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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Chavez, N./Reeb/De La Cruz **ORIGINAL DATE** 2/6/25

BILL

SHORT TITLE Denial of Bail Hearings & Presumptions **NUMBER** House Bill 165/ec

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Cost to Counties	\$1,266.7 to \$3,100.0	\$3,800 to \$9,300.0	\$3,800 to \$9,300.0	\$8,866.7 to \$21,700.0	Recurring	General Fund
AOC	At least \$117.1	At least \$351.2	At least \$351.2	At least \$819.5	Recurring	General Fund
LOPD	At least \$630.7	At least \$1,892.0	At least \$1,892.0	At least \$4,414.7	Recurring	General Fund
Total	\$2,014.5 to \$3,847.8	\$6,043.2 to \$11,543.2	\$6,043.2 to \$11,543.2	\$14,101.1 to \$26,934.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Joint Resolution 9 and Senate Bill 196.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)
 Corrections Department (NMCD)

SUMMARY

Synopsis of House Bill 165

House Bill 165 (HB165) would change the procedure for a pretrial detention hearing for a defendant accused of committing a “dangerous felony offense.” During the pretrial detention hearing, HB165 would allow the prosecuting authority to present all available evidence which demonstrates that, “the defendant is a danger to any other person or to the community if released” and “that no release conditions will reasonably protect any other person or the community.” The court must infer that the evidence entered by the prosecuting authority during the pretrial detention hearing is true and that denial of bail is necessary. HB165 dictates that, if the inferences and presumptions supporting bail are not overcome by the defense, the court shall

issue a denial of bail.

The bill provides a list of offenses that meet the term “dangerous felony offense”, including but not limited to:

- First- and second-degree murder,
- Voluntary manslaughter,
- First-degree kidnapping,
- First- and second-degree criminal sexual penetration
- First- and second-degree robbery, and
- A felony that was committed while the defendant brandished or discharged a firearm.

Additionally, the bill would allow other, lower offenses, such as involuntary manslaughter or third-degree robbery, to meet the definition of “dangerous felony offense” when, “the nature of the offense and the resulting harm are such that the court judges the crime to be a dangerous offense.”

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

HB165 would affect various criminal justice agencies including the courts, detention centers, district attorney offices, and public defender offices.

The courts would have significant cost increases to provide the staff and resources for the pretrial detention hearings. The Administrative Office of the Courts (AOC) notes that, in Bernalillo County alone, there would be an additional 797 to 1,969 individuals eligible for pretrial detention, creating the same proportional amount of court hearings. Each pretrial detention hearing is estimated to last a minimum of one hour and causes over two hours of additional time for the judge and court staff to prepare for the hearing and complete scheduling orders and docketing. The total time consumed by the pretrial detention hearing is over three hours and a total estimated cost of \$178.35 per hearing. The estimated cost per hearing from the AOC was derived from an analysis of the costs of House Bill 80, Senate Bill 123, and House Bill 44 from 2022, 2023, and 2024 legislative sessions; with HB165 possibly being broader, the court resources needed would increase from these original estimates.

The Law Office of the Public Defender (LOPD) provides a projection, based on a similar past bill, which asserts LOPD will need three additional attorney FTE (a mix of mid- and high-level attorneys since they deal with felony cases) and three additional staff FTE required to manage the increase in hearings projected to arise in Albuquerque alone. LOPD states the office would need at least six additional attorney and six additional support staff FTE to handle the increased number of hearings statewide, equating to a \$1.6 million impact. LOPD also estimates an impact on contract council of \$283.5 thousand, moving the total impact to \$1.892 million.

HB165 could result in more individuals being on pretrial detention. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. Based on the AOC’s estimate for the increased number of hearings and a detention rate of roughly 50 percent, this analysis assumes that HB165 would result in between 394 and 973 additional pretrial detainees annually.

Assuming that these detainees are held for approximately six months, HB165's annual fiscal impact to county jails would range between \$3.8 million and \$9.3 million.

SIGNIFICANT ISSUES

Constitutional Issues. Several agencies note that HB165 may conflict with Article II, Section 13 of the New Mexico Constitution, which states, "Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community." The New Mexico Sentencing Commission provides the following analysis:

The presumptions enumerated in HB165 seem to be in tension with the language of Art. II, Sec. 13 of the New Mexico Constitution, which states simply, "Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community." The New Mexico Constitution does not contemplate that defendants charged with certain crimes or appearing before a court in certain circumstances are presumed a flight risk or a danger to the community. A rebuttable presumption shifts the burden of proof. As such, HB165 runs afoul of the present constitutional provisions on pretrial release.

The Administrative Office of the District Attorney notes:

HB165 presumption may conflict with Article 2, Section 13 of the New Mexico Constitution that the state is required to prove by "clear and convincing evidence" that the defendant poses a further threat to others or the community.

The New Mexico Attorney General (NMAG) notes:

HB165 directs a court to infer that evidence presented by the prosecution demonstrating that "(1) the defendant is a danger to any other person or to the community if released; and (2) no release conditions will reasonably protect any other person or the community" is true, and then presume that denial of bail is necessary. Then, after all presentation of evidence, the court is to determine whether the inferences and presumption were overcome. The bill does not require the court to consider the prosecution's evidence under the clear and convincing standard imposed by the New Mexico Constitution, Rule 5-409, and case law and, instead, shifts the burden to the defendant to overcome inferences and presumptions.

However, the Department of Public Safety (DPS) asserts that, since HB165 "does not set a particular level of proof that is presumed in favor of the prosecution and defendants do not have to overcome a burden of proof level" the bill does not conflict with the standard set by Article II, Section 13.

Other Issues. LOPD provides the following:

Current dangerousness evaluations are based on many circumstances, beyond just the current charges for which a person is presumed innocent, investigation is ongoing, and evidence is scarce. These assessments have proven quite effective at detaining the right people....HB165 would create a rebuttable presumption that the prosecution has proven that a person is dangerous and that there are no conditions that will reasonably protect the safety of any person or the community based on a broad list of charges, without any evidence that any of these charges are by themselves reliable predictors of a defendant's

future dangerousness. The presumption would thus apply to a wide variety of defendants, including many who are not violent.

Furthermore, the presumptively dangerous circumstances enumerated in Subsection A are quite broad, and recent studies of New Mexico’s pretrial detention practices indicate that they will not be effective at reducing the overall crime rate. Understanding that some defendants commit new crimes while on pretrial release, it is a small percentage of the overall crimes being committed. Even if New Mexico decided to detain absolutely everyone pretrial, the vast majority of criminal activity would continue. Meanwhile, under HB165, an enormous number of presumptively innocent defendants would be detained despite the fact that they are not actually dangerous, merely because of the nature of unproven allegations against them. Relying on the presumption triggers in Subsection A will lead to a huge number of “false positives”; i.e., non-dangerous defendants being held pending trial unnecessarily.

DPS states:

The denial of bail for the defendant is a necessary and objective decision based on the substantial risk posed to public safety. Given the nature of the charges and the defendant's history, releasing them into the community would likely endanger the well-being of others. No set of conditions, including electronic monitoring or house arrest, would sufficiently mitigate the threat the defendant poses. The risk of reoffending or causing harm is too great to be overlooked, and there is a strong need to prioritize the safety of potential victims and the community at large. Allowing the defendant to be released would create an undue risk to public safety, and therefore, the court's decision to deny bail is warranted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB165 relates to House Joint Resolution 9 (HJR9). Both amend Article II, Section 13 of the New Mexico Constitution relating to pretrial detention. HJR9 also relates because it would expand the judiciary’s ability to hold defendants on pretrial detention.

HB165 relates to Senate Bill 196 (SB196) because both bills provide a list of felonies that would constitute pretrial detention. SB196, however, maintains the burden of rebutting pretrial detention on the prosecution.

OTHER SUBSTANTIVE ISSUES

NMAG provides the following:

It is unclear whether it was intentional to exclude third degree aggravated burglary, as provided in NMSA 1978, Section 30-3-5—which is included as a serious violent offense at Section 33-2-34(L)(4)(c)—from the list of dangerous felony offenses, or whether it was an oversight. Since

HB165 proposes to include any “felony that was committed while the defendant brandished or discharged a firearm” as a dangerous felony offense, it may be beneficial to include a definition for “firearm.” For example, there are several sections in NMSA Chapter 30 that include a definition for “firearm,” including Section 30-7-16(E)(4).