



allow the Legislature to set terms surrounding prohibiting bail eligibility.

The bill also removes limitations on the denial of bail to defendants charged with a felony, thus allowing for detention without bail to expand to misdemeanor cases.

The bill additionally removes the section of the constitution stating only prosecuting authorities may request a hearing to determine whether bail is denied.

The bill additionally expands the defendants for whom bail could be denied by the court. Under current statute, detention without bail is permitted only when “no release conditions will reasonably protect...the community.” If the proposed legislation were passed, detention without bail would be expanded to include the language “release conditions will not reasonably ensure the appearance of the person.”

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

## **FISCAL IMPLICATIONS**

HJR14 significantly expands the types of defendants eligible for detention and the basis on which they may be detained. The Administrative Office of the Courts (AOC) reports that, in 2024, there were approximately 101.5 thousand criminal cases filed in New Mexico Courts, excluding traffic cases. About 86.3 thousand, or 85 percent, of these cases were misdemeanors. Based on the marginal cost of each additional inmate in New Mexico’s jail system, each new offender being held pretrial could increase costs to counties by approximately \$19.2 thousand a year, or \$1,600 thousand per month. If 8,627 criminal misdemeanors, or 10 percent of misdemeanor cases, resulted in the individuals being held in pretrial detention for a month, it would cost counties an additional \$13.8 million. This estimate does not include any possible expansion in the number of felony cases that could result in pretrial detention.

AOC also reports for House Joint Resolution 9 (HJR9), a resolution that is very similar to HJR14, that, because HJR9 would remove the limitation of bail denial to defendants charged with a felony, it would add many thousands of cases statewide to those eligible for pretrial detention. This would greatly increase the need for additional district court resources and staff, in addition to the increase in the need for resources and staff in the non-record courts, which include all magistrate courts and most criminal cases in the Bernalillo County Metropolitan Court. This would also be true for HJR14.

Although HJR9 would reduce the burden on the prosecutor to prove detention is required, district attorney offices could still need additional resources. District attorney offices would have to screen every criminal misdemeanor, as well as felony, to make sure a motion for a pretrial hearing is done. Attending hearings in magistrate courts would also expand district attorney office travel with the addition of hearings beyond the courts of record to the lower courts.

The Law Offices of the Public Defender (LOPD) reports that, by expanding detention to misdemeanants, the number of defendants against whom the state would seek pretrial detention would increase, resulting in an increase in the number of detention hearings required by the courts, the number of defendants being held pretrial, and the number of appeals. LOPD estimates

a recurring increase of \$1.89 million to meet the staffing demands generated by the increased number of pretrial detention hearings.

The New Mexico Attorney General (NMAG) reports the amendments are likely to increase the number of pretrial detention motions filed, the number of persons for whom bail is denied, and the number of appeals of pretrial detention determinations. This would lead to an increase in appeals handled by NMAG, possibly requiring additional resources. NMAG only points out the possible appeals as the additional impact, thus making it an indeterminate but minimal fiscal implication.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

Should this proposed constitutional amendment be approved by voters, the estimated additional operating budget impact could be substantial for judicial agencies.

## **SIGNIFICANT ISSUES**

Agency analysis provided LOPD for House Joint Resolution 3 (HJR3) from the 2024 session, an exact duplicate of HJR14, expressed concern as to how the proposed legislation would give courts discretion to detain anyone without bail to ensure “either public safety or court appearance.” The agency also was wary of the aspect of the legislation that expands the detention of bail to misdemeanor offenses and ones that potentially carry no “danger to the community.”

LOPD notes that pretrial detention policy seeks to balance the public’s interest by not unnecessarily detaining individuals who pose no risk to the community and preventing the release of individuals who will go on to commit a serious crime during the pretrial period. There is an asymmetry in how these two priorities are balanced. The defendants whose lives are upturned due to unnecessary pretrial detention remain invisible and are rarely reported. In contrast, when a defendant is released and commits a serious crime, their name and criminal history are widely reported. Historically, the fiscal impacts of an unnecessary detention have been under accounted, mirroring public perception. This analysis is unable to estimate the impacts given data constraints, but it acknowledges these are significant. The expansion of pretrial detention to misdemeanor defendants as well could increase this underreported fiscal impact on unnecessary detentions.

There is evidence that pretrial detention also has a criminogenic effect, increasing new crime after case disposition. A 2018 LFC program evaluation found that likelihood of a new felony arrest rose with length of initial jail stay. Detaining individuals who have low- and moderate-risk of recidivism is associated with higher rates of new criminal activity and recidivism. When held for two to three days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than defendants held for no more than 24 hours. This is likely because individuals who are detained for even short periods of time face the possibility of lost

employment, loss of housing, and other negative social outcomes. A 2018 LFC Program Evaluation of the Bernalillo County criminal justice system noted links to loss of stability providing structures because of incarceration, including employment, housing, family, and community relationships. Increasing the risk of recidivism has long-term fiscal implications for county-run detention facilities and for the economy as a whole, as a share of people commit subsequent offenses who may not have otherwise done so.

LOPD also expressed concern for how HJR3 (HJR14's duplicate) expands the Legislature's ability to set "specific criteria for pretrial detention by authorizing the Legislature to designate certain conditions" that would limit or prohibit which defendants are eligible for bail. According to the agency, this expansion of the Legislature's role in bail would relieve the state of its "current constitutional burden of proving dangerousness in order to impose detention without bail." The agency analysis goes further, stating that the passage of HJR3 would make it so "the state would no longer need to present evidence 'that no release conditions will reasonably protect...the community,' but could instead rely on the mere fact charges have been filed." The agency also noted that the removal of the requirement that only courts of record can deny bail would thus allow magistrate judges, who are not required to have a law degree, to make decisions on denial of bail. Additionally, magistrate courts, due to not being a court of record, do not have a record of proceedings. This would result in appeals of denials of bail becoming de novo in district court (a new case that is deciding the case without reference made to the previous legal conclusion), resulting in an increased caseload for the district courts.

AOC provides the following:

HJR14 would substantially alter existing pretrial practices, requiring significant changes to Supreme Court Rules particularly for non-record magistrate courts. An expedited process for challenging a pretrial detention order entered in a non-record court would have to be created. Current statutes for non-record courts could be amended to require a record for detention hearings, which would make the appellate process less difficult but would require equipment and training to make a record of these proceedings. In addition, without a record of proceedings, appeals from non-record courts go to district courts to re-start the process.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The New Mexico Attorney General (NMAG) provides the following:

HJR14 is related to House Joint Resolution 9 (HJR9), "Denial of Bail, CA," in that, while not exact duplicates, each propose amendments with the same or similar effects. HJR9 proposes amendments to Article II, Section 13 of the New Mexico Constitution to allow conditions for denial of bail and for pretrial detention, remove the requirement that bail denial be made only by a court of record, remove the limitation of bail denial to persons charged with a felony and allow bail denial for a person who has previously failed to appear before the court or is a flight risk.

HJR14 is related to House Bill 165 (HB165), "Denial of Bail Hearings & Presumptions" and Senate Bill 196 (SB196), "Rebuttable Presumption Against Release," which both relate to pretrial detention.

HJR14 and HB165 conflict insofar as HB165 essentially creates a rebuttable presumption of dangerousness and that no release conditions will reasonably protect the safety of any

other person or the community for cases involving “dangerous felony offenses” and does not require the state to show by clear and convincing evidence that circumstances for denial of bail are met. HB165 also references the initiation of a hearing by the prosecuting authority pursuant to Article II, Section 13 of the New Mexico Constitution.

Under SB196, it shall be presumed that the prosecution has shown by clear and convincing evidence that the defendant is dangerous and that no conditions of release will reasonably protect the safety of any other person or the community if there is probable cause to believe that (1) the defendant committed any enumerated felony offense for which the defendant is charged or (2) “the defendant committed a new felony offense that prompted the detention hearing” under certain circumstances. If the initial presumption applies, the court shall then consider “any other available information tending to indicate that the defendant” is dangerous and that no conditions of release will reasonably protect the safety of any other person or the community to determine whether the prosecution has met its burden of proof required under Article II, Section 13 of the New Mexico Constitution.

## **OTHER SUBSTANTIVE ISSUES**

The Department of Public Safety (DPS) provides the following:

If courts are allowed to deny bail too easily based on a “danger to the community” standard, there is concern that this could be applied excessively, potentially infringing on defendants’ rights to a fair trial. In particular, this could disproportionately affect individuals who may not have committed serious crimes but are deemed a “risk” due to factors like prior criminal history or accusations without a conviction.

The determination of who poses a “clear danger” to the community or law enforcement is highly subjective. While law enforcement may have concerns about officer safety, courts will have to establish clear guidelines for what constitutes a “clear danger.” Without careful legal definitions and consistent criteria, there could be inconsistent rulings, leading to potential violations of due process.