

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/11/25

SPONSOR Lord/Hall/Block

BILL
NUMBER House Bill 381/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 Bill 165 and Senate Bill 196.
Conflicts with House Joint Resolution 9 and 14.

Sources of Information

LFC Files

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

SUMMARY

Synopsis of House Bill 381

House Bill 381 (HB381) would add a new section to Chapter 31, Article 3 NMSA 1978, the statute governing criminal procedure, to introduce rebuttable presumptions regarding the pretrial release of certain defendants in certain circumstances.

HB381 would call for the prosecuting authority to initiate a hearing where either a magistrate court, metropolitan court, or district court first makes a probable cause determination as provided for in Supreme Court rules.

Once probable cause to support the charge(s) is found, the bill would require that a pretrial detention hearing proceed in district court. The bill would require the prosecuting authority to present relevant evidence demonstrating that:

- The defendant committed a dangerous felony offense,
- The defendant is a danger to others or the community, and
- No release conditions would reasonably protect others and the community.

The bill further describes that the evidence creates a rebuttable presumption that the defendant is a danger to others or the community if released and no release conditions would reasonably protect others and the community. This presumption is based on a clear and convincing evidence standard. If the prosecuting authority successfully establishes the presumption described in the previous paragraph, the defendant would have the burden of proving that they are not a danger to others or the community if released and that release conditions would reasonably protect others and the community.

The bill authorizes the court to make the final determination of detention after consideration of whether the defendant has overcome the presumption of detention established and after considering any other factors established by Supreme Court rule.

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

The courts would face significant cost increases from increased 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 at a total estimated cost of \$178.35 per hearing. The estimated cost per hearing from 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 respectively; HB381 may have a broader effect than these bills, meaning the courts would likely need additional resources beyond the original estimates.

The Law Office of the Public Defender (LOPD) provides a projection, based on a similar past bill, which asserts LOPD will need 3 additional attorney FTE (a mix of mid- and high-level attorneys capable of dealing with felony cases) and 3 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.

HB381 could result in more individuals being on pretrial detention. LFC estimates a marginal cost (the cost per 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 HB381 would result in between 394 and 973 additional pretrial detainees annually. Assuming that these detainees are held for approximately six months, HB381's annual fiscal impact on county jails would range between \$3.8 million and \$9.3 million.

SIGNIFICANT ISSUES

Constitutional and Statutory Issues. Several agencies note that HB381 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 HB381 seem to be in tension with the language of Art. II, Sec. 13 of the New Mexico Constitution....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, HB381 runs afoul of the present constitutional provisions on pretrial release.

The Administrative Office of the District Attorney notes:

HB381 presumption may conflict with Article II, 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 concern over HB381 conflicting with the New Mexico Constitution and current statute:

HB381 would essentially eliminate and replace the factors under NMRA, Rule 5-409(F)(6) and the clear and convincing standard as outlined in both Article II, Section 13 of the New Mexico Constitution and NMRA, Rule 5-409. Under HB381, once the rebuttable presumption is established by the State, the burden would shift to the defendant where they would have to show they are not a danger to any other person or to the community and that release conditions exist that will reasonably protect any other person or the community. This burden shift and the contents of HB381 will likely be subject to litigation.

However, the Department of Public Safety (DPS) asserts that HB165, which nearly duplicates HB381 and also establishes a rebuttable presumption, “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,” meaning the bill may 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.... HB381 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. While it purports to involve other evidence as well, it does not prevent the state from relying exclusively on charges for a “dangerous felony.” 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 F 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 while 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 HB381, 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 will lead to a huge number of “false positives”; i.e., non-dangerous defendants being held pending trial unnecessarily.

DPS states:

The presumption that the prosecution has proven the defendant’s danger to the community creates a stronger legal foundation for keeping dangerous individuals off the streets while they await trial. This presumption helps prioritize community safety over the risk of releasing individuals who could harm others or flee.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG provides the following:

HB381 is almost identical to HB165 with slight grammatical and word choice changes, but otherwise is identical in substance.

HB381 is very similar to SB196 in that it creates a rebuttal presumption for enumerated felony offenses. SB196 encompasses similar enumerated felony offenses as HB381, but it makes direct reference to serious violent felony offense and felony offenses where firearms were brandished or discharged, or great bodily harm was inflicted. SB196 only enumerates several specific offenses such as murder, human trafficking, first degree child abuse, and sexual exploitation of children. Furthermore, SB196 incorporates whether the Defendant committed a new felony offense while pending trial or sentencing or while on probation, parole, or any other post-conviction supervision for an enumerated offense listed. SB196 is essentially more expansive than HB381 in terms of what conduct can be used to create a rebuttable presumption.

HJR9 and HJR14 are both semi-related and also conflict with HB381. Both HJR9 and HJR14 would amend Article 2, Section 13 of the New Mexico Constitution. However, they both keep the clear and convincing standard which more or less would be eliminated if HB381 were to become law.

OTHER SUBSTANTIVE ISSUES

AOC provides the following:

HB381 does not define “brandished,” “discharged,” or “firearm” in Section F. Providing definitions might make application of this section less subject to contest.

LOPD notes:

Keeping in mind that a person charged with a crime is presumed innocent, it is also important to compare pretrial detention numbers with the ultimate outcome of the criminal case. As noted above, according to LOPD internal data for Albuquerque, as of December 31, 2024, 8,110 detention cases were filed in Albuquerque from 2017 to 2023 and 3,992 (49.2 percent) of those were granted. 458 of those, or 11.5 percent were not indicted within the 10 days allowed by rule to continue detention. 7,780 detention cases have “resolved,” meaning a final outcome is known. Of those resolved cases, 18.1 percent were not indicted within the year, and 44.0 percent ended without a state conviction. Only 17.4 percent of people on whom the State filed for detention were ultimately sentenced to prison for a conviction on that case.

FC/hj/SL2