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FISCAL IMPACT REPORT

SPONSOR <u>Martinez, A.</u>	LAST UPDATED _____ ORIGINAL DATE <u>2/20/25</u>
SHORT TITLE <u>Denial of Bail, CA</u>	BILL <u>House Joint</u> NUMBER <u>Resolution 9</u>
ANALYST <u>Chavez</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs	No fiscal impact	No fiscal impact	\$35.0 to \$50.0	\$35.0 to \$50.0	Recurring	General Fund
Courts, if enacted	No fiscal impact	No fiscal impact	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund
District Attorneys, if enacted	No fiscal impact	No fiscal impact	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund
PDD, if enacted	No fiscal impact	No fiscal impact	At least \$1,892.2	At least \$1,892.2	Recurring	General Fund
Cost to Counties	No fiscal impact	No fiscal impact	At least 13,800.0	At least 1,380.0	Recurring	General Fund
NMAG	No fiscal impact	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	No fiscal impact	At least \$15,742.2	At least \$15,742.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 165, House Joint Resolution 14, and Senate Bill 196.

Sources of Information

LFC Files

Agency Analysis Received From

Administration Office of the Courts (AOC)
Administration Office of the District Attorneys (AODA)
Public Defender Department (PDD)
New Mexico Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Joint Resolution 9

House Joint Resolution 9 (HJR9) would amend Article II, Section 13, of the constitution of New Mexico relating to pretrial detention.

HJR9 would remove the requirement that decisions related to the denial of bail be made by a

“court of order,” expanding the ability to deny bail to magistrate judges and to most criminal cases in the Bernalillo County Metropolitan Court. HJR9 would also remove the limitation of bail denial to defendants charged with a felony, meaning detention without bail would be allowed in misdemeanors. It would still require the prosecutor to request a motion to deny release, but it removes the burden from the prosecutor to prove detention is required and allows the court to deny bail on a finding that there is clear and convincing evidence that denying pretrial release would reasonably protect the safety of the person and the community. HJR9 also allows the court to consider whether the person is a flight risk or if the person has failed to appear before a court, as required, as additional basis for denying pretrial release.

It also adds to the existing provision detailing that a person shall not be detained solely because of financial inability to post a money or property bond to also include if a person has not previously failed to appear before a court as required. The amendment to this section adds language that details that a person would be eligible for relief from posting bond if they were not detained on grounds of dangerousness, not a flight risk, and had not previously failed to appear before a court as required. The proposed amendments also replace “defendant” with “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

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 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 cost to judicial agencies would be substantial.

HJR9 would remove the limitation of bail denial to defendants charged with a felony to include those charged with misdemeanors. The Administrative Office of the Courts (AOC) reports that, in 2024, there were approximately 101,502 criminal cases filed in New Mexico Courts, excluding traffic cases. About 86,276, 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 due to the inclusion of risk of flight or previous failure to appear in court among the factors that can be considered for denial.

AOC also reports 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.

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 Public Defender Department (PDD) reports that, by expanding detention to misdemeanants and questionable flight risks, 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. Because PDD does not control its caseload, rather it reacts to the actions of the prosecution, it estimates a recurring increase of \$1,892,217 per year to the operating budget.

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.

SIGNIFICANT ISSUES

AOC reports HJR9 removes language requiring prosecutors to “prove” that no release conditions will ensure the public safety but retains the “clear and convincing evidence” standard. The implications of this change are unclear, particularly regarding the burden of proof. Additionally, eliminating the requirement for a pretrial detention hearing in a court of record could lead to procedural inefficiencies, including de novo reviews (a process that begins the case from the start without reference to what happened in the non-record court) that extend detention periods. AOC’s research suggests that pretrial detention increases recidivism and has severe social consequences, such as job loss, housing instability, and disrupted treatment.

HJR9 expands detention eligibility by allowing courts to detain individuals based on flight risk or any prior failure to appear (FTA), regardless of the nature of the offense. The amendment does not define “flight risk” beyond requiring clear and convincing evidence, and it does not limit FTAs to serious offenses. This could result in detention for minor infractions, such as traffic violations. Additionally, the amendment may unintentionally lead to detention based on financial inability to post bond. AOC’s research indicates that most FTAs occur due to logistical challenges, such as lack of transportation or work conflicts, rather than intentional evasion. Existing court rules already assess risk through tools like the public safety assessment (PSA) and background investigation report (BIR), which help determine appropriate pretrial conditions.

HJR9 would require significant changes to pretrial procedures, especially in non-record magistrate courts, where detention hearings currently lack official records. Without a record, appeals would have to restart in district courts, causing delays and increasing workloads. To

address this, Supreme Court rules would need revisions, an expedited appeals process would be necessary, and magistrate courts might require new recording equipment and training. Without these changes, pretrial detention periods could be unnecessarily prolonged, further straining the judicial system.

The Public Defender Department (PDD) points out the removal of the requirement for courts of record means magistrate judges—who may not be lawyers—could make these decisions, leading to more appeals and additional burdens on the judicial system. A magistrate judge, in districts smaller than 200 thousand in population, is only required to have graduated from high school or the equivalent, be a qualified elector, and reside in the district according to section 35-2-1 NMSA 1978. While districts with populations higher than 200 thousand have more requirements, including being a member of the state bar, it could still mean that pretrial detention hearing decisions could be made by nonlawyers.

PDD also provides the following statistics on pretrial detention:

According to [PDD] 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 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.

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. Previous [PDD] internal data indicates that 23.8 percent of defendants detained in Albuquerque between 2017 and 2022 were not ultimately convicted of anything (589 of 2,478). An additional 120, or 4.8 percent, pled down to a misdemeanor offense, possibly just to get out of jail. These numbers do not include defendants who were released or those who were convicted of some lesser felony, including felonies that would not be considered “dangerous” by any measure. Of those convicted, over 30 percent receive probated sentences because once all the circumstances are known, incarceration is often no longer deemed appropriate.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG provides the following:

HJR9 is related to HB165, “Denial of Bail Hearings & Presumptions” and SB196, “Rebuttable Presumption Against Release,” which both relate to pretrial detention.

HJR9 and HB165 conflict insofar as HB165 does not require the state show by clear and convincing evidence that circumstances for denial of bail are met, whereas HJR9 provides that the court must find by clear and convincing evidence that circumstances for denial of bail are met.

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.

HJR9 also relates to House Joint Resolution 14 (HJR14) because HJR14 also proposes constitutional amendments to Article II, Section 13, of the constitution of New Mexico relating to pretrial detention.

OTHER SUBSTANTIVE ISSUES

NMAG provides the following:

Adoption of the amendments would mean that existing rules would need to be amended and new rules may need to be promulgated. Currently, if a case is pending in magistrate court or Metropolitan Court, probable cause has been found, and a prosecutor files a motion for an expedited pretrial detention hearing, then pursuant to Rules 6-409, 7-409, and 5-409 NMRA, the motion for pretrial detention is to be sent to the district court, terminating the lower court’s jurisdiction. Rules 5-409, 5-405 and 12-204 NMRA provide for appeals of pretrial detention determinations from district court. New or amended rules would be needed for appeals of pretrial detention determinations from courts other than district courts. Issues may also arise regarding materials available for review on appeal. For example, regarding motions initiating an appeal, Rule 12-204(C)(1) states, in part, “The motion shall specify the decision appealed from and shall include, by attachments, any materials deemed necessary for consideration of the matter by the appellate court, including any available audio recording or stenographic transcript of the hearing in district court.” It is unclear what materials would be available for review on appeal if courts not of record were authorized to make pretrial detention determinations.

FC/hj/hg