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FISCAL IMPACT REPORT

SPONSOR <u>Chavez, N./Reeb/Hall</u>	LAST UPDATED _____ ORIGINAL DATE <u>3/13/25</u>
SHORT TITLE <u>Denial of Bail, CA</u>	BILL <u>House Joint</u> NUMBER <u>Resolution 22</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
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	At least \$3,847.8	At least \$11,543.2	At least \$11,593.2	At least \$26,984.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 165, House Joint Resolution 9 and 14, Senate Joint Resolution 14, and Senate Bill 196.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the District Attorneys (AODA)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 Administrative Office of the Courts (AOC)
 Corrections Department (NMCD)
 Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of House Joint Resolution 22

House Joint Resolution 22 (HJR22) would amend Article II, Section 13, of the constitution of New Mexico relating to the denial of bail.

HJR22 would add “persons charged with” to clarify that those who are charged with capital offenses would be eligible to post bail. HJR22 further adds a new provision that would allow the Legislature to designate, by law, dangerous or violent felony offenses for which a court of record may presume that release conditions will not reasonably protect any other person or the community and deny bail. HJR22 would also add that the person charged may rebut the presumption for denial of bail by the preponderance of evidence. In other words, the person charged would have the burden of proof to convince the court that release would not endanger any other person or the community.

HJR22 also strikes the mention of “defendant” and replaces it with “person” throughout.

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.

HJR22 is complementary to House Bill 165 (HB165), which would change the procedure for a pretrial detention hearing for a defendant accused of committing a “dangerous felony offense.” Because HJR22 amends the constitution of New Mexico to allow the Legislature to designate dangerous or violent felony offenses, the analysis will assume that any offense defined as a “dangerous felony offense” in HB165 would be apply to HJR22 as well.

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 in analysis for HB165 there would be an additional 797 to 1,969 individuals eligible for pretrial detention in Bernalillo County alone, creating the same proportional amount of court hearings. Each pretrial detention hearing is estimated to last a minimum of one hour and cause 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 estimated 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 legislation similar to HB165, that asserts LOPD will need three additional attorneys (a mix of mid- and high-level attorneys since they deal with felony cases) and three additional staff to manage the increase in hearings projected to arise in Albuquerque alone. LOPD states the office would need at least six additional attorneys and six additional support staff to handle the increased number of hearings statewide, equating to a \$1.6 million impact. LOPD also estimates an impact on contract counsel of \$283.5 thousand, moving the total impact to \$1.892 million.

If HJR22 were to use the offenses under HB165, it 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, HJR22's annual fiscal impact to county jails would range between \$3.8 million and \$9.3 million.

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission (NMSC) provides the following concerns regarding the absence of a clear definition for dangerous or violent felonies in current law:

Article II, Section 13, of the New Mexico Constitution was changed substantially in 2016. Every legislative session since there have been attempts to unwind those changes, sometimes through statute, sometimes through a new amendment to the state Constitution. HJR22 is more limited in scope than many of the prior attempts to unwind the changes made in 2016. It creates a rebuttable presumption of dangerousness for a person charged with a felony “designated by law as a dangerous or violent felony offense.” The standard the defendant would have for proving that they are not dangerous is “preponderance of the evidence,” which is a relatively low standard (more likely than not).

An issue with the language in HJR22 is that it is not always clear in New Mexico's statutes what constitutes a dangerous or violent felony. There is a list of serious violent offenses in the statute on earned meritorious deductions (Section 33-22-34(L)(4) NMSA 1978), but that list has 14 crimes that always are serious violent offenses, and a further 15 offenses that may or may not be serious violent offenses, depending on the facts particular to the case; and certain statutes may indicate that they are considered violent, but there is no comprehensive list to which the language in HJR22 would relate.

Further supporting the concerns raised by the NMSC, the New Mexico Attorney General (NMAG) provides the following insights:

The amendment would create a presumption for felonies designated as “dangerous or violent” by law. Because the amendment does not specify how to designate felonies as “dangerous or violent,” it appears that the amendment would support various methods for arriving at such a designation. For example, the Legislature could expressly designate offenses as dangerous or violent for the purposes of release, or, absent legislative action, the courts could develop caselaw to outline the parameters for designating a felony as “dangerous or violent.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG provides the following:

Related to and to an extent conflicting with HJR14, HJR9, HB165, SB196, and SJR14, which would all modify the conditions under which a court could detain individuals charged with felonies before trial.

OTHER SUBSTANTIVE ISSUES

NMAG explains that if HJR22 is adopted, it would require the courts to amend Rule 5-409 NMRA which reflects the current language and standard of Article II, Section 13, of the constitution of New Mexico.

FC/hj/hg