# F I S C A L  I M P A C T  R E P O R T

**SPONSOR** Nibert/Alcon **ORIGINAL DATE** 2/6/2018 **LAST UPDATED** **HB** 185

**SHORT TITLE** County Pretrial Release Compliance Programs **SB**

**ANALYST** Edwards

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | Minimal | Minimal | Minimal | Minimal | Recurring | General Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 74, HJR 5, SB44, SB 13, SJM 13.

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Administrative Office of the District Attorney (AODA)
Administrative Office of the Courts (AOC)

**SUMMARY**

Synopsis of Bill

House Bill 185 would allow a county to create a "pretrial release compliance program" to monitor defendants' compliance with the conditions of pretrial release imposed by a district or magistrate court. The program is to comply with guidelines established by the Administrative Office of the Courts (AOC). The defendant may be charged a fee not to exceed fifty dollars per month to the county according to a sliding fee scale established by the administrative office of the courts. The court may waive fees if the court determines that the defendant is indigent. Fess shall be used only to fund the program. Counties may obtain other funding or dedicate other county funds to the program.

The effective date of this legislation is May 16, 2018.

**FISCAL IMPLICATIONS**

AOC believes the bill will have no fiscal implications as no additional administrative duties are assigned.

AODA explains "there are no fiscal implications for the district attorneys. The administrative office of the courts will need to establish guidelines and a sliding fee scale. The counties that choose to implement a program will have expenses, which may or may not be paid for with the fee provided in HB 185. Courts in counties that have monitoring programs will be called on to assess the fees, and to determine if the fee should be waived because of indigency. It is not known whether the fees will be adequate to cover the counties' costs; HB 185 appears to contemplate the need for additional funding, or the need for counties to transfer funds from other sources to pay for the program."

**SIGNIFICANT ISSUES**

AOC submitted the following detailed analysis:

> There are circumstances in which a defendant cannot be released on personal recognizance; there may not be sufficient evidence to conclude the individual will appear at court or will not threaten the safety of others. In these situations pretrial programs could supply the support services necessary to encourage attendance at hearings and compliance with release conditions.
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> HB 185 does not mandate pretrial release compliance services, so only defendants and courts in counties that elect to create such programs will benefit.
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> Where pretrial release compliance monitoring programs exist, they would serve an important function in terms of both public safety and assistance to the defendant. Magistrate judges indicate these services would assist them in their role by providing a level of confidence when releasing individuals on court-ordered conditions, knowing the conditions would be appropriately monitored. Magistrate judges currently have no means of securing pretrial monitoring services through their local misdemeanor compliance programs because the authorizing statute for those programs limits services to convicted individuals. Pretrial programs could potentially be a positive support resource to defendants by providing reminders for upcoming hearings and evidence of compliance with conditions of release.
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> Since the creation of pretrial release services is elective, HB 185 does not create a statewide infrastructure for pretrial release compliance services. Further, there is no appropriation for these services and it is likely that fees from defendants will not be sufficient to maintain a robust program without local government subsidies; However, it should also be noted that local county incarceration costs may be reduced if defendants are supervised on pretrial release thus helping defer the costs of the program, instead of sitting in jail.
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> It should also be noted that electronic monitoring often costs in excess of $6 to $10 per day. These services, as well as drug testing, may not be included in the pretrial release compliance program standard operating budget, requiring that these services be absorbed by the defendant ancillary to the $50 monthly fee.

The AODA also submitted detailed analysis:

> In 2016, New Mexico voters amended Art. II, Section 13 of its constitution, the provision governing pretrial detention. In 2017 the New Mexico Supreme Court adopted new rules for pretrial release to implement the new constitutional amendment. The amendment and the

rules encourage courts to release defendants who are not a danger, and prohibit courts from detaining defendants who are neither a danger nor a flight risk solely because they lack the financial ability to post bond. Courts are encouraged to impose conditions of release on defendants to ensure that they will not pose a danger and will appear at trial. HB 185 provides a mechanism for counties to establish programs to monitor defendants' compliance with conditions of release.

It is not clear why this should be a county function, as opposed to a function of the local judicial district. For example, the Second Judicial District Court already has a Pretrial Services Division that monitors compliance with pretrial conditions by defendants in that district. It is, after all, the courts that benefit from and use the information gathered by a monitoring program. HB 185 appears to recognize that by making the administrative office of the courts the entity responsible for establishing program guidelines.

HB 185 creates programs to monitor compliance with conditions of pretrial release imposed by a district or magistrate court. Under the new constitutional amendment, only district courts impose conditions of release in felony cases, although some proposed legislation aims to change that. See SB 13, HB 74 and HJR 5. If both magistrate and metropolitan courts are allowed to conduct pretrial release proceedings, it is not clear why HB 185 would not allow monitoring programs to cover conditions of release imposed by metropolitan court.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

AODA explains:

HJR 5 greatly expands the list of circumstances that make a person ineligible for bail. Currently, those circumstances are taken into account by courts when determining conditions for release, and may be taken into account in determining whether bail should be denied because the defendant poses a danger, but they are not automatic reasons for denying bail. HJR5 also would remove the requirement that pretrial detention matters be heard by a court of record, therefore allowing magistrate courts and metropolitan courts to hear such matters.

SB 13 and HB 74 would amend statutes governing metropolitan courts and magistrate courts to make those courts "courts of record" for felony charges for which the prosecuting authority has requested a hearing to deny bail, enabling those courts to hear bail cases. Appeals from decisions in such cases are heard by the district court, in the manner set forth by Supreme Court rule.

SJM 13 requests that the Supreme Court rescind its rules on pretrial release, to make them consistent with a provision in the current constitutional provision providing that a defendant may file a motion to request relief from the requirement to post bail.

SB 44 affects bail issues by presuming that a person charged with leaving the scene of an accident is a flight risk.

**OTHER SUBSTANTIVE ISSUES**

AOC guidelines would reflect both legal and safety protections for the accused, the pretrial compliance staff, and community. The sliding fee scale would, likewise, establish reasonable

protections to address income disparity while providing a revenue source for local government programs.

AOC explains the American Bar Association recognizes the important role of pretrial services and details the essential elements of that role in their Pretrial Release General Principles Part I, as cited below in Standard 10-1.10.

> Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.
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> The pretrial services agency should:
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> A. conduct pre-first appearance inquiries;
> B. present accurate information to the judicial officer relating to the risk defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
> C. develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
> D. develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;
> E. monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;
> F. promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;
> G. supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;
> H. review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

I. develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;
J. assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;
K. remind persons released before trial of their court dates and assist them in attending court; and
L. have the means to assist persons who cannot communicate in written or spoken English.

TRE/al/jle