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## FISCAL IMPACT REPORT

SPONSOR Martinez ORIGINAL DATE 1/29/18  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Presume Certain Violations as Flight Risk SB 44  
ANALYST Sánchez

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		None	None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
New Mexico Sentencing Commission

### SUMMARY

#### Synopsis of Bill

Senate Bill 44 proposes to add a new section to the article on criminal procedures which will consider a person leaves the scene of an accident, Section 66-7-201 NMSA 1978, a flight risk.

### FISCAL IMPLICATIONS

The Public Defender Department (PDD) and the Administrative Office of the Courts (AOC) report this bill will have minimal fiscal impact.

### SIGNIFICANT ISSUES

PDD and AOC cite *State v. Brown*, 2014-NMSC-038, in which the Supreme Court found it to be

unconstitutional to set a bond solely based on the crime charged. Since the passing of the constitutional amendment, the Supreme Court has issued three decisions regarding pretrial detention issues. In *State ex rel. Torrez v. Whitaker*, 2018-NMSC-\_\_\_, ¶ 101, the Supreme Court stated, "Detention decisions, like release conditions, should not be based categorically on the statutory classification and punishability of the charged offense." Thus, the Court made clear that any presumptions in regard to release conditions were still unconstitutional as expressed in *Brown*.

The Administrative Office of the District Attorneys (AODA) and the New Mexico Sentencing Commission (NMSC) cite *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M.07 (1976) which held that in New Mexico the Court and not the Legislature dictates court procedures.

AODA also cites *Southwest Community Health Services v. Smith*, 107 N.M, 196 (1988) and NMSC cites *State ex. rel. Anaya v. McBride*, 88 N.M. 244, 539 P.2d 1006 (1975) as further support of the Court's decision about who is responsible for court procedures.

## **TECHNICAL ISSUES**

This bill may not be constitutional.

## **OTHER SUBSTANTIVE ISSUES**

The New Mexico Supreme Court has promulgated rules regarding pre-trial release district courts (Rule 5-401), magistrate courts ( Rule 6-401), metropolitan court (Rule 7-401) and municipal courts (Rule 8-401) that provide that if a defendant is eligible for pre-trial release under Article II, Section 13 of the New Mexico Constitution they should be released on their own personal recognizance or an unsecured appearance bond, unless the court makes, "...written findings setting forth particularized reasons why the release will not reasonably ensure appearance of the defendant as required.

**ABS/sb**