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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Reeb/Rehm/Lord</u>	<b>LAST UPDATED</b> _____ <b>ORIGINAL DATE</b> <u>1/31/2023</u>
<b>SHORT TITLE</b> <u>Denial of Bail, CA</u>	<b>BILL NUMBER</b> <u>House Joint Resolution 9</u>
<b>ANALYST</b> <u>Gray</u>	

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Counties: increased detention costs</b>	No fiscal impact	Up to \$44,537.0	Up to \$89,074	\$133,611.0	Recurring	County General Funds
<b>Secretary of State</b>	No fiscal impact	Up to \$375.0	No fiscal impact	Up to \$375.0	Nonrecurring	General fund

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

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Attorney General’s Office (AOG)  
 New Mexico Sentencing Commission (NMSC)  
 Department of Public Safety (DPS)  
 Secretary of State (SOS)

## SUMMARY

### Synopsis of House Joint Resolution 9

House Joint Resolution 9 proposes to amend Article II, Section 13, of the New Mexico Constitution to allow the Legislature to set the conditions under which defendants may be detained and denied bail pending trial. HJR9 proposes several additional changes to current constitutional requirements for denial of bail. It would remove the requirement that detention without bail be requested by prosecutors and allow any court to deny bail rather than just a “court of record.” This change would give magistrate judges, in addition to district judges, the ability to deny bail. Additionally, HJR9 would expand the types of defendants for whom bail may be denied by removing the constitutional requirement that only defendants charged with

felonies may be detained without bail and by permitting detention to ensure a defendant's appearance in court. Currently, the constitution only permits detention without bail prior to conviction when a defendant is found to be dangerous and when no conditions of release can reasonably protect the safety of the community or any individual.

If HJR9 was passed, the constitutional amendment it proposes would be submitted to voters for approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

## **FISCAL IMPLICATIONS**

HJR 9 significantly expands the types of defendants eligible for detention and the basis on which they may be detained. The cost estimates in this analysis are based on the cost of additional detention due to expanding detention eligibility to defendants charged with misdemeanors. The lower end of the cost estimate assumes the constitutional amendments result in no additional detentions while the upper end assumes misdemeanor defendants are detained at the same rate as felony defendants. Recent research on pretrial detention in Bernalillo County found 30.4 percent of defendants were detained. According to AOC's FY20 statistical addendum, 25,206 new misdemeanor cases were initiated in magistrate courts statewide in FY20. The marginal cost of detention at the Metropolitan Detention Center and the average time to case disposition for district attorneys statewide were applied to this population to arrive at the cost estimate for county general funds.

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 also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed.

## **SIGNIFICANT ISSUES**

Pretrial defendants are relatively small contributors to reported crime. A 2021 study found that 95 percent of defendants released pending trial in Bernalillo County did not pick up new violent charges while on pretrial release. Serious violent charges, such as robbery, sex offenses, or homicide each represented 1 percent or less of the new criminal activity in the pretrial release population.

Although pretrial detention prevents new criminal activity prior to case disposition through a short-run incapacitation effect, there is evidence that pretrial detention also has a criminogenic effect, increasing new crime after case disposition. A 2018 LFC program evaluation found that likelihood of a new felony arrest rose with length of initial jail stay.

Pretrial detention policy seeks to balance the public's interest by not unnecessarily detaining individuals who pose no risk to the community and preventing the release of individuals who will go on to commit a serious crime during the pretrial period. There is asymmetry in how these two priorities are balanced. The defendants whose lives are upturned due to unnecessary pretrial

detention remain invisible and are rarely reported. In contrast, when a defendant is released and commits a serious crime, their name and criminal history are widely reported. Historically, the fiscal impacts of an unnecessary detention have been under accounted, mirroring public perception. This analysis is unable to estimate the impacts given data constraints, but it acknowledges these are significant.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HJR9 is identical to the House Joint Resolution 4 from the 2022 legislative session.

HJR9 conflicts with House Bill 74, which proposes statutory requirements for constitutionally required hearings contained in Article 2, Section 13 of the New Mexico Constitution.

HJR9 conflicts with Senate Bill 174 establishes a rebuttable presumption. SB174 also disallows courts from excusing a defendant from positing bail unless the defendant proves they lack the financial means to do so.

HJR9 conflicts with Senate Bill 123 which creates a rebuttable presumption against pretrial release for individuals charged with certain crimes.

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