

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/29/25

Check all that apply:

Bill Number: HB 165

Original Correction
Amendment Substitute

Sponsor: Rep. Nicole Chavez, Rep. Andrea Reeb, Rep. Art De La Cruz

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: DENIAL OF BAIL HEARINGS & PRESUMPTIONS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB 165 would enact new legislation relating to pretrial detention. It essentially provides a rebuttable presumption of dangerousness and that no release conditions will reasonably protect the safety of any other person or the community for cases involving “dangerous felony offenses.”

Section 1 is entitled *Presumption that Defendant is Dangerous and that No Release Conditions Will Reasonably Protect the Safety of Any Other Person or the Community* and includes the substance of HB 165.

Section 2 provides, “It is necessary for the public peace, health and safety that this act take effect immediately.”

Section 1(A) refers to Article II, Section 13 of the New Mexico Constitution and states that a hearing to deny bail initiated pursuant to the aforementioned article “may proceed only after a magistrate court, metropolitan court or district court makes a probable cause determination as provided for by supreme court rule.”

Section 1(B) provides that “During a hearing to deny bail for a defendant charged with committing a dangerous felony offense,” a “prosecuting authority may present all available evidence that demonstrates that: (1) the defendant is a danger to any other person or to the community if released; and (2) no release conditions will reasonably protect any other person or the community.”

Section 1(C) provides that the court shall infer that evidence described in Section 1(B) is true and “presume denial of bail is necessary.”

Under Section 1(D), after presentation of evidence by both parties, “the court shall determine whether the inferences and presumption supporting denial of bail were overcome.” If not, “the court shall adopt them as findings and issue an order in accordance with supreme court rule.”

Section 1(E) enumerates the relevant dangerous felony offenses. The enumerated offenses nearly mirror those included as serious violent offenses in NMSA 1978, Section 33-2-34,

Eligibility for Earned Meritorious Deductions, Subsection (L)(4), except that HB 165 includes first degree murder and “a felony that was committed while the defendant brandished or discharged a firearm” and excludes third degree aggravated burglary (which is listed at Section 33-2-34(L)(4)(c)).

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

As provided by Article II, Section 13 of the New Mexico Constitution, case law, and court rule, a defendant may not be denied bail (or pretrial release) unless the state shows by clear and convincing evidence that (1) the defendant is dangerous and (2) no release conditions will reasonably protect the safety of any individual or the community. *See* N.M. Const. art. II, § 13 (“Bail may be denied by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.”); *State v. Anderson*, 2023-NMSC-019, ¶ 1; *State v. Mascareno-Haidle*, 2022-NMSC-015, ¶ 27; *State v. Ferry*, 2018-NMSC-004, ¶ 3; Rule 5-409 NMRA (providing in subparagraph (A) that “the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a motion for an expedited pretrial detention hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community” and in (F)(4) that “[t]he prosecutor must prove by clear and convincing evidence that the defendant is likely to pose a threat to the safety of others if released pending trial and that no release conditions will reasonably protect the safety of any other person or the community”). In *Mascareno-Haidle*, the court stated that “our Constitution requires the state to be held to an exacting standard when it asks a court to order a defendant to remain jailed while awaiting trial. Proof by clear and convincing evidence represents that standard, one satisfied only by evidence that instantly tilts the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true.” 2022-NMSC-015, ¶ 28 (internal quotation marks and citations omitted).

HB 165 directs a court to infer that evidence presented by the prosecution demonstrating that “(1) the defendant is a danger to any other person or to the community if released; and (2) no release conditions will reasonably protect any other person or the community” is true, and then presume that denial of bail is necessary. Then, after all presentation of evidence, the court is to determine whether the inferences and presumption were overcome. The bill does not require the court to consider the prosecution’s evidence under the clear and convincing standard imposed by the New Mexico Constitution, Rule 5-409, and case law and, instead, shifts the burden to the defendant to overcome inferences and presumptions.

PERFORMANCE IMPLICATIONS

None indicated

ADMINISTRATIVE IMPLICATIONS

None indicated

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See Significant Issues, above.

This bill is related to HJR 9, which proposes an amendment to the Article II, Section 13 of the New Mexico constitution to allow conditions for denial of bail and for pretrial detention, remove the requirement that bail denial be made only by a court of record, remove the limitation of bail denial to persons charged with a felony and allow bail denial for a person who has previously failed to appear before the court and is a flight risk.

HJR 9 and HB 165 conflict insofar as HB 165 does not require the state show by clear and convincing evidence that circumstances for denial of bail are met, whereas HJR 9 provides that the court must find by clear and convincing evidence that circumstances for denial of bail are met.

TECHNICAL ISSUES

None indicated

OTHER SUBSTANTIVE ISSUES

It is unclear whether it was intentional to exclude third degree aggravated burglary, as provided in NMSA 1978, Section 30-3-5—which is included as a serious violent offense at Section 33-2-34(L)(4)(c)—from the list of dangerous felony offenses, or whether it was an oversight.

Since HB 165 proposes to include any “felony that was committed while the defendant brandished or discharged a firearm” as a dangerous felony offense, it may be beneficial to include a definition for “firearm.” For example, there are several sections in NMSA Chapter 30 that include a definition for “firearm,” including Section 30-7-16(E)(4).

ALTERNATIVES

None identified

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None identified