

LFC Requester:	Felix Chavez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 01/29/2025 *Check all that apply:*
Bill Number: HB165 Original Correction
 Amendment Substitute

Sponsor: Nicole Chavez and Andrea Reeb and Art De La Cruz **Agency Name and Code** 790 – Department of Public Safety
Short Title: DENIAL OF BAIL HEARINGS & **Person Writing** Major Robert Alguire
Title: HEARINGS & **Phone:** 575-518-8788 **Email:** Robertj.alguire@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	NA	NA

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	NA	NA

(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	NFI	NFI	NFI	NFI	N A	NA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Very similar to 2024 HB44 and 2023 HB509
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Relates to pretrial detention. Establishes a presumption that the prosecution has proven that a defendant is dangerous and no release conditions will reasonably protect the safety of any other person or the community. Allows for the presumption to be rebutted by defendant in an adversarial hearing.

FISCAL IMPLICATIONS

No fiscal impact to DPS.

SIGNIFICANT ISSUES

In the two prior similar but different versions of the bill, the presumption of dangerousness was higher than in this bill (clear and convincing evidence standard) and defendants had to overcome that higher standard of proving to a clear and convincing evidence standard, that they are not a danger to any other person or to the community and that no release conditions will reasonably protect any other person or the community, giving this bill a stronger chance of overcoming constitutional challenges if passed, since the level of proof defendants must overcome has been lowered from 2023 HB509 and identical 2024 HB44. Those bills required a prosecutor to present evidence relevant to dangerousness and the adequacy of conditions of release. Both bills did not require that evidence to actually be persuasive to the court or to constitute clear and convincing evidence. The mere production of the evidence results in a presumption that the State's burden was satisfied. That was contrary to the constitutional burden of proof that violated Article 2, Section 13 of the New Mexico State Constitution, which requires a prosecutor to prove "by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community." Under the New Mexico Constitution, the state bears the burden of persuading a court that a particular defendant is in fact dangerous and that no conditions of release would protect the community from the risk they present.

In HB105 however, does not set a particular level of proof that is presumed in favor of the prosecution and defendants do not have to overcome a burden of proof level stated in the bill. Section 1 states, "C. Upon the introduction of the evidence described in Subsection B of this section, **the court shall infer** that the evidence is true and presume denial of bail is necessary. D. **After both parties present their evidence, the court shall determine whether the inferences and presumption supporting denial of bail were overcome.** If the inferences and presumption **were not overcome**, the court shall adopt them as findings and issue an order in accordance with supreme court rule."

PERFORMANCE IMPLICATIONS

DPS supports this bill. The denial of bail for the defendant is a necessary and objective decision based on the substantial risk posed to public safety. Given the nature of the charges and the defendant's history, releasing them into the community would likely endanger the well-being of others. No set of conditions, including electronic monitoring or house arrest, would sufficiently mitigate the threat the defendant poses. The risk of reoffending or causing harm is too great to be overlooked, and there is a strong need to prioritize the safety of potential victims and the community at large. Allowing the defendant to be released would create an undue risk to public safety, and therefore, the court's decision to deny bail is warranted.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is very similar to 2024 HB44 and 2023 HB509

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Serious violent offenders will be allowed bail and continue to be out on the streets committing more crimes and putting the general public at risk. New Mexico statistics show that many crimes that occur are committed many times by repeat violent offenders.

AMENDMENTS

None at this time.