

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: 2/12/2025

Check all that apply:

Bill Number: HB 381

Original Correction
Amendment Substitute

Sponsor: Rep. Stefanie Lord
Rep. William A. Hall
Rep. John Block

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

Person Writing

Short Title: PRETRIAL DETENTION
PRESUMPTION

Analysis: Bryan Nickerson

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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:

Section 1 of this bill would create a new section of Chapter 31, Article 3 NMSA 1978 relating to pretrial detention.

This bill would conform with the holding in *State v. Ferry*, which found that “the nature and circumstances of a defendant's conduct in the underlying charged offense(s) may be sufficient, despite other evidence, to sustain the State's burden of proving by clear and convincing evidence that the defendant poses a threat to others or the community.” *State v. Ferry*, 2018-NMSC-004, ¶ 6.

Subsection F defines a “dangerous felony offense” as one of 15 enumerated offenses, any felony committed while the defendant brandished or discharged a firearm, or 15 offenses when the nature of the offense and the resulting harm are such that the court determines the crime to be a “dangerous offense.” In defining “dangerous felony offenses,” the bill establishes, as a matter of policy, which felony offenses, after a finding of probable cause, are in the category of offenses contemplated by *Ferry*.

Subsection B requires the prosecutor to present all relevant evidence demonstrating that: (1) the defendant committed a “dangerous felony offense,” (2) the defendant is a danger to any other person or to the community if released, and (3) no release conditions will reasonably protect any other person or the community.

Upon such a presentation of evidence, Subsection C establishes a rebuttable presumption that the prosecution has proven by clear and convincing evidence that the defendant is a danger to any other person or to the community if released and that no release conditions will reasonably protect any other person or the community. Subsection D then provides an opportunity to the defendant to rebut the presumption.

Subsection E confirms that the court makes the final determination of detention after consideration of whether the defendant has overcome the presumption of detention established in Subsection C, and after considering any other factors established by supreme court rule.

Section 2 of the bill contains an emergency provision, and this bill would take effect

immediately.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB 381 would conflict with Article II, Section 13 of the New Mexico Constitution and NMRA, Rule 5-409 which state in relevant portion the following:

Article II, Section 13 of the New Mexico Constitution

“All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section. Excessive bail shall not be re-quired, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

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.”

NMRA, Rule 5-409

“Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico Constitution and Rule 5-401 NMRA, under Article II, Section 13 and this rule, 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.”

NMRA, Rule 5-409(F)(6) sets forth a non-exhaustive list of factors that the district court must consider, at a minimum, in making its determination on whether to grant or deny pretrial detention:

- (a) the nature and circumstances of the offense charged, including whether the offense is a crime of violence;
- (b) the weight of the evidence against the defendant;
- (c) the history and characteristics of the defendant;
- (d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;
- (e) any facts tending to indicate that the defendant may or may not commit new crimes if released;
- (f) whether the defendant has been ordered detained under Article II, Section 13 of the New Mexico Constitution based on a finding of dangerousness in another pending case or was ordered detained based on a finding of dangerousness in any prior case.

As the New Mexico Supreme Court has shown recently in *State v. Anderson*, 2023-NMSC-019, “This Court may reverse a district court’s ruling on pretrial detention if the ruling ‘is arbitrary, capricious, or reflects an abuse of discretion; ...is not supported by substantial evidence; or ...is otherwise not in accordance with law.’” ¶ 34.

HB 381 would essentially eliminate and replace the factors under NMRA, Rule 5-409(F)(6) and

the clear and convincing standard as outlined in both Article II, Section 13 of the New Mexico Constitution and NMRA, Rule 5-409. Under HB 381, once the rebuttable presumption is established by the State, the burden would shift to the Defendant where they would have to show they are not a danger to any other person or to the community and that release conditions exist that will reasonably protect any other person or the community. This burden shift and the contents of HB 381 will likely be subject to litigation.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 381 is almost identical to HB 165 with slight grammatical and word choice changes, but otherwise is identical in substance.

HB 381 is very similar to SB 196 in that it creates a rebuttal presumption for enumerated felony offenses. SB 196 encompasses similar enumerated felony offenses as HB 381, but it makes direct reference to serious violent felony offense and felony offenses where firearms were brandished or discharged, or great bodily harm was inflicted. SB 196 only enumerates several specific offenses such as murder, human trafficking, first degree child abuse, and sexual exploitation of children. Furthermore, SB 196 incorporates whether the Defendant committed a new felony offense while pending trial or sentencing or while on probation, parole, or any other post-conviction supervision for an enumerated offense listed. SB 196 is essentially more expansive than HB 381 in terms of what conduct can be used to create a rebuttable presumption.

HJR09 and HJR14 are both semi-related and also conflict with HB 381. Both HJR09 and HJR14 would amend Article 2, Section 13 of the New Mexico Constitution. However, they both keep the clear and convincing standard which more or less would be eliminated if HB 381 were to become law.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo for pretrial detention.

AMENDMENTS

N/A