

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 381 creates a new section of law under which in a hearing initiated by the prosecuting authority pursuant to the state constitutional provision on bail (Art. II, Sec. 13), a Magistrate, Metropolitan, or District Court shall first make a probable cause determination (probable cause of what is not indicated in the bill). Once probable cause has been determined, the pretrial detention hearing shall proceed in District Court. The prosecuting authority is to present evidence that the defendant committed a dangerous felony offense; the defendant is a danger to any other person or to the community if released; and no release conditions will reasonably protect any other person or the community. Introduction of this evidence creates a rebuttable presumption that the prosecuting authority 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. If the prosecuting authority successfully establishes the presumption, the burden of proving that the defendant is 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 shifts to the defendant. At the conclusion of the presentation of evidence by both parties, the court determines whether the defendant has successfully rebutted the presumption that the defendant is a danger to any other person or to the community and that no release conditions will reasonably protect any other person or the community.

HB 381 also defines “dangerous felony offense” – there is a long list of crimes that are defined as a “dangerous felony offense”. The list is similar to, but not identical to, the list of crimes considered as a “serious violent offense” in the Earned Meritorious Deductions statute, Section 33-2-34(L)(4) NMSA 1978, including a list of crimes that the court can make a determination that they qualify as a “dangerous felony offense”, “when the nature of the offense and the resulting harm are such that the court judges the crime to be a dangerous offense for the purpose of this section.” There are 15 crimes listed that are automatically considered a “dangerous felony offense”, and a further list of 15 crimes that fall under the optional category.

HB 381 has an emergency clause.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The presumptions enumerated in HB 381 seem to be in tension with the language of Art. 2, Sec.

13 of the New Mexico Constitution, which states simply, “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.” The New Mexico Constitution does not contemplate that defendants charged with certain crimes or appearing before a court in certain circumstances are presumed a flight risk or a danger to the community. A rebuttable presumption shifts the burden of proof. As such, HB 381 runs afoul of the present constitutional provisions on pretrial release.

A number of reports have been published in recent years on pretrial release in the state. The New Mexico Statistical Analysis Center (NMSAC) released its report “Bail Reform: Motions for Pretrial Detention and their Outcomes” in August 2021 (available here: <http://isr.unm.edu/reports/2021/bail-reform-motions-for-pretrial-detention-and-their-outcomes.pdf>). The Center for Applied Research and Analysis (CARA) at the University of New Mexico published “The Public Safety Assessment, Preventive Detention, and Rebuttable Presumptions in Bernalillo County” in December 2021 (available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention-and-rebuttable-presumptions-in-bernalillo-county.pdf>); CARA also published a Report in Brief for that report, available here: <https://isr.unm.edu/reports/2021/the-public-safety-assessment-preventive-detention,-and-rebuttable-presumptions-in-bernalillo-county-report-in-brief>).

In September 2022, NMSAC released its report “Impact of Bail Reform in Six New Mexico Counties” (available here: <http://isr.unm.edu/reports/2022/impact-of-bail-reform-in-six-new-mexico-counties.pdf>). The purpose of that study was to analyze the impact of bail reform. The report concluded:

Bail reform has successfully decreased the number of people held pretrial and has shortened pretrial detention time overall. The decrease in days detained overall is driven largely by a decrease in time spent detained among those who spend some of, but not the entire, pretrial period in jail. It has also successfully decreased the frequency with which bond is set, both for all cases set at any point during the life of the court case and during the pretrial period among new felony cases. When bonds are set, they are lower on average than they were pre-reform. Finally, days to disposition decreased with bail reform, indicating that pretrial court efficiency may be improving overall, though days to disposition were slightly longer for those detained for the entire pretrial period after the amendment was implemented. However, the reform has coincided with a small increase in new offenses pretrial, including violent new offenses. We also observed a slightly higher rate of failures to appear following the implementation of bail reform, though the vast majority of individuals successfully pass the pretrial period. This varied, though, by county. (p. 49)

In October 2024, CARA release two reports examining this issue for Bernalillo County, “Bernalillo County Second Judicial District Court Preventive Detention Motion Review” (available here: <https://isr.unm.edu/reports/2024/bernalillo-county-second-judicial-district-court-preventive-detention-motion-review.pdf>), and “Evaluating the Costs and Benefits of Pretrial Detention and Release in Bernalillo County” (available here: <https://isr.unm.edu/reports/2024/evaluating-the-costs-and-benefits-of-pretrial-detention-and-release-in-bernalillo-county.pdf>).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS