

<b>LFC Requester:</b>	<b>Felix Chavez</b>
-----------------------	---------------------

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto: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:** 02/12/2025 *Check all that apply:*  
**Bill Number:** HB381 Original  Correction   
 Amendment  Substitute

**Sponsor:** Stefani Lord, William Hall, John Block **Agency Name and Code Number:** 770-NMCD  
**Short Title:** Pretrial Detention Presumption **Person Writing:** Anisa Griego-Quintana  
**Phone:** 505-479-2296 **Email:** anisa.griego-quinta@cd.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	0	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	0	0	0	0	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: House Bill 381 would create a new section of the Criminal Code, relating to criminal procedures, establishes a process for determining whether certain defendants are too dangerous to be released before trial and that no release conditions will reasonably protect the safety of any other person or the community.

First, in a hearing initiated by a prosecuting authority under Art. 2, Sec. 13 of the Constitution (defendant's right to bail except where proof is evident or the presumption great, for person to be detained on grounds of dangerousness, etc.), a magistrate court, metropolitan court or district court shall first make a probable cause determination as provided for by Supreme Court Rules

Once probable cause is determined, the pretrial detention hearing shall proceed in district court with the prosecuting authority required to present evidence to demonstrate 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. The introduction of the foregoing three elements shall create a rebuttable presumption that the prosecuting authority has met the test for proving that defendant is a danger to another person or the community if released and that no release conditions will reasonably serve as protection.

Having successfully established that presumption, the burden then falls to the defendant to rebut the presumption.

At the conclusion of the presentation of evidence by both parties, the court shall determine whether the defendant has successfully rebutted the presumption and, in so doing, shall consider any relevant factors established by Supreme Court Rule.

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. (NMLR Note: Art. 2, Sec. 13 of the Constitution provides: An appeal from an order denying bail shall be given preference over all other matters.)

As used in this section, "dangerous felony offense" means:

- first degree murder, as provided in Sec. 30-2-1;
- second degree murder, as provided in Sec. 30-2-1;
- voluntary manslaughter, as provided in Sec. 30-2-3;
- third degree aggravated battery against a household member, as provided in Sec. 30-3-16;
- first degree kidnapping, as provided in Sec. 30-4-1;
- first and second degree criminal sexual penetration, as provided in Sec. 30-9-11;
- second and third degree criminal sexual contact of a minor, as provided in Sec. 30-9-13;
- first and second degree robbery, as provided in Sec. 30-16-2;
- second degree aggravated arson, as provided in Sec. 30-17-6;

- shooting at a dwelling or occupied building, as provided in Sec. 30-3-8;
- shooting at or from a motor vehicle, as provided in Sec. 30-3-8;
- aggravated battery upon a peace officer, as provided in Sec. 30-22-25;
- assault with intent to commit a violent felony upon a peace officer, as provided in Sec. 30-22-23;
- aggravated assault upon a peace officer, as provided in Sec. 30-22-22;
- a felony that was committed while the defendant brandished or discharged a firearm; or
- any of the following offenses, 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 Sec.:
  - involuntary manslaughter, as provided in Sec. 30-2-3;
  - fourth degree aggravated assault, as provided in Sec. 30-3-2;
  - third degree assault with intent to commit a violent felony, as provided in Sec. 30-3-3;
  - fourth degree aggravated assault against a household member, as provided in Sec. 30-3-13;
  - third degree assault against a household member with intent to commit a violent felony, as provided in Sec. 30-3-14;
  - third and fourth degree aggravated stalking, as provided in Sec. 30-3A-3.1;
  - second degree kidnapping, as provided in Sec. 30-4-1;
  - second degree abandonment of a child, as provided in Sec. 30-6-1;
  - first, second and third degree abuse of a child, as provided in Sec. 30-6-1;
  - third degree dangerous use of explosives, as provided in Sec. 30-7-5;
  - third and fourth degree criminal sexual penetration, as provided in Sec. 30-9-11;
  - fourth degree criminal sexual contact of a minor, as provided in Sec. 30-9-13;
  - third degree robbery, as provided in Sec. 30-16-2;
  - third degree homicide by vehicle or great bodily harm by vehicle, as provided in Sec. 66-8-101;
- or
- battery upon a peace officer, as provided in Sec. 30-22-24.

## **FISCAL IMPLICATIONS**

None for the Corrections Department. Pretrial release decisions are made by judges. This bill primarily impacts the New Mexico Judiciary in proposing changes to how pretrial release decisions are made, and the Corrections Department's mission and operations would not be directly impacted. If and to the extent this bill results in significant increases or decreases in pretrial detention, this would likely impact counties and jails.

## **SIGNIFICANT ISSUES**

None for the Corrections Department.

## **PERFORMANCE IMPLICATIONS**

None for the Corrections Department.

## **ADMINISTRATIVE IMPLICATIONS**

None for the Corrections Department.

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

None for the Corrections Department.

**TECHNICAL ISSUES**

None for the Corrections Department.

**OTHER SUBSTANTIVE ISSUES**

None for the Corrections Department.

**ALTERNATIVES**

None for the Corrections Department.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

None proposed by the Corrections Department.