

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: 1/30/25

Check all that apply:

Bill Number: HJR 9

Original Correction
Amendment Substitute

Sponsor: Rep. Alan T. Martinez

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

Person Writing

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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:

House Joint Resolution 9 (HJR 9) proposes to amend Article II, Section 13 of the New Mexico Constitution, “Bail; excessive fines; cruel and unusual punishment.” The title of the resolution appears to identify the intent of the proposed amendments: 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.

Section 1 proposes amendments and Section 2 provides that the amendments will be submitted for approval or rejection at the next general election or at a special election prior for that purpose.

Section 1 adds subparagraph markers (A) through (E). (A) and (B) incorporate the existing first paragraph of Article II, Section 13 with no substantive changes, essentially stating that persons shall be bailable except under certain circumstances and prohibiting the imposition of excessive bail and fines and the infliction of cruel and unusual punishment.

(C) amends the existing second paragraph of Article II, Section 13. Currently, the section provides, in part, that bail may be denied for a defendant charged with a felony by a court of record if the prosecution “proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.” The amendments remove the requirement that a person be charged with a felony and reference to “a court of record,” and add language that bail may be denied if “the court finds by clear and convincing evidence that the person is dangerous and that release conditions will not reasonably protect the safety of any other person or the community, that the person is a flight risk or that the person has previously failed to appear before a court as required.” The proposed amendments also use “person” instead of “defendant.”

(D) and (E) amend the current third paragraph of Article II, Section 13. The current language that (D) proposes to amend provides that a person who is not detainable for dangerousness, who is not a flight risk without bond, and who is otherwise eligible for bail, shall not be detained solely because of a financial inability to post bond. The substantive proposed amendment adds the language “has not previously failed to appear before a court as required”

following the language regarding flight risk.

The current language that (E) proposes to amend provides the mechanism by which a person who has a financial inability to post bond may request relief from the requirement to post bond. The amendments propose adding language that mirrors (D) regarding those not detainable for dangerousness, not a flight risk, and who have not previously failed to appear before a court as required. The proposed amendments also replace “defendant” with “person.”

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

Adoption of the amendments is likely to increase the number of pretrial detention motions filed, as well as the number of persons for whom bail is denied, and an increased number of appeals of pretrial detention determinations is likely to follow. This would lead to an increase in appeals handled by the New Mexico Department of Justice.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR 9 is related to HB 165, “Denial of Bail Hearings & Presumptions” and SB 196, “Rebuttable Presumption Against Release,” which both relate to pretrial detention.

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.

Under SB 196, it shall be presumed that the prosecution has shown by clear and convincing evidence that the defendant is dangerous and that no conditions of release will reasonably protect the safety of any other person or the community if there is probable cause to believe that (1) the defendant committed any enumerated felony offense for which the defendant is charged or (2) “the defendant committed a new felony offense that prompted the detention hearing” under certain circumstances. If the initial presumption applies, the court shall then consider “any other available information tending to indicate that the defendant” is dangerous and that no conditions of release will reasonably protect the safety of any other person or the community to determine whether the prosecution has met its burden of proof required under Article II, Section 13 of the New Mexico Constitution.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The proposed amendments change the current requirement that, when certain criteria are met,

only a court of record may deny bail to those charged with a felony. The amendments provide that “after the prosecuting authority requests a hearing” the court may deny bail and a person may be detained pending trial if the court has found that “the person is dangerous and that release conditions will not reasonably protect the safety of any person or the community, that the person is a flight risk or that the person has previously failed to appear before a court as required.” This change would permit courts not of record, such as magistrate courts (NMSA 1978 Section 35-1-1), to deny bail, and all courts to deny bail for any charges on which they make sufficient findings, regardless of whether the crime is a felony or not. Adoption of the amendments is likely to increase the number of pretrial detention motions filed as well as the number of persons for whom bail is denied, and an increased number of appeals of pretrial detention determinations is likely to follow.

Adoption of the amendments would mean that existing rules would need to be amended and new rules may need to be promulgated. Currently, if a case is pending in magistrate court or metropolitan court, probable cause has been found, and a prosecutor files a motion for an expedited pretrial detention hearing, then pursuant to Rules 6-409, 7-409, and 5-409 NMRA, the motion for pretrial detention is to be sent to the district court, terminating the lower court’s jurisdiction. Rules 5-409, 5-405 and 12-204 NMRA provide for appeals of pretrial detention determinations from district court. New or amended rules would be needed for appeals of pretrial detention determinations from courts other than district courts. Issues may also arise regarding materials available for review on appeal. For example, regarding motions initiating an appeal, Rule 12-204(C)(1) states, in part, “The motion shall specify the decision appealed from and shall include, by attachments, any materials deemed necessary for consideration of the matter by the appellate court, including any available audio recording or stenographic transcript of the hearing in district court.” It is unclear what materials would be available for review on appeal if courts not of record were authorized to make pretrial detention determinations.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A