

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: 02/10/2025

Check all that apply:

Bill Number: HJR14

Original Correction

Amendment Substitute

Sponsor: Rep. Stefani Lord, Rep. John Block

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 14 (HJR 14) proposes to amend Article II, Section 13 of the New Mexico Constitution, “Bail; excessive fines; cruel and unusual punishment.” The resolution proposes amendments: to remove the requirements that only courts of record may deny bail and that only prosecuting authorities may request a hearing to determine whether bail is denied, to allow courts to deny bail for all types of criminal offenses, to allow courts to deny bail upon a finding by clear and convincing evidence that release conditions will not reasonably ensure the appearance of the person as required or protect the safety of any other person or the community and to allow for conditions for denial of bail to be provided by law.

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 subsection markers (A) through (D).

(A) and (B) incorporate the existing first paragraph of Article II, Section 13. (A) alters the language from “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*” to “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 *may be denied as provided by this section or otherwise by law.*” (B) is the section prohibiting the imposition of excessive bail and fines and the infliction of cruel and unusual punishment.

(C) proposes to amend 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 provide that, after a hearing, bail may be denied if “the court finds by clear and convincing evidence that release conditions will not reasonably ensure the appearance of the person as required or protect the safety of any other person or the community.” The proposed

amendments remove the requirement that a prosecuting authority request a hearing and remove reference to felony charges.

(D) proposes to amend the third paragraph of Article II, Section 13, by essentially revising the language to condense the paragraph.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

Adoption of the amendments is likely to increase 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

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR 14 is related to HJR 9, “Denial of Bail, CA,” in that, while not exact duplicates, each propose amendments with the same or similar effects. HJR 9 proposes amendments to Article II, Section 13 of the New Mexico Constitution 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 or is a flight risk.

HJR 14 is related to HB 165, “Denial of Bail Hearings & Presumptions” and SB 196, “Rebuttable Presumption Against Release,” which both relate to pretrial detention.

HJR 14 and HB 165 conflict insofar as HB 165 essentially creates a rebuttable presumption of dangerousness and that no release conditions will reasonably protect the safety of any other person or the community for cases involving “dangerous felony offenses” and does not require the state to show by clear and convincing evidence that circumstances for denial of bail are met. HB 165 also references the initiation of a hearing by the prosecuting authority pursuant to Article II, Section 13 of the New Mexico Constitution.

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 the court may deny bail if “the court finds by clear and convincing evidence that release conditions will not reasonably ensure the appearance of the person as required or protect the safety of any other person or the community.” This change would permit courts not of record, such as magistrate courts (NMSA 1978 Section 35-1-1), to deny bail, all courts to deny bail for any charges on which they make sufficient findings, regardless of whether the crime is a felony or not, and clarify that all courts may deny bail if they make sufficient findings that release conditions will not reasonably ensure the appearance of the person. Adoption of the amendments is likely to increase the number of persons for whom bail is denied, and an increased number of appeals of pretrial detention determinations is likely to follow.

Additionally, by removing the requirement that the prosecuting authority request a hearing to seek detention, it is unclear who would be able to raise the issue. Currently, the prosecuting authority’s motion triggers a hearing at which evidence may be presented by both parties. Without the request, courts would need to determine whether to address the detention issue in every case, only when requested, or based on some other trigger. The federal detention rule addresses this question under 18 U.S.C.A. § 3142(f), which provides that a judicial officer shall hold a detention hearing upon motion of the attorney for the government—in a case involving certain offenses or a serious risk the person will flee or obstruct justice or will “threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror,” or upon the judicial officer’s own motion—in a case involving a serious risk the person will flee or obstruct justice or will “threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.”

Adoption of the amendments would also 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 court. 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 would be authorized to make pretrial detention determinations and if the triggering event is no longer the prosecutor’s motion.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS