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FISCAL IMPACT REPORT

SPONSOR <u>Rehm/Pettigrew/Lord/Block</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/30/24</u>
SHORT TITLE <u>Requirements for Denial of Bail, CA</u>	BILL NUMBER <u>House Joint Resolution 3</u>
	ANALYST <u>Davidson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Counties: increased detention costs	No fiscal impact	Up to \$44,537.0	Up to \$89,074.0	Up to \$133,610.0	Recurring	County General Funds
Secretary of State	No fiscal impact	\$75.0 to \$85.0	Indeterminate but minimal	\$75.0 to \$85.0	Nonrecurring	Other state funds
Total		\$44,612.0 to \$44,622.0	Up to \$89,074.0	Up to \$133,686.0 to \$133,696.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (LOPD)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 Corrections Department (NMCD)
 Supreme Court (NMSC)
 Court of Appeals
 Administrative Office of District Attorneys (AODA)
 Attorney General (NMAG)

SUMMARY

Synopsis of House Joint Resolution 3

House Joint Resolution 3 (HJR3) proposes to amend Article 2, Section 13 of the New Mexico Constitution. The proposed amendments will expand the courts' right to deny bail, expanding this right to not just courts of record but to all courts. HJR3 also removes language in the constitution that limits bail prohibitions to the terms of the constitution itself. This would then allow the Legislature to set terms surrounding prohibiting bail eligibility.

The bill also removes limitations on the denial of bail to defendants charged with a felony, thus allowing for detention without bail to expand to misdemeanor cases.

The bill additionally removes the section of the constitution stating only prosecuting authorities may request a hearing to determine whether bail is denied.

The bill additionally expands the defendants for whom bail could be denied by the court. Under current statute, detention without bail is permitted only when “no release conditions will reasonably protect...the community.” If the proposed legislation were passed, detention without bail would be expanded to include of “release conditions will not reasonably ensure the appearance of the person.”

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

HJR3 significantly expands the types of defendants eligible for detention and the basis on which they may be detained. The cost estimates in this analysis are based on the cost of additional detention due to expanding detention eligibility to defendants charged with misdemeanors. The lower end of the cost estimate assumes the constitutional amendments result in no additional detentions while the upper end assumes misdemeanor defendants are detained at the same rate as felony defendants. Recent research on pretrial detention in Bernalillo County found 30.4 percent of defendants were detained. According to AOC’s FY20 statistical addendum, 25,206 new misdemeanor cases were initiated in magistrate courts statewide in FY20. The marginal cost of detention at the Metropolitan Detention Center and the average time to case disposition for district attorneys statewide were applied to this population to arrive at the cost estimate for county general funds.

Additionally, agency analysis provided by the Department of Public Safety notes that the proposed legislation would “significantly expand the types of defendants eligible for detention.” This significant expansion would subsequently result in an increased cost to the taxpayer and counties where these defendants would be housed.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$75 thousand to \$85 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

Agency analysis provided by the Law Offices of the Public Defender expressed concern as to how the proposed legislation would give courts discretion to detain anyone without bail to ensure “either public safety or court appearance.” The agency analysis also was wary of the scope that

the proposed legislation would expand pretrial detention, specifically the aspect of the legislation that expands the detention of bail to misdemeanor offenses and ones that potentially carry no “danger to the community.”

Pretrial detention policy seeks to balance the public’s interest by not unnecessarily detaining individuals who pose no risk to the community and preventing the release of individuals who will go on to commit a serious crime during the pretrial period. There is an asymmetry in how these two priorities are balanced. The defendants whose lives are upturned due to unnecessary pretrial detention remain invisible and are rarely reported. In contrast, when a defendant is released and commits a serious crime, their name and criminal history are widely reported. Historically, the fiscal impacts of an unnecessary detention have been under accounted, mirroring public perception. This analysis is unable to estimate the impacts given data constraints, but it acknowledges these are significant. The expansion of pretrial detention to misdemeanor defendants as well could increase this underreported fiscal impact on unnecessary detentions.

There is evidence that pretrial detention also has a criminogenic effect, increasing new crime after case disposition. A 2018 LFC program evaluation found that likelihood of a new felony arrest rose with length of initial jail stay. Detaining individuals who have low- and moderate-risk of recidivism is associated with higher rates of new criminal activity and recidivism. When held for two to three days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than defendants held for no more than 24 hours. This is likely because individuals who are detained for even short periods of time face the possibility of lost employment, loss of housing, and other negative social outcomes. A 2018 LFC Program Evaluation of the Bernalillo County criminal justice system noted links to loss of stability providing structures because of incarceration, including employment, housing, family, and community relationships. Increasing the risk of recidivism has long-term fiscal implications for county-run detention facilities and for the economy as a whole, as a share of people commit subsequent offenses who may not have otherwise done so.

The Public Defender Department also expressed concern as to how this expansion of the Legislatures ability to set “specific criteria for pretrial detention by authorizing the Legislature to designate certain conditions” that would limit or prohibit which defendants are eligible for bail. According to the agency’s analysis, this expansion of the Legislature’s role in bail would relieve the state of its “current constitutional burden of proving dangerousness in order to impose detention without bail.” The agency analysis goes further, stating that the passage of HJR 3 would make it so “the State would no longer need to present evidence ‘that no release conditions will reasonably protect...the community,’ but could instead rely on the mere fact charges have been filed.” The agency also noted that the removal of the requirement that only courts of record can deny bail would thus allow magistrate judges, who are not required to have a law degree, make decisions like denial of bail.

Additionally, magistrate courts, due to not being a court of record, do not have a record of proceedings. This would result in appeals of denials of bail becoming de novo in district court (a new case that is deciding the case without reference made to the previous legal conclusion), resulting in an increased caseload for the district courts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR3 is nearly identical to House Joint Resolution 9 from the 2023 legislative session.

TECHNICAL ISSUES

Agency analysis provided by the Department of Public Safety noted that Section C of the bill is unclear as to whether it refers to “pretrial detention or money bond.” Also, the agency notes that Section D of the bill appears to be confusing pretrial detention and money bond.

Additionally, the agency analysis notes that the language in the bill referencing defendants being a “flight risk” is not necessary, due to the existing language in the bill regarding the efforts of bail denial being used to protect the safety of any other person.

AD/rl/ne