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**Bill Analysis 2018 Regular Session**

**SPONSOR:** Representative Bill Rehm

**SHORT TITLE:** Additional Grounds for Denial of Bail, CA

**SYNOPSIS OF BILL:** HJR 5 would amend the New Mexico Constitution by creating presumptions that certain people, who are presumed innocent, charged with crimes are ineligible for bail. This includes: 1) any person that had ever failed to appear for a criminal court case; 2) any person charged with a violent offense; 3) any person charged with a felony offense if that person has been previously convicted of two or more felony offenses; and 4) any person charged with a felony offense if that person committed the alleged offense while on probation or parole, or while released while awaiting trial on separate charges. HJR 5 would also reduce the current standard of “clear and convincing evidence” of dangerousness, to a lower “probable cause” standard. It would also add flight risk as a separate reason for a court to preventively detain an individual.

**WEAKNESSES:** There are serious negative policy implications with this proposed constitutional amendment:

1) *Longer periods of detention lead to higher rates of new criminal activity and recidivism.* Being detained pretrial for two days or more is related to the likelihood of post-disposition recidivism. Generally, as the length of time in pretrial detention increases, so does the likelihood of recidivism at both the 12-month and 24-month points. Detaining low- and moderate-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition; as length of pretrial detention increases up to 30 days, recidivism rates for low and moderate-risk defendants also increases significantly.<sup>1</sup>

2) *Innocent people are more likely to plead or be found guilty.* Pre-trial release decreases the probability of being found guilty by more than 15 percent. Many people plead guilty just so they can go home. The probability of pleading guilty also decreases by 12 percent.<sup>2</sup>

3) *Pretrial detention has a significant effect on a person's ability to provide for themselves and their family.* Pretrial detainees may lose their jobs, be forced to abandon their education, and be evicted from their homes. Their families also suffer from lost income and forfeited education opportunities, including a multi-generational effect in which the children of detainees suffer reduced educational attainment and lower lifetime income. The ripple effect does not stop there: the communities and states marked by the over-use of pretrial detention also must absorb its socioeconomic impact.<sup>3</sup>

**ADDITIONAL INFO:** The proposed indicia of dangerousness are already considered by judges when making their dangerousness determination, but with discretion to consider the totality of circumstances. This discretion is critical to a fair application of preventative detention. If passed, this constitutional amendment would likely lead to legal challenges at both the state and federal level. Both the United States and New Mexico constitutions forbid excessive bail. The New Mexico Supreme Court in *State v. Walter Brown* (2014) held that a court must impose the least restrictive condition, or combination of conditions, that will reasonably ensure the appearance of the defendant as required and the safety of any other person and the community. This language has now been codified in the rules that govern criminal procedure in New Mexico. See for instance NMSC Rule 5-401(B). By rewriting the Supreme Court rules, HJR 5 raises additional concerns related to constitutional separation of powers between the legislature and the courts.

<b><u>Safer</u></b>	<b><u>Apolitical</u></b>	<b><u>Fiscally-Responsible</u></b>	<b><u>Evidence Based</u></b>	<b>Grade</b>
On any given day in the United States, more than 440,000 people are sitting in jail even though they have not been convicted of a crime. Thousands of poor and middle class Americans – especially minorities – will languish in jail for days, weeks, months, or even years because they cannot afford cash bail. During this time many will lose families, jobs and homes even when they don't pose a danger to their communities. <sup>4</sup>	New Mexico's criminal justice system is undergoing a series of reforms, aimed at ending unconstitutional policing, jail overcrowding, and wealth-based incarceration to create a justice system that is more accountable, fair, and equitable. Because the reforms are new, it's still too early to assess what is working and what needs changing. Unfortunately, that hasn't stopped some elected officials from telling the public that justice reform is causing crime to rise. <sup>5</sup>	If HJR 5 became law, thousands of people would be ineligible for bail on felony charges. This means that county jails and ultimately the NM Department of Corrections would see an explosion in inmate population. The NM Sentencing Commission released a report recently saying that NM prisons are nearing or already at capacity. <sup>6</sup>	Longer periods of detention lead to higher rates of new criminal activity and recidivism. <sup>1</sup> Innocent people are more likely to plead or be found guilty. <sup>2</sup> Pretrial detention has a significant effect on a person's ability to provide for themselves and their family. <sup>3</sup>	<b>F</b>

1 The Hidden Costs of Pretrial Detention, November 2013. Retrieved at:

<https://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>

2 The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, July 2016. Retrieved at:

[https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy\\_bail\\_0.pdf](https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy_bail_0.pdf)

3 The Socioeconomic Impact of Pretrial Detention, 2011. Retrieved at: [https://www.opensocietyfoundations.org/sites/default/files/socioeconomic-](https://www.opensocietyfoundations.org/sites/default/files/socioeconomic-impact-pretrial-detention-02012011.pdf)

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4 Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System, May 2017. Retrieved at:

[https://d11gn0ip9m46ig.cloudfront.net/images/059\\_Bail\\_Report\\_2\\_1.pdf](https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report_2_1.pdf)

5 Beyond the Myths: Making Sense of the Public Debate About Crime in New Mexico, January 2018. Retrieved at: [https://www.aclu-](https://www.aclu-nm.org/sites/default/files/field_documents/criminal_justice_reform_report_draft.pdf)

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6 New Mexico Prison Population Forecast: FY2018 – FY2027, July 2017. Retrieved at: [https://nmsc.unm.edu/reports/2017/new-mexico-prison-](https://nmsc.unm.edu/reports/2017/new-mexico-prison-population-forecast-fy2018---fy2027.pdf)  
[population-forecast-fy2018---fy2027.pdf](https://nmsc.unm.edu/reports/2017/new-mexico-prison-population-forecast-fy2018---fy2027.pdf)

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