

LFC Requester:	Julia Downs
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 2/16/16
Original **Amendment** **Bill No:** SJR1
Correction **Substitute**

Sponsor: P. Wirth and A. Maestas **Agency Code:** 305
Short Title: Denial of Bail for Certain Felonies **Person Writing:** Steven Johnston
Title: Felonies **Phone:** 222-9197 **Email:** sjohnston@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to SJR1. Conflicts with HJR13 and HJR20

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis concerns three amendments to SJR1 proposed by the House Regulatory and Public Affairs Committee. SJR1 proposes changes to Article 2, Section 13 of the New Mexico Constitution. This agency previously provided an analysis of SJR1. This analysis is limited to an analysis of the HRPAC amendments.

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

The first of the three amendments adds seven words to the title of the resolution, but does not change any of the operative language.

The second proposed amendment provides courts with the power to set bonds for defendants who are dangerous or flight risks and detain those defendants on bonds even if those defendants lacked the ability to post them.

The last amendment provides that defendants who are not dangerous or flight risks and who are too indigent to post their bond may file a motion with the court relieving them of their bond obligations, and that courts shall rule on those motions in an expedited manner.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

There are no issues with the first amendment. That amendment only changes the title and does not change any of the operative language of the resolution.

The second and third proposed amendments pose significant issues, but in order to understand why, it’s necessary to read the amendment as a whole and read the amendments in light of the Supreme Court’s opinion in *State v. Brown*, 2014-NMSC-038.

In *Brown*, the Supreme Court held that courts were not permitted to set bonds “solely on the severity of the charged offense” nor permitted “to set high bail for the purpose of preventing a defendant’s pretrial release.” *Brown*, 2014-NMSC-038, ¶ 52-53. A key part of the logic of the *Brown* ruling is that “[i]ntentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether.” *Id.* ¶ 53. The current version of Article 2,

Section 13 of the New Mexico Constitution only permits courts to deny bail to defendants charged with a capital offense or, for limited times up to 60 days, to defendants who commit crimes using deadly weapons or who are repeat offenders. NM Const. Art. 2, § 13. The concern raised by the Supreme Court's ruling in *Brown* is that it provides all defendants who are not charged with a capital offense with a constitutional right to a bail that they can afford.

SJR1 would provide courts of record with the power to deny bail to defendants provided that the prosecutor requested a hearing and proved by clear and convincing evidence that the defendant was dangerous to another person or the community. SJR1, page 2, lines 1-19. This portion of the proposed resolution defines individuals who are not bailable. However, SJR1 would not provide courts with the power to deny bail to individuals the court determined were flight risks. Thus, under *Brown* the concern remains that individuals who are flight risks would be constitutionally entitled to a bail they could afford.

The original language of SJR1 appeared to codify these concerns. SJR1 appeared to provide non-dangerous defendants with a constitutional right to a bail they could afford. SJR1, page 2, lines 20-22. The second HRPAC amendment attempts to address this issue. Page 2, Lines 20-22 would now read:

“A person who is not *detainable on grounds of dangerousness nor a flight risk in the absence of bond* and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond.” (new language in italics).

This new language is not in a section of the resolution that would grant courts power to deny bail. Instead, this new language is being inserted into a portion of the resolution that deals with setting an appropriately priced bail for those individuals determined to be bailable. It suggests that courts will be permitted to set bails that defendants cannot afford if the court determines that they are dangerous or a flight risk in the absence of such a bond. This is not necessarily an issue. If adopted by the voters, this resolution would become a part of the New Mexico Constitution and would be constitutional by definition. Nor is there anything in the HRPAC's second amendment that is inconsistent with the United States Constitution. However, it's worth noting that this language essentially converts SJR1 into a constitutional amendment overruling *Brown*. It would provide courts with the ability to set high bails for the purpose of detaining defendants if those courts determined that the defendants were dangerous or a flight risk.

The second HRPAC amendment is slightly confusing. It refers to new categories of defendants: those that are “detainable on grounds of dangerousness” or “flight risks.” Those categories aren't set out in other parts of the amendment, but could probably be determined by courts with reference to Rule 5-401 NMRA.

The last of the HRPAC amendments is the most problematic. That amendment also amends the portion of SJR1 that previously appeared to establish a constitutional right to a bail that a defendant could afford (page 2, lines 20-22). This amendment grants defendants who are not dangerous nor flight risks and who cannot afford to post their bonds the right to file a motion with the court requesting to be relieved from the requirements of their bonds. This amendment appears to grant the right to file these motions requesting relief from their bonds only to individuals previously determined not to be dangerous or flight risks, and thus to deny those individuals determined to be dangerous or flight risks the right to file a motion to have their bonds reviewed. To the extent that this is true, it appears to become a constitutional amendment

overruling Rule 5-401(G) NMRA.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill and its amendments conflict with HJR13 and HJR20 both of which are alternatively proposals aimed at altering the constitutional right to bail contained in New Mexico Const. Article 2, Section 13.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS