

LFC Requester: _____

**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date Jan. 17, 2018

Bill No: SB 44

Sponsor: Richard Martinez

Agency Code: 264

Short Presume Certain Violations As

Person Writing Gary Cade

Title: Flight Risks

Phone: 505-507-7752 **Email** cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	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

BILL SUMMARY

Synopsis: SB 44 would add a new section to the bail statute that anyone charged with leaving the scene of a motor vehicle accident resulting in injury or death of any person "...shall be presumed to be a flight risk," by the judge considering the setting of bail or other conditions of release.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

The driver of a vehicle involved in an accident resulting in injury or death of any person is required to immediately stop at the scene of the accident or as close thereto as possible, and render aid to anyone injured and provide their name, address and vehicle registration and driver's license information. See, Sect. 66-7-201(A) and Sect. 66-7-203, NMSA 1978. Failure to stop or provide the required information or provide aid is punishable as a fourth degree felony if an accident resulted in great bodily harm or death, and is a third degree felony for a driver who knowingly fails to stop or provide aid or the required information if the accident resulted in great bodily harm or death. It is a misdemeanor if the accident did not result in great bodily harm or death. See, Sect. 66-7201(B)-(D), NMSA 1978.

The New Mexico Supreme Court has promulgated rules regarding pre-trial release for each of the courts in the state. See, Rule 5-401 (district court), rule 6-401 (magistrate court), rule 7-401 (metropolitan court) and rule 8-401 (municipal court), SCRA 1986. Each of those mirror rules provide that if a defendant is eligible for pre-trial release under Article II, Section 13 of the New Mexico Constitution they should be released on their own personal recognizance or an unsecured appearance bond, unless the court makes, "...written findings setting forth particularized reasons why the release will not reasonably ensure appearance of the defendant as required." To determine the least restrictive conditions of release to reasonably ensure the defendant's appearance, the

mirror rules prescribe consideration of certain information and set forth six criteria including, "... the nature and circumstances of the offense charged...(and)...record concerning appearance at court proceedings." See, Rules 5/6/7/8-401(C)(1) and Rules 5/6/7/8-401(3)(a), SCRA 1986.

The Supreme Court is zealous in protecting its authority to control procedure and resolves any potential conflict between legislative enactments and court rules in favor of the rules. See, e.g., *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M..07 (1976) and *Southwest Community Health Services v. Smith*, 107 N.M, 196 (1988). The standard applied is whether the legislative enactment is recognized or required by the New Mexico Constitution or court rule. If not, the legislature may not create a privilege because of the conflict. If it is recognized or required and the legislation arguably affects the same subject matter, then it is analyzed to determine if it's consistent with the Constitution or rule. If it is, both are given effect; if not it is not allowed to stand. See, *Albuquerque Rape Crisis Center v. Blackmer*, 2005—NMSC—32.

Since there are court rules in place requiring consideration of the "nature and circumstances of the offense charged" and "record concerning appearance at court proceedings," a challenge to the presumption of a flight risk in setting release conditions for the charge of leaving the scene of a motor vehicle accident is likely if SB 44 is adopted. A defendant might claim that the presumption is in conflict with the state constitution which was amended by voters in 2016, in part, to lessen the burdens involved with bail on persons otherwise eligible for pre-trial release. See, Article II, Section 13, New Mexico Constitution. They might also argue that there is a statute in place, to punish persons who fail to appear when required for court proceedings (See, Sect. 31-3-9, NMSA 1978) but even that charge does not require a presumption that the defendant is a flight risk so doing so if leaving the scene of an accident is charged is a violation of equal process.

At least some persons, presumably, leave the scene of an accident to conceal the fact they were driving drunk when the accident occurred and don't want to be charged with vehicular homicide or DWI, both of which can carry more severe penalties than leaving the scene. See, e.g., *State v. Cumpston*, 2000—NMCA—033, Cf., Sect. 66-7-201, NMSA 1978 (Maximum penalty is third degree felony and can be misdemeanor) and Sect. 66-8-101 (Maximum penalty is second degree felony and can be enhanced four years for each prior DWI conviction) and Sect. 66-8-102, NMSA 1978, (Maximum penalty ranges up to second degree felony with increasing mandatory incarceration for all subsequent convictions). The court rules regarding pre-trial release permit the court to take into consideration whether the crime involves alcohol or drugs so that can be another reason why persons leave the scene. If the record supports a claim of prior charges and convictions involving alcohol or drugs, a threat to community safety could also be argued but that is not stated as a presumption in SB 44.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS