

LFC Requester: _____

**AGENCY BILL ANALYSIS
2020 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 January 28, 2020
Bill No: HB 203-264

Sponsor: Gregg Schmedes
Short Pretrial release provisions
Title: _____

Agency Name and Code Administrative Office of the District Attorneys 264
Number: _____
Person Writing Donald Gallegos
Phone: 575-770-3120 **Email** dgallegos@questalaw.

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	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:

HB 203 is a new process for evaluating defendants who are otherwise eligible for release (bail) when they are being prosecuted. HB 203 proposes to do this by adding new material to the New Mexico Statutes. Presently, §31-3-1, et. seq., addresses release on secured bond.

Paragraph A (page 1, lines 21-25, and page 2, lines 1 and 2) provides a process to ensure that a defendant is able to post bail. The indigency standards pursuant to §34-6-46, NMSA 1978, are to be used in determining whether the defendant is able to post bail and be released.

Paragraph B (page 2, lines 3-9) provides that if a defendant has been released on his own recognizance for a prior offense, he shall not be eligible for release on his own recognizance in another matter unless the defendant posts bond in the other matter. In other words, a defendant cannot be released on his own recognizance in two or more separate prosecutions.

Paragraph C (page 2, lines 10-17) provides that a court consider a defendant who commits a crime while the defendant is out on bail on another case to be a danger to the community and thus be required to post a secured bond. This paragraph also states that a court shall consider a defendant who commits a crime while the defendant is awaiting trial for more than one other matters a flight risk and the defendant shall be denied pretrial release.

Paragraph D (page 2, lines 18-23) provides that a court exercise discretion in determining the eligibility of a defendant for pretrial release and in setting the monetary and nonmonetary conditions of release. This paragraph also prohibits the use by a court of any risk assessment tool that has not been created by or provided by a state entity or political subdivision of the state.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB 203 will create new and more hearings for the courts and there will be a fiscal impact on the criminal justice system. It is impossible to estimate how much will be required.

SIGNIFICANT ISSUES

1. Article 2, section 13 of the New Mexico Constitution was amended in 2016 for the purposes of guaranteeing that a person charged with a crime is not kept incarcerated simply because they cannot afford to post bail. In addition, the amendment was also supposed to guarantee that violent criminals be required to post higher amount of bail or to be detained without bail.
2. To implement these changes, the New Mexico Supreme Court utilized rulemaking authority make the necessary changes the rules of criminal procedure (see Rules 5-401, 5-409 6-401 and 6-409 NMRA 2019).
3. There have been many instances over the past year where violent and/or repeat offenders are being released either on their own recognizance or posting bail as provided in the rules.
4. Prosecutors file motions to detain defendants in serious violent cases or cases where the defendant is a repeat offender or were the facts and circumstances indicate that the defendant is likely to flee and not be available for trial.
5. HB 203 will address those instances where repeat offenders are being released on their own recognizance and establishes criteria for what constitutes a danger to the community and flight risk.
6. Risk assessment tools presently being used have been created and provided by non-governmental agencies. Some of those agencies may have an agenda such as increasing the number of defendants that can be released. Having a government agency or political subdivision develop risk assessment tools may reduce the risk that the tools the agenda driven.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Article II, Section 13, New Mexico Constitution; Rules 5-401, 5-409, 6-401 and 6-409, NMRA 2019

TECHNICAL ISSUES

There may be challenges to determine whether these issues should be dealt with in the rulemaking process or by statute. That will bring on another question: does the statute or the rule control?

Requiring risk assessment tools be created and provided by State agencies or political subdivisions of the State will ensure that the tools are not subject to any particular agendas of the organizations that produce them.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

repeat offenders will continue to be released even though they may be a danger to the community or be a flight risk. Risk assessment tools created by nongovernmental agencies will continue to be used to assess whether a person should be released.

AMENDMENTS