

SB123



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Bill Analysis 2023 Regular Session

SPONSOR: Sen. Linda Lopez and Rep. Meredith Dixon

SHORT TITLE: Rebuttable Presumption Against Release

SYNOPSIS OF BILL: Article II, Section 13 of the New Mexico Constitution dictates that, in order to detain a felony defendant, the State must prove a defendant is both dangerous and that no release conditions will reasonably protect the community. SB 123 would create statutory rebuttable presumptions that certain people are ineligible for pretrial release based entirely on particular charges or the fact of a new felony charge while facing or serving a sentence for those charges.

WEAKNESSES: Unlike the federal Bail Reform Act which employs the same standard for bail denial, the New Mexico Constitution uniquely places a burden of proof on the State. In June 2022, the NM Supreme Court held that the State *cannot* rely only on the nature of the charges to meet its burden for detention, stating that doing so “would all but eliminate Article II, Section 13 and the corresponding constitutional burden of the State.” *State v. Mascareno-Haidle*, 2022-NMSC-015, ¶ 36. As a result, presumptions based on charges alone conflict directly with the NM Constitution.

The proposed legislation would also unconstitutionally shift the burden to the defense to *disprove* this, in direct contravention of the current constitution and the presumption of innocence. The defense burden presents serious practical issues, as these hearings occur at the very beginning of a criminal case when the State is in exclusive control of all evidence. Defendants would have to mount their own investigation in a matter of days in a vast number of cases. It would be virtually impossible to rebut the presumption under such circumstances.

Furthermore, the proposal is **unnecessary**. Judges already consider the charges and criminal histories when making detention decisions and if a person is accused of a new crime while on pretrial release, the State can move to *revoke* the existing release conditions without meeting the heavy initial burden. Meanwhile, the data shows that most offenders comply with conditions of release and rates of committing new crimes while released are extremely low under the current system. While crime rates are on the upswing nationwide, pretrial release is not the cause.

This approach is also **not effective**. Charges are poor predictors of a person’s likelihood of committing a crime if released; they cast a much wider net than they should so that SB 123 would detain 6 non-dangerous defendants in order to prevent just one crime per year. Finally, SB 123 would have disastrous effects stemming from **the incarceration itself**. Under the current system, defendants detained based on “dangerousness” are held for a median of 212 days awaiting trial. Pre-trial release increases the probability of being found not guilty by 15.6%.² Many people plead guilty just so they can go home. Pretrial detainees may also lose their jobs, abandon their education, and be evicted from their homes. Their families suffer from these consequences. New Mexico’s county jails are drastically unprepared for increased inmate populations. Jails continue to be hotbeds of Covid-19 outbreaks. Jails are simultaneously struggling with C.O. staffing, giving rise to extremely hostile living conditions, public health concerns, and deadly safety issues.

Finally, rebuttable presumptions would have dire consequences for the judiciary, as hearings would have been required in 802 additional cases last year in Albuquerque alone, requiring 401 additional hours (50 full days) of court proceedings just in the Second Judicial District.

<u>Safer</u>	Apolitical	Fiscally-Responsible	Evidence Based	Grade
<p>Only a small percentage of defendants released pretrial are accused of committing a new violent offense. Meanwhile, this bill would lead to the dangerous incarceration of hundreds of <i>non-dangerous</i> defendants. The proposal will <i>not</i> make communities safer; indeed, by increasing recidivism rates and making jails <i>more dangerous</i>, the overall effect is likely to make New Mexico <i>less safe</i>.</p> <p>Expanding supportive services to system involved individuals and targeted improvements to the existing pretrial supervision process would likely have a much greater impact on recidivism rates than detention would.</p>	<p>The Rules promulgated to animate the 2016 constitutional amendment are under constant review from all stakeholders. They have been updated repeatedly to address known issues and concerns. The system is <i>working</i>.</p> <p>Unfortunately, there is a misconception that bail reform is causing crime to rise when the evidence decidedly shows otherwise. Pretrial release is not a driver of crime and the human cost of over-incarcerating non-dangerous defendants is not worth the false sense of security that SB 123 would provide to some voters.</p>	<p>If presumptions became law, the Public Defender estimates a cost of \$1.5 Million dollars each year to prepare rebuttal evidence.</p> <p>Realistically, thousands more people would be detained without bail on felony charges each year. This means that county jails would see an explosion in inmate population. In addition to the obvious costs of incarceration, due to jail staffing shortages, the health and safety costs of increased populations cannot be understated, and the costs to defendants and their families are exponential as jobs and economic opportunities are lost.</p>	<p>Longer periods of detention lead to higher rates of new criminal activity and recidivism.¹</p> <p>Innocent people are more likely to plead or be found guilty.²</p> <p>The State currently only <i>seeks</i> detention in less than half the cases where “presumption” charges are filed. New Mexico’s “release rate” is actually lower now than in states that have rebuttable presumption offenses, based on both preventative detention and detention based on violations of conditions of release. The data shows that people accused of these types of offenses are actually more likely to comply with conditions of release than others.</p>	<p>F</p>

¹ The Hidden Costs of Pretrial Detention, November 2013. https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf

² The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, July 2016. https://www.nber.org/system/files/working_papers/w22511/w22511.pdf