

LFC Requester:	Eric Cheiner
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**AGENCY BILL ANALYSIS
2015 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: Date 2/26/2015
Original Amendment Bill No: HB 545
Correction Substitute

Sponsor: Rep. Stephanie Maez Agency Code: Attorney General's Office
Short Misdemeanor Pretrial Detention Person Writing Jared Jeppson, AAG
Title: _____ Phone: 222-9162 Email jjepson@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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

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.

BILL SUMMARY

House Bill 535 limits pretrial detention to forty-eight hours for certain misdemeanors. The enumerated misdemeanors are found in Subsection B of the Bill but the language also includes “any crime or violation of a municipal or county ordinance with a potential penalty of imprisonment not exceeding ninety days.”

Subsection A of the Bill enumerates exceptions to this forty-eight hour detention limit. The exceptions primarily deal with additional charges to the individual for the same incident or other cases.

FISCAL IMPLICATIONS

The Bill would potentially decrease jailing and detention costs.

SIGNIFICANT ISSUES

Generally speaking, when a person is charged by law enforcement with committing a petty misdemeanor offense, they can either be arrested and transported to a county jail or provided a summons requiring their appearance in court (usually to set a date for arraignment). In the former instance, law enforcement must file a criminal complaint, which then triggers an arraignment date for a person charged. When that person is booked into a county jail, they are usually given a jail house bond, but can be released on their own recognizance (ROR) pending the arraignment. The likelihood of being ROR’d by the county jail becomes more remote if a person has a history of arrests and bench warrants or lacks a fixed mailing address. Thus, anecdotally, the people who tend to commit petty misdemeanors, who do not have financial resources to post a bond, and who tend to have a history of petty offenses or lack a mailing address tend to be homeless persons. This proposed legislation addresses this issue.

The proposed bill would require the release of any person sitting in custody for more than forty-eight hours before trial. The proposed legislation has a very specific set of petty misdemeanors which would fall under this category. It should, however, be noted that under proposed subsection (B)(7), it is unclear whether the intent is to include driving while intoxicated charges brought under NMSA 66-8-101, et. seq., as the DWI statute is located in the Motor Vehicle Code. Similarly, any municipal ordinance concerning an act of violence, such as battery or domestic violence, would be necessarily a petty misdemeanor. Consideration should be given as

to whether victims of crime should be provided notice of such release.

Another consideration to this bill concerns whether a forty-eight hour period is enough time to complete a wants-and-warrants check associated with extraditions. Law enforcement agents who arrest and transport a person for violating a petty misdemeanor, may be arresting a person who another state is seeking to extradite.

Supporters of the Bill will likely say that the Bill reduces jail crowding and jail costs.

Opponents of the Bill will likely say that the Bill decreases judicial discretion. Many of the crimes enumerated under Subsection B (littering, criminal trespass, wrongful use of public property, etc.) are commonly committed by individuals with no permanent residence. If individuals with no permanent residence are released before the resolution of the judicial process it is unlikely they will comply with court appearance dates. In this regard, the proposed bill strips judges of their ability to fashion conditions of release that reflect the entire scope of knowledge found in any background investigation.

The language of the Bill that states “pending trial” could be considered vague. Perhaps “pending resolution” would be more appropriate.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplication SB 538

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

