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HOUSE BILL 5

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

Marian Matthews and Meredith A. Dixon and  
William "Bill" R. Rehm and Linda M. Lopez and Natalie Figueroa

AN ACT

RELATING TO PRETRIAL RELEASE; ESTABLISHING WHEN A REBUTTABLE  
PRESUMPTION ARISES THAT A PERSON IS DANGEROUS TO ANY OTHER  
PERSON OR TO THE COMMUNITY AND NO RELEASE CONDITIONS WILL  
REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE  
COMMUNITY; CONFIRMING THE PROSECUTING AUTHORITY'S BURDEN OF  
PROOF IN PRETRIAL DETENTION HEARINGS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 31, Article 3 NMSA  
1978 is enacted to read:

"[NEW MATERIAL] REBUTTABLE PRESUMPTION AGAINST RELEASE.--

A. Subject to rebuttal by the defendant in a  
pretrial detention hearing requested by a prosecuting  
authority, evidence or offers of proof establishing probable  
cause for any of the following felony offenses for which a

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1 defendant is charged shall be deemed prima facie proof that the  
2 defendant is a danger to any other person or to the community  
3 and that no release conditions will reasonably protect the  
4 safety of any other person or the community:

5 (1) any of the following serious violent  
6 felony offenses:

7 (a) murder in the first degree;

8 (b) first or second degree felony human  
9 trafficking of a child;

10 (c) first degree felony abuse of a  
11 child;

12 (d) sexual exploitation of a child  
13 constituting at least a second degree felony; or

14 (e) a serious violent felony offense as  
15 provided in Subparagraphs (a) through (n) of Paragraph (4) of  
16 Subsection L of Section 33-2-34 NMSA 1978;

17 (2) a felony offense during which a firearm  
18 was brandished pursuant to Section 31-18-16 NMSA 1978 or during  
19 which a firearm was discharged; or

20 (3) a felony offense during which great bodily  
21 harm was inflicted as defined in Section 30-1-12 NMSA 1978 or  
22 that caused the death of a person.

23 B. Subject to rebuttal by the defendant in a  
24 pretrial detention hearing requested by a prosecuting  
25 authority, it shall be presumed that the defendant is a danger

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1 to any other person or to the community and that no release  
2 condition will reasonably protect the safety of any other  
3 person or the community if the court finds that there is  
4 probable cause to believe that the defendant committed a new  
5 felony offense that prompted the detention hearing:

6 (1) while pending trial or sentencing for an  
7 offense listed in Paragraphs (1) through (3) of Subsection A of  
8 this section;

9 (2) while on probation, parole or any other  
10 post-conviction supervision for an offense listed in Paragraphs  
11 (1) through (3) of Subsection A of this section; or

12 (3) within five years of having been convicted  
13 of an offense listed in Paragraphs (1) through (3) of  
14 Subsection A of this section.

15 C. If the court rules that the presumption in  
16 Subsection A or B of this section applies to a defendant, the  
17 court shall evaluate whether the prosecuting authority has  
18 satisfied its burden to prove by clear and convincing evidence  
19 that no release conditions will reasonably protect the safety  
20 of any other person or the community by evaluating any factors  
21 established by rules approved by the New Mexico supreme court  
22 for pretrial detention, including:

23 (1) the nature and circumstances of the  
24 offense charged, including whether the offense is a crime of  
25 violence;

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1 (2) the weight of the evidence against the  
2 defendant;

3 (3) the history and characteristics of the  
4 defendant;

5 (4) the nature and seriousness of the danger  
6 to any person or to the community that would be posed by the  
7 defendant's release;

8 (5) any facts tending to indicate that the  
9 defendant may or may not commit new crimes if released;

10 (6) whether the defendant has been ordered  
11 detained under Article 2, Section 13 of the constitution of New  
12 Mexico based on a finding of dangerousness in another pending  
13 case or was ordered detained based on a finding of  
14 dangerousness in any prior case; and

15 (7) any available results of a pretrial risk  
16 assessment instrument approved by the New Mexico supreme court  
17 for use in the jurisdiction; provided that the court shall not  
18 defer to the recommendation in the instrument but shall make an  
19 independent determination of dangerousness and community safety  
20 based on all information available at the hearing.

21 D. Nothing in this section shall be deemed to shift  
22 the burden of proof to the defendant that the defendant is not  
23 a danger to any other person or to the community and that there  
24 are no release conditions that will reasonably protect the  
25 safety of any other person or the community. The burden of

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1 proof rests with the prosecuting authority.

2 E. For the purposes of this section, "firearm"  
3 means any weapon that will, is designed to or may readily be  
4 converted to expel a projectile by the action of an explosive."

5 SECTION 2. APPLICABILITY.--The provisions of this act  
6 apply to charges first filed against defendants on or after the  
7 effective date of this act.

8 SECTION 3. EMERGENCY.--It is necessary for the public  
9 peace, health and safety that this act take effect immediately.