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HOUSE BILL 74

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Dayan Hochman-Vigil

AN ACT

RELATING TO CRIMINAL JUSTICE; PROVIDING REQUIREMENTS FOR A
PUBLIC SAFETY ASSESSMENT IN PRETRIAL DETENTION HEARINGS;
PROVIDING FOR PRETRIAL DETENTION UPON COMMISSION OF A FELONY
OFFENSE WHILE ON RELEASE.

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] PUBLIC SAFETY ASSESSMENT CONSIDERATION IN
PRETRIAL DETENTION HEARINGS.--

A. When the prosecution files a motion for the
pretrial detention of a criminal defendant charged with a
felony offense pursuant to Article 2, Section 13 of the
constitution of New Mexico, in a judicial district using a
public safety assessment, the public safety assessment shall

1 include a consideration notated on the profile, known as a
2 violent flag, for defendants who have been shown by a finding
3 of probable cause to have committed a violent crime, including:

4 (1) a serious violent felony offense as
5 provided in Subparagraphs (a) through (n) of Paragraph (4) of
6 Subsection L of Section 33-2-34 NMSA 1978;

7 (2) a felony offense during which a firearm
8 was brandished or discharged; or

9 (3) a felony offense resulting in death or
10 great bodily harm as defined in Section 30-1-12 NMSA 1978.

11 Such violent flag shall be a factor when taken into
12 consideration by the public safety assessment when assessing a
13 defendant's risk to the community for use in a pretrial
14 detention hearing.

15 B. In cooperation with the New Mexico sentencing
16 commission and the administrative office of the courts, the
17 criminal justice coordinating councils from every judicial
18 district shall independently evaluate and adjust the public
19 safety assessment used in that judicial district every year to
20 assess the risk of criminal defendants for pretrial detention
21 hearings to ensure that the public safety assessment accurately
22 represents the local demographics and public safety issues.
23 Any change to a judicial district's public safety assessment
24 shall be made by majority vote of the judicial district's
25 criminal justice coordinating council."

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1 SECTION 2. A new section of Chapter 31, Article 3 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] COMMISSION OF A FELONY OFFENSE WHILE ON
4 RELEASE.--

5 A. When a criminal defendant charged with a felony
6 offense is out of custody pending trial and the defendant is
7 charged with having committed a new felony offense while on
8 release, the prosecutor may file an expedited motion for
9 pretrial detention, and the court shall schedule a hearing to
10 review pretrial release. The motion shall include the specific
11 facts that warrant pretrial detention. The defendant may file
12 a response to the motion for pretrial detention in the district
13 court, but the filing of a response shall not delay the hearing
14 of this rule. If a response is filed, the defendant shall
15 promptly provide a copy to the assigned district court judge
16 and the prosecutor. The court shall not deny a motion to
17 revoke conditions of release alleging the commission of a new
18 offense without a hearing.

19 B. If the defendant is not in custody when the
20 motion for pretrial detention is filed, the district court may
21 issue a warrant for the defendant's arrest that includes notice
22 of the hearing and the reasons for review of pretrial release
23 if the motion establishes probable cause to believe the
24 defendant has committed a felony offense and alleges sufficient
25 facts that, if true, would justify pretrial detention under

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1 Article 2, Section 13 of the constitution of New Mexico. If
2 the motion does not allege sufficient facts, the court shall
3 issue a summons and notice of hearing.

4 C. The court shall revoke the defendant's release
5 if the state establishes probable cause to believe that a
6 criminal defendant committed a felony offense while on release
7 and establishes by a preponderance of the evidence that
8 conditions of release will not adequately protect the safety of
9 the community, prevent further violations of the law and ensure
10 the proper administration of justice. If the court does not
11 revoke the defendant's release, the court shall impose new or
12 additional conditions of release and shall make written
13 findings of the individualized facts that establish how the new
14 or additional conditions of release will adequately protect the
15 safety of the community, prevent further violations of the law
16 and ensure the proper administration of justice.

17 D. The defendant may seek an expedited appeal of an
18 order revoking release or imposing new or additional conditions
19 of release pursuant to this section."