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SENATE BILL

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

INTRODUCED BY

Linda M. Lopez and Meredith A. Dixon

AN ACT

RELATING TO PRETRIAL RELEASE; ESTABLISHING WHEN A REBUTTABLE PRESUMPTION ARISES THAT A DEFENDANT IS LIKELY TO POSE A THREAT TO THE SAFETY OF OTHERS IF RELEASED PENDING TRIAL AND THAT NO RELEASE CONDITIONS WILL REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; CONFIRMING THE PROSECUTION'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, it shall be presumed that the prosecution has proven

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1 by clear and convincing evidence that the defendant is likely  
2 to pose a threat to the safety of others if released pending  
3 trial and that no release conditions will reasonably protect  
4 the safety of any other person or the community if there is  
5 probable cause to believe:

6 (1) the defendant committed any of the  
7 following felony offenses for which the defendant is charged:

8 (a) murder in the first degree, as  
9 provided in Section 30-2-1 NMSA 1978;

10 (b) first or second degree felony human  
11 trafficking of a child, as provided in Section 30-52-1 NMSA  
12 1978;

13 (c) first degree felony abuse of a  
14 child, as provided in Section 30-6-1 NMSA 1978;

15 (d) sexual exploitation of a child  
16 constituting at least a second degree felony, as provided in  
17 Section 30-6A-3 NMSA 1978;

18 (e) a serious violent felony offense, as  
19 provided in Subparagraphs (a) through (n) of Paragraph (4) of  
20 Subsection L of Section 33-2-34 NMSA 1978;

21 (f) a felony offense during which a  
22 firearm was brandished pursuant to Section 31-18-16 NMSA 1978  
23 or during which a firearm was discharged; or

24 (g) a felony offense during which great  
25 bodily harm was inflicted, as provided in Section 30-1-12 NMSA

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1 1978, or that caused the death of a person; or

2 (2) the defendant committed a new felony  
3 offense that prompted the detention hearing:

4 (a) while pending trial or sentencing  
5 for an offense listed in Paragraph (1) of Subsection A of this  
6 section;

7 (b) while on probation, parole or any  
8 other post-conviction supervision for an offense listed in  
9 Paragraph (1) of Subsection A of this section; or

10 (c) within five years of having been  
11 convicted of an offense listed in Paragraph (1) of Subsection A  
12 of this section.

13 B. If the court rules that the presumption in  
14 Subsection A of this section applies to a defendant, the court  
15 shall evaluate whether the prosecution has satisfied its burden  
16 to prove by clear and convincing evidence that the defendant is  
17 likely to pose a threat to the safety of others if released  
18 pending trial and that no release conditions will reasonably  
19 protect the safety of any other person or the community by  
20 considering any factors established by rules approved by the  
21 New Mexico supreme court for pretrial detention.

22 C. Nothing in this section shall be deemed to shift  
23 the prosecution's burden of proof to the defendant that the  
24 defendant is likely to pose a threat to the safety of others if  
25 released pending trial and that no release conditions will

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1 reasonably protect the safety of any other person or the  
2 community. The burden of proof rests with the prosecuting  
3 authority.

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

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

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