

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

In Davidson

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:

Original x **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/20/24
Bill No: SB 122

Sponsor: Sens. Brandt and Moores

Short Title: Rebuttal Presumption
Against Release

Agency Name and Code Number: 305 – New Mexico
Department of Justice
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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 Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 of this bill would create a new section of Chapter 31, Article 3 NMSA 1978 relating to pretrial detention.

This bill apparently builds upon the holding in State v. Ferry, which found that “the nature and circumstances of a defendant's conduct in the underlying charged offense(s) may be sufficient, despite other evidence, to sustain the State's burden of proving by clear and convincing evidence that the defendant poses a threat to others or the community.” State v. Ferry, 2018-NMSC-004, ¶ 9. The bill, in Subsection A, establishes a presumption that "the prosecution has proven by clear and convincing evidence that the 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 if there is probable cause to believe...the defendant committed": (1) any one of a specific set of enumerated violent felony offenses, brandished or discharged a firearm during the commission of a felony offense, or inflicted great bodily harm during the commission of a felony offense; (2) a new felony offense while pending trial or sentencing for an offense identified above; or (3) a new felony offense within five years of having been convicted of an offense identified above.

Upon finding that a presumption applies, Subsection B requires the court to "evaluate whether the prosecution has satisfied its burden of proof pursuant to Article 2, Section 13 of the constitution of New Mexico by considering any other available information tending to indicate that the 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."

Subsection C confirms that the burden of proof in pretrial detention hearings remains with the prosecuting authority.

Subsection D defines a firearm for purposes of the bill to mean "any weapon that will, is designed to or may readily be converted to expel a projectile by the action of an explosive."

Section 2 addresses applicability of the act stating that it would "apply to charges first filed against defendants on or after the effective date of this act."

Section 3 of the bill contains an emergency provision, causing it to take effect immediately.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS