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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PRETRIAL DETENTION; ESTABLISHING A PRESUMPTION THAT THE PROSECUTION HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT A DEFENDANT IS DANGEROUS AND NO RELEASE CONDITIONS WILL REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY; ALLOWING THE PRESUMPTION TO BE REBUTTED IN AN ADVERSARIAL HEARING; 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] PRESUMPTION THAT DEFENDANT IS DANGEROUS AND THAT NO RELEASE CONDITIONS WILL REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY.--

A. In a hearing initiated by a prosecuting authority pursuant to Article 2, Section 13 of the constitution

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1 of New Mexico, a magistrate court, metropolitan court or
2 district court shall first make a probable cause determination
3 as provided for by supreme court rule.

4 B. Once probable cause has been determined pursuant
5 to Subsection A of this section, the pretrial detention hearing
6 shall proceed in district court and the prosecuting authority
7 shall present all relevant evidence demonstrating that:

8 (1) the defendant committed a dangerous felony
9 offense;

10 (2) the defendant is a danger to any other
11 person or to the community if released; and

12 (3) no release conditions will reasonably
13 protect any other person or the community.

14 C. Introduction of the materials as provided in
15 Subsection B of this section shall create a rebuttable
16 presumption that the prosecuting authority has proven by clear
17 and convincing evidence that the defendant is a danger to any
18 other person or to the community if released and that no
19 release conditions will reasonably protect any other person or
20 the community.

21 D. If the prosecuting authority successfully
22 establishes the presumption pursuant to Subsection C of this
23 section, the burden of proving that the defendant is not a
24 danger to any other person or to the community and that release
25 conditions exist that will reasonably protect any other person

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1 or the community rests with the defendant.

2 E. At the conclusion of the presentation of
3 evidence by both parties, the court shall determine whether the
4 defendant has successfully rebutted the presumption that the
5 defendant is a danger to any other person or to the community
6 and that no release conditions will reasonably protect any
7 other person or the community, and in doing so, shall consider
8 any relevant factors established by supreme court rule.

9 F. As used in this section, "dangerous felony
10 offense" means:

11 (1) first degree murder, as provided in
12 Section 30-2-1 NMSA 1978;

13 (2) second degree murder, as provided in
14 Section 30-2-1 NMSA 1978;

15 (3) voluntary manslaughter, as provided in
16 Section 30-2-3 NMSA 1978;

17 (4) third degree aggravated battery against a
18 household member, as provided in Section 30-3-16 NMSA 1978;

19 (5) first degree kidnapping, as provided in
20 Section 30-4-1 NMSA 1978;

21 (6) first and second degree criminal sexual
22 penetration, as provided in Section 30-9-11 NMSA 1978;

23 (7) second and third degree criminal sexual
24 contact of a minor, as provided in Section 30-9-13 NMSA 1978;

25 (8) first and second degree robbery, as

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1 provided in Section 30-16-2 NMSA 1978;

2 (9) second degree aggravated arson, as
3 provided in Section 30-17-6 NMSA 1978;

4 (10) shooting at a dwelling or occupied
5 building, as provided in Section 30-3-8 NMSA 1978;

6 (11) shooting at or from a motor vehicle, as
7 provided in Section 30-3-8 NMSA 1978;

8 (12) aggravated battery upon a peace officer,
9 as provided in Section 30-22-25 NMSA 1978;

10 (13) assault with intent to commit a violent
11 felony upon a peace officer, as provided in Section 30-22-23
12 NMSA 1978;

13 (14) aggravated assault upon a peace officer,
14 as provided in Section 30-22-22 NMSA 1978;

15 (15) a felony that was committed while the
16 defendant brandished or discharged a firearm; or

17 (16) any of the following offenses, when the
18 nature of the offense and the resulting harm are such that the
19 court judges the crime to be a dangerous offense for the
20 purpose of this section:

21 (a) involuntary manslaughter, as
22 provided in Section 30-2-3 NMSA 1978;

23 (b) fourth degree aggravated assault, as
24 provided in Section 30-3-2 NMSA 1978;

25 (c) third degree assault with intent to

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1 commit a violent felony, as provided in Section 30-3-3 NMSA
2 1978;

3 (d) fourth degree aggravated assault
4 against a household member, as provided in Section 30-3-13 NMSA
5 1978;

6 (e) third degree assault against a
7 household member with intent to commit a violent felony, as
8 provided in Section 30-3-14 NMSA 1978;

9 (f) third and fourth degree aggravated
10 stalking, as provided in Section 30-3A-3.1 NMSA 1978;

11 (g) second degree kidnapping, as
12 provided in Section 30-4-1 NMSA 1978;

13 (h) second degree abandonment of a
14 child, as provided in Section 30-6-1 NMSA 1978;

15 (i) first, second and third degree abuse
16 of a child, as provided in Section 30-6-1 NMSA 1978;

17 (j) third degree dangerous use of
18 explosives, as provided in Section 30-7-5 NMSA 1978;

19 (k) third and fourth degree criminal
20 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

21 (l) fourth degree criminal sexual
22 contact of a minor, as provided in Section 30-9-13 NMSA 1978;

23 (m) third degree robbery, as provided in
24 Section 30-16-2 NMSA 1978;

25 (n) third degree homicide by vehicle or

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1 great bodily harm by vehicle, as provided in Section 66-8-101
2 NMSA 1978; or

3 (o) battery upon a peace officer, as
4 provided in Section 30-22-24 NMSA 1978."

5 SECTION 2. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.