

HOUSE BILL 27

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

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO PRETRIAL DETENTION; ESTABLISHING A PRESUMPTION THAT  
THE PROSECUTION HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE  
THAT A PERSON IS DANGEROUS AND NO RELEASE CONDITIONS WILL  
REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE  
COMMUNITY; ALLOWING THE PRESUMPTION TO BE REBUTTED; 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  
.221575.1

1 of New Mexico, it shall be presumed that the prosecution has  
2 proven by clear and convincing evidence that a defendant is  
3 dangerous and that no release conditions will reasonably  
4 protect the safety of any other person or the community when:

5 (1) the defendant is charged with a capital  
6 offense or a serious violent offense;

7 (2) the defendant brandished or discharged a  
8 firearm during the commission of a capital offense or a serious  
9 violent offense as enumerated in Subsection D of this section;

10 (3) the defendant committed the charged felony  
11 offense while pending trial or sentencing for a separate felony  
12 charge;

13 (4) the defendant committed the charged  
14 offense enumerated in Subsection D of this section while on  
15 probation, parole or any other post-conviction supervision;

16 (5) the defendant has failed to appear in  
17 court for any prior felony offense; or

18 (6) the defendant has demonstrated a pattern  
19 of failure to follow conditions of release.

20 B. A defendant shall have the opportunity to rebut  
21 the presumption established in Subsection A of this section.

22 C. Nothing in this section shall be construed to  
23 allow the detention of a person solely because of financial  
24 inability to post a money or property bond.

25 D. As used in this section:

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1 (1) "capital offense" means first degree  
2 murder, as provided in Section 30-2-1 NMSA 1978, or an offense  
3 for which the defendant may be sentenced to life imprisonment  
4 without the possibility of parole pursuant to Section 31-20A-2  
5 NMSA 1978; and

6 (2) "serious violent offense" means:

7 (a) second degree murder, as provided in  
8 Section 30-2-1 NMSA 1978;

9 (b) voluntary manslaughter, as provided  
10 in Section 30-2-3 NMSA 1978;

11 (c) third degree aggravated battery, as  
12 provided in Section 30-3-5 NMSA 1978;

13 (d) third degree aggravated battery  
14 against a household member, as provided in Section 30-3-16 NMSA  
15 1978;

16 (e) first degree kidnapping, as provided  
17 in Section 30-4-1 NMSA 1978;

18 (f) first and second degree criminal  
19 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

20 (g) second and third degree criminal  
21 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
22 1978;

23 (h) first and second degree robbery, as  
24 provided in Section 30-16-2 NMSA 1978;

25 (i) second degree aggravated arson, as

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1 provided in Section 30-17-6 NMSA 1978;

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

4 (k) shooting at or from a motor vehicle,  
5 as provided in Section 30-3-8 NMSA 1978;

6 (l) aggravated battery upon a peace  
7 officer, as provided in Section 30-22-25 NMSA 1978;

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

11 (n) aggravated assault upon a peace  
12 officer, as provided in Section 30-22-22 NMSA 1978; or

13 (o) any of the following offenses, when  
14 the nature of the offense and the resulting harm are such that  
15 the court judges the crime to be a serious violent offense for  
16 the purpose of this section: 1) involuntary manslaughter, as  
17 provided in Section 30-2-3 NMSA 1978; 2) fourth degree  
18 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)  
19 third degree assault with intent to commit a violent felony, as  
20 provided in Section 30-3-3 NMSA 1978; 4) fourth degree  
21 aggravated assault against a household member, as provided in  
22 Section 30-3-13 NMSA 1978; 5) third degree assault against a  
23 household member with intent to commit a violent felony, as  
24 provided in Section 30-3-14 NMSA 1978; 6) third and fourth  
25 degree aggravated stalking, as provided in Section 30-3A-3.1

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1 NMSA 1978; 7) second degree kidnapping, as provided in Section  
2 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as  
3 provided in Section 30-6-1 NMSA 1978; 9) first, second and  
4 third degree abuse of a child, as provided in Section 30-6-1  
5 NMSA 1978; 10) third degree dangerous use of explosives, as  
6 provided in Section 30-7-5 NMSA 1978; 11) third and fourth  
7 degree criminal sexual penetration, as provided in Section  
8 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of  
9 a minor, as provided in Section 30-9-13 NMSA 1978; 13) third  
10 degree robbery, as provided in Section 30-16-2 NMSA 1978; 14)  
11 third degree homicide by vehicle or great bodily harm by  
12 vehicle, as provided in Section 66-8-101 NMSA 1978; or 15)  
13 battery upon a peace officer, as provided in Section 30-22-24  
14 NMSA 1978."

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