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HOUSE BILL 408

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO PRETRIAL DETENTION; CREATING A REBUTTABLE
PRESUMPTION; ALLOWING CERTAIN DEFENDANTS TO PARTICIPATE IN
SUBSTANCE ABUSE TREATMENT PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

"[NEW MATERIAL] PRETRIAL DETENTION--REBUTTABLE
PRESUMPTION--PROCEDURE.--

A. A district court may presume that no release
conditions will reasonably protect the safety of any other
person or the community and shall deny bail and detain a person
before conviction if the prosecuting authority requests a
hearing pursuant to Article 2, Section 13 of the constitution
of New Mexico and proves by clear and convincing evidence that:

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underscoring material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material] = delete~~

1 (1) the charge against the person is:
2 (a) a first degree felony; or
3 (b) a serious violent offense as
4 provided in Paragraph (4) of Subsection L of Section 33-2-34
5 NMSA 1978; and

6 (2) the person was previously convicted of any
7 felony; or

8 (3) the person has previously violated
9 conditions of pretrial release for any offense.

10 B. A person may rebut evidence offered by a
11 prosecuting authority by demonstrating that the authority did
12 not meet its burden as required in Subsection A of this
13 section. The standard of proof for a rebuttal is preponderance
14 of the evidence.

15 C. The rules of evidence for the district courts
16 shall not apply to a pretrial detention hearing, and nothing in
17 this section shall be construed to modify or limit the
18 presumption of a person's innocence.

19 D. Upon a finding by the district court that the
20 person be detained prior to trial, the court may require the
21 person to participate in one of the following programs for some
22 or the entirety of the time pending trial, if the person
23 stipulates to having a substance abuse addiction or problem:

24 (1) not less than a twenty-eight-day
25 inpatient, residential or in-custody substance abuse treatment

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1 program approved by the court;

2 (2) not less than a ninety-day outpatient
3 treatment program approved by the court;

4 (3) a drug court program approved by the
5 court; or

6 (4) any other substance abuse treatment
7 program approved by the court.

8 E. When the person fails to complete a program
9 imposed pursuant to Subsection D of this section:

10 (1) the district court may issue a warrant for
11 the person's arrest;

12 (2) the court shall determine if the person
13 shall be detained pursuant to Article 2, Section 13 of the
14 constitution of New Mexico; and

15 (3) the court may punish the person for
16 contempt."

17 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2019.