

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 5

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

INTRODUCED BY

Marian Matthews and Meredith A. Dixon and
William "Bill" R. Rehm and D. Wonda Johnson

AN ACT

RELATING TO PRETRIAL RELEASE; ESTABLISHING WHEN A REBUTTABLE
PRESUMPTION ARISES THAT A PERSON IS DANGEROUS TO ANY OTHER
PERSON OR TO THE COMMUNITY AND NO RELEASE CONDITIONS WILL
REASONABLY PROTECT THE SAFETY OF ANY OTHER PERSON OR THE
COMMUNITY; CONFIRMING THE PROSECUTING AUTHORITY'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, evidence or offers of proof establishing probable
cause for any of the following felony offenses for which a

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

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

1 defendant is charged shall be deemed prima facie proof that the
2 defendant is a danger to any other person or to the community
3 and that no release conditions will reasonably protect the
4 safety of any other person or the community:

5 (1) any of the following serious violent
6 felony offenses:

7 (a) murder in the first degree;

8 (b) first or second degree felony human
9 trafficking of a child;

10 (c) first degree felony abuse of a
11 child;

12 (d) sexual exploitation of a child
13 constituting at least a second degree felony; or

14 (e) a serious violent felony offense as
15 provided in Subparagraphs (a) through (n) of Paragraph (4) of
16 Subsection L of Section 33-2-34 NMSA 1978;

17 (2) a felony offense during which a firearm
18 was brandished pursuant to Section 31-18-16 NMSA 1978 or during
19 which a firearm was discharged; or

20 (3) a felony offense during which great bodily
21 harm was inflicted as defined in Section 30-1-12 NMSA 1978 or
22 that caused the death of a person.

23 B. Subject to rebuttal by the defendant in a
24 pretrial detention hearing requested by a prosecuting
25 authority, it shall be presumed that the defendant is a danger

.221264.12GLG

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

1 to any other person or to the community and that no release
2 condition will reasonably protect the safety of any other
3 person or the community if the court finds that there is
4 probable cause to believe that the defendant committed a new
5 felony offense that prompted the detention hearing:

6 (1) while pending trial or sentencing for an
7 offense listed in Paragraphs (1) through (3) of Subsection A of
8 this section;

9 (2) while on probation, parole or any other
10 post-conviction supervision for an offense listed in Paragraphs
11 (1) through (3) of Subsection A of this section; or

12 (3) within five years of having been convicted
13 of an offense listed in Paragraphs (1) through (3) of
14 Subsection A of this section.

15 C. If the court rules that the presumption in
16 Subsection A or B of this section applies to a defendant, the
17 court shall evaluate whether the prosecuting authority has
18 satisfied its burden to prove by clear and convincing evidence
19 that no release conditions will reasonably protect the safety
20 of any other person or the community by evaluating any factors
21 established by rules approved by the New Mexico supreme court
22 for pretrial detention, including:

23 (1) the nature and circumstances of the
24 offense charged, including whether the offense is a crime of
25 violence;

.221264.12GLG

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

1 (2) the weight of the evidence against the
2 defendant;

3 (3) the history and characteristics of the
4 defendant;

5 (4) the nature and seriousness of the danger
6 to any person or to the community that would be posed by the
7 defendant's release;

8 (5) any facts tending to indicate that the
9 defendant may or may not commit new crimes if released;

10 (6) whether the defendant has been ordered
11 detained under Article 2, Section 13 of the constitution of New
12 Mexico based on a finding of dangerousness in another pending
13 case or was ordered detained based on a finding of
14 dangerousness in any prior case; and

15 (7) any available results of a pretrial risk
16 assessment instrument approved by the New Mexico supreme court
17 for use in the jurisdiction; provided that the court shall not
18 defer to the recommendation in the instrument but shall make an
19 independent determination of dangerousness and community safety
20 based on all information available at the hearing.

21 D. Nothing in this section shall be deemed to shift
22 the burden of proof to the defendant that the defendant is not
23 a danger to any other person or to the community and that there
24 are no release conditions that will reasonably protect the
25 safety of any other person or the community. The burden of

.221264.12GLG

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

1 proof rests with the prosecuting authority.

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

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

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