



**OFFICE OF THE DISTRICT ATTORNEY**  
SECOND JUDICIAL DISTRICT  
STATE OF NEW MEXICO

**RAÚL TORREZ**  
DISTRICT ATTORNEY

January 15, 2020

Honorable Edward Chávez, Retired Justice  
Chair, Ad Hoc Committee on Pretrial Detention  
P.O. Box 92662  
Albuquerque, NM 87199-2662

Dear Justice Chávez:

I want to extend my sincere gratitude to the Supreme Court for creating a forum that will permit a further opportunity to discuss pretrial detention, and I thank you as the Chair of the Ad Hoc Committee on Pretrial Detention for inviting proposals to amend Rule 5-409 NMRA. Pretrial detention directly impacts community safety. It is thus critical that the Rules of Criminal Procedure assure the most accurate and consistent assessment of dangerousness and public safety. At present, there is much improvement to be made, both in protecting the public and in faithfully following the will of the people of New Mexico in their amendment of Article II, Section 13 of the New Mexico Constitution.

The pretrial detention system in New Mexico has been flawed from the outset. Unfortunately, some of the most fundamental flaws can only be corrected by constitutional amendment. But there are mitigating steps that can be taken short of a referendum. New Mexico need only look to the experience of other jurisdictions, both to understand why our current system does not adequately protect the public and to learn what New Mexico must do to fix the problem.

**The Teachings of Other Bail-Reform Jurisdictions**

Other bail-reform jurisdictions with far more experience with pretrial detention and a much higher volume of cases than New Mexico have taken two significant steps to protect the public that New Mexico has not yet taken. First, other jurisdictions provide for pretrial detention based not only on a criminal defendant's danger to the public or a member of the public but also based

on flight risk and obstruction of the criminal justice system. In New Jersey, for example, a defendant is detained pretrial if there is clear and convincing evidence that monetary bail and conditions of release cannot “reasonably assure the eligible defendant’s appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.” N.J. Stat. § 2A:162-19(e)(3). These other jurisdictions recognize that dangerousness, flight risk, and obstruction of justice have a certain degree of overlap rather than being mutually exclusive; risky defendants tend to pose multiple risks to the public and the system.

	<b>New Mexico</b> <i>Article II Sec. 13</i>	<b>New Jersey</b> <i>NJSA § 2A:162-18</i>
<b>Dangerousness</b>	“... no release conditions will reasonably <b>protect the safety of any other person of the community...</b> ”	“... no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure... <b>the protection of the safety of any other person or community...</b> ”
<b>Failure to Appear</b>		“... no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible <b>defendant’s appearance in court...</b> ”
<b>Obstruction</b>		“... no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure... the eligible <b>defendant will not obstruct</b> or attempt to obstruct the criminal justice process...”

Figure 1. A comparison of pretrial detention constitutional language differences.

The second way other jurisdictions protect the public is with rebuttable presumptions. These presumptions identify the crimes and offenders most closely associated with a risk to the public, and they do so based on legislative judgments about the seriousness of offenses or the dangers posed by certain classes of defendants. Rebuttable presumptions not only improve the quality and uniformity of pretrial detention rulings but they also serve as a necessary complement to risk assessment instruments, such as the tool developed by the Arnold Foundation. Risk assessment tools largely classify offenders based on their history rather than on the circumstances of the current offense. These tools assess risk without managing the risk. In other words, they provide only half of the story. Other jurisdictions thus use rebuttable presumptions and decision-making frameworks to supply the other half of the story, that is, “the risk that the criminal justice system is willing to tolerate concerning defendants who are charged with certain types of crimes.” *State v. Mercedes*, 183 A.2d 914, 921 (N.J. 2018) (quoted authority omitted).

I am attaching examples of rebuttable presumptions in other jurisdictions, including the federal system upon which New Mexico modeled its amendment to Article II, Section 13. Notably, California has been dealing with pretrial detention for decades and, based on that experience, recently expanded its use of rebuttable presumptions. See Attachments 1-3 for these examples of rebuttable presumptions.

In jurisdictions that utilize the Arnold Foundation risk tool (known as the Public Safety Assessment or PSA), a decision-making framework complements the raw risk scores to produce a pretrial release recommendation. These decision-making frameworks take into consideration the current charges to modify the risk tool’s numeric output. For example, in New Jersey after the Arnold risk scores are computed, a series of additional questions are asked. There, if the current charge is subject to life imprisonment, the pre-trial release recommendation is “No Release Recommended.” See Attachment 4 for New Jersey’s decision-making framework.

### **New Mexico’s Flawed Pretrial Detention Scheme**

Viewed against this backdrop, the flaws in our system are traceable to three sources: (1) the failure to include flight risk and obstruction of the criminal justice system as grounds for detention in Article II, Section 13; (2) the absence of rebuttable presumptions in Rule 5-409; and (3) the misuse of the PSA in the Second Judicial District. The first of these sources is, of course, beyond the scope of a rules committee and can only be corrected by constitutional amendment. It bears noting that as a consequence of failing to include flight risk as grounds for detention, New Mexico has a hybrid scheme to manage pretrial risk; detention for dangerous defendants and money bond for those presenting a flight risk (though the wholesale change to bail in New Mexico has made judges reluctant to impose bonds even when there is a clear flight risk). Despite this oversight in the framing of the constitutional amendment, the Supreme Court can

significantly improve pretrial detention practice in New Mexico under the current constitutional provision by including rebuttable presumptions in Rule 5-409 and assuring the proper use of risk assessment instruments.

Much of the problem in the Second Judicial District lies in the way the PSA is used. The Arnold Foundation first developed the tool in other jurisdictions, where pretrial detention is available for dangerousness and flight risk. As a result, the tool is designed to assess not only a defendant's likelihood of committing a new offense while on release but also the defendant's risk of failing to appear for court appearances. As I have already noted, this model does not fit with New Mexico's scheme. Consequently, the PSA may recommend detention primarily on flight risk, even though Article II, Section 13 does not permit detention on this basis.

The University of New Mexico's Institute of Social Research's (ISR) study, *Failure to Appear and New Criminal Activity: Outcome Measures for Preventative Detention and Public Safety Assessments*, dated November 2019, highlights the present incompatibility between the PSA and New Mexico law. ISR showed that approximately 70% of the time there is a PSA recommendation of detention it is for a property or drug offense. In these instances, there is rarely a good faith basis to argue that the defendant poses a high risk of danger. The individual in question is typically homeless or suffering from substance use disorder. Accordingly, under those circumstances and in alignment with New Mexico law, my office does not file a motion to detain pursuant to Rule 5-409. These PSA recommendations result in daily head-scratching exercises as prosecutors prepare for felony first appearances. See Attachment 5 presenting a sampling of PSA detention recommendations for property and drug offenders.

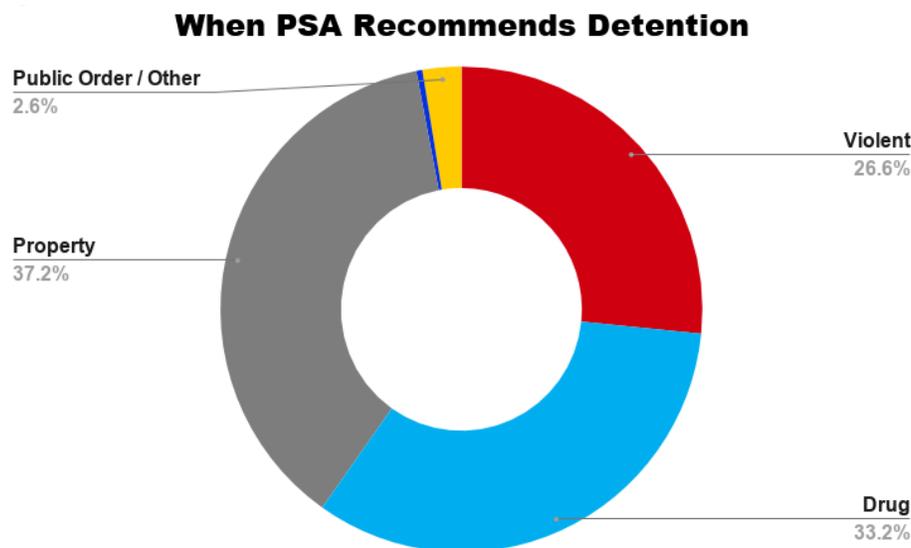


Figure 2. E. Ferguson, H. De LaCerde, and P. Guerin. *Failure to Appear and New Criminal Activity: Outcome Measures for Preventative Detention and Public Safety Assessments*. University of New Mexico: Institute for Social Research. (Nov 2019) pp. 5-7.

The Second Judicial District further misuses the PSA by failing to account for its inherent limitations. As mentioned above, other jurisdictions recognize that the PSA alone does not adequately assess the current charge and incorporate a decision-making framework to arrive at a pretrial release recommendation. The Second Judicial District’s implementation of the tool appears to be unique in its failure to develop and utilize a decision-making framework. As a result, there is no evaluation of the seriousness of the current charge in the PSA’s recommendation. Instead the current charge is classified as either violent or non-violent, having no gradations within those two categories. As a result, a charge of first degree murder carrying a possible penalty of life imprisonment is treated the same for purposes of scoring as a fourth-degree aggravated assault subject to a maximum penalty of eighteen months’ imprisonment. In this way, the Second Judicial District’s implementation of the PSA substantially undervalues serious violent felonies and results in recommendations that are removed from reality and flout the electorate’s expectations of the amendment to Article II, Section 13 of the New Mexico Constitution.

In order to maintain fidelity to New Mexico law when moving for pretrial detention my office has effectively developed an internal decision-making framework to determine when to seek pretrial detention. As ISR’s report demonstrates, 66% percent of the motions filed by my office are for a defendant accused of a violent offense. This rate and approach are congruous with the grounds available for detention in New Mexico. Indeed, my office’s decision to move to detain a defendant would largely align with the pretrial service’s recommendations to detain in jurisdictions with decision-making frameworks like New Jersey’s.

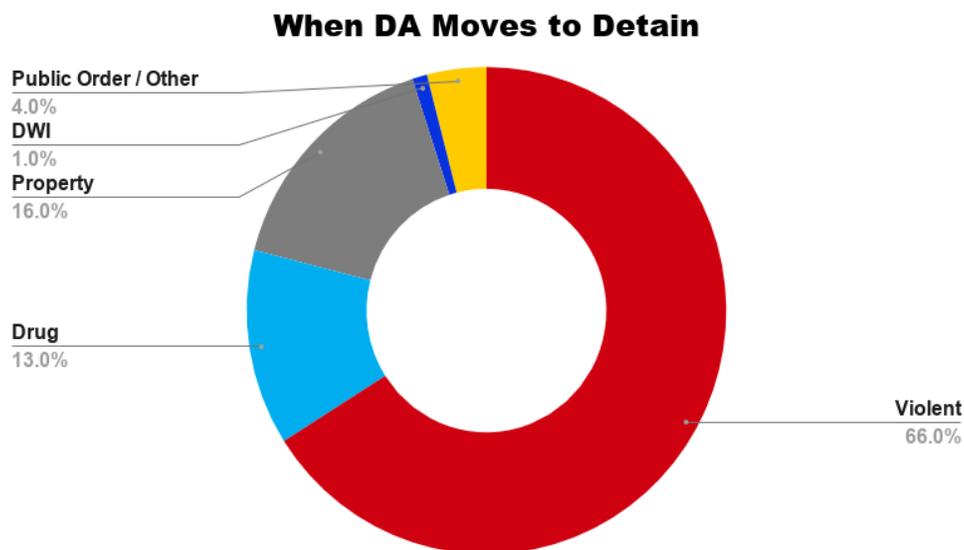


Figure 3. E. Ferguson, H. De LaCerde, and P. Guerin. *Failure to Appear and New Criminal Activity: Outcome Measures for Preventative Detention and Public Safety Assessments*. University of New Mexico: Institute for Social Research. (Nov 2019) pp. 5-7.

Decision-Making Frameworks Compared			
New Jersey	Arizona	Santa Cruz County	NM 2nd District
<b>Step 1:</b> Complete PSA .	<b>Step 1:</b> Complete PSA.	<b>Step 1:</b> Complete PSA .	<b>Step 1:</b> Complete PSA .
<b>Step 2:</b> Determine if current charge is subject to life imprisonment. If yes, release not recommended.	<b>Step 2:</b> Determine if def extradited, if violence flag found, or if current charge is on enumerated list/ any FTA for enumerated crime.	<b>Step 2:</b> Determine if def extradited, if violence flag found, or if current charge is on enumerated list/ any FTA for enumerated crime.	
<b>Step 3:</b> Determine PSA generated a score of 6 on either scale.	<b>Step 3:</b> If yes, release not recommended. If no, determine recommendation using matrix.	<b>Step 3:</b> If yes, release not recommended. If no, determine recommendation using matrix.	
<b>Step 4:</b> Determine if there is a violence flag and one of current charges is violent.	<b>Step 4:</b> Determine if current charge is, if there is any FTA for, or any attempt or conspiracy to commit any of a list of enumerated crimes and increase recommendation type and conditions level.	<b>Step 4:</b> Determine if current charge is, if there is any FTA for, or any attempt or conspiracy to commit any of a list of enumerated crimes and increase recommendation type and conditions level.	
<b>Step 5:</b> Determine if current charge is on a list of enumerated crimes.		<b>Step 5:</b> Determine Supervision Category and Standards using matrix or automatic increase.	
<b>Step 6:</b> Determine if defendant has been arrested on at least two occasions and if those charges were still pending at time of current offense.			
<b>Step 7:</b> If yes, release not recommended. If no, determine recommendation using matrix.			
<b>Step 8:</b> Determine if any current charge is No Release Act not previously listed.			
<b>Step 9:</b> Determine if any current charge is one of a list of weapons charges. If so, increase recommendation type and conditions level.			
<b>Step 10:</b> Determine if the highest current charge is an indictable offense or DV-related and eligible for pretrial detention.			

Figure 4. A summary of PSA decision-making frameworks across different jurisdictions.

Other jurisdictions understand that a “judge may rely heavily on the seriousness of a pending charge. The more serious the crime, the greater the weight it may be given.” *Mercedes*, 183 A.2d at 926 (citation omitted). Indeed, the New Mexico Supreme Court also recognizes 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.

Rule 5-409 permits judges to consider “the nature and circumstances of the offense charged, including whether the offense is a crime of violence.” The rule, however, fails to give any further guidance about the types of offenses that create the most danger in our community. Following the decision in *State v. Ameer*, 2018-NMSC-030, New Mexico stands alone among bail-reform jurisdictions in having no rebuttable presumption of detention, even for first degree murder. Adding rebuttable presumptions to Rule 5-409 would help judges evaluate the seriousness of the offense and assure a more fair and uniform application of the rule across the different judicial districts. In contrast, the Second Judicial District’s reliance on the PSA, without accompanying rebuttable presumptions, unduly diminishes the risk posed by serious violent offenders and thereby threatens public safety.

Because the Second Judicial District does not have a decision-making framework and Rule 5-409 does not include rebuttable presumptions, it is common for my office to move to detain an individual despite a PSA recommendation of ROR. See Attachment 6 presenting a sampling of PSA release recommendations for violent and dangerous offenders. This discrepancy strains the public’s trust of the judiciary. Proceeding without a change to detention practice will continue to result in absurd release recommendations and further erode the public’s confidence in the courts.

My office raised these problems with the Bernalillo County Criminal Justice Coordinating Council’s (BCCJCC) Arnold tool implementation team but to no avail. There was a promise to re-evaluate the Arnold tool implementation after a few months but that did not occur. In the face of inaction, I along with New Mexico’s other district attorneys have proposed legislation to establish rebuttable presumptions of pretrial detention and to amend the constitution. Rebuttable presumptions would require judges to consider the seriousness of the present offense and yield broader fairness and uniformity across the New Mexico’s judicial districts. I appreciate the New Mexico Supreme Court’s establishment of the Ad Hoc Committee on Pretrial Detention because these presumptions could be established by court rule. See Attachments 7-8 for the proposed legislation and proposed rule change.

Given the scope of the problems with pretrial detention in New Mexico, I anticipate that it will take a constitutional amendment to provide a true fix. See Attachment 9 for a proposed constitutional amendment. Nevertheless, there are ways to mitigate the problems with rule changes, and I look forward to working with you to ensure New Mexico's pretrial detention practice conforms to our laws and values.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'Raúl Torrez', written in a cursive style.

Raúl Torrez  
Second Judicial District Attorney

# Attachment 1

---

**Federal Rebuttable Presumptions:** 18 USCS § 3142. Release or detention of a defendant pending trial.

## 18 USCS § 3142

Current through Public Law 116-91, approved December 19, 2019.

**United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 – 6005) > Part II. Criminal Procedure (Chs. 201 – 238) > CHAPTER 207. Release and detention pending judicial proceedings (§§ 3141 – 3156)**

### § 3142. Release or detention of a defendant pending trial

**(a) In general.** Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

- (1) Released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
- (2) released on a condition or combination of conditions under subsection (c) of this section;
- (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
- (4) detained under subsection (e) of this section.

**(b) Release on personal recognizance or unsecured appearance bond.** The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 ([42 U.S.C. 14135a](#)), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

**(c) Release on conditions.**

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 ([42 U.S.C. 14135a](#)); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

- (i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;
- (ii) maintain employment, or, if unemployed, actively seek employment;
- (iii) maintain or commence an educational program;

## 18 USCS § 3142

- (iv) abide by specified restrictions on personal associations, place of abode, or travel;
- (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;
- (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
- (vii) comply with a specified curfew;
- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act ([21 U.S.C. 802](#)), without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title [[18 USCS § 1201](#), [1591](#), [2241](#), [2242](#), [2244\(a\)\(1\)](#), [2245](#), [2251](#), [2251A](#), [2252\(a\)\(1\)](#)], (2), (3), 2252A(a)(1), (2), (3), (4), 2260, 2421, 2422, 2423, or 2425], or a failure to register offense under section 2250 of this title [[18 USCS § 2250](#)], any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

**(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion.** If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

## 18 USCS § 3142

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(20\)](#)); and

(2) the person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of the person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, the person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

**(e) Detention.**

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS § 70501](#) et seq.];

(B) an offense under section 924(c), 956(a), or 2332b of this title [[18 USCS § 924\(c\)](#), [956\(a\)](#), or [2332b](#)];

(C) an offense listed in [section 2332b\(g\)\(5\)\(B\) of title 18, United States Code](#) [[18 USCS § 2332b\(g\)\(5\)\(B\)](#)], for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title [[18 USCS §§ 1581](#) et seq.] for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title [[18 USCS § 1201](#), [1591](#), [2241](#), [2242](#),

## 18 USCS § 3142

[2244](#), (a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425].

**(f) Detention hearing.** The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community—

**(1)** upon motion of the attorney for the Government, in a case that involves—

**(A)** a crime of violence, a violation of section 1591 [[18 USCS § 1591](#)], or an offense listed in section 2332b(g)(5)(B) [[18 USCS § 2332b\(g\)\(5\)\(B\)](#)] for which a maximum term of imprisonment of 10 years or more is prescribed;

**(B)** an offense for which the maximum sentence is life imprisonment or death;

**(C)** an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ([21 U.S.C. 801](#) et seq.), the Controlled Substances Import and Export Act ([21 U.S.C. 951](#) et seq.), or chapter 705 of title 46 [[46 USCS §§ 70501](#) et seq.];

**(D)** any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

**(E)** any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921 [[18 USCS § 921](#)]), or any other dangerous weapon, or involves a failure to register under [section 2250 of title 18, United States Code](#) [[18 USCS § 2250](#)]; or

**(2)** upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves—

**(A)** a serious risk that such person will flee; or

**(B)** a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, the person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

## 18 USCS § 3142

**(g) Factors to be considered.** The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591 [[18 USCS § 1591](#)], a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

**(h) Contents of release order.** In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title [[18 USCS § 1503](#)] (relating to intimidation of witnesses, jurors, and officers of the court), 1510 [[18 USCS § 1510](#)] (relating to obstruction of criminal investigations), 1512 [[18 USCS § 1512](#)] (tampering with a witness, victim, or an informant), and 1513 [[18 USCS § 1513](#)] (retaliating against a witness, victim, or an informant).

**(i) Contents of detention order.** In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

## 18 USCS § 3142

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

**(j) Presumption of innocence.** Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

## History

---

### HISTORY:

Added Oct. 12, 1984, *P. L. 98-473*, Title II, Ch I, § 203(a), *98 Stat. 1976*; Nov. 10, 1986, *P. L. 99-646*, §§ 55(a), (c), 72, *100 Stat. 3607*, 3617; Nov. 18, 1988, *P. L. 100-690*, Title VII, Subtitle B, § 7073, *102 Stat. 4405*; Nov. 29, 1990, *P. L. 101-647*, Title X, § 1001(b), Title XXXVI, Subtitle B, §§ 3622–3624, *104 Stat. 4827*, 4965; April 24, 1996, *P. L. 104-132*, Title VII, Subtitle A, § 702(d), Subtitle B, § 729, *110 Stat. 1294*, 1302; April 30, 2003, *P. L. 108-21*, Title II, § 203, *117 Stat. 660*; Dec. 17, 2004, *P. L. 108-458*, Title VI, Subtitle K, § 6952, *118 Stat. 3775*; Jan. 5, 2006, *P. L. 109-162*, Title X, § 1004(b), *119 Stat. 3085*; July 27, 2006, *P. L. 109-248*, Title II, § 216, *120 Stat. 617*; Oct. 6, 2006, *P. L. 109-304*, § 17(d)(7), *120 Stat. 1707*; Dec. 23, 2008, *P. L. 110-457*, Title II, Subtitle C, §§ 222(a), 224(a), *122 Stat. 5067*, 5072.

United States Code Service  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group (TM)  
All rights reserved. All rights reserved.

# Attachment 2

---

**California Rebuttable Presumptions:** Cal Pen Code § 1320.20. Rebuttable presumption against release; Burden; Basis for court's decision; Right to testify; Requirements for ordering preventive detention; Own recognizance release; Information that may be considered; Written notifications to defendant released after hearing.

## [Cal Pen Code § 1320.20](#)

Deering's California Codes are current through Chapter 5 of the 2019 Regular Session, including all legislation effective May 15, 2019 or earlier.

*Deering's California Codes Annotated > PENAL CODE (§§ 1 – 34370) > Part 2 Of Criminal Procedure (§§ 681 – 1620) > Title 10 Miscellaneous Proceedings (Chs. 1 – 15) > Chapter 1.5 Pretrial Custody Status [Operative October 1, 2019] (Arts. 1 – 8) > Article 7 Preventive Detention Hearing [Operative October 1, 2019] (§§ 1320.19 – 1320.23)*

### **§ 1320.20. Rebuttable presumption against release; Burden; Basis for court's decision; Right to testify; Requirements for ordering preventive detention; Own recognizance release; Information that may be considered; Written notifications to defendant released after hearing [Operative October 1, 2019]**

---

(a) There shall be a rebuttable presumption that no condition or combination of conditions of pretrial supervision will reasonably assure public safety if the court finds probable cause to believe either of the following:

(1) The current crime is a violent felony as defined in subdivision (c) of [Section 667.5](#), or was a felony offense committed with violence against a person, threatened violence, or with a likelihood of serious bodily injury, or one in which the defendant was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or was one in which he or she personally inflicted great bodily injury in the commission of the crime; or

(2) The defendant is assessed as "high risk" to the safety of the public or a victim and any of the following:

(A) The defendant was convicted of a serious felony as defined in subdivision (c) of [Section 1192.7](#) or a violent felony as defined in subdivision (c) of [Section 667.5](#), within the past 5 years.

(B) The defendant committed the current crime while pending sentencing for a crime described in paragraph (1) of subdivision (a).

(C) The defendant has intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime.

(D) At the time of arrest, the defendant was on any form of postconviction supervision other than informal probation or court supervision.

(b) The prosecution shall establish at the preventive detention hearing that there is probable cause to believe the defendant committed the charged crime or crimes in cases where there is no indictment, or if the defendant has not been held to answer following a preliminary hearing or waiver of a preliminary hearing, and the defendant challenges the sufficiency of the evidence showing that he or she committed the charged crime or crimes.

(c) The court shall make its decision regarding preventive detention, including the determination of probable cause to believe the defendant committed the charged crime or crimes, based on the statements, if any, of the defendant, offers of proof and argument of counsel, input from a victim, if any, and any evidence presented at the hearing. The court may consider reliable hearsay in making any decision under this section. The defendant shall have the right to testify at the hearing.

(d)

## Cal Pen Code § 1320.20

(1) At the detention hearing, the court may order preventive detention of the defendant pending trial or other hearing only if the detention is permitted under the United States Constitution and under the California Constitution, and the court determines by clear and convincing evidence that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court as required. The court shall state the reasons for ordering preventive detention on the record.

(2) Upon the request of either party, a transcript of the hearing shall be provided within two court days after the request is made.

(3) If either party files a writ challenging the decision, the court of appeal shall expeditiously consider that writ.

**(e)**

(1) If the court determines there is not a sufficient basis for detaining the defendant, the court shall release the defendant on his or her own recognizance or supervised own recognizance and impose the least restrictive nonmonetary condition or combination of conditions of pretrial release to reasonably assure public safety and the appearance of the defendant in court as required.

(2) A person shall not be required to pay for any nonmonetary condition or combination of conditions imposed pursuant to this subdivision.

(f) Solely for the purpose of determining whether the person should be detained or to establish the least restrictive nonmonetary conditions of pretrial release to impose, the court may take into consideration any relevant information, as set forth in a California Rule of Court, including, but not limited to, all of the following:

(1) The nature and circumstances of the crime charged.

(2) The weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded.

(3) The defendant's past conduct, family and community ties, criminal history, and record concerning appearance at court proceedings.

(4) Whether, at the time of the current crime or arrest, the defendant was on probation, parole, or on another form of supervised release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state.

(5) The nature and seriousness of the risk to the safety of any other person or the community posed by the defendant's release, if applicable.

(6) The recommendation of Pretrial Assessment Services obtained using a validated risk assessment instrument.

(7) The impact of detention on the defendant's family responsibilities and community ties, employment, and participation in education.

(8) Any proposed plan of supervision.

(g) If a defendant is released from custody following a preventive detention hearing, the court, in the document authorizing the defendant's release, shall notify the defendant of both of the following:

(1) All the conditions, if any, to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct.

(2) The penalties for and other consequences of violating a condition of release, which may include the immediate arrest or issuance of a warrant for the defendant's arrest.

## History

---

Cal Pen Code § 1320.20

Added [Stats 2018 ch 244 § 4 \(SB 10\)](#), effective January 1, 2019, operative October 1, 2019.

Deering's California Codes Annotated  
Copyright © 2019 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

---

End of Document

# Attachment 3

---

**Washington D.C. Detention:** D.C. Code § 23-1322. Detention prior to trial.

## [D.C. Code § 23-1322](#)

The Official Code is current through Jan. 7, 2020

***District of Columbia Official Code > Division IV. Criminal law and procedure and prisoners. (Titles 22 – 24) > Title 23. Criminal Procedure. (Chs. 1 – 19) > Chapter 13. Bail Agency [Pretrial Services Agency] and Pretrial Detention. (Subchs. I – II) > Subchapter II. Release and Pretrial Detention. (§§ 23-1321 – 23-1333)***

### § 23-1322. Detention prior to trial.

---

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § [23-1329\(b\)](#) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)

(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § [23-1321\(c\)](#) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § [23-1331](#);

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; § [22-722](#));

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

## D.C. Code § 23-1322

- (1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § [23-1331](#), while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;
- (2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;
- (3) Committed a dangerous crime or a crime of violence, as these terms are defined in § [23-1331](#), and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;
- (4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;
- (5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;
- (6) Committed a robbery in which the victim sustained a physical injury;
- (7) Violated § [22-4504\(a\)](#) (carrying a pistol without a license), § [22-4504\(a-1\)](#) (carrying a rifle or shotgun), § [22-4504\(b\)](#) (possession of a firearm during the commission of a crime of violence or dangerous crime), or § [22-4503](#) (unlawful possession of a firearm); or
- (8) Violated [subchapter VIII of Chapter 25 of Title 7, § [7-2508.01](#) et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § [23-1331](#), and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § [22-4502\(a\)](#).
- (d)
- (1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § [23-1331](#).
- (2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.
- (3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ [23-1327](#), [23-1328](#), and [23-1329](#), in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.
- (4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.
- (5) The person shall be detained pending completion of the hearing.
- (6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

## D.C. Code § 23-1322

**(7)**When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

**(e)**The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

**(1)**The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § [23-1331](#), or involves obstruction of justice as defined in § [22-722](#);

**(2)**The weight of the evidence against the person;

**(3)**The history and characteristics of the person, including:

**(A)**The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

**(B)**Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

**(4)**The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

**(f)**In a release order issued under § [23-1321\(b\)](#) or (c), the judicial officer shall:

**(1)**Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

**(2)**Advise the person of:

**(A)**The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

**(B)**The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

**(C)**The provisions of § [22-722](#), relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

**(g)**In a detention order issued under subsection (b) of this section, the judicial officer shall:

**(1)**Include written findings of fact and a written statement of the reasons for the detention;

**(2)**Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; provided, that after October 1, 2018, if the person is younger than 18 years of age, direct that the person be transferred to the custody of the Department of Youth Rehabilitation Services, subject to the federal standards under 28 C.F.R. § 115.14;

**(3)**Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

## D.C. Code § 23-1322

**(4)** Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

**(h)**

**(1)** The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

**(2)** For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

**(A)** The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

**(B)** The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § [23-1321](#) or after having escaped;

**(C)** The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

**(D)** The date on which an order permitting the withdrawal of a guilty plea becomes final;

**(E)** The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

**(F)** The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

**(G)** The date on which an order granting a motion for a new trial becomes final; or

**(H)** The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

**(3)** After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § [23-1321\(a\)](#) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

**(4)** In computing the 100 days, the following periods shall be excluded:

## D.C. Code § 23-1322

**(A)**Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

**(B)**Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

**(C)**Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

**(D)**Any period in which the defendant is otherwise unavailable for trial.

**(i)**Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

## History

---

(July 29, 1970, 84 Stat. 644, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, § 3, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(a), [36 DCR 2844](#); May 8, 1990, D.C. Law 8-120, § 2(a), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 3, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 602(a), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 17, [41 DCR 5193](#); July 25, 1995, D.C. Law 11-30, § 6, 42 DCR 1547; June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408; June 12, 2001, D.C. Law 13-310, § 2(b), [48 DCR 1648](#); May 17, 2002, D.C. Law 14-134, § 7, [49 DCR 408](#); May 5, 2007, D.C. Law 16-308, § 3(a), [54 DCR 942](#); Dec. 10, 2009, D.C. Law 18-88, § 223, [56 DCR 7413](#); Sept. 26, 2012, D.C. Law 19-171, § 78, [59 DCR 6190](#); June 19, 2013, D.C. Law 19-320, § 107(c), [60 DCR 3390](#); Apr. 4, 2017, D.C. Law 21-238, § 103, [63 DCR 15312](#).)

# Attachment 4

---

**New Jersey Pretrial Release Recommendation Decision Making Framework**

# Pretrial Release Recommendation Decision Making Framework (DMF) [March 2018]

## Process for Identifying the Pretrial Release/Detention Recommendation

**Step 1:** Complete the PSA to generate the FTA scale, NCA scale, and NVCA flag.

**Step 2:** Determine if any current charge is subject to life imprisonment:

- Murder or felony murder (N.J.S.A. 2C:11-3a(1),(2) or (3))
- Aggravated sexual assault (N.J.S.A. 2C:14-2a(1))
- Human trafficking (N.J.S.A. 2C:13-8a(2) or (3))
- Tampering/damage involving nuclear electric generating plant (N.J.S.A. 2C:17-7)
- Nuclear electric generating plant; damaging/tampering with equipment which results in death (N.J.S.A. 2C:17-8)
- Leader of narcotics trafficking network (N.J.S.A. 2C:35-3)
- Terrorism (N.J.S.A. 2C:38-2a(1), (2), (3) or (4))
- Producing/possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S.A. 2C:38-3a)
- Leader of firearms trafficking network (N.J.S.A. 2C:39-16)

- If yes, the final recommendation is No Release Recommended.
- If no, continue to Step 3.

**Step 3:** Determine if the PSA generated a score of 6 on the FTA scale and/or NCA scale.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to Step 10.
- If no, continue to Step 4.

**Step 4:** Determine if there is an NVCA flag and one of the current charges is violent.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to Step 10.
- If no, continue to Step 5.

**Step 5:** Determine if any current charge is:

- Escape (N.J.S.A. 2C:29-5a)
- Aggravated manslaughter or manslaughter (N.J.S.A. 2C:11-4a(1) or (2), 2C:11-4b(1) or (2))
- Aggravated sexual assault (N.J.S.A. 2C:14-2a(2)(a), (b) or (c), 2C:14-2a(3) through (7))
- Sexual assault (N.J.S.A. 2C:14-2b, 2C:14-c(1))
- First degree robbery (N.J.S.A. 2C:15-1a(1),(2) or (3))
- Carjacking (N.J.S.A. 2C:15-2a(1),(2),(3) or (4))
- Prohibited weapons and devices – sawed-off shotgun (N.J.S.A. 2C:39-3b)
- Possession of weapon for unlawful purpose (N.J.S.A. 2C:39-4b, 2C:39-4c)
- Unlawful possession of a weapon (N.J.S.A. 2C:39-5a, 2C:39-5f)
- Possession of firearm on school property w/o permission (N.J.S.A. 2C:39-5e(1))
- Certain persons not to have weapons (N.J.S.A. 2C:39-7a, 2C:39-7b(1), (2) or (3))
- Weapons—manu/transport/disp/defacement (N.J.S.A. 2C:39-9a, 2C:39-9b, 2C:39-9e, 2C:39-9g)
- Transport firearms into state for unlawful sale/transfer (N.J.S.A. 2C:39-9i)

- If yes, the final recommendation is No Release Recommended.
- If no, continue to Step 6.

## **Pretrial Release Recommendation Decision Making Framework (DMF)** **[March 2018]**

**Step 6:** Determine if the defendant has previously been arrested on two separate occasions and those charges were still pending at the time of the current offense.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to Step 10.
- If no, continue to Step 7.

**Step 7:** Apply the FTA and NCA scales to the DMF Matrix to determine preliminary recommendation.

**Step 8:** Determine if any current charge is No Early Release Act (NERA) not included in Step 2 or 5.

- If yes, increase the preliminary recommendation as follows to the revised preliminary recommendation and proceed to Step 9:
  - Release ROR = Release with PML 1
  - Release with PML 1 = Release with PML 2
  - Release with PML 2 = Release with PML 3
  - Release with PML 3 = Release with PML 3 + EM/HD
  - Release with PML 3 + EM/ HD = No Release Recommended
- If no, proceed to Step 9.

**Step 9:** Determine if any current charge is one of the following weapons charges:

- Prohibited weapons and devices – destructive devices (N.J.S.A. 2C:39-3a) (non-Graves Act)
- Prohibited weapons and devices – defaced firearms (N.J.S.A. 2C:39-3d)
- Possession of firearm while committing CDS/bias crime (N.J.S.A. 2C:39-4.1a)
- Poss. of weapon for unlawful purpose (N.J.S.A. 2C:39-4a(1) or (2))
- Unlawful possession of a weapon (N.J.S.A. 2C: 39-5b(1), 2C:39-5c(1) or (2))
- If yes, the preliminary recommendation from Step 7 or the revised preliminary recommendation from Step 8 is increased to the final recommendation as follows:
  - Release ROR = Release with PML 1
  - Release with PML 1 = Release with PML 2
  - Release with PML 2 = Release with PML 3
  - Release with PML 3 = Release with PML 3 + EM/HD
  - Release with PML 3 + EM/ HD = No Release Recommended
- If no, proceed to Step 10.

**Step 10:** Determine if the highest current charge is an indictable offense or a disorderly persons offense that is domestic violence related and is therefore eligible for pretrial detention.

- If yes, the preliminary recommendation from Steps 3, 4, or 6 is the final recommendation.
- If no, any preliminary recommendation of Release PML 3 + EM/HD or No Release Recommended is decreased to Release with PML 3 – Not Legally Eligible for Detention.

## Pretrial Release Recommendation Decision Making Framework (DMF) [March 2018]

All defendants released on ROR and any pretrial monitoring level (PML) will receive automated court date reminders and ongoing criminal history checks. Other monitoring services will be provided as shown in Table 1 below.

Table 1. Pretrial Monitoring Level Contacts and Conditions Monitoring

<b>Pretrial Monitoring Level</b>	<b>Phone Contact</b>	<b>Face to Face Contact</b>	<b>Conditions Monitoring</b>
PML 1	1 per month	None	Yes
PML 2	1 per month	1 per month	Yes
PML 3	1 every other week	1 every other week	Yes
PML 3 + EM/HD	1 every other week	1 every other week	Yes

# Pretrial Release Recommendation Decision Making Framework (DMF)

[March 2018]

## DMF MATRIX

	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
FTA 1	Risk Level Green – Recommendation ROR	Risk Level Green – Recommendation ROR				
FTA 2	Risk Level Green – Recommendation ROR	Risk Level Green – Recommendation ROR	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	
FTA 3		Risk Level Light Green – Recommendation PML 1	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 4		Risk Level Light Green – Recommendation PML 1	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 5		Risk Level Yellow – Recommendation PML 2	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Dark Orange – Recommendation PML 3 + EM/HD	Risk Level Red – No Release Recommended
FTA 6				Risk Level Red – No Release Recommended	Risk Level Red – No Release Recommended	Risk Level Red – No Release Recommended

# Attachment 5

---

**Second Judicial District Case Studies:** Public Safety Assessment recommendation of detention, District Attorney did not file motion to detain.

# Arnold Recommendations for **Detention**

	Charge(s)/History	Arnold Recommendation
Darrine Lee Otero	Possession of a Controlled Substance; Criminal Trespass  No Violent Felony Arrests in the last 90 days	<b>DETAIN</b>
Daniel Espinosa	Possession of a Controlled Substance; Possession of Drug Paraphernalia  No Violent Felony Arrests in the last 90 days	<b>DETAIN</b>
Antonio Atencio	Possession of a Controlled Substance; Possession of Drug Paraphernalia  No Violent Felony Arrests in the last 90 days	<b>DETAIN</b>
Brandon Gravlee	Possession of a Controlled Substance; Possession of Drug Paraphernalia  No Violent Felony Arrests in the last 90 days	<b>DETAIN</b>
Jordan Deagguerro	Bringing Contraband into Jail; Tampering with Evidence; Trafficking Controlled Substances  No Violent Felony Arrests in the last 90 days	<b>DETAIN</b>

The above graphic summarizes the cases that follow. For each defendant, both the PSA score and the criminal complaint for the incident are included.

# Pretrial Services

## Public Safety Assessment - Court Report

12/3/2019 11:56:25 PM

Name: Darrine Otero

Case Number: T-4-FR-2019-006786

PID: 7619361

YOB: 1987

PSA Assessment Date: 12/3/2019

Arrest Date: 12/3/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Possession of a Controlled Substance - Felony	1	30-31-23	Felony
Criminal Trespass	1	12-2-3	Misdemeanor

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | No                    |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | Yes                   |
| 4. Prior Misdemeanor Conviction                      | Yes                   |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | Yes                   |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 2 or More             |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                   |
| 9. Prior Sentence to Incarceration                   | Yes                   |

Recommendations: **(X) DETAIN** if const. reqs. met **OR RELEASE** with max conditions

Notes:

		New Criminal Activity Scale					
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
Failure to Appear Scale	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	<b>(X)DETAIN if const. reqs. met OR RELEASE with max conditions</b>	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions



# CRIMINAL COMPLAINT

STATE OF NEW MEXICO

BERNALILLO COUNTY

ALBUQUERQUE CITY

IN THE METROPOLITAN COURT

-- VS --

Name: OTERO DARRINE  
 Address: 123 VERMONT ST NE  
 City/Zip: ALBUQUERQUE NM 87108  
 D.O.B.: 07/12/1987  
 S.S.N.: 525-69-8642  
 Height: 5' 00" Weight: 140 lbs  
 Hair: Brown - BRO  
 Eyes: Brown - BRO

FILED IN METROPOLITAN COURT CASE # 190110437  
 2019 DEC -3 PM 6:04 *BL*

STN # \_\_\_\_\_  
 Arrest Date: 12/03/2019  
 Driver Lic #: 503760797  
 Citation #: \_\_\_\_\_  
 Arrest #: \_\_\_\_\_  
 Docket #: T4CR 2019 6786  
 Date Filed: 12/3/2019

The undersigned, under penalty of perjury, complains and says that on or about 12/03/2019, In the County/City of BERNALILLO/ALBUQUE, State of New Mexico, the above named Defendant(s) did:

Contrary to Section 30-31-23(A) NMSA 1978.

Charge Code 5614

CRIME: POSSESSION OF A CONTROLLED SUBSTANCE (FELONY)

(Common name of Offense or Offenses)

Contrary to Section 12-2-3

Charge Code \_\_\_\_\_

CRIME: CRIMINAL TRESPASS

(Common name of Offense or Offenses)

ON DECEMBER 3, 2019 AT 1400 HOURS I WAS ON PATROL IN MY MARKED POLICE VEHICLE IN THE AREA OF CENTRAL AVE AND WYOMING BLVD. THE MCDONALD'S LOCATED AT 8601 CENTRAL AVE HAS BEEN IN CONTACT WITH THE SOUTHEAST PROBLEM RESPONSE TEAM ABOUT SUBJECTS LOITERING ON THE PROPERTY AND HAS A ZERO TOLERANCE FOR TRESPASSING. AS I ENTERED THE PARKING LOT THERE WAS MULTIPLE SUBJECTS SITTING AGAINST THE BUILDING AND LEFT BEFORE I COULD MAKE CONTACT WITH THEM. ONE FEMALE WAS SITTING AGAINST THE WALL UNDER A NO TRESPASSING SIGN.

I CONTACTED THE FEMALE AND ADVISED HER SHE WAS BEING DETAINED FOR CRIMINAL TRESPASS. THE FEMALE WAS IDENTIFIED AS DARRINE OTERO. I RAN DARRINE THROUGH NCIC AND SHE RETURNED WITH A LOCAL MISDEMEANOR WARRANT FOR DISORDERLY CONDUCT (T4CR2019005756). THE WARRANT WAS CONFIRMED AND I PLACED DARRINE IN HANDCUFFS. I ASKED HER IF SHE HAD ANYTHING ILLEGAL ON HER AND SHE STATED TO ME THAT SHE HAD HEROIN ON HER BUT DID NOT KNOW WHERE IT WAS. I CONDUCTED AN SEARCH INCIDENT TO ARREST ON HER PURSE AND LOCATED A BROWN BAGGY FILLED WITH A HARD STICKY SUBSTANCE. THROUGH MY TRAINING AND EXPERIENCE TO BE IDENTIFIED AS HEROIN. ALSO IN HER PURSE I LOCATED A SYRINGE CAP FILLED WITH A BROWN LIQUID SUBSTANCE. THROUGH MY TRAINING AND EXPERIENCE TO BE IDENTIFIED AS HEROIN. DARRINE WAS TRANSPORTED TO THE SOUTHEAST POLICE SUBSTATION.

I TESTED THE HARD STICKY SUBSTANCE AND THE BROWN LIQUID SUBSTANCE USING A FIELD TEST KIT. BOTH TESTED PRESUMPTIVELY POSITIVE FOR HEROIN. BOTH SUBSTANCES WERE TAGGED INTO EVIDENCE. DARRINE WAS TRANSPORTED TO PTC WHERE SHE WAS BOOKED ON THE LISTED CHARGES. MY TASER CAMERA WAS UPLOADED TO EVIDENCE.COM. A COPY OF THIS CASE WILL BE SENT TO THE DISTRICT ATTORNEYS LIASON FOR FURTHER PROSECUTION.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE, SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE FALSE STATEMENT IN A CRIMINAL COMPLAINT.

Complainant *Andrew Della Longa*

Name DELLA-LONGA, ANDREW

Title(if any) 5611

Agency(if any) ALBUQUERQUE POLICE DEPT

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the district attorney or a law enforcement officer is not otherwise required.

Approved TELEPHONICALLY SGT. J. TREBETOWSKI (5405)

DISTRICT ATTORNEY OR LAW ENFORCEMENT OFFICER

[As amended, approved by the Supreme Court of New Mexico, effective September 1, 1990; April 1, 1991; November 1, 1991.]

T4FR20196784

**If Probable Cause Determination required:**

- Probable Cause Found
- Probable Cause Not Found, and Defendant Released from Custody

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

[As amended, effective September 1, 1990; April 1, 1991; November 1, 1991; as amended by Supreme Court Order No.13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]

# Pretrial Services

## Public Safety Assessment - Court Report

1/7/2020 7:32:29 AM

Name: Daniel Espinosa

Case Number: T-4-FR-2020-000092

PID: 8081646

YOB: 1983

PSA Assessment Date: 1/7/2020

Arrest Date: 1/6/2020

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Possession of a Controlled Substance - Felony	1	30-31-23	Felony
Possession of Drug Paraphernalia (PA)	1	30-31-25.1(A)&(C)	Petty Misdemeanor

Risk Factors:

Responses:

- |  |                            |
|--|----------------------------|
| 1. Age at Current Arrest                             | 23 or older                |
| 2. Current Violent Offense                           | No                         |
| a. Current Violent Offense & 20 Years Old or Younger | No                         |
| 3. Pending Charge at the Time of the Offense         | Yes                        |
| 4. Prior Misdemeanor Conviction                      | Yes                        |
| 5. Prior Felony Conviction                           | Yes                        |
| a. Prior Conviction                                  | Yes                        |
| 6. Prior Violent Conviction                          | 1 or 2 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 2 or More                  |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                        |
| 9. Prior Sentence to Incarceration                   | Yes                        |

Recommendations: **(Y) DETAIN** if const. reqs. met **OR RELEASE** with max conditions

Notes:

		New Criminal Activity Scale					
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
Failure to Appear Scale	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	<b><i>(Y)DETAIN if const. reqs. met OR RELEASE with max conditions</i></b>

T4FR2020-92

ORIGINAL SIGNED COPY-COURT; ADDITIONAL COPIES- DEFENDANT AND ADMINISTRATOR'S COPY  
STATE OF NEW MEXICO ARTICLE 2

-VS-  
Espinosa, Daniel

INITIATION OF PROCEEDINGS  
STATE OF NEW MEXICO  
IN THE METROPOLITAN COURT

FILED IN  
THE METROPOLITAN COURT  
*Ortiz*  
2020 JAN -6 AM 2:55

Name	DOB	SSN
Espinosa, Daniel	8/26/1983	559-77-9036
Address	CSZ	
314 Cromwell	Albuquerque, NM 87102	
Arrest Date	1/6/2020 12:42:54 AM	Driver License No 123114604
Citation No		Arrest No
Docket No		Date Filed 1/6/20
Complainant or Officer	Castaneda, Erick D	PDID 4881

BACKGROUND INVESTIGATIONS

CRIMINAL COMPLAINT

The undersigned, under penalty of perjury, complains and says that on or about 1/6/2020 12:42:54 AM, in the County of Bernalillo, State of New Mexico, the above-named defendant(s) did commit the above Offense(s) (here state the essential facts):

On 1/5/2020 at approximately 2255 hours, I (Deputy E. Castaneda #230) was on duty, wearing my full duty uniform, which displays my badge of office. I was working for the Bernalillo County Sheriff's Department operating in the South Valley Area Command and driving a fully marked vehicle. At that time, I was dispatched to 3800 Flora Vista SW in reference to a suspicious vehicle. The caller advised a dark sedan was parked in front of the complex for approximately an hour. The caller also stated the vehicle was occupied and had its headlights on. Upon arrival I engaged by spotlight and observed a black Honda bearing PSA327 parked facing south. I observed a male wearing a grey jacket and black jeans standing outside the driver side door. As I approached the vehicle, the front passenger opened the door at which point I believed the male was going to flee, challenge me or dispose of narcotics or a weapon. I ordered the male to close the door which he did. While I spoke with the male standing outside, I observed the front passenger making furtive movements as he kept reaching down and to the side near the door. I spoke with the female driver who was identified as Cecilia Chavez. While I spoke with Cecilia she appeared to be extremely nervous as she kept deviating from my questions and kept stating she did not want to be in any trouble. Due to the furtive movements of the front passenger and their nervous behavior I asked Cecilia if I could search her vehicle which she stated yes. During a search of the vehicle, a folded paper was located underneath the front passengers seat. The substance tested presumptive positive for amphetamine and weighed approximately 1 gram. Underneath the passenger seat a glass bubble pipe was also located which with my training education and experience I know it to be used for the ingestion of narcotics. The front passenger was identified as Danny Espinosa. I read Danny his Miranda Rights which he stated he understood. I asked about the substance located underneath his passenger seat which he stated it was not his. Due to the location of the substance and Danny's furtive movements, Danny was arrested for possession of controlled substance and possession of paraphernalia.

Contrary to Section(s) 30-31-23AB (POSS METH) - POSS. OF METHAMPHETAMINE 30-31-25.1 -  
POSSESSION PARAPHERNALIA NMSA 1978.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE AND TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.



# Pretrial Services

## Public Safety Assessment - Court Report

11/19/2019 7:04:00 AM

Name: Antonio Atencio

Case Number: T-4-FR-2019-006536

PID: 9914320

YOB: 1998

PSA Assessment Date: 11/19/2019

Arrest Date: 11/18/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Possession of a Controlled Substance - Felony	1	30-31-23	Felony
Possession of Drug Paraphernalia (PA)	1	30-31-25.1(A)&(C)	Petty Misdemeanor

Risk Factors:

Responses:

- |  |                            |
|--|----------------------------|
| 1. Age at Current Arrest                             | 21 or 22                   |
| 2. Current Violent Offense                           | No                         |
| a. Current Violent Offense & 20 Years Old or Younger | No                         |
| 3. Pending Charge at the Time of the Offense         | No                         |
| 4. Prior Misdemeanor Conviction                      | Yes                        |
| 5. Prior Felony Conviction                           | No                         |
| a. Prior Conviction                                  | Yes                        |
| 6. Prior Violent Conviction                          | 1 or 2 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 2 or More                  |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                        |
| 9. Prior Sentence to Incarceration                   | Yes                        |

Recommendations: **(U) DETAIN** if const. reqs. met **OR RELEASE** with max conditions

Notes:

Failure to Appear Scale	New Criminal Activity Scale						
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	<b>(U)DETAIN if const. reqs. met OR RELEASE with max conditions</b>	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions	

ORIGINAL SIGNED COPY-COURT; ADDITIONAL COPIES- DEFENDANT AND ADMINISTRATOR'S COPY

STATE OF NEW MEXICO

ARTICLE 2

-VS-

INITIATION OF PROCEEDINGS

ATENCIO, ANTONIO J

STATE OF NEW MEXICO

IN THE METROPOLITAN COURT

FILED IN METROPOLITAN COURT  
NOV 18 PM 5:33  
Basso

Name	DOB	SSN	
ATENCIO, ANTONIO J	8/23/1998	648-16-4264	
Address		CSZ	
8 Calle De Campo		BELEN, NM 87002	
Arrest Date	11/18/2019 11:49:00 AM	Driver License No	506772095
Citation No		Arrest No	
Docket No	T4FR2D19-4536	Date Filed	11-18-19
Complainant or Officer	Mauricio, Daniel P.	PDID	6304

CRIMINAL COMPLAINT

The undersigned, under penalty of perjury, complains and says that on or about 11/18/2019 11:49:00 AM , in the County of Bernalillo, State of New Mexico, the above-named defendant(s) did commit the above Offense(s) (here state the essential facts):

On 11/18/2019 at approximately 1149 hours I responded to the area of 106 Dallas Rd SE to assist Deputies who were on a bicycle patrol. I was told by the initial Deputy that they approached a group of three people who were gathered together in the alley way behind 106 Dallas St SE. Upon making contact with the individuals they observed a male, later identified as Antonio Atencio, with a syringe. The syringe had a dark brown fluid inside, which from my training and experience I was able to identify the substance as heroin. The substance was field tested using a NIK test, which tested presumptive positive for opium. The syringe was filled up to the 20cc line. Antonio was read his Miranda warning but chose to exercise his rights and not speak to me. Antonio was found to be on probation. I made contact with his probation officer who advised me he was in violation of his probation.

Contrary to Section(s) 30-31-23AB (POSS HEROIN) - POSS. OF HEROIN 30-31-25.1 - POSSESSION PARAPHERNALIA NMSA 1978.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE AND TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

Approved By	<i>M. Kowin 5-13</i>	Complainant	Mauricio, Daniel P.
Date / Time	11/18/19 1336	PDID	6304
Agency	Bernalillo County Sheriff Dept.	Case No	SO19110016703

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not otherwise required.

CF001	Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991			
METROPOLITAN COURT RULE 7-201	<input type="checkbox"/> -Court	<input type="checkbox"/> -Defendant	<input type="checkbox"/> -Attorney	<input type="checkbox"/> -DA

# Pretrial Services

## Public Safety Assessment - Court Report

11/20/2019 7:17:12 AM

Name: Brandon Gavlee

Case Number: T-4-FR-2019-006558

PID: 8040932

YOB: 1989

PSA Assessment Date: 11/20/2019

Arrest Date: 11/19/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Possession of Drug Paraphernalia (PA)	1	30-31-25.1(A)&(C)	Petty Misdemeanor
Possession of a Controlled Substance (Marijuana) (Eight Ounces or More)	1	30-31-23(A) & (B)(4)	Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | No                    |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | Yes                   |
| 4. Prior Misdemeanor Conviction                      | Yes                   |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | Yes                   |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 2 or More             |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                   |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(W) DETAIN if const. reqs. met OR RELEASE with max conditions**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
<b>Failure to Appear Scale</b>	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA6				<b><i>(W)DETAIN if const. reqs. met OR RELEASE with max conditions</i></b>	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions



CRIMINAL COMPLAINT

STATE OF NEW MEXICO

BERNALILLO

COUNTY

ALBUQUERQUE

CITY

IN THE METROPOLITAN

COURT

-- VS --

FILED IN METROPOLITAN COURT

CASE # 190106323

2019 NOV 20 AM 12:22

BACKGROUND INVESTIGATIONS

Name: GRAVLEE BRANDON
Address: 7104 CANARY LN NE
City/Zip: ALBUQUERQUE NM 87109
D.O.B.: 02/10/1989
S.S.N.: 585-79-4391
Height: 5' 10" Weight: 148 lbs
Hair: Black - BLK
Eyes: Brown - BRO

STN #
Arrest Date: 11/19/2019
Driver Lic.#: 505100441
Citation.#:
Arrest #:
Docket #: T4PR(2019-6553)
Date Filed: 11/20/19

The undersigned, under penalty of perjury, complains and says that on or about 11/19/2019, In the County/City of BERNALILLO/ALBUQUE, State of New Mexico, the above named Defendant(s) did:

Contrary to Section 30-31-25.1(A) NMSA 1978.
Charge Code 0524

CRIME: POSSESSION OF DRUG PARAPHERNALIA
(Common name of Offense or Offenses)
Contrary to Section 30-31-23(A) NMSA 1978.
Charge Code 5382

CRIME: POSSESSION OF MARIJUANA OR SYNTHETIC CANNABINOIDS (EIGHT OUNCES OR MORE)
(Common name of Offense or Offenses)

ON NOVEMBER 19, 2019 AT 1951 HOURS I WAS DISPATCHED TO 2809 JUAN TABO BL NE IN REFERENCE TO A AUDIBLE ALARM. WHILE ENROUTE DISPATCHED ADVISED THAT A MALE SUBJECT ATTEMPTED TO COME INTO THE STORE WEARING A MASK. THE CALLER DESCRIBED THE MALE AS WEARING A BLACK AND GREEN HOODIE, BLACK PANTS, WHITE MALE, POSSIBLY IN HIS THIRTIES. THE CALLER STATED THAT THE MALE, LATER IDENTIFIED AS BRANDON GAVLEE, WAS LAST SEEN WALKING TOWARDS JUAN TABO BL.
UPON ARRIVAL OFFICERS LOCATED BRANDON WALKING SOUTHBOUND ON JUAN TABO BL AWAY FROM THE BUSINESS. BRANDON MATCHED THE DESCRIPTION GIVEN TO US BY THE CALLER. I MADE CONTACT WITH BRANDON AND ADVISED HIM WHY WE STOPPED HIM. BRANDON PROVIDED ME WITH HIS NAME AND INFORMATION. WHEN CHECKING HIS INFORMATION THRU OUR SYSTEM BRANDON CAME BACK WITH TWO OUTSTANDING FELONY WARRANTS THAT WERE CONFIRMED.
SEARCH INCIDENT TO ARREST I LOCATED MULTIPLE LARGE ZIP LOCK BAGS WITH MARIJUANA AS WELL AS MULTIPLE GLASS PIPES USED TO SMOKE METHAMPHETAMINE IN BRANDON'S BACKPACK. BRANDON WAS ARRESTED ON THE LISTED CHARGES, THE OUTSTANDING WARRANTS AND WAS BOOKED INTO THE PRISONER TRANSPORT CENTER WITHOUT INCIDENT. NO FURTHER ACTIONS WERE TAKEN AT THIS TIME.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE, SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE FALSE STATEMENT IN A CRIMINAL COMPLAINT.

Complainant [Signature]
Name MARTINEZ, EFRAIN
Title(if any) 5654
Agency(if any) ALBUQUERQUE POLICE DEPT

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the district attorney or a law enforcement officer is not otherwise required.

Approved [Signature]

DISTRICT ATTORNEY OR LAW ENFORCEMENT OFFICER

[As amended, approved by the Supreme Court of New Mexico, effective September 1, 1990; April 1, 1991; November 1, 1991.]

# Pretrial Services

## Public Safety Assessment - Court Report

11/22/2019 7:43:00 AM

Name: Jordan Deaguerro

Case Number: T-4-FR-2019-006598

PID: 8228249

YOB: 1994

PSA Assessment Date: 11/22/2019

Arrest Date: 11/21/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Bringing Contraband into Jail	1	30-22-14(B) & 31-18-15	4th Degree Felony
Tampering with Evidence (Highest Crime a Third, Fourth or Indeterminate Degree Felony)	1	30-22-5	4th Degree Felony
Trafficking Controlled Substances (Possess with Intent to Distribute) (Narcotic or Meth)(1st Off.)	2	30-31-20 & 30-31-20(A)(3)	2nd Degree Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | No                    |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | Yes                   |
| 4. Prior Misdemeanor Conviction                      | Yes                   |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | Yes                   |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 2 or More             |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                   |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(W) DETAIN if const. reqs. met OR RELEASE with max conditions**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
Failure to Appear Scale	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA6				<b><i>(W)DETAIN if const. reqs. met OR RELEASE with max conditions</i></b>	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

STATE OF NEW MEXICO  
- VS -

ARTICLE 2  
INITIATION OF PROCEEDINGS  
**STATE OF NEW MEXICO**  
**COUNTY OF BERNALILLO**  
**IN THE METROPOLITAN COURT**

FILED IN  
METROPOLITAN COURT  
2019 NOV 21 PM 10:59  
BACKGROUND  
INVESTIGATIONS

Name: DEAGUERRO, JORDAN  
Address: P.O. Box 204, SANTA CRUZ, NM 87567

Arrest Date: 11-21-2019  
Driver Lic. #: 512324461  
Citation #:

D.O.B.: 12/7/1994  
S.S.N.: 649-07-2808

Arrest #:  
Docket #: *TJARR2019-6598*

Charge: Bringing Cont into Jail, Tamp W/Evidence, Poss W/Intent Dist  
(Cocaine) Poss W/Intent Dist (Heroin)

Date Filed: *11/21/19*

Complainant or Officer: P. Rael

Man #: 4070

(print name)

**CRIMINAL COMPLAINT**

The undersigned, under penalty of perjury, complains and says that on or about the 19 of November, 2019, in the County of Bernalillo, State of New Mexico, the above-mentioned defendant(s) did (here state the essential facts):

On the above date, inmate Jordan Deaguerro (#100238194) was transported from Santa Fe County Detention Facility (4312 State Highway 14, Santa Fe, NM) to the Bernalillo County Metropolitan Detention Center (100 Dean Miera Dr SW) by extraditions deputy, Deputy Kevin Lucero. Dep. K. Lucero stated inmate J. Deaguerro was a single pick-up transport order, with no other inmates in his vehicle. Dep. K. Lucero further stated he informed inmate J. Deaguerro to reveal any contraband prior to getting booked into MDC.

Upon arrival at MDC, inmate J. Deaguerro was body scanned prior to booking and an anomaly in the anal area was noted. As the transfer from Dep. K. Lucero to MDC staff within the RDT "Sally Port", inmate J. Deaguerro was patted down and taken to the "dress out/shower" area for a strip search. Corrections Officer's Walter Pagan and Mario Gonzales were present during the initial search.

During the search an object was seen protruding from inmate J. Deaguerro's anus, which he was asked to remove, but refused. Corrections Sergeant Lorenzo Serrano was called to the area and he got inmate J. Deaguerro to remove the item. Sgt. L. Serrano took the contraband and found there to be several individual packaged bags (11) to include a total weight of 2.03 gm of Cocaine and .76 gm of Heroin, which is consistent with trafficking. A sample of each was field tested and tested presumptive positive for their respective drugs by Sgt. L. Serrano. The contraband was placed into evidence. Inmate J. Deaguerro was rescanned and there was no further anomaly's noted.

Corrections Officer Edward Lopez interviewed inmate J. Deaguerro. C/O E. Lopez stated inmate J. Deaguerro said he wasn't concerned about new charges and they normally run concurrent if convicted. I asked if inmate J. Deaguerro would allow me to interview him and C/O E. Lopez said he would not.

Contrary to Section(s) 30-22-14B, 30-22-5, 30-31-20A, 30-31-20A

NMSA 1978

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.**

Approved

Complainant *P. Rael #145*  
Title (if any) Deputy  
Agency BCSO

DISTRICT ATTORNEY OR LAW ENFORCEMENT OFFICER

SO19110016762  
CAD Incident #

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest Warrant. Approval of the District Attorney or a law enforcement officer is not otherwise required.

METROPOLITAN COURT RULE 7-201

Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.

ORIGINAL - Court COPY TO: District Attorney Attorney Defendant

*ORIGINAL*  
*ORIGINAL*

# Attachment 6

---

**Second Judicial District Case Studies:** Public Safety Assessment recommendation of ROR, District Attorney filed motion to detain.

# Arnold Recommendations for ROR

	Charge(s)	Arnold Recommendation
Johnathan Griego	Aggravated Assault, Shooting at or from a Motor Vehicle (2-27-2019), Murder in the First Degree (9-27-2019)	ROR
Joseph McDonald	Kidnapping, Criminal Sexual Penetration, Aggravated Battery, Aggravated Assault	ROR
James Mares	Criminal Sexual Penetration of a Minor, Criminal Contact of a Minor, Contributing to the Delinquency of a Minor	ROR
Anthony Gallegos	Aggravated Battery (household member), Aggravated Assault (deadly weapon), Abandonment of a Child	ROR
Jesus Cartagena	Murder (2 counts)	ROR

The above graphic summarizes the cases that follow. For each defendant, both the PSA score and the criminal complaint for the incident are included.

# Pretrial Services

## Public Safety Assessment - Court Report

2/28/2019 6:43:47 AM

Name: Johnathan Griego

Case Number: T-4-FR-2019-001120

PID: 7381467

YOB: 1995

PSA Assessment Date: 2/28/2019

Arrest Date: 2/27/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Shooting At or From a Motor Vehicle (No Great Bodily Harm)	2	30-3-8(B)	4th Degree Felony
Aggravated Assault (Deadly Weapon)	1	30-3-2(A)	4th Degree Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | Yes                   |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | No                    |
| 4. Prior Misdemeanor Conviction                      | No                    |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | No                    |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                     |
| 8. Prior Failure to Appear Older than 2 Years        | No                    |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(A) ROR**

Notes:

Failure to Appear Scale	New Criminal Activity Scale						
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
	FTA 1	<b>(A) ROR</b>	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions	



CRIMINAL COMPLAINT

STATE OF NEW MEXICO

BERNALILLO

COUNTY

ALBUQUERQUE

CITY

IN THE METROPOLITAN

COURT

-- VS --

CASE # 190019187

FILED IN METROPOLITAN COURT FEB 27 PM 9:10

Name: GRIEGO JOHNATHAN
Address: 2120 N WIND DR SW
City/Zip: ALBUQUERQUE NM 87121
D.O.B.: 05/31/1995
S.S.N.: 649-05-8848
Height: 5' 09" Weight: 154 lbs
Hair: Brown - BRO
Eyes: Brown - BRO

STN #
Arrest Date: 02/27/2019
Driver Lic #: 511659116
Citation #:
Arrest #:
Docket #: 74FR19-1120
Date Filed: 2/27/19

The undersigned, under penalty of perjury, complains and says that on or about 02/27/2019, In the County/City of BERNALILLO, State of New Mexico, the above named Defendant(s) did:

Contrary to Section 30-3-8(B)
Charge Code

CRIME: SHOOTING FROM/INTO A VEHICLE (NO BODILY HARM)
(Common name of Offense or Offenses)

Contrary to Section 30-3-2(A) SK
Charge Code

CRIME: SLT AGGRAVATED ASSAULT W/DW
(Common name of Offense or Offenses)

Contrary to Section 30-3-8(B)
Charge Code

CRIME: SHOOTING FROM/INTO A VEHICLE (NO BODILY HARM)
(Common name of Offense or Offenses)

ON 02/27/2019 I WAS DISPATCHED TO THE INTERSECTION OF UNSER BLVD AND DENNIS CHAVEZ BLVD. UPON ARRIVAL I CONTACTED ERIK LOERA-HERNANDEZ. ERIK STATED THAT HE WAS DRIVING ON COORS AND DENNIS CHAVEZ GOING WEST ON DENNIS CHAVEZ. HE WAS AT THE LIGHT AND THE CAR IN FRONT OF HIM DID NOT GO WHEN THE LIGHT TURNED GREEN THE VEHICLE DID NOT GO. ERIK HONKED AT THE VEHICLE AND THE SUBJECT SHOWED THE GUN TO ERIK. THE SUBJECT WAS TURNING RIGHT ON UNSER BLVD. ERIK WAS GOING STRAIGHT. WHEN ERIK WENT STRAIGHT ON DENNIS CHAVEZ THE SUBJECT DID SHOOT AT THE VEHICLE. ERIK SAID THAT THE SUBJECT DID FIRE 6 ROUNDS, BUT JUST ONE DID HIT THE VEHICLE. ERIK AND DAVID ALBERTO WERE FINE. ERIK DESCRIBED THE CAR AS A SILVER BMW WITH TINTED WINDOWS AND THE TEMPT TAG WAS FLAPPING ON THE AIR. OFFICER L. MACIAS CHECKED THE AREA WHERE THE INCIDENT HAPPENED, BUT HE WAS UNABLE TO FIND ANY OF THE CASINGS. ERIK GAVE THE DESCRIPTION OF THE VEHICLE. HE SAID THAT HE WAS UNABLE TO SEE THE PLATE. I CALLED THE CS. I WAS WAITING FOR THE CS SHE WAS ENROUTE AND LATER SHE TOLD ME THAT SHE WAS PREEMPTED. WHEN I WAS WAITING FOR THE CS TO PROCESS THE VEHICLE OF THE VICTIM. ERIK AND DAVID POINTED AT A SILVER BMW DRIVING SOUTH ON UNSER BLVD TO DENNIS CHAVEZ. THEY BOTH SIDE THAT THE VEHICLE WAS THE ONE INVOLVED IN THE INCIDENT FROM EARLY. I STOPPED THE VEHICLE AND WAITED FOR HELP. WE DID A FELONY TRAFFIC STOP. TABITHA ULIBARRI WAS DRIVING THE VEHICLE. SHE SAID THAT HER BOYFRIEND, JOHNATHAN ANGELO GRIEGO, HE WAS THE PASSENGER. OFFICER. L. MACIAS TRANSPORTED ERIK AND DAVID TO THE TRAFFIC STOP. THEY BOTH IDENTIFIED JOHNATHAN ANGELO GRIEGO AS THE SHOOTER. THE VEHICLE WAS SEALED AND TAKEN TO APD LAB.



# Pretrial Services

## Public Safety Assessment - Court Report

9/27/2019 1:45:01 AM

Name: Johnathan Griego

Case Number: T-4-FR-2019-005537

PID: 7381467

YOB: 1995

PSA Assessment Date: 9/27/2019

Arrest Date: 9/26/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Open Count of Murder in the First Degree	1	30-2-1	Capital Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | Yes                   |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | Yes                   |
| 4. Prior Misdemeanor Conviction                      | No                    |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | No                    |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                     |
| 8. Prior Failure to Appear Older than 2 Years        | No                    |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(E) ROR - PML 1**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
<b>Failure to Appear Scale</b>	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	<b><u>(E) ROR-PML1</u></b>	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

STATE OF NEW MEXICO  
-VS-

ARTICLE 2  
INITIATION OF PROCEEDINGS  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
IN THE METROPOLITAN COURT

Name: Johnathan A. Griego FILED IN THIS OFFICE  
Address: 2120 N. Wind Dr. Sw TIME 7:30pm Arrest Date: Arrest Warrant  
Albuquerque, New Mexico 87121 Driver Lic. #: \_\_\_\_\_  
D.O.B. 05/31/1995 SEP 26 2019 Citation #: \_\_\_\_\_  
S.S.N. 649-05-8848 CLERK-METROPOLITAN COURT Arrest #: \_\_\_\_\_  
Charge(s): Open count of murder BY [Signature] Docket #: T4FR2019-5537  
Date Filed: 9/26/2019

Affiant – Officer/Detective T. Juarez Man #: 3100

**CRIMINAL COMPLAINT - ARREST WARRANT AFFIDAVIT**

The undersigned, under penalty of perjury, complains and says that on or about the 20 Day of September, 2019, In the County of Bernalillo, State of New Mexico, the above-named defendant(s) Did (here state the essential facts):

On September 20, 2019, at 2339 hours, officers with the Albuquerque Police Department were dispatched to 7303 Montgomery Blvd NE (Arioso Apartments) in reference to a shooting. Officers meet at 7515 Montgomery Blvd NE where they were approached by a male, later identified as Alex Romero-Aragon. Alex told officers he was at the scene of a shooting. Alex was detained until officers obtained more information.

As officers began approaching 7303 Montgomery Blvd Ne. they were being flagged down by a female, later identified as Katrina Lucero. Katrina pointed to the area of building #D. Officers located a male subject, later identified as Harvey Aragon Jr., lying on the ground. Harvey was lying next to a blue in color Chevy Cruze bearing NM plate #AHRN24. Harvey was unconscious, not breathing and had no pulse. Rescue #15 arrived on scene and pronounced Harvey Aragon Jr. deceased.

The scene was secured and a violent crimes call out was initiated.

On September 21, 2019, at 0245 hours, an interview was conducted with Katrina Lucero. Katrina is the current girlfriend of Harvey. Katrina stated Harvey has two children with his ex-girlfriend, Dominique Rodriguez. Harvey and Dominique have shared custody of the two children. Dominique usually keeps the children during the week and Harvey usually gets the children every Friday for the weekend. According to Katrina, approximately three weeks ago Dominique contacted Harvey and told him she was getting kicked out of her residence. Dominique asked Harvey if he would be willing to keep the children during the week so he could get them to school. Harvey agreed and assumed Dominique would keep the children on the weekend. During that time Harvey kept the children for the week and Dominique had them during the day on Friday so Katrina and Harvey made plans for Friday night. As the evening approached Dominique told Harvey she was going to drop the children off with Harvey. Harvey told Dominique he had plans and would not be able to have the children. Katrina stated that upset Dominique and she decided to have no contact with Harvey.

Harvey attempted to make contact with Dominique on multiple occasions for the last couple of weeks but was unsuccessful. Katrina believed Dominique had blocked Harvey on her cell phone. On Wednesday, September 18, 2019, Harvey arrived at Dominique's work and advised Dominique he wanted to see his children. According to Katrina, Dominique told Harvey he better not come around because her current boyfriend Johnny was going to beat him up.

T4FR 2019 5537

Katrina stated by Friday, September 20, 2019, Harvey wanted to go get his children from Dominique. Katrina, Harvey, Alex Romero-Aragon (Harvey's brother) and Kristina (Harvey's cousin) got into Katrina's vehicle and went to where Dominique had been staying. Katrina was not sure of the address where they first went but knew it was up around Eubank Blvd NE. Katrina stated Dominique had been staying with the children and her aunt at that residence. When Harvey spoke to Dominique's aunt she told Harvey she had kicked Dominique out a few weeks ago because of her boyfriend Johnny.

Katrina stated after leaving Dominique's aunts house they headed to the Arioso Apartments, located at 7303 Montgomery Blvd NE. According to Katrina, Harvey and her have picked up the children from that apartment complex in the past and they knew Dominique's parents resided there. Because they did not know the exact apartment number they decided they would walk around and see if they could locate Dominique's vehicle. Katrina stated Harvey, Alex, Kristina and her out of her vehicle and began walking towards building #F. While they were walking Harvey told Katrina to go back and get her vehicle. Katrina got into her vehicle and began driving toward building #F when she noticed a black Jeep approaching her head on. Katrina had to swerve in order not to be hit. Katrina stated she recognized the black jeep as belonging to Dominique.

When Katrina swerved she noticed Harvey was lying on the ground. Katrina exited her vehicle and tried to pick up Harvey and put him into her vehicle. Katrina was unable to pick Harvey up by herself so Kristina tried to help as well. As they were trying to get Harvey into the vehicle Katrina called 911. Katrina and Kristina were unable to get Harvey in the vehicle so Katrina decided to go to the front of the apartment complex and flag the police down.

On September 21, 2019, at 0320 hours, an interview was conducted with Alex Romero-Aragon. Alex is the brother of Harvey. Alex stated earlier in the day he was at his nana's house when he called his brother, Harvey. Alex asked Harvey to come and pick him up so he could spend the night with Harvey. Harvey picked up Alex and took Alex back to his residence where they hung out for a while. Eventually they decided to go look for Harvey's children. Harvey was upset because he hasn't seen his children in a while. Alex also mentioned Harvey was upset with Dominique's boyfriend for disrespecting him.

Alex, Harvey, Katrina and Kristina were all in the vehicle when they left. The first place they went to look for the kids was Dominique's aunt's house. Harvey went to the door and demanded to see his kids. The kids were not there so they left. They went to the Arioso Apartments where they all got out of the vehicle. Harvey told Katrina to go back to get the vehicle.

As Alex and Harvey were walking together they noticed a car driving by really slow. Harvey chased the car and Harvey broke either the back window or back rear window of the vehicle. Harvey had something metal, like a wrench, that he broke the window with. The driver of the vehicle stopped and the occupants of the vehicle got out to fight. According to Alex he heard people yelling "shoot him, Shoot him." Alex began yelling "what do you mean shoot him" then he heard a gunshot. Alex took off running because he thought he was going to get shot.

Alex thought Harvey began to run prior to being shot. Alex stated Dominique's boyfriend John had the gun. Alex stated Harvey never threatened anyone with the wrench. Alex does not recall seeing Dominique during the incident.

A concerned citizen, who is known to affiant and will be referred to as CC1 throughout this report due to fear of retaliation. CC1 is an independent witness in this case and has no vested interest with anyone involved in this case. CC1 stated while outside CC1 saw a black Jeep Compass and heard males and females arguing. CC1 heard "babies <sup>CH</sup> ~~ma'am~~ (Identified as Dominique Rodriguez) tell the shooter "shoot that fool, shoot that fool" referring to shooting "baby daddy" (Harvey Aragon Jr.). A male subject, described as a Hispanic male, short hair, tall with a medium build, shot the victim. After the shooting all four occupants got back into the vehicle and left the scene.

A concerned citizen, who is known to affiant and will be referred to as CC2 throughout this report due to fear of retaliation. CC2 is an independent witness in this case and has no vested interest with anyone involved in this case.

CB

74FR2019 5537

CC2 was outside when CC2 saw two males exit a Jeep Compass. CC2 saw the victim hitting the compass with a pipe wrench. A male exited the vehicle and a female began to tell that male "Kill him, shoot that nigga." The male subject went back into the Jeep and grabbed a gun. When the victim saw the gun he dropped the pipe wrench, started gaining distance from the shooter, put his hands up and then the male subject shot the victim. CC2 thought there were two gunshots. After the shooting the occupants got back into the Jeep and left the scene.

On September 21, 2019, affiant met with Alex Romero-Aragon. Alex was shown a photo array and positively identified Johnathan Griego as the male subject who shot his brother, Harvey.

On September 22, 2019, affiant met with CC1. CC1 was shown a photo array and positively identified Johnathan Griego as the male subject who shot the victim in this case.

On September 22, 2019, affiant met with CC2. CC2 was shown a photo array and positively identified Johnathan Griego as the male subject who shot the victim in this case.

Photo arrays are a departmental procedure which establishes legal principles and to provide an opportunity for victims and witnesses to correctly identify suspects accused of committing crimes without the appearance of suggested identification. The photo array shown in this case was compiled of six separate photos, one being of the alleged suspect. All photographs used in the photographic array were of persons similar in appearance to the suspect. The viewings of the photographic arrays were tape recorded and followed all Standard Operational Procedures.

Affiant was able to conform though the police data bases Dominique Rodriguez has a black Jeep Compass registered in her name.

Based on the above information, I respectfully request an arrest warrant be issued for Johnathan A. Griego.

Contrary to Section(s) 30-2-1 NMSA 1978.

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.**

Charles W. Brown  
JUDGE  
26 Sept 2019  
DATE

Terra A. Juarez  
AFFIANT  
9/26/19 3100  
DATE MAN NO.

Approved by DDA J. Duran 09/25/2019  
ASSISTANT DISTRICT ATTORNEY DATE

Case# 19-0087172  
APD CAD INCIDENT OR CASE #

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not other wise required.

CF001  
METROPOLITAN COURT RULE 7-201

Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.  
 - Court  - Defendant  - Attorney  - District Attorney

# Pretrial Services

## Public Safety Assessment - Court Report

7/29/2019 9:59:07 AM

Name: Joseph MCDonald

Case Number: T-4-FR-2019-004265

PID: 5192650

YOB: 1981

PSA Assessment Date: 7/29/2019

Arrest Date: 7/27/2019

New Violent Criminal Activity Flag: Yes



New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Kidnapping	1	30-4-1	Unknown
Criminal Sexual Penetration [Open]	1	30-9-11	Felony
Aggravated Battery (great bodily harm) (household member)	1	30-3-16(C) & 31-18-15	3rd Degree Felony
Aggravated Assault Against a Household Member	1	30-3-13	4th Degree Felony

Risk Factors:

Responses:

- |  |                            |
|--|----------------------------|
| 1. Age at Current Arrest                             | 23 or older                |
| 2. Current Violent Offense                           | Yes                        |
| a. Current Violent Offense & 20 Years Old or Younger | No                         |
| 3. Pending Charge at the Time of the Offense         | No                         |
| 4. Prior Misdemeanor Conviction                      | Yes                        |
| 5. Prior Felony Conviction                           | No                         |
| a. Prior Conviction                                  | Yes                        |
| 6. Prior Violent Conviction                          | 1 or 2 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                          |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                        |
| 9. Prior Sentence to Incarceration                   | No                         |

Recommendations: **(H) ROR - PML 1**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
Failure to Appear Scale	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		<b><u>(H) ROR-PML1</u></b>	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

STATE OF NEW MEXICO  
-VS-

ARTICLE 2  
INITIATION OF PROCEEDINGS  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
IN THE METROPOLITAN COURT

Name: Joseph David Rudy McDonald  
Address: 132 Ortega Rd NE  
Albuquerque, NM 87114  
D.O.B. 08/05/1981  
S.S.N. 585-71-7350  
Charge: Kidnapping, Criminal sexual penetration, aggravated battery on  
A household member with great bodily harm, aggravated assault on a house  
Hold member

Arrest Date: 07/28/2019  
Driver Lic. #: 116635721 NM  
Citation #: \_\_\_\_\_  
Arrest #: \_\_\_\_\_  
Docket #: 14772019-4205  
Date Filed: 7/28/19

Complainant or Officer: C. Carroll Man #: 4678

**CRIMINAL COMPLAINT**

The undersigned, under penalty of perjury, complains and says that on or about the 28 day of July  
20 19, in the County of Bernalillo, State of New Mexico, the above-named defendant(s) did

On Saturday, July 27, 2019 at approximately 2230 hours, I was called out to assist in a possible kidnapping investigation. I arrived on scene at approximately 2330 hours and was briefed by on scene deputies of the following things.

Deputies with the Bernalillo County Sheriff's Department were dispatched to 132 Ortega Rd NE in reference to someone within the residence being held hostage. The caller, who was identified as Jacob Rasinski, informed dispatch his roommate, Joseph McDonald had held his girlfriend, who he identified as Rochelle Hodgson, hostage. He stated Rochelle appeared to be "badly bruised" and "psychologically damaged" after being bound for several days and he had no idea she was there. Jacob informed dispatch Joseph was still on scene, and did not know he called. Deputies arrived on scene and requested all occupants within the residence exit. Among those who exited were, the calling party, Jacob Rasinski, the victim Rochelle Hodgson, the offender Joseph McDonald, the homeowner Robin Hodgson and her boyfriend, Steve Duncan.

I interviewed Rochelle in my unmarked patrol unit. The following is a synopsis of the interview. She has been in a romantic relationship with Joseph for approximately ten months, and she ended the relationship approximately a week ago due to constant arguing. She stated, she returned to the residence after Joseph picked her up on his motorcycle and she didn't have anywhere else to go and Joseph refused to let her leave. She stated once they got to the home at 132 Ortega Rd NE, he bound her to a cot using zip ties or chains, and repeatedly battered her with a blunt metal object "that extended". She stated she remembered at least four times Joseph hitting her in the head with what she stated was a crow bar. She stated each time she saw stars and felt like she was going to pass out or die. Numerous times she stated she believed she was going to be killed by Joseph. Before utilizing the zip ties, Joseph made her strip naked. She stated, while she was bound to the cot, he raped her by inserting an object into her vagina multiple times. She stated, he also kept her clothing away from her and she was in the nude. Rochelle informed Detectives; Joseph would insert socks into her mouth and duct taped it to keep her from screaming for help and would often place clothing such as a beanie over her face while also placing duct taping it to her head.

TYPR2019-4265

She stated, throughout the week, he kept her cell phone and would reply to text messages that she would receive. She advised, he keeps his room locked and doesn't allow others inside. It should be noted Rochelle stated she had been bound, held against her will and beaten since last Saturday July 20<sup>th</sup>, 2019. Rochelle has been held captive for at least seven days against her will.

It should be noted I observed Rochelle to have severe bruising along her arms and legs as well as ligature marks on her wrists and ankles consistent with her statement. Rochelle stated, while they were in the room, she heard and saw Joseph on his phone. She stated, she didn't know if he took pictures of her while she was bound, because her face was covered, and she didn't hear the sound a phone makes when a picture is taken.

Detectives also spoke with Robin Hodgson, who stated, she is Rochelle's aunt and she arrived at the residence with her boyfriend Steve Duncan, at approximately 2200 hours to feed her cats. She stated, while she was inside of the residence, she made contact with Rochelle who was wearing a robe, and Rochelle advised her that Joseph had bound her to a cot inside of his bedroom, and repeatedly battered her with "a club" or "bat". She stated, Rochelle lifted the sleeves of her robe, and she observed bruising on her arms and legs. She stated, Rochelle informed her, throughout the week she was there Joseph was using her phone to reply to text messages that were sent to her. Robin informed detectives, she last saw Rochelle approximately a week ago and had been texting her about her kids. She stated, Rochelle and Joseph have been together for less than a year, and argue constantly and did not know if they were violent with one another. She stated, they both drink often, and an argument would typically ensue. She stated, Joseph stays in the back bedroom of the residence, and he keeps his bedroom locked and does not allow people in.

I interviewed Jacob Wiercinski who lives with Joseph in the home. Jacob corroborated what Rochelle and Robin had told detectives. Jacob added he was living in constant fear of Joseph because they had been arguing. Jacob stated he came out of his room and went to Robin's and observed Rochelle looking "docile" and was covered in bruises. Jacob called 911 from the closet after retrieving his knife for safety because he was in fear Joseph would hurt them too.

Joseph was transported to the main substation for an interview. I read Joseph his Constitutional Rights per Miranda and he agreed to speak with me. He stated he had known Rochelle for about 10 months and he met her through her "baby daddy" Russel. He stated he had last seen Rochelle just after fathers day. I asked him if he saw her today because they came out of the house one at a time. He then asked me repeatedly what was going on. I told him of the allegations and then he stated he needed a lawyer and did not make anymore statements.

After reviewing the evidence on scene, the injuries to Rochelle, the interviews with witnesses, Joseph was arrested at this time for the above listed charges. Joseph did confine and bind Rochelle against her will. While confined and bound Joseph did insert an object or fingers into Rochelle's vagina causing great pain and mental anguish to Rochelle. Rochelle stated numerous times she was in fear of death and looked forward to the sexual assault because it was better than getting hit in the head with a crow bar. Joseph utilized zip ties, duct tape and a sock to make sure Rochelle could not get out. Joseph struck Rochelle numerous times in the head with a "crow bar" which is a deadly weapon and the striking of the head could cause great bodily harm or death. Rochelle stated Joseph would hold the crow bar up and would threaten her with it. Rochelle would cringe every time and was fear of being beaten again.

T4F2019-4265

contrary to Section(s) 30-4-1(4), 30-9-11C(2), 30-3-16C, 30-3-13(1) NMSA 1978.  
I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

Approved \_\_\_\_\_  
\_\_\_\_\_  
**DISTRICT ATTORNEY OR LAW  
ENFORCEMENT OFFICER**

Complainant C. Carroll  
Title (if any) Detective  
Man # 4678  
Agency Bernalillo County Sheriff's Off.  
BCSO CAD Incident SO19070010567

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not other wise required.

CF001 METROPOLITAN COURT RULE 7-201 Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.  
 - Court       - Defendant       - Attorney       - District Attorney

# Pretrial Services

## Public Safety Assessment - Court Report

11/26/2019 9:51:12 AM

Name: JAMES MARES

Case Number: T-4-FR-2019-006672

PID: 15989602

YOB: 1973

PSA Assessment Date: 11/26/2019

Arrest Date: 11/26/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Criminal Sexual Penetration [Open]	1	30-9-11	Felony
Criminal Sexual Contact of a Minor	1	30-9-13	Felony
Contributing to the Delinquency of a Minor	1	30-6-3 & 31-18-15	4th Degree Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | Yes                   |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | No                    |
| 4. Prior Misdemeanor Conviction                      | Yes                   |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | Yes                   |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                     |
| 8. Prior Failure to Appear Older than 2 Years        | Yes                   |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(H) ROR - PML 1**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
<b>Failure to Appear Scale</b>	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		<b><u>(H) ROR-PML1</u></b>	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

ORIGINAL SIGNED COPY-COURT; ADDITIONAL COPIES- DEFENDANT AND ADMINISTRATOR'S COPY  
**STATE OF NEW MEXICO**  
-VS-  
**ARTICLE 2**  
INITIATION OF PROCEEDINGS  
**STATE OF NEW MEXICO**  
**COUNTY OF BERNALILLO**  
**IN THE METROPOLITAN COURT**

FILED IN  
METROPOLITAN COURT  
2019 NOV 25 PM 8:15

Name: Mares, James Gilbert  
Address: 5208 Taurus Ave NW  
Albuquerque, NM 87114  
D.O.B. 01/14/1973  
S.S.N. 585134517  
Charge(s): Criminal sexual penetration of a minor, criminal sexual contact of a minor, contributing to the delinquency of a minor

Arrest Date: \_\_\_\_\_  
Driver Lic. #: 037075884  
Citation #: \_\_\_\_\_  
Arrest #: \_\_\_\_\_  
Docket #: TYFR2019-6692

Date Filed: 11/25/19

Affiant – Detective Daniel Skartwed Man #: 134

**CRIMINAL COMPLAINT – ARREST WARRANT AFFIDAVIT**

The undersigned, under penalty of perjury, complains and says that on or about August  
1, 2019, in the County of Bernalillo, State of New Mexico, the above-named defendant

knowingly committed criminal sexual penetration / criminal sexual contact unlawfully and intentionally on a male juvenile, known to Detective but hereafter referred to as XM, causing XM(15) to engage in sexual intercourse, cunnilingus, fellatio or the causing of penetration, to any extent and with any object, of the genital or oral openings.

On September 18, 2019, as a Detective with the Bernalillo County Sheriff's Department Special Victims Unit, I was assigned this case. I received a CYFD referral and an initial report authored by Deputy Williams. Deputy Williams reported the following:

"On September 16, 2019 I responded to 5621 Drake Ave NW to assist a CYFD investigator, Robert Grady while he conducted an investigation of James Mares in reference to possible sexual abuse allegations made by his son, XM. Robert advised me that XM approached a school social worker at Cibola High School and stated that approximately 2-3 years ago, James had touched him inappropriately on several different occasions. He did not give specifics on how nor where James touched him. Robert also advised during one of these occasions while James was giving XM a driving lesson, James exposed himself to XM out of view of other traffic and James leaned over and touched XM. XM did not give specifics about how James touched him during this incident. Robert also stated XM advised the school social worker that James would have him watch pornographic videos with him. Robert advised me none of the other children at the residence made any allegations of this nature about James.

Due to the nature of these allegations a safety plan was initiated by Robert to have James temporarily removed from the residence until a safe house interview with XM could be conducted. James was advised he is not to have any contact with XM nor any of the other children in the residence. It was agreed that XM could remain in the home with James's girlfriend, Lori Calhoun-Gonzales who is the owner of the residence. Robert advised there was no specific time frame on how long James was to remain away from the residence but he did advise that on October 1, 2019 after the safe house interview was conducted the safety plan would be re-evaluated based on the outcome of the interview. Both James and Lori advised they understood the safety plan produced by Robert. James retrieved some of his belongings and left the scene without incident.

SVU Detectives were contacted based on the information provided by Robert and a copy of this report will be forwarded to Detectives for further investigation.

Nothing further to report."

*RM*

0830 JS MK

On September 25, 2019, at 1330 hours I observed a forensic interview at the All Faiths Receiving Home, hereafter referred to as Safe House. The juvenile male, known to detectives but hereafter referred to as XM, was forensically interviewed by forensic interviewer Victoria Lynch. The interview began at 0915 hours. During the course of the interview XM made multiple statements alleging his father James had sexually assaulted him on multiple occasions and showed him pornographic images.

First Assault:

XM stated the sexual abuse began around the age of thirteen (13). XM stated James took him in his vehicle, described as a green, Jeep Grand Cherokee, to teach him how to drive. Once in a secluded area James instructed XM to stop the vehicle. XM advised he had pins on his school backpack which he displayed in support of his LGBTQ friends. James asked XM about his sexual orientation and what turned him on sexually. James then told XM about his dad, touching him sexually when he was a little boy and "basically having sex". James then pulled up a pornographic images on his phone, XM described James scrolling through images of women. James started describing his "ideal woman" to XM. James then pulled up "incest" porn and "really weird" videos on his phone.

James then brought up one of XMs teachers and how he found it hard to control himself around her during student teacher conferences because she pretty much "fit the bill" of his ideal woman. XM stated, "I could see in his face the lust, it was gross." XM stated, "He pulled down his shorts, he was hard he had a little pre-cum going, he was going up and down with his hands, he was only using two fingers."

While masturbating himself, James reached over and began to touch XM's groin area. James instructed XM to pull his pants down. XM did not know what to do. XM pulled his pants down at which point James began "jerking" XM off. XM stated James continued this act until both he and James ejaculated. James retrieved paper towels which he kept in the vehicle and instructed XM to clean up. James then leaned over and in a low "creepish" voice told XM, "This is our little secret." XM stated it disturbed him and he did not feel right. XM described the dirt area as being near James Monroe Middle School. Later, XM identified the area using Google Maps. The assault took place just east of James Monroe Middle School in the mesa area northeast of Unser NW and Paseo Del Norte NW, in Albuquerque New Mexico within Bernalillo County.

Second Assault:

XM stated the first two times happened in James' Jeep but did not give specifics of the second occurrence.

Third Assault:

XM described the incident occurring on Christmas Eve inside of his grandfather's truck. XM remembered it happening on Christmas Eve because James told XM he was happy he got to do it on a holiday. He described this incident as James doing "the normal stuff". James would assault XM until XM ejaculated then tell XM to clean up.

Fourth Assault:

XM stated James instructed him to sit down on the couch of the residence, James "did his thing" then instructed XM to go to the garage and sit down in the red folding chair. James began by "doing the normal stuff" then started "sucking" XM's "dick" until they both ejaculate. Once both James and XM ejaculated James instructed XM to "clean up".

XM stated, "It was pretty much the same thing but he sucked my dick in addition to everything else.", "He was jerking him and myself off while sucking my dick, he didn't make me watch a video that time."

XM advised he just thought about what he could do after and pretend it didn't happen.

Fifth Assault:

XM described the most recent assault as taking place over his recent summer vacation (2019). APS Summer vacations are scheduled late May through August. XM described the incident starting in his grandfather's, green, Dodge Ram, 2500. James borrows the truck when he needs a truck for side jobs. James made XM work for him over the summer as "free labor". XM stated James started with the "normal stuff" in the truck and told XM to put his pants back on and they would finish in the garage. Once inside of the garage James told XM to pull his pants down and sit in a folding chair which he provided.

James "Put on a video, one of the weird ones." XM stated James had "Grabbed my penis and his own and he forced me to stand in front of him and compare lengths." James stated, "You're a good 6-7 inches." James placed his penis next to XMs and held them both in the same hand began "jerking" both penis "off" "in a "weird way". James "finished" first and continued assaulting XM until XM ejaculated then told XM to clean up.

AM

XM described the chair which James made him sit in while he assaulted him as a red in color folding chair which he keeps in the garage or on the side of the house. The chair has two cup holders, black handles and plastic feet.

XM stated the first two times James assaulted him were in James' Jeep near James Monroe Middle School, the third time was in James father's, XM's grandfathers, truck, the fourth time was at their residence and the most recent time started in his grandfather's truck and finished inside the garage of the residence. XM identified the residence as 5621 Drake Ave NW, Albuquerque, NM. XM described a total of five assaults all occurring within Bernalillo County. XM stated when the incidents would occur he would think to himself, "He will be done soon and I can leave." XM described turning numb to the occurrences.

XM stated that during the incidents James has grabbed XM's hand and forced XM to "jerk him (James) off". According to XM, James has made multiple statements to XM that he wanted to penetrate XM and wanted XM to penetrate him. XM stated he was thirteen (13) years of age when he was first assaulted by James and fifteen (15) years of age when James last assaulted him. XM stated James has sexually assaulted XM's older sister Misty when she was a little girl, XM knows this because Misty told XM. XM also stated James raped his (James) older sister but she has since passed away, he could not recall how he knew of this. XM voiced concerns for his younger sibling, known to detectives but hereafter referred to as SM (13), because James has made sexual statements to SM and voiced that her body reminds him of her mothers.

On October 9, 2019, I conducted an interview with Misty Mares (DOB: 02/09/1998). Misty stated James had also sexually assaulted her when she was a young girl. Misty also expressed grave concern for her sister SM. SM told Misty James had been making sexual statements toward her. According to Misty, SM stated James asked her if she likes to "eat girl's pussies" and that James has made other graphic statements toward her. SM made these statements after she had been forensically interviewed.

It should be noted, On October 17, 2019, Brandon Mares was interviewed. Brandon is Misty and XM's sibling and another child of James. Brandon advised their father James has made multiple sexual advances within the past few years toward them. While Brandon was working as a hair stylist James received a hair cut by Brandon. During the shampooing James told Brandon that he was turned on and he was touching his penis under the hair apron. James then began to make sexual advances via messenger application on Facebook. The sexual advances became so frequent Brandon was forced to block James from social media. Brandon was in such dismay about the graphic sexual statements made by James toward them that they were forced to delete the messages from Facebook messenger to find some closure.

On November 7, 2019, XM was examined by Para Los Ninos sexual abuse physician Maryanne Chavez. XM again made the statements of sexual abuse which he made in the Safe House forensic interview. According to Maryanne Chavez, XM made multiple statements and detailed accounts of being sexually assaulted by his father James.

The above facts outline how James Mares willfully and wantonly forced himself on his juvenile son, XM, to perform fellatio and manual stimulation of XM's penis. James also forced XM to manually stimulate James' penis on multiple occasions. James forced XM to watch pornographic images. James acted on multiple occasions which shows his propensity to sexually assault the innocent.

Contrary to Section(s) \_\_\_\_\_

30-9-11, 30-9-13, 30-6-3

NMSA 1978.

74HR019-6672

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

*A Hart*

JUDGE *Alisa Hart*

*November 22, 2019 @ 12:00 pm*

DATE

*[Signature]*

Detective D. Skartwed

AFFIANT

11/21/2019

4909/134

DATE

MAN NO.

Approved by ADA Haley Murphy

11/22/2019

ASSISTANT DISTRICT ATTORNEY

DATE

19090013472

BCSO CAD INCIDENT OR CASE #

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not otherwise required.

CF001

Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.

METROPOLITAN COURT RULE 7-201

- Court

- Defendant

- Attorney

- District Attorney

# Pretrial Services

## Public Safety Assessment - Court Report

1/7/2020 7:50:37 AM

Name: Anthony Gallegos

Case Number: T-4-FR-2020-000016

PID: 8721878

YOB: 1995

PSA Assessment Date: 1/7/2020

Arrest Date: 1/6/2020

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Aggravated Battery (household member)	1	30-3-16	Felony
Aggravated Assault (Deadly Weapon)	1	30-3-2(A)	4th Degree Felony
Abandonment of a Child (No Death or Great Bodily Harm)	1	30-6-1(B)	Misdemeanor

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 23 or older           |
| 2. Current Violent Offense                           | Yes                   |
| a. Current Violent Offense & 20 Years Old or Younger | No                    |
| 3. Pending Charge at the Time of the Offense         | Yes                   |
| 4. Prior Misdemeanor Conviction                      | No                    |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | No                    |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                     |
| 8. Prior Failure to Appear Older than 2 Years        | No                    |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(E) ROR - PML 1**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
<b>Failure to Appear Scale</b>	FTA 1	(A) ROR	(B) ROR				
	FTA 2	(C) ROR	(D) ROR	<b><u>(E) ROR-PML1</u></b>	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

18)

ORIGINAL SIGNED COPY-COURT; ADDITIONAL COPIES- DEFENDANT AND ADMINISTRATOR'S COPY

FILED IN THIS OFFICE  
TIME 10:30 AM

JAN 02 2020

CLERK-METROPOLITAN COURT  
BY C. S. Smith

STATE OF NEW MEXICO  
-VS-

ARTICLE 2  
INITIATION OF PROCEEDINGS  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
IN THE METROPOLITAN COURT

Name: Gallegos, Anthony  
Address: 4619 Isleta Blvd SW  
Albuquerque, NM 87105  
D.O.B. 10/29/1995  
S.S.N. 649-07-4631  
Charge(s): Aggravated Battery - HHM, Aggravated Assault with a Deadly Weapon  
Child Abuse/Abandon W/O GBH

Arrest Date: WARRANT  
Driver Lic. #: NM 511506875  
Citation #: \_\_\_\_\_  
Arrest #: \_\_\_\_\_  
Docket #: T4FR2020-000016  
Date Filed: 1-2-20

Affiant - Officer/Detective T. Simpson Man #: 4833

**CRIMINAL COMPLAINT - ARREST WARRANT AFFIDAVIT**

The undersigned, under penalty of perjury, complains and says that on or about the 11<sup>th</sup> day of December, 2019, in the County of Bernalillo, State of New Mexico, the above-named defendant(s) Did (here state the essential facts):

*Affiant is a full-time, sworn Law Enforcement Officer with the Albuquerque Police Department. Affiant is currently assigned to the Northeast Area Command Impact Unit. Affiant has been a sworn officer with the Albuquerque Police Department since January, 2016. Affiant's current duties include investigation of felony and misdemeanor crimes to include but not limited to: Aggravated Battery, Aggravated Assault, Kidnapping, Domestic Violence, Burglary, Larceny, and Narcotics Violations.*

**December 19, 2019**

**Approximately 0800 hours:**

I was assigned to conduct a follow-up investigation of a domestic violence incident that occurred on December 11, 2019 involving April Ramirez and Anthony Gallegos. I obtained and reviewed the original report which was completed by Officer N. Hardy (5201). In his report, Officer Hardy states on December 11, 2019, he was dispatched to 333 Montano Rd NW in reference to a domestic dispute. Comments on the call stated a female indicated she escaped a domestic violence situation.

Upon arrival, Officer Hardy contacted the victim, April Ramirez. Officer Hardy noted in his report April was crying and he observed several red bruises, marks and scratches on her face, neck and head. Medical personnel arrived on scene and treated April's injuries. April told Officer Hardy she and her boyfriend, Anthony Gallegos, were involved in a dispute at her apartment located at 4528 Carlisle Blvd NE, Apartment #79. April and Anthony were engaged in a verbal argument about their relationship when he became angry. April stated Anthony grabbed her by her hair and punched her multiple times on her face and head and slammed her head on a concrete floor. April said Anthony pulled her hair so hard she felt he was going to rip her hair out.

April told Officer Hardy she believed Anthony punched her approximately one hundred times with his fists and the incident lasted for approximately ten to fifteen minutes. April also stated Anthony pushed her down, placed both of his hands around her neck and began to strangle her in her bedroom. April stated Anthony strangled her for approximately five to eight seconds and she was unable to breathe and she almost lost consciousness. Once Anthony released April's neck, he retrieved a "semi-automatic" handgun and pulled the slide back. Anthony then pointed the firearm at April and told her she would not live through the night. April told Officer Hardy she believed the firearm was loaded and Anthony was going to shoot her.

April stated Anthony then began to wave the firearm around and he put the barrel of the gun in his mouth. April's two children, 2-year-old DM and 3-year-old SM, were inside of the apartment during the time the incident occurred. Neither DM nor SM were injured. April said she walked out of the bedroom and into the kitchen and asked DM and SM if they were hungry. April retrieved her car keys and she and her children quietly left the residence. April drove to 333 Montano Rd NW and contacted police.

April requested to speak to a Victim's Advocate. The father of April's children, David Rentaria, arrived at the location as Officer Hardy was speaking with April and he took custody of the children. April was transported to Lovelace Medical Center, located at 601 Martin Luther King Jr Ave NE, via ambulance where she was treated for her injuries. April also contacted a Victim's Advocate while at the hospital. While at the hospital, April stated she feared Anthony and informed Officer Hardy he made statements indicating police officers would not be able to stop him from "getting to her." April told Officer Hardy Anthony has been abusive in the past and she is willing to pursue charges in this case.

*Based on the aforementioned facts, I respectfully request that an arrest warrant be issued for the listed charges*

MS  
Contrary to Section(s) 30-03-16, 30-03-02 (A), 30-06-01 B NMSA 1978.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.

[Signature]

JUDGE

12/31/19  
DATE

[Signature]

T. Simpson

AFFIANT

12/31/2019  
DATE

4833

MAN NO.

A.D.A. Approval by Christopher Moore 12/30/2019

ASSISTANT DISTRICT ATTORNEY DATE

Case #19-0113188

APD CAD INCIDENT OR CASE #

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not otherwise required.

CF001  
METROPOLITAN COURT RULE 7-201

Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.

- Court

- Defendant

- Attorney

- District Attorney

# Pretrial Services

## Public Safety Assessment - Court Report

6/27/2019 10:40:22 PM

Name: JESUS CARTAGENA

Case Number: T-4-FR-2019-003525

PID: 1852271

YOB: 1999

PSA Assessment Date: 6/27/2019

Arrest Date: 6/27/2019

New Violent Criminal Activity Flag: No

New Criminal Activity Scale



Failure to Appear Scale



Charge(s):	Count(s)	Statute	Degree
Open Count of Murder in the First Degree	2	30-2-1	Capital Felony

Risk Factors:

Responses:

- |  |                       |
|--|-----------------------|
| 1. Age at Current Arrest                             | 20 or Younger         |
| 2. Current Violent Offense                           | Yes                   |
| a. Current Violent Offense & 20 Years Old or Younger | Yes                   |
| 3. Pending Charge at the Time of the Offense         | No                    |
| 4. Prior Misdemeanor Conviction                      | No                    |
| 5. Prior Felony Conviction                           | No                    |
| a. Prior Conviction                                  | No                    |
| 6. Prior Violent Conviction                          | 0 Violent Convictions |
| 7. Prior Failure to Appear in Past 2 Years           | 0                     |
| 8. Prior Failure to Appear Older than 2 Years        | No                    |
| 9. Prior Sentence to Incarceration                   | No                    |

Recommendations: **(B) ROR**

Notes:

New Criminal Activity Scale							
	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
<b>Failure to Appear Scale</b>	FTA 1	(A) ROR	<b><i>(B) ROR</i></b>				
	FTA 2	(C) ROR	(D) ROR	(E) ROR-PML1	(F) ROR-PML3	(G) ROR-PML4	
	FTA 3		(H) ROR-PML1	(I) ROR-PML2	(J) ROR-PML3	(K) ROR-PML4	(L)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 4		(M) ROR-PML1	(N) ROR-PML2	(O) ROR-PML3	(P) ROR-PML4	(Q)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 5		(R) ROR-PML2	(S) ROR-PML2	(T) ROR-PML3	(U)DETAIN if const. reqs. met OR RELEASE with max conditions	(V)DETAIN if const. reqs. met OR RELEASE with max conditions
	FTA 6				(W)DETAIN if const. reqs. met OR RELEASE with max conditions	(X)DETAIN if const. reqs. met OR RELEASE with max conditions	(Y)DETAIN if const. reqs. met OR RELEASE with max conditions

STATE OF NEW MEXICO  
-VS-

ARTICLE 2  
INITIATION OF PROCEEDINGS  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
IN THE METROPOLITAN COURT

FILED IN THIS OFFICE  
TIME 10:50 pm

JUN 22 2019

CLERK-METROPOLITAN COURT  
BY [Signature]

Name: Jesus Cartagena, Jr  
351 Washington St SE  
Address: Apartment 202  
Albuquerque, NM 87108  
D.O.B. 01/14/1999  
S.S.N. 649-16-8755  
Charge(s): Murder (Open Count) - 2 Counts

Arrest Date: \_\_\_\_\_  
NMOLN  
Driver Lic. #: 513126913  
Citation #: \_\_\_\_\_  
Arrest #: \_\_\_\_\_  
Docket #: TH FR 2019-3525  
Date Filed: 6-22-19

Affiant - Officer/Detective Andrew Hsu Man #: 5210

**CRIMINAL COMPLAINT - ARREST WARRANT AFFIDAVIT**

The undersigned, under penalty of perjury, complains and says that on or about the 21<sup>st</sup> Day of June, 2019, in the County of Bernalillo, State of New Mexico, the above-named defendant(s) Did (here state the essential facts):

**Friday, June 21, 2019**  
**Approximately 0945 Hours**

Your Affiant was notified of homicide callout located at 2921 Monterey Ave SE, Albuquerque, NM 87106. Albuquerque Police Officers had been dispatched to the residence for a Suspicious Incident. The caller advised Dispatch that there appeared to be two bodies within the residence. When officers arrived, they cleared and secured the residence and located two deceased females. Both females appeared to have been stabbed numerous times. The officers requested assistance from the Homicide Unit.

At approximately 1055 hours a briefing was conducted in the mobile crime scene van. The briefing was held by responding field officer, Officer Anna Montoya #6650. Officer Montoya reported the following to Your Affiant:

Officers were dispatched to the residence of 2921 Monterey Ave SE in regards to a Suspicious Incident call. The reporting party was identified as Edward Medina. Mr. Medina advised police that he went to the listed residence to check on a co-worker Laura Hanish. Mrs. Hanish had failed to show up for a work meeting at 7:00am this morning and had not answered her cell phone. Mr. Medina and fellow co-worker, Steven Taylor, were concerned. Mrs. Hanish has been never tardy and does not miss work often. Mrs. Hanish had also mentioned to both co-workers that her daughter, Shanta Hanish (who lives with her), had recently broken up with her boyfriend, Jesus Cartagena. The breakup was not being handled well by Mr. Cartagena. Mr. Cartagena was continuously calling and harassing Shanta to the point where Mrs. Hanish wanted to disconnect her daughter's cell phone.

While enroute to Mrs. Hanish's residence, Mr. Taylor made several calls to Mrs. Hanish's cell phone. She utilized the cell phone not only as a work phone but also as a personal phone. It was unusual for her to not have answered it on a regular workday such as today.

When Mr. Medina and Mr. Taylor arrived on scene, they saw Mrs. Hanish's vehicle in the driveway. All of the doors and windows to the residence were locked. The two made their way around the house and looked in through a window. When they looked through the window, the two believed they saw two bodies lying on the floor. They then called 911. It should be noted that Mr. Taylor also attempted to contact Shanta via cell phone, but no contact was made.

Once police arrived, officers walked around the residence to the backside of the house. They looked through the window that Mr. Medina and Mr. Taylor reported to them and observed what appeared to be at least one body.

T4FR2019-3525

While securing the perimeter of the residence, officers located a broken window. The window was above the kitchen area with its glass clearly shattered. Officers breeched the door and entered the residence.

Officers found two females lifeless and covered in blood inside the residence. There appeared to be blood throughout the residence; blood was observed on the walls, on the floor, and covering both victims' faces and clothing. Officers observed a large knife near one of the victims. Both victims appeared to have suffered from lacerations to the face, neck and arms. The lacerations on the arms appeared to be defensive wounds.

Once officers located the victims, Rescue was notified. Rescue arrived on scene and both females were pronounced deceased. Officers and medical personnel removed themselves from the home and secured the residence.

### Investigation

During the course of the investigation, Your Affiant contacted a relative of Jesus Cartagena, Raymond Delgado. Mr. Delgado was Mr. Cartagena's brother. He had arrived on-scene while attempting to locate Mr. Cartagena who had not been in contact with his family for over 24 hours.

During an interview with Mr. Delgado, Your Affiant learned the following:

Mr. Cartagena had been in an intimate relationship with Shanta Hanish for approximately five years. At one point during their relationship, both of them resided at Shanta's mother's residence at 2921 Monterey Ave SE for at least six months. Mr. Delgado could not recall Shanta's mother's name.

Mr. Cartagena had begun renting an apartment located at 351 Washington St SE, Apartment 202 approximately one year ago with Shanta. They lived together there until approximately two weeks ago.

Mr. Delgado reported that approximately two weeks ago, Shanta ended the relationship with Mr. Cartagena. She moved in with her mother at 2921 Monterey Ave SE. Mr. Cartagena still resided at 351 Washington St SE, Apartment 202.

Mr. Cartagena was not handling the break up well, according to Mr. Delgado. He reported an incident on Sunday, June 16, 2019, in which he and other family members transported Mr. Cartagena to a hospital because he was making suicidal statements regarding the break up. Mr. Cartagena was released from the hospital later that day.

On Thursday, June 20, 2019 at about 1340 hours, Mr. Cartagena requested assistance from his brother. Mr. Cartagena wanted Mr. Delgado to check on the apartment. Mr. Delgado replied that he would. Mr. Delgado could not contact Mr. Cartagena at all after this interaction.

On today's date, Friday, June 21, 2019, between 1230 hours and 1300 hours, Mr. Delgado reported to Your Affiant that he had checked for his brother at Mr. Cartagena's apartment. Mr. Cartagena was not present. Mr. Delgado noted that Mr. Cartagena's identification badge for his place of employment was still in the apartment. He found this odd because Mr. Cartagena was scheduled to work on this afternoon, and Mr. Delgado believed that his brother would not be there without the badge.

Mr. Delgado reported that Mr. Cartagena drove only one vehicle, a brown Chevy Blazer SUV. He did not locate it at Mr. Cartagena's apartment.

During the interview, Mr. Delgado advised Your Affiant that he believed that Mr. Cartagena had done something to Shanta and her mother.

Another individual was contacted by investigators, Elizabeth Snyder. Ms. Snyder described herself as Shanta Hanish's best friend for several years. They both work together as well. Det. L. Neil interviewed Ms. Snyder and briefed Your Affiant.

Your Affiant learned the following from Ms. Snyder's interview:

Ms. Snyder knew that Shanta and Mr. Cartagena had been dating for four to five years. While Mr. Cartagena and Shanta had been dating, he had lived with Shanta and her mother, Laura Hanish, and the Hanish residence on 2921 Monterey Ave SE. They had been living together at an apartment on "Washington St SE at Apartment 201 or 202," recalled Ms. Snyder. Recently, within the past two weeks, Shanta had broken up with Mr. Cartagena and moved back in with her mother.

According to Ms. Snyder, Mr. Cartagena was verbally abusive to Shanta and "very controlling." He would not allow Shanta to spend time with her friends. He had made Shanta delete one of her social media applications, SnapChat. Ms. Snyder believed that these were the reasons for Shanta ending the relationship.

TH FR 2019-3525

Ms. Snyder described alarming behavior from Mr. Cartagena after the breakup.

On Monday, June 10, 2019, Ms. Snyder received a text message from Shanta reading, "I don't want to be with him," and they discussed Shanta going on a break from her relationship with Mr. Cartagena. Shanta detailed to Ms. Snyder that she had requested Mr. Cartagena to have no contact with her during the break to include no text messaging, no phone calls, and no contact at work or at her mother's residence. Mr. Cartagena did not respect these conditions and followed her to work.

Shanta detailed this incident further to her friend. Shanta had been scheduled to work early that morning. At approximately 0430 hours, she left her mother's residence. While driving to work, Shanta observed Jesus following behind her in his vehicle. When Shanta arrived at work, "she ran to the office and locked the door," according to Ms. Snyder. Shanta observed Mr. Cartagena put a note on her vehicle which read, "I love you very much," before driving away in his vehicle. Ms. Snyder described Mr. Cartagena's vehicle as a brown Blazer.

On Tuesday, June 11, 2019, Ms. Snyder was contacted again by Shanta. Shanta informed her that she saw Mr. Cartagena following her to work again.

On Wednesday, June 12, 2019, Shanta texted Ms. Snyder that she was officially breaking up with Mr. Cartagena. Shanta became concerned after the breakup because she saw Mr. Cartagena sitting in his Blazer outside of her residence and had remained there for an extended period of time. She told Ms. Snyder that she ran to her car to leave the residence to avoid contacting him.

Later in the afternoon, Shanta asked Ms. Snyder to help her with obtaining items from the apartment that she once shared with Mr. Cartagena. They arrived at the apartment and contacted Mr. Cartagena there. Mr. Cartagena would not allow Ms. Snyder into the apartment, only Shanta. Ms. Snyder told investigators that she could hear Mr. Cartagena inside the apartment weeping loudly and attempting to plea with Shanta to work on the relationship.

On Thursday, June 13, 2019, Shanta texted Ms. Snyder again. She informed Ms. Snyder that she was going to try to obtain personal items from the apartment again. Shanta wanted to conduct this errand by herself. Approximately ten minutes after receiving this text, Ms. Snyder received a phone call from Shanta. When she answered, Ms. Snyder could hear Shanta and Mr. Cartagena screaming on the phone.

Ms. Snyder recalled hearing Shanta screaming, "Jesus, you have to let me leave!" Shanta also described to Ms. Snyder that Mr. Cartagena had put his foot under her vehicle, preventing her from leaving. She also described to Ms. Snyder that Mr. Cartagena had opened her vehicle door and attempted to pull her out of it.

Ms. Snyder arrived at the apartment to assist Shanta. When she arrived, she described having to physically separate Shanta and Mr. Cartagena and placing herself between them so that Shanta could leave. When Shanta left the apartment, Mr. Cartagena told Ms. Snyder, "I'm never going to see her again." Ms. Snyder left shortly afterwards.

Later in the day, Shanta contacted Ms. Snyder again. She told Ms. Snyder that Mr. Cartagena had contacted her mother, Laura, and arranged to have breakfast with Laura the following day, Friday, June 14, 2019.

On Friday, June 14, 2019, Shanta contacted Ms. Snyder to describe her mother's breakfast with Mr. Cartagena. When they met, Mr. Cartagena was "inconsolable." Laura was unable to calm him down and left the restaurant to avoid any further scenes.

On Sunday, June 16, 2019, Shanta texted Ms. Snyder. She conveyed to Ms. Snyder that Mr. Cartagena had been talking on the phone with Shanta's uncle for approximately five hours from the late evening of Saturday, June 15, 2019 to the early morning of Sunday, June 16, 2019. Mr. Cartagena was inconsolable, and Shanta's uncle could not calm him down.

Later in the afternoon, Shanta contacted Ms. Snyder again. She described that Mr. Cartagena had been taken to a local area hospital for a mental health evaluation because of suicidal threats.

On Thursday, June 20, 2019, Shanta texted Ms. Snyder. She informed Ms. Snyder, "I'm turning off my phone because Jesus keeps calling me. I'm not dead. I'm alive."

A few hours later, Shanta texted Ms. Snyder again. She requested Ms. Snyder to review Shanta's personal Instagram account. Shanta informed Ms. Snyder that several passwords to her social media, financial institutions, and email accounts had been changed. The only other person who had access to these accounts was Mr. Cartagena.

Ms. Snyder met with Shanta at their place of work later in the afternoon. While there, Ms. Snyder noted that Mr. Cartagena was calling Shanta's cell phone "non-stop, between 20 to 30 times," according to Ms. Snyder. Shanta blocked Mr. Cartagena's phone number. After blocking his number, Shanta began receiving text messages from him. Ms. Snyder recalled that the text messages read, "Shanta, please." The message was sent "ten to 15 times."

T4 FR 2019-3525

Ms. Snyder's shift ended, but she remained at work with Shanta until approximately 2000 hours. She knew that Shanta was off of work at 2100 hours. She believed that Shanta would have returned home directly from work.

On the morning of Friday, June 21, 2019, Ms. Snyder sent Shanta a text but received no answer. Ms. Snyder knew that Shanta was supposed to start a shift at 0900 hours, but Shanta did not show up. Ms. Snyder left work to check on Shanta at 2921 Monterey Ave SE and found law enforcement conducting an investigation.

Further investigation was conducted by Your Affiant. Neighbors reported that Shanta's vehicle, a silver Toyota four-door sedan bearing a New Mexico plate "NPR 481," was missing from the driveway. The United States Border Patrol was notified of Shanta's missing vehicle and located it through surveillance systems travelling southbound on I-25 into Mexico early on today's date, Friday, June 21, 2019.

A background investigation was conducted into Mr. Cartagena. It was learned that he had a brown Chevy Blazer SUV bearing a New Mexico plate "PSA 823." During a canvass of the neighborhood, officers located Mr. Cartagena's vehicle one block away from the scene. It was unoccupied. The vehicle was seized and towed by law enforcement to a secured facility.

While on-scene, Your Affiant conducted a walk-through of 2921 Monterey Ave SE with Major Crime Scene (MCS) Det. C. Silver. Your Affiant noted that one window had been broken within the residence. There appeared to be blood stain patterns on the shards of glass. Inside the residence, Your Affiant noted that a large knife was on the floor near the bodies of the two women.

On Saturday, June 22, 2019, Your Affiant obtained an authorized search warrant for Mr. Cartagena's apartment at 351 Washington St SE, Apartment 202. During the execution of the search warrant, law enforcement located evidence that Shanta and Mr. Cartagena resided in the apartment, several sharp-edged weapons, and biological/trace evidence for comparison.

Following the execution of the search warrant, Your Affiant attended the autopsy of the two females at the Office of the Medical Investigator (OMI). OMI was able to positively identify the females as Laura Hanish and her daughter, Shanta Hanish. Both women suffered numerous severe injuries to their head, neck, and extremities. OMI's preliminary report showed that Laura Hanish's Cause of Death was tentatively noted as "Multiple Sharp Wound Injuries;" and her Manner of Death was noted as "Homicide." Shanta Hanish's Cause of Death was tentatively noted as "Multiple Sharp Wound Injuries" or "Strangulation;" and her Manner of Death was noted as "Homicide."

Following autopsy, Your Affiant received a phone call from El Paso Police Department in El Paso, Texas. Sgt. Ratliff reported that Jesus Cartagena had arrived at a police station in El Paso. Mr. Cartagena told El Paso officers that he had "done something bad in Albuquerque." He described breaking into a residence through a window to enter it. El Paso officers noted that Mr. Cartagena had injuries to both of his arms and that his clothing appeared bloody. He relayed to officers that he had "hurt someone really bad." During his contact with law enforcement there, Mr. Cartagena began ordering them to shoot him because he had "done something bad." Upon learning this information, officers ceased asking Mr. Cartagena further questions.

While conducting research to verify Mr. Cartagena's statement to them, Sgt. Ratcliff reported finding the Hanish's homicides on news websites. Sgt. Ratliff contacted Albuquerque Police immediately.

As of the writing of this warrant, Mr. Cartagena is being held and detained by the El Paso Police Department.

T4 FR 2019-3525

Based on the aforementioned facts, I respectfully request that an arrest warrant be issued for **Jesus Cartagena, Jr**

Contrary to Section(s), 30-2-1 – 2 Counts NMSA 1978.

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.**

  
\_\_\_\_\_  
JUDGE  
6/22/19  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
Andrew Hsu  
AFFIANT  
06/22/2019 # 5210  
\_\_\_\_\_  
DATE MAN NO.

ADA J. Duran 06/22/2019  
\_\_\_\_\_  
ASSISTANT DISTRICT ATTORNEY DATE

\_\_\_\_\_  
19-0056760  
APD CAD INCIDENT OR CASE #

This complaint may not be filed without the prior payment of a filing fee, unless approved by the District Attorney or a law enforcement officer authorized to serve an Arrest or Search Warrant. Approval of the District Attorney or a law enforcement officer is not other wise required.

CF001  
METROPOLITAN COURT RULE 7-201

Approved: Supreme Court, October 1, 1974; amended effective September 1, 1990; April 1, 1991; November 1, 1991.  
 - Court       - Defendant       - Attorney       - District Attorney

# Attachment 7

---

**Proposed Legislation:** An Act Relating to Criminal Justice; Establishing Rebuttable Presumptions in Pretrial Detention Hearings.

\_\_\_\_\_ Bill

**54th Legislature - STATE OF NEW MEXICO - Second Session, 2020**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL JUSTICE; ESTABLISHING REBUTTABLE  
PRESUMPTIONS IN PRETRIAL DETENTION HEARINGS.

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

**SECTION 1.** Subject to rebuttal by the defendant, evidence or offers of proof establishing probable cause for any of the following shall be deemed prima facie proof that the defendant poses a danger to any other person or to the community and that release conditions will not reasonably protect the safety of any other person or the community:

A. Violent Felonies

- 1) murder in the first or second degree, as proscribed in Section 30-2-1 NMSA 1978;
- 2) voluntary manslaughter, as proscribed in Section 30-2-3 NMSA 1978;

- 3) assault with intent to commit a violent felony in the second or third degree, as proscribed in Section 30-3-3, Section 30-3-9.2, Section 30-3-14, and Section 30-22-23 NMSA 1978;
- 4) aggravated battery in the third degree, as proscribed in Section 30-3-5, Section 30-3-9, Section 30-3-9.1, 30-3-9.2, Section 30-3-16, and Section 30-22-25 NMSA 1978;
- 5) kidnapping in the first or second degree, as proscribed in Section 30-4-1 NMSA 1978;
- 6) child abuse resulting in death or great bodily harm, as proscribed in Section 30-6-1 NMSA 1978;
- 7) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as proscribed by Section 30-9-11 NMSA 1978;
- 8) robbery in the first or second degree, as proscribed in Section 30-16-2 NMSA 1978;
- 9) aggravated arson in the second degree, as proscribed in Section 30-17-6 NMSA 1978; or
- 10) human trafficking of a child in the first or second degree, as proscribed by Section 30-52-1 NMSA 1978.

#### B. Firearms

- 1) the defendant was armed with a firearm or had a firearm readily available

during the commission of the charged felony offense that prompted the detention hearing. A firearm is any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. A firearm is readily available if it is on the defendant's person or in an area to which the defendant has quick and easy access.

C. Great Bodily Harm

1) the defendant inflicted great bodily harm, as defined in Section 30-1-12 NMSA 1978, or death of a person during the commission of the Charged felony offense that prompted the detention hearing.

D. Criminal History, Pending Cases, Witness Intimidation, Post-Conviction Supervision

- 1) the defendant was convicted within the past five years of a felony offense listed in subsection A of this section or a felony offense committed under the circumstances contained in Subsection B or Subsection C of this section;
- 2) the defendant committed the charged felony offense that prompted the detention hearing while pending trial or sentencing for a felony offense listed in Subsection A of this section or a felony offense committed under the circumstances contained in Subsection B or Subsection C of this section;
- 3) the defendant intimidated, dissuaded, or threatened retaliation against a witness or victim of the charged felony offense that prompted the detention hearing or against a juror or other member of the criminal justice system; or
- 4) the defendant committed the charged felony offense that prompted the

detention hearing while on probation, parole or other post-conviction supervision for a felony offense listed in Subsection A of this section or a felony offense committed under the circumstances contained in Subsection B or Subsection C of this section.

**SECTION 2. EFFECTIVE DATE.**-- The effective date of the provisions of this act is July 1, 2020.

# Attachment 8

---

**Proposed Amendment to Rule 5-409 NMRA: Pretrial Detention.**

**(Proposed Amendments from District Attorney Raúl Torrez)**

**5-409. Pretrial detention.**

A. **Scope.** Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico Constitution and Rule 5-401 NMRA, under Article II, Section 13 and this rule, the district court may order the detention pending trial of a defendant charged with a felony offense if the prosecutor files a motion titled “Expedited Motion for Pretrial Detention” and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

B. **Motion for pretrial detention.** The prosecutor may file an expedited motion for pretrial detention at any time in both the court where the case is pending and in the district court. ~~The motion shall include the specific facts that warrant pretrial detention.~~

- (1) The prosecutor shall immediately deliver a copy of the motion to
  - (a) the detention center holding the defendant, if any;
  - (b) the defendant and defense counsel of record, or, if defense counsel has not entered an appearance, the local law office of the public defender or, if no local office exists, the director of the contract counsel office of the public defender.
- (2) The defendant may file a response to the motion for pretrial detention in the district court, but the filing of a response shall not delay the hearing under Paragraph F of this rule. If a response is filed, the defendant shall promptly provide a copy to the assigned district court judge and the prosecutor.
- (3) The court may not grant or deny the motion for pretrial detention without a hearing.

C. **Case pending in magistrate or metropolitan court.** If a motion for pretrial detention is filed in the magistrate or metropolitan court and a probable cause determination has not been made, the magistrate or metropolitan court shall determine probable cause under Rule 6-203 NMRA or Rule 7-203 NMRA. If the court finds no probable cause, the court shall order the immediate personal recognizance release of the defendant under Rule 6-203 NMRA or Rule 7-203 NMRA and shall deny the motion for pretrial detention without prejudice. If probable cause has been found, the magistrate or metropolitan court clerk shall promptly transmit to the district court clerk a copy of the motion for pretrial detention, the criminal complaint, and all other papers filed in the case. The magistrate or metropolitan court’s jurisdiction to set or amend conditions of release shall then be terminated, and the district court shall acquire exclusive jurisdiction over issues of pretrial release until the case is remanded by the district court following disposition of the detention motion under Paragraph I of this rule.

D. **Case pending in district court.** If a motion for pretrial detention is filed in the district court

and probable cause has not been found under Article II, Section 14 of the New Mexico Constitution or Rule 5-208(D) NMRA, Rule 5-301 NMRA, Rule 6-203 NMRA, Rule 6-204(B) NMRA, Rule 7-203 NMRA, or Rule 7-204(B) NMRA, the district court shall determine probable cause in accordance with Rule 5-301 NMRA. If the district court finds no probable cause, the district court shall order the immediate personal recognizance release of the defendant under Rule 5-301 NMRA and shall deny the motion for pretrial detention without prejudice.

**E. Detention pending hearing; warrant.**

(1) **Defendant in custody when motion is filed.** If a detention center receives a copy of a motion for pretrial detention, the detention center shall distribute the motion to any person designated by the district, magistrate, or metropolitan court to release defendants from custody under Rule 5-401(N) NMRA, Rule 5-408 NMRA, Rule 6-401(M) NMRA, Rule 6-408 NMRA, Rule 7-401(M) NMRA, or Rule 7-408 NMRA. All authority of any person to release a defendant pursuant to such designation is terminated upon receipt of a detention motion until further court order.

(2) **Defendant not in custody when motion is filed.** If the defendant is not in custody when the motion for pretrial detention is filed, the district court may issue a warrant for the defendant's arrest if the motion establishes probable cause to believe the defendant has committed a felony offense and alleges sufficient facts that, if true, would justify pretrial detention under Article II, Section 13 of the New Mexico Constitution. If the motion does not allege sufficient facts, the court shall issue a summons and notice of hearing.

**F. Pretrial detention hearing.** The district court shall hold a hearing on the motion for pretrial detention to determine whether any release condition or combination of conditions set forth in Rule 5-401 NMRA will reasonably protect the safety of any other person or the community. The district court shall rule on the merits of pretrial detention at the hearing. Upon the request of the prosecutor, the district court shall set the matter for a preliminary examination to be held concurrently with the motion for pretrial detention and, for cases pending in the magistrate or metropolitan court, shall provide notice to the magistrate or metropolitan court that the preliminary examination is to be held in the district court.

(1) ***Time.***

(a) *Time limit.* The hearing shall be held promptly. Unless the court has issued a summons and notice of hearing under Subparagraph (E)(2) of this rule, the hearing shall commence no later than five (5) days after the later of the following events:

- (i) the filing of the motion for pretrial detention; or
- (ii) the date the defendant is arrested as a result of the motion for pretrial detention.

(b) *Extensions.* The time enlargement provisions in Rule 5-104 NMRA do not apply to a pretrial detention hearing. The court may extend the time limit for holding the hearing as follows:

- (i) for up to three (3) days if in the motion for pretrial detention the prosecutor requests a preliminary hearing to be held concurrently with the detention hearing;
- (ii) for up to three (3) days upon a showing that extraordinary circumstances exist and justice requires the extension;
- (iii) upon the defendant filing a waiver of the time limit; or
- (iv) upon stipulation of the parties.

(c) *Notice.* The court shall promptly schedule the hearing and notify the parties of the hearing setting within one (1) business day after the filing of the motion.

(2) ***Initial disclosures.***

(a) The prosecutor shall promptly disclose to the defendant prior to the hearing

- (i) all evidence that the prosecutor intends to rely on at the hearing, and
- (ii) all exculpatory evidence known to the prosecutor.

(b) Except in cases where the hearing is held within two (2) business days after the filing of the motion, the prosecutor shall disclose evidence under this subparagraph at least twenty-four (24) hours before the hearing. At the hearing the prosecutor may offer evidence or information that was discovered after the disclosure deadline, but the prosecutor must promptly disclose the evidence to the defendant.

(3) ***Defendant's rights.*** The defendant has the right to be present and to be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed. The defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not be used against the defendant at trial except for impeachment purposes or in a subsequent prosecution for perjury.

(4) ***Prosecutor's burden.*** The prosecutor must prove by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

(5) ***Evidence.*** The New Mexico Rules of Evidence shall not apply to the presentation and consideration of information at the hearing. The court may make its decision regarding pretrial detention based upon documentary evidence, court records, proffer, witness testimony, hearsay, argument of counsel, input from a victim, if any, and any other reliable proof presented at the hearing.

(6) ***Factors to be considered.*** The court shall consider any fact relevant to the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release and any fact relevant to the issue of whether any conditions of release will reasonably protect the safety of any person or the community, including but not limited to the following:

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

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant;

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

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

(f) whether the defendant has been ordered detained under Article II, Section 13 of the New Mexico Constitution based on a finding of dangerousness in another pending case or was ordered detained based on a finding of dangerousness in any prior case; and

(g) any available results of a pretrial risk assessment instrument approved by the Supreme Court for use in the jurisdiction, provided that the court shall not defer to the recommendation in the instrument but shall make an independent determination of dangerousness and community safety based on all information available at the hearing.

(7) ***Rebuttable Presumptions.*** Subject to rebuttal by the defendant, evidence or offers of proof establishing probable cause for any of the following shall be deemed prima facie proof that the defendant poses a danger to any other person or to the community and that release conditions will not reasonably protect the safety of any other person or the community:

(a) *Violent Felonies.*

(i) murder in the first or second degree, as proscribed in Section 30-2-1

NMSA 1978;

(ii) voluntary manslaughter, as proscribed in Section 30-2-3 NMSA 1978;  
(iii) assault with intent to commit a violent felony in the second or third degree, as proscribed in Section 30-3-3, Section 30-3-9.2, Section 30-3-14, and Section 30-22-23 NMSA 1978;

(iv) aggravated battery in the third degree, as proscribed in Section 30-3-5, Section 30-3-9, Section 30-3-9.1, 30-3-9.2, Section 30-3-16, and Section 30-22-25 NMSA 1978;

(v) habitual domestic abuse, as proscribed in Section 30-3-17 NMSA 1978;

(vi) kidnapping in the first or second degree, as proscribed in Section 30-4-1 NMSA 1978;

(vii) child abuse resulting in death or great bodily harm, as proscribed in Section 30-6-1 NMSA 1978;

(viii) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as proscribed by Section 30-9-11 NMSA 1978;

(ix) robbery in the first or second degree, as proscribed in Section 30-16-2 NMSA 1978;

(x) aggravated arson in the second degree, as proscribed in Section 30-17-6 NMSA 1978; or

(xi) human trafficking of a child in the first or second degree, as proscribed by Section 30-52-1 NMSA 1978.

(b) *Firearms.* The defendant was armed with a firearm or had a firearm readily available during the commission of the charged felony offense that prompted the detention hearing. A firearm is any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. A firearm is readily available if it is on the defendant's person or in an area to which the defendant has quick and easy access.

(c) *Great Bodily Harm.* The defendant inflicted great bodily harm, as defined in Section 30-1-12 NMSA 1978, or death of a person during the commission of the charged felony offense that prompted the detention hearing.

(d) *Criminal History, Pending Cases, Witness Intimidation, Post-Conviction Supervision.*

(i) the defendant was convicted within the past five years of a felony offense listed in subsection (F)(7)(a) of this section or a felony offense committed under the circumstances contained in Subsection (F)(7)(b) or Subsection (F)(7)(c) of this section;

(ii) the defendant committed the charged felony offense that prompted the detention hearing while pending trial or sentencing for a felony offense listed in Subsection (F)(7)(a) of this section or a felony offense committed

under the circumstances contained in Subsection (F)(7)(b) or Subsection (F)(7)(c) of this section;

(iii) the defendant intimidated, dissuaded, or threatened retaliation against a witness or victim of the charged felony offense that prompted the detention hearing or against a juror or other member of the criminal justice system; or

(iv) the defendant committed the charged felony offense that prompted the detention hearing while on probation, parole or other post-conviction supervision for a felony offense listed in Subsection (F)(7)(a) of this section or a felony offense committed under the circumstances contained in Subsection (F)(7)(b) or Subsection (F)(7)(c) of this section.

**G. Order for pretrial detention.** The court shall issue a written order for pretrial detention at the conclusion of the pretrial detention hearing if the court determines by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. The court shall file findings of the individualized facts justifying the detention as soon as possible, but no later than three (3) days after the conclusion of the hearing. The order for pretrial detention shall remain in effect until sentencing or until acquittal or dismissal of all felony charges unless modified under Subsection K.

**H. Order setting conditions of release.** The court shall deny the motion for pretrial detention if, on completion of the pretrial detention hearing, the court determines that the prosecutor has failed to prove the grounds for pretrial detention by clear and convincing evidence. At the conclusion of the pretrial detention hearing, the court shall issue an order setting conditions of release under Rule 5-401 NMRA. The court shall file findings of the individualized facts justifying the denial of the detention motion as soon as possible, but no later than three (3) days after the conclusion of the hearing.

**I. Further proceedings in magistrate or metropolitan court.** Upon completion of the hearing, if the case is pending in the magistrate or metropolitan court, the district court shall promptly transmit to the magistrate or metropolitan court a copy of either the order for pretrial detention or the order setting conditions of release. The magistrate or metropolitan court may modify the order setting conditions of release upon a showing of good cause, but as long as the case remains pending, the magistrate or metropolitan court may not release a defendant who has been ordered detained by the district court.

**J. Expedited trial scheduling for defendant in custody.** The district court shall provide expedited priority scheduling in a case in which the defendant is detained pending trial.

**K. Successive motions for pretrial detention and motions to reconsider.** On written motion of the prosecutor or the defendant, the court may reopen the detention hearing at any time before trial if the court finds that

- (1) information exists that was not known to the movant at the time of the hearing or circumstances have changed subsequent to the hearing, and

(2) the information or changed circumstance has a material bearing on whether the previous ruling should be reconsidered.

L. **Appeal.** Either party may appeal the district court order disposing of the motion for pretrial detention in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA. The district court order shall remain in effect pending disposition of the appeal.

M. **Judicial discretion; disqualification and excusal.** Action by any court on any matter relating to pretrial detention shall not preclude the subsequent statutory disqualification of a judge. A judge may not be excused from presiding over a detention hearing unless the judge is required to recuse under the provisions of the New Mexico Constitution or the Code of Judicial Conduct.

# Attachment 9

---

**Proposed Joint Resolution to Amend Article 2, Section 13 of the Constitution of New Mexico:** To provide for a presumption of detention for offenses subject to a life sentence and authorize legislative creation of additional rebuttable presumptions; providing for detention based on risk of flight and obstruction of justice; making procedural clarifications.

\_\_\_\_\_ JOINT RESOLUTION

**54th Legislature - STATE OF NEW MEXICO - Second Session, 2020**

INTRODUCED BY

DISCUSSION DRAFT

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR A PRESUMPTION OF DETENTION FOR OFFENSES SUBJECT TO A LIFE SENTENCE AND AUTHORIZE LEGISLATIVE CREATION OF ADDITIONAL REBUTTABLE PRESUMPTIONS; PROVIDING FOR DETENTION BASED ON RISK OF FLIGHT AND OBSTRUCTION OF JUSTICE; MAKING PROCEDURAL CLARIFICATIONS.

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

**SECTION 1.** It is proposed to amend Article 2, Section 13 of the constitution of New Mexico to read:

“A. All persons shall, before conviction, be bailable by sufficient sureties, except as provided in this section. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

B. A defendant shall be detained pending trial if charged with a felony and if the prosecuting authority proves to a clear and convincing standard that, if released, the defendant poses a danger to any other person or to the community, the defendant will not appear in court as required, or the defendant will obstruct the criminal process. There shall be a rebuttable presumption that the defendant poses a danger to any other person or to the community upon a finding of probable cause to believe the defendant has committed an offense subject to a sentence of life imprisonment. The Legislature may also provide for a rebuttable presumption upon a finding of probable cause to believe that the defendant committed other felony offenses or that other risk factors exist.

1. The court shall hold a detention hearing whenever the prosecuting authority requests detention by any form or means or the court raises the issue of detention on its own motion. The court shall rule on the merits of pretrial detention at the hearing.

2. The court may make its decision regarding detention, including the determination of probable cause to support rebuttable presumptions of detention, by documentary evidence, proffer, witness testimony, hearsay, argument of counsel, input from a victim, if any, and any other reliable proof presented at the hearing. No motion for detention shall be dismissed or denied based upon the form of the motion or of the proof presented.

The defendant shall have the right to testify, to be represented by counsel,

and to cross-examine witnesses, if any are called, during the hearing.

There shall be no right to discovery, except that the prosecuting authority shall disclose at any time before the hearing the information upon which it intends to rely at the hearing.

3. There shall be a right to immediate appeal from any disposition of a motion for detention, and the appeal shall be given preference over all other matters.

C. A defendant who is not detained pending trial and is otherwise eligible for bail shall not be held solely because of financial inability to post a money or property bond. A defendant who is not detained pending trial and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The court shall rule on the motion in an expedited manner.”

**SECTION 2.** The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.