

1 SENATE BILL 174

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Gregg Schmedes

5
6
7
8
9
10 AN ACT

11 RELATING TO BAIL; SPECIFYING THE STANDARD TO BE EMPLOYED FOR
12 PRETRIAL RELEASE HEARINGS; REQUIRING POSTING OF BOND IF A
13 DEFENDANT IS ON RELEASE FOR ANOTHER MATTER; PROHIBITING COURTS
14 FROM RELYING ON RISK ASSESSMENT TOOLS OR PROGRAMS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of Chapter 31, Article 3 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] ELIGIBILITY OF DEFENDANTS FOR PRETRIAL
20 RELEASE.--

21 A. A court shall not excuse a defendant from
22 posting bail unless the defendant motions for a hearing in
23 which the defendant proves that the defendant lacks the
24 financial means necessary to post bail. For purposes of this
25 subsection, the court shall employ the indigency standard

.224173.1

underscored material = new
[bracketed material] = delete

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

1 pursuant to Section 34-6-46 NMSA 1978 in determining whether
2 the defendant lacks the financial means necessary to post bail.

3 B. There is a rebuttable presumption, which the
4 court shall consider under its discretion, that a defendant who
5 has been released on the defendant's own recognizance for a
6 prior offense is a danger to the community and shall not be
7 eligible for release upon the defendant's recognizance in
8 another matter unless the defendant posts a secured bond in the
9 new matter.

10 C. There is a rebuttable presumption, which the
11 court shall consider under its discretion, that a defendant who
12 is currently on conditions of release in any other pending
13 matter is a danger to the community and is not eligible for
14 release upon the defendant's recognizance, if the defendant is
15 charged with:

16 (1) any of the following serious violent
17 felony offenses:

- 18 (a) murder in the first degree;
19 (b) first or second degree felony human
20 trafficking of a child;
21 (c) first degree felony abuse of a
22 child;
23 (d) sexual exploitation of a child
24 constituting at least a second degree felony; or
25 (e) a serious violent felony offense as

.224173.1

underscoring material = new
[bracketed material] = delete

1 provided in Subparagraphs (a) through (n) of Paragraph (4) of
2 Subsection L of Section 33-2-34 NMSA 1978;

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

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

9 D. A court shall exercise discretion in determining
10 the eligibility of a defendant for pretrial release and in
11 setting the monetary and non-monetary conditions of release. A
12 court shall not rely upon a risk assessment tool or program
13 created or provided by a third party that is not a state entity
14 or a political subdivision of the state."

15 SECTION 2. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2023.