

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 156

3 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

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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.

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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

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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

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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 by or provided by a third party that is not a state  
14 entity 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, 2022.