

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE JOINT RESOLUTION 20

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF NEW MEXICO TO  
PROVIDE THAT A COURT MAY GRANT OR DENY BAIL BASED UPON FLIGHT  
RISK, DANGER TO THE COMMUNITY, NATURE OF THE OFFENSE AND OTHER  
FACTORS PROVIDED BY LAW; ELIMINATING THE PRESUMPTION OF NO BAIL  
FOR CAPITAL OFFENSES.

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:

~~"All persons shall, before conviction, be bailable by  
sufficient sureties, except for capital offenses when the proof  
is evident or the presumption great and in situations in which  
bail is specifically prohibited by this section. Excessive  
bail shall not be required, nor excessive fines imposed, nor  
cruel and unusual punishment inflicted.~~

.185801.3

underscored material = new  
[bracketed material] = delete

1           ~~Bail may be denied by the district court for a period of~~  
2 ~~sixty days after the incarceration of the defendant by an order~~  
3 ~~entered within seven days after the incarceration, in the~~  
4 ~~following instances:~~

5           ~~A. the defendant is accused of a felony and has~~  
6 ~~previously been convicted of two or more felonies, within the~~  
7 ~~state, which felonies did not arise from the same transaction~~  
8 ~~or a common transaction with the case at bar;~~

9           ~~B. the defendant is accused of a felony involving~~  
10 ~~the use of a deadly weapon and has a prior felony conviction,~~  
11 ~~within the state. The period for incarceration without bail~~  
12 ~~may be extended by any period of time by which trial is delayed~~  
13 ~~by a motion for a continuance made by or on behalf of the~~  
14 ~~defendant. An appeal from an order denying bail shall be given~~  
15 ~~preference over all other matters.] Bail may be granted or~~  
16 ~~denied for a defendant charged with a crime and shall be based~~  
17 ~~on the flight risk of the defendant, the nature and seriousness~~  
18 ~~of the offense, the danger to any person or the community that~~  
19 ~~would be posed by the defendant's release and other factors as~~  
20 ~~provided by law. The least onerous condition of release needed~~  
21 ~~to comply with these factors shall be imposed. Excessive bail~~  
22 ~~shall not be required, nor excessive fines imposed, nor cruel~~  
23 ~~and unusual punishment inflicted. An appeal from an order~~  
24 ~~denying bail shall be given preference over all other matters."~~

25           SECTION 2. The amendment proposed by this resolution

1 shall be submitted to the people for their approval or  
2 rejection at the next general election or at any special  
3 election prior to that date that may be called for that  
4 purpose.

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