

SUMMARY OF AND ARGUMENTS



THE
CONSTITUTIONAL AMENDMENT
PROPOSED BY THE LEGISLATURE
IN 2016

New Mexico Legislative Council Service
Santa Fe, New Mexico

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Amendment to Appear on the November 8, 2016 General Election Ballot
as Constitutional Amendment 1:

"PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO PROTECT COMMUNITY SAFETY BY GRANTING COURTS NEW AUTHORITY TO DENY RELEASE ON BAIL PENDING TRIAL FOR DANGEROUS DEFENDANTS IN FELONY CASES WHILE RETAINING THE RIGHT TO PRETRIAL RELEASE FOR NON-DANGEROUS DEFENDANTS WHO DO NOT POSE A FLIGHT RISK."

General Information

For the first time in more than three decades, New Mexico voters will be asked in 2016 to consider only one proposed amendment to the state's constitution. The sole question, which addresses the granting or denial of bail, will appear on the November 8, 2016 general election ballot as Constitutional Amendment 1.

The Constitution of New Mexico provides that the legislature, by a majority vote of all members elected to each house, may propose amendments revising the constitution and that proposed amendments must then be submitted to the voters of the state for approval. A proposed amendment becomes part of the state's constitution if a majority of the votes cast in an election on the proposition is cast in its favor, unless the proposed amendment affects one of the sections for which a three-fourths' majority is required. (This year's proposed constitutional amendment does not affect one of those sections.) Proposed constitutional amendments become effective upon approval by the voters unless an effective date is provided within the text of the proposed amendment.

This publication contains a summary and the full text of the joint resolution proposing the amendment, as well as background information and summaries of arguments for and against the passage of the amendment.

While the full text of the proposed amendment appears in this publication, the title, which appears in capital letters at the top of the joint resolution, is the *only* language that will appear on the ballot. New language that is proposed for insertion in the text is shown by underscoring, and language that is proposed for deletion is shown within brackets.

Disclaimer

The arguments for and against the proposed constitutional amendment in this publication do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions from the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. No claim is made for the validity or consistency of these arguments. This is not an exhaustive list of all cogent and valid arguments. No attempt has been made to provide the same number of arguments for or against a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to a position for or against a proposed amendment.

SENATE JOINT RESOLUTION 1
52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO PROTECT COMMUNITY SAFETY BY GRANTING COURTS NEW AUTHORITY TO DENY RELEASE ON BAIL PENDING TRIAL FOR DANGEROUS DEFENDANTS IN FELONY CASES WHILE RETAINING THE RIGHT TO PRETRIAL RELEASE FOR NON-DANGEROUS DEFENDANTS WHO DO NOT POSE A FLIGHT RISK.

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.

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

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

~~B. the defendant is accused of a felony involving the use of a deadly weapon and has a prior felony conviction, within the state. The period for incarceration without bail may be extended by any period of time by which trial is delayed by a motion for a continuance made by or on behalf of the defendant]~~ by a court of record pending trial for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community. An appeal from an order denying bail shall be given preference over all other matters.

A person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond. A defendant who is neither a danger nor a flight risk 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.

► **SUMMARY of Proposed Constitutional Amendment 1**

Constitutional Amendment 1 would amend Article 2, Section 13 of the Constitution of New Mexico to change the conditions under which a defendant can be denied bail. At present, bail may be denied only for a defendant charged with a capital felony, a defendant with two or more felony convictions in New Mexico or a defendant accused of a felony involving the use of a deadly weapon if the defendant has a felony conviction in New Mexico. The proposed amendment would change these requirements, allowing bail to be denied for a defendant who has been charged with a felony if the prosecutor can prove to a judge that the defendant poses a threat to the public. The proposed amendment would also provide that a defendant who is not a danger to the community or a flight risk cannot be denied bail solely because of the defendant's financial inability to post a money or property bond.

► **BACKGROUND AND INFORMATION Regarding the Right to Bail in New Mexico**

A provision regarding bail was a feature of the Bill of Rights in the Constitution of New Mexico at the time of statehood. Originally, the provision provided that all persons shall beailable, with an exception for those accused of capital offenses "when the proof is evident or the presumption great", and that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". The original bail provision was modeled on the provision regarding bail in the United States Constitution's Eighth Amendment.

The vast majority of states had similar provisions in their constitutions, but many amended their constitutions to change these provisions. The bail provision for New Mexico remained unchanged until the 1980s, when it was amended twice. The principal change in 1980 provided that bail may be denied by a district court for 60 days when: a defendant is accused of a felony and has two prior felony convictions within the state; or when a defendant has been accused of a felony involving the use of a deadly weapon and has a prior felony conviction within the state. The change also allowed for an extension of the time someone can be incarcerated without being granted bail. A 1988 change added that the constitutional right to bail only applied to defendants prior to their convictions.

In 2014, the New Mexico Supreme Court, in *State v. Brown*, held that a district court abused its discretion by setting a high bond based solely on the nature of the offense charged against the defendant. In that opinion, the court noted its understanding that other courts may have been imposing bonds based solely on the nature of the charged offense, without balancing the factors required by law and court rule.

There has been a great deal of discussion in the state over bail reform since the *Brown* decision, including the creation by the supreme court of a task force to study the use of bail throughout the state. The task force recommended that the Constitution of New Mexico be amended to address release on bail. Approximately 40 percent of defendants incarcerated in the state are held pending trial — that is, their innocence or guilt has not yet been determined.

Defendants post bail to guarantee their appearance in court. Defendants who fail to appear lose the money they have posted.

► ARGUMENTS FOR

1. Allows judges to keep dangerous defendants off the streets.

Under the current constitutional structure, judges do not have the authority to deny release to a defendant who is known to be a danger to the community or a flight risk. As a result, dangerous defendants who can afford whatever bail is set by the judge are released and might further threaten public safety. The proposed amendment would give judges the power to keep those who need to remain behind bars while they are awaiting trial away from the community.

2. Allows release of people who do not pose a threat.

Many of the defendants incarcerated in New Mexico jails do not pose a danger to the community or are not a flight risk, but are held simply because they cannot afford bail. Often, they have no past criminal histories or are held pending trial for nonviolent offenses. Being held in jail has significant negative impacts on these defendants, who have not yet been found guilty of any crime, and on their families. Moreover, in states that have enacted reforms similar to the proposed amendment, there has been no corresponding negative impact on public safety.

3. Cost savings to counties.

Holding large numbers of people pending trial imposes substantial costs on the counties, which house the vast majority of these defendants. Some counties have spent up to half of their budgets on jails and correctional officers. Many of the individuals held in county jails could be released without affecting public safety.

4. Protection of basic constitutional rights.

It is a fundamental right since the founding of this nation that people are innocent until proven guilty, and thus the state should have to prove why a defendant should remain incarcerated before any finding of guilt.

► ARGUMENTS AGAINST

1. The present reliance on bail bonding helps ensure defendants appear in court.

A bond helps ensure that a defendant will appear in court. A defendant released without a bond in a drug or property crime case has no financial incentive to appear in court.

2. Possible negative impact on the bail bonding industry.

With fewer defendants required to post a bond, the proposed amendment would have a negative impact on the bail bonding industry, costing jobs in an already weak economy. The bail bonding industry provides a necessary service by helping to ensure that defendants appear in court.

3. Puts the public at greater risk.

The proposed amendment, which will require judges to release certain defendants, will almost certainly increase the risk to the public. Defendants who post bonds under the current system frequently commit other crimes while awaiting trial. Making it easier for defendants to be released while awaiting trial will inevitably result in further danger to the public.

