

HOUSE SAFETY AND CIVIL AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION 20

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 CHANGE THE COURT'S AUTHORITY TO
DENY RELEASE ON BAIL PENDING TRIAL BY ALLOWING BAIL TO BE
DENIED FOR FIRST DEGREE FELONY OFFENSES, OR OFFENSES INVOLVING
ACTS OF VIOLENCE OR SEXUAL ASSAULT, BY ALLOWING THE COURT TO
FIX THE AMOUNT OF BAIL BASED ON THE SERIOUSNESS OF THE CHARGE
AND THE DEFENDANT'S CRIMINAL HISTORY AND LIKELIHOOD OF
APPEARANCE, BY ALLOWING THE COURT TO RELEASE A DEFENDANT ON THE
DEFENDANT'S OWN RECOGNIZANCE AND BY PLACING LIMITS ON THE
SETTING OF A BOND AND PROVIDING FOR APPEALS.

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~~

1 ~~sufficient sureties, except for capital offenses when the proof~~
2 ~~is evident or the presumption great and in situations in which~~
3 ~~bail is specifically prohibited by this section.]~~

4 A. Excessive bail shall not be required, nor
5 excessive fines imposed, nor cruel and unusual punishment
6 inflicted.

7 B. All persons shall, before conviction, be
8 bailable by sufficient sureties, except for when the defendant
9 is charged with a capital offense or violent first degree
10 felony and the court finds, by clear and convincing evidence,
11 that no release conditions will reasonably protect the safety
12 of any other person or the community.

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

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

21 ~~B. the defendant is accused of a felony involving~~
22 ~~the use of a deadly weapon and has a prior felony conviction,~~
23 ~~within the state. The period for incarceration without bail~~
24 ~~may be extended by any period of time by which trial is delayed~~
25 ~~by a motion for a continuance made by or on behalf of the~~

1 ~~defendant.]~~ for offenses involving acts of violence on another
2 person, or sexual assault offenses on another person, when the
3 court finds, by probable cause, that there is a substantial
4 likelihood the defendant's release would result in great bodily
5 harm to others.

6 D. In fixing the amount of bail, the court shall
7 take into consideration the seriousness of the offense charged,
8 the previous criminal record of the defendant and the
9 probability of the defendant appearing at the trial or hearing
10 for the case.

11 E. A defendant may be released on the defendant's
12 own recognizance at the court's discretion.

13 F. Bond may be set only one time, based on the
14 original offense, if a defendant has followed all conditions of
15 release. A defendant may appeal a setting of bail to a court
16 of record, at which hearing the prosecuting authority shall be
17 required to present evidence justifying the amount set for
18 bail. An appeal of the setting of bond shall be heard on an
19 expedited schedule. After the hearing, if bail is set at the
20 same or a lower amount as was initially set and the court has
21 not found that the defendant has violated any condition of
22 release, the court shall determine the bond is a continuation
23 of the original bond.

24 G. An appeal from an order denying bail shall be
25 given preference over all other matters."

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