

1 SENATE JOINT MEMORIAL 13

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Richard C. Martinez

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10 A JOINT MEMORIAL

11 REQUESTING THE NEW MEXICO SUPREME COURT TO RESCIND CERTAIN
12 RULES OF CRIMINAL PROCEDURE REGARDING BAIL.

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14 WHEREAS, in 2016, the voters of New Mexico adopted an
15 amendment to Article 2, Section 13 of the constitution of New
16 Mexico, providing that a defendant who is neither a danger nor
17 a flight risk and who has a financial inability to post a money
18 or property bond may file a motion with the court requesting
19 relief from the requirement to post bond to obtain pretrial
20 liberty; and

21 WHEREAS, the New Mexico supreme court, by Order Number
22 17-8300-005, which was adopted on June 5, 2017 and became
23 effective on July 1, 2017, amended or adopted Rules 5-106,
24 5-204, 5-401, 5-402, 5-403, 5-405 and 5-406 of the Rules of
25 Criminal Procedure for the District Courts; Rules 6-401, 6-403,
.209664.1

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1 6-406, 6-506 and 6-703 of the Rules of Criminal Procedure for
2 the Magistrate Courts; Rules 7-401, 7-403, 7-406, 7-506 and
3 7-703 of the Rules of Criminal Procedure for the Metropolitan
4 Courts; and Rules 8-401, 8-403, 8-406, 8-506 and 8-703 of the
5 Rules of Criminal Procedure for the Municipal Courts; and

6 WHEREAS, the supreme court's rules do not include the
7 constitutional requirement to file a motion to request relief
8 from the requirement to post bond; and

9 WHEREAS, Section 38-1-1 NMSA 1978 provides that when the
10 supreme court promulgates rules for judicial proceedings, "Such
11 rules shall not abridge, enlarge or modify the substantive
12 rights of any litigant."; and

13 WHEREAS, the adoption of the above-referenced rules by the
14 supreme court impacted the substantive rights of individuals
15 appearing in New Mexico courts as litigants to obtain pre-
16 arraignment and pretrial release through the offering of
17 monetary bail;

18 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
19 STATE OF NEW MEXICO that the New Mexico supreme court be
20 requested to immediately rescind the above-referenced rules;
21 and

22 BE IT FURTHER RESOLVED that copies of this memorial be
23 transmitted to members of the New Mexico supreme court.