

1 HOUSE JOINT RESOLUTION 20  
2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY  
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10 A JOINT RESOLUTION  
11 PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE  
12 CONSTITUTION OF NEW MEXICO TO CHANGE THE COURT'S AUTHORITY TO  
13 DENY RELEASE ON BAIL PENDING TRIAL BY ALLOWING BAIL TO BE  
14 DENIED FOR OFFENSES INVOLVING ACTS OF VIOLENCE OR SEXUAL  
15 ASSAULT OR OFFENSES WHEN THE COURT FINDS BY CLEAR AND  
16 CONVINCING EVIDENCE THAT THE DEFENDANT POSES A THREAT, BY  
17 ALLOWING THE COURT TO FIX THE AMOUNT OF BAIL BASED ON THE  
18 SERIOUSNESS OF THE CHARGE AND THE DEFENDANT'S CRIMINAL HISTORY  
19 AND LIKELIHOOD OF APPEARANCE AND BY ALLOWING THE COURT TO  
20 RELEASE A DEFENDANT ON THE DEFENDANT'S OWN RECOGNIZANCE.  
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22 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. It is proposed to amend Article 2, Section 13  
24 of the constitution of New Mexico to read:

25 "A. Cruel and unusual punishment shall not be

underscored material = new  
[bracketed material] = delete

1 inflicted.

2 B. All persons shall, before conviction, be  
3 bailable by sufficient sureties, except for capital offenses  
4 when the proof is evident or the presumption great and in  
5 situations in which bail is specifically prohibited by this  
6 section.

7 C. Excessive bail shall not be required, nor  
8 excessive fines imposed [~~nor cruel and unusual punishment~~  
9 ~~inflicted~~].

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

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

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

24 (1) offenses involving acts of violence on  
25 another person, or sexual assault offenses on another person,

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[bracketed material] = delete

1 when the proof is evident or the presumption great and the  
2 court finds, based upon clear and convincing evidence, that  
3 there is a substantial likelihood the defendant's release would  
4 result in great bodily harm to others; or

5 (2) for offenses when the proof is evident or  
6 the presumption great and the court finds, based upon clear and  
7 convincing evidence, that the defendant has threatened another  
8 with great bodily harm and that there is a substantial  
9 likelihood that the defendant would carry out the threat if  
10 released.

11 E. In fixing the amount of bail, the court shall  
12 take into consideration the seriousness of the offense charged,  
13 the previous criminal record of the defendant and the  
14 probability of the defendant appearing at the trial or hearing  
15 of the case.

16 F. A defendant may be released on the defendant's  
17 own recognizance in the court's discretion.

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

20 SECTION 2. The amendment proposed by this resolution  
21 shall be submitted to the people for their approval or  
22 rejection at the next general election or at any special  
23 election prior to that date that may be called for that  
24 purpose.