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SENATE JOINT RESOLUTION

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE
CONSTITUTION OF NEW MEXICO TO ALLOW FOR A COURT TO DENY BAIL
PENDING TRIAL IF IT IS FOUND BY CLEAR AND CONVINCING EVIDENCE
THAT NO RELEASE CONDITIONS WILL ENSURE THE APPEARANCE OF THE
PERSON IN COURT OR PROTECT THE SAFETY OF THE PUBLIC, WHILE
PROVIDING THAT A PERSON ELIGIBLE FOR PRETRIAL RELEASE SHALL NOT
BE DETAINED SOLELY BECAUSE OF AN INABILITY TO POST A MONEY OR
PROPERTY BOND.

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, beailable by
sufficient sureties, except for capital offenses when the proof
is evident or the presumption great and in situations in which

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1 bail is specifically prohibited by this section. Excessive
2 bail shall not be required, nor excessive fines imposed, nor
3 cruel and unusual punishment inflicted.

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

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

12 B. ~~the defendant is accused of a felony involving~~
13 ~~the use of a deadly weapon and has a prior felony conviction,~~
14 ~~within the state. The period for incarceration without bail~~
15 ~~may be extended by any period of time by which trial is delayed~~
16 ~~by a motion for a continuance made by or on behalf of the~~
17 ~~defendant] the prosecuting authority requests a hearing and proves~~
18 ~~pending trial if, after a hearing, the court finds~~
19 by clear and convincing evidence that no release conditions
20 will reasonably ensure the appearance of the person as required
21 or protect the safety of any other person or the community. An
22 appeal from an order denying bail shall be given preference
23 over all other matters.

24 No person eligible for pretrial release pursuant to this
25 section shall be detained solely because of financial inability
to post a money or property bond."

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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.