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HOUSE JOINT RESOLUTION 20

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dennis J. Kintigh

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF NEW MEXICO TO ELIMINATE THE RIGHT TO BAIL AND TO PROVIDE THAT A COURT MAY GRANT OR DENY BAIL BASED UPON FLIGHT RISK, DANGER TO THE COMMUNITY, NATURE OF THE OFFENSE AND OTHER FACTORS PROVIDED BY LAW; ELIMINATING THE PRESUMPTION OF NO BAIL FOR CAPITAL OFFENSES; ELIMINATING THE PROHIBITION ON EXCESSIVE BAIL, EXCESSIVE FINES AND CRUEL AND UNUSUAL PUNISHMENT; ELIMINATING EXPEDITED APPEAL FROM AN ORDER DENYING BAIL.

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~~

underscored material = new
[bracketed material] = delete

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. An appeal from an order denying bail shall be given~~
18 ~~preference over all other matters.] Bail may be granted or~~
19 ~~denied for a defendant charged with a crime and shall be based~~
20 ~~on the flight risk of the defendant, the nature and seriousness~~
21 ~~of the offense, the danger to any person or the community that~~
22 ~~would be posed by the defendant's release and other factors as~~
23 ~~provided by law."~~

24 SECTION 2. The amendment proposed by this resolution
25 shall be submitted to the people for their approval or

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underscored material = new
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1 rejection at the next general election or at any special
2 election prior to that date that may be called for that
3 purpose.

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