

HOUSE JOINT RESOLUTION 10

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 13 OF THE
CONSTITUTION OF NEW MEXICO TO ADD FLIGHT RISK AND INTERFERENCE
WITH THE CRIMINAL PROCESS AS CIRCUMSTANCES FOR WHICH BAIL MAY
BE DENIED, TO ESTABLISH A REBUTTABLE PRESUMPTION OF DETENTION
FOR OFFENSES SUBJECT TO A LIFE SENTENCE AND TO PROVIDE FOR
ADDITIONAL REBUTTABLE PRESUMPTIONS THAT MAY BE ESTABLISHED BY
LAW.

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 bail is specifically prohibited by]~~ as provided in this

.219751.1

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1 section. Excessive bail shall not be required, nor excessive
2 fines imposed, nor cruel and unusual punishment inflicted.

3 ~~[Bail may be denied by a court of record pending trial for~~
4 ~~a defendant charged with a felony if the prosecuting authority~~
5 ~~requests a hearing and proves by clear and convincing evidence~~
6 ~~that no release conditions will reasonably protect the safety~~
7 ~~of any other person or the community. An appeal from an order~~
8 ~~denying bail shall be given preference over all other matters.~~

9 A person who is not detainable on grounds of dangerousness
10 nor a flight risk in the absence of bond and is otherwise
11 eligible for bail shall not be detained solely because of
12 financial inability to post a money or property bond. A
13 defendant who is neither a danger nor a flight risk and who has
14 a financial inability to post a money or property bond may file
15 a motion with the court requesting relief from the requirement
16 to post bond.] A defendant shall be detained pending trial if:

17 A. the defendant is charged with a felony; and

18 B. the prosecuting authority proves by clear and
19 convincing evidence that, if released, the defendant:

20 (1) poses a danger to any other person or to
21 the community;

22 (2) will not appear in court as required; or

23 (3) will obstruct the criminal process.

24 There is a rebuttable presumption that the defendant poses
25 a danger to any other person or to the community upon a finding

underscoring material = new
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1 of probable cause to believe that the defendant has committed
2 an offense subject to a sentence of life imprisonment.
3 Additional rebuttable presumptions may be established by law
4 upon a finding by a court of record that there is probable
5 cause to believe that the defendant committed another specified
6 felony offense or that another risk factor exists.

7 A defendant who is detained pending trial and is otherwise
8 eligible for bail shall not be held solely because of financial
9 inability to post a money or property bond. A defendant who is
10 not detained pending trial and who has a financial inability to
11 post a money or property bond may file a motion with the court
12 requesting relief from the requirement to post bond. The court
13 shall rule on the motion in an expedited manner."

14 SECTION 2. The amendment proposed by this resolution
15 shall be submitted to the people for their approval or
16 rejection at the next general election or at any special
17 election prior to that date that may be called for that
18 purpose.