Administrative Office of the Courts

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BIPARTISAN SENATE GROUP JOINS COURTS IN PROPOSING STATE CONSTITUTIONAL AMENDMENT TO GRANT COURTS AUTHORITY TO DENY RELEASE ON BAIL FOR DANGEROUS DEFENDANTS

SANTA FE – Today, Senators Peter Wirth (D-Santa Fe) and Sander Rue (R-Bernalillo) joined as primary sponsors in prefiling Senate Joint Resolution 1, which if approved by the Legislature and New Mexico voters would amend the New Mexico Constitution to give judges new authority to deny release on bail for dangerous defendants, while preserving the right to release for non-dangerous defendants. Senators William Payne (R-Bernalillo) and Linda Lopez (D-Bernalillo), have signed on as cosponsors.

The proposal would address the threat to public safety resulting from language in the original state Constitution that requires courts to permit bail for virtually all defendants, no matter how great a threat they may pose to the community if released. The new provisions would allow state courts of record to deny release on bail "for a defendant charged with a felony if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community." To emphasize that denial of bail should be based on evidence of dangerousness and not simply on a defendant's financial resources, the amendment would also clarify that "[a] person who is not a danger and is otherwise eligible for bail shall not be detained solely because of financial ability to post a money or property bond."

"The proposed amendment will help protect our communities without eroding the rights of accused citizens to fair and impartial justice while they are still presumed to be innocent," said Arthur Pepin, Director of the Administrative Office of the Courts. "The proposal guarantees a court hearing at which dangerousness has to be shown by clear and convincing evidence, the standard required by all other jurisdictions permitting denial of bail to dangerous defendants, and

also guarantees that suspects who are not dangerous should not be held in jail pending trial simply because they are poor." "Under our current constitutional bail provisions, people accused of a crime - no matter how dangerous they are - can simply buy their release from jail if they can find a way to post a bail bond," Pepin said. "But a money bond does nothing to prevent a dangerous defendant from committing other crimes while released."

Pepin added, "The decision to release defendants from jail while awaiting trial should be based on what risk they pose to the community and not on whether they have enough money to buy a bond."

Senator Wirth first circulated a draft of a proposed constitutional amendment in September, following a recommendation by the Supreme Court that the Legislature and voters consider the need to amend the antiquated language in the Constitution. Senator Wirth stated, "As a result of meeting and hearing from many legislators, groups involved in all aspects of the criminal justice system, and many New Mexicans concerned about pretrial release of dangerous defendants, modifications to the original proposal were made to sharpen the focus on protection of public safety."

Among the diverse groups having taken an official stand in support of the proposal are the New Mexico District Attorneys' Association, the New Mexico Coalition Against Domestic Violence, the New Mexico Criminal Defense Lawyers' Association, the American Civil Liberties Union of New Mexico, and the Criminal Justice Reform Policy Committee of the New Mexico Association of Counties.

The New Jersey Legislature and voters recently amended similar language in their constitution to give their judges authority to deny bail where justified by the evidence, and the authority has been granted to judges in a number of other states, the federal courts, and the courts of the District of Columbia.

If passed by the Legislature, the proposed Constitutional amendment would be placed on the general election ballot in November 2016.

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