# Administrative Office of the Courts

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**NEW MEXICO JUDICIARY ENDORSES BAIL REFORM CONSTITUTIONAL AMENDMENT**

ALBUQUERQUE _ The New Mexico Judiciary will ask the Legislature to let voters decide whether to approve reforms to the bail system for the release of criminal defendants awaiting trial.

The proposed amendment to the New Mexico Constitution will allow judges the lawful option of denying pretrial release on bail to defendants who are too dangerous or unreasonable flight risks. The proposal also will guarantee that no person entitled to pretrial release is held in jail simply because they are financially unable to afford a money bond.

Current provisions of the state Constitution require the pretrial release of virtually all defendants, regardless of how dangerous they are or whether they're unlikely to return to court. Many low-risk arrestees often remain in jail before trial simply because they are too poor to post a money bond.

Administrative Office of the Courts Director Artie Pepin announced Thursday that the New Mexico Supreme Court has endorsed the recommendation to seek a constitutional amendment recently made by the Ad Hoc Pretrial Release Committee, which the court established earlier this year to study the operation of the current bail system in New Mexico.

The committee determined that a constitutional amendment is needed to provide judges with the lawful authority to deny release to a criminal defendant when that's necessary to ensure public safety or the defendant's appearance in court. The committee includes lawyers, legislators, judges and bail bondsmen.

"The proposed amendment will help protect our community without eroding the rights of criminal defendants to fair and impartial justice," Pepin said. "The proposal guarantees due

process of a court hearing at which dangerousness or flight risk has to be proven by clear and convincing evidence, and also guarantees that suspects who are not dangerous or a flight risk should not be held in jail pending trial simply because they are poor."

Pepin said, "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 afford a bail bond. But a money bond does nothing to prevent a high-risk defendant from committing other crimes while released."

Senator Peter Wirth of Santa Fe, a member of the Senate Judiciary Committee, will sponsor the constitutional amendment during the 30-day legislative session that starts in January. If approved by the Legislature, the proposal would be placed on the November 2016 general election ballot.

"The bail system in New Mexico is broken," Wirth said. "Defendants should never be denied bail solely because they cannot pay. And judges should not have to grant bail when the evidence clearly demonstrates a defendant is a flight risk or danger to society. This proposed constitutional amendment strikes the correct balance."

The Ad Hoc Pretrial Release Committee recommended a constitutional amendment in order to give judges the legal authority to detain the most dangerous individuals pending trial, said Leo M. Romero, the committee chairman and professor emeritus at the University of New Mexico School of Law.

"Currently, judges have been setting high money bonds to detain these individuals although neither the current New Mexico Constitution nor the rules of procedure permit a judge to set a high money bond for the purpose of preventing a defendant's pretrial release," said Romero. "A constitutional amendment authorizing detention without bail will permit judges to protect the community from those defendants who can afford to post high money bonds but yet pose the most serious risks of danger to the community."

New Jersey voters approved a similar constitutional amendment in 2014 after the New Jersey Supreme Court and its pretrial release study group determined that language in that state's constitution, which was identical to New Mexico's, did not allow for safe or fair pretrial detention decisions by judges.

The New Jersey proposal was supported by Gov. Chris Christie along with the legislative and judicial branches of state government and a broad coalition of citizens, political parties and community groups. Supporters of the New Mexico proposal look forward to the same diverse support.

"The question of whether defendants should be released 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," said Pepin. "That is a proposition that should be beyond debate and above political considerations."

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