

## **BAIL REFORM: OVERDUE AND MORE TO DO**

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Chair, NM Supreme Court Ad Hoc Committee on Pretrial Release

Reforms to New Mexico's traditional money-based bail system will make our community safer by permitting judges to lock up defendants who are most likely to commit new crimes if released. And the reforms should not be blamed for the increase in crime reported in the press. They became effective just three months ago, on July 1.

Before the reforms, dangerous defendants could buy their way out of jail by paying a bondsman. Some dangerous defendants were never released by a judge but by jail personnel if they could post the money bond set forth on a bond schedule posted at the jail. Defendants who could not post the jail bond would see a judge who would set a money bond. Defendants, no matter how dangerous, who could post the bond would be released. Those who

could not, even if charged with minor offenses, remained in jail until their trials, sometimes months or even years later.

A federal judge, in rejecting a challenge to the reforms by bonding companies, described the pre-reform bail practice in New Mexico as having “drifted into unlawful reliance on a growing money-bond industry and practices of routinely requiring money bonds that did not require judicial determinations of individual risk or ability to pay.”

The Committee on Pretrial Release reviewed bail practices and recommended an amendment to the New Mexico Constitution to permit detention of the most dangerous defendants awaiting trial and revisions to the rules of criminal procedure that minimize reliance on money bonds for pretrial release.

The voter-approved constitutional amendment permits judges to detain dangerous defendants if they pose an unacceptable risk of committing additional crimes if released. These defendants should be locked up pending trial, and the amendment now gives judges the authority to jail them without setting any bond that might be posted.

For defendants not subject to pretrial detention, the concept of bail, dating back to Medieval England, allows defendants to be

released. A defendant is presumed to be innocent until proven guilty beyond a reasonable doubt, and a person should not be punished unless found guilty after a trial. Jailing a person before trial based solely on a charge contradicts the presumption of innocence and punishes that person without determining guilt.

Pretrial release conditions should minimize the risk that defendants may commit new crimes if released – risk of danger – or skip their trials – risk of flight. These risks vary in degree depending on each individual. Some defendants present unacceptable risks and should be detained. Others pose risks ranging from low to medium to high.

Except for those who should be detained, defendants should be released under conditions that reasonably ensure they will appear at trial and not commit new crimes. The defendant has not been proven guilty, and release pending trial saves the cost of jail. Pretrial detention is justified only when no conditions will ensure the safety of the community.

The revised rules give judges the authority to revoke release if the defendant does not abide by the conditions of release or commits a new crime.

An Albuquerque Journal editorial said the new pretrial detention rules need time to show results. I agree. The reforms will require judges, prosecutors, and defense attorneys to adjust to changes from a system that relied on money bonds to a new system based on individualized assessments of risks. I am confident that the reforms will better protect our community from crime.

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