Money Bonds Do Not Protect Community Safety

By Arthur Pepin, Director, New Mexico Administrative Office of the Courts

In the heated debate about what are being called "boomerang thugs," there are some realities that cannot be ignored. The United States Constitution guarantees that all persons charged with a crime are presumed innocent until proven guilty, and New Mexico's Constitution requires the release of accused persons before trial, except in a narrow category of offenses. Our New Mexico judges have no lawful option to deny release altogether. The question they must answer is what conditions accompanying release best promote community safety and the accused's presence at trial.

The commercial money bonding practice has not proven to be best at either. It results in freeing dangerous defendants who find a way, lawful or unlawful, to come up with the bondsman's fee, despite the fact they are a predictable danger to the community. And it results in jailing poor people simply because they are unable to pay a bond, at considerable hardships to themselves and their families and expense to our taxpayers.

Courts across the country, including here in New Mexico, are considering ways in which to address these two serious failings of money bonds. Studies show that the great majority of people released are not rearrested before trial, that they appear in court when scheduled, and that requiring them to come up with money to pay for release does not increase their appearance rate.

Courts are developing evidence-based risk assessment instruments that help measure the dangerousness of defendants and the likelihood that they will appear in court. These assessments take into account a defendant's previous criminal history and other facts which help judges set appropriate pretrial release conditions. Studies evaluating these assessments indicate that low-risk defendants who promise to comply with the court's pretrial release conditions honor that promise, show up for court and avoid further criminal activity. Courts, with the assistance of pretrial services staff, can also provide additional monitoring of a defendant's locations, activities, drug use, and compliance with other conditions set by a judge.

High-risk defendants pose special problems that are not solved by money bonds. A commercial bondsman has no responsibility for ensuring that a person freed by posting a money bond will not endanger others, and a bond cannot even be forfeited if the defendant commits other crimes while released. Allowing dangerous defendants to buy their release simply does not protect the community.

The failed system of "boomerang bail bonds" is exemplified by the dangerous defendants dominating the news headlines who have previously been released by posting money bonds. To better protect our community against

dangerous defendants, our Legislature and voters would have to approve a constitutional amendment to give our judges the lawful option of denying any form of release to defendants who are truly dangerous, no matter what kind of money they can come up with. Judges in the federal courts and a number of other states have that authority, and the voters of New Jersey recently amended their constitution to give their judges the same authority.

The New Mexico Supreme Court earlier this year appointed a special committee of criminal justice experts to make recommendations to the Court and Legislature on ways our laws could be improved to allow judges to better protect both the community and the rights of citizens accused of crime, including the desirability of such a constitutional amendment. Whatever that committee determines, one thing is clear: "boomerang bail bonds" are not the answer.