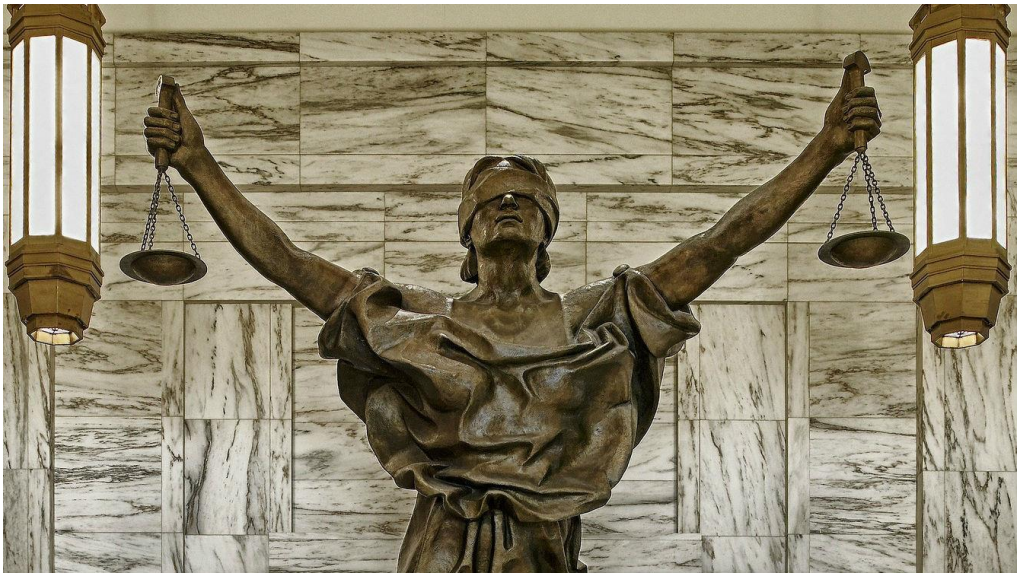
KEY FACTS AND LAW REGARDING PRETRIAL RELEASE AND DETENTION



INTRODUCTION

New Mexico, like the federal government and an increasing number of states in recent years, has been changing old dysfunctional practices to better protect public safety and improve the fairness of its pretrial justice system. Every jurisdiction that has seriously studied the problem has concluded that meaningful reforms in the way we distinguish between arrestees we hold in jail before trial and those we allow to remain free until their guilt can be determined can be accomplished only by moving from a money-based system to an evidence-of-risk-based system of release and detention.

In the past few years, New Mexico has taken two significant steps in that direction:

(1) passage in 2016 by the New Mexico Legislature (91% in favor) and New Mexico voters (87% in favor) of a constitutional amendment to give judges new authority to deny release to proven dangerous defendants -- no matter how much they can pay to buy a bail bond -- and ensuring that defendants who are neither a danger nor a flight risk may not be kept in jail before trial only because they cannot afford to buy a money bond; and

(2) issuance in July 2017 by the Supreme Court, on recommendation of a broad-based bail reform committee, of court rules to enforce the mandates of the new constitutional amendment, better protect public safety, and improve equal protection of the law.

This is a quick reference guide to key facts about those reforms.

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ORIGINAL COURT-PROPOSED CONSTITUTIONAL AMENDMENT

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

Bail may be denied pending trial if, after a hearing, the court finds by clear and convincing evidence that no release conditions will reasonably ensure the appearance of the person as required or protect the safety of any other person or the community. An appeal from an order denying bail shall be given preference over all other matters.

No person eligible for pretrial release pursuant to this section shall be detained solely because of financial inability to post a money or property bond."

CONSTITUTIONAL AMENDMENT PASSED BY LEGISLATURE AND NM VOTERS

SECTION 1. It is proposed to amend Article 2, Section 13 of the constitution of New Mexico to read:

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Bail may be denied by a court of record pending trial 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. An appeal from an order denying bail shall be given preference over all other matters.

A person who is not detainable on the grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond. A defendant who is neither a danger nor a flight risk and who has a financial inability to post a money or property bond may file a motion with the court requesting relief from the requirement to post bond. The court shall rule on the motion in an expedited manner."

[*New language added to previous constitutional language is underlined*]

REQUIREMENTS OF THE 2016 CONSTITUTIONAL AMENDMENT

1. The NM Constitution now allows district judges to deny pretrial release to dangerous defendants, requiring that pretrial release and detention decisions be based on evidence of individual risk of danger or flight, not on how much an arrestee can pay to get out of jail.

2. For the first time in NM history, district judges may now better protect community safety by denying pretrial release to dangerous defendants, no matter how much they can pay for a bond. In the past, judges had no authority to deny release to dangerous defendants who could buy a bond or make an installment payment deal with a bail bondsman.

3. As a result of an amendment in the legislative process, only a judge in a court of record (currently only district judges) has the authority to conduct a detention hearing or enter an order denying pretrial release, and may do so only after a prosecutor files a motion to detain a defendant without bail. Because of the legislative amendment, magistrate and metropolitan and municipal court judges have no authority to deny pretrial release to dangerous defendants.

4. In order to obtain an order to deny pretrial release, the prosecutor must file a detention request in district court and prove by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.

5. Low-risk arrestees who or neither a danger nor a flight risk may not be jailed pending trial (at significant taxpayer expense) solely for lack of money to buy their way out. This enforces several fundamental bases of American justice: (1) that an accused citizen is innocent until proven guilty at a trial where constitutional protections are honored; (2) that the government has the burden of producing evidence to satisfy a jury or judge that guilt has been proved beyond a reasonable doubt; (3) that bail is not pretrial punishment but is a method of releasing an accused pending trial; and (4) that all accused citizens are entitled to equal protection of the laws, no matter how much money they may or may not have.

6. Constitutional provisions must be upheld by all government officials. Statutes enacted by the Legislature and procedural rules promulgated by the Supreme Court must comply with the Constitution and all judges must support and uphold constitutional mandates in their rulings.

7. The provisions of the 2016 constitutional amendment overwhelmingly approved by the Legislature and New Mexico voters were based on federal statutes that have been expressly upheld as constitutional over 30 years ago by the United States Supreme Court in *U.S. v. Salerno*, 481 U.S. 739 (1987), and on similar constitutional reforms approved in 2014 by New Jersey voters and enacted by statute or constitutional amendment in other states.

COURT RULE UPDATES REQUIRED BY CONSTITUTION CHANGES

1. On July 1, 2017 the NM Supreme Court, on recommendation of a broad-based state bail reform committee, updated its court rules to comply with the constitutional requirements. The committee has been conducting hearings in 2018 to consider rvarious requests for rule revisions and in August 2018 submitted its recommendations and all minority views. After publication for public comment, the Court will act on the recommendations before the end of 2018.

2. The committee, chaired by a former UNM Law School Dean, included members from all branches of government; the AG's office; district attorneys; defense attorneys; county officials; commercial bondsmen; judges from various levels of courts; and a retired federal judge.

3. The amendments included evidence-based procedures for (a) conducting detention-for-dangerousness hearings (Rule 409); (b) determination of what monetary bond or other release conditions are necessary to address flight risk (Rule 401B-F); (c) clarification that fixed money-bail schedules that do not take into account evidence of dangerousness or flight risk cannot be used (401E); and (d) clarification that released defendants who fail to appear or commit new crimes or otherwise violate their conditions of release may have their release conditions strengthened or their pretrial release completely revoked (Rule 403).

4. The requirement that arrestees be released on nonfinancial conditions unless the court makes a case finding that no combination of nonfinancial conditions will reasonably assure future court appearance has been part of federal law since 1966 and NM law since 1972. Those provisions were not created by the new rules.

5. In place of the various inconsistent fixed-money-bond schedules that had been used by many local jurisdictions despite their lack of consideration of individual risk and noncompliance with controlling law, the new rules (Rule 409) also provide tighter regulation of procedures for early release procedures by detention centers and court employees, allowing standardized release of low-risk arrestees prior to initial court appearances but ending the practice of releasing high-risk defendants on fixed money schedules before they appear before a judge.

6. The rules updates do not prohibit the use of monetary bonds; they continue previous legal requirements that money bonds can be required only when needed to assure court appearance (Rule 401). Unlike a growing number of states and all nations except the U.S. and the Philippines, the new rules do not outlaw the selling of bail bonds or their requirement by a court where a money bond is determined to be appropriate in a particular case.

7. The Court has also issued opinions providing guidance on the new bail reforms. See, e.g., https://www.nmcourts.gov/uploads/FileLinks/eb6f94d85eab4a979c8b6890cea23485/Torrez_v_Whitaker_36379_J_CWD_Filed___stamped_opinion_1_11_18.pdf

WHY MONEY BONDS NEVER PROTECT PUBLIC SAFETY

1. Money bonds do nothing to protect public safety or deter a released defendant from committing new crimes while bonded out, whether against previous victims or new victims. Even worse, some defendants commit new crimes to get money to pay for money bonds.

2. A money bond's lawful purpose is not to protect public safety, but only to provide additional assurance that a released defendant will return to court. *State v. Eriksons*, 1987-NMSC-108.

3. Money bonds cannot lawfully be forfeited by a judge for commission of new crimes while out on bail because NM statutes do not "authorize[] forfeiture of bail for anything other than failure to appear." *State v. Romero*, 2007-NMSC-030. NMSA 31-3-2. No United States jurisdiction allows judges to forfeit money bonds for commission of new crimes while on release.

4. Money bonds cannot lawfully be set in an amount designed to prevent exercise of the constitutional right to pretrial release nor as pretrial punishment for the charged offenses. "Neither the New Mexico Constitution nor our rules of criminal procedure permit a judge to set high bail for the purpose of preventing a defendant's pretrial release." *State v. Brown*, 2014-NMSC-038. The same is true under controlling law in the federal constitution, as observed by the United States Supreme Court: "[R]equiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment. *Stack v. Boyle*, 342 U.S. 1 (1951); *Bandy v. U.S.*, 81 S. Ct. at 198 ("It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom.").

5. Money bonds are not required to be used as conditions of release by either the NM or the US constitutions. " 'Bail' as used in the constitutions is a broad category of nonmonetary and monetary pretrial release; money bonds are only one form of bail. Commercial money bonds did not exist until around 1900, over 100 years after the adoption of the U.S. constitution." *State v. Brown*, 2014-NMSC-038. The term "bail" includes the "process by which a person is released from custody either on the undertaking of a surety or on his or her own recognizance. . . " Black's Law Dictionary 167 (10th ed. 2014).

6. The United States Supreme Court has recognized that the federal constitution's only reference to bail, the 8th Amendment's right against excessive bail, "has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail." *Salerno v. United States*, 481 U.S. 739 (1987).

7. A bail bondsman does not enforce important pretrial release conditions such as drug or alcohol testing, curfews, preventing contact with victims or witnesses, travel restrictions, weapons restrictions, GPS monitoring, or the requirement not to commit new crimes.

FIXED MONEY BOND SCHEDULES ARE DANGEROUS AND UNJUST

1. Fixed money bond schedules neither protect public safety nor protect against flight risk, *because they can never take individual risk or criminal history into account.* They result in repetitious catch-and-release for high-risk defendants, many of whom commit new crimes to pay for their bail bonds.

2. Fixed bond schedules were never established by New Mexico laws and have been held to deny equal protection of the law to arrestees who do not have money to buy them and are jailed pretrial despite the fact they are neither dangerous nor flight risks, simply because they have less money than defendants who can find a way to buy their way out of jail. See the precedents surveyed in *O'Donnell v. Harris County*, https://www.gpo.gov/fdsys/pkg/USCOURTS-txsd-4_16-cv-01414/pdf/USCOURTS-txsd-4_16-cv-01414-5.pdf; https://cms.nmcourts.gov/uploads/FileLinks/eb6f94d85eab4a979c8b6890cea23485/Collins_v._Daniels___17cv776___Order_12_11_2017_Granting_Judicial_Defs._MTD__etc..pdf; see also http://www.ca5.uscourts.gov/opinions/pub/17/17-20333-CV0.pdf

4. County-by-county fixed bond schedules in New Mexico had created inconsistent application of state laws that treated arrestees differently in the amount of bond they were required to post, depending only on which county they were arrested in.

5. No federal or state court has ever held that fixed money bond schedules, which are inconsistent with the exercise of judicial judgment and discretion, are required by any federal or state constitution, despite repeated unsuccessful lawsuits by the commercial money bail industry.

RISK ASSESSMENTS HELP IDENTIFY DANGER AND FLIGHT RISKS

1. "A pretrial risk assessment instrument or tool provides an objective analysis of whether an arrested person is likely to appear in court and not get rearrested if released before trial. Using a pretrial risk assessment tool reduces bias and subjectivity in court decisions about who should be detained before trial and which conditions, if any, should be required of those who are released." https://www.pretrial.org/solutions/risk-assessment

2. The thoroughly-validated Arnold Public Safety Assessment is the recognized leader for risk assessment instruments and has been used successfully in many states to improve public safety and avoid unnecessary taxpayer-funded detention of low-risk arrestees.

http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/public-safety-assessment/

http://www.ncjp.org/pretrial/universal-risk-assessment

https://mobile.nytimes.com/2015/06/27/us/turning-the-granting-of-bail-into-a-science.html

http://www.ncjp.org/pretrial/universal-risk-assessment

https://www.wired.com/story/bail-reform-tech-justice/

https://ww2.kqed.org/news/2017/09/27/bail-or-jail-tool-used-by-san-francisco-courts-shows-promising-results/

3. The New Mexico July 2017 amendments provide in Rule 401 that judges should consider, although not be controlled in their release and detention decisions by, the results of a Supreme Court-approved risk-assessment-instrument. Although no instrument has yet been fully tested and approved for statewide use, a pilot project using the validated and nationally recognized Arnold PSA has been authorized in Bernalillo County. In 2018, after analyzing the results of this project in improving judicial predictions of dangerousness and flight risk, the Supreme Court will determine whether to authorize use of the Arnold PSA in courts elsewhere in New Mexico.

4. Risk assessment algorithms, which consider statistically-validated predictive factors, such as prior criminal history and record of attendance at court proceedings, are an additional evidence-based tool, but do not replace consideration of all other relevant factors in an individual case.

5. One advantage of the Arnold PSA, in addition to its nationally-proven success in better predicting dangerousness and flight, is that it does not require personnel and funding to conduct individual interviews of arrestees to obtain the necessary information for its use. The background data is quickly available from computerized court and law enforcement databases.

NEW COURT RULES HAVE NOT CAUSED HIGHER CRIME RATES; CRIME RATES HAVE DECREASED SINCE THE 2017 AMENDMENTS

1. The 2016 constitutional amendment and the July 2017 Rules that enforce the constitution's requirements were written to better deal with the real crime problems that New Mexico has faced for years; they did not ccreate or worsen those problems.

2. Crime rates in the Albuquerque area, for example, had risen significantly from 2010 through 2016, during the time that dangerous defendants were able to rotate in and out of jails and courts on catch-and-release money bonds. None of that crime rate can be attributed to the *later* adoption of the November 2016 constitutional amendment or the July 2017 procedural rule amendments. In fact, Albuquerque crime rates began a substantial *decline* in mid-2017 that continued in 2018. Crime rates throughout New Mexico have fallen since mid-2017, when the reforms took effect.

3. Because of the new constitutional authority and court rules, prosecutors now have new authority in Rule 409 to request, and district judges have new authority to order, pretrial detention of dangerous defendants, no matter how much they can pay for a money bond.

4. New provisions in Rule 403 as of July 2017 now provide all judges the explicit authority to amend conditions or to revoke pretrial release entirely for defendants who commit new crimes or violate other restrictions while released, to address the past problems of repetitious catch-and-release money bonds.

5. New provisions in Rule 12-204 provide new authority for both prosecutors and defense counsel to appeal pretrial release and detention decisions and obtain prompt rulings. This appellate review not only provides a check on potential misapplication of the law in individual cases, it allows the appellate courts an opportunity to issue precedential guidance.

6. The New Mexico reforms were modeled after provisions of law in other states, the federal courts, and the District of Columbia, that have been found to better protect public safety while ensuring that taxpayer-supported jail space is not used for low-risk defendants. *See*, *e.g.*, http://www.cleveland.com/metro/index.ssf/2016/05/how_dc_court_reforms_save_398.html (reporting that as a result of D.C.s successful reforms, "85 percent of defendants are released without bail, 90 percent of them show up for their court dates, and 91 percent of them stay out of trouble while free", while "the district saves at least $398 million . . . a year by releasing defendants into supervision programs that are far less expensive than keeping the defendants behind bars"); and http://www.northjersey.com/story/opinion/contributors/2017/09/26/new-jersey-sets-example-data-driven-justice/704371001/ (reporting law enforcement data from the first six months of New Jersey release and detention reforms that went into effect January 1, 2017 showing that "the state's jail population has fallen by 15.8 percent, while crime has decreased 3.8 percent and violent crime by 12.4 percent").

EARLY RELEASE IS NOW BASED ON LOW RISK AND NOT MONEY

1. The fixed-money-bond schedules that some local detention centers were allowed by local courts to administer in the past not only were created in the absence of any explicit state law and in contravention of the individual assessments required by the bail rules since 1972, they varied from county to county, creating inconsistent treatment of arrestees for the same offenses that depended on which side of the county line a person was charged.

2. NM Courts have had the authority since 1972 to appoint designees (under a single sentence in old Rule 401) to administer early releases, which had been done either through ROR programs assessing individual risk or, in applications of questionable legality in parts of the state, early release from detention centers on fixed-money-bond schedules that disregarded the individual risk determinations required since 1972 in Rule 401.

3. On recommendation of the bail reform committee, the Supreme Court issued new Rule 408 to provide guidelines and ensure consistent application of delegated early release authority.

4. Rule 408(B) allows courts to delegate early release authority to county detention facilities, but only for low-risk arrestees in identified misdemeanor cases, and only if they are not already on pretrial release, probation, or parole. No arrestee may be released under these provisions while a prosecutor's detention motion is awaiting a ruling or after a court orders pretrial detention.

5. The Administrative Office of the Courts has issued a model delegation order that standardizes and clarifies the scope of delegations of early release authority to release those low-risk misdemeanor arrestees. Its standardized guidelines neither allow nor require any exercise of discretion or judicial decision-making by detention center employees.

6. Rules 408 (C) and (D) will allow future use of court-approved validated risk assessment instruments and court-supervised ROR programs for early release of other low-risk defendants, which will not burden detention center personnel with making discretionary judicial decisions. Decisions in those cases will be made by court officials working under court-approved guidelines, based on specific risk-relevant facts relating to each arrestee. The judiciary is now conducting a pilot project for remotely operated evidence-based ROR programs for courts and jails throughout the state to provide timely screening rand elease of low-risk arrestees, as well as to identify high-risk offenders who should not be released before their court appearance.

7. All these early release provisions are designed to release only low-risk defendants before court appearance, unlike the old fixed money bond schedules that allowed even high-risk defendants to buy their way out of jail before ever seeing a judge and kept low-risk defendants in jail at taxpayer expense simply for lack of money to buy a money bond.

NM BAIL REFORMS ARE PART OF NATIONAL REFORM EFFORTS

1. The federal government began modern bail reform with the Bail Reform Act of 1966, requiring release on nonmonetary conditions unless financial security is required to assure court appearance in individual cases. Many states, including NM in 1972, modeled their bail rules on the federal reforms. Compare federal 18 U.S. Code § 3142 with New Mexico Rules 401 and 409.

2. The federal government enacted the Bail Reform Act of 1984 to better protect public safety by authorizing federal judges to deny pretrial release for defendants on a showing of clear and convincing evidence of dangerousness. *Salerno v. United States*, 481 U.S. 739 (1987). It was not until the Legislature and voters passed the 2016 constitutional amendment that the NM Supreme Court could issue rules allowing judges to deny release based on dangerousness.

3. States throughout the country are engaged in bail reform efforts like those in New Mexico:

https://newsroom.courts.ca.gov/news/chief-justice-workgroup-money-bail-is-unsafe-and-unfair

http://www.azcentral.com/story/news/local/arizona/2017/06/21/arizona-courts-back-away-cash-bail-system-bond-companies-worried/400209001/

http://www.npr.org/2016/12/17/505852280/states-and-cities-take-steps-to-reform-dishonest-bail-system

http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/01/locked-up-is-cash-bail-on-the-way-out

http://www.governing.com/topics/public-justice-safety/gov-bail-reform-texas-new-jersey.html

4. Justice system participants throughout the country support bail reforms like NM's:

https://mailchi.mp/pretrial/prosecutors-turn-away-from-money-bail?e=944dcefd04

http://www.theiacp.org/portals/0/pdfs/Pretrial_Booklet_Web.pdf (Intl. Assn Chiefs of Police)

http://www.sheriffs.org/sites/default/files/uploads/documents/2012resolutions/2012-6%20Pretrial%20Services.pdf (National Sheriffs Association)

http://ccj.ncsc.org/~/media/microsites/files/ccj/resolutions/20170809-supporting-federal-efforts-promote-pretrial-risk-assessment.ashx (National Conference of Chief Justices)

https://1newsnet.com/aba-house-supports-bail-reform-other-criminal-justice-measures/ (ABA)

http://lawenforcementleaders.org/wp-content/uploads/2017/09/Press-Release-for-Pretrial-Integrity-and-Safety-Act.pdf (Law Enforcement Leaders)

FEDERAL & STATE COURTS UNIFORMLY UPHOLD BAIL REFORM

1. The Federal Bail Reform Act of 1984, on which N.M. bail reforms are modeled, was upheld by the U.S. Supreme Court in *U.S. v. Salerno*, 481 U.S. 739, 754-55 (1987), holding that when a government's "interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more" and that when reforms require "detention on the basis of a compelling interest other than prevention of flight [such as protecting the community] the Eighth Amendment does not require release on bail."

2. Kentucky explicitly outlawed commercial bail bond companies from doing business in the state in 1976. Commercial bail bond companies brought a series of constitutional challenges to the statutory prohibition, all of which were rejected by federal and state courts. *See, e.g., Johnson Bonding Co*., 420 F. Supp. 331, 337 (E.D. Ky. 1976); *Stephens v. Bonding Assn. of Kentucky*, 538 S.W.2d 580, 584 (Ky. 1976) (rejecting constitutional challenge to legislation that "[i]nstead of letting commercial sureties 'die on the vine,'" determined to force "commercial bonding companies as surety for profit to go quickly and 'gently into that good night.'"); *Benboe v. Carroll*, 494 F. Supp. 462, 466 (W.D. Ky. 1977) (awarding attorneys' fees to defendants as a result of plaintiff bail bond companies repeated, unsuccessful, and meritless constitutional challenges to Kentucky's prohibition of commercial bail bond companies).

3. In *Schilb v. Kuebel*, 404 U.S. 357, 359-360 (1971), a unanimous US Supreme Court upheld Illinois bail reforms that eliminated use of commercial bail bonds: "Prior to 1964 the professional bail bondsman system with all its abuses was in full and odorous bloom in Illinois. The Court rejected challenges to the reforms, stating "[w]e refrain from nullifying this Illinois statute that . . . has brought reform and needed relief to the State's bail system." Id. At 372.

4. In 1979 Wisconsin outlawed the selling of commercial bail bonds entirely. In *Kahn v. McCormack*, 299 N.W.2d 279, 281 (Wis. Ct. App. 1980) the Wisconsin Court of Appeals rejected a challenge to the constitutionality of the reforms, holding that the state "could in the exercise of its police power, reasonably conclude that outlawing the bail bonding business is in furtherance of the public welfare."

5. The Oregon Court of Appeals in 1974 rejected a bond industry lawsuit and upheld 1973 Oregon bail reforms modeled on the Illinois reforms addressed *in Schilb, supra*. "Nowhere does [the constitutional right to bail] say that lawful release of a defendant may be accomplished only through the medium of sureties. Were this contention sound, release of a defendant on his own recognizance or by any other means would be constitutionally prohibited – an obvious absurdity." *Burton v. Tomlinson*, 527 P.2d 123, 126 (Or. Ct. App. 1974).

6. No court challenge to any of the kinds of reforms in New Mexico's 2016 constitutional amendment or 2017 court rules has ever been upheld in any federal or state court.

INDUSTRY LAWSUITS IN NM AND NJ DECLARED GROUNDLESS

1. The most recent anti-reform lawsuits were filed in 2017 by the commercial bail industry and their allies in federal courts in New Jersey (*Holland v. Rosen*, Case 1:17-cv-04317, D.N.J, filed June 14, 2017) and in New Mexico (*Collins v. Daniel* [sic], Case No. 1:17-cv-00776, D.N.M, filed July 28, 2017). In both suits, the commercial bail industry and a few allies sought to block recent pretrial release and detention reforms that now permit pretrial detention of clearly dangerous defendants, no matter how much they could pay for a bail bond, and that prohibit requirement of a monetary bond for accused individuals who are neither a danger nor a flight risk. As the New York Times noted in an August 2017 article, New Mexico and New Jersey found themselves "facing a challenge familiar to others that have overhauled their bail systems: an energetic legal attack from the bail industry."

2. In the New Jersey case, the federal court has issued an extensive opinion denying the bond industry's requests for an injunction against New Jersey's bail reforms. In that opinion, the court exhaustively traced the law and facts and determined that the bail industry's claims had no legal substance and it was likely to lose on all relevant merits once the case was concluded. https://cms.nmcourts.gov/uploads/FileLinks/eb6f94d85eab4a979c8b6890cea23485/Order_Denying_Injunction_in_New_Jersey_Bail_Reform_Lawsuit.pdf

3. The federal court in the New Mexico case, with an out-of-state senior judge assigned, rejected the bond industry's similar requests to block or reverse New Mexico's bail reforms. As in the New Jersey ruling, the court exhaustively traced the law and facts and determined that the bail industry had filed a patently meritless lawsuit. In thorough written opinions, the federal court denied the industry's request for an injunction, dismissed the New Mexico anti-reform lawsuit in its entirety, and also denied the commercial bail industry's motion to amend to add yet more legal theories the court ruled were groundless. The judge then imposed significant monetary sanctions on the industry's attorney for maintaining a frivolous lawsuit. https://cms.nmcourts.gov/uploads/FileLinks/eb6f94d85eab4a979c8b6890cea23485/Collins_v._Daniels___17cv776___Order_12_11_2017_Granting_Judicial_Defs._MTD__etc..pdf; https://www.abqjournal.com/1105441/judge-dismisses-federal-lawsuit-over-new-bond-rules.html; https://nmcourts.sks.com/uploads/FileLinks/eb6f94d85eab4a979c8b6890cea23485/Collins_v._Daniels___17cv776___Order_1_4_2018_Granting_Motion_for_Rule_11_Sanctions__1_.pdf

4. The commercial bail industry appealed the New Jersey and New Mexico federal rulings, just as it has appealed most of the court rulings elsewhere rejecting meritless legal challenges to bail reforms like New Mexico's. In over forty years of state and federal litigation the industry has never prevailed on a single one of the appeals, although it has repeatedly used the pendency of its legal challenges as talking points in media and political efforts to overturn bail reforms. The federal court in the New Jersey case rejected the industry's appeal in July 2018. http://www2.ca3.uscourts.gov/opinarch/173104p.pdf. A similar federal appellate ruling in the New Mexico case upholding the federal district court dismissal is expected by the end of 2018.