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# New Mexico Votes To Reform Bail System That Jails People Just Because They're Poor

## But reformers say the measure isn't strong enough.

By Nick Wing

New Mexico voters approved a constitutional amendment on Tuesday that will change the way judges in the state use bail to determine how — or if — to release defendants while they await trial.

[Constitutional Amendment 1](#) gives judges the authority to deny bail to defendants whom prosecutors determine to be too dangerous to be out before trial. It also prohibits the detention of defendants who aren't deemed dangerous or a flight risk "solely because of financial inability" to pay bail. For those who claim to be too poor to afford bail, the measure lays out a process by which they "may file a motion with the court requesting relief from the requirement to post bond."

The amendment doesn't say exactly when that process would take place, however, which has led to questions about whether the system will force defendants to remain in jail while they wait to prove their indigence.

Some bail reform supporters said the [amendment doesn't go far enough](#), and that the state should do more to reform existing bail practices that have benefited the for-profit bail bonds industry. Under the current system, judges in New Mexico often set a defendant's bail high to keep him or her in custody. But this doesn't guarantee that a truly dangerous defendant won't be able to bail out. Some individuals may be wealthy. Others turn to bail bonds companies, which bail out clients in exchange for a nonrefundable premium (usually 10 percent of the bond) that can be paid over time.

But in many cases, poorer defendants can't post a bond of any amount, so they stay in jail until trial. This takes a disproportionate toll on communities of color and the mentally ill, leaving many people facing only low-level charges behind bars on small bail amounts, when they could instead be safely released on non-monetary conditions.

Just a few days behind bars can have disastrous consequences, causing defendants to lose employment or access to benefits or other support systems. In some cases, just getting booked into jail [ends up being fatal](#). And many defendants are [left to languish behind bars](#) for weeks, months or even years.

In 2010, New Mexico inmates who remained in jail while waiting for trial [spent a median of 147 days behind bars](#), according to a report from the New Mexico Association of Counties. Defendants arrested and jailed while awaiting trial on misdemeanor charges were locked up for a median of 80 days.

This is a problem around the nation. U.S. taxpayers pay an [estimated \\$9 billion](#) each year to incarcerate hundreds of thousands of people who haven't been convicted.

New Mexico's initiative follows statewide bail reform efforts in Colorado, Illinois, Kentucky, New Jersey and Oregon, which have all prompted broader scrutiny over the reliance on cash bail. Reformers say the solution is to eliminate cash bail entirely. They believe making defendants pay to get out of jail before a determination of guilt violates the promise of equal access to justice under the U.S. Constitution and conflicts with [federal standards](#) that require judges to impose the least restrictive release conditions that assure community safety and a defendant's return to court. Instead, they say judges should make release decisions based on formal risk assessments provided by pretrial experts. These holistic reviews take into account a defendant's potential dangerousness and likelihood to jump bail or get re-arrested before trial. Judges can then use these objective analyses to either hold a defendant without bail, or to set non-financial conditions for release.

Cities like Washington, D.C., have done away with monetary bail entirely, meaning that between 85 and 90 percent of people arrested in the nation's capital are released without financial conditions. The most dangerous defendants don't get a chance to buy their freedom. But many of those facing low-level charges are free to go only on the promise that they'll return for future court dates. Others are placed under the supervision of the city's pretrial services agency, which monitors defendants who are out on more restrictive conditions. Around [90 percent of defendants](#) in Washington, D.C., show up for their court dates, and 91 percent make it through their trials without getting arrested again.

Because New Mexico's constitutional amendment is more limited, legal groups like New Mexico's American Civil Liberties Union and Criminal Defense Lawyers Association said they weren't confident the measure would be forceful enough to prevent judges from using cash bail to keep poor defendants in jail.

"Particularly when it concerns a constitutional change, the instruction has to be absolutely crystal clear, and this ballot measure language is anything but," Peter Simonson, executive director of the ACLU of New Mexico, told HuffPost in an interview last month. "We think the bail bond industry ultimately corrupted the original language in a way that opens up loopholes for the same worrisome situation to continue into the future."

But New Mexico Supreme Court Chief Justice Charles Daniels, the state's foremost critic of monetary bail, says the amendment will allow him to take aggressive action against current bail practices.

"This language provides something a whole lot better than the status quo," Daniels told HuffPost. "I fully expect a couple of years from now that [bail reform groups] will be inviting me to some banquet to tell me, 'We were wrong, you were right.'"

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