

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 Asso. 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 court in any jurisdiction.