

FREQUENTLY ASKED QUESTIONS

Why are criminal defendants released from jail while awaiting trial?

Under the American system of justice, people charged with a crime are presumed innocent until proven guilty. The New Mexico Constitution has guaranteed since statehood that people charged with a crime have a right to be released pretrial, except in limited instances. By allowing a person to remain free while awaiting trial, the state avoids punishing a person awaiting a determination of guilt – a fundamental principle of our justice system.

What changed because of a constitutional amendment in 2016 to reform New Mexico's pretrial release and detention system?

For the first time in state history, district court judges can lawfully hold felony defendants in jail before trial if they are shown to be too dangerous for release. The constitution also ensures that defendants who are not dangerous or a flight risk cannot be held in jail pretrial solely because they cannot afford a bail bond.

How can a defendant be detained pretrial?

Pretrial detention of a defendant may occur only if a prosecutor files a written request with the court and proves by clear and convincing evidence that pretrial jailing is necessary for the public safety. Judges cannot initiate a preventive detention proceeding. Only people charged with a felony – not a misdemeanor – are subject to possible pretrial detention. The constitution requires that a detention order be issued by a “court of record,” which currently means a district court and not the magistrate, metropolitan and municipal courts.

What kind of evidence is required at a detention hearing?

The New Mexico court rules were updated in July 2017 to provide guidance for conducting detention hearings permitted by the new constitutional provisions and were modeled on detention procedures used in federal courts and those in the states that have adopted similar reforms. Under new Rule 5-409, the formal rules of evidence do not apply as they would at a full trial, and a judge may rely

on any information that is deemed reliable. A fuller description of the evidentiary requirements may be found in the Supreme Court's announcement of its ruling in [Torrez v. Whitaker](#).

Why change the previous bail system that relied on money bonds?

The previous system jeopardized public safety. Dangerous defendants could return to the streets if they could afford a money bond under previous bail practices. In some instances, dangerous defendants could gain their release from jail shortly after their arrest without first appearing before a judge. That is because certain defendants could post a bond at the jail in a fixed-dollar amount based on the charged offense. In contrast, defendants who posed no danger or flight risk would remain in jail pretrial if they lacked the money for a bail bond. Equal justice is a right for all people, not a privilege for those with money. Unnecessary pretrial detention of low-risk defendants who cannot afford a bond leads to higher rates of conviction, often from guilty pleas by defendants hoping to gain their release from jail; longer sentences; and increased recidivism. Reforms under way in New Mexico move from a money-based system of bail to one in which pretrial release and detention decisions are based on evidence of the public safety risk posed by a defendant and the risk that a defendant will fail to appear in court.

What is the purpose of a money bail bond?

The only purpose of a bail bond is to provide a financial incentive for a defendant to return to court. Requiring defendants to post a money bond does not deter them from committing new crimes while awaiting trial. Under state law, a commercial money bail bond is not forfeited if a defendant is arrested for a new crime while released pretrial on another charge. A commercial money bond cannot be forfeited if a defendant violates conditions of their release such as failing a drug test, obtaining a weapon or violating curfew.

What is bail?

The term “bail” refers to the broad categories and conditions of pretrial release for criminal defendants. State bail rules since 1972 have required the pretrial release of defendants on the least restrictive conditions necessary to reasonably

assure their return to court and protect public safety. This places a priority on nonfinancial release options, such as personal recognizance or an unsecured appearance bond in which defendants are obligated to pay a certain amount to the court if they fail to return for future court appearances. A commercial money or surety bond is one form of bail. Before imposing a money bond, courts must consider nonfinancial bail conditions, such as requiring “house arrest” to confine the defendant to a residence and a GPS ankle monitor to track the person’s location, and barring any contact with the crime victim.

Why did the Supreme Court approve new rules on pretrial release and detention?

Court rules spell out procedures and deadlines for judges, prosecutors and defense attorneys in criminal cases, such as when a request is filed to detain a defendant. Rules governing the pretrial release and detention of defendants have been updated to comply with the constitutional amendment, and the revisions went into effect on July 1, 2017. The rules do not establish new law, but only implement the requirements of the constitution and state statutes.