Changes in bail system beneficial

By Jeff Clayton / Executive Director, American Bail Coalition

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There has been a lot information – and misinformation – written about New Mexico’s new constitutional amendment on bail. Therefore, it is important to understand just what happened and what the amendment will actually mean for the state. As a person on the front line of this issue, I wanted to share my thoughts on the ramifications of this amendment.

First, the idea that bail bondsmen or monetary conditions of bail is somehow going away is not the case. Of course, it was Justice Charles Daniels’ desire to implement a no-money bail system like the one in Washington, D.C. However, he was unsuccessful in his lobbying efforts with the Legislature to get it passed this year.

Ultimately, Daniels was able to negotiate the language in the compromise version of the New Mexico constitutional amendment that preserved the use of monetary bonds and jail house bond schedules. This compromise subsequently passed the state Legislature 67-0 and was approved by an overwhelming majority of voters.

Notably, it did not implement the no-money bail system — a component that was a major reason for Daniels’ original political coalition to break apart, with many groups making the choice to oppose the amendment. The compromise also had the effect of overruling his own earlier decision, which stated that no one could be held on bail they cannot afford, which practically speaking, banned all monetary bail.

Next, the amendment created a constitutional right to a hearing for individuals being held in jail to determine if their bail is beyond reach and/or without justification. That is a decided improvement in the system, making New Mexico the first state to offer an expedited bail review hearing as part of its Constitution.

Lastly, the amendment expands the use of preventative detention in serious criminal cases. This means judges and prosecutors now have greater authority to detain defendants in jail with no bail.

In abandoning Daniels’ attempt to implement the Washington, D.C. system on New Mexico, the state Legislature made the denial of bail an option in more cases. But it did not specify this as the sole reason a person could be held in jail pending trial.

This was a critical point in the compromise. Under the system that Daniels wanted, prosecutors would have had to hold a mini-trial prior to every case in which a person was to be held in jail pending trial. Under the new compromise, prosecutors can select cases where they feel this is necessary. Judges are then left to set reasonable and appropriate monetary and non-monetary conditions of bail on the remaining cases.

This saves the state millions of dollars that would have been wasted on more judges, prosecutors and public defenders.

Daniels has rightfully taken a lot of heat for what seemed to be a conflict of interest. While active as sitting judge, he directly lobbied the state Legislature on a substantive matter of criminal law.
Yet, credit must be given where it is due. At the end of the day, the compromise that he helped broker (along with representatives of the bail industry and others in the criminal justice system), offered an elegant solution to a portion of the most important issues we are seeing with bail around the country. It offered some real answers to the questions concerning how to deal with dangerous defendants, who may also be poor.

At the same time, it respects the history and tradition of bail in New Mexico and our country at large.