Santa Fe bail bondsman Charles Archuleta recently traveled to Texas to nab a client who had failed to appear in court on a drunken driving charge. (Eddie Moore/Journal)

SANTA FE, N.M. — Facing his second drunken driving charge in two years and a bench warrant for failing to comply with the sentence in his first DWI case, Jose Alberto Flores fled the state.

Flores didn’t have much to worry about when it came to law enforcement. It rarely tries to track down fugitives wanted on misdemeanor charges like DWI. Also, like other states, New Mexico doesn’t generally seek extradition of misdemeanor fugitives.
But Flores still had someone looking for him: his bail bondsman, Charles Archuleta, who runs the Santa Fe office of Gerald Madrid Bail Bonds.

For a $250 fee, Archuleta had posted a $2,500 bond to get Flores out of Santa Fe County jail in the second DWI case and faced the possibility of losing the $2,500 if Flores wasn’t apprehended.

“If I’m responsible for the guy, I take it seriously,” Archuleta says. “I’m going to go get him.”

He did – without incident – tracking Flores to a trailer home in Texline, Texas, handcuffing him, driving him back to Santa Fe and turning him over to law enforcement so he could be tossed in jail. And, Archuleta says, “It didn’t cost the state of New Mexico a dime.”

Flores, 43, pleaded guilty in September to DWI-second offense in state Magistrate Court and was ordered to serve 16 days in jail in lieu of paying fines and fees.

Bail bondsmen say their role in nabbing absconders – at no expense to taxpayers – is one of the benefits of requiring that defendants post commercial bail in order to be released from jail prior to trial.

“We provide hundreds of jobs, pay millions in taxes, provide community safety and get people to court so justice can be done,” says Albuquerque bail bondsman Gerald Madrid, president of the Bail Bond Association of New Mexico and a member of a family with three generations in the bail business across the state.

There are about 50 bail bond companies in the state, including more than a dozen in Albuquerque, and competition is intense, with some companies offering deals of little or no money down to get defendants out of jail. The companies, which make their money from fees, seldom have to forfeit bonds, but say that’s because they are good at getting clients to court.

But the industry is under siege and is perhaps the most outspoken opponent of the state Supreme Court’s push for changes that allow the release of many nonviolent defendants without having to post commercial bail and would permit judges to keep some defendants in jail without bond pending trial if they were deemed to be a serious safety risk.

The bail debate has also figured into the recent wave of shootings of police officers in the metro area and what critics are calling a turnstile justice system.
are released

Appearing last month at a meeting of the Legislature’s Courts, Corrections and Justice Committee, Supreme Court Justice Charles Daniels said that, under the current bail system, dangerous criminals are being released on bond, while defendants who aren’t likely to reoffend or flee are being held in jail because they don’t have the money to hire a bondsman to post bail.

Because of efforts by the Supreme Court to reshape New Mexico’s bail system, judges across the state are requiring fewer criminal defendants to post commercial bail pending resolution of their cases. In a landmark decision in 2014, the Supreme Court reaffirmed:

• A defendant must be released pending trial on the least restrictive conditions necessary to reasonably assure the person’s appearance in court and safeguard the public. In setting pretrial release conditions, judges have a range of options, including requiring a defendant to submit to alcohol and drug tests, and wear a tracking bracelet.

• Whenever possible, a defendant should be released on personal recognizance or upon the execution of an unsecured appearance bond, which is a promise by the defendant to pay a certain amount of money should the person fail to appear in court.

• A judge can require a defendant to post a secured bond either individually or through a bail bondsman only if other release conditions won’t reasonably assure the person’s appearance in court and safeguard the public. Secured bonds are backed by collateral, such as property or cash.

Last month, the Supreme Court also published proposed additions to its rules on bail. Under those proposals:

• So-called jailhouse bond schedules would be explicitly prohibited. The schedules, which are set by judges, establish uniform amounts of commercial bond that must be posted for certain crimes. The Supreme Court estimates that about half the state’s courts are using bond schedules, despite a requirement that judges assess each defendant for flight risk and danger to the community in setting pretrial release conditions.

• Judges would be required to use a risk assessment tool approved by the Supreme Court to determine what pretrial release conditions would reasonably assure a person’s appearance in court and safeguard the public. Judges are already required to consider several other factors, including the seriousness of the offense and a defendant’s criminal history.

• Defendants who score low on the risk assessment tool could be automatically released from jail without having to post bond or see a judge. Defendants charged with domestic violence, drunken driving, stalking, negligent use of a deadly weapon and other crimes wouldn’t be eligible.

Finally, the state Supreme Court has proposed an amendment to the state constitution that would prohibit defendants from being held in jail pending trial solely because of an inability to post a secured bond.

Also under the proposed amendment, a judge could deny bail to a defendant if the judge found 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.” Currently, a judge can deny bail only in some first-degree murder cases and in limited cases where a defendant has been previously convicted of one or more felonies.

The state District Attorney’s Association supports the proposed constitutional amendment in part because judges need the option to deny bail to dangerous offenders, says association president Robert “Rick” Tedrow, district attorney in Farmington.

Tedrow says the association also recognizes that it is a violation of the U.S. Constitution for a person to be detained pending trial solely because of a financial inability to post a secured bond.

“As D.A.s, we want to pride ourselves on doing what is right,” he says. “We don’t have debtor prisons anymore.”

The New Mexico Criminal Defense Lawyers Association has also endorsed the amendment.

The association “recognizes the current system allows dangerous people with resources to bond out of jail while...
thousands of nondangerous citizens are held for months, even years, waiting for trials that have nothing to do with violent conduct at all,” says Matt Coyte, the group’s president. “These people, held on bonds they cannot afford, fill our jails at great expense to the taxpayer and yet violent crime remains unabated.”

**Fairness issue**

It’s a Tuesday afternoon in state Magistrate Court in Santa Fe, and Judge George Anaya Jr. is plowing through about 20 first appearances and arraignments for people who had been arrested and jailed over the previous day or so on felony and misdemeanor charges. As part of the process, Anaya sets bail for the defendants.

For those accused of violent felonies, Anaya requires they post bond through a bail bondsman. Most of the others, including accused drunken drivers and shoplifters, are freed from jail on unsecured appearance bonds.

“We’re keeping a lot of nonviolent offenders out of jail,” Anaya says. “That saves the county money.”

Supporters of bail reform also say defendants who are unable to post commercial bond and remain jailed might lose their jobs or miss school. Families of defendants also suffer and can lose their homes, they say. Studies show that defendants who can’t make bail are more likely to plead guilty (sometimes just to get out of jail), more likely to serve longer sentences and more likely to reoffend.

“Spending time in jail makes criminals when they don’t need to be there,” Justice Daniels told the Courts, Corrections and Justice Committee.

The Supreme Court says studies show that a judicial system that doesn’t require low-risk defendants to post commercial bail can be just as effective in protecting the public and in getting defendants to appear in court. A handful of other states have outlawed commercial bail or severely limited its use.

Sen. Peter Wirth, a Santa Fe Democrat who is sponsoring the court’s proposed constitutional amendment on bail, says it’s unfair to keep a person jailed because he can’t post a bond, while another person charged with the same crime is freed because he has the money to pay a bondsman.

“We’ve equated risk in the bail system with the ability to pay,” Wirth told the Courts, Corrections and Justice Committee.

The Legislature will consider the proposed amendment in its session beginning in mid-January. If approved, it would go to voters in November.
Helping police

Bail bondsmen are regulated by state law and are permitted to charge a 10 percent fee to post a bond. Some companies allow fees to be paid in installments.

Judges can require that a bond be forfeited if a defendant fails to appear in court, but judges typically give bondsmen time to round up their clients. In one recent case, an Albuquerque judge gave a bonding company more than a year to track down a man accused of domestic violence. The man is now jailed awaiting trial.

The defendant and a cosigner, which could be a family member or friend, agree to pay the full amount of the bond to the bondsman should the defendant flee and a judge order a bond be forfeited. A defendant or cosigner can also be required to provide collateral, which can be seized.

Madrid, president of the Bail Bond Association of New Mexico, says bondsmen would rather have their clients appear in court than try to recover the amount of a forfeited bond from a cosigner. “It’s easier said than done to get money out of people,” he says.

Bondsmen say that having to post commercial bail encourages defendants to appear in court and that they track their clients and advise them when they need to appear. They say New Mexico already has a crisis with defendants failing to appear in court and question who’s going to go after those defendants who abscond after being released from jail without having to post commercial bail.

As of mid-October, nearly 22,000 bench warrants were pending statewide for defendants failing to appear in court, according to the state Department of Public Safety. How many of those warrants were for people who posted bond through a bondsman is unknown. Studies show that people charged with minor crimes, such as traffic offenses, are the most likely to fail to appear in court.

“Given the shortages in law enforcement, you would think judges would welcome the bail bondsmen. … Bail bondsmen have a significant motivation to go track down these guys and bring them to justice,” says Darren White, former Bernalillo County sheriff and ex-secretary of the state Department of Public Safety.

Like supporters of bail reform, bondsmen have studies to support their position. A study published in the Journal of Law and Economics in 2004 found defendants released on surety bonds – those are bonds whose payment is guaranteed by a third party, such as a bondsman – were less likely to fail to appear in court and less likely to remain at large for an extended period of time.