

Nov. 5, 2018

Make Michigan's Bail System Smarter, for All of Us

By Kahryn Riley

Summary

Michigan courts set bail requirements for criminal defendants, but do so without much precision. The results include ruined lives and needless taxpayer expense.

Main text word count: 728



It's time to make Michigan's bail system work better.

Like it or not, finances and incarceration are linked. Operating prisons and jails impose visible expenses on taxpayers, but incarceration imposes a host of other costs on the incarcerated. These costs also weigh on the workforce and compromise public safety. A more subtle link between money and incarceration is the way a defendant's finances shape the outcome of his criminal case.

There's usually a delay between the time when someone is charged with a crime and the case goes to trial. Defendants — except those credibly accused of the most serious crimes, such as murder and first-degree criminal sexual conduct — have the right to await their trial at home. But trial judges are allowed to place conditions on defendants, and may require them to stay in jail if they break those conditions. Those terms might include travel restrictions, drug testing, no-contact orders or electronic monitoring, but the most common requirement is to post money bail.

Money bail is meant to give a defendant the incentive to return to court for trial and to desist from bad behavior in the meantime. Ideally, the judge has enough information to charge just enough money. But that usually doesn't happen. Instead, judges are forced to rely on the seriousness of the charges and their personal impressions of the defendant's demeanor in a bail hearing, which often lasts less than a minute. As a result, a judge may set the bail amount too high, and even relatively modest bail amounts are often out of reach for indigent defendants, who must then await trial in jail. How often does this happen? Experts estimate that between 40 and 60 percent of jail inmates statewide are legally innocent people who couldn't afford to make bail.

Three conclusions follow. First, Michigan's bail system produces two outcomes: one for people with money, and one for people without. People charged with very serious crimes go free if they have enough money, while others charged with minor offenses serve the punishment reserved for guilty people, even though they are legally innocent.

Second, the bail system currently cannot achieve its stated goals. While its purpose is to ensure court appearances and good behavior, judges often rely merely on the seriousness of the charged offense when setting bail. In contrast, research-backed factors, such as a defendant's age at first arrest, can help judges objectively assess a defendant's individual risk of

committing crimes or failing to appear. When findings on these factors are left out, many defendants who could be safely released with little or no money bail end up facing unaffordable amounts that keep them needlessly behind bars.

Finally, the negative outcomes for individual defendants have consequences for all of us. When a defendant's freedom rests on his ability to pay, it creates the perception that the judicial system is stacked in favor of the wealthy. That poisons the respect government must command if it is to function. And when so many defendants are entitled to release but cannot afford bail, the county must house them in jail. Taxpayers must then spend more than a hundred dollars per person per day, and jails are not allowed to recoup their costs from pretrial inmates. Moreover, people who are incarcerated for want of a few hundred dollars' bail are likely to lose their job or housing quickly, which could put their families on public assistance in the process. Their absence disrupts employers, landlords and dependent relatives. Defendants who cannot afford bail are more likely to accept a conviction in exchange for time served so they can get home, but this potential miscarriage of justice also gives them the burden of a criminal record for the rest of their lives, decreasing access to employment and educational opportunities. It's hard to estimate the total social costs, but they are substantial.

For all of these reasons, the pretrial system needs reform. Consequently, the Mackinac Center has been developing partnerships with a wide array of parties, from state supreme court justices and trial court judges, to county corrections employees, prosecutors, defense attorneys for the indigent and policy advocates such as the ACLU of Michigan. A new policy brief, "How Bail Works in Michigan and Recommendations for Reform," lays out the issue in depth and proposes ways to improve the system. Together, we can modernize our state's pretrial system so that the goals of bail are met effectively and equitably.

#####

Kahryn A. Riley is the director of the criminal justice reform initiative at the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland, Michigan. Permission to reprint in whole or in part is hereby granted, provided that the author and the Mackinac Center are properly cited.

Many defendants who could be safely released with little or no money bail end up facing unaffordable amounts that keep them needlessly behind bars.

Attention Editors and Producers

Viewpoint commentaries are provided for reprint in newspapers and other publications. Authors are available for print or broadcast interviews. Electronic text is available for this Viewpoint at mackinac.org/pubs/viewpoints.

Please contact:

Holly Wetzel
Communications Coordinator
989-631-0900
wetzel@mackinac.org

140 West Main Street
P.O. Box 568
Midland, Mich. 48640

Mackinac.org
Facebook.com/MackinacCenter
Twitter.com/MackinacCenter