

New Solutions Campaign

Promoting Fair & Effective Criminal Justice • Strengthening Families & Communities

Unfair and Ineffective Bail Policies Are Wasting Taxpayer Dollars, Filling New Jersey Jails with Nonviolent Offenders and Weakening Families and Communities

New Jersey's bail system is broken. Nearly three-quarters of the 15,000 people in state jails are awaiting trial—rather than serving a sentence. Decisions about who is released pending trial are based on the ability to pay bail and not on the risk to the community. Nonviolent, low-risk offenders are warehoused in jails for long periods at great financial cost to New Jersey simply because they cannot pay sometimes nominal bail amounts. Meanwhile, high-risk offenders who do have the financial resources can obtain release.

More than half of the individuals in New Jersey jails are being held for nonviolent offenses. Many of these individuals could safely be released on bail pending trial but lack the financial resources to pay the arbitrary bail amounts set by New Jersey's bail schedule. The average length of time individuals are held pending trial is almost one year.

Almost 40 percent of those held in New Jersey's jails are there solely because of their inability to pay bail. More than 10 percent cannot pay bail amounting to \$2,500 or less (more than 800 inmates are held for the inability to pay \$500 or less).

It costs about \$100 a day to hold an individual in a New Jersey jail; therefore, warehousing an individual for almost a year while awaiting trial costs New Jersey taxpayers more than \$30,000. Thus, New Jersey's current policy of jailing an individual who cannot pay, for instance, \$500 bail, can cost New Jersey taxpayers more than \$30,000—just while that person awaits a trial.

In addition, the jailed person is separated from his or her family physically, emotionally and financially, further exacerbating the challenges this individual and family face. This is a lose-lose situation for everyone.

A Growing Consensus: The System Is Broken and We Need New Solutions

Elected officials, judges, prosecutors, criminal justice experts and advocates from across the political spectrum are speaking out against unfair, ineffective and costly policies. Fairness and fiscal responsibility mandate that New Jersey reform its bail system to base release decisions on risk, not the ability to pay, and allow for the supervised release pending trial of those who pose no threat to public safety. States around the country have successfully implemented bail reform policies. New Jersey can do better.

New Jersey Needs Legislation to Fix its Broken Bail System

Senate Bill 946 / Assembly Bill 1910 will create a fairer, safer and more cost effective bail system. By allowing the supervised release of low-risk individuals who do not threaten the security of their communities, we can prioritize public safety while encouraging fiscal responsibility. At the same time, this legislation will strengthen families and communities by allowing low-risk individuals to remain with their families, keep their jobs, and get connected to services, including drug treatment, pending trial.

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Our Current Bail System is Ineffective, Costly and Dangerous

At the moment, monetary bail amounts for individuals arrested in New Jersey are based on a state-wide schedule that categorically assigns values to different crimes. This schedule discourages courts from making individualized determinations of whether monetary bail is even necessary to protect public safety and ensure the appearance of a defendant at trial.

Our over-reliance on monetary bail means that low-risk nonviolent offenders who present no threat to public safety are warehoused in over-crowded county jails due to their inability to afford the cost of their release. This wastes taxpayer money and unfairly penalizes vulnerable individuals, their families and their communities simply because they lack access to economic resources.

Even more alarming, our existing system is not structured to best protect the public safety, as assigning each defendant a monetary bail amount rejects the notion that preventative detention is appropriate and absolutely necessary in some circumstances. This means that regardless of the nature of the offense or potential risk posed to a person or community, an arrestee with sufficient financial means will be able to easily secure his or her release.

The Lack of an Effective Bail System in New Jersey Has Created Serious Problems in County Jails

Several of the state's largest county jails, including those in Union, Camden and Mercer, are operating far in excess of their capacities. Some have been subject to court orders directing them to reduce the number of inmates behind bars, or to update the facilities to meet basic standards of living. Sustaining jail over-crowding is a huge financial expenditure for the state and creates dangerous conditions for both the incarcerated population and the correctional officers who supervise them. It can cost upwards of \$100 per day to incarcerate just one person in a New Jersey county jail—this grave financial commitment should be based on risk and public safety, not an arbitrary bail schedule.

Senate Bill 946 / Assembly Bill 1910 Will Fix our Broken Bail System

Senate Bill 946 / Assembly Bill 1910 will (1) encourage non-monetary release options; (2) require arrestees to undergo a risk assessment before their initial bail hearing in order for the court to make individualized determinations of what, or if, bail is appropriate; (3) establish a comprehensive pretrial services agency within each county that will monitor and counsel those awaiting trial; and (4) allow for the pretrial detention of truly dangerous individuals.

This legislation closely mirrors federal pretrial release policies that have been proven effective, and will prioritize public safety while encouraging fiscal responsibility.

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Pretrial and Bail Policies in Other States

A majority of other states, as well as the federal system, have legislatively declared pretrial detention a tool to be used only in limited circumstances. In general, such laws require the release of arrestees upon the least restrictive conditions and allow for money bail only after a court determines that no other conditions will reasonably ensure the appearance of a defendant in court. Importantly, many of these jurisdictions also permit the absolute pretrial detention of a defendant who a court determines poses a serious threat to public safety.

These well-developed policies were enacted amidst a growing recognition that overflowing jail populations are economically unsustainable and detaining low-risk defendants is wasteful and counterproductive. At the same time, these laws recognize the fact that some arrestees pose too great a safety threat and should not be released under any conditions.

Kentucky: A Tried and Proven Model of Reform

Kentucky is a national leader in the implementation of model pretrial release services and bail reform measures. In 1976, the state enacted legislation that outlawed commercial bail bonding, implemented a statewide pretrial release program and declared pretrial release the default option for the majority of defendants. Data gathered after the law took effect revealed that appearance rates for court remained extremely high, between 95 and 98 percent, and the operational costs of the program were far lower than the costs associated with incarceration.

In 2005, the state began a monitored conditional release program for pretrial defendants in a further effort to relieve jail overcrowding and reduce the growing financial burden of high incarceration rates. The program identifies appropriate candidates for release using an evidence-based risk assessment instrument and provides the court with a range of non-monetary release options that will best ensure a defendant's future appearance as well as the safety of the community. Thus far, the program is saving millions of dollars and appearance rates remain extremely high.

One year later, the legislature appropriated funds for a pilot project that placed a social worker in select public defender offices throughout the state to provide indigent defendants awaiting trial with treatment and counseling services. In one year, the project cut recidivism rates to less than half of what they were in counties where the program was not used and saved \$1.4 million in incarceration costs.

Conclusion

New Jersey can no longer afford to base pretrial release on a defendant's ability to pay. The current system results in the needless warehousing of low-risk defendants who pose no threat to the community but simply cannot afford their often nominal bail amounts. New Jersey needs to pass Senate Bill 946 / Assembly Bill 1910 to reform this broken system.

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“Almost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice.”

— *Attorney General Eric Holder*

“The requirement that virtually every defendant must post [money] bail...imposes personal hardship on them, their families, and on the public which must bear the cost of their detention and frequently support their dependants on welfare.”

— *American Bar Association, Standards Relating to Pretrial Release*

“The bail system works for people who are able to obtain release on recognizance and not so well for those who are not able to.”

— *Jerome Lacorte, Chief Attorney, Office of the District Public Defender, Baltimore Maryland*

“Most people in jail today are there because they cannot afford or will not post an amount of money that a judge set on them. Usually, that amount of money has absolutely nothing to do with your risk of getting back to court or being a danger to the community.”

— *Spurgeon Kennedy, Director of Research and Analysis, Pretrial Services Agency of the District of Columbia*

“People who don’t need to be in jail are sitting in jail at taxpayer expense...they might sit in jail for two, three, four, five months, costing taxpayers thousands of dollars simply because they don’t have fifty dollars to post bail.”

— *John Clark, Senior Project Associate, Pretrial Justice Institute, Washington, D.C.*

“[Our] pretrial release services are intended...to facilitate the release of defendants who would otherwise be incarcerated for want of financial resources, reduce unnecessary incarceration and associated costs, and relieve overcrowding in local correctional facilities.”

— *State of New York Pretrial Release Services Standards*

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