"We don't want people sitting in jails only because they cannot afford their financial bail."

-Representative John Tilley (D), Kentucky

# Lawmakers in more than two dozen states are changing the rules on bail.

### BY RICHARD WILLIAMS

ost of the people sitting in local jails have not been convicted of a crime. Instead, they're awaiting trial and can't afford bail. In fact, 60 percent of jail inmates are awaiting disposition of their cases, not serving time for a conviction, according to the federal Bureau of Justice Statistics. Three-fourths of these people are accused of property, drug or other nonviolent offenses. Although many are not considered a danger to the public or a flight risk, locking them up contributes substantially to the \$9 billion local governments spend every year

There's a high cost to defendants, too. The time they spend in jail can cost them their jobs, prevent them from supporting their families and keep them from dealing with matters that might help their case. Defendants out on bail who have a job, are connected with their families and aren't abusing drugs or alcohol are more likely to show up in court, according to experts in the field.

### **Determining Release**

Bail is the basic right for most defendants to be released prior to trial. Conditions for bail are set by a judge to reasonably ensure public safety and the person's return to court. They can include posting the full bail amount, using property as collateral or signing a written agreement to appear, referred to as release on your own recognizance. Judges also can order nonfinancial conditions, such as drug testing.

In localities with a pretrial services program, defendants are subject to supervision while they await trial or disposition of their case.

In 2011, at least 28 states enacted 73 bills addressing bail policy. The bulk of these laws seek to improve the effectiveness of commercial bond and pretrial services programs.

"We need to do a better job of distinguishing people who are suitable for release," says Representative John Tilley (D) of Kentucky. "We don't want people sitting in jails only because they cannot afford their financial bail."

Tilley chairs the House Judiciary Committee and co-sponsored pretrial reforms there last year.



John Tilley (D) Kentucky

### **Improving Pretrial Services**

In 2011, Kentucky lawmakers set out to improve their pretrial system by determining who would be best-suited for release. (Kentucky is one of only four states—the others are Illinois, Oregon and Wisconsin-without commercial bail.) They changed pretrial release by requiring risk assessments and improving pretrial supervision. The reforms emphasized alternatives to jail for defendants

Richard Williams covers law enforcement and forensics issues in NCSL's Criminal Justice Program, Alison Lawrence, who covers corrections and sentencing issues. also contributed to this story.

## Early Results of Kentucky's 2011 Pretrial Reforms

	June-November, 2011	June-November, 2012	Change
Defendants not released because of inability to make bail	34%	25%	-9%
Released defendants not charged with a new crime	90%	94%	+4%
Non-financial release rate	50%	67%	+17%
Referrals to pretrial services	3001	4240	+1239
Pretrial jail population	8462	7763	-699

Source: Kentucky Administrative Office of the Courts, Division of Pretrial Services PRIM case management system, 2012

who are not dangerous or a flight risk, who have substance abuse or mental health needs, or who are unable to pay their bail fee.

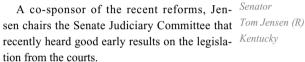
Defendants now undergo a pretrial risk assessment that considers factors linked to pretrial appearance rates and successful reentry into the community, such as employment status, family ties and avoiding substance use. Those determined to be low or moderate risk to the public or alleged victims, and who are likely to appear for court, are released on their own recognizance. For some moderate-risk defendants, courts impose conditions, such as drug testing or GPS monitoring.

Defendants who remain in jail before trial because they can't pay bail receive a \$100 credit toward their bond every day, allowing them to earn their release over time. High-risk offenders who must pay a bond to get out are not eligible.

The Kentucky law improves the supervision of those on probation, parole and in pretrial programs, and reinvests the savings from housing fewer inmates to community programs that supervise both defendants and convicted offenders. The law also requires better record keeping of appearance rates and new

crimes by pretrial defendants.

"The end goal is clear," says Kentucky Senator Tom Jensen (R), referring to the state's package of recent reforms. "We want more cost-effective ways to hold offenders accountable while improving public safety."





Kentucky Chief Justice John D. Minton Jr. told lawmakers the changes appear to be paying off. More low- or moderaterisk defendants are getting out before trial and being released without a bond, yet new crimes committed by those released went down 4 percent. The court wants the General Assembly to use money saved under the program to hire more staff for the offices that supervise pretrial defendants to handle increased inperson reporting, drug testing and curfew checks of those who are released.

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### Views Differ on Pretrial Release

tate leaders consider many issues as they refine and improve bail laws. Two of the potential options—pretrial services programs and the commercial bail industry—are subject to debate about their role in the bail system.

Proponents of bail reform believe a financial bail system has little effect on public safety. Timothy Murray, executive director of the Pretrial Justice Institute, maintains risk assessments can be used to gauge a defendant's probability of committing new crimes while on release and the likelihood he or she will show up in court.

"High functioning pretrial services programs provide the court with neutral and validated information for each defendant," Murray says. "Armed with this information, the court can make safe, fair and effective pretrial release decisions."

Alternately, representatives of the bail bond industry think defendants released to their custody are less likely to commit crimes and are more likely show up for their court date.

The service these private companies provide is "not only effective, it's indispensable," says Dennis Bartlett, executive director of the American Bail Coalition. "It doesn't cost the public anything, and if the defendant skips [his or her court hearing] and is not recovered, the bail agent has to pay the court the full amount of the bond, in cash."

The Pretrial Justice Institute is the national nonprofit organization dedicated to ensuring informed pretrial decision making for safe communities. The American Bail Coalition is the member organization dedicated to the long-term growth and continuation of the surety bail bond industry.

### **OSL ONLINE**

Hear more from Timothy Murray and Dennis Bartlett at www.ncsl.org/ magazine.

Tilley is encouraged. "We're letting more people out and they're committing fewer crimes, while showing up for court at the same rate as before the new law went into effect," he says.

### **Regulating Bail Bonds**

Commercial bond is now the most common form of bail, having surpassed release on recognizance over about the last 15 years. Under commercial bond, a defendant pays a nonrefundable fee to a licensed agent who certifies to the court he or she will be liable for the full bail amount if the defendant fails to appear. (Bondsman generally are not financially responsible if a defendant is rearrested.) The increased use of commercial bonding in states has gained the attention of legislatures. At least 27 laws in 17 states have been enacted since 2010 addressing bondsmen licensure, training requirements or business practice. In many states, reforms have been welcomed by the commercial bail industry in the belief that

they strengthen the profession.

Last year, for example, Utah lawmakers added a requirement that, to apply for a license, bondsmen must complete a course that covers many aspects of bonding. Representative Gregory Hughes (R), sponsor of the legislation, said it was a collaborative effort of legislators, law enforcement agen- Representative cies and bail bondsmen.



Greg Hughes (R)

In Connecticut, bail reform was on the agenda for nearly Utah

a decade before the General Assembly enacted legislation last year. The reforms—supported by the bail bond industry—were spurred by a domestic violence task force that heard from victim advocates. They expressed concern that some bond financing practices encouraged quick, poorly supervised release with little effort to provide notice or protection to victims.



Representative Connecticut

"There were a number of violent crimes across the state Mae Flexer (D) that we felt potentially could be stopped with changes to our bail laws," says Representative Mae Flexer (D).

Concerns about victim safety and the integrity of commercial bonding were raised by the case of Selami Ozdemir. Despite having a violent criminal history, he was released from custody in 2010 after paying no money toward his \$25,000 bail fee. Even though he was under a temporary order prohibiting him from contacting his wife, the day after he got out of jail, he killed her in a murder-suicide.

"The previous system allowed offenders to bond out without even a down payment, leaving victims with the misconception that the amount of bond set would keep the offender incarcerated," says Flexer.

Ozdemir was released without paying anything because of a practice known as "undercutting," where competition between bondsmen drives them to offer lower rates and better deals on financing. Under the new law, bond agents may not change the bond rates set by the insurance commissioner. While bond fees do not equate to safety in all cases, Flexer thinks the new regulations can ensure that everyone plays by the same rules.

Bondsmen in Connecticut also are now prohibited from soliciting business inside courthouses, police stations, correctional institutions and other detention centers.

"We were looking to better safeguard against frenzied competition for better repayment deals and unjustifiably lenient bail arrangements," says Flexer.

The legislation also prohibits a bondsman from working if he has a forfeited bond that is at least 60 days past due. New reporting requirements help identify these as well as the value of the collateral put up as security for a bond.

"This gives the Insurance and Public Safety departments the tools needed to regulate bail bond professionals, protect the public from potentially dangerous criminals, and to help prevent bond agents from compromising the integrity of the bail bond system in Connecticut," says Debra Korta, legislative director of the Department of Insurance.

In addition, new requirements for uniform standards of record retention will provide access to information needed for oversight. "This provides much needed transparency to an industry that had virtually none," she says.

Senator Joseph Crisco (D), who co-sponsored the 2011 legislation in Connecticut, says enhanced oversight of the bail bond industry will allow agencies to audit, investigate and enforce sanctions on bond companies and professionals that operate outside of the new regulations.



Joseph Crisco (D) Connecticut

"These reforms helped to align our bail procedures with the original intent of the practice."

#### SL ONLINE

Learn more about bail laws dealing specifically with domestic violence at www.ncsl.org/magazine.