

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

End Cash Bail to End Unfair and Unequal Treatment in Criminal Courts

Introduction

We have made significant progress in reforming our criminal justice system in recent years, but there is much more that we can do to protect the rights, freedoms and safety of every citizen.

Although state laws traditionally govern our system of bail and bonds, inconsistency and unfairness among state laws raises bail reform to an issue demanding a federal legal solution.

Federal courts do not impose cash bail and function properly without cash bail, so the argument that criminal courts cannot function properly without cash bail fails in light of the success of federal criminal court. This is a relevant issue because it affects average, generally law-abiding citizens of limited financial means. The Bureau of Justice Statistics reports that, in 2017, there were 10.6 million admissions to jail in the U.S. compared to 606,500 admissions to state and federal prisons, but traffic offenses made up half of all criminal cases.¹ Most people stayed in jail less than a week, but the one in five who stayed longer than a month took up nearly all the jail space.² In essence, but for the financial means to make bail, a significant number of otherwise honest Americans face long term unintended consequences of our criminal justice system.

Laws involving the welfare of citizens remain within the jurisdiction of state law. However, federal lawmakers and courts apply the Equal Protection Clause of the Fourteenth Amendment as a guidepost to determine the relevance of such laws on the federal level. The Equal Protection Clause simply says that each state should afford the same protections under law as any other

¹ Criminal cases disposed in court, 2019; Bureau of Justice Statistics, Prisoners in 2017 (2019); Bureau of Justice Statistics, Jail Inmates in 2017 (2019).

² 54 Incarceration Trends data is accessible at https://github.com/vera-institute/incarceration_trends and the National Archive of Criminal Justice.

Criminal Justice Reform/Reform Monetary Bail Requirements

state and that no state shall deny such protections as they are afforded by other states. For instance, Virginia's bail laws closely follow the Eighth Amendment which protects citizens against excessive bail.³

There have been past attempts to address this issue on a federal level including bail reform acts of 1966, 1984 and the Adam Walsh Amendment of 2006.⁴ In spite of these attempts, state level cash bail systems continuously fail to address key problems of crime in our communities while sending a massive bill to taxpayers and inadvertently creating criminal records for otherwise law abiding citizens who simply lacked the financial means to make bail at the time of arrest.

Legislation

On September 24 of 2019, Congressman Ted Lieu of California introduced H.R. 4474, a bill to "...discourage the use of payment of money as a condition of pretrial cases, and for other purposes."⁵ The bill was referred on October 28, 2019 to the House Committee on the Judiciary Subcommittee on Crime, Terrorism and Homeland Security. Although no vote has yet been taken at the subcommittee level, adopting H.R. 4474 as law, it will effectively address a national disparity within our legal system, save millions of dollars and impact the lives of millions of citizens. H.R. 4474 defines success in terms of key outcomes. The bill states, "Notwithstanding any provision of Federal law, no justice, judge, or other judicial official in any court created by or under article III of the Constitution of the United States may use payment of money as a

³ <https://www.pbs.org/newshour/show/new-jersey-eliminates-cash-bail-leads-nation-reforms>

⁴ Wald, Patricia M. Freed, Daniel J. (October 1966). "The Bail Reform Act of 1966: A Practitioner's Primer". American Bar Association Journal 52 (1); 940-945.

⁵ <https://www.congress.gov/bill/116th-congress/house-bill/5574?s=1&r=1>

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

condition of pretrial release in any criminal case.”⁶ This outcome extends the purpose of past bail fairness acts by removing the administrative burden from the courts of determining the appropriate, or “fair” bail to be set.

Discussion

On any given day, roughly 700,000 people were locked up in local jails.⁷ The majority of them had not been convicted of a crime. After an arrest – wrongful or not – a person’s ability to leave jail and return home to defend against the charges depends on money. Poorer Americans and people of color often cannot afford to come up with money for bail, leaving them stuck in jail awaiting trial. Meanwhile, wealthy people accused of the same crime can buy their freedom and return home.⁸ While awaiting their day in court for a criminal charge, should the wealthy walk away from jail while the less fortunate remain behind bars? Eliminating cash bail achieves fairness by removing the inherently unfair burden of providing cash for freedom for those for whom cash is not available. Pre-trial detainees are sitting in jail simply because they do not have the money to post bail. As a result, people without the financial means fill our jails at the taxpayers’ expense. In 2015, more than half of the 15,000 people in local jails across Michigan were still waiting for their court date, not having been convicted of anything.⁹ Most of them are indigent. Meanwhile, people with the financial means are often released, whether they pose a risk to public safety or not. With 15,000 people in jail on any given day in our state, the daily

⁶ <https://www.congress.gov/bill/116th-congress/house-bill/4474>

⁷ Michigan Joint Task Force on Jail and Pretrial Incarceration (January 10, 2020).

⁸ Shalom, Alexander. "Bail Reform as a Mass Incarceration Reduction Technique." *Rutgers Law Review* 4(2014): 921.

⁹ Michigan Joint Task Force on Jail and Pretrial Incarceration (January 10, 2020). Web. 24 Jan. 2020.

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

cost often far exceeds the amount of bail required. This creates an unsustainable financial burden on municipalities.¹⁰

H.R. 4474 addresses these costs citing six key financial, social and governmental benefits of a federal law that encourages states to eliminate cash bail: “(1) Nearly 60 percent of the inmates in jails in the United States are pretrial detainees who have not been convicted of a crime, an estimated 75 percent of whom have been charged with nonviolent crimes; (2) Under current bail systems that use payment of money as a condition of pretrial release, nearly 50 percent of the most dangerous pretrial detainees are released without supervision, according to a study by the Arnold Foundation. (3) Throughout the Nation, those with money can buy their freedom while poor defendants remain incarcerated awaiting trial; (4) Pretrial detention costs State and local governments an estimated \$14 million each year; (5) Pretrial detention should be based on whether the accused is likely to fail to appear in court or is a threat to public safety, not the ability to pay money as a condition of pretrial release; and (6) The states, the United States Department of Justice, law enforcement agencies, public officials, and community groups should collaborate to develop pretrial detention systems that improve public safety, reduce costs, and discourage criminal behavior.”¹¹ Each of these points enables federal support and guidance to allow states to tailor their own bail laws and practices to achieve the stated outcome.

Although state laws govern systems of criminal bail, HR 4474 effectively leads bail reform from the federal level. Each state law, if properly enacted, will use each of the above six points but

¹⁰ Michigan Joint Task Force on Jail and Pretrial Incarceration (January 20, 2020). Web. 24 Jan. 2020.

¹¹ <https://www.congress.gov/bill/116th-congress/house-bill/4474>. Web. 15 Jan. 2020.

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

will also benefit from their portion of saving the estimated \$14 million per year in pretrial detention costs.¹² In fact, this model has achieved success in Illinois, Kentucky, Oregon and Wisconsin when these states eliminated commercial for-profit bail bondsmen.¹³ As of 2012, Nebraska and Maine have eliminated surety bonds and since 2014, New Jersey and Alaska have abolished cash bail in a majority of cases.¹⁴ In most cases, states have attempted to address the wealth bias of the bond system which includes racial bias, inconsistency in application by specific judges and the ensuing socio-economic impact of extended incarceration by often innocent citizens simply because they lack the funds or borrowing power to raise bail.¹⁵ We have Eighth Amendment protections in some states but not all. This demands a federal initiative to achieve equal protection under the Fourteenth Amendment.¹⁶ The federal impact of 4474, if enacted into law, will allow resources and assistance to help each state comply with their Fourteenth Amendment duty to provide equal protection under the law.

California Congresswomen Karen Bass Democrat and Val Demings of Florida are respectively Chair and Vice Chairpersons of the Subcommittee on Crime, Terrorism and Homeland Security. As with any reform in the criminal justice system, many contending viewpoints can create an endless debate which thwarts progress. Some states have generally taken longer than others to

¹² https://www.prisonpolicy.org/blog/2017/02/07/pretrial_cost. Web. 15 Jan 2020.

¹³ Adam Liptak Illegal Globally, Bail for Profit Remains in U.S.

(https://www.nytimes.com/2008/01/29/us/29bail.html?pagewanted=all&_r=1), New York Times, 29 January 2008.

¹⁴ Ditching the Bondsman is only part of the Battle for Bail Report;

(<https://theappeal.org/ditching-the-bondsman-is-only-part-of-the-battle-for-bail-reform-3dd8e4198213/>).

¹⁵ <https://www.aclu.org/blog/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail>.

¹⁶ See O'Donnell v. Harris County, 892 F.3d 147 (5th Cir. 2018).

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

adopt even the simplest civil rights legislation. This bill can successfully become law because of the benefits to each state of federal leadership in this critical issue, the requirement of Equal Protection under the Fourteenth Amendment and the public awareness and support of Congressman Lieu and Committee leaders in their effort to push this bill through the House of Representatives and the Senate. The broad national impact of this legislation is far reaching. Effective social action in the form of public awareness, contacting committee members and supporting the debate to overcome inequality in the bail system will achieve lasting results.

Passing HR 4474, can also lead to other related reforms. For instance, pretrial incarceration also has negative effects on employment, housing, and families. Yet, research has shown that imposing financial conditions for release are no more effective than release on recognizance for low risk defendants. To better safeguard the rights of defendants, majority of judges additionally recommend creation of a tiered statutory framework for pretrial release that presumes release on personal recognizance unless the court makes an individualized determination that the person poses a significant risk of not appearing, absconding, or causing bodily harm to another person.¹⁷

Summary

Any of us, or any of our family members, could find our lives impacted by the unequal and unevenly applied impact of state bail laws. We need our federal legislators and our judiciary to tackle the broken bail system and work together to find sensible alternatives. The economic and social justifications for a federal approach to end cash bail at the state level benefits all America.

¹⁷ Michigan Task Force on Jail and Pretrial Incarceration, page 25 (January 10, 2020)

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements

Call to Action

Delta Sigma Theta Sorority, Incorporated. is a private, nonprofit organization whose purpose is to provide assistance and support through established programs in local communities throughout the world. Delta Sigma Theta Sorority, Inc. was founded in 1913 to promote academic excellence; to provide scholarship; to provide support to the underserved, to educate and stimulate participation in the establishment of positive public policy; and to highlight issues and provide solutions for problems in their communities. Today, Delta Sigma Theta Sorority, Inc has more than 250,000 members and nearly 1,000 chapters worldwide. The members of Delta Sigma Theta Sorority, Inc. have a longstanding history of advocacy and addressing inequality. Our membership partners with political leaders, judges and law enforcement officials to effectuate change and policy with the legal justice system. Therefore, the sorority supports initiatives; the passage of local, state and federal laws; and programs that seek to illuminate the inequity within our justice system.

Discussion Questions for Legislator or Legislative Staff

What are your thoughts on reforming monetary bail requirements?

Do you agree that the current cash bail system entails direct operational costs in addition to economic and social costs? Are these costs justified?

Do you support abolishing monetary bail?

If you support abolishing cash bail, what position plans do you have in place to ensure passage of H.R. 4474?

What do you believe is necessary to pass H.R. 4474?

If you do not support H.R. 4474, what other policies would you put in place to ensure that equality is being maintained in the criminal court system as it relates to monetary bail reform?

Detroit Alumnae Chapter

Delta Days in the Nation's Capital

Michigan

February 22-25, 2020

Criminal Justice Reform/Reform Monetary Bail Requirements
