

Bail Reform: A Civil Liberties Briefing



Too many Ohioans languish in local jails while awaiting trial.

The state's punitive bail system is costly, racially biased and counterproductive. It causes many working Ohioans to lose jobs for low-level offenses such as drug possession, and is a key driver of mass incarceration. Most importantly, putting bail out of reach for thousands of low-income people violates our fundamental principle of innocent until proven guilty.

Elected officials should implement changes to state law aimed at reducing the state's jail population to fewer than 15,000 prisoners from the near-record high of 19,861 counted in the Bureau of Justice Statistics 2014 census. Ohio governments jailed more than 400,000 people for an average stay of 16 days, the BJS reports.

The ACLU of Ohio recommends the following reasonable, politically achievable reforms:

Reform the bond system. Thousands of low-income Ohioans live in jail cells waiting for their day in court. Being too poor to afford pre-trial release is not a crime but is treated as such in our justice system. Ohio should follow American Bar Association guidelines that require pre-trial detention be an exception, not an everyday practice.

Reform proposed:

- 1) Eliminate cash bail. Ohio should make non-cash pretrial release (personal recognizance, unsecured bonds) the



default for those accused of crimes, absent a clear threat to public safety or flight risk.

- 2) Require individualized assessments of defendants. Today, bail guidelines are based largely on the offense charged, which assumes guilt. The constitutional presumption of innocence requires that a rational reason, such as a person's risk of flight or violence, justify imprisoning someone before trial.

Tickets, not arrests, for low level offenses. We need to keep people out of jail in the first place. Ohio's criminal classifications are outdated. Littering, a third-degree misdemeanor, can net 60 days in jail and a \$500 fine, but only if you are walking, whereas littering from a car is a minor misdemeanor, with no arrest and a maximum \$150 fine. **Reform proposed:**

- 1) Reclassify all misdemeanors one degree lower. Not paying for gas at the pump would fall from first-degree misdemeanor

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(up to 180 days in jail and a \$1,000 fine) to a second-degree misdemeanor (90 days, \$750 fine). Violations such as inaccurately displaying POW license plates would become minor mis-demeanors, not subject to arrest.

- 2) Create a presumption that a ticket or summons be used for misdemeanors unless a compelling reason, such as public safety or flight risk, exists to make an arrest.

Stop using jails as debtors' prisons. Ohio's criminal law has a cascading series of fines, fees and charges that keep low-income people locked up and in poverty. Financial penalties are too often redundant, triggered automatically by failure to pay another penalty and perpetually escalating in size until turned over to a collections agency. Locking up low-income people because they cannot afford to pay financial penalties hurts the people it is supposed to help, such as children and Ohio taxpayers. **Reform proposed:**

- 1) Stop jailing people who are unable to pay child support. We should not be locking people up who do not have the ability to pay their child support debts.
- 2) Stop punishing people who cannot pay their court fines. Courts can already consider ability to pay, but in practice, many people who cannot pay are still ensnared in the criminal justice system. Ohio needs to lower fines across-the-board, especially for the truly indigent.

Judges should also consider forgiving fines and costs that are uncollectable because of the person's indigence. Local courts should increase the use of payment plans and ease upfront costs and interest rates. Finally, the state must end the practice of sending unpaid fines and fees to collection agencies.

- 3) Ban "Pay-to-Stay" jail policies. These insidious fees—as much as \$100 to be booked, plus about \$60 a day—drive prisoners deep into debt and create a perverse financial incentive for jailing people. If taxpayers do not think the crime is serious enough to pay for a jailing, those people should be released.

These recommendations are explored in detail in the following ACLU of Ohio reports:

- **Looking Forward:** A Comprehensive Plan for Criminal Justice Reform in Ohio
- **In Jail & In Debt:** Ohio's Pay-To-Stay Fees
- **Outskirts of Hope:** How Ohio's Debtors' Prisons Are Ruining Lives and Costing Communities



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