

New Solutions Campaign

Promoting Fair & Effective Criminal Justice • Strengthening Families & Communities

Effectively Implementing Bail Reform

On August 11, 2014, Governor Christie signed historic comprehensive bail reform legislation into law. On November 4, 2014, New Jersey voters passed Ballot Question #1 enacting the reform that will take effect in January 2017.

Enacting comprehensive bail reform legislation was only the first step in fixing our broken bail system. While part of the vision of a fairer, safer and more cost effective bail system requires the structural and constitutional changes accomplished via legislation, achieving that vision requires effective implementation of the legislation and accountability for system stakeholders.

Now is a critical time for New Jersey. Although legislation laid the groundwork for reform, it is the implementation decisions that are currently being made that will guide the ultimate operation of the law. Without proper implementation, the spirit and intent of bail reform is at risk.

Fixing the Broken System

New Jersey's comprehensive bail reform law will create a fairer, safer and more cost effective bail system. By allowing the release of low-risk individuals, we can prioritize public safety while encouraging fiscal responsibility. At the same time, this new law 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.

New Jersey's comprehensive bail reform law (1) prioritizes non-monetary release options; (2) requires use of a validated risk assessment before an initial bail hearing in order for the court to make individualized determinations for release decisions; (3) establishes a comprehensive pretrial services agency within each county that will monitor and counsel those awaiting trial; (4) allows for the pretrial detention of truly dangerous individuals; and (5) guarantees timelines for a speedy trial.

New Jersey's bail reform law closely mirrors federal pretrial release policies that have been proven effective and will prioritize public safety while encouraging fiscal responsibility. The New Jersey Administrative Office of the Courts is responsible for implementing bail reform and a Pretrial Services Program Review Commission was established through the bail reform law to oversee and assist with effective implementation. The Commission will report annually to the Governor, the Legislature and the Supreme Court.

Effective Implementation is Critical

Until bail reform becomes effective in 2017, decisions about who is released pending trial will continue to be based on the ability to pay bail and not on risk. However, under the new law, low-risk arrestees will no longer be warehoused in jails for long periods at great financial cost to New Jersey simply because they cannot pay sometimes nominal bail amounts.

Criminal justice stakeholders are asking for more information and education about the new system. There are many jurisdictions around the country that have already successfully eliminated the use of money bail while maintaining public safety.

Proper Use of Risk Assessments

Risk assessments are used throughout the criminal justice system to help stakeholders make informed decisions. Pretrial, risk assessments are predictive of a person's likelihood of failing to appear in court or of being arrested for a new offense prior to trial. Risk assessments should be empirically based and locally validated to be effective.

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The new bail reform law requires the use of a validated risk assessment before their initial bail hearing to help the court make an individualized determination of what type of pretrial release is appropriate.

While risk assessment results are helpful to judges because they provide an objective assessment of an individual's risk, they should not be used in isolation. Factors not captured by risk assessments which could be discovered during a short supplemental interview, such as employment status and family information, can be just as important for a judge to consider when deciding whether to release or hold an individual pretrial.

Effective Pretrial Supervision

Pretrial supervision has been shown to improve pretrial outcomes by providing appropriate conditions and services for defendants prior to trial. Common pretrial supervision conditions include checking in with a pretrial case manager, court date reminders, and/or treatment referrals.

Supervision however, should only be set as a condition of release if it is determined that it is the only way to assure court appearance and community safety prior to trial. Supervision should not be set as a blanket condition on every individual released pretrial. In fact, research shows that over supervision of low-risk individuals produces poor outcomes and wastes resources. Stakeholders should be educated about effective risk mitigation to appropriately supervise individuals and to limit the harms of over supervision.

Appropriate Preventative Detention

Preventative detention is another component of a risk-based pretrial system. Under the new bail law, individuals may be detained pretrial if the state can show that the individual poses an unmanageable risk to public safety and/or to failing to appear in court. Preventative detention eliminates the court's reliance on monetary bail, by providing a legal mechanism to detain individuals who may be dangerous, and can also afford any money bail that is set.

If used incorrectly, preventative detention can also be counterproductive and costly. Like the rest of the system, decisions about preventative detention should be based on an individual's risk, and not on his or her current charge. While the charge may certainly be one factor to consider, stakeholders should be cautious about how they define eligibility for preventative detention. Casting a wide net and needlessly detaining individuals pretrial is costly and ineffective. As Justice Rehnquist wrote almost 30 years ago, "In our society liberty is the norm and detention without trial is the carefully limited exception."

Cost-Savings from Reform

Bail reform will save money. The financial cost of New Jersey's current broken bail system is enormous. Federal estimates of cost savings indicate that on average it costs about \$7 a day to supervise a low risk offender in the community and about \$70 a day to keep them in jail. In New Jersey, it costs approximately \$100 a day to hold an individual in a jail. Jailing someone who cannot pay, for instance, \$500 bail, can cost New Jersey taxpayers more than \$30,000 per year — just while that person awaits a trial.

New Jersey's new pretrial system strikes an appropriate balance of interests. By allowing the supervised release of low-risk individuals who do not threaten the security of their communities, New Jersey is able to prioritize public safety while encouraging fiscal responsibility and saving the state millions of dollars.

For more information please contact the New Solutions Campaign at 609-396-8613 or nj@drugpolicy.org.