AMERICAN CIVIL LIBERTIES UNION of VERMONT

Reforming Vermont's Bail Statute to Support Families and Save Money

Vermont currently jails hundreds of pre-trial defendants simply because they do not have money to pay bail. As a growing number of states and localities have come to recognize, pre-conviction and preventative jailing is costly, unnecessary, fundamentally unfair, and harmful to families and communities. Many of those jurisdictions—including Oklahoma, Texas, California, New Jersey, Maryland, Nebraska, and Connecticut, and Washington D.C.—are moving forward with bail reform. As part of the growing movement for criminal justice reform, Vermont must revise its bail statute to ensure no one is jailed because they lack money, or for failure or inability to satisfy other conditions of release (for example, the defendant could not find a ride to court, or has a disability or a substance addiction) that are unrelated to the risk of flight.

What's Wrong with Pre-conviction Jailing?

*** Lives ruined**. Pre-conviction jailing imperils jobs, livelihoods, housing, health and wellness, treatment, and families. Also, it undermines community safety.[i]

*** Corrosive to Justice.** Jails someone despite being "innocent until proven guilty" and inhibits accused's ability to adequately prepare a defense; makes sentences longer; exacerbates racial disparities.

*** Cost-driver.** At any given time 350-400 prisoners are incarcerated pre-trial. At roughly $50,000 per bed, pre-trial detention costs Vermont taxpayers approximately $19 million per year.

*** Punishes People with Mental Illness and Addiction**. High bail or bail denial should not be used in place of civil commitment and community treatment.

What's Wrong with Money Bail?

*** In the vast majority of cases, we don't need it.** Vermont is the safest state in the nation, and studies in other areas have shown that the vast majority of people released without bail show up to court and do not reoffend pretrial.[ii] [iii]

*** Rich post bail, poor go to jail.** Inherently unfair wealth-based system, regardless of the crime. Vermont's statute does not require judges to consider a defendant's ability to pay when setting bail.

***Arbitrary application.** Bail and pre-conviction jailing practice vary widely from county to county. Legislation establishing uniform practices is essential for a fair, efficient, and effective justice system.

How Can Vermont Suppport Families and Save Taxpayer Dollars through Bail Reform?

1) Require judges to consider defendants' ability to pay bail when setting bail amounts, with written findings on the record.

2) Require bail be set based upon "risk of flight," not risk of non-appearance.

3) Increase opportunities for residential treatment instead of jail for lack of bail.

4) Use court date reminder system.[iv]

5) Collect data to measure progress.[v]

Created by Jay Diaz, ACLU-VT Staff Attorney/Interim Policy Director, on January 26, 2017.
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[i] Studies show that similarly situated, low-risk individuals jailed pre-conviction (even for short periods of time) are more likely to commit new crimes following release.

[ii] Bronx Freedom Fund's Second Annual Report states that of misdemeanor defendants for which the fund paid their bail, 97% returned for ALL court appearances. See, e.g., Arpit Gupta, et al., The Heavy Costs of High Bail: Evidence from Judge Randomization 3, 19 (May 2, 2016), available at http://www.columbia.edu/~cjh2182/GuptaHansmanFrenchman.pdf (studying the assessment of money bail in Philadelphia and Pittsburgh courts and finding that the imposition of money bail led to a 6-9 percent
yearly increase in recidivism;) Laura & John Arnold Found., supra note 4, at 5 ("Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours.").

[iii] The Washington D.C. Pretrial Services Agency states that over five years, 88% of defendants are released non-financially, 88% of released defendants made all scheduled court appearances, 88% remained arrest free pending trial, 85% remained release while cases were pending. See https://www.psa.gov/?q=node/97.

[iv] Providing reminders of the need to appear in court is an effective manner of assuring appearance. In Multnomah County, Oregon, the implementation of automated telephone calls to defendants prior to the court hearing reduced failure to appear rates by 31 percent, or 41 percent for individuals who successfully received the call (either answered or went to answering machine) (from 29 percent to 17 percent) and resulted in about $1 million of net cost avoidance. Matt O'Keefe, COURT APPEARANCE NOTIFICATION SYSTEM: 2007 ANALYSIS HIGHLIGHTS 1, 2 (2007).

- Similarly, in Coconino County, Arizona, a call notification system resulted in a reduction of failure to appear at initial appearance in misdemeanor cases from 25 percent to less than 13 percent. Wendy F. White, CRIM. JUSTICE COORDINATING COUNCIL & FLAGSTAFF JUSTICE COURT, COURT HEARING CALL NOTIFICATION PROJECT 4 (2006).
- Other jurisdictions have experienced similar success. *See* Brian H. Bornstein, et al., REDUCING COURTS' FAILURE-TO-APPEAR RATE BY WRITTEN REMINDERS, 19 PSYCHOLOGY, PUB. POL'Y, & L. 70, 71 (2013).
- Call reminders may even produce disproportionate benefits for minorities. *Id.*
- Written reminders (postcards) demonstrated effectiveness in a 2013 Nebraska study (increased appearance rates by 1.7 percent to 4.3 percent depending on the content of the reminder (language reminding individuals of the sanctions for failure to appear performed best)). *Id.* at 74.

[v] Bail amounts by defendant and crime, length of lodging for lack of bail, number of misdemeanor detainees vs. felony detainees, harms caused by jailing for lack of bail, access to addiction treatment, court appearance rates, jailed after violation of probation, race/ethnicity/gender, use of specific conditions,

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