



Free markets. Real solutions.



People have a right to the [presumption of innocence](#) until proven guilty and the government should not have an unfettered ability to restrict someone's freedom when the person has not yet been convicted of a crime.

EXPLAINER

Effectively Updating Michigan's Bail System

April 2023

Introduction

Bail is the system governing an accused individual's release from jail pending trial. Effective use of bail requires a balance between maintaining public safety and upholding personal freedom and constitutional liberties. People have a right to the [presumption of innocence](#) until proven guilty and the government should not have an unfettered ability to restrict someone's freedom when the person has not yet been convicted of a crime. For this reason, bail may not be [excessive](#) and the government may only use it to address flight and safety concerns.

Currently, the Michigan bail system predominantly relies on money to determine if someone can be released pretrial. However, the use of monetary conditions has created a system that allows those with cash to get out and those with limited funds to waste taxpayer dollars unnecessarily while they remain incarcerated. A court can instead use [alternative options](#)—such as pretrial risk assessment, supervision and electronic monitors—to address public safety concerns more effectively and maintain the likelihood of an individual returning to court. These services are far [less expensive](#) than pretrial detention for taxpayers, the accused and the economy, and all of them have positive track records in real-life situations.

Summary of Smart Pretrial Changes

[Bail system changes](#) in Michigan have bipartisan support and create a more effective system. A new approach would create a tiered system that allows the court to continue to detain the most violent offenders and release low-risk offenders so they can remain productive members of society. For those in the middle tier, the court could impose additional safety measures—including imposing monetary conditions, if deemed appropriate—to ensure they show up for court and remain law-abiding.

Tier 1 Eligible for Preventative Detention ([Learn More](#))

- A person who has been convicted of two or more violent felonies within the last 15 years
- A person charged with murder or treason
- A person charged with first-degree criminal sexual conduct, armed robbery or kidnapping with intent to extort, unless the court finds the defendant is not likely to flee or present a danger to any other person
- A person charged with a violent felony while the person was on bail, probation or parole for a prior violent felony

Tier 2 Eligible for Monetary Conditions and Additional Safety Measures

- A person charged with listed offenses (i.e. sex offenses)
- A person charged with assaultive crimes (i.e. violent offenses and domestic violence)
- A person charged with serious misdemeanors
- A person charged with a DUI
- A person charged with a felony that is punishable by imprisonment for five or more years
- A person facing charges for a new offense that involves harm to person or property and were on bail for a substantially similar offense
- A person absconds in the present case while on any form of pretrial release

Tier 3 Presumption of Release without Monetary Conditions

- A person charged with a low-level, low-risk offense (i.e. driving without a license, theft, possession of a controlled substance)



Free markets. Real solutions.

FAQ

What does this look like in Michigan?

FAQ

How is this bill different from New York or Illinois?

FAQ

How is public safety being addressed?

FAQ

How are victims being protected?

FAQ

How will this save taxpayer money?

EXPLAINER

Effectively Updating Michigan's Bail System

April 2023

In Michigan, approximately [half](#) of the people in jail have not been convicted of a crime. Some of the [top offenses](#) for pretrial jail admissions include driving without a license, theft, and possession or use of a controlled substance. In fact, more than [60 percent](#) of jail admissions are for misdemeanor charges. Of the individuals detained pretrial, [38 percent](#) have a cash bail amount under \$2500 preventing their release.

This bill is quite different from reforms put in place in [New York](#) and [Illinois](#). For example, in New York, a court cannot consider the “dangerousness” of an individual when setting bail whereas in Michigan a judge would need to consider whether a defendant poses a risk of personal harm to another or the community at large. In Illinois, the state passed a bill to eliminate the use of cash bail completely whereas courts in Michigan could still impose cash bail conditions for middle-tier offenders.

Bail system changes resulting in the strategic release of low-level offenders in [New Jersey](#) and [Houston, Texas](#) have proven that smart changes can lead to increasing public safety. This is not surprising considering [research](#) shows that incarcerating low-risk individuals pretrial can lead to higher reoffense rates, thus compromising public safety. Michigan would also provide additional safety measures, such as statewide pretrial services, needs assessments and availability of cash bail for violent crimes, repeat offenders and those that abscond.

Sexual offenses and assaultive crimes would be included as tier 2 offenses that would still be eligible for monetary conditions and additional safety measures. Further, the threat to any victim and victim input would be factors to be considered when setting bail conditions. Victims would also be protected from being called by the defense to testify at the bail hearing.

Several states have found realized or expected savings under bail system changes similar to proposed changes in Michigan. For example, one study in [Ohio](#) found potential annual savings in the tens of millions, and a report in [New Jersey](#) had similar findings.

For more information

Lisel Petis is a former prosecutor and victim advocate, and a resident senior fellow for Criminal Justice and Civil Liberties at the R Street Institute. Petis can be contacted at lpetis@rstreet.org.

Alan Smith is a former FBI agent, and is a co-founder and the Midwest director of the R Street Institute. Smith can be contacted at asmith@rstreet.org.