

An American flag is shown waving on a flagpole against a dark background. The flag is the primary visual element on the left side of the slide.

Understanding Bail Reform

Jeff Clayton, Executive Director

Kansas Pretrial Justice Task Force
March 8, 2019

Who We Are

- American Bail Coalition
- American Bail Agent Coalition
- Jeff Clayton, Executive Director
- www.AmBailCoalition.org



**American Bail
Agent Coalition**

Topics Covered

- Bail reform efforts throughout the country
- What is bail reform?
- Legislative push for bail reform
- Legal push for bail reform
- Local push for bail reform
- The 4th Generation of Bail Reform in America

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What Is Bail Reform

What is Bail Reform?

- Can be a whole host of things—some that threatens to reduce or even eliminate your business as a bail agent; some that we don't really care about; some that we support.
- Arrest procedures—citations or summons
- Bail schedules
- Risk assessment algorithms
- Due process—bail review and setting
- No money bail system
- Pretrial supervision—GPS, drug screening
- Diversion programs –drug court, veteran's court, etc.
- Changes in court rules by Supreme Court justices

No Money Bail System Explained

- Preventative detention—what is it?
- Can states and the federal government actually deny the right to bail?
- What is bail under the constitution? U.S. v. Leary; Stack v. Boyle.
- Washington, D.C. and the 1970s
- Federal Bail Reform Act of 1984
- U.S. v. Salerno (1987)
- New Jersey (2014)
- New Mexico (2016)

The No Money Bail System—Why?

- It is throwing out an argument to both sides: you can both lock 'em up and also believe that you are helping those who cannot “afford” their bail.
- How did it start?
- Kalief Browder
- Sandra Bland
- What we would call playing the reverse Willie Horton card
- What is the Willie Horton card?

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Legislative Push for Bail Reform

From the State Legislatures

- California--what happened in California?
- Senate Bill 10
- State v. Humphrey
- Mushroom bill
- Legislation would basically implement the federal bail system
- The legislation is not going to go into effect at least until 2021, if at all
- The legislation was opposed by 50 civil rights groups including the RFK Foundation, ACLU and many others

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From the State Legislatures

- Ohio
- Risk assessment legislation, HB 439
- Court rule effort
- No one shall be held in jail solely due their inability to afford bail

From the State Legislatures

- Idaho and Delaware
- Preventative Detention constitutional amendment
- Eliminate all monetary bail whatsoever
- Both failed
- Idaho legislation never made it out of committee
- Delaware legislation came down to the 11th hour
- Texas also had similar legislation run in 2017, which was defeated, but is probably coming back in 2019

From the State Legislatures

- Florida
- Legislation was run in 2018, and there is other legislation in 2019 that will implement risk assessments statewide and create pretrial services program statewide
- Florida generally does not use risk assessment tools right now
- Would be a major shift
- There is also legislation that creates a sort of bail bill of rights—right to fair and accurate information on your options for getting out of jail

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From the State Legislatures

- Alaska
- Idaho—HB 118
- New Hampshire
- Texas
- West Virginia
- New Mexico (2018)
- Georgia
- Kentucky
- Michigan
- Virginia
- Maryland

From the State Legislatures

- Risk Assessment tools
- Are they biased? 110 national civil rights groups say they are and to stop using
- Are they transparent? Not right now, but that day is coming
- John Arnold—conceded yesterday that intellectual property in risk assessments is not enough to deny transparency—now supporting Idaho HB 118
- Do they work? Megan Stevenson, risk assessments.

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The Legal Push for Bail Reform



From the Courts

- Walker v. Calhoun, Georgia
- ODonnell v. Harris County, Texas
- Buffin v. San Francisco
- Welchen v. Sacramento
- Cullman County, Alabama
- Holland v. Rosen
- Collins v. Daniels



From the Courts

- Meaning of the 8th Amendment
- Bail schedules
- Due process
- Equal protection

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Bail Reform on the Local Level

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From Local Governments

- A lot of reforms are happening at the local level
- Risk assessments
- Supervision
- Alternatives to monetary bail
- OR projects (El Paso)
- Cash only bail

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The Fourth Generation of Bail Reform

The Future of Bail in America

4th Generation of Bail


Over the last 60 years, the United States has gone through two generations of bail reform, and for the last fifteen years we have been in a period described by some as the “third generation” of bail reform.

The third generation of bail reform, like the second generation, has been a complete failure. Reliance on preventative detention and electronic monitoring policies has brought a sledgehammer to the bill of rights, including the federal and state constitutional rights to bail.

4th Generation of Bail

Thirty four years after the federal government embarked on this grand risk-based bail experiment, an experiment which no one thought constitutional at the time, it is now time instead for a fourth generation of bail reform.

It's time to return the American bail system into what it is supposed to be. A bail bond which is solely based on the defendant's appearance in which judges set appropriate bail that balances the rights of the victim of crime, the person accused of the crime, and the people who seek to prosecute the accused.

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Principles of the 4th Generation of Bail Reform

The 14 Guiding Recommendations

The 4th Generation of Bail Reform is structured around 14 recommendations to use as a guide for states and lawmakers.

- When then-Chief Justice Rehnquist said in 1987 that “liberty is the norm,” there is no way to believe he would have felt the same way when 31 years later liberty is absolutely not the norm. In fact, the expansion of pre-conviction detention and supervision by the state is the norm. The American Civil Liberties Union (ACLU) warned of this danger in 1984, which Justice Thurgood Marshall echoed in dissent in *Salerno*.

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Recommendation #1

Protecting the fundamental Constitutional Right to Bail and opposing general preventative detention policies.

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Recommendation #2

Improving due process and bail review procedures for defendants, prosecutors and victims.

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Recommendation #3

Eliminating the use of bail as a collections mechanism.



Recommendation #4

Eliminating the restrictions on the way to post bail and protecting the right to personal surety.

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Recommendation #5

Promoting statutes that adopt the concept of nuisance bail and meaningful recognizance bonds.

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Recommendation #6

Eliminating pre-conviction probation except in certain circumstances and require individualized consideration.

Recommendation #7

Eliminating pretrial risk assessment tools in favor of complete and real data concerning the statutory and constitutional factors in setting bail to accompany decision makers when setting bail.

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Recommendation #8

Eliminating full cash ONLY bail, unsecured bail,
and 10% deposit to the court bail.



Recommendation #9

Improving regulation regarding bail agents and recovery agents with arrest authority.



Recommendation #10

Rethink public and private bail funds to afford the indigent the ability to exercise the right to bail rather than be supervised by the state.

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Recommendation #11

Unpaid fines and fees should never be a reason to deny bail.



Recommendation #12

Pretrial incarceration or the setting of bail with the intent to detain should be eliminated.



Recommendation #13

Administrative delays in the bail process should immediately be addressed and immediately reduced.

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Recommendation #14

Statutes that encourage speedy trial reforms should be highly encouraged so as to equally reduce all negative aspects of the period between arrest and disposition.

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Thank you

For more information, please contact us @ info@AmBailCoalition.org