

Bail or Jail?

Most Arizonans support changes in the bail system

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When a person is arrested and charged with a crime, the judge may set bail – the amount of money the person must post in order to get out of jail in promising to return to court for the trial date. If the person cannot afford to post the bail, however, he/she stays in jail until trial, which can be costly to all sides.

Courts use this method under the premise that it helps ensure that defendants will return to court for trial. It's been standard practice for years. But some scholars and practitioners are faulting this “money bail” system for unfairly keeping low-income, low-risk defendants incarcerated solely because they cannot afford even small bail amounts or to pay minor fines and fees. Results can be extended “punishment” for individuals not convicted of a crime, as well as disrupted families, missed rent payments and lost jobs, exasperating their financial struggles.

Among these critics are the Arizona Supreme Court's Task Force on Fair Justice for All, formed last year by Chief Justice Scott Bales. The task force called for fundamental changes to the traditional system of determining pretrial release or detention. The changes, they say, are rooted in evidence-based practices that more reliably assess suspects' likely behavior while preserving or enhancing public safety.

The task force's report, [*Justice for All*](#),* notes that thousands of Arizonans annually sit in jail awaiting trial solely because they cannot afford to post bail. The report also cited research showing that imposing money bail does not improve the chances that a defendant will return to court, nor does it protect the public from high-risk defendants who have access to money.

“Our ideal of ‘justice for all’ embraces the notion that all people should be treated fairly in the justice system,” the task force wrote in its report. “Those without means should not be disparately punished because they are poor. While everyone should face consequences for violating the law, criminal fines and civil penalties should not themselves contribute to or further an individual's impoverishment by imposing excessive amounts or unduly restricting a person's ability to be gainfully employed.”

The Task Force and other proponents argue that their proposed changes will assist judges in setting bail, while ceasing to unfairly punish minor, low-risk defendants. Another key provision of the proposed changes is a more flexible approach to the payment of court

finances and fees (e.g., installment payments) – addressing another frequent reason some defendants languish behind bars

Apparently, most Arizonans agree. A statewide opinion poll** conducted in November/December 2016 found strong majorities of respondents favoring change, including:

- Nearly 66 percent strongly agreed or agreed that suspects with no history of dangerousness should not remain in jail simply because they cannot pay bail.
- Some 87 percent strongly agreed or agreed that courts should use a “risk assessment” system to determine if a suspect should remain in jail until trial.
- Almost 85 percent strongly agreed or agreed that suspects who can’t afford to pay fines and fees – and are thus kept in jail – should instead be allowed to perform community service work or participate in other court-ordered programs.
- More than 68 percent agreed that judges should be given more freedom to reduce the amount of fines and fees if a jailed person cannot afford to pay all or part of the mandatory amount.
- More than 76 percent agreed that judges should be given the authority to impose driving restrictions on low-risk defendants – such as driving only to and from work or school – who failed to appear for a traffic offense. Currently, judges are required to suspend the driver’s licenses of people who fail to appear in court for a traffic offense

The proposed reforms, as reported by the Task Force, are many. But at their core is the application of scientifically validated risk assessments to evaluate a defendant’s possible danger to the community and his/her likelihood of returning to court. Such far-reaching changes cannot be implemented in Arizona without the approval of the public, and perhaps an amendment to the Arizona Constitution, which itself would require a popular vote.

The poll, facilitated and overseen by Morrison Institute for Public Policy, consisted of telephone interviews conducted in late November 2016 and early December 2016 with 800 randomly selected registered Arizona voters. The margin of error varies across the questions, but at its largest was +/- 3.5 percentage points at a 95 percent confidence level.

*Find the report at <http://www.azcourts.gov/Portals/0/FairJusticeArizonaReport2016.pdf>

** A copy of the survey and its findings is attached to this report

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ARIZONA STATE UNIVERSITY

SURVEY ON THE USE OF BAIL TOPLINES

November 28-December 4, 2016 (N=802)

Hello, my name is _____ and I am calling on behalf of the Morrison Institute for Public Policy at Arizona State University. We are conducting a brief but important study among Arizona voters. I would like to ask you seven questions about Arizona's courts and jails.

First, some background. When a person is arrested for a crime, the judge may set bail – the amount of money the person must post in order to get out of jail until their trial date. If the person can afford to post the bail, they get out of jail until trial. If the person does not have access to money, he/she stays in jail until trial. Currently, there is a debate among experts over this process.

1. I'm going to read you examples of two different ways judges could decide whether a person arrested for a crime is released from jail, or kept in jail while awaiting trial. After I read them to you, please tell me which of these two approaches you think is better. (ALTERNATE SCENARIOS 1 AND 2):

A. Joe is arrested. The judge sets bail – the amount Joe must pay to remain free until his trial date. If Joe can afford the required amount, he will usually be released. If Joe does not have the money and can't pay the bail, he remains in jail.

B. John is arrested. The judge applies a widely used "risk assessment" process that calculates how likely John would be to commit a new crime or not return for his trial if he was released from jail. If John is determined to be a low risk, he is released without having to pay bail. If he is considered a high risk, he remains in jail until his trial.

30.05%	Joe
69.95%	John

2. Now I'm going to read you two statements. Please tell me how much you agree or disagree with each of them.

A. People accused of crimes who have no history of being a danger to the community should not remain in jail only because they cannot pay bail.

Strongly agree/agree/strongly disagree/disagree

31.17%	Strongly agree
35.41%	Agree
21.70%	Disagree

11.72% Strongly disagree

B. Courts should use a risk assessment system to determine if an arrested person is a danger to the community or is likely to not return for trial – and thus whether the person should remain in jail until trial.

Strongly agree/agree/strongly disagree/disagree

45.51% Strongly agree

41.02% Agree

8.85% Disagree

4.61% Strongly disagree

3. Currently, a judge must set bail for nearly every arrested person, and in most cases cannot simply require the person to stay in jail until trial. This is so even if the person has failed to return to court in the past and the judge determines that the person may again fail to return for trial. Keeping that in mind, which of the following statements is closer to your opinion? (ALTERNATE THE TWO CHOICES)

A. Arizona should enable judges to keep in jail persons who have repeatedly failed to appear for past court hearings, or who are otherwise a risk for not returning for trial.

B. All arrested persons, regardless of having failed in the past to appear for trial, should have the right to pay bail and remain free until trial.

79.05% Option A

19.58% Option B

0.37% Both [Do not read]

1.00% Neither [Do not read]

4. People convicted of minor crimes, such as traffic offenses, must often pay various court fees as well as fines. Many people must balance such payments against the costs of daily living expenses. People who do not pay their fines or fees may have their driver's license suspended or be arrested. Keeping that in mind, which of the following two statements is closer to your own opinion? (ALTERNATE ORDER):

A. People who can't afford to pay fines and fees should instead be allowed to perform community service work or participate in other court-ordered programs.

B. All arrested persons, regardless of their financial circumstances, should be required to pay all fines and fees, without the chance to do community service work or other court programs.

84.91% Option A

12.97% Option B

0.87% Both [Do not read]

1.25% Neither [Do not read]

5. Currently, judges in many cases are required by law to impose mandatory fines and fees, sometimes totaling hundreds or thousands of dollars, on people who are convicted of a crime. People who do not pay may be arrested. Keeping that in mind, which of the following two statements is closer to your own opinion? (ALTERNATE ORDER)

A. Judges should be given more freedom to reduce the amount of fines and fees if a person cannot afford to pay all or part of the mandatory amount.

B. Judges should be required, without exception, to impose the mandatory amount of fines and fees, and require that the entire amount be paid.

68.33%	Option A	
28.55%	Option B	
0.00%	Both	[Do not read]
3.12%	Neither	[Do not read]

6. Currently, judges are required to suspend the driver's licenses of people who fail to appear in court for a traffic offense, often making the person unable to get to work or school. Keeping this in mind, which of the following two statements is closest to your own opinion? (ALTERNATE ORDER)

A. Judges should be given the authority to impose driving restrictions on low-risk defendants – such as driving only to and from work or school – instead of suspending the person's license entirely.

B. Judges should be required to suspend a person's driver's license in all cases, and should not have the authority to instead impose a restriction such as letting the person drive only to and from work or school.

76.43%	Option A	
21.20%	Option B	
0.25%	Both	[Do not read]
2.12%	Neither	[Do not read]

7. Driving on a suspended license is currently a criminal charge – not just a civil violation – regardless of why the license was suspended. Keeping that in mind, which of the following is closer to your own opinion? (ALTERNATE ORDER)

A. Driving on a suspended license should be reduced to a civil violation, if the reason for the suspension was missing a previous court date or not paying a fine.

B. Driving on a suspended license should remain a criminal charge in all cases.

59.60%	Option A	
37.66%	Option B	
0.25%	Both	[Do not read]
2.49%	Neither	[Do not read]

Now please share some basic information about yourself – remembering that all such data remains strictly confidential.

Demographic Data

Age

32.04% 18-35

44.51% 36-64

23.44% 65+

Gender

49.75% Male

50.25% Female

Race/Ethnicity

60.35% White, non-Hispanic

26.81% Hispanic/Latino

2.87% Black/African American

2.00% Native American/Pacific Islander

1.12% Asian American

3.12% Other

3.74% Refused

Political Affiliation

24.06% Republican

33.17% Democrat

28.05% Independent

8.35% Other

6.36% Refused

THANKS VERY MUCH FOR YOUR HELP!