



Bail in the United States

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What is bail?

Bail is **the amount of money defendants must post** to be released from custody until their trial. The purpose of bail is simply to ensure that defendants will appear for trial and all pretrial hearings for which they must be present.

Defendants can post bonds personally or through a bail **bondsperson**. A bondsperson is someone who guarantees the rest of the bail that the defendant may not be able to post, usually defendant has to post at least 10%, but they then must pay a fee to the bondsperson on top of this 10%.

History of bail in the US

- In medieval England, until the 13th century, the conditions under which a defendant could be detained before trial were dictated by the local Sheriffs
- The Statute of Westminster in 1275 eliminated the discretion of sheriffs with respect to *which crimes would be bailable*, however, not only were some offenses explicitly excluded from bail, but the statutes' restrictions were confined to the abuses of the sheriffs.

Turning point in Medieval England

- When parliament did not give him any funds, King Charles forced noblemen to grant him loans and if the knights refused, they were sentenced to prison without bail
 - Parliament responded to the King's action and the court's ruling with the Petition of Right of 1628. The Petition protested that contrary to the Magna Carta and other laws guaranteeing that no man be imprisoned without due process of law, the King had recently imprisoned people before trial "without any cause showed."

What determines bail?

The judge or magistrate decides the amount of bail by weighing many factors:

1. the risk of the defendant *fleeing*
2. the type of *crime* alleged
3. the "*dangerousness*" of defendants
4. the safety of the *community*

What is not considered:

- **the offenders *ability to pay***

UNITED STATES, Petitioner v. Anthony SALERNO and Vincent Cafaro (Mafia)

- Facts of the Case
 - Bail Reform Act of 1984
 - allowed the federal courts to detain an arrestee prior to trial if the government could prove that the individual was potentially dangerous to other people in the community
- Question
 - Did the Bail Reform Act violate the Fifth Amendment's Due Process Clause?
- Conclusion
 - The Court held that the Act was did not violate that Fifth Amendment and was constitutional because when the government's interest in protecting the community outweighs individual liberty; pre-trial detention can be "a potential solution to a pressing societal problem"
 - The Act only applied to a **specific list of serious offenses, placed heavy burdens on the government to prove that the arrestee posed significant threats to others, and did not prevent the accused from enjoying a speedy trial**

How Policy Reform Has Made An Impact

Bail reform act of 1984

- Protects and serves the community
- Forces law officials to thoroughly investigate each detainee to assure they truly need to be detained
- Only detains those who are a threat to the community
- Releases individuals that do not pose a significant threat
 - Usually requires little to no bail in this case*
- Takes **flight risk** and **community roots** into consideration

Drawbacks of Monetary Bail

- Low vs. high socioeconomic statuses suffer exponentially different consequences
 - Unemployment rates skyrocket
- Family/dependents suffer
- Overcrowding in jails leads to more unrest, poor sanitation, and heavier workload for officers
- If the punishment for the crime itself is not deterring the criminal from committing the act, then clearly bail will not deter them either

Constitutionality

- Pretrial Release policy
 - State to state basis that could change to federal discretion
 - Relieves financial burden, in most cases, but not all
 - Detainees- capital/violent crime offenders **only**
 - *Knowingly applying a practice that disproportionately affects Americans violates the constitution*
 - Fourteenth amendment
- Excessive Bail policy
 - Universal standard is unrealistic
 - Fair does not mean equal
 - What's excessive for one is not for others
 - Bail proportionate to income and crime
 - Other factors should be included in determination

Why study bail in general, especially monetary?

- Jails are overcrowded and disproportional due to bail
- Indigent people are affected much more than those who are well off
- There are other opportunities and considerations that could replace monetary bail
- Efficiency of our communities
- ***Equity***

Bail reform policies would be the solution to these problems

Sources

Smith, A. M. (2019). U.S. Constitutional Limits on State Money Bail Practices for Criminal Defendants. Retrieved December 1, 2021, from <https://crsreports.congress.gov/product/pdf/R/R45533>.

Smith, A. M. (2018). State Money-Bail Systems: Differing Approaches. Retrieved December 1, 2021, from <https://crsreports.congress.gov/product/pdf/LSB/LSB10220>.

“About Bail - History of Bail History of Bail.” PBUS, <https://www.pbush.com/page/14>. Accessed 5 Apr. 2022.

“United States, Petitioner v. Anthony Salerno and Vincent Cafaro.” Legal Information Institute, Legal Information Institute, <https://www.law.cornell.edu/supremecourt/text/481/739>.

“Stack v. Boyle, 342 U.S. 1 (1951).” Justia Law, <https://supreme.justia.com/cases/federal/us/342/1/>.