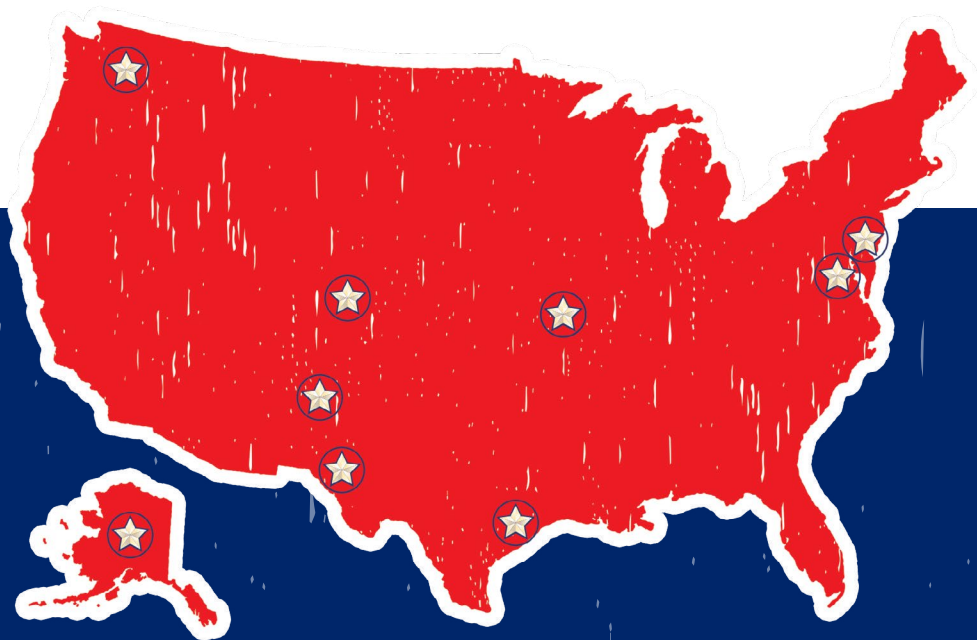


# A Review of Failed Bail Reform:

## *An Analysis of States*



# INTRODUCTION

As the bail reform movement moves past its crescendo, this gives us an opportunity to assess how things are going. Initially, the people advocating change claimed that the current bail system in the United States was unconstitutional. Therefore, they argued that changes had to be made because the courts were going to get rid of it. In the intervening period, the only two reported cases to date from the United States Court of Appeals for the Fifth Circuit and the Eleventh Circuit have ruled just the opposite. They have concluded that monetary bail is constitutional. As a result, the arguments supporting change have now shifted to arguments that “this is the right thing to do.” However, they are not arguing that it is the right thing to do for tax payers, the States or the Criminal Justice System, which should always be primary considerations.

The following booklet is a collection of case studies from around the country highlighting the results of several attempted state specific bail reform efforts. In some cases, the results have been bad enough to cause the jurisdiction to repeal the changes. While each state discussed is unique, the results are hauntingly similar. From promises of less crime, less time in jail and lower jail populations, to the realities of more crime, more time in jail and larger jail populations, states have been left to fend for themselves.

No longer can they afford to wait for more resources or time for these programs to start living up to their empty promises. Instead, states are looking for ways to roll back and rethink these ineffective and underwhelming bail reform policies.

**No longer is the mantra, “eliminate bail,” but rather it has evolved to, “improve it.”**



*While each state discussed is unique, the results are hauntingly similar.*

# Alaska BAIL REFORM

## RESULTS: Increased failures to appear, increased crime

In 2016, Alaska implemented one of the nation's first catch and release pretrial programs. Much like other states assessing their criminal justice systems, Alaska was courted by pretrial activists from around the country. They provided the typical narrative promising Alaska that reforms to their bail system would lower their incarceration rate and keep crime rates the same. Ultimately, they convinced Alaska's legislature that their bail system needed reform. The legislature passed Senate Bill 91. This piece of legislation revamped sentencing guidelines and made changes to other longstanding criminal justice policies including the reclassification of many felonies to misdemeanors. Since SB91 was enacted, criminals began reoffending at much higher rates and defendants' failure to appear rates for court increased substantially. According to State Senator Mia Costello:



*One of the reasons for having laws on the books is to send a message to the community about what is and what isn't acceptable. We've gone the opposite direction, where criminals are feeling emboldened by this law.*

In 2018, Ms. Costello lead the charge to repeal SB19. As a result, the legislature rolled back many of the bills dangerous and ineffective aspects. The legislature also was able to pass several add-on bills that gave judges more discretion in bail decisions and allow the judges to also consider out of state criminal histories.

Alaska is a great example of a state that evaluated the effect of its prior decision and decided to take action and change course to remedy the detrimental results. Alaska realized that the promises of the bail reform movement were not realized and took action that was in the best interest of their citizens. Therefore, instead of eliminating its commercial bail system, Alaska found ways to improve it.

Overall, the catch and release system implemented in Alaska has done nothing to fix the original problem and only increased public outrage and public safety fears. Texas' own Mark Levin with the Texas Public Policy Foundation and Right On Crime, along with former State Representative Jerry Madden, now a Senior Fellow with Right On Crime, were both instrumental in promoting the changes in SB 91 and the use of an assessment tool. Madden and Levin were questioned strongly by members of the legislature after the failed results of SB 91 and were quoted as saying, "These policies take time for people to understand them." A further note is that these two same individuals are at the forefront of recommending the same failed policies in Texas that are being repealed by Alaskans.

*Greenblatt, After Reforming Criminal Justice, Alaska Has Second Thoughts, Governing (February 2018).*

## GOVERNING

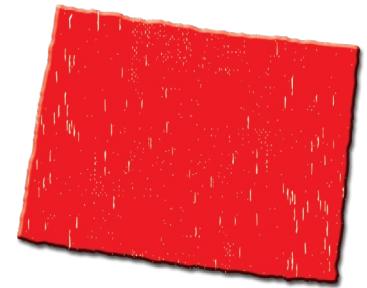
February 2018

### After Reforming Criminal Justice, Alaska Has Second Thoughts

# Colorado BAIL REFORM

## RESULTS: Increased jail populations, increased length of stay, increased failures to appear

In 2013, Jefferson County, Colorado moved away from the use of financially secured release (money bail) in favor of an unsecured bond system with a robust pretrial services agency. All bail schedules were eliminated, and pretrial risk assessments were implemented. Advocates of bail reform often tout Jefferson County as a gold standard of the movement and a model for others to follow.



When a status report of the Jefferson County “model” pretrial program was finally released, the results were shocking. The program failed to live up to the promises it made regarding jail population reductions and wait time reductions. Instead the new pretrial program increased almost every metric that it promised to decrease. This included:

- An increase in the average daily pretrial population and an increase in the average pretrial length of stay by 29%;
- An increase in the number of people staying in jail more than one day by 141%;
- An increase in the number of outstanding warrants by 42% in felonies and 34% in misdemeanors; and
- An increase in the percent of the pretrial population in the jail from 35% to 42%.

In December of 2016, the District Attorney, the Sheriff, and the County Supervisor from Jefferson County, Colorado wrote a letter to the leadership in Maryland warning them of the false narrative and empty promises of bail reform. According to the letter:

**// The program did not work as intended. We did not save budget dollars. The system suffers from a lack of accountability. //**

How did the Jefferson County leadership respond to this status report? The county proceeded to reinstate commercial bail. Now Jefferson County reports, “...accountability has improved and as a system we are functioning better.”

[Szabo, et. al, Letter to Judges of Maryland Court of Appeals \(December 22, 2016\).](#)

## NEW PRETRIAL PROGRAM **INCREASED** ALMOST EVERY METRIC THAT IT PROMISED TO DECREASE

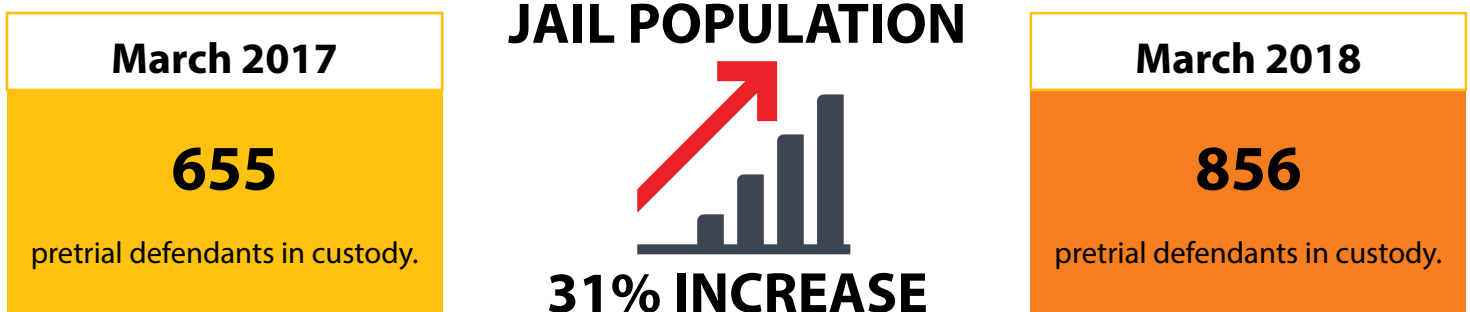


# Maryland BAIL REFORM

## Results: Increased Pretrial Detention

In 2017, the state of Maryland passed bail reform as a solution for jail overcrowding. The effort was initiated by five legislators who asked Attorney General Brian Frosh to provide an opinion on the constitutionality of the money bail system. In his opinion, AG Frosh claimed that the money bail system was most likely unconstitutional as it violated the equal protection and due process rights of defendants. The attorney general's opinion led to Maryland completely revamping its pretrial release policies. These new policies promoted the free release of most defendants on their own recognizance and the detention of those deemed too dangerous to release. Very few instances were left where a financially secure bond would be required or allowed.

The results of this bail reform effort have been disappointing and have detrimentally impacted the Criminal Justice System and public safety. Since implementing the program, pretrial jail populations have increased substantially. Comparing population numbers from March 2017 to March 2018 demonstrate a 31% increase in pretrial defendants in custody from 655 to 856. Additionally, since implementing these expensive and ineffective new bail policies, the first reported cases from the United States Court of Appeals for the 5th Circuit and the 11th Circuit have held that pretrial release systems that use money bail and bail schedules are constitutional and if operated properly do not procedurally violate the due process and equal protection clauses of the constitution.



Eliminating financially secured bail did not solve Maryland's jail overcrowding problem. Instead, it increased the problem and the costs associated with it. The promises made in favor of bail reform were broken.

Shackford, *Bail Reform Efforts Are Backfiring in Baltimore, Leading to More People Stuck in Jail*, Reason (Blog May 31, 2018).  
Bui, *Reforms intended to end excessive cash bail in Md. are keeping more in jail longer, report says*, Washington Post (July 2).

**“ Since implementing the program, pretrial jail populations have increased substantially. ”**



# Washington BAIL REFORM

## Results: Increased jail population, increased racial disparity, unsustainable budget needs

Spokane, Washington is one of the many jurisdictions across the country that was awarded a \$1.75 million Safety and Justice Grant from the MacArthur Foundation to start a pretrial services program. The goal was to reduce jail populations and show that pretrial services can be just as, if not, more effective than the bail industry. So how is Spokane's pretrial program performing? That is a great question, and not one that Spokane's pretrial program is willing to answer. In fact, in order to get actual numbers, a Freedom of Information Request had to be filed. After several attempts, data was finally provided for the first year of the program.



After reviewing the data, one can easily understand why Spokane officials were not enthusiastic about providing it. A program that was designed and promised to reduce both the jail population and the pretrial population failed miserably. According to the data:

*The Spokane jail population did not decrease but rather increased by 10.3%.  
The pretrial jail population also increased by an even larger percentage of 16.9%.*

Another promise made by proponents of the pretrial reforms was that the use of risk assessments and the deployment of a robust pretrial services agency to manage and implement those assessments and supervise defendants would substantially decrease the racial disparity that exists in the system. Unfortunately, the ratio of African Americans to Whites increased almost 5% in jail bookings and had basically no meaningful change in pretrial populations.

The program began with so many promises and alleged benefits over the existing bail system, but the reality was a system that was worse in almost all respects. In fact, a program that was supposed to save Spokane money is costing them over \$5 million a year more than the previous bail system. Based on a \$75 per jail bed/day value, the increase in jail population of 10.3% equates to an additional cost of \$5,468,000 to Spokane taxpayers on top of the annual expenses of the new system which was previously provided by private industry at no cost to the taxpayers.

Safety in Justice Challenge Part III: Bail Reform Flames Out in Spokane, American Bail Coalition (2018).

Safety and Justice Challenge: Interim performance measurement report Jail Measures, CUNY Institute for State and Local Governance (February 5, 2018).



## Additional cost to Spokane taxpayers

$$\begin{array}{l} \$75 \text{ per jail} \\ \text{bed/day value} \end{array} + \begin{array}{l} \text{the increase in jail} \\ \text{population of 10.3\%} \end{array} = \text{\textcolor{red}{\$5,468,000}}$$

*“...the increase in jail population of 10.3% equates to an additional cost of \$5,468,000 to Spokane taxpayers.”*

# South Carolina BAIL REFORM

## Results: Increased jail population, no decrease in racial disparity, unsustainable budget needs

Charleston, South Carolina is another jurisdiction to receive a MacArthur Safety and Justice Grant. Charleston received \$3.4 Million dollars over two years to reduce jail populations and reduce racial disparity all while reducing a reliance on money bail. The goal was to reduce the jail population 25% over three years.

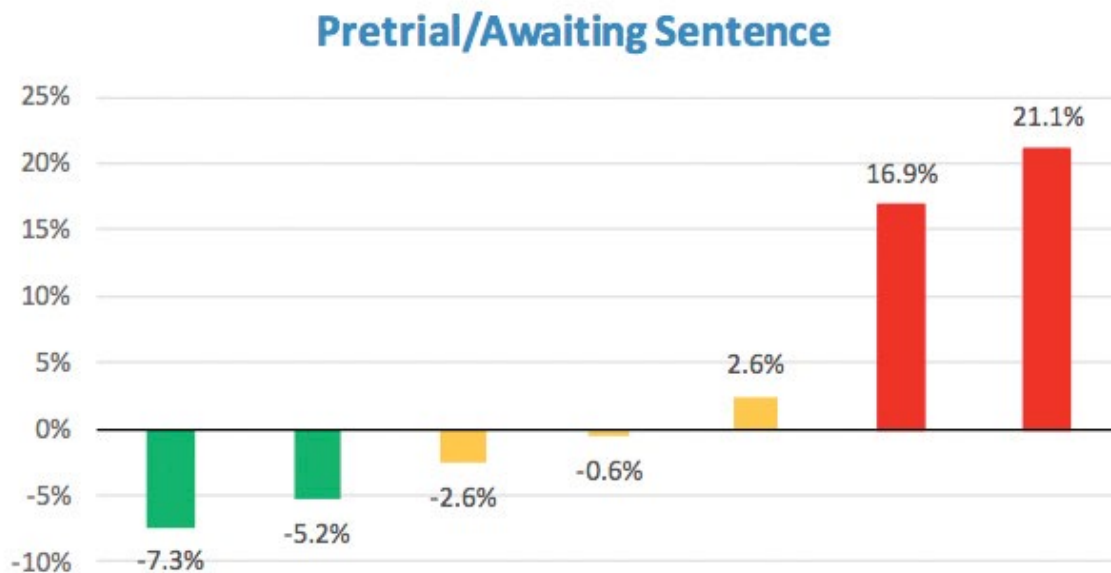


The results of the first year of the program have been released and they are not very promising. According to data provided by the MacArthur Foundation through an open records request, jail populations in Charleston increased 1.6%.

As far as racial disparities the promised reforms did not appear and there were no changes in the racial makeup of the jail. The interesting thing is that Charleston is reporting a 7% decrease in its jail populations. However, this decrease has to do with the sentenced populations and not the pretrial population, which according to the raw data is increasing.

Taking into consideration the grant money received along with the increased costs to Charleston from an increased jail population, Charleston has spent over \$2 Million to increase its jail population and do nothing about racial disparities in the system.

*Safety and Justice Challenge: Interim performance measurement report Jail Measures, CUNY Institute for State and Local Governance (February 5, 2018).*



// **Charleston has spent over \$2 Million to increase its jail population and do nothing about racial disparities.**

//

# Missouri BAIL REFORM

## Results: Increased jail population, increased racial disparity, unsustainable budget needs

Another jurisdiction to receive a MacArthur Foundation Safety and Justice Grant was Saint Louis, Missouri. In the aftermath of Hurricane Ferguson, Saint Louis was not only struggling to deal with a variety of issues around fines and fees, but also its overworked and underperforming criminal justice system. The solution, Saint Louis received \$2.25 Million to rewrite its criminal justice “best practices.” This involved the development and expansion of a robust pretrial release program to solve jail overcrowding and racial disparities in the system. After reviewing the data gathered through an open records request, it was determined that Missouri’s so-called “improvements” were illusory. In the first year under the new program, the jail population did not decrease, it increased 4.7%. The pretrial population increased 21.1%.

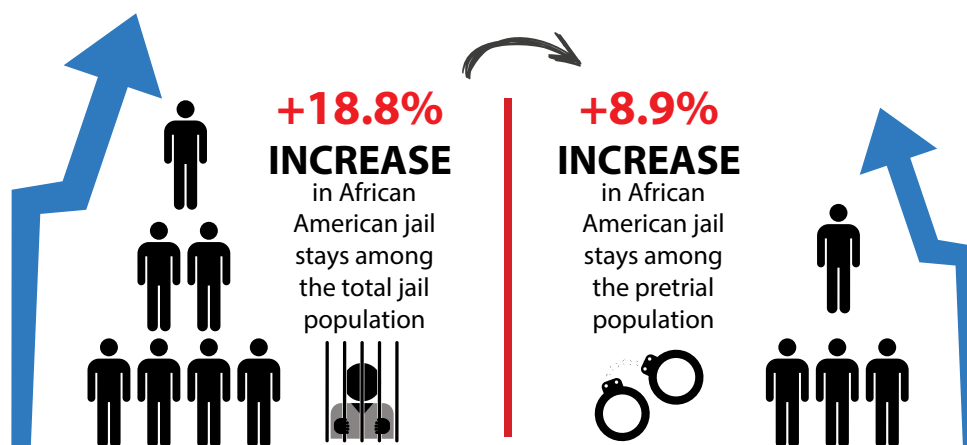


*In the first year under the new program, the jail population did not decrease, it increased 4.7%. The pretrial population increased 21.1%.*

In terms of racial disparities associated with lengths of stays, African American stays increased 18.8% in the total jail population and 8.9% in the pretrial population.

With a \$75 jail bed/day cost, not counting the original grant of \$2.25 Million, St. Louis taxpayers paid an additional \$1.62 million dollars to house this additional jail population and increase the racial disparity within them. Promises made seem to equate to promises broken.

*Safety and Justice Challenge: Interim performance measurement report Jail Measures, CUNY Institute for State and Local Governance (February 5, 2018).*



*St. Louis taxpayers paid an additional \$1.62 million dollars to house this additional jail population and increase the racial disparity within them.*



# El Paso, Texas BAIL REFORM

## Results: Substantial increase in cost, increased failures to appear

El Paso, Texas has been dabbling in bail reform for the past several years. In 2015 the Commissioners Court of El Paso County spent \$2 million to expand its pretrial services program. The goal was to reduce the number of people sitting in jail and show that pretrial services programs were just as effective if not more effective than financially secured release methods utilized by the commercial bail industry.



What the El Paso Commissioners' Court did not realize was that releasing people from jail is easy but getting them to show up and go to court can be difficult. Since 2015 and the launch of its expanded pretrial program, El Paso has amassed an increase of over 200% in bail bond forfeiture judgments because of defendants' failure to appear for court. In 2015, when the program started, there were 188 unpaid judgments. In 2017, that number skyrocketed to 569. Each of those judgments has a financial value that cannot be ignored. Those judgments total a whopping \$3,190,507.00 owed to the county, which remains uncollected today. Going back 5 years, before the program was expanded, the total amount owed to the county of El Paso was well over \$12,000,000. Of this sum, the total amount that has been collected is only \$7,563.00. During this same 5-year period the bail industry paid close to \$4 million in judgments to the county. Why? Because bail agencies are required to pay ALL judgments timely if they are unable to get the defendants to return to court as required by the law. If they do not pay, they could lose their license, even if it means they go out of business.

In addition to the lost revenue associated with unpaid judgments, the county is also paying an even bigger cost with its failing pretrial services program. In a 2013 study out of the University of Texas, Dr. Robert Morris determined that there is a cost of every failure to appear in the amount of approximately \$1,775. Based on the number of judgments in El Paso over the past 4 years multiplied by Dr. Morris' value of an FTA at \$1,775, El Paso county not only failed to collect \$4 million in judgments, they lost a total value of close to \$13,000,000.00. This sum can be broken down as follows:

## TEXAS FAILING PRETRIAL SERVICES PROGRAM



Cost of program:	<b>\$6,000,000</b> (based on an annual pretrial cost of \$2 Million since 2015)
Cost of judgements:	<b>\$4,583,101</b> (past 4 years)
Judgements paid:	<b>(\$7,563)</b>
Cost of FTA's:	<b>\$2,410,450</b> (1,358 Judgements x \$1,775...based on judgements not FTAs)
<b>TOTAL LOST:</b>	<b>\$12,985,988</b>

It is very easy to sit back and advocate for the county to get into the bail business and generate money for the county. But it is a very different thing to do it successfully.

Blaylock, El Paso County Texas Commissioner's Court: Show Me the Money, American Bail Agent Coalition (January 31, 2018).

***"Going back 5 years, before the pretrial program was expanded, the total amount owed to the county of El Paso is well over \$12,000,000."***

# Harris County, Texas BAIL REFORM

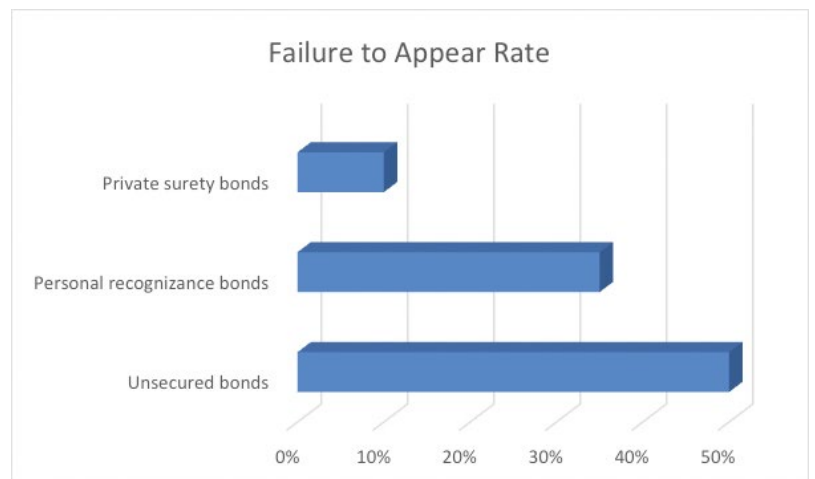
## Results: Increased failure to appear rates

Over the last two years, Harris County, Texas has been under a federal court order to impose many of the changes advocated by bail reform proponents. The Fifth Circuit Court of Appeals recently reversed the district court's preliminary injunction which imposed these restrictions. However, the Harris County experience is very illuminating. Over a 12 month period, while the order was in effect, the county tracked the failure to appear rate for each type of release. Here are the results.



As you can see, those individuals who were released on a private surety bond through a bail agent appeared at a rate of 90%. Those released on unsecured bonds failed to appear 50% of the time.

What does that mean? Harris County arrests approximately 1,000 misdemeanor individuals a week. If all of these individuals were given "unsecured bonds" then approximately 500 individuals every week would not appear for court and would have to be rescheduled for new hearings. The second week, you would now have 1,500 defendants to deal with. This includes the weekly 1000 defendants plus the 500 who failed to appear the previous week. Based on these numbers, the estimated number of FTAs from that group would be 50% or 750 people.



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***Individuals released on a private surety bond through a bail agent appeared at a rate of 90%. Those released on unsecured bonds failed to appear 50% of the time.***

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# New Mexico BAIL REFORM

## Results: Increased crime, increased failures to appear

In 2017, through court rule, New Mexico implemented the Laura and John Arnold Risk Assessment Tool in its court system. This new risk assessment tool mostly eliminated the use of financially secured release. All defendants were put through the tool and given a risk level. They were then released into the community for free without having to pay for a bail bond. Instead they are given a so called “appropriate level of supervision” by the court based on their risk level.



This new process has failed. While the effort did reduce the jail population (the jails are at 70% capacity) it did so at the expense of public safety. Crime in New Mexico has skyrocketed. The Governor of New Mexico, Susana Martinez, has publicly come out against New Mexico's bail reform effort. In a recent video she prepared for the state of Utah, she issued this warning: “New Mexico implemented this pretrial risk assessment tool to devastating results. I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street to terrorize communities.”

According to Governor Martinez, New Mexico was sold a false narrative by those advocating for bail reform. They were told that by eliminating financially secured release, New Mexico could effectively and efficiently manage its pretrial populations while ensuring court appearances and protecting the public. None of these promises were kept. The Governor's office sent this statement to a local media outlet:



“The implementation of the pre-trial detention rules by the New Mexico Supreme Court is disastrous for our communities. The Governor will continue to stand against dangerous criminals and repeat offenders being let out on the streets and will lend her voice to any state considering these faulty rules.”

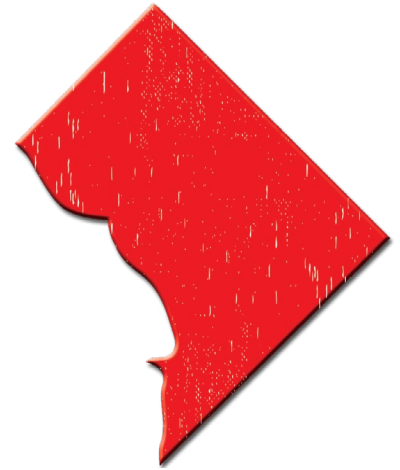
[Schmitt, New Mexico Governor Warns Utah About Bail Reforms, ABC4 \(April 26, 2018\).](#)

**// New Mexico implemented this pretrial risk assessment tool to devastating results. I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street to terrorize communities. //**

# Washington, D.C. BAIL REFORM

## Results: Substantial costs, substantial increase in detention

In 1984, the federal government passed its own bail reform legislation. This legislation created a large robust pretrial services agency responsible for the supervision of all released defendants. At the same time, it pretty much eliminated the use of money bail in the federal system, which is the system that Washington, D.C. employs. The purported reasons for this change was to allow for more people to be released pretrial. Unfortunately for Washington, D.C. and the federal system, this approach did not only fail, but completely backfired. Instead of lowering jail populations and detention rates, the new bail reform legislation increased them.



Prior to bail reform, detention rates in the federal system were about 24% with only about 2% being detained without bail. Move forward 34 years and you can see the detrimental impact that these reforms have had on individual liberty. Today over 72% of defendants in the federal system are held prior to trial with no option or opportunity for release. That is a 303% increase in detention rates since the Bail Reform Act of 1984 was implemented.

Additionally, the cost of running a DC like system is exorbitant. For example, Washington, D.C. pretrial services budget is approximately \$63 million annually. This large sum of money is required for a population just under 700,000 people. If you were to implement the same type of system in various counties around Texas, based on this DC cost calculation, the program would be unsustainable. The chart to the rights shows some example costs estimates.

**Cost Estimates for Running a Washington, D.C. Style Pretrial Program in Texas**

County	Population	Cost Estimate
Harris County	4.653 million	\$418,770,000
Dallas County	2.63 million	\$263,000,000
Tarrant County	2.054 million	\$184,860,000
Bexar County	1.959 million	\$176,310,000

**// Today over 72% of defendants in the federal system are held prior to trial with no option or opportunity for release. That is a 303% increase in detention rates since the Bail Reform Act of 1984 was implemented.**





# Kentucky BAIL REFORM

## Results: Increase in jail populations, increase in failures to appear

While Kentucky is not a surety bail state, the state has been on the forefront of the bail reform movement. With one of the most robust pretrial services agencies in the country, they are one of the biggest proponents and users of the Arnold Risk Assessment Tool. Unfortunately, the results out of Kentucky are not the shining beacon of hope upon which bail reformers base their dreams.



Despite touting Kentucky as the model pretrial release system, the jails in Kentucky continue to be overcrowded. Unfortunately for bail reform advocates, there is no commercial bail bond industry to blame in Kentucky.

The failures lie completely with their underperforming pretrial services agency.

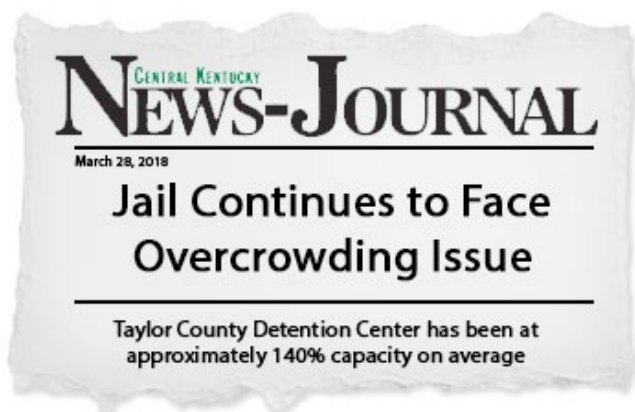
Professor Megan Stevenson from George Mason University's Antonin Scalia School of Law recently produced a research report assessing the effectiveness of Kentucky's use of the Arnold Risk Assessment. While advocates for Kentucky's use of risk assessments promised lower jail populations and lower failure to appear rates, the reality is that it did the opposite. According to Professor Stevenson, "The introduction of the PSA did not lead to a decline in failures-to-appear. If anything, the FTA rate is slightly higher after the PSA was adopted than before."

Combs, *WKYT Investigates | Drug epidemic and overcrowding in Kentucky jails*, WKYT (September 21, 2017).

Kentucky Jail Emergency, *The Daily Independent* (August 7, 2018).

Oakes, *Jail continues to face overcrowding issue*, *Central Kentucky News-Journal* (March 28, 2018).

Shields, Spissinger, *Overpopulation creates problems for Kentucky's jails*, *WPSD Local 6* (May 8, 2018).



**// The introduction of the PSA did not lead to a decline in failures-to-appear. If anything, the FTA rate is slightly higher after the PSA was adopted than before. //**

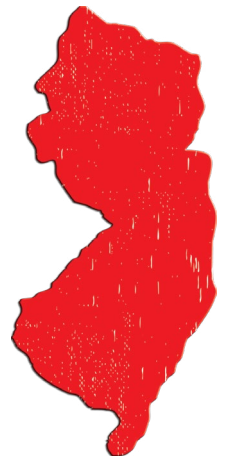


# New Jersey BAIL REFORM

## Results: Increased costs, increased crime, lack of transparency and a lack of results

One could say that New Jersey has been ground zero for the bail reform movement. Back in 2015, New Jersey voters approved two pieces of legislation. The first piece involved the voters changing the New Jersey state constitution to allow for the preventative detention of pretrial defendants. The second piece of legislation involved the establishment of a robust pretrial services agency and the establishment of a risk assessment tool to be used to measure the risk level of pretrial defendants. While these pieces of legislation did not specifically eliminate the use of financially secure release (commercial bail bonds), they set the stage for the attorney general to interpret the statute and direct New Jersey courts to only use financially secured release as the last and final resort for determining pretrial release of a defendant.

The legislation went into effect in January of 2017 and commercial bail was all but eliminated in New Jersey. The proponents of change promised cost savings, decreases in jail population, and no increases in crime or adverse impact to public safety. The results of New Jersey's efforts have not lived up to any of these promises. According to a letter from Assemblyman Bob Andrzejczak,



***...it has been an absolute disaster. The public safety needs of citizens in New Jersey have suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed.***

"The law went into effect this past January and it has been an absolute disaster. The public safety needs of citizens in New Jersey have suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed."

Despite the over \$500 million cost estimate of bail reform that was provided by an economics professor at Towson State University, New Jersey's bail reform program was still promoted as a cost savings measure. The sad reality is that there has been no cost savings. In fact, the overall costs of the New Jersey program have been substantial. After almost 2 years, reports show that the program is quickly running out of funding. In the first year, the legislature passed a statewide increase in property taxes in order to fund the exorbitant program created by the bail reform movement (something that they claimed they would not have to do). And based on updated figures, the program is set to run out of money by 2020. In one of the latest articles, officials have stated that a sufficient funding source must be found soon to continue these massive efforts.

Additionally, there has been no transparency with the reforms so that anyone can determine how bad or how good the reforms have been. It is difficult to assess whether the reforms have accomplished the other reported goals because the state has refused to release any data. New Jersey courts continue to not provide any metrics or statistics on the program to the public. Based on the types of charges and the profiles of the defendants being released through this program, we can assume that it is not going well. Crime in New Jersey continues to increase along with defendant recidivism rates. Even two years after the reforms, the State is not releasing any real data. The partial data available documents that there has been a decrease of the jail population recently, but the population numbers are still greater than the numbers before bail reform was implemented. This hardly shows any success.

New Jersey is consistently cited as the leader in bail reform, but there is no data to support this. Further, the limited results show that all the program has done is waste millions of taxpayer dollars to embolden criminals and make New Jersey communities less safe.

[New Jersey Assemblyman Outlines Failure and Lies of Bail Reform, Jail Advertising Network \(July 11, 2018\).](#)  
[Andrzejczak, Letter to Speaker Rendon of the New Jersey House of Representatives \(July 3, 2017\).](#)  
[Gallo, Bail Reform Blamed for Tax Hike in Cumberland's \\$157M Budget, The New Jersey Journal \(April 26, 2017\).](#)

# BAIL REFORM *Lessons Learned*

## **What are the lessons from the experiences of these various states?**

### **Lesson No. 1- Bail Reform Without Supervision Creates Chaos**

- Granting PR bonds with no supervision causes the largest failure to appear rate. In Harris County this was 50% of the PR bonds issued. A 50% failure to appear rate will shut down your criminal justice system.
- Providing limited supervision decreases the failure to appear rate, but not by much. The failure to appear rate will still be double the rate of the current private industry.
- The Report to the Texas Legislature from the Office of Court Administration recognizes this problem and seeks to address it by recommending the creation of some type of Statewide Pretrial Services Department modeled after either Kentucky or Washington, D.C. This would create a whole new bureaucracy in Texas. The report recommends various funding suggestions: (1) the state pay for it; (2) the counties pay for it; (3) the defendants pay for it; or (4) some combination of the first three. Also, a state system that is paid for by the defendants seems to be just a government takeover of a private industry.
- Supervision is expensive. A new statewide department will still not provide the level of supervision currently provided by private industry.

### **Lesson No. 2- Promises Of Cost Savings And Jail Population Reductions Have Not Been Realized And The Reality Is That There Have Been Substantial Costs To The New Systems**

- The argument has been made that any reforms can be funded by the savings that will be realized as a result of the proposed reforms. This has not been true in any state or county which has implemented them.
- New Jersey had to pass a statewide property tax increase to pay for the initial reforms and is set to run out of money again in early 2020.
- Promises that jail populations would decrease have also not been realized. The real-world experiences have been an increase in the jail population as more people are detained.

### **Lesson No. 3- Risk Assessment Tools Do Not Satisfy The Requirements Of The Recent Decisions From The 5Th Circuit Or The 11 Circuit.**

- Proponents of change have argued that an automated risk assessment tool will provide for the efficient release of defendants.
- The current tool proposed by the Office of Court Administration is not automated and it is not a program that accesses criminal history data bases. It is only an app that calculates a score based upon information entered into the app. Therefore, it relies on information disclosed by the defendant. The app does not review local, state or national criminal histories for the defendant. Additionally, the information entered into the app is not disclosed to the court. Instead, only a score is disclosed.
- When the app makes a mistake, it is usually by concluding a defendant is low risk when the defendant is not.
- The 5th Circuit and the 11 Circuit have held that the U.S. Constitution requires an individual hearing to have an opportunity to ask for a deviation from a bail schedule if the defendant claims poverty. The use of a risk assessment app does not satisfy this requirement and will require counties to expend even more resources to establish procedures to address the requirements of these cases.
- Growing data demonstrates that risk assessments in general are not race neutral.