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### Law experts want Arizona's bail system to change



Courtesy  
**Lack of money keeps many Arizona inmates, like these at the Mohave County jail in Kingman, behind bars thanks to a bail system some experts argue needs to change.**

Scott Orr and Howard Fischer

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A vertical advertisement for a red 2014 Ford Super Duty F-250 pickup truck. The text reads "DEAL OF THE WEEK" in yellow, "2014 FORD SUPER DUTY F-250" in yellow, and "Our Price: \$24,966" in red. Below is the "66 AUTO SALES SINCE 1975" logo and contact information: "928-753-6600" and "1983 E. ANDY DEVINE".

KINGMAN – When a judge sets an amount for a defendant's bail, the object is to choose the minimum amount that will ensure that defendant will continue to appear in court.

A special panel of experts on criminal law wants to scrap the current system of setting bail and imposing fines and replace it with one linked to a defendant's ability to pay.

"Every year in Arizona, thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail," according to the report released Tuesday by the Task Force on Fair Justice for All. "While people arrested are protected by a presumption of innocence, if they lack the access to money, they often remain in jail."

Dave Byers, who chairs the panel created by Supreme Court Chief Justice Scott Bales, said that inability to pay has a financial cost on taxpayers, with the bill statewide for operating jails at \$1 million a day.

That, he said, creates a spiral where people who are locked up awaiting trial lose their jobs and perhaps their homes. And Byers said there is evidence that people locked away for only two or three days are 40 percent more likely to commit a future offense than those who are arrested for the same crimes but released without bond.

What's worse, he said, is there are people who are arrested for minor crimes who can't afford the bail set – a bail often determined by the charge – who sit behind bars for far longer than they would be sentenced.

Byers said there are people who should remain behind bars who are multiple offenders or

could be considered a danger to others. But because they have money or a “friendly bail bondsman,” they can easily make the \$1 million bond that a judge set under the premise it would keep the person off the streets.

He said existing laws and constitutional provisions give judges only limited ability to deny bail. So the committee is recommending a constitutional amendment to expand that power.

**Bail and bond**

If you’ve encountered the words “bail” and “bond” enough in news coverage, they might seem to be interchangeable, but they really aren’t.

Although both “bail” and “bond” refer to money paid to the court to guarantee that defendants will come to court, bail is money paid by the defendant (or his friends or family) and it’s usually the full amount required.

That defendant has “bailed out” of jail.

Bond is paid by a bail bonds company, which makes a loan to the defendant or his family for the amount the court imposes. The bonding agent takes a house, vehicle, jewelry, or other collateral, as well as a set fee of 10 percent of the total.

The courts accepts a promise of payment from a bail bonds company because it guarantees it will pay the balance if the defendants forfeits the bond by failing to appear in court, said Brian Tickner, owner of Fitzgerald All-State Bail Bonds.

But what if the defendant does disappear?

Tickner said that isn’t common – he estimated that 90 percent of defendants out on bond do appear.

Deputy County Attorney Tom Stoxen said that, of the hundreds of cases heard each year in Yavapai County Superior Court, there are about 50 felony defendants who fail to appear when they’ve been released on bond.

When that happens, the bonding company is not necessarily on the hook for the bond money, Tickner said, because there is time between the defendant’s missed court appearance and the day a bond forfeiture hearing is set.

“If somebody absconds, there is a small window of time, before the bond forfeiture hearing, that you can recover the defendant, put him back in jail, and then you’d go to court” and try to convince the judge that, with the defendant back behind bars, the bond shouldn’t be forfeited, Tickner said.

But, bail bondsman John Otto said Arizona is not a “bail-friendly” state.

“If the defendant misses one court date ... and then we bring him back to jail the next day, the courts can, and they have, forfeit the bond, even though we brought the person back to jail,” Otto said, which is different than most other states, where the bondsman has as long as six months or a year to return the defendant.

“It doesn’t give us incentive to find the person and bring him back if we’re going to forfeit the bond anyway,” he said. “I think the jail would rather have the money ... a lot of time they give us a month to find him,” which isn’t enough time to locate someone.

Otto pointed out that, usually, police will find the defendant who failed to appear, given time.

And, while the percentage of absconders is pretty low, Otto said, the bail bondsman isn’t out any money when someone runs – it’s usually “Mom and Dad,” who put up their home or their vehicles to guarantee their family member’s appearance.

*Editor’s note: Orr writes for the Daily Courier in Prescott. Fischer writes for Capitol Media Services.*

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 **JayFleming** 2 days, 7 hours ago  **2**

This would be better for the person who makes a mistake, and the tax payers. The tax payers are the one's who pay the \$20,000 to \$30,000 it takes to keep someone in jail awaiting trial.

Judges need to discerssion to keep those they see as dangerous like career criminals, in jail, and release those who are not a danger and will return for court appearances.

Our criminal justice system needs reform, and this would be a good step in that direction.

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 **OlderNwiser** 2 days, 6 hours ago  **0**

Do the crime do the time. This country does not need to encourage crime by pandering to any criminal regardless of what's in his or her pocket. As for bail do away with the bail leeches. Maybe when the criminal realizes there will be consequences for his or her actions the crime will not be committed. Just another politically correct arrow in the heart of America.

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 **steph5453** 2 days, 5 hours ago  **0**

So because they have broken the law, we should be kinder to them???? They shouldn't have to pay so much or get out without bail???? Maybe they should have thought about that BEFORE they committed the crime!!! What a concept!!!

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 **HwyRover** 2 days ago  **1**

Ahh, look at the "compassionate conservatives" showing up. Very sad, but not unexpected.

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 **JayFleming** 1 day, 22 hours ago  **1**

Bail is before you're found guilty... Has Everyone forgot the Constitution or the Bill of Rights? Remember that innocent until proven guilty by a jury thing, and the part where it says "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

We're forgetting why this is the United States of America.....

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 **meninblack** 1 day, 19 hours ago  **0**

One Expert, years ago spoke on this very subject. Don't ask me who, simply been to long ago. The words used, went some thing like this. If you applied the law in accordance with ones ability to "pay" our courts would be empty.

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 **HwyRover** 1 day, 7 hours ago  **1**

Well whomever it was they were incorrect. A logical examination of the bail/bond situation reveals a disparity that has nothing to do with the number of crimes nor those who be in court charged with crimes.

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 **Axel** 1 day, 15 hours ago  **1**

it has been interesting on occasion to read or view accounts of tribal cultures' ways of dealing with offences. It can be more brutal or more lenient. But one thing it does not do - it does not destroy a person's capacity to provide for themself, make friends, or fend off lifelong retrieval of long ago mistakes. The bail issue is important, but the lifelong ruin of arrest records really had no equal before the modern era. And if anyone out there thinks every arrest has conformed with the law - no excessive charges, charges without any merit at all, or charges stemming from police/fed provocations - I'll sell you an extra-judicial law enforcement asset and throw in a bridge, too.

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