

The Seattle Times

Legislature should ensure any changes to bail system respect rights of accused

Some lawmakers are considering changes to the bail system that would require defendants to pay their full bail upfront, rather than work through a bail bondsman. Guest columnist Rob Hayes argues that would favor the wealthy, penalize the poor and possibly be unconstitutional.

By [Rob Hayes](#)

(January 13, 2012, by JDCop1)

IN 2011, following the brutal murders of four Lakewood police officers, calls rang out for the state Legislature to examine our criminal-justice system. We need to continue to review and make changes, but in doing so we need to recognize that bail is part of our constitutional system, and that bail, administered properly, benefits society and enhances public safety.

Some lawmakers are discussing changes that would remove flexibility and force all defendants to pay a set amount of the overall bail up front, even if that amount is beyond their means. This change is unfair, probably unconstitutional and certainly not necessary.

Our system is based on the presumption of innocence. Other than those facing the death penalty or life in prison, citizens charged, but not yet convicted, have the right to a bail amount that is realistic given their economic circumstances. The goal of the bail system is not to punish or penalize, but rather to ensure that the accused shows up for trial.

The bail bondsman guarantees the full amount of the bail will be paid if the defendant does not appear in court. If a defendant does abscond, the bondsman is highly motivated to return the defendant to court. Bail bondsmen also dramatically multiply the ability of law enforcement to track down and capture defendants who violate their terms of release, which helps keep the public safe.

Trying to create a one-size-fits-all system that requires all defendants to pay the same percentage of their bail up front will mean that well-off defendants go home, while the poor stay in jail. That's not fair, and it is probably not constitutional.

The Washington Constitution forbids "excessive" bail, meaning bail set so high the accused can't possibly make payment. This standard applies both to the overall bail amount and to any cash payment a defendant might be required to make to a bail bondsman before being released.

In addition to being unfair, this change is also unnecessary. The current system is not broken. Studies show bail in its current form is the most reliable system for ensuring defendants show up for court. With a bail system there will always be someone working to make sure the defendant appears in court. The simple reason is that the bondsman has an economic incentive to do so.

In addition, bail allows the accused to return home, to return to work, to provide for their families, and to defend their cases and keep their lives intact. All of this at no cost to the taxpayers.

This system is far preferable to a system where the accused are simply released on their honor, or released with an electronic-tracking device, which is easy to remove. We don't have enough police to look for every defendant who might remove an ankle bracelet and disappear. And we can't afford to fill our jails with defendants awaiting trial for minor offenses because they couldn't make an upfront cash payment.

Those who pose an obvious risk to society must be kept apart from the community while awaiting trial. But for the vast bulk of cases, bail is the option that best protects society and the rights of the accused while maintaining the integrity of the criminal-justice system.

We must keep these principles foremost as we work to improve our current system.

Rob Hayes is CEO of Aladdin Bail Bonds, the largest retail bail provider in the U.S., and the largest in Washington state.