



Kentucky, Texas and several other states have either eliminated the private cash bail system or are taking steps to do so. Knox News' investigation shows homeless people charged with being drunk in public in Tennessee have been jailed for weeks and, in rare cases, a month or more, before a hearing, too poor to pay a professional bondsman.



Raybin

“I think there’s a fundamental failure on the part of the judges to even know the law,” said Dawn Deaner, Nashville’s former public defender. “Many times these judges get on the bench having never practiced criminal law.”

The price for this judicial approach is high — for those too poor to buy their pretrial freedom; for the children left behind as the incarcerated sit in jail; for the state’s economy as defendants lose jobs; for Tennessee’s welfare systems; and for taxpayers and local governments who must build and maintain jails.

The fix for this decades-long reliance on cash bail as a first option, Deaner and others say, is simple: The default position judges should take is the presumption people are innocent, and release without cash bail should be the default. And if a cash bail is under consideration, a meaningful bail hearing should be standard. Judges insist they are not ignoring the law, and short of a statewide injunction or a flurry of appeals, no one can force them to change their ways.

“The general consensus among our conference is that all judges currently comply,” said Davidson County General Sessions Judge Lynda Jones. “We are MM

“Given that she had no means to remove herself from public view,” the officer wrote, “she was taken into custody and transported to the Hamblen County Jail.”

Her cash bail on a disorderly conduct charge? \$35,000. Attorneys working with two Washington, D.C., nonprofits — Civil Rights Corps and Georgetown University Law’s Institute for Constitutional Advocacy and Protection — were shocked.

“We sort of came into Hamblen County to see if it was worth challenging (bail practices),” Civil Rights Corps attorney Gene Mililone said. “It was absolutely horrendous. There were just bodies everywhere (inside the jail).”

Hamblen County public defender Ethel Rhodes was not surprised.

“We have been saying bonds were too high forever,” Rhodes said. “It’s the way we’ve always done it.” Terrell West wasn’t shocked by the figure either, a deposition obtained by Knoxville News shows. West sat down for the video deposition in April 2020 in the run-up to the recent federal court ruling on bail.

State chief circuit court clerk, and Hamblen County General Sessions Court Judge Doug Collins allows

state's bail laws), that deal likely comes with freedom.

Santana added, “In this day and time, if you sit in jail (awaiting trial), you can lose your job, your house. The (state Department of Children’s Services) shows up to take your kids. (Judges and clerks) just pull (cash bail amounts) out of their behinds. They’re not even logical or consistent.”

Cash bail amounts vary widely across the state and even within the same county. A person accused of vandalism in Knox County may well be released without forking out cash. But the same person facing the same charge in Sevier County, by comparison, likely will face a cash bail of at least \$1,000.

“You may be behind bars in one county and then, one county over, you could be released on pretrial,” said Jasmine Heiss of the Vera Institute of Justice. “(Being jailed pretrial) makes poor people even more poor, and they’re more likely to wind up in jail again.” People too poor to pay for their freedom are not only are stuck in jail, but a Knox News’ review shows they are not eligible for rehabilitation programs while awaiting trial. Many rural jails don’t offer rehabilitation programs at all.

Bethany Edmond, 37, was held in jail for 14 days under a \$1,500 bond she was unable to afford on a charge of aggravated criminal littering, a misdemeanor.

The mother of two found herself in a cell designed to house 20 women that instead held 50.

“I was broke,” she said. “There was absolutely no way I could pay that.”

She told a judge she couldn’t afford the bail. He waved aside her request for a reduction.

“He said, ‘Well, we’re going to set your (preliminary hearing),’” Edmond said. “You don’t get an attorney (appointed) before (the hearing).”

Eric Lutton, Knox County’s newly elected public defender, said those sitting in jail because they can’t afford bond may well plead guilty to a crime they didn’t commit solely to get their freedom.

“As long as I’ve been practicing law, people have pled guilty just to get out of custody,” Lutton said. “People absolutely do plead guilty to things they didn’t do just to get out of custody. ... It sets them up for failure.”

Edmond maintains prosecutors had no evidence she was guilty of the littering charge, but she took a plea deal to a charge of vandalism to avoid more jail time.

“I had a seizure (while in jail),” Edmond said. “They threw me in the drunk tank with no shoes and no blanket. It’s like PTSD — as soon as you hear that door (close).”

The costs to taxpayers are high, as well.

Taxpayers pay for judges’ wrongs

“We are just wasting tons of (tax) money,” Lutton said. “We’re misapplying our resources all over the place.”

The state’s 1978 bail law was designed, in part, to free up space in overcrowded local jails and standardize bail practices across the state.

But, as veteran attorney Raybin noted, judges began ignoring it while the ink was still wet on the law.

Local jails grew even more packed.

“Many jurisdictions (in Tennessee) are wasting incredible amounts of money to incarcerate people who don’t need to be jailed,” said Wayne, the Georgetown University Law Center attorney.

A Knox News review shows that on any given day in the state of Tennessee for the past decade, pretrial detainees who have been deprived bail hearings account for as much as 50 percent of the population in county

jails.

Many local jails in rural counties in Tennessee, including Cocke, Hamblen and Scott, are so packed, nasty and lacking in basic medical equipment the state won't even certify them as OK. The state doesn't have power, though, to shut them down or make improvements.

In every case of overcrowding in Tennessee, Knox News' review showed, those jails had high percentages of detainees facing misdemeanor charges with unaffordable cash bails — sometimes as high as 40 percent of the total population.

Overcrowded jail conditions across the state have led to pricey lawsuits taxpayers must pay to defend, violence against detainees and corrections staff, increased medical care costs, increased food costs, higher insurance premiums and staff hiring costs.

In more than a dozen counties, taxpayers have been forced over the past three decades to foot the bill for new jail construction because of overcrowded, unsanitary conditions. Those new jails cost millions to construct and millions more to operate.

The new jails, a Knox News review has shown, were often overcrowded with pretrial detainees within a year of operation.

Deaner points out the expense of keeping people in jail, and how much money and resources counties could shift to other priorities if they weren't keeping so many people behind bars.

Knox County Judicial Magistrate Ray H. Jenkins — the only magistrate contacted by Knox News who readily agreed the bail practices he follows aren't legal — said it was the threat of a jail overcrowding lawsuit that led Knox County judges to recently adopt a pretrial release program.

Knox County to this day remains under a federal court order capping the population in its downtown jail. That order came as a result of a lawsuit, and county taxpayers found themselves on the hook for fines whenever that cap was exceeded, plus the construction of a new detention facility. The new facility was packed nearly to capacity on a daily basis for more than four years pre-pandemic, according to an analysis of inmate population data obtained by Knox News.

In 2019, Knox County taxpayers paid to jail an average of 240 misdemeanor detainees and another 500 to 700 detainees facing low-level, nonviolent felonies every day. It cost taxpayers \$75 to \$100 to house a detainee for just one day.

“Two years ago, we started the pretrial experiment ... because (other jurisdictions) were on the verge of being sued because of their cash bail practices,” Jenkins said.

The Knox County program, Knox News' investigation shows, doesn't follow legal guidelines, either. The same is true for the pretrial program initiated in Davidson County around the same time.

But don't tell Davidson County's Judge Jones. She insists she's in the right.

Judge's bail practices put to legal test

Knox News asked Jones to describe her bail practices.

“Defendants go through several opportunities to have no bond or low bond,” Jones said.

But they don't get a hearing with an attorney present before a bail decision is made, which is now mandated in Hamblen County under the injunction in the federal lawsuit filed against Hamblen County. Instead, a magistrate or Jones herself decides, she said, if the accused will be freed under the supervision of the pretrial release

If a bail agency customer skips court, the agency still doesn't pay the cash bail amount to the court and won't — unless the accused doesn't turn up in six months. Even then, Knox News' review shows, bail agencies often petition to avoid ponying up the cash they promised. Many are successful. Knox News' analysis of arrest records reveals that most people who skip court are most often located by police, not bail agents.

"I've been doing this 30 years and only had to pay one bond off," a veteran East Tennessee bondsman told Knox News.

Bail agents advertise inside many county jails across the state.

In Hamblen County, the depositions of Sheriff Jarnagin and his chief jail administrator show the accused are given a list of bail bonds agency as part of the booking process and allowed to use jail phones for free to call those companies. Knox News has observed bail businessfriendly practices repeatedly — for years — in nearly all county jails in East Tennessee.

The COVID-19 pandemic has put the lie to the notion that cash bail makes the community safer and the accused more likely to show up for court, Knox News' investigation shows. The state Supreme Court in March ordered judges to start clearing local jails of pretrial detainees accused of misdemeanors or nonviolent felonies who were being held solely because they couldn't pay a cash bail.

Not all judges complied with that order, but most did. Jail populations took a nose dive. Knox County, for instance, was averaging 1,400 inmates daily pre-pandemic. When judges started setting detainees free, the population dropped to as low as 660 at one point. When the Tennessee Supreme Court lifted its temporary ban on in-person court hearings and jury trials last summer, many sessions court judges and magistrates went right back to in-person bail hearings. In Shelby County, Knox County and other counties, the average number of in-person bail hearings went up to 16 per day. When jury trials resumed, a yocuseh

“I’m not here picking a fight with the bail bonds industry,” Heiss said. “W

Santana said Collins has improved things since the decision in the lawsuit. Public defenders get to meet their clients within 48 hours. He's now holding arraignments in the courtroom — with attorneys and prosecutors present. But he's still requiring the detainee to file a written motion for a cash bail reduction, Rhodes said in an October interview, which is not a requirement and puts the onus on the defendant for justifying bail when it should be on prosecutors to fight it.

“And guess what?” Santana said. “The judicial system is still running. He still gets to go home by 10 a.m. on Fridays ... The fear is when this lawsuit goes away, will we go back to the old ways? Everybody has that (cash) bail first mentality.”

Legislator pushes bill to gut bail rules

Knox News did a follow-up interview with Santana in January. He said bail hearings still weren't being held properly and prosecutors are now “aggressively” defending cash bail when challenged. He's not bitter, though. He thinks good change is on the way in Tennessee.

“I think we're going to get there,” Santana



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