

# THE BAIL PROJECT

Written Statement of Carrie Cole  
of The Bail Project before the  
Senate Standing Committee on Judiciary  
Commonwealth of Kentucky  
In Opposition to House Bill 5

Chair Westerfield, Vice Chair Wheeler, and other Distinguished Members of the Committee:

Good morning. My name is Carrie Cole, and I am the Kentucky Policy Advocacy and Partnership Manager for The Bail Project, a national nonprofit organization dedicated to restoring the presumption of innocence through improvements to the pretrial system. I grew up in Louisville and work here in Kentucky. This is my home.

While The Bail Project operates nationally, we put our roots down in the communities we serve. We operated as a charitable bail organization in Louisville from 2018 through 2023, providing free bail assistance to over 4,200 Kentuckians in 28 counties statewide. Our clients in Louisville have safely returned to 91% of their court dates. In addition to posting bail, we have provided needs-based supportive services to our clients upon release, including court reminders, travel assistance, and connections to social services like mental health and employment referrals. We are invested in making sure that Kentucky is a safe place, where all its residents can thrive.

That is why we come today in staunch opposition to House Bill 5. This legislation includes severe restrictions on organizations that provide financial assistance to the many Kentuckians who are in jail simply because they cannot afford to post bail – more than half of the Commonwealth’s jail population.

The provisions outlined in this bill will not protect public safety, but instead work against it. House Bill 5 would restrict bail payments by charitable bail organizations to \$5,000 or less. In doing so, it would limit the number of Kentuckians living in poverty who are able to access financial support to secure their release. In effect, this legislation would further entrench the two-tiered, wealth-based cash bail system in Kentucky, wherein people with money can pay to secure their freedom – regardless of underlying safety concerns – but people living in poverty are denied financial assistance and forced to languish in jail. Setting an arbitrary hard cap on the amount of money that a charitable organization can post will have inconsistent impact, as bail amounts vary wildly from county to county and fluctuate significantly over time.

Additionally, House Bill 5 would prohibit charitable bail organizations from posting bail for a variety of alleged offenses. This subverts the presumption of innocence – a fundamental right for all Americans, regardless of the charge. And this restriction removes judicial discretion to make individualized pretrial decisions, which means that the particular circumstances of a given case are in effect thrown out the window. Evidence, not bank account size, should inform pretrial outcomes.

This legislation is imprecise and disruptive of the judicial system, and will be extremely difficult to implement. Under House Bill 5, the definition of “charitable bail organizations” is abnormally broad, applying onerous restrictions even to churches who occasionally assist their constituents or a mom and pop store that puts up a GoFundMe to support their son. Changes to bail forfeiture law would take money away from Kentucky courts. And organizations would be required to make decisions and report cases using information that is not publicly available.

We urge the committee to amend this section to reduce unnecessary incarceration and prevent undue harm to families and communities. On the whole, these restrictions are unnecessary and harmful. However, a few provisions pose particular threat to Kentuckians - namely the imprecise definition of organizations that will be impacted, the limitations on bail amounts that can be paid by a charitable entity, and the unworkable reporting requirements.

The Bail Project recommends key amendments to the bill: (1) Define charitable bail organizations based on the frequency with which organizations furnish bail; (2) Create common sense exemptions, such as for faith groups; (3) Increase the amount that charitable bail entities are able to pay to support indigent people who judges have determined are safe to release; (4) Require judges to make individual determinations about a defendant’s ability to pay before setting bail; and (5) Remove the requirement that any organization impacted publish comprehensive financial reviews and sensitive client information on their public websites, requiring annual reports referred only to the Interim Joint Committee on Judiciary.

We are all aware of the increased urgency that both city and state governments are facing to address public safety. We feel that urgency too. But we cannot continue to double-down on policies that have failed to make us safe. Sensible legislating requires time – it should not be a process driven by fear. We can achieve better public safety outcomes through careful consideration of the legal system, with input from all affected stakeholders. House Bill 5 fails to do so.

Charitable bail organizations enhance community safety and provide an essential service that Kentuckians cannot afford to lose. We ask the Kentucky legislature: partner with us and other impacted stakeholders to improve pretrial outcomes. Together, we can make meaningful change based on evidence, not fear.