

Evaluation of Bail Reform in Memphis and Shelby County, Tennessee

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What is the Standing Bail Order?

In Tennessee, when a defendant is arrested, he/she usually has the right to post a bond. If posted, he/she can be released while they are waiting for trial. Bond requirements may include conditions such as GPS monitoring or may require that the defendant pay an amount of money. The bond process is intended to preserve the presumption of innocence while also protecting public safety and ensuring the defendant's later appearance in court.

In 2022, the Shelby County General Sessions Court and County Commission implemented a Standing Bail Order. The Order is a set of reforms intended to improve the fairness of bond setting and ensure that defendants are not detained solely due to their financial status. It also targeted compliance with existing state laws requiring that bond be not more onerous than necessary.

What reforms did the Standing Bail Order implement?

Judicial commissioners were required to use a set of formal criteria to set bail. With release on recognizance (no money required) as the default, judicial commissioners needed to provide increasing levels of justification to impose strict bond conditions or a money bond.

A "calculator" was used to determine the amount of bond that a defendant could afford to pay without borrowing money. Justification is needed to impose an unaffordable bond.

Defendants held in custody are automatically scheduled for bail review hearings, with both the defendant and the State represented by counsel. These hearings are heard either by the judge or, if ordered by the judge, by a judicial commissioner in a newly created bail review hearing room.

Is the Standing Bail Order currently in place?

A state law passed in 2024 prohibited consideration of a defendant's ability to pay while setting bond. Therefore, data from the calculator or the notion of a bond's "affordability" is no longer considered when setting bond amounts. However, the other formal processes remain in place, including the bail review process and the requirements to legally justify money bonds.

Why did the University of Memphis evaluate the Standing Bail Order?

To fund the new bond-setting process, the County Commission required regular reports on bond-setting outcomes and the SBO's effectiveness. To ensure the production of accurate statistics, Shelby County Government partnered with the University of Memphis Center for Community Research and Evaluation (CCRE). With financial support from Arnold Ventures, CCRE prepared two reports for the County Commission. In partnership with two faculty colleagues (Dr. Doyun Koo and Dr. Timothy McCuddy), CCRE also prepared an academic manuscript on the SBO, currently under peer review.

What are the results of CCRE's research?

Bail Amounts: After the “affordable bail calculator” was implemented in December 2022, defendants were more likely to receive lower bond amounts. In a regression analysis controlling for a variety of factors, defendants were 36% more likely to have a non-money bond set by the judicial commissioner and 28% more likely to be released from custody within seven days. Overall bond setting amounts decreased 32%.

We also see lower bail requirements once bail reviews were implemented in February 2023. After the full implementation of the Standing Bail Order, CCRE found that defendants were 35% more likely to be released without having to post money bond within seven days and 69% more likely to be released from custody within seven days. Overall bond amounts decreased 11%. Bail review outcomes vary significantly depending on the judge or judicial commissioner adjudicating the hearing.

Judicial Review: With the requirement that defendants be represented by counsel during bail review hearings, the Standing Bail Order increased the speed with which legal representation was provided. After the reforms were fully implemented, defendants were 138% more likely to be represented by an attorney within two business days. A downside is the longer amount of time needed for judicial commissioners to set bail, increasing from 11.4 hours in 2021 to 14.7 hours in 2023.

Public Safety: CCRE conducted numerous analyses with various regression models and timeframes and controlling for numerous factors. The analyses did not establish any impact of the Standing Bail Order on rates of court non-appearance, pretrial rearrest, or recidivism.

Where can I learn more?

The full reports and papers are available on the website of the University of Memphis, Center for Community Research and Evaluation (www.memphis.edu/ccre). For questions or inquiries, contact the Principal Investigator, Dr. Jonathan Bennett, at jrbennett@memphis.edu.

