



THE BAIL PROJECT



COVINGTON

Detroit Bail Agreement: Summary of Agreement Structure and Features

- The goal of this Agreement is to eliminate situations in which someone who doesn't present an unmanageable flight risk or danger to the public will face pretrial detention solely because they cannot afford to pay for their freedom. This Agreement will improve service to the public by ensuring the existence of procedures that will help guide and inform judicial officials to conduct the necessary inquiries going forwards.
- The use of cash bail to detain criminal defendants while they await trial inevitably results in the disproportionate detention of defendants of color, with resulting disparate harms that impact those individuals, their families, and their communities. A key goal of this lawsuit, and this Agreement, is to reduce such disparities.
- Under the Agreement, the parties agree that unaffordable cash bail (which essentially amounts to pre-trial detention) will be imposed in the 36th District Court "only in rare cases," as outlined below.
- The court will presume that someone should be released without cash bail and with only minimal conditions, unless there is evidence, specific to that person, that they present a flight risk or danger to the public.
- If there is evidence of a flight risk or danger to the public, the court will consider *non-cash* conditions such as reporting to probation, protective orders, and other means before considering cash bail. Only if non-cash conditions are insufficient to reduce or mitigate potential danger to the public or flight risk will the court even consider cash bail.
- In any case in which cash bail is imposed, the court will examine the defendant's ability to pay and make a determination on the record as to how much the defendant can afford.
- Bail will be set at an unaffordable amount *only* if the court finds that pre-trial detention is the only way to protect the public or a flight risk. Thus, the Agreement preserves judicial discretion and protects the public, while also ensuring that people are not detained simply because they cannot afford to pay money.

- In determining the ability to pay, there will be a rebuttable presumption that anyone whose household income is 200% or less of the federal poverty line (\$55,500 for a family of four) cannot afford to pay cash bail.
- Anyone who was required to pay an amount of bail that was intended to be *affordable* is entitled to a bail redetermination hearing the next day to find out why they are still in jail if they haven't posted bail within one day.
- Anyone who was required to pay bail in an amount intended to be *unaffordable* is entitled to a bail redetermination hearing within 48-72 hours at which they can challenge the decision to detain them.
- The court will not impose any conditions for which the defendant must pay to either be released or remain free while awaiting trial. This includes tethers, so even if someone is ordered to wear a tether, they should not be incarcerated if they cannot afford to pay tether fees.
- Everyone who goes through an arraignment in the 36th District Court will be entitled to court-appointed counsel unless they knowingly waive that right or choose to retain a private attorney.
- Arraignment counsel will have the time and privacy necessary to review the defendant's financial circumstances and other factors relevant to bail. They will be expected to complete a form regarding their client's financial situation during consultation with the client to ensure that counsel has the information necessary to make arguments about their ability to pay at arraignment.
- All appointed attorneys in the 36th District Court will be required to receive four hours of training on how to handle a bail hearing, bail determination procedures, and the terms of the Agreement. The training will be co-taught by plaintiffs' counsel, Judge Larry Williams, Jr., and Gerald Evelyn (one of the attorneys representing the court).
- Defendants who miss a hearing for most misdemeanor cases will automatically have their hearing rescheduled instead of having a warrant issued for their arrest the first time they miss a hearing.
- The court will continue to operate a system that provides text reminders of hearings to defendants, and will take steps to make it easy to sign up for notifications at the court.
- The parties have agreed that following these procedures should result in the following release rates, meaning that the designated percentage of people should be released without cash bail or with an amount of bail that they can afford to pay within 24 hours:
 - At least 97% of people accused of misdemeanors should be released.
 - At least 90% of people accused of most felonies should be released.
 - At least 80% of people accused of certain serious felonies should be released.

- There is no release rate for people accused of murder, treason, first degree criminal sexual conduct, armed robbery, kidnapping, or who are accused of committing a violent felony while already released on bond or probation/parole, or who are accused of committing a violent felony and have twice been convicted of violent felonies in the previous 15 years. Under the Michigan constitution, such people may be detained without bond if the court makes certain findings.
- The release rates are consistent with rates achieved in jurisdictions like Washington, D.C. and New Jersey that have eliminated or largely eliminated the use of cash bail. Those jurisdictions have not experienced adverse impacts to public safety or appearance rates.
- Release rates and data will be reported by the court to Plaintiffs' counsel on a bi-monthly basis.
- The Agreement will last from 2-5 years. If the court is successful in meeting the release rates in every reporting period, the Agreement expires in 2 years. The Agreement is extended if the court misses any release rates.
- The Agreement creates a Partnership Working Group consisting of a Judge Larry Williams, Jr., a 36th District Court Judge who helped negotiate the agreement, the 36th District Court's General Counsel, and Plaintiffs' counsel.
- The Partnership Working Group will work together in good faith to resolve any disputes and to address the root causes if the release rates are not being achieved or if there are other issues implementing this agreement. The Partnership Working Group can also meet and address any other systemic issues in the court that might arise that are identified by the Parties but that are not covered by this agreement.
- If the Partnership Working Group is not able to address these issues together, though it is both Party's intention that we will be able to do so, and if release rates are missed twice within a 6- or 8-month period (which one depends on various factors), then the Parties may call on an independent individual, known as the Community Partner, to assist in investigating the root causes and identifying solutions.
- Saul Green has agreed to serve as the Community Partner. Mr. Green is currently Senior Counsel at Miller Canfield. He is formerly U.S. Attorney for the Eastern District of Michigan, a deputy mayor of Detroit, a Corporation Counsel for Wayne County, a monitor of a consent decree involving the Cincinnati Police Department, and has sat on the Board of Directors for the Vera Institute of Justice and the Neighborhood Defender Service.