

MODEL POLICY: GUARANTEE ACCOUNTABILITY AND TRANSPARENCY OF CHARITABLE BAIL FUNDS BY REQUIRING BASIC REGULATION AND REPORTING

SUMMARY:

Charitable bail organizations were created to attempt to help low-level, indigent defendants in cases where if they had a surety they would probably be released. In the past few years, the funds have nationalized, and are now operating in fashion to destabilize the bail system. They are self-titled “bail disruptors.”

The disruption caused has been quite significant. EXAMPLES OF 5-10 cases. Then let’s link to the freedom fund guy video in a footnote.

One author argues that charitable bail is by definition not a sufficient surety because such transaction lacks incentives. As such, she argues, all charitable bail should be disallowed.

Instead, we think the better approach is to follow the lead of New York and legislation put forward in Indiana and Texas last year. The below model act is a blending of all three acts. In summary they create a basic framework of regulation, allow posting of bonds only in misdemeanor cases, do not allow bonds to be posted over \$2000, and require the defendant to be indigent. The Texas reporting provisions are included, with the exception that the reports are quarterly instead of monthly.

Legitimizing charitable bail is also important to protect donors to such funds. Many donated under the idea that they were bailing out peaceful protestors, when in reality many violent defendants that were not protesting are being bailed out using such proceeds.

Protecting public safety requires accountability and oversight of the entire process of arrest and release from custody. When mistakes are made, harm is done, whether it be to the defendant, the victim, or the community. This model act is but one approach. In the footnotes, we provide links to the acts introduced in the seven states.

BILL LANGUAGE:

Section 1: CHARITABLE BAIL ORGANIZATION REGULATION ACT.

(1) A charitable bail organization, when operating in compliance with this section, may post bonds for criminal defendants as authorized under this section. A charitable bail organization that fails to comply with this section may not post bonds in this State until in compliance with this section.

(2) Definition: A “charitable bail organization” is an organization that:

- (A) is certified by the commissioner;
 - (B) posts bail for more than two (2) individuals in a one hundred eighty (180) day period;
 - (C) solicits or accepts donations from the public;
 - (D) agrees to deposit money for bail for another person.
- (3) For purposes of this, the commissioner of the department of insurance may certify a person as a charitable bail organization if the person:
- (A) is a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code;
 - (B) is currently registered to do business in this State;
 - (C) is located in this State; and
 - (D) exists for the purpose of depositing cash bail of two thousand dollars (\$2,000) or less for an indigent person charged with a misdemeanor.
- (4) A person may apply for certification under this section in accordance with rules adopted under this section.
- (5) The commissioner shall certify a person as a charitable bail organization if the:
- (A) person pays an application fee of three hundred dollars (\$300);
 - (B) person meets the requirements of this section; and
 - (C) person, including an officer or director of the person, has not engaged in conduct that: constitutes fraud, dishonesty, deception, malfeasance, misfeasance, or nonfeasance in dealing with money; or
 - (D) resulted in the suspension or revocation of a previous loss of certification.
- (6) A charitable bail certification is valid for two (2) years from the date of issuance and may be renewed upon payment of a renewal fee of three hundred dollars (\$300). If a person applies for renewal before the expiration of the existing certification, the existing certification remains valid until the commissioner renews the certification, or until five (5) days after the commissioner denies the application for renewal. A person is entitled to renewal unless the commissioner denies the application for renewal.
- (7) The commissioner may suspend, revoke, or refuse to renew a certification if the commissioner finds that the person no longer qualifies as a charitable bail organization under this section, or does not otherwise meet the requirements of this section; person violated a requirement; or the person, including an officer or director of the person, has engaged in conduct that constitutes fraud, dishonesty, or deception; or malfeasance, misfeasance, or nonfeasance in dealing with money.
- (8) A charitable bail organization must comply with all of the following:
- (A) If the charitable bail organization pays, or intends to pay, bail for more than two (2) individuals in any one hundred eighty (180) day period, the charitable bail organization

must be certified by the commissioner under this section before depositing money for bail for another person.

(B) If the charitable bail organization is not certified under this section, the charitable bail organization may pay bail for not more than two (2) individuals in any one hundred eighty (180) day period.

(C) A charitable bail organization may only deposit cash bail of two thousand dollars(\$2,000) or less for an indigent person charged with a misdemeanor. A charitable bail organization may not pay bail for a defendant charged with a felony, even if the defendant is also charged with a misdemeanor.

(D) A charitable bail organization may not execute a surety bond for a defendant.

(E) A charitable bail organization shall, before paying bail for an individual, execute the agreement described in allowing the court to retain all or a part of the bail to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

(F) A charitable bail organization may not charge a premium or receive any consideration for acting as a charitable bail organization.

(9) The commissioner shall adopt rules implement this section.

Section 2. CHARITABLE BAIL ORGANIZATION—PUBLIC SAFETY REPORTING.

Not later than the 10th day of each quarter, a charitable bail organization shall submit an affidavit, to the commissioner of insurance in a form designated by the commissioner, a report that includes the following information for each defendant for whom the organization paid or posted a bail bond in the preceding calendar quarter:

- (1) the name of the defendant;
- (2) the cause number of the case;
- (3) the county in which the applicable charge is pending, if different from the county in which the bond was paid;
- (4) any dates on which the defendant has later failed to appear in court as required for the charge for which the bond was paid;
- (5) whether or not a forfeiture was declared or paid for each failure to appear, and the outcome of each failure to appear; and,
- (6) any new arrests or criminal charges, and the specific charges and nature of the charges, later filed against the defendant during the period the defendant was released on a bond paid by the charitable bail organization;