

Denying bail is cruel and unusual punishment

Senate Bill 60 would unfairly deny accused criminals their civil liberties

The purpose of bail is to ensure the appearance of accused criminals in court, not to infringe upon their civil liberties before they stand trial. Senate Bill 60 could limit the opportunities afforded the accused and could extend the judicial system's ability to use bail as a form of punishment.

Judges would be able to keep more people in jail that are awaiting trial. This is problematic for a few reasons:

- Overcrowding of jails and prisons in the United States has been on the rise for the past 20 years.

- The tax dollars that must be spent to house individuals in

jail could increase.

- The lives of the accused would be negatively affected.

Having the opportunity and the resources to post bond allows the accused to be an active participant in maintaining their innocence. Being released back into the community allows the accused to look for witnesses that may support their cases, ensure their lawyers are working diligently and maintain a source of income. The accused also can collect funds to pay for private defense, pay bills, maintain good credit standings, and function as a parent, son, daughter, uncle or aunt. In other words, they won't

be treated as guilty before their day in court.

Before Delaware agrees to remove more mothers and fathers from their homes, from their communities, from churches and schools, there should be more information collected on the denial of bail and how this affects the accused. The key word is "accused."

Again, we must not punish them before they go to trial. These are some of the issues that go unmentioned when we speak of bail denial for those that are presumed innocent. I understand that there are privileges that one loses when involved with the criminal justice system, but the issue is when

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these privileges are lost. The first appearance (bail hearing) in court should not be the phase that determines this. The support of Senate Bill 60 would be in direct opposition of these civil liberties that anyone should be afforded under the democratic process here in the United States.

Included in the bail decision is the question of protection for the community and state from reoffenders. With this in mind, the judicial system is faced with a tough decision to protect the civil liberties of the accused while at the same time protecting the community.

Yet, according to the 2004 Bureau of Justice Statistics, from 1990 to 2004 defendants that were released on bail were rearrested for a new offense only 17 percent of the time, and

only 11 percent committed a new felony. The notion that releasing an accused criminal back into the community equals more crime may be a bit exaggerated. Should we punish more people (83 percent) at the bail phase? Research also indicates that those detained in jail before trial have a higher propensity to plead guilty, be found guilty at trial and receive longer and harsher sentences.

Before Delaware increases the power of the judicial system to incarcerate more people at the bail phase, more research should be done now on how these decisions are made and whether they are consistent with the written bail laws of the state.

For example, judges may not be able to deny bail for certain "violent felony offenses," but

they do have the power to set bail at such a high amount for some of these crimes that the accused are forced to remain in jail until trial anyway. The U.S. Constitution says, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Yet we have an abundance of people that contribute to the overcrowding of our jails because they do not have the resources to pay for their release. Is this not a form of punishment? What is defined as "excessive?"

Increasing the ability to incarcerate more people before conviction being convicted is unusual punishment.

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