Chief Justice Scott Bales

Arizona panel recommends major changes to laws on bail, fines

By Howard Fischer Capitol Media Services

PHOENIX — A special panel of experts on criminal law wants to scrap the current system of setting bail and imposing fines and replace it with one linked to a defendant’s ability to pay.

“Every year in Arizona, thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail,” according to the report released Tuesday by the Task Force on Fair Justice for All. “While people arrested are protected by a presumption of innocence, if they lack the access to money, they often remain in jail.”

Dave Byers, who chairs the panel created by Supreme Court Chief Justice Scott Bales, said that inability to pay has a financial cost on taxpayers, with the bill statewide for operating jails at $1 million a day. He said the majority of those locked up at any given time have not been convicted of anything but are simply awaiting a court appearance.
“Jail is an expensive resource that should be used for high-risk individuals,” said Byers who is the director of the Administrative Office of the Courts.

And then there’s the human cost.

“Some of these people are sitting in jail for a lot longer than they would be sentenced to jail if they were found guilty for any of the offenses,” Byers said.

That, he said, creates a spiral where people who are locked up awaiting trial lose their jobs and perhaps their homes. And Byers said there is evidence that people locked away for only two or three days are 40 percent more likely to commit a future offense than those who are arrested for the same crimes but released without bond.

What’s worse, he said, is there are people who are arrested for minor crimes who can’t afford the bail set — a bail often determined by the charge — who sit behind bars for far longer than the time they would serve if sentenced.

Pima County Attorney Barbara LaWall said she already is working in that direction.

“We have many detainees in our jail awaiting trial who are not violent, not dangerous, not habitual career criminals and do not pose a true flight risk,” she said.

LaWall said some have had bond set because they may not have appeared for scheduled court hearings. But she said that often is the result of addiction, mental illness and homelessness.

But there’s another side to the set formula.

Byers said there are people who should remain behind bars who are multiple offenders or could be considered a danger to others. But because they have money or a “friendly bail bondsman,” they can easily make a $1 million bond that a judge set under the premise it would keep the person off the streets.
He said existing laws and constitutional provisions give judges only limited ability to deny bail. So the committee is recommending a constitutional amendment to expand that power.

That provision, however, alarms Alessandra Soler, the executive director of the state chapter of the American Civil Liberties Union.

She said judges already can detain people without bail in certain limited circumstances, such as when someone is charged with murder or certain sex offenses.

“Those are people that are dangerous if released,” Soler said. What this change would do, she said, is allow a judge to hold a chronic shoplifter who just doesn't show up in court.

“Allowing detention (without bail) to assure appearance would mean that you could detain someone charged with a minor offense, not because they’re going to cause harm if they’re released but solely because there are doubts the defendant’s going to come back to court,” she said. “I think that’s incredibly, incredibly dangerous and troubling.”

LaWall disagreed, saying she is “an advocate for pretrial incarceration of those who pose a true flight risk.”

Parallel to the question of bond is the issue of fines.

“The purpose of a sanction is to get you to obey the law,” Byers said.

Byers said the average traffic ticket in Arizona costs motorists $270. That is usually based on a schedule set by each court taking into account the specific offense and, when speed is involved, how far over the limit someone was clocked.
“If you break the law, there should be a sanction,” he said. But Byers said the committee concluded that the penalty hits someone who is poor much harder than a person with more resources.

“You don’t want to make the fine impossible,” he said.

LaWall also said there’s a legal basis for flexible fines, noting the Arizona Constitution specifically makes it illegal to jail someone solely because they owe money.

“Consistent with this constitutional provision, people should not be jailed for failing to pay fines or other court-assessed financial sanctions for reasons beyond their control,” she said.

The remedy suggested by the committee would be to have judges base the penalty on ability to pay, even allowing those with limited resources to satisfy the fine with community service. Byers said that makes the sting — the deterrent — equal across various wage ranges.

But that leaves the question: Should those who are super-rich, for whom a $270 ticket might be little more than a minor nuisance, pay more?

“We didn’t go there,” Byers said. “It gets complicated.”

He said, though, there is precedent, albeit from Switzerland, where someone of means was repeatedly speeding through a town. “The judge fined him a quarter of a million dollars because they wanted to deter the behavior,” Byers said.

On Twitter: @azcapmedia

MORE INFORMATION