

National

Cash bail system under attack as unconstitutional

By Paul Elias December 26 at 3:41 PM

SAN FRANCISCO — Crystal Patterson didn't have the cash or assets to post \$150,000 bail and get out of jail after her arrest on an assault charge in October.

So Patterson, 39, promised to pay a bail bonds company \$15,000 plus interest to put up the \$150,000 bail for her, allowing her to go home and care for her ailing grandmother.

The day after her release, the district attorney decided not to pursue charges. But Patterson still owes the bail bonds company. Criminal justice reformers and lawyers at a nonprofit legal clinic in the District say that is unconstitutionally unfair.

The lawyers have filed a class action lawsuit on behalf of Patterson, Rianna Buffin and other jail inmates who argue that San Francisco and California's bail system unconstitutionally treats the poor and the wealthy differently.

Wealthy suspects can put up their houses or other valuable assets — or simply write checks — to post bail and stay out of jail until their cases are resolved. Poorer suspects are not so lucky. Many remain behind bars or pay nonrefundable fees to bail bonds companies.

San Francisco public defender Chesa Boudin says some of his clients who cannot afford to post bail plead guilty to minor charges for crimes they did not commit so they can leave jail.

Boudin represented Buffin, 19, after her arrest on a charge of grand theft in October. Buffin could not afford to post the \$30,000 bail or pay a bond company a \$3,000 fee and so contemplated pleading guilty in exchange for a quick release from jail, even though she says her only crime was being with the “wrong people at the wrong place at the wrong time.”

Fortunately, the district attorney declined to charge Buffin, and she was released after being held for three days.

“My family was worried,” said Buffin, who lost her \$10.50-an-hour baggage handler job at the Oakland International Airport after her arrest.

The lawsuit filed by Equal Justice Under Law in San Francisco federal court in October seeks to abolish the cash bail system in the city, state and country. It is the ninth lawsuit the nonprofit civil rights organization has filed in seven states.

“The bail system in most states is a two-tiered system,” said center founder Phil Telfeyan. “One for the wealthy and one for everyone else.”

The center has settled four lawsuits, persuading smaller jails in states in the South to do away with cash bail requirements for most charges.

Telfeyan said a win in California could add momentum to the center’s goal to rid the country of the cash bail system, which the lawyers say is used by most county jails in all 50 states. The federal system usually allows nonviolent suspects to go free without bail pending trial and denies bail to suspects in serious and violent crimes.

“The country watches what happens in California,” said Telfeyan, a former Department of Justice attorney who founded the Washington organization in 2013 with a partner and the first-ever grant from the Harvard Law School Public Service Venture Fund.

Telfeyan said he is not trying to destroy the classic, neon-advertising bail bonding industry, but he conceded that the business model would become obsolete if he convinces courts that the cash bail system is unconstitutional.

The industry did not acknowledge Telfeyan’s first lawsuits, filed this year.

But on Monday, lawyers for the California Bail Agents Association filed court papers seeking to formally oppose the San Francisco lawsuit. The association argues that government lawyers for San Francisco and the state are offering only “tepid” opposition to the California lawsuit.

San Francisco Sheriff Ross Mirkarimi argues that most jail inmates are awaiting resolution of minor, nonviolent cases and that allowing them to go free while awaiting court hearings will save the city millions of dollars. Mirkarimi said nonviolent suspects can be monitored electronically and with frequent visits from law enforcement officials to ensure they do not flee the area and do attend all their court hearings.

In January, Telfeyan and his colleagues from Equal Justice Under Law intend to ask a judge to temporarily suspend San Francisco’s cash bail system until the lawsuit is resolved. Telfeyan said a victory in San Francisco and the elimination of cash bail in the city would most likely lead to the abolition of cash bail in all of the state’s 58 counties.

The president of the California Bail Agents Association says the longtime system of putting up money or an insurance-backed bail bond is better at getting people to show up in court and saves the public the cost of monitoring defendants or hunting down bail jumpers.

Association president Maggie Kreins said that California's "bail schedule" could be reformed to reduce bail amounts for minor crimes but that eliminating the system would be a mistake.

"What is the incentive to go to court if you don't lose anything for failing to appear?" Kreins said.

— **Associated Press**

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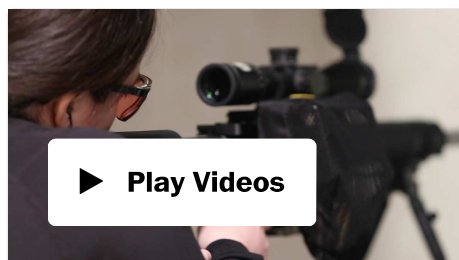
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