



## CENTER FOR FAMILY POLICY AND PRACTICE

### POLICY BRIEFING

FEBRUARY/MARCH 2018 — Vol. 18 — No. 1

---

#### IN THIS ISSUE:

- Kentucky Becomes First State to Plan Implementation of Work Requirements for Medicaid Benefits
- States and Local Jurisdictions Reconsidering Cash Bail and Court Fees and Fines
- Florida Could Restore Voting Rights to Ex-Felons Through Court or Ballot
- State Policy and Practice
- Also of Note

#### **Kentucky Becomes First State to Plan Implementation of Work Requirements for Medicaid Benefits**

The state of Kentucky will soon be the first to require work from Medicaid recipients as a condition of receiving benefits. At least nine other states are

planning to do the same, with expected approval from the Trump administration. Some of these states will also impose time limits for Medicaid receipt. The restrictions on benefits will no doubt lead to a significant drop in the number of a state's residents receiving benefits. House Speaker Paul Ryan has stated his intention, after the recently passed tax bill's expected increase of \$1.5 trillion in the federal deficit, to address it by reducing "entitlement spending."

The work requirements have already drawn [a lawsuit filed by the National Health Law Program, the Kentucky Equal Justice Center and the Southern Poverty Law Center](#) asking for a preliminary injunction to block the state from moving forward while a judge considers the plan's legality. The lawsuit alleges that the federal approval of Kentucky's waiver to implement the plan was granted illegally and is in conflict with provisions of the Medicaid law that only Congress has the power to change. The suit also identifies multiple provisions of the Kentucky work requirements themselves that are in conflict with federal law.

An estimated 350,000 recipients in the state will be subject to the new work rules. Approximately 500,000 residents were added to the state's Medicaid rolls under the Affordable Care Act. The state itself estimates that approximately half of the state's 350,000 able-bodied recipients currently do not meet the work requirements and could lose their benefits. Kentucky Governor Matt Bevin has calculated that the requirements will result in 100,000 being dropped from the Medicaid program over

the next five years. Many of these recipients would be at greater risk of developing serious health conditions as a result of not receiving timely treatment. [Kentucky is the state with the most cancer deaths and the most preventable hospitalizations](#), is 45th out of 50 in the incidence of diabetes, and is 47th in the incidence of heart disease.

The new requirements would:

- Require 20 hours of work, volunteer activity, or training each week for able-bodied adults with no dependents. Failure to meet the requirement results in a suspension of eligibility, not to be reactivated until 80 hours of the required work activities are completed within a 30-day period, or until the recipient completes a state-approved health literacy or financial literacy course. This course requirement for reactivation is only available once in any given 12-month eligibility period, and recipients will be required to pass quizzes before they are considered as having passed the course.
- Terminate enrollment if the recipient is in suspension for any reason on their redetermination date. Compliance is monitored by 10 regional work boards.
- Charge most recipients from \$1 to \$15 per month, collected by private managed care companies that contract with the state. Consequences for nonpayment of premiums after 60 days include disenrollment and a six-month non-eligibility period for recipients with household income above 100 percent of the federal poverty level (FPL). Recipients with income at or below 100 percent of the FPL who do not make a premium payment within 60 days will be enrolled, but required to pay copayments instead of premiums, and their eligibility will begin the first day of the month in which the 60-day period expires.
- Apply a six-month non-eligibility period for failure to comply (to gather and report all of the newly required documentation, e.g.) with the redetermination process.
- Disenroll and apply a six-month non-eligibility period for certain recipients who fail to report a change in circumstance that would affect Medicaid eligibility.
- Require recipients to earn “rewards dollars” in order to qualify for such services as vision and dental care. These would be tracked online on a platform to which recipients must also track their work, volunteer, and training hours. Missed appointments will be charged to the recipient as a deduction from this healthy behavior incentive account.

The [Kaiser Family Foundation](#) has created a chart of approved and pending Medicaid restrictions for each of the nine currently affected states.

<b>States and Local Jurisdictions Reconsidering Cash Bail and Court Fees and Fines</b>
--

As the harm caused by keeping low-income people in jail because of their inability to pay

bail or imposed fines and fees to the court has come increasingly to light, policy changes are being proposed and implemented in a number of areas around the country.

## *Cash Bail*

Cash bail is the money a defendant is ordered to pay to ensure the court he or she will show up for trial; the bail is forfeited if the person does not appear. Most of the people who are ordered to post bail are low-income people of color, and they are often held for \$500 or \$1,000 or more for even low-level misdemeanors. Some recent efforts to curtail the practice include:

- New York Governor Andrew Cuomo has proposed [criminal justice reforms that would speed up trials and end cash bail](#) for those accused of misdemeanor and nonviolent felonies throughout the state. In some jurisdictions in the state, district attorneys have already announced that they will no longer seek cash bail in most misdemeanor cases.

Nearly 60 percent of inmates in the state's jails are not serving sentences, but are awaiting trial in jail because they could not pay their cash bail. The state's current bail law does not require judges to consider whether a defendant is able to afford the amount of bail ordered by a judge. According to Donna Lieberman, the executive director of the New York Civil Liberties Union, relying heavily on cash bail often leads to a "two-tiered system of justice" in which wealthy people can pay their way out of custody while the poor remain locked up before they can even contest the accusations against them. The consequences for the poor can include losing jobs, housing, and even the custody of their children. Cash bail also pressures the poor to plead guilty in their cases as a means to get themselves out of jail.

- In a unanimous vote, [the Atlanta City Council](#) voted in early February to change its bail procedures so that city judges have more capacity to release people without bail when they are arrested for nonviolent misdemeanors until they are due back in court. The measure had the support of Atlanta police and detention officials. [A bill that would apply the same changes statewide](#), however, has run into opposition from several county sheriff's groups. The legislation, Senate Bill 407, is supported by Georgia Governor Nathan Deal and would let judges consider a defendant's ability to pay in setting bail and give law enforcement officials more leeway to issue citations instead of criminal charges.
- Legislation passed in January [in Delaware](#) changes state law to encourage judges to first use pretrial release conditions other than cash bail, such as an ankle monitor, mandatory check-ins with court officers, and restrictions on travel, alcohol consumption and contact with victims. Prior state law required judges to set a monetary bail amount. State officials report that approximately [25 percent](#) of Delaware's prison population is made up of people awaiting court dates.

- In early February, the [Philadelphia City Council](#) passed a resolution urging the city's district attorney and the First Judicial District of Pennsylvania to end policies that perpetuate the reliance on cash bail. The resolution also recommends that the Pennsylvania Supreme Court and Pennsylvania State Legislature act on bringing a statewide end to cash bail systems in jails.

Other states that have implemented changes to move away from requiring cash bail include Arizona, New Mexico, Maryland, New Jersey and the District of Columbia, and more than 40 states have task forces or commissions considering changes to bail and pretrial detention, according to [the Laura and John Arnold Foundation](#).

### *Juvenile Court Fees and Fines*

According to a report from [Stateline](#), "in almost every state and the District of Columbia, minors who appear in the million-plus cases heard in juvenile court each year may be charged for multiple court-related costs, fines and fees. Courts use the money for witness fees, court operations, public defender fees and probation supervision. They also spend it on health care, GPS monitoring and drug tests, among many other items and services." The report cites research finding that in fact, court fees and fines can cost cities and counties more to collect than the revenue they bring in.

A [Juvenile Law Center review](#) also found that juvenile offenders and their families are subject to court costs, fees, fines, or restitution in every state. The analysis demonstrates that subjecting youth and families to the fines increases recidivism and contributes to racial disparities in the juvenile justice system. The report's survey of local jurisdictions suggests that costs, fines, and fees are often imposed even when there are no relevant statutes authorizing them.

For juvenile offenders, who rarely have the resources to pay the court-ordered costs, their parents or guardians often become liable for their fees and fines. Failure to make the payments can result in incarceration, suspension of driver's licenses and an inability to expunge or seal records.

Recent efforts to end cash bail requirements for juvenile offenders who cannot afford them include:

- In October 2017, [the state of California](#) passed legislation that, among other provisions aimed at improving the juvenile justice system in the state, eliminates the financial liability of parents and legal guardians for the costs associated with stays in juvenile justice facilities, including for food, shelter, drug tests, transportation, and other care. Support for addressing these payment systems had grown as public awareness of the burdens the payments placed on families grew.

More than 60% of the \$1.7 billion generated by the payments funded court programs and services at the state and local levels, according to California Supreme Court Chief Justice Tani Cantil-Sakauye, who criticized the court fees, stating that "We have a system of fines and fees that has morphed from a system of accountability to a system that raises revenue for essential government services."

- [Washington state](#) passed the Youth Equality and Reintegration (YEAR) Act in May 2015, which eliminated nearly all legal financial obligations for youth in the state's criminal justice system and prevents local jurisdictions from ordering new obligations.

### *Adult Court Fees and Fines*

Jurisdictions addressing adult court fees and fines include:

- The Board of Supervisors is set to pass legislation that would make [San Francisco the first city in the United States to eliminate court fees](#). Current fees include a booking fee of \$135, a pre-sentence report fee of \$150, \$125 upfront and \$35 per day for electronic ankle bracelets, and an initial \$1,800 fee for adult-probation programs. Public Defender Jeff Adachi says about the fees that "Most of them have absolutely nothing to do with the crime, or making restitution for the victim." Just 9 to 15 percent of all fees are actually paid, and they often deter people from entering the workforce because once the city learns that the individual is working, wages are garnished up to 50 percent until the fines are paid in full.
- A [lawsuit filed recently by the Equal Justice Center Under Law](#) seeks to end a law in the state of Pennsylvania that allows for the suspension of driver's licenses for drug-related offenses regardless of a person's traffic safety record. The state has suspended nearly 149,000 driver's licenses that fit this circumstance in the period between 2011 and 2016 and the practice can apply even to those charged with possession of just a small amount of marijuana.
- In [Virginia](#), a bill that recently passed the state Senate would repeal the state's current requirement that the driver's license of a person convicted of any violation who does not immediately pay fines or court costs have their license suspended. Approximately 638,000 Virginians have a suspended license due to unpaid court costs and fees. The bill faces a stiff challenge in getting out of the state House of Representatives, but if it does, it is thought to have a good chance of passage.
- Counter to this trend, [Kansas](#) is considering legislation that would authorize counties to assess a fee up to \$100 on youth who are applying to participate in Kansas' immediate intervention process, a diversion program that allows youth

charged with certain misdemeanor offenses to avoid formal prosecution in the juvenile justice system. The bill would require youth who want to participate in this process to prove their inability to pay, rather than acknowledging that as a class, youth offenders are rarely able to pay court costs.

According to Stateline, the state of Utah, the city of Philadelphia, and Johnson County, Kansas, are among other jurisdictions that have cut back on juvenile fees and fines in the past year, but none has gone as far as California.

US Attorney General Jeff Sessions, however, recently pushed against these efforts to address court fines and fees by rescinding the Obama administration's guidance to state court leaders advising against excessive fine, fee and bail practices. The Obama administration guidance referenced the obligation to follow the constitutional standards articulated in a U.S. Supreme Court case, *Bearden v. Georgia*. The *Bearden* decision asserts that suspects cannot be jailed simply because they can't afford to pay fines and fees imposed by courts.

Ohio Supreme Court Justice Maureen O'Connor argued that the *Bearden* decision established constitutional requirements that remain unaltered. "Here in Ohio I have spoken out unequivocally that courts are centers of justice, *not* automatic teller machines whose purpose is to generate revenue for governments, including themselves," [O'Connor wrote in a letter](#) to state and local court judges.

**Florida Could Restore Voting Rights to Ex-Felons Through Courts or Ballot**

[A federal judge has ruled that the process for ex-felons to regain voting rights in the state of Florida is](#)

[unconstitutional](#). Florida currently disenfranchises felons for life unless they make a personal appeal to a panel headed by Governor Rick Scott. In his ruling, U.S. District Judge Mark Walker said, "the disenfranchisement of felons who have served their time is 'nonsensical' and a violation of the First and 14th Amendments to the U.S. Constitution." Judge Walker ordered further briefing from the parties on the appropriate remedy.

Governor Rick Scott created the current system that requires all felons to wait at least five years after they complete their sentences, serve probation, and pay all restitution before they are allowed to apply for the right to vote and other civil rights. Unless they do so, their voting rights are never reinstated. The small minority of eligible ex-felons who do apply must wait years before their case is heard by a panel and then personally decided by Governor Scott. If Scott is not personally convinced that someone is reformed, that person is denied full citizenship. Scott is not required to explain his votes and every aspect of the clemency process is secret.

Before Scott's process was implemented in 2011, the state policy was to restore voting rights without an application process or hearings for felons (not including murderers and sex offenders) five years after a sentence had been served.

Florida is now one of three states that permanently revokes the civil rights of anyone convicted of a felony, a system that has disenfranchised an estimated 1.5 million people and approximately one in four African Americans in the state.

In response to the Judge Walker's recent ruling, [state leaders are making the argument that one remedy could be to deny voting rights to all felons for life](#), and that an injunction requiring the state to create a new vote-restoration procedure would be inappropriate. Walker is expected to issue an order in the case, and Scott has indicated that the state could appeal it to a federal appeals court in Atlanta.

Another route to restoring voting rights for ex-felons in the state may be through a constitutional amendment on the ballot this November known as the Voting Rights Amendment. The amendment would automatically restore the right to vote to citizens convicted of felonies who have completed their prison sentence, parole, and probation in the state, with the exception of murderers and sex offenders. Known as Amendment 4, it will require passage by 60 percent of voters. A petition drive to get the initiative on the ballot has successfully reached the required 766,200 signatures.

### **State Policy and Practice**

- A [new law](#) in **North Dakota** terminates the monthly child support obligations of parents who have been ordered to pay child support and are then sentenced to incarceration for a period of 180 days or longer. The law allows a child support obligation to be reinstated if an incarcerated parent has more than \$750 of net monthly income from outside sources. It also excludes parents on work release or probation if they are able to earn wages outside a correctional facility. In addition, the law does not forgive any past-due support that was owed prior to termination of the monthly support obligation.

The law had support from both the state Department of Corrections and Rehabilitation (DOCR) and the state's Child Support Division. In its press release supporting the legislation, DOCR director Leann Bertsch stated, "This law helps to reduce a major barrier for a successful transition back into the community by reducing overwhelming debt that can set people up for failure and possible re-incarceration."

According to DOCR and Child Support Division records, about 330 current inmates with 416 child support obligations will have their obligations terminated as a result of the new law.

- A [state prison reform work group](#) in **Kentucky** has made a policy recommendation to raise the bar on the amount of unpaid child support from its current \$1,000 to \$10,000 before it is considered a felony crime. The workgroup also recommends ending the practice of allowing child support debt to accumulate while a parent is in prison.

Child support nonpayment is one of the most common felony offenses resulting in incarceration in the state for both men and women. The work group report reviewed a sample of 2016 felony nonsupport cases and found that "45 percent of offenders owed child support payments of less than \$10,000 at the time of conviction, and 22 percent of offenders owed less than \$5,000 at the time of conviction." The workgroup's recommendations are expected to take the form of prison reform bills introduced in the next legislative session.

- The **Ohio** Bureau of Motor Vehicles reports that [1.1 million state residents had their licenses suspended last year](#), representing almost 12 percent of the state's driving-age population. Reasons for license suspensions include skipping a court date, failing to pay child support and dropping out of high school. State legislators have accused the state of using driver's license suspensions as an arbitrary punishment for offenses unrelated to driving while creating burdensome debts from fees and fines. State legislators have introduced bills to allow motorists suspended for non-driving violations to drive to work, school and appointments such as doctor's visits and to allow judges to assign community service in lieu of reinstatement fees in order to begin addressing the issue.

According to Miami Valley Community Action Partnership Director Randall Smith, "The whole thing is discriminatory against low-income people. A lot of them can't get jobs because the jobs are either beyond the bus route or require a valid driver's license. Some of them haven't had a license in 10 or 15 years." Republican State Representative Jim Butler stated that "It defies logic that you would take away their means of getting to work so they can earn money to pay their child support or their court fines."

- **Wisconsin** Governor Scott Walker introduced [a set of bills that push harder on recipients of government assistance](#) to demonstrate they are drug free, require work as a condition of benefits, and that also require paternity establishment and child support payments as a condition of health benefits. The bills were recently passed by the state Senate. The cost to the state for implementing the bills is estimated to be more than \$90 million per year. The bills would:
  - Require parents with children between the ages of 6 and 18 to meet food stamp work requirements or lose benefits after three months. There are 7,300 such households in the state that might be affected by this proposal. An existing work requirement for adults without children has led to about 3.5 recipients losing benefits for every recipient who secured a job through the program, or approximately 86,000 state residents losing food stamp benefits.
  - Increase the minimum work or job training hours required of food stamp recipients from 20 to 30 hours a week.



- Require drug screening, testing and treatment to be eligible for public housing. (Walker has already asked the Trump administration for approval to drug test Medicaid and food stamp recipients.)
  - Require photo IDs to participate in the food stamp program.
  - Prohibit participation in Medicaid for any able-bodied adults who refuse to cooperate with paternity establishment, child support order establishment or the enforcement of any child support order, or who fail to make other payments a child has a legal right to receive.
- **South Dakota** saw the [highest rate of growth in unpaid child support](#) compared to other states in 2016, with the amount of unpaid child support growing by \$40 million, to more than \$191 million. But the growth in unpaid child support does not appear to reflect a higher level of actual payments that are not being made to support children. Instead, the growth is being attributed to the fact that the state has not kept up with other states in reducing minimum child support orders for parents who are unemployed or in jail. Another contributing factor is that the state has increased its minimum wage, which is used to calculate the amount of child support owed by parents; if they are unemployed or incarcerated, the state presumes an income comparable to full-time minimum wage.

#### **Also of Note**

- A recent [study in Health Affairs](#) found that states that expanded Medicaid eligibility for childless adults under the Affordable Care Act (ACA) experienced fewer hospital closures. Increased Medicaid coverage for previously uninsured people was found to reduce expenditures for care that were uncompensated and strengthen the financial viability of hospitals. This was particularly the case in rural markets and counties that had large numbers of uninsured adults before the state's Medicaid expansion. The authors suggest that reverting to pre-ACA eligibility levels would lead to a significant increase in rural hospital closures, which could in turn lead to reduced access to care, a loss of highly skilled jobs, and harmful impacts on local economies.
- A [historically low number of African Americans being incarcerated](#) in the state of **Georgia** is attributed to a dropping crime rate, the state's expansion of "accountability courts" as an alternative to prison, and the state's new definition of "felony" for burglary, theft and shoplifting. The felony theft definition was changed from a theft of more than \$500 in goods or cash to a new threshold of \$1,500.

Overall prison admissions have dropped almost 19 percent in the past eight years, and the incarceration of black inmates fell by 30 percent. In addition, the number of black inmates entering the prison system last year was at its lowest level in decades. The changes are being credited to criminal justice reforms supported and initiated by Governor Nathan Deal in 2011. The drop in rates of

incarceration has been occurring at the same time that the crime rate in the state has dropped.

The accountability courts divert offenders with substance abuse and mental health problems from prison on the condition that they get a job, stay clean and get treatment. The programs typically last 18 months and include frequent drug tests and individual and group counseling. The court dismisses charges against offenders who graduate. The number of accountability courts has expanded from 12 to 149, and Governor Deal hopes to expand them further in the near future.

- [Ukraine](#) has created a twist on the common child support enforcement tool of creating a public site listing parents who are behind in paying child support. An electronic register with 75,000 names of nonpaying parents, called the “Wall of Shame,” is being billed as a means for women to check a man’s credentials before entering a relationship with him. Ukraine is said to have looked at practices in the United States in designing its electronic register. Arizona, for example, publishes the name, photograph and the amount owed by parents on a website easily accessed by the public.
- The US Office of the Administration for Children and Families has released its most recent annual publication, [Welfare Rules Databook: State TANF Policies as of July 2016](#). The databook tracks TANF policies for each state and provides tables that allow for comparisons of cash assistance programs across all 50 states and the District of Columbia, as well as providing data to research changes over time in cash assistance policies in a particular state.