

FOR BETTER OR FOR PROFIT:

HOW THE BAIL BONDING INDUSTRY STANDS IN THE WAY
OF FAIR AND EFFECTIVE PRETRIAL JUSTICE

JUSTICE POLICY INSTITUTE | SEPTEMBER 2012



The Justice Policy Institute is a national organization focused on reducing the use of incarceration and the justice system and promoting policies that improve the well-being of all people and communities.

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60%

of people held in
U.S. jails are awaiting
their day in court.

PART 1

INTRODUCTION

The for-profit bail bonding industry exerts control and influence over pretrial decision-making in jurisdictions throughout the country. Despite a checkered past, for-profit bonding is now a multi-billion dollar industry backed by giant insurance companies and trade associations with the money and political power needed to maintain their place in the criminal justice system.

The industry continues to prosper and grow despite decades of research and reform efforts that have changed the pretrial landscape to one that no longer requires the services of the professional bondsman.

In contrast to other pretrial mechanisms, for-profit bail bonding is unable to effectively manage people who are released pretrial. Other methods of release, such as the use of pretrial services (PTS) agencies, gauge pretrial risk based on several factors including prior criminal record, substance abuse history and severity of the current charge, to name but a few. For-profit bail bondsmen assess risk based the ability of the person—or their family—to pay the bond premium, and the risk they will have to pay the full bond amount if they fail to appear in court.

The industry touts its services as coming at no cost, but the system is very costly to the taxpayer and to the individuals and families who enter into the bail bond agreement. Many of those who cannot or do not purchase a bail bond will remain in jail until their trial date, sometimes as long as a year. This has contributed to dangerously high jail populations, with a national average of 60 percent of people in jail awaiting their day in court. In some

jurisdictions, as many as 71 percent of people in jail have a pretrial status.

As courts increasingly recognize the ineffectiveness of for-profit bail bonding, the number of people released through a bail bond, and simultaneously supervised and monitored by PTS agencies has grown dramatically, resulting in a greater taxpayer burden. This is solely due to deficits in the for-profit bail bonding service. Likewise, because of the lack of industry regulation, courts often choose to play it safe by raising bail amounts. This increases pretrial jail populations for those who can't afford release and increases the financial burden of those who can.

With the personal liberty of accused people held by a profit-driven private industry, for-profit bail bonding is systemically prone to corruption, criminal collusion, and the use of coercion against bonded people. This phenomenon is not new and has plagued the industry for decades, resulting in a ban on for-profit bonding in four states.

The practice has been criticized widely for decades by such groups as the American Bar Association, International Association of Chiefs of Police, the

American Civil Liberties Union and numerous other criminal and social justice stakeholders. For-profit bail bonding continues, however, largely because of the political influence the industry is able to leverage through lobbying, campaign donations and association with powerful anti-reform organizations. In numerous instances the for-profit bail bond industry has fought pretrial reform through the use of industry lobbyists, significant donations to industry-friendly policymakers, backroom influence and legislation with the help of their conservative corporate-financed partner: the American Legislative Exchange Council (ALEC).

There are proven alternatives to the for-profit system that rely on statistically validated assessments of risk and a continuum of pretrial release options instead of money. It is through the use of these

alternatives that the U.S. will be able to eliminate the use of the for-profit bail bonding industry, and ultimately money bail itself, while improving outcomes for people and communities and safely reduce jail populations, resulting in less costs and more safety for all of us.

The only risk that for-profit bail bondsmen consider is financial: can the client pay the bond premium and the full bail amount? And what is the likelihood they'll have to pay a forfeiture for a failure to appear?

PART 2

HISTORY AND CONTEXT

The use of money bail—the larger practice of bail within which for-profit bail bonding exists—can be traced back 1,000 years to medieval England. Its intended purpose was basically the same as it is today: to ensure a person who has been arrested and released pretrial shows up for their future trial date.

By using money as guarantee for trial appearance at a time when most punishments were monetary, the system had a measure of internal consistency, making it “perhaps the last entirely rational application of bail.”¹

Bail was brought to America with English settlers, where the practice remained mostly the same until the late 19th century and was even codified into the 8th Amendment of the Constitution.² Money bail remains an integral part of the criminal justice system in most parts of the U.S. today as a condition for pretrial release.

For-profit bail bonding—the practice of hiring a third party to pay or provide a surety guarantee for one’s bail—is commonly believed to have begun in the U.S. around 1898 by underworld bosses the McDonough brothers, who were active in gambling and prostitution rings in rough-and-tumble, turn of the century San Francisco. The McDonoughs bailed out people in these illicit industries so they could return to work as quickly as possible.³ Even in what was considered to be an “open town” with a high tolerance for extra-legal activities, the McDonough’s bail business was seen to be a “fountainhead of corruption.”⁴ In 1912, the San Francisco police chief said of bondsmen, “they are simply shysters, the offal of the earth, and they should be driven from business, from the police courts.”

One hundred years later the bail bonding industry, now a billion-dollar business, continues to enjoy considerable political influence. But the padded envelopes of the early twentieth century in large part have been replaced by campaign donations and lobbyists who promote the industry’s right to exist, reduce competition from alternatives to bail bonding like pretrial supervision, and ensure that profit margins remain high through



THE WORLD’S FIRST FOR-PROFIT BAIL BONDS COMPANY, RUN BY SAN FRANCISCO CRIME BOSSES, THE MCDONOUGH BROTHERS.

Photo: San Francisco History Center, San Francisco Public Library

the reduction of risk in the form of forfeitures (that is, payment of the full bail amount for someone who does not appear for trial).

Two primary factors contributed to the rise of the professional bail bondsmen in the early part of the 20th century. First, the growing American West meant many lacked strong social networks of friends, family and neighbors upon whom to call for help raising bail; people who couldn't afford to remain in jail were willing to sacrifice the non-refundable fee in order to remain free pending trial. Second, bail amounts began to rise, making it harder for the average person to pay the full bail amount.⁵ The blossoming for-profit bail industry used that opportunity to establish itself as an everyday part of the criminal justice system. In fact, commercial bail proponents use the language of tradition to portray the practice as integral to the operation of the American criminal justice system and its absence as unimaginable.

However, as early as the 1920's critics raised worrying issues. Arthur L. Beeley, in his 1927 study, *The Bail System in Chicago*, noted that poor people remained in pretrial detention solely because of their inability to pay even small bail amounts; he believed the role of bail bondsmen had become too prominent in the administration of justice, and corruption and a failure to pay bond forfeitures plagued the industry. Amazingly, these issues are still at the heart of what is wrong with the for-profit bail system in America today.⁶

Out of concern over the disparate treatment of those who could or could not afford bail, the 1961 Manhattan Bail Project sought to demonstrate that people who had been arrested could be released under non-financial conditions with low failure-to-appear (FTA) rates. The project, which became the flagship for the Vera Institute of Justice, was successful and opened the door for the Federal Bail Reform Act of 1966. This Act emphasized a presumption of release

on personal recognizance for people charged with non-capital offenses, placed restrictions on the use of money bail and promoted the use of pre-trial services within the Federal court system. Following that, the American Bar Association (ABA) released its updated Standards, stating that the for-profit bond agent "is neither appropriate nor necessary and the recommendation that they be abolished is without qualification."⁷

Despite these attempts at reform, by the 1970s bail bond-related corruption and influence within the criminal justice system reached such a level that four states—Illinois, Wisconsin, Kentucky and Oregon—banned the practice, opting instead for non-financial release mechanisms or allowing accused people to place a refundable deposit with the court (known as deposit bail). Commercial bail is still prohibited in those states and has been limited or made scarce in several other jurisdictions since that time.

Following several high profile offenses committed by people who had been released on bail, Congress passed the Bail Reform Act of 1984. The intent of the act was to add the consideration of dangerousness to the bail decision, in addition to likelihood of future court appearance. The result of the Act, in Federal Courts as well as the local courts that adopted the tenets of the Act, was an increase in bail amounts, which in turn increased the number of people who remained in jail prior to trial,⁸ as well as the bottom line for bail bondsmen, who generally collect and keep ten percent of the bail amount. As the Reform Act coincided with a surge in the War

"Their role is neither appropriate nor necessary and the recommendation that they be abolished is without qualification."

—AMERICAN BAR ASSOCIATION

LAMONT REDMAN

CASE MANAGER, JERICHO REENTRY PROGRAM, BALTIMORE, MD



The bail review process exists to determine flight risk and danger to the community at large.

There are some people out there who absolutely don't deserve bail. If you have been locked up numerous times for the same thing, you don't deserve bail. But if you have somebody who is a first-time offender and has no record and gets the book thrown at them, it shouldn't be like that.

I've seen people basically having to put up houses or take out loans against their property to come up with bail amounts to get out of prison.

Sometimes there's too much judgment involved instead of going by what is stated on paper. It's always dependent on how that person may feel that day. To me, there is no continuity in it. Depending on the mood the commissioner may be in, you may get a higher bail or lower bail. Or, this commissioner might go by the book; that commissioner might not go by the book. This judge might do it this way; another judge might not. I think that the way the law should be set up is that everything should be black and white. There shouldn't be paint involved in the bail process.

I've seen people basically having to put up houses or take out loans against their property to come up with bail amounts to get out of prison. And you are talking about a lot of people who just don't have that kind of money. A lot of the bail bondsmen in the city, they work with a lot of people. They even go down to one percent, as far as putting down to get people out. But like I said, they've got regular families putting houses down. They are not the ones getting locked up, but they've got to put their houses up, and if this person runs, you can lose your house. Or take out a loan, a payday loan from these predatory loan companies that try to get the money to bail somebody out of prison. And that's where it starts affecting everybody.

Like I said, this person is not a danger or flight risk, so why should they have to go through all this burden? Don't get me wrong; if somebody commits a crime, that's their fault. But, should there even be a bail in that case, or should it just be release? Major cases, I understand that—like murders, burglary, theft anything like that. But a lot of these guys are locked up for drug charges, and not for selling, but for using. What's the purpose of continuing to give them bails? It drains the system, it overcrowds the jails, and you put an unnecessary troublesome burden on their families. Put these guys in treatment.

So that's my problem with it all. That's why, depending upon the crime, sometimes bail doesn't seem needed. It's cumbersome, and it puts an unnecessary burden on family members. Nobody wants to see their child or mother or father behind bars, but sometimes, if you got to stay there, it does a lot to affect a family—especially in cases where it'd be more useful and helpful to the community at large to put these guys in treatment, not keep putting them behind bars. They get no treatment behind bars most of the time. So, how's this helping?

It's a big racket. Like I said, the whole bail system has its pros and cons, but I believe that for lesser petty charges, there shouldn't even be a bail process for that. Lock them up, give them the charge, let them go.



on Drugs, those whose bail amount was increased due to supposed risk of dangerousness were overwhelmingly accused of drug-related offenses.⁹

In the early 1990s, members of the for-profit bail industry came together to discuss ways to better combat what they perceived as unfair competition by government-funded pretrial services programs. They formed what would become the American Bail Coalition (ABC), a national organization committed to lobbying for the for-profit bail industry. In 1994, ABC joined forces with the American Legislative Exchange Council (ALEC), a powerful conservative group funded by corporations that works directly with legislators to draft and promote model bills throughout the country. ABC refers to ALEC as their “life preserver,” and rightly so; in the ensuing decade they were successful in passing many bills which simultaneously give advantage to the for-profit bail business and restrict or de-fund pretrial services.

Within ALEC, ABC worked through the Criminal Justice Task Force which disbanded in 2012 after increased scrutiny related to the Trayvon Martin case.¹⁰ The future of their work regarding for-profit bail is uncertain.

As of writing, there are approximately 15,000 bail bond agents working in the United States.¹¹ Some are small, independent businesses, but a recent Justice Policy Institute investigation found that bail bonding agents increasingly operate under the umbrella of large, well-financed insurance corporations. In fact, most bail bond agencies that claim to be family owned and operated are underwritten by multi-billion dollar companies. These companies have the resources and infrastructure to mount effective lobbying campaigns to further for-profit bail bonding as an industry and to destabilize pretrial services in jurisdictions throughout the country.

THE LANGUAGE OF BAIL BONDING:

A GLOSSARY OF KEY TERMS

Common usage of bail-related terminology often differs widely from the technical or official definitions of such terms. This report will employ common usage.

BAIL: The term ‘bail’ has several modern uses that stray from its original and accurate meaning. Historically, ‘bail’ has meant the process by which a person is released from custody before trial and, in some cases, the entire pretrial process. The term has also been used to describe the person or persons who give or promise money for a person’s release.

Here, the term ‘bail’ will be used in its more colloquial usage, meaning “the money required to obtain release from pretrial detention.”

BAIL BOND: The legal agreement between the court and the payer of bail guaranteeing a person’s appearance at trial. In insurance terms, a surety bond.

BOND: An agreement of debt upon certain circumstances; in the case of for-profit bail bonding, the agreement to pay the entire bail amount if a client fails to appear in court.

EXONERATE: The process through which the court may declare a bondsman free from the debt of a bad bond. If a bonded client is apprehended and returned to the custody of the court, the court may exonerate the bond, removing the bondsman from all obligations.

FOR-PROFIT BAIL BONDSMAN: An insurance agent who sells a bail bond to an arrested person or their family to ensure the person’s release from detention prior to trial.

FOR-PROFIT BAIL INDUSTRY: The network of businesses involved in for-profit bail bonding. These include the bail bonding agency that works directly with arrested people and members of the insurance industry who provide the financial backing for bail agencies. Many bail agencies work with regional and local representatives of insurers, however the industry also includes larger insurance corporations, some of which are worth hundreds of billions of dollars.

FORFEITURE: The process through which a for-profit bail bondsman may have to pay the court following a failure-to-appear by the bondsman’s client. Also, commonly used to refer to the amount owed. If the court declares a bail bond ‘forfeited,’ the bondsman must pay the ‘forfeiture.’

INDEMNITOR: A person who enters into an agreement to pay a debt under certain circumstances. In the case of bail bonding, an indemnitor is usually the family or friends of an arrested person who agrees to purchase a bail bond and to pay the full amount of bail should the arrested person fail to appear in court.

OR/ROR or PERSONAL BOND: An agreement with the court in which an arrested person is “released on their own recognizance,” a promise to appear at a scheduled court date. This is a non-financial release option.

SKIP: A colloquial term referring to a bonded person who has failed to appear in court. Once a person has become a ‘skip,’ a warrant may be issued for their arrest and the bondsman and law enforcement agents will attempt to apprehend the person.

PART 3

HOW DOES BAIL BONDING WORK?

For-profit bail bonding exists in a unique intersection of commercial insurance and criminal justice. For the purposes of licensing and fiscal reporting, it is part of the insurance industry, though it deals exclusively with the criminal justice system.

As a mainstay in most of the U.S. criminal justice system, bail bonding is a practice with which most people are generally familiar, though the details and mechanics of it may be less well understood.

No one who is offered release on money bail has to use a bail bondsman. After being arrested, a person may be given the option of posting bail (pay a set amount of money to the court) in order to be released prior to their trial. He or she—or, more typically, their friends and family—may pay the full bail amount directly to the court. When the person appears for their court date, the amount paid in bail is refunded, minus court fees. If they do not show up for court—they *fail to appear (FTA)*; their bond may be forfeited and a warrant issued for their arrest. Barring extenuating circumstances that prevented their appearance in court (being hospitalized, for instance), someone who fails to appear and is apprehended by the police may be required to spend the rest of their time awaiting the disposition of their case in jail. In some instances the court will set a new, higher bail following an FTA, and the bonding process begins again.

Many people, though, do not have and cannot raise the full bail amount. Then a person may turn to a

professional bail bondsman. For a fee—frequently ten percent of the total bail amount—a bail bondsman will secure a person’s pretrial release. The person, their friends, or family who pays the bond also sign an agreement to pay the full amount of the bail if the accused person fails to show up to court. They may have to prove to the bondsmen that they have adequate resources available. While the bondsmen themselves do not have to pay the full bail amount to the court at the time of the person’s release, they must provide evidence that they have the assets available to them to pay the full bail; for instance, deeds for property, bank statements or, most commonly, insurance coverage by a large national company that provides “surety” insurance to underwrite the bail amount.

If the person who has been bonded appears at trial as scheduled, the bail bond is terminated and the agreement ended, although those who paid the bond get no part of the fee back. If the person does not appear at trial, the bondsman is responsible for finding the person—at this stage, colloquially called a ‘skip’—and returning them to the court. If they are unable to do this, they are liable to pay the entire bail amount to the court. Bondsmen

will then turn to the people who signed the bond agreement, and take whatever actions are necessary to recover their costs.

“Almost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice.”

—ATTORNEY GENERAL ERIC HOLDER

As operated within the law, for profit bail bonding is a system that exploits low income communities; is ineffective at safely managing pretrial populations; distorts judicial decision-making; and, gives private insurance agents almost unlimited control over the lives of people they bond out. In some cases, the power the system inherently cedes to bail bondsmen leads to corruption, coercion and criminal collusion.

Why does this system continue to dominate the way we handle pretrial justice? Because of the political power the bail bondsmen—and their enablers, the insurance industry—have over those who could choose policies and practices that are better for public safety and communities. This broken system and the influence of money that keeps it running that will be examined in this report.

PART 4

FOR-PROFIT BAIL TAKES ADVANTAGE OF LOW INCOME COMMUNITIES

Prior to for-profit bail bonding, the entire amount of a money bail was primarily raised by a person's family and friends. This was at a time when bail amounts were significantly lower than they are today.

Despite the hardship of raising bail for a relative or loved one, the refundable nature of bail gave friends and family a vested interest in getting the person to trial. The non-refundable bail bond premium accomplishes no such benefit.

However, as the country became more mobile, many people didn't have sufficient social connections nearby to assist with raising bail. It is in this changing national landscape that for-profit bail bonding began to flourish, by writing bail bond contracts for people without sufficient means to make their own bail. Much as the payday loan/check cashing industry purports to assist low income people,¹² so too does the bail bonding industry. But like payday loans, bail is part of a two-tiered system, one for the haves and one for the have-nots.

FOR THOSE WHO CAN PAY THEIR OWN BAIL: If you (or your family and friends) can pay your full bail, then the courts hold your money until your court date. Cash advances from credit

cards can even help cover the bail. When you show up for court, your bail is returned, less any court fees. If you are ordered to pay any fines, these may be deducted from your bail deposit. This in turn reduces your future obligations to the court, and reduces the chance that you will miss payments of fines and be subject to additional sanctions.



Photo: John Morris, goodnightraleigh.com

BAIL BOND STIPULATION AND BAIL BOND CONTRACT

As cosigner, I understand that **I am liable for the FULL FEE** agreed upon with Bail Bonds by Renell should defendant fail to make any court appearance.

I understand that the fee WILL NOT be reduced or refunded if the case is dismissed bond is reduced. If for any reason a NEW BOND is required, said new bond will be subject to ADDITIONAL FEES. Should one or more of the bonds posted by Bail Bonds by Renell on the defendant's behalf become forfeited **you agree to pay all expenses incurred by Bail Bonds by Renell relating to the defendant's capture and return to custody...**

> I understand that **I am responsible to make payments for money due on the premium of this bond should defendant not do so.** A \$25.00 late charge will be computed on past due accounts...

> A forfeiture of the bail bill will be entered by the court if the defendant fails to make any court appearance. I understand that the bond is ordered or forfeited and if it is not ordered reinstated or exonerated that **I must pay the full amount of the bail forfeited to the bail bond company.**

> I understand that if I breach the bail bond stipulations and contract by nonpayment or any other action as defined above, **I am responsible for any collection, actions taken, including attorney fees and costs, court costs, and interest...**

> I understand that if the defendant's bail bond(s) are forfeited for any reason, as the cosigner, **I am personally liable, and legally as well as financially responsible to pay any and all court, investigation, or legal fees on any other expenses related to the apprehension of the said defendant or related to the reinstatement of any forfeited bail bonds.**

> I understand completely that if this defendant's bail bond(s) are forfeited for any reason that, **as the cosigner, I am responsible legally and financially for the full bond amount(s).**

EXCERPTS FROM A TYPICAL FOR-PROFIT BAIL BOND CONTRACT. EMPHASIS ADDED

(<http://bailbondsbyrenell.com/contract.html>)

FOR THOSE WHO CAN'T PAY THEIR OWN BAIL:

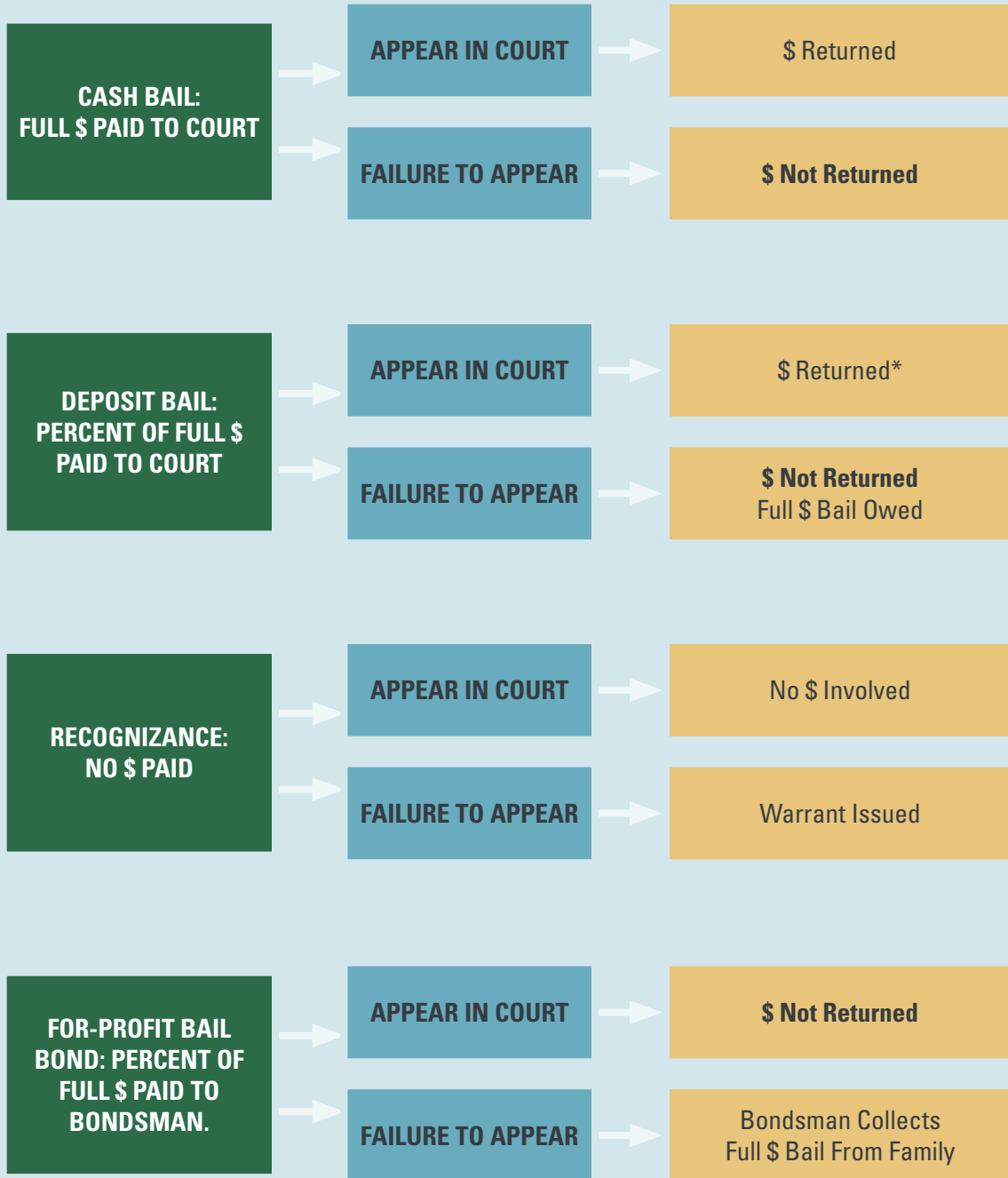
If you (or your family and friends) can't pay the full bail amount, your choices are to remain in jail until your case is resolved—which might be weeks or months—or to try to obtain a bail bond. Different jurisdictions have different regulations for the amount a bail bond agent can charge, but a common figure is ten percent of the full bail. Whoever signs the bail bond contract (see sample) is responsible for the full agreed upon fee, plus all other expenses incurred, if the person on bail fails to appear in court.

That no part of the bond fee is refunded means that those who are low income—those unable to make their own bail—are paying a large price for their freedom. This is true even if the charges are

eventually dropped or the person is found innocent. Regardless of case outcome, a person who makes their own full bail has virtually all their money returned.

The bail bonding industry justifies retention of the full fee as compensation for the risks they take and costs they accrue. However, this risk appears to be overstated on two counts. First, those who pay the fee for the bond have signed a legal contract. Bail bondsmen don't write contracts to bail someone out unless they have evidence that the co-signers have the resources to pay. Whether it's a ranch in Montana or a car repair shop in Maryland, the bail bondsman can legally take the assets of co-signers if the defendant doesn't make their court appearance and the bail is forfeited.

WHERE DOES THE MONEY GO?



*With deposit bail, a person's money is returned, minus a fee.

“The surety industry has lower expected loss ratios ... than most areas of the property and casualty insurance industry. The lower expected loss ratios result because the product is a bond that serves as financial protection to a third party in the event a principal is unable to honor an obligation, rather than an insurance policy that pays on behalf of a policyholder. When a bond is called upon, we often receive subrogation recovery against the loss, including recovery from the bond principal.”

2011 Annual Report of HCC Insurance Holdings, an underwriter of bail bonds.
<http://ir.hcc.com/phoenix.zhtml?c=90423&p=irol-IRHome>.

At a time when national indigency rates (the percentage of defendants who qualify for free legal counsel due to low incomes) are around 80 percent,¹³ requiring bail or a bail bond to secure pretrial release may increase the burden on public defender systems. A family who raises the money for a bail bond may have fully tapped their resources when it comes time to hire a lawyer. Likewise, those who cannot afford pretrial release may lose their job during their detention, a scenario which can cause catastrophic financial problems for their family.

Second, courts seldom actually make bondsmen pay if the person they've bonded fails to appear in court. Forfeiture rules are, with the help of the industry's political power, written to give the bail agent nearly endless opportunities to avoid paying forfeitures and make the process labor intensive and complex for the courts. Courts must officially notify bondsmen of forfeiture proceedings within as little as 5 days, or the bond is exonerated. In most jurisdictions courts basically have to sue bail agents to begin a lengthy forfeiture collection process. Each step of the process is costly to the taxpayer. And if the accused person fails to appear in court, they are likely to be apprehended by law

enforcement, and the bail agent may collect the entire, large bail amount from the accused person or the bond cosigner without having to pay a forfeiture to the court.

In the end, it is those who co-signed the bond—often families and friends who themselves are of modest means—who end up paying. The co-signer becomes an indemnitor, an individual “who agrees to assume the obligation normally placed on a surety.”¹⁴ If the person or their family is unable to pay, the bondsman will seize and liquidate any collateral used to secure the bond such as a home or property. Experienced bondsmen insist on collateral to minimize their risks. As one bondsman stated, “You bet your fanny I’m going to take collateral. I’ll take his first born.”¹⁵ If no collateral or insufficient collateral was put up the bail agent may sue the indemnitor for the money. The agent may claim the buck stops with him, but it is the family of the accused who is really on the hook.

People with low income are also disadvantaged by the selective nature of bail bonding. While a judge may assign a bail amount on the assumption that a person may have the resources to afford the bail bond fee, if not the full bail, bondsmen are under no obligation to bond anyone. If a person's bail is low—say, less than \$2,000—but their family still can't raise the full amount, they may find that bail bondsmen are not willing to write a bond, as the fee isn't worth the hassle to them.¹⁶ Bail bondsmen may also refuse to bail out people for any reason or no reason at all, depending on whether they believe, rightly or wrongly, that a person might miss his court appearance. This could be due to the person being of foreign descent, or having drug addiction or mental health problems they believe might keep them from making his or her court date. For a person of financial means, all of this is irrelevant, as they and their network are able to make the full bail themselves.

JEROME LACORTE

CHIEF ATTORNEY, OFFICE OF THE DISTRICT PUBLIC DEFENDER, BALTIMORE, MD



The legislative intent behind the pretrial release laws in Maryland is to ensure the appearance of the defendant at trial and to protect the community from an individual who might be dangerous.

In Maryland, the conditions of pretrial release, including requiring a bail to be posted, are set by a District Court commissioner. Individuals who are not able to meet these conditions have their cases reviewed by a District Court judge at the next session of the court. The District Court judge can raise,

lower, or leave the commissioner-set bail the same, and add or remove other conditions of pretrial release.

The bail system works for people who are able to obtain release on recognizance and not so well for those who are not able to.

Once a bail is set, unless the commissioner or judge orders otherwise, it can be posted by cash, real property, or by hiring a bondsman to post a bail bond. The bail bond industry in Maryland is regulated by statute and court rules and by the Maryland Insurance Administration. Bail bondsmen must be licensed by the Insurance Administration, which sets premium rates for bail bonds.

The bail system works for people who are able to obtain release on recognizance and not so well for those who are not able to. The commissioner or judge has to decide bail in a very short time based on very limited information about a person. Many judges presume that the allegations against the arrestee are true. Poor people are generally much less able to secure pretrial release. Many young persons are charged with serious crimes and are unable to obtain release due to their financial circumstances. These defendants often spend more than a year in jail awaiting their trial. This is not the ideal place for someone still in their formative years to spend so much time.

Bail bondsmen are required to charge a total premium of 10 percent. This rate is set by the insurance commissioner, and a bondsman could lose his license or be otherwise sanctioned if he were to charge less. However, it is common practice (and not unlawful) for the bond to be posted with a down payment of as little as one percent. This practice was found to be legal by the Court of Appeals under existing insurance regulations in 1997.

Poor people are generally much less able to secure pretrial release.



PART 5

FOR-PROFIT BAIL BONDSMEN ARE NOT CRIMINAL JUSTICE PROFESSIONALS.

The passage of the Comprehensive Crime Control Act of 1984 added the consideration of public safety to the criminal pretrial release decision. This change appeared to be compatible with the Pretrial Services Act of 1982, which sought to establish pretrial services in courts throughout the country.

These new Pretrial Services (PTS) programs, it was believed, would be instrumental in assessing the risk of pretrial offending that each accused person posed and making informed release recommendations.¹⁷

However, the promise of more pretrial services agencies was never met. Instead, judges responded by increasing money bail amounts as a way to take into account dangerousness. And, as this coincided with the trend towards an increasingly punitive criminal justice system largely driven by the “war on drugs,” the numbers of people being arrested and booked skyrocketed. Ready and willing to take advantage of this opportunity, the for-profit bail industry stepped in to make bigger and bigger fees on more and more people.

The for-profit bail industry does not have a mechanism with which to consider dangerousness as a factor in their decision to bond. In fact, bondsmen are only held liable for no-shows; if a person is arrested by the police for another offense while out on bail, the bond is not forfeited. Bondsmen operate on the assumption that in setting a bail amount, the courts are using money

as a proxy for risk, and setting bail accordingly. The decision by the bondsman to write or not write a bail bond is driven solely by a profit motive, and if the accused person is able to raise the money to purchase a bond and provide collateral as a guarantee, the agent is in a no-lose situation with a big payday. For them, cases in which bail is set very high are more appealing, as they represent higher profit with no increased risk. According to the International Association of Chiefs of Police, “The bondsman’s focus, from a purely business model, is on how much money will be made to profit the company versus broader concerns like public safety.”¹⁸

BAIL BONDSMEN DON'T ADDRESS PUBLIC SAFETY.

Presumably, one reason money bail—and therefore bail bonds—are used is because it is assumed that bail bondsmen will ensure that a person makes it to their court date. However, studies and reform projects have shown no clear or consistent correlation between court appearance rates for people who were released with a

DAVE WEISSERT

COORDINATOR OF COMMISSIONER ACTIVITY DISTRICT COURT OF MARYLAND, BALTIMORE, MD



The bail system could be effective if everybody would follow two simple goals: make the defendant come to their trial, and protect the public and the individual from safety concerns.

It's a matter of determining what set of conditions you would want to consider as a part of pretrial release. Bail is only one function of pretrial release. We could put [people] in the custody of somebody. If the threat was extreme, we could set no bail. For some offenses, Maryland statute says that there can be no release established by a commissioner. So, if you're a drug kingpin, and you're charged as such, the commissioner has no authority, by statute, to even offer pretrial release. But there's very few of those kinds of offenses.

If you had a penny for every state's attorney that said, "This person is probably going to be dangerous," or, "This person won't come to trial; put a bail on them," we'd be rich people.

Some players just don't follow the system. They have another agenda, I guess. Bail commissioners, judges, state's attorneys, everybody gets involved in that. If you had a penny for every state's attorney that said, "This person is probably going to be dangerous," or, "This person won't come to trial; put a bail on them," we'd be rich people. They're prosecuting the case, and they're looking for any strategic advantage they can get in the case.

Maryland still hangs on to this archaic business, the bail bond industry. Perhaps in the early days, it was important. I'm not so sure if it serves a real purpose today. In order to even determine that, it has to be standardized, it has to be licensed, it has to play by the same rules—and that it does not do, across collateral type or across political jurisdictions.

We see people now paying bondsmen a half percent, one percent, and the rest is in some sort of confessed judgment, or a lean on something. Let's say it's a \$10,000 bond. So they're going to charge a 10% fee, that's \$1,000. But they say to the person, "I'll take \$100, and a \$900 note." They do it all the time. Until the Maryland Insurance Administration takes action, there's nothing administratively we can do about that. We make them disclose that so we know what the actual collateral was. But how they go about collecting this and how they make any money, it just makes you wonder. It sort of defeats the purpose.



bail bond and those released on their own recognizance (ROR).¹⁹ While it may be that a “bondsmen’s main responsibility is to bring defendants back to court if they fail to show up,” most people who miss their court date are apprehended by law enforcement, not bail agents.²⁰

In terms of ensuring that a person on bail remains law abiding, the bail industry plays no role, as they are only responsible for ensuring a person shows up to court. Bail is not forfeited if a person is arrested for a new offense while out on bail, so there is no incentive for bondsmen to provide supports and services to help those on bail remain successfully in the community while awaiting trial. A representative of American Surety and Casualty Co., Inc. , in his testimony before Congress, laid this out succinctly: “we write bonds for appearance. We do not write bonds for performance. The reason that is necessary is, it’s an insurance company just like any other. You have to be able to define the risks, in order to understand what the risks are and in order to charge a premium to cover those risks.”²¹

In order to protect their market, the for-profit bail bonding industry may try to make it appear otherwise. According to one bail group in Florida, “Bail bondsmen are seasoned veterans who possess a good judge of character. They carefully analyze the accused, the person posting

the security, and the risks involved with freeing the defendant. To the bondsman, this is a relatively straight-forward business transaction; he will obviously not post bail if he believes the accused to be a flight risk or will cause trouble.”²² In fact, it could be argued that it serves for-profit bail’s bottom line when people *are* re-arrested and jailed while on bail, as this reduces to zero the chance that the bail will be forfeited due to an FTA.

UNLIKE BONDSMEN, PRETRIAL SERVICES AGENCIES MEASURE RISK, FACILITATE SERVICES.

Results from recent and on-going research projects examining attitudes toward pretrial justice and reform found that people generally believed risk assessment to be a normal part of pretrial practice. In fact, there was some disbelief when told that, in many cases there is no standardized measure of risk prior to releasing a person after arrest.²³

The field of pretrial services (PTS) has been moving toward a risk-based paradigm and the increased use of validated risk assessment tools in recent years. *Validated* risk assessments are those which have been tested and found appropriate and reliable to the jurisdiction in which they are applied.²⁴

How is this different than bail bondsmen? Like bail bondsmen, PTS agencies perform an assessment to evaluate someone’s likelihood to appear in court. However, PTS utilize standardized tools to gauge a person’s potential risk to public safety if released before trial, such as: prior failure to appear in court, prior convictions, present felony charge, employment status, drug abuse history and number of pending cases. PTS

“Pretrial services employing validated risk assessments provide useful data and offer practical information essential to making informed decisions during court proceedings and determining conditions of supervision and sentencing, when appropriate.”

—ASSOCIATION OF PROSECUTING ATTORNEYS

agencies are able to provide the courts the information necessary to decide whether a person can be safely released pretrial, and if so, under what conditions. For instance, a person on pretrial supervision may be required to check in with an officer once a week (depending on risk level), take a breathalyzer or other drug test, wear a GPS bracelet, maintain a job or housing, or fulfill other conditions that will increase the chances the person will remain safely in the community until trial.

One jurisdiction that has used pretrial services for an extensive period of time is the federal courts. As the table shows, by using a risk assessment they have been successful in determining which people are more likely to be successful pretrial—that is, appear at trial having not been re-arrested for a new offense or violating their conditions of supervision. In six years of data tracking, Federal Pretrial Services was able to measure assessed risk accurately, to the point that almost 98 percent of those judged ‘risk

A recent and on-going research project examining attitudes toward pretrial justice and reform found that people generally believed risk assessment to be a normal part of pretrial practice. In fact, there was some disbelief when told that, in many cases, there is no standardized measure of risk prior to releasing a person after arrest.

level one’ successfully completed pretrial, with decreasing—but still high—levels of success for those released at higher risk levels. And by providing supervision, services and supports to those deemed higher risk, more people are able to maintain their jobs and community and family obligations rather than be held in jail awaiting their day in court.

Side by Side: For Profit Bail and Pretrial Services			
For-Profit Bail Bonds Industry		Pretrial Service Agencies	
What do they base decisions on?	What is generally provided to person awaiting trial?	What do they base decisions on?	What is generally provided to person awaiting trial?
<ul style="list-style-type: none"> • Ability to pay bonding fee • Assets available to pay full bail if FTA • Their subjective assessment of likelihood of FTA 	<ul style="list-style-type: none"> • Reminder to go to court 	<ul style="list-style-type: none"> • Number of prior FTA’s • Past convictions, present and pending charges • Employment status • Drug abuse status • Other information shown to be statistically related to success pretrial 	<ul style="list-style-type: none"> • Reminder to go to court • Drug and alcohol testing if relevant • Referrals for treatment and other social services if needed • Regular check-ins with officer and/or electronic monitoring

The Federal Courts have been successful in using pretrial risk assessments.			
	Pretrial Services Recommendations for Release	Court Decisions for Release	Pretrial Outcome—Successful
Risk Level 1	84.8%	87.1%	97.7%
Risk Level 2	59.2%	62.3%	94.0%
Risk Level 3	46.0%	49.4%	90.8%
Risk Level 4	35.8%	40.0%	88.2%
Risk Level 5	22.1%	27.9%	84.5%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001 - September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court - A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

BAIL BONDING IS NOT “CHEAPER” THAN PRETRIAL SERVICES.

The bail industry argues that taxpayers pay for pretrial services, whereas bail bonding is “free.” This ignores a number of collateral costs, both to taxpayers and to communities.

First, when people without sufficient means to pay their full bail obtain a bond, the ten percent fee costs them and their communities. The ways this can occur are numerous. For example, if they purchase a bond using rent or mortgage money, there is increased likelihood of homelessness. This bears tremendous social costs. In the best case scenario, the person and their family have less to spend on food, clothing and other goods and services that they would have bought in the community. The bond fee could push a family into using public assistance, which would then directly cost taxpayers.

Additionally, without an accurate risk assessment and pretrial services, relying on money bail alone, judges are more likely to be conservative in deciding whether to offer bail and how large that bail should be. Both of these effects drive up jail populations, as more people will remain incarcerated either because

they weren’t offered bail or the bail was so high that they couldn’t afford even a bond.

Finally, a 2002 study showed that more than two-thirds of people in jail met the criteria for substance abuse dependence or abuse.²⁵ The Washington State Institute of Public Policy has shown that drug treatment in the community provides a \$20.16 public safety return on investment, as compared to \$7.16 for treatment in prison. By assessing drug dependency and getting people started on treatment pretrial, PTS can save taxpayers money and reduce victimization that results from offenses committed to get money for drugs. Additionally, pretrial drug treatment may influence the court’s trial decision favorably by demonstrating a person’s willingness to address underlying health problems and take accountability for their actions.

That a substantial number of cases involve dual release mechanisms—both for-profit bail and pretrial supervision—shows that the courts increasingly recognize that bail bonding does not address risks and needs pretrial. If a person is supervised by a PTS agency that monitors the client’s compliance with court-ordered conditions and will remind them of all upcoming court dates, what purpose does the bail bondsman serve? The business model of the for-profit bondsman already allows for a high profit with

little risk; when bonded clients are under the supervision of pretrial services, that risk all but evaporates. That people are still being required to post a bail

DENYING INDUSTRY IMPACT

The for-profit bail industry denies its impact on pretrial jail populations. Industry leader Jerry Watson states:

“The fact is that the ONLY people in pretrial detention today who can’t afford a commercial bail bond are (1) pure transients or (2) persons who are so extremely recalcitrant that they have burned every bridge with family and community. And these persons, if released, are almost certain to flee, and therefore no responsible judicial officer would allow them released in any case.”

(<https://www.aisurety.com/651/section.aspx/122>)

This attitude completely ignores the range of people who live on limited incomes and the financially secure family and social networks the industry assumes in its model.

bond in addition to being supervised by a pretrial services agency is due to the political power of the bail industry, to be discussed later in this report.

PTS agencies recognize the absurdity of dual release and the extra burden it places on their offices and on the person on bail. In fact, the National Association of Pretrial Services Agencies (NAPSA) stated in the Third Edition of its Standards on Pretrial Release: “Jurisdictions should ensure that responsibility for supervision of defendants released on bond posted by a compensated surety lies with the surety. A judicial officer should not direct a pretrial services agency to provide supervision or other services for a defendant released on surety bond. No defendant released under conditions

providing for supervision by the pretrial services agency should be required to have bail posted by a compensated surety.”²⁶

However, PTS agencies cannot control the release type and conditions dictated by the judge or magistrate and are required to supervise all individuals on pretrial release who have conditions imposed upon them. The phenomenon of dual release is not one that is rare or insignificant. Records on cases which involved bail bonds and additional conditions are spotty and differ from jurisdiction to jurisdiction but below are a few examples of the practice.

Harris County, Texas

In Harris County, Texas (the City of Houston’s jurisdiction), Pretrial Services struggles with the staff resources needed for the monitoring and supervision of people released pretrial. The Defendant Monitoring Division (DMD) is responsible for supervising all those released on personal bond through the agency and, when requested by the court, will also provide supervision for those who have secured release on surety bond or cash bond. They review with clients the release conditions with which they must comply, notify them of impending court dates, and take steps to assure their appearance in court.

Since the early 1990s, the agency has also been asked by some judges, in both the District Courts and the County Courts, to provide supervision for some people released on surety bail with special conditions that must be monitored. As the table shows,

From 1994 to 2004 the percent of people in Harris Co., TX on pretrial supervision required to post a bond **INCREASED FROM <3% TO >60%.**

In Harris County, TX, the percent of people on pretrial release who also paid money bond increased from less than three percent of over 60 percent.

People Under Pretrial Supervision	1994	1997	2000	2003	2004	Percent Change 1994-2004
Personal Bond: Misdemeanor	6,895	4,103	2,889	2,864	3,173	-54.0%
Personal Bond: Felony	1,859	687	147	131	109	-94.1%
Financial Bond: Misdemeanor	7	377	1,988	2,341	2,114	+30,100.0%
Financial Bond: Felony	236	642	1,637	2,490	2,998	+1,170.3%
Post Adj/Other	0	25	24	38	27	
Total	8,997	5,834	6,695	7,864	8,421	-6.4%

Source: Barry Mahoney and Walt Smith, *Pretrial Release and Detention in Harris County: Assessment and Recommendations* (Denver, Colorado: The Justice Management Institute, 2005.)

the frequency with which the agency has provided supervision for people released on financial bond (almost always a surety bond) has increased very sharply over the past decade, rising from less than three percent (243 cases in 1994) to over 60 percent of all supervised cases (5,112 cases in 2004). Of those who were freed on financial release and

also required supervision and monitoring by PTS, the most striking increases occurred for people accused of misdemeanors. Between 1994 and 2004 the number of these cases increased *more than 30,000 percent*.²⁷



There has been a simultaneous sharp decrease in the number of people on personal bond (that is, released on their own recognizance with a promise to appear at their court date) and a very large increase in the number of people on financial bond who are being supervised by PTS.

Connecticut

In Connecticut, the change has been almost identical as in Harris County, Texas, though not as great in scale. In 2004, 14.8 percent of people released on a financial bond were given pretrial conditions. By 2010 that rate had increased to 27.5 percent, a percent change increase of 86. In fact, in 2010, 55 percent of people released with conditions were also released with a financial bond. This represents over half of PTS' caseload having been burdened with a non-refundable fee for which there is no clear purpose.



GREG CARPENTER

SITE DIRECTOR, SAFE STREETS—
MONDAWMIN (BALTIMORE, MARYLAND);
FORMERLY INCARCERATED INDIVIDUAL



I've experienced the criminal justice system firsthand. I spent approximately 20 years of my life in prison.

Bail is supposed to provide some temporary release from incarceration for the accused. Think about an individual who is surviving from hand to mouth. Their bail is set at \$5,000. Ten percent of that becomes \$500. For a person who doesn't have any money, whose family doesn't have any money, it becomes a hardship just to try to get that money together. We see it all the time. The kinds of people who are at Jericho do not have disposable income.²⁸ When someone gets locked up, everybody has to pool their resources, going from this family member to that family member, just to come up with the money to give to a bail bondsman. The bail bondmen take the money and get the individual out, but the families never get that money back. So that becomes a burden.

Here in Baltimore, you can get out on bail by paying one percent of the bail to the bail bondsman. You make arrangements to pay the full ten percent to the bondsman over time. If you miss a payment, they snatch you up and put you back in jail. Whatever money you've given the bondsman, you lose. And bail bondsmen, they're just taking advantage of the situation. They do it because they know that the people that they're going to provide the service to have no other options. It's a hustle.

When someone gets locked up, everybody has to pool their resources, going from this family member to that family member, just to come up with the money to give to a bail bondsman. The bail bondmen take the money and get the individual out, but the families never get that money back.

The other nuance here is that while the bail bondsman affords them the opportunity to get out, they had bills before they went in, but now they have this additional bill to deal with. In a lot of cases, it becomes a reason for an individual to commit more crime just so they can pay the bail bondsman. I've heard people say, "I've got this bail, and the only way that I can get the money to pay it is to do such and such. But as soon as I pay the bail off, I'm gonna stop." But it's never that easy, and it never happens like that.

I know we do not live in a society where morality is uppermost, so I cannot expect that the people who enforce and make the laws are going to be looking at it through my lens. I just think that if they were, they would realize that this is a serious opportunity to make some adjustments that would positively impact the lives of a lot more people. People say, "I don't ever want to go back," but a lot of times, the damage has been done. A lot of people are scarred. And they go back one way or the other.



In Connecticut, the percent of people under pretrial court supervision who also paid money bond nearly double from 2004 to 2010.							
Connecticut	2004	2005	2006	2007	2008	2009	2010
Released on financial bond, all	27,609	28,588	31,593	31,213	31,668	29,042	27,035
Released w/conditions, all	8,302	9,276	9,942	11,117	12,953	13,860	13,483
Within financial, rate of conditions	14.8%	15.6%	14.7%	16.9%	22.0%	25.0%	27.5%
Released w/conditions-financial	4,083	4,457	4,656	5,287	6,956	7,267	7,430
Within conditions, rate of financial	49.2%	48.0%	46.8%	47.6%	53.7%	52.4%	55.1%

Source: State of Connecticut, Judicial Branch, Court Support Services Division.

FOR-PROFIT BAIL BONDING AFFECTS JUDICIAL DECISIONS AROUND RELEASE.

As mentioned earlier, judges who rely on money bail as a pretrial release option may be more conservative in their judicial decisions because bail bondsmen don't provide the supervision and supports that pretrial services agencies do. There are other ways that for-profit bail bonding can change the way our courts operate, including variability in bond premiums/fees.

The industry standard for bail bond premiums is ten percent of the full bail amount. Many states mandate a minimum bail percent for bond premiums, usually ten percent, but others have no such restriction. This allows for-profit bondsmen to compete with each other and under-cut offers by other bail agents, charging as little as two percent of the bail.

If a judge believes that the seriousness of a charge merits a bail of at least, say, \$5,000, she may set it at \$50,000 on the assumption that the bail fee will be ten percent. However, if it becomes common knowledge that some bail agents in their jurisdiction are

only charging two percent premiums on bail bonds, judges "are left to guess how much defendants are paying to be released from jail before trial."²⁹ To ensure that even at two percent a person has raised at least \$5,000, a judge may now set bail at \$250,000. This has a number of consequences: first, it makes it almost impossible for people of modest means to pay the full bail amount themselves. While family and friends may be able to use vehicle titles, credit cards, etc. to cover \$50,000, a quarter million dollars is out of reach to most. Next, it may be harder for people to get a bail bond, as co-signers on the bond will need to show much greater assets. Finally, if a person fails to appear for a court date at the higher amount, those who put up the \$5,000 are now liable for \$250,000 rather than \$50,000 in forfeited bail. For many, this would mean loss of a home or business and possibly bankruptcy.

From a public safety point of view, these rising bail amounts are even more arbitrary when one considers that there is no proven connection between a dollar amount and either a person's likelihood to appear in court or to abstain from illegal behavior while on pretrial release,³⁰ despite bail industry claims.³¹ In fact, studies have shown that most people will appear in court without having to pay a non-refundable fee to a bondsman.³²

PART 6

POLITICAL INFLUENCE KEEPS BAIL BONDSMEN IN BUSINESS

For-profit bail bonding has become a multi-*billion* dollar industry backed by special interest groups and large insurance companies. As such, the industry has been successful in using its wealth and influence to promote industry-friendly legislation and thwart reform efforts.

Apart from the first bail bondsmen in the U.S., who were backed by organized crime, until the late 1950s for-profit bail bonding was typically performed by bondsmen who used their own money and property to serve as collateral for the bonds they wrote. Around that time, savvy bail agents, such as Florida’s Hank Snow, sought to grow the industry by getting the financial backing—also known as underwriting - of national and regional insurance agencies. This allowed bondsmen to write more and larger bonds. While some for-profit bail agencies are still family businesses, even these are almost all backed by insurance companies.

With the support of the insurance industry and the coordination of newly-formed trade associations, the field grew rapidly, but it wasn’t until the early 1990s that the for-profit bail bonding influence machine truly began to make its power known.

Today, the industry does a conservative estimate of \$2 billion in business annually and is supported by around 30 insurance companies. An estimated 15,000 people are employed in the industry and bail bonding businesses can be found in nearly every jurisdiction within the 46 states that allow the practice.³³ It is big business with the power, money

and organization to affect policy and practice in the criminal justice system.

THE FOR-PROFIT BAIL INDUSTRY USES LOBBYISTS TO PASS LEGISLATION FAVORABLE TO THEIR BOTTOM LINE.

As a multi-billion dollar industry with the institutional backing of large insurance companies, agents and associations have the resources to hire professional lobbyists to protect their interests in statehouses across the country, particularly when legislation involving pretrial services or forfeiture regulations is in play. In recent years bail lobbyists have been hired in Florida, Texas, California, Virginia and North Carolina, to name but a few. As in other industries, lobbyists not only work by testifying in front of committees, but by building personal relationships with legislators. In Maryland, for instance, bail bondsmen in 2011 hosted a social event for legislators during the session at the Annapolis Yacht Club.³⁴

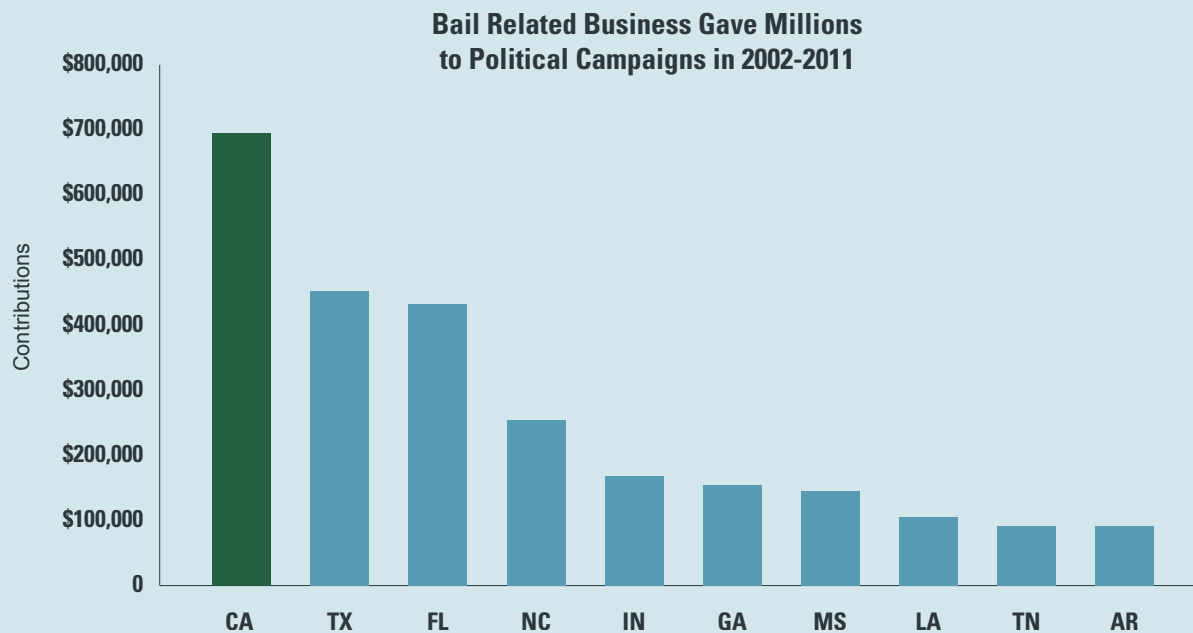
Each state is required to record lobbying spending differently, making a detailed analysis difficult. However, the for-profit bail industry engages in “multimillion dollar lobbying efforts”³⁵ to increase their profitability and attack pretrial services operations. In California alone, the bail industry has spent almost a half million dollars on lobbying since 2000.³⁶

The effects of strong lobbying efforts should not be underestimated. In places where the for-profit bail

bonding industry has launched attacks on pretrial reform, they have occasionally triumphed in the face of opposition by the courts, law enforcement and the general public.

In Broward County, Florida for example, one of the most visible recent battles resulted in the severe defunding of a successful and popular PTS program that was lauded for reducing the local jail population.³⁷ The main opposition to the program came

OVER \$3 MILLION IN CAMPAIGN DONATIONS ALSO HELP SECURE SUPPORT FOR THE BAIL BOND INDUSTRY.



Campaign donations from the bail bonding industry are substantial. An analysis of state campaign donation records showed that bail agents, businesses and associations have contributed over \$3.1 million to state-level political candidates from 2002 to 2011¹. Eighty-two percent of these donations (\$2,600,070) were made within ten states (see graph). Given the wide variation in state size within the group of ten states, an estimate of giving per capita was calculated using 2010 state populations. Several states—Mississippi, Arkansas and North Carolina—emerge as particularly strong donors. Mississippi, a state known for its strong bail bondsman association, stands far above the rest with bail-related donors giving nearly 5 cents per capita to legislators. Mississippi has not been a battleground for bail agents, but ongoing contributions may protect gains made in the past.

¹ A search was done at www.followthemoney.org for all states using the terms “bail” and “surety.” Results were analyzed and researched and, where the researcher was unsure, records removed from the calculation to ensure a conservative estimate. This analysis does not include donations to local-level players such as judges, sheriffs and county board members.

from the for-profit bail industry, which felt that PTS was unfairly stealing their “customers.” The industry hired high-powered lobbyist Ron Book, donated to the campaigns of the voting county board members and successfully won back market dominance. A public defender in Broward County stated, “I don’t know if what happened was illegal or unethical, [but] I can tell you it stinks all the way to the rafters.”³⁸

Book, who describes himself as “if not the best, [then] one of the best [lobbyists] in the state,”³⁹ was simultaneously working for the bail industry and as a lobbyist for Broward County Commissioners, who were opposed to the legislation. After this apparent conflict of interest was exposed by National Public Radio, Book was forced to choose sides and decided to keep working for the county. However, according to Commissioner Luis Wexler, “the word on the street is that he’s already secured the votes for them [bondsmen] so he can now afford to be neutral.”⁴⁰

BELOW ARE SEVERAL STATE EXAMPLES OF HOW MONEY IN POLITICS IS AFFECTING POLICIES AROUND MONEY BAIL.

North Carolina

A recent battle over pretrial legislation in North Carolina provides a clear example of the kind of backroom influence the for-profit bail industry enjoys thanks to strategic campaign donations. In early 2012, SB 756 was introduced in the North Carolina legislature to decimate funding for pretrial services (PTS) in the state, prohibit PTS from any contact with a person that has been arrested within 48 hours of the arrest and mandate a minimum of \$1,000 bail for anyone ordered to electronic house arrest. Greensboro Police Chief Ken Miller said the bill “serves no public safety interest,” and that it will “increase the profitability of bail bonding companies at the expense of community safety.”⁴²

North Carolina is home of State Senator Tom Apodaca, the “first bail agent to be elected to political office.”⁴³ Justin P. Burr, elected to the North Carolina House of Representatives in 2011, is also a licensed bail agent and comes from a family that continues to work in the industry. While Apodaca and Burr have recused themselves from votes involving bail-related issues, as the Chairman of the Senate Rules Committee, Apodaca holds considerable influence within the Statehouse halls. Bonding industry leaders believe that Burr will “certainly have a significant impact on the future of the commercial bail industry.”⁴⁴

Even if one removes the obvious impact of bail bondsmen in state office, SB 756 reeked of industry influence. Six of the ten sponsors and co-sponsors of the bill (Clary, East, Jones, D. Berger, Forrester and Rucho) received a total of \$10,300 in campaign donations from the bail industry since 2002. Over \$8,500 of that money has been given since 2008. Of the money given to SB 756 sponsors, \$9,500 came from the North Carolina Bail Agents Association (NCBAA) or its related Bail Political Action Committee (PAC).



BAIL BONDSMAN IN NORTH CAROLINA STATEHOUSE. REP. JUSTIN P. BURR AND SEN. TOM APODACA ARE BOTH LICENSED BAIL AGENTS

Photo: www.justinburr.com; www.senatorapodaca.com

The NCBAA, like bail associations in other states, exists solely to promote the future and influence of the for-profit bail industry in North Carolina. One way the group does this is through generous donations to the campaign coffers of politicians in the state. Between 2002 and 2011, the NCBAA and its Bail PAC gave \$181,800 to North Carolina leaders. That amount represents over 70 percent of all bail-related campaign donations in the state during that period.

Despite strong opposition from judges, court officials, police chiefs and justice advocates—parties one might think would hold considerable sway in the consideration of a criminal justice bill—the legislation passed the Senate with a vote of 33 to 16.

Such a blatant measure to increase profits at the expense of public safety can only have been achieved through the kind of influence that money can buy. Taxpayer-funded agencies, such as Pretrial Services agencies, police and judiciaries, cannot contribute money to campaigns. They can only rely on the persuasive arguments of their expert opinions. In

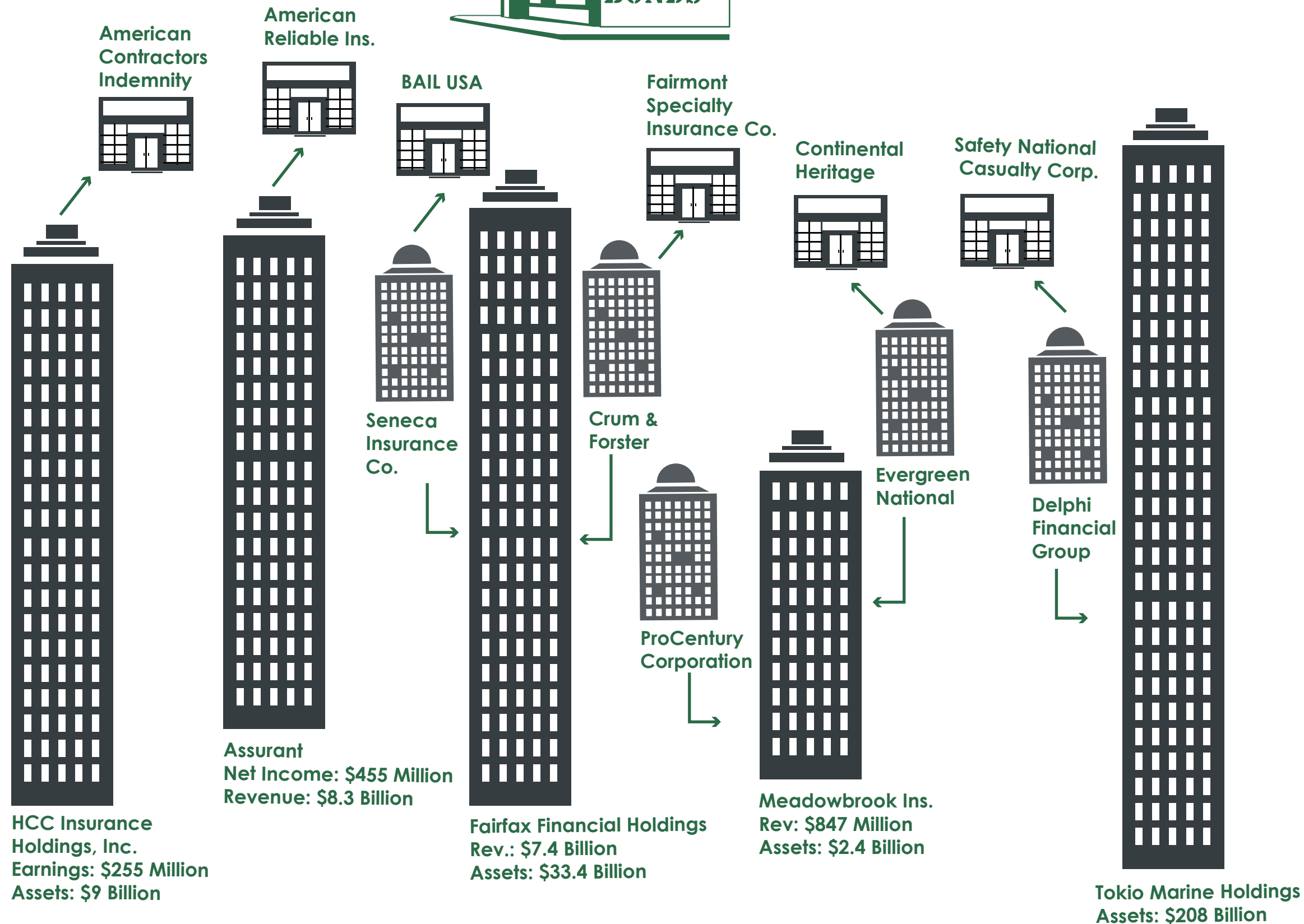
the case of North Carolina, these opinions appear to have been trumped by financial gifts.

Chief Miller summed up the problem in saying, “allowing for-profit business to engage our criminal justice system so pervasively and without regulation is a very dangerous thing.” Chuck Johnson, Director of Wake County’s Pretrial Services and President of the N.C. Pretrial Release Services Association, added, “criminals and bail bondsmen are the only groups that increase profits when crime goes up and that should not be allowed.”⁴⁵

Florida

In 2009 and 2011 two Florida bills were put forth (HB 445 and SB 372) that would have restricted the arrested population eligible for PTS as well as increased the work of PTS in proving an accused person meets the narrow criteria. Donation records show that the sponsors and co-sponsors of these bills received a total of \$11,000 from bail-related donors in recent years.

Recent For-profit Bail Bonding Industry and Pretrial Legislation				
State	Year	Bill & Description	Sponsors	Amount
FL	2009/ 2011	HB 445: Increase PTS restrictions and narrow eligibility criteria. SB 372: Require state to rely on private sector for pretrial release, narrow PTS criteria, new system where counties pay bond premium for indigent defendants who appear in court.	Dorworth, Fetterman, Tobia, Bogdanoff	\$11,000
NC	2012	SB 756: decimate PTS funding, prohibit PTS from arrestee contact within 48 hours, minimum of \$1,000 bail for any arrestee ordered to electronic house arrest	Clary, East, Jones, D. Berger, Forrester and Rucho	\$10,300
TX	2011	HB 1686: Eases restrictions on bond forfeiture exoneration. SB 878: Limits the posting of a surety bond to only bail bondsmen.	Whitmire, Hinojosa, Fletcher	\$102,766
VA	2010/ 2011	HB 728: Restricts PTS eligibility to indigents. HB 2437: Increases industry regulations.	Albo, Iaquinto	\$12,200



FOR-PROFIT BAIL BONDING IS BACKED BY DEEP POCKETS.

In the distant past, bail bondsmen used their own assets or property as surety for the bail bonds they wrote and, in those cases, assumed financial risk. Today, nearly all bail bondsmen are underwritten by insurance companies. Front-line companies that provide services directly to bail bondsmen, such as Seneca Insurance and Continental Heritage, are often relatively small operations with only a few million dollars of assets and revenue.

However, these smaller companies are often subsidiaries of—are owned and managed by—larger insurance corporations which are, in turn, part of even larger companies. These large groups have hundreds of billions of dollars of assets and revenue; meaning they can provide resources needed to influence policy in industry-friendly ways. A look at a few surety insurance companies that back bail bondsmen in one state—South Carolina—demonstrates this phenomenon clearly (see illustration).⁴¹

For example, Safety National Casualty Corporation, a front-line bail surety company, is a subsidiary of Delphi Financial Group which is a subsidiary of Tokio Marine Holdings, a Japanese insurance giant with assets of \$208 billion.

These large insurance companies understand that underwriting bail bonds is a low-risk business and can use their considerable financial weight to keep it that way.

For-profit bail bonding agencies—even locally-based businesses—are backed by powerful insurance companies worth billions which wield substantial political influence in statehouses across the country.

Corporations shown represent a subset of bail bonding underwriters, courtesy of South Carolina Insurance Commissioner, 2010. Financial figures from public records (Tokio assets converted from yen).

Texas

They say everything is big in Texas. The adage holds true with campaign donations to sponsors of bail industry-friendly bills. Two State Senators and one State Representative who introduced bills in 2011 received over \$100,000 from bail industry members between 2002 and 2011. Those bills set restrictions on alternatives to for-profit bail bonding and increased criteria for exonerating forfeited bonds.

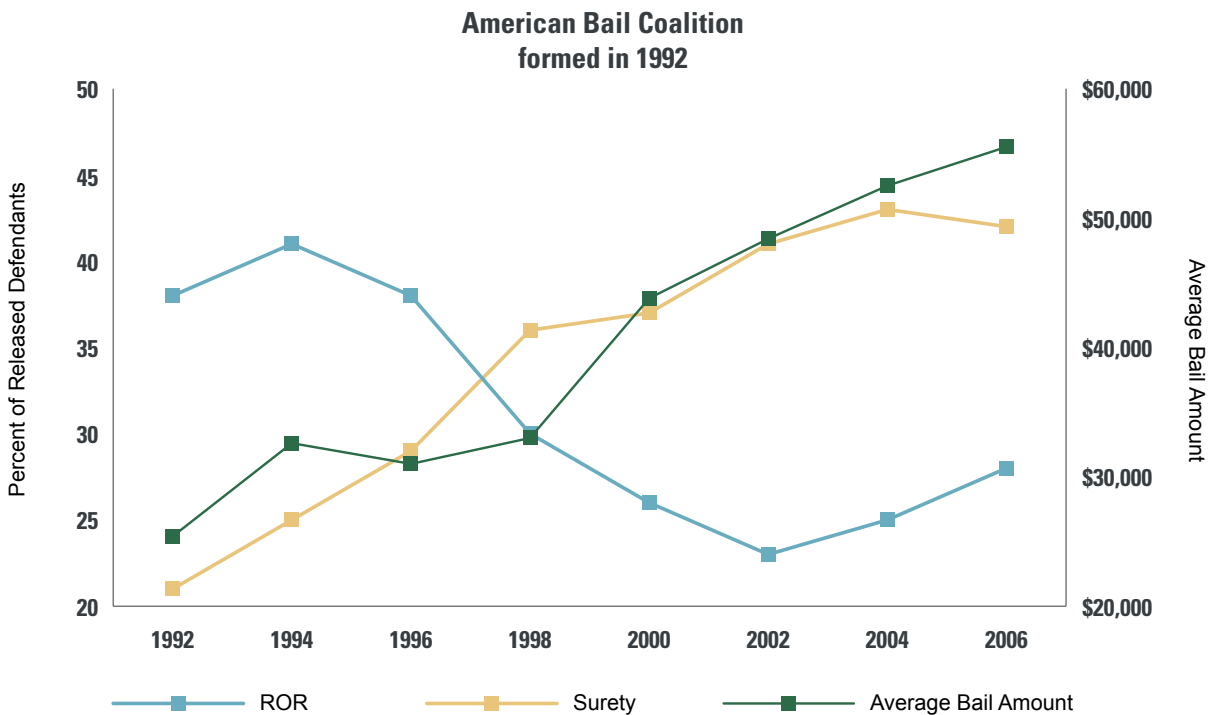
include about half of the industry's largest insurance companies, and it has become the country's leading for-profit bail advocacy organization. In 1994, ABC joined forces with the American Legislative Exchange Council (ALEC), a powerful conservative group that provides dues-

paying corporate members with access to receptive legislators for the purposes of influencing policy. To date, ALEC has managed to maintain its status as an educational non-profit rather than a lobbying organization, allowing them to keep their membership roster and finances private. However, the connection between ALEC and the for-profit bail industry is

Two Texas State Senators and one State Representative received **OVER \$100,000** from bail industry members between 2002 and 2011.

THE ABC-ALEC CONNECTION

In 1992, members of the for-profit bail industry came together to discuss ways to better combat what they perceived as unfair competition by government-funded pretrial services programs. They formed what would become the American Bail Coalition (ABC), a national organization committed to lobbying for the for-profit bail industry. ABC's members



Bureau of Justice Statistics, State Court Processing Statistics, 1990-2004, Pretrial Release of Felony Defendants in State Courts, November 2007, NCJ 214994 (Washington, DC, 1-18).



clear. For, while ABC is a powerful force in itself and influential due to the moneyed pockets it represents, it is ALEC that connects ABC to lawmakers. ABC refers to ALEC as a “life preserver”⁴⁶ for their ability to turn the ABC agenda into actionable legislation.

Together, the two groups have worked to draft model bills which reduce regulation and oversight of bail agents, promote higher bail amounts in bail schedules, increase the court’s burden in pursuing bond forfeitures and restrict the funding of PTS agencies and the populations eligible to participate in their programs. Most notably, in 2008 ALEC drafted the “Citizen’s Right to Know Act,” described in more detail below.

Since 1995, top leaders of ABC have served as active members within ALEC. Dennis Bartlett, current Executive Director of ABC, serves on the corporate Executive Committee of ALEC’s Public Safety and Elections Task Force. Jerry Watson has served as Chairman of ALEC’s Private Enterprise board and is the Senior Legal Counsel for ABC as well as a top-level executive in several bail insurance agencies. Bill Carmichael is the current President and CEO of ABC and also sits on ALEC’s Private Enterprise board.⁴⁷

Since the partnership between ABC and ALEC began, “ABC has written 12 model bills fortifying the commercial bail industry” and has used ALEC to promote and distribute their pro-industry messages

to the country’s top government leaders.⁴⁸ The effects of the ABC-ALEC dual assault are clear when looking at several bail and pretrial release factors (see chart). First, starting in 1992, the year of ABC’s formation, until 2006, the percentage of people charged with felonies released on their own recognizance (i.e., with no financial conditions) decreased from its 1994 high of 41 percent to 28 percent in 2006. Meanwhile, the percentage of people charged with felonies released on surety bonds has doubled, from 21 percent to 42 percent. Likewise, average bail amounts have increased from \$25,400 to \$55,500, a 118 percent change increase, for the same population.

During the same period, from 1992 to 2006, the number of people in jails in the U.S. with a pretrial status more than doubled, increasing from 50 percent to 63 percent of the total jail population.⁴⁹

These figures demonstrate the impact that the for-profit bail industry has enjoyed since the formation of a national organizing body and joining forces with ALEC. Unfortunately for our society, the same figures represent more people accused of crimes who are unnecessarily given financial conditions for release and unable to afford to buy their release from jail before trial. This in turn has led to crisis-level pretrial jail populations, rising costs for counties and an erosion of judicial power as bail bondsmen exert more and more control over pretrial release decisions.

An innovative ALEC tactic: piling on PTS paperwork through a “Right to Know.”

In 2008, the for-profit bail industry, working through ALEC, drafted a model bill called the “Citizens’ Right to Know: Pretrial Release Act.” The

document is a clear effort to place onerous reporting requirements on PTS agencies with the threat of de-funding if these requirements are not met. An overview of the act states:

“This Act demands that pretrial service agencies reveal their budgets and staffing, number and kind of release recommendations made, number of defendants released and under what type of bond, number of times a defendant has been released, his FTA record, and crimes committed while on release, and report the above in a timely and intelligible way and make it available to the public. This innovative ALEC model bill will provide a great service to the public by holding government agencies more accountable to taxpayers and potentially reducing crime.”⁵⁰

The bill appeals to the public’s fear of government waste and need to know how their tax dollars are being spent. However, most pretrial services agencies already collect the kind of information contained in the Act, though they may not currently present the data in a report format. The conditions of Citizens’ Right to Know (CRTK) are what make it an obvious attack on PTS.

When CRTK bills are presented to states for consideration, they are sometimes customized with even more rigorous requirements than the annual report called for by the ALEC model. For example, one bill put forth in Nevada in 2011 (SB 217) required a detailed PTS registry to be updated weekly and provided upon request to the public for no charge. A similar bill introduced in Tennessee in 2011 included a monthly reporting requirement but borrowed language from ALEC’s model bill stipulating that all additional reporting requirements are to be performed under agencies’ existing budgets. Clearly these bills, dressed up in the clothes of transparency, are merely extra hurdles to place more burden on PTS.

The ALEC model of CRTK includes a “Sanctions for Noncompliance” section which requires those

“Our discussions must be grounded in rational and transparent risk assessments—built on evidence-based tools, and predicated on the presumption of innocence—but ever mindful of the need to keep our neighborhoods safe.”

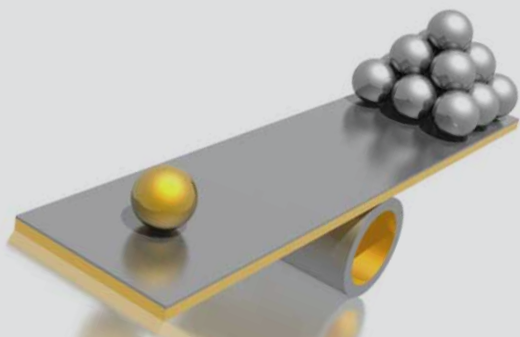
—ATTORNEY GENERAL ERIC HOLDER

who do not report fully within the guidelines have their budgets cut by 25 percent for public agencies and have their operations suspended for privately-run PTS agencies. Transparency of tax-payer funded programs is important to oversight and accountability which is one reason why PTS agencies already collect most of the information listed in CRTK bills. However, the time and effort it takes to create the documentation as laid out in these bills means that the cost of PTS rises, giving bail bondsmen another target.

It should be noted that bail bondsmen are not subject to similar reporting requirements. Publicly available statistics regarding their practice are virtually non-existent. Data on which the industry relies are typically the crude measures of FTA rates and pretrial re-arrests. While bail bondsmen may criticize pretrial re-arrest rates, they don’t point out that people under the supervision of PTS may actually be more likely to be charged with illegal behavior simply because they *are* being supervised. As bail agents do not supervise their clients, re-arrest is less likely.

Another ALEC tactic: reduce risks to the bail industry.

For years, due to industry-friendly forfeiture rules and the labyrinthine workings of the insurance world, pursuing forfeitures has been a



labor-intensive and complex process that many jurisdictions don't have the time, resources or know-how to undertake. Collecting a bond forfeiture is much less simple than simply sending a bill with a 'due by' date. Bondsmen have worked hard to stack the deck on their side and have myriad contingencies which allow for extensions or even exoneration of the forfeiture.

For example, the ALEC-penned 'Bail Forfeiture Notification Act' requires the courts to notify several parties, including "the bond surety or depositor of money posted as bail; and the bail agent listed on the bond; and any other party to be notified in case of forfeiture listed on the bond"⁵¹ by certified mail within 30 days of the forfeiture decision. Failure to provide such notification to all parties within the specified time may be grounds for bond exoneration in jurisdictions where this Act has passed. If the already overburdened courts are able to send out the timely notifications with such quick turnaround, the bail agent is under no such similar obligation to respond quickly and has every reason to wait it out. If their client is apprehended, even by law enforcement officers, the forfeiture will likely be dropped. If not, the poor coordination of collection procedures ensures that it will be a long time before anyone really comes looking for the forfeiture. There are also numerous reasons written into law for which a forfeiture can be dropped and, if already paid, even returned to the bondsman.

The process can be burdensome enough to actually discourage jurisdictions from pursuing forfeiture collection altogether leading to situations where millions are owed. Following are examples of just a few recent cases where a lack of forfeiture collection has been discovered:⁵²

- California — estimated \$150 million owed
- New Jersey—more than \$100 million owed
- Hawai'i — more than \$9 million owed
- New York City — more than \$2 million owed
- Harris County, Texas — \$26 million owed
- Tarrant County, Texas — \$73 million owed
- Dallas County, Texas — \$35 million owed

Bondsmen in these areas and around the country are aware of loopholes and collection laxity and many have not paid a forfeiture in years, reducing their financial risk to zero. As noted earlier, even when they are subject to forfeiture, bail bondsmen pass this cost on to those who paid the initial bond, with additional costs added on.

RECENT LEGISLATION SHOWS THE INDUSTRY IS FIGHTING HARD—AGAINST REFORM.

When Reality TV and Real Life Mix: The 2012 Hawai'i Reform Bill

An example of the strength of the for-profit bail industry's fight against reasonable and cost-effective pretrial reforms occurred in Hawai'i during the 2011-2012 legislative session. The Justice Reinvestment Initiative (JRI), a data-driven reform effort now being



JOHN CLARK

SENIOR PROJECT ASSOCIATE,
PRETRIAL JUSTICE INSTITUTE, WASHINGTON, D.C.



The bail system, as it exists right now in most jurisdictions, is a cash-based system: if you've got the money, you can get out; if you don't have the money, you can't get out.

If you have some of the money, you can try to find a bail bondsman who will take your money. The bondsmen are in for the profit for themselves; the higher the bail, the higher their potential for profit, so they go after the high bail cases. High bail is usually set in the very serious cases. If I get arrested for disorderly conduct and the judge sets a \$500 bond on me, if the bondsman bailed me out, he'd get \$50. To a bondsman, that's not worth all the paperwork required to bail me out, so I'm going to sit in jail. Even though I've got \$50 to give to a bondsman, he's not interested in me. But if I get arrested for armed robbery, and I get a \$5,000 bond, that's a \$500 profit for the bondsman. That's the kind of case that would interest him. The system is built that way.

People who don't need to be in jail are sitting in jail at taxpayer expense....They might sit in jail for two, three, four, five months, costing taxpayers thousands of dollars simply because they don't have fifty dollars to post bail.

The bail bonding industry has no place in the criminal justice system. They, in effect, control who's in jail. We're ceding enormous amount of authority to a private, profit-motivated industry whose bottom line is to make money. That's not serving the public interest. Although bonding companies are technically liable to forfeit the bail bond if the defendant fails to appear in court, that doesn't always happen. In a lot of cases, they're able to get out of it.

People who don't need to be in jail are sitting in jail at taxpayer expense. They could be safely released, except nobody will take their \$50, or they don't have the \$50. They might sit in jail for two, three, four, five months, costing taxpayers thousands of dollars simply because they don't have fifty dollars to post bail.

Nationally, data show that in more than half of felony cases, defendants who do get money bail set by the court are never able to post it. They sit in jail throughout the entire time the case is pending. And even for those who do post it, it takes them an average of 12 days to post that bail. That's how much time it takes them, on average, to come up with the money and make their financial dealings with the bonding companies to get out.

Bail is supposed to maximize pretrial release while getting people back to court and protecting the safety of the community. But money does nothing to protect the safety of the community. On the other hand, higher risk defendants could be released on conditions that were designed to address community safety. They might be put on electronic monitoring, they might be tested for drugs, they might be given a curfew or stay-away orders—a number of things to monitor and curtail their activities in the community.



rolled out in 17 states, aims to reduce jail and prison populations while increasing public safety and accountability. In Hawai'i, this resulted in draft legislation (HB2514) to expedite the return of people held in other states to the islands and strengthen parole guidelines and supervision. It also requires "a pretrial risk assessment within three working days of commitment to a community correctional center."⁵³ It was the timeframe of the risk assessment that drew the attention and lobbying efforts of the for-profit bail industry, specifically reality television star, Duane "Dog" Chapman, aka "Dog the Bounty Hunter."

"Dog" and his wife, Beth Chapman (who was recently elected as Senior Vice President of the American Bail Coalition) submitted written testimony and lobbied the halls of the Hawai'i State Building in opposition of the JRI bill. In addition, both Chapmans made numerous statements designed to scare the public. In an interview, Dog stated that if a personal recognizance (PR) system were introduced (that is, clearer paths to pretrial release without money bail), "Hawai'i will not remain the safest

place in America to live for children ever again." He also told Hawai'i Public Radio, "you put this PR system, I'm gone. I'm not gonna live here when you allow murderers, killers, drug dealers, armed robbers out for free."⁵⁴

Hawai'i Senator Will Espero, a supporter of the JRI bill, found it counter-intuitive that the Chapmans and the for-profit bail industry would oppose the legislation for its perceived result of releasing people pretrial too quickly. He asserted that "through their bail company, they put [accused people] on the street, so for them to criticize this bill is wrong and ironic." Upon further questioning, the Chapmans acknowledged that the bill "would negatively impact their business."⁵⁵

As in other areas where the industry has worked to derail pretrial reform legislation, opposition to the Hawai'i bill came only from bail bondsmen and the local prosecutor (see table). In this instance, the concerns of the Hawai'i Department of the Prosecuting Attorney centered mostly on the mechanics

<p>SUPPORTERS of HB2514 Justice Reinvestment Bill</p>	<p>OPPOSITION to HB2514 Justice Reinvestment Bill</p>
<p>Governor of the State of Hawai'i Hawai'i Department of Public Safety, Hawai'i Paroling Authority Hawai'i Crime Victim Compensation Commission Office of Hawaiian Affairs Hawai'i State Commission on the Status of Women American Civil Liberties Union of Hawai'i Drug Policy Forum of Hawai'i Judiciary of Hawai'i Hawai'i Government Employees' Association Community Alliance on Prisons Hawai'i Substance Abuse Coalition Sex Abuse Treatment Center MADD Hawai'i US Department of Justice⁵⁶ Numerous State Senators and Representatives</p>	<p>Duane "Dog" & Beth Chapman 808 Bail Bonds Honolulu City Prosecutor</p>

of implementing pretrial changes⁵⁷ and not with the seemingly apocalyptic outcomes portrayed by Dog.

The JRI-related bills passed House and Senate votes in Hawai'i, with the support of groups like MADD and the ACLU, but pretrial reform efforts in other states have succumbed to the fear-mongering and moneyed influence of the bail industry.

Colorado

During the 2011 Colorado legislative session, a bill was defeated that would have allowed people accused of crimes to pay 15 percent of their bail amount directly to the court, rather than contracting with a bail bondsman. This arrangement is known as a 'deposit bond' and is used by many jurisdictions throughout the country. Advocates of deposit bonds argue that an accused person has more incentive to meet the demands of court appearance since the deposit is mostly refundable. A bail bond premium paid to a bondsman is not refundable. The bill stipulated that half of the bond would be used to cover pretrial monitoring and supervision costs, if ordered by the court, while the other half would be applied to court costs, if the accused person is found guilty, and returned to the person (minus fees) upon a finding of not-guilty.

The for-profit bail industry, including "Dog," who was born in the state, defeated the bill and claimed a victory. At the heart of their argument was the contention that the state was trying to take over a private industry and to enter into the bail bond business. However, the state has a public interest in reducing costs and improving public safety. Determining the risk and appropriate release mechanism for people pretrial is how the state protects the public interest.

North Carolina

As mentioned above, in 2012 the bail industry and their allies put forth a bill in North Carolina that

would severely curtail the scope and usefulness of the state's PTS agencies. Specifically, SB756 would have barred PTS from any access to people within 48 hours of the time of their arrest. This would have allowed the for-profit bondsmen exclusive access to the "market" of accused people who may be able to pay their way out of detention. What it would not allow is any assessment of risk or informed judicial decision-making during the pretrial release process.

Again, the industry came out in strong support of a pretrial process that only considers the ability of the accused to pay their fee, with no consideration of risk or public safety. As in similar instances, support of PTS and the pretrial risk assessment functions they provide came from most state and local law enforcement agencies, victims' rights groups and judges. Opposition came from the for-profit bail industry and the lobbyists they employed as well as conservative Republican legislators. In preliminary votes, the North Carolina bill was supported along party lines and passed 33 to 16. However, the bill did not make it into the session needed to enact it. It will likely be revived in the next session.

With opposition from judges, police, sheriffs and victims' groups,⁵⁸ it might seem counter-intuitive that such an industry-skewed measure would gain support. The answer may lay in the campaign donation records of North Carolina State Senators who voted "aye" on the bill.

An analysis of donations to the aye-voters for NC-SB756 performed by the Justice Policy Institute (JPI) found that between 2002 and 2011, donors clearly associated with the for-profit bail industry gave at least \$21,700 to the bill's supporters. This is a conservative calculation as it does not and cannot include individuals who donated to industry-friendly policymakers but did not report a bail or surety affiliation. The JPI analysis found

that, between 2002 and 2011, the North Carolina Bail Agents Association and their Bail PAC donated \$181,800 to lawmakers in the state.

California

The for-profit bail industry has recently found itself up against a different kind of criminal justice reform that it perceives as a threat to its livelihood. As lawmakers are forced to find ways to deal with overcrowded jails at the state and county levels, many have begun what is referred to as “realignment.” California is a prime example of this type of effort and certainly the largest jurisdiction to undertake the reform, guided by the state’s Assembly Bill 109 (AB109).

The state has two jail overcrowding issues to address in its realignment plan. First, state facilities are dangerously overcrowded to the point that the US Supreme Court has ordered California to reduce its jail population.⁵⁹ Overcrowding at the state level is widely blamed on years of tough-on-crime sentencing and other policies that over-emphasize the use of incarceration as punishment. The other overcrowding problem is at the county level, where 71 percent of jail inmates have a pretrial status. California’s rate is the highest in the U.S., where the average pretrial jail population is 61 percent.

Following the federal mandate, California has begun to require its counties to keep low-level, non-violent offenders in local jails rather than send them to state facilities. However, with county jails already full of people who have yet to go to trial, it is left to the counties to solve their own overcrowding problems.⁶⁰

The dilemma brings the opportunity to reform the pretrial system so that limited jail space can be reserved for people who have been *convicted* of crimes, not those who have been *accused*. An increased use of PTS and the supervision and monitoring services they provide is one such proposed

reform. However, “in counties where elected officials are afraid of appearing soft on crime, such alternatives are particularly sensitive.”⁶¹

As some counties have begun to release more people pretrial on non-financial release, for-profit bail agencies have seen their business decrease by as much as 50 percent.⁶² The changes have created a situation where the for-profit bondman’s “biggest client base no longer needs a bondsman.”⁶³

These changes have already created pushback from the industry, along with the use of fear-mongering and specious data they have employed in other jurisdictions. Three industry associations—Golden State Bail Agents Association, California Bail Agents Association and the American Bail Coalition—have begun a public relations campaign to “fight against AB109,”⁶⁴ as well as a fund-raising push for their groups and its associated PAC. An argument used against AB109 likened pretrial services to “a type of county taxpayer funded criminal welfare”⁶⁵ but fails to explain how taxpayers benefit from county jails crowded with people held before trial as a result of the for-profit bail system.

The industry has also begun to claim that PTS programs result in 33 to 40 percent FTA rates, while commercial bail bonding has a “99+ percent appearance rate.”⁶⁶ These figures are simply unsupported by research or other factual evidence.

PART 7

BY ITS VERY NATURE, FOR-PROFIT BAIL IS RIPE FOR CORRUPTION AND ABUSE

CORRUPTION

The for-profit bail industry was plagued by corruption from the very beginning. As an organized crime venture, the fathers of for-profit bail, the McDonough brothers, had no shame in bribing police to expedite the bail process and get their employees back to work.

In fact, in 1912—one hundred years ago—the San Francisco Call ran a front-page story on the Police Board’s plan to “clear out bail bond evil.”⁶⁷ Even in San Francisco, considered at the time to be an “open town,” the graft and collusion of the bail bond business was too much for law enforcement to overlook.

Despite the best efforts of reformers, corruption in the for-profit bail industry has not been driven out. Four states (Illinois, Kentucky, Oregon and Wisconsin) have banned the practice and many other jurisdictions have made policy changes to discourage it, primarily because for-profit bail is systemically prone to corruption. It allows insurance agents with little to no legal or justice training to control aspects of the pretrial criminal justice process and the personal liberty of people accused of crimes.

Plenty of bail bondsmen are honest professionals who truly care about their clients and their clients’ families. However, some are not, and for them the for-profit bail system is one that is ripe for exploitation. Bail corruption typically involves the illegal bribing of justice officials and personnel, the coercion of bonded clients to engage in criminal activities or provide sex to the bondsman, or brutal and terrorist tactics used to extort clients’ friends and family.

The way in which the system is set up, bail agents are given complete control of an accused person’s liberty. One judge stated in hearing a case of bondsman brutality that bail agents enjoy “the vesting ... by the state of coercive police powers not possessed by private citizens generally.”⁶⁸ This control exists in the context of a financial transaction in which the client may not be able to fully afford the bondsman’s services. This makes for a very toxic situation and one in which some bondsmen have succumbed to the lure of corruption. Unfortunately, it is the system itself that is fertile ground for corruption to take root, and one that is resistant to reform or regulation.

Financial exploitation and excessive use of force

Some bail agents have been charged and convicted of assaulting clients who owed them money and forcing bond cosigners into giving up property that had been used for collateral, even in cases where the bond terms had been met.⁶⁹ In California, a bondsman and his associates were charged with coercing clients to sign over property, including a mentally-disabled man and his 82 year-old

POLICE BOARD TO CLEAR OUT BAIL BOND EVIL

Commissioners Instruct Chief
White to Obtain Evidence
Against McDonoughs

Cook Says Offending Saloon
Keepers Will Lose Licenses
and Shysters Their Graft

Patrolmen's Records to Be
Watched to Prevent Possi-
ble Collusion

PRESIDENT JESSE B. COOK of the board of police commissioners cleared up all doubts yesterday as to the stand that he and the board would take on the bail bond evil, which was exposed last week by Superior Judge Dunne and Assistant District Attorney Maxwell McNutt. Cook said that in instructing the chief of police to secure evidence against the bail bond brokers and their allied shysters, the commission meant business. He stated specifically that McDonough brothers, the saloon men, were notorious for their activity in bail bond graft, and that upon the presentation of legal evidence that they were involved in the traffic which has been associated with their name for 20 years, their license would be revoked.

The evil, the president of the commission said, lay in the corruption which the bail broker exercised over

mother.⁷⁰ In St. Louis, three bail bondsmen apprehended a client who had missed his court appearance and owed them \$225. The agents drove him around aimlessly for hours, threatened to rape him and wiped pepper spray on his genitals before eventually returning him to jail. The bondsmen were charged with felony restraint and misdemeanor assault and were released after posting a bail bond.⁷¹ The three received sentences ranging from a few days in jail to two years of probation.

Because of the potential loss of money if a person doesn't make their court appearances, bail agents will try to find the person who missed their court appearance. Bail bondsmen will often search out their own FTA's, particularly when they believe a person may have just forgotten to appear. They may occasionally contract the services of a bail recovery agent, commonly known as a bounty hunter. Bounty hunters require even less training than a bondsmen does, and operate under less regulation than their insurance agent colleagues. In effect, they are given powers even greater than law enforcement: not only can they take a person into custody, but they can come onto private property without a warrant or other official permission to do so.

The history of bail recovery is peppered by horror stories of gung-ho bounty hunters breaking down the wrong door, frightening families and taking the wrong person to jail.⁷² Oftentimes, when accused of assault or even murder in a case of mistaken identity, the bounty hunter is exonerated through these pseudo-police credentials.

Although reform has been slowly creeping into state laws regarding bounty hunting, most cases of misconduct are protected by an outdated 1872 ruling that "gives extraordinary common law powers to bounty hunters, which makes it unusually difficult to criminally prosecute them in states without statutes regulating bounty hunting."⁷³

**A 1912 SAN FRANCISCO
NEWSPAPER ARTICLE IS AN
EXAMPLE OF A LONG HISTORY OF
CORRUPTION IN THE INDUSTRY.**

Bribes

The laws and regulations of most jurisdictions where for-profit bail bonding is permitted prohibit police or attorneys from referring or recommending specific bail agencies. Likewise, the laws generally prohibit bondsmen from recommending a defense attorney. These rules have been put in place to avoid conspiratorial practices between the bail industry and those within the legal system. For example, attorneys who have an agreement with a bail agency may be less inclined to argue for the non-financial release or even for a bail reduction for their client.

However, some bail agents choose to flout these laws, by bribing jail staff and even people held in jail to advertise and promote their agency. In California, the owner of a bail bonding company pled guilty on several felony charges after he was discovered to have paid an inmate to inform him of incoming arrests and recommend his agency to new arrivals in the jail.⁷⁴ Similarly, bail agents have paid “kickbacks” to law enforcement officers for bonding referrals. In Starr County, Texas a sheriff, a justice of the peace and four jailers were indicted on charges of accepting payments for referrals.⁷⁵

In another example, bondsman Ronald Lee Brockway of Seal Beach, California, was convicted of both using people in jail to distribute leaflets advertising his bail bond agency, as well as engaging in a reciprocal referral scheme with local attorneys. Most recently, in July 2012 a bondsman in Portsmouth, Virginia pled guilty to charges of bribing a sheriff’s deputy to refer those he arrested to his agency. It was also alleged that he made payments to a magistrate who was responsible for making the release decision, including setting bail amounts.⁷⁶

These cases damage the integrity of the entire pretrial system by taking away the assurance that people accused of crimes can trust in ethical and

legal procedures that guarantee impartiality. A U.S. Attorney who indicted a Maryland bondsman on charges of corruption put it best: “Because the bail bond industry plays a major role in Maryland’s criminal justice system, the integrity of the system is jeopardized by corrupt bail bondsmen.”⁷⁷

All of the above examples of corruption, coercion and ruthlessness are merely a snapshot of what can be found through an internet search. Of the estimated 15,000 for-profit bail agents currently operating in the U.S., most are undoubtedly upstanding and professional. However, the system in which they work, one which gives untrained bondsmen immense power over individual liberty with the promise of money as the reward, is one which by its very nature invites corruption and abuse.

Sexual coercion

As part of the bail bonding agreement, upon the release of an accused person from jail the bail bond agent is given powers that equate to those used by police to apprehend and detain people suspected of crimes.⁷⁸ In fact, “The control of a bondsman over his/her principal is a continuance of the original imprisonment. Therefore, when a prisoner is out on bond s/he is still under court control, though the bounds of his/her confinement are enlarged. The bondsmen are his/her jailers.”⁷⁹ Unlike police officers, however, bail agents are not required to undergo law enforcement training. These insurance agents “can legally pursue you across state lines, arrest you and detain you without a warrant, using deadly force if necessary.”⁸⁰ This means that they may, at any time and for any reason—and often without having to state that reason—choose to revoke a client’s bond and return them to jail. The threat of returning a client to jail can be used by the for-profit bondsman to coerce clients into criminal or sexual behavior.

PART 8

ALTERNATIVES TO FOR-PROFIT BAIL BONDING EXIST AND ARE EFFECTIVE.

Four states—Kentucky, Illinois, Oregon and Wisconsin—have banned for-profit bail bonding. Unfortunately, it took crisis levels of corruption and abuse in the industry to move these states to take action. When they did, it was in a time predating the powerful bail bond lobby that exists today.

There are numerous alternatives which allow jurisdictions to make non-financial pretrial release decisions based on risk, ensuring greater public safety and eliminating the need for bail bondsmen. The states mentioned above use such methods, as do several other areas where bail bonding remains legal, but unnecessary.

Effective pretrial release programs begin with rigorous risk assessments, preferably those that have been validated for the jurisdiction. Once the accused person's risk of failing to appear at trial and dangerousness has been assessed, a release recommendation can be made that incorporates a

continuum of available options. This range of options is crucial to implementing a risk-based pretrial system.

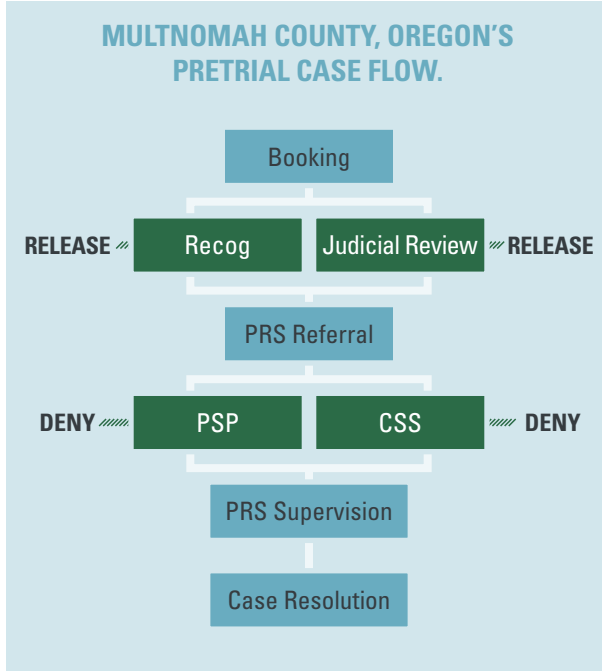
MULTNOMAH COUNTY, OR

For example, in Multnomah County, Oregon—one of the states without for-profit-bail—Pretrial Release Services (PRS) has four basic release options, each with several sub-options within. After an initial charge screening, some people may be released on their own recognizance with the promise to return to court at a later date. Others are referred to a Judicial Review to determine release eligibility. Low to moderate risk defendants may be referred to PRS' Pretrial Supervision Program (PSP). Those who are determined to pose a greater risk if released may be referred to Close Street Supervision (CSS), a program run by the Sheriff's Office. The remaining accused people will be detained until a further release review or until their trial date.

The range of options in Multnomah County allows the courts to properly assess and place each accused person while maintaining public safety and adheres to the state's legal requirement that

THE AMERICAN PROBATION AND PAROLE ASSOCIATION

“supports the role of pretrial supervision services to enhance both short-term and long-term public safety, provide access to treatment services and reduce court caseloads, and submit that such a role cannot be fulfilled as successfully by the bail bond industry.”



each person “be considered for release pending the resolution of their case.”⁸¹ People under the watch of Close Street Supervision may be subject to “telephone contact, visits to the home and work, to the use of technologies such as “Electronic Monitoring” and GPS.”⁸² Even with lower-risk option of PSP, released people are “monitored through a combination of phone contact, home visits, office appointments and (in some cases) electronic monitoring.”⁸³

KENTUCKY

Kentucky established its PTS system in 1976 when it made for-profit bail bonding illegal. PTS officers interview arrested persons except those who decline an interview or make bail immediately. Using their recently-validated risk assessment tool the officer then makes a pretrial release recommendation based on the person’s measured risk of failing to appear at trial or being rearrested before trial. As in Multnomah County, there are a range of options available to court officials regarding pretrial release. They may choose ROR, supervised release or set a high bail to reduce the likelihood of release.

In 2011, the Kentucky legislature passed HB 463, a comprehensive criminal justice overhaul bill which mandated changes in the pretrial system, further codifying PTS practice into law. A recent evaluation of outcomes showed positive gains following the implementation of HB 463 policies. Although the state already enjoyed relatively high outcomes in trial appearance and arrest-free pretrial release, the changes improved these even more.

The state saw its Appearance rates rise from 89 percent to 90 percent, post-HB 463. Also, the percentage of those released pretrial who were rearrested before their trial date dropped from nine percent to eight percent in the same period.⁸⁴

Kentucky is a prime example of how states can achieve, maintain and improve pretrial outcomes in a system that doesn’t allow for-profit bail bonding.

THE FEDERAL SYSTEM

Much of the early reform work on the subject has been done at the federal level. The major reform legislation—Acts that promote presumptive pretrial release, the use of pretrial service agencies and consideration of public safety in release decisions—are all federally passed reforms.

The federal pretrial system, while divided between 94 districts, demonstrates much more uniformity

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

“calls for a national law enforcement summit to address the need for bail reform and in particular the urgent need for more robust pretrial services that conduct dangerousness assessments for use by the judiciary when considering pretrial release.”

in its application of pretrial release than do the states. They more tightly regulate and monitor the for-profit bondsmen that are licensed to sell bonds to federal defendants than do the states or local jurisdictions. Lists of approved agents and relevant regulations can be found in one central online location.⁸⁵ The federal court system has also adhered more closely to the reform Acts concerning pretrial release, maintaining a practice of the presumption of release with relevant conditions based on risk. In so doing, federal reliance on for-profit bonding has dramatically reduced from one-quarter of all defendants in 1984 to less than one percent in 2007.⁸⁶ As mentioned earlier, the federal system has achieved very high rates of appearance, and is able to predict risk with a high degree of accuracy.

RECOMMITTING TO THE PROMISE OF PRETRIAL SERVICES AGENCIES

As of 2009 there were approximately 300 PTS agencies operating in the United States ranging from one-employee operations to large offices servicing major metropolitan areas.⁸⁷ In most jurisdictions these agencies operate alongside for-profit bail

agents and in systems that rely heavily on financial release options. However, when used effectively, with proper funding and support, PTS agencies can eliminate the need for financial release options by recommending tailored supervised release for those who warrant it and pretrial detention for those who pose too great of a public safety threat.

Washington, D.C.'s PTS program is an example of one that successfully operates with little to no money bail and virtually no for-profit bondsmen. By adhering to principles promoted by the American Bar Association, the National District Attorneys' Association and the National Association of Pretrial Services Agencies, the D.C. PTS agency recommends the least restrictive release option as informed by a thorough risk assessment.⁸⁸

The ways in which jurisdictions utilize PTS agencies differ from county to county and state to state. One fact is clear: a system that bases pretrial release decisions more on risk than money requires a healthy Pretrial Services Agency, as does any jurisdiction that chooses to eliminate the use of financial release options altogether.

PART 9

RECOMMENDATIONS

END FOR-PROFIT BAIL BONDING.

Every jurisdiction should follow the lead of the four states where for-profit bail bonding is banned and institute robust, risk-based pretrial programs.

If the for-profit bondsman ever did serve a legitimate function in the pretrial process, that time has come and gone. However, the bondsman remains a part of our cultural landscape—one where appearance doesn't match reality. In addition to changing laws and policies, attitudes and beliefs need to be realigned to meet the reality of pretrial release practices that presume a supervised and monitored, non-financial release based on risk, not on profit.

While pursuing the elimination of for-profit bail bonding, jurisdictions should implement guidelines and procedures that promote non-financial release and systems which allow accused people to have any money spent on pretrial release returned to them following court appearance.

PROMOTE AND FURTHER INSTITUTIONALIZE PRETRIAL SERVICES.

Pretrial services are the most effective means of managing the pretrial assessment and possible release of people awaiting a criminal trial. They are not merely an alternative to for-profit bail bonding.

Instead they are an integral part of the criminal justice continuum which begins at arrest and ends with exoneration or conviction. The bail bonding industry exists outside of this historically and necessarily government-run process.

To this end, PTS agencies should be incorporated in justice systems where they are absent and supported where they currently exist. Part of the support these agencies require is a political commitment to maintain adequate funding and to support legislation solidifying the role of PTS as a jurisdiction's primary method of pretrial decision-making.

Likewise, policy-makers must resist the political influence wielded by the for-profit bail bonding industry. Through a dedication to pretrial practices that emphasize risk assessment, public safety and non-financial release options, system stakeholders can challenge the industry's dangerous and profit-driven interference.

Further, jurisdictions with PTS agencies should follow the standards of the National Association of Pretrial Services Agencies. These guidelines suggest that no PTS agency should be required to provide supervision or other services for a

person released on surety bond and that no person released under the supervision of a PTS agency should be required to have bail posted by a compensated bail bonding agent. Such practices simultaneously undermine and burden pretrial services and recognize the inherent public safety deficits of for-profit bail bonding.

REQUIRE GREATER TRANSPARENCY WITHIN THE INDUSTRY.

The for-profit bail bonding industry will not and cannot disappear overnight. It is too integrated into our pretrial systems to be eliminated without addressing inflated bail amounts and first creating and fortifying other, more effective processes. Until that time, the industry must be held more accountable and to a greater standard of transparency. Several key changes are needed:

- Introduce reporting of all transactions and practices, including number and amount of all bonds sold, number of and reason for bonds denied, number of forfeitures and exonerations and any other accounting information deemed appropriate for transparency by a jurisdiction. The industry should be held to the same reporting standards it has demanded of PTS agencies in its proposed “Citizens Right to Know” policies.
- Greater standards of licensing and regulation, including increased training in the foundations of criminal justice and legal procedure. As actors within the criminal justice system who possess police powers, bail bond agents should be required to meet a minimum training standard similar to public law enforcement officers.
- For-profit bail bonding should be recognized for what it is: a third-party service provider to the criminal justice system. As such, it should be held to the expectations and requirements mandated by the courts of each jurisdiction. To achieve this, regulation and oversight of the industry should be shifted away from state insurance bodies and to state and local judiciaries.

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