Taxpayer Funded

Pretrial Release

A Failed System

Allegheny Casualty International Fidelity Associated Bond

Dedication

The publishers would like to dedicate this small volume jointly to those county officials across the country who have already taken the necessary steps toward protecting their local citizens from wasteful spending on ineffective pretrial release programs and to those state legislators who have passed The Citizens Right to Know Act in their state, thus holding local Pretrial Release Agencies accountable for their performances.

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PREFACE

Persons legitimately suspected by a proper official of having committed a crime are processed into custody – usually the county jail where they remain until trial unless they are released upon approval of the court. Such a release pending trial is always based upon an assurance, acceptable to the court, that the person will return to court as directed.

These promises of the defendant to make their scheduled court appearance fall neatly into two categories: where the promise is financially secured (posting of a bond) or where the release is based upon an unsecured promise to come back for trial.

These unsecured releases are frequently recommended by, and supposedly administered through, a local taxpayer funded county agency commonly called "Pretrial Services." Arranging for secured release is done by the private sector industry known as commercial bail bonding.

It will be seen that claims by Pretrial Services which advocate that their taxpayer-funded agencies are a beneficial adjunct to local courts and law enforcement should be scrutinized carefully. Their key performance function is in getting persons in their charge to court for disposition of the charges against them. Proof will be provided to show that in this critical performance requirement Pretrial Services dramatically fails the test.

The purpose of this booklet is to point out the critical differences between these two approaches and how those differences affect the public safety and economic interests of citizens. It is hoped that judges, state legislators and local government leaders will, by reviewing these materials, be better able to make appropriate decisions relative to the type of pretrial release system that would best serve the interests of their respective constituents.

It should come as no surprise that taxpayer funded bail bonding operations are inefficient and wasteful of local government resources. At every turn we see, at both the national and state levels, the very poor results of government trying to replace the private sector. This mistake is glaringly apparent in the bail field, as will be readily seen from a review of this publication.

All reference sources used will be identified by number and cited accordingly in the index provided.

REPORT PROPER

Private sector bonding is utilized by the courts to arrange for financially secured release pending trial of persons charged with crimes.

County Pretrial Services Agencies providing unsecured releases of such persons, routinely present three serious problems:

I. A HIGH FAILURE TO APPEAR RATE:

Any system is only as good as it is workable. A method of releasing persons pending trial works if it gets those released back to court, and there can logically be no exceptions to this rule, since this is the primary purpose of any release system.

The determining factor then, in assessing the effectiveness of the pretrial release program is: how good is it at getting persons back to court?

For Pretrial Release Agencies the answer is: not good at all. Numerous very credible studies establish this fact:

- U.S. Department of Justice, through its Federal Bureau of Justice Statistics, measures performance of the two systems against each other. Their research was conducted in the nation's 75 most populous counties and their formal report was published at the end of 2007. *They found that failures to appear on unsecured releases were twice as high as those on surety bond.*

- The American Legislative Exchange Council did a similar study in the three most populous counties in California and found: *"A defendant is more than twice as likely to fail to appear for trial if released on government secured release without financial security than if released on a private surety bail program."*

- Thomas H. Cohen, a highly recognized statistician with the U.S. Department of Justice, in 2009 completed a comprehensive comparison of secured vs. unsecured release and their respective appearance performances. He concluded: *"…this analysis showed that defendants released through surety bond were less likely to*

miss their court appearances and become fugitives than defendants released through other means…"

- The Journal of Law and Economics, published by the University of Chicago reports an extensive analysis of the performance difference between public versus private release pending trial. The conclusion was*: "Defendants released on surety bonds are 28% less likely to fail to appear than similar defendants released on their own recognizance",* that is, their unsecured promise to appear.

It is important to note that not a single piece of evidence has been put forward to challenge these authorities. In fact, Pretrial Service officials strive to keep their performance statistics hidden. One example is how vigorously they oppose state legislation making it a requirement that they post regular reports accounting for, among other things, their failure to appear numbers. And this, despite the fact that any judge or prosecutor will readily agree that failures to appear thwart the county's system of justice.

II. A GREATER NUMBER OF CRIME VICTIMS

Programs promoting unsecured release are proven to be public safety dangers.

There is no question that persons with unsecured releases commit more crimes while released than do persons whose release is financially secured. The evidence is in on that.

- The U.S. Department of Justice's Bureau of Justice Statistics *shows the recidivism rate, while on release, at almost twice as high for unsecured release as for secured release (See Exhibit A)*

- The University of Chicago Study mentioned earlier also concludes a significantly higher rearrest rate for those on unsecured release.

- Evidence of a Failed System: A Study of the Performance of Pretrial Release Agencies in California in its Executive Summary (See Exhibit B) states: *"More than 700 crimes per day are committed by defendants released prior to trial. It is probable that*

most of them are committed by the same people who fail to appear for trial. By shifting away from government secured releases toward privately secured releases the "failure to appear" rate can be cut dramatically and the streets and neighborhoods can be made safer."

For every 100 persons on unsecured release, there will be seven (7) more crimes committed than there would if those 100 persons had been on secured release (See Exhibit A). What is most incredible about these numbers is that they conclusively demonstrate that county taxpayers are funding a local government program that actually creates crime in their neighborhoods, while they are totally unaware of this expenditure. And really how could a better result be anticipated? A system that rewards bad performance can only expect worse performance.

III. A GREAT MONETARY LOSS TO THE COUNTY

It has been clearly shown that an unacceptably high percentage of persons on unsecured pretrial release never come back to court.

Can this high failure to appear rate be translated into financial costs to local governments? It can. For a few examples, consider;

- The fugitive: Evidence on Public Versus Private Law Enforcement From Bail Jumping is a very thorough study performed by highly credentialed scholars, and they remark that: *Defendants who fail to appear impose significant costs on others. Direct costs include the costs of rearranging and rescheduling court dates, the wasted time of judges, lawyers, and other court personnel, and the costs necessary to find and apprehend or rearrest fugitives. Other costs include the additional crimes that are committed by fugitives. In 1996, for example, 16 percent of released defendants were rearrested before their initial case came to trial. We can be sure that the percentage of felony defendants who commit additional crimes is considerably higher than their rearrest rate. We might also expect that the felony defendants who fail to appear are the ones most likely to commit additional crimes. Indirect costs include the increased crime that result when high failure-to-appear (FTA) and fugitive rates reduce expected punishments.*

- When persons on unsecured release abscond, the forfeited bail amount goes uncollected. These mounting debts have reached staggering sums in every county having a Pretrial Release Agency. Note: If those persons had been on secured release, they would either have been returned to custody by the surety or the bail amount would be paid in full. The Philadelphia Enquirer recently reported that uncollected bail forfeitures there exceeds One Billion Dollars.

Every new crime has its attendant costs, every failed court appearance is highly expensive to the local justice system and every uncollected bail forfeiture is money lost. Added together, these losses become unsustainable with already strained county budgets.

Knowledgeable professionals are in agreement that unsecured release as promoted through Pretrial Service Agencies (taxpayer-funded "free bail" programs) is a misguided pretrial release alternative. One recognized authority on the subject recently authored a simple paper, The Myths of Taxpayer-Funded Pretrial Release Agencies (Exhibit C) pointing out the fallacies inherent in their claims of legitimacy.

CONCLUSION: Pretrial Service Agency operations frustrate the local court system, add significantly to county financial burdens and increase the number of crime victims in the community. And just as bad, these failed systems send entirely the wrong message to criminals and would-be criminals: "If you get arrested, don't worry – we will get you out of jail for free. You do not have to come back to court because when you don't come back, nobody will come after you and nobody will have to pay anything." County taxpayers financially underwrite this, but they don't know it because there is no accountability.

Conversely, with secured release, the defendant knows that if he fails to appear, the bond writer will recover him back into custody to avoid having to pay the bail loss. This knowledge positively influences the behavior of the defendant, which accounts for the superior performance of the secured release approach.

EXHIBITS

When a defendant missed a court date and a bench warrant was issued, the failure to appear occurred within 1 week of release in 12% of the cases, within 1 month of release in 35% of the cases, and within 3 months in 74% of the cases. For all defendants failing to appear in court, the median time between pretrial release and the initial missed court date was 46 days.

Time from release to Failure to appear	Percent of defendants
1 week	12%
1 month	35
3 months	74
6 months	94
1 year	100
Median	46 days

Return of fugitive defendants to the court

Overall, about 1 in 13 released felony Defendants had failed to appear in court as scheduled and were still fugitives at the end of the year-long study. The percentage of defendants who were fugitives at the end of the study was higher when the method of release was unsecured bond (19%) or emergency release (13%) than when some other type of release was used.

About a third of the defendants for whom a bench warrant was issued were returned to the court within 1 month of their failure to appear, and about half had been returned after 3 months. At the end of the 1-year study period, about two-thirds of all defendants who had failed to appear had been returned to the court.* The remaining third were still fugitives.

Among those defendants who failed to appear, the percentages who were still fugitives at the end of the study was highest for those who had been Released on unsecured bond (44%).

Time from release to Failure to appear	Percent of defendant
1 week	14%
1 month	34
3 months	51
6 months	59
1 year	68
Median	29 days
Not returned within 1 year	32%

*Some defendants returned to the court voluntarily, and the bench warrant for their arrest was withdrawn.

Table 15. Released felony defendants who were rearrested while on pretrial release, by selected defendant characteristics, 1992

Percent of released felony defendants in the 75 largest counties:

Defendant characteristic	Number of defendants	Not rearrested	Rearrested		
			Total	Felony	Misdemeanor
All Released defendants	30,051	86%	14%	10%	3%
Most serious original arrest charge					
Violent offenses	6,991	88%	12%	8%	3%
Property offenses	10,147	86	14	11	4
Drug offenses	10,146	84	16	13	4
Public-order offenses	2,765	91	9	7	2
Sex					
Male	24,839	85%	15%	11%	3%
Female	5,164	91	9	6	3
Race					
Black	15,830	85%	15%	12%	4%
White	11,329	89	11	8	3
Other	365	95	5	5	0
Race/Hispanic Origin*					
Non-Hispanic					
Black	11,295	85%	15%	11%	4%
White	6,313	91	9	7	3
Other	361	94	6	6	0
Hispanic, any race	5,126	84	16	12	4
Age at Arrest					
Under 21	7,008	84%	16%	12%	4%
21-34	15,907	86	14	11	3
35 or older	6,730	89	11	9	2
Type of release					
Financial release	11,877	88%	12%	9%	3%
Surety Bond	6,611	91	9	6	3
Full cash bond	2,697	84	16	13	4
Deposit Bond	2,275	84	16	14	3
Property Bond	294	91	9	3	6
Nonfinancial release	16,089	86%	14%	11%	3%
Recognizance	9,785	85	15	11	4
Conditional	4,075	90	10	7	2
Unsecured Bond	2,228	84	16	15	1
Emergency release	776	82%	18%	12%	6%
Number of Prior Convictions					
10 or more	1,154	62%	38%	27%	11%
5-9	2,393	74	26	19	7
2-4	4,691	82	18	14	4
1	4,122	86	14	10	4
None	15,670	91	9	7	2
Most serious prior conviction					
Felony	7,684	76%	24%	19%	5%
Misdemeanor	4,948	86	14	8	6
None	15,642	91	9	7	2

Note: Rearrest data were collected for 1 year. Rearrests occurring after the end of this 1 –year study periods are not included in the table. Information on rearrests in jurisdictions other than the one granting the pretrial release was not always available. Rearrest data were based on 94% of released defendants. Detail may not add to total because of rounding. *Based on defendants with known race and Hispanic origin.

Exhibit A

EVIDENCE OF A FAILED SYSTEM

A Study of the Performance of Pretrial Release Agencies in California

EXECUTIVE SUMMARY

Too many crimes are being committed by repeat criminals who have been through the judicial system at least once before. A symptom of this problem is the failure of released defendants to appear for trial, since they are likely to commit additional crimes while on pre-trial release.

When criminal suspects are arrested, few are actually forced to be confined to jail until trial. Most are released pending trial. Pretrial release options fall into one of two broad categories: private secured release and government secured release.

The government secured release programs were initially developed to serve only truly indigent, non-dangerous defendants. Like many government programs, they have since expanded beyond their original intent. Government pretrial release programs have become the most common form of pretrial release in most states, and the only form in some states.

- This study found that in the counties of San Diego, Los Angeles and San Francisco, private secured release is much more effective than government secured release in ensuring defendants appear for trial.

More than 60% of defendants are released prior to trail by the courts of the nation's 75 most populous cities. In the three counties examined in this study, the number is lower, a little more than 40%. Of those that are released in the three counties, a slim majority (52%) are released under some form of government secured release without the requirement that they post financial security for their promise to appear for trial. The others are released under some form of private secured release, generally surety bail which requires the posting of a bond.

San Francisco County relies more heavily on government secured release than the other two counties, with nearly 70% of released defendants in such programs. In comparison, in San Diego County less than 40% of the released defendants participate in government secured release programs. But, in San Francisco County, 53% of released defendants had their releases revoked due to a violation of the release order, whereas, only 4% of the defendants released in San Diego County had their releases revoked.

- Defendants released on surety bail (the pre-dominant private secured release program) in the three counties are more likely to be violent and repeat offenders than those released on government secured release without financial security.

- However, a defendant is more than *twice as likely to fail to appear for trial* if released on government secured release without financial security than if released on a private surety bail program.

- For those without a prior record of arrest or conviction, defendants on government secured release are *five times more likely to fail to appear for trial.*

- Defendants released on any non-financial government secured release are over *three times more likely to appear on multiple occasions.*

- It is estimated that the failure to appear rate in Los Angeles County would fall from 27% to 19% if the proportion of defendants released under a surety bond rose from its current 40% to 86%.

More than 700 crimes per day are committed by defendants released prior to trial. It is probable that most of them are committed by the same people who fail to appear for trial. By shifting away from government secured releases toward privately secured releases the "fail to appear" rate can be cut dramatically and the streets and neighborhoods can be made safer.

The Myths Of Taxpayer-Funded Pretrial Release Agencies

by JERRY WATSON

According to the dictionary, a myth is something imagined, fictitious or not based on facts or scientific study. The Easter Bunny is a myth. Santa Claus is a myth. Leprechauns are myths. And some beliefs about pretrial services are myths. Let us review a few of them.

Myth #1

These agencies are the answer to jail over-crowding.

This assertion is founded upon two inherently unsound premises:

1) These agencies actually contribute to jail overcrowding because a large percentage of the people they take out are routinely rearrested on a new offense and put right back in jail. If ever there was a "revolving door syndrome" related to persons arrested, these agencies are the doormen.

2) Their claim, to be true, would require judges to abdicate their role in the criminal justice system. The advocates of pretrial service agencies, as a solution to local jail over-population, are really saying that the judge setting conditions of release should consider how many persons are already housed in the jail. That issue has no legitimacy in the court's bail decision. In fact, since the jail's population has nothing to do with risk of flight or public safety danger, as it relates to the person whose release is being considered, it would be improper for the judge to even take this into account.

Myth #2

These agencies provide an economic benefit to the county.

This argument also is totally fallacious. The only basis for such a claim has to be, again, jail overcrowding relief. That we have already dealt with, but more can be said. For example: if one takes the agencies' actual annual operations cost, adds to that the enormous expense associated with failure to appear for trial and then puts on top of that the untold cost of all the commissions of new crimes assignable to the agencies' performance failures, the aggregate annualized expense to the county would be seen as staggering. In times of already existing county budget deficits underwriting a pretrial services agency is unsustainable. In short, they not only do not save the county money, they represent an insupportable cost.

Myth #3

It is unfair to force an accused to have his release pending trial be financially secured.

In other words, why should one have something of value pledged as security to assure his return for trial? This is a part of their campaign to eliminate private sector bail bonding which they perceive as their "competitor". Their grossly inferior performance in terms of court appearances and public safety protections leaves them with this, their most persistent argument: it is only fair that the government should provide the accused a free release from his pretrial custody.

Several facts prove the invalidity of their claim:

1) Embedded in the states' constitutions will be found a requirement that bail (release from pretrial custody) shall be had upon "sufficient surety". This contemplates that "something" shall stand as assurance to the government that this defendant will return to have his case adjudicated. Weighing against this is the Eighth Amendment to the U.S. Constitution which provides that there shall be no excessive bail. This places the court at a point of tension: bail set too high is unfair to the defendant, but bail set too low is unfair to the people. Pretrial service advocates argue for "bail too low" – free to the defendant. But if "free bail" encourages defendants to skip out (and the numbers prove conclusively that it does) then something of value must be pledged in lieu of the defendant remaining in custody. Suggesting otherwise argues against the law.

2) The most basic of rules governing human behavior argues against their position. Nobody can deny that if bad actions are rewarded, this will only encourage more bad acts. One is arrested upon probable cause that he has committed a crime. Yet if we release that person before trial under conditions that would suggest to him that we don't take his arrest seriously – that is, under a system whereby there are no consequences for his continued misbehavior – how can we expect him to take the matter seriously? How can we expect him not to reoffend? We cannot, and so he does.

3) Finally, and this is the most ludicrous of all: their suggested free bail policies come from their misguided belief that the only reason a person is arrested in the first place is because society has failed him. In other words: if we had been, all his life, all that we should have been toward him, he would not be in trouble to begin with. This strained logic rests upon a faulty premise: that a person is not responsible for his own behavior. But they take it further: since we are responsible for his behavior, when he ends up in jail, we should pay to get him out. After all, his life is our fault.

So for at least these reasons, their argument that one's pretrial release should not be secured must fail.

Myth #4

People in jail cannot afford to pay for a bail bond.

Pretrial Service agency executives say that without these agencies, people who cannot pay for a commercial bond just have to languish in jail until their trial. This is simply not true, and it is not true for several reasons:

1) The only study ever done on this question of how many can arrange for their own release placed the number at the mid-80% range. Unfortunately that study was twenty years ago, but it should not be discounted since nothing officially rebuts it.

2) Almost everyone today can arrange for a commercial bail bond, because sellers of these bonds have had to adjust their business models to accommodate the financial abilities of the market. For example: bail bond charges are now "carried" through payment plans, the terms of which the customer can meet. Current economic restraints of many purchasers require such programs. It must be remembered that the bond seller's "customer" is not typically the incarcerated defendant. Rather, it is the person, or persons, who want the defendant out. Arranging terms to meet the payment requirements is key and the seller makes this available. So, the only person in custody who cannot arrange for his release is either a transient or a person who has burned every bridge he ever had with family or community. Should such a person ever be released pretrial? That is a decision for the judge.

These, then, are the four myths ordinarily espoused by the champions of taxpayer-funded "free" bail bond agencies. Of course, these bonds are free only to the defendant – not to the county who must financially sponsor such operations. Local county taxpayers and government leaders will have to decide whether or not the freight is worth the cost, both in dollars and in the increased number of crime victims.

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