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Deposit Bail

A Failed System

Allegheny Casualty International Fidelity Associated Bond

Preface

There are at least four methods of pretrial release: (1) *release on own recognizance* (ROR) where the Defendant is released purely upon his promise to appear as directed or he is liable for the amount of bail set (a few states have no set bail amount on ROR.), (2) *cash bail* (Defendant posts full amount of bail.), (3) *surety bail* (A private party guarantees appearance of defendant in court, otherwise pays the court the full amount of the bail.), and, the subject of this report, (4) *deposit bail* (Defendant pays a small percentage of the bond set.). Of all the above methods of pretrial release, deposit bail is the least effective.

In the classic form, 10% cash deposit is simple. The defendant posts with the court, cash in the amount of 10% of the penal sum of the bail. If all court appearances are made, the defendant is refunded 90% of the deposit with the court keeping the remainder. If the defendant fails to appear, the court keeps all of the deposit and has the right (and duty) to collect the remaining 90%.

The supposed financial windfall to the court - the forfeiture of the cash deposit upon the Defendant's failure to appear is illusory, because it is offset by the cost of each failure to appear (FTA) and the loss is magnified by the government not going after the remainder (90%).

The cost is not only fiscal. Cash deposit bail spawns a high number of Defendants who fail to appear and who, as fugitives, in turn prey on local citizens driving up the community's crime rate.

These two failures associated with the 10% cash deposit bail program, financial loss and increased crime, are driven by the FTA rate. These problems will be demonstrated in this report to be the inevitable result of the 10% cash deposit bail system.

REPORT PROPER

Wherever they have been tried, 10% deposit bail programs have produced three phenomena:

I. HIGH FAILURE TO APPEAR RATES.

One need only review a few historical examples, from diverse geographical areas, to conclude that far too many people released on deposit bail simply don't come back to court.

a. **Illinois** became the first state to adopt the 10% cash deposit approach. The Illinois Criminal Justice Information Authority reports that the failure to appear rate is 21% for women and 30% for men.

b. **Oregon** passed a 10% deposit bail Bill. A later comprehensive study showed that over 40% of those so released failed to appear.

c. **California** is probably the most persuasive reason for deciding against 10% cash deposit bail. After the completion of a comprehensive deposit bail pilot project California concluded that (1) deposit bail did not alleviate jail overcrowding, (2) commercial bonds were more successful in assuring reappearance of defendants, and (3) taxpayers carried a significantly higher financial burden with deposit bail.

d. **New Jersey** had a 10% program for years. In 1995 the legislature dismantled the program because of its horrendous failure.

e. **Other States Recent Refusals:** a number of other states in recent sessions (Texas and Minnesota, for two examples), have turned down 10% cash deposit proposals after finding that such programs

create not only crime increases but huge local government costs.

As just one proof of the fact that persons released on deposit bail are less apt than those out on a surety bond to make their court appearances, please see Exhibit A. This data, compiled by the Department of Justice's Federal Bureau of Justice Statistics, is conclusive; it is a several year composite of data gathered on 60,000 state case defendants closely "tracked" for missed court appearances and re-arrests.

II. ESCALATES CRIME RATE.

Deposit bail programs are proven to be public safety dangers.

There is no question that persons released pretrial via a 10% cash deposit program commit more crimes than persons released on a commercial, private sector bond. And the recidivism differential is considerable.

In Illinois a state criminal justice research project showed deposit bail release re-arrest rates of 17% for women and 39% for men. For commercial bond releases, however a nationwide study of enormous scope shows that the re-arrest rate is only 9%.

Notice Exhibit B, taken from another U.S. Justice Department report. This table reveals that persons released on deposit bail are almost twice as apt to be rearrested while released than are persons who are released on a surety bond.

Experts in the field all agree: there is a direct correlation between the number of bail fugitives at large in a community and the number of serious crimes committed there.

Deposit bail programs breed bail fugitives at large and thereby increase the number of crimes committed. Referring again to Exhibit A, one sees that persons remaining a

fugitive after one year are one third higher for deposit bail fugitives than is the case for surety bond releases.

When a deposit bail Defendant fails to appear, who goes after him? Nobody. Local law enforcement has too many pressing priorities rather than to allocate resources to chasing FTA's. Some jurisdictions have thousands of fugitives. For example, Prince George's County in Maryland with 30,000, and Philadelphia with around 50,000 outstanding warrants for FTA's. The number for this is yet to be calculated in Ohio and the few other states where deposit bail is allowed.

Even though deposit bail may appear to make the court money, it clearly does not; it assuredly makes more crime victims, and puts more citizens in harm's way.

III. ECONOMIC UNSOUNDNESS.

The idea that government is better equipped to release and monitor people accused of crimes rather than the private sector is a total fabrication. Furthermore, government run programs are terribly expensive in terms of personnel costs. No deposit bond program can monitor the day to day activities of a person after release. Deposit bond fulfills only half of the equation – thus explaining their dismal failure to appear rates.

Can this high failure to appear rate be translated into actual dollars? It can. A very comprehensive study performed by leading experts in the field of assessing the effects of pretrial release misconduct on the local justice system was completed in May, 1997.

This work entitled *Runaway Losses*, underwritten and published by The American Legislative Exchange Council, shows the actual cost to the local system, per failure to appear, to be $1,273.81. Please see Exhibit C, a copy of the Executive Summary page from that extensive report.

> It's simple: deposit bail will generate regularly, large numbers of failures to appear. These in turn, become actual and substantial monetary losses to the local government, not to mention the incalculable but obviously enormous cost attendant to increases in crime certain to follow.

Knowledgeable professionals are in agreement that deposit bail is a misguided pretrial release alternative. One nationally recognized authority on the subject, Jerry Watson, Esq. Recently authored a simple paper, *The Myths of Deposit Bail*, (Exhibit D) pointing up the several inherent fallacies of the deposit bail approach.

CONCLUSION: a 10% deposit bail program will increase the crime rate, be fiscally irresponsible and burden the local criminal justice system. It should not be implemented, and if it exists it should be abolished.

Exhibits

Pretrial misconduct rates stable from 1990-2004

Overall misconduct rates varied only slightly from 1990 through 2004, ranging from a high of 35% to a low of 31% (figure 5). For failure to appear, the range was from 21% to 24%, and the fugitive rate ranged from 5% to 8%. Overall rearrest rates ranged from 13% to 21%, and felony rearrest rates from 10% to 13%.

Pretrial misconduct rates for State court felony defendants in the 75 largest counties, 1990-2004

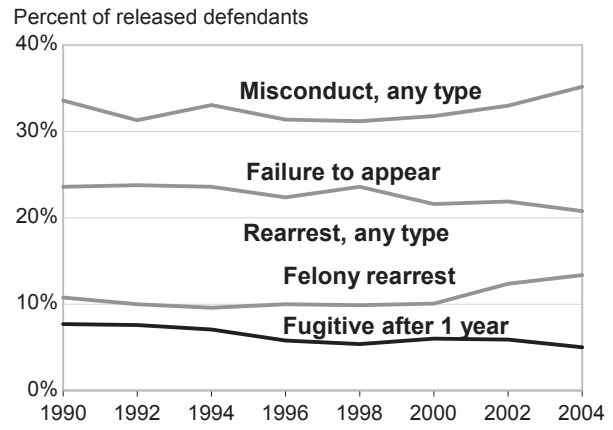

Figure 5

Pretrial misconduct rates highest for emergency releases

About half (52%) of the 1% of defendants released under an emergency order to relieve jail crowding were charged with some type of misconduct (table 7). Pretrial misconduct rates for other types of releases ranged from 27% to 36%.

After emergency release (45%), the highest failure-to-appear rate was for defendants released on unsecured bond (30%). Property bond (14%), which also accounted for just 1% of releases, had the lowest failure-to-appear rate followed by surety bond (18%).

About 1 in 4 defendants who failed to appear in court were fugitives at end of a 1-year study period

By type of release, the percent of the defendants who were fugitives after 1 year ranged from 10% for unsecured bond releases to 3% of those released on surety bond.

Overall, 28% of the defendants who failed to appear in court and had a bench warrant issued for their arrest were still fugitives at the end of a 1-year study period. This was 6% of all defendants released pretrial (not shown in table).

Compared to the overall average, the percentage of absconded defendants who remained a fugitive was lower for surety bond releases (19%).

Type of release	Number of defendants failing to appear	Percent still a fugitive after 1 year
All types	54,485	28%
Surety bond	13,411	19%
Emergency	1,168	22
Conditional	6,788	27
Property bond	490	30
Recognizance	20,883	30
Deposit	4,548	31
Unsecured bond	5,018	33
Full cash bond	2,179	36

Likelihood of pretrial misconduct lower for defendants released after being charged with murder or rape

Defendants released after being charged with murder (19%) or rape (18%) had misconduct rates that were about half that for defendants charged with motor vehicle theft (39%), drug trafficking (39%), or burglary (37%).

Younger, male, black, and Hispanic defendants more likely to be charged with pretrial misconduct

Released defendants age 20 or younger (33%) had higher misconduct rates than those age 40 or older (28%). This pattern also existed for rearrest and failure-to-appear rates. Male defendants (34%) had a higher misconduct rate than females (28%). Black (36%) and Hispanic (34%) defendants had a higher misconduct rate than whites (28%).

Prior criminal activity associated with greater probability of pretrial misconduct

Defendants who had an active criminal justice status at the time of arrest — such as pretrial release (48%), parole (47%), or probation (44%) — had a higher misconduct rate than those who were not on a criminal justice status (27%). This difference was observed for both failure to appear and rearrest.

Defendants with a prior failure to appear (49%) had a higher misconduct rate than defendants who had previously made all court appearances (30%) or had never been arrested (23%). Defendants with a prior failure to appear (35%) were about twice as likely to have a bench warrant issued for failing to appear during the current case than other defendants (18%).

Defendants with at least one prior felony conviction (43%) had a higher rate of pretrial misconduct than defendants with misdemeanor convictions only (34%) or no prior convictions (27%).

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.

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 predominant 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 Deposit Bail

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 10% deposit bail are myths. Let us review a few of them.

Myth #1

Deposit bail is an appropriate method of release pending trial.

This is mythical because it is not based on fact. Deposit bail is totally inappropriate as a form of pretrial release. How do we know this? Because the qualification that any pretrial release method must meet to be appropriate has been consistently defined for us by the courts, which say that the sole purpose of bail is to ensure the appearance of the defendant.

If the sole purpose of bail is to ensure the appearance of the defendant, then any release method which does not accomplish this is inappropriate. Clearly, deposit bail fails this test, because a disproportionately high percentage of people released this way never come back to court.

Therefore, to say that deposit bail is an appropriate pretrial release method puts it right there with the Easter bunny – it's just not real.

Myth #2

Deposit bail is a legitimate means of generating revenue for the county.

This is false, and to see why we turn again to the courts, which have told us over and over again that the purpose of bail is not to collect revenue.

Now, obviously, if the sole purpose of bail is to get the defendant back to court and if making money for the county cannot be a purpose of bail, then for the court to engage in the practice of deposit bail to make the county money is, actually, illegal.

For local government to turn release from pretrial custody into a commodity for sale through the courts is more than improper; it is downright offensive.

Myth #3

Deposit bail is an effective way for the courts to reduce jail overcrowding.

This is not true, because it cannot be effective if it is against the law. We go again to the courts. Remember the rule? The sole purpose of bail is to ensure the appearance of the defendant.

It is entirely improper for the court, in setting bail, to consider whether or not the jail is already full. That, in fact, is none of the court's business. That is

the business of the county executives whose job it is to see that sufficient detention facilities exist. The court's job is to consider flight risks, and perhaps in some cases danger to the community, but not to set bail based upon how many prisoners are already in the jail.

So the idea that deposit bail can be used to control jail population has to get in line right behind Santa Claus as just another myth.

Myth #4

If a court wants to set 10% deposit bail, it doesn't really hurt anybody.

Wrong! It can not only hurt somebody, it can kill somebody. Highly credible studies have repeatedly demonstrated that the more 10% deposit bail is used, the more people don't return to court and therefore the more fugitives there are. And since fugitives are highly recidivistic, the more fugitives there are, the more crime victims there will be.

Deposit bail doesn't hurt anyone? That's right up there with leprechauns.

Here's something about deposit bail that is not a myth: The criminals love it, because they know when they put up their 10% with the court they don't have to come back and when they don't, nobody's coming after them. And, they know something else: Nobody is going to make them pay the remaining 90% of their bond. Ever.

How different it is, and how much safer the community, when the court insists upon financially secured release where if the defendant skips, someone brings him back, and if they don't they pay the bail amount to the court.

For more information on the AIA companies, please contact:

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