



Pre-Trial Release

Revisited

PRE-TRIAL RELEASE REVISITED

By Jerry Watson, AIA Chief Legal Officer

A reoccurring interest in the bail industry is the topic of public-funded pre-trial release (PTR). Many metropolitan counties across the country already have a local PTR agency. These agencies are responsible for interviewing prisoners upon book-in, making recommendations to the court as to what form of release should be utilized, monitoring prisoners for reappearances and meeting of bail conditions by those released on their own recognizance (under the control of the PTR agency). Needless to say, most of the PTR prisoner interviews usually ends with a recommendation that the defendant be released through the PTR agency. These have commonly been referred to as a “free bail” release. They are indeed free to the defendant, but by no means are they free to the local taxpayer. Operating with a surplus of staff and under huge budgets, these local PTR agencies are extremely costly to their respective county.

In the recent NAPSA Release Standards, the National Association of Pre-Trial Service Agencies once again urges “in deciding pre-trial release, a presumption in favor of pre-trial [release on personal recognizance] should apply to all persons arrested and charged with a crime.” NAPSA leadership and members have always seen the commercial bonding industry as their enemy and they are not entirely incorrect. In most instances, the person released is either going to be released upon their own recognizance into the care of the PTR agency or they will engage the services of a commercial bail bondsman.

No one seems to disagree that the primary purpose of release pending trial is to afford the defendant an opportunity to participate in the preparation of his defense while at the same time employing that release method which will have the defendant back in court when he is supposed to be there. Taking this as a given, a question presents itself: How effective is PTR in accomplishing the purpose of release? It is precisely here that NAPSA and PTR advocates are long on rhetoric and short on performance.

We have long held the belief that the private bail system is superior to the free release programs because there is no cost to taxpayers. The following is a list of references supporting this notion:

1. ***Public versus Private Law Enforcement: Evidence from Bail Jumping.***

This is a recent study which appeared in the Journal of Law & Economics, April 2004 by Eric Helland and Alexander Tabarrok, two highly qualified educators and researchers in the criminal justice field.

To quote from that study’s conclusion: “Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time.”

2. Evidence of a Failed System, A Study of the Performance of Pre-Trial Release Agencies in California.

This study, sponsored by the American Legislative Exchange Council, and conducted by Michael K. Block, Ph.D., recognized criminologist, and Steven J. Twist, Assistant U.S. Attorney, found the following:

- 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.
- Defendants released on any non-financial government secured release are over three times more likely to fail 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%.

3. Using the Private Sector to Deter Crime.

This study was conducted by the National Center for Policy Analysis, a highly reputable think tank recognized and utilized by the federal government when comparing public versus private bonding systems, found:

- The fugitive rate for defendants out on private bail is under 1%.
- Bail agents have a 0.8% fugitive rate versus 8.0% for public bail.
- A U.S. Department of Justice study of the 75 largest counties found that only 14% of felony defendants released on surety bonds initially failed to appear in court versus 27% of those released through other methods, and at the end of one year the fugitive rates were 3% and 9.5%, respectively.

If we are forced to continue competing with the free bail advocates for our share of the pre-trial release pie - and it appears we will - then the frontline fighter, the local retail bail agent, should be equipped as well as possible to intelligently and effectively engage in this endeavor.

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COMPANIES, PLEASE CONTACT:

ALLEGHENY CASUALTY COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY
ASSOCIATED BOND

800.935.2245

WWW.AIASURETY.COM
INFO@AIASURETY.COM

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