



The Conditional  
Post Conviction Release  
Program

ALLEGHENY CASUALTY

INTERNATIONAL FIDELITY

ASSOCIATED BOND

## ***PREFACE***

A bite as malevolent and unrelenting as that of a Moray Eel chomps down on your state's budget. This is not in reference to education, health care, transportation infrastructure, natural disasters or homeland security. This super-sized bite is for the state's corrections budget. Similar to a merchant's store policy, "If you break it, you pay for it" policy corrections is the tail end of, "You convicted them, now lock them up".

We have come through almost two decades of get tough on crime measures like mandatory sentences and elimination or restriction of parole. Keeping the bad guys locked up for as long as possible has made the streets safer. Keeping the perpetrators behind bars has resulted in lower crime rates nationwide. As every virtue has its vice, the success of these initiatives for public safety has resulted in unintended consequences, such as jail and prison overcrowding. America's detention centers are compacted, shaken, and overflowing. America's prisons are similar to the freeway system; as soon as a new one is built it accommodates as many as possible until it becomes congested.

The result is the sheriffs and corrections authorities are forced to release inmates. Few jurisdictions have been forced by judges to abide by caps. If you go over the cap then you've got two choices, (1) shell out millions of dollars for a new facility or (2) let some of the inmates go, regardless of how much time they have yet to serve. Let's hope such authorities make wise release decisions. You don't have to tune into the O'Reilly Factor to know often they don't make wise decisions. In order to grasp the enormity of the problem across the country, try the following: type "early jail releases" into any search engine on the web daily for a week and you'll get more hits in a day than you can read in a week.

A ball park figure for calculating incarceration costs of around \$60 per day per inmate has gained purchase as a rule of thumb. A useful, but somewhat misleading tool, it doesn't take into consideration the costs of other needs of the prison population which have to be born by the state. What about the \$25,000+ annual tab for special medication for the IDS infected patient? Or the \$50,000 check for another's triple by-pass surgery. It is not unheard of for the medical costs of a single inmate to cost the state a quarter of a million dollars annually! Ask any state legislator what the biggest criminal justice problem his state faces, and ten to one it will be jail and prison overcrowding. At meetings of the ALEC Criminal Justice Task force meetings, overcrowding is the *liet motif* of complaints.

What we propose is a partial, but practical solution to the problem. It is an alternative that will help ease the overcrowding burden with due respect for the maintenance of public safety. The mechanism is the conditional post conviction release bond. Only those deemed no threat to public safety would be candidates for this method of release. The legal releasing authorities would make the selection. This method is already tried and true. It has been in place for centuries under medieval English law and from the founding of America. It is called bail and it applies to those who have been charged and who are released from confinement before their trial. The purpose of bail is to return the

defendant to court in order to answer the charges against him. If the bail agent fails to do this, he pays the amount of the bond as a penalty. It is highly efficient, operates at no cost to the public and has a 97% to 98% success rate. The U.S. Department of Justice's Bureau of Justice Statistics attests to the effectiveness of commercial bail's track record in a 2007 study, as have multiple studies in the academic community. The post conviction bond is a modification of the pretrial release commercial appearance bond used in bail. It would apply to those already convicted and already in jail serving their sentences. The concept has only to be slightly adjusted to apply to post conviction release of inmates.

It would work by an inmate being selected as a candidate for release under this program by the proper releasing authority. He would be released subject to complying with certain conditions set down by the releasing authority. In addition, the release (or principal) would be obligated to post a commercial surety bond (like a bail bond) written by a qualified underwriter/insurance company. With this bond, the person being released promises to abide by the conditions or upon failure agrees to be returned to custody. The private sector surety guarantees that if the duly constituted authority determines that the person in question has failed to comply, and in turn gives timely notice of the same, the surety will return the person released to custody. Failure to do so means forfeiture of the bond and payment by the surety. He will pay for his failure. Hence the surety has as much financial incentive to return the post conviction principal to custody in this case as it has in the case of bail in making sure the person shows up for his court date.

Releasing qualified prisoners frees up space for the convicts who need to stay locked up.

The following ALEC State Factor, entitled, "A Plan to Reduce Prison Overcrowding and Violent Crimes," provides a blueprint for a state to set up such a program. Also attached is a sample model bill by which such a program could be enacted. In addition, attached is a sample conditional post-conviction bond form.

# The State Factor

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*Jeffersonian Principles in Action*

## ***A PLAN TO REDUCE PRISON OVERCROWDING AND VIOLENT CRIME***

### **“Conditional Post-Conviction Release Bond Act”**

#### **Introduction**

The overcrowding of prisons and the breakdown of the parole and probation system has become a serious problem in America. Criminals released early from prison—in order to relieve overcrowding—are often poorly supervised and free to commit new crimes once they are back on the streets. In order to solve these problems lawmakers should consider a new and innovative program called “Conditional Post-Conviction Release Bonding.” This ALEC concept would allow for the early release of legislatively defined participants from prison—primarily non-violent and juvenile offenders—but require that they post a bond. The bond would be revoked if they did not meet all the requirements of the program like keeping gainful employment and staying off of drugs.

During the late 1980s and early 1990s, state and local governments got tougher on crime by passing legislation calling for mandatory sentences for repeat offenders, such as California’s “three strikes and you’re out” law. Cities like New York adopted the “Broken Windows” strategy that called for the arrest and prosecution of all crimes large and small. Because of the enactment of these policies the number of victims of violent crime in America has dropped from **620** per 100,000 in 1986 to **469** per 100,000 in 2005.<sup>1</sup>

Unfortunately, one unintended consequence of America’s new tough stance on crime is that our prison system has become dangerously overcrowded, forcing prison officials to release violent criminals after serving only a fraction of their sentences.

Sadly, the current system used to relieve overcrowding has created a “revolving door” criminal justice system. The recidivism rate among those released early from state and county prisons is extremely high. In fact, a Department of Justice study found that 67.5 percent of criminals released from prison were rearrested for a felony or serious misdemeanor within three years.<sup>2</sup>

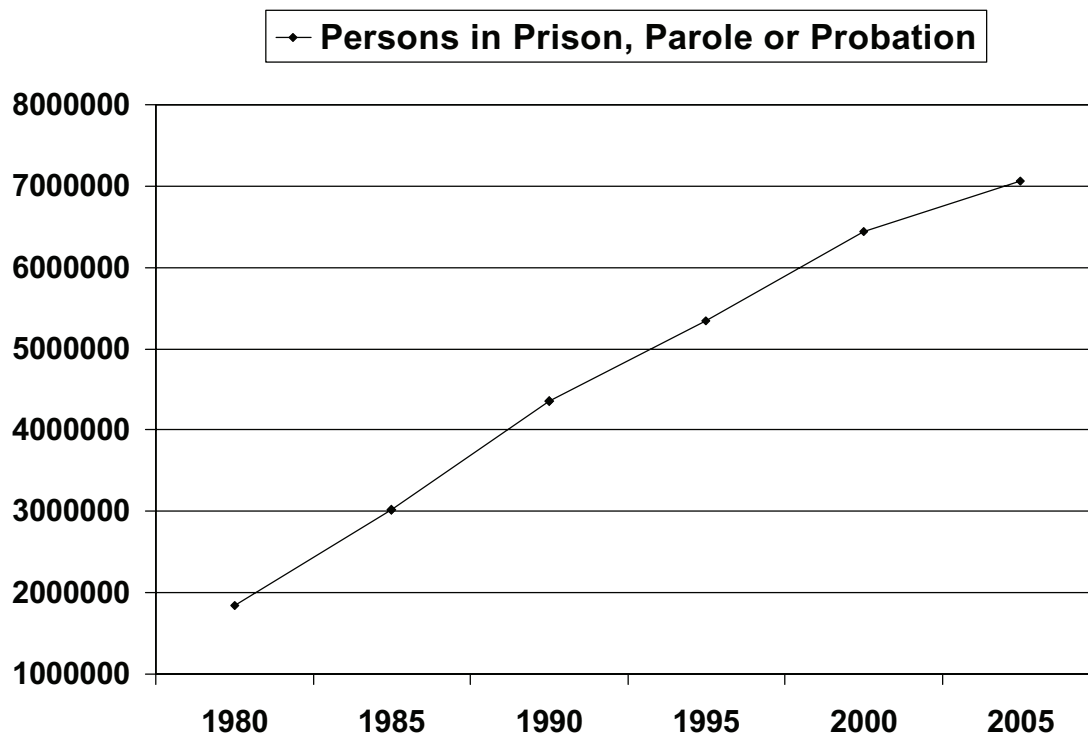
The evidence from previous studies is that incarceration works; however, there is currently not enough space in prisons for all convicted criminals to fully serve their sentences. In many cases, for every new criminal admitted to prison, another must be released on early parole in order to comply with federal court orders to reduce overcrowding.

In 2005, federal prisons operated at an average of 134 percent capacity and state prisons operated at an average of 107 percent above capacity.<sup>3</sup> Prison overcrowding is so bad in California that Gov. Arnold Schwarzenegger recently declared a state of emergency. California lawmakers have crafted a plan to deal with prison overcrowding that will cost more than \$7 billion.

The dramatic rise in the number of criminals incarcerated has also impacted the parole and probation system. Currently, 10 percent of those on parole or probation simply disappear compared with only 3 percent of those released on private bail bonds.<sup>4</sup> Furthermore, 15 murders a day are committed by people under government supervision<sup>5</sup> and 53 percent of prison inmates were on probation, parole or pretrial release at the time of their incarceration.<sup>6</sup>

Lawmakers need to recognize that the current system is failing to adequately supervise criminals, and more importantly, failing to return them to custody upon inappropriate behavior. In most places what passes for supervision is less than adequate. Parole and probation officers meet with a criminal on average for as little as 5 to 20 minutes a month.<sup>7</sup>

Taxpayers are not well served by a broken and potentially dangerous prison and parole system. In order to properly protect American citizens, some immediate solution must be found to reduce prison overcrowding so those deemed most violent to society serve their full prison sentence.



Lauren E. Glaze and Thomas P. Bonczar. "Probation and Parole in the United States, 2005." U.S. Department of Justice. Washington D.C. January 18, 2007. NCJ215091.

## Background

In 2005 more than 2.1 million people were held in state or federal prisons—an increase of more than 600,000 since 1995.<sup>8</sup> To put the current number in perspective, in 1970 less than 200,000 people were housed in state or federal prisons.<sup>9</sup> In part because of overcrowding, felons sentenced to state prisons in 2002 were likely to serve only 51 percent of their sentence or just 2.25 years.<sup>10</sup>

States face a dire need to increase the capacities of their prisons; however, as it will cost billions of dollars to build enough new prisons it seems unlikely that federal and state governments will be able to quickly allocate the needed funding. In the meantime, an immediate solution to the overcrowding problem must be found.

Government leaders must also recognize that the parole and probation system is overburdened and

under-funded. In 2005, almost 5 million Americans were on parole or probation, an increase of more than 1 million people since 1995.<sup>11</sup> This large increase has led to parole and probation officers having average caseloads of 258 to 337 criminals.<sup>12</sup>

An article in *Corrections Management Quarterly* described the current system this way: "When probation and parole officers lacking resources and plausible technique are made responsible for dispersed caseloads of individuals who proved themselves motivated offenders in the past, who are located where crime and vulnerable victims abound, and who are effectively anonymous because they are without formal or informal supervision for weeks on end, the agents are inclined to let nature take its course—to wait for police to arrest those offenders who, unsupervised, commit new crimes."<sup>13</sup>

Not only do criminals commit new crimes while under government supervision, many choose to simply run away. Most times there is little effort by the government to track these runaways down. A report by the Manhattan Institute in conjunction with the American Probation and Parole Officers and the National Association of Probation Executives stated: “[N]ext to nothing is being done to apprehend these scofflaws, a number of whom are ‘hiding in plain view.’”<sup>14</sup>

## A Solution

Any plan or program to provide a prompt and adequate solution to the overcrowding problem in state and local detention facilities should address the following issues:

- The detention facility population should be brought down to a level consistent with capacity so that the most violent offenders can serve out their full sentences.
- Juveniles and non-violent misdemeanor offenders should be the focus of rehabilitation and early release.
- Additional economic burdens should not be placed on taxpayers. To the greatest extent possible, the program’s costs should be borne by criminals.
- Supervision of those on parole and probation must be increased.
- Private companies should be utilized, and there should not be a sole reliance on the government-run parole and probation system. The private sector appearance bond system is a well proven workable model.<sup>15</sup>
- Finally, and most importantly, there should be assurances that under the program’s operation there would be no increase in recidivism. The solution must be capable of demonstrating in the early stages of implementation that no adverse impact upon community safety occurs.

## Conditional Post-Conviction Release

Conditional Post-Conviction Early Release would rely on performance bonds and security or indemnity agreements to keep participants from committing new crimes and assure their prompt return to custody should they misbehave. The program would focus on the large number of incarcerated juveniles and

misdemeanor non-violent offenders and operate much like the current private bail bonds system, which has been successfully used to grant pretrial releases to individuals across the country. It would be a means for providing early release of non-violent offenders from state and local facilities in such a way as to reduce recidivism with no additional costs to taxpayers. Best of all, the program would rely on the proven success of the private bail bond industry, rather than the proven dysfunction of the government-run parole and probation system, by requiring families and communities to take some responsibility for future acts of the person who is displaying signs of trouble.

The Conditional Post-Conviction Release would work as follows:

- Legislatively defined participants would be chosen by parole officials at the penitentiary level and judges at the trial level (hereafter referred to as releasing authorities).
- Participants would be released from confinement under the terms and conditions of a performance bond. The bond would require a surety, (financial guarantor) by a qualified insurance company. The terms and conditions of the performance bond would have to be fully met at all times in order for the participant to remain in society.
- Failure of the releasee to meet numerous requirements such as house arrest, regular drug testing, recovery program involvement, mandatory check-in requirements, non-interference with witnesses or victims, maintenance of gainful employment, payment of restitution, and no subsequent arrests or any additional requirements would obligate the surety to promptly return the releasee to custody thus safeguarding the community. Failure to so perform would subject the surety to full financial penalty under the bond.
- Persons in the participant’s release environment, such as parents and guardians, would voluntarily sign “agreements of indemnity” whereby they, along with the individual would have a monetary incentive, as indemnitors to the surety, to encourage compliance by the participant. If there is a violation of the bond, the family as well as the offender would be drawn into the circle of responsibility.
- Upon the breach of any single condition of release, the bond could be revoked by the court, a warrant



issued and the participant re-incarcerated, and the surety required to pay a financial penalty to the state in the alternative.

The financial penalties of the bond would create strong incentives on the part of the surety and the indemnitors to see that the participant abides by all the releasing authority's conditions of release or else be promptly surrendered back into custody, thereby guaranteeing low recidivism. The program would require no additional staffing or administrative costs for state and local governments. Prison space would become available to ensure that violent offenders serve their full sentences. At the trial stage, this program would be a sentencing alternative. For those who operate prisons and jails, it would be a very tightly controlled early-release vehicle for selected, non-violent offenders.

The program would relieve overburdened parole and probation officers of many non-violent and juvenile offenders. Offenders would also perform better in the Conditional Release Program as compared to the current system because of the financial penalty subject to being imposed.

## Conclusion

It is imperative that the use of limited prison space is maximized and that criminals are better supervised in order to reduce crime. Properly freeing inmates who are not threats to law-abiding citizens allows the justice system to ensure that those who are a threat remain incarcerated for the duration of their sentence.

This type of early release program is revolutionary because of its reliance on private entities instead of the government. This program would utilize the techniques that have made the private bail bond system superior to the government's "revolving door" justice system.

For many years, ALEC has educated its members on the benefits of enlisting the private sector in the effort to reduce crime. This new ALEC endorsed program would generate family and community support for rehabilitating offenders, particularly juvenile offenders; provide an alternative to the current parole and probation system; and promote the principle of local government and the private sector working together to overcome grave social ills. It would do this in a fiscally responsible manner with no new cost to state and local government.

*The American Legislative Exchange Council (ALEC) is the nation's largest nonpartisan, individual membership organization of state legislators, with over 2,400 legislator members from all fifty states, and 87 former members serving in the U.S. Congress. [www.alec.org](http://www.alec.org).*

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**Published by  
American Legislative Exchange Council  
1129 20th Street, N.W., Suite 500  
Washington, D.C. 20036  
[www.alec.org](http://www.alec.org)**

## Endnotes

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- 15 Morgan Reynolds.

## American Legislative Exchange Council Model Legislation

### **Conditional Early Release**

#### SUMMARY

This Act would create a means whereby a State can, after conviction, release a person. The Act would also establish how conditions on the release may be set and how the private sector may be used in determining whether or not those conditions are met.

#### Model Legislation

Section 1. {Title} This Act may be cited as the Conditional Post-Conviction Release Act.

Section 2. {Definitions. } As used in this Act:

(A) "Releasing Authority" means any State official, State Board, or State subordinate governmental unit having legal authority to release a prisoner onto probation, furlough or parole.

(B) "Principal" means any person to be released under this Act.

(C) "Surety" means any person or entity licensed under the laws of the state to execute bonds filed in criminal cases.

(D) "Bond" means the written undertaking delivered by the surety to the releasing authority and describing the terms and conditions of surety's duties.

(E) "Conditions" means such conditions as the releasing authority may impose as a prerequisite(s) to being on release from custody.

(F) "Breach" means any condition of release violated by the Principal.

(G) "Breach penalty" means the amount of money to be paid by the surety to the state upon the surety's failure to meet the requirements under this Act. The breach penalty shall be equal to the face amount of the bond.



(H) "Charge" means the amount of money the surety charges to write the bond. In no case shall the charges be less than fifteen percent of the breach penalty amount which charge shall be fully earned when the bond is written.

(I) "Revocation of bond" means the use and effectiveness of the bond has ceased. The releasing authority may revoke the bond upon a breach or continue the bond by nullifying the breach. Or, the bond may be revoked at any time the releasing authority determines that the Principal is not attempting to abide by the conditions of the bond.

(J) "Mandatory conditions" mean those conditions the releasing authority must place upon the Principal as a condition(s) to early release.

Section 3. {Early release on bond.} Upon the decision of the releasing authority to return an inmate to society. The releasing authority may release a Principal by requiring the posting of an early release bond by a surety. The releasing authority may set conditions of release, which conditions shall be appended to and made a part of the bond. The conditions may, unless otherwise specified, be any of the following, but are not limited to these conditions and are to include any conditions imposed by the releasing authority:

(A) The Principal shall be drug/alcohol tested as specified.

(B) The Principal shall take part in specified recovery program(s).

(C) The Principal shall not contact, go about or communicate directly with any witness(es) involved in Principal's conviction.

(D) The Principal shall not contact, go about or communicate directly or indirectly with any victim(s) involved in Principal's conviction.

(E) The Principal shall obtain and keep employment.

(F) The Principal shall be on home arrest via electronic monitoring devices approved by the State.

(G) The Principal shall abide by specified travel restrictions.

(H) The Principal shall make all specified periodic restitution payments.

(I) The Principal shall pay specified fines and Court costs.

(J) The Principal shall perform specified community services.

(K) The Principal shall pursue specified education courses.

(L) The Principal shall obtain such education as specified.

(M) The Principal will participate in such family or third part involvement as specified.

(N) The Principal shall have, as a mandatory condition, that he or she pay the surety's charge.

(O) The Principal shall have, as a mandatory condition, that he or she personally report to the surety at such time and in such manner as directed by the releasing authority and the surety.

Section 4. {Terms of the bond}. The early release bond put up by the surety shall:

(A) be for a term of one year, and may be renewed annually;

(B) be in favor of and payable to the State; and

(C) be conditioned that the releasing authority shall:

(1) Give the surety written notice of any breach of condition within 30 calendar days of the breach.

(2) If within 180 calendar days from date of receipt of written notice by releasing authority that the Principal has failed to meet one or more of the conditions of

Principal's early release, the Principal shall have been placed back into custody, whether by Surety or another, then the bond shall be exonerated.

Section 5. {Penalties paid by the surety.} The surety shall pay penalties as follows:

(A) The breach penalty shall be paid upon breach of a condition by the Principal.

(B) There can be only one penalty per bond.

Section 6. {Surrender of Principal.} At any time after receiving a notice of breach by the Principal the Surety may arrest the principal and surrender him or her to the nearest county jail. If the Principal is surrendered within 180 calendar days of receipt of the notice of breach, the bond shall be exonerated.

Section 7. {Severability Clause. }

Section 8. {Repealer Clause. }

Section 9. {Effective date.}

\*Each state must determine the crimes for which this bill will apply.

**EARLY RELEASE APPEARANCE BOND**

STATE OF \_\_\_\_\_

(SURETY'S NAME  
& ADDRESS)

VS.

\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the above named individual, a principal, and \_\_\_\_\_ Insurance Company, as surety, are held and firmly bound unto the State of \_\_\_\_\_ in the sum of \$\_\_\_\_\_, for the payment whereof will, and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns firmly by these presents.

WHEREAS, the Principal herein has been duly sentenced to a term of \_\_\_\_\_ by a court of competent jurisdiction of the State of \_\_\_\_\_ and, through the appropriate State office has petitioned for release from custody before completion of the full term of Principal's sentence; and

WHEREAS, having considered such petition, the State of \_\_\_\_\_ agrees to the early release of said Principal provided there be furnished, in favor of the State, this Early Release Appearance Bond executed by a surety duly qualified to execute and issue such undertakings in the State of \_\_\_\_\_.

NOW, THEREFORE, the condition of this obligation is such that, if, within 180 (One Hundred Eighty) days from date of receipt of written notice by the State of \_\_\_\_\_ that Principal has failed to meet one of the conditions of Principal's early release, the Principal shall have been placed back into custody, whether by the Surety or another, then this obligation to be void, otherwise to remain in full force and virtue until Principal's term of early release is satisfied or non-payment of an annual renewal premium, whichever occurs first.

A renewal premium in the amount of 10% (Ten Per Centum) shall be due each year upon the anniversary date of the bond herein executed until such time as the Surety obligations hereunder are duly discharged, there being no cumulative effect on the bond amount due to such premiums and the non-payment of a renewal premium shall entitle the Surety to place the Principal back into custody thus creating a discharge of all bond obligations.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TAKEN BEFORE ME

AND APPROVED BY ME:

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_

BY: \_\_\_\_\_, SURETY

BY: \_\_\_\_\_

(ATTORNEY-IN-FACT)

FOR MORE INFORMATION ON THE AIA  
COMPANIES, PLEASE CONTACT:

ALLEGHENY CASUALTY COMPANY  
INTERNATIONAL FIDELITY INSURANCE COMPANY  
ASSOCIATED BOND

800.935.2245

[WWW.AIASURETY.COM](http://WWW.AIASURETY.COM)  
[INFO@AIASURETY.COM](mailto:INFO@AIASURETY.COM)

