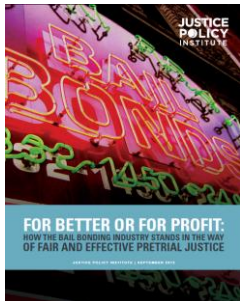


For Better or For Profit:

How the bail bonding industry stands in the way of fair and effective pretrial justice.

September 2012



INTRODUCTION

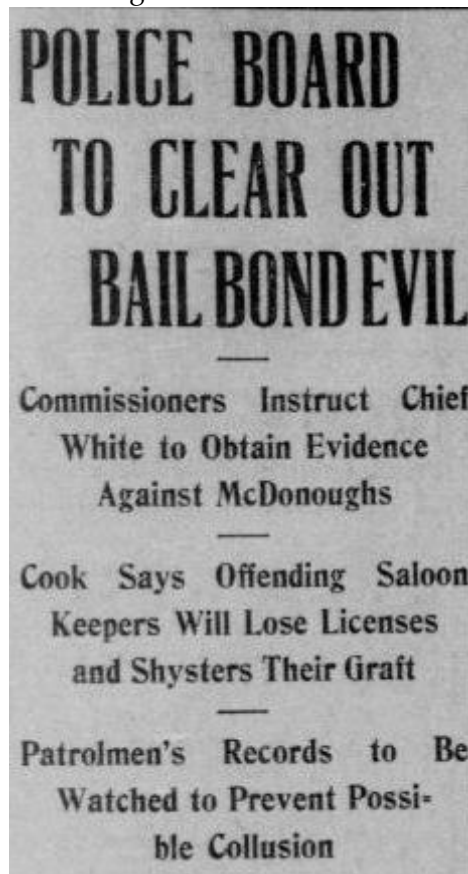
The U.S. is one of only two countries that allow for-profit bail bonding, a practice that has outlived any purpose it might once have served in the criminal justice

system. As middle men between the courts and people seeking pretrial release on money bail, commercial bail bondsmen are insurance agents who make their bonding decisions on whether: 1.) they will make a profit on the transaction and 2.) their relative financial risk.

Their presence in the system distorts judicial decision-making and leads to people being needlessly held behind bars while awaiting their day in court. For-profit bail bonding costs taxpayers through increased jail and other justice expenses. In addition, it impacts people from low income communities – generally the loved ones of the accused person - who must pay nonrefundable fees for the bond regardless of case outcome and who, through contracts with the bondsmen, bear the real monetary risk of paying the full bail amount in the event of a court no-show.

Backed by multibillion dollar insurance giants, the for-profit bail bonding industry maintains its hold in the pretrial system through political influence. Using campaign contributions, lobbying and their affiliation with groups like ALEC (American Legislative Exchange Committee), the bail industry protects their profit margin by limiting

regulation and financial risk, while working to defund and hamper Pretrial Services Agencies. As criminal justice professionals, Pretrial Services can make more informed release decisions based on risk to public safety, while providing supervision and services that allow people to remain in the community while awaiting their day in court. All jurisdictions should follow the lead of states like Kentucky and Illinois that have banned for-profit bail, and move towards fairer, more effective pretrial justice systems that use risk, rather than money, to decide whether to deny a person their liberty while awaiting trial.



This 1912 San Francisco newspaper article is an example of a long history of corruption in the industry.

WHAT IS FOR-PROFIT BAIL BONDING?

For-profit bail bonding is the practice of hiring a third-party to provide a surety guarantee for a person's financial release after arrest. If a person chooses to purchase a bail bond, the bail bonding agent enters into a promissory agreement with the court, pledging to pay the full bond amount if their client fails to appear for trial. The bail bond fee, or premium, that is paid by a person or their family and friends is not refundable regardless of the outcome of the case or if charges are dropped.

Less than fifteen years after first appearing on the scene in 1898, critics raised worrying issues about for-profit bail. A 1927 study noted that poor accused people remained in pretrial detention solely because of their inability to pay even small bail amounts, bail bondsmen had become too prominent in the administration of justice and corruption and a failure to pay bond forfeitures plagued the industry.¹

Amazingly, these issues are still at the heart of what is

wrong with the for-profit bail system in the U.S. today.

The Rise of the For-Profit Bail Bonding Industry. In the mid-twentieth century, for-profit bail bonding shifted from small, independent businesses to front-end sales agents for giant insurance companies. These companies, and newly-formed professional associations, helped to institutionalize the field as a powerful industry. Today, there are approximately 15,000 bail bond agents working in the United States, writing bonds for about \$14 billion annually.²

FOR-PROFIT BAIL TAKES ADVANTAGE OF LOW INCOME COMMUNITIES

People of means who can afford to pay their full bail—refundable upon court appearance—don't require the bail bondsman's service. The bail bonding industry exists to profit from a vulnerable community: low-income people who find themselves accused of a crime but cannot afford to pay the bail set by the court. As average bail amounts have more than doubled in the last two decades (see graph), this community has grown, along with the bondsmen's non-refundable fee.

The bail bonding industry justifies their fee as compensation for the risks they take and costs they accrue. However, those who purchase a bail bond—usually the family or friends of an accused person—sign a legal contract obligating them to pay the full bail amount if a court date is missed. As private insurance agents, bondsmen can selectively choose their

clients based on financial means or other, unstated

criteria, leaving many low-risk low-income people behind bars pretrial. If the bonded person fails to appear in court, the bondsman will collect the full amount from the family or liquidate the collateral used to secure the bond. In the end, it is those who co-signed the bond—who are themselves often of modest means—who end up paying.

Courts seldom actually make bondsmen pay forfeitures – that is, the full bail amount if the person they've bonded fails to appear in court. Forfeiture rules are written, with the help of the industry's political power, to give the bail bond agent nearly endless

"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."

~ International Association of Chiefs of Police

opportunities to avoid paying forfeitures and make the process labor intensive and complex for the courts. This environment has led to hundreds of millions in forfeitures owed to jurisdictions throughout the country, further reducing the insurance companies' financial risk and increasing profits for them and bondsmen.

Bail bondsmen are not justice professionals. Reforms in the 1980s incorporated public safety into the criminal pretrial release decision. When the promise of pretrial services agencies nationwide to help assess pretrial risk was not met, judges responded by increasing money bail amounts as a way to take dangerousness into account. 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 bail bonding industry is not in the business of improving outcomes for people or communities. They are for-profit businesses and their concern is financial: can the person pay the fee, and what's the risk they might have of paying a forfeiture.

Pretrial services agencies, on the other hand, have the mandate to ensure that people are not unnecessarily held in jail while awaiting trial and that those who are released show up for their court date and don't break the law. They use tools—validated risk assessments³—that not only help them recommend whether someone should be held in jail pretrial, but under what conditions a person may be released. These agencies can also help connect people with services they need to help them be successful in the community both until

their trial and afterwards, including treatment, housing, etc.

Bail Bonding is not “cheaper” than pretrial services. When people who cannot pay their full bail obtain a bond, the fee costs them and their communities. For families already scraping by, the bondsman's non-refundable fee can lead to catastrophic financial ruin, increased reliance on public assistance and homelessness, all of which directly cost taxpayers. Systems that rely solely on non-financial pretrial release prove that these fees are unnecessary for pretrial compliance.

When judges rely on financial options alone, they are more likely to be conservative in deciding whether to offer bail and how large

it should be. In areas with no mandated minimum bond premium—the industry standard is ten percent of the full bail amount—for-profit bondsmen compete with each other,

charging as little as two percent of the bail. Judges “are left to guess how much defendants are paying to be released from jail before trial,”⁴ often dramatically increasing amounts. Higher bail amounts lead to higher pretrial jail populations as many cannot afford full bail or a bail bond premium. If a person fails to appear in court, the higher bail now means a huge debt to the bondsman for those who signed the bond.

Additionally, since bail bondsmen focus solely on court appearance and not pretrial services, there is no opportunity for people to connect with interventions—like substance abuse treatment—which have been shown to reduce costs to the criminal justice system over time.

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.

A substantial number of cases now involve dual release mechanisms— both for-profit bail and pretrial supervision— showing that courts increasingly recognize that bail bonding does not safely manage people pretrial. This practice increases costs to PTS agencies while still putting money in the pockets of bail bondsmen. In some counties dual release has skyrocketed. For example, in 1994 less than three percent of the almost 9,000 people on pretrial service supervision in Harris County, Texas also had to pay a money bond; ten years later, over 60 percent – more than 5,000 people – of those under pretrial services supervision had to also pay money bond.⁵

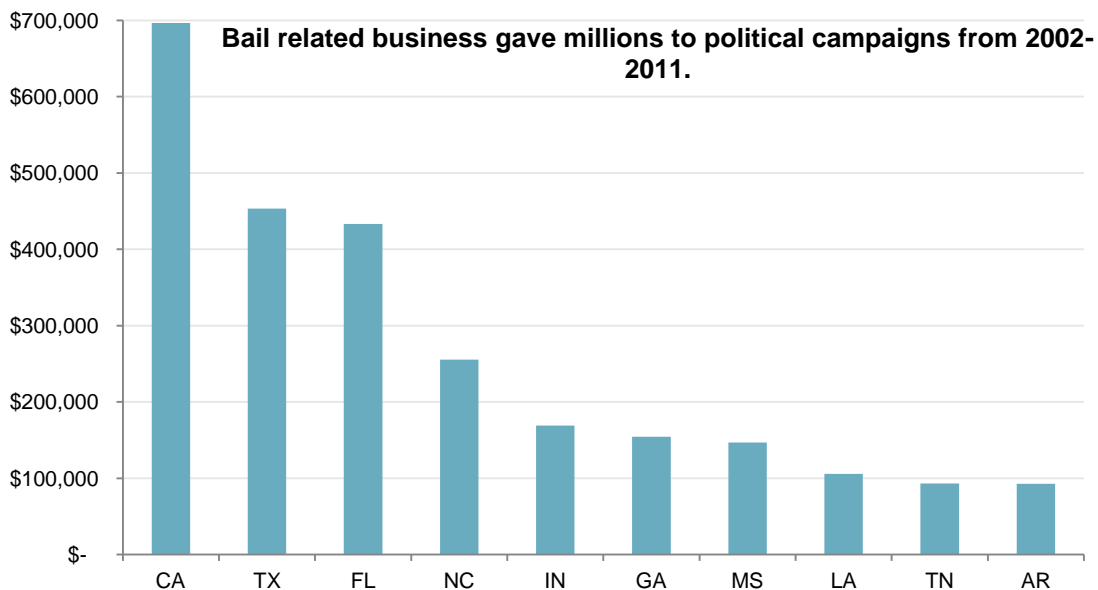
POLITICAL INFLUENCE KEEPS BAIL BONDSMEN IN BUSINESS.

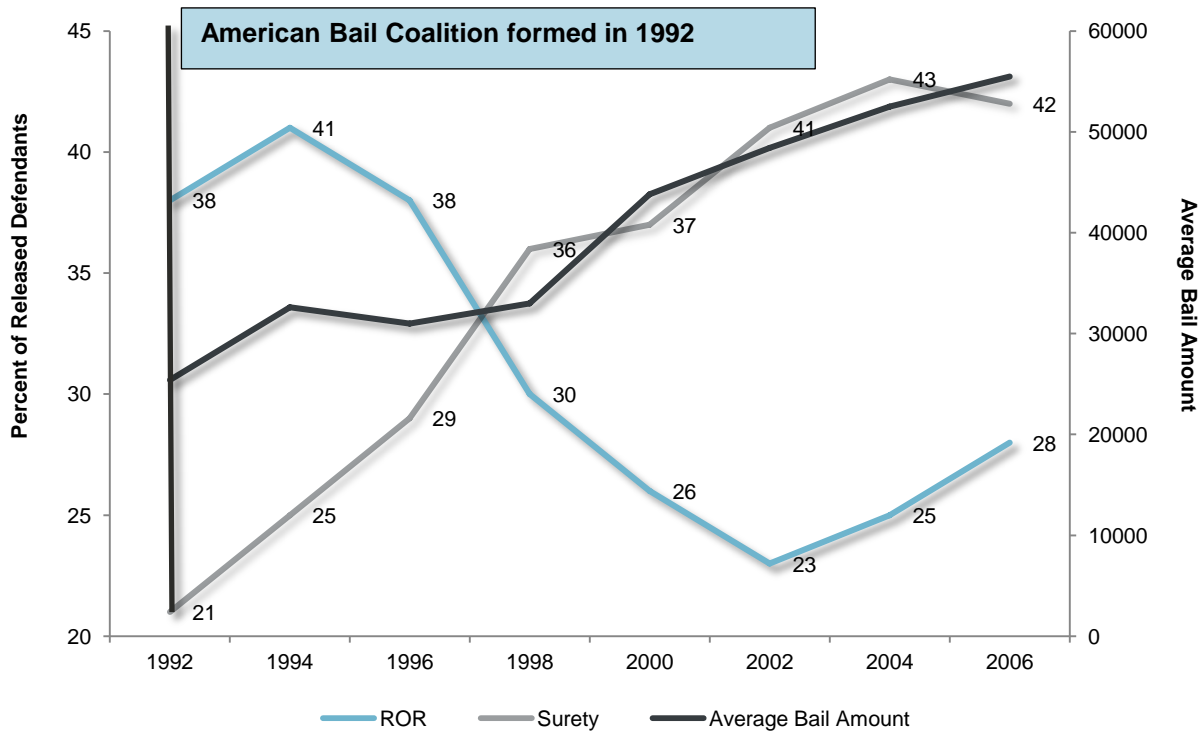
Today, the industry does a conservative estimate of \$2 billion in business annually and is supported by around 30 insurance companies. An estimated 15,000 people are employed in the industry in nearly every

jurisdiction within the 46 states that allow the practice (Illinois, Kentucky, Oregon and Wisconsin have banned for-profit bail bonding).⁶ It is big business with the power, money and organization to affect policy and practice in the criminal justice system.

A recent investigation showed that the for-profit bail industry engages in “multimillion dollar lobbying efforts”⁷ 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 2000.⁸

Campaign donations from the bail industry are also 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 2011⁹. Eighty-two percent of these donations (\$2,600,070) were made within ten states (see graph).





In 1994, the American Bail Coalition (ABC), joined forces with the American Legislative Exchange Council (ALEC). 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 people eligible to participate in their programs.

As the graph shows, since the formation of ABC and its association with ALEC, the for-profit bail industry has flourished while non-financial release has declined and bail amounts have risen.

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

The fact that for-profit bail bonding introduces money and profit into the pretrial process and gives bail agents complete control of an accused person’s liberty has led to

numerous instances of abuse and corruption in the industry. Cases abound of bondsmen bribing jailers and inmates for increased access to potential clients, employing brutal and illegal methods to extort money and information and even using their extralegal powers to coerce people into sexual acts. The industry laments the negative image these abuses create, but it is the system itself which enables such behavior.

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

Effective pretrial release programs employ rigorous, validated risk assessments, offer pretrial release recommendations and supervise and monitor released persons within a continuum of options. Successful models of pretrial services can be found in Multnomah County, Oregon; Kentucky; and the Federal pretrial system.

RECOMMENDATIONS

1. **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. Short of legislative banning, jurisdictions should implement non-financial release guidelines and procedures as well as work to reshape outdated pretrial attitudes and beliefs.
2. **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 should be incorporated in justice systems where they are absent and supported where they currently exist. These agencies require political commitment to maintain adequate funding and to support legislation solidifying 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 and insist that no PTS agency should be required to provide supervision or other services for a person released on surety

bond. Such practices simultaneously undermine pretrial services, financially burden people awaiting trial and their loved ones, and recognize the inherent public safety deficits of for-profit bail bonding.

3. **Require greater transparency within the industry.** Until such a time that for-profit bail bonding can be eliminated from our nation's pretrial systems, the industry must be held more accountable and to a greater standard of transparency. Several key changes are needed:
 - a. The industry should be held to the same reporting standards it has demanded of PTS agencies in its proposed "Citizens Right to Know" policies.
 - b. Greater standards of licensing and regulation, including increased training in the foundations of criminal justice and legal procedure.
 - c. Regulation and oversight of the industry should be shifted away from state insurance bodies and to state and local judiciaries.

**THE FOR-PROFIT BAIL INDUSTRY
LOBBIES FOR LEGISLATION THAT
IMPROVES THEIR BOTTOM LINE**

NOT OUR JUSTICE SYSTEM.

¹ Arthur Lawton Beeley, *The Bail System in Chicago* (Chicago: University of Chicago Press, 1927).

² Dennis Bartlett, email message, June 22, 2012.

³ Pretrial Justice Institute, *The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment* (Washington, DC, 2006).

⁴ Jonathon Martin, "Higher bails likely in courts despite deadlock in Olympia," *Seattle Times*, June 4, 2011.

http://seattletimes.nwsourc.com/html/localnews/2015235251_bail05m.html.

⁵ Barry Mahoney and Walt Smith, *Pretrial Release and Detention in Harris County: Assessment and Recommendations* (Denver, Colorado: The Justice Management Institute, 2005.)

⁶ Professional Bail Agents of the United States, "About Us," August 2012.

<http://www.pbua.com/displaycommon.cfm?an=1>.

⁷ American Bar Association, "Silver Gavel Award, Interview with Laura Sullivan," 2011.

http://www.americanbar.org/content/dam/aba/images/public_education/gavel_radio_2011.pdf.

⁸ Amanda Gullings, *The Commercial Bail Industry: Profit or Public Safety* (San Francisco: Center on Juvenile and Criminal Justice, 2012).

⁹ 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.

REFORM BAIL



—justicepolicy.org—

The Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *For Better or For Profit: How the bail bonding industry stands in the way of fair and effective pretrial justice*, please visit www.justicepolicy.org or contact us at Justice Policy Institute 1012 14th St. NW, Suite 400 Washington, DC 20005 Phone: (202) 558-7974 or at info@justicepolicy.org.