Approved: February 8, 2007
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfreid at 1:30 P.M. on February 7, 2007 in Room 313-S of the Capitol.

All members were present except:
Representative Ted Powers- excused

Committee staff present:
Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Carol Doel, Committee Assistant

Conferees:
David Stuckman - American Bail Coalition
Chris Joseph - General Counsel KPBBA
Darrel Manning - Bail Bond Recovery Agent
Manuel Baraban - Bail Bondsman
Shane Rolf - Bail Bondsman
Randall Kahler - Bail Bondsman

Others attending:
See attached list

Chairman Siegfreid directed the committees' attention to information regarding the "Guidelines for Catered Event Notification" which had been requested at the hearing on **HB 2202** - concerning alcoholic liquors; relating to farm wineries. (Attachment 1)

The Chair opened the floor for introduction of bills and recognized Stuart Little, Kansas Association of Addiction Professionals.

Mr. Little requested a bill that amends the Kansas State Gaming Funds. The Chairman moved the bill, seconded by Representative Loganbill. With no objections, the bill will be accepted.

Representative Judy Morrison requested a bill regarding certification of behavior analysts. The Chairman moved the bill, with a second by Representative Olson. With no objections, the bill will be accepted.

There were no further bill introductions and Chairman Siegfreid opened the floor for hearing on **HB 2203** - concerning crimes; criminal procedure and punishment; relating to release prior to trial; conditions of release.

Kathie Sparks of Legislative Research gave an explanation of **HB 2203**.

The Chair recognized Representative Mike Peterson who spoke in favor of **HB 2203** relating that the bill is a request of the administrative judge in Wyandotte County. It allows for an alternative method of pre-trial release for individuals accused of crimes. The amount of cash, not less than 10%. It could be whatever the court feels is adequate. It allows the family of an individual to put up money and allow the individual out to work and take care of his family and the money would still be there to pay fines, or restitution to higher counsel when the case is over and they get their money back. It also allows judicial districts to hold down the number of people who are in jail. (No Attachment)

There was a question as to whether or not there was a Supreme Court order still in effect which provided for pretrial release and if so **HB 2203** would not be necessary. Kathie Sparks of Legislative Research verified that this order did exist and was still in effect.

There were no other persons wishing to speak in favor of **HB 2203** and Chairman Siegfreid opened the floor for opponents of **HB 2203** recognizing Christopher Joseph, General Counsel for Kansas Professional Bail Bond Association, Inc. Mr. Joseph related that studies have shown that such programs as described in the bill result in a high rate of defendants failing to appear in court as well as overwhelming law enforcement with

warrants and while they are free, they continue to roam the streets and commit other crimes. (Attachment 2)

Mr. Joseph called attention to a study by Helland & Tabarrok. (Attachment 3)

Also submitted for review by Mr. Joseph was an article entitled "Shirk's Criminal History" (Attachment 4) as well as a request from former Attorney General, Robert Stephen to former Representative Marvin Smith, Senator Oleen and Judge Carpenter regarding their opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. (Attachment 5) Also submitted to the Committee was a copy of the Supreme Court Order Number 96 regarding Pretrial Release signed by Chief Justice Richard W. Holmes. (Attachment 6)

David Stuckman, spokesman for American Bail Coalition, gave testimony opposing **HB 2203**. Mr. Stuckman stated that the bail agents are members of the Professional Bail Agents of the United States. They guarantee and ensure that justice is served without coercion of the citizens who may be charged with a crime, maintaining innocence until proven guilty, additionally, guaranteeing that the victims of crime have their day in court. This is done with no cost to the taxpayers. (Attachment 7)

Bail bond recovery agent, Darrel Manning spoke opposing **HB 2203**. Mr. Manning opined that the bill would put the courts in the role of the bail bondsman and would put sheriffs in the recovery agent business where they are already spread too thin to actively deal with the number of outstanding warrants. (Attachment 8)

Manuel Baraban appeared before the committee in opposition to **HB 2203**. Mr. Baraban has been in the bail bond business for almost 40 years. Mr. Baraban feels that the enactment of **HB 2203** would place a greater burden on law enforcement to find criminal defendants who fail to appear, as well as unnecessarily delaying a victim's right to their day in court. (Attachment 9)

Randall Kahler, General Manager of Mannie's Bonding Company, presented testimony opposing **HB 2203** relating that 10% cash bonding is a big black hole and will cost the state of Kansas and its taxpayers millions of dollars. He further related that if the bill passes, he has three suggestions: 1) build more jails to compensate for extra prisoners, 2) increase the budget of every sheriff's department, and 3) give the courts more help because of the overwhelming work load defendants jumping bond will cause. (Attachment 10)

Professional bail bondsman Shane Rolf, opposes **HB 2203**. It is his opinion that from a cost standpoint, a State should choose a system of pre-trial release that produces the lowest instance of failures to appear. He further opined that the criminal justice system cannot legitimately function when large percentages of charged defendants do not appear to address the charges against them. All studies have shown that a pre-trial system utilizing surety bail bonds produce the lowest rate of failure to appear of all the various methods of pre-trial release as well as being the most inexpensive method. (Attachment 11) Mr. Kahler also submitted a copy of a Bureau of Justice Statistics Bulletin entitled *"Pretrial Release of Felony Defendants, 1992"* (Attachment 12)

Written testimony in opposition to **HB 2203** was supplied by Eric Rucker, Chief Deputy District Attorney Johnson County, Kansas (Attachment 13) and Attorney Scott Gyllenborg of Olathe, Kansas. (Attachment 14)

Also provided to the committee by Kevin Barone, was *"The Effectiveness and Cost of Secured and Unsecured Pretrial Release in California's Large Urban Counties 1990-2000"* authored by Michael Block, PhD. Professor of Economics & Law, University of Arizona. (Attachment 15)

Eric Willis, bail bondsman; Chris Fisher, bail bondsman; and Doug Smith addressed the committee opposing **HB 2203**. (No Written Testimony).

With no other person wishing to speak to the bill, the Chair closed the hearing on **HB 2203**.

There being no further business before the committee, Chairman Siegfreid adjourned the meeting.

FEDERAL AND STATE AFFAIRS
GUEST LIST

Date 2/7/07

Kevin Barone	KPBBA
Eric Wilde	" "
Darrol Manning	KPBBA
Aaron Gunderson	K.P.B.B.A.
Tommy Hendrickson	KPBBA
Ray V. Vunovich	KPBBA
D. Heinemann	Stand Up For Kansas
Doug Smith	Ks Professional Sureties
Ron Seeber	Hein Law Firm
Shane Rolf	Shane's Bail
Bill Warfield	Greenleather Bonds
Chris Fisher	Big Fish Bail Bonds - Wichita
Tony Sudduth	Dynamite Bail Bonds
Mark Bachman	KAPS
Randall Kahler	Marmet Republic

K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

KATHLEEN SEBELIUS, GOVERNOR

POLICY MEMORANDUM 2002 – 4 (Revised)

Subject: Guidelines for Catered Event Notification

Revision Date: June 1, 2006

1. Purpose: The purpose of this memorandum is to provide clarification of the statutes and regulations as they pertain to notifying local law enforcement agencies and the Division of Alcoholic Beverage Control on catered events.

2. Applicability: This policy memorandum is applicable to all licensed caterers, drinking establishment/caterers and hotel/drinking establishment caterers.

3. Discussion: Issues frequently surface concerning the requirement of licensed caterers to notify local law enforcement and the Alcoholic Beverage Control Division on events they will be catering. Kansas' statutes and administrative regulations require licensed caterers to notify local law enforcement and the ABC prior to conducting catered events. The following paragraphs discuss the catering notification requirement and the Division's policy on notifications, handling late notifications and failure to notify.

a. K.S.A. 41-2643(d) states "A caterer shall notify the director at least 10 days prior to any event at which the caterer will sell alcoholic liquor by the individual drink unless the director waives the 10-day requirement for good cause shown. In addition, prior to the event, the caterer shall notify: 1) The police chief of the city where the event will take place, if the event will take place within the corporate limits of a city; or 2) the county sheriff of the county where the event will take place, if the event will be outside the corporate limits of any city."

b. K.A.R. 14-22-6 (b) requires: "Each caterer shall notify the director not less than 10 days in advance of each event at which the caterer will sell alcoholic liquor by the individual drink." In reference to notifying local law enforcement agencies, K.A.R. 14-22-6 (c) and (d) require respectively: "For each event to be catered in an incorporated city, the caterer shall file with the law enforcement agency for the city in which the event will be held, a notice that an event will be held," and "For each event to be catered outside an incorporated city, the caterer shall file with the sheriff of the county in which the event will be held, a notice that an event will be held." In addition, K.A.R. 14-22-6 (e) identifies specific requirements of the notification. This issue is discussed in paragraph 3 (g) of this policy memorandum.

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66625-3512
Voice 785-296-7015 Fax 785-296-7185 http://www.ksrev

c. There are two issues to address when it comes to notifying ABC of catered events. The first is late notification. There are a variety of reasons given by licensees for the late notification. Historically, the Division policy has been to accept most late notifications but to process them as
violations consistent with our penalty structure. For this violation, the first offense was a $250 fine with subsequent violations increasing by $250 incrementally until the fifth violation, at which time the license was to be revoked. This approach caused licensed caterers to fail to notify the ABC at all due to the perceived severity of the penalty.

d. The statute authorizes the Director to waive the 10-day requirement "for good cause shown," but fails to define "good cause shown." There are two major categories that the ABC generally accepts as "good cause:" 1) Licensees are often contacted late by persons desiring their services; and 2) caterers simply fail to recognize the deadline and submit the paperwork timely. Late notifications impact the overall ability of the ABC and local law enforcement to enforce the liquor laws. Accordingly, licensees should make every attempt to provide at least 10 days advance notice of catered events.

e. The second issue with regard to notifying ABC of catered events is complete failure to notify the Division. Complete failure may be intentional or unintentional but the fact remains that proper notification was not provided. Our previous penalty provisions treated failure to notify and late notification the same, despite the disparity between the two.

f. **Original Policy**. The original policy memo on this subject provided guidance effective July 1, 2002 whereby late notifications would be accepted but a graduated fine would be imposed depending on how late the notification was received. This policy was revised effective August 22, 2003, and allowed a no-fine provision for notices received less than 10 days but greater than 5 days prior to the event for "good cause shown".

g. **Revised Policy**. Effective June 1, 2006, "Good cause shown" will be presumed on any notice provided to the Director within 10 days prior to a catered event. Failure to notify the Director prior to a catered event will result in a $250 fine for a first offense. Under a progressive fine structure, each subsequent violation will increase by $250 per violation through the fourth violation. A fifth violation of this nature will normally result in revocation of the caterer's license.

h. **Specific notification requirements.** K.A.R. 14-22-6 (e) requires "Each notice ...shall contain:

(1) a copy of the catering contract, in force or proposed, with the sponsor of the event, if applicable;

(2) a clear description of the event premises which shall be in enough detail that the event premises are identifiable;

(3) disclosure of all personnel who will be mixing or dispensing alcoholic liquor at the event, and

(4) a statement of the dates the event will be conducted and the hours of operation on each date.

The Notification of Catered Event form, ABC Form 318, supplies space to provide a "clear description of the event premises" and "a statement of the dates ...and the hours of operation." The other two items listed under paragraphs 1 and 3 above are NOT REQUIRED TO BE SUBMITTED with the notification of catered event document. However, both of these items, a contract and a listing of employees mixing or dispensing alcoholic liquor at the catered event, must be available and on-hand at the actual event.

i. **Notification Procedures.** Caterers may submit their notification either by mail or fax to ABC. On all late notifications, please include an explanation of the late notification to show good cause. Failure to provide the explanation may result in a violation carrying the penalties as if no notification was provided. The ABC Form 318 (Notification of Catered Event) may be mailed, faxed or emailed to:

Kansas Alcoholic Beverage Control Division
Attn: Special Events Coordinator
Docking State Office Building, Rm 214
915 SW Harrison Street
Topeka, KS 66625-3512

or fax to: (785)296-7185

or email: abc_mail@kdor.state.ks.us

4. Additional Comments:

a. Failure to comply with the applicable statutes, regulations and/or this policy memorandum, may result in administrative action for violation of the liquor laws.

b. ABC Agents and local law enforcement officers will verify compliance with the provisions of the applicable statutes, regulations and this policy memorandum.

5. Clarification of Policy: All requests for clarification of this policy should be directed *in writing* to this office via mail, fax, or email.

6. Effective date of this Policy: The original policy was effective August 22, 2003. This revised policy is effective from June 1, 2006 until further notice.

Original Signed and On File

Thomas W. Groneman

Subject: Guidelines for Catered Event Notification (Revised)
June 1, 2006

cc: Assistant Attorney General
Chief of Enforcement
Licensing Supervisor
Compliance Supervisor
Administration Supervisor
Enforcement Agents

Attachment: ABC Form 318
(down load from "http://www.ksrevenue.org/abc/other-forms.html")

14-22-6 Events; filings; notice; food sales required. (a) Each caterer, under this article, may offer for sale, sell and serve alcoholic liquor for consumption at an event.
(b) Each caterer shall notify the director not less than 10 days in advance of each event at which the caterer will sell alcoholic liquor by the individual drink.
(c) For each event to be catered in an incorporated city, the caterer shall file with the law enforcement agency for the city in which the event will be held, a notice that an event will be held. The notice shall contain that information required by subsection (e).
(d) For each event to be catered outside an incorporated city, the caterer shall file with the sheriff of the county in which the event will be held, a notice that an event will be held. The notice shall contain that information required by subsection (e).
(e) Each notice required by subsections (c) or (d) shall contain:
(1) a copy of the catering contract, in force or proposed, with the sponsor of an event, if applicable;
(2) a clear description of the event premises which shall be in enough detail that the event premises are identifiable;
(3) disclosure of all personnel who will be mixing or dispensing alcoholic liquor at the event; and
(4) a statement of the dates the event will be conducted and the hours of operation on each date.
(f) The licensee shall prominently display at each event, upon a poster or other device located at the entrance to the event premises:
(1) the caterer's name;
(2) the caterer's license;
(3) the name of the sponsor; and
(4) a copy of the notice required by subsections (c) or (d).
(g) A caterer shall not:
(1) conduct an event upon licensed premises unless the caterer also holds the license for the licensed premises;
(2) conduct an event for longer than seven days, unless the director first approves the longer duration;
(3) deny access to an event to any law enforcement officer;
(4) operate an event between the hours of 2:00 A.M. and 6:00 A.M.; or
(5) sell cereal malt beverage or non-alcoholic malt beverages at an event.
(h) For each event, the caterer shall keep records for three years which:
(1) demonstrate the ratio of food sales to alcoholic beverage sales is not less than 30% in a 12 month period. This shall not apply to events conducted in a county which has eliminated this requirement;
(2) demonstrate that all excise taxes have been paid; and
(3) demonstrate that all sales taxes have been paid. (Authorized by K.S.A. 41-2634, 79-3618, 79-41a03; implementing K.S.A. 1989 Supp. 41-2613, K.S.A. 1989 Supp. 41-2614, 41-2634, K.S.A. 79-3609, and K.S.A. 79-41a07 as amended by L. 1990, Ch. 179, Sec. 7; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1990; amended July 1, 1991.)

NOTIFICATION OF CATERED EVENT

ALCOHOLIC BEVERAGE CONTROL
915 SW HARRISON STREET, ROOM 214
TOPEKA, KANSAS 66625-3512
Phone: (785) 296-7015
Fax: (785) 296-7185

SEE K.A.R. 14-22-6 ON REVERSE SIDE BEFORE COMPLETING FORM

Caterer License Name _____

Caterer License Number _____

Title of Event _____

Location of Event _____
(Include Street Address, City and County)

Date and Time of Event _____

Approximate No. of People to Be Served _____

Name and Address of Sponsor _____

Caterer Rep. and Daytime Telephone No. _____

Notification must be received by the ABC Director at least ten (10) days prior to any event in which a caterer sells alcoholic liquor. A caterer must also notify the police chief or county sheriff prior to the beginning of the event.

YOU MUST DRAW A DIAGRAM OF THE PREMISES WHERE THE CATERED EVENT IS GOING TO TAKE PLACE.

_____

ABC-318 (Rev. 1/02) Signature of ABC Official Date

ARTICLE 22 CATERER

KPBBA

1508 SW
Topeka
Boulevard
Topeka,
Kansas 66612

President
Tommy
Hendrickson

Vice-President
Aaron
Gunderson

Treasurer
Chris Waisner

Board of
Directors
Mitch Walker
Ray Vunovich
Eric Willis

General
Counsel
Christopher
Joseph,
Joseph &
Hollander P.A.

s Kansas Professional Bail Bond Association, Inc.

TO: House Federal-State Committee

FROM: Christopher M. Joseph, General Counsel

DATE: February 5, 2007

RE: Opposition to HB 2203

Good afternoon Chairman and members of the Committee, my name is Chris Joseph and I am the General Counsel for the Kansas Professional Bail Bond Association, Inc. The KPBBA is an association of professional sureties in the State of Kansas. We are here to testify today in opposition of HB2203.

House Bill 2203 essentially codifies a judicially-created hybrid bond, known as the "own recognizance cash deposit bond" or "ORCD bond", authorized by Kansas Supreme Court Administrative Order 96. The Supreme Court order authorizes judges to allow defendants to post bond by paying 10% of the total bond, in the form of cash, to the district court clerk. This hybrid bond was modeled after programs in other states. **Studies have shown that such programs result in a high rate of defendants failing to appear in court as well as overwhelming law enforcement with warrants.** *See* Exhibit 1. Without a massive increase in funding to hire new officers, law enforcement is unable to actively seek out defendants who failed to appear in court. While such defendants roam the streets, they commit other crimes. **Each year, numerous such crimes are committed in Kansas by defendants who post this hybrid bond, fail to appear in court, and remain at large for months because no one is actively searching for them.** *See* Exhibit 2.

The studies attached to this memorandum provide compelling statistics. For example, according to the Helland & Tabarrok study:

> 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. Deposit bonds perform only marginally better than release on own recognizance. . . . Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to those released on cash bond. These finding indicate that bond dealers and bail enforcement agents ("bounty hunters") are effective at discouraging flight and at recapturing defendants. Bounty hunters, not

FEDERAL AND STATE AFFAIRS
Date 2/7/07
Attachment 2

KPBBA

1508 SW Topeka Boulevard
Topeka, Kansas 66612

President
Tommy Hendrickson

Vice-President
Aaron Gunderson

Treasurer
Chris Waisner

Board of Directors
Mitch Walker
Ray Vunovich
Eric Willis

General Counsel
Christopher Joseph,
Joseph & Hollander P.A.

public police, appear to be the true long arms of the law.

Helland & Tabarrok, *Public versus Private Law Enforcement: Evidence from Bail Jumping*, 47 Journal of Law and Economics 93 (April, 2004).

A brief history on Supreme Court Administrative Order 96 is helpful. On October 26, 1993, the Third Judicial District adopted DCR 3.324. The local rule created the hybrid ORCD bond. **On February 22, 1994, Attorney General Robert Stephan issued Attorney General Opinion No. 94-25, concluding that the hybrid bond program was illegal.** *See* Exhibit 3. The opinion addressed concerns expressed by Representative Marvin Smith and Senator Lana Oleen. The Attorney General noted that "while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions." The Attorney General concluded that the ORCD hybrid bond was prohibited by statute. In reaching this conclusion, the Attorney General noted: "On at least three occasions legislation has been introduced which would have variously prohibited or codified this 10% program . . . . All three bills were defeated at various stages." Finally, the Attorney General concluded that it was illegal for the courts to keep a portion of the bond money as an "administrative fee." The Attorney General did not reach the concern of Senator Oleen "that the court is somehow restricting the ability of a defendant to obtain the services of a professional bondsman by requiring that a defendant select the OR-CD program."

On January 17, 1995, the Supreme Court issued Administrative Order Number 96, allowing district courts to implement programs allowing the hybrid bonds that Bob Stephan had determined were illegal. *See* Exhibit 4. Order 96 provided that "in addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may be accomplished by promulgation of a local rule substantially as provided in the attached example." The attached rule was Shawnee County rule 3.324, which included the provision allowing the courts to keep a percentage of the bond as an "administrative fee." The order was signed by former Chief Justice Richard W. Holmes.

The language of HB 2203 essentially approves of the "10% to the courts" bond program authorized by Supreme Court Administrative Order 96. **Instead of blessing the courts' attempt to get into the bail bond business, the legislature should prohibit it.** Senate Bill 203 does exactly that. SB 203 recognizes that the fee paid to bondsmen by defendants provides the funding for bondsmen to track whether defendants appear in court and, if they fail to appear, actively hunt them down and return them to jail. Without bondsmen providing this essential service, when a defendant fails to appear in court all that happens is that a warrant is issued, the criminal process stops, and the courts wait for the defendant to come into contact with law enforcement, most often in the form of a traffic stop. **Unless the legislature is prepared to provide millions of dollars to fund the hiring and training of hundreds of new police officers to actively hunt down defendants who fail to appear, HB 2203 must be rejected.**

Public versus Private Law Enforcement: Evidence from Bail Jumping

Eric Helland* and Alexander Tabarrok**

Abstract

After being arrested and booked, most felony defendants are released to await trial. On the day of the trial, a substantial percentage fail to appear. If the failure to appear is not quickly explained, warrants are issued and two quite different systems of pursuit and rearrest are put into action. Public police have the primary responsibility for pursuing and rearresting defendants who were released on their own recognizance or on cash or government bail. Defendants who made bail by borrowing from a bond dealer, however, must worry about an entirely different pursuer. When a defendant who has borrowed money skips trial, the bond dealer forfeits the bond unless the fugitive is soon returned. As a result, bond dealers have an incentive to monitor their charges and ensure that they do not skip. When a defendant does skip, bond dealers hire bail enforcement agents, more colloquially known as bounty hunters, to pursue and return the defendants to custody. We compare the effectiveness of these two different systems by examining failure to appear rates, fugitive rates and capture rates of felony defendants who fall under the respective systems. We apply propensity score and matching techniques.

Keywords: bail, surety bond, pretrial release, bounty hunter, propensity score, matching method

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The authors wish to thank Jonathan Guryan, Steve Levitt, Lance Lochner, Bruce Meyer, Jeff Milyo, Christopher Taber, Sam Peltzman and seminar participants at Claremont McKenna College, the American Economic Association annual meetings (2002), George Mason University, Northwestern University and the University of Chicago.

1. Introduction

Approximately one quarter of all released felony defendants fail to appear at trial. Some of these failures to appear (FTA) are due to sickness or forgetfulness and are quickly corrected, but many represent planned abscondments. After one year, some thirty percent of the felony defendants who initially fail to appear remain fugitives from the law. In absolute numbers, some 200,000 felony defendants fail to appear every year and of these, approximately 60,000 will remain fugitives for at least one year.[1]

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 (Bureau of Justice Statistics 1999). 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 results when high failure to appear and fugitive rates reduce expected punishments.[2]

The dominant forms of release are by surety bond, i.e. release on bail that is lent to the accused by a bond dealer, and non-financial release. Just over one-quarter of all

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[1] All the figures are from the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics and can be found in the reports of various years on *Felony Defendants in Large Urban Counties*. We describe the data at greater length below. The SCPS program creates a sample representative of one month of cases from the 75 most populous counties (which account for about half of all reported crimes). In 1996 the sample represented 55,000 cases, which in turn represent some 660,000 filings in a year and 1,320,000 filings in the nation. The absolute figures are calculated using this total and the release, FTA, and fugitive (defined as FTA for one year or more) rates from the random sample.

released defendants are released on surety bond, a very small percentage pay cash bail or put up their own property with the court (less than 5 percent combined); most of the rest are released on their own recognizance or on some form of public bail (called deposit bond) in which the defendant posts a small fraction, typically 10 percent or less, of the bail amount with the court.

Estimating the effectiveness of the pretrial release system in the US can be characterized as a problem of treatment evaluation. Treatment evaluation problems can be difficult because treatment is rarely assigned randomly. Release assignment, for example, is based on a judge's assessment of the likelihood that a defendant will appear in court as well as on considerations of public safety. Correctly measuring treatment effects requires that we control for treatment assignment. In this paper we control for selection by matching on the propensity score (Rubin 1974, 1977, Rosenbaum and Rubin 1983, 1984 Dehejia and Wahba 1999, Heckman, Ichimura and Todd 1999).

We begin with a brief history of pretrial release followed in section 3 by a further explanation of the different release forms and their incentive effects. Section 4 discusses the matching method. Section 5 presents the results of the matching and our estimates of the treatment effect. We estimate the treatment effect for three outcomes - the probability that a defendant fails to appear at least once; the probability that a defendant remains at large for one year or more conditional on having failed to appear (what we call the fugitive rate); and the probability that a defendant who failed to appear is recaptured as a function of time.

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[2] Justice delayed can mean justice denied in practice as well as in theory. Thousands of cases are dismissed on constitutional grounds every year because police fail to serve warrants in a timely manner (Howe and Hallissy 1999).

2. History of Pretrial Release

Bail began in medieval England as a progressive measure to help accused defendants get out of jail while they waited, sometimes for many months, for a roving judge to show up to conduct a trial. If the local sheriff knew the defendant he might release him on the defendant's promise to return for trial, sometimes backed up by some sort of bond – but more often the sheriff would release the accused to the custody of a surety, usually a family member or friend. Under the common law, custody over the accused was never *relinquished* but instead was *transferred,* which explains the origin of the extraordinary rights that sureties have to pursue and capture escaped defendants. Initially, if the accused failed to appear, the surety literally took their place and was judged accordingly. Over time, the penalty became less severe until the system of money forfeiture became common.[3] The English system was adopted by the United States in most particulars with the exception that personal surety was slowly replaced by a commercial system. By the end of the 19th century commercial sureties were the norm.

Although money bail is still the most common form of release, money bail and especially the commercial surety industry have come under increasing and often virulent attack since the 1960s.[4] As noted above, bail began as a progressive measure to help defendants get *out* of jail when the default option was that all defendants would be held until trial. In the twentieth century, however, the default option was more often thought

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[3] Freed and Wald (1964) describe the history of bail at greater length and provide references.

[4] Floyd Feeney (1976, xi), for example, writes that "the present system of commercial surety bail should be simply and totally abolished....It is not so much that bondsmen are evil – although they sometimes are – but rather that they serve no useful purpose." The American Bar Association (1985, 114-115) refers to the commercial bond business as "tawdry" and discusses "the central evil of the compensated surety system." When Oregon considered reintroducing commercial bail, Judge William Snouffer testified "Bail bondsmen are a cancer on the body of criminal justice..." quoted in Kennedy and Henry (1996). Supreme Court Harry Blackmun called the commercial bail system "offensive" and "odorous" (see SCHILB v. KUEBEL 404 U.S. 357 (1971), available on the web at http://laws.findlaw.com/us/404/357.html.)

of as release and thus money bail was reconceived as a factor that kept people *in* jail. In addition, the greater burden of money bail on the poor elicited growing concern.[5] As a result significant efforts were made, beginning in the 1960s, to develop alternatives to money bail.

In the early 1960s, the Vera Institute's Manhattan Bail Project gathered information on a defendant's community ties and residential and employment stability and summarized this information in a point score. Defendants with high point scores were recommended for release on their own recognizance. Felony defendants who were recommended for release by the Manhattan Bail Project had failure to appear rates that were no higher than those released on money bail. Largely on the basis of these results, in 1966 President Lyndon Johnson signed into law the first reform of the federal bail system since 1789. The Federal Bail Reform Act of 1966 created a presumption in favor of releasing defendants on their own recognizance.

Although the Bail Reform Act of 1966 applied only to the federal courts these reforms have been widely emulated by the states (where the reform process began). Every state now has some pretrial services program and four states, Illinois, Kentucky, Oregon and Wisconsin, have outlawed commercial bail altogether.[6] In place of commercial bail, Illinois introduced the "Illinois Ten Percent Cash Bail" or "deposit bond" system. In a deposit bond system the defendant is required to post with the court an amount up to 10 percent of the face value of the bond. If the defendant fails to appear,

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[5] In order to provide appropriate incentives, money bail is typically higher for the rich than the poor. Thus, it is not a priori necessary that money bail should discriminate against the poor although in practice this does occur due to non-linearities and fixed costs in the bail process. Assume that money bail is set so as to create equal failure to appear (FTA) rates across income classes. In such a case, there is no discrimination against the poor in the *setting* of bail. But if the bail amounts necessary to ensure equal FTA rates are not linear in wealth then such rates can generate unequal rates of release across income classes.

[6] In the Pretrial Services Act of 1982 pretrial service agencies were established in all 94 Federal district courts.

the deposit may be lost, and the defendant held liable for the full value of the bond. If the defendant appears for trial, the deposit is returned to the defendant, less a small service fee in some cases (National Association of Pretrial Service Agencies 1998). Some counties will also release defendants on unsecured bonds. Unsecured bonds are equivalent to zero percent deposit bonds. That is, defendants released on an unsecured bond are liable for the full bail amount if they fail to appear but they need not post anything to be released.

The Manhattan Bail Project showed that the failure to appear rates of *carefully selected* felony defendants released on their own recognizance were no higher than those released on money bail. But the Manhattan Bail Project released relatively few defendants and so could easily "cream-skim" the defendants who were most likely to appear at trial. As pretrial release programs greatly expanded across the states in the late 1960s and early 1970s, selection became more difficult and was made even more difficult as prisons became overcrowded. Using data from the 1960s and 1970s from some 15 cities, Thomas (1976) suggested that as the percent of defendants released on their own recognizance increased so did the failure to appear rate – a conclusion also reached by many police chiefs and other observers of the bail process (Romano 1991).

Economic studies of the bail system include Landes (1973, 1974), Clarke et al (1976) and Myers (1981). These studies examine the role of the bail amount in the decision to FTA, generally finding that higher bail reduces FTA rates. These earlier studies did not focus on the central issue of this paper - the different incentive effects of the various release types.[7]

[7] Ayres and Waldfogel (1994) demonstrate the subtlety of the distinctions made by bond dealers in setting bail bond rates. Although the courts (in New Haven, Connecticut in 1990) set higher bail amounts for minority defendants than

3. Incentive Effects of Different Release Types

The pretrial release system is designed to ensure that defendants appear in court. It's often asserted that the commercial bail system *discourages* appearance because those released on surety bond are given few incentives to show up for trial. In a key Supreme Court case, for example, Justice Douglas argued that:

> ...the commercial bail system failed to provide an incentive to the defendant to comply with the terms of the bond. Whether or not he appeared at trial, the defendant was unable to recover the fee he had paid to the bondsman. No refund is or was made by the professional surety to a defendant for his routine compliance with the conditions of his bond. *Schilb v. Kuebel,* ((1971), 404 U.S. at 373-374).[8]

Similarly, Drimmer (1996, 742), says "hiring a commercial bondsman removes the incentive for the defendant to appear at trial." Goldkamp and Gottfredson (1985, 19) suggest that "use of the bondsman defeated the rationale that defendants released on cash bail would have an incentive to return" and in their influential set of performance standards for pretrial release the National Association of Pretrial Service Agencies (1998) says under commercial bail "the defendant has no financial incentive to return to court."[9]

In light of the persistent criticism that surety bail encourages FTA it is perhaps surprising that the data consistently indicate that defendants released via surety bond have lower FTA rates than defendants released under other methods. Part of this might be explained by selection – FTA rates, for example, may be higher for those defendants charged with minor crimes - perhaps these defendants reason that police will not pursue a failure to appear when the underlying crime is minor - and defendants charged with

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for whites, Ayres and Waldfogel find that bond dealers acted in precisely the opposite manner. What this pattern suggests is that judges set higher bail for minority defendants *compared to white defendants with the same probability of flight.* Bond dealers are then induced by competition to charge minorities relatively lower bail bond rates.

[8] The case can be found on the web at http://laws.findlaw.com/us/404/357.html.

[9] See also Thomas (1976, 13) who because of this issue calls the surety system "irrational."

minor crimes are more likely to be released on their own recognizance than on surety release. A second reason, however, is that bond dealers, just like other lenders, have numerous ways of creating appropriate incentives for borrowers.

Most obviously, a defendant who skips town will owe the bond dealer the entire amount of the bond just as with the deposit bond system. Defendants are often judgment proof, however, so bond dealers often ask defendants for collateral and family cosigners to the bond (which is not done under the deposit bond system). If hardened criminals do not fear the law, they may yet fear their mother's wrath should the bond dealer take possession of their mother's home because they fail to show up for trial. In order to make flight less likely, bond dealers will also sometimes monitor their charges and require them to check in periodically. In addition, bond dealers often remind defendants of their court dates and, perhaps more importantly, remind the defendant's mother of the son's court date when the mother is a cosigner on the bond (Toborg 1983).[10]

If a defendant does fail to appear the bond dealer is granted some time to recapture him before the bond dealer's bond is forfeited. Thus, bond dealers have a credible threat to pursue and rearrest any defendant who flees. Bond dealers report that just to break even, 95 percent of their clients must show up in court (Drimmer 1996, Reynolds 2002). Thus, significant incentives exist to pursue and return skips to justice.

Bond dealers and their agents have powerful legal rights over any defendant who fails to appear, rights that exceed those of the public police. Bail enforcement agents, for example, have the right to break into a defendant's home without a warrant, make arrests using all necessary force including deadly force if needed, temporarily imprison defendants, and pursue and return a defendant across state lines without necessity of

entering into an extradition process (Drimmer 1996). In Taylor vs. Taintor (16. Wall. U.S. 366, 1873), which remains good law, the Supreme Court noted (371-372):

> When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state; may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest, by the sheriff, of an escaping prisoner.

Bond dealers prepare for the possibility of flight by collecting information at the time they write the bond that may later prove useful. A typical application for bond, for example, will contain information on the defendant's residence, employer, former employer, spouse, children (names and schools), spouse's employer, mother, father, automobile (description, tags, financing), union membership, previous arrests etc.[11] In addition, bond dealers have access to all kinds of public and private databases. Bob Burton (1990), a bounty hunter of some fame, for example, says that a major asset of any bounty hunter is a list of friends who work at the telephone, gas, or electric utility, the post office, welfare agencies or in law enforcement.[12]

Bond dealers, however, recognize that what makes their pursuit of skips most effective is the time they devote to the task. In contrast, public police bureaus are often strained for resources and the rearrest of defendants who fail to show up at trial is usually given low precedence. The flow of arrest warrants for failure to appear has overwhelmed

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[10] Bail jumping is itself a crime which may result in additional penalties.

[11] We thank Bryan Frank of Lexington National Insurance Corporation for discussion and sending us a typical application form.

[12] Good bond dealers master the tricks of their trade. One bond dealer pointed out to us, for example, that the first three digits in a social security number indicate in what state the number was issued. This information can suggest that an

many police departments so that today many counties are faced with a massive stock of unserved arrest warrants. Baltimore alone had 54,000 unserved arrest warrants as of 1999 (Clines 2001). In recent years Cincinnati has had over 100,000 outstanding arrest warrants stemming from failures to appear in court. One Cincinnati defendant had 33 pending arrest warrants against him (Lecky 1997). In response to the overwhelming number of arrest warrants, most of which will never be served because of lack of manpower, some counties have turned to extreme measures such as offering amnesty periods. Santa Clara County in California, for example, has a backlog of 45,000 unserved criminal arrest warrants and in response has advertised a hotline that defendants can use to schedule their own arrests (Lee and Howe 2000).[13]

Although national figures are not available it is clear that the problem of outstanding arrest warrants is widespread. Texas, for example, is relatively clean with only 132,000 outstanding felony and serious misdemeanor warrants but Florida has 323,000 and Massachusetts, as of 1997, had around 275,000 (Howe and Hallissy 1999). California has the largest backlog of arrest warrants in the nation. The California Department of Corrections estimated that as of December 1998 there were more than *two and a half million* unserved arrest warrants (California Board of Corrections 1998, Howe, Hallissy 1999). Many of these arrest-warrants are for minor offenses but tens of thousands are for people wanted for violent crimes including more than 2,600 outstanding homicide warrants (Howe and Hallissy 1999). Howe and Hallissy (1999) report that "local, state and federal law enforcement agencies have largely abandoned

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applicant might be lying if he claims to have been born in another state (many SSNs are issued at birth or shortly thereafter) and it may provide a lead for where a skipped defendant may have family or friends.

[13] See Prendergast (1999) for description of a similar program in Kenton County, Kentucky.

their job of serving warrants in all but the most serious cases." Explaining how this situation came about, they write:

> As arrests increased, jails became overcrowded. To cope, judges, instead of locking up suspects, often released them without bail with a promise to return for their next court date. For their part, police, rather than arrest minor offenders, issued citations and then released the suspects with the same expectation.
>
> When suspects failed to appear for their court dates, judges issued bench warrants instructing police to take the suspects into custody. But this caused the number of warrants to balloon, and the police did not have the time or staff to serve them all.

4. The Matching Model with Multiple Treatments

Ideally in a treatment evaluation we would like to identify two outcomes: one if the individual is treated, Y_T, and one if no treatment is administered, Y_{NT}. The effect of the treatment is then $Y_T - Y_{NT}$. But we cannot observe an individual in both states of the world making a direct computation of $Y_T - Y_{NT}$ impossible (Rubin 1974). All methods of evaluation, therefore, must make some assumptions about "comparable" individuals. An intuitive method is to match each treated individual with a statistically similar untreated individual and compare differences in outcomes across a series of matches. Thus two statistical doppelgängers would function as the same individual in different treatments.

An important advantage of matching methods is that they do not require assumptions about functional form. When the research question is about a mean treatment effect, as it is here, matching methods also allow for an economy of presentation because they focus attention on the question of interest rather than on a long series of variables that are used only for control purposes. Unfortunately, matching methods typically founder between a rock and a hard place. The technique works best when individuals are matched across many variables but as the number of variables

increases, the number of distinct "types" increases exponentially so the ability to find an exact match falls dramatically.

In an important paper, Rosenbaum and Rubin (1983) go a long way to surmounting this problem. Rosenbaum and Rubin show that if matching on X is valid then so is matching on the probability of selection into a treatment conditional on X. The multi-dimensional problem of matching on X is thus transformed into a single dimension problem of matching on $Pr(T=1 \mid X)$ where $T=1$ denotes treatment.[14] $Pr(T=1 \mid X)$ is often called the propensity score or p-score.

The matching technique extends naturally to applications with multiple treatments through the use of a multi-valued propensity score with matching on conditional probabilities (Lechner 1999, Imbrens 1999). Assume that there are M mutually exclusive treatments and let the outcome in each state be denoted Y_1, Y_2, etc. As before, we observe only a specific outcome but are interested in the counterfactual; what would the outcome have been if this person had been assigned to a different treatment? Rather than a single comparison, we are now interested in a series of pairwise comparisons between treatments m and l. The treatment effect on the treated is written:

$$\theta_0^{m,l} = E(Y^m - Y^l \mid T = m) = E(Y^m \mid T = m) - E(Y^l \mid T = m), \qquad (1)$$

where $\theta_0^{m,l}$ denotes the effect of treatment m rather than l.

Identification of (1) can occur under appropriate conditions the most important being that treatment outcomes are independent of treatment selection after conditioning on a vector of attributes, X (the conditional independence assumption). Formally,

[14] Matching methods are common among applied statisticians and natural scientists but have only recently been analyzed and applied by econometricians and economists. Papers on the econometric theory of matching include Heckman, Ichimura, Todd (1998) and Imbrens (1999). More applied work includes Heckman, Ichimura and Todd

$$Y^1 \text{K}\ Y^M \perp T \mid X = x \tag{2}$$

If this assumption is valid we can use the conditional propensity score to identify the treatment effect (see Lechner 1999),

$$\theta^{m,l} = E(Y^M \mid T = m) - \underset{p^{m|ml}}{E}\Big[E(Y^l \mid p^{m|ml}(X), T = l) \mid T = m \Big], \tag{3}$$

In practice, the conditional propensity score, $p^{m|ml}(x)$, is computed indirectly from the marginal probabilities $p^l(x)$ and $p^m(x)$ estimated from a discrete choice model. In this case:

$$E[p^{m|ml}(x) \mid p^l(x), p^m(x)] = E[\frac{p^m(x)}{p^l(x) + p^m(x)} \mid p^l(x), p^m(x)] = p^{m|ml}(x). \tag{4}$$

The matching estimator in our case is created by an ordered probit model for reasons that will be discussed below. An outline of the basic procedure is given in Table 1.

It's important to emphasize that the propensity scores are not of direct interest but rather are the metric by which members of the treated group are matched to members of the "untreated" group ("differently" treated in our context). After matching, and given the conditional independence assumption, the treated and untreated group can be analyzed *as if* treatment had been assigned randomly. Thus, differences in mean FTA rates across *matched* samples are estimates of the effect of treatment.

Less formally, matching on propensity scores can be understood as a pragmatic method for balancing the covariates of the sample across the different treatments (Dehejia and Wahba 1998). Note that the covariates that we care most about balancing are those that affect the treatment outcome. Assume, for example, that X influences treatment

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(1997), Dehejia and Wahba (1998) and Lechner (2000). Our multi-treatment application is closest to that of Lechner (1999).

selection but does not independently influence treatment outcome. If the goal of the selection model were to consistently estimate the causes of treatment selection we would want to include X in the model but it is not necessarily desirable to include it when the purpose is to create a metric for use in matching (Augurzky and Schmidt 2000). A simple example occurs when X predicts treatment exactly. Inclusion of X would defeat the goal of matching because all propensity scores would be either zero or one. Similarly, we will include in the propensity score model variables that may affect the treatment outcome even if they do not casually affect treatment selection.

5. Data and Descriptive Statistics

We use a data set compiled by the U.S. Department of Justice's Bureau of Justice Statistics called State Court Processing Statistics (SCPS), 1990, 1992, 1994, 1996 (ICPSR 2038). We supplement with an earlier version of the same collection, the National Pretrial Reporting Program (NPRP), 1988-1989 (ICPSR 9508). The data are a random sample of one month of felony filings from approximately 40 jurisdictions where the sample was designed to represent the 75 most populous U.S. counties. The data contain detailed information on arrest charges, the criminal background of the defendant (e.g. number of prior arrests), sex and age of the defendant,[15] release type (surety, cash bond, own recognizance etc.), rearrest charges for those rearrested, whether the defendant failed to appear and whether the defendant was still at large after one year among other categories.

In addition to the main release types, there are minor variations on a theme. Some counties, for example, release on an unsecured bond for which the defendant pays no

money to the court but is liable for the bail amount should he fail to appear. Because the incentive effects are very similar, we include unsecured bonds in the deposit bond category.[16] Instead of a pure cash bond it is sometimes possible to put up property as collateral. Since property bonds are rare (588 observations in our data, less than 2% of all releases), we drop them from the analysis.[17] Finally some counties may occasionally use some form of supervised release. In the first year of our dataset, supervised release is included in the own recognizance category. Supervised release often means something as simple as a weekly telephone check-in, so including these with own recognizance is reasonable. Supervised release is not a standard term, however, and other forms, such as mandatory daily attendance in a drug treatment program are likely to be more binding. To maintain comparability across years we follow the practice established in the first year of the dataset by classifying supervised release with own recognizance. Because supervised release is more binding than pure own-recognizance, this can only lower FTA rates and other results in the own recognizance sample thus biasing our results *away* from finding significant differences among treatments.[18]

In Table 2, the mean FTA rates for release categories are along the main diagonal with the number of observations in square brackets. The preliminary analysis suggests that FTA rates are lower under surety bond release than under most other types of release. Off diagonal elements are the difference between the FTA rate for the row category and the FTA rate for the column category. The FTA rate for those released under surety bond

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[15] The SCPS is more complete and better organized than the NPRP data. The former, for example, includes information on the race of the defendant that the latter does not.

[16] We drop observations with missing data on the bail amount.

[17] Another reason to drop property bonds is that it's difficult to compare the bail for these releases for other release types. A defendant, for example, may put up a $250,000 house as collateral for $25,000 in bail. Although we know the bail amount we do no know the value of the collateral property other than that it must, by law in many cases, be higher

is 17 percent. Compared to surety release, the FTA rate is 3 percentage points higher under cash bonds, 4 percentage points higher under deposit bonds and 9 percentage points higher under own recognizance (all these differences are statistically significant at greater than the 1 percent level). Put slightly differently, compared with surety release, the FTA rate is approximately 18 percent higher under cash bond, 33 percent higher under deposit bond, and more than 50 percent higher under own recognizance.

We also present some information in Table 2 on emergency release. Emergency releasees are defendants who are released solely because of a court-order on prison overcrowding. Emergency release is not a treatment – the treatment is own recognizance – but rather an indication of what happens when neither judges nor bond dealers play their usual role in selecting defendants to be released.[19] One would expect that relative to those released under other categories these defendants are likely to be accused of the most serious crimes, have the highest probability of being found guilty and have the fewest community ties. In addition, these defendants have neither monetary incentive nor the threat of being recaptured by a bounty hunter to induce them to return to court. As a result, a whopping 45 percent of the defendants who are given emergency release fail to appear for trial. The large differences between the FTA rates of those released on emergency release and every other category indicate that substantial and successful selection occurs in the release versus not released decision. Emergency release is thus of some special interest, although not directly related to the focus of this paper.

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than the value of the bail amount. A cash or surety bond, therefore, is not equivalent to a property bond for the same bail amount.

[18] We find similar results by restricting the dataset to the years in which supervised release is given a distinct category.

[19] Even under emergency release some selection can occur. Judges and jailers, for example, could order that more inmates be paroled to make room for the most potentially dangerous accused defendants or inmates could be shipped out-of-state or the court-order could be (temporarily) ignored. The costs of selection, however, clearly rise substantially when jail space is tightly constrained.

Although the preliminary data analysis is suggestive, the difference in means analysis could confound effects due to treatment with effects due to selection on, for example, defendant characteristics such as the alleged crime.

6. Results

6.1 Propensity Scores from Ordered Probit

We generate propensity scores for matching using an ordered probit model. By law, judges must release defendants on the *least restrictive* conditions that they believe are compatible with ensuring appearance at trial.[20] Own recognizance, the least restrictive form of release, is our first category followed by release on deposit bond. Although defendants released on deposit bond must put up some cash, which they will forfeit if they fail to appear, the amount of the cash is typically less than $500.[21] Few people are ever held because of a failure to raise cash for a deposit bond. Defendants who were offered financial release (but not a deposit bond) and who paid their bonds in cash are the third category of release. Cash bond is more expensive than a deposit bond but does not involve the monitoring of sureties. Defendants released via surety bond are the fourth category. Although the Constitution guarantees that excessive bail shall not be required it does not require that bail should always be set low enough for a defendant to be able to afford release. Indeed, judges sometimes set bail in the expectation (and hope) that the defendant will not be able to raise bail. Thus, we include defendants held on bail or detained without bail as the final, most restrictive category, not released. Emergency

[20] The Federal Bail Reform Act of 1966 required that defendants be released on the least restrictive conditions that will ensure their appearance at trial and almost all states have adopted similar laws since that time.

[21] The median deposit bond amount is $5000 and releasees typically must deposit 10 percent or less of the bond amount.

releases are also included in the final category because, had it not been for the emergency, these individuals would have not have been released.

Thus, stringency of release, measured by z,* is a linear function,

$$z^* = \beta' x + \gamma_t + \lambda_k + \varepsilon ,$$

where x includes all of the independent variables in the sample, γ_t are year specific intercepts for 1990, 1992, 1994, and 1996 and λ_k are county effects. The observed values of stringency are discrete and take on the value of 1 for those released on own recognizance, 2 for those on deposit bond, 3 for those on cash bond, 4 for those on surety bond and 5 if the defendant was not released. That is,

$$\begin{aligned} z &= 1 \text{ if } z^* \le 0 \\ &= 2 \text{ if } \mu_1 < z^* \le \mu_2 \\ &\text{M} \\ &= 5 \text{ if } \mu_4 \le z^* \end{aligned}$$

where $\mu's$ are the unknown cut points that can be estimated. Probabilities for each release type can then be constructed (see, for example, Greene 2000). From the ordered probit we generate conditional propensity scores for each possible pairwise comparison.[22]

Variables in the ordered probit specification include individual-specific indicators denoting whether the crime the defendant has been accused of is a murder, rape, robbery, assault, other violent crime, burglary, theft, other property offense, drug trafficking, other drug related, or driving related (with misdemeanors and other crimes in the constant). We also include variables for past experience with the criminal justice system. Three binary variables are set equal to one respectively if the defendant had some active criminal justice status at the time of the arrest (e.g. was on parole or probation), had prior

felony arrests, or had a prior failure to appear at trial. The defendant's sex and age are also included. Note that these variables are exactly the sorts of variables that judges use to make treatment selection decisions.[23] Other, non-individual variables include the police clearance rate, defined as the number of arrests divided by the number of crimes per county. The clearance rate provides a crude measure of police availability that may affect FTA rates.

County and year effects are included in the selection equation (county 29 and 1988 are excluded to prevent multicollinearity). The use of county effects in the selection equation is noteworthy because it implies that matching will occur with "quasi"-fixed effects. A true fixed-effects estimator would require that comparables come from within the same county. The matching estimator takes into account county effects when seeking a match but does not insist that every match must be within-county. In particular, some counties do not release on deposit bond and others do not release on surety bond. A fixed-effects estimator would not use information from these counties in estimating the effect of the deposit and surety treatments. The matching estimator will use information from these counties if matching is strong on other variables. A pure fixed-effects estimator may also be important, however, so we discuss this at greater length in the section below on unobservables. The results of the ordered probit estimation are in Table 3.

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[22] We have also estimated the results using a multivariate logit model. The results are substantively similar.

[23] Ayers and Waldfogel (1994) identify eight characteristics that judges may consider in setting bail: 1) the nature and circumstances of the offense (if relevant); 2) the evidence against the defendant; 3) the defendant's prior criminal record; 4) the defendant's prior FTA record; 5) the defendant's family ties; 6) the defendant's employment record; 7) the defendant's financial resources; and 8) the defendant's community ties. Although Ayers and Waldfogel's study deals only with Connecticut the criteria are similar in other states.

6.2 Matching Quality

A match is defined as the pair of observations with the smallest difference in propensity scores so long as the difference is less than a predefined caliper. If no observations can be matched within the caliper distance, the observations(s) is dropped. We use matching with replacement so the order of matching is irrelevant and every untreated observation is compared against every treated observation.[24]

The match quality is good, as we match large proportions of the sample despite using a caliper of only 0.0001.[25] Figure 1A presents a box and whiskers plot of the propensity scores for each treatment category (including the "treatment" of not-released) conditional on the actual treatment. The left most part of the graph, for example, gives the box and whiskers plot for the propensity of receiving the own, deposit, cash, surety and not released treatments for all defendants who received the own treatment.[26]

Figure 1B plots the box and whiskers for the pairwise (conditional) probabilities for the own v. surety comparison. The Pr. Own and Pr. Surety arrows indicate that we can find good comparables, statistical doppelgangers, for individuals released under either treatment. Many of the defendants released on surety bond, for example, were as likely to have been released on their own recognizance (3rd box from the left) as those who actually were released on their own recognizance (1st box from the left). Similarly, many of the defendants who were released on their own recognizance were as likely to

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[24] Dehejia and Wahba (1998) find that matching with replacement is considerably superior to matching with non-replacement.

[25] When matching on variables with fewer observations, such as fugitive rates conditional on FTA as we do below, we match using a caliper of .001. The caliper size makes little difference to the results.

[26] In a box and whiskers plot the box contains the interquartile range (IQR) the observations between the 75th percentile (the top of the box) and the 25th percentile (the bottom of the box). The horizontal line towards the center of each box is the median observation. The whiskers are the so called adjacent values which extend from the largest observation less than or equal to the 75 percentile plus 1.5 * IQR and the smallest observation more than or equal to the 25 percentile minus 1.5* IQR. Points outside the box and whiskers are called extreme values or outside points and for clarity are not plotted in this graph. In this plot, the width of the box is proportional to the square root of the number of observations in that category.

have been released on surety bond (2nd box from the left) as those who actually were released on surety bond (4th box from the left). Note that it's important that the boxes overlap *across* treatments, not that they overlap within treatments – i.e. the fact that in Figure 1A the propensity to receive the deposit bond treatment is everywhere lower than the propensity to receive own recognizance simply reflects the fact that deposit bond is a low probability event. More important is that the deposit bond treatment is a low probability event *regardless of actual treatment* – we can thus find good comparables across the treatments. Alternatively stated, the overlap in the boxes across treatments indicates that random factors play a large role in treatment selection thus aiding our effort to find true comparables.[27]

Although we can find good comparables across the release treatments we cannot find good comparables for those who were not released. Indeed, the Figure 1A box and whiskers plot of the propensity for not-released among those who in fact were not-released doesn't overlap *at all* with the propensity to be not-released for those who were released. Defendants who are not-released differ greatly from released defendants.[28] (This is consistent with the very high FTA rates we found for emergency releasees in Table 2). The fact that the model is capable of finding large selection effects if they exist, as they apparently do for those not-released, bolsters the finding that selection on observables is not overly strong among the release treatments.

6.3 Estimated Treatment Effects: Failure to Appear

In Table 4 the row variable denotes the treated variable and the column the untreated variable. For reference, the main diagonal includes the mean FTA rate in that

[27] Another interesting aspect of the box and whisker plot is that it suggests that almost everyone can be released on their own recognizance, even those who might in another time and place be released only with high bail. Thirty percent of released defendants accused of murder, for example, were released on their own recognizance.

category from the full sample.[29] Reading across the surety row, for example, we see the estimated difference in FTA rates caused by the surety treatment relative to the column treatment – i.e. the estimate of the effect of treatment on the treated. The matching estimator suggests that similar individuals are 7.3 percentage points or 28% less likely to fail to appear when released on surety bond than when released on their own recognizance. Similar individuals are also 3.9 percentage points or 18% less likely to fail to appear when released on surety bond than when released on deposit bond. The estimated treatment effect for those on surety bonds versus cash is small and not statistically significant.[30]

Two standard errors are presented in Table 4. The first takes into account uncertainty in the matched samples but assumes that the propensity score is known with certainty. The second estimate is a bootstrapped standard error that takes into account uncertainty propagating from the estimation of the propensity score. The "regular" and bootstrapped standard errors are close with the bootstrap errors being approximately 8-20 percent higher.[31] All the statistically significant results are significant at greater than the 1% level using either standard error. Since the estimation of the propensity score adds very little uncertainty to the matching estimators and because calculating bootstrap errors is very time and resource intensive we present only the regular standard errors in future

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[28] It is possible to find defendants who were released who might not have been released – thus the data is consistent with the adage that it is better to let 10 guilty men go free than jail one innocent man.

[29] The mean FTA rate for the full sample is included as rough guide to absolute effects. Note, however, that the matched sample is usually smaller than the full sample so the mean FTA rate for the matched and full samples can be slightly different.

[30] As a test of matching quality we also ran a linear regression on the matched samples that included Surety Bond and all the variables in Table 3. The results are similar, as they should be if the matched samples divide other covariates as if they were assigned randomly. The coefficient on Surety Bond in the surety versus own regression, for example, is –6.5 which is within one standard deviation of the –7.3 matching estimate. We do a more detailed comparison of linear regression and matching results further below.

[31] Not surprisingly, the smaller differences occur in comparisons using either of the largest groups, own or surety.

results.[32] Readers may add 15% to these errors to control for uncertainty in the estimation of the propensity score.

Unlike Table 2, both the top and bottom halves of Table 4 are filled in; this is because the estimate of the treatment on the treated is conceptually different from the estimate of the treatment on the untreated (differently treated). For example, the effect of the surety treatment relative to own recognizance for those who were released on surety bond is not necessarily the exact opposite of the effect of own recognizance relative to surety bond on those who were released on own recognizance. As it happens, however, our estimates of these effects are similar. The estimate of the effect of own recognizance relative to surety on those who were released on their own recognizance, for example, is 6.5 percentage points, similar in size but opposite in sign to the –7.3 surety effect relative to own recognizance of those who were released on surety bond. The similarities across diagonals suggest that either (or both) treatment selection or treatment effect does not interact strongly with defendant characteristics. One possible exception is that the deposit bond treatment relative to cash is estimated at 4.1 percentage points while the cash bond treatment relative to deposit is estimated at –1.5 percentage points.

In Table 5 we extend our matching algorithm so that it matches on the propensity score and the bail amount. Bail is determined by the same sorts of factors that enter into treatment selection (e.g. seriousness of crime, prior arrests etc.), and thus matching on p-score will match on bail to some extent. But in the matched surety bond sample, for example, the mean bail is $8243 but in the cash bond sample it is only $3883. The

[32] The bootstrap errors in Table 5 were calculated using 100 replications of the model. The procedure took over 48 hours on a reasonably fast Pentium computer.

difference is to be expected as defendants with low bail amounts will tend to self-select into cash rather than surety bail. If higher bail significantly discourages FTAs, differences in bail amounts could account for perceived treatment effects among release types. Thus, to ensure that the effects are not being caused by bail per se, we match on propensity score and the natural log of bail using the Mahalanobis distance as a metric.[33]

In the surety v cash bond sample matching on bail suggests a small but statistically significant positive impact of surety bond on FTA rates. Matching does distribute bail amounts across the treatments. In the sample matched on bail and propensity score the mean bail amounts in the surety and cash bond sample are, $4011 and $3927 respectively. Thus, high-bail surety bond releases are thrown out in order to match surety releases to the cash bond sample. The results on the other treatment effects are similar to those found earlier. In particular, surety and cash bond both result in lower FTAs than deposit bond.

6.4 Estimated Treatment Effects: The Fugitive

A surprisingly large number of felony defendants who fail to appear remain at large after one year, approximately 30%. Alternatively stated, some 7% of all released felony defendants skip town and are not brought back to justice within one year. We call FTAs that last more than one year, fugitives.

The surety treatment differs most from other treatments when a defendant purposively skips town because this is when bounty hunters enter the picture.[34] If the surety treatment works, therefore, we should see it most clearly in the apprehension of

[33] The Mahalonobis distance is a Euclidian (squared) distance that is weighted by the inverse covariance matrix for the matching variables. For details see Sianesi (2002).

[34] We use the term bounty hunter or bail enforcement agent to refer to private pursuers of felony defendants. Bond dealers typically pursue their own skips. Literal bounty hunters are typically not called in unless the skip is thought to

fugitives. Given that a defendant fails to appear, we ask what is the probability that the defendant is not brought to justice within one year and how does this vary with release type? Importantly, *once a defendant has decided to abscond* there is no reason why anything other than the different effectiveness of public police and bail enforcement agents should have a systematic effect on the probability of being recaptured.

Table 6 provides strong evidence that bounty hunters are highly effective at recapturing defendants who attempt to flee justice - considerably more so than the public police. The main diagonal of Table 6 contains the mean fugitive rate conditional on FTA along with the number of observations in each category. The estimated treatment effect for the row versus column variables are shown in the off diagonals with standard errors in parentheses. The probability of remaining at large for more than a year conditional on an initial FTA is much lower for those released on surety bond. The surety treatment results in a fugitive rate that is lower by 17, 15.5, and 25.6 percentage points compared to own recognizance, deposit bond and cash bond respectively. In percentage terms the fugitive rate under surety release is 53%, 47%, and 64% lower than the fugitive rate under own recognizance, deposit bond and cash bond respectively. Similarly, the own recognizance, deposit and cash bond treatments result in fugitive rates that are 29%, 47%, and 47% higher than under surety.

There are also some interesting non-surety effects in Table 6. Note that the fugitive rate *conditional on an FTA* is *higher* for cash bond relative to release on own recognizance. Earlier (see Table 5) we had found that the FTA rate was *lower* for cash bond relative to release on own recognizance. What this suggests is that defendants on

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have crossed state or international lines. Services like Wanted Alert, http://www.wantedalert.com, regularly post ads in USA Today that list fugitives and their bounties.

cash bond are less likely to fail to appear than those released on their own recognizance but if they do fail to appear they are less likely to be recaptured. The result is pleasingly intuitive. A defendant released on his own recognizance has little to lose from failing to appear and thus may fail to appear for trivial reasons. But a defendant released on cash bond has much to lose if he fails to appear and thus those who do fail to appear do so with the goal of not being recaptured.

The propensity score method can be very informative about the entire distribution of treatment effects. In Figure 2 we graph smoothed (running-mean) FTA and fugitive rates against surety p-scores for the own-recognizance and surety treatments (conditional on receiving either surety or own). (We omit graphs for the other treatment comparisons for reasons of length). The two downward-sloped less-thick curves graph smoothed FTA rates against the p-scores for those defendants released on their own recognizance or surety. The slope of each line indicates the direction and strength of the effect of observables on selection in that treatment. The difference between the own and surety lines at any given propensity score is an estimate of the treatment effect, controlling for observables. The difference is roughly constant which indicates that despite some mild selection the treatment effect is roughly independent of observables.

For both the own and surety treatments, FTA rates fall as the propensity for receiving surety increases. That is, FTA rates fall as observables move in the direction predicting surety release. The fall is gentle; moving from a near zero propensity to a near 1 propensity reduces the FTA rate by approximately 5 percentage points. The effect is sensible if we recall that many FTAs are short-term - the defendant forgets the trial date or has another pressing engagement. These sorts of FTAs are likely to be more common

for defendants with observables that predict low p-scores because judges release most defendants on their own recognizance and reserve surety release for defendants accused of more serious crimes. Few people will forget to show up for their murder trial but some may do so if the trial involves a driving offense. At the same time, however, we expect that defendants accused of more serious crimes - who have more to lose from being found guilty - are more likely to purposively abscond. If this is correct, we ought to see a positive correlation between the surety propensity score and the fugitive rate (failing to appear and not found within one year) conditional on having failed to appear.

The two upward-sloped and thick lines plot smoothed fugitive rates against the surety propensity score. As before the slope of the plots gives the direction and strength of effects caused by selection on observables and the treatment effect for any given propensity score is the difference between the FTA rates at that propensity score. Unlike FTA rates, the selection effects for conditional fugitive rates are positive – that is, as observables move in the direction of a greater propensity to be selected for surety release the fugitive rate increases. Interestingly, the effect of selection on defendants released on surety bond is less than that of defendants released on their own recognizance, deposit or cash bond (i.e. the "slope" of the plot is less). What this suggests is that the surety treatment works well even for those defendants whose observables would predict higher FTA rates. We examine the issue of unobservables at length below but since selection by observables has little influence on fugitive rates, Figure 2 already suggests that unobservables would have to be very different from unobservables in order to greatly affect the results.

6.5 Kaplan-Meier Estimation of FTA Duration

The higher rate of recapture for those released on surety bond compared to other release types can be well illustrated with a survival function. For a subset of our data, just over 7000 observations, we have information on the time from the failure to appear until recapture (return to the court). A survival function graphs the percentage of observations that survive at each time period. We estimate a survival function for each release type using the non-parametric Kaplan-Meier estimator. Typically, the Kaplan-Meier estimator is used only for preliminary analysis and is then followed by a parametric or semi-parametric model. Although parametric and semi-parametric models allow for covariates they require sometimes-tenuous assumptions about functional form. Instead, we follow our earlier approach of creating matched samples. Thus, using the same procedure as earlier, we create three matched samples surety v. own, surety v. deposit and surety v. cash. We then compare the survival function across each matched sample. The matching procedure ensures that covariates are balanced across the matched samples so it is not necessary to include additional controls for covariates.

Figure 3 presents the survival functions. In each case the survival function for those on surety bond is markedly lower than that for own recognizance, deposit bond, or cash bond. The ability of bail enforcement agents relative to police to recapture defendants who skip bail is evident within a week of the failure to appear.[35] By 200 days the surety survival rate is some 20 to 30 percentage points or 50 percent lower than the survival rate for those on cash bond, deposit bond or out on their own recognizance, i.e.

[35] A number of estimates have been made that bounty hunters take into custody between 25,000 and 35,000 fugitives a year, depending on the year (see various sources in Drimmer 1996 also Barr 2000). These figures are consistent with a recapture rate of over 95 percent and are consistent with the number of fugitives on surety bond. It appears, therefore, that almost all fugitives on surety bond are recaptured by bail enforcement agents and not by the police. Bounty hunters, however, will sometimes track down defendants and then tip police as to their whereabouts so police will sometimes be involved in some aspects of recapture.

the probability of being recaptured is some 50% higher for those released on surety bond relative to other releases. (Note that there are three surety bond survival functions, one for each comparison group, but that these are nearly identical). Figure 4 presents a similar regression matching on propensity score and bail. The survival functions appear more ragged but otherwise the results are very similar.

Table 7 shows the results of a log rank test (Kalbfleisch and Prentice 1980). The log rank test confirms Figures 3-4; we can easily reject the null of equality of the survivor functions - defendants released on surety bond are much more likely to be recaptured (i.e. less likely to remain at large, "survive") than are those released on their own recognizance, deposit bond or cash bond.

7. Looking for Unobservables

Matching is a powerful and flexible tool, but like linear regression, it is not a research design that magically guarantees the identification of causal effects. In this section we use a number of techniques to test for robustness and to rule out the potentially confounding effects of unobservables. Analyzing unobservables requires identification assumptions and, as always, such assumptions are open to question. Nevertheless, we are able to offer several identification strategies that allow us to analyze three classes of potentially unobserved variables; 1) unobservables associated with counties, 2) variables associated with individuals that are unobserved by us but observed by judges and 3) variables associated with individuals that are observed neither by us nor by judges. Analyzing each of these possibilities we converge on the finding that treatment effects rather than unobserved variables explain why FTA rates and fugitive

rates are much lower for defendants on surety bond compared to defendants on other forms of pre-trial release.

7.1 County Unobserveds

We begin with county unobservables. Counties vary on a wide set of dimensions such as size, population density, average crime rate, and prosecutorial and police strategies. If any of these are correlated across the data with FTA and fugitive rates and with the propensity to use commercial bail, this could bias our results. Earlier we noted that county variables in the ordered probit selection equation make the matching estimator a "quasi-fixed" estimator. We now examine whether we find similar results using a true fixed-effects regression. Some counties do not use some release programs. In running a particular fixed-effects regression, say of the surety versus own treatment, we could use every county that contains both treatments but instead we take a more conservative approach. Our fixed effects regression contains only those counties with *every* treatment program – we assume, in other words, that counties with *every* treatment program are the most comparable. This reduces the number of counties and observations by approximately 40 percent. The regression includes county fixed effects and all of the variables in Table 3. For comparison purposes we also run the matching estimator on the new sample and we run the probability model on the matched samples. By including fixed effects the identification of the treatment effect comes only from the *within-county* variation in FTA rates among treatment types. Thus, the fixed effects regression controls for *any* unobserved but fixed variable associated with counties.

In Table 8 we focus on the fugitive results and the surety treatment effect on the treated. The first number is the coefficient on surety bond in a linear probability model

followed by the matching estimate; respective standard errors are in parentheses.[36] The percentage point treatment effects are somewhat smaller than in the full sample but they are smaller when estimated by either the linear probability model with fixed effects or the matching estimator thus suggesting that the differences are due to sample and not to estimation technique. In percentages the surety treatment effect results in estimated fugitive rates that are lower compared to own, deposit and cash bond rates by 15-22%, 54-38%, and 40.7-41.5% (where the first number uses the linear probability model and the second the matching estimator). The fixed effects and matching estimates are within a standard deviation of one another, or a shade of a standard deviation in the Surety v. Deposit comparison. We conclude that the fugitive rate for those released on surety bond is considerably lower than it is for defendants released under other categories even after restricting the sample to the most comparable counties and including county fixed effects.

Using county fixed effects throws out the cross-county variation but arguably this variation is the most revealing because it may be the most "fortuitously random." Consider those states that have banned commercial bail. It seems plausible that matching can find two individuals who are comparable but for the fact that one individual *could not* have been assigned surety bail while the other could and *was* assigned surety bail. Comparing these individuals gives as a measure of what would happen if a county lifted its ban on commercial bail.[37]

Table 9 demonstrates that states that ban commercial bail pay a high price. We estimate that FTA rates are 7 to 8 percentage points or approximately 30% higher under

[36] We use a linear probability model to allow for full fixed effects. The marginal effect (discrete method) of Surety Bond in a probit model with a constant and one county variable dropped are virtually identical, -4.4, -16.3, and -15.3 respectively. Restricting the linear model to the matched sample makes little difference. The coefficients on Surety Bond in the full sample are –4.9, -11.0, and -16.5 respectively.

deposit or own recognizance compared to what they would have been if the same individuals were released on surety bond.[38] As before, we find that cash bond is about as effective as surety at controlling FTA rates. The fugitive rate conditional on FTA is much higher, under own, deposit, or cash release than under surety; higher by some 15, 20, and 36 percentage points or 78%, 85 and 93% respectively - even larger figures than we found earlier.

7.2 Unobserved by us but Observed by Judges

Unobserved variables may be associated with individuals rather than with counties. Since we do not have repeated data on individuals, controlling for individual observables requires stronger identification assumptions. If unobservables associated with individuals are important, however, it's worthwhile noting that they are likely to bias the surety treatment effects *downwards*. In assigning defendants to release treatments, judges are supposed to choose the least restrictive form consistent with reasonable assurance that the defendant will appear at trial. "Cream skimming," therefore, is built into the release process and *the cream gets released on own recognizance and deposit bond* while the *skim are held or released on cash or surety bond.*

Defendants who are released on cash or surety bond were not released on their own recognizance presumably, although not necessarily, because a judge thought the FTA likelihood under such a release form would be too high. If judges observe some information that we do not, we would expect cash and surety releases to have more

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[37] Since we are interested in the cross-county variation, the propensity scores for these tests were generated from an ordered probit that did *not* include county fixed effects but was otherwise identical to that used earlier.

[38] Note that in Table 9 we examine the treatment effect of own, deposit and cash relative to surety because this is the relevant comparison when considering the experiment of lifting the ban on commercial bail. As noted earlier, the

unobserved variables pointing in the direction of higher FTA rates than those defendants released under other treatments. For example, if judges are more likely to assess bail when the evidence against a defendant is strong or when the defendant has a surly demeanor and if strong evidence or surly demeanor is associated with higher FTA and fugitive rates (as it should be if judges are doing their job) then our estimates of the surety treatment effects are *too low*.

We have already found some evidence which would suggest the bias in our results is downward. Recall from Figure 2 that the effect of selection on *observables* is to raise the fugitive rate (we focus on the fugitive rate because it is most dispositive statistic concerning the effectiveness of the surety treatment). If selection on unobservables is in the same direction as selection on observables, then our estimates of the surety treatment effect are too low. Unless there is reason to think that the process that makes one variable observed and another unobserved is correlated with the outcome it's best to assume that selection on unobservables is in the same direction as selection on observables (because if the process that determines what is observable is random we should learn something about all variables from those that we observe). In addition to this general argument, we have a specific argument. We know that what judges are supposed to do is to assign defendants with higher FTA and fugitive rates to more restrictive release categories and they should do so using *all* the variables that they observe even if some of these variables are unobserved by us.

If judges have access to information that we do not, we might expect this information to be incorporated into the bail amount. Thus, one way of accessing this

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treatment effect on the treated and untreated are similar so we could also have examined the surety treatment effect relative to the alternative release types.

information is to match on the propensity score *and* the bail amount thereby controlling for information that is unobserved to us but observed (and used) by judges.

Earlier we matched on propensity score and bail amounts when matching on FTA rates. The motivation at that time was to control for the incentive effect of bail. We can see now, however, that matching on bail also controls for information observed by judges but not observed by us. When the outcome is fugitive rates *conditional on having failed to appear*, however, there is no longer an independent effect arising from the bail amount - once a defendant has failed to appear for any significant amount of time his bail is sunk and therefore irrelevant. The only reason to match on bail when the outcome is fugitive rates is to control for potentially unobserved judicial information.

Table 10 presents the results for matching on propensity score and (log) bail. The estimate of the surety treatment v. deposit bond is lower than without matching on bail but the surety v. cash treatment effect is nearly identical to that found earlier. Unless judges act perversely they will assign defendants with a higher propensity to fail to appear to more restrictive release categories. The information theory predicts, therefore, that matching on bail will result in a larger estimated treatment effect than matching on a reduced information set. The surety v. deposit estimate is different when matching on bail but it's smaller not larger than that found when matching on propensity score. In addition, no bail effect shows up in the surety v. cash estimates. Overall, this suggests that judges do not have much information in addition to that which we observe.

We have also matched on only predicted bail generated from a Tobit model. Results (available upon request) are very similar to those presented already and are omitted here for reasons of length.

7.3 Unobserved Individual Effects

Variables associated with individuals may be observed neither by us nor by judges. We propose two identification strategies. First, some 14 percent of defendants out on pre-trial release are arrested for another crime before they are sentenced for the first crime. We assume that the probability of being rearrested is positively correlated with the probability of becoming a fugitive. Suppose, for example, that guilty defendants are less likely to show up for trial than innocent defendants and innocent defendants are less likely to be rearrested than guilty defendants. There is good evidence for some such assumption because in the raw data defendants who are never rearrested have an FTA rate of 11% but defendants who are rearrested for another crime have an FTA rate of 43%.

If rearrest is positively correlated with the probability of becoming a fugitive and *if treatment does not influence rearrest rates,* then rearrest rates by treatment will track unobserveds. Table 11 provides evidence for the second clause - in the raw data there is very little variation in rearrest rates across treatment categories.

The evidence suggests that treatment does not influence rearrest rates so any differences in rearrest rates across treatment categories can be assigned to the influence of unobserveds. Nevertheless, it is useful to consider two reasons why treatment might influence rearrest rates. First, bond dealers have an incentive to ensure that their charges show up at trial. Although the rearrest of a defendant is not usually grounds for the forfeiture of the bond dealer's bond,[39] bond dealers do monitor their charges and such

[39] The only circumstance where this might occur is if the defendant is arrested in another state and for this reason fails to show up at trial. Even in this case the surety has some time, usually 90 to 180 days, to locate the defendant before the bail is forfeited. Reynolds (2002) suggests that parole and probation bonds be created such that bond dealers would forfeit their bonds if the defendant was rearrested. If this were to occur then bond dealers would have the same incentives to reduce defendant rearrest as they today have to ensure that defendants appear at trial.

monitoring might reduce rearrest rates. Second, bond dealers might be able to select defendants who are unlikely to flee and thus also unlikely to be rearrested.[40] Note that both of this hypotheses imply that all else equal, rearrest rates should be lower for those released on surety bond.

Table 12 (matching on propensity score and bail) presents the rearrest "treatment effects" for the various release types. In no case is the rearrest rate lower for surety bond compared to other treatment types. Thus there is no evidence that monitoring significantly reduces rearrest rates or that bond dealers selectively choose defendants with low rearrest and FTA rates. Thus any "treatment effect" is best interpreted as the influence of unobserved variables and the direction of this influence is indicative of the influence of unobserved variables on FTA and fugitive rates. The surety v. own and surety v. deposit comparisons show positive but very small and statistically insignificant effects suggesting that unobserved variables have little influence on FTA and fugitive rates across these comparisons. The surety v. cash bond comparison suggests that the surety treatment increases rearrest rates by 4.5 percentage points which implies that unobserved variables operate in a direction that *offsets* the true treatment effect of surety on FTA and fugitive rates. Recall from Tables 4 and 5 that we found that FTA rates were slightly higher under surety than under cash bond. The evidence from rearrest rates suggests that unobservables may be responsible for part of this and that the true treatment effect is somewhat lower. Similarly, although we found large negative effects on fugitive

[40] Note, however, that no bond dealer could stay in business if she only bonded the innocent.

rates from the surety treatment (relative to cash treament), the evidence suggests that, if anything, that the true treatment effects may be even more negative.[41]

The rearrest data also allows for another interesting comparison. For a small subset of our data, 1331 observations from 1988 and 1990, we know the re-release type for those individuals who are arrested and released on a second charge. We do not know whether the individual failed to appear on the second charge, which is why we don't have repeated observations. Nevertheless, the second arrest and release data may be revealing.

Suppose that the initial release is own recognizance and the second release is via surety bond. By monitoring and possibly recapturing the defendant if he skips on the *second* trial, bail bondsmen and their agents create a positive externality with respect to fugitive rates on the *first* trial. This potential externality means that we need not compare own recognizance to surety releases to measure a surety treatment effect. Instead, we can compare defendants who received own recognizance with other defendants who received own recognizance in their first release and surety in their second release. Similarly, we can compare fugitive rates on the first trial for defendants whose first and second releases were own and own with those whose first and second releases were own and surety. With this comparison we control for any selection effects on the first release.

The unconditional fugitive rate of defendants who are released on their own recognizance and *not* rearrested is 8.48 percent.[42] The fugitive rate of defendants who are released on their own recognizance and who are rearrested and then released again on their own recognizance is almost identical, 8.04 percent. But the fugitive rate for those

[41] Since we find that rearrest rates vary little by treatment category we should also find that treatment effects measured in the rearrest sample, i.e. using only those defendants who were subsequently arrested for a second crime, should be similar to those found in the one-arrest sample. We have run these matching tests on propensity score and bail and do find similar results which we omit for reasons of length. Results available upon request.

defendants initially released on their own recognizance but then rearrested and rereleased on surety bond is just 1.9 percent. The difference between the own and the own-surety fugitive rate is statistically significant at the greater than 1% level. The difference between the own-own and own-surety rate, which controls for rearrest, is also statistically significant at the greater than 1% level. Table 13 summarizes.[43]

Our last identification strategy uses an instrumental variable. When jails become overcrowded judges are pressured to release individuals on their own recognizance rather than running the risk of setting bail that the defendant might not be able to secure. Bond dealers understand that overcrowded jails mean less surety business. One Arkansas newspaper headline, for example, read "Crowded jails put squeeze on bondsmen." The article noted that local bond dealers were "feeling the pinch of jail overcrowding" because more suspects were being released on their own recognizance resulting in a significant drop-off in business (Kimbrough 1989).

We define ratio as the county jail population divided by the official jail capacity. A ratio greater than 1 indicates overcrowding. We suggest that jail overcrowding is not likely to be correlated with unobservables that affect FTA and fugitive rates. In addition, to test whether ratio is an useful instrument for surety bond (relative to own recognizance) we run a first stage regression of surety bond on ratio and every other exogenous variable including the crime variables and county and year fixed effects.[44] The coefficient on ratio is –16.4 with a robust standard error of .0189 (t=8.67). A rule of

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[42] Earlier we focused on fugitive rates conditional on having FTA. We focus on unconditional fugitive rates here because we have fewer observations. We have data on rearrest and re-release type for 1988 and 1990.

[43] We have also run similar tests where we control for the charges by focusing only on those individuals whose second charge was the same as the first charge. We again find that surety release results in significantly lower fugitive rates. Results available upon request.

[44] We focus on surety versus own because the deposit bond sample is small and overcrowding is unlikely to have a large effect on the cash/surety margin. Although judges could lower bail amounts thus encouraging cash bond this

thumb is that a t statistic of 3.2 or greater suggests a reasonable instrumental variable so ratio looks like a good instrument for surety bond. Table 14 presents estimates for the effect of surety bond on FTA rates and fugitive rates conditional on FTA with ratio used as an instrument.

In the FTA equation the coefficient on surety is –17.2, consistent in sign but larger in size to that found via matching but not statistically significant at conventional levels (p=.16). Similarly the coefficient on surety in the fugitive conditional on FTA equation is negative and much larger than that found previously and is statistically significant at the greater than 5% level.[45] We have found very little evidence of selection effects using previous tests (e.g. from Figure 1-2, and using the information from rearrest rates) in which case instrumental variables add noise to the estimating equation. A Hausman test comparing the OLS results using surety bond and the IV results verifies this finding. The IV results, therefore, give us additional confidence that our previous estimates of the surety treatment effect are not greatly contaminated by unobservables and, to the extent that unobservables are important, the IV results are consistent with the earlier results in suggesting larger not smaller surety treatment effects.

In this section we have controlled in a variety of ways for county effects, individual effects observed by judges but unobserved by us and pure unobserved effects of a very general nature. We have also noted the cream that judges skim goes to own recognizance and deposit bond while the skim are released on cash or surety bond. Consistent with this, observable selection effects on fugitive rates are positive. The evidence from rearrest rates and the IV suggests that unobservables are not biasing our

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does not guarantee a reduction in overcrowding. Indeed, lower bail amounts will not necessarily increase the number of releases because lower bail amounts discourage release via surety bond.

results upwards. Taken together the evidence suggests that we have good estimates that surety release reduces FTA rates, survival times and fugitive rates.

8. Conclusions

When the default was for every criminal defendant to be held until trial, it was easy to support the institution of surety bail. Surety bail increased the number of releases relative to the default and thereby spared the innocent some jail time. Surety release also provided good, albeit not perfect, assurance that the defendant would later appear to stand trial. When the default is that every defendant is released, or at least when many people believe that "innocent until proven guilty" establishes that release before trial is the ideal, support for the surety bail system becomes more complex. How should the probability of failing to appear and all the costs this implies, including higher crime rates, be traded-off against the injustice of imprisoning the innocent or even the injustice of imprisoning the not yet proven guilty? We cannot provide an answer to this question but we can provide a necessary input into this important debate.

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. Deposit bonds perform only marginally better than release on own recognizance. Requiring defendants to pay their bonds in cash can reduce the FTA rate to a similar rate than that for those released on surety bond. Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to

[45] We find similar results using an instrumental variables probit.

those released on cash bond. These finding indicate that bond dealers and bail enforcement agents ("bounty hunters") are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law.

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Table 1 : Algorithm for the estimation of $\theta_0^{m,l}$

Step 1	***Estimate the Propensity Score via an Ordered Probit*** For each treatment T=1…M and individual N=1…K obtain $[\hat{p}_N^1(x), \hat{p}_N^2(x), ..., \hat{p}_N^M(x)]$ and compute $\hat{p}_N^{m\|ml}(x) = \frac{\hat{p}_N^m(x)}{\hat{p}_N^l(x) + \hat{p}_N^m(x)}$.
Step 2	***Create a Matched Sample*** For a given pair of treatments m and l: i) Choose an observation *i* that received treatment m ii) Match i to an observation j in the treatment subsample that is less than the caliper distance and closest to *i* in terms of $\hat{p}_N^{m\|ml}(x)$. If no such observation exists drop observation *i*. (In the case of multivariate matching 'closeness' is based on the Mahalanobis distance.) iii) Repeat i) and ii) until no observations in m remain.
Step 3	***Estimate the Treatment Effect*** Subtract the mean outcome in the "untreated" matched group from the mean outcome in the matched treated group.

Table 2: Mean FTA Rates by Release Category, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond	Emergency Release
Own Recognizance	26% [20,944]	5*	6*	9*	-19*
Deposit Bond		21% [3605]	1	4*	-23*
Cash Bond			20% [2482]	3*	-25*
Surety Bond				17% [9198]	-28*
Emergency Release					45% [584]

Mean FTA rates for release categories, rounded to the nearest integer, are along the main diagonal with the number of observations in square brackets. Off diagonal elements are the difference between the mean FTA rate for the row category and the mean FTA rate for the column category.
* Statistically significant at the greater than 1% level.

Table 3: Ordered Probit on Stringency of Release, also includes county and year effects (not shown).

Variable	Coefficient
Local Conditions:	
Time, in days, to scheduled start of trial	-0.5821*
	(0.0038)
Local Clearance Rate (total arrest/ total crime)	0.3957
	(0.1799)
Defendant is Charged with:	
Murder	0.35915*
	(0.051044)
Rape	0.376661*
	(0.032135)
Robbery	0.146899*
	(0.028193)
Assault	0.208538*
	(0.039397)
Other Violent	0.048705***
	(0.02932)
Burglary	-0.10109*
	(0.027554)
Theft	-0.16676*
	(0.029142)
Other Property Crime	0.212824*
	(0.026824)
Drug Trafficking	-0.1147*
	(0.027033)
Other Drug Crime	-0.01139
	(0.041254)
Driving Related Crime	-0.18755*
	(0.016514)
Defendant Characteristics:	
Age of defendant	0.000854
	(0.000653)
Female (yes=1)	0.873055*
	(0.080055)
Active Criminal Justice Status	0.191588*
	(0.013974)
Previous Felonies	0.244761*
	(0.013558)
Previous Failure to Appear	0.123918*
	(0.015137)
Number of Observations	58,585

Asymptotic Standard Errors in parenthesis
* Statistically significant at the greater than 1% level (two sided).
** Satirically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 4: Treatment Effects of Row versus Column Release Category on FTA Rates using Matched Samples, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own Recognizance	26%	3.2* (1.0/1.1)	4.8* (1.1/1.2)	6.5* (.78/.78)
Deposit Bond	-3.1* (1.1/1.2)	21%	4.1* (1.5/1.6)	3.1* (1.1/1.3)
Cash Bond	-5.8* (1.3/1.6)	-1.5 (1.6/2.0)	20%	1.8/2.0 (1.4/1.8)
Surety Bond	-7.3* (.78/.89)	-3.9* (1.1/1.2)	1.7 (1.3/1.4)	17%

Mean FTA rates for release categories for the full sample are along the main diagonal. Off diagonal elements are the estimated treatment effects of the row category versus the column category. Standard errors in parentheses – the first standard error assumes the p-score is estimated with certainty the second uses bootstrapping to estimate the standard error including uncertainty of the p-score.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Satirically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 5: Treatment Effect of Row versus Column Release Category on FTA Rates using Samples Matched on Propensity Score and Bail Amount, 1988-1996

	Deposit Bond	Cash Bond	Surety Bond
Deposit Bond	21%	3.1 (1.9)	4.1* (1.2)
Cash Bond	-4.2** (2.0)	20%	-2.1 (1.7)
Surety Bond	-4.3* (1.3)	3.4** (1.6)	17%

Mean FTA rates for release categories for the full sample are along the main diagonal. Off diagonal elements are the difference between the mean FTA rate for the row category and the mean FTA rate for the column category. Standard errors are in parentheses.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 6: Treatment Effect of Row versus Column Release Category on the Fugitive Rate using Matched Samples, Conditional on FTA, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own Recognizance	32% [5440]	-3* (2.6)	-4.9* (2.9)	9.4* (2.1)
Deposit Bond	-.2 (2.6)	33% [766]	-6.2 (4.1)	12.1* (2.7)
Cash Bond	11.9* (3.0)	-3.8 (4.4)	40% [506]	18.6* (3.7)
Surety Bond	-17* (2.0)	-15.5* (2.9)	-25.6* (4.2)	21% [1537]

Mean fugitive rates, defined as FTAs that last longer than a year, for release categories for the full sample are along the main diagonal with the number of observations in that category conditional on an FTA in square brackets. Off diagonal elements are the difference between the mean fugitive rate for the row category and the mean fugitive rate for the column category estimated using matching. Standard errors are in parentheses.
Matching Caliper=.001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 7: Log Rank Test of the Equality of the Hazard Functions

	Matching on Propensity Score			Matching on Propensity Score and Bail	
	Surety v. Own	Surety v. Deposit	Surety v. Cash	Surety v. Deposit	Surety v. Cash
Surety	1033 [787]	883 [678]	852 [629]	685 [563]	501 [373]
Own	1167 [1412]				
Deposit		817 [1021]		716 [837]	
Cash			507 [729]		287 [414]
Total	2200	1700	1359		
χ^2 against null of equality of hazard rates	121*	105*	151*	44*	85*
Matched on:	Pr(surety)	Pr(surety)	Pr(surety)	Pr(surety) and bail	Pr(surety) and bail

Column entries equal the actual number of FTAs returned to court. Column entries in brackets represent the expected number of FTAs returned.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 8: Effect of Surety Treatment versus other Release Types on Fugitive Rates in Fixed Effects Regressions Using Only Counties with All Release Types, 1988-1996

	Surety v. Own Recognizance	Surety v. Deposit Bond	Surety v. Cash Bond
Treatment Effect	-4.3***/-6.2* (2.5/2.4)	-16.5*/-11.7* (3.9/3.4)	-15.6*/-16.9* (2.8/5.3)
Observations	1853	1670	1909

The first number is the coefficient on Surety Bond in a linear probability model run on matched samples with all the covariates in Table 3 plus county fixed effects. The second number is the treatment effect estimated via matching. Respective standard errors are in parentheses.
Matching Caliper=.001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 9: Effect of Alternative Treatment versus Surety Bond on FTA and Fugitive Rates (conditional on FTA) Matching Individuals from States that have Banned Surety Bonds with Similar Individuals Released on Surety Bond, 1988-1996

	Own Recognizance v. Surety Bond	Deposit v. Surety Bond	Cash v. Surety Bond
Treatment Effect on FTA Rates	+7.8* (1.6)	+6.2* (1.8)	-1.6 (4.4)
Treatment Effect on Fugitive Rates	+14.8* (2.3)	+19.8* (2.9)	+35.7* (8.0)

Standard errors are in parentheses.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 10: Treatment Effect on the Fugitive Rate using Samples Matched on Propensity Score and Bail, Conditional on FTA, 1988-1996

Surety v. Deposit Bond	Surety v. Cash Bond
-9.4* (3.3)	-25.3* (5.5)

Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 11: Mean Rearrest Rates by Release Category, 1988-1996

Own Recognizance	14.9% [20,945]
Deposit Bond	13.3% [3605]
Cash Bond	14% [2482]
Surety Bond	12% [9202]

Percentage of rearrests by release category. Number of observations in square brackets.

Table 12: Effect of Surety Treatment Effect versus other Release Types on Rearrest Rates using Samples Matched on p-Score and Bail, 1988-1996

	Surety v. Own Recognizance	Surety v. Deposit Bond	Surety v. Cash Bond
Surety Bond	0.7 (0.6)	.58 (1.0)	4.5* (1.3)
Matched Observations	14,925	9,740	7,064

Matching Caliper=.001
Matching estimators of the surety treatment effect.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 13: Unconditional Fugitive Rates by Arrest-Rearrest Category, 1988,1990

	1) Own and Not Rearrested	2) Own-Own	3) Own-Surety	*t*-test 1-3	*t*-test 2-3
Fugitive Rate	8.48 [17,828]	8.04 [191]	1.49 [134]	2.9 $p_{1>3=.0019}$	2.6 $p_{2>3=.0047}$

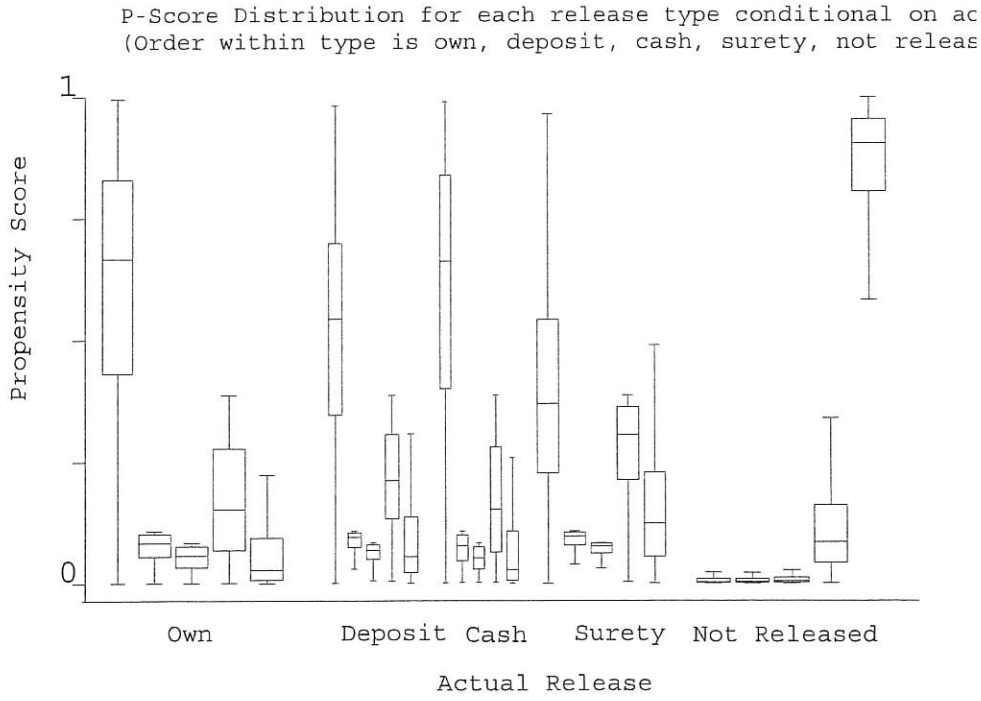
Own-Own indicates first release on own recognizance and second release on own recognizance. Own-Surety indicates first release on own recognizance, second release on surety.

Table 14: Surety vs. Own Recognizance Treatment Effect Estimated using Ratio as an Instrument for Surety Bond, 1988-1996

	FTA Rate	Fugitive Rate Conditional on FTA
Surety Bond	-17.2 (12.2)	-79.7** (36.3)
Observations	22,136	4698

Robust standard errors.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

A)


P-Score Distribution for each release type conditional on ac
(Order within type is own, deposit, cash, surety, not releas
1
0
Propensity Score
Own
Deposit Cash
Surety
Not Released
Actual Release

B)

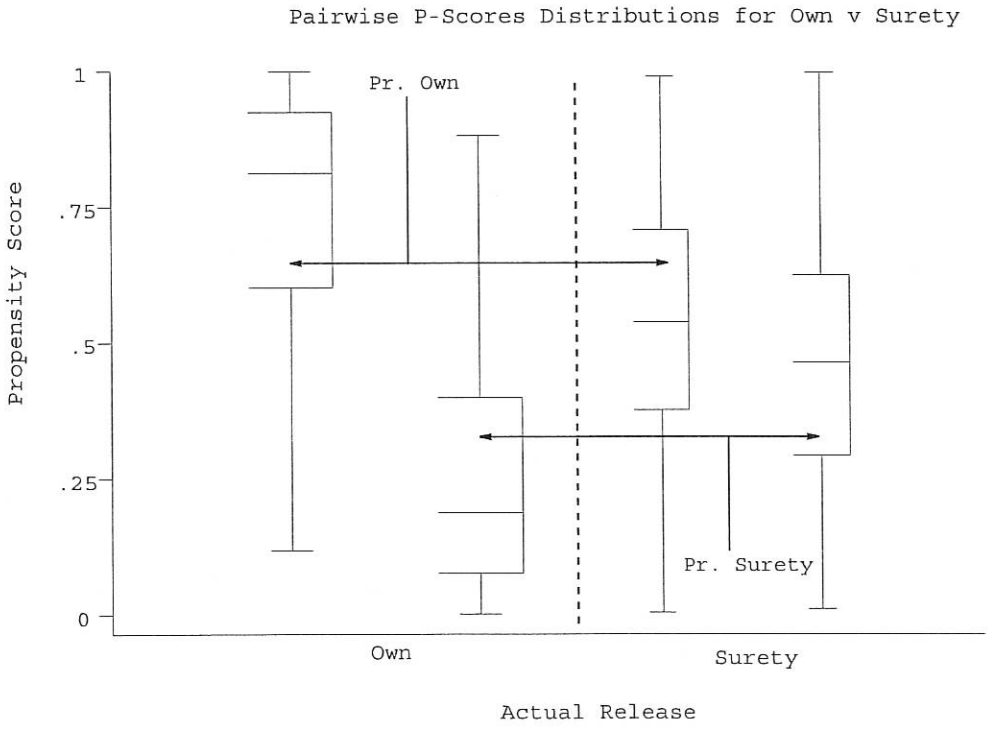

Pairwise P-Scores Distributions for Own v Surety
1
.75
.5
.25
0
Propensity Score
Pr. Own
Pr. Surety
Own
Surety
Actual Release

Figure 2

FTA and Fugitive Rates by Own v. Surety Treatment Plotted against Propensity Scores

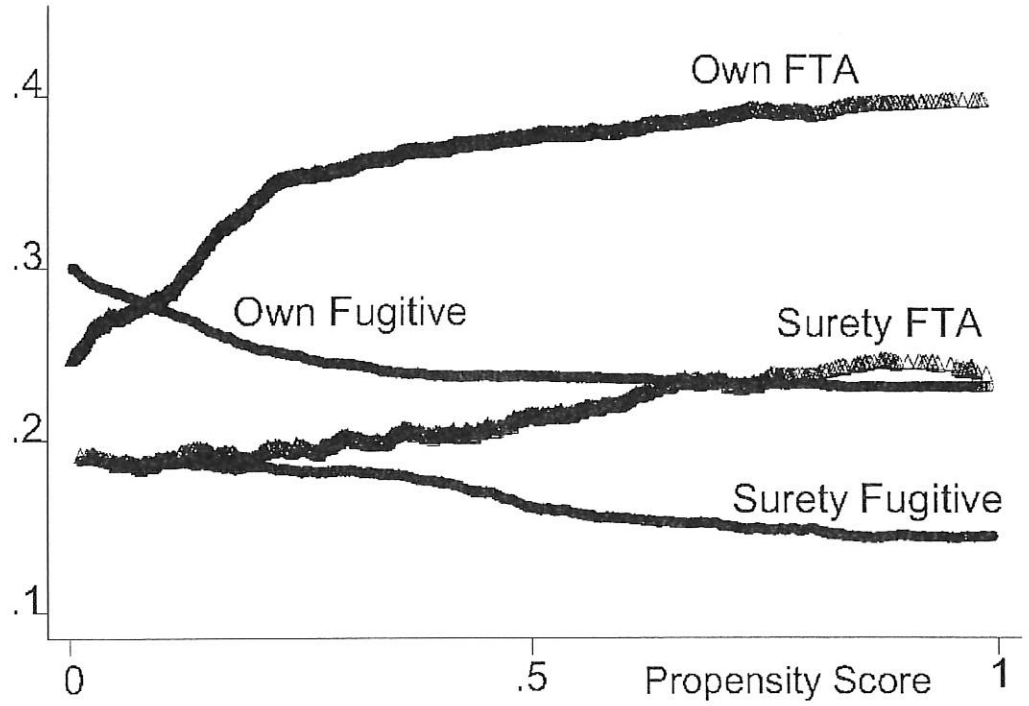
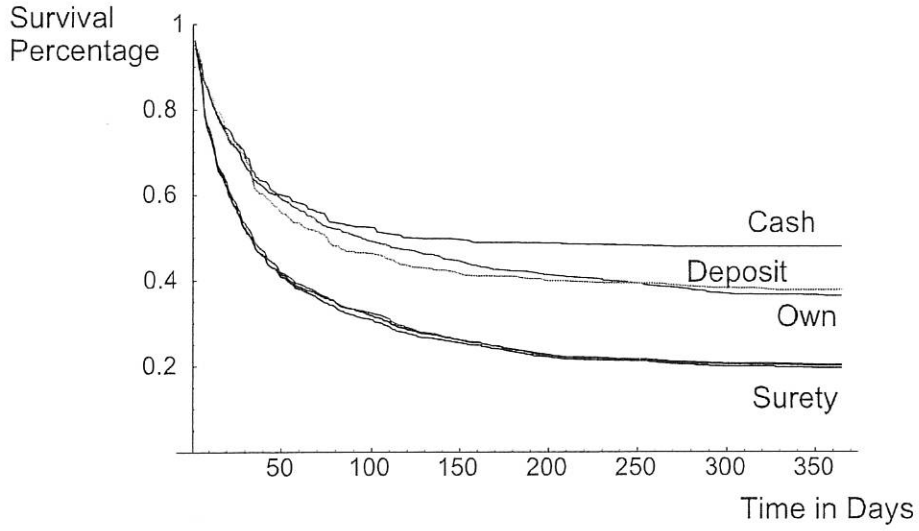
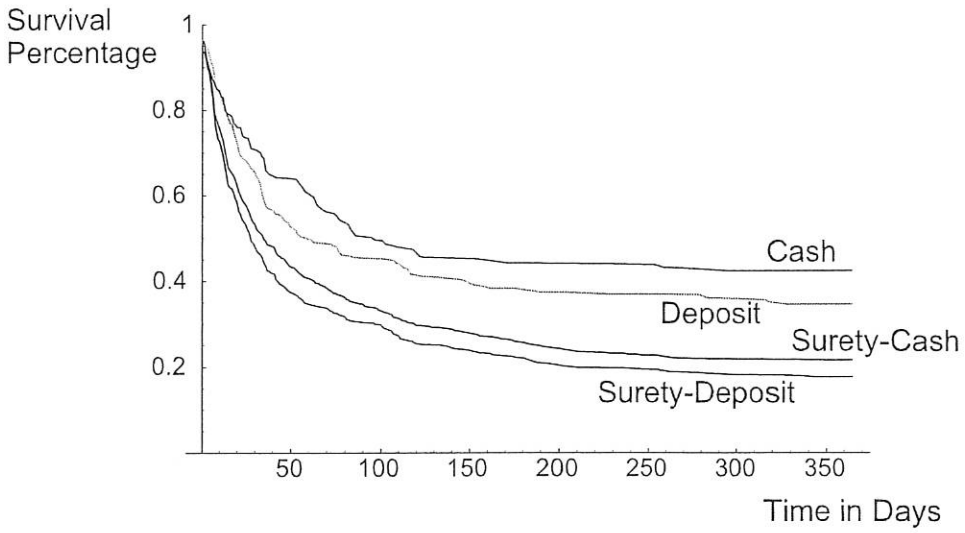


Figure 3



Kaplan-Meier Survival Function for Defendants on Surety bond versus those on Cash bond, Deposit bond or released on their own recognizance - using matched samples

Figure 4



Kaplan-Meier Survival Function for Defendants on Surety bond versus those on Cash and Deposit bond - using samples matched on propensity score and bail

Office of the Attorney General
State of Kansas

Opinion No. 94-25
February 22, 1994

Re: Criminal Procedure--Conditions of Release--Release Prior to Trial--Local Court Rule Concerning Pretrial Release

Synopsis: District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court. Furthermore, it is not permissible for a court to retain any portion of a cash deposit for the purpose of bond, however, the "fee" which the third judicial district is currently collecting from the defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, does not have to be turned over to the state treasurer.

K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

Paragraph 15 of the district court rule requires that the court's order reflect the type of bond procedure that the defendant is using. Cited herein: K.S.A. 1993 Supp. 20-350; 22-2802; K.S.A. 22-2809; 22-2814; Kan. Const., art. 2, § 16.

The Honorable Marvin Smith
State Representative, Fiftieth District
State Capitol, Room 115-S
Topeka, Kansas 66612

3-55

Shirk's Criminal History

Shirk's Criminal History
Kara Fullmer

Justin Shirk, who police believe may have killed his ex-wife and run off with his daughter Wednedsay has had more than one run-in with the law. On the Wednesday he took off, he was meant to appear in court on charges of two counts of aggravated assault and criminal damage that happened only four months ago. He was charged for assaulting two teenagers and repeatedly ramming their car with his.

So why was Shirk allowed to be back on the streets? Shirk took advantage of a type of bond known as an Own Recognisance Cash Deposit, or ORCD, which one local attorney says makes it too easy for criminals to slip through the cracks.

Shawnee County Court set Justin Shirk's bond at 7500-dollars after he was charged with aggravated assault in June. Instead of going through a bonding agency for the money to get out of jail, Shirk used an ORCD bond collected by the county. He only had to pay 10% of the $7500, and promise to pay the rest if he didn't show up to court. When Shirk missed his appearance Wednesday, Attorney Chris Joseph who represents Viking Bail Bonds says he was not surprised.

"They put the money down, walk out the door and don't show up, time after time," Joseph explains.

This was only Shirk's first ORCD bond, but Joseph says in many cases ORCD's make it easier not to show up for court.

"The ninety-percent they are expected to pay, it's pretty well known that no one is out collecting that ninety-percent," says Joseph.

On a professional surety bond issued by a bonding agency, if a person is a no show, a bondsman will quickly track them down and take them to court. But when the county issues the bond, and the person doesn't show...

"A warrant is issued, the warrant goes to warrant department at the sherrif's office, and they're inundated with warrants. So often it just sits on the books until someone is pulled over or does something and is arrested again," Joseph says.

Joseph admits, in Justin Shirk's case it's not likely either the county or a professional bondsman would have been able to track him down this morning before he allegedly took off with his daughter. But, Joseph says he knows of at least three cases last year where a person released on an ORCD did not appear, and committed further crime.

FEDERAL AND STATE AFFAIRS
Date 2/7/07
Attachment 4

The Honorable Lana Oleen
State Senator, Twenty-Second District
State Capitol, Room 136-N
Topeka, Kansas 66612

Honorable William Carpenter
Administrative Judge of the Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Dear Representative Smith, Senator Oleen and Judge Carpenter:

You request our opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. Briefly, the program which is administered by court services officers and employees of the department of corrections establishes an automatic bond schedule for pretrial release for certain crimes. Representative Smith and Senator Oleen are concerned that certain facets of this program violate the statutes which deal with pretrial release and surety bonds. Those concerns can be summarized as follows:

1. Do court services officers (CSOs) and employees of the department of corrections (DCOs) who are sworn as deputy clerks of the district court, have authority to admit to bail persons in custody?

2. Is it permissible for a court to allow an accused person to post 10% of the amount of an appearance bond?

3. Is it permissible for a court to retain 10% of an appearance bond as an administrative "fee" and must the court turn over this amount to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the defendant?

5. If a defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect that change?

Our inquiry will focus on whether certain provisions of district court rule 3.324 violate the statutes. In order to make that determination, it is important to not only review the rule itself but to understand the mechanics of how it operates.

The rule establishes an automatic bond schedule (schedule) for certain crimes ranging from county resolution violations to "C" felonies. The schedule sets forth the amount and type of bond which the court will accept. Under certain conditions, persons in custody are not eligible for schedule bonds. (Some of those circumstances include situations involving prior bond forfeitures, extradition, prior felony convictions and if there is a threat to public safety or fear that the accused may flee the jurisdiction.) If the schedule requires a surety bond in the amount of $1,000 or less, Shawnee county residents may be released on their own recognizance if they or their surety have significant ties to the county. (E.g. real estate, employment, Kansas driver's license, etc.) Such a defendant as well as his or her surety enter into a written recognizance bond by which the defendant agrees to appear in court when required. If the defendant fails to appear, the bond is forfeited and the surety or the defendant is liable for the face amount of the bond.

If the schedule requires a surety bond in an amount over $1,000 and less than $2,500, Shawnee county residents may be released if they or their surety meet the significant ties condition and if the defendant posts an "OR cash deposit bond" (OR-CD). This bond requires that the defendant or surety deposit 10% of the face amount of the bond to the clerk of the district court. If the defendant fulfills all the conditions that the bond requires, 90% of the deposited amount is returned to the defendant and the clerk retains the remainder as an "administrative fee" which is then turned over to the county. For example, if the bond amount is $2,500, the defendant or surety pays $250 to the clerk. If the defendant complies with the bond conditions, $225 is returned to him or her and the clerk retains $25. If the defendant fails to comply and the bond is forfeited the surety or the defendant is liable for the face amount of the bond minus the amount previously deposited.

With this background, we will answer your queries keeping in mind that while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions. Therefore, a court cannot promulgate rules which contravene statutory provisions. Gas Service v. Coburn, 389 F.2d 831 (10th Cir. 1968), reversed on other grounds; Synder v. Harris, 89 S.Ct. 1053, 394 U.S. 332, 22 L.Ed.2d 319 (1969); 21 C.J.S. Courts § 126. Supreme court rule 105 authorizes judicial

districts to make rules necessary for the administration of their affairs to the extent that they are not inconsistent with applicable statutes.

*3 1. Do court services officers and employees of the department of corrections who are sworn are deputy clerks of the district court have authority to admit to bail persons in custody?

Paragraph 1 of district court rule 3.224 states, as follows:

"1. Court services officers (CSO) and Shawnee county department of corrections officers (DCO) who are sworn as deputy clerks of the district court, are authorized to admit to bail persons in custody in accordance with the provisions of this order."

Absent statutory authority nonjudicial officers may not admit accused persons to bail. 8 C.J.S. Bail § 50. Specifically, a district court clerk has no power to take or approve recognizances and the court may not deputize the clerk to do so. Morrow v. State, 5 Kan. 563 (1869); 8 C.J.S. Bail § 52; 8 Am.Jur.2d Bail and Recognizance § 21. However, admitting a person to bail is an entirely different act from the taking, accepting or approving bail after its allowance by a court; the former is generally considered to be a judicial act to be performed by a court or judicial officer while the latter is merely a ministerial function which may be performed by any authorized officer. 8 C.J.S. Bail § 39, 8 Am.Jur.2d Bail and Recognizance § 9. The act of taking and approving the bail bond in accordance with court orders has been held to be a ministerial act which may be delegated without statutory authority. Thus, after bail has been allowed and its amount fixed by the proper judicial officer, a clerk, by direction of the court, may accept and approve a bail bond. 8 C.J.S. Bail, § 53.

While the choice of language in paragraph 1 of the court rule is unfortunate because it appears to allow CSOs and DCOs to admit people to bail, in actuality, this is not what occurs. The court, through its inherent rule making power, has established bond amounts and types of bonds which are required for certain crimes. Basically, the court has decreed that if certain conditions exist, a person may be released from custody. The CSOs and DCOs do not set bond amounts nor do they determine whether a surety is required. They merely determine whether the defendant meets the conditions that the court has already prescribed, and, if so, they ensure that the appropriate paperwork is filled out by the defendant who is then released. In effect, the court has preset the bond amounts, the types of bonds, and the conditions under which a defendant may be released and it is the responsibility of the nonjudicial officers to ensure that the court's order is carried out. Consequently, it is our opinion that the district court rule does not sanction the practice of nonjudicial officers admitting persons in custody to bail.

Rather, the nonjudicial officers are merely performing ministerial acts pursuant to court order.

You indicate concern that this procedure may violate K.S.A. 1993 Supp. 22- 2802 by releasing defendants prior to their first court appearance. This statute states, in relevant part, as follows:

"Release prior to trial. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and assure the public safety."

There is nothing in the statutes which prohibits the release of a defendant on bond prior to his or her first appearance. In fact, K.S.A. 22-2901(1) and (3) contemplate that a person who is arrested be taken "without unnecessary delay" to a magistrate who can then fix the terms and conditions of an appearance bond. Consequently, it is our opinion that K.S.A. 1993 Supp. 22- 2802 provides that if the defendant has not been released prior to the first appearance, the defendant will be released upon execution of an appearance bond.

2. Is it permissible for a court to allow accused persons to post 10% of the amount of an appearance bond?

K.S.A. 1993 Supp. 22-2802(3) and (4) provide, in relevant part, as follows:

"(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

"(4) A deposit of cash in the amount of the bond may be made in lieu of the execution ofthe bond by sureties."

The statutes do not specifically address the propriety of the court's 10% OR- CD program. K.S.A. 1993 Supp. 22-2802 was originally enacted in 1970 and it drew heavily on federal bail reform law which was designed to encourage the release of defendants without money bail and to minimize the number of cases where the defendant would be detained pending trial. Kansas Judicial Council Bulletin, October, 1969, p. 45. Release on the person's own recognizance was the norm and money bail or pretrial detention in lieu thereof was contemplated only when special circumstances existed

which could best be met by use of traditional bond.

K.S.A. 1993 Supp. 22-2802 contemplates three types of bonds: Appearance bonds with sureties, appearance bonds without sureties, and a cash bond in the full amount. On at least three occasions legislation has been introduced which would have variously prohibited or codified this 10% program. (House bill no. 2009 introduced during the 1985 session, house bill no. 2961 in 1986 and house bill no. 2252 in 1987). All three bills were defeated at various stages.

The court justifies its use of this program under the authority of K.S.A. 22-2814 et seq. which authorize each district court to "establish, operate and coordinate release on recognizance programs and supervised released programs". We have reviewed the legislative history of these statutes in order to determine whether the legislature intended to allow such a program under the auspices of these recognizance statutes.

These statutes were originally enacted in 1978, however, the supreme court concluded that they violated the one subject rule in article 2, § 16 of the Kansas constitution. State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980). The statutes were reenacted in 1981 without the constitutional infirmities.

Recognizing the unfairness of a system that relied heavily on money bail and professional bondsmen, these statutes were enacted to rely less on the financial resources of the defendant and concentrate on the risk of nonappearance. Minutes, Senate Committee on Federal and State Affairs, March 23, 1978.

"House bill No. 3129 would permit the establishment of release-on- recognizance (ROR) and supervised released programs in the state. These programs will permit the pretrial release of those selected individuals who are unable to post money bond but who have stable roots in the community indicating that they will appear at trial and their release will not jeopardize public safety. House bill no. 3129 would authorize each district court to establish, operate, and coordinate ROR and supervised released programs which would be administered by probation officers and other personnel of the district court." Proposal No. 14, Report on Kansas Legislative Interim Studies to the 1978 Legislature, Feb. 1978, p. 56.

Neither proposal no. 14 nor any of the testimony before the senate federal and state affairs committee included any discussion of a 10% cash deposit bond program. However, it is interesting to note that included in house bill no. 3129 was an amendment to then K.S.A. 1977 Supp. 22-2802 which would have allowed a defendant to execute an appearance bond and deposit with the court a sum not to exceed 10% of

the bond amount -- the deposit to be returned if the defendant made the required appearances. (House bill no. 3129, sec. 5). However, the senate committee struck the amendment and the 10% cash deposit provision was never enacted.

In determining legislative intent, the historical background, legislative proceedings and changes made in the statutes during the course of their enactment may be considered in determining legislative intent. Urban Renewal Agency of Kansas City v. Decker, 197 Kan. 157 (1966). Rejection by the legislature of a specific provision contained in a proposed enactment is persuasive to the conclusion that the act should not be so construed as in effect to include that provision. City of Manhattan v. Eriksen, 204 Kan. 150 (1969). (In Erikson, the court interpreted the eminent domain act as not including as an element of damage the cost of removal of personal property -- noting that while the original bill included such a cost as an element of damage, the senate judiciary committee deleted the item.)

We cannot ignore the fact that when the ROR statutes were being considered this 10% cash deposit program - which is currently in use by the third judicial district court - was specifically rejected. Consequently, it is our opinion that the district court's 10% OR-CD program goes beyond the authority granted to district courts under the purview of K.S.A. 22-2814

*6 3. Is it permissible for a court to retain 10% of the OR-CD bond as an administrative fee or must the clerk of the district court turn it over to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

In attorney General Opinion No. 89-113, we concluded that if an appearance bond is in the form of a cash deposit, the authority of the court to retain the deposit or to apply any of it to court costs or fines depends on the statute because the court has no inherent power to do so. In the absence of such a statute, retention of the cash deposit is impermissible. While we realize that this opinion addressed K.S.A. 1993 Supp. 22-2802(4) - (a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties), the rationale can be applied to the situation at hand where the court accepts a percentage of the bond amount in cash and then retains a portion of that cash as a "fee." Consequently, it is our opinion that the third judicial district court lacks the power to withhold any amount from the cash deposit because there is no statutory authorization to do so.

However, this "fee" is not a "fine, penalty or forfeiture" which would trigger the operation of K.S.A. 1993 Supp. 20-350 which requires that "all moneys received by the clerk of the district court from the payment of fines, penalties and forfeiture shall be

remitted to the state treasurer." A fee is generally regarded as a charge for some service whereas a fine, penalty, or forfeiture is a pecuniary punishment imposed by a tribunal for some offense. Executive Aircraft Consulting Inc. v. City of Newton, 252 Kan. 421 (1993); Vanderpool v. Higgs, 10 Kan.App.2d 1, 2 (1984); United States v. Safeway Stores, 140 F.2d 834, 839 (10th Cir. 1994); Missouri-Kansas-Texas Railroad Company v. Standard Industries Inc., 192 Kan. 381, 384 (1964). It is our opinion that the fees collected by the district court clerk do not fall under the purview of K.S.A. 1993 Supp. 20-350 and, therefore, do not have to be turned over to the state treasurer.

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the obligor?

Paragraph no. 14 of the district court rules states:

"It is a condition on all private or professional surety bail bonds in this judicial district that sureties shall agree to remain liable on all bail bonds until all proceedings arising out of the arrest and/or case for which the bond was posted are concluded or until they are released by court order. No surety shall be released on their obligation on a bail bond once posted without court approval. Any surety or person arrested and turned in on bond by their surety, may file a motion with the court for a determination of whether or not the bail bonds should be revoked or continued."

Your concern is whether this provisions violates K.S.A. 22-2809 which provides:

"Any person who is released on an appearance bond may be arrested by his surety ... and delivered to a custodial officer of the court in any county in the state in which he is charged and brought before any magistrate having power to commit for the crime charged; and at the request of the surety, the magistrate shall commit the parties so arrested and endorse on the bond ... the discharge of such surety; and the person so committed shall be held in custody until released as provided by law." (Emphasis added.)

An appearance bond is a contract between the principal (defendant) and surety on the one hand and the state on the other. State v. Indemnity Insurance Company of North America, 9 Kan.App.2d 53, 55 (1983). Theoretically, the court is a party to the contractual obligation between the surety and the defendant and, therefore, would have the right to negotiate a condition that the surety remain liable on the bond until the conclusion of the proceedings or until the court releases the surety on the bond. The problem with this theory is that we interpret K.S.A. 22-2809 as requiring the court to discharge the surety upon the latter's request (if the defendant is surrendered) and consequently paragraph 14's requirement that sureties agree to remain liable until the criminal proceeding is over violates K.S.A. 22-2809's provision that sureties be released

upon request. However, it is appropriate for the court to require that a surety file a motion for release as long as that motion is granted without delay.

5. If the defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect such a change?

Paragraph 15 of the district court rule states:
"Bail bonds designated as OR-cash, cash or professional surety shall be written only on the terms specified by the district judge. If a defendant requests release on a professional surety bond when cash or OR-cash deposit has been specified, the CSO or DCO shall contact the judge authorizing the bond, for modification of the bond."

Whenever a defendant has been released on bond, the court issues an order which designated the bond amount, bond conditions, and the type of bond (i.e. professional surety, nonprofessional surety, OR, OR-cash deposit, OR- supervised, cash). If the defendant desires to use a professional surety, the order will reflect this fact. If the order indicates a bond with a nonprofessional surety and the defendant desires to use a professional surety instead, then paragraph 15 requires that the CSO or DCO contact the court so that the order will reflect the change.

Senator Oleen indicates concern that the court is somehow restricting the ability of a defendant to obtain the services of a professional bondsman by requiring that a defendant select the OR-CD program. This complaint is beyond our purview and moot in light of our opinion that the court's OR-CD program goes beyond the authority granted to the court under K.S.A. 22-2814 et seq. We interpret this paragraph to require that the court order reflect the type of bond the defendant is currently using as well as the conditions of the bond and we find no violation of any statute in this procedure.

Summarizing our opinion, we conclude the following:

1. District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

*8 2. K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court.

3. Furthermore, it is not permissible for a court to retain any portion of a cash deposit. However, the "fee" which the third judicial district is currently collecting from defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, would not be required to be turned over to the state treasurer.

4. K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests a discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

5. Paragraph 15 of the district court rule requires that the court order reflect the type of bond procedure that the defendant is currently using.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Mary Feighny
Assistant Attorney General

Kan. Atty. Gen. Op. No. 94-25, 1994 WL 869642 (Kan.A.G.)

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 96

In re: Pretrial Release

1. Reference: Article 1, Section 3, Kansas Constitution, K.S.A. 20-101, and K.S.A. 20-342.

2. In addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may also be accomplished by promulgation of a local rule substantially as provided in the attached example. Examples of necessary supporting materials are also attached.

3. Judicial districts whose current own recognizance-cash deposit pretrial release programs are not substantially in compliance with the attached example have until July 1, 1995, to submit a local rule substantially in compliance with the attached example. All other districts may adopt a local rule for this purpose whenever the judges of the district court determine such a rule should be adopted. An information copy of any OR-cash deposit local rule adopted shall be forwarded to the office of judicial administration concurrently with filing with the clerk of the supreme court.

BY ORDER OF THE COURT this 17th day of January 1995.

Richard W. Holmes
Chief Justice

Attachments

FEDERAL AND STATE AFFAIRS
Date 2-7-07
Attachment 6

IN THE JUDICIAL DISTRICT OF KANSAS

DISTRICT COURT RULE NO.
PRETRIAL RELEASE

This District Court Rule establishes procedures and qualifications for release from custody in situations other than upon specific direction from a judge of the district court. (If applicable--This rule supersedes _____.)

1. Court Service Officers, Deputy Sheriffs and Correctional Officers who are sworn in as Deputy Clerks of the District Court are authorized to permit persons in custody to post bail bonds in accordance with the provisions of this rule.

2. The attached Automatic Bond Schedule (ABS) is approved for the amount of bail bonds for particular crimes. For those offenses where no bond is set or is designated "see judge," the accused shall be brought before a judge of the district court at the next court date to have a bond set. If a person has been in custody for 48 hours and no bail bond has been set, a judge of the district court shall be contacted.

3. Notwithstanding the ABS, persons in custody with any of the following conditions are not eligible for an ABS bond and shall be brought before a judge to have bond set:

(a) Prior bond forfeitures,
(b) Has been extradited or is awaiting extradition to another state,
(c) Has a detainer or hold from other states or federal authorities,
(d) Has a prior conviction of a felony classified as A, B, or C or level 5 or lower.
(e) Has been detained for a violation of probation.
(f) If a deputy clerk believes in good faith that the accused may flee, pose a danger to public safety or is not eligible for bond under the ABS, the matter of setting a bail bond shall be referred to a judge of the district court.

4. On bonds requiring $1,000 surety or less, _____ County residents eligible for bond under the ABS may be released on the person's own recognizance bond (OR) if they meet one of the following criteria:

(a) Own real estate located in _____ County in own name; or
(b) Any three of the following five:
  (1) Resident of _____ County- more than 6 months:
  (2) Valid Kansas drivers license;
  (3) Employment in _____ County-more than 3 months;
  (4) Current telephone service-in own name;
  (5) Is enrolled as a student in the State of Kansas; or
(c) Active duty military and stationed at a military base in the State of Kansas.

All factors shall be determined upon a sworn statement made under penalty of perjury by the accused or the accused's private surety. Court service officers, deputy sheriffs or correctional officers who are sworn in as deputy clerks are authorized to require further verification of any item as they deem appropriate before permitting a person in custody to post bond. Victims reflected in an arrest report cannot act as private surety on a bail bond.

5. On bonds requiring $1,000 surety or less _____ County residents eligible for bond under the ABS, but not meeting the criteria at paragraph 4, may be released on bond with a surety if the surety completes a sworn statement and qualifies under both items (a) and (b) of paragraph 4.

6. On bonds requiring surety of more than $1,000 and up to $2,500, _____ County residents eligible for bond under the ABS may be released by posting an OR cash deposit bond and meeting one of the criteria set forth in paragraph 4, sections (a), (b) or (c). A _____ County resident eligible for release under the ABS, but not meeting the criteria of paragraph 4 may be released by posting an OR-cash deposit bond and obtaining a private surety who qualifies under both items (a) and (b) of paragraph 4.

7. Persons may be admitted to personal recognizance cash deposit (OR-cash deposit) bail bonds who meet the criteria set forth in this rule or upon special screening and recommendation of a person authorized to permit posting of a bond in accordance with this rule. Any person determined eligible to be admitted to bail on an OR-cash deposit bond shall deposit with the clerk of the court cash equal to 10 percent of the amount of the bond and execute a bail bond in the total amount of the bond. All other conditions of the bond set by the court and this rule must be satisfied.

8. When an accused person qualifies for an OR-cash deposit bond, the cash deposit shall be held by the Clerk of the Court until such time as the accused has fully performed all conditions of the bond and is discharged from the person's obligation by the court. When an accused has been so discharged, 90% of the cash deposit shall be returned to the accused upon surrender of the cash deposit receipt previously issued by the clerk. Ten percent of the cash deposit shall be retained by the Clerk as an administrative fee. Cash deposit bonds shall be placed in an interest-bearing financial institution account by the clerk. No interest shall be paid to the person or surety posting a cash deposit bail bond. Annually the aggregate amount of administrative fees retained and interest earned on cash deposit bail bonds shall be turned over to the general fund of _____ County.

9. A cash receipt for an OR-cash deposit bail bond shall be issued only to the person being released on bond. Any person posting cash for another person shall be informed that any cash posted as a bail bond is the property of the accused person and may be subject to forfeiture, application to payment of fines, court costs and fees, and will be refunded only to the arrested party. Any arrangements to furnish bond money are between the lender and the accused person.

10. When an accused person who has posted a cash deposit bail bond is discharged from the person's obligation to the court and files the receipt for the cash deposit with the clerk at the conclusion of the proceedings, the refundable portion of the cash deposit may be allocated to restitution, court costs or to an attorney for payment of attorney fees, upon order of the court.

11. All OR-cash deposit bail bonds issued in this county shall be subject to the condition of forfeiture and the amount deposited will become the absolute and permanent property of the district court or of _____ County should one or more of the following occur:

(a) Accused person or surety makes a false statement or representation regarding the criteria for OR-cash deposit as set forth in paragraphs 3 through 6, above.
(b) Accused person fails to appear in court pursuant to court order at any stage of the proceedings.
(c) Accused person fails to report as directed to CSO.
(d) Accused person fails to perform any other condition of bail imposed by the court.

12. All persons admitted to bail on OR or OR-cash deposit bond shall be required to report as directed to a court service office (CSO).

13. Other special conditions may also be imposed by the court as a requirement of release on OR or OR cash deposit bonds.

14. All private or professional surety bonds in this district court shall have as a condition that sureties shall agree to remain liable on any bail bond until all proceedings arising out of the arrest or case for which the bond was posted are concluded or the surety is released by court order. No surety shall be released on an obligation on a bail bond without court approval. Either a surety or a person arrested and turned in on a bond by a surety may file a motion with the court for a determination of whether the bail bond should be revoked or continued in force.

15. Bail bonds designated as OR-Cash, Cash or Professional Surety shall be written only on terms specified by a judge of the district court. If an accused person requests release on a professional surety bond when cash or an OR-cash deposit bond has been specified, the deputy clerk shall contact the judge authorizing the bond for modification of the bond.

16. This rule shall not limit or restrict the right of any person to seek or obtain pretrial release under other statutory methods of admitting accused persons to bail or the authority of a judge of the district court to determine bail. The participation of an accused person in this program shall be on a voluntary basis.

17. This rule shall <u>not</u> apply to civil bench warrants.

18. Definitions:

(a) The term "cash" as used in this rule means United States currency, a money order, or a bank draft or certified check drawn on a Kansas banking or savings and loan institution.

(b) The term "court" as used in this rule refers to the_____ County District Court.

(c) The term "accused person" as used in this rule means a person in custody by reason of an arrest report or a defendant in a criminal, driving under the influence of drugs or alcohol, or traffic case.

BY ORDER OF THE JUDGES OF THE DISTRICT COURT IN _____ COUNTY, KANSAS.

Dated this _____ day of _____ 19____.

_____

Administrative Judge

IN THE DIST CT COURT OF COUNT , KANSAS
JUDICIAL DISTRICT

INFORMATION REGARDING OR - CASH DEPOSIT BONDS

1. Kansas residents who meet certain specified screening requirements may be eligible for release on their own nizance by posting a cash deposit with the Clerk of District Court.

2. When a defendant qualifies for on OR - Cash Deposit bond, ten percent of the bond in cash shall be deposited with and held by the Clerk of District Court until such time as the defendant has fully performed all conditions of the bond and is discharged, ninety percent of the cash deposit shall be returned to the defendant upon filing the receipt with the Clerk. Ten percent shall be retained by the Clerk as an administrative fee. No interest will be paid on the cash deposit. The Court will only refund cash deposits to the defendant or persons in possession of the receipt and an assignment executed by the defendant.

3. The cash deposit shall be retained by the Clerk of the Court until the defendant has performed all conditions of the bond and has been discharged from all obligations by the Court, including fines, court costs, attorneys fees, child support or any other Court ordered obligation.

4. The cash deposit may be forfeited should one or more of the following events occur:

a. Defendant makes a false statement or provides false information in the written document entitled "SUPPLEMENTAL CONDITIONS" which is attached to and becomes a part of his/her OR-Cash Deposit bail bond;
b. Defendant fails to make any required court appearance;
c. Defendant fails to report as directed to a Court Services Officer;
d. Defendant fails to perform any other condition of bail imposed by the Court.

If the defendant's bond is forfeited, the defendant and any sureties will be obligated for the full amount of the bond. The cash deposit will be applied to such obligation and remain the absolute property of the Court or the State of Kansas.

5. An application for return of the refundable portion of the cash deposit must be made within one year after termination and final judgment in the case. If such application is not made within such period of time, the cash deposit shall become the absolute and permanent property of the Court or County.

6. The OR - Cash Deposit bail bond program is voluntary. If a defendant does not participate in this program he/she retains the right to seek or obtain pretrial release under any other statutory provision for admitting defendants to bail.

7. PERSONS POSTING BOND FOR ANOTHER ARE DEEMED BY THE COURT AS MAKING A LOAN TO THE ARRESTED PARTY. THE COURT IS NOT UNDER ANY OBLIGATION TO REFUND A CASH DEPOSIT TO ANYONE OTHER THAN THE ARRESTED PARTY AND CASH DEPOSITS ARE SUBJECT TO APPLICATION TO FINES, COSTS AND FEES.

8. This information sheet should be attached to every receipt for an OR - Cash Deposit.

I have read the foregoing and have received a copy of this information sheet.

_____
(Defendant)

Date: _____

Name and Mailing Address (Please Print)

_____

_____

_____

IN THE DISTRICT COURT OF COUNTY, KANSAS
JUDICIAL DISTRICT

STATEMENT FOR OBTAINING OR AND ORC BONDS

Date _____

1 Please print the following information:
NAME _____ AGE: _____ SEX _____ RACE _____
OFFENSE _____

2. Screening information to be furnished by defendant: (Check correct answers)
a. I am a Kansas resident. _____Yes _____No How long? _____(months)(years).
b Address: _____
How long at this address? _____ (months) (years)
c. Your home telephone number _____ Is this telephone listed in your name? _____ Yes _____No
d. I have had prior bond forfeitures. _____Yes _____No
e. I have been extradited or waived extradition on pending charges. _____Yes _____No
f. I have detainers or holds from other state or federal authorities. _____Yes _____No
g. Are there other charges pending against you? _____Yes _____No
If yes, explain: _____

3. Additional screening information furnished by defendant:
a. I have not been previously convicted of an A, B or C felony or a level 5 or lower felony. _____Yes _____No
b. Closest relative or family member living in County.
Name _____ Home telephone No. _____ Address _____
c. I am presently employed in Kansas. _____Yes _____No
(If the answer is "yes", write employer's name and address below)
_____
_____ Employer's Telephone No. _____
How long employed here? _____(months)(years).
d. I own an interest in real property in the State of Kansas _____Yes _____No
(If the answer is "yes", list the address or the legal description of the property)
_____
_____
e. I am a student in Kansas. _____Yes _____No
(If the answer is "yes", state the school or institution, date of last enrollment and class)
_____
_____

4. An active member of military service _____Yes _____No
(If yes, state Service number, duty station and name of commanding officer and c.o. telephone number)
_____

5. In addition to any special conditions required by the Court, I understand the following are conditions of this BOND:
a. That all of the foregoing statements are true.
b. That I will report as directed to Court Services Officer.
6. When this document is signed and sworn to by the defendant, it shall be attached to and become a part of the Recognizance for Appearance in the District Court of _____, County, Kansas.

_____
(DEFENDANT) (SURETY)

AFFIDAVIT OF DEFENDANT OR SURETY

I, the undersigned defendant, do solemnly swear under penalty of perjury that the foregoing statements are true, correct and complete. So Help Me God.

_____
(DEFENDANT) (SURETY)

Subscribed and sworn to before me this _____day of _____, 1993.

CLERK OF DISTRICT COURT

_____
DEPUTY CLERK

VoteTracker
P.O. Box 12734
Overland Park, KS 66282
Toll free: 866-348-8683
Fax: 913-381-7467

Invoice

Number: **1240**

Date: **February 05, 2007**

Bill To:

Kevin Barone
1508 SW Topeka Blvd
Topeka, KS 66612

Ship To:

Terms	Customer #	Contact Person
Due upon receipt	1169	Kevin Barone

Date	Product ID	Description	Quantity	Price	Amount
2/5/2007	101599	VoteTracker - 1 year (through 2/5/2008)	1.00	550.00	550.00

Thank you! We appreciate your business.

				Total	**$550.00**

FEIN: 48-1236772

Please make checks payable to VoteTracker. Or, if you'd prefer to pay by credit card (Visa, MasterCard, Discover or American Express), call us toll-free at 866-348-8683.

TO: House Federal-State Committee

FROM: David Stuckman Spokesman for American Bail Coalition

DATE: February 6th 2007

RE: Opposition to HB 2203

Hello members of the committee, I am David Stuckman a spokesman for a group of Kansas Professional Bail agents and The American Bail Coalition. We bail agents are members of the Professional Bail Agents of the United States.We are dedicated men and women that make up a profession that serves the communities in which we live. We guarantee and ensure that justice is served with out coercion of the citizen's who may be charged with a crime, maintaining innocence until proved guilty but, additionally guaranteeing that the victims of crime have their day in court. So, you see it is a two fold duty that we professional bail agents provide to our communities **with out cost** to the taxpayers. I have bee asked to testify, as to how we do this.

Before we Post a bond, there are several factors we consider, and information that we collect before we will write the bond, such factor include a defendant`s

Financial resources

Character and mental condition

Family ties

Employment status

Ties to the Community

Length of residency in the community

Prior arrest record

Prior court appearance record

As you can see these are important factors to consider. After taking these factors into consideration. We will determine how and what we want to put on the bond.

No contact with the victim or the witness.

not go near any bars the places where the crime place

attend AA meeting

maintain or seek gainful employment

11:00 pm curfew

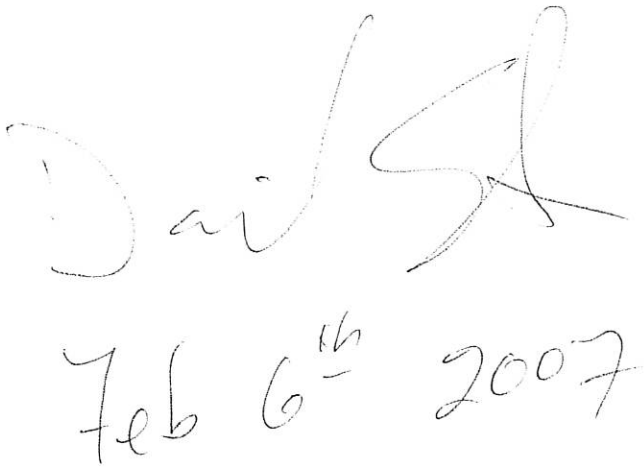
notify us of change of address or phone number employment ect

We may take Real estate, cars boats motorcycles, ect as collateral to secure the bond, we may have the parents or family member indemnify or co-sign for the bond.

When the bond is written we will have the defendant check-in periodically usually on a weekly basis. until he has fulfilled his obligation to the court. found guilty , acquitted plead an agreement or found not guilty.

FEDERAL AND STATE AFFAIRS
Date 2-7-07
Attachment 7

When the defendant doesn't show for the court date. We a allotted short amount of time to find him. we use many methods to make this happen. we contact the co-signers they are usually the most help in getting information on the where abouts of the defendant, and bring him back to the jurisdiction of the court at no cost to the taxpayers.



Feb 6th 2007

2/6/2007

1-3

David Stuckm: (Please type in the Discharge Dates and return to American Surety Company for processing. Keep a copy for your records.)

PowerNumber	DefendantName	BondAmou	ExecutionD	CourtCity	CaseNumber	ST	town	THE DATE CAUGHT
AS5-510271	JOHNSON, RICHARD L	1,000.00	08/03/06	TOPEKA	06TR004068	TX	DUMAS	Sunday, October 01, 2006
AS5-510268	GARCIA, ANTONIO	300.00	08/02/06	MANHATTAN	06TR1103	OK	ENID	Sunday, November 05, 2006
AS5-510273	THOMPSON, DEMONTHEOUS	1,000.00	08/03/06	MANHATTAN	04TR1585	MO	SPRINFIELD	Tuesday, September 05, 2006
AS5-510272	AYON, THEODORE	1,500.00	08/03/06	MANHATTAN	06TR2087	OK	TULSA	Friday, September 01, 2006
AS5-510275	LEOS, CRYSTAL M	750.00	08/03/06	JUNCTION CITY	CR064337	TX	DALLAS	Monday, September 11, 2006
AS5-498943	MOFFETT, TONYA MARIE	1,000.00	05/03/06	MANHATTAN		NE	SARACUSE	Friday, July 07, 2006
AS5-497130	LAWRENCE, MARK ALEXANDE	2,000.00	05/03/06	MANHATTAN		LA	MANDIVILLE	Wednesday, June 21, 2006
AS5-510267	TATE, MATTHEW A	500.00	07/30/06	MANHATTAN	06006634	AR	LITTLE ROCI	Friday, September 01, 2006
AS5-510266	LOWRY, TONI	500.00	07/30/06	JUNCTION CITY	CR0602347	IL	CHICAGO	Wednesday, August 30, 2006
AS5-510338	BASHORE, THEKLA T	500.00	08/08/06	MANHATTAN	06CR694	TX	ELGIN	Friday, September 15, 2006
AS5-510335	COLLIER, MICHELLE ROSA	500.00	08/05/06	MANHATTAN	06006849	CO	LAMAR	Monday, August 07, 2006
AS5-510336	STONE, GLADYS M	500.00	08/05/06	MANHATTAN	06006882	FL	MIAMI	Friday, September 15, 2006
AS5-510334	HARPER, WADE	750.00	08/05/06	JUNCTION CITY	0205j722	UT	PARK CITY	Monday, September 25, 2006
AS5-510337	HILL, SANDRA	1,000.00	08/06/06	MANHATTAN	05CR761	AR	PRSCOTT	Tuesday, August 15, 2006
AS5-510276	HANKS, AREALE N	5,000.00	07/09/06	MANHATTAN	06006777	PA	INDIANA	Wednesday, November 01, 2006
AS5-510330	DIGGS, SETH RYAN	500.00	07/01/06	JUNCTION CITY	06CR678	CO	RYE	Monday, August 21, 2006
AS5-510331	TOOMBS, CHARLENE Y	5,000.00	06/13/06	MANHATTAN	06CR702	CO	DILLON	Saturday, July 01, 2006
AS5-510333	HARPER, WADE	750.00	06/11/06	MANHATTAN	05CR1368	OK	ELK CITY	Tuesday, August 01, 2006
AS5-510332	SCOTT, MAURICE	750.00	05/25/06	MANHATTAN	05CR757	OK	TULSA	Sunday, June 25, 2006
AS5-498944	MOORE, SEAN COSSLETT	1,500.00	05/03/06	WESTMORELANI	05CR187	NE	OMAHA	Monday, July 03, 2006
AS5-492430	HOOVER, JACOB R.	500.00	04/03/06	MANHATTAN	05CR775	IL	AMES	Monday, June 05, 2006
AS5-492429	BRINKER, ELIZABETH	500.00	04/03/06	MANHATTAN	04CR108	OR	SHERIDAN	Sunday, July 02, 2006
AS5-492431	CORBETT, VALERIE ANN	500.00	04/03/06	MANHATTAN	05CR19923	TX	HOUSTON	Saturday, August 05, 2006
AS5-492427	RICHTER, ROSS WILLIAM	1,000.00	04/01/06	MANHATTAN	05CR001174	GA	ATLANTA	Tuesday, August 01, 2006
AS5-492428	AQUINAGG, MICHAEL	750.00	04/02/06	JUNCTION CITY	06MR01	LA	KENNER	Monday, June 12, 2006
AS5-492426	EVERHART, TRISTA L.	750.00	03/31/06	MANHATTAN	05CR407	TX	WACO	Monday, May 01, 2006
AS5-492451	CYRE, MEGAN	500.00	03/25/06	JUNCTION CITY	05CR356	MS	GULFPORT	Tuesday, April 25, 2006
AS5-492435	STRUEBING, PATRICK BISHOI	129.00	04/04/06	MANHATTAN	05CR184	NE	KEARY	Friday, May 05, 2006
AS5-492433	SHUCK, JONATHAN PAUL	5,000.00	04/04/06	JUNCTION CITY	05CR1501	TX	CHILDRESS	Wednesday, June 07, 2006
AS5-492434	TAYLOR, KATRINA GAIL	5,000.00	04/04/06	MANHATTAN	05CR158	NV	SPARKS	Tuesday, June 06, 2006
AS5-492452	RIECHERS, CODY ALAN	500.00	03/25/06	JUNCTION CITY	05CR2184	NE	LINDON	Saturday, April 15, 2006
AS5-492377	WIDENER, KRISTI R.	200.00	03/01/06	MANHATTAN		TX	DALLAS	Saturday, April 01, 2006
AS5-492376	WIDENER, KRISTI R.	500.00	02/15/06	MANHATTAN	05CR365	TX	DALLAS	Saturday, April 01, 2006
AS5-492420	SCHMIDT, DANIEL	1,000.00	02/01/06	JUNCTION CITY	05CR2184	NM	SANTA FE	Friday, March 03, 2006
AS5-492375	MCCLANTHAN, MEGAN DEE	2,500.00	01/15/06	MANHATTAN	DWS	AR	TUCSAN	Wednesday, February 15, 2006
AS5-492425	BROWN, COLBY LEE	3,500.00	01/08/06	MANHATTAN	05CR1305	CO	LIMON	Wednesday, February 01, 2006

KPBBA

1508 SW
Topeka
Boulevard
Topeka,
Kansas 66612

Kansas Professional Bail Bond Association, Inc.

TO: House Federal-State Committee

FROM: Darrel Manning, Recovery Agent

DATE: February 7, 2007

RE: Opposition to HB2203

Good afternoon Chairman and members of the Committee. My name is Darrel Manning and I am a bail bond recovery agent. I am here today to speak in opposition of HB2203. HB2203 would put the Courts in the role of the bail bondsman and would put Sheriffs in the recovery agent business when they are already spread too thin to actively deal with the number of outstanding warrants.

I was in law enforcement for 14 years, including being Osage County Undersheriff for two years, before I went to work in the bail bond industry in 2000. I work for various Kansas Bail Bond companies and specialize in the recovery of defendants who fail to appear in court. I have been asked to testify about recovery efforts when a defendant fails to appear in court.

When a professional surety posts a bond, the organization tracks the defendant's progress in court. Generally, the defendant is required to check in with the surety weekly. The defendant is constantly reminded about court dates. When a court date comes, the surety checks to make sure that the defendant appeared. Methods for such "court-checks" include sending an agent to court to verify appearance or calling the court clerk to verify appearance.

If a defendant is released on bond through a surety and fails to appear in court, a recovery agent immediately attempts to locate the defendant. We contact all of the persons who have agreed to payment of the bond, guaranteeing payment of the bond should the defendant fail to appear, as well as employers, family and friends. All of this information is obtained and verified when the bond is posted. In most cases, we are able to quickly locate and surrender the defendant to custody. Occasionally, a defendant will make a genuine effort to "run from the law" and head to another state. In such situations, if it does not make financial sense to travel to the other state, we contact a recovery agent in the other state and hire that agent to recover the defendant. The standard fee for such work is 15% of the face value of the bond plus expenses, but the fee is negotiable.

In contrast, when a defendant bonds out on cash and fails to appear in court, a warrant is issued by the judge and the local sheriff notified. Sometimes the warrant is entered into the national database, NCIC, allowing officers in other states to "see" that there is an active warrant. There is a fee for entering a warrant into this database, so only the more serious warrants are entered. Because law enforcement does not have funding for a dedicated staff

KPBBA

1508 SW
Topeka
Boulevard
Topeka,
Kansas 66612

of officers to actively track defendants who missed court, only the most serious cases are actively pursued. Even then, the warrants often must take a backseat to other law enforcement duties. The vast majority of warrants never have an officer actively seeking to enforce it. There simply are not enough officers to do this.

Attached to my testimony is a list of the outstanding warrants that Sheriffs of Shawnee county currently have to deal with. As you will see they already have a large burden to deal with. Passing HB2203 would only make an already difficult job for County Sheriffs even harder.

Thanks for the opportunity to speak in opposition of HB2203 and I encourage the committee to reject this bill. I am available for any questions that any members of the committee may have.

TESTIMONY OF MANUEL BARABAN

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

HOUSE BILL NO. 2203

FEBURARY 7, 2007

Chairman Siegfreid and Members of the House Federal and State Affairs Committee:

My name is Manuel Baraban and I have been in the bail bond business in Olathe, Kansas, for almost 40 years and can provide the Committee with more information about the surety business than time would permit. In addition I am a licensed Real Estate Broker in Kansas and Missouri for over 50 years.

I appear today in strong opposition to House Bill 2203 and hope the Committee rejects the proposals put forth in this measure.

As we all know, our courts and sheriffs office local police department are all bulging at the seams. Cases continue to be filed on a daily basis. Our courts and law enforcement agencies do not have sufficient staff available to handle the caseload. Enacting HB 2203 would place a greater burden on law enforcement to find criminal defendants who fail to appear, as well as unnecessarily delaying a victim's right to their day in court.

Under current law, a defendant is allowed to be released upon posting, a personal recognizance bond, 100% cash bond or with a surety who is authorized by the court

For those of you unfamiliar with the bail bond process, let me explain. A surety bail bondsman charges a fee for his service, typically 10% of the bond. The surety then pledges to the court that the defendant will be present when ordered by the court to appear. If the defendant fails to appear the surety will pay the full amount of the bond (100%) to the Court/State.

A "property" surety, such as myself, has his own assets pledged to the court to insure the full amount of the bond is available to be paid if the defendant fails to appear. The Administrative Judge in each district reviews my application, my Affidavit of Assets, my background and my financial conditions and then determined if and how much bail I can post in that District. Additionally, I am required on an ongoing basis, to update the court with current financial information including my present bond obligations and any change in my financial condition.

When a criminal defendant on an appearance bond, has made their appearance at all court proceedings as required, the surety is released from the bond. If the defendant fails to appear then the appearance bond is forfeited. In the event of a failure to appear a financial incentive has been created for surety to return a missing defendant to the custody of the sheriff, to avoid losing the full amount of the bond.

The current proposal would eliminate these incentives.

Cash Deposit programs modified to allow a defendant to pay 10% of the bond's face amount will mean the elimination of all surety bail bondsman. There are about 1500 people involved in the bail bond business in the State of Kansas. The state would lose all monies collected on 100% bonds posted by surety on bond forfeitures.

Supreme Court Rule 114
SURETIES ON BONDS

> Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business in the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify the person as surety and the total amount of any liabilities, contingent or otherwise, which may affect the person's qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. **The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond**. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.
>
> [**History**: Am. effective September 8, 2006.]

The questions you should ask of this bill are:

Does this change to the statue provide any benefit to the State? No

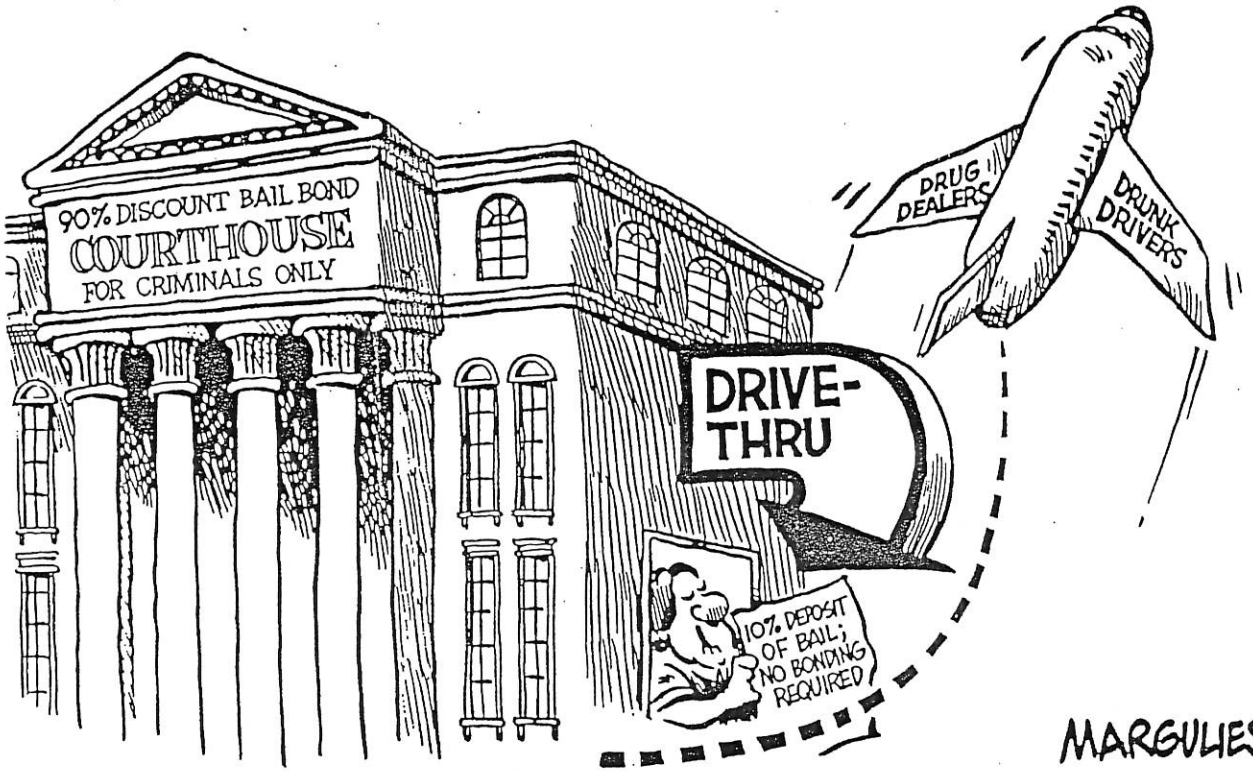
Does this change to the statue provide any savings to the taxpayer's money? No

Does this change protect the citizens of the state of Kansas? No.

Does this bill violate the Kansas Constitutions, Bill of Rights Article 9? All person shall be bailable sufficient surety except for capital offences where proof is evident and the presumption great. Excessive bail shall not be required nor excessive fines imposed nor cruel or usual punishment inflected. The question is 10% of 100% sufficient surety

So whom does this measure really help, only those who want to convert the fee a bondman would charge to their own purposes.

Thank you for our time and consideration today.



" Do you want a receipt ?... "

to the Index of District Court Rules

Kansas Judicial Branch
Rules Adopted by the Supreme Court
Rules Relating to District Courts

COMMENCEMENT OF ACTIONS, PLEADINGS, AND RELATED MATTERS

Rule 111
FORMS OF PLEADINGS

All pleadings, briefs, and other papers prepared by attorneys or litigants for filing in the courts shall, unless the judge specifically permits otherwise, be typed with black ink on one side only of standard size (8 ½" x 11") sheets and shall include the name, Supreme Court registration numbers for attorneys, address, and telephone number of the person filing them. Typing shall be double-spaced except that single spacing may be used for subparagraphs, legal descriptions of real estate, itemizations, quotations, and similar subsidiary portions of the instrument.

[**History**: Am. effective September 8, 2006.]

Rule 112
DUTY TO PROVIDE ADDRESSES FOR SERVICE

In all instances, a litigant has the duty to provide addresses for any service requested.

[**History**: Am. effective September 8, 2006.]

Rule 113
CLERK'S EXTENSION

In cases filed pursuant to Chapter 60 of the Kansas Statutes Annotated, the initial time to plead to any petition, as the time is stated on the summons served upon the party, may be extended once by the clerk of the court for a period of not to exceed ten (10) additional days. The party seeking the extension shall prepare the order for the clerk's signature, and copies thereof shall be served upon counsel for all adverse parties in accordance with K.S.A. 60-205. All other extensions of time to plead shall be by order of the judge.

History: Am. effective July 1, 1982.]

Rule 114
SURETIES ON BONDS

Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance

with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business in the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify the person as surety and the total amount of any liabilities, contingent or otherwise, which may affect the person's qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.

[**History**: Am. effective September 8, 2006.]

Rule 115
ENTRIES OF APPEARANCE

In all actions in which a party shall enter an appearance solely by personally signing an instrument designed for that purpose, and no attorney subsequently appears of record on behalf of such party, such entry of appearance shall be held to be ineffective to constitute service under K.S.A. 60-203 unless the signature of the party has been acknowledged before an officer authorized by law to take acknowledgements.

[**History**: Am. effective September 8, 2006.]

to the Index of District Court Rules || to Rule 116 - Rule 118

URL: http://www.kscourts.org/ctruls/dsct_111.htm
Updated: February 2, 2007

VIRGINIA REJECTS 10%

He who goes bail for a stranger will rue it...
Proverbs 11:15

In a recent report entitled *House Document No 13*, the Virginia State Crime Commission decided that effective regulation of commercial bail bondsmen trumped creating a 10% bail system.

Their reason?

> *...the Crime Commission has determined that the implementation of a percentage bond system would be burdensome on the courts and* ***would likely increase the rates at which defendants released before trial fail to appear in court.*** [emphasis added]

How did the Commission reach this conclusion? The 2002 General Assembly, passed VA HJR 201, which mandated that the Virginia Crime Commission study bail bondsmen, bounty hunters, and percentage bail payment to the courts. Virginia has never utilized the 10% bail system. Hence, the Commission staff analyzed statutes, regulations, and local court rules of the 30 states that have some type of percentage bail system. (The study includes its detailed findings in an attachment [R]).

Based on these analyses and interviews with local and state official and clerks of the courts, the commission rejected the 10% type system as both "burdensome" to the courts and a threat to public safety. In fact, the percentage bail system is a sort of an institutionalized rejection of the common sense embodied in the above passage from the wisdom literature of the Sacred Scripture. Hence, it is not surprising that the Old Dominion, home of the first legislative body in America, would side with the sacred author.

You can get more information re the report by calling the Virginia State Crime Commission at 804-225-4534 or *vscc.state.va.us*.

Randall J. Kahler
Testimony

Mannies Bonding Company
302 E. Santa Fe
Olathe, Kansas 66061

Phone 913.782.0670
Toll Free 866.782.2245
Fax 913.780.6696

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
HOUSE BILL NO. 2203
FEBRUARY 7, 2007

Dear Chairman Siegfreid and Committee Members;

My name is Randall Kahler. I have been the General Manager of Mannie's Bonding Company in Olathe, Kansas, for about 10 years.

I appear here today in opposition to House Bill No. 2203 and I urge the Committee to reject this proposed legislation.

This 10% cash bonding proposal is a big black hole **and will cost the state of Kansas and its taxpayers millions of dollars**. Every defendant who is released by this program and does not appear in as required by the court, will divert the time, energy and focus of Sheriff's Department. Law enforcement officers employed will now be forced to attempt to track and apprehend these fugitives. And these fugitives can only be located through intense and methodical tracking efforts.

If HB2203 passes, I have three suggestions for you; 1) build more jails to compensate for the extra prisoners they will be forced to hold; 2) increase the budget of every Sheriff's Department by 30% to track the defendants down; and 3) give the courts more help because of the overwhelming work load defendants jumping bond will cause.

To date the ORCD program in Johnson County has resulted **in a failure to appear rate of 25%, with over 36% of those fugitives still at large**.

Under this program, if the defendant has been released from jail and they jump bond, the judge will not, and should not, give them a new 10% cash deposit appearance bond. This will necessitate more jail space for the defendants while awaiting a court date.

As you all are well aware, our jails are expensive and overcrowded. Simply put, jails will not be able to handle the extra load this program will force upon them. Currently, Johnson County farms out an average of three hundred fifty people a day with the 10% ORCD Program. Similarly, Wyandotte County farms their people out to Missouri. This is with the existing Programs in place today. I'm not sure how many millions of dollars it will cost to build the new jails to facilitate the jail population that HB 2203 will create, but I'm sure it will be difficult to find the resources to do so.

The largest problem, however, is that our local Sheriff's Offices will have to depend on other law enforcement agencies to apprehend the defendants, many of which may lack the manpower to do so. Then the County will have to transport them back to Kansas through Security Transport Systems, or by sending Deputies to transport them back themselves. The result is the same – local law enforcement will be forced to pull officers off the streets as a result of HB 2203 and their already tight budgets will be stressed even further.

HB 2203 will be a problem for the courts, by jamming up the system. When defendants fail to appear, it necessitates extra court appearances and burdens an already overwhelmed system. On the other hand, if you have a surety that signs for the defendant to get out, and if the defendant fails to appear the surety will go where ever he/she is and return them back to the jurisdiction they are wanted in. The current system leaves no cost to the taxpayers of Kansas or any other state and if the defendant is not apprehended then the surety has to pay the state the full Bond amount.

Fact: Kansas Bill of Rights Section No. 9 states

"All persons shall be bailable by SUFFICIENT SURETIES except for capital offenses,"

Question: How can the State of Kansas be sufficient surety for a defendant? Is the State going to pay Johnson County, Wyandotte County, or Shawnee County etc., the full face amount of the bond, if the defendant doesn't show?

If the County allows the Defendant to post 10% cash deposit who will pay the full bond? You can't find the defendant, there isn't anyone to collect from; all you have is a debt to the County, even those that are apprehended can't pay this. So the County and the State have lost that money. All you have is a debt the County and State that will never get paid.

I have personally traveled to all part of the United States to recover defendants and return them back to Kansas Courts and as of this time I have over 5000 bail recoveries and it has not been at the expense of the State of Kansas or Kansas taxpayers.

Attached you will find letters of opposition of HB2203 from,

James Franklin Davis, Johnson County Head Criminal Judge

Stephen L. Parker, Criminal Attorney

Scott Gyllenborg, Criminal Attorney

N. Trey Pettlon, Criminal Attorney

Thank you for your Time.

R.J. Kahler

Davis, James, DCA

From: Davis, James, DCA
Sent: Monday, February 05, 2007 2:24 PM
Subject: HB 2203 - court bonding

Tim,

Sorry to bend your ear, but I just was handed a draft of HB 2203. I must say that I am strongly opposed to this initiative. Bonding should be left to the sound discretion of each judicial district. In many cases a 10% per cent court bond is just an invitation for a defendant not to return to court. Missouri has had tremendous problems with it. With a court bond, no one is chasing after those who fail to return. The matter is best left to the local level. The proposed revision to the bill is even worse, setting bonds at a presumptive amount. Bonding in Johnson County isn't broke and doesn't require a fix...If you have time or interest, call or send me your thoughts. Sorry to bother you, but I think the proposal is serious enough for me to alert you to the problem. Enjoy the session, Tim...

Judge James Franklin Davis

10-3

ABOGADOS
PARKER & PARKER, P.A.
ATTORNEYS AT LAW

Hablamos Español

STEPHEN L. PARKER — ADMITTED IN KANSAS AND MISSOURI — DANIEL L. PARKER

535 CENTRAL AVENUE
KANSAS CITY, KANSAS 66101

TELEPHONE: (913) 381-1610
ESPAÑOL: (816) 509-8959
FAX: (913) 403-8749

February 2, 2007

Michael Peterson
Kansas State Representative
300 SW 10th Avenue
Room: 281E
Topeka, KS 66612-1504

RE: House Bill No. 2203

Dear Rep. Peterson:

I am writing in opposition of Senate Bill No. 2203. Our law office handles criminal law cases in Wyandotte and Johnson County and I believe this bill would seriously affect many of our clients.

I thank you for your kind consideration of this matter.

Very truly yours,

Stephen L. Parker

SLP/eg

SHANE L. ROLF
215 EAST SANTA FE
OLATHE, KANSAS 66061
(913) 829-2245

TESTIMONY IN OPPOSITION TO HB 2203

My name is Shane Rolf, I have been a professional bail bondsman in Olathe for over 20 years. I am here to day to provide testimony in opposition to House Bill No. 2203.

Purpose of Bill

What is the purpose of this bill? Over the years I have heard various excuses for these types of proposals. All of them center on the notion that the fees charged by a professional bail bondsman could be converted to another purpose. Whenever an issue comes up involving a financial crisis within the Criminal Justice System, there is a segment that proposes that the solution is to get rid of the bondsmen and take the fees they charge. Getting rid of us, and seizing the fees we charge, has been proposed as the solution to fund indigent defense, build new prisons and solve jail overcrowding.

I guess I didn't realize that I made that much money.

It has been suggested that by allowing a defendant to post only a portion of the bond in cash, then a reserve of cash would be available to attach for other purposes. Specifically, a private lawyer would be able to attach these funds at the end of the case and, as a result, the need for court appointed counsel would be avoided.

This ignores several basic facts:

- The average bail bond is just slightly more than $2,000.00, which would provide a pool of only $200.00 for a lawyer to attach. Most lawyers these days are charging in excess of $175 per hour. This small amount, *potentially* available at some point in the future, is not going to engage the services of a competent attorney.
- Bonding fees and cash bonds are not typically paid by the defendant, rather a friend or family member is most often the source of these funds. A bond posted in cash with the State still belongs to the person making the deposit, until such time as there is a violation of bond conditions and the bond is forfeited. If the defendant meets all the conditions of his bonds, then the full cash deposit would need to be refunded to the party making the deposit. It would not be available for attachment, for any purpose.
- If the defendant fails to appear, then the deposited cash would be forfeited to the State, thus leaving the attorney with nothing to attach.
- Supreme Court rule 114 forbids attorneys or their spouses from acting as surety on a bond for a defendant they represent. Presumably, this is so that an attorney does not have a financial interest in the outcome of a criminal case. Preventing this financial interest in the case is the reason attorneys are not allowed to accept criminal cases on a contingency basis. Giving an attorney an interest in the outcome of the case creates a perception of conflict. For example: a defendant feels he is wrongly accused and wants to go to trial, but

FEDERAL AND STATE AFFAIRS
Date 2-2-07
Attachment 11

his lawyer convinces him to accept a plea so that the lawyer can quickly collect the cash deposit.

- Districts that have established deposit bond programs have a terrible history of collecting their own Court Appointed Counsel fees, much less fees for private counsel. For instance: Shawnee County has the lowest recoupment rate of any judicial district with a public defender's office.
- Revenue from bond forfeitures is currently divided as follows. The local county government receives 40% of the collected bond forfeiture (to create incentive to collect and help defray the cost of collection and the remaining 60% is transferred to the State's General Fund. That amount is supposed to be transferred into the budget of the Board of Indigent Defense Services to help offset the cost incurred by the State in funding indigent defense. Even if these cash deposits were properly forfeited, the amount of money being transferred to BIDS would be reduced by as much as 90%.

If the goal of this bill is to attempt to turn the fees a bail bondsman charges into money for private attorneys, then history and common sense demonstrates that it will not be effective.

There are other problems with the bill as well.

Constitutional issues:

This bill would fundamentally alter the manner by which bail is posted in this state. The bill mandates that the Court may allow or require a defendant to post a cash deposit with the Court in an amount less than the full bail to secure his future appearance before the Court.

The bill alters the concept of bail as guaranteed by the Kansas Constitution in that it would not allow a defendant to use a surety to secure this lesser amount, but would require a deposit of cash.

> **The Kansas Constitution, Bill of Rights,** § 9. Bail. All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

This bill would deny a defendant his Constitutional right to use a surety, rahter than cash, on a bail, unless he was willing to secure a surety at a far greater bond amount.

Purpose of Bail – Excessive Bail

Bail is a Constitutional right. However bail is not intended to be a source of revenue for the State.[1] Further, many courts have held that bond set in any amount higher than or for any purpose beyond securing appearance is to be considered "excessive." As noted above, excessive bail is also prohibited by the Kansas Constitution. If the purpose behind these "deposit bonds" is to generate revenue, either for the State or for some other party, then bail would be or should be considered excessive.

The commercial bail bond industry provides a valuable service to both the accused defendant and the State. The accused defendant is able to gain his freedom

[1] State v. Midland Insurance. "The purpose of bail is not to beef up public revenues."

pending a determination of guilt or innocence, while the State is provided assurance that the defendant will be present to answer those charges. The defendant is able to post bail amounts which might normally be beyond his means, thus providing significant and measurable incentive for reappearance, while the State is spared the cost of housing the defendant during the pre-trial period. This process has been described as "balancing competing concerns" and "paying full fealty to the basic principles of freedom and the concept of the presumption of innocence."

With deposit bonds, this balance shifts away from the State and toward the criminal defendant. Deposit bonds may provide a less expensive means of release for the defendant, but this is only because deposit bonds carry less incentive for reappearance. The State and the taxpayers gain little from their use.

Effect on Commercial Surety Industry

This bill would have a very negative effect on the commercial surety industry. This effect is by design. It is important to recognize that the suggested cash deposit amount in this bill (no less than 10%) is identical to the fee commonly charged by professional bail bondsmen. The goal of this bill is to siphon clients away from bail bondsmen. This would have a negative economic effect.

In Johnson County alone, the commercial bail bond industry employs about 20 people full time and at least another 20 part time. There are 24 surety companies authorized to post bail. The Industry owns or leases commercial space which pays over $16,000 in annual property taxes, as well as paying hundreds of thousands of dollars in regular business expenses – advertising, rents, utilities, insurance, etc. – which contribute to the local economy. All those employees pay income taxes and property taxes themselves and contribute to the local economy, as well.

Statewide, there are hundreds of individuals and families who have dedicated their lives and their efforts to this industry.

Passage of this bill would have a very negative on the industry and those Kansas residents who are engaged in it.

Performance

There have been studies conducted to compare the appearance rate associated with various types of pre-trial release. The most basic of these studies was conducted by the Bureau of Justice Statistics, which is a branch of the Federal Department of Justice. BJS conducted a study, published in 1992 comparing the various types of release. Defendants released on deposit bonds failed to appear 25% more often than those released on surety bonds. Further, those who absconded on deposit bonds were twice as likely to still be at large after one year, when compared to surety bonds. When this comparison was first conducted, the goal was to demonstrate that surety bonds were not as effective as other types of pre-trial release. In actuality, the results demonstrated that surety bonds were the MOST EFFECTIVE type of pre-trial release. As a result, BJS has never published this comparison data since then.

However, others have been given access to the raw data and have published studies of their own. In April 2004, a study was printed in the Journal of Law and Economics, which is published by the University of Chicago. The study is titled: The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping. In the

study, two statisticians have attempted to compare apples to apples with various types of releases by using a propensity matching score for defendants. Their conclusions are stark. The paper indicates:

- The FTA rate for Deposit bonds is 33% higher than for Surety bonds.
- The Fugitive Rate[2] is 47% higher for deposit bonds
- Defendants who abscond on surety bonds are much more likely to be recaptured compared with other forms of release.
- "States which ban commercial bail pay a high price." The fugitive rate in those states is estimated to be 85% higher for deposit bonds than it would be using surety bonds.

Shawnee County Experience

Nine years ago, Johnson County was considering the possibility of a deposit bond program. They contacted the Shawnee County District Court to ask about their experience. Shawnee County officials wrote and indicated that their FTA rate was 4%. This was based upon the number of cases charging the offense of Aggravated Failure to Appear as a percentage of total case filings. (If this is the definition of failure to appear, then this means that I haven't had anybody fail to appear in over five years.) As it happens, the number of failure to appear *warrants* equaled about 34% of case filings. The research I did back then clearly demonstrated that Shawnee County officials were not above manipulating or redefining their data to support their program.

When Johnson County again looked at the prospect of a deposit bond program in 2005, I had to check the performance of the Shawnee County program again.

To determine the true FTA rate on ORCD bonds in Shawnee County, I reviewed 500 criminal cases from 2004. I did this in blocks of 100 cases spread throughout the year. In those 500 cases I found 162 ORCD appearance bonds. Of those 162 bonds, 53 resulted in failures to appear. (My definition of failure to appear is the issuing of a bench warrant for non-appearance.) This is a **failure to appear rate of 32.7% or 1 in 3**. [This is remarkably similar to the FTA rate from 9 years ago.]

The bottom line is that this program does not work, failures to appear are high, and revenue from administrative fees is less than revenue from bond forfeitures paid by surety companies.

To summarize the high points of the Shawnee County ORCD program:

- One in three defendants released on an ORCD appearance bond fail to appear;
- Shawnee County generates over $50,000 *less,* annually, in administrative fees than Johnson County generates in bond forfeitures;
- Shawnee County's incarceration rate is almost double that of Johnson County's (3.2 per thousand versus 1.7 per thousand). Put in other terms, if Johnson County had the same incarceration rate as Shawnee County, the jail would be holding over 1600 inmates right now;

[2] Fugitive Rate is defined as missing for at least one year following failure to appear

- Shawnee County has the lowest rate of recovery of BIDS money of any county with a public defender's office, despite their claims of increased payments from these ORCD deposits;
- Shawnee County has one of the highest crime rates in the state, perhaps because their probation officers are busy supervising pre-trial releases rather than convicted defendants;

Clearly, Shawnee County is not the county to attempt to emulate.

Johnson County Experience

In late 2005, without any public hearings and without any input from the surety industry, the Johnson County District Court implemented a limited version of the Shawnee County program to test its effectiveness and/or viability.

Defendants were screened by court services officers on a daily basis. Those who successfully passed through several filters, including residency, criminal history, offense severity, prior failure to appear were afforded the opportunity to post a deposit bond.

In order to assist in measuring the efficacy of these deposit bonds, I have tracked these bonds. The first ORCD bond was posted on October 14, 2005 and I have the numbers through October 14, 2006. They are as follows:

From 10/14/05 through 10/14/06 there have been 123 ORCD bonds whose cases have been successfully resolved. They were resolved as follows:

74 Sentenced
27 Diversion
18 Dismissed
2 Acquitted
1 Stay Order
1 Probation Revoked[3]

For this same time period there were 41 failures to appear. This gives us a working total of 164 bonds. Of those 41 failures to appear, 15 are still missing. **This means that – after one year of this test program – the failure to appear rate of the ORCD program is exactly 25%. With 36 % of those who missed court, still being at large.** This number is particularly appalling given that those defendants who were granted these bonds were screened, at great expense, and were considered to be the best risk to reappear.

Additionally, there are 11 other cases which I did not include in this total. These cases were resolved, but there were problems. These cases were resolved as follows:

1 – ORCD bond changed to PR after posting.
1 – Defendant committed suicide.
1 – Case was dismissed prior to any court appearances.
8 – ORCD bonds were revoked for bond condition violations.

[3] Obviously, this bond was posted in violation of the local rules regarding ORCD bonds.

I did not include these in the overall numbers because of the confusion as to where to place them. In theory, the revocations could be placed with the failures to appear, because there were violations of the bonds, however they were not failures to appear. The other three could have been placed with the successfully completed cases, except that the bond did not last the duration of the case. If these 11 cases were included in the totals, the forfeiture rate would be bumped up to 28%.

Even at 25%, it would seem hard to argue that the program is a success. A program which allows 1 in 4 accused criminals to abscond with little or no repercussions would be difficult to justify.

Johnson County Revenue/Costs

As I noted, 41 ORCD bonds resulted in failures to appear. Of those, 15 are still at large. Of those 15 cases, 8 have had Motions for Judgment on Bond granted. [The use of the Motion for Judgment on bond process brings up another problem. A Motion for Judgment on Bond is a special procedural matter which is allowed only for bonds posted under KSA 22-2802. KSA 22-2807 allows for a hearing to occur on a motion (rather than a separate lawsuit) and it allows service to be made upon the Clerk of the District Court, rather than the principal to the contract. ORCD bonds are an extra-statutory creation of the Supreme Court and as such would have to be treated like ordinary contracts. I.E. a separate lawsuit would need to be filed against the defendant to enforce them.]

Notwithstanding their legality, judgments in the amount of $10,250.00 have been granted. Deposits of $922.50 have been applied toward those forfeitures [$1,025.00 CD - $102.50 administrative fee]. This means that there is an outstanding uncollected (*and uncollectible*) balance of $9,322.50 in unpaid ORCD bond forfeiture judgments. Additionally, the ORCD bonds for the remaining missing defendants total $6,550.00. If one factors the amount deposited less the administrative fees on those bonds, this means the State is out an additional $5,960.50 for those defendants.

Therefore it is easy to conclude that the test program in Johnson County has generated red ink in the amount of $15, 283.00 in unpaid bond forfeitures alone. This is to say nothing of the cost of administering the program [The man hours spent accounting for the funds, the cost of rearresting the individuals who fail to appear, the cost of screening dozens of defendants each week, etc.] While these costs are buried elsewhere, they are real costs and should be factored when considering the efficacy of this program.

I would note that over the same period of time, my company alone has paid $27,750.00 in bond forfeitures to the Clerk of the District Court. $11,100.00 of that total has been transferred into the General Fund of Johnson County and the remaining $16,650.00 has been paid to the General Fund of the State of Kansas. I'm sure that the District Attorney has or can acquire a grand total for the year for all surety companies. However, I cannot imagine that I would represent more than a quarter of all forfeitures paid. As such I am assuming total surety bond forfeitures collected to be in excess of

$100,000.00. This means that the Johnson County General Fund has received at least $40,000.00 in surety bond forfeiture payments. This is more than ten times the total administrative fees generated from ORCD bonds. When one compares the revenue generated for the State, you find $60,000.00 in bond forfeiture judgments paid to the State versus nothing in administrative fees and about $550.00 in collected forfeitures. Also, over the past year, I have also spent over $30,000.00 in apprehension expenses to return my wayward clients back to custody. While it is hard to quantify the savings to the government, it is clear that there is absolutely no savings with ORCD bonds.

In short the deposit bond test program can be summed up at follows:
A failure to appear rate of at least 25%.
36% of those fugitives are still at large.
Over $15,000.00 in uncollectible judgments.

I have provided this information to the local courts and while Johnson County has not formally abolished this "test" program, the number of defendants who have been offered this type of release has dropped off substantially.

Increased costs

If Kansas does away with the commercial bail bonds industry by establishing a deposit bond system, the state will incur substantial additional costs. These include:

Costs of Recapture – The State will have to bear the expenses of recapturing all absconding defendants. This is a difficult cost to determine. A study in Illinois in the late 1980s indicated that the cost to return a fugitive to custody was $1,161.00 per fugitive. Kansas recently completed Operation Padloc III, which was a program to locate and recapture parole absconders and check on the status of registered sex offenders. The program was operated on a Federal Grant of $28,000.00. Operation Padloc III returned 12 individuals to custody. This is slightly more than $2,300.00 per fugitive. My company alone returned 162 fugitives to custody in 2006. This represents a savings of at least $188,000 and as much as $372,000 (using Operation Padloc II figures) to the various jurisdictions of the State of Kansas. And this is from just one surety company. Absent a healthy surety industry, the State will have to bear those costs itself.

Every jurisdiction, including Shawnee County, which has effectively done away with surety bail and replaced it with deposit bonds has had to establish large government agencies or staffs to run these programs. In Cook County, Illinois, and Marion County, Indiana, for example, the pre-trial services offices have staff dedicated solely to resolving failures to appear – in essence they have had to establish their own warrants division (or in bonding terms, their own bounty hunters or fugitive apprehension staff). Cook County Pre-trial has established a Failure to Appear "booth" in the lobby of the courthouse. Defendants who have missed court can simply reschedule at the booth. A few years ago, Shawnee County (despite supposedly not having a FTA problem) attempted to get funds for a "private marshal" answerable to the court for purposes of apprehending fugitives. The money was not provided.

Costs of incarceration – Obviously, if more people fail to appear on deposit bonds – and the studies show that they do – those people are less likely to get back out once they are recaptured. As I noted earlier, Shawnee County has an incarceration rate almost double that of Johnson County. If Johnson County was forced to hold even an additional 300 inmates in custody at $75 per inmate, per day, the county would incur $8.2 Million in additional annual incarceration costs for Johnson County alone.

The BJS study further indicates that defendants on deposit bonds also take longer to secure their initial release than surety bonds. After one month only 82% of defendants who were to be released on deposit bonds had gained their release, versus 89% for surety bonds. Given the statewide jail population, any increase in pre-trial incarceration (say 7%) will increase incarceration costs dramatically.

Intangible costs – Justice Denied, Eroding Respect for the Criminal Justice System

If police officers are forced to deal with an increase in the number of fugitives, then they will be taken away from their primary function of protecting the citizenry. Or, if police officers are not retasked to this purpose, then criminal defendants will quickly learn that justice can be avoided by simply absconding. They will quickly deduce that their risk of recapture is simply a function of random bad luck (from their perspective).

This will help foster a "revolving door mentality" among charged defendants. The defendant is caught, he pays a "toll" in the form of a deposit bond, then he is gone again until, by a stroke of luck, he crosses paths with the police again. Since the jails have become overcrowded, he is released on yet another deposit bond and the cycle begins anew. All the while, justice is delayed and denied, and the victim of the crime is left to wonder about the futility of the criminal justice system. Police officers become embittered and frustrated about the increasing futility of *their* work, and the door opens for ambivalence and corruption.

These are real costs to society, although it would be difficult to attach a dollar figure to them.

It is quite easy to look at places that have adopted deposit bond programs. Life has not become better in those places. Crime has not gone down. The costs of running the criminal justice system have not gone down or even stabilized. Rather these locations have seen large jumps in their crime rates, enormous expenses in housing criminal defendants and increases in official corruption. Quality of life and property values have gone down. Obviously, the world has not come to an end in these places, but the taxpayers *have* suffered the burden of subsidizing the release of criminal defendants.

CLOSING

The bottom line is this: From a cost standpoint, a State should choose a system of pre-trial release that produces the lowest instance of failures to appear. That is the purpose of pre-trial release. The criminal justice system cannot legitimately function when large percentages of charged defendants do not appear to address the charges against them. All the studies have shown that a pre-trial system utilizing surety bail bonds

produces the lowest rate of failure to appear of all the various methods of pre-trial release. Further, it is the most inexpensive method of pre-trial release available to the State. All other forms of pre-trial release, including deposit bonds, involve some degree of State subsidy in the form of increased costs borne by the taxpayers.

In short, someone *has* to do the job that we do. It can be us – at our expense – or it can be a government agency at the taxpayers' expense.

I would ask you to stop this bill right here.

Thank you for your time and consideration in this matter.

epartment of Justice
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National Pretrial Reporting Program

Pretrial Release of Felony Defendants, 1992

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An estimated 63% of the defendants who had State felony charges filed against them in the Nation's 75 most populous counties during May 1992 were released by the court prior to the disposition of their case. About a third of these released defendants were either rearrested for a new offense, failed to appear in court as scheduled, or committed some other violation that resulted in the revocation of their pretrial release. Of the 25% of released defendants who had a bench warrant issued for their arrest because they did not appear in court as scheduled, about a third, representing 8% of all released defendants, were still fugitives after 1 year.

These findings are drawn from a sample of felony cases filed in State courts during May 1992. The cases were followed for up to 1 year as part of the National Pretrial Reporting Program (NPRP) sponsored by the Bureau of Justice Statistics.

Highlights

- Murder defendants (24%) were the least likely to be released prior to case disposition, followed by defendants whose most serious arrest charge was rape (48%), robbery (50%), or burglary (51%).

- A sixth of the defendants detained until case disposition were held without bail. Defendants held without bail comprised 6% of all felony defendants, with defendants charged with murder (40%) the most likely to be denied bail.

- Among defendants already on pretrial release for a prior case when arrested on the current felony charges, 56% were released again. Thirty-two percent of those arrested while on parole and 44% of those already on probation were released.

- Twenty-seven percent of released defendants had at least one prior felony conviction, including 9% with a prior conviction for a violent felony. Among detained defendants, 57% had a prior conviction, including 21% with at least one prior conviction for a violent felony.

- Among released defendants who had failed to appear in court at least once on a previous charge, 38% had a bench warrant issued because they failed to appear during the current case. This was about twice the failure-to-appear rate of other released defendants (20%).

- About 14% of all released defendants were rearrested while on pretrial release, 10% for a felony. Released defendants with at least one prior conviction (19%) were about twice as likely to be rearrested as those with no prior convictions (9%). Twenty-nine percent of released defendants with five or more prior convictions were rearrested while on pretrial release.

- The overall pretrial release rate of 63% recorded by the 1992 NPRP was similar to that found in 1990 (65%) and 1988 (66%). Failure-to-appear rates have also remained constant at about a fourth of those released. The 1992 rearrest rate of 14% for defendants on pretrial release represented a slight decrease from the 18% rate recorded in 1988 an

Table 1. Felony defendants released before or detained until case disposition, by the most serious arrest charge, 1992

Most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released before case disposition	Detained until case disposition
All offenses	51,002	100%	63%	37%
Violent offenses	13,638	100%	58%	42%
Murder	570	100	24	76
Rape	724	100	48	52
Robbery	4,467	100	50	50
Assault	6,509	100	68	32
Other violent	1,368	100	59	41
Property offenses	17,647	100%	63%	37%
Burglary	6,176	100	51	49
Theft	6,434	100	67	33
Other property	5,037	100	71	29
Drug offenses	15,469	100%	68%	32%
Sales/trafficking	8,517	100	66	34
Other drug	6,952	100	71	29
Public-order offenses	4,248	100%	65%	35%
Weapons	1,437	100	71	29
Driving-related	645	100	73	27
Other public-order	2,167	100	58	42

Note: Data on detention/release outcome were available for 92% of all cases.
Detail may not add to total because of rounding.

National Pretrial Reporting Program

The Bureau of Justice Statistics (BJS) initiated the biennial National Pretrial Reporting Program (NPRP) in 1988. The NPRP collects detailed information about the criminal history, pretrial processing, adjudication, and sentencing of felony defendants in State courts in large urban counties. The NPRP data do not include Federal defendants.

The 1992 NPRP collected data for 13,206 felony cases filed in 40 counties during May 1992. These cases were part of a 2-stage sample that was representative of the estimated 55,246 felony cases filed in the Nation's 75 most populous counties during that month. (In 1990, the 75 largest counties accounted for about 37% of the U.S. population and nearly 50% of all crimes reported to law enforcement agencies.) Cases were tracked for up to 1 year.

Table 2. Type of pretrial release or detention of felony defendants, by the most serious arrest charge, 1992

Most serious arrest charge	Total	Percent of felony defendants in the 75 largest counties: Released before case disposition: Financial release: Total financial release	Surety bond	Full cash bond	Deposit bond	Property bond	Nonfinancial release: Total non-financial release	Recog-nizance	Con-ditional	Unse-cured bond	Emer-gency release	Detained until case disposition: Held on bail	Held without bail
All offenses	100%	25%	13%	6%	5%	1%	37%	24%	8%	4%	2%	30%	6%
Violent offenses	100%	25%	11%	7%	7%	--	33%	25%	5%	3%	--	34%	8%
Murder	100	13	7	6	1	0	10	5	2	3	0	37	40
Rape	100	24	12	4	6	1	22	11	9	2	2	49	3
Robbery	100	21	4	9	7	--	29	23	3	3	--	43	7
Assault	100	29	15	6	8	1	39	31	5	2	--	26	6
Other violent	100	27	14	7	5	1	32	20	9	3	--	33	8
Property offenses	100%	21%	13%	4%	3%	1%	40%	25%	8%	6%	2%	32%	6%
Burglary	100	16	8	3	3	1	34	22	7	5	1	43	6
Theft	100	21	14	4	2	1	42	26	10	6	4	27	6
Other property	100	26	17	5	4	1	43	28	9	7	2	23	5
Drug offenses	100%	27%	15%	7%	5%	1%	39%	23%	11%	5%	2%	27%	5%
Sales/trafficking	100	29	15	8	5	1	36	23	8	5	1	30	5
Other drug	100	26	16	5	4	--	42	22	16	4	3	23	6
Public-order offenses	100%	33%	17%	11%	5%	1%	30%	21%	7%	2%	1%	29%	6%
Weapons	100	42	13	21	8	1	28	18	7	3	1	25	4
Driving-related	100	42	37	5	1	0	31	20	9	2	0	22	5
Other public-order	100	25	14	5	5	1	31	23	6	2	1	34	9

Note: Data on type of pretrial release or detention were available for 92% of all cases.
See table 1 for number of defendants in each offense category.
Detail may not add to total because of rounding.
--Less than 0.5%.

12-2

Types of pretrial release

Nonfinancial release

Among the 63% of felony defendants in the 75 largest counties who were released prior to case disposition, about 3 in 5 were released on nonfinancial terms that required no posting of bail (table 1). (In this report, "pretrial release" and "released prior to case disposition" are used interchangeably. See *Methodology* on pages 15 and 16 for definitions.)

Release on recognizance, granted to 24% of all defendants and to 38% of all released defendants, was the most common type of pretrial release (table 2). About two-thirds of all nonfinancial releases involved the release of a defendant on his or her own recognizance. The only condition placed on the defendant under this type of release is a written agreement to appear in court as scheduled. Generally, the recognizance release category used in this report refers to a decision made by the court; however, citation releases made by law enforcement personnel (2% of the recognizance releases) are also included.

Approximately 13% of all pretrial releases in the 75 largest counties (23% of nonfinancial releases) were on conditional release. About a fourth of conditional releases included an unsecured bail amount to be forfeited should the defendant fail to appear in court as scheduled. About two-thirds of conditional releases included an agreement by the defendant to maintain regular contact with a pretrial program through telephone calls and/or personal visits. Fifteen percent of conditional releases involved regular drug monitoring or treatment, and 6% included a third party custody agreement.

Most defendants placed on conditional release were supervised by a pretrial release program. Such programs, which also interview arrestees and provide information to judicial officers, were operating in all but 2 (Suffolk, Massachusetts; and Montgomery, Pennsylvania) of the 40 NPRP counties during 1992.

Releases on unsecured bond comprised 4% of the NPRP cases. About 12% of nonfinancial releases (7% of releases overall) involved this type of release. Although this type of release does not require financial payment, it does specify a bail amount to be forfeited if the defendant does not appear in court as scheduled.

Financial release

Overall, about 2 in 5 defendants released before case disposition received that release through financial terms involving a surety, full cash, deposit, or property bond. Deposit, full cash, and property bonds are posted directly with the court, while surety bonds involve the services of a bail bond company.

Defendants must post the full bail amount in cash or collateral to be released on full cash or property bond. The cash or property is forfeited if the defendants do not appear in court as required. Typically, a defendant must provide 10% of the full bail amount to be released on deposit or surety bond. Either the defendant (deposit bond) or the bail bond company (surety bond) are liable to the court for the full bail amount if the defendant does not appear in court as required.

Release on surety bond, the second most common type of pretrial release for felony defendants, was used in 54% of all financial releases and in 21% of all pretrial releases. Surety bond was used in 31 of the 40 NPRP counties surveyed.

Ten percent of all pretrial releases, including 25% of financial releases, were on full cash bond. Full cash bond was used in 33 of the 40 NPRP counties surveyed.

A deposit bond secured release for about 8% of all released defendants, including 19% of defendants placed on financial release. Deposit bond was used for pretrial release in 17 NPRP counties.

Emergency release

Overall, about 2% of felony defendants were released as part of an emergency release ordered because of jail crowding. Generally, these emergency releases did not involve the use of any of the financial or nonfinancial release conditions discussed above. Emergency releases occurred in 8 of the 40 NPRP counties, with 3 counties (Hamilton, Ohio; Cook, Illinois; and Wayne, Michigan) accounting for more than 95% of all emergency releases recorded by NPRP.

Factors affecting probability of pretrial release

Overall, 37% of the felony defendants included in the NPRP sample were detained until the court disposed of their case, roughly the same percentage as in NPRP studies for 1988 (34%) and 1990 (35%). Five out of six detainees from the 1992 study had a bail amount set but did not post the money required to secure release. The remainder, representing 17% of detained defendants and 6% of all defendants, were ordered held without bail.

While denial of bail provides the court with an absolute assurance that a defendant will not be released prior to case disposition, the NPRP data also show that when a defendant is required to post bail, the probability of

release decreases as bail amounts increase. When bail was set at $20,000 or more, 18% of the defendants were eventually released (table 3). When the bail amount was between $10,000 and $19,999, 38% of the defendants secured release; from $2,500 to $9,999, 52% of the defendants; and under $2,500, 66%.

The effect of bail amount on the likelihood of a defendant's being released varied according to the type of arrest charge. For example, when the bail amount was set at $20,000 or more, drug defendants (29%) secured release more often than defendants charged with a public-order offense (18%), violent offense (17%), or property offense (11%). Defendants charged with a property offense were less likely to be released than other defendants in all four bail amount categories.

Defendants released on deposit bond had higher average bail amounts than other defendants released on bond, a median of $7,500 and a mean of $15,200. Defendants released on surety bond had a median bail amount of $5,000 and a mean bail amount of $7,100. Defendants released on surety or deposit bond typically had to post 10% of the full bail amount to secure release: a mean of $1,520 for deposit bond and $710 for surety bond.

Defendants released on full cash bond posted the full bail amount to secure release; a median of $1,000 and a mean of $3,300. Defendants released on unsecured bond did not post any money to secure release but were liable for the full bail amount, a median of $5,000 and a mean of $10,100, if they did not appear in court. Among defendants who had a bail amount set but were unable to secure release, the mean bail amount was $39,800, and the median was $10,000.

Type of release bond	Bail amount	
	Median	Mean
Surety	$5,000	$7,100
Deposit	7,500	15,200
Full cash	1,000	3,300
Property	5,000	10,900
Unsecured	5,000	10,100
Not released	$10,000	$39,800

Court decisions about bail are primarily based on the judgment of whether the accused will appear in court as scheduled and the potential danger to the community from crimes that a defendant may commit while on release. Many jurisdictions have established specific criteria that must be considered when setting bail. Examples of such criteria are personal character and mental condition, employment and financial resources, family and community ties, offense seriousness, criminal justice status at the time of arrest, prior criminal record, prior court appearance record, the weight of the evidence against the defendant, and the sentence that may be imposed upon conviction.

While the NPRP does not provide data on all of these factors, it does provide information on the seriousness of the current offense, criminal justice status at the time of arrest, prior court appearance record, and prior criminal record. The NPRP data illustrate how the bail system is used in conjunction with these factors to affect the probability of release.

Table 3. Felony defendants released before or detained until case disposition, by bail amount set and the most serious arrest charge, 1992

Bail amount set and the most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties with a bail amount set: Total	Released before case disposition	Detained until case disposition
$20,000 or more				
All offenses	6,083	100%	18%	82%
Violent offenses	2,740	100	17	83
Property offenses	1,500	100	11	89
Drug offenses	1,298	100	29	71
Public-order offenses	544	100	18	82
$10,000 to $19,999				
All offenses	5,373	100%	38%	62%
Violent offenses	1,580	100	44	56
Property offenses	1,657	100	24	76
Drug offenses	1,790	100	46	54
Public-order offenses	344	100	34	66
$2,500 to $9,999				
All offenses	9,752	100%	52%	48%
Violent offenses	2,078	100	57	43
Property offenses	3,499	100	44	56
Drug offenses	3,395	100	54	46
Public-order offenses	780	100	60	40
Under $2,500				
All offenses	6,780	100%	66%	34%
Violent offenses	1,597	100	68	32
Property offenses	2,463	100	61	39
Drug offenses	1,768	100	66	34
Public-order offenses	951	100	76	24

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Table excludes defendants given nonfinancial release. Detail may not add to total because of rounding.

Seriousness of offense

The NPRP data indicate that defendants charged with murder were the least likely of all felony defendants to be released prior to case disposition (24%) (table 1). While about a fourth of murder defendants were released, about half of defendants charged with rape, robbery, or burglary were released, as were about two-thirds of assault, theft, or drug trafficking defendants.

Murder defendants had the lowest release rate, mainly because they were the most likely to be denied bail or to have a high bail amount. Forty percent of murder defendants were denied bail, compared to 9% or less for other defendants. Among murder defendants who had a bail amount set, about three-fourths had a bail amount of $20,000 or more (table 4).

Defendants charged with rape (57%) were the next most likely to have bail set at $20,000 or more. Robbery defendants (41%) were the only other group for which more than a third of the defendants with a bail amount had it set by the court at $20,000 or more. Overall, defendants whose most serious arrest charge involved a violent offense (34%) were about twice as likely as drug (16%) and property (16%) defendants to have a bail of $20,000 or more.

Among defendants who were held on bail, the median bail amount that had been set by the court was $10,000 (table 5). The median bail amount was higher for detained defendants charged with murder ($100,000), rape ($25,000), or robbery ($20,000). Released defendants had a median bail amount of $3,500, with a higher median bail amount for released defendants charged with murder ($10,000) or rape ($10,000).

Table 4. Bail amount set for felony defendants, by the most serious arrest charge, 1992

Most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties with a bail amount of: Total	Under $2,500	$2,500-$9,999	$10,000-$19,999	$20,000 or more
All offenses	27,987	100%	24%	35%	19%	22%
Violent offenses	7,996	100%	20%	26%	20%	34%
Murder	284	100	5	7	10	78
Rape	527	100	9	14	20	57
Robbery	2,830	100	17	22	21	41
Assault	3,551	100	26	33	19	22
Other violent	805	100	17	24	26	33
Property offenses	9,120	100%	27%	38%	18%	16%
Burglary	3,595	100	16	39	21	23
Theft	3,056	100	35	37	16	12
Other property	2,470	100	33	39	16	12
Drug offenses	8,252	100%	21%	41%	22%	16%
Sales/trafficking	4,918	100	22	34	26	18
Other drug	3,334	100	21	51	16	12
Public-order offenses	2,620	100%	36%	30%	13%	21%
Weapons	966	100	38	35	11	16
Driving-related	414	100	52	25	15	8
Other public-order	1,241	100	30	27	15	29

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Table excludes defendants given nonfinancial release. Detail may not add to total because of rounding.

Table 5. Median bail amount set for felony defendants, by pretrial detention/release outcome and the most serious arrest charge, 1992

Most serious arrest charge	Felony defendants in the 75 largest counties: Median bail amount Total	Released	Detained
All offenses	$5,000	$3,500	$10,000
Violent offenses	$10,000	$5,000	$17,000
Murder	75,000	10,000	100,000
Rape	23,500	10,000	25,000
Robbery	10,000	5,000	20,000
Assault	5,000	5,000	10,000
Other violent	10,000	5,000	20,000
Property offenses	$5,000	$2,500	$7,500
Burglary	5,000	5,000	10,000
Theft	4,000	2,000	5,000
Other property	4,000	2,500	5,000
Drug offenses	$5,000	$5,000	$6,000
Sales/trafficking	5,000	5,000	10,000
Other drug	5,000	4,300	5,000
Public-order offenses	$4,000	$2,000	$10,000
Weapons	3,000	2,000	10,000
Driving-related	2,000	2,000	4,000
Other public-order	5,000	2,500	15,000

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Bail amounts have been rounded to the nearest 100 dollars. Table excludes defendants given nonfinancial release.

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Table 6. Felony defendants released before or detained until case disposition, by criminal justice status at the time of offense, 1992

Criminal justice status at time of offense	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
On parole	2,957	100%	32%	17%	14%	1%	68%	53%	14%
On probation	6,081	100	44	21	22	1	56	45	11
On pretrial release	4,804	100	56	24	30	2	44	32	12
None	25,228	100	72	30	40	2	28	25	3

Note: Data on both criminal justice status at the time of offense and detention/release outcome were available for 74% of all cases. Defendants who had more than 1 type of criminal justice status at the time of offense are excluded from the table. Detail may not add to total because of rounding.

Table 7. Felony defendants released before or detained until case disposition, by court appearance history, 1992

Court appearance history	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
With prior arrests	25,954	100%	54%	21%	32%	2%	46%	39%	7%
Failed to appear one or more times	11,378	100	51	17	31	3	49	44	5
Made all court appearances	14,576	100	57	23	32	1	43	35	8
No prior arrests	15,116	100	81	30	50	1	19	16	3

Note: Data on both court appearance history and detention/release outcome were available for 74% of all cases. Detail may not add to total because of rounding.

Table 8. Felony defendants released before or detained until case disposition, by prior conviction record, 1992

Prior conviction record	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
Number of prior convictions*									
5 or more	9,191	100%	43%	18%	24%	2%	57%	49%	8%
2-4	9,630	100	50	23	26	2	50	42	8
1	6,849	100	61	27	32	2	39	30	9
None	20,293	100	79	30	48	1	21	17	3
Most serious prior conviction									
Violent felony	6,293	100%	43%	18%	24%	1%	57%	45%	12%
Nonviolent felony	11,616	100	46	20	23	2	54	45	9
Misdemeanor	8,221	100	63	27	34	1	37	33	4
None	20,293	100	79	30	48	1	21	17	3

Note: Data on both prior conviction record and detention/release outcome were available for 84% of all cases. Detail may not add to total because of rounding.
*The number of convictions refers to the number of charges.

Criminal justice status

The NPRP data indicate that a defendant's criminal justice status at the time of arrest is also related to the probability of pretrial release. Among felony defendants without an active criminal justice status at the time of arrest, 72% were released before case disposition (table 6). In contrast, just 32% of defendants on parole and 44% of defendants on probation at the time of the current arrest were released. Among defendants who were already on pretrial release for a pending case when arrested, 56% were released pending disposition of the current charge. Defendants on parole (14%), probation (11%), or pretrial release (12%), were about 4 times as likely to be denied bail as those with no criminal justice status at the time of the offense (3%).

Court appearance history

The court is also likely to consider a defendant's court appearance history when setting bail and the terms of release for the current felony charge. About two-thirds of the defendants included in the NPRP study had previously been arrested and required to appear in court. Among defendants who made all scheduled court appearances related to prior arrests, 57% were released prior to disposition of the current case (table 7). The probability of release was somewhat lower for defendants who had failed to appear in court previously (51%). Overall, the release rate for defendants who had been previously arrested was 54%, two-thirds the rate among defendants with no prior arrests (81%).

Prior conviction record

Defendants with more than one prior conviction or with a felony conviction record were less likely than other defendants to await disposition of their case outside jail. Just under half were released prior to case disposition (table 8). About 3 in 5 defendants with a single prior conviction or only misdemeanor convictions were able to obtain release, while 4 in 5 defendants with no prior convictions were released.

12-6

About 10% of defendants who had a prior felony conviction were denied bail, compared to 3% of other defendants.

Time from arrest to pretrial release

Fifty-two percent of all pretrial releases occurred either on the day of arrest or on the following day, and 91% occurred within 1 month of arrest (table 9). The time from arrest to release varied by factors that included the type of release conditions imposed, the bail amount set (if any), and the type of arrest charge.

About two-thirds of defendants released on unsecured bond, conditional release, or emergency release were discharged on the day of arrest or on the following day, compared to a third of those who were eventually released on deposit or full cash bond. About half of those released on recognizance, surety bond, or property bond were released within a day of their arrest. Overall, about 2 in 5 financial releases occurred within a day of arrest compared to 3 in 5 nonfinancial releases.

When the defendant was required to post money to secure release (surety, full cash, or deposit bond), the time from arrest to pretrial release increased as the bail amount did. When the bail amount was $10,000 or more, 1 in 3 defendants secured release within a day. Nearly 1 in 2 did so when the bail amount was under $2,500.

Defendants charged with violent offenses (46%) were slightly less likely than those charged with drug (51%), public-order (53%), or property (56%) offenses to be released on the day of arrest or the following day.

Criminal history of released versus detained defendants

Three-fourths of detained defendants had at least 1 prior conviction compared to just under half of released defendants (table 10). Among

Table 9. Time from arrest to release for felony defendants released before case disposition, by type of release, bail amount set, and the most serious current arrest charge, 1992

Type of release, bail amount set, and the most serious arrest charge	Number of defendants	Percent of released felony defendants in the 75 largest counties who were released within: 1 day	1 week	1 month
All released defendants	31,562	52%	77%	91%
Type of release				
Financial release	12,189	41%	71%	89%
Surety bond	6,762	48	76	93
Full cash bond	2,951	31	68	87
Deposit bond	2,151	34	59	82
Property bond	325	49	74	88
Nonfinancial release	18,577	59%	81%	93%
Recognizance	12,107	55	80	92
Conditional	4,221	65	85	93
Unsecured bond	2,249	68	80	94
Emergency release	796	69%	84%	93%
Bail amount set*				
$20,000 or more	885	33%	61%	83%
$10,000-$19,999	1,863	33	62	82
$2,500-$9,999	4,809	41	72	91
Under $2,500	4,241	46	76	91
Most serious arrest charge				
Violent offenses	7,873	46%	72%	87%
Property offenses	11,104	56	79	94
Drug offenses	10,740	51	79	93
Public-order offenses	2,834	53	76	90

Note: Data on time from arrest to pretrial release were available for 98% of all cases involving a defendant who was released prior to case disposition. Release data were collected for 1 year. Defendants released after the 1-year study period are excluded from the table.
*Includes defendants released on deposit, surety, or full cash bond.

Table 10. Number of prior convictions of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Total with: No prior convictions	Total with: Prior convictions	Number of prior convictions*: 1	2-4	5-9	10 or more
Released defendants								
All offenses	29,138	100%	55%	45%	14%	17%	9%	5%
Violent offenses	7,163	25	14	10	3	4	2	1
Property offenses	9,829	34	19	15	5	5	3	2
Drug offenses	9,667	33	17	16	5	6	3	1
Public-order offenses	2,479	9	5	4	1	2	1	--
Detained defendants								
All offenses	16,826	100%	25%	75%	16%	28%	19%	12%
Violent offenses	5,171	31	10	21	4	9	5	3
Property offenses	5,873	35	7	28	5	10	8	5
Drug offenses	4,426	26	7	19	5	7	4	3
Public-order offenses	1,356	8	1	7	2	3	2	1

Note: Data on both number of prior convictions and detention/release outcome were available for 83% of all cases. Detail may not add to total because of rounding.
*Number of convictions refers to number of charges.
-- Less than 0.5%.

12-7

released defendants, 31% had more than 1 prior conviction, and 5% had 10 or more. Among detained defendants, 59% had more than 1 prior conviction, and 12% had 10 or more.

Detained defendants (57%) were about twice as likely to have at least one prior felony conviction as defendants who received pretrial release (27%) (table 11) (figure 1). About 1 in 5 detained defendants had at least 1 prior conviction for a violent felony compared to 1 in 11 released defendants. About 8% of detained defendants and 3% of released defendants were under a current charge for a violent felony and had at least one prior conviction for a violent felony.

Among released defendants, 47% had not been previously arrested, compared with 20% of detained defendants (table 12). Of those released 22% had been previously arrested and failed to appear in court at least once, while 32% had made all scheduled court appearances resulting from prior arrests. About half of detained defendants who had been previously arrested, representing 38% of all detained defendants, had failed to appear in court at least once during a previous case.

Table 11. The most serious prior conviction of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Total with: No prior convictions	Total with: Prior convictions	Most serious prior conviction: Felony: Total	Felony: Violent	Felony: Nonviolent	Misdemeanor
Released defendants								
All offenses	29,368	100%	55%	45%	27%	9%	18%	18%
Violent offenses	7,175	24	14	10	6	3	3	4
Property offenses	9,942	34	19	15	9	3	6	6
Drug offenses	9,749	33	17	16	10	2	7	6
Public-order offenses	2,503	9	5	4	2	1	1	2
Detained defendants								
All offenses	17,055	100%	25%	75%	57%	21%	37%	18%
Violent offenses	5,230	31	10	21	16	8	8	5
Property offenses	5,972	35	7	28	22	7	15	6
Drug offenses	4,474	26	7	19	14	4	11	5
Public-order offenses	1,379	8	1	7	5	2	3	2

Note: Data on both most serious prior conviction and detention/release outcome were available for 84% of all cases. Detail may not add to total because of rounding.

Table 12. Court appearance history of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Court appearance history: Failed to appear at least once	Made all court appearances	Had no prior arrests
Released defendants				
All offenses	26,225	22%	32%	47%
Violent offenses	6,283	5	7	12
Property offenses	9,157	8	10	16
Drug offenses	8,652	7	11	14
Public-order offenses	2,134	1	3	4
Detained defendants				
All offenses	14,846	38%	42%	20%
Violent offenses	4,508	10	12	8
Property offenses	5,171	15	14	5
Drug offenses	3,979	9	13	5
Public-order offenses	1,189	4	3	1

Note: Data on both detention/release outcome and court appearance history were available for 74% of all defendants. Detail may not add to total because of rounding.

Criminal history of released and detained felony defendants, 1992

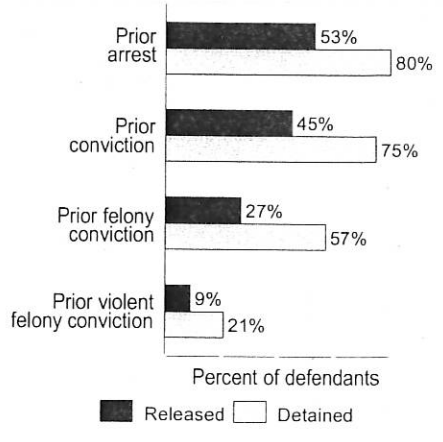

Figure 1

12-8

Defendant characteristics by type of pretrial release

Defendants charged with a violent offense comprised the largest percentage among those released on deposit bond (39%), while defendants released under emergency conditions were the least likely to be facing charges for a violent offense (5%) (table 13).

Among the categories of released defendants, those on full cash bond (92%) or deposit bond (90%) had the highest percentage of males. Defendants released on surety bond or emergency release (18%) were less likely to be under age 21 than defendants released under other methods.

Without consideration of Hispanic origin, black defendants comprised the largest percentages among defendants released on deposit bond (71%) or emergency release (70%). Black defendants accounted for about half of surety bond and conditional releases, and a significant majority of other types of releases. When Hispanic origin is included in the racial distribution, blacks accounted for a majority of those released on emergency release (70%), deposit bond (64%), and unsecured bond (57%).

Among types of financial release, full cash bond (33%) had the largest proportion of Hispanic defendants. Non-Hispanic blacks comprised a larger percentage of defendants released on deposit bond (64%) than either surety bond (44%) or full cash bond (43%). Non-Hispanic whites comprised about a third of the defendants released on surety bond, compared to about a fourth of those released on deposit bond or full cash bond.

Among the types of nonfinancial release, unsecured bond (57%) had the highest percentage of non-Hispanic blacks. Hispanic defendants (12%) were less prevalent among this group than among defendants released on recognizance (28%) or conditional release (20%). Non-Hispanic whites accounted for a slightly higher percentage of defendants released on conditional release (31%) or unsecured bond (30%) compared to those released on recognizance (24%).

About half of the defendants released on surety, deposit, or full cash bond had a prior conviction for either a misdemeanor or a felony. Slightly lower percentages of defendants given nonfinancial types of release had a conviction record. Among financial releases, the percentage of defendants with one or more prior felony convictions was higher among those released on deposit bond (39%) than among those released on surety bond (25%). Among nonfinancial releases, more defendants released on unsecured bond (35%) had a felony conviction record than other defendants (24%).

About 3 in 5 defendants placed on emergency release had a prior conviction and nearly half had more than one prior conviction. Defendants released on emergency release (21%), deposit bond (18%), or unsecured bond (18%) were slightly more likely than other released defendants to have five or more prior convictions.

Table 13. Selected characteristics of felony defendants released before case disposition, by type of pretrial release, 1992

Defendant characteristic	Percent of released felony defendants in the 75 largest counties: Financial release: Surety bond	Financial release: Full cash bond	Financial release: Deposit bond	Nonfinancial release: Recognizance	Nonfinancial release: Conditional	Nonfinancial release: Unsecured bond	Nonfinancial release: Emergency release
Most serious arrest charge							
Violent offenses	21%	30%	39%	28%	16%	16%	5%
Property offenses	33	22	21	36	35	47	54
Drug offenses	35	33	31	29	42	32	36
Public-order offenses	11	14	9	7	7	4	6
Sex							
Male	80%	92%	90%	82%	81%	86%	80%
Female	20	8	10	18	19	14	20
Race							
Black	49%	58%	71%	61%	52%	63%	70%
White	49	41	28	38	46	37	30
Other	2	2	--	1	2	--	0
Race/Hispanic origin*							
Non-Hispanic							
Black	44%	43%	64%	47%	47%	57%	70%
White	34	22	25	24	31	30	26
Other	3	2	--	1	2	1	0
Hispanic, any race	19	33	11	28	20	12	5
Age at arrest							
Under 21	18%	25%	26%	26%	24%	23%	18%
21-34	56	55	55	51	53	55	53
35 or older	25	20	19	22	24	22	29
Number of prior convictions							
5 or more	13%	14%	18%	13%	11%	18%	21%
2-4	18	21	17	15	15	13	23
1	17	15	13	13	16	9	15
None	52	50	51	58	58	60	41
Most serious prior conviction							
Felony	25%	34%	39%	24%	24%	35%	46%
Misdemeanor	24	16	10	18	19	6	14
None	52	50	51	58	58	60	41
Court appearance history							
Failed to appear	16%	22%	25%	21%	19%	35%	44%
Made all appearances	37	38	23	32	32	17	26
Had no prior arrests	47	40	51	47	48	48	30

Note: Table is based on the following number of defendants for each type of release: surety bond, 6,823; full cash bond, 3,129; deposit bond, 2,411; recognizance,12,274; conditional, 4,229; unsecured bond, 2,264; and emergency release, 800.
*See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.
--Less than 0.5%.

12-9

Nearly half of the defendants placed on emergency release (44%) and about a third of the defendants released on unsecured bond (35%) had missed at least 1 court appearance during a previous case. Lower percentages of defendants released on surety bond (16%), conditional release (19%), recognizance (21%), full cash bond (22%), or deposit bond (25%) had previously missed a court appearance.

Misconduct by defendants placed on pretrial release

Failure to appear in court

A primary goal of any pretrial release decision by the court is to ensure the defendant's appearance in court as scheduled. Among those felony defendants who were released prior to case disposition, 3 out of 4 made all scheduled court appearances. A bench warrant was issued for the arrest of the remaining 25% because they had missed one or more court dates (table 14). Two-thirds of these defendants had been returned to the court by the end of the 1-year study period, while a third of them, 8% of all released defendants, remained fugitives.

The percentage of defendants who failed to appear varied somewhat by the type of arrest charge. Bench warrants for failure to appear were issued more often for released property defendants (29%) and drug defendants (27%) than for defendants charged with public-order offenses (18%) or violent offenses (17%).

Rates of failure to appear varied little by sex or age. By race, failure-to-appear rates ranged from 27% for black defendants to 21% for whites and 15% for defendants of other races. When Hispanic origin was considered, failure-to-appear rates were higher for Hispanics (30%) and non-Hispanic blacks (28%) than for other defendants.

A defendant's court appearance history for previous arrests was related to the probability of failing to appear on the current charges. For those who had missed one or more court dates in the past, about 38% failed to make a scheduled court appearance during the current case, nearly twice the failure-to-appear rate of defendants who had made all court appearances related to prior arrests (22%) or had no prior arrests (20%).

By type of release, defendants on emergency release (49%) were the most likely to have a bench warrant issued because they failed to appear in court, although in 7 out of 10 such cases they were returned to the court. The next highest failure-to-appear rate was for defendants released on unsecured bond (42%). Bench warrants for failure to appear were less likely to be issued for defendants released on surety bond (15%), conditional release (19%), deposit bond (21%), full cash bond (22%), or personal recognizance (26%).

Table 14. Released felony defendants who failed to make a scheduled court appearance, by selected defendant characteristics, 1992

Defendant characteristic	Number of defendants	Percent of released felony defendants in the 75 largest counties: Total	Made all court appearances	Failed to appear in court: Total	Returned to court	Remained a fugitive
All released defendants	33,484	100%	75%	25%	17%	8%
Most serious arrest charge						
Violent offenses	8,159	100%	83%	17%	11%	6%
Property offenses	11,449	100	71	29	20	10
Drug offenses	10,958	100	73	27	19	8
Public-order offenses	2,918	100	82	18	13	6
Sex						
Male	27,700	100%	75%	25%	17%	8%
Female	5,696	100	78	22	14	8
Race						
Black	17,701	100%	73%	27%	19%	9%
White	12,525	100	79	21	14	7
Other	395	100	85	15	10	5
Race/Hispanic origin*						
Non-Hispanic						
Black	12,566	100%	72%	28%	19%	8%
White	7,166	100	81	19	13	6
Other	391	100	86	14	9	5
Hispanic, any race	5,885	100	70	30	17	13
Age at arrest						
Under 21	7,628	100%	78%	22%	15%	6%
21-24	6,110	100	77	23	16	7
25-29	6,264	100	73	27	18	9
30-34	5,319	100	73	27	18	9
35 or older	7,482	100	75	25	17	8
Court appearance history						
Failed to appear	5,967	100%	62%	38%	28%	11%
Made all appearances	8,396	100	78	22	18	5
Had no prior arrests	12,586	100	80	20	11	9
Type of release						
Recognizance	12,054	100%	74%	26%	18%	9%
Surety bond	6,764	100	85	15	12	3
Conditional	4,205	100	81	19	14	5
Full cash bond	3,115	100	78	22	14	8
Deposit bond	2,403	100	79	21	15	6
Unsecured bond	2,249	100	58	42	23	19
Emergency	796	100	51	49	36	13

Note: Data on the court appearance record for the current case were available for 99% of cases involving a defendant released prior to case disposition. All defendants who failed to appear in court and were not returned to the court within the 1-year study period are counted as fugitives. Some of these defendants may have been returned to the court at a later date. Detail may not add to total because of rounding.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.

12-10

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.

Time from failure to appear to return	Percent of defendants
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.

Among those defendants who failed to appear, the percentage who were still fugitives at the end of the study was highest for those who had been released on unsecured bond (44%). Less than a third of the defendants for whom a bench warrant had been issued remained fugitives when they

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

Defendant characteristic	Percent of released felony defendants in the 75 largest counties: Number of defendants	Not rearrested	Rearrested: Total	Rearrested: Felony	Rearrested: 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	11,292	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	88	10	7	2
Unsecured bond	2,228	88	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 period 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 available for 94% of released defendants. Detail may not add to total because of rounding.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.

12-11

had been released on surety bond (21%), conditional release (27%), emergency release (27%), or deposit bond (28%).

Type of pretrial release	Percent of fugitive defendants not returned within 1 year
All types	32%
Surety bond	21%
Conditional	27
Emergency	27
Deposit bond	28
Recognizance	33
Full cash bond	37
Unsecured bond	44

Rearrest for a new offense

In addition to considering the likelihood that a released defendant may not return for scheduled court appearances, courts in most States also assess the risk of crimes being committed by a defendant who is not held in jail. Rearrest data collected during the 1-year study indicated that 14% of released defendants were rearrested for an offense allegedly committed while on pretrial release (table 15). By original arrest offense, public-order defendants had a slightly lower rearrest rate (9%) than other defendants. Among those arrested for a new felony following pretrial release (10%), about 3 in 5 were rearrested for the same type of offense as the original charge that preceded their release.

Although the misdemeanor rearrest rate (3%) did not vary by sex, the felony rearrest rate for males (11%) was higher than for females (6%). About 15% of black defendants were rearrested, as were 11% of white defendants and 6% of defendants of other races. Hispanic defendants had a rearrest rate of 16%. Defendants under age 21 (16%) had a slightly higher rearrest rate than those age 35 or older (11%).

Released defendants with 10 or more prior convictions had a rearrest rate of 38%, 4 times that of defendants who had no prior convictions (9%). About 19% of defendants whose most serious prior conviction was a felony were rearrested for a felony, more than twice the percentage for defendants with no prior felony convictions (7%). For rearrested defendants, the median time from pretrial release to the alleged commission of a new offense was 48 days. About 8% of the new charged offenses occurred within a week of pretrial release, 37% occurred within 1 month, and 71% occurred within 3 months of the defendant's release.

Percent of released and rearrested defendants who were charged with committing a new offense within:	
1 week	8%
1 month	37
3 months	71
6 months	91
Median	48 days

About 63% of the released defendants who were rearrested were again granted pretrial release. Re-release was more likely to occur if the rearrest offense was a misdemeanor (70%) than if it was a felony (61%). Among defendants rearrested for a felony, re-release was slightly less likely if the rearrest was for a drug offense or a violent offense (59%).

Rearrest offense	Percent of rearrested defendants who were re-released
Total	63%
Felony	61%
Violent	59
Property	63
Drug	59
Public-order	66
Misdemeanor	70%

Overall rates of misconduct

Overall, 1 in 3 released felony defendants were charged with some type of misconduct committed while on pretrial release (table 16). This may have been in the form of a failure to appear in court as scheduled, a new offense allegedly committed while on pretrial release, or some other violation of release conditions that resulted in the revocation of the defendant's pretrial release. In some instances, defendants committed more than one type of pretrial misconduct.

Table 16. Released felony defendants charged with misconduct while on pretrial release, by selected characteristics, 1992

Defendant characteristic	Released felony defendants in the 75 largest counties: Number	Percent charged with misconduct
All released defendants	33,857	33%
Most serious original arrest charge		
Violent offenses	8,271	24%
Property offenses	11,598	36
Drug offenses	11,055	37
Public-order offenses	2,933	25
Sex		
Male	28,025	34%
Female	5,744	27
Race		
Black	17,884	35%
White	12,689	28
Other	395	20
Race/ Hispanic origin*		
Non-Hispanic		
Black	12,721	35%
White	7,267	25
Other	391	19
Hispanic, any race	5,961	38
Age at arrest		
Under 21	7,778	31%
21-34	17,836	34
35 or older	7,554	31
Type of release		
Financial release	12,688	27%
Surety bond	6,823	23
Full cash bond	3,129	32
Deposit bond	2,411	32
Property bond	325	33
Nonfinancial release	18,767	33%
Recognizance	12,274	33
Conditional	4,229	26
Unsecured bond	3,450	47
Emergency release	800	56%
Number of prior convictions		
10 or more	1,464	54%
5-9	2,685	45
2-4	5,111	39
1	4,350	31
None	16,789	27
Most serious prior conviction		
Felony	8,544	45%
Misdemeanor	5,356	31
None	16,817	27
Court appearance history		
Failed to appear	6,043	49%
Made all appearances	8,497	32
Had no prior arrests	12,695	24

Note: Misconduct may have been a new charged offense, failure to appear in court, or a technical violation of release conditions that resulted in the revocation of a defendant's pretrial release. Data were collected for a maximum of 1 year.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15.

12-12

The 33% misconduct rate was similar to that found in the two previous NPRP studies based on filings in 1988 (35%) and 1990 (34%) (figure 2). The failure-to-appear rate has remained constant at about a fourth of all released defendants. In 1988 and 1990 about 1 in 6 released defendants were charged with a new offense that they had allegedly committed while on pretrial release. In 1992 about 1 in 7 released defendants were charged with such an offense.

About 3 in 8 released drug and property defendants were charged with some type of pretrial misconduct as were 2 in 8 defendants facing violent or public-order charges (table 16). Defendants who were male (34%), black (35%), or Hispanic (38%) had somewhat higher pretrial misconduct rates than other defendants.

By type of pretrial release, defendants with the highest overall misconduct rates were those placed on emergency release (56%). Aside from those released under emergency conditions, the misconduct rates for other types of pretrial release were lowest for surety bond (23%) and conditional release (26%) and highest for unsecured bond (47%). Overall, defendants released on financial bond (27%) had a slightly lower misconduct rate than those released under nonfinancial conditions (33%).

Defendants with multiple prior convictions, or with at least 1 prior felony conviction, had higher than average rates of pretrial misconduct. Defendants with 10 or more prior convictions (54%) were twice as likely to be charged with some type of pretrial misconduct as defendants with no prior convictions (27%).

Half of the defendants with at least one prior missed court appearance were charged with some type of pretrial misconduct during the current case, compared to about a third of those who had made all court appearances related to prior arrests, and about a fourth of those who had no prior arrests.

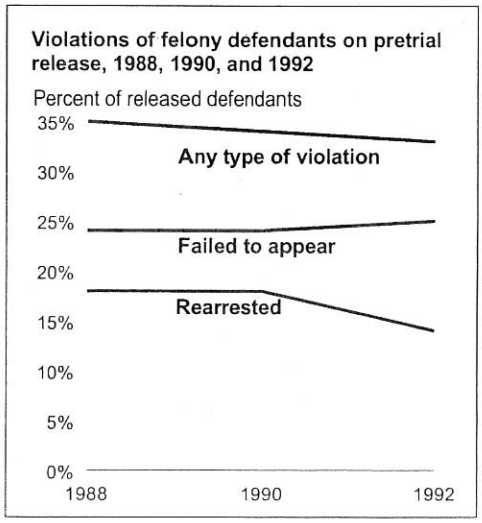

Figure 2

Adjudication

The median time from the original felony arrest to adjudication of that charge was greater for released defendants (118 days) than for those who had remained in detention (46 days) (table 17). A month after arrest, detained defendants (39%) were about 3 times as likely as released defendants (14%) to have been adjudicated on their felony arrest charges. By the end of 1 year, 96% of the cases of detained defendants and 86% of the cases of released defendants had been adjudicated (figure 3).

Among detained defendants, those charged with a violent offense (92%) were less likely than others (98%) to have their case adjudicated within a year of their arrest. This finding was especially true for detained murder defendants, about a third of whom were still awaiting adjudication of their case at the end of 1 year.

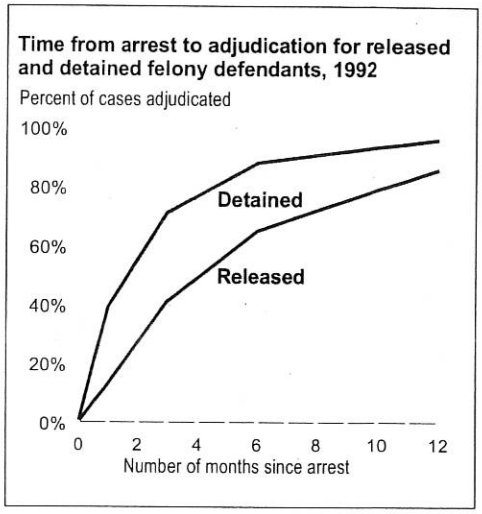

Figure 3

Table 17. Time from arrest to adjudication for released and detained defendants, by the most serious original arrest charge, 1992

Most serious original arrest charge	Felony defendants in the 75 largest counties: Number of defendants	Median number of days	Percent of cases adjudicated within: 1 week	1 month	3 months	6 months	1 year	Percent not adjudicated within 1 year
Released defendants								
All offenses	31,743	118	2%	14%	42%	66%	86%	14%
Violent offenses	7,742	126	2	12	39	65	86	14
Property offenses	10,868	112	1	13	43	67	86	14
Drug offenses	10,442	119	3	14	42	64	85	15
Public-order offenses	2,690	101	4	18	46	73	90	10
Detained defendants								
All offenses	18,695	46	8%	39%	71%	88%	96%	4%
Violent offenses	5,699	85	4	26	53	77	92	8
Property offenses	6,569	40	7	42	80	93	98	2
Drug offenses	4,932	33	12	47	79	91	98	2
Public-order offenses	1,494	36	12	43	74	93	99	1

Note: Data on time from arrest to adjudication were available for 97% of all adjudicated cases. Because of violation of the conditions of pretrial release, 6% of the defendants who were granted pretrial release had their release revoked and were in custody at the time of adjudication. These defendants are included under "released." The median time from arrest to adjudication includes cases still pending at the end of the 1-year study period. Knowing the exact date of adjudication for these cases would not change the medians reported.

12-13

Overall, a higher percentage of detained defendants (79%) than released defendants (61%) were convicted (table 18). The lowest conviction rate was for released defendants who were charged with a violent offense (47%).

The felony conviction rate among detained defendants was 70%, compared to 45% for released defendants. Among released defendants, 54% of those charged with a drug offense or public-order offense were convicted of a felony, a higher percentage than for those charged with a property offense (44%) or a violent offense (33%). Among defendants detained until case disposition, about two-thirds of those who had been originally charged with a violent offense were convicted of a felony, compared with about three-fourths of those who had been charged with a nonviolent offense.

Table 18. Adjudication outcome for released and detained felony defendants, by the most serious original arrest charge, 1992

Most serious original felony arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Convicted: Total	Total convicted	Felony	Misdemeanor	Not convicted: Total not convicted	Dismissed/ acquitted	Other nonconviction
Released defendants								
All offenses	27,212	100%	61%	45%	16%	39%	31%	7%
Violent offenses	6,567	100	47	33	15	53	48	5
Property offenses	9,420	100	65	44	21	35	28	7
Drug offenses	8,853	100	65	54	11	35	24	11
Public-order offenses	2,371	100	69	54	15	31	27	4
Detained defendants								
All offenses	17,985	100%	79%	70%	9%	21%	20%	1%
Violent offenses	5,217	100	72	64	8	28	28	1
Property offenses	6,447	100	83	72	11	17	16	1
Drug offenses	4,852	100	81	73	8	19	16	3
Public-order offenses	1,469	100	79	70	9	21	20	1

Note: Ten percent of all cases were still awaiting adjudication at the conclusion of the 1-year study period. Information on adjudication was available for 90% of all cases that were adjudicated within 1 year. Convictions for local ordinance violations are included under the misdemeanor category. Detail may not add to total because of rounding.

Table 19. Most severe type of sentence received by convicted felony defendants, by whether released or detained, and by the most serious original arrest charge, 1992

Most serious original felony arrest charge	Number of defendants	Percent of convicted defendants in the 75 largest counties: Total	Sentenced to incarceration: Total	Prison	Jail	Not sentenced to incarceration: Total	Probation	Other
Released defendants								
All offenses	15,372	100%	51%	19%	32%	49%	44%	5%
Violent offenses	2,641	100	53	20	33	47	44	3
Property offenses	5,841	100	49	17	32	51	45	5
Drug offenses	5,387	100	54	22	32	46	41	4
Public-order offenses	1,504	100	45	14	32	55	46	9
Detained defendants								
All offenses	13,943	100%	87%	50%	38%	13%	12%	1%
Violent offenses	3,597	100	87	55	32	13	12	1
Property offenses	5,275	100	88	46	41	12	12	1
Drug offenses	3,912	100	87	50	37	13	11	2
Public-order offenses	1,159	100	89	47	41	11	11	--

Note: Information on type of sentence received was available for 95% of all cases involving a conviction that was adjudicated within 1 year of arrest. Sentences to incarceration may have also included probation. Sentences to incarceration or probation may have also included a fine, restitution, and/or community service. "Other" category includes fines, restitution, and community service. Conviction was for a misdemeanor in some cases. Detail may add to total because of rounding.
--Less than 0.05%.

Sentencing

Upon conviction, 87% of detained defendants were sentenced to incarceration, with 50% receiving a prison sentence and 38% a jail term (table 19). Fifty-one percent of the released defendants who were convicted were sentenced to incarceration, with more receiving a jail sentence (32%) than a prison sentence (19%). Convicted defendants who were detained until case disposition (50%) were more than twice as likely as released defendants to receive a State prison sentence. More than 90% of both released and detained defendants who were convicted but not sentenced to incarceration received a probation sentence.

Among defendants who were detained until case disposition, 67% were convicted and sentenced to incarceration, compared to 29% of those who were released (figure 4).

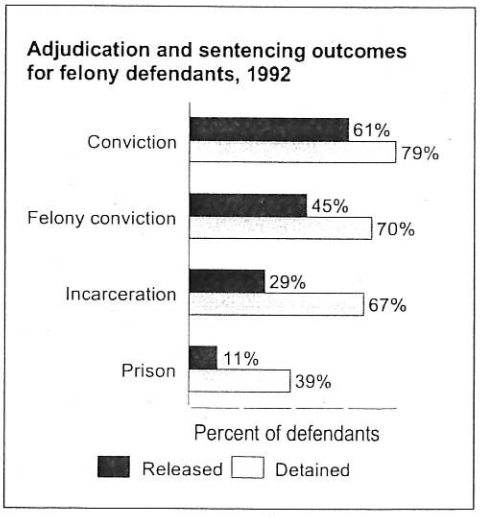

Figure 4

12-14

Detained defendants (39%) were nearly 4 times as likely as released defendants (11%) to be convicted and sentenced to State prison. These differences can be attributed mainly to the fact that some of the factors that affect sentencing decisions, such as seriousness of offense and prior criminal record, also affect pretrial release decisions.

Methodology

The NPRP sample was designed and selected by the U.S. Bureau of the Census under BJS supervision. It is a 2-stage stratified sample with 40 of the 75 most populous counties selected at the first stage and a systematic sample of State court felony filings (defendants) within each county selected at the second stage. The 40 counties were divided into 4 first-stage strata based on court filing information obtained through a telephone survey. Fourteen counties were included in the sample with certainty because of their large number of court filings. The remaining counties were allocated to the three noncertainty strata based on the variance of felony court dispositions.

The second stage sampling (filings) was designed to represent all defendants who had felony cases filed with the court during the month of May 1992. The participating jurisdictions provided data for every felony case filed on selected days during that month. Depending on the first-stage stratum in which it had been placed, each jurisdiction provided data for 1, 2, or 4 weeks' worth of filings in May 1992. Data from jurisdictions that were not required to provide a full month of filings were weighted to represent the full month.

Data on 13,206 sample felony cases were collected from the 40 sampled jurisdictions. This sample represented 55,246 weighted cases filed during the month of May 1992 in the 75 most populous counties. Cases that could not be classified into one of the four major crime categories (violent, property, drug, public-order) because of incomplete information were omitted from the analysis. Cases that were disposed of too quickly to allow time for a pretrial release decision were also excluded. The data collection was supervised by the Pretrial Services Resource Center of Washington, D.C.

This report is based on data collected from the following jurisdictions: Arizona (Maricopa); California (Los Angeles, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara); District of Columbia; Florida (Broward, Dade, Duval, Hillsborough, Palm Beach, Pinellas); Georgia (Fulton); Illinois (Cook); Maryland (Montgomery); Massachusetts (Essex, Suffolk); Michigan (Wayne); Missouri (St. Louis); New Jersey (Essex); New York (Bronx, Erie, Kings, Monroe, New York, Queens); Ohio (Hamilton); Pennsylvania (Allegheny, Montgomery, Philadelphia); Tennessee (Shelby); Texas (Dallas, Harris, Tarrant); Utah (Salt Lake); Virginia (Fairfax); Washington (King); and Wisconsin (Milwaukee).

Because the data came from a sample, a sampling error (standard error) is associated with each reported number. In general, if the difference between two numbers is greater than twice the standard error for that difference, we can say that we are 95% confident of a real difference and that the apparent difference is not simply the result of using a sample rather than the entire population. All differences discussed in this report were statistically significant at or above the 95-percent confidence level.

Race/Hispanic origin

Several jurisdictions did not provide complete reporting for defendants' Hispanic origin. As a result, the overall reporting level for race combined with Hispanic origin was 77% compared to 91% for race alone. Because of this underreporting, the categories of race alone account for more defendants in tables 13 through 16 than the categories that include both race and Hispanic origin. A large preponderance of the persons with a Hispanic origin were white, although the category includes all races.

Offense categories

Felony offenses were classified into 13 categories for this report. These categories were further divided into the four major crime categories of violent, property, drug, and public-order offenses. The following listings contain a representative summary of most of the crimes contained in each category; however, these lists are not meant to be exhaustive. All offenses, except for murder, include attempts and conspiracies to commit.

Violent offenses

Murder — Includes homicide, nonnegligent manslaughter, and voluntary homicide. Does not include attempted murder, classified as felony assault or negligent homicide, and involuntary homicide and vehicular manslaughter, which are classified as *other violent offenses.*

Rape — Includes forcible intercourse, sodomy, or penetration with a foreign object. Does not include statutory rape or nonforcible acts with a minor or someone unable to give legal consent, nonviolent sexual offenses, and commercialized sex offenses.

Robbery — Includes the unlawful taking of anything of value by force or threat of force.

Assault — Includes aggravated assault, aggravated battery, attempted murder, assault with a deadly weapon, felony assault battery on a law enforcement officer, or other felony assaults. Does not include extortion, coercion, or intimidation.

Other violent offenses — Includes vehicular manslaughter, involuntary manslaughter, negligent or reckless homicide, nonviolent or nonforcible sexual assault, kidnaping, unlawful imprisonment, child or spouse abuse, cruelty to child, reckless endangerment, hit and run with bodily injury, intimidation and extortion.

12-15

Property offenses

Burglary — Includes any type of entry into a residence, industry, or business with or without the use of force with the intent to commit a felony or theft, such as forcible entry and breaking and entering. Does not include possession of burglary tools, trespassing, and unlawful entry where the intent is not known.

Theft — Includes grand theft, grand larceny, motor vehicle theft, or any other felony theft. Does not include receiving or buying stolen property, fraud, forgery, or deceit.

Other property offenses — Includes receiving or buying stolen property, forgery, fraud, embezzlement, arson, reckless burning, damage to property, criminal mischief, vandalism, bad checks, counterfeiting, criminal trespassing, possession of burglary tools, and unlawful entry.

Drug offenses

Drug sales/trafficking — Includes trafficking, sales, distribution, possession with intent to distribute or sell, manufacturing, or smuggling of controlled substances. Does not include possession of controlled substances.

Other drug offenses — Includes possession of controlled substances, prescription violations, possession of drug paraphernalia, and other drug law violations.

Public-order offenses

Driving-related — Includes driving under the influence of drugs or alcohol, driving with a suspended or revoked license, or any other felony in the motor vehicle code.

Weapons — Includes the unlawful sale, distribution, manufacture, alteration, transportation, possession, or use of a deadly weapon or accessory.

Other public-order offenses — Includes flight/escape, parole or probation violations, prison contraband, habitual offender, obstruction of justice, rioting, libel and slander, weapons offenses, treason, perjury, prostitution/pandering, bribery, and tax law violations.

Terms related to pretrial release

Released defendant — Includes any defendant who was released from custody prior to the disposition of his or her case by the court. Includes defendants who were detained for some period of time before being released and defendants who were returned to custody after being released because of a violation of the conditions of pretrial release.

Detained defendant — Includes any defendant who remained in custody from the time of arrest until the disposition of his or her case by the court. This report also refers to detained defendants as "not released."

Failure to appear — Occurs when a court issues a bench warrant for a defendant's arrest because he or she has missed a scheduled court appearance.

Types of financial release

Full cash bond — The defendant posts the full bail amount in cash with the court. If the defendant makes all court appearances, the cash is returned. If the defendant fails to appear in court, the bond is forfeited.

Deposit bond — The defendant deposits a percentage (usually 10%) of the full bail amount with the court. If the defendant fails to appear in court, he or she is liable to the court for the full amount of the bail. The percentage bail is returned after the disposition of the case, but the court often retains a small portion for administrative costs.

Surety bond — A bail bond company signs a promissory note to the court for the full bail amount and charges the defendant a fee for the service (usually 10% of the full bail amount). If the defendant fails to appear, the bond company is liable to the court for the full bail amount. Frequently the bond company requires the defendant to post collateral in addition to the fee.

Property bond — Also known as collateral bond, this involves an agreement made by a defendant as a condition of pretrial release requiring that property valued at the full bail amount be posted as an assurance of his or her appearance in court. If the defendant fails to appear in court, the property is forfeited.

Types of nonfinancial release

Unsecured bond — The defendant pays no money to the court but is liable for the full amount of bail should he or she fail to appear in court.

Release on recognizance — The court releases the defendant on the promise that he or she will appear in court as required.

Citation release — Arrestees are released pending their first court appearance on a written order issued by law enforcement personnel. Citation release is included in the recognizance release category in this report.

Conditional release — Defendants are released under conditions and are usually supervised by a pretrial services agency. In some cases an unsecured bond is included. This type of release is also known as supervised release.

Other type of release

Emergency release — Defendants are released solely in response to a court order placing limits on a jail's population.

Brian A. Reaves and Jacob Perez wrote this report. Pheny Z. Smith provided statistical review. Tom Hester edited the report, assisted by Rhonda Keith, who did the page layout. Marilyn Marbrook produced the final report, assisted by Jayne Robinson and Yvonne Boston.

November 1994, NCJ-148818

12-16

TO: House Federal-State Committee

FROM: Eric Rucker, Chief Deputy District Attorney for Johnson County, Kansas

DATE: February 5, 2007

RE: Opposition to HB 2203

Dear Chairman Siegfreid:

I am Eric Rucker and currently serve as Chief Deputy District Attorney for Johnson County, Kansas. The KPBBA brought HB2203 and this hearing to our attention. I apologize for not being able to be present at the hearing and am sending this information for your review.

Johnson County is currently reviewing it's bonding program, usually referred to as ORCD. As a result of this review, the Johnson County District Attorney's office has asked the Johnson County Information Management System (JIMS) to provide information regarding whether those eligible to receive an ORCD bond had subsequently violated the law. This is important because the ORCD bond concept operates (in part) on the theory that lower risk offenders, which I understand is the intent of this bill, are less likely to be a substantial risk to society and should therefore be eligible for release on a lower bond.

One of the markers to determine the actual risk to society is whether the ORCD offender stays law-abiding while "out on bond". The data we have reveals the following:

- From 10/11/05 to 10/11/06
    - 1 in 5 Johnson County ORCD status offenders either failed to appear for a scheduled court appearance or otherwise had bench warrants issued for their arrest.
    - 1 in 25 have had a new criminal charge filed against them.

Please know that our office's inquiry and ultimate opinion regarding the continuance of the Johnson County ORCD program has just begun. Much remains to be learned and discussed within the Johnson County law enforcement community.

It is also important for you to know that at this time our office is not prepared to offer a position on the proposed legislation before you. However, foundational to any ORCD program is whether public safety is being preserved or compromised. If 20% or more of the ORCD bond recipients allegedly violate the law and/or actually fail to appear for a scheduled court appearance, the program must be viewed with significant caution.

Thank you for accepting this written testimony. If you or any other member of the committee have any questions please do not hesitate to contact my office. As our review progresses and more facts become available, I will report our progress to you.

Sincerely,

Eric K. Rucker

Chief Deputy District Attorney Johnson County, Kansas

FEDERAL AND STATE AFFAIRS
Date 2-7-07
Attachment 13

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February 5, 2007

The Honorable Arlen Siegfried
Chair, Federal and State Affairs Committee
Room 136-N
Kansas State Capitol
Topeka, Kansas 66612

Re: Opposition to House Bill 2203

TESTIMONY BEFORE THE FEDERAL AND STATE AFFAIRS COMMITTEE

Dear Chairman Siegfried and Members of the Committee:

My name is Scott Gyllenborg, and I oppose House Bill 2203, which amends and repeals K.S.A. 2006 Supp. 22-2802. I will be attending the National Conference of Bar Presidents and the American Bar Association midyear meetings in Miami, Florida and cannot appear as a live witness before your committee at the hearing on this bill scheduled for February 7.

I have practiced criminal law in Johnson County, Kansas since I graduated from the University of Kansas School of Law in 1988. I served as an assistant district attorney in Johnson County for three years under Paul Morrison, and have been a criminal defense attorney since 1991. From 2000 to 2006, I was co-chairman of the Criminal Law Bench/Bar Committee of the 1,400-member Johnson County Bar Association. I am the current president of the Johnson County Bar Association.

There are two reasons that I oppose the bill:

First, the amended language is unnecessary. K.S.A. 22-2802(3) gives the magistrate discretion to apportion the appearance bond between surety and personal recognizance in any appropriate percentage, e.g., an appearance bond in the amount of $15,000.00 of which $5,000.00 shall be by surety and $10,000.00 by personal recognizance. As a Republican, I am a big believer in keeping the laws that we must have as uncomplicated as we can make them.

Second, the bill obviates the need for a surety in most cases. My nearly 20 years of experience as an attorney in criminal cases has shown me that a surety is the best guarantee of the return of the defendant to the courthouse in the case of a failure to appear. If a client of mine fails to appear, I can pick up the telephone, call the bonding

FEDERAL AND STATE AFFAIRS
Date 2-7-07
Attachment 14

company (which is on the hook for the full amount of the bond and, thus, properly motivated to locate and return the defendant) and usually within a few hours I can get my client before the court. Occasionally this process takes a few days, but it is nearly always quicker than the months or years it can take law enforcement to find and return the defendant. This level of service to the justice system is impossible if one must rely only on the services of law enforcement because they have so many other functions to serve. The cost of this service also is borne by the defendant and his family, not the taxpayers.

Along with the important services that bonding companies provide in a free enterprise economy, the good bonding companies keep close tabs on the defendants for whom they are providing surety, often requiring them to call in daily or weekly so that the bonding companies can assure themselves that the defendants comply with the other conditions of release. This high level of supervision also comes at no cost to the taxpayers, and increases community safety.

Finally, bonding companies provide a level of economic security for the courts because they *are* solvent, and have had to prove their solvency. Allowing a lesser amount of the bond to be deposited by the defendant on the defendant's assurance that he has the economic means to pay the entire amount of the bond if necessary -- with no independent means of verification -- seems foolhardy when sureties are readily available with verifiable assets.

The current law works efficiently and effectively in Johnson County and in other jurisdictions in Kansas. I recommend that the committee reject the bill. I will be available by mobile telephone at (913) 449-4321 if you have any questions.

Very truly yours,

GYLLENBORG & DUNN, P.A.

Scott C. Gyllenborg
SCG:cmd

THE EFFECTIVENESS AND COST OF SECURED AND UNSECURED PRETRIAL RELEASE IN CALIFORNIA'S LARGE URBAN COUNTIES: 1990-2000

By
Michael K. Block, Ph.D.
Professor of Economics & Law
University of Arizona

March, 2005

EXECUTIVE SUMMARY

When an individual is released pending trial he or she must promise to appear at all required hearings and at trial. The promise to appear may be financially secured or it may be unsecured. The most common form of financially secured release is referred to formally, as Surety Bond. In California the most common forms of unsecured release are called Release on Own Recognizance (ROR) and Conditional or Supervised Release (CR).

In this study we use U. S. Bureau of Justice Statistics (BJS) data, called State Court Processing Statistics, for all the of California's large urban counties included in this data during 1990 to 2000 to analyze pre-trial releases. In particular, we compare the characteristics and performance of Surety Bond releases and ROR/CR releases. Our primary focus is the relative effectiveness of these two approaches in guaranteeing appearance at scheduled court proceedings and in preventing defendants from becoming fugitives.

We analyzed data from over 20,000 cases. This data was collected by BJS in 6 surveys over an eleven-year period from 12 of California's largest counties. Our findings from this analysis include the following:

- The proportion of defendants released before trial in these California counties was at 44% substantially below the national average of 62%.
- The proportion of releases on Surety Bond averaged 40% over the period while the proportion released on ROR/CR averaged 57%. In 2000 these percentages stood at 46% and 53% respectively for the California counties included in the BJS sample.
- A defendant released on ROR/CR was about 60% more likely to have failed to appear for a scheduled court appearance as a defendant released on Surety Bond - 32% vs 20%. (See Figure A below.)
- A defendant who failed to appear for a scheduled court appearance was approximately two and a half times more likely to remain a fugitive if he/she was released on ROR/CR than if he/she was released on Surety Bond.
- If the proportions released on Surety Bond and ROR/CR was reversed in California's 12 largest counties in 2000, we estimate that there would have been over 1000 fewer failures to appear in California's largest 12 counties.
- If Surety Bond had completely replaced ROR/CR as a release option in California's largest 12 counties in 2000, we estimate there may have been over 6000 fewer failures to appear in these large counties.
- A more aggressive use of Surety Bond could save taxpayers between $1.3 million and $10 million per year in budget outlays in California's largest 12 counties, depending on exactly how aggressive these counties are in replacing release on ROR/CR with release on Surety Bond. Total cost savings, including the social costs of failures to appear, could range from over $14 million to over $109 million per year in these counties again depending on how aggressive the 12 largest counties are in replacing ROR/CR with release on Surety Bond.

ABOUT THE AUTHOR

Michael K. Block is Professor of Economics and Law as well the Director of the Office of Economic Education at the University of Arizona. Dr. Block's specializes in applying economic analysis to legal and policy issues. In prior years, Dr. Block was chairman of the Arizona Constitutional Defense Council and chairman of the Arizona Juvenile Justice Advisory Council. . In addition, Dr. Block was also previously a senior policy advisor for Criminal Justice to the Governor of Arizona, a consultant for the Executive Office of the President; a member of the Arizona Residential Utility Consumers Board; and a consultant on regulatory reform and privatization for The World Bank's Economic Development Institute. Until 1989 Dr. Block served as a Commissioner on the U.S. Sentencing Commission in Washington, D.C. He was appointed a Commissioner by President Reagan and confirmed by the U.S. Senate in October 1985. Dr. Block has co-authored several books and published numerous articles in scientific journals; consulted for Hernando DeSoto at the Instituto Libertad y Democracia in Lima, Peru; and was from 1975 until 1982 Director of the Center for Econometric Studies of the Justice System at the Hoover Institution at Stanford University, where he was also a Senior Research Fellow. Dr. Block received his Ph.D. in Economics from Stanford University in 1972, where he previously received his B.A. and M.A., also both in Economics.

Introduction

California's constitution provides that "a person shall be released on bail by sufficient sureties . . ." and "may be released on his or her own recognizance in the court's discretion." While defendants charged with first-degree murder, or those whose release would pose a "substantial likelihood" of harm to others, may be denied these pretrial release options, the vast majority of those arrested in California are eligible for release pending trial.

When an individual is released pending trial he or she must promise to appear at all required hearings and at trial. This promise to appear may be financially secured or it may be an unsecured promise to a government official. Financially secured release is referred to as "bail" and in California may take the form of Surety Bond, Full Cash Bail, and Property Bail. Under unsecured release, the court makes a decision, either on its own or with the assistance of other public officials, to waive the requirement of financial security, and in essence assumes responsibility for the appearance of the defendant at all required proceedings. The most common forms of unsecured release in California are: Release on Own Recognizance (ROR); Conditional or Supervised Release (CR); Release on Citation; and Emergency Jail Release.

The purpose of this study is to compare and contrast the performance of secured release and unsecured release programs. In particular we will be interested in the relative performance of the most common release options: Surety Bond and ROR/CR. Our focus will be on the effectiveness of these two approaches in preventing failures to appear (FTA) at required court proceedings. The prevention of FTA's is important in both assuring the integrity of our judicial system and in controlling the costs of our criminal justice system. Failures to appear undermine the efforts of local government to assure the safety of persons and property and they impose a significant cost on taxpayers.

Methodology

On a biannual cycle, the U. S. Bureau of Justice Statistics (BJS) collects a sample of felony cases filed during one month (May) in 40 of the nation's largest 75 counties.[1] Of the 40 counties sampled, six to nine, depending on the year, are among the 12 largest counties in California. (The number has grown from six in 1990 to nine in 2000.) These California counties make up our sample and, while the sample does not contain all of the large urban counties in California, the sample always includes Los Angeles County, Santa Clara County, San Bernardino and a representative sample of the other large urban counties in the state.

In 2000, the most recent year for which we have data, the BJS sample counties (See Appendix) represented 89% of the population and 87% of the FBI Part I Modified Index

[1] For a good discussion of this data see, *Felony Defendants in Large Urban Counties, 2000* Bureau of Justice Statistics, U. S. Department of Justice 2003 (NUJ -202021)

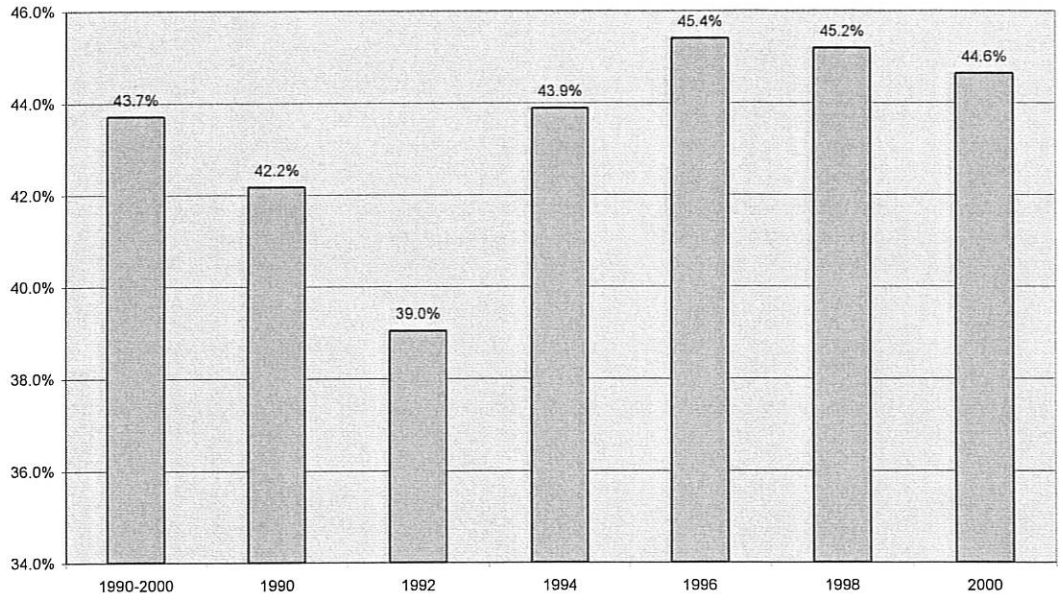
Crimes reported in California's 12 largest counties which themselves represented 77% of the State's population and 76% of the Modified Index Crimes reported in the State as a whole.[2] The years covered in this study are 1990 to 2000. We stop at 2000 because it is, as we noted above, the last year for which BJS data is currently available. The number of cases BJS sampled over the ten-year period in California was 20,811. All of these cases are involved in our present study.

As part of the information collected on these felony cases, BJS records information on pretrial release, including the type of release (e.g., Surety Bond, ROR, CR, etc.), BJS also follows the case for up to one year after filing. The "State Court Processing Statistics", which is BJS's name for the data series used in this report, contains rather detailed information on who gets released before trial, how they get released, and whether they appear for all required proceedings.

[2] FBI Part I Modified Index Crimes are Murder, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Auto Theft.

Pretrial Release Rates

FIGURE #1
PERCENTAGE OF DEFENDANTS RELEASED BEFORE TRIAL IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

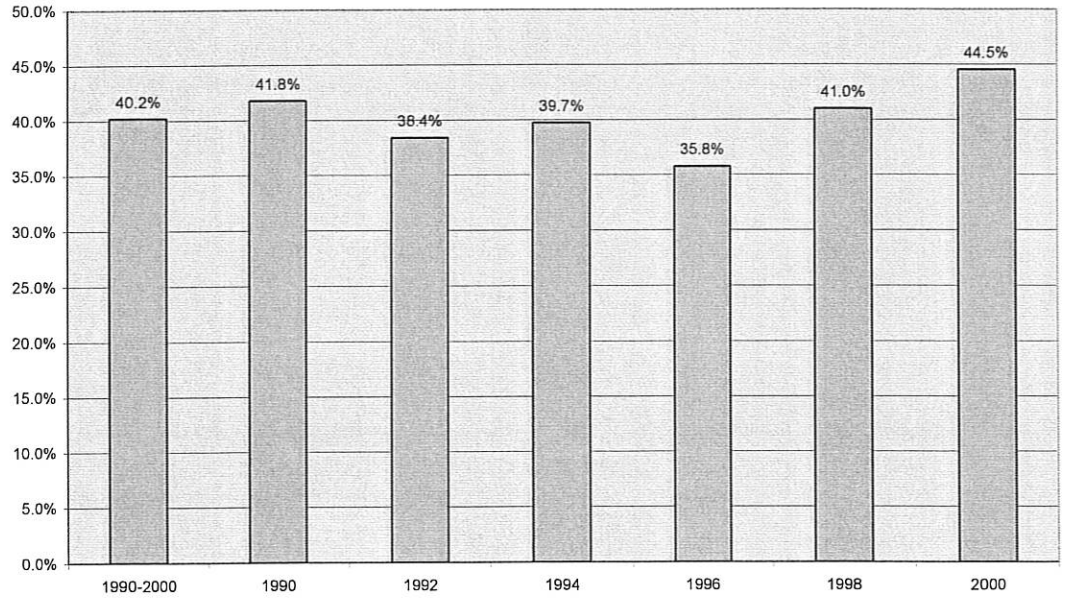


In California the percentage of defendants in large urban counties released before trial is about 44%. Nationwide the pretrial release rate in such counties is about 62%.

It appears, based on the histograms in Figure #1, that the proportion of defendants released before trial in California's large urban counties was relatively stable in the 1990's. In only one year, 1992, did the release rate fall below 40% and in no year did the rate exceed 45%. However, because the number and identity of the California counties included in the BJS sample varies from year to year the data in Figure #1 may not be a very accurate indicator of trends over time.

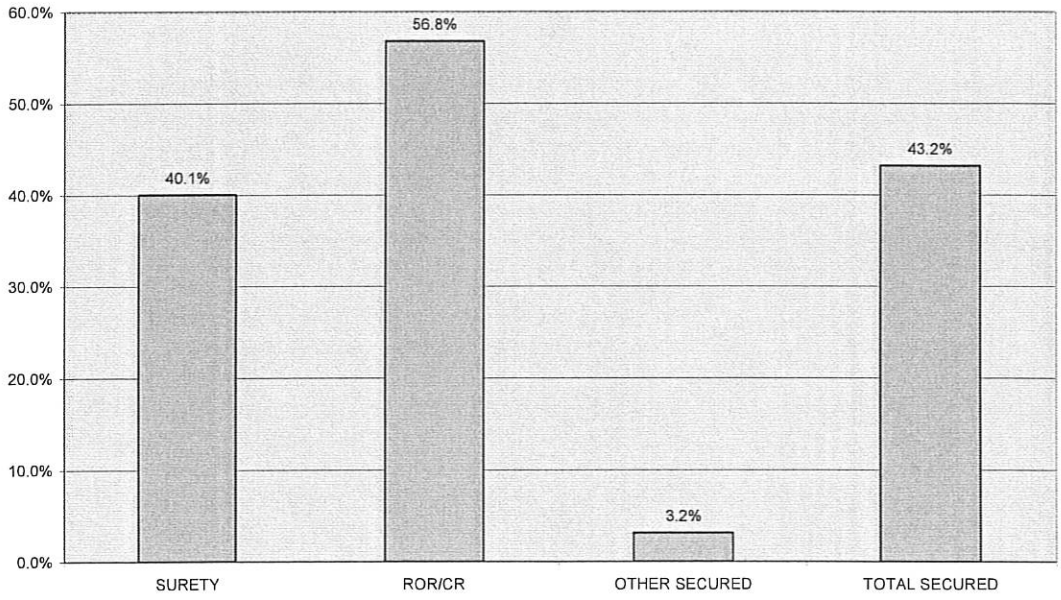
What we have done to supplement the analysis is to construct the same series using only the counties (Los Angeles, San Bernardino, Santa Clara) that were in the BJS sample every year. The results of this exercise are presented in Figure #1a. While the pattern over the decade is slightly different for these counties, the magnitudes are similar and there is the same evidence of relative stability; with perhaps a bit more significant of an increase in the release rate by the beginning of the 21st century.

FIGURE #1.a
PERCENTAGE OF DEFENDANTS RELEASED BEFORE TRIAL IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Secured and Unsecured Release

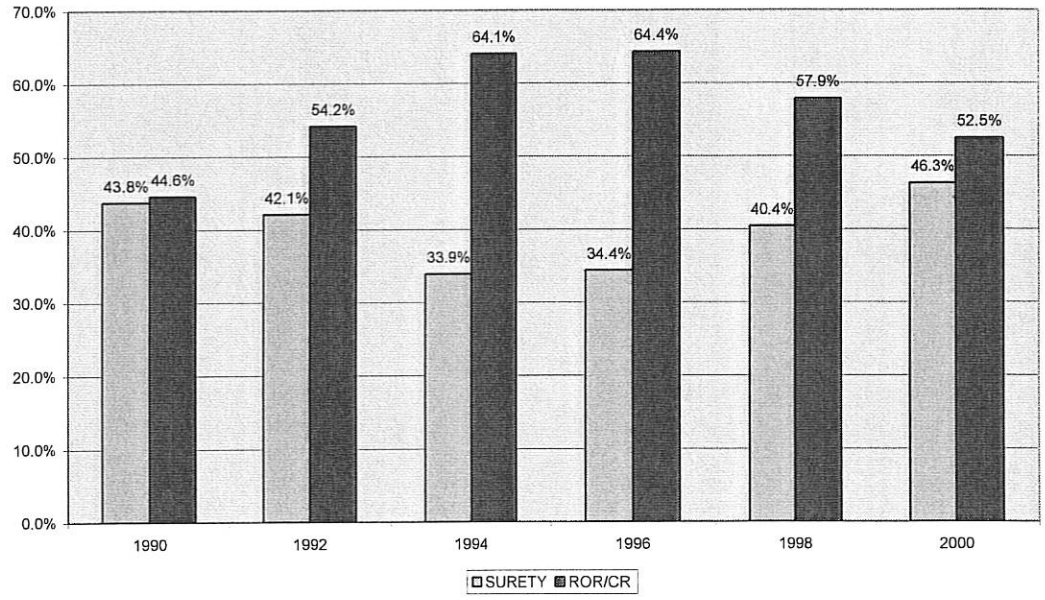
FIGURE #2
RELATIVE INCIDENCE OF SECURED AND UNSECURED PRETRIAL RELEASE MECHANISMS
IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



If we consider the entire period 1990-2000, the BJS data reveals that in California's large urban counties about 40% of all released defendants were released on Surety Bond. The proportion released on all forms of secured release was, over the same period, approximately 43%. The latter was obtained by adding releases guaranteed by Surety Bond, Full Cash Bond, Deposit Bond and Property Bond. The remaining 57% of all released defendants were released under the unsecured government release options of ROR and Conditional Release (CR).

As is readily apparent in Figure #3 the trend during the early to mid-1990's of increased reliance on unsecured release has abated and to some extent been reversed. Nonetheless unsecured release was still somewhat more common in 2000 than it was in 1990.

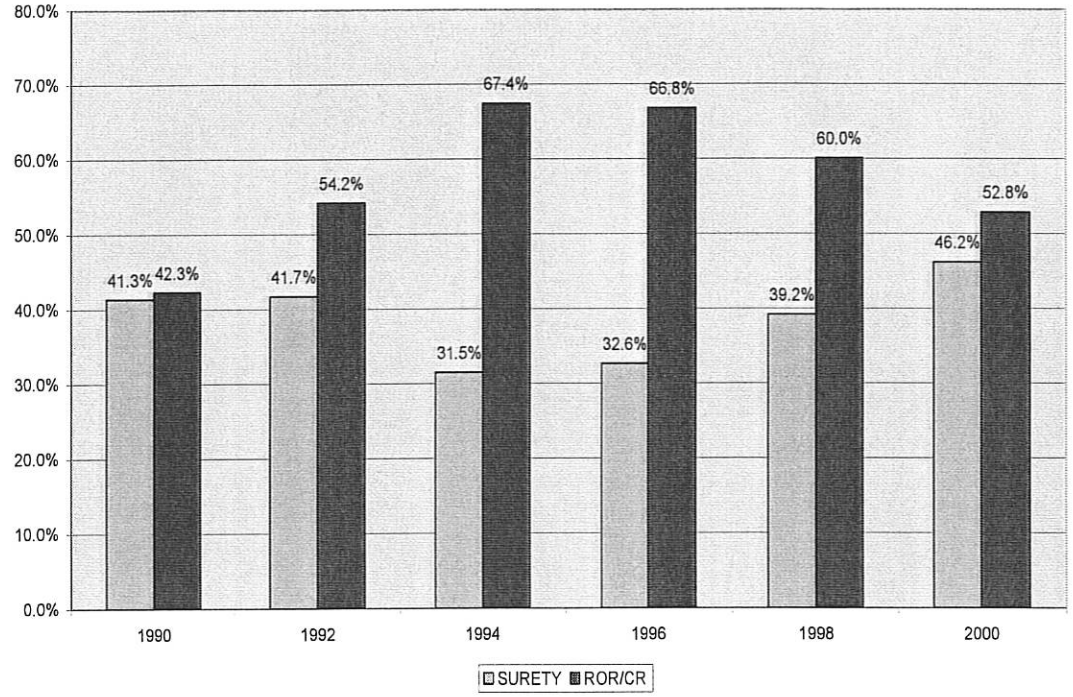
FIGURE #3
RECENT TRENDS IN THE USE OF SURETY BOND AND UNSECURED RELEASE OPTIONS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



In 1990 about 45% of all releases were ROR or Conditional Releases. By 1996 this percentage had grown to 65%. However by 2000 it was back down to 53%, which was still quite a bit higher than it had been in 1990. Conversely, while Surety Bonds secured nearly 44% of all releases in 1990, this percentage had fallen to 34% by 1994. In 1996 this trend reversed itself so that by 2000 the percentage of releases secured by Surety Bond was, 46%, which was also somewhat higher than it had been at the beginning of the decade. Nonetheless releasees on ROR/CR grew more rapidly during this period than did releases on Surety Bond. Interestingly enough, by 2000 all other forms of privately secured release had virtually disappeared.[3]

[3] By 2000 Surety Bond and ROR/CR accounted for 98.8% of all releases in the California counties in the BJS sample.

FIGURE #3.a
RECENT TRENDS IN THE USE OF SURETY BOND AND UNSECURED RELEASE OPTIONS IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

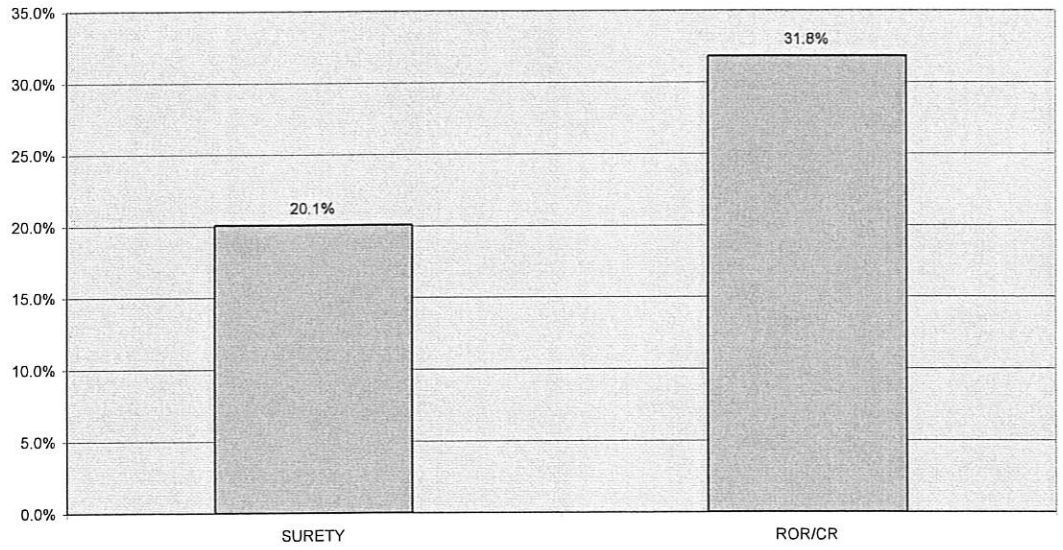


Again since the counties in the BJS sample change from year to year we supplemented the data in Figure #3 with a series on release that used only those California counties that were in all the BJS samples. The results of this effort are shown in Figure #3a. The data in this figure have virtually the same pattern as those in Figure #3.

Relative Performance of Secured and Unsecured Pretrial Release

FIGURE #4

PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON SURETY BOND AND ROR/CR RELEASE OPTIONS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

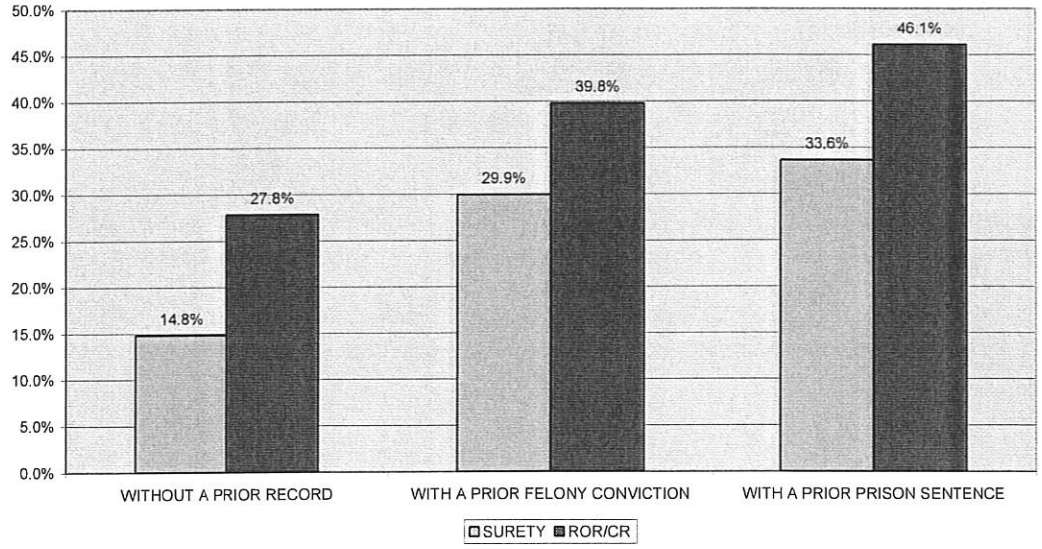


In Figure #4 we display the relative performance of Surety Bond and ROR/CR in assuring the defendant's appearance at all required proceedings. It is apparent that Surety Bond is a much more effective mechanism for preventing failure to appear at required proceedings (FTA). Over the period 1990-2000, approximately 20% of all defendants on Surety Bond secured release failed to make a court appearance in California's large urban counties. During the same period, about 32% of the defendants released on ROR/CR failed to make a required court appearance. It is striking that even though the defendants released on Surety Bond had more serious criminal histories than those released on ROR/CR, their failure to appear rate was about 60% lower than that of defendants released on ROR/CR.[4]

[4] For a summary of the criminal justice histories of releasees in the selected urban counties see Appendix Figures 4 and 5.

FIGURE #5

PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE BY CRIMINAL JUSTICE HISTORY AND TYPE OF RELEASE IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



The fact that Surety Bond has been a more effective method of assuring appearance at court proceedings than ROR/CR for a rather wide range of defendants is clearly evident in Figure #5. While Surety Bond has proven particularly effective, relative to ROR/CR, in assuring appearance of defendants without any prior criminal convictions (14.8% vs. 27.8%), it has also proven substantially more effective in preventing FTA's among more "hardened" defendants such as those with prior prison incarcerations.

In Figure #6, the FTA rate of both Surety Bond and ROR/CR appears to have increased since 1990. However, if we consider the failure to appear history during the 1990s in the counties that are in all BJS samples, the situation is somewhat different. Here, as shown in Figure #6a, it is only the releasees on Surety Bond that have experienced an increase in the failure to appear rate over the decade.[5]

[5] See Appendix Figure 4.

FIGURE #6

RECENT TRENDS IN THE PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON BOTH SURETY BOND AND ROR/CR IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

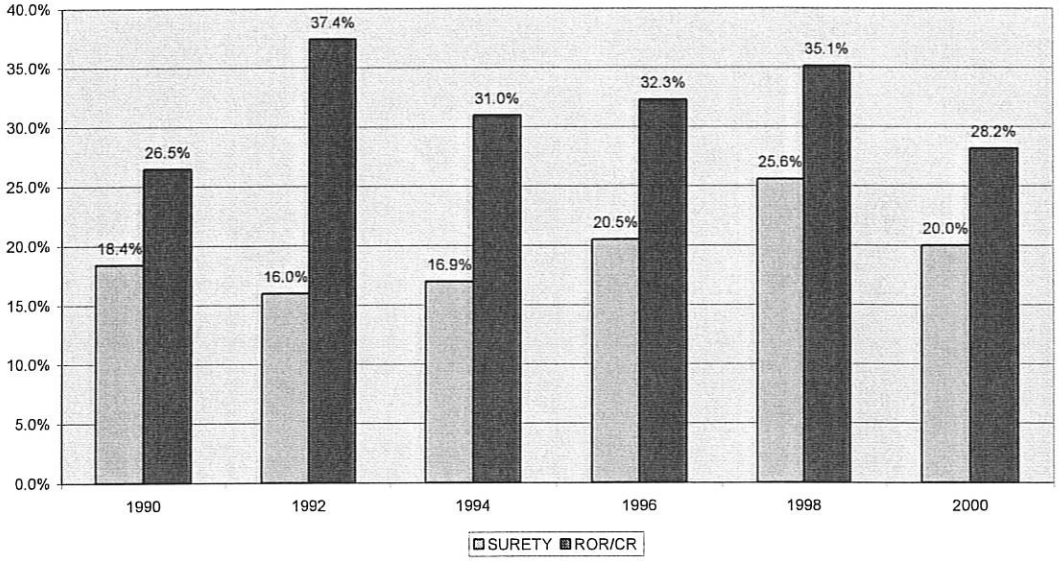


FIGURE #6.a

RECENT TRENDS IN THE PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON BOTH SURETY BOND AND ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

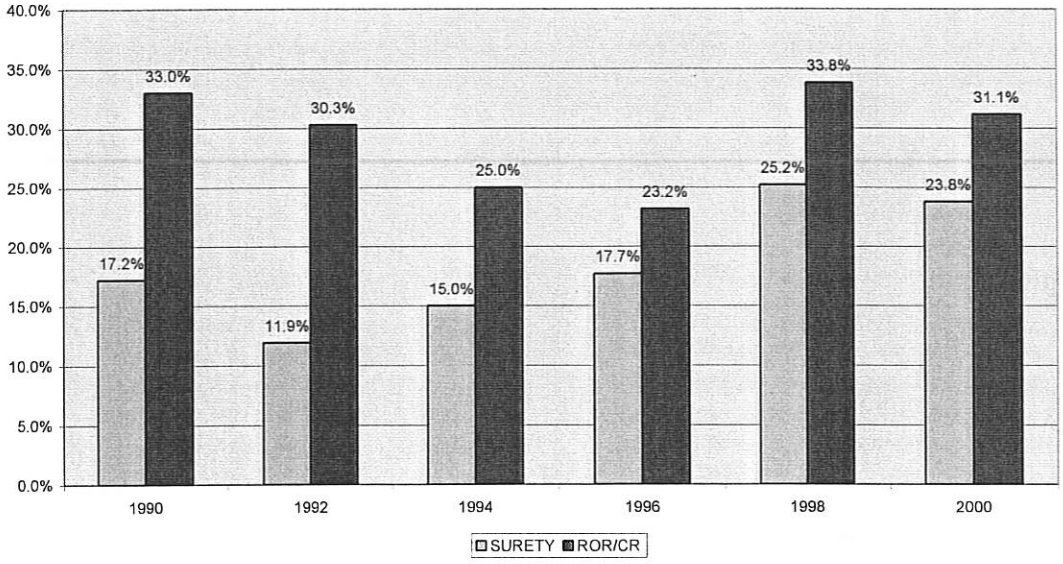


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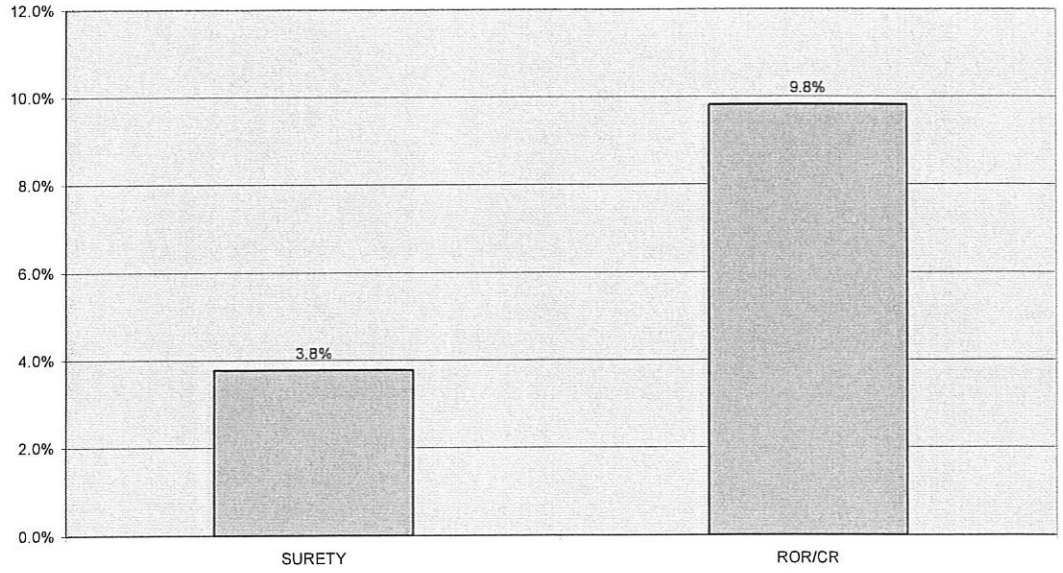
FIGURE #7

PERCENTAGE OF RELEASEES WHO REMAIN A FUGITIVE IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Surety Bond has not only been more effective than government secured pretrial release in assuring appearance at court proceedings it has also, as we can observe in Figure #7, been better at eventually returning defendants who FTA to custody. Only about 4% of defendants released on Surety Bond remained fugitives after one year in California's large urban counties. The comparable percentage for ROR/CR was approximately 10%.

What If?

Since pretrial release secured by a Surety Bond appears to have been so much more effective than ROR/CR in assuring appearance in California's large urban counties during the 1990's, it is both interesting and relevant to ask the question: What would have been the failure to appear situation in California's 12 largest urban counties in 2000 if greater use had been made of Surety Bond releases?

Employing the BJS data for the entire time period and using standard statistical techniques that controlled for defendants characteristics, criminal histories, location and other relevant variables, we estimated what the failure to appear rate would have been if greater use had been made of release on Surety Bond in 2000. Our results are shown in Figure #8 and Table #1.

TABLE #1

ESTIMATED FAILURE TO APPEAR RATES IN CALIFORNIA'S LARGEST 12 URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000[6]

PROPORTION OF ALL ESTIMATED RELEASEES ON SURETY BOND	FTA RATE
45% (Actual)	29% (Actual)
52%	28%
60%	27%
70%	26%
80%	25%
90%	24%
97%	23%

The first estimate in Table #1 (the second entry in the table) corresponds to the level of Surety Bond releases that would have been obtained if the proportions of releasees on Surety Bond and ROR/CR were reversed in 2000. That is, instead of 52% of all releases in 2000 being ROR/CR 52% were secured by Surety Bond and conversely instead of 45% being secured by Surety Bond 45% were released ROR/CR.

We estimated that in this case the average failure to appear rate in California's 12 largest urban counties in 2000 would have been 28% instead of 29%. Even this very modest increase in the use of Surety Bond would have lowered the FTA rate by 3%. On the other hand, if Surety Bond releases were used much more aggressively and in fact replaced all ROR/CR releases over the period, the failure to appear rate would have been 23%, that is it would have been 21% below its actual level.

[6] Sacramento, San Francisco and Ventura Counties were not in the BJS 2000 sample and hence we used 1998 data for these counties.

FIGURE #9

ESTIMATED FAILURE TO APPEAR RATES IN CALIFORNIA'S LARGE URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000

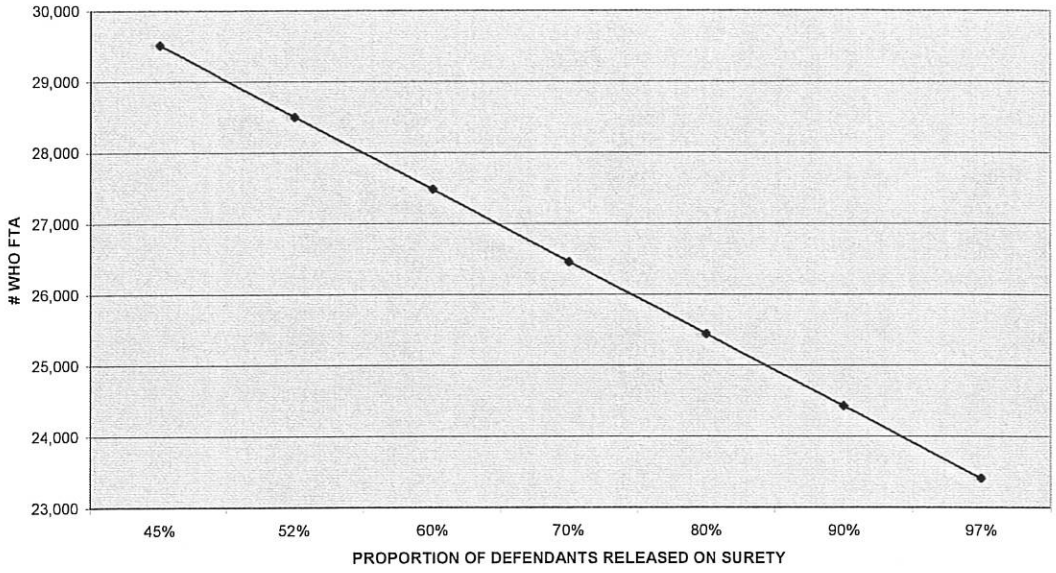


TABLE #2

ESTIMATED REDUCTION IN NUMBER OF FAILURES TO APPEAR IN CALIFORNIA'S 12 LARGEST URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000

SURETY BOND UTILIZATION LEVEL	ESTIMATED REDUCTION IN FTA'S
52%	1,018
60%	2,035
70%	3,053
80%	4,071
90%	5,089
97%	6,106

In Figure #9 and Table #2 we take this "What if" failure rate information and translate it into estimates of what the number of failures to appear would have been if the proportion of defendants released on Surety Bond had been greater in 2000. Figure #9 gives the estimated FTA levels and Table #2 the estimated reduction in FTA levels. For reference we have included in Figure #9, as the first point on the line, the actual failure to appear rate (.29) and the corresponding number of failures to appear (29,514).

As indicated in Table #2, we estimate that, if the proportion of releasees on Surety Bond and ROR/CR were reversed in 2000, there would have been 1,018 fewer FTA's in California's 12 largest urban counties in 2000. In the extreme, if Surety Bond had completely replaced ROR/CR in 2000 there would have been more than 6,100 fewer FTA's in these California counties.

Consequences of a Failure to Appear

When a defendant fails to appear for a required proceeding, the presiding judge or magistrate generally issues a Bench Warrant for his or her arrest. The defendant may remain a fugitive, or, as more likely, he/she may return to court either by surrender or apprehension.

If the defendant surrenders to the court, the court will recall the warrant, the defendant will be rebooked, and a new proceeding may be held to redetermine the conditions of release. If the defendant is arrested, he will be booked and detained. Upon booking the defendant appears in court where a new determination of release conditions will be made. A hearing may be held to determine whether the original bail bond, if there was one, is to be re-instituted or forfeited.

It is clear that an FTA imposes additional costs on the taxpayers and on the general population. The scale of the problem is suggested by the fact that in 2004 there were almost 2.5 million unserved felony and misdemeanor warrants in the state of California Even if the individual surrenders there are additional process and detention costs. Re-arrest of a defendant imposes even greater costs on the taxpayer. If the defendant remains a fugitive all of the original booking and hearing costs are wasted and the integrity of the criminal justice system is further compromised. Every defendant that remains a fugitive undermines the crime control efforts of local government.

Costing the Consequences of Failure to Appear

In order to gain some appreciation of the magnitude of the costs that every failure to appear imposes on taxpayers and on society in general, it is helpful to attach dollar values to both their relatively straight-forward budgetary (or fiscal) impacts as well as to their more difficult to assess social costs. In a previous study of this topic Steven Twist and the author developed a rather detailed set of failure to appear cost estimates based on data we were able to obtain from Los Angeles County. A very brief summary of our estimates appears in Tables #3 and #4. In both cases the costs have been re-indexed and expressed in current (Year 2005) dollars.

TABLE #3

Estimated Budgetary Costs of a Failure to Appear by Type of Eventual Return - Current Dollars

Return Method	Budgetary Cost
Surrender	$517
Arrest on a Bench Warrant	$927
Arrest on a New Crime	$3,009
Fugitive/No Return	$2,385

Table #3 presents the budgetary costs of a failure to appear corresponding to the method by which the defendant is returned to court. It includes estimates of the additional budgetary costs attributable to an FTA if the defendant eventually surrenders; if the defendant is arrested on a Bench War-rant for the FTA, if the defendant is eventually rearrested for a new crime, or if the defendant is never returned and remains a fugitive. In the latter case we consider that all costs before the defendant became a fugitive are wasted once he/she becomes a fugitive. Hence, all of the expenditure up to the time the defendant failed to appear is considered a budgetary cost of this type of FTA.

Table #4

ESTIMATED AVERAGE BUDGETARY AND SOCIAL COSTS OF A FAILURE TO APPEAR BY TYPE OF RELEASE - CURRENT DOLLARS

Type of Release	Average Budgetary Cost	Average Social Cost	Average Total Cost
Surety Bond	$1,230	$7,260	$8,490
ROR/CR	$1,409	$10,560	$11,969

In Table #4, under the column labeled "Average Budgetary Costs", we report the results of taking the costs reported in Table #3 and weighting them by the proportion of defendants who are returned by each method. This weighting generates an estimate of the average budgetary cost of an FTA. Because Surety Bond releases and ROR releases have different return profiles they have different estimated budgetary costs.

Since counting only the budgetary cost of an FTA that ends with the defendant in fugitive status seriously underestimates the impact on society of that event, we also calculated a social cost of fugitive status. This social cost calculation (based again on our previous study of Los Angeles County) attempts to attribute to fugitives the reduction in crime control that results from their status and the increased costs of crime associated with that reduction in crime control.[7] Our previous study suggests that every fugitive costs society more than $33,000 in lost crime control benefits. Hence since the average FTA in these large urban counties has between a 22% and 33% chance of ending in fugitive status after 1 year, we estimated that the social cost is likely to be between $7,260 and $10,560 per FTA.[8]

[7] For a more complete discussion of our methodology in calculating social cost see, *Runaway Losses: Estimating the Costs of Failure to Appear in the Los Angeles Criminal Justice System*, pp 23-25.

[8] While the fugitive rate in 2000 (in these 12 urban counties) after one year is between 22 and 32 percent the eventual fugitive rate will be lower and hence this social costs calculation will be an overestimate on this score. However, we also assume in calculating social cost that fugitives have the same probability of being convicted and going to prison as other defendants who FTA. This assumption clearly biases our estimates downward. On balance it is not clear that our estimate is systemically biased upward.

Potential Cost Savings from Increased Use of Surety Bond Releases

TABLE #5

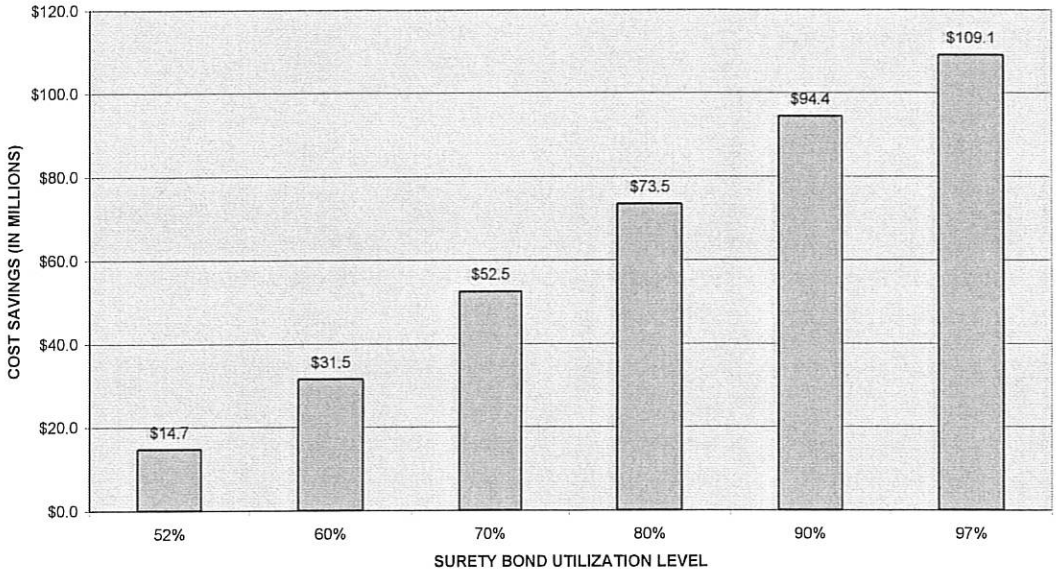
ESTIMATED BUDGETARY AND SOCIAL COST SAVINGS THAT WOULD HAVE RESULTED FROM INCREASED USE OF SURETY BOND IN THE 12 LARGEST URBAN COUNTIES IN CALIFORNIA: 2000 (CURRENT DOLLARS)

SURETY BOND UTILIZATION LEVEL	ESTIMATED REDUCTION IN FTA'S	BUDGET COST SAVINGS	SOCIAL COST SAVINGS (IN MILLIONS)	TOTAL SAVINGS (IN MILLIONS)
45%	0	$0.0	$0.0	$0.0
52%	1,018	$1.3	$13.3	$14.7
60%	2,035	$2.9	$28.6	$31.5
70%	3,053	$4.8	$47.7	$52.5
80%	4,071	$6.7	$66.7	$73.5
90%	5,089	$8.7	$85.8	$94.4
97%	6,106	$10.0	$99.1	$109.1

Table #5 and Figure #10 bring together the information on reduced failure rate possibilities from our "What if" calculation and the estimated costs of a failure to appear. In Table #5 we show, assuming that the cost estimates based on Los Angeles County are at least indicative of costs in other large urban counties, the potential savings in terms of both budgetary costs and social costs, that would have resulted from a range of increased levels of Surety Bond utilization in California's 12 largest urban counties. In Figure #10 we display the total cost savings graphically. We show the results of a very modest increase in the role of Surety Bond implied by reversing percentages with ROR/CR in 2000 as well as the cost savings of a complete replacement of ROR/CR with Surety Bonds.

FIGURE #10

ESTIMATED TOTAL COST SAVINGS THAT WOULD HAVE RESULTED FROM INCREASED USE OF SURETY BOND IN THE 12 LARGEST URBAN COUNTIES IN CALIFORNIA: 2000



Specifically, we show the cost savings in 2000 that would have resulted from reversing the proportions of releasees on Surety Bond and ROR/CR in 2000, which would have involved raising the proportion on Surety Bond to 52%.

We also show cost savings for higher levels of Surety Bond utilization all the way up to completely replacing ROR with Surety Bond releases (97%).

We find that if Surety Bond releases comprised 52% rather than 45% of all releases in California's 12 largest counties in 2000, the budget savings in these urban counties would have been over $1.3 million without counting the budgetary reductions due simply to lower levels of pretrial program staffing. In addition, we estimate there would have been a savings in social costs due to a reduction in the number of fugitives of about $13.3 million. Hence, the overall savings of this very modest increase in the role of Surety Bond releases would have been over $14.7 million. At the other extreme if Surety Bond had completely replaced ROR/CR, total cost savings would have been close to $109 million. Budgetary savings alone of this radical restructuring of pretrial release would have been over $10,000,000. Of course Surety Bond could not actually replace ROR/CR, if only for the reason that some defendants could not qualify for a Surety Bond. However release on Surety Bond could have been used more often than it was in these California counties, and Figure #10 indicates what the savings would have been had it been used more frequently.

APPENDIX

I. Glossary
II. Sample
III. Weighting Techniques
IV. Appendix Figures

GLOSSARY

Terms Related to Pretrial Release

- **Released Defendant**: Includes any defendant who was released from custody prior to the disposition of his or her case by the court. Includes defendants who were detained for some period of time before being released and defendants who were returned to custody after being released because of a violation of the condition of pretrial release.
- **Detained Defendant**: Includes any defendant who remained in custody from the time of arrest until the disposition of his or her case by the court.
- **Failure to Appear**: Occurs when a court issues a bench warrant for a defendant's arrest because he or she has missed a scheduled court appearance.

Financial Release Mechanisms

- **Surety Bond**: A bail bond company signs a promissory note to the court for the full bail amount and charges the defendant a fee for the service (usually 10% of the full bail amount). If the defendant fails to appear, the bond company is liable to the court for the full bail amount. Frequently the bond company requires collateral from the defendant in addition to the fee.
- **Deposit Bond**: The defendant deposits a percentage (usually 10%) of the full bail amount with the court. The percentage of the bail is returned after the disposition of the case, but the court often retains a small portion for administrative costs. If the defendant fails to appear in court, he or she is liable to the court for the full amount of the bail.
- **Full Cash Bond**: The defendant posts the full bail amount in cash with the court. If the defendant makes all court appearances, the cash is returned. If the defendant fails to appear in court, the bond is forfeited.
- **Property Bond**: Involves an agreement made by a defendant as a condition of pretrial release requiring that property valued at the full bail amount be posted as an assurance of his or her appearance in court. If the defendant fails to appear in court, the property is forfeited. Also know as "collateral bond".

Nonfinancial Release Mechanisms

- **Release on Recognizance (ROR)**: The court releases the defendant on a signed agreement that he or she will appear in court as required.
- **Unsecured Bond**: The Defendant pays no money to the court but is liable for the full amount of bail should he or she fail to appear in court.
- **Conditional Release**: Defendants are released under conditions and are usually monitored or supervised by a pretrial services agency. In some cases, such as those involving a third-party custodian or drug monitoring and treatment, another agency may be involved in the supervision of the defendant. Conditional release sometimes includes an unsecured bond.

SAMPLE

County	1990	1992	1994	1996	1998	2000
Alameda			X	X	X	X
Contra Costa						X
Los Angeles	X	X	X	X	X	X
Orange	X			X	X	X
Riverside						X
Sacramento	X	X	X	X	X	
San Bernardino	X	X	X	X	X	X
San Diego	X	X				X
San Francisco		X	X	X	X	
San Mateo						X
Santa Clara	X	X	X	X	X	X
Ventura			X	X	X	

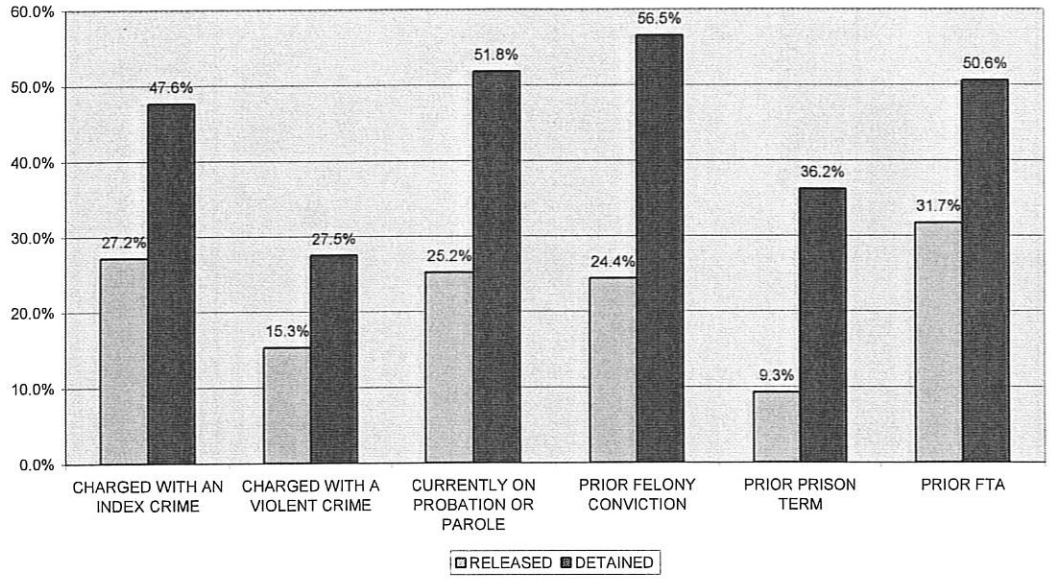
WEIGHTING TECHNIQUE

The pretrial release data used in this report was collected from large urban counties in California by BJS for one, two, three, or four weeks out of a year, depending on their relative size. The largest counties were sampled for one week, the smallest for four weeks, and counties with relatively moderate populations were sampled for two or three weeks. Frequency weights were assigned to the data so that the sample would be representative of the population, from which it was drawn, reflecting a whole month of data collection.

APPENDIX FIGURES

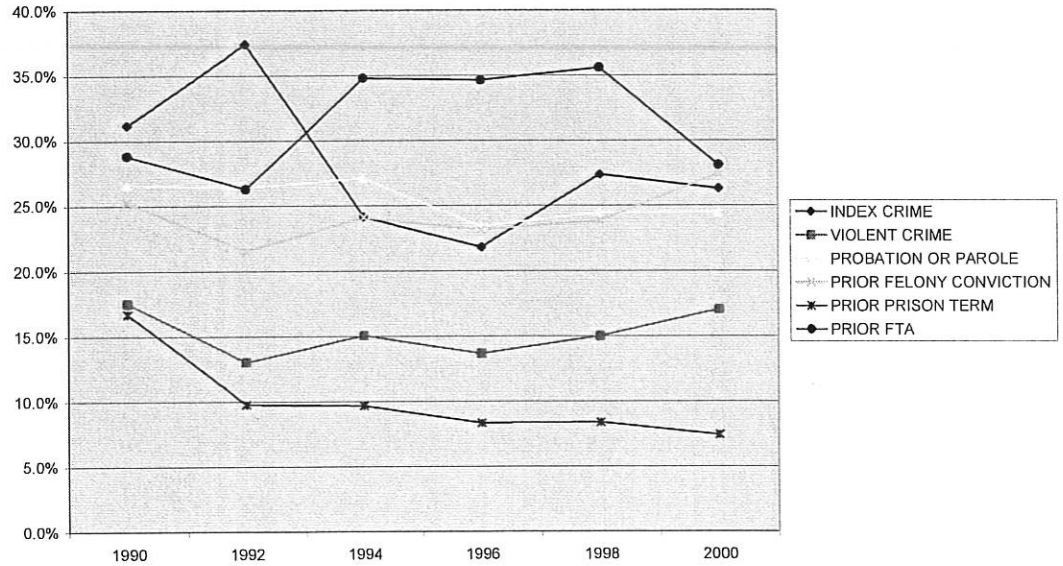
APPENDIX FIGURE #1

CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED OR DETAINED IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



APPENDIX FIGURE #2

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF RELEASED DEFENDANTS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



APPENDIX FIGURE #3

CRIMINAL JUSTICE HISTORIES OF DEFENDANTS ON SURETY AND ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

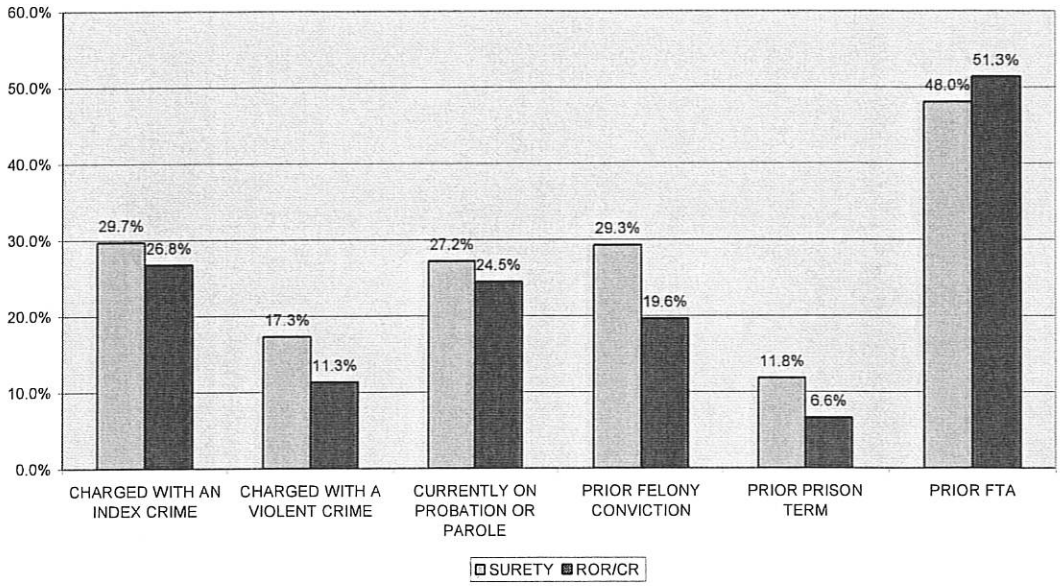


FIGURE #4

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED ON SURETY IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

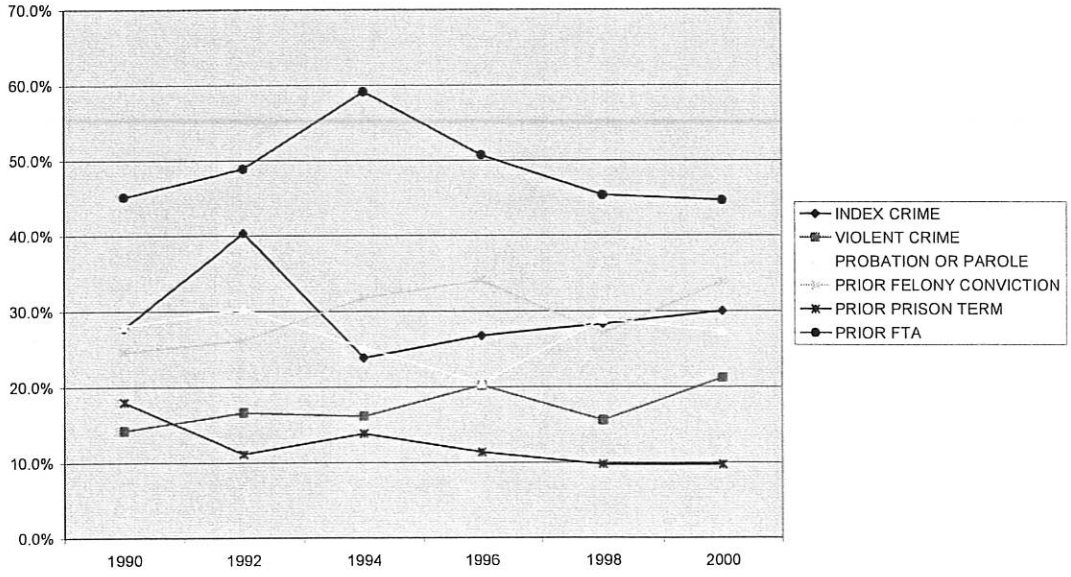
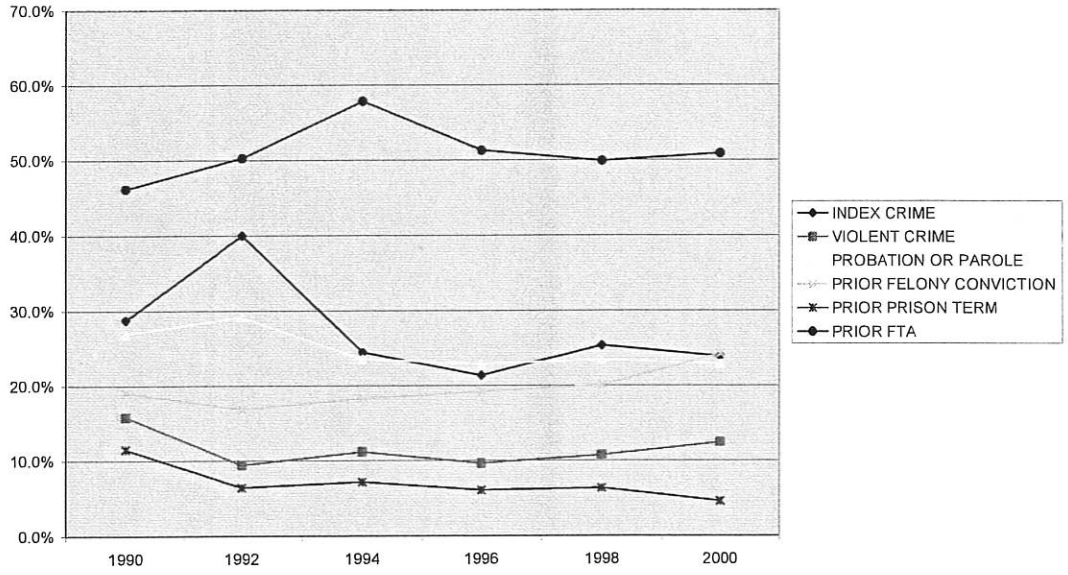


FIGURE #5

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED ON ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Appendix Figure #6

Independent Variables Used in Statistical Analysis

Independent Variable	Includes	Excludes
Time in days to adjudication	0-59 60-119 120-179 180-240 Over 240	Pending Cases
Clearance rate	All applicable	See County and Year
County	Alameda Contra Costa Los Angeles Orange County Riverside Sacramento San Diego San Francisco San Mateo Santa Clara Ventura	San Bernardino
Year	1992 1994 1996 1998 2000	1990
Arrest Charge	Rape Robbery Assault Other Violent Weapons Related Burglary Larceny and Theft Other Property Drug Sales Other Drug Driving	Murder Other Public Order
Age in years of arrestee	All applicable	N/A
Gender	Female	Male
Active criminal justice status?		N/A
Prior felony arrest?		N/A
Prior failure to appear?		N/A
Release Type	Surety Other Financial	ROR/CR N/A