

## **COMMERCIAL BAIL - Criminal Justice Partners**

### ***Bail Reform Talking Points***

#### **I. What is the Problem that Bail Reform seeks to address?**

Initially, the complaint was that bail was unconstitutional. But several courts of appeals have held that bail is substantively constitutional so long as there are procedures in place to give poor people an opportunity to request a lower bond if they say that they cannot afford it.

Now, advocates claim that bail is just “unfair.”

The real problem is how do we process large numbers of people through the jails in metropolitan areas quickly, and cost effectively without taking advantage of the poor or losing track of them.

#### **II. What Is It That The Bail Industry Actually Does?**

The bail industry gets people to court. The bail industry has the lowest failure to appear rate of any release form used. Advocates for reform say that a 40% failure to appear rate should be acceptable. But in our largest counties this mean the criminal justice system will collapse because 4 out of 10 people fail to appear. Harris County’s system is close to collapse and advocates are suggesting outright dismissal of between 12,000 to 18,000 felony cases to prevent the collapse.

#### **III. Types of Reform That Have Been Attempted**

##### **A. Simple Release either with no bond or an arbitrary low PR bond without seeing a magistrate**

###### **i. The Harris County Experience**

This has been a complete failure causing misdemeanor pending dockets to double before the pandemic.

###### **ii. The New York Experience**

This also has been a complete failure because people are arrested over and over and just released. It is a green light for criminals to commit more crime.

##### **B. Risk Assessment Tools**

This was supposed to be the fix. But studies have discredited risk assessment tools. They are wrong much of the time and they have a racial element. Studies, advocate groups and many others no longer support the use of risk assessment tools. Suit in Harris County against District Court judges questions use of risk assessment tools.

##### **C. Individual Magistration**

Effective and has been used for many years. But it is very costly in our largest counties.

#### **D. Individual Magistration Coupled with a Reasonable Bail Schedule**

The use of Bails schedules was attacked in Harris County in suit against misdemeanor judges. So long as there are certain procedures in place to protect the poor they are proper. They are the only method for posting bonds left that works smoothly in our largest counties. Federal courts have held that this method of release provides for efficient release of large groups of people quickly.

#### **E. Preventative Detention**

Texas only allows preventative detention in certain situations for very serious crimes. Allowing more preventative detention will only increase the cost to the county. Changing this would require a constitutional amendment and requirement the counties to spend a lot of money.

### **IV. Hot Topics for Bail Reform**

#### **A. So Which Method Should be Used?**

Simple release and Risk Assessments have been failures. The only tools left are what have been used in the past that have been proven to work.

#### **B. Other Considerations**

- i. Reforms seem to be getting rid of all accountability. This will cause more crime not less. A lack of accountability is resulting in chaos.
- ii. We have to return accountability. We have to do this in several ways. First, if you have a criminal histories for some crimes you should not be eligible for a free bond. These people would not be in jail because they are poor but because they are dangerous and have proven that they cannot be trusted on a fee bond.
- iii. Measuring Success Must Be A Part of Any Change
- iv. Keeping Track of Who is In Jail Preconviction

### **V. What is Meaningful Bail Reform?**

- Returning Accountability to bail. This means of they get a free bond and they fail to appear or commit a new crime they do not get a new free bond.
- Requiring a review of criminal histories to be reviewed as a part of setting bail.
- Risk Assessments have been discredited, but they are still being pushed. Simple release has been a complete failure and results in rising crime. Any proposals that include these elements should be rejected.