

FACTS REGARDING THE COMMERCIAL BAIL INDUSTRY



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THE COMMERCIAL BAIL INDUSTRY

THE FACTS

Several organizations who espouse to the notion of a taxpayer-funded pretrial services system, whereby no financial release is ever to be considered for people who commit crimes, have attempted to discredit the commercial bail industry with falsehoods, innuendos and lies in order to advance their idea that financial release is “bad.”

Taxpayer-funded pretrial services programs continue their attack on the commercial bail industry with an all-out call to eliminate the industry. These entities are the:

- National Association of Pretrial Services Agencies (NAPSA)
- Pretrial Justice Institute (PJI)
- Justice Policy Institute (JPI)
- American Bar Association (ABA)

The National Association of Criminal Defense Lawyers is also supporting this cause through issuing a resolution calling for financial bail to be used as the last resort for release from jail.

The above organizations advocate the use of tax dollars rather than the private sector to release defendants from jail and supervise them until disposition of their case.

The first three agencies above are funded in part through tax dollars, and are using such dollars in an attempt to put private industry out of business. In essence, they are offering “*fantasy bail bonds*”¹ that will never measure up to the effectiveness of commercial bail.

National Association of Pretrial Services Agencies (NAPSA)

“Call for the abolition of compensated sureties”

Foreword: page VII

Introduction: pages 2-3

Key principles: pages 4 and 7

Standard; conditions of release: page 16

Standard; conditions of release: pages 18-19

Pretrial Justice Institute (PJI)

“Pretrial services agencies have a legitimate and important role in criminal justice, a role surety bondsmen cannot play.”

Pretrial Justice Institute (PJI)

“A simple ‘release/detain’ approach to bail has evolved into a system offering judicial officers a range of options to meet the risks presented by individual defendants. This has led to a more equitable system of pretrial release and detention and less dependence on a release option — commercial surety bail — many believe should be limited, if not abolished.”



DISINFORMATION BEING PUBLISHED REGARDING COMMERCIAL BAIL

Justice Policy Institute (JPI)

"Bail Fail: why the U.S. should end the practice of using money for bail."

"For better or for profit: how the bail bonding industry stands in the way of fair and effective pretrial justice."

Justice Policy Institute (JPI)

"We need bail reform."

"The for-profit bail industry lobbies for legislation that improves their bottom line – not our justice system."

American Bar Association (ABA)

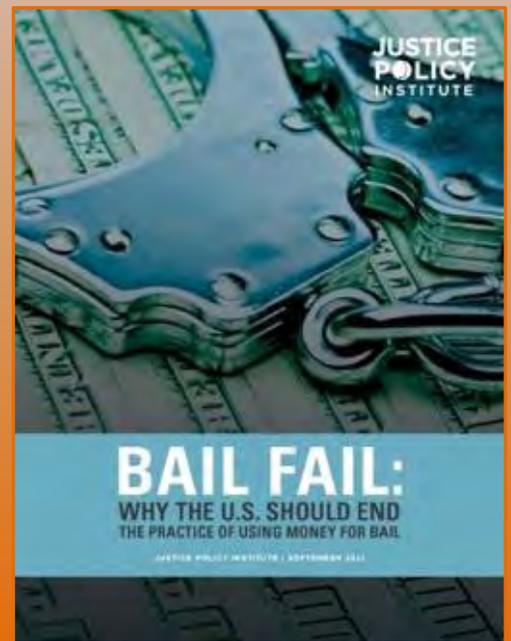
"Consistent with the processes provided in these standards, compensated sureties should be abolished."

ABA Pretrial Standard: 10-1.4

National Association of Criminal Defense Lawyers (NACDL)

"Release guidelines shall presumptively favor release on personal recognizance."

"Financial bond should be used as a last resort."



FACTS REGARDING COMMERCIAL BAIL

This document lays out the misleading assertions followed by the facts regarding commercial bail.

Assertion: Taxpayer-funded pretrial services programs lower jail overcrowding, while money bail contributes to jail overcrowding with un-convicted people, burdens low-income communities and supports an ineffective for-profit industry:

Facts:

- ☞ Commercial bail reduces jail overcrowding at no taxpayer expense.
- ☞ Defendants released on unsecured means have higher recidivism and failure to appear rates, thus increasing jail overcrowding.²
- ☞ Defendants are less likely to be released from jail if they have a prior arrest/conviction, an active criminal justice status or a prior failure to appear.³
- ☞ Defendants remain in jail for numerous reasons and not because they can't afford bail:
 - Immigration violations, awaiting transfer to a state prison, being held on probation violations, serving their sentence in the county jail, deemed too dangerous for the community or are a flight risk.

“Jail populations have declined for the third consecutive year”

- Bureau of Justice Statistics



- ☞ For the third consecutive year jail populations have declined.⁴
- ☞ A history of missed court appearances reduced the likelihood of release.⁵
- ☞ There is a direct relationship between the bail amount and the probability of release; the higher the bail amount the lower the probability of release.⁶
- ☞ Defendants arrested for violent offenses or who have a criminal record are most likely to have a high bail amount or be denied bail.⁷
- ☞ The most important preliminary step available to counties seeking to reduce unnecessary pretrial incarceration is to review their jail population data to determine the number of defendants who are locked up solely because they could not afford a commercial bail bond.⁸

FACTS REGARDING COMMERCIAL BAIL

Assertion: There is no research that shows commercial bail, rather than a taxpayer-funded pretrial services program or unsecured release, is more effective:

Facts:

- ☞ Failure to appear on unsecured release is twice as high as those released on commercial bail.⁹
- ☞ Defendants released on unsecured release were most likely to have a bench warrant issued due to a failure to appear.¹⁰
- ☞ The recidivism rate is almost twice as high for unsecured release vs. commercial bail.¹¹
- ☞ A defendant is more than twice as likely to fail to appear for trial if released on taxpayer-funded release, without financial security, than if released on a private surety bail bond program.¹²
- ☞ An analysis showed that defendants released through surety bond were less likely to miss their court appearance and become fugitives than defendants released through other means.¹³
- ☞ Defendants released on surety bonds are 28 percent less likely to fail to appear than similar defendants released on their own recognizance.¹⁴
- ☞ The largest and most comprehensive study comparing secured and unsecured release methodologies for assuming the defendant's presence in court found that the failure to appear rate is 20 percent lower on commercial bail than the rate for unsecured release.¹⁵
- ☞ Bail agents can devote the time necessary to make sure pursuits are successful for defendants who have failed to appear as police are over-burdened and give failures to appear a low priority.¹⁶
- ☞ Data consistently indicates that defendants released via a surety bond have lower failure to appear rates than defendants released under other methods.¹⁷
- ☞ Compared to release on recognizance, defendants released on financial release were more than likely to make all court appearances.¹⁸
- ☞ A taxpayer-funded pretrial services program does not have the authority to look for defendants who fail to appear; fugitives are brought back by law enforcement only if and when they commit a new offense.
- ☞ A defendant's flight risk is lowered when they understand that family and/or friends will bear a financial burden for a failure to appear.



FACTS REGARDING COMMERCIAL BAIL

Assertion: Taxpayer-funded pretrial services programs provide economic benefits to the community:

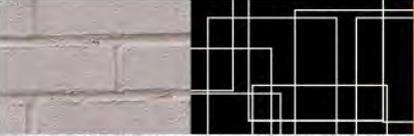
Facts:

- ☞ An unacceptably high number of defendants released through unsecured release never come back to court creating significant costs to the criminal justice system:¹⁹
 - Re-arranging and re-scheduling court dates.
 - Wasted time of judges, clerk of court staff, public defender, state attorney and other court personnel.
 - Wasted time of law enforcement attempting to find defendants rather than focusing on public safety.
- ☞ Only 22 percent of taxpayer-funded pretrial services programs even use indigency to screen defendants, thus releasing many defendants who could afford their own release.²⁰
- ☞ An average taxpayer-funded pretrial services program often has a budget in excess of \$1 million dollars, comprising mostly of salaries and fringe benefits.
- ☞ At no point does the defendant assume any financial responsibility for their actions under unsecured release methods.
- ☞ The taxpayer is financially responsible for a failure to appear under unsecured release methods:
 - The taxpayer pays for law enforcement to arrest the defendant; the jail that houses the defendant; often the services of a public defender; and then release under a taxpayer-funded pretrial services program.

Assertion: The commercial bail industry only cares about profits and provides no economic benefits to the community:

Facts:

- ☞ Commercial bail provides the most effective release method to ensure accountability of the criminal justice system.
- ☞ Commercial bail offers many layers of financial commitments:
 - The insurance company as surety on the bond; a bail agent's contract with the insurance company; the bail agent's own funds with the insurance company; and third-party indemnitors on the bond.
- ☞ Each bail bond written results in payment of insurance premium taxes back into county/state coffers.
- ☞ Economic savings result from lower failure to appear and recidivism rates.
- ☞ Economic savings result from increased fugitive recovery, which results in over 30,000 apprehensions each year at no taxpayer expense.²¹



FACTS REGARDING COMMERCIAL BAIL

Assertion: The commercial bail industry only cares about profits and provides no economic benefits to the community (continued):

Facts:

- ☞ Commercial bail is ‘user-funded’ with no financial burden placed on the taxpayer.
- ☞ Commercial bail carriers employ approximately 15,000 bail agents with over 10,000 support personnel.
- ☞ There are almost 500 insurance carriers in America and of these, 35 write surety bail bonds.²²
- ☞ In 2011, these companies and their bail agents secured the obligations of defendants to appear in court to the tune of \$13.6 billion dollars.²³
- ☞ Bail agents facilitate court operations by maintaining social control over the defendant, stressing the importance of appearance in Court and reminding defendants of court dates, requiring third-party indemnitors and locating defendants for failure to appear.²⁴
- ☞ Bail agents release from confinement each month an average of 250,000 defendants resulting in a significant impact on jail operational expenses.

Assertion: Financial release weakens public safety and creates two criminal justice systems: one for those who have money and one for those without:

Facts:

- ☞ Bail agents work with all types of defendants from various socio-economic backgrounds.
- ☞ Bond fees and rates are not determined by race, gender or socio-economic status but by strict bail schedules.
- ☞ Bail agents charge a minimum fee to assume the risk for a defendant as required by state statute.
- ☞ Bail agents offer flexible payment plans to indemnitors per state statutes.
- ☞ It is very rare to find a defendant who cannot post bail due to financial constraints.
- ☞ Public safety is enhanced under commercial bail as bail agents continually assess risk of the defendant to influence a positive outcome:
 - Regular check-ins, ongoing communication with the defendant and indemnitors; court reminders; and monitoring to avoid a failure to appear.
- ☞ Commercial bail offers a layer of accountability that is non-existent with unsecured release, thus increasing public safety.

FACTS REGARDING COMMERCIAL BAIL

Assertion: Unlike taxpayer-funded pretrial services programs, bail agents do not use evidence-based practices:

Facts:

- ☞ Bail agents assess risk on every defendant and often take additional collateral to further ensure court appearance.
- ☞ Third-party indemnitors provide a critical source of knowledge to bail agents, which enhances commercial bail's effectiveness and ability to proactively manage risk.
- ☞ Risk assessment tools used by pretrial services programs vary widely, are not universally applicable, are often of marginal effectiveness and based on interviews with defendants who are presumed to be telling the truth.
- ☞ 48 percent of pretrial services programs have never verified their risk assessment tool, thus its use is questionable.²⁵
- ☞ Bail agents conduct extensive interviews with indemnitors and the defendant to assess and evaluate risk.
- ☞ Market conduct exams examine a bail agent's risk assessment form for content, manner of presentation, clarity of intent and usability for a defendant released on bail.

Assertion: Financial bail is unfair in order for defendants to be released from jail:

Facts:

- ☞ The U.S. Constitution states that bail shall be based on "sufficient surety" that a defendant will appear.
- ☞ The eighth amendment to the Constitution states there shall be no excessive bail, but without some value pledged for release, there is little incentive for appearance.
- ☞ Defendants must have some "stake" in their release or the criminal justice system is not taken seriously.
- ☞ Many taxpayer-funded pretrial services programs accept defendants charged with a wide range of criminal charges, including violent felons, who are financially capable of paying for their own release and need the expert monitoring provided by a bail agent.²⁶
- ☞ Such a lack of consequences can lead to increased criminal activity and a disrespect for the criminal justice system.



FACTS REGARDING COMMERCIAL BAIL

Assertion: Arrested individuals cannot afford a bail bond:

Facts:

- ☞ Since 1998 a majority of pretrial releases have included financial conditions.²⁷
- ☞ Financial release surpassed release on recognizance as the most common type of pretrial release.²⁸
- ☞ Bail agents work closely with indemnitors to secure the release of defendants from jail and offer flexible payment plans.
- ☞ There will always be a core group of defendants who remain in jail for various reasons such as Immigration violations, awaiting transfer to a state prison, being held on probation violations, serving their sentence in the county jail, deemed too dangerous for the community or are a flight risk.



Assertion: The for-profit bail industry lobbies for legislation that improves their bottom line; not the justice system:

Facts:

- ☞ The bail industry will continue to fight for legislation that:
 - Improves appearance and enhances public safety.
 - Creates transparency among taxpayer-funded pretrial service programs.
 - Forces such programs to provide data and statistics to show their effectiveness and efficiency using tax dollars.
 - Highlights the pitfalls of ineffective release systems such as ten percent deposit bail, which has high failure to appear rates and a significant impact on the criminal justice system.²⁹
- ☞ Most model legislation increases the regulation and accountability of the bail industry, not lessens it.
- ☞ All legislation pertaining to the criminal justice system should promote public safety.
- ☞ The Courts and Legislatures determine if legislation is needed for higher bond amounts to protect public safety.
- ☞ Many elected officials are simply fed up with the marginal effectiveness of unsecured release methods.
- ☞ The commercial bail industry has a responsibility to educate the public regarding the taxpayer savings the industry provides.

FACTS REGARDING COMMERCIAL BAIL

Assertion: The for-profit bail industry is a corporate behemoth that profits off an inequitable bail system:

Facts:

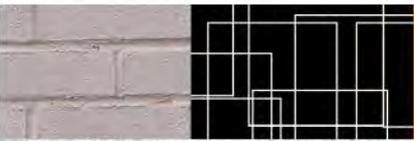
- ☞ Bail is set by the Court and Legislators.
- ☞ The bail industry is governed by strict state statutes and rules.
- ☞ Bail agents must be licensed by state Department of Insurance agencies or other regulatory bodies.
- ☞ The object of bail is to assure the appearance of the defendant for purposes of public justice.³⁰
- ☞ The primary purpose of bail is to assure the defendant's appearance at all required court proceedings and trial.³¹
- ☞ The bail industry continues to work with state bail insurance departments to hold the industry accountable.

Assertion: Pretrial services programs perform critical functions, such as providing the court with information on the defendant and providing monitoring and supervision:

Facts:

- ☞ Many taxpayer-funded pretrial services programs do not provide all of the services claimed.
- ☞ Forcing defendants into programs before they have been proven guilty ignores the fundamental principle of innocence until proven guilty.
- ☞ Judges are often provided limited information to assess the likelihood that a defendant will fail to appear.³²
- ☞ 75 percent or less of taxpayer-funded pretrial services programs conduct investigations prior to initial appearance to provide the court with information.³³
- ☞ There are a variety of sources to obtain criminal history information to ascertain a defendant's flight risk, yet taxpayer-funded pretrial services programs only checked the following records as indicated:³⁴
 - 87 percent of programs check state criminal records.
 - 86 percent of programs check the national crime information center.
 - 60 percent of programs check motor vehicle records.
 - 40 percent of programs check sex offender registries.
 - 84 percent of programs take any action following a failure to appear.





FACTS REGARDING COMMERCIAL BAIL

Assertion: For much of our history Judges required the posting of money bail even though the defendant was considered innocent until proven guilty:

- Facts:**
- ☞ The U.S. bail system has evolved from a system developed in the Middle Ages.
 - ☞ In 1677 the English parliament passed the Habeas Corpus Act, which established that magistrates would set bail terms.
 - ☞ Presumption of innocence is for the Court to decide, otherwise law enforcement would be unable to hold any defendant pending case disposition.

Assertion: In the past 50 years states and Congress have concluded that money bail is unnecessary and discriminatory:

- Facts:**
- ☞ All states, including the four that prohibit bail, require money bail for release in most cases.
 - ☞ Since 1998 financial release is more prevalent than non-financial release.³⁵
 - ☞ Of the four states that currently ban commercial bail, two of them (Oregon and Wisconsin) have started the process of researching its re-institution due to the ineffectiveness of unsecured release methods.

Assertion: Financial bail is ineffective at distinguishing between dangerous and non-dangerous defendants and thus the laws were changed:

- Facts:**
- ☞ Laws were initially changed so that first-time, non-violent indigent defendants could more easily obtain release.
 - ☞ This is no longer the case as defendants with violent criminal histories, failures to appear and high recidivism rates are routinely released through taxpayer-funded pretrial services programs.
 - ☞ Indigency is rarely a criteria for admittance to such programs.³⁶
 - ☞ Bail agents assess risk much more thoroughly and use third-party indemnitors to keep defendants in check.
 - ☞ Commercial bail is more effective than other unsecured release methods in returning defendants of all kinds, dangerous and non-dangerous, to Court as well as ensuring such defendants commit fewer crimes while out on bail.³⁷

FACTS REGARDING COMMERCIAL BAIL

Assertion: Every defendant released on non-financial means is one less paying customer for commercial bail:

Facts:

- ☞ Not every defendant is eligible for release on commercial bail as delineated previously.

Assertion: For the past 50 years local and state governments have relied on pretrial services programs to maintain community safety and reduce jail populations:

Facts:

- ☞ Jurisdictions have relied on commercial bail since the founding of the United States and continue to do so because of its effectiveness.
- ☞ Most taxpayer-funded pretrial services programs were established since 1990, hardly a track record of half a century as claimed.³⁸
- ☞ Limited taxpayer funds should not be used to fund a system that private enterprise is already doing with a much higher level of success and efficiency.

Assertion: Bail agents want to continue to collect defendants' non-refundable fees:

Facts:

- ☞ Bail is an insurance product; a contract between the Court, the defendant and the surety.
- ☞ The non-refundable fee, or the premium, is the cost of assuming the risk of appearance for a defendant.
- ☞ A bail agent is physically and financially responsible for a defendant from the time of release on bail until disposition of the case.
- ☞ The one-time premium must cover all expenses, insurance costs and fugitive recovery fees if necessary and is good for the life of the bond.
- ☞ If more than two percent of bail bonds posted resulted in forfeitures, bail agents and insurance underwriters could not survive.
- ☞ The fact that they do speaks volumes regarding the effectiveness of the commercial bail industry.

FACTS REGARDING COMMERCIAL BAIL

Assertion: Bail agents promise to, but avoid paying forfeitures:

Facts:

- ☞ If bail agents did not pay their forfeitures, the industry would lose authority to write bonds and would already be out of business.
- ☞ In the vast majority of criminal proceedings there is no forfeiture because commercial bail has done its job.
- ☞ Courts have authority to set aside a forfeiture or judgment and often do if the defendant is surrendered or surrender is without fault of the bail agent for reasons acceptable to the Court (defendant becomes ill, confusion over court date, etc.).
- ☞ Unpaid forfeitures under a taxpayer-funded pretrial services system or unsecured release can amount to millions; for example in Philadelphia alone, the amount of unpaid forfeitures was over \$1 billion dollars.³⁹
- ☞ It has been the commercial bail industry that has blown the whistle on forfeiture abuses to hold the industry accountable.

Assertion: The commercial bail industry is encouraging the use of bonds in conjunction with pretrial services programs as a way to protect its profits:

Facts:

- ☞ The growing trend is for judges to release defendants on bond and through a pretrial services program to enforce conditions of release, such as drug testing.
- ☞ Such programs claim defendants must also pay a bail bond agent a non-refundable fee, which is unfair.
- ☞ In reality, release under a taxpayer-funded pretrial services program is not non-monetary, but this fact is seldom publicized.
- ☞ Under a taxpayer-funded pretrial services program, defendants must pay for ongoing supervision, drug testing, GPS monitoring etc., vs. a one-time fee under commercial bail.
- ☞ Any expense to a defendant released on commercial bail is more than offset by the gains in public safety and premium taxes paid by the industry.
- ☞ Taxpayer-funded pretrial services programs artificially inflate their success rate when release is in conjunction with a bail bond as it is the bail agent who ensures appearance for all court hearings.

FACTS REGARDING COMMERCIAL BAIL

Assertion: The commercial bail industry has no place in the criminal justice system and has been banished in most of the world as unsafe and corrupt:

Facts:

- ☞ Without commercial bail, both Canada and the United Kingdom have struggled with crime waves, which resulted from unsecured release methods.
- ☞ The ministers of justice for Canadian provinces have already called for bail reform due the failures of unsecured release.
- ☞ Representatives from China have also studied the commercial bail industry and its effectiveness in guaranteeing appearance.
- ☞ Increased recognition of commercial bail has caused states that currently ban commercial bail to re-think the practice due to high failure to appear and recidivism rates under unsecured release methods.

Assertion: The commercial bail industry supports legislation that puts harsh administrative burdens on taxpayer-funded pretrial services program that are not required of the industry:

Facts:

- ☞ Pretrial services programs funded by taxpayers should be held accountable for their performance using such dollars.
- ☞ Such programs often skew or hide their statistics, which is rarely available to the public.
- ☞ Taxpayer-funded pretrial services programs have disparate differences in how data is collected and used.⁴⁰
- ☞ The bail industry must keep meticulous records years after a bail transaction.
- ☞ Surety companies must file quarterly financial statements to demonstrate their solvency.
- ☞ Surety companies and bail agents are licensed by each state's Department of Insurance or applicable agency.
- ☞ Surety companies must undergo intense market conduct exams to ensure they are meeting all licensing requirements.
- ☞ Market conduct exams also review a bail agent's risk assessment form and ensure the defendant's financial rights are protected.
- ☞ Bail agents are required to take continuing education classes to maintain their bail license.
- ☞ On any bond posted, the posting bail agent, the surety company, the bond amount, the defendant's name and other particulars are all public record.

FACTS REGARDING COMMERCIAL BAIL

Assertion: Taxpayers in jurisdictions where there is a high reliance on money bail pay an enormous price in jail construction and operational costs:

- Facts:**
- ☞ The real cost of housing a defendant in a county jail per day ranges from \$10-\$15 dollars in consumables and not the inflated rate taxpayer-funded pretrial services programs promote.
 - ☞ The inflated rate contains all of the fixed costs of operating a jail, including salaries and fringe benefits, and would remain despite the number of inmates housed.
 - ☞ Fixed jail costs are not significantly lowered unless full sections of a jail are closed and the accompanying costs reduced, which rarely happens unless crime declines significantly.

Assertion: Bail agents do not apprehend defendants who fail to appear but rely on law enforcement to do their job:

- Facts:**
- ☞ Bail agents risk their lives to apprehend defendants who have failed to appear for Court.
 - ☞ The relationship between private sector fugitive recovery services and the criminal justice system results in over 30,000 apprehensions per year at no taxpayer expense.⁴¹
 - ☞ A bail agent has the right and authority to take a defendant into custody for the purpose of exonerating a surety's liability on the bond.⁴²
 - ☞ Bail agents will coordinate with law enforcement for the recapture of a defendant in dangerous or risky situations to protect both the public and the defendant.
 - ☞ Bail agents will also contract with bounty hunters, where permitted by statute, to locate and retrieve fugitives thereby relieving the burden on law enforcement.



FACTS REGARDING COMMERCIAL BAIL

Assertion: The commercial bail industry is motivated by private profit and not community safety:

Facts:

- ☞ Bail agents live and work in our communities and believe public safety should always be paramount to any release decision.
- ☞ Taxpayer-funded pretrial services programs continue to spout this derogatory statement despite evidence to the contrary.
- ☞ Such comment is particularly insulting in view of national studies, particularly through the Department of Justice, Bureau of Justice Statistics, that shows unsecured release can actually foster crime by releasing defendants under conditions that give little to no incentive to show up for Court or avoid committing new crimes.⁴³

Assertion: The commercial bail industry has been proven to be the most effective and efficient means of pretrial release:

Facts:

- ☞ This fact is evidenced by numerous state and national publications, most recently by the Department of Justice, Bureau of Justice Statistics.⁴⁴
- ☞ The bail industry's longevity in and of itself is the most telling sign of its effectiveness.
- ☞ An industry that only collects ten percent upfront yet must pay out 100 percent of the bail amount for ineffective performance would go out of business quickly if it were not effective.
- ☞ Commercial bail has provided its services at no taxpayer expense since the founding of the United States

The commercial bail industry has a long and historic partnership in the criminal justice system. The purpose of bail is to ensure the appearance of the defendant in Court. Commercial bail has done this for generations in the United States with an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents track and monitor defendants to ensure they appear in Court and receive their sentences. Bail agents and the insurance company backing the bonds are monetarily responsible for defendants released on commercial bail. If a defendant flees, the bail agent must return the defendant to jail or pay the Court, often large sums of money. Bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers and victims of crime. Taxpayer-funded pretrial services programs are not financially or physically responsible for their clients, nor do they attempt to apprehend a defendant if they fail to appear in Court.

The commercial bail industry will continue to advocate for the preservation and promotion of bail vs. the use of taxpayer dollars to fund programs that historically have higher failure to appear, recidivism and fugitive rates.

FACTS REGARDING COMMERCIAL BAIL

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