

# THE TRUTH ABOUT COMMERCIAL BAIL BONDING IN AMERICA

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<http://www.pretrial.org/Docs/Documents/NAPSAFP1.pdf>

*Subject brief was handed out to the attendees of the 2009 NAPSA conference. Its purpose is to deflect criticism of pretrial services by denigrating commercial bail. The brief hardly contains a sentence that is not replete with errors, half truths, dubious innuendos, slippery evasions, and stark falsehoods.*

### *List of Falsehoods*

Page	Falsehood or Error	Comment
1	For much of our history, judges routinely required the posting of money by the accused to secure release pending trial, even though he was considered innocent until proven guilty.	Presumption of innocence is for the court to decide; otherwise law enforcement officials would be unable to hold <i>any</i> defendant pending case disposition.
1	In the past 50 years states and the Congress have concluded that money bail is un-necessary and discriminatory.	All states, including the four which prohibit commercial bail, require money bail for release in most cases, especially high-level misdemeanors and felonies offenses. In fact, according to a recent survey, pretrial services programs recommended that defendants be released on commercial bail 20 percent of the time.
1	Financial bail is in-effective at distinguishing between dangerous and non-dangerous defendants. As a result, laws were changed.	Laws were changed to assist indigent, non-violent and first-time offenders in obtaining release pending trial. According to the Bureau of Justice Statistics and other academic studies, commercial bail is more effective than pretrial services programs 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.

2	In many jurisdictions, taxpayer-funded pretrial services programs have been established.	This is correct if “many” equals more than one. There are over 3,000 counties in the U.S. and countless cities and towns. At a maximum, there are less than 300 pretrial services programs nationwide and only 171 programs responded to a recent survey. In contrast, there are 14,000 bail agents and 10,000 support personnel nationwide.
2	Pretrial services programs use “research-based tools” to assess defendants in order to impartially determine the best method of release.	Constant attempts to renew or refine such tools reveal that the so called “risk assessment” instrument remains an elusive philosopher’s stone. The use of same is spotty, varies widely from place to place, is not universally applicable, and by pretrial services programs’ admission, of marginal effectiveness. For the most part, the risk assessment is based on an interview of a defendant who is presumed to be telling the truth.
2	Commercial bail opposes “bail reform” because of loss of revenue.	This brief does not define what “bail reform” is. If by “bail reform” the brief means the elimination of commercial bail, not only is this opposed by the commercial bail bond industry, but by the Congress and 46 states as well. Current practitioners of commercial bail entered the scene well after the bail reforms of the mid-sixties, and have accepted the current system as effective and do not advocate for any other type of system.

2	Every defendant released on non-financial conditions is one less paying customer for commercial bail.	In the first place, not every defendant would be a client of commercial bail. Annually there are 14 million arrests in the U.S. and only a small fraction of those arrestees are potential clients for commercial bail. Commercial bail does not enter the scene until after the court makes a determination that a defendant is to be released on a commercial bail bond via a bond schedule or through the initial appearance process.
2	Pretrial services programs are trying to bring about a "more rational pretrial justice system."	Are pretrial services programs implying that the current system is unreasonable and unjust? What a shock this must be for the tens of thousand of civil servants, the legislators who passed laws regarding commercial bail, the governors who enacted and administer the laws, the courts which apply such laws, and statewide departments of insurance which regulate the commercial bail industry, to discover that what they have put in place is un-rational and unjust.
2	The bail bond industry has renewed its efforts to discredit pretrial services programs.	In so far as pretrial services programs seek to eliminate commercial bail, the commercial bail bond industry will continue to oppose such efforts. At the 2008 National Association of Pretrial Services Agencies (NAPSA) convention, the keynote speaker, Wisconsin Representative Frederick Kessler, advocated, "fighting dirty," to eliminate commercial bail. The commercial bail bond industry can hardly be faulted in defending itself, especially from those who profess to "fight dirty." Furthermore, the commercial bail bond industry does not need to discredit pretrial services programs, as their own track record discredits themselves.

2	<p>For the past 50 years local and state governments have relied on pretrial services programs to maintain community safety, administer justice and help maintain jail populations. The commercial bail bond industry is using the economic crisis to attempt to cut pretrial services programs using taxpayer funds.</p>	<p>This is a wildly over-blown claim. Releases under pretrial services programs remain a “drop in the bucket” compared to releases using commercial bail bonds. Jurisdictions have relied on commercial bail for centuries and continue to do so because it is effective. According to a survey of 171 pretrial services programs, most of such programs have come into existence since the 1990’s, which is hardly a track record of half a century as claimed. The commercial bail bond industry believes that 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.</p>
2	<p>The bonding industry is motivated by private profit and not community safety.</p>	<p>Bail agents live and work in our communities and believe public safety should always be paramount to any release type. Pretrial services programs continue to spout this derogatory statement, which is completely unsupported. Such comment is particularly insulting in view of national studies which show that pretrial services programs can actually foster crime by releasing defendants under conditions that give little or no incentive for a defendant to show for court.</p>
2	<p>The bail bonding industry wants policy makers and the public to believe that the reforms over the past 50 years never occurred.</p>	<p>In an effort to distract policy makers and the public from looking too closely at the failures of pretrial services programs, bashing commercial bail as only being concerned with profit has become pretrial services programs’ mantra. The commercial bail bond industry has been highly successful in pointing out the flaws of pretrial services programs that use millions of taxpayer dollars. Such programs are no longer adhering to their original mission of releasing indigent</p>

		defendants charged with non-violent and first-time offenses.
2	Bondsmen want to continue to collect defendants' non-refundable fees.	The non-refundable fee, also called a premium, is the cost of assuming the risk of returning the defendant to all court proceedings. The bail agent is physically and financially responsible for the defendant from the time the bond is written until resolution of the case. The assertion that a non-refundable fee should not be collected for assuming such risk is short-sighted. How many people at the end of their auto policy period would receive a refund on their policy because they did not have an accident? The insurance company assumed the risk and thus the insured paid a non-refundable fee for such risk.
2&3	Bondsmen promise to, but avoid, paying forfeitures.	The brief cites misleading and dated sources as proof of this statement. In a cited case, in reality it was the commercial bail bond industry which blew the whistle on forfeiture abuses. Regarding the cited California cases, the brief fails to take note of the forfeiture process, in which from declaration of forfeiture to judgment on same, millions of dollars might be in suspension until the matter is resolved. The bottom line is that if the commercial bail bond industry does not pay its forfeitures, the industry would lose authority to write bonds, and hence, would already be out of business per pretrial services programs' logic. The fact that the industry continues to be the most effective and efficient method of release is evidence that the commercial bail bond system works. What pretrial services programs don't want the public to know is how much in unpaid forfeitures are owed in states where commercial bail is not allowed. In Philadelphia for example, where

		pretrial services programs maintained a stronghold for three decades, the amount of unpaid forfeitures was over \$1 billion!
3	Bondsmen target high-fee cases, leaving less risky, low-bond defendants to sit in jail. If a defendant out on bail is re-arrested, the bail agent is, "off the hook," to pay the bond amount to the court. This results in the release of individuals who are potentially dangerous to you and your family because they can pay the bond.	It is the court that makes the decision regarding which defendant is releasable on a bail bond via a bond schedule or at initial appearance. Only the appearance of the defendant in the court exonerates the bond. When a defendant is re-arrested for a new offense while on bond, the bail agent must verify this fact and submit proof of the re-arrest to the court to have the bond exonerated. No bond is too low for a bail agent to write. Despite the inflammatory remark about threats to, "you and your family," pretrial services programs' track record of releasing defendants charged with serious offenses on non-monetary means, who then often commit new crimes, is far more detrimental to public safety than release on a bail bond.
3	Unlike pretrial services programs, bondsmen do not use evidence-based practices.	Bail agents assess risk of each and every defendant released on a bail bond and often take additional collateral to further ensure the defendant appears for court. Pretrial services programs envision a social engineering make-over of the criminal justice system, wherein they control the defendant from intake, to court, and to case resolution. Evidence-based practices should take into account risk assessment procedures, failure to appear and re-arrest rates in order to gain an accurate understanding of success. Yet 48 percent of all pretrial services programs have never validated their risk assessment procedures; only 68 percent calculate failure to appear rates; and only 37 percent calculate re-arrest rates. Hence, pretrial services programs tout evidence-practices that in reality are lacking in substance.

3	Tough economic times have made reliance on the "already irrational" commercial bail system more dangerous.	The economic crunch has forced the commercial bail bond industry to offer more flexible payment plans to clients, yet rarely is found a defendant who cannot post a bail bond due to financial constraints as pretrial services programs would have one believe. The commercial bail bond industry is working in partnership with statewide departments of insurance to prevent rate-cutting practices among bail agents, which the brief rightly cites as an unhealthy practice.
3&4	The commercial bail industry is encouraging the use of commercial bonds in conjunction with pretrial services programs as a way to protect its profits.	There is a growing trend in which judges are releasing defendants on a commercial bail bond in conjunction with supervision by a pretrial services program. This is most often done in order to have other conditions of release enforced, such as random drug testing. Pretrial services programs complain that a defendant is then forced to pay a non-refundable fee to the bail agent in addition to release under their program, which is monetarily unfair to the defendant. Any expense to the defendant for release on a bail bond is more than offset by the gains in public safety and the premium taxes paid by the commercial bail bond industry. Pretrial services programs artificially inflate their success rate when release is in conjunction with a bail bond, while in reality, it is the bail agent who ensures the defendant appears at all court hearings and not the pretrial services program.
4	The commercial bail bond business model has no place in our criminal justice system, as most of western civilization has banished the model as unsafe and corrupt. Only the United States and the Philippines allow the practice to remain.	Currently both Canada and the United Kingdom are struggling with a crime wave, which has resulted from pretrial services programs and their release methods. In October 2009, the ministers of justice for Canadian provinces met in New Brunswick to call for bail reform, which in their

		context means something other than a pretrial services program system. In addition, procurators from China have made three visits to the U.S. to study the commercial bail bond system due to its effectiveness.
4	The commercial bail bond industry has been successful in getting legislation passed that imposes harsh administrative burdens upon pretrial services programs, which are not required of commercial bail bond companies.	Pretrial services programs are funded using taxpayer dollars and hence are accountable for their performance in the use of such dollars. Pretrial services programs assert that they already keep data and statistics in other formats, yet such data is not readily accessible to the public. The Pretrial Justice Institute (PJI), which advocates for the proliferation of pretrial services programs, has acknowledged that such programs have disparate differences in how data is collected and used, and such programs often fear data will be used against them by the commercial bail bond industry. The commercial bail bond industry must keep meticulous records, sometimes for period of years after the bail bond transaction, as required by departments of insurance and the surety companies that underwrite the bonds. Surety companies are required to file quarterly financial statements to departments of insurance to demonstrate solvency, and are subject to market audits.
4, 5 & 6	The American Legislative Exchange Council (ALEC) has a strategy to implement its "Citizens' Right-to-Know Act" (CRTK) to impose "harsh administrative" burdens on pretrial services programs and prevent government agencies from doing the work the public expects.	This brief is woefully misinformed about ALEC and its role in the CRTK legislation. The CRTK legislation has been an ALEC model bill for close to a decade, and is one bill among hundreds of model bills. Legislators are free to apply model legislation to their state as they deem necessary. ALEC had nothing to do with the CRTK legislation passed in Florida in 2008. In fact, ALEC did not even know the bill was in process until it was almost enacted. Regarding Texas, the ALEC incident with Harris County also had

		<p>nothing to do with the CRTK legislation. The reverse is true; the CRTK legislation was passed in Texas as a part of an omnibus crime bill, and idea for the ALEC model bill was based on that provision alone.</p> <p>In 2008, the Virginia bondsmen association introduced a bill to require that pretrial services programs to release only-indigent defendants as defined by the court. The bill passed successfully until it was defeated due to an adverse fiscal impact statement prepared by a member of NAPSA who was employed by the Virginia Department of Criminal Justice Services. This fiscal impact statement has been proved to be false by an analysis done by the George Mason University Department of Economics.</p> <p>In North Carolina, ALEC was also unaware that the CRTK bill had been introduced.</p>
6	<p>In Ohio, the state association for bail bondsmen pushed the 2008 state legislature to eliminate a bail bond option that allows defendants to pay a refundable deposit of 10 percent of the value of the bond directly to the court.</p>	<p>Judge James Carr, who sits on the federal bench, and who is a long-time supporter of pretrial services programs, testified against this initiative. He apparently didn't know how ineffective the 10 percent method is. In Cleveland, according to the courts' 2007 report, defendants released on 10 percent bail had a 48 percent failure to appear rate. Advocates of the 10 percent deposit system say the full deposit is returned to the defendant after case disposition, but in Ohio, the courts skim most of the deposit amount off for administrative costs, fines, etc.</p>

6 & 7	<p>The commercial bail bond industry misuses data (from the Bureau of Justice Statistics - BJS) that they claim supports the notion that commercial bail is superior to alternatives put in place by state legislatures and Congress.</p>	<p>The commercial bail bond industry has done nothing more than disseminate the conclusions of a national and reputable study, highlighting the fact that the performance of commercial bail is superior to that of pretrial services programs. The BJS stands behind its study despite the tortured spin pretrial services programs are putting on the meaning of the conclusions. Ironically pretrial services programs have endorsed some of the study's findings when pretrial services were ordered in conjunction with a bail bond. The commercial bail bond industry will give pretrial services programs merit if and when deserved.</p>
8	<p>In 2008, the BJS issued a grant to have its methodology reviewed and revised.</p>	<p>The BJS issued a grant to review its work not because it believed its data was skewed against pretrial services programs, but because it was confident the same results would be revealed. The 2009 data collection contract was awarded to Rejis instead of the Pretrial Justice Institute, who had the contract since the project's inception. Secondly the BJS stated that the pretrial services programs/commercial bail bond data was very small and that it would take years to implement the new collection strategy. The commercial bail bond industry will give pretrial services programs merit if and when deserved.</p>
8 & 9	<p>The U.S. pretrial justice system is broken and two-thirds of the jail population is comprised of individuals awaiting trial. In five out of six cases, individuals can't pay their bonds as set by the court or have bonds that simply do not give bondsmen the amount of profit they want. Pretrial services programs rely on research-based tools to sort out who should be released and who should stay in jail, a much safer</p>	<p>There is not one stitch of data that shows that the commercial bail bond system causes jail overcrowding, and the BJS empathically denies any such nexus. Defendants released under pretrial services programs have higher failure to appear and re-arrest rates pending trial than those released on a commercial bail bond. Given this fact, an argument could be made that pretrial services programs themselves</p>

	and more cost-effective method. Such taxpayer funds are put to better use.	cause jail overcrowding due to the recycling of defendants released through the program.
9 & 10	Bounty hunters have serious complaints regarding the current system and are opposed to efforts by the Professional Bail Agents of the United States (PBUS) and the Bail Bond Fairness Act, which would alleviate bondsmen of all financial liability for any pretrial misconduct.	There are so few commercial bail bonds written on the federal level requiring the use of bounty hunters that this statement is ludicrous. In addition, any bounty hunter seeking to carve out this niche does not want to compete with the U.S. Marshals Service in locating a defendant who has skipped on a bail bond.
10	The National Association of Counties (NACo) recently joined other national organizations in calling for rational and safe pretrial release based upon risk assessment rather than financial means. In response, the commercial bail bond industry has issued an "all hands on deck" campaign to lobby elected county officials against this effort to eliminate commercial bail in favor of pretrial services programs.	NACo has disseminated a document, written by a PJI staffer and funded by the Bureau of Justice Assistance, to county officials. The document is entitled, " <i>Jail Population Management: Elected County Officials' Guide to Pretrial Services</i> ," and states the main reason for jail overcrowding is due to the commercial bail bond industry. While there is no shred of evidence for this contention, which has been repudiated by the BJS, the document recommends that the fix for jail overcrowding is to replace commercial bail with taxpayer-funded pretrial release programs. The commercial bail bond industry issued the, "all hands on deck," campaign in an effort to provide elected county officials with true and accurate information about the two release mechanisms.
10	In a continuing economic downturn and constricted budgets, the commercial bail bond industry will use the states' budget gaps as an opportunity to intensify their efforts on eliminating pretrial release programs. ALEC has a map of targeted states for 2009. Efforts are underway by pretrial services programs and other national advocacy groups, "calling on communities to invest more into pretrial services so that	ALEC has no such target map as asserted, and the commercial bail bond industry can hardly be faulted for recommending a better use of the taxpayer dollars than financing a government-run system that is less effective than a privately-funded commercial bail bond system. In addition, pretrial services programs across the country are releasing defendants charged with violent and

	people charged with non-violent offenses . . . can be quickly vetted for community programs.”	repeat criminal and/or driving offenses with minimal supervision. Through the CRTK legislation, particularly in Florida, research has shown that defendants charged with DUI, battery, drug possession (including armed possession), burglary, theft, grand theft, carrying/possessing concealed weapons, forgery, lewd/lascivious behavior, exposing sexual organs, etc. are routinely being released on unsecured bail and often without ever seeing a judge for their release.
10	Expose the truth about the motives of the commercial bail bond industry and their desire to maintain their commercial profit.	The motive of the commercial bail bond industry is not relevant in any discussion regarding the issue of public safety and ensuring taxpayer funds are used wisely. What is relevant is the effective and efficient performance of the industry in relation to a taxpayer-funded pretrial release system.
10	Advocate that states make policy decisions that produce long-term benefits.	The commercial bail bond industry is completely in agreement with this statement.