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*Testimony presented to Connecticut Sentencing Commission regarding pretrial release
November 3, 2016
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Good morning members of the Connecticut Sentencing Commission. My name is Andrew Marocchini and I am the President of the Bail Association of Connecticut (BAC). I am joined today by Andrew Bloom, past president of our association, to provide testimony related to the query presented by the Commission with regards to its Pretrial Release and Detention study.

For background, our association was established in 2008 in order to represent the 95 small businesses employing over 1,000 Connecticut residents. Our membership includes, Surety Bail Agents licensed by the Department of Insurance (DOI), Professional Bail Agents & Bail Enforcement Agents licensed by the Department of Emergency Services and Public Protection (DESPP), Insurance Company Representatives and Surety Bail Companies and their employees.

Our testimony today will touch on many of the issues identified by Governor Malloy in his November 5, 2015 letter to the Sentencing Commission requesting examination of Connecticut's current bail bond system and the possibility for its reform.

It is important to note, that the BAC appreciates the concerns raised by the governor and those of which the Sentencing Commission and its Pretrial Release & Detention Advisory Group are currently studying and we stand ready as an association to assist in ensuring that non-violent, low level offenders are not held behind bars simply because they cannot afford to post bail.

However, we believe that after thorough review of the available state data, comparison of our state's current system to many others, and independent research conducted by BAC, that rather than pursuing changes within the state's current statutes and judicial practice, that the Sentencing Commission should seek to supplement our current system to assist the few identified arrestees that cannot secure pre-trial release.

Attached to this testimony you will find two separate presentations which we have made before the Sentencing Commission's Pretrial Release & Detention Advisory Group as well as a proposal and response from us to items presented before the Advisory Group, which we will go into further detail below.

Research and Data

Through our research and examination of available state data, we discovered, that our current system of pretrial release could be considered one of the best in the country. Connecticut has a hybrid pretrial release system, already incorporating renditions of all forms of release currently available. We have a very low rate of failures to appear (FTA) compared to the national average of 18%, whereas Connecticut's average is between 8% and 13%. Connecticut citizens accused of crimes are given multiple 2nd chances and each arrestee has a minimum of four different authorities review their case in an effort to use the least restrictive form of release possible. Additionally, arrestees have opportunities for their bond to be modified after arraignment.

Based on data collected on April 1, 2016 from the Department of Correction and Judicial Branch websites, it becomes apparent that there are not a large amount of non-violent, low level offenders being incarcerated at high levels due to their ability to post bail after you consider their criminal records. Regardless, we as an association stand ready to assist this identified population.

I would like to refer you to pages 10, 11 and 12 of our August 30th presentation, which is included in your packet. As of the date mentioned above, 548 individuals were incarcerated on bonds of \$20,000 or less, 453 of them were held on a felony, FTA or VOP charges. 90 of the individuals were held on misdemeanor chargers with previous conviction history and only 5 individuals were identified as being held due to a single misdemeanor charge¹.

Additionally, 77% of the pretrial detainees identified who were held on misdemeanors had three or more convictions in their criminal history².

Review of the backend of the process led BAC to further research current FTA rates within the state. Review of 2015's forfeitures showed that there were 13,306 total failures to appear. Out of these, 4,597 are still active cases and 322 of these are active surety bonds, the remainder were individuals released on other forms of non-surety release like promise to appear.

Forfeiture rates were similar for both surety bail and non-surety, 10.4% and 8.4% respectively, yet 92% of the forfeitures still active are unaccountable pretrial release.

Out of the 3,030 FTAs on surety bonds, only 325 remain pending as of June 1, 2016 (90% resolved). This is broken down as 2,708 total resolved with 1,926 arrested by Bail Enforcement Agents, 217 on negotiated surrenders and 144 forfeited bonds paid resulting in over \$800,000 in revenue to the state.

¹ Department of Correction Inmate Information Search, Criminal/Motor Vehicle Case Look- up, CT Judicial Branch.

² Pre-Trial Inmates JD Court Support Services, June 2016.

The complete breakdown of the 2015 data shows a total of 151,763 individuals released pretrial. 122,852 were released on alternative forms of pretrial, 28,911 were released on surety bail.

This data demonstrates that surety bail outperforms non-surety alternatives by a rate of 5 to 1.

A more detailed review of the data can be found within our attached August 30th presentation.

BAC Responses to Items Presented at the October 4, 2016 Advisory Group Meeting

BAC believed it to be important to offer the attached responses to the four items which were presented to the Pretrial Release & Detention Advisory Group for discussion and further exploration.

These items included:

1. Develop a peer reviewed, validated risk assessment instrument that provides separate scoring outcomes for court appearance, new violent criminal activity, and new criminal activity.
2. Ensure that Bail Commissioners have remote or in-person access to individuals at the police station immediately following arrest in order to determine appropriate conditions following risk assessment and interview.
3. Allow individuals to deposit 10 percent cash bail with the court anytime a surety bond is imposed.
4. Require the release of all defendants on non-financial conditions unless the court finds on the record that there is clear and convincing evidence that no nonmonetary conditions of release can reasonably ensure the appearance of the person in court and the safety of the community.

We hope that our attached comments will help the Advisory Group and the Commission as it considers possible recommendations.

BAC Indigent Defendants Pretrial Services Fund (IDPSF) Proposal

The Bail Association of Connecticut (BAC) offers the proposal described below with hopes that it will assist the Sentencing Commission with its study and recommendation pertaining to Connecticut's current bail bond system. The BAC believes, after review of the available state data and comparison of our state's current system to many others, that rather than pursuing changes within the state's current statutes and judicial practice, that the Sentencing Commission should seek to supplement our current system with the inclusion of the proposal described herein which would create an Indigent Defendants Pretrial Services Fund (IDPSF), to assist the few identified arrestees that cannot secure pre-trial release.

What we propose is the creation of a fund similar to others recently created or currently operating throughout the nation, the BAC proposes the creation of a 501c3 nonprofit organization to provide support and secure pre-trial release to identified indigent within our

court system. The fund would be administered by the bail industry with input from all concerned parties.

Proposed funding for the IDPSF would be established via an assessment on every surety bond executed within the state. With an estimated 30,000 surety bonds written in 2015, it is projected that with a \$10 assessment on each surety bond executed, the fund would raise on average \$300,000 a year. Non-profits would also be encouraged to contribute to the fund.

Funds similar in concept throughout the country offer much more limited service to clients charged with low level, non-violent misdemeanor or town ordinance violations. Connecticut being the gold standard of pretrial release programs, currently has mechanisms in place to manage and oversee our low level offender population. All but a few are released on nonfinancial conditions prior to or at arraignment and the creation of such a fund would be a tool to address such a population.

Qualifying of eligible arrestees would be conducted by the non-profit in an underwriting process similar to how the industry currently qualifies potential candidates now, and similar to the application for Public Defender Services and the data obtained in the risk analysis conducted by the Bail Commissioner's Office (criteria would be established with input from all concerned parties including Court Support Services, Public Defenders, etc.).

The parameters of eligibility for defendants to be considered eligible for the fund would be established by input from all parties represented within the Sentencing Commission's membership.

This process ensures no person is incarcerated solely because they lack financial resources. It also provides consideration of public safety, defendant accountability and assurance of court appearance.

Our proposal would have the IDPSF utilized to execute bail and provide said service obligation on those meeting underwriting requirements that lack resources to secure release on their own.

Defendants aided by the IDPSF will be connected to services and support for the duration of their case to ensure court obligations are met while receiving assistance in making long term modifications to stay out of the judicial system in the future.

After bail has been set for an arrestee and the individual has not secured release post arraignment, during the first two week period or subsequent bail review hearing (whichever comes first), the fund:

- Would qualify and approach arrestees who have not secured release (process to be determined with input from all concerned parties).

- Assess individuals on additional recommendations via a judge, public defender, bail commissioner or assistant state's attorney.

If the arrestee is qualified and opts into the IDPSF fund, a licensed bail agent will assume all responsibilities associated with such pre-trial release and ensure such arrestee will appear before the court when scheduled.

We acknowledge that there are many aspects of this proposal which need additional input and respectfully request the Sentencing Commission's feedback and assistance from its membership with finalizing.

Conclusion

As the data reviewed and comparisons to other states has shown, Connecticut is already a national leader with regards to the services provided to arrestees who are accused of crimes within the state. This proposed concept (IDPSF) is groundbreaking, economically responsible and would eliminate the negligible number of low level nonviolent defendants being held in pretrial detention simply for lack of financial resources moving forward.

Thank you for your consideration of this proposal, we welcome the opportunity to discuss it in more detail and stand ready as an association to continue to work with the Sentencing Commission and all interested parties as you study our state's pretrial justice system.

Attachments

1. BAC IDPSF Outline
2. BAC Responses to items presented to the Pretrial Release & Detention Advisory Group (10/4/16)
3. BAC Presentation to the Pretrial Release & Detention Advisory Group (8/30/16)
4. BAC FTA Presentation to the Pretrial Release & Detention Advisory Group (10/19/16)