



Department of Community Justice
MULTNOMAH COUNTY OREGON

Adult Services Division
Pretrial Services Program
1120 SW 3rd Avenue, Rm. 358
Portland, Oregon 97204
(503) 988-5042 Phone
(503) 988-4157 Fax

NB 2548

House Judiciary Committee
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

March 26, 2013

Chairman Jeff Barker, Members of the Committee;

My name is Donald Trapp. I am the Community Justice Manager for the Pretrial Services Program with the Multnomah County Department of Community Justice. For the past 25 years, I have worked in the field of probation, parole and court services in Oregon. The program I manage is responsible for evaluating defendants for release to the community, recommending the least restrictive conditions necessary to assure community safety and appearance in court, and administering supervision for released defendants. I am a Technical Assistance Provider for the National Institute of Corrections in Pretrial Functions, and I serve as co-chair of the Accreditation Committee for the National Association of Pretrial Service Agencies. My work in providing assistance to pretrial agencies across the country and working with the National Pretrial Association have given me firsthand knowledge of how commercial bail impacts the pretrial process. I am submitting this testimony in opposition to the re-establishment of commercial bail in the State of Oregon.

The pretrial release decision is the second most important in the criminal justice process, having far reaching impacts on the community and the defendant. Detained defendants are more likely to be convicted than released defendants. If convicted, detained defendants are more likely to be sentenced to jail, and for longer terms, than released defendants. Detained defendants are also more likely to be poor, people of color, or suffering from physical or mental illness. Defendants released without regard to the risk they pose, place the victim and/or the community at undue risk of harm. In addition, unnecessary detention requires counties to use limited and expensive jail beds. These are important decisions that must be made for each defendant taken into custody; moreover, the criteria for making these decisions must be objective, valid, and assure equitable consideration for all persons. In 1973, when the Oregon Legislature eliminated the use of commercial bail bonds, they created a presumption of non-financial release, a process ensuring access and equity for all defendants, and established criteria for these decisions based on empirical evidence. These statutes, which are a model nationally, have effectively changed the culture of pretrial release practices in Oregon.

In my experience working with pretrial agencies across the country, I believe that the reintroduction of commercial bail would have a negative impact on public

3/26/2013:drt

safety, on a just and equitable pretrial process, and on the effective use of public resources, specifically county jail beds.

Public Safety: Multnomah County, where 39% of criminal cases in Oregon are filed, utilizes a validated risk assessment to determine risk of flight and rearrest in making release recommendations. Additionally, secondary assessments, including a domestic violence assessment, are used to provide specific risk information. The use of such tools on the over 2600 defendants recommended for release and supervised by the Pretrial Services Program during the calendar year 2012 resulted in a 1.5% rearrest rate for both felony and misdemeanor cases. The national average rearrest rate for felony pretrial releases secured through surety bonds is 16%. More importantly however, is that the practice of assessing dangerousness through a dollar amount, and that a defendant's ability to pay said amount mitigates that risk has never been demonstrated to be valid. It is the essence of the use of commercial bail. Release decisions based on financial considerations instead of objectively derived and valid criteria are a threat to public safety.

Equitable Process: The use of financial conditions for release from custody is inherently discriminatory. From 2000 to 2007, when both violent and property crime decreased by 17.7% and 19.5% respectively, the population of the nation's jails increased 26.5%. During that same period, the number of courts requiring felony defendants to post money bail increased from 54% to 69%; consequently, the pretrial release rate in those jails decreased from 66% to 56%. Nationally, African-Americans are five times more likely to be detained pretrial than white, and three times more likely to be detained than Latino people. A 2010 validation of the risk assessment instrument used by the Pretrial Services Program of Multnomah County found that African American defendants were 12% more likely to be released than white defendants.

The use of money bail to secure release from custody places whole classes of defendants at undue risk to remain in custody. It is unlikely that commercial bail interests will be satisfied with current Oregon practices, which result in only 8.4% of pretrial releases secured with money bail. In Multnomah County, only 22% of our pretrial population had steady employment in the two years prior to their arrest. Additionally, Oregon's census data continue to show that income earnings for African Americans, Native Americans and Latinos are consistently lower than the state average. A commercial bond system would exacerbate pre-existing inequalities and would have a decidedly negative impact on our communities of color. The pretrial process is a critical decision point to address minority over-representation.

Effective use of Public Resources: The emphasis on financial conditions of release are associated with decreasing release rates from county jails, increased lengths of stay in custody, and increasing average jail capacities of 94%, despite occurring during a period of decreasing crime. Nationally, the percentage of jail populations that are pretrial defendants increased to 61%. Multnomah County has maintained an average pretrial population of 34%. These practices then force jurisdictions to conduct "emergency population releases", or releases due to overcrowding. These releases are the result of a process that does not include an objective assessment of risk or the establishment of appropriate conditions of release. Consequently, releases of this type perform very poorly, placing their communities at risk.

In Multnomah County, all defendants eligible for release under state statute are interviewed and assessed, with approximately 45% of defendants released between arrest and arraignment, and an additional 25% after arraignment. Defendants are subject to the least restrictive conditions from personal recognizance, automated phone notification, active supervision including electronic monitoring, and community visits from pretrial supervision officers. Unnecessary pretrial detention is limited only to those who pose the highest risk to the community. Defendants are able to maintain their employment and residence, and to more fully participate in their defense while being accountable for their actions.

In the cases where money bail is used, often in conjunction with pretrial supervision, the court, at the resolution of the case, is able to apply those monies to victim restitution, child support, or other fines or fees owed by the defendant. In 2008 for example, \$1.8 million was paid in restitution, compensatory fines to crime victims, and child support. While it does represent a small percentage of cases, under the proposed legislation, these monies would be collected and retained by the surety bond interests.

In summary, the elimination of commercial bail has served the citizens of Oregon well. Our statutes as well as our practices remain a model for the country. I, as have been my predecessors in the Pretrial Services Program, remain committed to ensuring that the safety of the community, the integrity of the Courts, and the rights of the accused are central to the mission and operation of our program. Public safety is a compelling state interest and should not be ceded lightly to private entities. I would urge that this legislation not be approved. It is unnecessary, it is unfair, and it is unsafe.

Respectfully,



Don Trapp, M. S.
Community Justice Manager
Pretrial Services Program
1120 SW 3rd Avenue, Rm 358
Portland, OR 97204

