WARNKEN REPORT ON PRETRIAL RELEASE

BY THE
MARYLAND BAIL BOND ASSOCIATION

PREPARED BY

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Table of Contents

I. Executive Summary

A. Introduction – The Need for the Response

On September 12, 2001, Professor Douglas L. Colbert, of the University of Maryland School of Law, published "The Pretrial Release Project Study" (Colbert Report). On October 11, 2001, the Pretrial Release Project Advisory Committee, chaired by C. Carey Deeley, Jr., Esquire (Deeley Committee), published the "Report of the Pretrial Release Project Advisory Committee" (Deeley Report). The Maryland Bail Bond Association (Bail Association) has commissioned this Response, responding to both the Colbert Report and the Deeley Report (collectively Reports).

There should have been no need for the Bail Association to publish this Response, but for the fact that the bail bond industry was excluded from the information gathering process and substantive deliberations that gave rise to the reports, most particularly the Deeley Report. The exclusion of the bail industry seriously flawed not only the quality of the results and the recommendations, but also the credibility that flows from the appearance of neutrality in any study. Without belaboring the point in the body of this Response, the information contained in this Response -- whether totally persuasive, partially persuasive, or not persuasive at all -- should have been accumulated, digested, debated, and, as appropriate, integrated, at least, into the Deeley Report. App. A to this Response details the systematic exclusion of the bail bond industry from the studies and highlights the bias that permeates the Deeley Report and Colbert Report.

B. Goal of the Response – To Set the Record Straight

The goal of this Response is to set the record straight, by providing facts and statistical data from the District Court of Maryland (District Court), the United States Department of Justice (Department of Justice), and other sources to counter myth, innuendo, and erroneous information. Towards that end, the Response sets forth accurate – and complete – factual information, including (1) failure to appear (FTA) rates, and (2) rates at which FTA's are returned to the Court's jurisdiction, along with an analysis of the Maryland statutes and rules, including the legislative history. The Response specifically examines and analyzes (1) the factual and legal predicates advanced by, and (2) the recommendations offered in the Colbert Report and the Deeley Report. In light of the findings in this Response, the recommendations of the Reports are then assessed from a legal, a practical, and an economic standpoint.

C. Findings of the Response

The primary finding of this Response is that, of all forms of pretrial release, Corporate Surety Bail is the most effective, the most cost efficient, and the most conducive to public safety. Its demonstrated efficacy, at no expense to taxpayers, aids in the orderly administration of justice, enhances public safety, and results in considerable cost savings to Maryland taxpayers. The following are the ten major findings of the Response.

1. Despite bonding defendants that have been judicially determined to be "least reliable," Corporate Surety Bail has outperformed all other forms of pretrial

release. District Court statistics for 1998 and 1999 reveal that the FTA rate for defendants released on their own recognizance (ROR) was 14.7%, which was 40% higher than for defendants released through a bail bondsman on Corporate Surety Bail (10.5%).

2. District Court statistics for 1998 and 1999 reveal that the FTA rate for defendants released on 10% Deposit Bail (14.1%) was 34.3% higher than defendants released, through a bail bondsman, on Corporate Surety Bail (10.5%). Additionally, the FTA rate for defendants released on Unsecured Bail (13.2%) was 25.7% higher than for defendants released through a bail bondsman on Corporate Surety Bail (10.5%).

3. A national study conducted by the Department of Justice in 1992 of the 75 largest counties found that Corporate Surety Bail had the highest appearance rate – thus, lowest FTA rate -- of any form of pretrial release for felony defendants. In fact, the Department of Justice Study disclosed that a defendant on a 10% Deposit Bail was 60% more likely to FTA than a defendant released on Corporate Surety Bail, and that a defendant released on Unsecured Bail was 180% more likely to FTA than a defendant released on Corporate Surety Bail.

4. Department of Justice Study substantiates that, for those defendants that do FTA, Corporate Surety Bail is far superior in locating and returning its bonded FTA defendants to the Court's jurisdiction. The Study found that only 3% of Corporate Surety Bail defendants ultimately remained fugitives after one year, a return rate that is 100% better than the rate for 10% Deposit Bond FTA defendants (6%), and 533.3% better than the rate for Unsecured Bail FTA defendants (19%).

5. By integrating family and friends into the "circle of responsibility," as guarantors on the bond, the Corporate Surety Bail process sufficiently "invests" – and, thus, instills financial incentive in – those guarantors, as well as the defendant and bondsman, to assure that the defendant appears, as required and, if he does FTA, there is active and concerted pursuit of the defendant until he is located and returned to the Court's jurisdiction.

6. The economic cost of FTA's – estimated by a Chicago Study to be $3,474 per re-arrest and by a California crime victims study to be between $1,109 and $1,270 in "budgetary costs" and between $8,319 and $11,105 in "total costs, including social costs" – is real and substantial.

7. As indicated by the District Court statistics, if the other forms of pretrial release within the criminal justice system could reduce their FTA rate to that of Corporate Surety Bail, there would have been 8,068 fewer District Court criminal defendant FTA in 1998 and 1999. Applying the Chicago Study cost of re-arrest ($3,474) to the 8,068 extra FTA's, the extra cost exceeded $28 million, which

could have been the savings realized through cost effective Corporate Surety Bail.

8. In November 2001, the Baltimore Sunpapers reported that Baltimore City alone had 98,000 open warrants. Expanded use of Unsecured Bail, 10% Deposit Bail, or expansive state agency supervision programs – inevitably resulting in increased FTA's, with greater cost and less accountability – will further burden police departments and impact public safety as those FTA's remain at large, exacting the economic and social costs to our citizenry, particularly to the new victims of crimes committed by FTA's.

9. For Corporate Surety Bail, the District Court bail forfeiture procedures impose accountability. If any bail forfeiture is not resolved or paid in accord with those procedures, the surety company that underwrote the bail is disqualified from doing business statewide until rectified.

10. The data, including the fact that statewide 50% of the arrested defendants (and 60% in Baltimore City) are ROR indicates that the Court Commissioners (Commissioners) and District Court Judges are making reasoned and able pretrial release decisions.

D. Conclusion

This Response concludes that Corporate Surety Bail is the most effective and most cost efficient form of pretrial release in assuring that defendants appear in court as required. Moreover, Corporate Surety Bail is the most effective in promptly locating and returning FTA's to the Court's jurisdiction. Despite the fact that Corporate Surety Bail bonds those defendants that have been judicially determined to be "least reliable," Corporate Surety Bail has outperformed all other forms of pretrial release – all at no expense to taxpayers.

Indeed, as a direct result of its systems and processes, Corporate Surety Bail relieves taxpayers of enormous expenses. In addition, Corporate Surety Bail enhances the orderly administration of justice and enhances public safety. Increased use of other forms of pretrial release – specifically, Unsecured Bonds, 10% Deposit Bonds, or expansive state agency supervision programs, as urged by the Colbert Report and Deeley Report – are ill-advised. That approach would be expensive, inefficient, and not conducive to public safety. Instead of curtailing or eliminating Corporate Surety Bail, the evidence supports its expanded use.

II. An Overview of Bail in Maryland

Through the use of bail, the criminal justice system permits the release of a defendant from custody, pending trial, while, at the same time, attempting to (1) secure the defendant's appearance at all court proceedings, and (2) avoid criminal activity on the part of the defendant while released. The bail component of the pretrial release process attempts to balance (1) society's interest in (a) public safety, and (b) an efficient criminal justice system, and (2) the defendant's interest in release (a) because he has not been convicted of a crime, and (b) so that he can adequately prepare for trial.

"Bail in America began as a 'carry over' from the British practice as established in 1275 under the statute of Westminster where only certain offenses were bailable, developing into our Judiciary Act of 1789 which required bail for offenses not punishable by death, the progenitor of the U.S. Constitution's 8th Amendment: 'There shall be no excessive bail.'"[1] Despite evolving notions toward bail over the last 200 years, its primary objective has remained that of assuring the defendant's appearance at all required court proceedings. To aid the reader's understanding, this Response provides an explanation of (1) the pretrial release process in Maryland, (2) the relationships between the various parties in the bail process, and (3) the statutory and regulatory framework in which the parties operate.

A. The Pretrial Process and Types of Bail

A defendant is arrested by law enforcement based on probable cause to believe he has committed a crime. Under Md. Rule 4-212(f), the defendant is taken before a Commissioner, who is a judicial officer of the District Court, as soon as practicable, but in no event later than 24 hours. The Commissioner performs four tasks – (1) making a probable cause determination, (2) advising the defendant of his right to counsel, (3) advising the defendant of his right to a preliminary hearing, if applicable, and (4) making a pretrial release determination, if applicable. Md. Rule 4-213(a).

For the pretrial release determination, the Commissioner uses "information available or developed in a pretrial release inquiry," Md. Rule 4-216(e), and the factors under Md. Rule 4-216. Based on this information, if the defendant is eligible for pretrial release, the Commissioner either (1) grants the defendant ROR status, meaning released solely on the defendant's promise (a) to abide by all laws while released, and (b) to appear when required, or (2) makes the defendant eligible for release, subject to one or more conditions, which may include posting bail under Md. Rule 4-217.[2]

For any defendant not released through this process, there is an automatic bail review hearing the following day, before a District Court Judge, who reviews and, if appropriate, modifies the conditions of release, as determined by the Commissioner.[3] Although Md. Rule 4-216(f)(4)

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[1] The Law of Miscellaneous and Commercial Surety Bonds, American Bar Association, Tort and Insurance Practice (2001), ch. 8, at 127, Bail Bonds (Watson & Labe).

[2] Md. Rule 4-216(f).

[3] Md. Rule 4-217(g).

enumerates four forms of bail bond, they fall into three categories. The following explanation is offered, using a bail of $5,000 as an example.

1. **Unsecured Bail**

Under Md. Rule 4-216(f)(4)(A), unsecured bail is bail "without collateral security" (Unsecured Bail). Thus, Unsecured Bail is supported solely by the defendant's promise – though not ability -- to pay the full penalty amount. When using the $5,000 bail example for Unsecured Bail, the defendant is not required to "put up" any money at all. Instead, the defendant promises to pay $5,000 if he FTA's for any court proceeding. The defendant is not required to provide any security to back his promise. In essence, Unsecured Bail is the same as ROR. If a defendant would otherwise become an FTA, any notion that the defendant, having signed a bond, with no collateral security to back it, would appear for trial solely because of the fear of having to make good on his signature is not supported by reality. Moreover, the State does not even attempt to collect on Unsecured Bail if the defendant becomes an FTA.

2. **10% Deposit Bail**

Under Md. Rule 4-216(f)(4)(B), deposit bail is bail "with collateral security . . . equal in value to the greater of $25.00 or 10% of the full penalty amount, or a larger percentage as may be fixed by the judicial officer" (10% Deposit Bail). Thus, when a defendant is subject to 10% Deposit Bail, the defendant (or a third party) deposits 10% (or, on rare occasion, a greater amount) of the full penalty amount to secure his release. When using the $5,000 bail example for 10% Deposit Bail, the defendant (or a third party) is required to "put up" only $500, and the remaining 90% of the bail is supported solely by the defendant's (or a third party's) promise to pay the remaining $4,500 if he FTA's for any court proceeding. The defendant (or a third party) is not required to provide any security to back the promise to pay the remaining $4,500. If the defendant appears in Court, as required, the $500 deposit is refunded.

Although bail secured by 10% is better than no security at all (as in the case of Unsecured Bail), as explained in this Response, the evidence demonstrates that 10% Deposit Bail is neither effective nor efficient. If a defendant would otherwise become an FTA, any notion that the defendant would appear for trial solely because of the fear that he (or his surety) would have to make good on the remaining 90% is not supported by reality. Moreover, the State does not even attempt to collect on the unsecured 90% if the defendant becomes an FTA.

3. **Fully Secured Bail**

Under Md. Rule 4-216(f)(4)(C) & (D), fully secured bail is bail "with collateral security . . . equal in value to the full penalty amount [or] with the obligation of a corporation that is an insurer or other surety in the full penalty amount" (Fully Secured Bail). For a defendant subject to Fully Secured Bail, the defendant, or someone on the defendant's behalf, posts with the Court, the full penalty amount to secure his release. This comes in the form of (1) 100% cash, (2) equity in real property deposited with, or pledged to, the Court, or (3) the obligation of an insurance company, which comes under the regulatory control of the Maryland Insurance Administration.

When using the $5,000 bail example for Fully Secured Bail, the defendant (or surety) is required to "put up" $5,000 in cash or equity in real property. If the defendant is unable or unwilling to post 100% in cash or equity in real property, the defendant may use the services of Corporate Surety Bail, which will act as surety on behalf of the defendant, in return for a premium equal to 10% of the fully penalty amount, which is $500 in the $5,000 bail example.

B. <u>The Bail Transaction</u>

Unfortunately, when examining the bail bond process, even in 2002, the history – and thus the image -- of the bail bond industry must be addressed. Historically, a bail bondsman was the Damon Runyon character with a large cigar, a diamond pinky ring, and a brogan. The reality is now far different. Today, bail bondsmen are men and women owning, operating, and managing small businesses within their communities. These men and women are diverse in race, gender, religion, and background. The vast majority are licensed insurance professionals, holding a property and casualty insurance producer's license, which is issued by the Maryland Insurance Administration.

In Maryland, there are two types of compensated surety bail bondsmen. By far, the predominant group is corporate surety bail bondsmen (Corporate Bondsmen). These individuals post bail in their capacity as licensed and appointed property and casualty insurance producers of an insurance company authorized to do business in Maryland. The much smaller group is composed of property bail bondsmen. These individuals post bail by pledging real estate. Because bail posted by Corporate Bondmen is, by far, the predominant form of bail in Maryland, this Response focuses on that format.

An understanding of the bail transaction requires an understanding of three different – and intertwined – relationships of the parties, as follows:

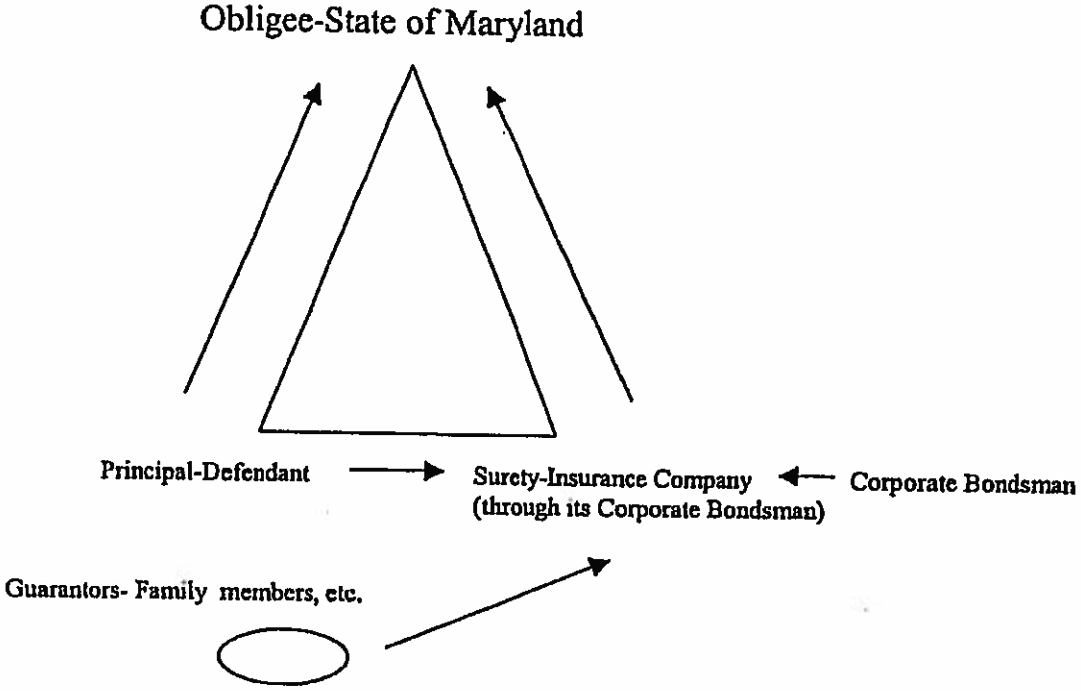
1. **<u>Relationship #1: The State, the Defendant, and the Surety on the Actual Bail Bond;</u>**

2. **<u>Relationship #2: The Insurance Company (the Actual Surety on the Bail Bond), and the Corporate Bondsman (Who Executes the Bond As Agent or Attorney-in-Fact for the Insurance Company);</u> and**

3. **<u>Relationship #3: The Guarantors for the Defendant and the Surety</u>.**

An understanding of those relationships may be aided by the following diagram:

Diagram of Relationships



Circle of Responsibility

1. **Relationship #1: The State, the Defendant, and the Surety on the Actual Bail Bond**

In relationship #1, a bail bond is a three-party contract to guarantee the defendant's appearance at all court proceedings. The State is the obligee, the defendant is the principal, and the insurance company is the surety. Md. Rule 4-217(i). The bail bond is executed by (1) the defendant, as the principal, and (2) the Corporate Bondsman, who has been given the authority to execute the bond, as agent or attorney-in-fact, on behalf of the insurance company, which is the surety.

If the defendant becomes an FTA, (1) a bail forfeiture is entered, (2) notice of the forfeiture is sent, and (3) if the defendant is not apprehended within 90 days (or within an additional 90 days, if extended for good cause shown), then the forfeiture "ripens" into a civil judgment, in favor of the State, against the defendant, as the principal, and against the insurance company, as the surety. The surety is required to ensure that the forfeiture is paid or stricken. Otherwise, the surety, i.e., the insurance company, is "shut down" and precluded from doing business statewide.

2. **Relationship #2: The Insurance Company (the Actual Surety on the Bail Bond), and the Corporate Bondsman (Who Executes the Bond As Agent or Attorney-in-Fact for the Insurance Company)**

In relationship #2, the Corporate Bondsman executes the bail bond, as agent or attorney in fact for the insurance company, which is liable to the State as the surety on the bail bond. The Corporate Bondsman is an independent contractor, contractually liable to the insurance company for any loss or loss adjustment expense on the bail bonds written by that Corporate Bondsman.

The Corporate Bondsman is, in effect, a retailer of the insurance policies called -- referred to as bail bonds. He underwrites the bail bonds, and he controls and monitors the defendants for court appearances. If a defendant becomes an FTA, it is the independent Corporate Bondsman who must (1) undertake to locate the FTA and return him to the Court's jurisdiction, or (2) failing to do so, pay the full penalty amount. Notwithstanding the contractual relationship, because the Corporate Bondsman executes the bail bond as "attorney in fact" for the surety, the "buck" stops with the insurance company, acting as surety. The insurance company must make sure that Corporate Bondsman resolves the FTA issue or pays the forfeiture, or the insurance company must do so.

3. **Relationship #3: The Guarantors for the Defendant and the Surety**

Relationship #3 is the actual process of underwriting the bail. Typically, following arrest and the setting of bail, the defendant contacts family or friends, who then contact a Corporate Bondman. The Corporate Bondsman will (1) obtain and verify the defendant's personal and arrest information, as provided by family, friends, and law enforcement authorities; (2) require sufficient guarantees from responsible family and/or friends, who become contractually obligated to indemnify the Corporate Bondsman if the defendant becomes an FTA and the bail is forfeited; and (3) charge the insurance premium equal to 10% of the bail amount, which may be paid in installments.

At the heart of underwriting a bail bond is the notion that those who are closest to the defendant – his family and friends – must be in the "circle of responsibility," as guarantors on the bond, so that the defendant knows that becoming an FTA will result in (1) the immediate issuance of a bench warrant for his arrest, (2) the immediate action of the Corporate Bondsman to "seek him out," and (3) adverse financial consequences to his family and friends. Between (1) the Corporate Bondsman's own financial incentive, and (2) the constant reinforcement of the "circle of responsibility" concept on the defendant and the guarantors, the bail bond process results in superior appearance rates, when compared with all other pretrial release systems.

Moreover, because of their "investment," family and friends, as guarantors on the bond, generally keep "a watchful eye" on the defendant, resulting in an additional – somewhat unexpected – benefit of reduced recidivism. The Corporate Bondsman ensures that the defendant and/or the guarantors are constantly made aware of the time and place of required court appearances and otherwise imposes any other conditions, e.g., telephone or personal check-in, that the Corporate Bondsman deems warranted under the circumstances. If the defendant becomes an FTA, there is an immediate and significant motivation, on the part of the Corporate Bondsman and the guarantors, which results in most bonded defendants being located and returned to the Court's jurisdiction.

C. The Licensing and Regulatory Framework

A comprehensive licensing and regulatory framework exists for Corporate Surety Bail in Maryland. Professor Colbert's assertions to the contrary are incorrect. Apparently relying on one footnoted telephone conversation with an employee of the Maryland Insurance Administration, Colbert Report, at 41 n.144, Professor Colbert maintains that the bail bond industry is

> largely unregulated [and t]he Maryland Department of Insurance [sic], responsible for licensing insurance companies and bail bond agents who are engaged in the insurance business within the State, provides no oversight of the bail bond industry, except that each licensed insurance company must file an annual financial statement of the total business transacted here.

Id. at 41. Professor Colbert relies on inaccurate and incomplete information. Had he (1) examined the Maryland Annotated Code and his case citations, or (2) contacted (a) more than one individual at the Maryland Insurance Administration, or (b) the Bail Association, he would have learned of the comprehensive statutory and regulatory framework that controls the bail bond industry.

Insurance companies that act as surety on bail bonds must be "admitted" insurers, who must satisfy financial and regulatory requirements, as a prerequisite to the issuance of a Certificate of Authority by the Maryland Insurance Administration. The list of requirements includes, at the front end, minimum capital stock and surplus requirements, depositing securities with the Maryland State Treasurer, and otherwise passing muster in the application process with the Commissioner of Insurance, including extensive background checks and fingerprinting, a review of planned operations, and an extensive review and analysis of its financial condition and affairs.

Once a Certificate of Authority is issued by the State, the insurer must comply with other requirements, including (1) submission of an annual audited financial statement, (2) the preparation of quarterly and annual statutory statements, (3) limitations on the investment of assets and risks undertaken, and (4) cooperation in audits conducted by the Maryland Insurance Administration. Moreover, if an insurance company, acting as a surety, does not satisfy, or cause to be satisfied, its bond forfeitures, in accordance with the District Court procedures, it immediately becomes disqualified from doing any bail bond business statewide, effectively putting "out of business" Both the insurance company and each Corporate Bondsman acting as an attorney in fact on its behalf.

Corporate Bondsmen are governed by the Maryland Insurance Administration and the Courts. A Corporate Bondsman must meet the same qualifications, and satisfy the same licensure process, as required for insurance agents that provide any form of property and/or casualty insurance coverage, e.g., automobile insurance, homeowners' insurance. To be eligible for the property and casualty producer's license, issued through the Maryland Insurance Administration, a Corporate Bondsman must (1) complete the 96-hour property and casualty pre-licensing course, (2) pass the state administered property and casualty insurance producer's examination, and (3) become associated with an "admitted" insurance company that underwrites bail. That insurance company must then file an appointment with the Maryland Insurance Administration and a Qualifying Power of Attorney

with the District Court before the licensee can act as a Corporate Bondsman.

All property and casualty insurance producers – including Corporate Bondsmen -- are governed by the statutory requirements in the Maryland Annotated Code,[4] the regulatory requirements in the Code of Maryland Regulations (COMAR), and the disciplinary rules of the Maryland Insurance Administration.[5] Additionally, as a Property and Casualty Insurance Producer, a Corporate Bondsman must satisfy continuing education requirements every two years. Further, a Corporate Bondsman is subject to any rules promulgated by the Circuit Court or the Judicial Circuit, Md. Crim. Proc. Code Ann. § 5-203, as well as the anti-solicitation provisions. Id. § 5-210.[6]

D. Bail Forfeitures for FTA's on Bail Through a Corporate Bondsman

If an insurance company does not resolve or satisfy all of its bail forfeitures, in accordance with the District Court's procedures, the insurance company and each Corporate Bondsman are immediately "cut off," i.e., disqualified from writing any business anywhere in this State until all bail forfeitures are satisfied. After a defendant becomes an FTA, a Corporate Bondsman has 90 days to either (1) return the defendant to the Court's jurisdiction, or (2) pay the forfeiture. Id. § 5-208(b). The 90-day period may be extended for an additional 90 days "for good cause shown." Id. § 5-208(b)(2)(i). As a matter of law, after 90 days (or, if extended, 180 days), if the forfeited bail has not been resolved or satisfied, the bail forfeiture ripens into a civil judgment.

To eliminate any errors that could result in an insurance company and its Corporate Bondsmen being wrongfully "cut off," the District Court circulates a quarterly "Absolute Forfeiture List," listing those bonds underwritten by that company that are in absolute forfeiture status, having ripened into civil judgments. The insurance companies are provided a 30-day "grace" period to either (1) provide documentation showing that all bond forfeitures on the Absolute Forfeiture List have been resolved or satisfied, or (2) resolve or satisfy all bond forfeitures. If not, at the end of the 30-day period, the insurance company is disqualified from writing any business statewide.

E. Bail Forfeitures for FTA's on Bail, But Not Through a Corporate Bondsman

Even though enforcement and collection of forfeited bail bonds underwritten by insurance

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[4] Md. Ins. Code Ann. § 10-101, et seq.; § 10-301, et seq., which are specifically applicable to Corporate Surety Bondsmen.

[5] Interestingly, Professor Colbert cites Insurance Commissioner v. Engelman, 345 Md. 402, 692 A.2d 474 (1997), Colbert Report at 18 n.68, involving an audit and resulting disciplinary proceedings against a bail agent, but, nonetheless, he maintains that the bail industry is "largely unregulated."

[6] In the Seventh Judicial Circuit (which includes Calvert, Charles, Prince George's, and St. Mary's Counties), comprehensive guidelines and rules have been promulgated and are set forth in Local Rules 714 and 714A. See Deeley Report at App. D-33 to D-41 for the complete local rules in place in the Seventh Judicial Circuit. The Seventh Judicial Circuit has the largest contingent of property bondsmen and, as provided by statute, has a governing Bail Commissioner, who is responsible generally for the administration of all bail related matters, including the regulation of the bail bondsmen conducting business in the Seventh Judicial Circuit. See Deeley Report at App. D-29 to D-41, setting forth the local rules in other Maryland Judicial Circuits.

companies are strictly enforced, the story is exactly the opposite for all forfeited bonds not posted by a Corporate Bondsman. In fact, as to (1) Unsecured Bail, (2) 10% Deposit Bail, and (3) Fully Secured Bail when secured by real property (and not by a Corporate Bondsman), enforcement and collection of bail forfeitures is almost non-existent.

As to Unsecured Bail, no effort is ever made to recover the 100% that is owed by the FTA defendant who posted nothing. As to 10% Deposit Bail, no effort is ever made to recover the 90% that is owed by the FTA defendant or the person who acted as his surety. As to posted real estate, there are two problems. First, there is frequent fabrication of the equity value of the property because a large percentage of individuals claim to have no mortgage, but this is never independently verified. Second, no effort is ever made to collect the 100% by foreclosing on the property.[7]

Under the various forms of pretrial release not involving Corporate Bondsmen, there is little or no incentive -- financial or otherwise -- for the defendant to comply. Moreover, once a defendant becomes an FTA, there is a disincentive, on the part of the family and friends, to locate and return the FTA defendant. Without "the stick" of enforcement, Unsecured Bail, 10% Deposit Bail, and Fully Secured Bail (when not secured through a Corporate Bondsman) are ineffective. In reality, the only bail that works to keep the FTA rate down is bail through a Corporate Bondsman.

III. Analysis of the Colbert Report and the Deeley Report.

A. An Overview of the Colbert Report and the Deeley Report

This Response, of necessity, analyzes the Colbert Report and the Deeley Report as if they were one document. First, the nine recommendations in the Colbert Report and the nine in the Deeley Report are substantially the same. Second, Professor Colbert (1) was the author of the Colbert Report; (2) as Chair of the Correctional Reform Section of the Maryland State Bar Association (MSBA), was the catalyst behind the creation of the Deeley Committee, which produced the Deeley Report; (3) served as the "main researcher and reporter" for the Deeley Committee, and (4) offered his research and data to the Deeley Committee, which apparently did not conduct independent research "in the field," but, instead, relied on his research to form the informational basis for the Deeley Report. With Professor Colbert as the "common thread," the Colbert Report and the Deeley Report are intrinsically and empirically linked together as one report.

Presumably, if there is the need for a study that leads to a report, there must have been a "problem." It appears that the principal problem, as perceived by Professor Colbert, is that bail is being set for many defendants with conditions that are, in his view, too onerous. First, his work starts with the assumption that Maryland's pretrial system is akin to the system used by the federal government between 1966 and 1984, which has long since been abandoned as ill-advised and

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[7] In fact, Haven Kodak, Esquire, Deputy State's Attorney for Baltimore City, who is responsible for bail forfeiture matters, advised the Bail Reform Subcommittee of the Baltimore City Criminal Justice Coordinating Council that foreclosure of a bail bond secured by property has been viewed as "against public policy," and, thus, the State's Attorney's Office has not, during his tenure, pursued enforcement of any bail bonds secured by real property. Bail Reform Subcommittee Minutes (January 28, 2002).

unworkable. Second, Professor Colbert suggests that Commissioners, when establishing pretrial release conditions, and District Court Judges, during bail review hearings, are not in compliance with the law. Deeley Report at App. B16-18. He comes to this conclusion because, in his view, the "overwhelming majority [of the defendants with full bail] should have been offered less onerous alternatives and been released without bondsmen." Colbert Report at ii.

Professor Colbert substitutes his judgment for that of Commissioners and District Court Judges when he concludes that Maryland's judicial officers make decisions "without essential information." He summarily concludes that there is "[n]o objective basis for believing bail bondsmen provide a greater assurance that defendants will appear in court." Relying on that conclusion, he then next concludes that alternatives, such as 10% Deposit Bail and Unsecured Bail, which he considers less onerous, should be used.

Professor Colbert states that "the overwhelming majority of Maryland defendants released pretrial returned to court when required," claiming that almost 95% of Maryland defendants appear for trial. The District Court provided to Professor Colbert, and subsequently to the Bail Association, statistics covering more than 280,000 defendants in 1998 and 1999. With a statistically valid sample exceeding a quarter of a million defendants, Maryland's appearance rate was 86.6%, according to the District Court statistics provided -- not 94.7% as asserted by Professor Colbert. Thus, Maryland's FTA rate was 13.4% -- not 5.3%. Had Professor Colbert's analysis been correct, Maryland would have had 22,656 fewer FTA's during 1998 and 1999 than Maryland actually had.

Professor Colbert concludes that, in the "vast majority of cases," it is the police who locate, apprehend, and return the FTA's to the Court's jurisdiction. **In the 500 trial days during 1998 and 1999, Maryland's criminal justice system experienced, on average, 75 new FTA's in the District Court every single day.** The Baltimore Sunpapers reported that Baltimore City has 98,000 open warrants – with no resources to "go after" the subjects of these warrants. A total of 98,000 open warrants means one warrant for every seventh man, woman, and child in Baltimore City.

The Deeley Report does not really set forth the nature of the problem that it sought to study. It appears that most – if not all – of the members of the Deeley Committee accepted the Colbert proposition that problems exist,[8] presumably, based on drafts of the Colbert Report or, perhaps, based on the notion that, because a committee was formed, there must be problems. Professor Colbert sets forth predicates that, if correct, might support some of what he recommends. The Deeley Committee, on the other hand, does not set forth predicates or offer empirical data or information to substantiate the problems it perceives, much less support the need for most of its recommendations, particularly as they relate to the bail system. The Deeley Committee appears to have accepted, without question, the Colbert "research" as accurate and complete and then uses that research as its factual foundation, despite indicators that it was flawed.[9]

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[8] At the Deeley Committee's initial meeting, committee member Scott Patterson, Esquire, State's Attorney for Talbot County, raised the point that the committee appeared to be "presupposing" problems. Deeley Report at App. B-2. The minutes do not reflect any further analysis of this comment.

[9] A detailed analysis of the fundamental factual inaccuracies in the Colbert Report is discussed throughout.

An analysis of the perceived problems -- and the factual predicates allegedly supporting those predicates -- shows that the Colbert "research" is incomplete and erroneous. As a result, some of the nine recommendations in the Colbert Report and the nine recommendations in the Deeley Report are ill-advised. Within each document, the nine recommendations greatly overlap each other. Among the two documents, the nine recommendations of one and the nine recommendations of the other are essentially the same, with one difference. The Colbert Report recommends the study of the elimination of the Corporate Surety Bail, Colbert Report at vii, but the Deeley Report makes no such recommendation regarding the elimination of Corporate Surety Bail,[10] although it does recognize that that would become a natural result of the adoption of all of the recommendations. The chart below sets forth the essence of the recommendations made in the Colbert Report and the Deeley Report:

Item	Type of Recommendation	Colbert Report #	Deeley Report #
1.	Expanded statewide pretrial release services (include information for pretrial release conditions and monitoring defendants)	1, at vii	#1, #6, #8, & #9, at 2-3, 10-14, 17-18, 19
2.	Defense counsel at initial appearance and bail review hearings	#2, at vii	#2, at 3, 14-15
3.	Prosecutors at bail review hearings	#3, at vii	#3, at 3, 15-16
4.	Judicial education	#8, at vii	#7, at 3, 18-19
5.	Use of unsecured bonds over secured bonds	#5 & #6, at vii	#4, at 3, 16-17
6.	Use of automatic 10% refundable cash deposit bail	#4 & #9, at vii	#5, at 3, 17
7.	Eliminate bail bond industry	#7, at vii	

However, even from the Deeley Committee minutes, it is clear that several fundamental research "facts," which were compiled by Professor Colbert and his colleagues, were questioned by those that participated in the deliberations. For example, the assertion that Corporate Bondsmen were an important source of information -- in fact, the predominant source -- in determining whether to set bail for a defendant, as well as the FTA figures proffered by Professor Colbert, were questioned. Deeley Report at App. B-21 (Comment of Judge Oshrine).

[10] At its meeting on January 9, 2001, the Deeley Committee actually "voted that, on implementation of the recommendations on financial conditions, Maryland should study and assess the appropriateness of eliminating commercial surety." Deeley Report at App. B-36. At its meeting on July 19, 2001, after discussion, the Deeley Committee determined "that the recommendation was not necessary, in light of the *natural* effect of other recommendations, and would only be a distraction from implementation of those recommendations." Id. at App. B-57 (emphasis added).

B. The Faulty Predicates for the Specific Bail-Related Recommendations

The analysis in this Response is largely devoted to the specific bail-related recommendations, which are items 5., 6., and 7. above Following the primary analysis, some discussion of the other items is offered, particularly the viability and advisability of expanded statewide pretrial release services. In analyzing the recommendations 5., 6., and 7., it is necessary to examine the three erroneous factual predicates, as follows:

1. Faulty Predicate #1: 95% of Maryland Defendants Appear in Court When Required

The Colbert Report states that "[i]n fiscal year 1999, almost 95% of the 215,000 defendants charged with misdemeanor and felony offenses appeared at their scheduled District Court proceeding." Colbert Report at 46. Professor Colbert states that the "District Court statistics indicated that 5.3% failed to appear ('FTA') for their scheduled court date." Id. n.155. He argues that Maryland's "no-show rates are substantially less than national figures and those in other states." Id. at 46. On this basis, he then concludes that Maryland defendants are "extraordinarily" reliable, and thus worthy, in his view, of release, in the "vast majority of cases," without the need for Fully Secured Bail.

Despite the Colbert Report's repeated assertion of a nearly 95% appearance rate, i.e., a 5.3% FTA rate, even Professor Colbert discloses that he is unsure of the FTA rates. First, the Colbert Report cites the FTA rate in the text of the report at 5.3%. Id. Although he used the District Court raw data, he calculated the FTA rate at 5.3% only after eliminating "the cases that were ultimately dismissed or nolle prossed." Id. Then, he reports much higher FTA rates in the 10% to 30% range. Id. at 47 nn.159-61. Finally, in response to the dramatic increase in the FTA rate, Professor Colbert states that this data "is puzzling and requires additional study."

What is "puzzling" is the assertion by Professor Colbert of a FTA rate of 5.3%. At his request, the District Court apparently compiled FTA Statistics by Bail Type for 1998 and 1999. In preparation of this Response, the Bail Association contacted Judicial Information System (JIS) representatives and requested to be given the exact same data that had been given to Professor Colbert.[11] Because this data did not include "cumulative totals," a spread sheet, extrapolating and calculating the requisite totals from the data, has been prepared and included in App. B to this Response.[12]

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[11] Cookie Pollack, District Court Project Manager (JIS) and Cheryl Cogan, Criminal System Analyst, were contacted to obtain the same information that had been provided to Professor Colbert. The JIS representatives advised that a hard copy of the data, which had been provided to Professor Colbert, in February 2001, had not been maintained. However, they ran the identical program for the identical time periods and advised that, if there was a difference at all, it would be completely immaterial. On January 28, 2002, at a regularly scheduled meeting of the Bail Reform Subcommittee of the Baltimore City Criminal Justice Coordinating Counsel, Brian J. Frank, Esquire, requested that Professor Colbert produce the raw data to substantiate the statements on page 47 of the Colbert Report, but he declined to do so.

[12] Property bonds have been excluded from the Maryland data presentation in the body of this Response because

MARYLAND FTA RATES FOR SPECIFIC FORMS OF PRETRIAL RELEASE

Years	Released on Recognizance	Unsecured Bail	10% Deposit Bail	Full Cash Bail	Corporate Surety Bail
1998-99	14.7%	13.2%	14.1%	11.1%	10.5%

Notwithstanding having the FTA-specific information from the District Court, Professor Colbert analyzed a Criminal Filing and Disposition Statistics Report (set forth as App. F of the Colbert Report), from which he took the number in the FTA column (11,268), and divided it by the total of cases filed (213,343), to derive the 5.3% FTA rate. According to Charles Moulden, Assistant Chief Clerk for the District Court, the data in that report was not intended to measure FTA rates and, in fact, once a case is resolved in any fashion, any FTA that existed for that case is removed from the FTA column, with that case then counted in the applicable disposition column.

Professor Colbert even acknowledges, by footnote, that the 5.3% rate calculated by him from the data "does not include defendants who failed to appear for cases that were ultimately dismissed or nolle prossed." Colbert Report at 46, n.155. Thus, he recognizes that he eliminated from the numerator nearly 85,000 cases – 30% of all cases – because they were ultimately dismissed or nolle prossed. Nonetheless, this 30% of all defendants were deemed to be "non-FTA's," by being counted in the denominator at the same time that they were ineligible to be counted in the numerator. Professor Colbert's footnote does not address whether he eliminated from his calculation the other categories of cases that fell within the Total Untried column, but it seems quite probable that he did. In any event, this calculation method, in which at least 30% of all defendants were deemed to be "non-FTA's," naturally, produced an erroneously low FTA rate.

The statistics produced by the District Court for 1998 and 1999 include a total of 280,546 defendants. Those statistics reveal that the total number of FTA's within the release types was 37,525. Thus, the FTA rate was 13.4%. In sum, the Colbert analysis and recommendations are based, in large measure, on an incorrect – and greatly understated -- FTA rate. The Colbert Report claims Maryland's FTA rate to be 5.3%, when, in fact, Maryland's FTA rate is 13.4%. No FTA analysis in the Colbert Report can be accurate when the base number is in error by a factor of two and a half. For perspective, the actual Maryland FTA rate is 153% larger than the FTA rate reported in the Colbert Report. Stated alternatively, the Colbert Report FTA rate is only 39.6% of the actual FTA rate, having failed to count 22,656 of Maryland's 37,525 applicable FTA's.

2. **Faulty Predicate #2: Corporate Surety Bail Does Not Provide a Greater Assurance That Defendants Will Appear in Court**

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the statistical information for that category consist of bonds posted by family members, etc., and by compensated Property Bondsmen, without distinction.

Professor Colbert is likewise incorrect when asserting that there is "[n]o objective basis for believing bail bondsmen provide a greater assurance that defendants will appear in court." Id. at vi. He states that "[b]ail bondsmen claim that defendants released on surety bail have a higher appearance rate than defendants released on nonfinancial conditions and on less onerous types of bail. There is no objective support for this contention." Id. at 46. The Colbert Report also suggests that "defendants' reliability is as good, if not better, when a bail bondsman is not involved." Id. at 2. He adds: "Reliance on professional sureties is based on the belief that bail bondsmen are the best guarantor for ensuring that defendants appear in court and for locating and apprehending those who fail to appear. There is no truth in such belief." Id. at 45.

The Colbert Report further states that "the Judicial Information System (JIS) for the Maryland District Court provided statistical data on the failure to appear rate for each type of pretrial release in Maryland [and the data] belie the bondsmen's claim that bonded defendants have a higher appearance rate." Id. at 46-47. The Colbert Report does not include the JIS data and merely offers a conclusory analysis of that data. As noted above, in preparation of this Response, the Bail Association contacted JIS representatives and obtained the data, which is set forth in App. B. The chart below further analyzes the pertinent results:

COMPARING MARYLAND FTA RATES
FOR
CORPORATE SURETY BAIL
VERSUS
UNSECURED BAIL AND 10% DEPOSIT BAIL

Years	Unsecured Bail	10% Deposit Bail	Corporate Surety Bail	Increased Likelihood of FTA for Unsecured Bail Versus Corporate Surety Bail	Increased Likelihood of FTA for 10% Deposit Bail Versus Corporate Surety Bail
1998-99	13.2%	14.1%	10.5%	25.7%	34.3%

During the two-year period of 1998 and 1999, there were 280,546 criminal defendants accounted for in the statistics provided by the District Court. Of that total, 37,525 defendants became FTA's at trial, producing an overall FTA rate of 13.4%. As demonstrated by the above chart, among the groups within the quarter-million plus defendant pool, Corporate Surety Bail outperformed all other forms of pretrial release. A defendant on Corporate Surety Bail was much more likely to appear for trial and was much less likely to become a FTA.

Professor Colbert urges Unsecured Bail and 10% Deposit Bail as being preferred means of

pretrial release when compared to Corporate Surety Bail. However, the FTA rate was 13.2% for defendants on Unsecured Bail and 14.1% for defendants on 10% Deposit Bail. At the same time, the FTA rate for defendants on Corporate Surety Bail was only 10.5%. Thus, the FTA rate was 25.7% higher for defendants on Unsecured Bail, when compared with defendants on Corporate Surety Bail. Even worse, the FTA rate was 34.3% higher for defendants on 10% Deposit Bail, when compared with defendants on Corporate Surety Bail. Incidentally, the 10.5% FTA rate for Corporate Surety Bail, based on the District Court data, is consistent with the Bail Association data.

Defendants on bail through a Corporate Bondsman are so much more likely to appear for trial, when compared with the defendants not associated with a Corporate Bondman. The reason is simple. Corporate Surety Bail – unlike the public sector – has the financial incentive and financial necessity – to do the job that it has been paid to do. Corporate Surety Bail has developed a system of integrating guarantors -- family and friends -- into the "circle of responsibility," with as many individuals as possible being "invested" in assuring the defendant's appearance in court. Corporate Surety Bail accomplishes this significantly lower FTA rate, even though Corporate Bondsmen bond those defendants who have been judicially determined to be the "least reliable."

To gain perspective on these numbers, if the rest of the criminal justice system in Maryland could reduce its FTA rate to the rate enjoyed by the Corporate Bondsmen, there would have been 7,567 fewer FTA's in Maryland in 1998 and 1999. Each one of these extra 7,567 FTA's burdened an already over burdened criminal justice system. In addition, there is probably no way to determine accurately what havoc was caused by an extra 7,567 "at large" FTA's, in terms of economic and non-economic harm to society.

DEPARTMENT OF JUSTICE STATISTICS ON NATIONAL FTA RATES

Year	Unsecured Bail	10% Deposit Bail	Full Cash Bail	Corporate Surety Bail	All Defendants
1992	42%	21%	22%	15%	25%

In November 1994, under the auspices of the National Pretrial Reporting Program, the Department of Justice issued a study, titled "Pretrial Release of Felony Defendants, 1992" (Department of Justice Study), which is its most recent published study analyzing FTA rates for various types of pretrial release. This Department of Justice Study, which is App. C to this Response, compiled FTA rates from the nation's 75 largest counties for 1992. Id. at 10 (table 14).

Both (1) the FTA rates overall, and (2) the FTA rates for Unsecured Bail and 10% Deposit Bail, when compared to the FTA rates for Corporate Surety Bail, is even more dramatic in this 1992 nationwide study than it is in the 1998-99 Maryland study. In the Department of Justice Study, the FTA rate for all defendants was 25%, compared to Maryland's 13.4% overall FTA rate. For defendants on Unsecured Bail, the FTA rate was 42%, compared to Maryland's 13.2% FTA rate for

Unsecured Bail. For defendants on 10% Deposit Bail, the FTA rate was 21%, compared to Maryland's 14.1% FTA's. The disparity may be explained, in part because the Department of Justice Study involved felony defendants, while the vast, vast majority of the Maryland defendants were misdemeanor defendants because the Maryland information involved District Court defendants.

Consistent with the Maryland statistics, the national statistics confirm that, in the comparative, the lowest FTA rate belongs to defendants on Corporate Surety Bail. Nationally, the FTA rate was 42% for defendants on Unsecured Bail and 21% for defendants on 10% Deposit Bail, yet the FTA rate was only 15% for defendants on Corporate Surety Bail. Thus, on a nationwide basis, among felony defendants, those on Unsecured Bail were 180% more likely to become an FTA when compared to defendants on Corporate Surety Bail. Nationally, a defendant on 10% Deposit Bail was 60% more likely to become an FTA than a defendant on Corporate Surety Bail.

In the Department of Justice Study, "all defendants" had a 66.7% increased FTA rate, when compared to defendants on Corporate Surety Bail. The 66.7% increased FTA rate would be even higher if Department of Justice compiled its statistics in a way to permit comparing "non-Corporate Bondsmen FTA's" and "Corporate Bondsmen FTA's," and not merely "total FTA's" and "Corporate Bondsmen FTA's." In conclusion, nationally, when measuring the vast, vast majority of jurisdictions that offer the services of Commercial Surety Bail, the Corporate Surety Bail results in significantly fewer FTA's.

FTA RATES FOR JURISDICTIONS THAT HAVE REPLACED CORPORATE SURETY BAIL WITH 10% DEPOSIT BAIL

Jurisdiction	Year	10% Deposit Bail
Philadelphia[13]	1998	35%
Chicago[14]	1988	30% (male) 21% (female)

In a very small number of jurisdictions, defendants charged with a crime do not have the option of using the services of a Corporate Bondsman. In the "non-Corporate Bail" jurisdictions, defendant are ROR or, if bail is set, they are released on either Unsecured Bail or 10% Deposit Bail. Those are the same two methods that Professor Colbert recommends. The two most notable cities

[13] Data from the Department of Justice, Bureau of Justice Statistics, Felony Defendants – Court Appearance Record (table 20) for 1998 (Philadelphia County, Pennsylvania) (received by e-mail on December 12, 2001, from Brian A. Reaves, Ph.D. (Philadelphia Study).

[14] Cook County Pretrial Release Study at 82 (June 1992), issued by the Illinois Criminal Justice Information Authority (Chicago Study). This comprehensive 160-page report studied Cook County defendants in 1988.

that have eliminated Corporate Surety Bail are Philadelphia and Chicago. Their experience since eliminating Corporate Surety Bail provides a glimpse into what would likely develop in Baltimore were Maryland to eliminate Corporate Surety Bail.

The previously offered Maryland chart and the Department of Justice national chart permit the comparison of FTA rates for (1) non-Corporate Surety Bail, and (2) Corporate Surety Bail, in the vast, vast majority of jurisdiction offering Corporate Surety Bail. The addition of the Philadelphia/Chicago chart above permits a comparison of FTA rates for (1) non-Corporate Surety Bail in Corporate Surety Bail jurisdictions, and (2) non-Corporate Surety Bail in non-Corporate Surety Bail jurisdictions. The statistics demonstrate that the already higher FTA rate for non-Corporate Surety Bail in Corporate Surety Bail jurisdictions gets even worse in non-Corporate Bail jurisdictions. In the small number of jurisdictions that have eliminated Corporate Surety Bail, the FTA rate is much higher than in jurisdictions in which the Corporate Surety Bail plays a role in the pretrial release equation.

In the Chicago Study, the 1988 FTA rate was 34% for defendants who posted no security and 30% for defendants released on 10% Deposit Bail. The Chicago statistics show what Maryland might anticipate were it to eliminate Corporate Surety Bail and use only Unsecured Bail and 10% Deposit Bail, as urged by Professor Colbert. A "no security" defendant in Chicago (a non-Corporate Surety Bail jurisdiction) was almost two and a half times as likely to become an FTA than a "no security" defendant in Maryland (a Corporate Surety Bail jurisdiction). Specifically, the Chicago "no security" FTA rate was 158% higher than Maryland's ROR FTA rate and 131% higher than Maryland's Unsecured Bail FTA rate.

As for defendants released on 10% Deposit Bail, Chicago's FTA rate was more than twice that of Maryland. Assuming a 90-10 ratio of male defendants to female defendants, Chicago defendants on 10% Deposit Bail had a 106% increased likelihood to become an FTA, when compared with Maryland defendants on 10% Deposit Bail. In Philadelphia's 1998 study, the FTA rate for defendants on 10% Deposit Bail was 35%, which was even worse than the FTA rate for defendants on 10% Deposit Bail in Chicago. In fact, a Philadelphia defendant on 10% Deposit Bail was two and a half times as likely to become an FTA, when compared with Maryland defendants on 10% Deposit Bail.

These statistics are predictive of future FTA rates in Maryland, were Maryland to become one of those rare jurisdictions to eliminate Corporate Surety Bail by adopting the ill-advised, costly, and dangerous recommendations in the Colbert Report and the Deeley Report. The "street is wise." If a system is adopted that eliminates the most effective way of assuring the appearance of defendants at trial – the Corporate Bondsman – it will only be a matter of time before the FTA rates soar, just as they did in Chicago and later in Philadelphia. When Chicago and Philadelphia eliminated Corporate Surety Bail, it should have come as no surprise that FTA rates would – and did -- greatly accelerate in those cities.

If Maryland were to replace Corporate Surety Bail with Unsecured Bail and 10% Deposit Bail, Maryland would have two choices. One choice would be to become like Chicago and Philadelphia, tolerating a much higher FTA rate. The other choice would be to create an expensive

administrative agency to do what is already an integral component within the Corporate Surety Bail community, but which would be lost if Corporate Surety Bail were eliminated. That expensive administrative agency would be designed to take legal steps (1) to forfeit real property, and (2) to seek recovery against defendants and others who gave their "solemn promise" to pay if the defendant became an FTA.

Of course, one of the problems with creating such an administrative agency is that it could not fulfill its mission in any event. Currently, in Maryland, everyone receives the great benefit that flows from Corporate Surety Bail. One, there is an insurance company that backs the Corporate Bondsman's promise to pay. Two, there is a great incentive for the bail industry to pay timely all forfeitures – and, thus, for Corporate Surety Bail to strive for the fewest FTA's and fewest forfeitures possible -- because of the disqualification to do business that flows from non-compliance. The current effective system, offered at no expense to the taxpayers, would be replaced with an administrative agency's futile attempt to recover against "non-deep pocket" defendants and others, who lack both the resources and incentive to comply. Because such a system – doomed from its inception -- would likely produce only a few cents on a dollar, there would be no way to control FTA rates.

In addition to the fact that defendants on Corporate Surety Bail have a much lower FTA rate, they also appear to have a much lower rate of recidivism or misconduct while awaiting trial. The Department of Justice Study examined pretrial release defendants from two related standpoints – (1) re-arrested while awaiting trial, i.e., arrested for a new offense while in a pretrial release status pending trial; and (2) overall misconduct, including (a) those who were arrested for a new offense while in a pretrial release status pending trial, (b) those who violated a pretrial release condition resulting in revocation of their pretrial release status, and (c) those who became an FTA.

The Department of Justice Study showed that not only do defendants on Corporate Surety Bail appear for trial at a much higher rate, they "get into less trouble" while awaiting trial. The re-arrest rates were virtually identical for all groups other than for defendants on Corporate Surety Bail. Department of Justice Study at 11 (table 15). The re-arrest rates were 16% for defendants in all three of the other groups, and 9% for defendants on Corporate Surety Bail. Thus, defendants awaiting trial, but not associated with a Corporate Bondsman, were 78% more likely to be re-arrested while awaiting trial.

In addition, the Department of Justice Study showed that defendants on bail are less likely to get in trouble generally while awaiting trial, using the three categories of misconduct set forth below. The misconduct rates were virtually identical for all groups other than defendants on Corporate Surety Bail. Id. at 12 (table 16). The misconduct rates were 32% to 47% for defendants in the other three groups, and 23% for defendants on Corporate Surety Bail. Thus, defendants awaiting trial, but not associated with a Corporate Bondsman, were between 39% and 104% more likely to become involved in misconduct while awaiting trial.

DEPARTMENT OF JUSTICE STATISTICS
OF DEFENDANTS ARRESTED FOR ANOTHER CRIME
WHILE ON PRETRIAL RELEASE

Year	Unsecured Bail	10% Deposit Bail	Full Cash Bail	Corporate Surety Bail
1992	16%	16%	16%	9%

DEPARTMENT OF JUSTICE STATISTICS
ON THE MISCONDUCT* RATE OF DEFENDANTS
WHILE ON PRETRIAL RELEASE

Year	Unsecured Bail	10% Deposit Bail	Full Cash Bail	Corporate Surety Bail
1992	47%	32%	32%	23%

* Misconduct includes (1) arrested for another crime while awaiting trial, (2) violation of a release condition that results in a revocation of pretrial release, and (3) becoming a FTA.

The Colbert Report states that "[w]hen financial conditions are ordered, judicial officers should view the 10% cash deposit as at least as good an incentive for defendants reappearing in court as surety bond, since it permits families and individuals to recover their deposit at the conclusion of the case." Colbert Report at vii. It is clear that the evidence – from Maryland, from across the nation, from Chicago, and from Philadelphia -- supports exactly the opposite conclusion than that suggested in the Colbert Report and the Deeley Report.

The national study by the Department of Justice demonstrated that no group of defendants performed better than those on Corporate Surety Bail, which had a national FTA rate of 15%. At the same time, nationally, defendants on 10% Deposit Bail and Full Cash Bail had FTA both had rates of 21% and 22% -- at least 40% higher. The data shows that appearance rates are not influenced by the amount of money that the defendant and his family has at risk. Instead, appearance rates are much more heavily controlled by whether the money was paid to a court or paid to a Corporate Bondman. This reflects the differing degrees of proactive posture of the Corporate Bondsman – who ensure that the defendant gets to court -- versus the government employee who accepts the money -- and that's the end of that.

Corporate Surety Bail defendants and 10% Deposit Bail defendants both pay 10% of the full

bond amount to obtain their release, while Full Cash Bail defendants pay ten times that amount, i.e., 100% of the full bond amount, in order to obtain their release. If the best predictor for appearance at trial was the amount of money that the defendant and his family had to place at risk to obtain release, then the FTA rate should be about the same for defendants on Corporate Surety Bail and for defendants on 10% Deposit Bail, both of whom have risked the same amount of money. At the same time, the FTA rate would presumably be much lower for defendants on Full Cash Bail, who have ten times the financial exposure.

With defendants on Full Cash Bail and with defendants on 10% Deposit Bail, Government's primary role is to hold the defendant's collateral, waiting to see whether the defendant appears for trial and receives a refund or becomes an FTA and forfeits the money. Despite the Colbert Report's assertion to the contrary, in these instances, it is the Government that is a "passive player," with no stake in the outcome and no "carrot/stick" approach. Regardless of whether defendants had 100% at risk or only 10% at risk, their FTA rate was virtually the same when the Government replaced the Corporate Bondsman.

In the Department of Justice Study, defendants on 10% Deposit Bail and defendants on Full Cash Bail both had FTA rates in the 21% to 22% range. However, that same study showed that the FTA rate was only 15% for defendants on Corporate Surety Bail. Thus, even when the defendant had 100% of the bail amount at risk, the defendant was still 47% more likely to become an FTA, when compared with a defendant with only 10% of the bail amount at risk, provided the "10% defendant" was on Corporate Surety Bail.

On first blush, it makes no sense that two groups of defendants – Full Cash Bail defendants with 100% of the bail amount at risk and 10% Deposit Bail defendants with only 10% of the bail amount at risk – would both have the same FTA rate. However, it does make sense when realizing that both of those groups were associated with the Government – and not with a Corporate Bondsman. Thus, for the two groups of defendants that deposited money with the Government, there was no Corporate Bondsman, and, thus, there was no one with the financial incentive to ensure that the defendants appeared for trial.

With these two groups virtually identical in their FTA rates – at 21% and 22% -- on first blush, it makes no sense that a third group of defendants would have a much lower FTA rate. However, it does make sense when realizing that the one group with the much lower FTA rate was also the only group associated with a Corporate Bondsman. Thus, even though that group had the minimum at risk -- 10% of the bail amount -- they had something else. They were the only group of defendants with a Corporate Bondsman to ensure that they appeared for trial. Thus, the amount of cash posted -- and subject to immediate forfeiture if the defendant became an FTA -- played no role in establishing FTA rates. To get a lower FTA rate, the system needs Corporate Bondsmen -- and not a government agency – getting the defendant to trial.

Similarly, in Maryland, there were defendants on 10% Deposit Bail and defendants on Corporate Surety Bail. On first blush, both groups had the same amount at risk if they became FTA's and should have had about the same FTA rate. On closer examination, the defendants on Corporate Surety Bail would not get a refund when they appeared for trial, but the defendants on

10% Deposit Bail would get a refund. Thus, it would seem that the defendants on 10% Deposit Bail should an even lower FTA rate. Of course, not only did the defendants on 10% Deposit Bail not have a lower FTA rate, they had a much higher FTA rate – 34.3% higher. The reason is the same as in the Department of Justice Study. A defendant on Corporate Surety Bail is much less likely to become a FTA because a "financially incentivized" Corporate Bondsman ensures the defendant's appearance – or at least ensures it at a much higher rate than among defendants on 10% Deposit Bail.

Some individuals will always do what they are supposed to do, and other individuals will never do what they are supposed to do. For the vast majority of human beings, the degree of incentive do perform appropriately, as well as the degree of incentive to not perform inappropriately, will play a major role in determining whether they do – or do not do -- what they are supposed to do. Because both the defendants and the individuals getting – or failing to get – the defendants to appear for trial are both human beings, they both work on incentives. The only dispositive variable in predicting the FTA rate for defendants who actually paid money to obtain their release was whether they paid that money to a Corporate Bondsman, who has a continuing stake in the outcome, or paid that money to the Government.

Once the government employee takes the defendant's money, the "lot in life" of that employee is no better – or no worse -- if the defendant appears at trial or becomes an FTA. The employee who takes the money never knows – and probably never even thinks about -- whether the defendant appears for trial or becomes an FTA. To the contrary, once a Corporate Bondsman takes the insurance premium from a defendant, the "lot in life" of that Corporate Bondsman is dramatically different if the defendant appears at trial than it is if the defendant becomes an FTA. It does not take too many FTA's to send a Corporate Bondsman into financial ruin. With each defendant's appearance at trial – or lack of appearance at trial – the Corporate Bondsman has his or her very livelihood at stake. In the private sector, the owner of every business knows where his or her margin is and takes the necessary steps to ensure economic success, if possible.

An economist can explain why the FTA rate is at least so much higher for defendants who deposit money with the Government, when compared with defendants for whom a Corporate Bondsman is responsible. Different considerations are at issue for Government, as juxtaposed to the private sector. For Government, the FTA rate is merely an agency statistic. The FTA rate does not influence whether the government employees who "wrote the bond" keeps his or her job or whether the government agency would be permitted to "remain open for business." There is a reason why, over the last two decades, more governmental functions have been "privatized" when either (1) the public sector cannot successfully accomplish an important governmental task, but the private sector can accomplish it, or (2) the public and private sector can both accomplish the task, but the private sector can accomplish it more economically, e.g., school systems, penal institutions.

In addition, there has been de facto "privatization" when individuals elect to purchase services from the private sector because Government is too slow or inefficient, e.g., trash removal, mediation rather than litigation, Federal Express or UPS rather than the United States Postal Service. Furthermore, where Government once absorbed all of the cost, there are now "user fees" paid by the individuals who take advantage of the services, e.g., parks. One additional downside to Unsecured Bail or 10% Deposit Bail, managed by Government, as opposed to Corporate Surety Bail, managed

by the bail industry, is that, under the former, taxpayers pay for defendants to be released pending trial, but, under the latter, only the recipients of the service pay. When defendants retain the services of Corporate Surety Bail, it is like a "user fee," in that it is funded by that portion of the population that takes advantage of the service and not by those who do not need or desire the service

3. Faulty Predicate #3: Police Locate, Apprehend, and Return FTA's to the Court's Jurisdiction

In his report, Professor Colbert states that, regarding the task of locating, apprehending, and returning FTA's to the Court's jurisdiction, "[i]n the vast majority of cases, it is the police, not bondsmen, who perform this role . . . [B]ondsmen are usually passive and far less effective than local law enforcement in procuring the presence of defendants who fail to appear in court." Colbert Study at vi, 2. He continues:

> Despite widespread beliefs to the contrary, bail bondsmen assume a less active role in securing the return of clients who failed to appear in court. Indeed, police catch absconders far more often than do bail bondsmen.

Id. at 49.

Not only is this statement incorrect and unsubstantiated, it demonstrates a misunderstanding of both the law and how the bail industry operates. It is the personnel within the bail industry alone who face a 100% forfeiture and who have the financial incentive to return the FTA to the Court's jurisdiction. The financial incentive has, of necessity, caused Corporate Surety Bail to develop a highly effective system for apprehending FTA's. When a Corporate Bondsman accomplishes this task, the FTA client is "turned over" to the police for processing through the criminal justice system. It is, at this time, that the police take credit -- statistically speaking -- for the re-arrest. Corporate Bondsmen (at least prior to the Colbert Report's attempt to eliminate them) had no need or desire to self-promote and to receive "credit" for the re-arrest. Corporate Surety Bail's "credit" comes in the form of being released from financial liability for the defendant.

In support of his proposition, Professor Colbert, citing the 1998 Commissioner's Report-Table 10(a), set forth in App. I of the Colbert Report, states that "[i]n 1998, corporate sureties surrendered only 245 Maryland defendants, one sixth of the bonded defendants who failed to appear and forfeited bail." Colbert Report at 49. He adds that "[i]n 1999, bondsmen apprehended only 211 defendants who had failed to appear in court." Id. n.169. With no authority cited, he also notes that "[t]his is comparable to the national rate." Id. David Weishert, the District Court Coordinator of Commissioner Activity, whose office compiled this data, confirmed that the figures advanced by Professor Colbert—"the 245 for 1998 and the 211 for 1999" – represent the Md. Rule 4-217(h) surrenders and have no correlation to apprehensions of FTA defendants.[15]

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[15] Telephone conversations with David Weishert in December 2001.

The concept of, and procedure for, "**surrendering**" a defendant is set forth in Md. Rule 4-217(h), establishing the process for a Corporate Bondsman to "surrender" a defendant and be "discharged" from liability prior to forfeiture. A "surrender" usually takes place when a Corporate Bondsman receives information -- usually from family members or guarantors -- that a defendant who is on Corporate Surety Bail is going to become an FTA. To "surrender" a bailed defendant, the Corporate Bondsman must deliver the defendant and must give up the 10% premium charged. Accordingly, "surrender" occurs when the Corporate Bondsman makes a decision that the risk of losing 90% of the bail amount outweighs the plus of earning 10% of the bail amount. Thus, an additional feature of Corporate Surety Bail is that the Corporate Bondsman has a financial incentive to "keep his ear to the ground" and prevent FTA's from happening.

Professor Colbert misinterprets the data because, apparently, he is not familiar with the factual and legal distinction between "recapture of FTA's" and "surrender of bailed defendants." From this misunderstanding, the Colbert Report incorrectly concludes that it must be the police -- and not Corporate Bondsmen -- who apprehend FTA's. In fact, the cited "surrender" statistics, when viewed in the context of the required "surrender" procedure, illustrates the prudence of Corporate Bondsmen -- who necessarily act on information in advance of the defendant becoming an FTA -- to avoid an FTA and a likely bond forfeiture.

Any notion that it is the police who have the time and opportunity to search for, to find, and to apprehend and re-arrest the "general population" of FTA's, and specifically FTA's on Corporate Surety Bail, is not supported by reality. Although the police encounter FTA's when processing persons arrested for unrelated crimes and when conducting a records check during traffic stops, on a day-to-day basis, the police lack the resources to intentionally find the general FTA population[16] for which a Judge has issued a bench warrant.

In Baltimore City alone, there are 98,000 outstanding arrest warrants -- one for every seven City residents. See "98,000 Warrants Gather Dust in City," The Baltimore Sunpapers (November 21, 2001) ("chaos and inefficiency reign"). In Prince George's County, according to Sheriff Alonzo Black, "[a] task force that arrested 322 felony suspects [in October 2001] -- an average of 12 a day -- did not significantly reduce Prince George's County's backlog of outstanding felony warrants." See "PG's Warrant Sweep of 322 Barely Dents the Backlog," The Daily Record at 3B (November 24, 2001). According to the article, there are nearly 40,000 outstanding warrants in Prince George's County, even after a concerted effort to reduce the backlog.

The results -- namely, the number of forfeited bonds paid, as recited by Professor Colbert -- along with the statistics regarding outstanding arrest warrants, the "surrender" figures, and the other information cited above, demonstrate that it is the Corporate Bondsmen -- and not the police -- who locate, apprehend, and return to the Court's jurisdiction, with great efficiency, their bonded defendants that become FTA's, as well as those who are likely to become FTA's. Professor

[16] There are, of course, special police task forces that are specially assigned the responsibility of serving warrants. These task forces, which do an outstanding job, are generally geared toward serving warrants for violent crimes or other felonies.

Colbert's assertions to the contrary are incorrect.

DEPARTMENT OF JUSTICE STATISTICS
ON PERCENTAGE OF FTA's RETURNED TO COURT'S JURISDICTION

Year	Unsecured Bail	10% Deposit Bail	Full Cash Bail	Corporate Surety Bail	All Defendants
1992	55%	71%	64%	80%	68%

PERCENTAGE OF FTA's RETURNED TO COURT'S JURISDICTION
WHERE BAIL HAS BEEN ELIMINATED

Jurisdiction	Year	Unsecured Bail	10% Deposit Bail
Philadelphia	1998	74%	72%

The District Court data for Maryland does not include the "ultimate FTA rate," meaning the FTA rate after subtracting those FTA's who are returned to the Court's jurisdiction. However, as demonstrated by the above charts, both (1) the 1992 75-county Department of Justice Study, and (2) the Philadelphia Study in 1998 do include the "ultimate FTA rate."

As previously noted, the Department of Justice Study showed that defendants on Unsecured Bail (42% FTA's) and defendants on 10% Deposit Bail (21% FTA's) produce a greater percentage of FTA's than defendants on Corporate Surety Bail (15% FTA's). Moreover, an Unsecured Bail FTA and a 10% Deposit Bail FTA are more likely to remain an FTA – and not be returned to the Court's jurisdiction -- than a defendant on Corporate Surety Bail. In fact, for every 100 Unsecured Bail FTA's, only 55 are returned to the Court's jurisdiction, and for 10% Deposit Bail FTA's only 71 out of every 100 are returned to the Court's jurisdiction. By contrast, for every 100 FTA's who are the responsibility of a Corporate Bondsman, 80 are returned to the Court's jurisdiction.

This means that nationally (1) Unsecured Bail defendants had 125% more FTA's not returned to the Court's jurisdiction, when compared to FTA's who were the responsibility of a Corporate Bondsman, and (2) 10% Deposit Bail defendants had 45% more FTA's not returned to the Court's jurisdiction, when compared to FTA's who were the responsibility of a Corporate Bondsman. In Philadelphia – a jurisdiction that eliminated Corporate Surety Bail -- the percent of FTA's returned to the Court's jurisdiction was 74% for Unsecured Bail and 72% for 10% Deposit Bail. Thus, nationally, the "ultimate FTA rate" for defendants on Corporate Surety Bail, was 3%. In Maryland, the experience of Bail Association is consistent with the 1992 national statistics with an "ultimate

FTA rate" in the 2% to 3% range.

The Chicago Study determined that the cost of re-arrest for the alarmingly high number of FTA's was $3,474 per FTA, and it further noted that there was no way to determine the economic and non-economic societal costs when FTA's remain free in the population. Chicago Study at 74 ("**[T]his does not reflect the larger (and largely immeasurable) costs to victims of new crimes.**" Id. at 89). In "A Study of the Effectiveness and Cost of Secured and Unsecured Pretrial Release" (Crime Victims Study), conducted by Crime Victims United of California, an advocacy group for public safety and victims rights, the research indicated that "[a]n average failure to appear . . . imposes budgetary costs of between $1,109 and $1,270 and total costs, including social costs, of between $8,319 and $11,105." The Crime Victims Study further found:

> A more aggressive use of Surety Bond could have saved taxpayers between $3.5 million and $40.8 million in California's largest 12 counties, depending on exactly how aggressive that use was over the [six year study] period. In addition, the savings in total cost, including social costs, could have been between $35.4 million and $403.4 million over the same time period.

C. Bail Recommendations in the Colbert Report and the Deeley Report: (1) The Use of Unsecured Bail, and (2) the Use of "Automatic" 10% Refundable Deposit Bail – While Eliminating Corporate Surety Bail

The Deeley Report and the Colbert Report both urge the use of Unsecured Bail and 10% Deposit Bail, in lieu of Corporate Surety Bail. In fact, express in the Colbert Report -- and implied in the Deeley Report – is the recommendation that Maryland should study the elimination of Corporate Surety Bail. As previously explained in this Response, the factual, practical, and legal predicates advanced by the Deeley Report and the Colbert Report, in support of their "bail reform" recommendations, are flawed. Not only does Maryland's pretrial release system not need to replace Corporate Surety Bail with Unsecured Bail and 10% Deposit Bail, to do so would be ill-advised. Implementation of the Colbert and Deeley recommendations (1) would be costly for taxpayers, (2) would escalate the already high level of administrative burden and inefficiency, as well as frustration for almost all personnel in the criminal justice system, and (3) would be dangerous to public safety.

Unsecured Bail consists of the defendant's promise to pay the full bail amount if the defendant becomes an FTA, but with no collateral required to support the promise. Thus, Unsecured Bail is the same as ROR. The Department of Justice Study showed that 42% of the defendants on Unsecured Bail became FTA's. Despite this data and Professor Colbert's recognition that "[b]onded defendants generally reappeared in court at a higher rate than defendants released on recognizance," Colbert Report at 47, both the Colbert Report and the Deeley Report urge expanding the number of defendants released on Unsecured Bail.

The Colbert Report and the Deeley Report place much weight on information and authority from the four states -- Kentucky, Illinois, Oregon, and Wisconsin -- that have abolished Corporate Surety Bail, but make little use of information and authority from the 45 states (not counting Maryland) that utilize Corporate Surety Bail as an effective means of pretrial release. The Reports

mention the so-called "model" 10% Deposit Bail in Illinois, referring to the Chicago Study, titled "Cook County Pretrial Release Study," prepared by the Illinois Criminal Justice Authority. However, the Colbert Report and the Deeley Report fail to mention that the Chicago Study with the "model" 10% Deposit Bail also includes the "model" system's FTA rates – 30% for male defendants and 21% for female defendants.

In theory, it would be natural to assume that underlying both the Colbert Report and the Deeley Report are legitimate studies, initiated from a neutral posture, and designed to go wherever the law and the evidence would lead them. However, that may not be the case. Both of the Reports may have actually started with a preconceived bias against Corporate Surety Bail. If so, that may explain both (1) the exclusion of the bail industry during the studies that led to the Reports, and (2) the extent of errors contained in the Reports.

1. The Colbert/Deeley Recommended Rules Change and the Alleged Legal Basis for Such a Rules Change

The Colbert Report expressly takes the position – and the Deeley Report implicitly takes the position – that Commissioners and District Court Judges are not in compliance with the law. Colbert Report at 1; Deeley Report at 2, 18. The Reports take the position that Md. Ann. Code art. 27, § 616-1/2(b)(2) (recodified in Md. Crim. Proc. Code Ann. art. 5, effective October 1, 2001), presumptively places all defendants on ROR. If ROR is insufficient, then the judicial officer may set bail, which presumptively should be Unsecured Bail. If that is insufficient, and the judicial officer requires security, the defendant has the option to either retain the services of a Corporate Bondsman or to go to the Court and deposit 10% of the full bail amount.

The Reports are of the position that the decision regarding the use of the services of a Corporate Bondsman, versus depositing with the Court, it, by law, at the option of the defendant. The Reports believe that satisfying the bail by only depositing 10% with the Court, and promising to pay the remaining 90% if the defendant becomes an FTA, is an "automatic" right of the defendant. The Colbert Report and the Deeley Report both misunderstand the law. Compounding this misunderstanding, both Reports recommend amending Md. Rule 4-216 to reflect this misunderstanding. Deeley Report at 3, 16-17; Colbert Report at vii, 54.

The Maryland General Assembly never has – and does not now – provide for an automatic right of the defendant to post a mere 10% of the bail amount set by the Commissioner or District Court Judge. The legislature vests in Commissioners and District Court Judges the power to determine, within their discretion, (1) whether the defendant shall be required to post bail as a condition of pretrial release, and (2) if so, whether such bail shall be in the form of Unsecured Bail, 10% Deposit Bail, or Fully Secured Bail. The Maryland General Assembly gives to Commissioners and/or District Court Judges – but not to defendants – the power to determine which of these various types of bail shall be required.

About 50% of Maryland defendants who are eligible for pretrial release – and about

60% in Baltimore City -- are ROR.[17] Colbert Report at i, v. This means that, in 50% to 60% of the cases, a judicial officer determines that the defendant is sufficiently trustworthy that the defendant's personal promise (1) not to commit a crime while awaiting trial, and (2) to appear for trial as mandated, is good enough. For the lesser trustworthy 40% to 50% of the defendant population eligible for pretrial release, many of whom already have a criminal record, judicial officers establish conditions -- including bail -- because the mere promise to appear for trial and not to commit crimes in the interim is insufficient.

Therefore, it makes sense that the Maryland General Assembly would not have intended to convert Commissioners and District Court Judges into mere technicians – with the defendants and not the judicial officers selecting the method of bail. Studies in Maryland and throughout the nation, and studies in both "Corporate Surety Bail" jurisdictions and jurisdictions that have eliminated "Corporate Surety Bail," are in agreement that (1) the use of Unsecured Bail and refundable 10% Deposit Bail increases both "initial" FTA's and "ultimate FTA's" and, thus, they also create a danger to society, and (2) the FTA rates for defendants on Unsecured Bail and 10% Deposit Bail are even higher in jurisdictions that have eliminated Corporate Surety Bail, such as Chicago and Philadelphia.

Neither the Colbert Report, nor the Deeley Report, offers any statutory analysis or legislative history to support its understanding of the law. This Response provides that missing analysis of Maryland's statutes and rules, as well as the legislative history behind them. The Deeley/Colbert recommended amendments to Md. Rule 4-216 (Pretrial release) are, in substantial part, as follows:

> (a) Construction of rule.
>
> This rule shall be construed liberally to carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict or pending a new trial.
>
> (b) Release on personal recognizance.
>
> In accordance with this Rule and the Code, Criminal Procedure Article, § 5-101 and except as otherwise provided in Code, Criminal Procedure Article, §§ 5-201 and 5-202, a defendant is entitled to be released before verdict in conformity with this Rule on personal recognizance or with one or more conditions imposed.

2. <u>The Legislative History Behind – and the Intent of – Maryland's Pretrial Release Statutes and Rules of Court</u>

[17] Additionally, in Baltimore City, the State's Attorney has taken over, from the police, the responsibility of actually charging the suspects with the crimes. As a result, a substantial number of cases are being refused for prosecution. In fact, in 2001, state's attorneys "declined to prosecute 26 percent of the suspects who were arrested and brought to the Central Intake and Booking Center." See "Weeding Out Shaky Cases," The Baltimore Sunpapers at 1F (January 27, 2002).

In drafting recommended language for Md. Rule 4-216, the Colbert Report and the Deeley Report borrow language from the new Md. Crim. Proc. Code Ann. § 5-101 ("Release on personal recognizance"), which became effective on October 1, 2001, when the Maryland General Assembly created Maryland's new Criminal Procedure Code. In section 5-101 of that code, the General Assembly addressed only personal recognizance, naming that section "Release on personal recognizance." Nonetheless, the Colbert/Deeley approach takes the legislature's "personal recognizance" language from section 5-101 and then erroneously applies it to all pretrial release scenarios –not just to personal recognizance.

Title 5 of the new Md. Crim. Proc. Code Ann. is named "Release." In total, the "Release" title contains 15 sections, which are derived from former Md. Ann. Code art. 27, §§ 638A & 616-1/2. The Special Reviser's Note states that the new law is a recodification of the old law and is adopted "without substantive change." The confusion and misunderstanding, reflected in both the Colbert Report and the Deeley Report, is probably explained as follows:

The former statutory scheme placed "release on personal recognizance" in section 638A and placed "release subject to conditions" in section 616-1/2(d). By contrast, new Title 5 of Md. Crim. Proc. Code Ann. "houses" both former section 638A (addressing "release on personal recognizance") and former section 616-1/2 (addressing "release subject to conditions") in the same title. However, in doing so, Title 5. correctly juxtaposes "release on personal recognizance" from "release subject to conditions" by placing "release on personal recognizance" in subtitle 1. and "release subject to conditions" in subtitle 2.

Subtitle 1. of Title 5. of the Md. Crim. Proc. Code Ann. begins with section 5-101 (Release on personal recognizance). Subsection (a) of section 5-101 provides: "Construction of section. – This section shall be construed liberally to carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict." By express language, the legislature provided that this rule of "construction," as set forth in subsection (a) of section 5-101, applies only in this "section," i.e., only to section 5-101, which is titled "Release on personal recognizance."

In other words, when the judicial officer determines that the "personal recognizance" section is the appropriate pretrial release section, then "criminal sanction [should be relied on] instead of financial loss to ensure the appearance of a defendant." As indicated, the legislature did not provide that section 5-101(a) is a means of statutory construction to be applied to the entire title on "release," but rather it is a means of statutory when – but only when -- the "section" on "release on personal recognizance" is the applicable section.

In the pretrial release process, when a judicial officer makes a pretrial release determination, there are multiple steps, as follows: First, when a defendant appears before a particular judicial officer (the answer may be different if the judicial officer is a Commissioner or a District Court Judge), is the defendant (1) prohibited from being released, (2) rebuttably presumed not to be released, (3) granted pretrial release, but only if the judicial officer, in the exercise of discretion, makes a determination to grant pretrial release, or (4) entitled to a pretrial release determination?

Second, in (2), (3), and (4) above, unless the defendant is prohibited from being released on personal recognizance, is the defendant to be released (1) on personal recognizance, or (2) subject to one or more of the conditions of release set forth in Md. Rule 4-216(f)? Third, Md. Crim. Proc. Code Ann. § 5-101(a)-(b) provides that, if personal recognizance is sufficient "to ensure the appearance of a defendant, . . . the defendant may be released on personal recognizance."

As recommended by the Colbert Report and the Deeley Report, Md. Rule 4-216(a) would take the statutory construction language, as established by the legislature for personal recognizance cases, and incorrectly apply it to all cases. Reading proposed Md. Rule 4-216(a) and Md. Rule 4-216(b) together, the Colbert/Deeley recommendation appears to establish a rebuttable presumption for all defendants to be ROR. This could not be further from the legislative intent.

Ironically, even when ROR is sufficient to ensure a defendant's appearance at trial, section 5-101 does not mandate ROR, but rather provides that the defendant may be granted ROR. The reason for this is that "appearance at trial" is only one of three considerations that the judicial officer must address under Md. Rule 4-216(e)(3). The other two considerations are (1) "[p]rotect[ion of] the safety of the alleged victim," and (2) "[a]ssur[ance] that the defendant will not pose a danger to another person or to the community . . ." These two additional considerations may necessitate that the defendant not be released, or be released, but only subject to one or more conditions of release, including the threat of "financial loss."

The legislative history shows the interplay among (1) the intent of the Maryland General Assembly in enacting and rejecting bail and pretrial release legislation since 1968, (2) the intent of the Rules Committee and the Court of Appeals in promulgating rules governing bail and pretrial release since 1962, and (3) the intent of Congress in enacting the Bail Reform Act of 1966 and the Bail Reform Act of 1984, both of which heavily influenced the approach to bail and pretrial release taken by the states.

Maryland adopted the common law of England, as of July 4, 1776, through article 5 of the Maryland Declaration of Rights. By 1957, neither the Maryland General Assembly, nor the Court of Appeals, in its rule making power, had addressed bail and pretrial release. That year, the Court of Appeals decided Fischer v. Ball, 212 Md. 517 (1957), in which the Court surveyed – and relied on – the common law regarding bail. The common law rule was that "[a]ll persons shall be bailable by sufficient sureties except for capital offenses where the proof is evident or the presumption great." Id. at 521. Regarding bail in a capital case, the Court stated:

> The common law rule in capital cases (to which this opinion is confined) is that bail is in the discretion of the trial court. We think that under Article 5 of the Maryland Declaration of Rights, this rule of the common law, in which no constitutional or statutory change has been made, remains in force in this State.

Id. at 523. Thus, the common law rule was that there is no right to bail in a capital case because the granting of release on bail is within the Court's discretion. As to defendants not charged with a capital offense, the defendant "shall be bailable," provided there is "sufficient sureties." In 1962, the Court of Appeals adopted Md. Rule 777(a), which adopted the common law rule, providing: "Prior

to conviction an accused who is charged with an offense the maximum punishment for which is other than capital shall be entitled to be admitted to bail. In a capital case the accused may be admitted to bail in the discretion of the court."

When Congress enacted the Bail Reform Act of 1966, Maryland still had no bail statute. The premise of the 1966 federal legislation was that (1) defendants should be released pending trial, and (2) their promise to appear should be sufficient and, if not, judicial officers should impose the least onerous conditions to ensure their appearance. Pretrial conditions were designed for one purpose – ensuring appearance at trial. In fact, the American Bar Association (ABA), at that time, recommended the elimination of bail.

In 1968, based on the federal legislation and the ABA recommendation, Maryland studied bail reform and the elimination of Corporate Surety Bail. The study led to proposed legislation. The Report of the Proposed Bills to the General Assembly of 1968 by the Legislative Council of Maryland Special Subcommittee on Bail Bonds provided: "The subcommittee recommended a procedure whereby bail is not necessary for persons who clearly will be available to answer charges at trial. [P]ersons may be released on their own recognizance or upon the execution of an appearance bond unless it is determined that some greater security is needed." However, in the "Report of the Subcommittee on Bail Bond Reform by the Maryland State Bar Association," this State's organized bar rejected both the ABA recommendation and the congressional scheme in enacting the Bail Reform Act of 1966. The proposed Maryland legislation was not enacted.

In 1969, during the following legislative session, the Maryland General Assembly did enact Maryland's first bail statute. Md. Ann. Code art. 27, § 616-1/2, Ch. 557 (H.B. 347), 1969 Md. Laws. The statute's purpose was to deny bail, in certain situations, for defendants charged with certain crimes while on bail. The preamble to House Bill 347 provides the following: "[P]ersons indicted and charged for committing a certain offense while on bail or recognizance for committing a certain offense shall be ineligible for release on bail or recognizance for the subsequent charge until the prior charge has been finally determined by the courts . . ."

Thus, at the same time that Congress and the ABA were urging that pretrial release be made easier, and that appearance at trial was the only factor for consideration in the pretrial release equation, the Maryland General Assembly went in the other direction. The legislature created a "no bail" status for recidivists, even when the defendant was not charged with a capital offense. With such an enactment, Maryland was already "ahead of the curve," by factoring in not only appearance at trial, but also factoring in concern for public safety. Thus, after defeating "bail reform" in 1968, the 1969 legislature enacted legislation providing for certain "no bail" scenarios, i.e., ineligibility for pretrial release for offenses less than capital offenses.

Three years later, in 1972, the Court of Appeals Rules Committee addressed bail, and rejected the position taken by the ABA to prohibit Corporate Surety Bail. The Rules Committee stated: "A.B.A. Standard 5.2 . . . recommended the prohibition of compensated sureties. This recommendation was not concurred in by the Joint Committees of the Maryland Bar and the Judiciary on ABA standards." Minutes of the Rules Committee (October 16, 1972). In 1977, the Rules Committee expressly recognized Corporate Surety Bail in the Maryland Rules, stating: "The

suggested amendments to Rule 721 (pretrial release) . . . expand to include within the definition of bail bonds which may be taken pursuant to Rule 721(b)(4) an obligation of a corporation which is an insurer." Minutes of the Rules Committee (November 18, 1977).

In 1978, Md. Rule 721b (Conditions of release) required Commissioners and Judges to "impose the first of the following conditions of release that will reasonably assure the appearance of the defendant as required . . ." The rule provided a list of conditions – bail and otherwise – substantially similar to the current list set forth in Md. Rule 4-216(f) (Conditions of release). When the 1978 rule was promulgated, bail laws were still influenced by the Bail Reform Act of 1966, and the only consideration in the pretrial release determination was the defendant's "appearance at trial."

The four previous paragraphs demonstrate Maryland's legislative and judicial handling of bail and pretrial release, as a supplement to Maryland's common law, from 1968 through 1978. At the national level, during the 18-year period, beginning with the enactment of the Bail Reform Act of 1966, the experience of the criminal justice system forced a complete re-thinking of some of the previous "givens." First, defendants were becoming FTA's at an alarming rate. Second, there was an alarming percentage of crimes committed by defendants awaiting trial on pretrial release. Third, the criminal justice system could not afford – in programs or personnel -- the kinds of resources it would take to (1) reduce the FTA rate, (2) recapture FTA's, and/or (3) reduce the amount of crime committed by defendants awaiting trial.

In response, Congress enacted the Bail Reform Act of 1984. The legislative thrust of the 1984 statute was significantly different than that of its 1966 predecessor. In 1984, although there was still a goal of not unnecessarily detaining defendants pretrial, an equal – if not greater -- legislative goal was public safety. Under the new law, the conditions to be imposed on a defendant charged with a crime and awaiting trial now had a two-fold purpose, i.e., not only the purpose of ensuring the defendant's appearance at trial, but also the purpose of ensuring that the defendant remained crime free -- and the public remained safe -- while the defendant awaited trial. The legislative history of the Bail Reform Act of 1984 is instructive.

> [The 1984 Act] substantially revises the Bail Reform Act of 1966 in order to address such problems as (a) the need to consider community safety . . . The adoption of the changes marks a significant departure from the basic philosophy of the Bail Reform Act [of 1966], which [was] that the sole purpose of bail laws must be to assure the appearance of the defendant at judicial proceedings.
>
> . . .
>
> The primary purpose of the [Bail Reform] Act [of 1966] was to de-emphasize the use of money bonds in the federal courts, a practice that was perceived as resulting in disproportionate and unnecessary pretrial incarceration of poor defendants, and to provide a range of alternative forms of release. These goals of the [Bail Reform] Act [of 1966] – cutting back on the excessive use of money bonds and providing for flexibility in setting conditions of release appropriate to the characteristics of individual defendants – are ones which are worthy of support. However, 15 years of

> experience with the Act have demonstrated that, in some respects, [the Act] does not provide for appropriate release decisions. Increasingly, the Act has come under criticism as too liberally allowing release and as providing too little flexibility to judges in making appropriate release decisions regarding defendants who pose serious risks of flight or danger to the community.

S. Rep. No. 225, 98th Cong., 1st Sess., 1983, 1984 U.S.C.C.A.N. 3182, 1983 WL 25404.

The Bail Reform Act of 1966 was enacted during the pinnacle of both the Warren Court's judicial liberal activism and the partnership between the Johnson Administration and Congress on the "Great Society" programs. Influenced by both of these, the Act failed to strike the necessary balance between "too onerous" and "not onerous enough" in terms of requirements for pretrial release – at the expense of public safety.

Moreover, if the "carrot-stick" approach was imbalanced toward "too lenient" when the goal was simply "ensure that the defendant appears for trial," how much more of a problem might it be to both (1) "ensure that the defendant appears for trial," and (2) "ensure that the defendant does not pose too great a risk to the victim or society, if released pending trial." To address the public safety concerns, the Bail Reform Act of 1984 established preventive detention under certain circumstances when the judicial officer determines that the defendant poses a threat to the victim's safety or the safety of the public generally. In United States v. Salerno, 481 U.S. 739 (198), the Supreme Court upheld the constitutionality of the 1984 statute, against a challenge that detaining on the basis of future dangerousness violated substantive due process and punished a presumed innocent defendant.

Congress declared, through the Bail Reform Act of 1984, that its well-intended 1966 approach to managing the pretrial release component of the criminal justice system, at the federal level, had been a total failure. The Maryland General Assembly acknowledged this reality in the criminal justice system, through numerous enactments, that (1) mandated that judicial officers consider (a) appearance at trial. (b) victim safety, and (c) public safety, in making pretrial release decisions, and (2) "toughened" Maryland's pretrial release legislation, continually increasing those scenarios in which pretrial release would be more difficult to obtain.

By 2002, in Maryland, there is a large list of offenses and situations for which the legislature has prohibited Commissioners from granting pretrial release. For those offenses and those situations, only a District Court Judge may release a defendant, and, even then, there is a statutory presumption (1) that the defendant will become an FTA, and/or (2) that the defendant poses a danger to the community. As such, there is also a statutory presumption that the defendant shall be denied pretrial release. These crimes include drug kingpin and escape from confinement, even if it is a first offense. In addition, there are offenses for which there is no pretrial release as a matter of right, but only within the discretion of the judicial branch, e.g., crimes punishable by life in prison.

Moreover, for recidivists, the pretrial release picture is statutorily even more onerous. The presumption of non-release applies for all crimes of violence committed by defendants with a prior conviction for a crime of violence. Furthermore, the presumption of non-release applies for many offenses committed by defendants who, at the time of the offense, are on pretrial release, even

though the defendant is presumed innocent, e.g., arson, burglary, child abuse, destructive devices, drug offenses, vehicular manslaughter, and all crimes of violence. This is the same for defendants who are charged with violating ex parte orders or orders of protection. In addition, not only is there a presumption of becoming a FTA and being a "danger to the community," and, thus, a presumption of non-release, if the defendant attempts to rebut the presumption, the legislature provides guidance to District Court Judges, listing "suitable bail" as the first consideration.

From 1978 to 1998, Md. Rule 4-216 (and its predecessor) required the judicial officer to "impose the first of the following conditions of release that will reasonably assure the appearance of the defendant as required . . ." Consistent with the era and the tone of the Bail Reform Act of 1966, the 1978 rule reflected the only consideration in the pretrial release decision, i.e., would the defendant appear for trial? The Bail Reform Act of 1984 added preventive detention and required the pretrial release decision to consider not only whether the defendant would appear for trial, but also whether the defendant poses a danger to the victim and/or to society generally.

Consistent with the new reform era and the new tone, the Maryland General Assembly enacted, in various contexts, the requirement that judicial officers consider not only the issue of whether the defendant will appear at trial, but also whether the defendant poses a danger to the victim and/or to society generally. In 1998, the Court of Appeals amended Md. Rule 4-216(e)(3) to ensure that its rules reflected this legislative mandate, with the following language: "[T]he judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release . . . that will reasonably: (A) Assure the appearance of the defendant as required; (B) protect the safety of the alleged victim . . . ; and (C) Assure that the defendant will not pose a danger to another person or the community . . . ."

According to the Honorable Joseph F. Murphy, Jr., Chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure, the 1998 change to Md. Rule 4-216(e)(3) was designed to strike the appropriate balance in light of the legislative mandate. On the one hand, Commissioners and District Court Judges should consider not only the defendant's likelihood to appear at trial, but should also consider the danger that the defendant poses to society generally – and to the victim, in particular -- if released. On the other hand, Commissioners and District Court Judges should impose conditions no greater than necessary to accomplish the three-fold consideration of (1) appearance at trial, (2) safety of the victim, and (3) public safety.

Thus, with the 1998 change, the mandate of Md. Rule 4-216, placed on Commissioners and District Court Judges, was no longer merely to impose "the first of the following conditions of release that will reasonably assure the appearance of the defendant as required . . ." Instead, the mandate on judicial officers expanded to require them to consider not only the appearance of the defendant at trial, but also consider the safety of both the victim and society generally. Because there may be different considerations regarding – and different conditions necessary to accomplish -- appearance at trial and the safety of the victim and society, the 1998 amendment to the rule authorized judicial officers to review all possible conditions, as a collective whole, and not merely the first condition, the second condition, etc., in seriatim. The 1998 rule change was designed to provide a greater flexibility, on a case-by-case approach, for judicial officers on the front lines.

In light of the Deeley Report's recommendation that the Maryland Rules be amended, the Rules Committee Criminal Subcommittee met on November 14, 2001. With four of the six subcommittee members present, the Criminal Subcommittee recommended to the full Rules Committee the adoption of the recommendation in the Deeley Report. On January 4, 2002, for more than two hours, the Rules Committee heard from Mr. Deeley, on behalf of the Deeley Committee, and Professor Warnken, on behalf of the Bail Association. Professor Warnken urged the Rules Committee not to adopt the proposed rules change but, instead, to send this issue back to the Criminal Subcommittee in light of the presentations that the Rules Committee heard that day. The Rules Committee unanimously adopted a resolution consistent with Professor Warnken's recommendation.

3. Addressing Public Safety, Which Is Society's Number One Concern, in Light of the Increased FTA's That Would Result from More Unsecured Bail and More 10% Deposit Bail

Public safety is one of the – if not the -- most important concern of our citizenry. As demonstrated, Unsecured Bail and 10% Deposit Bail invariably lead to more FTA's. Moreover, FTA's are more likely to commit crimes while in their FTA status. Obviously, the sooner an FTA is apprehended, and returned to the Court's jurisdiction, the better.

Through Corporate Surety Bail, the private sector is "invested" in the defendant, and the family and friends are brought into the "circle of responsibility." As a result, once a bonded defendant fails to appear, the Corporate Bondsman is immediately taking steps to locate, apprehend, and return the FTA defendant, in order to discharge the financial liability. The family and friends who are guarantors on the bond are likewise motivated, due to their financial exposure.

To the contrary, for FTA's released through other methods, such as Unsecured Bail or 10% Deposit Bail, there is never the sense of urgency for return – not on the FTA's part and not on the part of the criminal justice system. FTA's who are not on Corporate Surety Bail come to know that they will simply join the ever growing list of warrants to be served, as the number of open warrants in Baltimore City reaches 100,000. Moreover, rarely is a defendant who fails to appear ever charged with the separate "FTA" charge. Thus, the FTA has unilaterally creates a continuance – maybe even a permanent continuance – for himself. The "street" is smart and acts accordingly.

For Baltimore City, which has made considerable strides in reducing violent crime under Mayor Martin O'Malley and Police Commissioner Edward Norris, the increased burden of FTA warrants resulting from Unsecured Bail and 10% Deposit Bail would thwart that progress and further burden a police force already confronting an enormous workload, including the 98,000 open warrants.

There are additional societal costs that are oftentimes overlooked. The foremost societal cost is best described in the Chicago Study as: "the larger (and largely immeasurable) costs to the victims of the new crimes." The California Crime Victims Study, in attempting to quantify the costs of FTA's, found that "[a]n average failure to appear . . . imposes . . . total costs, including social costs, of between $8,319 and $11,105." In addition to the "new victims," there is also the notion that,

without the prospect of immediate consequence, there will be a wholesale contempt and disrespect for the entire criminal justice system.

4. Addressing Increased Cost to Taxpayers, Which Is Society's Number Two Concern, and Which Would Result from Adoption of the Recommendations in the Colbert Report and the Deeley Report.

The fiscal consequences of Unsecured Bail and 10% Deposit Bail are substantial. Although the defendant may deposit 10% of the bail amount with the Court, these programs are, nonetheless, largely taxpayer funded. The primary costs include (1) the measurable costs to administer the program, and (2) the cost of re-arrest following the FTA, which the Chicago Study determined to be $3,474 per FTA. Deeley Report at 12 (citing Chicago Study at 74). When multiplying $3,474, times each of 37,525 FTA's, the re-arrest cost alone exceeds $130 million.

If the FTA rate, in Maryland, for defendants not on Corporate Surety Bail was reduced to the FTA rate for defendants on Corporate Surety Bail, there would have been 7,567 fewer FTA's in1998 and 1999. The cost just to re-arrest those extra FTA's caused by the non-diligence in the criminal justice system for the defendants not on Corporate Surety Bail, when compared to defendants on Corporate Surety Bail, totals more than $26 million. Corporate Surety Bail has a demonstrated superior performance in procuring defendants' appearance at trial. However, when a defendant on Corporate Surety Bail becomes an FTA, the cost to the criminal justice system is less because much of the cost to re-arrest is most frequently absorbed by the Corporate Bondsman, who locates, apprehends, and returns the FTA to the Court's jurisdiction.

In addition, curtailment or elimination of Corporate Surety Vail would mean a loss of tax revenue that is currently generated by the insurance premium taxes[18] and income taxes paid by the insurance companies, the Corporate Bondsmen, and their employees, all of which inure to the benefit of the general treasury of the State.

5. Increased Administrative Burdens

Expansion of Unsecured Bail and 10% Deposit Bail would produce logistical, fiscal, and administrative burdens. When the Court system becomes the bail bond company, with many defendants paying in cash, there must be adequate controls when receiving, safeguarding, accounting for, and dispersing the funds. Thus, there will a need for increased staffing, as all of the bail bond agencies become, in essence, absorbed by the State. The failure to pursue collections on 10% Deposit Bail against the FTA's will foster disrespect for the criminal justice system, and may give rise to equal protection challenges.

6. 10% Deposit Bail Will Not Relieve Jail Overcrowding

[18] The premium tax rate in Maryland is 2% of the gross premiums, exclusive of any retaliatory tax that may be due. Additionally, in the Seventh Judicial Circuit, bondsmen pay a tax or license fee equal to 1% of the face amount of each bond written in that Circuit. Md. Crim. Proc. Code Ann. § 5-203(b).

Some have suggested that Unsecured Bail and 10% Deposit Bail will relieve jail overcrowding. In fact, the opposite is true. Corporate bondsmen routinely allow for "installment" payments of bail premiums, see Insurance Commissioner v. Engelman, 345 Md. 402, 692 A.2d 474 (1997), thus allowing defendants, who would otherwise remain incarcerated, to be released. Presumably, the Court system will not offer "no interest installment plans" on "10% Deposit Bail." Consequently, retaining the services of a Corporate Bondsman may result in release from incarceration sooner. While waiting for defendants to obtain all of the 10%, jail overcrowding will increase.

There is concern about the defendants being held at the Baltimore City Detention Center on smaller bonds. However, there are multiple reasons why defendants do not make bail, including other pending charges, detainers from other jurisdictions, time being served on other cases, and because family members who do not want the defendant on the street or are unwilling to help the defendant based on a "tough love" theory, etc.

The Maryland Association has been working with Commissioner Lamont Flanagan on initiatives to reduce the population at the Baltimore City Detention Center, particularly for those defendants with small bonds. One initiative offered by the bail industry, which is pending before Secretary of Public Safety and Corrections Stuart Simms, focuses on defendants charged with non-violent crimes and having bonds of $1,000 or less. The Bail Association's proposal could release many jail bed days per year. With an estimated daily incarceration cost of $55 per defendant, this initiative could save thousands of dollars.

In sum, Unsecured Bail and 10% Deposit Bail cannot -- and do not -- operate with the same level of efficiency or effectiveness as Corporate Surety Bail. This manifests in terms of "assuring appearance" at all required court dates, and in terms of locating, apprehending, and returning FTA's. There is the tremendous cost, plus the risks to public safety. By producing a lower FTA rate, and by actively seeking to apprehend FTA's, Corporate Surety Bail aids the orderly administration of the criminal justice system and reduces economic and societal non-economic costs that come with each criminal act that is perpetrated by an at-large FTA defendant.

D. Other Recommendations in the Colbert Report and the Deeley Report

1. A Statewide Pretrial Release Program at an Annual Cost of $20 Million

Professor Colbert asserts that, in his view, Commissioners and District Court Judges are making decisions "without essential information." This predicate apparently serves, in large part, as the basis for items 1. through 3. in the Types of Recommendations. It could hardly be contended that Commissioners and Judges should make decisions "without essential information," just as it could hardly be contended that a committee studying pretrial release and the bail system should do so "without essential information." Professor Colbert proffers the Commissioner Survey Report of Professor Ray Pasternoster, Colbert Report at App. E, as support for the assertion that the Commissioners and Judges are acting "without essential information."

There are at least two different Pasternoster Reports distributed as App. E to the Colbert

Report.[19] The first Pasternoster Report, which appeared in the Colbert Report, as originally released on September 12, 2001, is included as App. D1 to this Response. The second Pasternoster Report (apparently, the correct version) is included as App. D2 to this Response (Pasternoster Reports). The original Pasternoster Report stated "that bondman [sic] are an important source of information" – the most important source of information -- to Commissioners in determining whether to set bail for a defendant. App. D1 at 10. The Bail Association's legislative counsel brought this allegation to light by letter, dated September 24, 2001, to Mr. Deeley and to Professor Colbert, who retracted the statement, advising that while assembling the Report for duplication, he "included a much earlier draft of App. E [the original Pasternoster Report], which contained a coding error."[20]

Although the actual source data was not included in the Colbert Report, and thus not subject to analysis here, even a cursory review of the Pasternoster Reports indicates that, like the "coding" error in the original Pasternoster Report, other errors ("coding" or otherwise) likely exist in the "corrected" Pasternoster Report. The underlying survey used to compile the data and the Pasternoster Reports was confusing at best.[21] Even assuming the accuracy of the data collected and reported, the conclusion that Professor Colbert draws -- namely, that the Commissioners and Judges are acting "without essential information" -- is conclusory and unsupported.

In all decision making processes, including the setting and reviewing of bail, there is necessarily a balance that must be struck. The costs would be too great -- in terms of efficiency, cost, and otherwise -- to require that all conceivable information be obtained and verified. Even then,

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[19] Oddly enough, there appears also to be several versions of the Colbert Report. As noted, the original Colbert Report was released on September 12, 2001 (with the original Pasternoster Report). However, there appears to a version with a "July 2001" cover, thus making two original versions. The next – or third version – appears to be the "corrected" Colbert Report, with the corrected Pasternoster Report, which has the curious notation of "REV: 10/02/01." It is unclear at what point prior to Mr. Cooke's letter, dated September 24, 2001, that the "coding error" was discovered. Based on the Deeley Committee minutes, it must have been sometime after October 25, 2000. Indeed, according to the Deeley Committee minutes, the accuracy of the "bondsmen as an important source of information" statement was questioned at least twice. Commissioner Elmore questioned it during the meeting on August 22, 2000, Deeley Report at App. B-6 to B-7, and during the meeting on September 12, 2000, reference was made to a letter from (former) Chief Judge Rasin, advising that the statement "simply cannot be correct." Id. at App. B-12. Professor Colbert thereupon promised to have Professor Pasternoster review the data to ensure against error, and, during the subcommittee meeting on October 25, 2000, he reported that Professor Pasternoster had "double checked the figures" and affirmed their accuracy. Id. at App. B-22. The minutes of the remaining four meetings do not disclose when the "triple check" apparently took place, resulting in the discovery of the "coding error," and no reference is made to the Deeley Committee being so informed.

[20] While retracted in his letter, dated October 3, 2001, to Mr. Deeley, with copies to the other Deeley Committee members, to Chief Judge Bell, and to Mr. Cooke, apparently the Colbert Report, with the original Pasternoster Report, had been – *and, until at least January 31, 2002, continued to be* -- publicly released and disseminated. Although it is unknown whether the retraction was likewise disseminated to all other recipients, it appears unlikely, as this inaccurate comment, coupled with the tone of the Colbert Report, apparently lead one editor of the Baltimore Sunpapers to opine that "court commissioners and Judges . . . are in *cahoots* with bail bond firms." See "Serving Jail Time for Lack of Money," Baltimore Sunpapers at F2 (October 28, 2001) (emphasis added).

[21] The Minutes of the Deeley Committee reflect that some confusion may have existed with the survey. In fact, in response to certain results from the survey, Mr. Elmore queried "whether commissioners correctly understood the survey question as to source of information . . . " Deeley Report at App. B-6.

because the process necessarily includes a human subjective element, the decision can never be perfect. Indeed, the bail determination and review process is an "art" rather than a "science." Despite Professor Colbert's belief to the contrary, the results within the criminal justice system suggest that, on balance, both Commissioners and Judges are doing a capable job in making rational pretrial release determinations to reasonably (1) ensure the appearance of the defendant at trial, (2) safeguard the victim, and (3) safeguard society. If anything, the statistical data indicates that the Commissioners and Judges in Maryland are giving the "benefit of the doubt" to the defendants, given the number of defendants released without security and the FTA rates.

About 60% of the Baltimore City defendants (and about 50% on a statewide basis) who are eligible for pretrial release are granted ROR status. Colbert Report at i, v. This means that a judicial officer determined that this half of the defendant population was sufficiently trustworthy that their promise (1) not to commit a crime while awaiting trial, and (2) to appear for trial as mandated, was good enough. For the lesser trustworthy 40% to 50% of the defendants who are eligible for pretrial release, many of whom already have a criminal record and prior FTA's, judicial officers established conditions, including requiring the posting of bail, because the mere promise to appear for trial and not to commit crimes in the interim were deemed insufficient.

Among fiscal priorities -- at any time, but particularly now—it would be ill-advised to expend unprecedented public funds to establish and implement a fully effective system of (1) pretrial services and supervision, (2) appearance at trial, and (3) immediate re-arrest of FTA's. Recommendation #1 of the Deeley Report addresses the establishment of a statewide pretrial release agency. The recommendation calls for a 24-hour-a-day framework in which Government would "do it all."

Under this recommendation, the statewide pretrial release agency would (1) conduct a pretrial release investigation into the background of every defendant; (2) provide verified information to judicial officers, prosecutors, and defense attorneys as to each of the pretrial considerations under Md. Rule 4-216, including employment status and history, family ties, financial circumstances, and residence; (3) provide information to victims, witnesses, and the defendant's family regarding scheduling, procedures, pretrial release conditions, etc.; (4) monitor defendants regarding pretrial release conditions, home detention, work release, treatment, and other programs; (5) communicate with employers, family members, treatment facilities, victims, and witnesses, both to gather information for the defendant's compliance with pretrial release conditions and to provide information regarding changes in pretrial status and trial dates; and (6) monitor release eligibility of detained defendants and inform judicial officers, prosecutors, and defense attorneys of changes in status. Deeley Report at 10.

The Deeley Report recognized that the key issue is funding. Id. at10. The cost, based on 1990 dollars, was almost $5.5 million annually for 19 counties that excluded the so-called "Big 5" -- Anne Arundel County, Baltimore City, Baltimore County, Montgomery County, and Prince George's County. The cost for Baltimore City alone was $2.4 million. Id. at 11. If the 19 small counties would have cost $5.5 million, and Baltimore City would have cost $2.4 million, the other four large counties would probably have cumulatively cost at least another $5.5 million. At about 3% per year increase, the cost in 2002 would be about $20 million. Presumably, one of the many reasons for

such a program would be to reduce the cost of pretrial detention. At a per diem median cost of about $50, id. at 11-12, a reduction of even 10,000 bed days would only reduce the $20 million projected cost by about half a million dollars.

There has always been the notion that if Government simply "throws" enough money at a problem, Government can solve the problem. However, even if there were unlimited funding for the statewide pretrial services envisioned, there remains serious question as to Government's ability to accomplish the necessary tasks, as effectively as the current system. Many government programs have invested enormous amounts of money -- and failed. Moreover, the statistical data shows that Corporate Surety Bail is the most effective method of release.

It is realistic to believe that (1) Government cannot properly supervise the conduct of those defendants who are released awaiting trial so as to reduce the number of crimes committed by defendants on pretrial release; (2) Government cannot properly accomplish, with an ever-increasing defendant population, an FTA rate as favorable the current FTA rate; and (3) Government cannot efficiently locate, re-arrest, and return to the Court's jurisdiction the FTA's, as indicated by the current backlog of unserved warrants in the two most active venues -- Baltimore City and Prince George's County. Thus, there will be the enormous – and virtually certain -- cost in dollars and human and societal terms because of the "at large" FTA's.

2. Attorneys at Initial Appearances and Bail Review Hearings

Regarding Recommendation #2 (defense counsel at initial appearances and bail review hearings) and Recommendation #3 (prosecutors at bail review hearings), this Response neither opposes nor supports either, but it does note the issue of cost and efficacy. The presence of public defenders and prosecutors makes the process adversarial and, as (former) Chief Judge Rasin informed the Deeley Committee, "may result in higher bails, as occurred to the consternation of Public Safety in Baltimore City when prosecutors and defense attorneys began attending bail reviews in person." Deeley Report at App. B-21.

With regard to Recommendation # 2, Professor Colbert relies on the results of his "Lawyers at Bail Project" (LAB) to support the recommendation. He asserts that "[p]roviding legal representation to indigent defendants at the bail review hearing would significantly reduce Maryland's pretrial jail population [and that] the popular stereotype of arrestees is inaccurate: most arrestees had strong ties within the community and were good risks to return to court." Colbert Report at 26. Although a critique of the LAB project and resulting report, authored by Professor Ray Paternoster and Professor Shawn Bushway (LAB Report), is not within the scope of this Response, certain observations are noteworthy:

The LAB control group consisted of 300 subjects, with 175 assigned to LAB attorneys and 125 in the control group. **The typical LAB client reportedly "had been with their current employers an average of four years."** Id. n.95. Experience makes it hard – if not impossible to believe -- that this would be a typical Baltimore City defendant. Moreover, a defendant with that employment status (1) would be unlikely to qualify as "indigent," and (2) would most likely be granted ROR by a Commissioner or District Court Judge, with or without an attorney present,

particularly when charged with a non-violent crime, to which the LAB project was limited. State Public Defender Stephen Harris, Esquire, indicated that the LAB project sample of participants was "skewed." See "Little Hope for State Wide Bail Bill," The Daily Record (March 16, 2000).

In addition, it is unclear whether the law provides indigent defendants with public defenders for initial appearances before Commissioners. From a constitutional standpoint, the Sixth Amendment right to counsel applies to preliminary hearings, under Coleman v. Alabama, 399 U.S. 1 (1970), and Green v. State, 286 Md. 692, 695 (1980), and arraignments, under White v. Maryland, 373 U.S. 59, 60 (per curiam), and Hamilton v. Alabama, 368 U.S. 52, 54 n.4 (1961), because they are adversarial trial-like confrontations. However, the Sixth Amendment right to counsel does not apply to initial appearances, under Gerstein v. Pugh, 420 U.S. 103 (1975), and Hebron v. State, 13 Md. App. 134, 138 (1971), because that is a non-adversarial, non-critical stage proceeding.

However, the analysis cannot stop there because for Maryland defendants, "'the right to counsel under the Public Defender Act is significantly broader than the constitutional right to counsel." McCarter v. State, 363 Md. 705, 713, 770 A.2d 195, 200 (2001) (quoting State v. Flansburg, 345 Md. 694, 700, 694 A.2d 462, 465 (1997)). Md. Ann. Code art. 27A, § 6(b), provides that "[r]epresentation . . . shall extend to all stages in the proceedings, including custody, interrogation, preliminary hearing, arraignment, trial, . . . and appeal."

In McCarter, the defendant prayed a jury trial in District Court, and the case was transferred to the Circuit Court. 363 Md. at 707, 770 A.2d at 196. The issue in McCarter arose at the defendant's Circuit Court arraignment, which the Court noted is now called an "initial appearance." Id. at 716, 770 A.2d at 201. The Court held that the defendant had a statutory right to counsel at his initial appearance before the Circuit Court because that appearance was an "arraignment," which is an enumerated proceeding in section 4(d) of the Public Defender's Act. 363 Md. at 715-16, 770 A.2d at 201. Moreover, "regardless of whether the . . . proceeding was an 'arraignment,' within the meaning of the statute, the statutory right to counsel 'extends to all stages in the proceedings.' 'All' means 'all' . . . The specific types of proceedings listed in the statute and rules are for purposes of illustration only." Id. at 716, 770 A.2d at 201.

The language of section 6(b), and the dicta of McCarter, seem to require counsel at the initial appearance before a Commissioner. This is supported by the statutory language "all stages in the proceedings" and the McCarter Court's broad interpretation of this language. Moreover, even though the laundry list of counsel occasions does not include the initial appearance before a Commissioner, the list starts with "including" and is only for illustration purposes. Furthermore, section 4(b)(1) may be read to mean that counsel is provided at all stages once the defendant reaches "presentment before a commissioner or judge." In addition, Md. Rule 4-213(a)(3) requires the Commissioner to make a pretrial release determination, which, under Md. Rule 4-216(f), includes "[i]nformation presented by defendant's counsel."

The counter argument is that the statements in McCarter are mere dicta as to whether the defendant has a right to statutory counsel before a Commissioner. Because McCarter addressed the right to counsel at a Circuit Court arraignment, which is constitutionally and statutorily mandated, its dicta may not resolve the issue. The expression of one is the exclusion of others. "Initial

appearance" before a Commissioner, under Md. Rule 4-213, "preliminary hearing," under Md. Rule 4-221, and "arraignment" (or "initial appearance" in the Circuit Court) are terms of art, reflecting three distinct steps in the pretrial phase.

In section 6(b), the legislature expressly included "preliminary hearing" and "arraignment," as stages for which a public defender would be provided. However, there is a striking change of expression, as the legislature excluded "initial appearance" from its otherwise all-inclusive laundry list. In addition, when a defendant appears before a Commissioner for an initial appearance, one of the Commissioner's duties, under Md. Rule 4-213(a)(2), is to inform the defendant of the right to counsel, which sounds like a future event.

Even if the statute provides for public defenders at initial appearances, such representation is problematic in light of the requirement to verify indigency. An attorney is only provided, at taxpayer expense, to individuals who are indigent. Md. Ann. Code art. 27A, § 7(a), provides:

> Eligibility . . . shall be determined on the basis of the need of the person seeking legal representation. Need shall be measured according to the financial ability of the person to engage and compensate competent private counsel . . . Such ability shall be recognized to be a variable depending on the nature, extent and liquidity of assets; the disposable net income of the defendant; the nature of the offense; the effort and skill required to gather pertinent information; the length and complexity of the proceedings; and any other foreseeable expenses.

The Public Defender's Office must promulgate administrative regulations, establishing the eligibility criteria. See 79 Op. Md. Atty Gen. 354 (1994). Section 7(b) requires "[t]he Office of the Public Defender [to] make such investigation of the financial status of each defendant . . ." Section 7(a) provides:

> In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, the office may undertake representation of an indigent person provisionally, and if it shall subsequently determine that the person is ineligible, it shall so inform the person, and the person shall thereupon be obliged to engage his own counsel and to reimburse the office for the cost of the services rendered to that time.

Section 7(d) provides that "[t]he reasonable value of the services rendered to a defendant pursuant to this article shall constitute a lien on any and all real property or personalty in which the defendant shall have or acquire an interest, except for the residence of the defendant." Section 7(d)-(h) establishes (1) a mechanism for perfecting the lien, (2) an adversarial hearing for the defendant to contest the State's entitlement to the lien and the value of the services rendered, (3) a mechanism for separately indexed books for the recordation of the liens, (4) the collection of the moneys due to the State, and (5) court orders of reimbursement, both in context of the criminal case and other than in the context of the criminal case.

Regarding Recommendation #3, seemingly, the presence of an assistant state's attorney at a

bail review hearing should be at the discretion of the State's Attorney,[22] as opposed to being compulsory. Again, it is a cost and efficacy issue, which the State's Attorney in each venue is necessarily best suited to determine, whether as to a particular case or as to policy, taking into account all considerations, including fiscal considerations.

3. Judicial Education

As regards Recommendation #4 (judicial education), one could hardly discourage the notion of educating Commissioners and Judges. This Response supports the proposition. Indeed, Commissioners and Judges should be educated as to the effectiveness of Corporate Surety Bail, particularly the statistical data, as well as the public safety and fiscal considerations, all of which suggest that, if anything, greater utilization of fully secured bail -- and a reduction in ROR, Unsecured Bail, and 10% Deposit Bail -- is warranted.

IV. A Summary of the Colbert Report Inaccuracies

From a review of the materials giving rise to, and included in, the Colbert Report and the Deeley Report, it appears that both Reports were actually multiple steps in Professor Colbert's goal of eliminating Corporate Surety Bail in Maryland. If philosophical differences were all that were at issue, this section of the Response would be unnecessary. Of course, as noted earlier, had the appropriate fact gathering and deliberative process been undertaken, this entire Response would have been unnecessary. Many of the inaccuracies, omissions, and internal inconsistencies in the Colbert Report have been covered, but a recapitulation of the most significant errors may be helpful.

A. Bail Bondsmen Are the Primary "Source of Information" for Commissioners in Determining Whether to Set Bail

B. Corporate Surety Bail Is Largely Unregulated

C. The FTA Rate in Maryland is 5.3%, with Almost 95% of Defendants Appearing As Scheduled in the District Court

D. There Is No Objective Basis for Believing Corporate Bondsmen Provide a Greater Assurance That Defendants Will Appear in Court

E. Corporate Bondsmen Apprehended Only 245 FTA Defendants on Corporate Surety Bail in 1998 and Only 211 Such FTA's in 1999, and the Police Apprehended the Rest of the Defendants on Corporate Surety Bail

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[22] According to the Deeley Committee minutes, this practice exists in Harford County. Deeley Report at App. B-14. Robert Dean, Esquire, a Deeley Committee member, remarked that "if pretrial services are present, an assistant state's attorney would have nothing to add." Id.

One additional aspect of the Colbert Report -- the discussion of the revenues of Corporate Surety Bail, as estimated by Professor Colbert -- merits discussion because it presents incorrect information that either has the effect of unfairly and incorrectly casting the bail industry in an unfavorable light.

The Colbert Report estimates annual revenue in Maryland of Corporate Surety Bail to be between $42.5 million and $170 million – a range of $127.5 million, which lacks credibility by establishing a range for which the "high" is four times the low, i.e., $42.5 million x 4 = $180.0 million. It appears that Professor Colbert derived his revenue estimate by examining the financial statements filed by the various insurance companies that are authorized by the Maryland Insurance Administration and that have qualified, with the District Court, to write bail bonds in Maryland. Colbert Report at 45.

Despite an acknowledgment that the "Department of Insurance [sic, Maryland Insurance Administration] and the District Court personnel suggested contacting the surety company and individual bail bondman to obtain the revenue information," Professor Colbert gathered the names of surety companies from the District Court list, obtained annual statements, and compiled, with limited exceptions, each company's entire surety line premiums, without regard for how much, if any, of its premiums were for bail bonds. To compound the error, the Colbert Report, apparently without any further inquiry, and based solely on one permitted method of accounting and reporting of bail premiums, applied a factor of ten to the number he erroneously compiled, as constituting premiums. Because those companies authorized to write bail bonds had reported total surety premiums of $17 million, he decided that as much as $170 million in bail premium may have been generated.

Professor Colbert apparently did not check with District Court personnel or JIS, which is the readily available and accessible District Court's computer information system, to see which companies had appointed bail agents and were writing bail bonds. He could have learned that several of the companies whose premiums he included did not have any appointed agents, and that some he included have either (1) never written a bail bond, such as Atlantic Bonding Company, or (2) if they ever did write bail, they are – and were for the year he studied -- inactive, such as National Surety Corporation of Chicago and St. Paul Mercury Insurance Company.

Although cognizant that companies may write other types of surety bonds other than bail bonds, Professor Colbert did not inquire as to what portion, if any, of the reported Corporate Surety Bail premiums for each company was attributable to bail bonds. Moreover, many companies write not only bail bonds, but other types of surety bonds, e.g., contractor's performance bonds, supersedeas bonds, probate bonds, and the inclusion of all Maryland surety premiums would greatly affect any estimate.

Professor Colbert used a methodology that would result in a greatly exaggerated estimate. Although he apparently recognized that there are two appropriate accounting methods for bail premiums ("Amwest, too, reporting only net premiums received." Colbert Report, at 42 n.147). He nonetheless multiplied the "so-called" reported revenue of $17 million by 10, which sharply distorted upward the estimates. He ignored the absence of a Supplemental Schedule of Premiums Written, as existed for those companies reporting "net." Moreover, Professor Colbert failed to – even though

urged to -- contact individuals within the Corporate Surety Bail community.

Lastly, but importantly, Professor Colbert apparently made no attempt to reconcile the number of Corporate Surety Bail defendants for whom bonds were written. According to App. I of the Colbert Report, in 1998, 35,925 defendants used the services of a Corporate Bondsmen. Let's assume that additional bail bonds posted at the Circuit Court would add 10%, there would be nearly 40,000 Corporate Surety Bail defendants purporting to generate up to $170 million in premiums – from $1.7 billion in the total face value. That would mean that the average bail was about $42,500, by dividing $1.7 billion by 40,000 bail bonds. Thus, for the revenue estimate to be accurate, the average bail would have to be $42,500 and not $8,239 (which was the Baltimore City average as explained in Colbert Report). Colbert Report at 44, n.151. To further complicate this, industry information reveals that the average bail in Maryland, in 1998, was below $7,000, which is 15% percent less than the average reported by Professor Colbert.

V. Pressing Priorities

The truly "pressing priorities" within the criminal justice system need addressing.

A. The Need for Substance Abuse Treatment

""The crisis that's killing our city' is how Baltimore City Mayor Martin O'Malley refers to drug addiction." Smart Steps: Treating Baltimore's Drug Problem 1 (2000). In the criminal justice system in Maryland – and, in particularly in Baltimore City -- the most pressing need is for substance abuse treatment. Repeatedly, the call has been for increased funding to combat substance abuse, including expanding the capacity and accessibility of the treatment system. One of the many goals is to reduce crime. Id. at 34-35; see "Baltimore's Drug Problem: It's Costing Too Much Not To Spend More On It" (Abell Foundation, October 1993).

A study of arrestees conducted at Central Booking Center in Baltimore City confirmed the significant correlation between drug abuse and crime, with almost three-quarters of the study's sample testing positive for at least one drug. Findings from the 2001 Baltimore City Substance Abuse: Need for Treatment Among Arrestees (SANTA) Project, Wish & Yacoubian (November 14, 2001) (Wish Study). Further, Baltimore City has a long standing opiate-positive rate for arrestees that is more than double that of arrestees in other Northeast cities. Id. at 6 (urinalysis results). Meaningfully addressing the substance abuse problem has been shown to result in significant reductions in crime. See "Report: Drug Treatment Works," The Daily Record at 1A (January 31, 2002).

B. Parole and Probation Needs

In conjunction with the need for substance abuse treatment, there is the need for comprehensive parole and probation services to minimize or prevent repeat offenders. The value of parole or probation, at least in terms of taxpayer expenditure, is supposed to be the savings resulting from not having to imprison offenders. The savings are, however, a "fiction" if the convict is not adhering to the conditions of parole or probation and not getting meaningful supervision or, even

worse, victimizing others by committing additional crimes. The Division of Parole and Probation is understaffed to supervise and address the needs of those they supervise, and is lacking necessary automation to improve supervision. See "Probation Overhaul Hits Money Snags," The Baltimore Sunpapers at 2F (November 18, 2001).

C. Juvenile Crime

There are grave concerns with juvenile crime. The concepts of prevention, early intervention, and rehabilitation are fundamental to the juvenile justice system, as numerous studies have shown the likely progression from juvenile offender to adult offender. Although recent articles have focused on certain abuses that have occurred at several juvenile facilities, it is clear that resources must be devoted to early intervention, counseling, and alternatives to avoid the ascension of juvenile offenders -- particularly regarding violence and drugs -- to adult offenders. According to a report by the Violence Policy Center, Maryland has the highest rate of youth handgun killings in the country, with many of the killings directly linked to drug dealing, robberies, and aggravated assaults. See "State Worst in Gun Study," The Baltimore Sunpapers at 1B (November 29, 2001). Moreover, education regarding the effects of substance abuse must be a priority, as the Wish Study showed that the pivotal intervention point is prior to age 26.

D. Overburdened Police

As indicated by the discussion on "open warrants," police departments -- particularly Baltimore City -- are overburdened. Although Baltimore was ranked the fourth most violent city, according to the FBI's 2000 Uniform Crime Report, significant progress -- including double digit decreases in the murder rate and violent crime -- has been made. This is due, in large measure, to the steps taken by Mayor O'Malley and Commissioner Norris. Nonetheless, there is a significant amount of work to be done to continue the reduction in crime in Baltimore City and throughout the State. Recent events and concerns stemming from the September 11th terrorist attack, including anthrax scares, have only served to further burden our police forces. As things "normalize" -- if they ever can truly "normalize" again -- police resources must be committed to reducing crime, particularly violent and drug related crimes.

VI. Conclusion

This Response concludes that Corporate Surety Bail is the most effective and most cost efficient form of pretrial release in assuring that defendants appear in Court, as required. Moreover, if the defendant fails to appear, as required, Corporate Surety Bail is the most effective method for promptly locating and returning the defendant to the Court's jurisdiction. The clients of Corporate Surety Bail are those defendants that have been judicially determined to be the "least reliable." Even with that handicap, Corporate Surety Bail has outperformed all other forms of pretrial release.

Moreover, Corporate Surety Bail has accomplished its mission with no expense to the taxpayers. In fact, Corporate Surety Bail has saved countless tax dollars by producing lower FTA rates and by returning to the Court's jurisdiction a higher percentage of its FTA's. Naturally, this has also promoted the orderly administration of the criminal justice system and has enhanced public

safety.

Any suggestion that the criminal justice system should expand the use of other forms of pretrial release – specifically, Unsecured Bail and 10% Deposit Bail – is ill-advised. Any suggestion that the Maryland General Assembly create a $20 million a year statewide administrative agency makes no sense when the mission that would be assigned to that agency is already being accomplished by the bail bond industry. Furthermore, that mission is currently being accomplished better than it would be if it became a governmental operation. Under the existing system, it is the users of the service – and not the taxpayers – who pay for those services. In summation, instead of curtailing or eliminating Corporate Surety Bail, the evidence supports its expanded use.

Appendix A to This Response

The Colbert Report and the Deeley Report Never Sought Input from the Bail Bond Industry and Intentionally Excluded the Bail Bond Industry

The Deeley Report's Suggestion That It Included Input from the Bail Bond Industry Is Not Persuasive: The Deeley Report implicitly recognized that its exclusion of the bail bond industry rendered its work incomplete and less of a deliberative process reflecting a considered judgment of all relevant information. As such, the report implicitly recognized that its conclusions would be less credible and its recommendations would probably be less persuasive and certainly be less of a mandate or "call to action."

In fact, Mr. Deeley told the author of this Response that he believes that there is a place for both attorneys and bail bondsmen in the criminal justice system and that the market should dictate their usage. Mr. Deeley justified the non-inclusion of the bail bond industry during the work of his committee on the fact that his committee had no agenda to eliminate the bail bond industry.

The Deeley Report must have recognized that it had to "explain away" the failure to include the bail bond industry. At one point, the report suggests that it had input from the bail bond industry. This is not persuasive when considering that, during the year-long study leading to the Deeley Report, no member of the bail bond industry was on the Committee, no member of the bail bond industry was invited to a meeting of the Committee, and the Committee did not communicate its work -- or even its existence -- to the bail bond industry.

The background to the Deeley Report's suggestion that it received input from the bail bond industry is as follows. The Deeley Committee had eight meetings during its yearlong study. A draft report was completed prior to the meeting of April 30, 2001. Id. at B-51. In May 2001, the Deeley Committee provided a copy of its draft report to Chief Judge Bell. Id. at B-57. In June 2001, the Maryland State Bar Association (MSBA) conducted its annual meeting. The annual MSBA meeting took place (1) after the Deeley Committee's April meeting, when it was announced that the committee had completed a draft of its report, and (2) after the committee submitted its completed draft to Chief Judge Bell in May. Id. at 5.

At the annual MSBA meeting, there was no meeting of the Deeley Committee. However, during the MSBA annual meeting, the Correctional Reform Section, like most MSBA sections, sponsored an educational program. The Correctional Reform Section, chaired by Professor Colbert, the Deeley Committee's "main researcher and reporter," sponsored a program, titled "Pretrial Release, Bailbonds, Presumption of Innocence, and Prospects for Reform."

The program was moderated by Professor Colbert, and the three panelists included a representative of pretrial release services, a prosecutor, and a defense attorney. This program, like all programs, was open to any of the 19,000 MSBA members who registered for the annual convention. Apparently, a member of the audience was "a representative of an insurer for commercial bail bondsmen." Id. at 6. The Deeley Committee's "Chairman and staff also in attendance were able to share with the Committee the comments of the audience . . ." Id. Such sharing would presumably

have taken place at the Committee's only remaining meeting, which took place six weeks later, which was three months after the Committee completed its draft and two months after that draft was submitted to Chief Judge Bell.

The Advisory Committee's Unwillingness to Delay Publication of Its Report to Accept Input from the Bail Bond Industry: On September 24, 2001, Ira C. Cooke, Esquire, delivered a letter to the Deeley Committee, explaining that he had represented the Maryland Bail Bond Association for two decades and had just received a copy of the Colbert Report. Mr. Cooke stated that because Professor Colbert proclaimed that he was the "main researcher and reporter" for the Deeley Committee, "I must assume that the Committee is relying on information and data collected and generated by [Professor Colbert, and I] request that the private bail bond industry be allowed to make a presentation to your Committee . . ."

Mr. Cooke's letter listed some of the flaws in the Colbert Report's "approach to the private surety industry," as follows: (1) the failure to follow directives from both the Maryland Insurance Administration and the District Court to contact the bail bond industry to gain accurate information; (2) the inclusion of surety companies that do not even write bail bonds; (3) the creation of bail bond industry revenue "estimates" at levels that could not possibly be reconciled with the number of bail bonds written and the average bail bond amount; (4) the inclusion of a failure to appear rate that is a "gross interpretive distortion of the data provided . . . by the District Court"; (5) "statements that are ludicrous and defy logic" that bail bondsmen, who are "almost never present when a Commissioner sets bail," somehow provide the "information to Commissioners as to whether or not bail is to be granted and its amount," which "suggest[s] that an impermissible or improper relationship exists between bondsmen and Commissioners, something that is patently false and insulting"; and (6) a misunderstanding of the law and the data regarding "surrender" of criminal defendants pretrial versus return of criminal defendants subsequent to their failure to appear for trial.

Mr. Cooke concluded that "[w]e are confident that, when accurate information is before your Committee and is properly interpreted, you will conclude that private sector bail has been, and continues to be, an extremely efficient and valuable means of pretrial release in Maryland." Two weeks later, a telephonic response announced that the Deeley Report had already gone to the printer.

The Advisory Committee's Unwillingness to Amend or Supplement Its Report with Input from the Bail Bond Industry: On October 22, 2001, Mr. Cooke again wrote to the Committee, stating in part:

> I felt compelled to write to you to express [the Maryland Bail Bond Association's] dismay and bewilderment about **NEVER** having been contacted during the entire information gathering or deliberative process. . . .
>
> Committees appointed by the Court of Appeals are necessarily charged with the responsibility of collecting accurate data and **COMPLETE AND COMPREHENSIVE INFORMATION.** [T]he committee should welcome -- and indeed seek -- individuals who can bring varying perspectives . . ."

B

Appendix B to This Response

MARYLAND DISTRICT COURT CRIMINAL SYSTEM

FTA STATISTICS BY BAIL TYPE FOR 01/01/98 TO 12/31/99

	ROR		CASH		PERCENT		CORP		PROP		INTANGIBLE		UPS		OTHER	
DISTRICT	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA	TOTAL	%FTA
		#FTA		#FTA		#FTA		#FTA		#FTA		#FTA		#FTA		#FTA
1998	91,734	14.45%	4,675	12.06%	1,204	14.04%	21,606	10.46%	9,431	12.19%	1	0.00%	3,230	13.50%	11	27.27%
1999	87,018	14.66%	4,889	10.23%	1,082	14.14%	32,315	10.52%	9,385	12.00%	0	0.00%	3,759	12.97%	9	11.11%
	178,752	14.55%	9,564	11.13%	2,286	14.09%	53,921	10.50%	18,816	12.10%	1	0.00%	6,989	13.21%	20	20.00%
	28,200		1,064		322		8,712		2,300		0		923		4	

MARYLAND DISTRICT COURT CRIMINAL SYSTEM

FTA STATISTICS BY BAIL TYPE FOR 01/01/98 TO 12/31/98

	ROR			CASH			PERCENT			CORP			PROP			INTANGIBLE			UPB			OTHER		
DISTRICT	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA
01 01	16,915	15%	2,537	373	11%	41	4	0%	0	5,421	9%	488	508	6%	30	0	0%	0	7	0%	0	0	0%	0
01 02	3,304	11%	363	36	8%	3	1	0%	0	824	5%	46	106	3%	3	0	0%	0	0	0%	0	0	0%	0
01 03	24,882	8%	1,975	236	6%	14	6	0%	0	7,881	4%	315	691	2%	14	0	0%	0	20	20%	4	0		0
01 04	485	66%	320	31	16%	5	0	0%	0	4	0%	0	0	0%	0	0	0%	0	1	0%	0	0	0%	0
01 05	190	94%	179	0	0%	0	0	0%	0	8	50%	4	0	0%	0	0	0%	0	0	0%	0	0	0%	0
02 01	428	4%	17	43	9%	4	0	0%	0	124	6%	7	30	0%	0	0	0%	0	22	9%	2	0	0%	0
02 02	221	7%	15	6	0%	0	0	0%	0	198	4%	8	27	3%	1	0	0%	0	81	2%	2	0	0%	0
02 03	641	10%	64	57	17%	10	0	0%	0	769	7%	54	79	1%	1	1	0%	0	47	10%	5	0	0%	0
02 04	351	10%	35	21	0%	0	1	100%	1	270	11%	30	32	3%	1	0	0%	0	58	8%	4	0	0%	0
02 05	1,857	14%	260	248	8%	20	2	50%	1	611	12%	73	39	12%	5	0	0%	0	31	16%	5	0	0%	0
03 02	1,268	11%	139	199	17%	34	33	15%	5	460	15%	69	180	8%	14	0	0%	0	143	12%	17	0	0%	0
03 03	198	6%	12	69	2%	1	0	0%	0	69	13%	9	13	7%	1	0	0%	0	15	26%	4	0	0%	0
03 04	503	13%	65	40	27%	11	0	0%	0	81	17%	14	30	10%	3	0	0%	0	9	0%	0	0	0%	0
03 05	379	13%	49	69	11%	8	0	0%	0	198	8%	16	46	2%	1	0	0%	0	12	8%	1	0	0%	0
03 06	466	10%	47	58	12%	7	0	0%	0	99	9%	9	34	6%	2	0	0%	0	6	33%	2	0	0%	0
04 01	721	6%	43	58	12%	7	144	2%	3	132	13%	17	71	8%	6	0	0%	0	156	8%	13	0	0%	0
04 02	1,553	18%	280	78	20%	16	0	0%	0	188	18%	34	465	11%	51	0	0%	0	13	0%	0	0	0%	0
04 03	1,265	9%	114	234	10%	23	0	0%	0	105	9%	9	159	15%	24	0	0%	0	5	0%	0	0	0%	0
05 01	2,728	23%	627	127	11%	14	0	0%	0	429	19%	82	859	17%	146	0	0%	0	7	14%	1	0	0%	0
05 02	8,360	19%	1,212	324	11%	36	0	0%	0	1,137	13%	148	2,908	14%	407	0	0%	0	15	6%	1	0	0%	0
05 01	2,914	19%	389	389	16%	62	438	15%	66	518	17%	88	947	17%	161	0	0%	0	582	14%	81	0	0%	0
05 02	2,024	21%	425	286	13%	37	243	18%	44	248	25%	62	505	24%	121	0	0%	0	380	19%	72	0	0%	0
06 03	0	0%	0	0	0%	0	1	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
07 01	4,089	23%	940	236	16%	38	82	16%	12	1,391	16%	223	387	13%	50	0	0%	0	100	12%	12	0	0%	0
07 02	3,154	20%	631	224	8%	18	81	17%	14	1,438	17%	244	229	12%	27	0	0%	0	90	8%	7	0	0%	0
08 01	2,140	17%	364	110	19%	21	0	0%	0	1,253	13%	163	119	9%	11	0	0%	0	97	12%	12	0	0%	0
08 02	1	0%	0	1	0%	0	0	0%	0	1	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
08 03	1,089	11%	120	54	5%	3	0	0%	0	504	7%	35	72	5%	4	0	0%	0	33	6%	2	0	0%	0
08 04	2,894	31%	835	177	18%	32	3	33%	1	2,359	24%	566	326	9%	30	0	0%	0	153	15%	23	0	0%	0
08 05	1,728	16%	276	132	8%	11	1	0%	0	1,211	10%	121	154	4%	6	0	0%	0	71	8%	6	0	0%	0
09 01	2,055	16%	329	109	8%	9	53	18%	10	484	12%	58	83	7%	4	0	0%	0	52	11%	6	0	0%	0
10 01	1,547	15%	232	253	17%	43	0	0%	0	557	12%	67	59	16%	9	0	0%	0	429	24%	103	0	0%	0
10 02	804	6%	48	49	12%	6	53	3%	2	189	6%	11	50	4%	2	0	0%	0	494	9%	44	11	27%	3
11 01	1,053	11%	118	75	21%	16	75	13%	10	943	13%	123	68	13%	11	0	0%	0	7	29%	2	0	0%	0
11 02	1,020	11%	112	73	13%	9	0	0%	0	798	10%	80	65	3%	2	0	0%	0	2	0%	0	0	0%	0
12 01	815	6%	49	114	2%	2	0	0%	0	521	6%	31	62	3%	2	0	0%	0	15	0%	0	0	0%	0
12 02	228	11%	30	87	6%	5	3	66%	2	83	10%	8	27	0%	0	0	0%	0	77	6%	5	0	0%	0
TOTALS:	91,734	14.45%	13,251	4,575	12.06%	564	1,204	14.01%	169	31,806	10.48%	3,313	9,431	12.20%	1,150	1	0.00%	0	3,230	13.49%	436	11	27.00%	3

RUN DATE: 12/26/2001

MARYLAND DISTRICT COURT CRIMINAL SYSTEM
FTA STATISTICS BY BAIL TYPE FOR 01/01/98 TO 12/31/98

JOB CODE A70CK215

DISTRICT	--- ROR --- TOTAL	%FTA	--- CASH -- TOTAL	%FTA	-- PERCENT - TOTAL	%FTA	--- CORP -- TOTAL	%FTA	--- PROP -- TOTAL	%FTA	INTANGIBLE TOTAL	%FTA	--- UPB --- TOTAL	%FTA	-- OTHER -- TOTAL	%FTA
01 01	16,915	15	373	11	4	0	5,421	9	506	6	0	0	7	0	0	0
01 02	3,304	11	36	0	1	0	924	5	108	3	0	0	0	0	0	0
01 03	24,682	8	230	4	6	0	7,001	4	691	2	0	0	20	20	0	0
01 04	485	66	31	16	0	0	4	0	0	0	0	0	1	0	0	0
01 05	190	94	0	0	0	0	8	50	0	0	0	0	0	0	0	0
02 01	428	4	43	9	0	0	124	6	30	0	0	0	22	9	0	0
02 02	221	7	6	0	0	0	198	4	27	3	0	0	81	2	0	0
02 03	641	10	57	17	0	0	769	7	79	1	1	0	47	10	0	0
02 04	351	10	21	0	1	100	278	11	32	3	0	0	56	8	0	0
02 05	1,857	14	248	8	2	50	611	12	39	12	0	0	31	16	0	0
03 02	1,268	11	199	17	33	15	460	15	180	8	0	0	143	12	0	0
03 03	196	6	68	2	0	0	69	13	13	7	0	0	15	26	0	0
03 04	503	15	40	27	0	0	81	17	30	10	0	0	9	0	0	0
03 05	379	13	69	11	0	0	190	8	66	2	0	0	12	8	0	0
03 06	466	10	58	12	0	0	99	9	34	5	0	0	6	33	0	0
04 01	721	6	56	12	144	2	132	13	71	8	0	0	158	8	0	0
04 02	1,553	18	78	20	0	0	180	18	465	11	0	0	13	0	0	0
04 03	1,265	9	234	10	0	0	185	9	159	15	0	0	5	0	0	0
05 01	2,728	23	127	11	0	0	629	19	859	17	0	0	7	14	0	0
05 02	6,380	19	324	11	0	0	1,137	13	2,908	14	0	0	15	6	0	0
06 01	2,914	19	389	16	438	15	518	17	947	17	0	0	582	14	0	0
06 02	2,024	21	286	13	243	18	248	25	585	24	0	0	380	19	0	0
06 03	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
07 01	4,089	23	236	16	62	19	1,391	16	387	15	0	0	100	12	0	0
07 02	3,154	20	224	8	81	17	1,438	17	229	12	0	0	90	8	0	0
08 01	2,140	17	110	19	0	0	1,253	13	119	9	0	0	97	12	0	0

RUN DATE: 12/26/2001

MARYLAND DISTRICT COURT CRIMINAL SYSTEM
FTA STATISTICS BY BAIL TYPE FOR 01/01/98 TO 12/31/98

JOB CODE A70CK215

DISTRICT	--- ROR --- TOTAL	XFTA	--- CASH -- TOTAL	XFTA	-- PERCENT - TOTAL	XFTA	--- CORP -- TOTAL	XFTA	--- PROP -- TOTAL	XFTA	INTANGIBLE TOTAL	XFTA	--- UPB --- TOTAL	XFTA	-- OTHER -- TOTAL	XFTA
08 02	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0
08 03	1,089	11	54	5	0	0	506	7	72	5	0	0	33	4	0	0
08 04	2,694	31	177	18	3	33	2,359	24	329	9	0	0	153	15	0	0
08 05	1,726	16	132	8	1	0	1,211	10	154	4	0	0	71	9	0	0
09 01	2,055	16	189	8	53	18	684	12	61	7	0	0	52	11	0	0
10 01	1,547	15	253	17	0	0	557	12	59	16	0	0	429	24	0	0
10 02	604	8	49	12	53	3	189	6	58	4	0	0	496	9	11	27
11 01	1,053	11	75	21	75	13	943	13	86	13	0	0	7	28	0	0
11 02	1,020	11	73	13	0	0	798	10	65	3	0	0	2	0	0	0
12 01	815	6	114	2	0	0	521	6	62	3	0	0	15	0	0	0
12 02	276	11	87	6	3	66	83	10	27	0	0	0	77	4	0	0

MARYLAND DISTRICT COURT CRIMINAL SYSTEM

FTA STATISTICS BY BAIL TYPE FOR 01/01/99 TO 12/31/99

	ROR			CASH			PERCENT			CORP			PROP			INTANGIBLE			UPB			OTHER		
DISTRICT	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA	TOTAL	%FTA	#FTA
01 01	15,686	12%	1,882	341	8%	27	3	0%	0	5,400	7%	378	408	3%	12	0	0%	0	9	11%	1	0	0%	0
01 02	3,366	11%	370	43	11%	5	1	0%	0	979	5%	49	94	5%	5	0	0%	0	2	0%	0	0	0%	0
01 03	21,300	10%	2,130	211	6%	13	2	0%	0	7,290	5%	365	606	2%	12	0	0%	0	16	6%	1	0	0%	0
01 04	721	59%	425	35	37%	13	0	0%	0	1	0%	0	1	0%	0	0	0%	0	0	0%	0	0	0%	0
01 05	1,151	55%	633	2	50%	1	1	100%	1	85	55%	47	1	100%	1	0	0%	0	0	0%	0	0	0%	0
02 01	412	7%	29	27	0%	0	0	0%	0	218	5%	11	52	0%	0	0	0%	0	29	17%	5	0	0%	0
02 02	273	9%	25	24	0%	0	0	0%	0	210	6%	13	19	0%	0	0	0%	0	89	3%	3	0	0%	0
02 03	680	10%	68	65	1%	1	0	0%	0	929	7%	65	78	3%	2	0	0%	0	113	6%	7	2	50%	1
02 04	394	9%	35	36	2%	1	1	0%	0	319	8%	26	31	3%	1	0	0%	0	66	4%	3	0	0%	0
02 05	1,678	17%	285	198	9%	18	1	0%	0	590	9%	53	36	5%	2	0	0%	0	43	16%	7	0	0%	0
03 02	1,278	12%	153	195	11%	21	16	31%	5	613	17%	104	136	8%	11	0	0%	0	199	16%	32	0	0%	0
03 03	201	6%	12	50	4%	2	0	0%	0	49	18%	9	14	0%	0	0	0%	0	26	19%	5	0	0%	0
03 04	519	13%	67	41	29%	12	0	0%	0	95	7%	7	56	7%	4	0	0%	0	11	36%	4	0	0%	0
03 05	427	12%	51	85	15%	10	0	0%	0	231	11%	25	45	4%	2	0	0%	0	84	18%	12	0	0%	0
03 06	497	10%	50	59	18%	11	0	0%	0	174	9%	16	53	5%	3	0	0%	0	4	0%	0	0	0%	0
04 01	1,019	8%	82	79	6%	5	120	6%	7	132	13%	17	84	19%	16	0	0%	0	183	10%	19	0	0%	0
04 02	1,529	16%	245	100	13%	13	0	0%	0	239	19%	45	525	14%	74	0	0%	0	28	14%	4	0	0%	0
04 03	1,293	10%	129	110	7%	8	0	0%	0	179	18%	32	144	11%	16	0	0%	0	22	13%	3	0	0%	0
05 01	2,997	23%	689	127	17%	22	0	0%	0	401	20%	80	1,073	14%	150	0	0%	0	27	22%	6	0	0%	0
05 02	6,193	20%	1,239	274	10%	27	0	0%	0	1,023	11%	113	3,035	15%	455	0	0%	0	31	12%	4	0	0%	0
05 01	2,790	17%	474	511	8%	41	504	14%	71	584	13%	73	1,042	13%	135	0	0%	0	587	11%	65	0	0%	0
05 02	1,961	19%	373	348	11%	38	261	19%	53	261	25%	65	456	20%	91	0	0%	0	345	18%	62	0	0%	0
05 03	0	0%	0	0	0%	0	0	0%	0	1	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
07 01	3,546	23%	816	283	19%	54	23	13%	3	1,384	17%	232	366	13%	51	0	0%	0	127	15%	19	0	0%	0
07 02	2,923	20%	585	180	6%	11	27	3%	1	1,590	14%	223	237	11%	26	0	0%	0	103	9%	9	0	0%	0
08 01	1,856	15%	278	143	11%	16	0	0%	0	1,222	14%	171	104	8%	8	0	0%	0	56	7%	4	0	0%	0
08 02	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	1	0%	0	0	0%	0
08 03	177	8%	14	7	0%	0	0	0%	0	96	1%	1	5	0%	0	0	0%	0	11	0%	0	0	0%	0
08 04	3,000	23%	690	248	16%	40	6	16%	1	2,848	21%	598	342	9%	31	0	0%	0	181	13%	21	0	0%	0
08 05	1,885	15%	283	197	13%	26	1	0%	0	1,336	12%	160	147	6%	9	0	0%	0	96	13%	12	0	0%	0
09 01	1,796	14%	251	112	8%	9	32	25%	8	598	14%	84	47	23%	11	0	0%	0	43	20%	9	0	0%	0
10 01	1,541	14%	216	269	10%	27	0	0%	0	483	10%	48	70	15%	11	0	0%	0	512	23%	119	0	0%	0
10 02	720	7%	50	105	2%	2	0	0%	0	255	8%	20	62	8%	5	0	0%	0	686	7%	48	7	0%	0
11 01	1,123	11%	124	109	11%	12	57	5%	3	935	12%	112	74	6%	4	0	0%	0	15	26%	4	0	0%	0
11 02	1,025	12%	123	45	11%	5	0	0%	0	894	11%	98	39	5%	2	0	0%	0	0	0%	0	0	0%	0
12 01	767	6%	46	159	5%	8	0	0%	0	563	8%	45	51	0%	0	0	0%	0	3	0%	0	0	0%	0
12 02	294	9%	26	83	5%	5	8	0%	0	126	11%	14	19	0%	0	0	0%	0	38	7%	3	0	0%	0
TOTALS:	87,018	14.88%	12,949	4,889	10.23%	500	1,082	14.11%	153	32,315	10.52%	3,399	9,585	12.00%	1,150	0	0.00%	0	3,756	12.97%	487	9	11.11%	1

RUN DATE: 12/26/2001

MARYLAND DISTRICT COURT CRIMINAL SYSTEM
FTA STATISTICS BY BAIL TYPE FOR 01/01/99 TO 12/31/99

JOB CODE A70CK215

DISTRICT	--- ROR --- TOTAL	XFTA	--- CASH --- TOTAL	XFTA	-- PERCENT - TOTAL	XFTA	--- CORP -- TOTAL	XFTA	--- PROP -- TOTAL	XFTA	INTANGIBLE TOTAL	XFTA	--- UPD --- TOTAL	XFTA	-- OTHER -- TOTAL	XFTA
01 01	15,686	12	341	8	3	0	5,400	7	608	3	0	0	9	11	0	0
01 02	3,366	11	43	11	1	0	979	5	96	5	0	0	2	0	0	0
01 03	21,300	10	211	6	2	0	7,290	5	600	2	0	0	16	6	0	0
01 04	721	59	35	37	0	0	1	0	1	0	0	0	0	0	0	0
01 05	1,151	55	2	50	1	100	85	55	1	100	0	0	0	0	0	0
02 01	612	7	27	0	0	0	210	5	52	0	0	0	29	17	0	0
02 02	273	9	24	0	0	0	210	6	19	0	0	0	89	3	0	0
02 03	680	10	65	1	0	0	929	7	79	3	0	0	113	6	2	50
02 04	394	9	36	2	1	0	319	0	31	3	0	0	66	4	0	0
02 05	1,678	17	198	9	1	0	590	9	36	5	0	0	63	16	0	0
03 02	1,278	12	195	11	16	31	613	17	136	8	0	0	199	16	0	0
03 03	281	6	50	4	0	0	49	18	14	0	0	0	26	19	0	0
03 04	519	13	41	29	0	0	95	7	56	7	0	0	11	36	0	0
03 05	427	12	45	15	0	0	231	11	45	4	0	0	64	18	0	0
03 06	497	10	59	18	0	0	174	9	53	5	0	0	4	0	0	0
04 01	1,019	8	79	6	120	6	132	13	84	19	0	0	193	18	0	0
04 02	1,529	16	100	13	0	0	239	19	525	14	0	0	28	14	0	0
04 03	1,293	10	110	7	0	0	179	10	144	11	0	0	22	13	0	0
05 01	2,997	23	127	17	0	0	401	20	1,073	14	0	0	27	22	0	0
05 02	6,193	20	274	10	0	0	1,023	11	3,035	15	0	0	31	12	0	0
06 01	2,790	17	511	8	504	14	566	13	1,062	13	0	0	587	11	0	0
06 02	1,961	19	346	11	281	19	281	23	496	20	0	0	345	18	0	0
06 03	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
07 01	3,546	23	283	19	23	13	1,364	17	596	13	0	0	127	15	0	0
07 02	2,923	20	180	6	27	3	1,590	14	237	11	0	0	103	9	0	0
08 01	1,856	15	143	11	0	0	1,222	14	104	0	0	0	56	7	0	0

RUN DATE: 12/26/2001

MARYLAND DISTRICT COURT CRIMINAL SYSTEM
FTA STATISTICS BY BAIL TYPE FOR 01/01/99 TO 12/31/99

JOB CODE A70CK215

DISTRICT	--- ROR --- TOTAL	%FTA	--- CASH -- TOTAL	%FTA	-- PERCENT - TOTAL	%FTA	--- CORP -- TOTAL	%FTA	--- PROP -- TOTAL	%FTA	INTANGIBLE TOTAL	%FTA	--- UPB --- TOTAL	%FTA	-- OTHER -- TOTAL	%FTA
08 02	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
08 03	177	8	7	0	0	0	96	1	5	0	0	0	11	0	0	0
08 04	3,000	23	240	16	6	16	2,040	21	542	9	0	0	141	13	0	0
08 05	1,885	15	197	13	1	0	1,336	12	147	6	0	0	96	13	0	0
09 01	1,796	14	112	8	32	25	598	14	67	23	0	0	43	20	0	0
10 01	1,541	14	269	10	0	0	483	10	70	15	0	0	512	23	0	0
10 02	720	7	105	2	0	0	255	0	62	0	0	0	606	7	7	0
11 01	1,123	11	109	11	57	5	935	12	74	6	0	0	15	26	0	0
11 02	1,025	12	45	11	0	0	894	11	39	5	0	0	0	0	0	0
12 01	767	6	159	5	0	0	563	0	51	0	0	0	3	0	0	0
12 02	294	9	93	5	6	0	120	11	19	0	0	0	30	7	0	0

U.S. Department of Justice
Office of Justice Programs

Appendix C to This Response

Bureau of Justice Statistics Bulletin

November 1994, NCJ-148818

National Pretrial Reporting Program

Pretrial Release of Felony Defendants, 1992

By
Brian A. Reaves, Ph.D.
and
Jacob Perez, Ph.D.
BJS Statisticians

An estimated 63% of the defendants who had State felony charges filed against them in the Nation's 75 most populous counties during May 1992 were released by the court prior to the disposition of their case. About a third of these released defendants were either rearrested for a new offense, failed to appear in court as scheduled, or committed some other violation that resulted in the revocation of their pretrial release. Of the 25% of released defendants who had a bench warrant issued for their arrest because they did not appear in court as scheduled, about a third, representing 8% of all released defendants, were still fugitives after 1 year.

These findings are drawn from a sample of felony cases filed in State courts during May 1992. The cases were followed for up to 1 year as part of the National Pretrial Reporting Program (NPRP) sponsored by the Bureau of Justice Statistics.

Highlights

- Murder defendants (24%) were the least likely to be released prior to case disposition, followed by defendants whose most serious arrest charge was rape (48%), robbery (50%), or burglary (51%).

- A sixth of the defendants detained until case disposition were held without bail. Defendants held without bail comprised 6% of all felony defendants, with defendants charged with murder (40%) the most likely to be denied bail.

- Among defendants already on pretrial release for a prior case when arrested on the current felony charges, 56% were released again. Thirty-two percent of those arrested while on parole and 44% of those already on probation were released.

- Twenty-seven percent of released defendants had at least one prior felony conviction, including 9% with a prior conviction for a violent felony. Among detained defendants, 57% had a prior conviction, including 21% with at least one prior conviction for a violent felony.

- Among released defendants who had failed to appear in court at least once on a previous charge, 38% had a bench warrant issued because they failed to appear during the current case. This was about twice the failure-to-appear rate of other released defendants (20%).

- About 14% of all released defendants were rearrested while on pretrial release, 10% for a felony. Released defendants with at least one prior conviction (19%) were about twice as likely to be rearrested as those with no prior convictions (9%). Twenty-nine percent of released defendants with five or more prior convictions were rearrested while on pretrial release.

- The overall pretrial release rate of 63% recorded by the 1992 NPRP was similar to that found in 1990 (65%) and 1988 (66%). Failure-to-appear rates have also remained constant at about a fourth of those released. The 1992 rearrest rate of 14% for defendants on pretrial release represented a slight decrease from the 18% rate recorded in 1988 and 1990.

Table 1. Felony defendants released before or detained until case disposition, by the most serious arrest charge, 1992

Most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released before case disposition	Detained until case disposition
All offenses	51,002	100%	63%	37%
Violent offenses	13,838	100%	58%	42%
Murder	570	100	24	76
Rape	724	100	48	52
Robbery	4,467	100	50	50
Assault	6,509	100	68	32
Other violent	1,368	100	59	41
Property offenses	17,647	100%	63%	37%
Burglary	6,176	100	51	49
Theft	6,434	100	67	33
Other property	5,037	100	71	29
Drug offenses	15,469	100%	68%	32%
Sales/trafficking	8,517	100	66	34
Other drug	6,952	100	71	29
Public-order offenses	4,248	100%	65%	35%
Weapons	1,437	100	71	29
Driving-related	645	100	73	27
Other public-order	2,167	100	58	42

Note: Data on detention/release outcome were available for 92% of all cases.
Detail may not add to total because of rounding.

National Pretrial Reporting Program

The Bureau of Justice Statistics (BJS) initiated the biennial National Pretrial Reporting Program (NPRP) in 1988. The NPRP collects detailed information about the criminal history, pretrial processing, adjudication, and sentencing of felony defendants in State courts in large urban counties. The NPRP data do not include Federal defendants.

The 1992 NPRP collected data for 13,206 felony cases filed in 40 counties during May 1992. These cases were part of a 2-stage sample that was representative of the estimated 55,246 felony cases filed in the Nation's 75 most populous counties during that month. (In 1990, the 75 largest counties accounted for about 37% of the U.S. population and nearly 50% of all crimes reported to law enforcement agencies.) Cases were tracked for up to 1 year.

Table 2. Type of pretrial release or detention of felony defendants, by the most serious arrest charge, 1992

Most serious arrest charge	Total	Percent of felony defendants in the 75 largest counties: Released before case disposition: Financial release: Total financial release	Surety bond	Full cash bond	Deposit bond	Property bond	Nonfinancial release: Total nonfinancial release	Recognizance	Conditional	Unsecured bond	Emergency release	Detained until case disposition: Held on bail	Held without bail
All offenses	100%	25%	13%	6%	5%	1%	37%	24%	8%	4%	2%	30%	8%
Violent offenses	100%	25%	11%	7%	7%	--	33%	25%	5%	3%	--	34%	8%
Murder	100	13	7	6	1	0	10	5	2	3	0	37	40
Rape	100	24	12	4	6	1	22	11	9	2	2	49	3
Robbery	100	21	4	9	7	--	29	23	3	3	--	43	7
Assault	100	29	15	6	8	1	39	31	5	2	--	26	6
Other violent	100	27	14	7	5	1	32	20	9	3	--	33	8
Property offenses	100%	21%	13%	4%	3%	1%	40%	25%	6%	6%	2%	32%	6%
Burglary	100	16	8	3	3	1	34	22	7	5	1	43	6
Theft	100	21	14	4	2	1	42	26	10	6	4	27	6
Other property	100	26	17	5	4	1	43	28	9	7	2	23	5
Drug offenses	100%	27%	15%	7%	5%	1%	39%	23%	11%	5%	2%	27%	5%
Sales/trafficking	100	29	15	8	5	1	36	23	8	6	1	30	5
Other drug	100	26	16	5	4	--	42	22	16	4	3	23	6
Public-order offenses	100%	33%	17%	11%	5%	1%	30%	21%	7%	2%	1%	29%	6%
Weapons	100	42	13	21	8	1	28	18	7	3	1	25	4
Driving-related	100	42	37	5	1	0	31	20	9	2	0	22	5
Other public-order	100	25	14	5	5	1	31	23	6	2	1	34	9

Note: Data on type of pretrial release or detention were available for 92% of all cases.
See table 1 for number of defendants in each offense category.
Detail may not add to total because of rounding.
--Less than 0.5%.

Types of pretrial release

Nonfinancial release

Among the 63% of felony defendants in the 75 largest counties who were released prior to case disposition, about 3 in 5 were released on nonfinancial terms that required no posting of bail (table 1). (In this report, "pretrial release" and "released prior to case disposition" are used interchangeably. See *Methodology* on pages 15 and 16 for definitions.)

Release on recognizance, granted to 24% of all defendants and to 38% of all released defendants, was the most common type of pretrial release (table 2). About two-thirds of all nonfinancial releases involved the release of a defendant on his or her own recognizance. The only condition placed on the defendant under this type of release is a written agreement to appear in court as scheduled. Generally, the recognizance release category used in this report refers to a decision made by the court; however, citation releases made by law enforcement personnel (2% of the recognizance releases) are also included.

Approximately 13% of all pretrial releases in the 75 largest counties (23% of nonfinancial releases) were on conditional release. About a fourth of conditional releases included an unsecured bail amount to be forfeited should the defendant fail to appear in court as scheduled. About two-thirds of conditional releases included an agreement by the defendant to maintain regular contact with a pretrial program through telephone calls and/or personal visits. Fifteen percent of conditional releases involved regular drug monitoring or treatment, and 6% included a third party custody agreement.

Most defendants placed on conditional release were supervised by a pretrial release program. Such programs, which also interview arrestees and provide information to judicial officers, were operating in all but 2 (Suffolk, Massachusetts; and Montgomery, Pennsylvania) of the 40 NPRP counties during 1992.

Releases on unsecured bond comprised 4% of the NPRP cases. About 12% of nonfinancial releases (7% of releases overall) involved this type of release. Although this type of release does not require financial payment, it does specify a bail amount to be forfeited if the defendant does not appear in court as scheduled.

Financial release

Overall, about 2 in 5 defendants released before case disposition received that release through financial terms involving a surety, full cash, deposit, or property bond. Deposit, full cash, and property bonds are posted directly with the court, while surety bonds involve the services of a bail bond company.

Defendants must post the full bail amount in cash or collateral to be released on full cash or property bond. The cash or property is forfeited if the defendants do not appear in court as required. Typically, a defendant must provide 10% of the full bail amount to be released on deposit or surety bond. Either the defendant (deposit bond) or the bail bond company (surety bond) are liable to the court for the full bail amount if the defendant does not appear in court as required.

Release on surety bond, the second most common type of pretrial release for felony defendants, was used in 54% of all financial releases and in 21% of all pretrial releases. Surety bond was used in 31 of the 40 NPRP counties surveyed.

Ten percent of all pretrial releases, including 25% of financial releases, were on full cash bond. Full cash bond was used in 33 of the 40 NPRP counties surveyed.

A deposit bond secured release for about 8% of all released defendants, including 19% of defendants placed on financial release. Deposit bond was used for pretrial release in 17 NPRP counties.

Emergency release

Overall, about 2% of felony defendants were released as part of an emergency release ordered because of jail crowding. Generally, these emergency releases did not involve the use of any of the financial or nonfinancial release conditions discussed above. Emergency releases occurred in 8 of the 40 NPRP counties, with 3 counties (Hamilton, Ohio; Cook, Illinois; and Wayne, Michigan) accounting for more than 95% of all emergency releases recorded by NPRP.

Factors affecting probability of pretrial release

Overall, 37% of the felony defendants included in the NPRP sample were detained until the court disposed of their case, roughly the same percentage as in NPRP studies for 1988 (34%) and 1990 (35%). Five out of six detainees from the 1992 study had a bail amount set but did not post the money required to secure release. The remainder, representing 17% of detained defendants and 6% of all defendants, were ordered held without bail.

While denial of bail provides the court with an absolute assurance that a defendant will not be released prior to case disposition, the NPRP data also show that when a defendant is required to post bail, the probability of

release decreases as bail amounts increase. When bail was set at $20,000 or more, 18% of the defendants were eventually released (table 3). When the bail amount was between $10,000 and $19,999, 38% of the defendants secured release; from $2,500 to $9,999, 52% of the defendants; and under $2,500, 66%.

The effect of bail amount on the likelihood of a defendant's being released varied according to the type of arrest charge. For example, when the bail amount was set at $20,000 or more, drug defendants (29%) secured release more often than defendants charged with a public-order offense (18%), violent offense (17%), or property offense (11%). Defendants charged with a property offense were less likely to be released than other defendants in all four bail amount categories.

Defendants released on deposit bond had higher average bail amounts than other defendants released on bond, a median of $7,500 and a mean of $15,200. Defendants released on surety bond had a median bail amount of $5,000 and a mean bail amount of $7,100. Defendants released on surety or deposit bond typically had to post 10% of the full bail amount to secure release: a mean of $1,520 for deposit bond and $710 for surety bond.

Defendants released on full cash bond posted the full bail amount to secure release; a median of $1,000 and a mean of $3,300. Defendants released on unsecured bond did not post any money to secure release but were liable for the full bail amount, a median of $5,000 and a mean of $10,100, if they did not appear in court. Among defendants who had a bail amount set but were unable to secure release, the mean bail amount was $39,800, and the median was $10,000.

Type of release bond	Bail amount	
	Median	Mean
Surety	$5,000	$7,100
Deposit	7,500	15,200
Full cash	1,000	3,300
Property	5,000	10,900
Unsecured	5,000	10,100
Not released	$10,000	$39,800

Court decisions about bail are primarily based on the judgment of whether the accused will appear in court as scheduled and the potential danger to the community from crimes that a defendant may commit while on release. Many jurisdictions have established specific criteria that must be considered when setting bail. Examples of such criteria are personal character and mental condition, employment and financial resources, family and community ties, offense seriousness, criminal justice status at the time of arrest, prior criminal record, prior court appearance record, the weight of the evidence against the defendant, and the sentence that may be imposed upon conviction.

While the NPRP does not provide data on all of these factors, it does provide information on the seriousness of the current offense, criminal justice status at the time of arrest, prior court appearance record, and prior criminal record. The NPRP data illustrate how the bail system is used in conjunction with these factors to affect the probability of release.

Table 3. Felony defendants released before or detained until case disposition, by bail amount set and the most serious arrest charge, 1992

Bail amount set and the most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties with a bail amount set:		
		Total	Released before case disposition	Detained until case disposition
$20,000 or more				
All offenses	6,083	100%	18%	82%
Violent offenses	2,740	100	17	83
Property offenses	1,500	100	11	89
Drug offenses	1,298	100	29	71
Public-order offenses	544	100	18	82
$10,000 to $19,999				
All offenses	5,373	100%	38%	62%
Violent offenses	1,580	100	44	56
Property offenses	1,657	100	24	76
Drug offenses	1,780	100	46	54
Public-order offenses	344	100	34	66
$2,500 to $9,999				
All offenses	9,752	100%	52%	48%
Violent offenses	2,078	100	57	43
Property offenses	3,499	100	44	56
Drug offenses	3,395	100	54	46
Public-order offenses	780	100	60	40
Under $2,500				
All offenses	6,780	100%	66%	34%
Violent offenses	1,597	100	68	32
Property offenses	2,463	100	61	39
Drug offenses	1,768	100	66	34
Public-order offenses	951	100	76	24

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Table excludes defendants given nonfinancial release. Detail may not add to total because of rounding.

Seriousness of offense

The NPRP data indicate that defendants charged with murder were the least likely of all felony defendants to be released prior to case disposition (24%) (table 1). While about a fourth of murder defendants were released, about half of defendants charged with rape, robbery, or burglary were released, as were about two-thirds of assault, theft, or drug trafficking defendants.

Murder defendants had the lowest release rate, mainly because they were the most likely to be denied bail or to have a high bail amount. Forty percent of murder defendants were denied bail, compared to 9% or less for other defendants. Among murder defendants who had a bail amount set, about three-fourths had a bail amount of $20,000 or more (table 4).

Defendants charged with rape (57%) were the next most likely to have bail set at $20,000 or more. Robbery defendants (41%) were the only other group for which more than a third of the defendants with a bail amount had it set by the court at $20,000 or more. Overall, defendants whose most serious arrest charge involved a violent offense (34%) were about twice as likely as drug (16%) and property (16%) defendants to have a bail of $20,000 or more.

Among defendants who were held on bail, the median bail amount that had been set by the court was $10,000 (table 5). The median bail amount was higher for detained defendants charged with murder ($100,000), rape ($25,000), or robbery ($20,000). Released defendants had a median bail amount of $3,500, with a higher median bail amount for released defendants charged with murder ($10,000) or rape ($10,000).

Table 4. Bail amount set for felony defendants, by the most serious arrest charge, 1992

Most serious arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties with a bail amount of: Total	Under $2,500	$2,500-$9,999	$10,000-$19,999	$20,000 or more
All offenses	27,987	100%	24%	35%	19%	22%
Violent offenses	7,996	100%	20%	26%	20%	34%
Murder	284	100	5	7	10	78
Rape	527	100	9	14	20	57
Robbery	2,830	100	17	22	21	41
Assault	3,561	100	26	33	19	22
Other violent	805	100	17	24	26	33
Property offenses	9,120	100%	27%	38%	18%	16%
Burglary	3,595	100	16	39	21	23
Theft	3,056	100	35	37	16	12
Other property	2,470	100	33	39	16	12
Drug offenses	8,252	100%	21%	41%	22%	16%
Sales/trafficking	4,918	100	22	34	26	18
Other drug	3,334	100	21	51	16	12
Public-order offenses	2,620	100%	36%	30%	13%	21%
Weapons	966	100	38	35	11	16
Driving-related	414	100	52	25	15	8
Other public-order	1,241	100	30	27	15	29

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Table excludes defendants given nonfinancial release. Detail may not add to total because of rounding.

Table 5. Median bail amount set for felony defendants, by pretrial detention/release outcome and the most serious arrest charge, 1992

Most serious arrest charge	Felony defendants in the 75 largest counties: Median bail amount Total	Released	Detained
All offenses	$5,000	$3,500	$10,000
Violent offenses	$10,000	$5,000	$17,000
Murder	75,000	10,000	100,000
Rape	23,500	10,000	25,000
Robbery	10,000	5,000	20,000
Assault	5,000	5,000	10,000
Other violent	10,000	5,000	20,000
Property offenses	$5,000	$2,500	$7,500
Burglary	5,000	5,000	10,000
Theft	4,000	2,000	5,000
Other property	4,000	2,500	5,000
Drug offenses	$5,000	$5,000	$6,000
Sales/trafficking	5,000	5,000	10,000
Other drug	5,000	4,300	5,000
Public-order offenses	$4,000	$2,000	$10,000
Weapons	3,000	2,000	10,000
Driving-related	2,000	2,000	4,000
Other public-order	5,000	2,500	15,000

Note: Data on bail amount were available for 99% of all defendants for whom a bail amount was set. Bail amounts have been rounded to the nearest 100 dollars. Table excludes defendants given nonfinancial release.

Table 6. Felony defendants released before or detained until case disposition, by criminal justice status at the time of offense, 1992

Criminal justice status at time of offense	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
On parole	2,957	100%	32%	17%	14%	1%	68%	53%	14%
On probation	6,081	100	44	21	22	1	56	45	11
On pretrial release	4,804	100	56	24	30	2	44	32	12
None	25,228	100	72	30	40	2	28	25	3

Note: Data on both criminal justice status at the time of offense and detention/release outcome were available for 74% of all cases. Defendants who had more than 1 type of criminal justice status at the time of offense are excluded from the table. Detail may not add to total because of rounding.

Table 7. Felony defendants released before or detained until case disposition, by court appearance history, 1992

Court appearance history	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
With prior arrests	25,954	100%	54%	21%	32%	2%	46%	39%	7%
Failed to appear one or more times	11,378	100	51	17	31	3	49	44	5
Made all court appearances	14,576	100	57	23	32	1	43	35	8
No prior arrests	15,116	100	81	30	50	1	19	16	3

Note: Data on both court appearance history and detention/release outcome were available for 74% of all cases. Detail may not add to total because of rounding.

Table 8. Felony defendants released before or detained until case disposition, by prior conviction record, 1992

Prior conviction record	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Released: Total released	Released: Financial	Released: Non-financial	Released: Emergency release	Detained: Total detained	Detained: Held on bail	Detained: Held without bail
Number of prior convictions*									
5 or more	9,191	100%	43%	18%	24%	2%	57%	49%	8%
2-4	9,630	100	50	23	26	2	50	42	8
1	6,849	100	61	27	32	2	39	30	9
None	20,293	100	79	30	48	1	21	17	3
Most serious prior conviction									
Violent felony	6,283	100%	43%	18%	24%	1%	57%	45%	12%
Nonviolent felony	11,616	100	46	20	23	2	54	45	9
Misdemeanor	8,221	100	63	27	34	1	37	33	4
None	20,293	100	79	30	48	1	21	17	3

Note: Data on both prior conviction record and detention/release outcome were available for 84% of all cases. Detail may not add to total because of rounding.
*The number of convictions refers to the number of charges.

Criminal justice status

The NPRP data indicate that a defendant's criminal justice status at the time of arrest is also related to the probability of pretrial release. Among felony defendants without an active criminal justice status at the time of arrest, 72% were released before case disposition (table 6). In contrast, just 32% of defendants on parole and 44% of defendants on probation at the time of the current arrest were released. Among defendants who were already on pretrial release for a pending case when arrested, 56% were released pending disposition of the current charge. Defendants on parole (14%), probation (11%), or pretrial release (12%), were about 4 times as likely to be denied bail as those with no criminal justice status at the time of the offense (3%).

Court appearance history

The court is also likely to consider a defendant's court appearance history when setting bail and the terms of release for the current felony charge. About two-thirds of the defendants included in the NPRP study had previously been arrested and required to appear in court. Among defendants who made all scheduled court appearances related to prior arrests, 57% were released prior to disposition of the current case (table 7). The probability of release was somewhat lower for defendants who had failed to appear in court previously (51%). Overall, the release rate for defendants who had been previously arrested was 54%, two-thirds the rate among defendants with no prior arrests (81%).

Prior conviction record

Defendants with more than one prior conviction or with a felony conviction record were less likely than other defendants to await disposition of their case outside jail. Just under half were released prior to case disposition (table 8). About 3 in 5 defendants with a single prior conviction or only misdemeanor convictions were able to obtain release, while 4 in 5 defendants with no prior convictions were released.

About 10% of defendants who had a prior felony conviction were denied bail, compared to 3% of other defendants.

Time from arrest to pretrial release

Fifty-two percent of all pretrial releases occurred either on the day of arrest or on the following day, and 91% occurred within 1 month of arrest (table 9). The time from arrest to release varied by factors that included the type of release conditions imposed, the bail amount set (if any), and the type of arrest charge.

About two-thirds of defendants released on unsecured bond, conditional release, or emergency release were discharged on the day of arrest or on the following day, compared to a third of those who were eventually released on deposit or full cash bond. About half of those released on recognizance, surety bond, or property bond were released within a day of their arrest. Overall, about 2 in 5 financial releases occurred within a day of arrest compared to 3 in 5 nonfinancial releases.

When the defendant was required to post money to secure release (surety, full cash, or deposit bond), the time from arrest to pretrial release increased as the bail amount did. When the bail amount was $10,000 or more, 1 in 3 defendants secured release within a day. Nearly 1 in 2 did so when the bail amount was under $2,500.

Defendants charged with violent offenses (46%) were slightly less likely than those charged with drug (51%), public-order (53%), or property (56%) offenses to be released on the day of arrest or the following day.

Criminal history of released versus detained defendants

Three-fourths of detained defendants had at least 1 prior conviction compared to just under half of released defendants (table 10). Among

Table 9. Time from arrest to release for felony defendants released before case disposition, by type of release, bail amount set, and the most serious current arrest charge, 1992

Type of release, bail amount set, and the most serious arrest charge	Number of defendants	Percent of released felony defendants in the 75 largest counties who were released within: 1 day	1 week	1 month
All released defendants	31,562	52%	77%	91%
Type of release				
Financial release	12,189	41%	71%	89%
Surety bond	6,762	48	76	93
Full cash bond	2,951	31	68	87
Deposit bond	2,151	34	59	82
Property bond	325	49	74	88
Nonfinancial release	18,577	59%	81%	93%
Recognizance	12,107	55	80	92
Conditional	4,221	65	85	93
Unsecured bond	2,249	68	80	94
Emergency release	796	69%	84%	93%
Bail amount set*				
$20,000 or more	885	33%	61%	83%
$10,000-$19,999	1,663	33	62	82
$2,500-$9,999	4,809	41	72	91
Under $2,500	4,241	48	76	91
Most serious arrest charge				
Violent offenses	7,873	46%	72%	87%
Property offenses	11,104	56	79	94
Drug offenses	10,740	51	79	93
Public-order offenses	2,834	53	76	90

Note: Data on time from arrest to pretrial release were available for 98% of all cases involving a defendant who was released prior to case disposition. Release data were collected for 1 year. Defendants released after the 1-year study period are excluded from the table.
*Includes defendants released on deposit, surety, or full cash bond.

Table 10. Number of prior convictions of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Total with: No prior convictions	Total with: Prior convictions	Number of prior convictions*: 1	2-4	5-9	10 or more
Released defendants								
All offenses	29,138	100%	55%	45%	14%	17%	9%	5%
Violent offenses	7,163	25	14	10	3	4	2	1
Property offenses	9,829	34	19	15	5	5	3	2
Drug offenses	9,667	33	17	16	5	6	3	1
Public-order offenses	2,479	9	5	4	1	2	1	–
Detained defendants								
All offenses	16,826	100%	25%	75%	16%	28%	19%	12%
Violent offenses	5,171	31	10	21	4	9	5	3
Property offenses	5,873	35	7	28	5	10	8	5
Drug offenses	4,426	26	7	19	5	7	4	3
Public-order offenses	1,356	8	1	7	2	3	2	1

Note: Data on both number of prior convictions and detention/release outcome were available for 83% of all cases. Detail may not add to total because of rounding.
*Number of convictions refers to number of charges.
– Less than 0.5%.

released defendants, 31% had more than 1 prior conviction, and 5% had 10 or more. Among detained defendants, 59% had more than 1 prior conviction, and 12% had 10 or more.

Detained defendants (57%) were about twice as likely to have at least one prior felony conviction as defendants who received pretrial release (27%) (table 11) (figure 1). About 1 in 5 detained defendants had at least 1 prior conviction for a violent felony compared to 1 in 11 released defendants. About 8% of detained defendants and 3% of released defendants were under a current charge for a violent felony and had at least one prior conviction for a violent felony.

Among released defendants, 47% had not been previously arrested, compared with 20% of detained defendants (table 12). Of those released 22% had been previously arrested and failed to appear in court at least once, while 32% had made all scheduled court appearances resulting from prior arrests. About half of detained defendants who had been previously arrested, representing 38% of all detained defendants, had failed to appear in court at least once during a previous case.

Table 11. The most serious prior conviction of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Total	Total with: No prior convictions	Total with: Prior convictions	Most serious prior conviction: Felony: Total	Felony: Violent	Felony: Nonviolent	Misdemeanor
Released defendants								
All offenses	29,388	100%	55%	45%	27%	9%	18%	18%
Violent offenses	7,175	24	14	10	6	3	3	4
Property offenses	9,942	34	19	15	9	3	6	6
Drug offenses	9,749	33	17	16	10	2	7	6
Public-order offenses	2,503	9	5	4	2	1	1	2
Detained defendants								
All offenses	17,055	100%	25%	75%	57%	21%	37%	18%
Violent offenses	5,230	31	10	21	16	8	8	5
Property offenses	5,972	35	7	28	22	7	15	6
Drug offenses	4,474	26	7	19	14	4	11	5
Public-order offenses	1,379	8	1	7	5	2	3	2

Note: Data on both most serious prior conviction and detention/release outcome were available for 84% of all cases. Detail may not add to total because of rounding.

Table 12. Court appearance history of released and detained felony defendants, by the most serious current arrest charge, 1992

Most serious current arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Court appearance history: Failed to appear at least once	Made all court appearances	Had no prior arrests
Released defendants				
All offenses	28,225	22%	32%	47%
Violent offenses	6,283	5	7	12
Property offenses	9,157	8	10	16
Drug offenses	8,652	7	11	14
Public-order offenses	2,134	1	3	4
Detained defendants				
All offenses	14,846	38%	42%	20%
Violent offenses	4,508	10	12	8
Property offenses	5,171	15	14	5
Drug offenses	3,979	9	13	5
Public-order offenses	1,189	4	3	1

Note: Data on both detention/release outcome and court appearance history were available for 74% of all defendants. Detail may not add to total because of rounding.

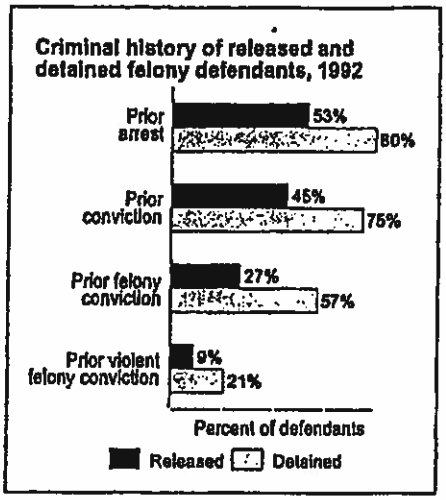

Figure 1

Defendant characteristics by type of pretrial release

Defendants charged with a violent offense comprised the largest percentage among those released on deposit bond (39%), while defendants released under emergency conditions were the least likely to be facing charges for a violent offense (5%) (table 13).

Among the categories of released defendants, those on full cash bond (92%) or deposit bond (90%) had the highest percentage of males. Defendants released on surety bond or emergency release (18%) were less likely to be under age 21 than defendants released under other methods.

Without consideration of Hispanic origin, black defendants comprised the largest percentages among defendants released on deposit bond (71%) or emergency release (70%). Black defendants accounted for about half of surety bond and conditional releases, and a significant majority of other types of releases. When Hispanic origin is included in the racial distribution, blacks accounted for a majority of those released on emergency release (70%), deposit bond (64%), and unsecured bond (57%).

Among types of financial release, full cash bond (33%) had the largest proportion of Hispanic defendants. Non-Hispanic blacks comprised a larger percentage of defendants released on deposit bond (64%) than either surety bond (44%) or full cash bond (43%). Non-Hispanic whites comprised about a third of the defendants released on surety bond, compared to about a fourth of those released on deposit bond or full cash bond.

Among the types of nonfinancial release, unsecured bond (57%) had the highest percentage of non-Hispanic blacks. Hispanic defendants (12%) were less prevalent among this group than among defendants released on recognizance (28%) or conditional release (20%). Non-Hispanic whites accounted for a slightly higher percentage of defendants released on conditional release (31%) or unsecured bond (30%) compared to those released on recognizance (24%).

About half of the defendants released on surety, deposit, or full cash bond had a prior conviction for either a misdemeanor or a felony. Slightly lower percentages of defendants given nonfinancial types of release had a conviction record. Among financial releases, the percentage of defendants with one or more prior felony convictions was higher among those released on deposit bond (39%) than among those released on surety bond (25%). Among nonfinancial releases, more defendants released on unsecured bond (35%) had a felony conviction record than other defendants (24%).

About 3 in 5 defendants placed on emergency release had a prior conviction and nearly half had more than one prior conviction. Defendants released on emergency release (21%), deposit bond (18%), or unsecured bond (18%) were slightly more likely than other released defendants to have five or more prior convictions.

Table 13. Selected characteristics of felony defendants released before case disposition, by type of pretrial release, 1992

Defendant characteristic	Percent of released felony defendants in the 75 largest counties: Financial release: Surety bond	Financial release: Full cash bond	Financial release: Deposit bond	Nonfinancial release: Recognizance	Nonfinancial release: Conditional	Nonfinancial release: Unsecured bond	Nonfinancial release: Emergency release
Most serious arrest charge							
Violent offenses	21%	30%	39%	28%	16%	18%	5%
Property offenses	33	22	21	36	35	47	54
Drug offenses	35	33	31	29	42	32	36
Public-order offenses	11	14	9	7	7	4	6
Sex							
Male	80%	92%	90%	82%	81%	86%	80%
Female	20	8	10	18	19	14	20
Race							
Black	49%	58%	71%	61%	52%	63%	70%
White	49	41	28	38	46	37	30
Other	2	2	--	1	2	--	0
Race/Hispanic origin*							
Non-Hispanic							
Black	44%	43%	64%	47%	47%	57%	70%
White	34	22	25	24	31	30	26
Other	3	2	--	1	2	1	0
Hispanic, any race	19	33	11	28	20	12	5
Age at arrest							
Under 21	18%	25%	26%	26%	24%	23%	18%
21-34	56	55	55	51	53	55	53
35 or older	25	20	19	22	24	22	29
Number of prior convictions							
5 or more	13%	14%	18%	13%	11%	18%	21%
2-4	18	21	17	15	15	13	23
1	17	15	13	13	16	9	15
None	52	50	51	58	58	60	41
Most serious prior conviction							
Felony	25%	34%	39%	24%	24%	35%	46%
Misdemeanor	24	16	10	18	19	6	14
None	52	50	51	58	58	60	41
Court appearance history							
Failed to appear	16%	22%	25%	21%	19%	35%	44%
Made all appearances	37	38	23	32	32	17	26
Had no prior arrests	47	40	51	47	48	48	30

Note: Table is based on the following number of defendants for each type of release: surety bond, 6,823; full cash bond, 3,129; deposit bond, 2,411; recognizance,12,274; conditional, 4,229; unsecured bond, 2,264; and emergency release, 800.
*See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.
--Less than 0.5%.

Nearly half of the defendants placed on emergency release (44%) and about a third of the defendants released on unsecured bond (35%) had missed at least 1 court appearance during a previous case. Lower percentages of defendants released on surety bond (16%), conditional release (19%), recognizance (21%), full cash bond (22%), or deposit bond (25%) had previously missed a court appearance.

Misconduct by defendants placed on pretrial release

Failure to appear in court

A primary goal of any pretrial release decision by the court is to ensure the defendant's appearance in court as scheduled. Among those felony defendants who were released prior to case disposition, 3 out of 4 made all scheduled court appearances. A bench warrant was issued for the arrest of the remaining 25% because they had missed one or more court dates (table 14). Two-thirds of these defendants had been returned to the court by the end of the 1-year study period, while a third of them, 8% of all released defendants, remained fugitives.

The percentage of defendants who failed to appear varied somewhat by the type of arrest charge. Bench warrants for failure to appear were issued more often for released property defendants (29%) and drug defendants (27%) than for defendants charged with public-order offenses (18%) or violent offenses (17%).

Rates of failure to appear varied little by sex or age. By race, failure-to-appear rates ranged from 27% for black defendants to 21% for whites and 15% for defendants of other races. When Hispanic origin was considered, failure-to-appear rates were higher for Hispanics (30%) and non-Hispanic blacks (28%) than for other defendants.

A defendant's court appearance history for previous arrests was related to the probability of failing to appear on the current charges. For those who had missed one or more court dates in the past, about 38% failed to make a scheduled court appearance during the current case, nearly twice the failure-to-appear rate of defendants who had made all court appearances related to prior arrests (22%) or had no prior arrests (20%).

By type of release, defendants on emergency release (49%) were the most likely to have a bench warrant issued because they failed to appear in court, although in 7 out of 10 such cases they were returned to the court. The next highest failure-to-appear rate was for defendants released on unsecured bond (42%). Bench warrants for failure to appear were less likely to be issued for defendants released on surety bond (15%), conditional release (19%), deposit bond (21%), full cash bond (22%), or personal recognizance (26%).

Table 14. Released felony defendants who failed to make a scheduled court appearance, by selected defendant characteristics, 1992

Defendant characteristic	Number of defendants	Percent of released felony defendants in the 75 largest counties: Total	Made all court appearances	Failed to appear in court: Total	Returned to court	Remained a fugitive
All released defendants	33,484	100%	75%	25%	17%	8%
Most serious arrest charge						
Violent offenses	8,159	100%	83%	17%	11%	6%
Property offenses	11,449	100	71	29	20	10
Drug offenses	10,958	100	73	27	19	8
Public-order offenses	2,918	100	82	18	13	6
Sex						
Male	27,700	100%	75%	25%	17%	8%
Female	5,696	100	78	22	14	8
Race						
Black	17,701	100%	73%	27%	19%	9%
White	12,525	100	79	21	14	7
Other	395	100	85	15	10	5
Race/Hispanic origin*						
Non-Hispanic						
Black	12,586	100%	72%	28%	19%	8%
White	7,166	100	81	19	13	6
Other	391	100	86	14	9	5
Hispanic, any race	5,885	100	70	30	17	13
Age at arrest						
Under 21	7,628	100%	78%	22%	15%	6%
21-24	6,110	100	77	23	16	7
25-29	6,264	100	73	27	18	9
30-34	5,319	100	73	27	18	9
35 or older	7,482	100	75	25	17	8
Court appearance history						
Failed to appear	5,967	100%	62%	38%	28%	11%
Made all appearances	8,396	100	78	22	18	5
Had no prior arrests	12,586	100	80	20	11	9
Type of release						
Recognizance	12,054	100%	74%	26%	18%	9%
Surety bond	6,764	100	85	15	12	3
Conditional	4,205	100	81	19	14	5
Full cash bond	3,115	100	78	22	14	8
Deposit bond	2,403	100	79	21	15	6
Unsecured bond	2,249	100	58	42	23	19
Emergency	796	100	51	49	36	13

Note: Data on the court appearance record for the current case were available for 99% of cases involving a defendant released prior to case disposition. All defendants who failed to appear in court and were not returned to the court within the 1-year study period are counted as fugitives. Some of these defendants may have been returned to the court at a later date. Detail may not add to total because of rounding.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.

When a defendant missed a court date and a bench warrant was issued, the failure to appear occurred within 1 week of release in 12% of the cases, within 1 month of release in 35% of the cases, and within 3 months in 74% of the cases. For all defendants failing to appear in court, the median time between pretrial release and the initial missed court date was 46 days.

Time from release to failure to appear	Percent of defendants
1 week	12%
1 month	35
3 months	74
6 months	94
1 year	100
Median	46 days

Return of fugitive defendants to the court

Overall, about 1 in 13 released felony defendants had failed to appear in court as scheduled and were still fugitives at the end of the year-long study. The percentage of defendants who were fugitives at the end of the study was higher when the method of release was unsecured bond (19%) or emergency release (13%) than when some other type of release was used.

About a third of the defendants for whom a bench warrant was issued were returned to the court within 1 month of their failure to appear, and about half had been returned after 3 months. At the end of the 1-year study period, about two-thirds of all defendants who had failed to appear had been returned to the court.* The remaining third were still fugitives.

Time from failure to appear to return	Percent of defendants
1 week	14%
1 month	34
3 months	51
6 months	59
1 year	68
Median	29 days
Not returned within 1 year	32%

*Some defendants returned to the court voluntarily, and the bench warrant for their arrest was withdrawn.

Among those defendants who failed to appear, the percentage who were still fugitives at the end of the study was highest for those who had been released on unsecured bond (44%). Less than a third of the defendants for whom a bench warrant had been issued remained fugitives when they

Table 15. Released felony defendants who were rearrested while on pretrial release, by selected defendant characteristics, 1992

Defendant characteristic	Number of defendants	Percent of released felony defendants in the 75 largest counties: Not rearrested	Rearrested: Total	Rearrested: Felony	Rearrested: Misdemeanor
All released defendants	30,051	86%	14%	10%	3%
Most serious original arrest charge					
Violent offenses	6,991	88%	12%	8%	3%
Property offenses	10,147	86	14	11	4
Drug offenses	10,146	84	16	13	4
Public-order offenses	2,765	91	9	7	2
Sex					
Male	24,839	85%	15%	11%	3%
Female	5,164	91	9	6	3
Race					
Black	15,830	85%	15%	12%	4%
White	11,329	89	11	8	3
Other	365	95	5	5	0
Race/Hispanic origin*					
Non-Hispanic					
Black	11,292	85%	15%	11%	4%
White	6,313	91	9	7	3
Other	361	94	6	6	0
Hispanic, any race	5,126	84	16	12	4
Age at arrest					
Under 21	7,008	84%	16%	12%	4%
21-34	15,907	86	14	11	3
35 or older	6,730	89	11	9	2
Type of release					
Financial release	11,877	88%	12%	9%	3%
Surety bond	6,611	91	9	6	3
Full cash bond	2,697	84	16	13	4
Deposit bond	2,275	84	16	14	3
Property bond	294	91	9	3	6
Nonfinancial release	16,089	86%	14%	11%	3%
Recognizance	9,785	85	15	11	4
Conditional	4,075	88	10	7	2
Unsecured bond	2,228	88	16	15	1
Emergency release	776	82%	18%	12%	6%
Number of prior convictions					
10 or more	1,154	62%	38%	27%	11%
5-9	2,393	74	26	19	7
2-4	4,691	82	18	14	4
1	4,122	86	14	10	4
None	15,670	91	9	7	2
Most serious prior conviction					
Felony	7,684	76%	24%	19%	5%
Misdemeanor	4,948	86	14	8	6
None	15,842	91	9	7	2

Note: Rearrest data were collected for 1 year. Rearrests occurring after the end of this 1-year study period are not included in the table. Information on rearrests in jurisdictions other than the one granting the pretrial release was not always available. Rearrest data were available for 94% of released defendants. Detail may not add to total because of rounding.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15 for a discussion of underreporting of Hispanic origin.

had been released on surety bond (21%), conditional release (27%), emergency release (27%), or deposit bond (28%).

Type of pretrial release	Percent of fugitive defendants not returned within 1 year
All types	32%
Surety bond	21%
Conditional	27
Emergency	27
Deposit bond	28
Recognizance	33
Full cash bond	37
Unsecured bond	44

Rearrest for a new offense

In addition to considering the likelihood that a released defendant may not return for scheduled court appearances, courts in most States also assess the risk of crimes being committed by a defendant who is not held in jail. Rearrest data collected during the 1-year study indicated that 14% of released defendants were rearrested for an offense allegedly committed while on pretrial release (table 15). By original arrest offense, public-order defendants had a slightly lower rearrest rate (9%) than other defendants. Among those arrested for a new felony following pretrial release (10%), about 3 in 5 were rearrested for the same type of offense as the original charge that preceded their release.

Although the misdemeanor rearrest rate (3%) did not vary by sex, the felony rearrest rate for males (11%) was higher than for females (6%). About 15% of black defendants were rearrested, as were 11% of white defendants and 6% of defendants of other races. Hispanic defendants had a rearrest rate of 16%. Defendants under age 21 (16%) had a slightly higher rearrest rate than those age 35 or older (11%).

Released defendants with 10 or more prior convictions had a rearrest rate of 38%, 4 times that of defendants who had no prior convictions (9%). About 19% of defendants whose most serious prior conviction was a felony were rearrested for a felony, more than twice the percentage for defendants with no prior felony convictions (7%). For rearrested defendants, the median time from pretrial release to the alleged commission of a new offense was 48 days. About 8% of the new charged offenses occurred within a week of pretrial release, 37% occurred within 1 month, and 71% occurred within 3 months of the defendant's release.

Percent of released and rearrested defendants who were charged with committing a new offense within:	
1 week	8%
1 month	37
3 months	71
6 months	91
Median	48 days

About 63% of the released defendants who were rearrested were again granted pretrial release. Re-release was more likely to occur if the rearrest offense was a misdemeanor (70%) than if it was a felony (61%). Among defendants rearrested for a felony, re-release was slightly less likely if the rearrest was for a drug offense or a violent offense (59%).

Rearrest offense	Percent of rearrested defendants who were re-released
Total	63%
Felony	61%
Violent	59
Property	63
Drug	59
Public-order	66
Misdemeanor	70%

Overall rates of misconduct

Overall, 1 in 3 released felony defendants were charged with some type of misconduct committed while on pretrial release (table 16). This may have been in the form of a failure to appear in court as scheduled, a new offense allegedly committed while on pretrial release, or some other violation of release conditions that resulted in the revocation of the defendant's pretrial release. In some instances, defendants committed more than one type of pretrial misconduct.

Table 16. Released felony defendants charged with misconduct while on pretrial release, by selected characteristics, 1992

Defendant characteristic	Released felony defendants in the 75 largest counties: Number	Percent charged with misconduct
All released defendants	33,857	33%
Most serious original arrest charge		
Violent offenses	8,271	24%
Property offenses	11,598	36
Drug offenses	11,055	37
Public-order offenses	2,933	25
Sex		
Male	28,025	34%
Female	5,744	27
Race		
Black	17,884	35%
White	12,689	28
Other	395	20
Race/ Hispanic origin*		
Non-Hispanic		
Black	12,721	35%
White	7,267	26
Other	391	19
Hispanic, any race	5,961	38
Age at arrest		
Under 21	7,778	31%
21-34	17,836	34
35 or older	7,554	31
Type of release		
Financial release	12,688	27%
Surety bond	6,823	23
Full cash bond	3,129	32
Deposit bond	2,411	32
Property bond	325	33
Nonfinancial release	18,767	33%
Recognizance	12,274	33
Conditional	4,229	26
Unsecured bond	3,450	47
Emergency release	800	56%
Number of prior convictions		
10 or more	1,464	54%
5-9	2,685	45
2-4	5,111	39
1	4,350	31
None	16,789	27
Most serious prior conviction		
Felony	8,544	45%
Misdemeanor	5,356	31
None	16,817	27
Court appearance history		
Failed to appear	6,043	49%
Made all appearances	8,497	32
Had no prior arrests	12,695	24

Note: Misconduct may have been a new charged offense, failure to appear in court, or a technical violation of release conditions that resulted in the revocation of a defendant's pretrial release. Data were collected for a maximum of 1 year.
*Based on defendants with known race and Hispanic origin. See *Methodology* on page 15.

The 33% misconduct rate was similar to that found in the two previous NPRP studies based on filings in 1988 (35%) and 1990 (34%) (figure 2). The failure-to-appear rate has remained constant at about a fourth of all released defendants. In 1988 and 1990 about 1 in 6 released defendants were charged with a new offense that they had allegedly committed while on pretrial release. In 1992 about 1 in 7 released defendants were charged with such an offense.

About 3 in 8 released drug and property defendants were charged with some type of pretrial misconduct as were 2 in 8 defendants facing violent or public-order charges (table 16). Defendants who were male (34%), black (35%), or Hispanic (38%) had somewhat higher pretrial misconduct rates than other defendants.

By type of pretrial release, defendants with the highest overall misconduct rates were those placed on emergency release (56%). Aside from those released under emergency conditions, the misconduct rates for other types of pretrial release were lowest for surety bond (23%) and conditional release (26%) and highest for unsecured bond (47%). Overall, defendants released on financial bond (27%) had a slightly lower misconduct rate than those released under nonfinancial conditions (33%).

Defendants with multiple prior convictions, or with at least 1 prior felony conviction, had higher than average rates of pretrial misconduct. Defendants with 10 or more prior convictions (54%) were twice as likely to be charged with some type of pretrial misconduct as defendants with no prior convictions (27%).

Half of the defendants with at least one prior missed court appearance were charged with some type of pretrial misconduct during the current case, compared to about a third of those who had made all court appearances related to prior arrests, and about a fourth of those who had no prior arrests.

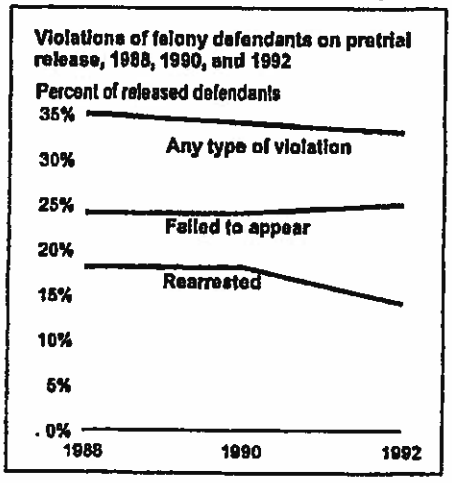

Figure 2

Adjudication

The median time from the original felony arrest to adjudication of that charge was greater for released defendants (118 days) than for those who had remained in detention (46 days) (table 17). A month after arrest, detained defendants (39%) were about 3 times as likely as released defendants (14%) to have been adjudicated on their felony arrest charges. By the end of 1 year, 96% of the cases of detained defendants and 86% of the cases of released defendants had been adjudicated (figure 3).

Among detained defendants, those charged with a violent offense (92%) were less likely than others (98%) to have their case adjudicated within a year of their arrest. This finding was especially true for detained murder defendants, about a third of whom were still awaiting adjudication of their case at the end of 1 year.

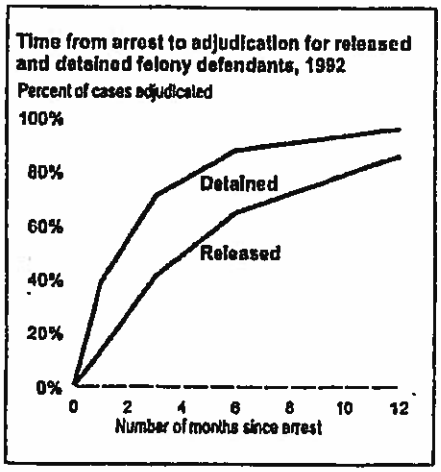

Figure 3

Table 17. Time from arrest to adjudication for released and detained defendants, by the most serious original arrest charge, 1992

Most serious original arrest charge	Felony defendants in the 75 largest counties: Number of defendants	Median number of days	Percent of cases adjudicated within: 1 week	1 month	3 months	6 months	1 year	Percent not adjudicated within 1 year
Released defendants								
All offenses	31,743	118	2%	14%	42%	66%	86%	14%
Violent offenses	7,742	126	2	12	39	65	86	14
Property offenses	10,868	112	1	13	43	67	86	14
Drug offenses	10,442	119	3	14	42	64	85	15
Public-order offenses	2,690	101	4	18	46	73	90	10
Detained defendants								
All offenses	18,695	46	8%	39%	71%	88%	96%	4%
Violent offenses	5,699	85	4	26	53	77	92	8
Property offenses	8,569	40	7	42	80	93	98	2
Drug offenses	4,932	33	12	47	79	91	98	2
Public-order offenses	1,494	36	12	43	74	93	99	1

Note: Data on time from arrest to adjudication were available for 97% of all adjudicated cases. Because of violation of the conditions of pretrial release, 6% of the defendants who were granted pretrial release had their release revoked and were in custody at the time of adjudication. These defendants are included under "released." The median time from arrest to adjudication includes cases still pending at the end of the 1-year study period. Knowing the exact date of adjudication for these cases would not change the medians reported.

Overall, a higher percentage of detained defendants (79%) than released defendants (61%) were convicted (table 18). The lowest conviction rate was for released defendants who were charged with a violent offense (47%).

The felony conviction rate among detained defendants was 70%, compared to 45% for released defendants. Among released defendants, 54% of those charged with a drug offense or public-order offense were convicted of a felony, a higher percentage than for those charged with a property offense (44%) or a violent offense (33%). Among defendants detained until case disposition, about two-thirds of those who had been originally charged with a violent offense were convicted of a felony, compared with about three-fourths of those who had been charged with a nonviolent offense.

Table 18. Adjudication outcome for released and detained felony defendants, by the most serious original arrest charge, 1992

Most serious original felony arrest charge	Number of defendants	Percent of felony defendants in the 75 largest counties: Convicted: Total	Total convicted	Felony	Misdemeanor	Not convicted: Total not convicted	Dismissed/ acquitted	Other nonconviction
Released defendants								
All offenses	27,212	100%	61%	45%	16%	39%	31%	7%
Violent offenses	6,567	100	47	33	15	53	48	5
Property offenses	9,420	100	65	44	21	35	28	7
Drug offenses	8,853	100	65	54	11	35	24	11
Public-order offenses	2,371	100	69	54	15	31	27	4
Detained defendants								
All offenses	17,985	100%	79%	70%	9%	21%	20%	1%
Violent offenses	5,217	100	72	64	8	28	28	1
Property offenses	6,447	100	83	72	11	17	16	1
Drug offenses	4,852	100	81	73	8	19	16	3
Public-order offenses	1,469	100	79	70	9	21	20	1

Note: Ten percent of all cases were still awaiting adjudication at the conclusion of the 1-year study period. Information on adjudication was available for 90% of all cases that were adjudicated within 1 year. Convictions for local ordinance violations are included under the misdemeanor category. Detail may not add to total because of rounding.

Table 19. Most severe type of sentence received by convicted felony defendants, by whether released or detained, and by the most serious original arrest charge, 1992

Most serious original felony arrest charge	Number of defendants	Percent of convicted defendants in the 75 largest counties: Sentenced to incarceration: Total	Prison	Jail	Not sentenced to incarceration: Total	Probation	Other
Released defendants							
All offenses	15,372	100%	51%	19%	32%	49%	44%	5%
Violent offenses	2,641	100	53	20	33	47	44	3
Property offenses	5,841	100	49	17	32	51	45	5
Drug offenses	5,387	100	54	22	32	46	41	4
Public-order offenses	1,504	100	45	14	32	55	46	9
Detained defendants								
All offenses	13,943	100%	87%	50%	38%	13%	12%	1%
Violent offenses	3,597	100	87	55	32	13	12	1
Property offenses	5,275	100	88	46	41	12	12	1
Drug offenses	3,912	100	87	50	37	13	11	2
Public-order offenses	1,159	100	89	47	41	11	11	–

Note: Information on type of sentence received was available for 85% of all cases involving a conviction that was adjudicated within 1 year of arrest. Sentences to incarceration may have also included probation. Sentences to incarceration or probation may have also included a fine, restitution, and/or community service. "Other" category includes fines, restitution, and community service. Conviction was for a misdemeanor in some cases. Detail may add to total because of rounding.
–Less than 0.05%.

Sentencing

Upon conviction, 87% of detained defendants were sentenced to incarceration, with 50% receiving a prison sentence and 38% a jail term (table 19). Fifty-one percent of the released defendants who were convicted were sentenced to incarceration, with more receiving a jail sentence (32%) than a prison sentence (19%). Convicted defendants who were detained until case disposition (50%) were more than twice as likely as released defendants to receive a State prison sentence. More than 90% of both released and detained defendants who were convicted but not sentenced to incarceration received a probation sentence.

Among defendants who were detained until case disposition, 67% were convicted and sentenced to incarceration, compared to 29% of those who were released (figure 4).

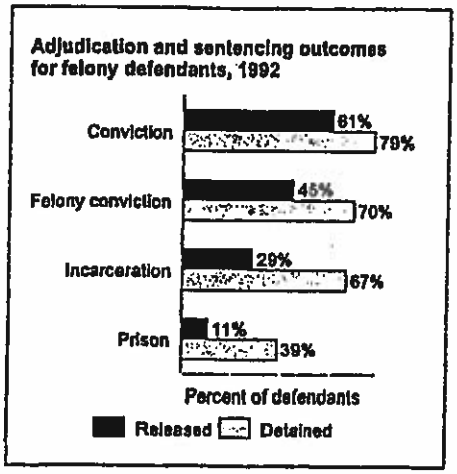

Figure 4

Detained defendants (39%) were nearly 4 times as likely as released defendants (11%) to be convicted and sentenced to State prison. These differences can be attributed mainly to the fact that some of the factors that affect sentencing decisions, such as seriousness of offense and prior criminal record, also affect pretrial release decisions.

Methodology

The NPRP sample was designed and selected by the U.S. Bureau of the Census under BJS supervision. It is a 2-stage stratified sample with 40 of the 75 most populous counties selected at the first stage and a systematic sample of State court felony filings (defendants) within each county selected at the second stage. The 40 counties were divided into 4 first-stage strata based on court filing information obtained through a telephone survey. Fourteen counties were included in the sample with certainty because of their large number of court filings. The remaining counties were allocated to the three noncertainty strata based on the variance of felony court dispositions.

The second stage sampling (filings) was designed to represent all defendants who had felony cases filed with the court during the month of May 1992. The participating jurisdictions provided data for every felony case filed on selected days during that month. Depending on the first-stage stratum in which it had been placed, each jurisdiction provided data for 1, 2, or 4 weeks' worth of filings in May 1992. Data from jurisdictions that were not required to provide a full month of filings were weighted to represent the full month.

Data on 13,206 sample felony cases were collected from the 40 sampled jurisdictions. This sample represented 55,246 weighted cases filed during the month of May 1992 in the 75 most populous counties. Cases that could not be classified into one of the four major crime categories (violent, property, drug, public-order) because of incomplete information were omitted from the analysis. Cases that were disposed of too quickly to allow time for a pretrial release decision were also excluded. The data collection was supervised by the Pretrial Services Resource Center of Washington, D.C.

This report is based on data collected from the following jurisdictions: Arizona (Maricopa); California (Los Angeles, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara); District of Columbia; Florida (Broward, Dade, Duval, Hillsborough, Palm Beach, Pinellas); Georgia (Fulton); Illinois (Cook); Maryland (Montgomery); Massachusetts (Essex, Suffolk); Michigan (Wayne); Missouri (St. Louis); New Jersey (Essex); New York (Bronx, Erie, Kings, Monroe, New York, Queens); Ohio (Hamilton); Pennsylvania (Allegheny, Montgomery, Philadelphia); Tennessee (Shelby); Texas (Dallas, Harris, Tarrant); Utah (Salt Lake); Virginia (Fairfax); Washington (King); and Wisconsin (Milwaukee).

Because the data came from a sample, a sampling error (standard error) is associated with each reported number. In general, if the difference between two numbers is greater than twice the standard error for that difference, we can say that we are 95% confident of a real difference and that the apparent difference is not simply the result of using a sample rather than the entire population. All differences discussed in this report were statistically significant at or above the 95-percent confidence level.

Race/Hispanic origin

Several jurisdictions did not provide complete reporting for defendants' Hispanic origin. As a result, the overall reporting level for race combined with Hispanic origin was 77% compared to 91% for race alone. Because of this underreporting, the categories of race alone account for more defendants in tables 13 through 16 than the categories that include both race and Hispanic origin. A large preponderance of the persons with a Hispanic origin were white, although the category includes all races.

Offense categories

Felony offenses were classified into 13 categories for this report. These categories were further divided into the four major crime categories of violent, property, drug, and public-order offenses. The following listings contain a representative summary of most of the crimes contained in each category; however, these lists are not meant to be exhaustive. All offenses, except for murder, include attempts and conspiracies to commit.

Violent offenses

Murder— includes homicide, nonnegligent manslaughter, and voluntary homicide. Does not include attempted murder, classified as felony assault or negligent homicide, and involuntary homicide and vehicular manslaughter, which are classified as *other violent offenses.*

Rape— includes forcible intercourse, sodomy, or penetration with a foreign object. Does not include statutory rape or nonforcible acts with a minor or someone unable to give legal consent, nonviolent sexual offenses, and commercialized sex offenses.

Robbery— includes the unlawful taking of anything of value by force or threat of force.

Assault— includes aggravated assault, aggravated battery, attempted murder, assault with a deadly weapon, felony assault battery on a law enforcement officer, or other felony assaults. Does not include extortion, coercion, or intimidation.

Other violent offenses— includes vehicular manslaughter, involuntary manslaughter, negligent or reckless homicide, nonviolent or nonforcible sexual assault, kidnaping, unlawful imprisonment, child or spouse abuse, cruelty to child, reckless endangerment, hit and run with bodily injury, intimidation and extortion.

Property offenses

Burglary— Includes any type of entry into a residence, industry, or business with or without the use of force with the intent to commit a felony or theft, such as forcible entry and breaking and entering. Does not include possession of burglary tools, trespassing, and unlawful entry where the intent is not known.

Theft— Includes grand theft, grand larceny, motor vehicle theft, or any other felony theft. Does not include receiving or buying stolen property, fraud, forgery, or deceit.

Other property offenses— Includes receiving or buying stolen property, forgery, fraud, embezzlement, arson, reckless burning, damage to property, criminal mischief, vandalism, bad checks, counterfeiting, criminal trespassing, possession of burglary tools, and unlawful entry.

Drug offenses

Drug sales/trafficking— Includes trafficking, sales, distribution, possession with intent to distribute or sell, manufacturing, or smuggling of controlled substances. Does not include possession of controlled substances.

Other drug offenses— Includes possession of controlled substances, prescription violations, possession of drug paraphernalia, and other drug law violations.

Public-order offenses

Driving-related— Includes driving under the influence of drugs or alcohol, driving with a suspended or revoked license, or any other felony in the motor vehicle code.

Weapons— Includes the unlawful sale, distribution, manufacture, alteration, transportation, possession, or use of a deadly weapon or accessory.

Other public-order offenses— Includes flight/escape, parole or probation violations, prison contraband, habitual offender, obstruction of justice, rioting, libel and slander, weapons offenses, treason, perjury, prostitution/pandering, bribery, and tax law violations.

Terms related to pretrial release

Released defendant— Includes any defendant who was released from custody prior to the disposition of his or her case by the court. Includes defendants who were detained for some period of time before being released and defendants who were returned to custody after being released because of a violation of the conditions of pretrial release.

Detained defendant— Includes any defendant who remained in custody from the time of arrest until the disposition of his or her case by the court. This report also refers to detained defendants as "not released."

Failure to appear— Occurs when a court issues a bench warrant for a defendant's arrest because he or she has missed a scheduled court appearance.

Types of financial release

Full cash bond— The defendant posts the full bail amount in cash with the court. If the defendant makes all court appearances, the cash is returned. If the defendant fails to appear in court, the bond is forfeited.

Deposit bond— The defendant deposits a percentage (usually 10%) of the full bail amount with the court. If the defendant fails to appear in court, he or she is liable to the court for the full amount of the bail. The percentage bail is returned after the disposition of the case, but the court often retains a small portion for administrative costs.

Surety bond— A bail bond company signs a promissory note to the court for the full bail amount and charges the defendant a fee for the service (usually 10% of the full bail amount). If the defendant fails to appear, the bond company is liable to the court for the full bail amount. Frequently the bond company requires the defendant to post collateral in addition to the fee.

Property bond— Also known as collateral bond, this involves an agreement made by a defendant as a condition of pretrial release requiring that property valued at the full bail amount be posted as an assurance of his or her appearance in court. If the defendant fails to appear in court, the property is forfeited.

Types of nonfinancial release

Unsecured bond— The defendant pays no money to the court but is liable for the full amount of bail should he or she fail to appear in court.

Release on recognizance— The court releases the defendant on the promise that he or she will appear in court as required.

Citation release— Arrestees are released pending their first court appearance on a written order issued by law enforcement personnel. Citation release is included in the recognizance release category in this report.

Conditional release— Defendants are released under conditions and are usually supervised by a pretrial services agency. In some cases an unsecured bond is included. This type of release is also known as supervised release.

Other type of release

Emergency release— Defendants are released solely in response to a court order placing limits on a jail's population.

Brian A. Reaves and Jacob Perez wrote this report. Pheny Z. Smith provided statistical review. Tom Hester edited the report, assisted by Rhonda Keith, who did the page layout. Marilyn Marbrook produced the final report, assisted by Jayne Robinson and Yvonne Boston.

November 1994, NCJ-148818

Appendix D1 to This Response

APPENDIX E

Professor Ray Pasternoster's Report,
Chief Judge Rasin Letter, Commissioner Survey

SURVEY OF MARYLAND BAIL COMMISSIONERS: COUNTY COMPARISONS

In this part of the report, we would like to make some comparisons of bail commissioners' by geographical jurisdiction. At the beginning of the questionnaire, each commissioner was asked to report whether they practiced in a predominately urban, suburban, or rural jurisdiction. Approximately thirty-four percent of the commissioners said that they served a urban jurisdiction, 42% a suburban jurisdiction and 24% a rural jurisdiction. As in the pooled analysis, we will separate three features of this report. The first section will briefly describe some characteristics of the commissioners, the second section will provide information about the jurisdiction where the commissioner hears cases, and the third and more detailed section will present information about the commissioners' bail review procedures.

CHARACTERISTICS OF COMMISSIONERS

Commissioners were asked about their tenure as a bail commissioner. Table 1 reveals that urban bail commissioners had slightly longer tenures than those from both suburban and rural jurisdictions. For example, nearly one half (49.1%) of the urban commissioners reported that they have been a bail commissioner for ten or more years, compared with only thirty-nine percent for suburban and forty-two percent for rural commissioners. Suburban and rural bail commissioners were generally more alike in terms of number of years in service than their urban counterparts.

Table 1: Length of Time on the Job For Bail Commissioners

	Urban	Suburban	Rural
Less than 1 year	8.2%	9.5%	9.3%
1-2 years	18.0%	12.2%	11.6%
3-5 years	16.4%	13.5%	14.0%
6-10 years	8.2%	25.7%	23.3%
10-15 years	19.6%	13.5%	18.6%
16+ years	29.5%	25.7%	23.3%

In terms of their general education, there was no real discernable pattern among the commissioners. Commissioners from urban (81.9%) and suburban (78.4%) jurisdictions were more likely to have a college education or advanced degree than those from rural jurisdictions (68.3%). A slightly greater percentage of commissioners from urban (38%) and suburban (40%) jurisdictions reported having some type of legal education than those form rural jurisdictions (32%).

Table 2: General Education of the Bail Commissioners

	Urban	Suburban	Rural
Some College	9.8%	12.2%	24.4%
Associate Degree	8.2%	9.5%	7.3%
Bachelor's Degree	55.7%	60.8%	41.5%
Law or Graduate School	26.2%	17.6%	26.8%

Among those with legal education, commissioners from urban and rural jurisdictions were more likely to have had paralegal training than those from suburban areas, and those from suburban and rural jurisdictions were more likely than their urban counterparts to have legal education that went beyond a law degree.

Table 3: Legal Education of Bail Commissioners

	Urban	Suburban	Rural
Paralegal Training	65%	58%	68%
Some Law School	22%	23%	8%
Law Degree	13%	15%	16%
Post-Graduate Law Degree	0%	4%	8%

In addition to their formal education, commissioners were asked if they had received any special training to prepare them for being a bail commissioner in the state of Maryland. Nearly all commissioners in each jurisdiction reported that they did receive some specialized training. Over 90% of the urban commissioners had special training, compared with 89% of those in suburban areas, and 86% of the rural bail commissioners. Table 4 shows that the extent of specialized training for bail commissioners did vary by jurisdiction. Commissioners serving urban areas were more likely to have extensive training (over 40 hours) Than those in either suburban or rural jurisdictions.

Table 4: Amount of Training For Bail Commissioners

	Urban	Suburban	Rural
8 hours or less	0.0%	3.0%	0.0%
9 - 24 hours	3.6%	7.1%	15.4%
25 - 40 hours	1.8%	9.9%	17.9%
40 + hours	94.6%	80.0%	66.7%

JURISDICTION

Each bail commissioner was asked if they had occasion to set bail for suspects who lived outside the county within which they worked. Fifteen percent of the commissioners from urban

areas reported that they did this "Often", twenty-four percent from suburban jurisdictions, and sixteen percent from rural jurisdictions. Forty-six percent of the urban commissioners set bail for someone outside their jurisdiction "Sometimes", while the percentages for suburban and rural commissioners was 56% and 63%, respectively. Thirty-nine percent of the urban commissioners set bail for someone outside their jurisdiction "Infrequently", while the corresponding percentages for suburban and rural counties was 16% and 21% respectively.

Table 5 reports the number of suspects each bail commissioner saw during the course of an average week. As perhaps suspected, urban bail commissioners set bail more frequently than both suburban and rural commissioners. For example, over three quarters (78.%) of the urban commissioners reported that they set bail for more than twenty suspects per week, compared

Table 5: Average Number of Suspects per Week

	Urban	Suburban	Rural
0 - 5	3.3%	4.1%	11.9%
6 - 10	3.3%	20.3%	31.1%
11 - 20	14.8%	27.0%	38.1%
21 - 50	50.8%	33.8%	9.5%
51 - 75	18.0%	9.5%	2.4%
76 - 100	9.8%	5.3%	7.0%

with less than one-half of the suburban (48.6%) and rural (18.9%) commissioners. The pattern is that urban commissioners have the heaviest caseload, followed by suburban then rural commissioners.

CHARACTERISTICS OF BAIL REVIEW HEARING

A critical part of the questionnaire sent to each bail commissioner was their description of the bail review hearing. Two variables that were important was the factors that the commissioner used in setting bail, and how often it was that they had information about that particular factor. We report this information separately for each of the three types of jurisdictions in Table 6.

It can be seen that with minor exceptions, there was a great deal of consensus across the jurisdictions as to what factors are used in setting bail. In each jurisdiction, the important factors in setting bail reflect the severity of the current offense, the offender's prior criminal history and history of failure to appears. The only glaring exception to this consensus seem to be the greater tendency of suburban (92%) and rural (93%) bail commissioners to state that the suspect's employment status is a factor in setting bail.

It is also true that in each jurisdiction the commissioners reported that they did have access to important information. Approximately ninety percent of the urban, suburban and rural bail commissioners reported having information about the current charges, current FTA status, and the criminal history of the suspect. Employment information which was reported to be an important factor in setting bail for suburban and rural commissioners was slightly less available.

Table 6: Percentage of Time That a Commissioner Used Each Factor in Setting Bail, and the Percentage of Time that Information About that Factor was Available to the Commissioner

Factor	Percentage of Time Used to Set Bail	Percentage of Time Information Was Available	Urban Jurisdictions Suburban Jurisdictions Percentage of Time Used to Set Bail	Percentage of Time Information Was Available
Nature & circumstances of charge	97%	91%	97%	94%
Nature & weight of evidence	75%	84%	74%	85%
Possible sentence if convicted	77%	98%	91%	94%
Prior failure to appear for trial	95%	91%	97%	91%
Parole or probation status	87%	84%	91%	81%
Pending cases	95%	88%	92%	83%
Prior arrests	70%	81%	74%	87%
Prior convictions	93%	85%	95%	87%
Family ties	52%	61%	72%	63%
Employment history	72%	63%	92%	79%
Suspect's financial resources	60%	64%	64%	70%
Suspect's school status	25%	35%	20%	45%
Suspect's military status	25%	47%	16%	40%
Suspect's other status (INS)	23%	37%	34%	28%
Suspect's reputation	75%	59%	77%	63%
Suspect's medical condition	27%	37%	24%	37%
History of alcohol abuse	50%	49%	43%	56%
History of drug abuse	50%	56%	43%	55%

Arrested while under alcohol	48%	70%	47%	75%
Arrested while under drugs	50%	67%	45%	72%

Table 6: Continued

Rural Jurisdictions

Factor	Percentage of Time Used to Set Bail	Percentage of Time Information Was Available
Nature & circumstances of charge	100%	85%
Nature & weight of evidence	63%	78%
Possible sentence if convicted	88%	95%
Prior failure to appear for trial	100%	93%
Parole or probation status	93%	83%
Pending cases	95%	89%
Prior arrests	63%	93%
Prior convictions	95%	89%
Family ties	74%	72%
Employment history	93%	84%
Suspect's financial resources	63%	73%
Suspect's school status	12%	46%
Suspect's military status	12%	42%
Suspect's other status (INS)	23%	42%
Suspect's reputation.	67%	76%
Suspect's medical condition	19%	36%
History of alcohol abuse	28%	65%
History of drug abuse	30%	60%
Arrested while under alcohol	46%	88%
Arrested while under drugs	46%	83%

Recall that each bail commissioner was also asked to estimate how important a given factor was in their decision to set bail. They were asked to provide this estimate on a five point scale that ranged from "Least Important" with a score of 1 to "Very Important" with a score of 5. A high score (one close to 5), therefore, indicates that a commissioner thought that the particular factor was important in setting bail. In Table 7, for each type of jurisdiction we report each of the factors given to the commissioners, and the average score across commissioners for that factor.

In this dimension, as in others we have looked at, there is a surprising degree of consensus among the bail commissioners from different kinds of jurisdictions. Although rural commissioners generally had the lowest absolute ratings, there was strong agreement as to which factors were the most important in setting bail. In each jurisdiction, the most important factors were the nature of the current charge, the criminal history of the defendant, and the failure of the suspect to appear for trial in a previous case. While the relative ordering of these factors differed slightly across jurisdictions, they were rated the most important factors in setting bail in each of the three areas. The similarity in ranking across urban, suburban and rural bail commissioners is more striking and compelling than the minor differences that exist.

Table 7: Bail Commissioner's Assessment as to "How Important" Each Factor is in Setting Bail

Factor	Average Importance Score* Urban	Suburban	Rural
Nature & circumstances of charge	4.77	4.64	4.46
Nature & weight of evidence	4.38	4.18	4.10
Possible sentence if convicted	4.37	4.20	4.10
Prior failure to appear for trial	4.66	4.79	5.00
Parole or probation status	4.34	4.07	3.88
Pending cases	4.57	4.08	3.98
Prior arrests	3.93	3.80	3.70
Prior convictions	4.55	4.20	4.19
Family ties	3.61	3.32	3.30
Employment history	3.87	3.33	3.63
Suspect's financial resources	3.41	3.28	3.30
Suspect's school status	3.32	3.74	3.83
Suspect's military status	3.63	4.02	3.68
Suspect's other status (INS)	3.50	3.57	3.38
Suspect's reputation	3.63	3.56	3.13
Suspect's medical condition	3.53	3.49	3.41
History of alcohol abuse	3.45	3.27	2.89
History of drug abuse	3.53	3.34	3.00
Arrested while under alcohol	3.58	3.72	3.68
Arrested while under drugs	3.60	3.63	3.70

* A score of 5.0 indicates that a given factor is "Very Important" to the Commissioner in Setting Bail

We asked each commissioner to estimate how often they used different sources of information in setting bail, and the responses to these questions are reported in Table 8 for each of the three types of jurisdictions. A few things should be noted. First, is the consistent fact that bail bondmen are an important source of information in each jurisdiction. This is particularly likely to be true in suburban and rural jurisdictions. Behind this, is pretrial services, where a

majority of commissioners in each area said they were a "primary" source of information in setting bail. Pretrial service personnel are also more likely to be a "primary" source of information in suburban and rural jurisdictions.

Table 8: How Often A Source of Information is Used by Bail Commissioners

Urban Jurisdictions

Source	Primarily Used 1	2	3	4	5	Never Used
Family/Friends	19%	43%	32%	6%		0%
Police	46%	16%	16%	22%		0%
Prosecutor	27%	16%	27%	30%		0%
Defense Lawyer	30%	21%	31%	18%		0%
Defendant	41%	6%	26%	27%		0%
Pretrial	53%	12%	16%	19%	0%	
Bondsman	67%	29%	4%	0%		0%

Suburban Jurisdictions

Source	Primarily Used 1	2	3	4	5	Never Used
Family/Friends	29%	48%	19%	5%		0%
Police	37%	10%	25%	28%		0%
Prosecutor	28%	23%	38%	11%		0%
Defense Lawyer	20%	33%	38%	9%		0%
Defendant	54%	13%	17%	16%		0%
Pretrial	65%	9%	18%	9%	0%	
Bondsman	81%	12%	7%	0%		0%

Rural Jurisdictions

Source	1 Primarily Used	2	3	4	5 Never Used
Family/Friends	33%	33%	26%	7%	0%
Police	35%	24%	30%	11%	0%
Prosecutor	31%	23%	42%	4%	0%
Defense Lawyer	56%	22%	19%	4%	0%
Defendant	55%	5%	30%	10%	0%
Pretrial	63%	25%	12%	0%	0%
Bondsman	100%	0%	0%	0%	0%

We asked each commissioner several questions about the frequency with which they employed non-financial conditions of release. First, we asked them to estimate the proportion of cases in which they set non-financial conditions of release. Table 9 indicates that rural bail commissioners are more likely than those in both suburban and rural jurisdictions to set non-financial conditions. Nearly one-half of those in rural areas reported that they set non-financial conditions seventy-five percent of the time or more, compared with only 43% for suburban commissioners and 32% for urban commissioners.

Table 9: Percentage of Cases Bail Commissioners Reported That They Set Non-Financial Conditions of Release

	Urban	Suburban	Rural
Never or Rarely	3%	3%	6%
About 25% of the time	36%	24%	17%
About 50% of the time	29%	30%	29%
About 75% of the time	22%	32%	20%
More than 90% of the time	10%	11%	29%

Each commissioner was then asked to estimate the frequency with which they imposed two specific types of non-financial conditions: (1) release on recognizance with no special conditions, and (2) release on recognizance with special conditions. This data is reported for each jurisdiction in Table 10.

Table 10: Frequency of Non-Financial Conditions of Bail

Urban Jurisdictions	Frequently Used				Never Used
Source	1	2	3	4	5
ROR	27%	35%	28%	5%	5%
ROR With Conditions	61%	20%	19%	0%	0%

Suburban Jurisdictions	Frequently Used				Never Used
Source	1	2	3	4	5
ROR	19%	31%	28%	10%	12%
ROR With Conditions	45%	28%	24%	3%	0%

Rural Jurisdictions	Frequently Used				Never Used
Source	1	2	3	4	5
ROR	29%	15%	18%	21%	17%
ROR With Conditions	49%	34%	17%	0%	0%

These data are a little difficult to summarize. First, it appears that with respect to ROR, it appears that urban commissioners are more likely to release suspects on their own recognizance than are suburban commissioners, who in turn are more likely to impose an ROR than rural commissioners. There does not, however, appear to be much difference by jurisdiction in the frequency with which ROR with conditions is imposed by commissioners. Urban commissioners are slightly more likely to impose ROR with conditions than either suburban or rural commissioners, but this difference is not great (when combining frequency categories "1" and "2").

Recall also that each commissioner was asked about the effectiveness of financial conditions of release. For example, they were asked the frequency with which they imposed three types of financial bail; unsecured, percentage bond, and a full cash bail. We report these data in Table 11. We can see that in each type of jurisdiction, the bail commissioners we surveyed were unlikely to impose bails that were unsecured (without collateral) or percentage bonds. In fact, fewer than twenty percent said that they frequently imposed such financial conditions of release. Much more frequently imposed was the full cash bail. There was more consistency across jurisdictions in the frequency with which cash bails were imposed.

Table 11: Frequency of Financial Bail Conditions

Urban Jurisdictions

Source	Frequently Used 1	2	3	4	5 Never Used
Unsecured	2%	7%	28%	37%	27%
Percentage Bond	2%	7%	25%	41%	25%
Full Cash	65%	17%	2%	3%	13%

Suburban Jurisdictions

Source	Frequently Used 1	2	3	4	5 Never Used
Unsecured	8%	14%	25%	36%	18%
Percentage Bond	8%	12%	11%	21%	47%
Full Cash	58%	19%	10%	1%	11%

Rural Jurisdictions

Source	Frequently Used 1	2	3	4	5 Never Used
Unsecured	0%	14%	31%	46%	9%
Percentage Bond	6%	6%	14%	37%	34%
Full Cash	56%	24%	12%	6%	3%

With respect to the financial conditions of bail, we asked each commissioner if they had information available to them about the defendant's ability to post the bail that was set. A majority in each jurisdiction said that they did not have such information. In fact, 78% of the commissioners in urban jurisdictions, 60% of those in suburban areas, and 73% in rural jurisdictions reported that they had no information about the suspect's ability to post the amount of bail that was set. This could reflect the fact that commissioners in each jurisdiction thought that the suspect's financial ability to make bail should not be a factor in their setting of bail. Nearly one-half (47%) of the commissioners in urban and rural areas thought that the suspect's financial condition was either the least important factor or an irrelevant factor in setting bail, while 37% of the commissioners in suburban areas thought it unimportant or irrelevant.

47% irrelevant.

APPENDIX E

Professor Ray Pastemoster's Report,
Chief Judge Rasin Letter, Commissioner Survey

SURVEY OF MARYLAND BAIL COMMISSIONERS

During the fall of 1999 as part of a broader study of bail practices in the state of Maryland, a survey of Maryland District Court Bail Commissioners was undertaken. Questionnaires were mailed to each commissioner in the state asking them questions about their bail review procedures. We will separate three features of this report. The first section will briefly describe some characteristics of the commissioners, the second section will provide information about the jurisdiction where the commissioner hears cases, and the third and more detailed section will present information about the commissioners' bail review procedures.

CHARACTERISTICS OF COMMISSIONERS

Commissioners were asked about their tenure as a bail commissioner. Table 1 reveals that most of the state bail commissioners have been in the post a number of years. For example over sixty percent (61.95) have been a bail commissioner for more than five years, and more than a quarter have been commissioner for more than sixteen years.

Table 1: Length of Time on the Job For Bail Commissioners

	Frequency	Percent
Less than 1 year	18	9.7%
1-2 years	26	14.1%
3-5 years	26	14.1%
6-10 years	35	19.0%
10-15 years	30	16.3%
16+ years	49	26.6%

Several different queries were made into the commissioners educational background and training for the job. This information in shown in Tables 2- 4. Table 2 reports basic educational information about the bail commissioners. A majority of the commissioners (54,1%) have a

bachelor's degree, while an additional twenty-three percent have post-college education (law or graduate school), a sizeable proportion of them have some college, but did not matriculate (13.8%).

Table 2: General Education of the Bail Commissioners

	Frequency	Percent
Some College	25	13.8%
Associate Degree	16	8.8%
Bachelor's Degree	98	54.1%
Law or Graduate School	42	23.2%

Approximately forty percent of the commissioners reported that they have some type of legal education. Table 3 indicates that for the most part the commissioners' legal education has consisted of para legal education, fewer than 20% of the commissioners reported having a law degree.

Table 3: Legal Education of Bail Commissioners

	Frequency	Percent
Paralegal Training	39	62.9%
Some Law School	12	19.4%
Law Degree	9	14.5%
Post-Graduate Law Degree	2	3.2%

Finally, in addition to their formal education, commissioners were asked if they had received any special training to prepare them for being a bail commissioner in the state of Maryland. Nearly all (90%) reported that they had, although the amount of training varied. Table 4 shows that a minority of commissioner received only modest training (fewer than 25 hours), while the vast majority (82%) received forty hours or more of specific training.

Table 4: Amount of Training For Bail Commissioners

	Frequency	Percent
8 hours or less	2	1.2%
9 - 24 hours	13	7.8%
25 - 40 hours	14	8.4%
40 + hours	137	82.5%

JURISDICTION

Each bail commissioner was asked the nature of the jurisdiction within which they served. Approximately thirty-four percent reported that they served a primarily urban area, forty-two percent a predominately suburban area, and twenty-four percent a rural area. They were also asked if they had occasion to set bail for suspects who lived outside the county within which they worked. Only one commissioner responded that he/she had "never" done this, while a majority (73%) reported that they had either "often" or "sometimes". Table 5 reports the number of suspects each bail commissioner saw during the course of an average week. Although there is great variation in how busy each commissioner is, the majority of the commissioners reported theat they set bail for between eleven and fifty suspects during an average week. Approximately fifteen percent of the commissioners reported setting bail for fifty or more suspects during an average week.

Table 5: Average Number of Suspects per Week

	Frequency	Percent
0 - 5	10	5.4%
6 - 10	31	16.8%
11 - 20	46	24.9%
21 - 50	63	34.1%

51 - 75	20	10.8%
76 - 100	9	4.9%

CHARACTERISTICS OF BAIL REVIEW HEARING

A critical part of the questionnaire sent to each bail commissioner was their description of the bail review hearing. One factor of interest to us was the factors that the commissioner used in setting bail, and how often it was that they had information about that particular factor. To gather this information, we had a list of factors that could conceivable affect the bail decision and asked each commissioner two questions about each, (1) was this a factor that they considered, and (2) an estimate of the percentage of time that they had information on this factor. Ideally, if a bail commissioner reported that they used a given factor in setting bail that they would frequently have this information at their disposal before setting bail. Information about these possible bail factors are provided in Table 6.

What we can easily ascertain from Table 6 is that bail commissioners seem to share a great deal of consensus in terms of what factors they use in setting bail. We can make sense of this table by grouping the factors into meaningful clusters. For example, there are two items that reflect the current offense that are frequently used by commissioners in setting bail. Ninety-seven percent of the commissioners reported that they used the nature of the charge as a factor in setting bail, and almost ninety percent (86%) reported that the possible sentence that the suspect could receive if convicted of the current charge is a factor in setting bail. There is also a cluster of prior offense factors that is important to commissioners in setting bail. Ninety-seven percent

Table 6: Percentage of Time That a Commissioner Used Each Factor in Setting Bail, and the Percentage of Time that Information About that Factor was Available to the Commissioner

Factor	Percent Saying That they Use it to Set Bail	Percentage of Time Information was Available
Nature & circumstances of charge	97%	90%
Nature & weight of evidence	73%	83%
Possible sentence if convicted	86%	92%
Prior failure to appear for trial	97%	91%
Parole or probation status	89%	82%
Pending cases	94%	86%
Prior arrests	71%	86%
Prior convictions	94%	87%
Family ties	66%	65%
Employment history	85%	75%
Suspect's financial resources	63%	69%
Suspect's school status	21%	41%
Suspect's military status	20%	43%
Suspect's other status (INS)	29%	35%
Suspect's reputation	74%	65%
Suspect's medical condition	25%	38%
History of alcohol abuse	43%	55%
History of drug abuse	44%	56%
Arrested while under alcohol	51%	76%
Arrested while under drugs	52%	73%

reported that a prior failure to appear is an important consideration, eighty-nine percent use the suspect's current parole or probation status, ninety-four percent use any pending cases against the suspect as a factor, and an equal percentage use the suspect's prior convictions. Finally, there is a cluster of suspect's characteristics that are frequently used in setting bail. Nearly ninety percent (85%) of the commissioners reported that the suspect's employment history is a factor in setting bail, and almost three quarters (74%) reported that they consider the suspect's reputation in the community. Perhaps surprisingly, only sixty-three percent of the commissioners said that they consider the suspect's financial circumstances in setting bail, and fewer (66%) reported that they used the suspect's family ties. A history of drug and alcohol use or the use of drugs/alcohol during the immediate offense was considered a factor in setting bail by about one-half of the commissioners.

In addition to the factors they used in setting bail, commissioners were asked to estimate the percentage of time information on each factor was available to them. This data is provided in the second column of Table 6. What we can determine is that for the most part information was almost always available for those factors that the commissioners reported using in setting bail. For example, the most frequently used factors in setting bail was the nature of the charge, prior failure to appears, the suspect's prior convictions, any pending cases, and the possible sentence given the suspect if convicted. This information was available to the commissioners (according to their estimated), approximately ninety percent of the time. So important information that the bail commissioners use in setting bail was on average available in 9 out of every 10 cases. Information was less readily available, for those characteristics that a fewer percentage of the bail commissioners used. For example, the suspects employment history was a factor in setting bail for 85% of the commissioners, but was available only 75% of the time. The suspect's history of

alcohol and drug abuse was used by less than one-half of the commissioners and only available in about one-half of the cases.

Each bail commissioner was also asked a more normative set of questions. They were asked to estimate how important a given factor was in their decision to set bail. They were asked to provide this estimate on a five point scale that ranged from "Least Important" with a score of 1 to "Very Important" with a score of 5. A high score (one close to 5), therefore, indicates that a commissioner thought that the particular factor was important in setting bail. In Table 7, we report each of the factors given to the commissioners, and the average score across commissioners for that factor. One conclusion we can arrive at from this data is that the factors that are considered "important" by the commissioners are the ones that they generally use in setting bail. For example the two highest importance scores are for the nature of the current charge and the suspect's history of failure to appear for trial. In Table 6 we learned that ninety-seven percent of the bail commissioners reported that they used these two factors in setting bail. Generally, the most important set of factors seem to reflect the nature of the current offense and the suspect's criminal history. The second most important set of factors seem to be the suspect's personal characteristics and community ties. The least important seem to reflect mitigating factors on the current offense (drug and alcohol use).

In their decision to set bail, bail commissioners have access to a number of different sources of information - the police, pretrial services, the suspect, the suspect's family, and the state's attorney, for example. We asked each commissioner to indicate the extent to which they relied on seven different sources of information. This information is provided in Table 8. From

Table 7: Bail Commissioner's Assessment as to "How Important" Each Factor is in Setting Bail

Factor	Average Importance Score*
Nature & circumstances of charge	4.64
Nature & weight of evidence	4.24
Possible sentence if convicted	4.23
Prior failure to appear for trial	4.80
Parole or probation status	4.14
Pending cases	4.24
Prior arrests	3.85
Prior convictions	4.33
Family ties	3.42
Employment history	3.59
Suspect's financial resources	3.34
Suspect's school status	3.59
Suspect's military status	3.77
Suspect's other status (INS)	3.50
Suspect's reputation	3.51
Suspect's medical condition	3.52
History of alcohol abuse	3.28
History of drug abuse	3.36
Arrested while under alcohol	3.69
Arrested while under drugs	3.66

* A score of 5.0 indicates that a given factor is "Very Important" to the Commissioner in Setting Bail

Table 8: How Often A Source of Information is Used by Bail Commissioners*

Source	Never Used 1	2	3	4	Primarily Used 5	Seldom or Never Available 6
Family/Friends	18%	28%	18%	5%	2%	30%
Police	10%	14%	21%	20%	25%	11%
Prosecutor	11%	15%	22%	11%	6%	6%
Defense Lawyer	19%	20%	20%	7%	1%	34%
Defendant	5%	8%	22%	16%	41%	8%
Pretrial	17%	5%	7%	6%	7%	58%
Bondsman	39%	8%	1%	1%	0%	52%

* May not sum to 100% because of rounding.

this information obtained from bail commissioners, we can see that the defendant is the primary source of information for most commissioners. Forty-one percent of the commissioners reported that they relied on the defendant as the primary source of information they used in assigning bail. Only five percent said that they "never" used information from the defendant. The next most frequently relied upon source of information in setting bail was the arresting officer. Twenty-five percent of the commissioners reported that the police were a "primary" source of bail information. It is also interesting to note from Table 8 that the arresting officer, the state's attorney, and the defendant are most likely to be available at the hearing to be used as a source of information. Over one-half of the commissioners reported that pretrial services and a bail bondsperson were "seldom or never" available at the hearing.

We asked each commissioner several questions about the non-financial conditions of release. First, we asked them to estimate the proportion of cases in which they set non-financial conditions of release. Table 9 indicates that the commissioners set non-financial conditions in a substantial proportion of the cases that they hear. Over two-thirds (70%) of the commissioners reported that they employ non-financial conditions at least 25% of the time, and forty percent of them reported that they use non-financial conditions more than one-half of the time.

Table 9: Percentage of Cases Bail Commissioners Reported That They Set Non-Financial Conditions of Release

Never or Rarely	4%
About 25% of the time	26%
About 50% of the time	30%
About 75% of the time	26%
More than 90% of the time	14%

Each commissioner was then asked to estimate the frequency with which they imposed two specific types of non-financial conditions: (1) release on recognizance with no special conditions,

and (2) release on recognizance with special conditions. This data is reported in Table 10. We

Table 10: Frequency of Non-Financial Conditions of Bail

Source	Frequently Used 1	2	3	4	Never Used 5
ROR	23%	28%	28%	10%	11%
ROR With Conditions	51%	26%	21%	2%	0%

can see that release on recognizance with some special conditions (drug or alcohol counseling, stay away order) is generally used more frequently than ROR with no conditions. However, even non-conditional release on recognizance is frequently used by over one-half of the bail commissioners in our survey.

Finally, each commissioner was asked about the effectiveness of financial conditions of release. For example, they were asked the frequency with which they imposed three types of financial bail; unsecured, percentage bond, and a full cash bail. We report these data in Table 11. We can see that the bail commissioners we surveyed were unlikely to impose bails that were unsecured (without collateral) or percentage bonds. In fact, fewer than twenty percent said that they frequently imposed such financial conditions of release. Much more frequently imposed was the full cash bail. Almost eighty percent of the commissioners imposed these financial bails.

Table 11: Frequency of Financial Bail Conditions

Source	Frequently Used 1	2	3	4	Never Used 5
Unsecured	5%	11%	28%	37%	19%
Percentage Bond	6%	9%	17%	31%	37%
Full Cash	59%	20%	8%	3%	11%

With respect to the financial conditions of bail, we asked each commissioner if they had information available to them about the defendant's ability to post the bail that was set. A majority (71%) said that they did not have such information. Finally, we asked them to estimate how important it would be to have information about the defendant's ability to post the amount of bail that was set. Less than twenty percent of the commissioners thought that such information was important for them to have, while almost half (44%) reported that information about the suspect's ability to post bail was either the least important information they sought or that it simply was not relevant.