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LEGISLATIVE PROGRAM REVIEW  
& INVESTIGATIONS COMMITTEE

**Bail Services In Connecticut**

DECEMBER 2003

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## BAIL SERVICES IN CONNECTICUT

### *Right to Bail*

The right to bail is a founding principle of the American criminal justice process. The existing laws on bail are vague and confusing and in some procedural areas there are no statutory guidelines.

Bail options Nonsurety bonds are rarely used and are unenforceable because there is no process to collect a forfeited nonsurety bond.

- 1. Repeal existing statutory authorization for the nonsurety bond and authorize written promise to appear as the only available nonfinancial bond option.**

Cash only bond There is ambiguity between the bail statutes and rules of the court in that court rules but not state law authorize a cash only bond.

Judges do not over-rely on the cash only bond option. It has been used by judges to respond to specific types of cases and to effect payment of fines. The Superior Court appears to have incorporated the cash bond option into the bail system and it should be codified in state law.

- 2. Statutorily authorize a cash only bond as the most restrictive bond option.**

Posting 10 percent cash and cash only bonds While it is not specifically set out in statute, it is the intent of the legislature and the interpretation of the Superior Court a defendant must post his or her own personal funds in cash directly with the court to be released on a 10 percent cash or cash only bail bond.

- 3. Amend existing statutes to prohibit professional and surety bail bondsmen from posting and insurers from underwriting 10 percent cash and cash only bonds.**

Pre-trial bail eligibility and criteria Bail statutes should provide a general statement of intent applicable to all defendants to guide judicial bail-setting decisions. The law should give judges discretion to determine if a defendant poses a danger to another person. Preventative detention would have no weight in a bail decision if the crime did not involve violence or another safety issue.

- 4. Eliminate the statutory two-pronged test for appearance in court and dangerousness and establish a general statutory guideline for a judge to set the least restrictive bond necessary to reasonably assure a defendant's appearance in court and to protect the physical safety of any person when the crimes charged or the facts and circumstances of the case suggest a defendant may be dangerous. Revise the statutory factors a judge considers in setting bail and nonfinancial conditions of release.**
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Post-conviction bail eligibility Existing state law prohibiting post-conviction bail release of a person convicted of a crime involving the use, attempted use, or threatened use of physical force has been found unconstitutional by the Connecticut Supreme Court.

- 5. Repeal the statutory provision prohibiting post-conviction bail release of a person convicted of a crime involving the use, attempted use, or threatened use of physical force.**

Technical amendments to bail laws Existing bail procedure laws do not specifically provide for or clarify the authority of a judge in certain areas. As a result, certain unintended practices have occurred.

- 6. Make the technical amendments to existing bail laws regarding the mandatory six-month stay for forfeited bonds, releasing a bondsman from payment of a forfeited bond, and reinstating a forfeited bail bond.**

### ***Licensing and Regulation***

Types of bail bondsmen Dual system of regulation with different procedures and financial reporting requirements for professional bail bondsmen and surety insurance companies is inequitable and imposes a lesser financial accountability standard on professional bail bondsmen.

- 7. Terminate issuance of new professional bail bondsmen licenses issued after June 30, 2004, but allow existing professional bail bondsmen licenses to be renewed unless the licenses is allowed to lapse or is terminated by the licensee or is revoked by the Division of State Police.**

Licensing and regulatory authority The division of licensing and regulatory authority over the bail bond industry among the Division of State Police and Insurance Department has resulted in conflicting, inconsistent, and ineffective enforcement and confusion over jurisdiction. The Insurance Department's failure to adequately regulate surety bail bondsmen has hindered the state's efforts to collect forfeited bonds and to prevent illegal pricing practices.

- 8. Consolidate the authority and responsibility to license and regulate the commercial bail bond industry within Division of State Police by transferring control and function over surety bail bondsmen from the Insurance Department.**

Licensing criteria The eligibility and licensing criteria for surety bail bondsmen and bail enforcement agents should better reflect the state's standards for suitability.

No changes are recommended to the current eligibility and licensing criteria for professional bail bondsmen because through attrition and the recommended termination of new professional bail bondsmen licenses the system of personal bond underwriting will eventually end.

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- 9. Establish new statutory eligibility criteria and licensing standards for surety bail bondsman and bail enforcement agents to ensure a person's suitability to work in the industry. Require the Division of State Police conduct a background investigation of each applicant.**
- 10. Require any person responsible for the operation and management of a bail bond agency and supervision of professional or surety bail bondsmen within that agency to also be licensed as a professional or surety bail bondsman.**
- 11. Require all licensed professional and surety bail bondsmen shall post a \$10,000 cash performance bond with the Division of State Police by June 30, 2004. The Division of State Police shall return the bond amount to the licensee upon voluntary termination or revocation of the license by the division, but may withhold the balance of any unpaid fine imposed upon the bail bondsmen as a result of a substantiated administrative violation or infraction.**
- 12. Require all licensed professional and surety bail bondsman and bail enforcement agents engaged in the bail fugitive recovery process to provide proof of a minimum of \$300,000 general liability insurance coverage for recovery activities including but not limited to personal injury for false arrest, false imprisonment, libel, and slander to the Division of State Police prior to licensing or license renewal.**
- 13. Require all licensed professional and surety bail bondsmen shall provide written notice to the Division of State Police within two business days of any change of address. The notice shall include the person's old and new address.**

*License renewal* The statutory criteria for license renewal are vague and inconsistent among the entities of the commercial bail bond industry. The authority to deny license renewal is a regulatory tool and its enforcement should be clearly defined.

- 14. Require professional and surety bail bondsman and bail enforcement agent licenses be renewed annually. Require all licensees to initiate the application process, meet the statutory requirements for license renewal, and pay a \$250 fee.**
  - 15. Require professional and surety bail bondsmen and bail enforcement agents to provide proof of attendance of at least eight hours of biennial in-service training and an annual firearm recertification course.**
  - 16. Establish the statutory grounds for which the Division of State Police may deny license renewal to a professional or surety bail bondsman or bail enforcement agent.**
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*Regulatory practices* State law should clearly and specifically define the business practices within the commercial bail bond industry that are prohibited and the regulatory authority of the Division of State Police to enforce sanctions.

- 17. Establish the specific business practices and activities professional and surety bail bondsmen and bail enforcement agents are statutorily prohibited from committing.**
- 18. Establish the commission of a prohibited business practice or activity by a bail bondsman or bail enforcement agent is an infraction of state law punishable by a fine. Authorize the Division of State Police to suspend the license of a bail bondsman or bail enforcement agent failing to pay a fine until full restitution is made.**
- 19. Authorize the Division of State Police to also take administrative enforcement action (e.g., suspend, revoke, fine) against a bail bondsman or bail enforcement agent engaging in the prohibited business practices or activities.**
- 20. Establish the suspension or revocation of any professional or surety bail bondsman or bail enforcement agent license also results in the same administrative action against any other bail bondsman or bail enforcement agent license and firearm permit held by the person. Any person who fails to surrender a revoked license or firearm permit within five days of notice is guilty of a class B misdemeanor.**

*Required resources* The licensing fees for professional and surety bail bondsmen and bail enforcement agents should be consistent and set at a meaningful rate. The revenue generated through an increased licensing fee for the commercial bail bond industry, regulatory fines, and civil collection of forfeited bail bonds can provide the Division of State Police with the resources it needs to take on the added responsibility of the surety bail bondsmen as well as improving regulation of the industry.

- 21. Set the application and annual license renewal fees for professional and surety bail bondsmen and bail enforcement agents at \$250. Establish the \$250 application fee is nonrefundable if the applicant is denied licensure, cancels the application, or fails to provide all required information.**
  - 22. Authorize all revenue generated from licensing fees and regulatory fines and 10 percent of the collected forfeited bond funds are dedicated to the Division of State Police for licensing and regulating the commercial bail bond industry.**
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## ***Commercial Bail Bonds***

***Bail bondsmen fees and pricing practices*** Different pricing standards are inherently unfair and are a contributing factor to the current illegal and unprofessional pricing practices among bail bondsmen. Establishing a mandatory fixed pricing schedule for professional and surety bail bondsmen supports the fundamental purposes of bail and is critical to preventing illegal pricing.

- 23. Set the nonrefundable fees charged by professional and surety bail bondsmen at 10 percent for any bond amount over \$500.**
- 24. Require professional and surety bail bondsmen to issue a written receipt including the amount of the nonrefundable fee charged to all clients for whom he or she posts a bond. Require bail bondsmen to maintain a copy of the receipt as part of the business record, which is subject to auditing by the Division of State Police, Insurance Department, and the Office of the Attorney General.**
- 25. Require professional and surety bail bondsmen to also record the amount of the nonrefundable fee to post a bond on the appearance bond form.**

***Bail bond processing*** The commercial bail bond industry claims as a primary benefit of its service is there is no cost to the state to support the independent bail bonding system. This is not accurate. The judicial branch performs several administrative functions to ensure an effective and efficient bail bond system. Since bail bonding generates revenue, the system should be self-funding.

- 26. Set a processing fee of \$25 assessed to a professional or surety bondsman, insurer, defendant, or any person posting a financial bond (i.e., surety, 10 percent cash, cash only, property) of \$500 or more. Dedicate the generated revenue to the judicial branch to fund the administrative costs associated with the bail bond process and to re-establish the jail re-interview project.**

***Notice of forfeiture*** Beginning in April 2004, written notice of forfeited bail bonds will be sent to the insurance company underwriting the bail bond and not the surety bail bondsman. Given the current practice among some bail bondsmen of intentionally failing to provide forfeiture notice to an insurance company, there is the possibility a bail bondsman may attempt to intercept or prevent a bond forfeiture notice from being sent directly to an insurer by providing an alternative, incorrect, or fraudulent address.

- 27. Require written notice of a forfeited surety bond is mailed to the insurance company's corporate headquarters address in its domicile state that is on file with the Insurance Department. Prohibit the forfeiture notice from being mailed to a post office box or commercial mailbox address, to a Connecticut address if the insurance company is**
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**headquartered out-of-state, or to a surety bail bondsman or attorney. Establish a presumption any mail posted and not returned to the state has been delivered to the addressee.**

- 28. Require a surety bail bondsman to provide on the appearance bond form the National Association of Insurance Commissioners (NAIC) identification code for of the insurance company underwriting the bail bond.**
- 29. Require each powers of attorney provided by a licensed insurance company to a surety bail bondsman have the insurer's name, corporate headquarters address, and NAIC code pre-printed on the form.**
- 30. Require insurance companies to pre-number the powers of attorney forms or implement some other uniform process of assuring all forms can be audited and missing or copied forms tracked.**

*Civil collection process* In light of the six-month stay period for payment and the court's rebate schedule for forfeited bail bonds, the existing compromise schedule to allow for reduced payments of forfeited bonds adopted by the Office of the Chief State's Attorney appears to lenient. When posting a bail bond, a professional bail bondsman or surety insurer enters into a contract with the state to pay the full amount of the bond if the defendant fails to appear in court as ordered. Therefore, the state should establish a disincentive for nonpayment of forfeited bail bonds rather than an incentive for payment that is consistent with its other debt collection policies and procedures.

The collection of forfeited surety bail bonds is strictly a civil proceeding, not a criminal process. Connecticut has a civil collection process to recover any debt owed to the state operated by the Department of Administrative Services (DAS) and under this system any litigation is referred to the Office of the Attorney General. The collection of forfeited bail bonds is not any different than the collection of any other state debt and should not be treated differently.

- 31. Transfer the authority and responsibility for the civil collection of forfeited bail bonds from the Office of the Chief State's Attorney to the Department of Administrative Services.**
  - 32. Retain the judicial branch's responsibility to provide the initial notice of bond forfeiture to insurers and professional bail bondsmen. Require the judicial branch to also notify DAS and to provide all information necessary for debt collection.**
  - 33. Require DAS to provide written notice for payment of the forfeited bail bond to the insurer or professional bail bondsmen during the fifth month of the six-month stay period.**
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- 34. Require a forfeited bail bond be paid in full within 30 days of the end of the six-month stay period, except that any forfeited bond paid within the first 10 days of the 30-day period may be paid at a 10 percent discount.**
- 35. Require all forfeited bail bonds not paid in full after the 30-day period are assessed interest of 1 percent of the total bond amount per month and are referred to the Office of the Attorney General for litigation of a final judgment for payment.**
- 36. Require the automatic and immediate suspension of an insurer's or professional bail bondsman's license for nonpayment of a forfeited bail bond after the 30-day payment period. The suspension remains in effect until full restitution of the debt is made, and during the suspension the insurer or professional bondsman cannot post any bail bond in Connecticut.**
- 37. Require an insurer's or professional bail bondsman's license be revoked when a period of license suspension for nonpayment of a forfeited bail bond exceeds six months. Require a surety bail bondsman's license be revoked if he or she engages in a pattern of misconduct that contributes to the insurer's nonpayment of a forfeited bond.**
- 38. Require the judicial branch, Division of State Police, Insurance Department, Department of Administrative Services, and the Office of the Attorney General implement a process to provide timely notification and accurate information to facilitate the collective of forfeited bail bonds and the automatic license suspension process.**
- 39. Dedicate 10 percent of collected forfeited bail bond funds to the Department of Administrative Services for the civil collection function.**
- 40. Require the judicial branch review and amend if necessary the existing rebate schedule for forfeited bail bonds, and require bail bondsmen eligible for a rebate apply directly to DAS.**

*Indemnitor eligibility for discount and rebate* Although the entitlement for a discount payment and rebate for forfeited bail bonds are not authorized by state law for an indemnitor other than a licensed bail bondsman, it is the intent of the legislature to treat a bondsman and an indemnitor equally. The Superior Court also has authority under its common law powers to grant the rebate to an indemnitor and the chief state's attorney has amended its practice to allow an indemnitor to pay a forfeited bail bond at a discounted rate.

- 41. Amend existing statutes to entitle a person other than a licensed bail bondsman or insurer posting a surety bond to pay at the recommended 10 percent discounted rate and to a rebate on a portion of the paid forfeited bond when a fugitive defendant is returned to custody with one year.**
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Motions for judgment or appeal Motions that lack legal merit and are brought solely for the purpose of delaying payment of a forfeited bail bond cost the state money and impact the integrity of the commercial bail bond industry.

**42. Require an insurer, professional or surety bail bondsman, principal, or indemnitor filing a motion seeking trial court judgment or appellate review of a final judgment on a forfeited bond: (1) place in escrow with the trial court the sum of the forfeited bail bond or pay the amount under protest with a reservation of appellate rights; or (2) post with the trial court a *supersedeas* bond from a different and sufficient surety insurer in the amount of one and one half times (150 percent) of the forfeited bail bond guaranteeing payment of the judgment amount, lawful interest, and any fee or costs awarded by the trial or appellate court.**

Bail bondsman build-up fund Managing build-up accounts in out-of-state banks makes it difficult for surety bail bondsmen to oversee and access their funds. It is also problematic for the state to place a lien against the out-of-state accounts when litigating a final judgment of a forfeited bail bond.

Surety bail bondsmen are licensed and operate in Connecticut and the build-up funds are intended to pay forfeited surety bonds posted in Connecticut.

**43. Require insurers underwriting bail bonds in Connecticut to manage all surety bail bondsman build-up funds in in-state banks.**

### ***Bail Enforcement***

Failure to appear A bail bond is forfeited when a defendant fails to appear (FTA) for any scheduled court proceeding. On that date, a judge issues a rearrest warrant ordering the fugitive be apprehended, charged with a new crime of failure to appear, and returned to custody.

Posting the FTA warrant The current practice of not entering all rearrest warrants into the state and national criminal information systems does not meet the needs of the state and municipal law enforcement and criminal justice agencies or the commercial bail bond industry. The procedure has serious ramifications for public safety and police officer safety. It also does not hold fugitive defendants accountable thus undermines the purpose of bail.

The existing state law allowing a judge to order a warrant be entered into a centralized database has not corrected the current practice or addressed the backlog of rearrest warrants that have not been entered into the law enforcement information systems. Any statutory requirement to enter warrants into a centralized information system should be imposed on the state or municipal law enforcement agencies responsible for this function and not a criminal court judge.

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**44. Require state and municipal law enforcement agencies enter all felony rearrest warrants into the COLLECT system and NCIC if extradition is ordered by a state's attorney within five days of receiving the warrant.**

*Decision to extradite* A bail bondsman or surety insurer contractually agrees to assume financial liability for a defendant's appearance in court, but does not have authority to require extradition of a fugitive defendant recovered in another jurisdiction.

**45. Authorize a bond forfeiture vacated and the professional bail bondsman or surety insurer relieved of payment if a fugitive defendant is in custody in an out-of-state jurisdiction and the state's attorney declines extradition.**

*Transport costs* The use of a private prisoner transport company appears to be a more effective and cost-efficient method of transporting extraditable fugitives to and from Connecticut.

**46. Authorize the chief state's attorney to contract with a private prisoner transport company for transporting bail fugitives and other fugitives from justice to and from Connecticut to face prosecution or serve a prison sentence.**

*Firearm permits* The federal Interstate Transportation of Dangerous Criminal Act meets the intent and qualification criteria of the state's firearm permit laws

**47. Exempt a private prisoner transport company and its employees operating in Connecticut from state firearm or weapon permit requirements if its policies meet the minimum standards established under the Interstate Transportation of Dangerous Criminal Act and are approved by the Division of State Police.**

*State fugitive recovery process* Since most fugitive offenders are apprehended during routine police work, it is critical outstanding rearrest warrants are entered into the state and national criminal information systems: COLLECT and NCIC.

Fugitive recovery is an essential element to the bail process. It holds defendants released on bail accountable to meet the contractual obligations of the bail bond and assists with the orderly and effective administration of justice by ensuring defendants appear in court as ordered. It provides public and police officer safety by identifying and taking potentially dangerous offenders into custody.

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Given the backlog of outstanding rearrest warrants, the current state resources allocated to fugitive recovery are inadequate. To be most effective, fugitive recovery must be on on-going intelligence gathering and tactical process.

**48. Require the Division of State Police expand its fugitive recovery unit and prioritize locating and apprehending bail fugitives. Dedicate 30 percent of collected forfeited bond funds to the division for this function.**

The existing mandate for the surveillance of serious felony offenders released on bail is unworkable given current resources, jurisdictional issues, and caseload. The intent of the legislation is met through the witness protection program administered by the Office of the Chief State's Attorney.

**49. Repeal the statutory requirement for the chief state's attorney to develop protocols for the surveillance of persons charged with serious felony offenses that are out on bail.**

*Commercial bounty hunting* The commercial bail bond industry's fugitive recovery practices in Connecticut are dangerously unregulated.

**50. Clarify the existing statutory definition of a bail enforcement agent and require out-of-state fugitive recovery personnel be licensed to operate in Connecticut or contract with a licensed bail enforcement agent to apprehend a bail fugitive in the state.**

**51. Amend existing statute to require bail bondsmen and bail enforcement agents provide at least six hours prior notice to local law enforcement of any attempt to apprehend of bail fugitive and to provide an update if the activity continues over an extended period of time.**

**52. Require a bail bondsman or bail enforcement agent to deliver a bail fugitive to the court or police within five hours if apprehended in Connecticut and within 24 hours of apprehension in another state.**

**53. Require a bail bondsman or bail enforcement agent complete an "In Custody Report" for each apprehension of a bail fugitive. A bondsman will retain the report for a period of five years and make the reports available to the state for investigative purposes and review.**

**54. Require the Division of State Police to develop and provide the "In Custody Report" forms.**

**55. Authorize a violation of any fugitive recovery provision is an infraction of state law and may also result in an administrative action (e.g., license suspension or revocation or fine) by the Division of State Police.**

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# Introduction

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## Need for Bail Reform

The right to bail is a founding principle of the American criminal justice process. It is based on the federal and state constitutional guarantees of a defendant's presumption of innocence until proven guilty. *Connecticut has a responsibility to ensure its bail system is fair, effective, and efficient.*

Serious concerns about the administration and oversight of the bail system raised by the General Assembly prompted the Legislative Program Review and Investigations Committee's review of possible reforms.

This report contains a series of recommendations aimed at clarifying state bail statutes, consolidating and strengthening state oversight of the commercial bail bond industry, and addressing inequities in the bail system.

*Existing state statutes on bail are vague and confusing and, in some procedural areas, nonexistent or have been found unconstitutional.* The state law establishing the pre-trial eligibility standard and criteria to set bail is confusing and difficult to interpret into the rules of the court while a post-conviction eligibility standard has been found by the state Supreme Court to be unconstitutional. Cash only bond is not statutorily authorized but allowed under the rules of the court. Finally, because the statutes do not specifically address the authority of a judge in certain areas of bail, some unintended practices have occurred such as modifying the mandatory six-month stay on a forfeited bail bond.

Professional and surety bail bondsmen provide the same service to the state and defendants in criminal cases and bail bondsmen and bail enforcement agents are interdependent. Yet, the licensing authority for the commercial bail bond industry is split between the Insurance Department that licenses surety bail bondsmen and the Division of State Police that licenses professional bail bondmen and bail enforcement agents. The program review committee could find no rationale for the split in responsibility for the commercial bail bond industry. The state structure has resulted in conflicting, inconsistent, and ineffective enforcement, confusion over jurisdiction, and has allowed unprofessional and illegal business practices by bail bondsmen and bail enforcement agents to persist. *A vital reform to the bail system is the consolidation of licensing and regulatory authority over the commercial bail bond industry in Connecticut.*

The commercial bail bond industry claims a primary benefit of its service is that there is no cost to the state to support the independent bail bonding system. This is not accurate. The state pays the costs of several bail bonding processes linked to or required by the commercial bail bond industry such as licensing and regulating the industry, providing information and notification of the process, civil collection of forfeited bonds, processing rearrest warrants, and recovery of bail fugitives.

*Bail bonding generates revenue, but the state has failed to fully realize the potential income from this source.* Reforms would result in increased state revenue that could be dedicated to: improved licensing and regulatory efforts; civil collection of forfeited bonds; service of rearrest warrants and recovery of bail fugitives; and re-establishment of the jail re-interview project.

*The commercial bail industry is dangerously unregulated.* Unprofessional and illegal business practices among bail bondsmen and bail enforcement agents have been found to be pervasive and persistent despite the efforts of the state, which have been insufficient. The current bail bond business climate undermines the state's obligation to ensure a fair and effective bail system for arrested persons. The state must, therefore, exert a strong regulatory presence to enforce the recommended reforms discussed throughout this report.

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## **Methodology**

A variety of sources and methods were used to gather information for the bail system study. Relevant statutes, regulations, and agencies' policies, guidelines, and written procedures were reviewed. Public policy and academic research on the right to bail, commercial bail bonding, bail enforcement, and bail reform were examined. Bail laws and practices in other states were also reviewed.

Committee staff conducted interviews with key personnel from the: judicial branch, including judges, administrators, bail commissioners, and clerks; Division of Criminal Justice and Office of the Chief State's Attorney; Department of Public Safety's Division of State Police; Departments of Correction, Insurance, and Administrative Services; Office of the Chief Public Defender; Office of the Attorney General; governor's office; and municipal law enforcement departments. Representatives of the commercial bail bond industry including bail bondsmen, bail enforcement agents, and insurers, and officers and members of professional bail bonding organizations, and several national experts and consultants on bail bonding were also interviewed. The

committee staff spoke with persons procuring the services of a commercial bondsman (e.g., defendants and indemnitors) and third-party persons involved in or impacted by the bounty hunting process. A public hearing to elicit information about bail bond issues was held by the program review committee on September 10, 2003.

Committee staff examined the pre-trial and post-conviction bail bonding process by attending criminal court arraignment and trial proceedings and observed the bail setting process conducted by municipal police departments, bail commissioners, judges, and state's attorneys, public defenders, and private defense attorneys.

Further, committee staff posed as a person needing the services of a bondsman at several different police departments and court locations to observe the business practices of the industry.

A listing of professional and surety bail bondsmen, bail enforcement agents, and insurance companies licensed by the Division of State Police and Insurance Department was obtained and regulatory enforcement data on the commercial bail bond industry was examined. The chief state's attorney's office's information and data on the collection of forfeited bail bonds was also analyzed.

Bail bond data on all criminal and motor vehicle cases opened between January 1, 1998 and July 1, 2003 were analyzed to determine trends and patterns in the types and amounts of bail bonds set. To develop information on the rate of failure to appear among persons released on bail and the recovery of bail fugitives, rearrest warrants issued during the same time period were reviewed in detail.

The committee staff also examined the final report of a validation study of Connecticut's risk assessment for pre-trial release decision making contracted by the judicial branch. The study (conducted by Central Connecticut State University's Department of Criminology and Criminal Justice) evaluated the current point system to determine which factors are predictive of bail decisions and outcomes and to identify additional factors to improve the validity of the risk assessment tool used by bail commissioners.

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## **Report Organization**

Program review committee findings and recommendations for bail reform are organized into five chapters. Chapter 1 describes the state's bail laws and the authority of the judicial branch in the bail process. Chapter 2 summarizes the pre-trial bail release process. Licensing and regulating the

commercial bail bond industry are discussed in Chapter 3 and the commercial bail bond process itself is discussed in Chapter 4. The final chapter of the report presents information on bail enforcement, specifically the bail fugitive recovery process.

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## **Agency Response**

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies included in the scope of a review with the opportunity to comment on committee findings and recommendations before the final report is published. A written response to this report was solicited from the judicial branch's Office of the Chief Court Administrator, the Office of the Chief State's Attorney, the Department of Public Safety's Division of State Police, the Insurance Department, the Department of Administrative Services, the Office of the Attorney General, and the Department of Correction. The responses submitted by the Office of the Chief State's Attorney, Departments of Public Safety, Correction, and Administrative Services, and the Office of the Attorney General are presented in Appendix C. The Insurance Department and the judicial branch did not submit a response.

# Chapter 1: Right to Bail

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## Introduction

The right to bail is a founding principle of the criminal justice process. It is based on the constitutional guarantee of a defendant's presumption of innocence until proven guilty.

The original purpose of bail was to assure a criminal defendant's appearance in court. For the past 20 years, however, the purpose has been expanded to include preventative detention, which allows for bail to either be denied or set so high the defendant cannot for financial reasons meet the bond amount.

Bail involves both criminal and civil procedures. First, bail is the process through which the criminal justice system allows the release of an arrested person from custody while ensuring his or her appearance at future court proceedings. Second, if a defendant fails to appear in court, the process to collect a forfeited bond is strictly a civil matter between the party posting the bond and the state.

The legal mandates for bail are established through several sources. In Connecticut, federal and state constitutional law, state statutes, common law, and court rules (known as the Connecticut Practice Book) govern certain bail practices such as eligibility for bail, types of bail, responsibilities of the criminal justice system, and the state's licensing and regulation of the commercial bail bond industry.

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## Constitutional Guarantees

Both the U. S. and Connecticut constitutions provide persons with certain bail rights. The U.S. Constitution, Article 8 provides: *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.* Like other Bill of Rights protections, the Eighth Amendment did not apply to state criminal court proceedings until relatively recently. However, since 1818, the Connecticut Constitution has also addressed bail rights. The current language, adopted in 1965, is similar to the original wording, and provides: *In all criminal prosecutions, the accused shall have the right to be ... released on bail upon sufficient security, except in capital offenses, where the proof is evident or presumption great ....*

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The United States Supreme Court has defined excessive bail as more than what is required to guarantee a defendant's presence at trial. A question has long existed, though, about whether the prohibition against "excessive bail" means that bail always has to be offered (i.e., that there is a "right to bail"). Federal statutes provide persons arrested for capital offenses<sup>1</sup> can be held without bail. Connecticut has a similar carve out for capital offenses in the state constitution. However, arguments arise over the state's rights to make people arrested for other, noncapital offenses ineligible for bail.

Finally, based on the federal Fourteenth Amendment equal protection clause, an indigent person cannot be treated differently under state bail provisions because of his or her indigent status.

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## **Federal Bail Reform**

At the federal level, there have been two significant bail reforms: the Federal Bail Reform Act of 1966 and the Federal Bail Reform Act of 1984. These acts, though applicable only in federal criminal cases, subsequently led to the revision of bail laws and systems in most states including Connecticut.

The Federal Bail Reform Act of 1966<sup>2</sup> created a presumption in favor of releasing defendants on their personal recognizance (known as a "promise to appear" in Connecticut) and also established a series of nonfinancial conditions used to structure pretrial release to the needs of individual defendants in all federal courts. Financial (or money) bail was to be used only if a nonfinancial conditional release would not adequately assure the defendant's appearance in court. Simply, the law designated a defendant's release on his or her own recognizance ("ROR") as the preferred method of pretrial release unless it was determined the defendant would not appear in court. Even when such a determination was made, a federal judge was required to give first priority to imposing the least restrictive nonfinancial bond. A financial bond could only be imposed if nonfinancial conditions would not reasonably assure a defendant's appearance in court. Only persons accused of crimes punishable by death were ineligible for bail.

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<sup>1</sup> Capital felony crimes are punishable by the death sentence.

<sup>2</sup> Federal Bail Reform Act of 1966 was based on the Manhattan Bail Project, a three-year pretrial release experiment conducted by the Vera Foundation (now the Vera Institute of Justice), initiated in 1961 to provide information to the court about a defendant's ties to the community to support his or her release without requiring a financial bail bond. The project was not a direct challenge to the use of financial (or money) bail, but rather an effort to adopt and reform the bail system to the needs of the poor who could not afford cash bail but may have sufficient ties to the community to assure their appearance at court.

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In the 1980s, the national bail policy shifted from its original focus on assuring appearance at trial to keeping dangerous accused criminals in jail and off the streets. The Bail Reform Act of 1984 authorized the concept of preventative detention to keep the public safe from dangerous offenders. Bail was now to be used to assure both the appearance of a defendant and the safety of the community. In 1993, the U.S. Supreme Court ruled pretrial preventative detention based solely on perceived dangerousness was a legitimate regulatory function, not punishment.

Specifically, under the 1984 bail reform law an arrestee can be denied bail if he or she: (1) poses a serious risk to the community; (2) may obstruct justice or intimidate witnesses or jurors; or (3) commits a violent or drug offense, an offense carrying a life sentence or the death penalty, or a felony while having a serious criminal record.

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## **Connecticut Bail Laws**

In Connecticut, bail has three purposes: (1) to prevent punishing the accused person absent conviction; (2) to secure the accused's attendance at trial or sentencing; and (3) to protect the public from dangerous offenders. State statutes require bail be set at the "least restrictive" amount necessary to insure the presence of the defendant in court or to ensure the community is protected. Bail is set prior to disposition of the criminal charges pending against an accused person and may be continued by the court pending sentencing or appeal of a conviction.

Generally, bail is required for defendants charged with any felony or misdemeanor criminal offense. Defendants charged with a capital felony offense punishable by the death sentence (e.g., capital felony murder, murder, felony murder, arson murder) are not eligible for bail.

As the following discussion illustrates, the existing state laws on bail are vague and confusing and, in some procedural areas, nonexistent or have been found unconstitutional.

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## **Bail Options**

There are two categories of bail bonds: nonfinancial and financial (or surety) bonds. Nonfinancial bonds do not include a monetary amount for release, but rather allow a defendant to be released on his or her promise to appear at all court proceedings as ordered. Financial bonds set a monetary amount deemed sufficient to assure the defendant's appearance in court. The defendant must post the bond amount in cash or procure a

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commercially secured bond to be released. Failure by the defendant to appear in court results in the bond amount being forfeited to the state.

As shown in Table 1, there are six types of bail bonds. State law authorizes all bond options except a cash only bond, which is permitted only by the rules of the court, known as the Connecticut Practice Book.

<b>Table 1. Bond Options in Connecticut</b>	
<i>Type of Bond</i>	<i>Definition</i>
<b>Written Promise to Appear</b>	Defendant’s personal promise to appear in court; a nonfinancial release of “good risk”; no monetary amount set
<b>Nonsurety Bond</b>	A written promise to appear with a monetary amount set, but defendant is not required to post cash or secure bond
<b>Surety Bond</b>	Financial bond set in no greater amount than necessary to assure defendant’s appearance in court
<b>10 Percent Cash Bond</b>	Financial bond set in no greater amount than necessary to assure defendant’s appearance in court, but defendant required to post in cash 10 percent of total value of bond
<b>Property Bond</b>	Financial bond set in no greater amount than necessary to assure defendant’s appearance in court, but defendant required to pledge property as collateral
<b>Cash Only Bond</b>	Financial bond set in no greater amount than necessary to assure defendant’s appearance in court, but defendant required to post in cash full amount of bond

Source: Connecticut General Statutes and Connecticut Practice Book 2003

As a standard condition of bail release, state law prohibits a defendant from committing another federal or state crime or violating any local ordinances. Other nonfinancial conditions of release can also be ordered as part of any bond set by the court including:

- community supervision including electronic monitoring or participation in a zero-tolerance drug supervision program;
- restrictions on travel, association, and residence;
- prohibition against certain activities including use or possession of dangerous weapons, illegal drugs, or alcohol;
- restrictions on contact with the victim and potential witnesses including ordering restraining or protective orders against the defendant;

- continued employment or attendance in an educational program; or
- any other condition “reasonably necessary” to assure the defendant’s appearance in court and public safety.

**Nonsurety bond.** A nonsurety bond is a written promise to appear with a monetary amount set, but the defendant is not required to post cash or to secure a commercial bond. The state does not collect the monetary bond amount if a defendant fails to appear and forfeits a nonsurety bond.

The nonsurety bond amounts tend to be low, but can be set at any amount. There is no minimum for the amount of a surety, 10 percent cash, or cash only bond that a judge may set. Using one of these bond options set at an amount that is the least restrictive for an individual defendant would be more consistent with the basic principle of bail than imposing a nonenforceable nonsurety bond.

The program review committee could find no rationale for nonsurety bonds. This bond is used infrequently; nonsurety bonds represented only 13 percent of all bond types imposed between January 1 and July 1, 2003. Neither state law or court rules authorize an agency or establish a process to collect a forfeited nonsurety bond. In fact, the cost of collection of forfeited nonsurety bonds would be prohibitive given the low value of the bonds.

**The existing statutory authorization for a nonsurety bond shall be repealed and the only nonfinancial bond option available shall be a written promise to appear bond.**

**Cash only bond.** There is ambiguity between the bail statutes and rules of the court in that a cash only bond is authorized by the rules of the court but not state law. The two should not conflict because it is confusing and has led to the erroneous conclusion cash only bond is statutorily prohibited.

The state criminal court initiated the cash only bond option as a preventive detention measure in the late 1980s in response to a statewide effort to control serious gang and illegal drug crimes. Surety bonds were found to be insufficient because the defendants’ access to large sums of money enabled them to post the bonds, but they were not appearing in court as ordered and were committing new crimes while out on bail. Judges began imposing cash only bonds at very high amounts so the defendants in those cases were not for financial reasons able to post the bonds and remained incarcerated.

During the past several years, cash only bonds have evolved into a mechanism to ensure bond is meaningful for some defendants. The cash only bond is often used: as a bond modification to reduce a very high surety bond; for repeat offenders with past failure to appear records; or based on a bail recommendation from the prosecution and defense counsel.

Cash only bond is also used as an alternative means to collect fines. For offenses where the penalty is a fine or restitution, a judge imposes a cash only bond and upon a guilty disposition the cash only bond is forfeited in lieu of the fine or restitution amount. This process is typically used in motor vehicle cases for which the offender (e.g., an out-of-state trucker) posts the bond but does not intend to appear in court. The intention is the bond will pay the fine upon a guilty disposition. This process is also used when a defendant has been found guilty and sentenced to pay a fine but does not have the financial resources to pay the whole amount. A judge may continue the case to give a defendant an opportunity to raise the funds. Each time a defendant fails to pay the fine, the cash bond amount is raised incrementally until the total fine amount is reached. The cash bond is then forfeited in lieu of the fine.

A judge must consider all bond options and have a reason for not imposing a lesser bond type over a more restrictive one. The bond types are listed in statute and the rules of the court in order from least to most restrictive as written promise to appear, nonsurety, surety, 10 percent cash, property, and cash only. Cash only bond is the most restrictive.

Figure 1 is a breakdown of the bail bond options imposed from January 1, 1998 through July 1, 2003. Cash only bonds represent 6 percent of all bonds imposed. The most common bonds are written promise to appear (66 percent) and surety (15 percent).

State law and the rules of the court allow a defendant to post a surety bond with his or her own personal funds or to purchase a commercial bond from a bondsman. When a defendant posts a surety bond with personal funds (e.g., cash) the bond does not become a cash only bond. By imposing a cash only bond rather than a surety bond, a judge restricts the defendant to posting personal funds and eliminates the option of using the services of a bondsman.

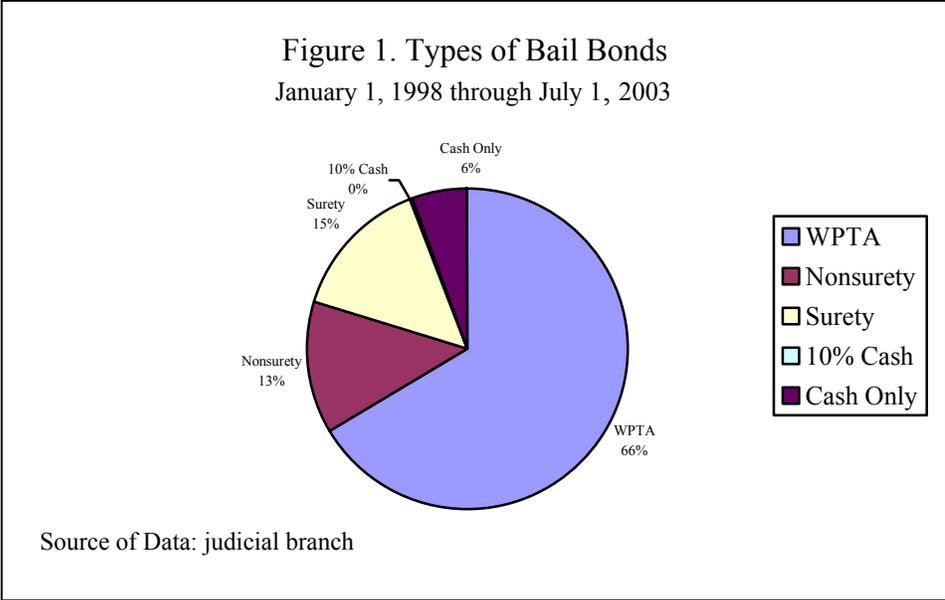


Table 2 shows the average cash only bond amount imposed for felony and misdemeanor offenses, infractions of state law, and violations of state law or local ordinance. The felony cash only bonds are on average over \$1 million and are typically imposed as a preventative detention measure. The average cash only bond amount for misdemeanors, infractions, and violations varies depending on the facts and circumstances of each case, but generally the less serious the offense, the lower the amount of the cash only bond.

**Table 2. Average Amount of Cash Only Bond by Offense Type**

<i>Offense Type</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003*</i>
Felony	\$1,023,564	\$1,424,496	\$2,221,912	\$1,160,395	\$1,371,961	\$1,271,382
Misdemeanor	\$74,115	\$61,951	\$112,350	\$111,336	\$107,087	\$142,957
Infraction	\$21,048	\$22,012	\$7,500	\$5,000	\$113,000	\$0
Violation	\$35,455	\$16,804	\$5,000	\$52,500	\$0	\$125,000

\*Partial year data from January 1 through July 1, 2003.  
Source of Data: judicial branch

*The data show there is not an over-reliance by judges on the cash only bonds. It has been used to respond to specific types of cases and to effect payment of fines. The Superior Court appears to have incorporated the cash only bond option into the bail system and it should therefore be codified in state law like the other bond options.*

**A cash only bond shall be authorized by state statute as the most restrictive bond option.**

The Superior Court criminal task force, which is responsible for reviewing procedural and practice issues in the criminal court, examined the issue of cash only bonds. Its findings were referred to the judicial branch's Judges' Rules Committee, which comprises seven Superior, Appellate, and Supreme Court judges. The Judge's Rules Committee is responsible for establishing the rules of the court set out in the Connecticut Practice Book. The rules committee supports including the cash only bond option in state statute.

**Posting 10 percent cash and cash only bonds.** There are two types of bonds that a commercial bail bondsman cannot post: 10 percent cash and cash only bonds. While it is not specifically set out in statute, it is the intent of the legislature and the interpretation of the court a defendant must post his or her own personal funds (in cash) directly with the court to be released.

There have been instances of bail bondsmen posting the cash bonds and charging a defendant a fee. The court returns the money to the bondsmen when the bond is terminated upon disposition of the criminal case, but the bondsman's fee is not returned to the defendant.

This practice is a form of loan sharking. It undermines a judge's authority and intent when imposing 10 percent cash and cash only bail. Further, it contradicts legislative intent.

**Existing statutes shall be amended to specifically prohibit professional or surety bail bondsmen from posting and insurers from underwriting 10 percent cash and cash only bonds.**

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## **Pre-Trial Bail Eligibility and Criteria**

In setting the least restrictive bail, a judge and bail commissioner are mandated to use "written uniform weighted" release criteria to assess the defendant's risk of failure to appear and dangerousness. These factors are:

- nature and circumstances of the crime as they are relevant to the risk of nonappearance in court;
- record of prior criminal convictions and prior appearance in court while on bond;
- family and community ties, employment record, financial resources, character, mental condition, and history of substance abuse;

- number and severity of the pending criminal charges;
- weight of evidence against the defendant;
- history of violence;
- record of previous convictions for similar offense committed while on bail; and
- likelihood defendant will commit another crime while on bail.

The state law establishing pre-trial bail eligibility and the criteria to be followed by a judge in setting bail is confusing and difficult to interpret into the rules of the court. The confusion lies in the two-pronged statutory test to set a bond that will assure a defendant's appearance in court and, if necessary, protect the safety of another person or the public from a dangerous defendant. Only defendants defined as dangerous by statute are to be considered for a bond that will provide for preventive detention.

The first prong determines the type and amount of bond that will reasonably assure a defendant's appearance at future court proceedings. As shown in Table 3, all arrested persons except those ineligible for bail (i.e., arrested for a capital felony punishable by the death sentence) are assessed by statutory criteria.

A judge must consider the nature and circumstances of the crime for which the defendant was arrested, the defendant's prior criminal history and record of appearance in court, the defendant's family and community ties, and employment record and financial resources. A judge considers all bond options and must have a reason for not imposing a lesser bond type over a more restrictive one.

The second prong in setting bail determines if a defendant poses a potential danger to others. If a defendant is arrested for any one of the specific offenses set out in statute (refer to Table 3), a judge then considers whether the person poses a danger to another person or the community. In addition to the initial criteria under the first prong, a judge reviews the seriousness of the pending criminal charge, the weight of evidence against the defendant, the defendant's history of violence, whether the defendant was convicted of the same offense while out on a prior bond, and the likelihood the defendant will commit another offense while released on bail. Based on this assessment, a judge sets the least restrictive bond option that he or she believes will assure the defendant's appearance in court *and* protect the safety of the public.

<b>Table 3. Statutory Pre-Trial Bail Release Eligibility and Criteria</b>		
<i>Two-Pronged Test To Determine:</i>		
	<i>Appearance In Court</i>	<i>Preventive Detention</i>
<b>Eligibility Standard</b>	Applies to all persons arrested for felony or misdemeanor offenses except capital felony offenses	Applies to persons arrested for: <ul style="list-style-type: none"> <li>• Class A felony</li> <li>• Class B felony except promoting prostitution in first degree or larceny in the first degree</li> <li>• Class C felony except promoting prostitution in second degree, bribery of a juror, or bribe receiving by a juror</li> <li>• only the following Class D felonies: assault in second degree, assault in second degree with firearm, assault in second degree and assault in second degree with firearm of elderly, blind, disabled, pregnant or mentally retarded person, sexual assault in third degree, unlawful restraint in first degree, burglary in third degree, burglary in third degree with firearm, reckless burning, robbery in third degree, criminal use of firearm or electronic defense weapon, or family violence crime</li> </ul>
<b>Bond Options</b>	<ul style="list-style-type: none"> <li>• Written promise to appear</li> <li>• Nonsurety</li> <li>• Surety</li> <li>• 10 percent cash</li> <li>• property</li> </ul>	<ul style="list-style-type: none"> <li>• Written promise to appear</li> <li>• Nonsurety</li> <li>• Surety</li> <li>• 10 percent cash</li> <li>• property</li> </ul>
<b>Criteria to Set Bail</b>	<ul style="list-style-type: none"> <li>• Nature &amp; circumstances of crime</li> <li>• Prior criminal record</li> <li>• Past record of court appearances</li> <li>• Family ties</li> <li>• Employment record</li> <li>• Financial resources</li> <li>• Community ties</li> </ul>	In addition to the initial criteria: <ul style="list-style-type: none"> <li>• Seriousness of criminal charges</li> <li>• Weight of evidence</li> <li>• History of violence</li> <li>• Convicted of same offense while on bond</li> <li>• Likelihood of committing another offense while on bond</li> </ul>

Source: Connecticut General Statute §54-64a

In practice, a judge measures all defendants by the criteria for appearance in court and preventive detention regardless of whether he or she was arrested for one of the types of crimes that defines a potentially dangerous offender. The two-pronged test has been merged into a single measure used to set a defendant's bail. No judge wants to release a defendant who may be dangerous; all defendants while out on bail pose the potential to

commit another crime that may cause harm to another person or the community.

The crimes listed in statute that define an arrested person's dangerousness also cause confusion. Basically, a person arrested for a class A, B, and C felony, except those arrested for promoting prostitution in the first or second degree, larceny in the first degree, and bribery of juror or bribe receiving by a juror, is tested by a judge for his or her risk of danger. The program review committee could find no rationale for the exempted offenses or for not including other similar felonies that on their face do not appear to indicate a predisposition to violence.

The state law also requires persons arrested for certain class D felonies be assessed for dangerousness when setting bail. These crimes are listed in Table 3 and include: assault in second degree; sexual assault in third degree; unlawful restraint in first degree; burglary in third degree; reckless burning; robbery in third degree; criminal use of firearm or electronic defense weapon; or a family violence crime. However, there are many class D felonies and class A misdemeanors -- such as assault in the second degree with a motor vehicle, threatening in the first degree, reckless endangerment in the first degree, sexual assault in the fourth degree, unlawful discharge of a firearm, and carrying a prohibited dangerous weapon -- that may involve violence or are similar in indicating a propensity on the part of the defendant for violence, but are not listed in the state law.

*The bail statutes should provide a general statement of intent applicable to all defendants to guide judicial bail-setting decisions. The law should give judges discretion to determine if a defendant poses a danger to another person. Preventive detention should have no weight in a bail decision if the crime did not involve violence or another safety issue.*

**The existing statute establishing the eligibility standard and criteria to set bail shall be amended to eliminate the two-pronged test for appearance in court and dangerousness. The amended statute shall establish a general guideline for a judge to set the least restrictive bond necessary to reasonably assure a defendant's appearance in court and protect the physical safety of any person when the crimes charged or the facts and circumstances of the case suggest a defendant may be dangerous.**

**A judge in determining the bail bond and nonfinancial conditions of release to reasonably assure a defendant will appear in court shall consider factors 1 through 7 and, when the facts and circumstances of the crime suggest the defendant may pose a risk to the physical safety of any other person, shall also consider factors 8 through 10:**

1. **nature and circumstances of the offense including the weight of the evidence;**
2. **prior criminal history;**
3. **prior record of court appearances;**
4. **family ties;**
5. **employment record;**
6. **financial resources, character, and mental condition;**
7. **community ties;**
8. **history of violence;**
9. **previous conviction of similar offense while released on bail; and**
10. **likelihood based upon the expressed intention of the defendant that he or she will commit another crime while released on bail.**

The judicial branch's Judges' Rules Committee supports clarification of the existing bail statute. The rules committee shared with the program review committee its findings and recommended change to the Connecticut Practice Book, which will be presented for a vote during the annual meeting of Superior Court judges in June 2004. The above recommendation is very similar to the rules committee proposal.

In keeping with its prior finding, the program review committee believes state law and the rules of the court (e.g., Connecticut Practice Book) should reflect the same intent and language. This will ensure consistent and fair procedures and practices in all criminal cases pending before the Superior Court.

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## **Post-Conviction Bail Eligibility**

A judge is statutorily authorized to grant or continue bail pending sentencing or appeal unless he or she finds custody is necessary to provide "reasonable assurance" the defendant will continue to appear in court. A person convicted of murder, felony murder, capital felony murder, or arson murder is ineligible for post-conviction bail release.

A recent law (Public Act 00-200) further prohibits a person convicted of any crime involving the use, threatened use, or attempted use of physical force from being released on post-conviction bail. *In 2002, the state Supreme Court found the law violates the separation of powers provision of the state constitution because it significantly interferes with the*

*Superior Court's authority to control its proceedings.*<sup>3</sup> Specifically the Supreme Court found the law could:

- seriously hamper a defendant's right to appeal;
- mandate incarceration before sentencing even if the appropriate punishment might only be a fine; or
- interfere with the trial court's power to vacate a conviction or impose an alternative sentence.

**The state statute prohibiting post-conviction bail release of a person convicted of a crime involving the use, attempted use, or threatened use of physical force shall be repealed.**

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## **Technical Amendments To Bail Laws**

The existing bail procedure laws do not specifically address the authority of a judge in certain areas of bail. While a criminal court judge has unilateral discretion in setting bail, it is the intent of the legislature that certain procedures are available to and enforced consistently for all defendants released on bail. Because of the ambiguity in state law, certain unintended practices regarding bail procedure have occurred such as judge's modifying the mandatory six-month stay and reinstating forfeited bonds after the five-day period.

*Some technical amendments to existing state law establishing bail procedure are required to ensure fairness and consistency.*

### **No Superior Court judge shall:**

- **reduce, extend, or vacate the mandatory six-month stay on all forfeited bonds;**
- **release a professional or surety bail bondsmen or surety insurer from payment of a forfeited bond unless a fugitive defendant is returned to state custody within the six-month stay period or is detained in another state and Connecticut declines extradition (this process will be discussed later in the report); or**

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<sup>3</sup> *State v. McCahill*, 261 Conn. 492 (2002)

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- **reinstate a forfeited bail bond after the mandatory five-day period, during which a rearrest warrant may be vacated and a forfeited bond reinstated, without the surety (e.g., professional bail bondsman or the insurer and surety bail bondsman) posting the forfeited bond agreeing to remain the surety on the reinstated bail bond.**
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## Chapter 2: Pre-Trial Bail Release Process

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### Bail Release

This chapter summarizes the pre-trial bail release process. The flowchart in Figure 2 shows the steps in the post-arrest process where bail release decisions are made and the agency or private entity responsible for the administration of that step. The process to recover forfeited bonds will be discussed later in this report.

Three governmental entities -- police, bail commissioners, and judges -- act as screens to release eligible defendants on bail. Each is authorized to set certain conditions of release. Only a judge, however, has unilateral discretion to set, modify, and revoke a bail bond at any point in the criminal justice process.

The bail system relies on limited and, at times, unverified information to make bail decisions. A defendant can be arrested, interviewed by a bail commissioner, and presented for arraignment before a judge within several hours or at the most two to three days if he or she is arrested on a weekend or holiday. Setting bail, therefore, is more common sense than science.

It is important to note the number of court appearances required to dispose of a criminal case varies as does the length of time to conclude a case, ranging from a period of days to years. These factors, however, do not affect a defendant's bail status unless he or she fails to appear for a scheduled court appearance.

Also, an arrestee can be charged with more than one crime from a single arrest, but only one bail bond is set per arrest. However, many arrestees have more than one criminal case based on previous arrests pending before the court and can be released under different types and amounts of bail for each case.

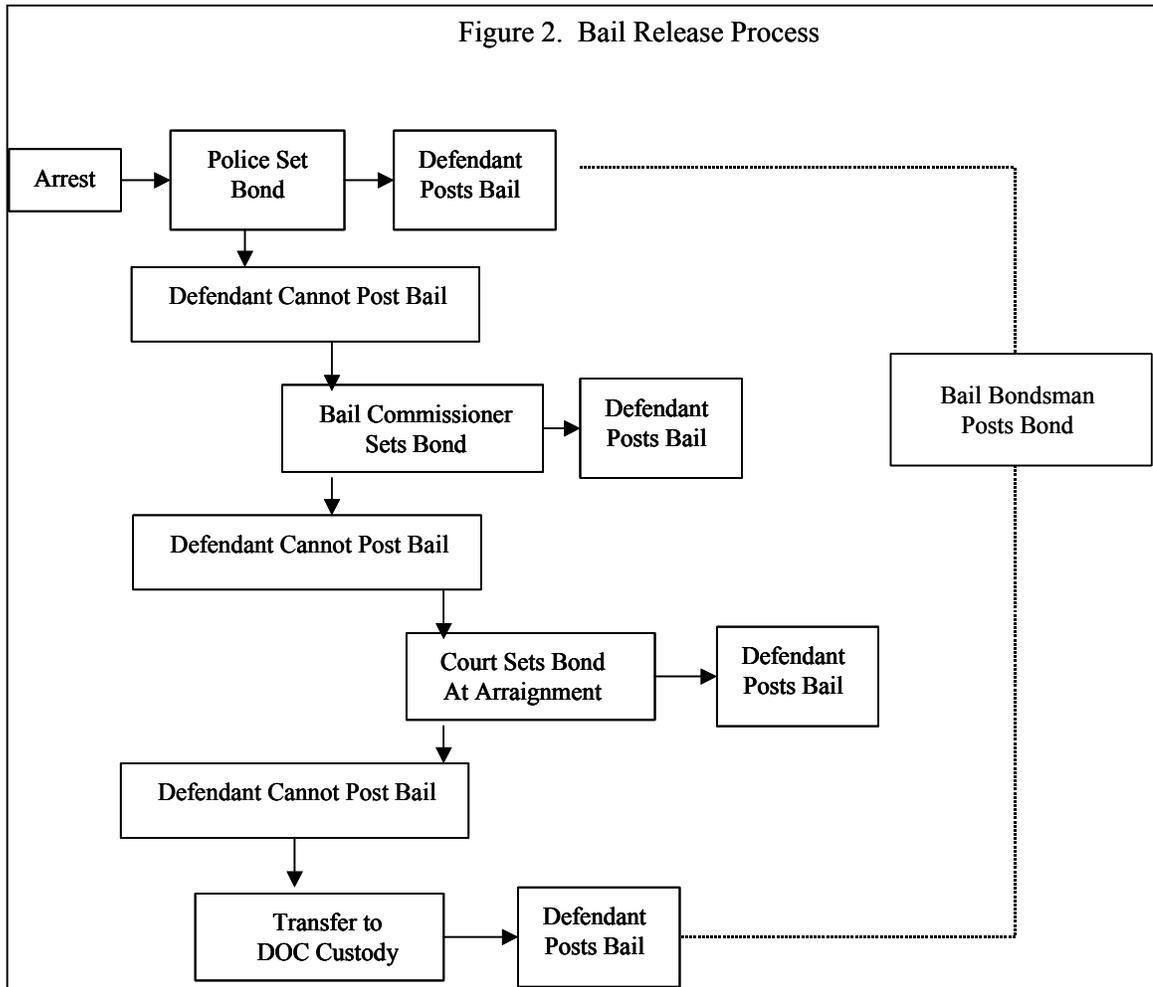
As will be discussed, given the time constraints and limited information available about a defendant at arrest and arraignment, Connecticut's bail setting process appears to be fair and effective.

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### Police Role

As Figure 2 shows, in Connecticut, people can be released on bail after an arrest and prior to arraignment in court. The police are required to set the initial bond type and amount unless the arrest was based on a warrant (this process is discussed below). There are no statewide mandatory criteria for police-set bonds. Most police departments have internal written guidelines

for setting the bond amount based on the offense and the accused’s past criminal history. Since police departments are autonomous, they can emphasize different criteria based on the unique concerns of the communities they serve and directives from local judges and prosecutors.



The majority of arrests are made without a warrant, based on a police decision that probable cause exists that a person committed a crime. An arrest warrant (also called a bench warrant) is a court order issued to the police by a judge based on probable cause that a crime has occurred and was committed by the person to be arrested. Typically a bench warrant will specify the bond type and amount and any release conditions set by the judge. The police cannot change bail established through a bench warrant. If bond is not specified by the arrest warrant, the police set the initial bond.

After a person is arrested, he or she is brought to the police department for processing (commonly referred to as “booking”). The “booking” process is

the first step in collecting the necessary information about the arrestee to set bail. In setting bail, the police are required to inform the accused of his or her right to a bail interview during which counsel may be present. Information about the accused relevant to establishing a bond is obtained at the bail interview. The police are required to corroborate the information where necessary. The accused may waive or refuse the bail interview and remain in custody.

The police can set a written promise to appear or surety bond. If the defendant posts bond, he or she is released immediately.

If the arrestee is unable or unwilling to post bond, he or she remains in police custody until arraignment. The police notify the judicial branch Intake, Assessment, and Referral (IAR) staff -- formerly and still called bail commissioners.

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## **Bail Commissioner Role**

Bail commissioners are responsible for reviewing police bond decisions and providing the court with recommendations for bail. Bail commissioners are required to promptly interview defendants who are unable to post bond set by the police. Occasionally, a defendant who is unable to be interviewed (e.g., does not speak English or is intoxicated, uncooperative, or mentally ill) is brought directly before the court for arraignment without seeing a bail commissioner.

Bail commissioners are available during court business hours as well as evenings and weekends to interview arrested persons. They generally contact local police departments periodically to determine the number of persons being held. Police departments, especially in urban areas, contact the bail commissioners during busy times to arrange for arrestees to be interviewed as soon as possible in an effort to manage overcrowded detention facilities.

There are four important distinctions in the authority to set bail between the police and a bail commissioner. The police, as noted, have no statewide mandatory criteria to follow. A bail commissioner:

- is mandated to release on the least restrictive bail sufficient to assure the defendant's appearance in court;
- may impose release conditions in conjunction with a bond such as electronic monitoring, curfew, or treatment;

- may modify the type and/or amount of a police-set bond; and
- is required by state law to use “written uniform weighted” release criteria for determining the least restrictive bail. (In response, the judicial branch developed a point scale to calculate risk of failing to appear and dangerousness.<sup>4</sup>)

Much of the information about a defendant is self-reported and a bail commissioner attempts to verify it prior to arraignment. Reliable automated information about the offense, prior criminal history and appearance record, pending arrest warrants, and program participation is collected by the criminal justice system and available to a bail commissioner (much of this information is unavailable to police at the time of arrest). During an interview, a bail commissioner attempts to collect the following information about a defendant:

- name and address;
- date of birth;
- other identifying information (i.e., height, weight, hair and eye color, race);
- marital status and name of spouse or cohabitant;
- length of residence at present address and in the state;
- whether he or she owns property or has a telephone in own name;
- whether he or she lives alone or with others (e.g., parent, spouse, children, or family member) and whether he or she has family residing in the state;
- means of support and weekly income;
- occupation, name and place of employment, and length of time employed;
- any physical or mental illness or disability;
- substance abuse and mental health treatment history; and
- name, address, and phone number of verifiable references.

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<sup>4</sup> The judicial branch recently examined the validity of its existing risk assessment tool used for bail decision-making. The study (July 2003) evaluated the point scale system to determine which factors are predictive of bail decisions and outcomes and to identify additional factors to improve the validity of future risk assessment tools. Based on the study’s recommendations, the judicial branch implemented a revised point scale system.

Based on a bail interview, the bail commissioner can modify or change the police-set bond. The defendant is released after posting bail or remains in either police or court “lock-up” until arraignment on the next court day.

If a police department objects to a bail commissioner’s bond modification and the defendant’s release, the department can request the local state’s attorney authorize a delay in release until a court hearing is held.

At arraignment, a bail commissioner provides a judge with a brief assessment of the defendant’s criminal history and community ties and offers a bail recommendation. The judge is not bound by the bail commissioner’s recommendation.

Generally, the bail commissioner’s role ends once a defendant posts bond. In some cases, bail commissioners are responsible for developing alternative bail release plans as part of the jail re-interview project (this process will be discussed in Chapter 4), supervising a defendant’s compliance with nonfinancial conditions of release (e.g., electronic monitoring or participation in treatment program), and reporting to the court any violations, which may result in bail being revoked or modified.

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## **Court Role**

The criminal court judge is the final screen in the bail process. A judge has unilateral discretion in setting and modifying bail and revoking and terminating bonds.

Defendants who cannot make bail at arrest or after being seen by a bail commissioner are presented before a judge at an arraignment hearing. At the arraignment, the judge determines if there is probable cause to support the charges against the defendant and sets the least restrictive bail necessary to assure the defendant’s appearance in court.

As previously stated, the time from arrest to arraignment can span several hours or a few days. Judges make bail determinations based on initial arrest documents, brief presentations by a bail commissioner, a state’s attorney, and the accused’s legal counsel (typically a public defender), and an assessment of risk of nonappearance and dangerousness based on statutory criteria.

After arraignment, defendants able to post bond are immediately released and those unable to post bond or denied bond are transferred to the custody of the Department of Correction (DOC).

A defendant unable to post bond is required to have a bond modification hearing to present additional information related to his or her suitability and resources for bail release. A judge is required to review and can modify the bond for any defendant charged with a class A, B, or C felony after the first 45 days of incarceration. A defendant still unable to post bond may petition for a bond modification hearing every 45 days thereafter. A defendant charged with a class D felony or a misdemeanor is eligible for a bond modification hearing every 30 days.

**Bond violations.** Failure to appear at any scheduled court proceeding or noncompliance with any nonfinancial release condition are bail bond violations. Upon a finding of “clear and convincing evidence” the defendant has violated bail, a judge can modify the conditions of release or revoke bail. Bail is automatically revoked if a defendant is charged with a crime punishable by a prison sentence of 10 years or more *and*: (1) he or she has endangered the safety of another person; or (2) is charged with a new federal or state crime. If the defendant is charged with a new crime, the burden of proof to not revoke bail is shifted to the defendant (called a rebuttable presumption) to show he or she has not committed the crime.

**Terminated bonds.** When a case is disposed of and the defendant has appeared in court as ordered or the defendant is admitted to a pretrial diversionary program (e.g., a pretrial drug or alcohol education program, a pretrial family violence education program, a community service labor program, or accelerated rehabilitation), the judge terminates the bond and releases the bail bondsman and/or insurance company (surety) from its financial obligation to the state. The judge may also terminate a bond when a fugitive defendant is returned to court. In this case, the judge can set a new bond, deny bond, or continue the original bond.

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## **Bail Bondsman Role**

Few arrestees are able, without help, to raise the funds required for release and may secure release by purchasing the services of a commercial bondsman. In Connecticut, the service is provided by two types of licensed bail bondsmen: professional bondsmen and surety bondsmen.

Any bail bondsman: (1) assumes a financial liability to assure a defendant’s appearance in court; (2) attempts to produce the defendant if the defendant fails to appear in court; and (3) pays the state as a result of the forfeited bond if he or she cannot locate and produce the defendant in court.

In the bail release process, bondsmen have a few specific responsibilities. The scope of authority and liability of the bondsmen is broad and will be discussed in detail in Chapters 4 and 5.

Once a bondsman's services are secured, either at the police station after arrest or at the court after arraignment, he or she posts two documents: an appearance bond and a power of attorney. Professional bondsmen post only the appearance bond; the power of attorney is not required because the professional bondsman is not representing an insurance company.

The bondsman does not initially pay the court any money. These documents promise to pay a certain amount if the defendant fails to appear in court as ordered.

In return for posting the bond and assuming the financial risk of forfeiture to the state, a bondsman charges a defendant a nonrefundable fee or premium, which is a percentage of the bail amount set in the case. Whether or not the defendant appears in court, no part of the bondsman's fee is returned to the defendant.

Under the bond contract, the defendant is legally released into the custody of the bondsman and such release is considered to be an extension of incarceration. In practice, however, a bondsman does not actively supervise a defendant. The defendant may be required to remain in contact and/or provide certain information about his or her residence and whereabouts.

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### **Prosecutor Role**

The state's attorney is the legal representative of the state in criminal proceedings whose primary responsibility is to prosecute and convict offenders. At arraignment, the state's attorney presents the state's bail recommendation, which is generally more restrictive based on a public safety argument than recommendations by the bail commissioner and defense counsel. The state's attorney is required to represent the state in bond modification hearings and appeals related to bail.

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### **Public Defender Role**

Under an informal agreement with the judicial branch to expedite the arraignment process, the state's public defenders represent almost all defendants for the purposes of bail only at arraignment. If a defendant is

deemed indigent and eligible for free legal counsel, the judge orders a public defender appointed to handle other proceedings such as bail modification hearings.

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### **Correction Department Role**

The Department of Correction operates a unified system housing both pretrial and sentenced inmates. Pretrial inmates are generally housed in one of the department's four correctional centers (or jails) located in Bridgeport, Brooklyn, Hartford, and New Haven. Upon posting a bond, the defendant is immediately released by the department, which submits the bond documents and funds to the judicial branch.

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### **Bail Enforcement Agent Role**

Although bail bondsmen can find and return fugitive defendants (at this point, called a "skip") to the jurisdiction of the court, they can also use bail enforcement agents (BEA). Bail enforcement agents are typically independent contractors paid a percentage of the total value of the forfeited bond amount to locate and return a "skip" to the custody of the court.

BEAs must be licensed to operate in Connecticut and must notify the police responsible for a town in which a fugitive is believed to be located before taking or attempting to take him or her into custody.

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## Chapter 3: Licensing and Regulation

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The commercial bail bond industry comprises professional and surety bail bondsmen, surety insurance companies, and bail enforcement agents. Professional and surety bail bondsmen provide the same service to the state and defendants, but have somewhat different financial liabilities for the bonds they post. Bondsmen and bail enforcement agents are closely related and interdependent. While surety insurance companies are an essential component, for the purposes of this study, they will be discussed separate from bail bondsmen and bail enforcement agents.

Bail bondsmen, insurers, and bail enforcement agents operate privately and for-profit, but must be licensed to operate in Connecticut. State licensure is intended to ensure suitability, liability, responsibility, and accountability.

The licensing and regulatory authority for the bail bond industry is split between the Insurance Department (ID) and the Division of State Police, within the Department of Public Safety. There does not appear to be any rationale for the split in the state's oversight responsibility of the commercial bail bond industry. The current structure has created a "rogue" business climate that undermines the state's interest in a fair and efficient bail system and allows unprofessional and illegal business practices to thrive among the independent bail bondsmen and bail enforcement agents.

This chapter provides an overview of the licensing and regulatory laws and procedures. The committee's recommendations presented in this section focus on improving effectiveness through consolidation of licensing and regulatory authority over the commercial bail bondsmen and bail enforcement agents in Connecticut.

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### Surety Insurance Companies

**Licensing.** Any domestic or foreign insurance company licensed by the state Insurance Department to conduct fidelity and surety business can underwrite bail bonds. Fidelity and surety insurance is a specific line within the broad property/casualty insurance category, which includes homeowners, automobile, fire, accident and health, liability, workers' compensation, commercial multiple peril, inland and ocean marine, farm owners, and residual value insurance.

To apply for a license, an insurance company submits an application (along with a \$175 fee) and supporting documents including:

- annual financial statement;
- certified public accountant (CPA) report;
- holding company filing;
- biographical affidavits of all officers and directors;
- most recent financial report (called an examination report) prepared by the state of domicile stating the financial condition of the company is adequate;
- plan of operation with premium projections;
- certified copy of charter or articles of incorporation;
- company bylaws;
- certificate of authority from domicile state as proof of operation elsewhere;
- certificate of deposit;
- actuarial opinion;
- proxy statements if publicly owned;
- shareholders report;
- 10K (Securities and Exchange Commission filing);
- power of attorney appointing insurance commissioner as agent for service of process in Connecticut; and
- if license application denied in any other state, a written explanation why.

Approved licenses are granted for one year. Licenses are automatically renewed each May 1 unless revoked by the department or the company requests removal. There is a \$100 renewal fee for in-state insurance companies and a retaliatory fee for out-of-state companies, which allows the Insurance department to charge the fee established by the company's domicile state whether it is lower or higher. Additionally, the Insurance Department charges certain fees for required annual filings (e.g., annual financial statements, CPA reports, and holding company filings).

State law requires insurance companies to file a schedule of premium rates with the Insurance Department prior to licensing. The rate schedule must meet Insurance Department guidelines for pricing. Licensed insurance companies are then prohibited from charging fees that differ from the filed rates.

If a license application is denied, the insurance company may appeal the department's decision in accordance with the Uniform Administrative Procedures Act (UAPA). Licenses are generally denied for: failure to meet financial or "seasoning" (experience) requirements; incomplete filings or application; lack of knowledge or experience among directors

and officers of company; and no previous underwriting experience in the line of business for which it is requesting a license.

Licensed insurance companies are required to maintain books, records, and assets in Connecticut and are subject to audit by the Insurance Department. In-state companies are audited at least once every five years. The ID relies on the domicile state to audit out-of-state companies and most states have similar audit requirements.

**Regulation.** The Insurance Department has two standard regulatory processes for licensed insurance companies: market conduct investigations and financial examinations (audits). Market conduct investigations are initiated based on a company's market share; companies doing a lot of business in the state are subject more often to an investigation. The department conducts scheduled, routine financial audits of in-state companies only. Out-of-state companies are subject to audits by the licensing authority in their home state.

It also responds to consumer complaints. The Insurance Department's practice is to negotiate a settlement between the complainant and insurance company usually in favor of the consumer. However, if a pattern of misconduct is noted based on a series of complaints, the department will initiate a market conduct investigation.

The Insurance Department can take three enforcement actions upon a finding of a license violation. All formal actions are subject to the UAPA. The insurance department can:

- impose a fine;
- suspend or revoke a license; or
- issue a cease and desist order if the insurance company fails to adjust its practices or offer a remedy.

No recommendations are made regarding the responsibility for licensing and regulating insurance companies. *The state Insurance Department should retain its current authority in that area.*

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## **Licensing and Regulatory Authority**

As noted earlier, the licensing authority for the commercial bail bond industry is split between the Insurance Department, which licenses surety bail bondsmen, and the Division of State Police, which licenses

professional bail bondmen and bail enforcement agents. The regulation of commercial bail bond entities is assigned to the agency issuing their license.

Bail bonding involves both criminal and civil proceedings. This has impacted the perspectives and policies of the two licensing and regulatory authorities. The licensing and regulatory practices of the state police and Insurance Department will be discussed in detail below.

In general, however, the state police, as a law enforcement agency, view bail bonding and bail fugitive recovery as an adjunct to the criminal justice process and as a public safety issue. The state police license application and annual renewal process are stringent and set a high threshold for the applicant. The Division of State Police takes a more proactive approach and has broadly interpreted the statute authorizing it to regulate professional bail bondsmen and bail enforcement agents.

In comparison, the Insurance Department views the licensing and regulatory functions from a business regulation perspective. The Insurance Department rarely investigates allegations against surety bail bondsmen.

The Insurance Department has acknowledged it lacks the expertise and resources to adequately carry out its statutory licensing and regulation functions for surety bail bondsmen. It does not hire investigators nor does it have an understanding of the criminal process in which bail bondsmen work. The Insurance Department conceded the responsibility for surety bail bondsmen should be transferred to the Division of State Police, which has indicated its willingness to assume licensing and regulatory authority over surety bail bondsmen.

*The division of regulatory authority over the bail bond industry among two agencies has resulted in conflicting, inconsistent, and ineffective enforcement and confusion over jurisdiction. The Insurance Department's failure to adequately regulate surety bail bondsmen has hindered the state's efforts to collect forfeited bonds and to prevent illegal pricing practices*

**The authority and responsibility to license and regulate surety bail bondsmen shall be transferred from the Insurance Department to the Division of State Police within the Department of Public Safety. All Insurance Department resources (e.g., fiscal and staff positions) currently appropriated for these functions shall be transferred to the Division of State Police.**

The program review committee requested the Insurance Department estimate the staffing and fiscal resources currently assigned to licensing and regulating surety bail bondsmen. The department reported 14 staff are assigned to the Licensing Division, which oversees 85,000 licenses in different insurance areas of which about 450 are for surety bail bondsmen. However, only an insurance program manager, an insurance associate examiner, and an attorney are specifically assigned to oversee surety bondsmen. None of the three staff positions work full-time on the bail function. The department reported the amount of time dedicated to the bail function varies depending on the number of new applicants, the license renewal process, and specific issues or investigations. The department was unable to provide any fiscal estimates.

The committee requested the Division of State Police provide an estimate on the resources needed to implement the recommended consolidation of licensing and regulatory authority. Currently, a detective and a processing technician handle the licensing of professional bail bondsmen. To carry out the consolidation plan, the state police estimate an additional four detectives and three processing technicians would be needed.

The division also reported its current level of staff attorneys may not be sufficient to handle an increase in administrative enforcement actions (e.g., suspension and revocation hearings) that may occur under the recommended consolidation.

Centralizing the licensing and regulation of the commercial bail bond industry has a number of advantages. The responsibility is more consistent with the Division of State Police's role. The state police are experienced investigators and have access to information to assess an applicant's suitability and eligibility to be licensed as either a bail bondsman or a bail enforcement agent. Also, having a single licensing authority will ensure consistency and fairness.

Professional and surety bail bondsmen under the bail bond contract have broad authority to recover fugitive defendants. Bail bondsmen may also contract with a BEA to perform this function. As will be discussed in Chapter 5, this authority is similar to state and municipal law enforcement authority to arrest. In the absence of bail bondsmen and bail enforcement agents, the police would have sole responsibility to locate and apprehend fugitives. As such, the state police are uniquely qualified to oversee this area of commercial bail bonding.

The committee's study revealed, as will be discussed later in this chapter, unprofessional and illegal business practices are not uncommon in the commercial bail bond industry. The program review committee believes there is a need for the state to have a strong regulatory presence. The

division can provide a police presence to enforce the recommended reforms discussed throughout this report.

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## **Types of Bondsman Licenses**

Connecticut law defines a bail bondsman as a person in the business of furnishing bail in criminal cases or who furnishes bail in five or more criminal cases in one year whether for compensation or otherwise. There are two types of commercial bail bondsmen in Connecticut: surety and professional.

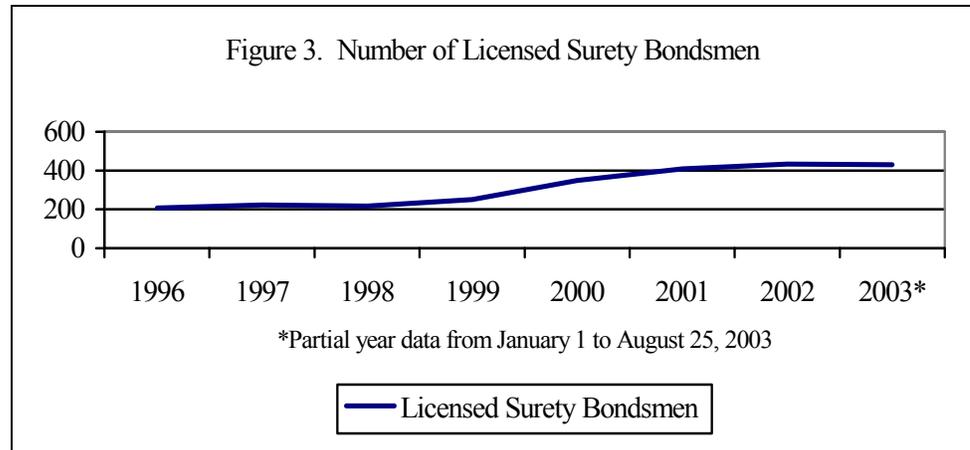
**Surety bondsmen.** Licensing requirements for surety bail bondsmen were statutorily established in 1996. Prior to 1996, persons licensed and operating as casualty insurance agents wrote bail bonds. These agents were “grandfathered” in as surety bondsmen under the new licensing process, and exempt from any background or suitability review as long as their licenses didn’t lapse. Once lapsed, a “grandfathered” surety bondsman must go through the full application process to become reinstated.

Surety bondsmen are independent agents (retail sellers) working under contract with insurance companies and given powers of attorney to execute or countersign bail bonds in criminal cases. Surety bondsmen often have limited personal liability for forfeited bonds. Rather, the insurance company is by contract financially liable to the state.

There are 430 active surety bondsman licenses issued by the Insurance Department under individual and business names. Some individuals hold licenses under both their names and a business name.

Since 1996, the Insurance Department has denied licenses to 14 applicants. The most common reason for denial is a felony or misdemeanor criminal conviction.

Figure 3 shows the growth in the number of surety bondsmen since the Insurance Department began its licensing process. Beginning in 1999, the industry has experienced significant growth. The number of licenses has increased almost 100 percent from 1999 to the present.



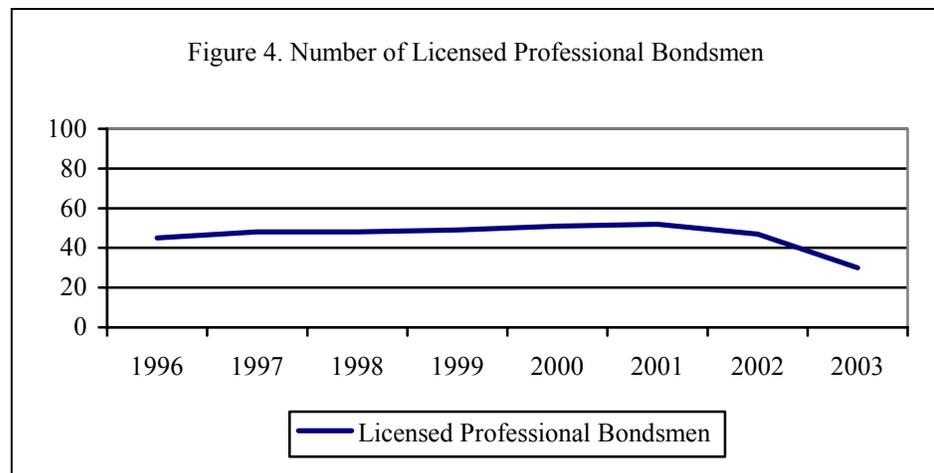
To write bail bonds, a surety bondsman must be authorized to act on behalf of a licensed insurance company. Table 4 shows the number of surety bondsmen licenses authorized by each insurance company. A bondsman and/or a general agent who hires bondsmen as independent contractors can be authorized to write bonds by more than one insurance company. Therefore, the number of licenses in this table will exceed 430.

<b>Insurance Company</b>	<b>HQ Location</b>	<b># of Authorized Licenses</b>
Accredited Surety & Casualty Co., Inc.	Winter Park, FL	148
AEGIS Security Insurance Co.*	Harrisburg, PA	0
American Bankers Insurance Co. of FL	Miami, FL	12
American Contractors Insurance Co.		
American Reliable Insurance Co.	Scottsdale, AZ	16
American Surety Co.	Indianapolis, IN	44
Bankers Insurance Co.**	St Petersburg, FL	17
Diamond State Insurance Co.	Bala Cynwyd, PA	5
Frontier Insurance Co.^	Monticello, NY	13
Harco National Insurance Co.	Rolling Meadows, IL	33
Highlands Insurance Co.^	Lawrenceville, NJ	33
International Fidelity Insurance Co.	Newark, NJ	48
Legion Insurance Co.^	Philadelphia, PA	0
Ranger Insurance Co.	Houston, TX	66
Safety National Casualty Co.	St Louis, MO	47
Seneca Insurance Co., Inc.	New York, NY	48

\*AEGIS stopped writing new bonds in Connecticut In February 2003.  
 \*\*Bankers Insurance Co. is not authorized to write bonds as of September 30, 2002.  
 ^Frontier and Highlands are servicing existing business only and are not writing new bonds.  
 ^^Legion Insurance Co. is in liquidation and is out of business.  
 Source of Data: Insurance Department

**Professional bondsmen.** Professional bondsmen (also called property bondsmen) are the oldest type of bondsmen and have operated under state licensing requirements since 1947. Professional bondsmen put up their own personal property or assets as security for bonds. They have complete personal liability for their bonds in the event defendants fail to appear in court.

Currently, there are 30 licensed professional bondsmen. Figure 4 shows the number of professional bondsmen remained steady until 1999 but has since decreased. The total number of licenses has dropped from 52 in 2001 to 30 in 2003.



Each professional bondsman has a bond authorization cap, which establishes the cumulative amount of posted bonds at 70 percent of his or her equity line. Currently, the lowest authorized cap is \$66,500 and the highest in \$1.7 million. Almost half of the licensed professional bondsmen are currently authorized to write a cumulative amount of bonds from \$500,000 to \$1 million.

Table 5 lists ranges of authorized bond caps and the number of professional bondsmen within that range. It is important to note a bondsman can post any bond at or under the cap; thus all 30 licensed professional bondsmen can post a \$75,000 bond but only six can post over \$1 million.

<b>Table 5. Bond Caps</b>	
<b>Bond Cap Limit</b>	<b>No. of Bondsmen</b>
Up to \$75,000	3
\$75,001 to \$150,000	2
150,001 to \$250,000	2
\$250,001 to \$350,000	3
350,001 to \$500,000	3
\$500,001 to \$1 million	11
Over \$1 million	6
<b>TOTAL</b>	<b>30</b>

Active licenses as of August 26, 2003  
Source of Data: DPS Division of State Police

Professional bondsmen, by putting up their own personal property or assets as security for bonds, have complete personal liability for their bonds in the event defendants fail to appear in court. This system of personal bond underwriting is a form of insurance with the professional bail bondsman operating as the insurer.

If an individual seeks to act as an insurer he or she must meet the licensing, financial, and regulatory requirements established under existing state law and insurance regulations. Insurance companies underwriting bail bonds incur substantial financial expense to meet the state licensing obligations and are subject to specific regulations regarding their business operations including financial solvency.

In comparison, professional bondsmen currently meet much lesser licensing and regulatory standards and do not have the same strict financial solvency requirements imposed upon traditional insurers. A professional bondsman's credit line, which is calculated based on his or her financial assets and liabilities, is set upon licensing and is reviewed during the annual license renewal process by the state police. As stated, the bondsman may then write a cumulative amount of bail bonds up to 70 percent of the total credit line.

The possibility of a change in assets because a professional bondsman's financial solvency had changed during the licensing period may ultimately harm the state if it is unable to collect on a forfeited bond. The surety insurance system, in comparison, provides greater protection and less financial risk to the state in the commercial bail bonding process.

In Connecticut, the system of personal bond underwriting by professional bail bondsmen has not experienced the growth seen in the surety bond system. Over the past three years, the number of persons seeking a

professional bail bondsman license or license renewal has decreased from 52 in 2001 to 30 in 2003.

In contrast, there are about 400 surety bail bondsmen licensed to work in Connecticut. More than half (18) of the 29 professional bail bondsmen also hold a surety bail bondsman license. A bail bondsman holding licenses as a professional and surety bondsman has discretion to determine under which type of license he or she posts a bail bond. Also, 44 professional or surety bail bondsmen hold a bail enforcement agent license.

It should be noted Connecticut and Rhode Island are the only two New England states still authorizing the traditional system of personal bond underwriting. Many other states have eliminated professional (or property) bail bondsmen and have adopted the surety insurance model primarily in an effort to protect the states' financial interests.

*The dual system of regulation with different procedures and financial reporting requirements for professional bail bondsmen and surety insurance companies is inequitable and imposes a lesser financial accountability standard on professional bail bondsmen.*

**No new professional bail bondsman licenses shall be issued after June 30, 2004 and all applications pending after that date shall be voided. All professional bail bondsman licenses issued prior to the termination date may be renewed in accordance with state statutes and Division of State Police regulations unless the license is allowed to lapse, is terminated by the licensee, or is revoked by the Division of State Police.**

The recommended elimination of new professional bail bondsman licenses will not negatively impact the ability of persons to continue working in the industry nor will it limit the availability of a bondsman's service to defendants. Currently licensed professional bail bondsmen will be allowed to renew their licenses each year.

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## Licensing Criteria

Different licensing criteria are set out in statute for both types of bail bondsmen and bail enforcement agents.

**Bail bondsmen.** The eligibility criteria and licensing procedures for the two types of bail bondsmen differ. The licensing criteria and standards were developed at different times -- 1947 for professional bondsmen and

1996 for surety bondsmen -- and are currently enforced by two different state agencies.

The licensing requirements and procedures for professional and surety bondsmen are outlined in Table 6. The requirements are established in state statute, regulations, and agency rules.

The state police and Insurance Department are required to provide the judicial branch, Department of Correction, and all state and municipal police departments with the names of licensed professional and surety bondsmen and must notify these agencies of any change in the license status.

**Table 6. Licensing Requirements for Professional and Surety Bail Bondsmen**

	<i>Professional Bondsmen</i>	<i>Surety Bondsmen</i>
<b>Licensing Authority</b>	Department of Public Safety's Division of State Police	Insurance Department
<b>License Requirements</b>	<p>1-year renewable professional bail bondsman (statutory \$100 annual fee)</p> <p>5-year renewable state pistol permit (\$31 fee) and 5-year renewable supplemental firearm permit (\$35 fee)</p> <p>Firearm permit requirement waived by state police if bondsman does not apprehend defendants who forfeit bond</p>	2-year renewable surety bail bondsman (administratively set fee of \$75 for individual or \$65 for business)
<b>Statutory Qualifications</b>	<p>Applicant must be:</p> <ul style="list-style-type: none"> <li>• in-state resident and a registered voter</li> <li>• "of good moral character"</li> <li>• "of sound financial responsibility"</li> <li>• have no prior felony convictions</li> <li>• cannot be employed as a law enforcement official or vested with any police powers</li> </ul>	<p>Applicant must be:</p> <ul style="list-style-type: none"> <li>• U.S. citizen</li> <li>• at least 18 years old</li> <li>• have no prior felony convictions or misdemeanor convictions for possession of illegal drugs, criminally negligent homicide, assault 3, threatening 3, reckless endangerment 1, unlawful restraint 2, failure to appear 2, riot 1, riot 2, inciting to riot, and stalking 2 (numbers indicate degree of crime)</li> </ul>

**Table 6. Licensing Requirements for Professional and Surety Bail Bondsmen**

	<i>Professional Bondsmen</i>	<i>Surety Bondsmen</i>
<b>Application Process</b>	<p>No pre-licensing course required Pre-licensing interview conducted by state police</p> <p>Written application providing:</p> <ul style="list-style-type: none"> <li>• name, age, address, and occupation</li> <li>• record of prior criminal history</li> <li>• whether business established individually or in partnership and, if a partnership, the name, age, address, and occupation of other partners</li> <li>• statement of assets and liabilities</li> <li>• fingerprints and photograph (\$24 fee for fingerprint-supported background check)</li> <li>• 4 letters of reference</li> <li>• any other information required by state police such as copies of high school diploma, GED, or college transcript and discharge record from military or police</li> </ul> <p>No right to appeal denial of license application</p>	<p>Pre-licensing course required but waived by insurance department (insurance department has not yet contracted with a vendor to provide course)</p> <p>Written application with supporting documents, fingerprints, photograph with nonrefundable filing fee (\$24)</p> <p>Background investigation conducted by Division of Criminal Justice</p> <p>Examination to test competency and qualifications on general insurance industry; not specific to bail bonding; 70 percent passing score required (exam administered by contracted independent testing service)</p> <p>Notice of appointment from insurer authorizing applicant to execute bail bonds</p> <p>No pre-licensing interview</p> <p>No right to appeal denial of license application</p>
<b>Bond Authorizations</b>	<p>Total bond authorization of up to 70 percent of bondsman’s equity line (calculated as assets minus liabilities)</p> <p>Equity line must be valued at a minimum of \$15,000</p>	<p>Appointment and power of attorney from insurer authorizing applicant to execute bail bonds for specific amounts set by insurer (Most insurers require prior underwriting authorization to execute bonds over bondsman’s cap)</p>
<b>Price Setting Standards</b>	<p>Pricing set by state statute: \$50 for any bond up to \$500 May charge <i>up to</i> 10 percent on the first \$5,000 May charge <i>up to</i> 7 percent on any amount over \$5,000</p>	<p>Pricing set by Insurance Department guidelines: \$50 for any bond up to \$500 Fixed at 10 percent on the first \$5,000 Fixed at 7 percent on any amount over \$5,000</p> <p>Rates for insurers’ premiums filed with ID</p>
<b>Reporting Requirements</b>	<p>Monthly notarized report listing</p> <ul style="list-style-type: none"> <li>• current bond amounts</li> <li>• docket numbers</li> <li>• defendants’ names and arrest dates</li> <li>• terminated bonds</li> </ul>	<p>None, but ID authorized to examine bondsman’s books and records at any time</p> <p>Bondsmen have 30 days to report change in status or address or a criminal conviction to Insurance Department</p>

**Table 6. Licensing Requirements for Professional and Surety Bail Bondsmen**

	<i>Professional Bondsmen</i>	<i>Surety Bondsmen</i>
	Annual report (submitted each January) listing <ul style="list-style-type: none"> <li>• defendant names</li> <li>• date and amount of bonds</li> <li>• fees charged and paid by defendants</li> <li>• any other information requested by state police</li> </ul>	
<b>Identification</b>	State police issued photo ID card listing name, license number, address, expiration date, and bonding limit and a badge specifically designed for bondsman (Bondsmen must purchase badge from vendor)  Prohibited from wearing, carrying, or displaying any badge that portrays bondsman as an employee, officer, or agent of the state or federal government	As of February 1, 2004, Insurance Department will issue photo ID card to new and renewal licenses; prior to that department issued only license (no photo ID card or badge)
Source: Connecticut General Statutes, Insurance Department, Division of State Police		

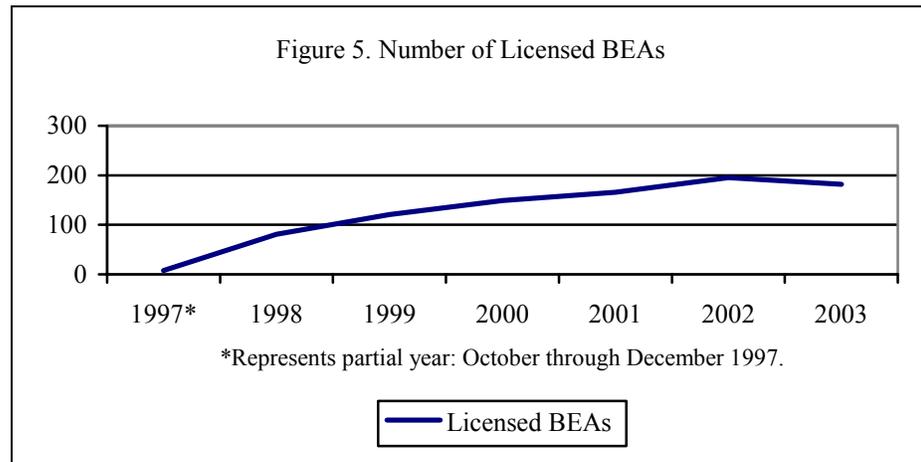
**Bail enforcement agents.** A bail enforcement agent is also known as a bounty hunter or a fugitive recovery agent. In Connecticut, a BEA must be licensed by the state police to locate and apprehend any defendant for whom a rearrest warrant has been issued for failure to appear in court. BEAs have been subject to state licensing requirements since 1997; prior to that the industry was unregulated. During 1998, bail enforcement agents operating prior to enactment of the 1997 licensing law were allowed to continue to work while their license applications were pending.

The Department of Public Safety is required to provide the courts and all state or municipal police departments with the names of licensed bail enforcement agents and report changes in BEA license status. Table 7 summarizes the licensing requirements for bail enforcement agents.

**Table 7. Licensing Requirements for Bail Enforcement Agents**

<i>Bail Enforcement Agent</i>	
<b>Licensing Authority</b>	Department of Public Safety
<b>License Requirements</b>	<p>1-year renewable bail enforcement agent (statutory \$100 annual fee)</p> <p>5-year renewable state pistol permit (\$31 fee) and 5-year renewable supplemental firearm permit (\$35 fee)</p>
<b>Statutory Qualification</b>	<ul style="list-style-type: none"> <li>• “Suitable” to receive license</li> <li>• U.S. citizen or naturalized U.S. citizen</li> <li>• No prior felony conviction or misdemeanor conviction for possession of illegal drugs, criminally negligent homicide, assault 3, assault 3 on elderly, blind, disabled, pregnant, or mentally retarded person, threatening 3, reckless endangerment 1, unlawful restraint, failure to appear 2, riot 1, riot 2, inciting to riot, and stalking 2 (numbers refer to degree of crime)</li> </ul>
<b>Application Process</b>	<p>Successful completion of: (1) 20-hour course on criminal justice system (e.g., use of force, laws of arrest, search and seizure, and constitutional law) within 5 years prior to license application; and (2) gun safety course</p> <p>Written application providing:</p> <ul style="list-style-type: none"> <li>• name, age, date and place of birth, address, and occupation</li> <li>• record of prior criminal history</li> <li>• fingerprints and photograph (\$24 fee for fingerprint-supported background check)</li> <li>• employment, motor vehicle, and medical history for past 5 years</li> <li>• credit report</li> <li>• 4 letters of reference</li> <li>• any other information required by state police such as copies of high school diploma, GED, or college transcript and discharge record from military or police</li> </ul> <p>Pre-licensing interview conducted by state police</p>
<b>License Renewal Process</b>	<p>Submit renewal application and update criminal history check</p> <p>\$100 renewal fee</p> <p>Renew firearm permits when necessary</p>
<b>Reporting Requirements Identification</b>	<p>Notify state police within 2 business days of change of address</p> <p>State police issued photo ID card and a badge specifically designed for BEA (purchased from approved vendor)</p> <p>Prohibited from wearing, carrying, or displaying any badge that portrays BEA as an employee, officer, or agent of state or federal government</p>

On August 28, 2003, there were 194 licensed bail enforcement agents; 26 license applications were pending. As shown in Figure 5, since the state police began licensing BEAs in 1997, the number of licenses has continued to grow each year, but appears to be leveling off during 2003.



Professional and surety bail bondsmen and bail enforcement agents are licensed by the state to ensure an applicant's suitability, liability, responsibility, and accountability. The program review committee believes the eligibility criteria for both types of bail bondsmen should be the same. The criteria should seek to equalize the threshold an applicant must meet to be licensed as a professional or surety bail bondsmen. However, through attrition and the recommended termination of new professional bail bondsmen licenses, the system of personal bond underwriting will eventually end and naturally eliminate any differences. The Division of State Police can, if necessary, amend its professional bail bondsmen licensing criteria or process through regulation.

*Therefore, no changes are recommended to the current eligibility and licensing criteria for professional bail bondsmen. The eligibility and licensing criteria for surety bail bondsmen and bail enforcement agents, however, should be amended to better reflect the state's standards for suitability.*

**To be eligible to apply for a surety bail bondsman license, an applicant shall:**

- **be at least 25 years old;**
- **have a high school diploma or high school equivalency (GED) diploma;**

- be a legal resident of the United States and Connecticut;
- be of good moral character;
- be of sound financial responsibility;
- have been honorably discharged from military service if he or she served in a branch of the U.S. military;
- have no felony convictions or misdemeanor convictions for possession of illegal drugs, criminally negligent homicide, assault in the third degree, assault in the third degree of elderly, blind, disabled, pregnant, or mentally retarded person, threatening in the second degree, reckless endangerment in the first degree, unlawful restraint in the second degree, failure to appear in the second degree, riot in the first degree, riot in the second degree, inciting to riot, stalking in the second degree, or any offense involving truth, veracity, or moral fitness or any offense in any other state for which the essential elements are substantially the same as the offenses listed;
- have no pending bankruptcy or other civil litigation that may affect the applicant's financial status; and
- not be employed as a law enforcement official or vested with any police powers.

**To be licensed as a surety bail bondsman by the Division of State Police, an applicant shall:**

- successfully complete a 20-hour pre-licensing course within two years of the date of application;
- pass with a score of at least 70 percent an examination to test competency and qualifications in the area of bail bonds, general insurance regulations and unfair practices, criminal justice system including the power of rearrest and use of physical force and restraint, and any other area deemed necessary by the division;
- submit a written application including fingerprints, photograph, four letters of reference, and any other information deemed necessary by the division;
- provide an employment history for the past five years;

- **participate in a pre-licensing interview conducted by the Division of State Police; and**
- **submit a notice of appointment from an insurance company licensed to operate in Connecticut by the state Insurance Department authorizing the applicant to execute bail bonds for such insurer.**

**To be eligible to apply for a bail enforcement agent license, an applicant shall:**

- **be at least 25 years old;**
- **have a high school diploma or high school equivalency (GED) diploma;**
- **be a legal resident of the United States;**
- **be of good moral character;**
- **have been honorably discharged from military service if he or she served in a branch of the U.S. military;**
- **have no felony convictions or misdemeanor convictions for possession of illegal drugs, criminally negligent homicide, assault in the third degree, assault in the third degree of elderly, blind, disabled, pregnant, or mentally retarded person, threatening in the second degree, reckless endangerment in the first degree, unlawful restraint in the second degree, failure to appear in the second degree, riot in the first degree, riot in the second degree, inciting to riot, stalking in the second degree, criminal impersonation, or any offense involving truth, veracity, or moral fitness or any offense in any other state for which the essential elements are substantially the same as the offenses listed; and**
- **not be employed as a law enforcement official or vested with any police powers.**

**To be licensed as a bail enforcement agent by the Division of State Police, an applicant shall:**

- **successfully complete a 20-hour pre-licensing course within five years prior to the date of application;**
- **pass with a score of at least 70 percent an examination to test competency and qualifications in**

**the area of the criminal justice system including the power of rearrest, use of physical force and restraint, and any other area deemed necessary by the division;**

- **submit a written application including fingerprints, photograph, four letters of reference, and any other information deemed necessary by the division;**
- **provide an employment history for the past five years; and**
- **participate in a pre-licensing interview conducted by the Division of State Police.**

**The Division of State Police shall conduct a thorough background investigation of each professional or surety bail bondsman or bail enforcement agent applicant. It shall also develop the content and curriculum of the required 20-hour pre-licensing course and may provide or approve a private entity to provide the course.**

**Any person responsible for the operation and management of a bail bond agency, partnership, association, or corporation operating in Connecticut and the supervision of professional or surety bail bondsmen within that agency, partnership, association, or corporation shall be licensed as a professional or surety bail bondsman.**

**Each licensed professional and surety bail bondsmen shall post a \$10,000 cash performance bond with the Division of State Police by June 30, 2004. The performance bond shall remain active during the licensing period including any subsequent renewal periods. The Division of State Police shall be authorized to return the bond amount to the licensee upon voluntary termination or revocation of the license by the division. The Division may withhold from the amount of the performance bond the balance of any unpaid fine imposed upon the bail bondsman as a result of a substantiated administrative violation or infraction.**

**All licensed professional and surety bail bondsmen and bail enforcement agents engaged in the bail fugitive recovery process shall provide proof of a minimum of \$300,000 general liability insurance coverage for recovery activities including but not limited to personal injury for false arrest, false imprisonment, libel, and slander to the Division of State Police prior to licensing or license renewal.**

**All licensed professional and surety bail bondsmen shall provide written notice to the Division of State Police within two business days**

**of any change of address. The notice shall include the person's old and new address.**

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## **License Renewal**

Currently, professional bail bondsmen and bail enforcement agents renew their licenses each year. Surety bondsmen renew every two years.

The state police have implemented a license renewal process to reassess a licensee's continued eligibility and suitability to work in the industry. Professional bail bondsmen and bail enforcement agents are subject to a criminal background check and must submit specific information required by the state police as part of the license renewal process. Professional bail bondsmen are also subject to a financial status check.

In response to the recent attention being paid to the business practices of bail bondsmen, the Insurance Department has recently amended its license renewal process. Until this year, the department automatically renewed surety bail bondsman licenses every two years (on February 1<sup>st</sup>) without any review of a licensee's continued eligibility or suitability.

All surety bail bondsman licenses were up for renewal beginning November 1, 2003 through January 31, 2004. During this current renewal period, the department is requiring a criminal history check for all licensees and has entered into an agreement with the state police to conduct the criminal background checks. As shown in Table 6, a surety bail bondsman is ineligible for a license renewal if he or she has been convicted of a felony or any one of the specified misdemeanor offenses. The Insurance Department has reported it is prepared to deny a surety bail bondsman license renewal to any person found to be ineligible because of a criminal conviction for any of the specified offenses.

The Insurance Department will also, for the first time, issue a photo identification card to all surety bail bondsmen upon renewal of their licenses. The photo license will provide the surety bondsman's name, address, and departmental license number. The state police already issue photo identification licenses to professional bail bondsmen and bail enforcement agents.

However, as previously stated, the Insurance Department has acknowledged it lacks the expertise and resources to adequately carry out its statutory licensing functions for surety bail bondsmen. The department

also believes the existing statutes are unclear and do not provide the specific grounds to deny re-licensure to a surety bail bondsman.

*The statutory criteria for license renewal are vague and inconsistent among the entities of the commercial bail bond industry. The authority to deny license renewal is a regulatory tool and, therefore, its enforcement should be clearly defined.*

**All professional and surety bail bondsman and bail enforcement agent licenses shall be renewed each year following the date of issuance of the license. Each licensee shall be required to initiate the renewal application process, meet the statutory and regulatory requirements for license renewal, and pay a \$250 license renewal fee.**

**All professional and surety bail bondsmen and bail enforcement agents shall attend biennial in-service training consisting of not less than eight hours of instruction in areas related to their profession as determined by the Division of State Police. The division shall develop the content and curriculum of the required eight-hour in-service training course and may provide or approve a private entity to provide the course.**

**All professional and surety bail bondsmen and bail enforcement agents issued a firearm permit shall attend an annual firearm recertification course to demonstrate continued competency and safe handling of firearms. The Division of State Police shall approve the curriculum content and provider of the firearm recertification course. Proof of firearm recertification shall be submitted at the time of license renewal each year.**

**The Division of State Police shall conduct a thorough investigation of each licensee applying for license renewal. The Division of State Police shall deny license renewal for a professional or surety bail bondsman or bail enforcement agent when such renewal applicant is found to be:**

- **unsuitable;**
- **has substantially impaired financial responsibility;**
- **has violated any of the statutory licensing or regulatory requirements;**
- **has practiced fraud, deceit, or misrepresentation;**
- **has made material misstatement in the application for issuance or renewal of the license;**
- **has demonstrated incompetence or untrustworthiness in conducting business; or**

- **has been convicted of a felony or any of the specified misdemeanors making a person ineligible for a license.**

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## Regulatory Practices

As stated, the regulation of professional and surety bail bondsmen and bail enforcement agents is assigned to the authority issuing their license. State law authorizes the licensing entities to suspend or revoke bail bondsmen and BEA licenses. The licenses can be suspended for a definite term or revoked for any of the reasons listed in Table 8.

<b>Table 8. Bail Bond Industry Violations and Misconduct</b>		
<b>Professional Bondsman:</b>	<b><i>Surety Bondsman:</i></b>	<b><i>Bail Enforcement Agent:</i></b>
felony conviction	soliciting or negotiating	violation of any licensing or reporting provision or public safety regulation (also a class D felony)
participation in criminal activity	conviction of felony or misdemeanor of offense involving “dishonesty” or misappropriations of money or property	practice of fraud, deceit, or misrepresentation
“substantially impaired” financial responsibility		
unpaid forfeited bond (automatic license suspension upon notification by chief state’s attorney and license reinstated only upon proof of full payment)	general insurance laws prohibit rebating, misrepresentation, and unfair practices	material misstatements in license application or renewal “demonstrated incompetence or untrustworthiness in business”
exceeding equity line cap (automatic license suspension and license reinstated only when total bond amount is under cap)		conviction of felony or specific misdemeanor crime preventing licensing or any crime affecting “honesty, integrity, or moral fitness”
violation of any licensing or reporting provision (permanent revocation and fine of not more than \$1,000, up to two years in prison, or both)		any finding of “unsuitableness”

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All formal actions to suspend or revoke a license by the state police or the Insurance Department are subject to the Uniform Administrative Procedures Act, which provides due process (e.g., notice, hearing, right to appeal) to the licensee. For substantiated violations, however, the state police have implemented an alternative process to allow bondsmen or bail enforcement agents to voluntarily negotiate a settlement in lieu of the formal UAPA process. A licensee gives up the UAPA right of appeal when accepting a settlement.

Once a professional bail bondsman or BEA license is suspended or revoked, the person's firearm permits are automatically revoked by the state police. A bondsman or BEA's failure to surrender his or her firearm permit within five days of written notification is a class C misdemeanor.

**State police.** The state police, as a law enforcement agency, view bail bonding and bail fugitive recovery as an adjunct to the criminal justice process and as a public safety issue. The Division of State Police takes a more proactive approach to regulation and enforcement of licensing policies than does the Insurance Department. The state police have broadly interpreted the statute authorizing it to regulate professional bail bondsmen and bail enforcement agents. The division investigates administrative and criminal complaints against professional bail bondsmen and monitors bondsmen's compliance with set equity line limits. The state police respond to verbal and written complaints.

Since 1996, the state police have taken enforcement action against 12 professional bondsmen. In those cases, the bondsmen's licenses were suspended and in one case it was revoked but reinstated. The most common reasons for license suspension are exceeding a bond limit and nonpayment of forfeited bonds. As required, the state police automatically suspend a license until the bondsman reduces the cumulative amount of posted bonds or pays the forfeited bonds. In only two cases was a bondsman's license suspended due to a criminal complaint; one investigated by the state police and the other as a result of a Federal Bureau of Investigation (FBI) case.

Since 1997, the state police have revoked two BEA licenses and suspended one for criminal complaints against the licensees.

**Insurance Department.** In comparison, the Insurance Department views the regulatory function from a business regulation perspective. The department has for the most part focused on the insurers and not the surety bail bondsmen. Despite repeated complaints from within the industry and numerous referrals from the state police and Office of the Chief State's Attorney's (CSA), the department has not vigorously much less proactively regulate surety bail bondsmen. In fact, until recently, the

department did not actively cooperate with the chief state's attorney's office in the civil collection of forfeited bail bonds.

The chief state's attorney routinely requests ID to suspend the licenses of all surety bail bondsmen and insurance companies with outstanding bond forfeitures and/or civil judgments until full payment is made. The state police request the department suspend or revoke the surety license of any professional bondsman subject to sanctions by the state police; as stated, bondsmen may carry both types of licenses. The Insurance Department has refused on the grounds the statutes do not specifically require a license suspension for nonpayment of forfeited bonds. This lax approach cost the state revenue and allowed some surety bail bondsmen to take advantage of the system by engaging in illegal and unprofessional business and pricing practices.

The Insurance Department rarely investigates allegations against surety bail bondsmen and will initiate an investigation only based on a written complaint. Many bondsmen, though, are reluctant to submit written complaints for fear of retaliation within the industry and defendants benefiting from reduced fees have no incentive to complain. The Insurance Department is statutorily authorized to audit business records of surety bondsmen, but it does not have written audit procedures or a schedule to periodically conduct the reviews. Since the department began licensing surety bondsmen in 1996, it has not conducted any audits.

Since 1996, the department has revoked only two licenses: one in 2002 for submitting a check with insufficient funds and another in 2003 for a default judgment to pay forfeited bonds. The Insurance Department has not suspended any surety bond agent licenses.

Appendix A provides a summary of two recent bond forfeiture cases that highlight the problems caused by the Insurance Department's failure to exercise its regulatory authority. It should be noted both insurance companies in these cases (AEGIS Insurance Company and Ranger Insurance Company) paid in full the outstanding forfeited bail bonds, but currently have substantial balances of forfeited bonds still within the six-month stay. To date, the Insurance Department has taken no regulatory action against the licenses of the surety bail bond companies (Capital Bail Bonds and Aladdin Bail Bonds) posting the forfeited bonds.

**Bail bonding business practices.** Based on interviews and conversations with bail bondsmen, insurers, staff from the criminal justice agencies, and defendants, program review committee staff observations of the process, and several instances where committee staff posed as a person needing the services of a bondsman, numerous problems and shortcomings of the

commercial bail bond system were identified. Among those issues cited are:

- “undercutting”;
- rebating;
- loan sharking;
- failure to require collateral;
- soliciting;
- fraudulent bonds;
- multiple bonds;
- altercations between bondsmen; and
- bail bondsmen’s failure to notify insurer of forfeited bonds.

*Undercutting.* As stated, professional bondsmen can set their rates up to a maximum profit level, but surety bondsmen have fixed bond rates. It is reported to be a common practice for surety bondsmen to charge less than the fixed bond rates established by the scheduled rates filed by insurance companies. This practice is called “undercutting” and is statutorily prohibited.

Undercutting occurs when a firm lowers its price to below the average or fixed cost of its competitors. The competitors must then also lower their prices below average or fixed cost or risk losing virtually all of the market share. In theory, if undercutting reduces a bail bondman’s revenues below his or her costs, they will eventually go out of business. If this occurs on a wide scale, the bail bond market might be left with only a few operators, who if new operators were not allowed to enter the market, would have a near monopoly position. This would give them the ability to set prices at any level.

Bondsmen solicit clients -- defendants or their relatives, spouses, friends, employers, etc. -- by offering to charge less than (undercut) the rate given by another bondsman. In some instances, a bondsman will forgo his or her fee to write a bond just to steal the business from a competitor; the premium paid to the retail seller and insurance company are then paid by the bondsman not the defendant. Some bondsmen have managed to eliminate competition and corner the market on bail bonds in certain courts.

To maintain a cash flow, bondsmen engaged in undercutting must increase the number of bonds written. To increase their numbers, bondsmen write “high risk” bonds, which generally releases defendants who the bondsmen know will most likely fail to appear in court and be difficult to locate.

This practice is only a concern among surety bondsmen. Professional bondsmen can set their rates up to a maximum amount. However, professional bondsmen charging reduced rates only exasperates the undercutting practice among surety bondsmen.

***Rebating.*** Another common pricing practice cited is “rebating.” Rebating is a credit plan for the payment by the defendant of the bondsman’s fee. It is a form of undercutting and is also statutorily prohibited.

For example, the fixed fee for a surety bondsman to write a \$25,000 bond is \$1,900. Under a rebate plan, the defendant will only pay a portion of the total fee and agree to make payments after being released. Most bondsmen have no legal means to collect nor do they have the incentive, as long as the bond is not forfeited, to collect the balance from the defendant. Ultimately, the surety bondsman does not collect the required fee.

***Loan sharking.*** There are two types of bonds that a bail bondsman cannot post: 10 percent cash and cash only bonds. The defendant is required to post the bond with personal funds (in cash) directly with the court.

Bail bondsmen have been posting the cash bonds and charging the defendant a fee. The money is returned to the bondsmen when the bond is terminated, but the defendant’s fee is not refunded. This practice also undermines a judge’s authority and intent when imposing 10 percent cash or cash only bail.

***No collateral.*** In Connecticut, requiring collateral on a bond from a defendant is a practice that has all but stopped. It is a practice, however, that has the general support of the bail bond insurance industry. Requiring collateral protects the solvency of the bondsman and insurer and gives the defendant a financial stake in appearing in court, which is the purpose of the bail bond.

In addition to a fee, it had been common practice for bail bondsmen to require defendants provide collateral in an amount equal to the value of the bond. The collateral could be cash or property. The collateral was released upon termination of the bond by the court or seized by the bondsmen when the bond was forfeited.

As a result of the other price cutting practices, most bondsmen no longer require collateral on bail bonds.

***Soliciting.*** Professional and surety bondsmen aggressively solicit clients at police stations and in the courts. The solicitation has lead to confrontations and altercations (discussed below) between bondsmen. It also has confused clients and disrupted court proceedings.

State law prohibits soliciting by surety bondsmen. Professional bondsmen are not subject to a similar ban. However, professional bondsmen soliciting clients only exasperates the practice among surety bondsmen.

***Fraudulent bonds.*** There have been recent incidents in which surety bondsmen posted fraudulent (or “dirty”) bonds by submitting fake powers of attorney. The bondsmen were not authorized by a licensed insurance company to underwrite the bonds. All identified “dirty” bonds posted in the state have been for very high amounts (e.g., \$1 million) and the defendants were considered high risk. The defendants were charged the nonrefundable fee and released on the fraudulent bonds.

The chief state’s attorney’s office is currently investigating the practice of posting “dirty” bonds and several bondsmen have been arrested. The defendants released on the fraudulent bonds were returned to custody pending posting of authentic bonds.

***Multiple bonds.*** Professional bondsmen are subject to a limit on the cumulative amount of all bonds posted. Surety bondsmen are capped at the face of an individual bond that can be posted and must have prior insurance company approval to write over that amount. As a way to circumvent these limits, especially for high bonds (e.g., \$1 million or more), bondsmen will split bonds. Two or more bondsmen post a percentage of the total bond amount. They also submit multiple powers of attorney in amounts that total the value of a bond.

***Altercations between bondsmen.*** Judges, court personnel, and the police have reported verbal and physical altercations between bondsmen are increasingly becoming a problem especially when taking place in a courthouse. There are numerous cases of bondsmen being arrested for breach of peace, assault, and threatening each other or clients.

***Failure to notify surety.*** Under the provisions of their contracts with insurance companies, surety bail bondsmen are required to notify the insurers of forfeited bonds. In general, bondsmen are reluctant to notify insurers of forfeitures to protect their working relationship and bond writing authorization. A high failure to appear rate may cause an insurer to terminate a contract with a bondman or to impose oversight measures on the bondsman’s practice.

A Connecticut law currently hinders insurers from managing bail bond forfeitures (this process will be discussed in detail in Chapter 4). State law authorizes official notice of forfeitures to go directly to the surety bondsman. The bondsmen generally do not provide this information to the insurers especially during the six-month stay period during which time they attempt to recover the fugitive and avoid payment of the bond. The

problem for the state occurs when bondsmen and/or general agents accumulate a significant amount in overdue forfeitures yet continue to write new bail bonds, and the insurers are unaware.

**Fugitive recovery business practices.** Chapter 5 provides a detailed discussion of the role of a bondsman and bail enforcement agent in fugitive recovery. However, an overview of the issues surrounding the apprehension of a bail fugitive is necessary to understand the state's oversight of the industry.

Based on interviews and conversations with bail bondsmen and BEAs, insurers, staff from the criminal justice agencies, and defendants, program review committee staff observations of the process, and a review of court records, several problems and shortcomings of the fugitive recovery system were identified. Among those issues cited are:

- kidnapping;
- excessive use of force;
- criminal impersonation; and
- use of unlicensed BEAs.

***Kidnapping.*** Without authorization from the court, neither a bondsman nor a BEA can detain a defendant. A rearrest warrant or a mittimus are required to return an accused person on bail to custody.

The court issues a rearrest warrant when a defendant fails to appear as ordered. The bondsman is notified of the rearrest warrant and pending bond forfeiture.

To return a defendant who has ***not*** missed a court date or violated a condition of release, a bondsman must petition the court to revoke or modify the bond. In granting the bondsman's request, the court issues a mittimus authorizing the defendant be detained in state custody.

Without a rearrest warrant or a mittimus, BEAs and bail bondsmen are not allowed to detain a defendant. If they do so, they can be arrested and charged with kidnapping.

Allegations have been made bail enforcement agents routinely detain defendants without proper court authorization. Accused persons have complained about being handcuffed and shackled, taken at gunpoint, and held for several days until a rearrest warrant or mittimus was ordered. In the past several years, several bail enforcement agents and bail bondsmen have been arrested for kidnapping.

***Excessive use of force.*** There is ambiguity in the case law governing the authority of bail enforcement agents. They are not subject to the same clear and stringent regulations guiding police use of force against offenders.

In the course of their work, most BEAs carry firearms. They use handcuffs and shackles. They employ different surveillance and apprehension techniques and often interact with third parties who are not a party to the bond contract in attempting to locate and take a defendant into custody.

BEAs have been accused of excessive use of force against fugitives and third parties. For example, BEAs have forcefully entered the homes of third parties in an attempt to locate and take a defendant into custody.

***Criminal impersonation.*** Impersonating a police officer is a crime. BEAs are prohibited from wearing, carrying, or displaying any badge that portrays a bondsman as an employee, officer, or agent of the state or federal government. They are issued identification cards and specially designed badges and required to wear clothing with a BEA logo to differentiate them from police officers. As stated, most carry a firearm.

It is reported to be a common practice for BEAs to misrepresent themselves as law enforcement officers to defendants and third parties who may be present when an accused person is taken into custody. It has also been alleged BEAs misrepresent the scope of their authority to local police when requesting assistance or information.

***Unlicensed BEAs.*** There are bondsmen who continue to employ unlicensed bail enforcement agents. Some bondsmen use ex-offenders as bounty hunters because it is presumed easier for them to locate fugitives. The use of unlicensed bounty hunters is illegal. Unlicensed bounty hunters are not subject to the same restrictions as licensed BEAs.

The program review committee's study revealed these unprofessional and sometimes illegal business practices are not uncommon in the commercial bail bond industry for three reasons. First, as previously discussed, regulatory efforts split between licensing authorities are inconsistent, conflicting, and ineffective. Second, there are no specific state laws regulating the business practices of the commercial bail bond industry. Third, an influx of new surety bondsmen licensees caused the bail bond market to become highly competitive during the past several years.

The unprofessional and illegal business practices among bondsmen and bail enforcement agents have been found to be pervasive and persistent despite the efforts of the state. Corruption and unethical behavior have become the norm for some bondsmen and BEAs in Connecticut. These

behaviors diminish the public's regard for the criminal justice system, disrupt the criminal justice process, and undermine the state's interest in administering a fair bail process for arrested persons.

As previously stated, there is a need for the state to have a strong regulatory presence to enforce the recommended reforms discussed throughout this report.

*State law should clearly and specifically define prohibited business practices within the commercial bail bond industry and the regulatory authority of the Division of State Police to enforce sanctions.*

**No licensed professional or surety bail bondsman shall:**

- **charge a fee or premium for a bail bond other than that required by state law;**
- **directly or indirectly advertise, solicit business, or loiter in or around any place where arrested persons are confined or at any Superior Court location;**
- **offer a rebate or credit terms for a fee or premium for a bail bond;**
- **advertise discounted or reduced rates or credit plans or use any business trade name or style that directly or indirectly suggests lower or discounted rates or better terms than that of a competitor;**
- **pay anything of value to any person for a bail bond referral or bail bond service unless that person is a licensed professional or surety bail bondsman;**
- **post a 10 percent cash or cash only bond for an arrested person;**
- **post a surety bond with fraudulent documents;**
- **pay a fee or rebate or give or promise anything of value to a public official or employee in order to secure a client, settlement, compromise, or reduction in the amount of any bail bond;**
- **fail to maintain or submit for review or audit any required business records and documents;**
- **take a fugitive defendant into custody without proper authorization; or**
- **use a trade name or designation that implies any association with a municipal, state, or federal government agency or any name or designation that may tend to mislead the public.**

**No licensed professional or surety bail bondsman or bail enforcement agent engaged in bail fugitive recovery activities shall:**

- **take a defendant into custody before forfeiture of the bond or Superior Court order (e.g., mittimus) and without written authorization from a licensed professional or surety bail bondsman or insurer;**
- **enter an occupied residence without the consent of the occupants who are present at the time of entry;**
- **forcibly enter an inhabited dwelling without prior notice to the local law enforcement agency;**
- **use force against an innocent third party;**
- **collect fees or payments of any type on behalf of a professional or surety bail bondsmen;**
- **collect fees or payments of any type from a defendant on a bond, indemnitor, or any other person associated with the defendant; or**
- **use a trade name or designation that implies any association with a municipal, state, or federal government agency or any name or designation that may tend to mislead the public.**

**The term soliciting shall be defined in statute as the distribution of business cards, novelty items, print advertising, or other written or verbal information directed to an arrested person or potential indemnitor by a professional or surety bail bondsman or bail enforcement agent, unless the arrested person or potential indemnitor requests such information. Professional and surety bail bondsmen and bail enforcement agents shall be allowed to limited print or display advertising in or around any place where arrested persons are confined and at Superior Court locations. Permissible print advertising in such locations is limited to a listing in a telephone directory and the posting of a bail bond agency's or bondsman's name, address, and telephone number in a designated location within the facility or building as approved by the facility or building administrator.**

**Any violation of the recommended provisions shall be an infraction of Connecticut state law punishable by a fine. The Division of State Police shall suspend the license of any professional or surety bail bondsman or bail enforcement agent failing to pay a fine until full restitution is made.**

**A substantiated finding of wrongdoing by a licensed professional or surety bail bondsman or bail enforcement agent shall also be grounds for an administrative action including license suspension or revocation or fine by the Division of State Police. A pattern of infractions or violations shall be grounds for license revocation.**

**The suspension or revocation of any professional or surety bail bondsman or bail enforcement agent license shall result in the suspension or revocation of any other bail bondsman or bail enforcement agent license held by the person. The suspension or revocation of any professional or surety bail bondsman or bail enforcement agent license shall also result in the suspension or revocation of the person's firearms permit. Any professional or surety bail bondsman or bail enforcement agent who fails to surrender a revoked license or firearm permit within five days of written notification by the Division of State Police shall be guilty of a class B misdemeanor.**

An infraction is a violation of state criminal law for which the only sentence authorized is a fine. A person is noticed of an infraction through a written summons rather than being arrested and taken into custody. No bail is required.

A person charged with an infraction can pay the fine by mail or in person to the Superior Court's centralized infractions bureau on or before the date specified on the summons. The payment of the fine is considered a plea of *nolo contendere*<sup>5</sup> and is inadmissible in any other criminal or civil proceeding against the defendant.

A plea of not guilty is transferred to a state's attorney for review. The Superior Court has established a magistrate hearing process to adjudicate the cases.

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## **Required Resources**

The expanded licensing and regulatory responsibilities of the Division of State Police recommended by the program review committee will require additional resources. The committee believes licensing revenues and a percentage of the collected bond forfeiture funds could be applied to this purpose.

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<sup>5</sup> *Nolo contendere* is a plea in a criminal case that has a similar legal effect as a guilty plea except that the defendant does not admit or deny the charge.

Licensing the commercial bail bond industry generates revenue through the collection of fees. The civil collection of forfeited bail bonds also results in revenue (this process is described in Chapter 4). Currently, the revenue from these sources is deposited in the state's General Fund and is not used to support the state function of licensing or regulating the industry.

The current licensing fees vary between each bail bond entity. Connecticut has no formula or schedule for establishing or raising licensing fees. It is an arbitrary process. During the 2003 legislative session licensing fees for some professions and activities were raised. Those for bail bondsmen and BEAs were not, and the current licensing fees are among the lowest charged for a professional license in Connecticut.

*The licensing fees for professional and surety bail bondsmen and bail enforcement agents should be consistent and set at a meaningful rate. The revenue generated through an increased licensing fee for the commercial bail bond industry, regulatory fines, and civil collection of forfeited bail bonds can provide the Division of State Police with the resources it needs to take on the added responsibility of the surety bail bondsmen as well as improving the regulation of the industry.*

**It is recommended the application and annual license renewal fees for professional and surety bail bondsmen and bail enforcement agents increase to \$250. The \$250 application fee is nonrefundable in the event the applicant is denied licensure, cancels the application, or fails to provide all required information.**

**All revenue generated from licensing fees and regulatory fines and 10 percent of the collected forfeited bail bond funds shall be dedicated to the Division of State Police for licensing and regulating the commercial bail bond industry.**

Based on the current number of licensed bail bondsmen (30 professional and 430 surety) and bail enforcement agents (194), the recommended license application and renewal fees would generate about \$163,500 per year. This is an increase from the \$25,085 raised each year by the existing fee structure: \$40 per year for professional bondsmen and bail enforcement agents and \$75 every two years for surety bondsmen.

There is precedent in state law for the revenue generated through licensing a profession or activity to be used to fund the state function. For example, the state police issue firearm permits. A firearm permit fee is \$35, \$10 of which is credited back to the state police within 30 days of the deposit of

the fee into the state's General Fund. The state police maintain a separate nonlapsing account for this purpose.

There is no way to estimate the revenue that may be generated through payment of fines imposed by the court as a result of an infraction or by the state police as a result of an administrative enforcement action.

In 2002, \$8.4 million in forfeited bail bonds was owed to the state and, between January and November 2003 almost \$5 million was owed. Given this, the recommended allocation (10 percent of the collected forfeited bond funds) to the state police over the past two years would have been about \$1.3 million (\$844,298 in 2002 and \$471,265 in 2003).

These dedicated resources are sufficient to provided the additional resources required by the Division of State Police to enact the recommended reforms of consolidating the licensing and regulation and improving regulatory enforcement of the commercial bail bond industry.

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## Chapter 4: Commercial Bail Bonding

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In Connecticut, commercial bail is operated as a form of property/casualty insurance. There are two phases of the commercial bail bond process that involve civil proceedings arising out of a criminal action (an arrest). The first involves the contract entered into between the state and a surety (e.g., insurance company or professional bail bondsman) in which the surety assumes financial liability for a defendant's appearance in court. The surety does this by posting a bail bond and charging the defendant a nonrefundable fee. The second phase begins if the defendant fails to appear in court as ordered and a criminal court judge forfeits the bail bond. The civil collection process for the state's claim for recovery under the surety's forfeited bond then begins.

Although there are several contractual arrangements in bail bonding, the state is only a legal party in the contract between it and the surety (e.g., professional bondsman or insurer) posting the bond.

The commercial bail bond industry claims a primary benefit of its service is there is no cost to the state to support the independent bail bonding system. This is not accurate. The state pays the costs of several bail bonding processes, discussed throughout this report, that are linked to or required by the commercial bail bond industry.

Bail bonding generates revenue, but the state has failed to fully realize the potential income from this source. The reforms recommended by the committee throughout this chapter will result in increased state revenue that can be dedicated to improving the effectiveness and efficiency of the bail system as well as continuing the state's General Fund share.

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### **Bail Bond Contract**

A commercial bail bond is a written contract between three parties wherein the government is the obligee, the defendant is the principal, and the insurance company or professional bondsman is the surety. The bail bond may involve contractual relationships between:

- a defendant (principal) and the retail seller of the bond (bail bondsman);

- a bail bondsman and a general agent who hires a bail bondsman as an independent contractor for an insurance company;
- a general agent and the insurance company underwriting the bond; and
- an insurance company or professional bondsman and the state.

**Surety.** The state is only a party in the contract between it and the surety posting the bail bond. In Connecticut, the surety is either an insurance company or professional bail bondsman.

Through the bail bond, the surety assumes fiscal responsibility -- or risk -- for a defendant's appearance in court through a contract in which the surety agrees to forfeit to the state the amount of the cash bail if the defendant fails to appear. The bail bond contract is established through two documents submitted to the court: the appearance bond and power of attorney. A surety bail bond agent acts as the legal representative of the insurance company in submitting and signing the forms. A professional bondsman files only an appearance bond.

The appearance bond is a contract between the state and the defendant and has the defendant's promise to appear or pay guaranteed by the surety.

The bail power of attorney is issued by an insurance company on a form that can be executed by any licensed and authorized bail retailer. The power of attorney lists the bond amount cap for which the bail agent is authorized. Bail "powers" are not effective unless attached to appearance bonds in an amount that is equal to or less than the value listed on the "power".<sup>6</sup>

There are other contractual arrangements in bail bonding, but the state is not a legal party to any of them. For a complete understanding of the process, these relationships are discussed below.

**Retail seller.** A general bail bond agent contracts with an insurance company to serve as its retail seller of bonds. The contract defines the rights, duties, and authority of the retail seller. Specifically, the provisions include an indemnification clause that holds harmless the insurance company (surety) on any loss, costs, or damages connected with forfeited bonds. The insurer holds the general agent financially liable for forfeited bonds. This private contractual arrangement, however, is not a defense for an insurer in any action by the state to collect on forfeiture.

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<sup>6</sup> See *Bail Bonds* by Jerry W. Watson and L. Jay Labe

**Bail bondsman.** A contract between a general agent and bail bondsman contains the same general provisions including the indemnification clause. The contract establishes financial liability for forfeitures in exchange for receiving a fee.

It should be noted a bondsman can refuse to write a bond. Any decision to withhold services is not subject to review by the state licensing agency or court. A defendant has no redress to appeal a bondsman's refusal to provide service.

**Defendant.** Under the bond contract, the defendant is legally released into the custody of the bondsman on his or her promise to pay the state the bond amount if the defendant fails to appear in court as ordered. The release of a defendant on a surety bond is considered to be an extension of incarceration.

**Indemnitor.** In many cases, a third party (called an indemnitor) is involved in the transaction between a defendant and bail bondsman. An indemnitor is any person willing to assume some financial liability for the defendant's appearance in court through the payment of the bondsman's fee and/or posting of collateral equal to the bond amount. Generally, an indemnitor is a relative, spouse, friend, or employer of the defendant. The personal relationship between defendant and indemnitor can help to assure the defendant will appear in court and not forfeit the indemnitor's cash or property.

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## Bondsman's Fees

In return for posting a surety bond and assuming the risk of forfeiture to the state, a professional or surety bondsman charges a defendant a nonrefundable fee or premium, which is a percentage of the bail amount set in the case. The fees charged by bondsmen are regulated by the state. However, there are different standards for the rates charged by professional and surety bail bondsmen. The different rates allow professional bondsman to charge less but not more for the same bond amount than a surety bail bondsman.

State statute sets the *maximum* fees that can be charged by professional bail bondsmen. The current rates allow a professional bondsman to charge **up to** 10 percent for any bond amount between \$500 and \$5,000 and **up to** 7 percent for any bond amount over \$5,000. It appears professional bondsmen were allowed discretion in setting their bond rates because they

are backed by personal assets rather than underwritten by an insurance company.

Insurance Department guidelines establish the *fixed* rates for surety bail bondsmen. Surety bondsmen must charge 10 percent for any bond amount between \$500 and \$5,000 and 7 percent for any bond amount over \$5,000. State law prohibits an insurance company or its agent (e.g., the surety bondsman) from charging a fee different from the rates filed with the Insurance Department.

Table 9 shows the pricing standards for professional and surety bondsmen. For example, to post a \$25,000 bond, a surety bondsman must charge the defendant \$1,900; \$500 for the first \$5,000 and \$1,400 for the \$20,000 balance. A professional bondsman can charge less, but not more than \$1,900 for the same bond.

<b>Table 9. Pricing Schedule for Surety Bonds</b>	
<b><i>Bondsman</i></b>	<b><i>Surety Bond Fees</i></b>
<b>Professional</b>	\$50 for any amount up to \$500  May charge <b><i>up to</i></b> 10% on first \$5,000  May charge <b><i>up to</i></b> 7% on any amount over \$5,000
<b>Surety</b>	\$50 for any amount up to \$500  Fixed at 10% on first \$5,000  Fixed at 7% on any amount over \$5,000

Whether or not the defendant appears in court, no part of the bondsman’s fee is returned to the defendant. The majority of the bond fee goes to the surety bondsman; current industry practice is about 80 percent of the fee. A percentage is then paid to the general agent who submits a percentage of his or her fee to the insurance company. Insurers generally receive between one or three percent of the total bond amount.

The program review committee could not determine the rationale for the different bail bond rate standards for professional and surety bail bondsmen. Professional and surety bail bondsmen, however, provide the same service to defendants and serve the same purpose to the state. *Therefore, different pricing standards are inherently unfair and are a*

*contributing factor to the current illegal and unprofessional pricing practices among bail bondsmen.*

Most states have a fixed bail bond rate of either 10 percent or 15 percent. The program review committee could find no rationale for the existing split rate schedule or the cut off based on a bond amount over \$5,000. *A flat rate for all financial bonds will provide all parties (e.g., bondsmen, defendants, judges) with a consistent and definite pricing schedule.*

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## **Pricing Practices**

Commercial bail bonding operates as a for-profit private industry. The ability of a bail bondsmen to make a profit is determined by the fees charged to post a bond and an accurate assessment of the risk a defendant will fail to appear in court thereby avoiding bond forfeiture.

An influx of new licensed surety bail bondsmen working in the industry has lead to the market becoming highly competitive during the past several years. As detailed in Chapter 3, the competition spurred some bail bondsmen to engage in illegal and unfair pricing practices (e.g., undercutting, rebating) to increase their profit and reduce competition in the marketplace. This problem is not unique to Connecticut. Similar issues in the bail bond industry have occurred in other states such as California, New Jersey, and Pennsylvania and states such as Illinois and Massachusetts responded to this issue by statutorily eliminating commercial bail bonding.

Undercutting, rebating, and the failure of a bail bondsman to require collateral from a defendant are illegal or unfair pricing practices. Undercutting and rebating by surety bail bondsmen are prohibited under the state's general insurance laws. It has been recommended by the program review committee undercutting and rebating also be statutorily classified as infractions of the state's criminal laws and be specific grounds for license suspension or revocation by the state police (refer to pages 55 through 57).

State law does not require a defendant to post collateral for a bail bond. It is a business decision on the part of the bondsman and the insurance underwriter to require collateral for a bail bond. However, not requiring collateral contributes to the practice of undercutting because it allows the defendant to be released on a lesser financial liability.

The program review committee is not recommending collateral be required for all bail bonds posted by a surety because the recommended reforms will compel the insurance industry to regulate itself and its agents. *As stated, although insurance companies have other means to ensure*

*financial solvency, requiring collateral is considered a “best practice” within the industry. The program review committee believes this is a procedural and contractual issue best left to the insurance companies and their agents to resolve.*

The state of Connecticut and defendants are both consumers of the commercial bail bond system, but their interests differ. The state is mandated to: provide a fair and equitable system for all parties; operate an effective and cost efficient criminal justice system by ensuring arrested persons appear in court as ordered; and protect its financial interest in bail bonding. Defendants have a personal interest in and a constitutional right to secure release from custody at the lowest possible price.

Despite the obvious benefits of obtaining the lowest price for a service, undercutting, rebating, and other unprofessional pricing practices allow for unequal and inequitable treatment to defendants relying on discounted prices from a bail bondsman, but who ultimately pay more for bail than other defendants when charged the correct rate. Discounted bail bond fees run contrary to the original purpose of bail, which establishes a financial incentive for a defendant to appear in court, and undermine the state’s interests in a fair and financially solvent bail system.

In response to the illegal and unfair pricing practices, judges are setting bond amounts partially in an effort to regulate the bail bondsmen. For example, judges have reported increasing the amount of a surety bond and as a result increasing the fee a defendant should pay to a bondsman solely to counter any discount pricing by the bail bondsmen. Judges have further reported rather than setting a surety bond he or she imposes a 10 percent cash or cash only bond to cut a bail bondsman out of the process.

Regulating the bail bond industry is not the responsibility of a criminal court judge. This practice is at odds with the constitutional and statutory mandates that bail not be excessive and set at the “least restrictive” amount to ensure a defendant will appear in court.

As stated, commercial bail bonding in Connecticut is an extremely competitive market. Market controls do not work in this industry in part because of the conflicting interests of the state and the defendants, both consumers of commercial bail bond services. However, the state’s interests in the bail system must override a defendant’s ability to secure a discounted fee for a bail bond.

*Establishing a mandatory fixed pricing schedule for professional and surety bail bondsmen, therefore, supports the fundamental purpose of bail and is critical to preventing illegal and unfair pricing practices.*

**The nonrefundable fee charged by professional and surety bail bondsmen and insurers shall be statutorily fixed at 10 percent for any bond amount over \$500.**

**Professional and surety bail bondsmen shall be required to issue written receipts to all clients for whom each bondsman has posted surety bail bonds. The receipt shall include the following information for the bail bond being posted:**

- **defendant's name;**
- **indemnitor's name;**
- **case docket number;**
- **total amount of the surety bond;**
- **total amount of the nonrefundable fee paid by the defendant or indemnitor;**
- **total value of any collateral posted by the defendant or indemnitor; and**
- **date the bail bond was posted and nonrefundable fee received by the bondsman.**

**In addition to copies of all bail bonds executed and countersigned, professional and surety bail bondsmen shall maintain a copy of all written receipts as part of their business records, which shall be subject to audit at any time by the Division of State Police and the Insurance Department for the purposes of licensing and regulating the industry and by the Office of the Attorney General during the civil collection of forfeited bail bonds.**

**Professional and surety bail bondsmen shall also record the amount of the nonrefundable fee paid by the defendant or indemnitor to the bondsmen on the appearance bond, which is filed with the court at the time the bail bond is posted and the defendant released. The judicial branch shall revise the existing appearance bond form as necessary to include this information.**

The total amount of the surety bond and the nonrefundable fee will be recorded on a written receipt and the appearance bond. This will provide two documents to validate the bail bond fee.

The recommended requirement for bail bondsmen to issue written receipts to their clients and to record the nonrefundable fee charged on the appearance bond establishes a means for tracking and regulating the industry's compliance with the fixed rate schedule for surety bail bonds. These records can be used to protect a bail bondsman from false allegations or claims that he or she engaged in an illegal pricing practice,

but can also be used as evidence by the Division of State Police to substantiate an allegation or claim.

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## **Bail Bond Processing**

The judicial branch is responsible and incurs costs for processing bail bonds. It receives the bond documents (e.g., appearance bond and power of attorney), collects any money posted for bail, collects data on the status of bail bonds, produces and mails bail bond status reports to the bondsmen, produces and mails forfeiture notices to bondsmen, and processes rebates for paid bond forfeitures. It also provides bail bond information to other state agencies such as the Office of the Chief State's Attorney, Division of State Police, and the Insurance Department.

In late 2002, the judicial branch implemented a bail bond status report process to ease the workload of the criminal court clerk's offices, which process posted bail bonds. Before then, bail bondsmen had routinely requested status information on bail bonds from the clerks. The judicial branch found the industry's reliance on the court clerks' office to maintain de facto business records for the bondsmen was seriously interfering in the normal court duties and responsibilities of the clerks.

To relieve the court clerks of the responsibility of responding to the bail bondsmen's information requests, the judicial branch agreed to provide all licensed professional and surety bail bondsmen with a weekly report tracking open, terminated, and forfeited bonds. The reports provide the current status of each bail bond posted by a bail bondsman including: the docket number; defendant's name; date the bond was posted, terminated, or forfeited; and the amount of the bond. This information is not regularly provided to surety insurance companies, but is available upon request.

The judicial branch is not statutorily required to provide this information and it does not charge the bail bondsmen for producing or mailing the report. This is a complimentary state service to all licensed professional and surety bail bondsmen.

The judicial branch reports it produces and mails approximately 300 bail bond status reports each week at an annual estimated cost of \$7,500, which includes paper, postage, and computer and staff time. The judicial branch was unable to accurately estimate the costs of the other bail functions.

*The judicial branch is required to perform several administrative functions to ensure an effective and efficient bail bond system. Since bail bonding generates revenue, the system should be self-funding.*

**A processing fee of \$25 shall be assessed to a professional or surety bondsman, insurer, defendant, or indemnitor posting a surety, 10 percent cash, cash only, or property bond of \$500 or more. The revenue generated shall be dedicated to the judicial branch to cover the administrative costs associated with the bail bond process and to fund the jail re-interview project.**

Based on the total number of financial bonds posted during 2002 (about 96,000), approximately \$2.4 million would be generated by the recommended \$25 per financial bond processing fee. For the first half of 2003 (January 1 through July 1), the processing fee would net about \$1 million based on 40,450 financial bonds. The total revenue generated will depend on the number of financial bonds over \$500 posted each year.

The program review committee encourages the judicial branch to consider an alternative process to provide licensed bail bondsmen with Internet access to bail bond status information. Any revenue generated as a result of the recommendation and dedicated to producing and mailing the bail bond status reports could be used to support an automated information system.

A computer terminal could be made available during court hours in the clerk's office at all court locations allowing each licensed bail bondsmen access to status information on his or her bail bonds. The data could be provided in a "read only" format that did not allow a bondsman to enter or change the automated data or access another bondsman's records. Access could be restricted based on a bondsman's license number or other unique identifier.

**Jail re-interview project.** In 1997 the judicial branch established the jail re-interview project to screen incarcerated pretrial defendants unable to post bond. The purpose of the project was to reduce the number of defendants sent to jail because they could not post bond or meet the nonfinancial release conditions set by a judge. The program reassessed primarily those defendants whose history of violent or sexual assault offenses or mental health or substance abuse problems made them ineligible for placement in most community programs.

Under the program, bail commissioners would develop alternative bail release plans that usually included substance abuse or mental health treatment and/or supervision programs. The alternative bail release plans were presented to a judge after arraignment in the form of a bond modification. The judge typically modified the original bond order and released the defendant on a written promise to appear on the condition he or she complied with the release plan under the supervision of a bail commissioner.

The judicial branch and the Department of Correction reported the program has a significant impact on prison overcrowding among the pretrial inmate population. Between March 1998 and December 2002, almost 9,000 incarcerated defendants were released to community supervision, reserving prison bed space for more serious or sentenced offenders. About 68 percent of all incarcerated defendants screened were subsequently released on an alternative bail release plan.

Despite its success, the jail re-interview program was eliminated in January 2003 as a result of layoffs and reassignment of bail commissioners. In September 2003, the judicial branch began to re-establish the jail re-interview project within available resources, but it is not funded or operating at its prior level. Currently, there are two bail commissioners assigned to the program at the Bridgeport and New Haven Correctional Centers (jails) that were identified as seriously overcrowded and most in need of the jail re-interview project by DOC. A third position staffed on a rotating schedule by bail commissioners from various judicial districts is also available.

To fully administer the jail re-interview project, the judicial branch estimates an additional seven bail commissioners would be needed at an annual cost of approximately \$363,000 (including salary, benefits, and equipment). The dedicated funds can also be used to expand the number of available community-based residential treatment and supervision beds needed to implement the alternative bail release plans.

The recommended \$25 processing fee for all posted financial bonds appears to generate sufficient revenue to fund the program. Also, any money saved by releasing incarcerated defendants who would otherwise be out on bail justifies reinstating the program. The cost of pre-trial incarceration is extremely high compared to community-based placement programs (for a complete discussion of prison overcrowding and the related costs refer to the Legislative Program Review and Investigations Committee report on *Factors Impacting Prison Overcrowding*, December 2000).

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## **Forfeiture of Bail Bonds**

**Bond forfeiture.** A financial or nonfinancial bail bond is forfeited when a defendant fails to appear for any scheduled court proceeding. State law authorizes a six-month stay for all financial bond forfeitures of \$500 or more, beginning with the date the defendant failed to appear. Financial bonds of less than \$500 are due immediately upon forfeiture; the six-month stay mandate does not apply. When a nonfinancial (e.g., written

promise to appear or nonsurety) bond is forfeited, a judge vacates the bond and a new bond is ordered on the rearrest warrant, which will be imposed when the defendant is returned to custody.

If the defendant returns to court within five business days of the forfeiture date a judge can void the forfeiture and reinstate the bond. If the defendant is returned to court at any time during the six-month stay period a judge cannot reinstate the forfeited bond, but can order a new bond, which may be the same type and amount as the forfeited bond. The bondsman or person posting the bond does not have to pay the forfeiture amount. However, if the defendant is not returned to the court within the six-month period, payment of the bond is due.

Currently, the judicial branch refers civil collection of surety bonds to the Office of the Chief State's Attorney and property bonds to the Office of the Attorney General (AG). The court processes the civil collection of forfeited 10 percent cash and cash only bonds.

**Notice of forfeiture.** Existing state law requires official notice of a bail bond forfeiture be provided to the professional or surety bondsman posting the bond. The insurer underwriting the bail bond is not notified by the state. Surety bondsmen are typically contractually obligated to provide notice of forfeited bail bonds to the insurer.

This process hinders insurers from managing bail bond forfeitures to protect their solvency and meet financial obligations for payment. In general, bondsmen are reluctant to notify insurers of forfeitures, especially during the six-month stay period, to protect their working relationship and bond writing authorization. A high failure to appear rate may cause an insurer to terminate a contract with a bond agent or to impose oversight measures on the bondsman's practice.

The problem for the state occurs when a bail bondsman accumulates a significant amount of overdue forfeitures yet continues to write new bail bonds, and the insurer is unaware of the mounting debt for which it is ultimately liable. There have been cases in which the state is owed substantial amounts in forfeited bonds and insurers refused to pay because they claim they did not receive proper notification of the forfeitures from the state. (Refer to Appendix A for a summary of two cases that highlight this problem.)

The notification issue has been addressed by the legislature. A recent change in the law (Public Act 03-202) requires the judicial branch, beginning on April 1, 2004, to notify the surety insurance company rather than the surety bail bondsman of all forfeitures. If a professional

bondsman who is not backed by an insurance company posts the bond he or she will continue to receive the notice.

*Given the current practice among some bondsmen of intentionally failing to provide forfeiture notice to an insurance company, there is the possibility a bail bondsman may attempt to intercept or to prevent a bail bond forfeiture notice from being sent directly to an insurer by providing an alternative, incorrect, or fraudulent address.*

**Public Act 03-202 shall be amended to require the written notice of a forfeited surety bond be mailed to the insurance company's corporate headquarters address in its domicile state that is on file with the state Insurance Department. The written bail bond forfeiture notice shall not be mailed to a post office box or a commercial mailbox address nor mailed to a Connecticut address if the insurance company's corporate headquarters are in another state. A licensed insurance company shall be required to notify the Insurance Department in writing of any address change.**

**A licensed insurance company shall not request the written bail bond forfeiture notice be mailed to a surety bail bondsmen or an attorney. There shall be a presumption any mail posted and not returned to the judicial branch, Department of Administrative Services, or the Office of the Attorney General has been delivered to the addressee.**

**When posting a bail bond, a surety bail bondsman shall be required to provide on the appearance bond form the National Association of Insurance Commissioners (NAIC) five-digit identification code of the licensed insurance company underwriting the bond. The judicial branch shall revise the existing appearance bond form as necessary to include this information. To assist with compliance with the state law and the committee staff's recommendation regarding bond forfeiture notification, the Insurance Department shall provide the judicial branch, the Division of State Police, the Department of Administrative Services, and the Office of the Attorney General with the company name and corporate headquarters address for each NAIC code for insurance companies licensed to underwrite bail bonds in Connecticut.**

**Each power of attorney provided by a licensed insurer to a surety bail bondsman shall have the insurer's name, corporate headquarters address, and NAIC identification code pre-printed on the form.**

Because most insurance companies are licensed to operate in more than one state, the National Association of Insurance Commissioners issues a five-digit identification code to each insurer. All state insurance

departments, including Connecticut, use the NAIC code to identify insurers.

An insurance company must provide its surety bail bondsman with powers of attorney authorizing the bondsman to represent the insurer when posting a bond. Currently, the powers do not include the insurer's headquarters address or NAIC code. This information is critical to regulating the industry and in the civil collection of forfeited bail bonds.

Generally, an insurer provides a surety bail bondsman with a number of powers of attorney forms. The powers documents are not numbered to differentiate one from another.

*A bail bondsman is prohibited from reproducing a powers document or changing the information pre-printed on the form. There have, however, been cases involving bondsmen copying and changing powers of attorney document in order to post fraudulent bail bonds.*

**The Insurance Department shall require insurers underwriting bail bonds to pre-number the powers of attorney forms or implement some other uniform process of assuring all powers of attorney forms can be audited and missing or copied forms can be tracked.**

**Civil collection process.** The responsibility for collecting forfeited surety bonds was originally assigned to the then-12 state's attorneys for each judicial district in the state. In 1994, this responsibility was centralized within the Office of the Chief State's Attorney to promote consistency and to streamline the process.

At that time it was determined the collection of forfeited surety bonds, a civil proceeding, was outside the scope of work and jurisdiction of the state's attorneys who are responsible for the prosecution of criminal cases. However, the CSA was given statutory authority to carry out this function.

The new mandate (Public Act 94-164) required the chief state's attorney's office establish a surety bond forfeiture unit to collect monies owed. The CSA was given the authority to establish uniform standards to compromise and settle forfeited bail bonds for lesser amounts. One-third of the amount of collected forfeited bonds was dedicated to this function and the apprehension of fugitive defendants. The CSA was further required to dedicate \$100,000 per year of the collected forfeited bonds to the witness protection program.

In 1996 (Public Act 96-169), the CSA was required to also fund the investigation and prosecution of vendor fraud in social service programs with the dedicated bond forfeiture funds. In 1997 (Public Act 97-1), the legislature repealed the dedicated funds and all forfeited bond money

collected by the chief state’s attorney’s office was deposited in the state’s General Fund. However, the mandates were not repealed. In response the CSA eliminated its fugitive recovery unit (discussed in Chapter 5), but continues to collect forfeited surety bonds and to fund the witness protection program.

**Forfeiture compromise schedule.** In the early 1990s, the chief state’s attorney office entered into an informal agreement with the commercial bail bond industry to develop a compromise schedule for the reduced payment of forfeited surety bonds, which was codified in 1994. The compromise schedule was intended to serve as an incentive for bondsmen to promptly pay forfeited bonds.

Table 10 shows the current CSA compromise schedule for reduced payment of forfeited surety bail bonds.

The chief state’s attorney’s office reported most forfeited bonds are paid at a reduced rate within the first 30-day period. However, if payment is not made after 30 days, the chief state’s attorney does not negotiate forfeited bond amounts. The total value of the bond is due and no partial payments are accepted. CSA can file a civil suit against the insurer and/or bail bondsman for a judgment to collect the debt. In the past 10 years, CSA has litigated only two cases.

**Table 10. Chief State’s Attorney Surety Bond Compromise Schedule**

<i>After Stay Period, Payment Made Within:</i>	<i>Percentage of Total Bond Amount Paid:</i>
7 days	50%
Between 8 and 30 days	75%
After 30 days	100%

No interest is charged on balance due after 30 days.

Source: Office of the Chief State’s Attorney

Table 11 shows the total amount of forfeited surety bonds and the total amount paid in accordance with the compromise schedule. Since 1999, almost \$35 million in bonds have been forfeited and the chief state’s attorney’s office has collected about \$22 million. Over the previous four years, the chief state’s attorney’s office has agreed to not pursue about 40 percent of the total bond amount owed to the state through its compromise schedule. However, during 2003, it has collected over 80 percent of the total forfeited bond amount owed.

**Table 11. Forfeited Bond Amount Owed and Collected**

<i>Year</i>	<i>Total Bond Forfeiture</i>	<i>Total Collected</i>	<i>Percent of Total Collected</i>
1999	\$5,799,052	\$3,497,294	60%
2000	\$5,562,020	\$3,203,525	58%
2001	\$10,190,877	\$7,024,552	69%
2002	\$8,442,977	\$5,564,014	66%
2003*	\$4,712,650	\$3,926,438	83%
<b>TOTAL</b>	<b>\$34,707,576</b>	<b>\$22,465,335</b>	<b>65%</b>

\*Partial year data from January 1 through November 13, 2003.

Source of Data: Office of the Chief State's Attorney

Table 12 shows the total amount of forfeited bonds paid at the reduced rates established in the compromise schedule. The totals reflect any rebate awarded to a bondsman for returning a fugitive within one year. This process is discussed below.

Since 1999, almost half (48 percent) of all forfeited bonds are paid at 50 percent of the total value within the first seven days after the six-month stay period has ended. During January 1 through November 13, 2003, more than half of the forfeited bonds due have been paid at 100 percent.

**Table 12. Total Bond Forfeitures Paid at Compromise Schedule**

<i>Year</i>	<i>Paid at 50% (% of yearly total)</i>	<i>Paid at 75% (% of yearly total)</i>	<i>Paid at 100%* (% of yearly total)</i>
1999	\$1,914,738 (57%)	\$915,432 (27%)	\$522,058 (16%)
2000	\$2,201,750 (66%)	\$598,500 (18%)	\$511,205 (15%)
2001	\$2,435,775 (38%)	\$1,633,575 (25%)	\$2,317,327 (36%)
2002	\$2,606,363 (49%)	\$741,188 (14%)	\$2,100,077 (39%)
2003**	\$1,590,963 (41%)	\$255,375 (6%)	\$2,080,100 (52%)
<b>TOTAL</b>	<b>\$10,749,589 (48%)</b>	<b>\$4,144,070 (18%)</b>	<b>\$7,530,767 (34%)</b>

\*Minus funds credited under Connecticut Practice Book rebate schedule; may not equal 100 percent.

\*\* Partial year data: January 1 through November 13, 2003.

Source of Data: Office of the Chief State's Attorney

**Rebate on forfeitures.** All forfeited bond money is deposited in the state’s General Fund. A professional or surety bondsman is entitled to a rebate on a paid forfeited bond when a fugitive defendant is returned to the court within one year of the forfeiture date. Bonds paid pursuant to the compromise schedule cannot be rebated. Only bonds paid in full (100 percent) can be rebated. Court rules set the following rebate schedule as shown in Table 13.

The chief state’s attorney’s office credits bond rebates toward outstanding bond forfeitures rather than returning money directly to the bondsman. This is done to expedite the process and to avoid requesting the rebate funds from the state’s Comptroller’s Office.

<b><i>Rebate Bond Amount:</i></b>	<b><i>If Defendant Returned to Court:</i></b>
46%	Within 210 days of bond forfeiture date
38%	Within 240 days of bond forfeiture date
30%	Within 270 days of bond forfeiture date
23%	Within 300 days of bond forfeiture date
15%	Within 330 days of bond forfeiture date
7%	Within 1 year of bond forfeiture date

Source : Connecticut Practice Book 2003

*In light of the six-month stay period for payment and the court’s rebate schedule for forfeited bail bonds, the existing compromise schedule adopted by the Office of the Chief’s State’s Attorney appears too lenient.*

*When posting a bail bond, a professional bail bondsman or surety insurer enters into a contract with the state to pay the full amount of the bond if the defendant fails to appear in court as ordered. Therefore, the state should establish a disincentive for nonpayment of forfeited bail bonds rather than an incentive for payment that is consistent with its other debt collection policies and procedures.*

*The collection of forfeited surety bail bonds is strictly a civil proceeding, not a criminal process. The collection of forfeited bail bonds is not any different than the collection of any other state debt and should not be treated differently. Connecticut has a civil collection process to recover any debt owed to the state operated by the Department of Administrative*

*Services (DAS). Under this system, any litigation to recover debt payment is referred to the Office of the Attorney General.*

**The authority and responsibility for the civil collection of forfeited bail bonds shall be transferred from the Office of the Chief State's Attorney to the Department of Administrative Services in accordance with Connecticut General Statute §4a-12.**

**The judicial branch shall retain responsibility for providing the original bond forfeiture notices to insurers and professional bail bondsmen in accordance with existing state law and the program review committee staff's recommendation in this area. The judicial branch shall also notify the Department of Administrative Services of all forfeited bail bonds and provide all information necessary for debt collection at the beginning of the mandatory six-month stay period for all forfeited bail bonds.**

**After a surety bond is forfeited and during the fifth month of the six-month stay period, DAS shall send a written notice for payment to the insurer or professional bail bondsmen. The notice shall contain information on the payment schedule, the recommended 10 percent discount, rebate, and any other necessary information.**

**A forfeited bail bond shall be paid in full (100 percent) within 30 days of the end date of the six-month stay period (the seventh month), except that any forfeited bail bond paid within the first 10 days of the 30-day period may be paid at a 10 percent discount of the total bond amount. Payment shall be made to and recorded by the Department of Administrative Services.**

**If a forfeited bail bond is not paid in full after a 30-day period after the end date of the six-month stay, the insurer or professional bail bondsman shall be assessed interest of 1 percent of the total bond amount per month or any part thereof. The Department of Administrative Services shall refer such cases to the Office of the Attorney General, which shall be responsible for litigating a final judgment for payment against any insurer or professional bail bondsman refusing to pay a forfeited bail bond or appealing a final judgment.**

**Additionally, if a forfeited bail bond is not paid in full after 30 days after the end of the six-month stay period, the insurer's and surety bail bondsman's license or the professional bail bondsman's license shall automatically and immediately be suspended until full restitution of the debt is made. During the period of suspension an**

**insurer cannot underwrite or a surety or a professional bail bondsman cannot post any bail bond in Connecticut.**

**An insurer's or professional bail bondsman license shall be revoked when a period of license suspension for nonpayment of a forfeited bond exceeds six months from the end date of the 30-day payment period. A surety bail bondsman license shall be revoked if he or she engaged in a pattern of misconduct that contributed to the insurer's nonpayment of a forfeited bond. A pattern of license suspensions for nonpayment of forfeited bail bonds shall be grounds for revocation of an insurer's or professional or surety bail bondsman's license.**

**The judicial branch, Division of State Police, Insurance Department, Department of Administrative Services, and the Office of the Attorney General shall implement a process to provide timely notification and accurate information to facilitate the collection of forfeited bail bonds and the automatic license suspension process.**

**Ten percent of the collected forfeited bail bond funds shall be dedicated to the Department of Administrative Services to fund the civil collection function.**

**The judicial branch shall review and amend if necessary the existing rebate schedule for forfeited bail bonds. Bail bondsman eligible for a rebate shall apply directly to the Department of Administrative Services.**

Recommendations set forth in this report dedicate specific percentages of the collected forfeited bail bond revenue. The overall breakdown of the recommended appropriation of the total collected revenue is:

- 10 percent to the Division of State Police for licensing and regulating the commercial bail bond industry;
- 10 percent to the Department of Administrative Services for the civil collection of the forfeited bond debt;
- 30 percent to the Division of State Police to expand its fugitive recovery unit (as will be discussed in ); and
- 50 percent to the state's General Fund.

The appropriations of the collected forfeited bail bond funds are discussed within the specific committee staff recommendations. Estimates of the dedicated funds recommended throughout this report and anticipated new state costs to enact bail reform are presented in Appendix B.

## **Discount and Rebate Eligibility**

Existing state law entitles a surety, which has been interpreted as a professional or surety bail bondsman, to a rebate of a portion of a forfeited bond when a fugitive defendant is returned to custody within one year of forfeiture. In practice, the entitlement was extended to include a reduced payment on a bond in accordance with the CSA's compromise schedule. Persons posting a surety bond other than a licensed professional or surety bail bondsmen (i.e., relative or friend of a defendant) were deemed not entitled to the rebate or compromise schedule because the statute only referenced sureties.

In 2002, the Connecticut Supreme Court ruled an indemnitor other than a licensed professional or surety bail bondsman is entitled to a rebate when a fugitive defendant is returned to custody.<sup>7</sup> The court found although the entitlement was not authorized by state law, it was the intent of the legislature to treat a bondsman and indemnitor equally. The court also has inherent authority under its common law powers to grant the rebate.

The chief state's attorney's office has amended its practice to allow any indemnitor to pay in accordance with its compromise schedule a discounted rate for forfeited bonds.

**Existing statutes shall be revised to entitle a person other than a licensed professional or surety bail bondsman or insurer posting a surety bond to pay at the recommended discounted rate a forfeited bail bond and to a rebate on a portion of a paid forfeited bond when a fugitive defendant is returned to custody with one year of forfeiture.**

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## **Motions for Judgment or Appeal**

Any person posting a financial bail bond can file a motion for relief from bail bond forfeiture or appeal a final judgment for payment of a forfeited bail bond. *However, motions that lack legal merit and are brought solely for the purpose of delay cost the state money and impact the integrity of the commercial bail bond industry.*

**To file a motion seeking trial court judgment or appellate review of a final judgment on a forfeited bail bond, an insurer, professional or surety bail bondsman, principal (defendant), or indemnitor shall either: (1) place in escrow with the trial court the sum of the forfeited bail bond or pay the amount under protest with a reservation of**

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<sup>7</sup> *State v. Mario Marro*, 68 Conn. App. 849 (2002)

appellate rights; or (2) post with the trial court a *supersedeas* bond<sup>8</sup> from a different and sufficient surety insurer authorized to do business in Connecticut in the amount of one and one half times (150 percent) of the forfeited bail bond amount guaranteeing payment of the judgment amount, lawful interest, and any fee or costs awarded by the trial or appellate court.

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## Build-up Funds

A provision of most contracts between an insurer and its surety bail bondsmen is the establishment of a “build-up” fund (or “buff” account) to be used to pay forfeited bonds. The build-up funds are maintained as a trust fund on behalf of a bail bondsman held by the insurer in a fiduciary capacity to be used to indemnify the insurer for loss and other agreed-upon costs related to a bail bond executed by a bondsman.

The build-up fund is the sole property of the bail bondsman. Upon termination of a contract between an insurer and a bondsman and discharge of open bond liabilities, the build-up funds are returned to the bail bondsman. Typically, a bondsman is obligated to deposit one percent of the total value of each surety bail bond into his or her build-up fund.

Currently, no in-state insurers underwrite bail bonds. All insurers licensed to post bail bonds in Connecticut are domiciled in other states. The build-up funds are managed in out-of-state banks.

Managing the build-up accounts in out-of-state banks makes it difficult for surety bail bondsmen to oversee and access their funds. It is also problematic for the state to place a lien against those out-of-state accounts when litigating a final judgment for the collection of a forfeited bail bond.

*Surety bail bondsmen are licensed and operate in Connecticut and the build-up funds are intended to pay forfeited surety bonds posted in Connecticut.*

**Licensed insurers underwriting bail bonds in Connecticut shall be required to manage all surety bail bondsman build-up funds with banking institutions licensed to operate and with branches in Connecticut.**

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<sup>8</sup> A bond required of one who petitions to set aside a judgment or execution (i.e., insurer or bondsman) and from which the other party (i.e., the state) may be made whole if the action is unsuccessful.

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## Chapter 5: Bail Enforcement

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Bail enforcement is a broad term generally including: the monitoring of a person released on bail; ensuring a person on bail is aware of all bail release conditions and scheduled court proceedings; and locating and apprehending a defendant who fails to appear in court, thereby forfeiting the bail bond. The process of locating and taking a defendant who “skipped” bail into custody is fugitive recovery, also called bounty hunting.

Commercial bail enforcement practices are dangerously unregulated. Unprofessional and illegal business practices among bail bondsmen and bail enforcement agents have been found to be pervasive and persistent. The practices have impacted fugitive defendants as well as third parties.

The current bail bond business climate undermines the state’s obligation to ensure a fair and effective bail system for arrested persons and to protect the rights of innocent persons. The reforms presented in this chapter are aimed at establishing bail enforcement guidelines for the industry and ensuring the state has a strong regulatory enforcement presence.

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### Failure to Appear

A bail bond is forfeited when a defendant fails to appear for any scheduled court proceeding. The charge of failure to appear (FTA) is a class D felony if the underlying charge, which is the crime for which the defendant was released on bail, is a felony. It is a class A misdemeanor if the underlying charge is a misdemeanor or motor vehicle violation for which a prison term may be imposed.

On the date the defendant fails to appear, a judge issues a rearrest warrant ordering the fugitive defendant (now called a “skip”) to be apprehended and charged with a new criminal offense.

**Warrant process.** A FTA rearrest warrant authorizes any law enforcement official to apprehend the defendant and return him or her to the custody of the court. It also allows a bail bondsman to exercise his or her civil authority to apprehend a fugitive defendant on a bond. When taken into custody, the fugitive is returned to court to respond to the pending criminal charges for which he or she was released on bail and the new charge of FTA.

The warrant identifies the person to be arrested, the new criminal charge; it may indicate the type and amount of a new bond set by a judge. The

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court forwards the rearrest warrant to the state's attorney prosecuting the case. It is then sent to the state or municipal police department that arrested the fugitive defendant for the original crime (the arresting police department) for process.

Table 14 shows the total number of each type of bail bond option imposed each year from 1999 through July 1, 2003. Also shown is the total number of outstanding rearrest warrants issued for failure to appear by the type of bail bond. Not all of these warrants are currently pending as some defendants may have been apprehended.

<b>Table 14. Number of FTA Warrants by Bail Bond Type as of July 1, 2003</b>						
<i>Year of Arrest</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003*</i>
<b>Nonfinancial Bonds</b>						
<b>WPTA</b>						
# Bonds Set	111,902	101,771	83,450	82,665	86,161	44,015
# FTA Warrants	12,629	14,165	12,569	14,013	12,817	7,336
FTA %	11%	14%	15%	17%	15%	17%
<b>NONSURETY</b>						
# Bonds Set	17,693	15,347	18,556	19,104	21,092	11,333
# FTA Warrants	1,860	2,225	2,177	2,551	3,044	1,934
FTA %	11%	14%	12%	13%	14%	17%
<b>Financial Bonds</b>						
<b>SURETY</b>						
# Bonds Set	16,861	18,185	17,931	19,766	23,244	15,756
# FTA Warrants	3,310	4,418	4,469	5,261	5,419	3,539
FTA %	20%	24%	25%	27%	23%	22%
<b>10% CASH</b>						
# Bonds Set	265	98	33	35	55	36
# FTA Warrants	33	29	14	30	36	9
FTA %	13%	30%	42%	86%	65%	25%
<b>CASH ONLY</b>						
# Bonds Set	9,140	7,308	7,855	7,571	7,705	3,888
# FTA Warrants	572	740	789	894	942	593
FTA %	6%	10%	10%	12%	12%	15%
<b>TOTALS</b>						
# Bonds Set	155,861	142,709	127,825	129,141	138,257	75,028
# FTA Warrants	18,404	21,577	20,018	22,749	22,258	13,411
FTA %	12%	15%	16%	18%	16%	18%

\*Partial year data from January 1 through July 1, 2003.

Source of Data: judicial branch

The overall failure to appear rate for all bond options has remained at less than 20 percent for each year under analysis. As shown in the table, 10 percent cash bond has the highest failure to appear rate. In 2001 almost 90 percent of the 10 percent cash bonds were forfeited and in 2002, 65 percent were forfeited because the defendant failed to appear.

The high rate of FTA is due, in part, because defendants intending to flee view the cost of the 10 percent cash bond as a “business” expense. They forgo the cash to avoid prosecution and sentencing. As will be discussed later in this section, locating and recovering bail fugitives is not a priority for the state at this time. Commercial bondsmen do not post 10 percent cash bonds and, therefore, do not attempt to recover these fugitives.

Surety bonds have the second highest rate of failure to appear. As the table shows, almost a quarter of all surety bonds are forfeited because the defendant did not appear in court as ordered. However, bondsmen do attempt to apprehend these fugitives especially during the six-month stay period to avoid paying the forfeited bail bond.

As of July 1, 2003, there were 19,979 outstanding FTA warrants for all bond types statewide. Table 15 shows the number of pending warrants for each type of bond. The data are categorized by the year in which the defendant was arrested for the crime for which bail was set.

**Table 15. Number of Pending FTA Rearrest Warrants as of July 1, 2003**  
*(pending FTA warrants as percent of total bond imposed)*

	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003*</b>
WPTA	1,596 (13%)	1,557 (11%)	1,642 (13%)	2,265 (16%)	2,927 (23%)	1,999 (27%)
Nonsurety	194 (10%)	233 (10%)	382 (18%)	514 (20%)	676 (22%)	410 (21%)
Surety	346 (11%)	433 (10%)	653 (15%)	834 (15%)	1,028 (19%)	697 (20%)
10% Cash	9 (27%)	3 (10%)	11 (79%)	9 (30%)	17 (47%)	2 (22%)
Cash Only	172 (30%)	187 (25%)	322 (41%)	322 (36%)	377 (40%)	162 (27%)
<b>TOTAL</b>	<b>2,317</b>	<b>2,413</b>	<b>3,010</b>	<b>3,944</b>	<b>5,025</b>	<b>3,270</b>

\*Partial year data from January 1 through July 1, 2003.  
Source of Data: judicial branch

Ten percent cash and cash only bonds have the highest rate of pending warrants for failure to appear. Defendants were required to post personal funds in cash for these types of bonds. Those defendants who skip bail were prepared to forfeit the money and most likely are not going to turn themselves in.

**Posting the warrant.** The arresting police department is responsible for entering the warrant information into a statewide central criminal information system accessed by municipal and state law enforcement

agencies. In Connecticut, this is the COLLECT system maintained by the state police. COLLECT maintains a variety of information on offenders and the rearrest warrants are entered into the Wanted Persons File.

Rearrest warrants requiring extradition of a fugitive (this process is discussed below) who may be apprehended in another state are entered into the COLLECT system and the National Crime Information Center (NCIC) database. NCIC is a nationwide information system serving local, state, and federal law enforcement agencies maintained by the Federal Bureau of Investigation (FBI).

State law does not specifically require all warrants be entered into the COLLECT or NCIC systems. Each arresting police department has discretion as to which warrants are entered. Generally, the police do not enter rearrest warrants for low-level offenses or infractions (e.g., failure to appear, violation of probation, motor vehicle infraction). The police also do not enter warrants for persons with whom the police have frequent contact or know their whereabouts. In those cases, the arresting police department will serve the warrant when it locates the fugitive or has the staffing resources to do so. Some warrants are simply not entered because the arresting police department does not have the administrative staffing resources for the function.

A 2000 law (Public Act 00-209) attempted to address this issue by authorizing a judge to order a rearrest warrant be entered into a central computer system. In practice, however, judges do not specifically order rearrest warrants be entered into COLLECT or NCIC. It is the intent and expectation of a judge that every rearrest warrant issued be processed and the arresting police department exercise due diligence in recovering the fugitive including posting the warrants in the two systems.

In an effort to address the backlog of outstanding warrants (about half of all warrants are not entered into COLLECT), the judicial branch implemented and maintains a centralized rearrest warrant database called the Paperless Rearrest Warrant Network (PRAWN)<sup>9</sup>.

Beginning in 2001, the judicial branch began entering all rearrest warrants into PRAWN. PRAWN is linked to the COLLECT system and the Department of Correction inmate database. Once a warrant is entered into PRAWN any descriptive information including a photograph is downloaded from COLLECT and the DOC systems. This process

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<sup>9</sup> PRAWN is part of the Criminal Justice Information System (CJIS), which is an umbrella network to manage criminal justice information that also includes the Offender-Based Tracking System (OBTS), On-Line Booking, Automated Fingerprint Database, and the Protective Order Registry. A federal National Criminal History Information Project (NCHIP) grant was used to partially fund this project.

provides police with the warrant as well as information needed to accurately identify the fugitive for arrest.

PRAWN and COLLECT are separate databases. However, if a person has an outstanding warrant and he or she is run through the COLLECT system by a police officer, COLLECT will prompt the officer to access PRAWN for the warrant information.

PRAWN and COLLECT are not linked to NCIC. An extraditable warrant still must be entered by the arresting police department into NCIC for the information to be available nationwide. There is no statutory or procedural requirement for police to enter rearrest warrants into NCIC.

PRAWN is currently being piloted in the Milford and Derby judicial districts and is available to the Ansonia, Beacon Falls, Derby, Milford, Orange, Oxford, Shelton, Seymour, and West Haven police departments. The judicial branch will bring PRAWN on-line on a district-by-district basis as the state police upgrade the COLLECT system at each police department throughout the state.

Once PRAWN is fully operational, arresting police departments will be notified of rearrest warrants through the system; no paper warrants will be sent. PRAWN will also enable police departments to track outstanding, served, and vacated warrants.

A bail bondsman is relieved of his or her financial obligation on a forfeited bond when a fugitive is apprehended whether by the bondsman, bounty hunter, or the police. When the police arrest a fugitive as a result of a pending rearrest warrant, it relieves the bail bondsman of locating and apprehending the fugitive with his or her own resources.

When a pending rearrest warrant is not entered into the state or national criminal information systems, other police departments are unaware of a person's fugitive status. If the person is subsequently detained or arrested for a new crime, the original arresting police department holding the rearrest warrant will not be notified. The bondsman then misses an opportunity to have the fugitive returned custody and the bond forfeiture vacated. It is in a bondsman's best interest, therefore, to have all rearrest warrants entered into the COLLECT and NCIC systems even though PRAWN will eventually be available to all police departments in the state.

Police departments' failure to enter rearrest warrants in the COLLECT and NCIC systems is statewide problem that has been going on for years. The failure to follow the procedure of posting rearrest warrants in a centralized system is especially problematic for police departments in larger urban areas. The long-standing failure of many police departments to follow the procedure of posting rearrest warrants in COLLECT and NCIC has

contributed to a backlog of outstanding warrants for fugitives in Connecticut.

*The current practice of not entering all rearrest warrants into the state and national criminal information systems does not meet the needs of state and municipal law enforcement and criminal justice agencies or the commercial bail bond industry. The procedure has serious ramifications for public safety and police officer safety. It also does not hold fugitive defendants accountable thus undermines the purpose of bail.*

*The existing state law allowing a judge to order a warrant be entered into a centralized database has not corrected the current practice or corrected the backlog of rearrest warrants that have not been entered into the law enforcement information systems. Any statutory requirement to enter warrants into a centralized information system should be imposed on the state or municipal law enforcement agencies responsible for this function and not criminal court judges.*

**State and municipal law enforcement agencies shall be required to enter all felony rearrest warrants into the COLLECT system and NCIC if extradition is ordered by a state's attorney within five days of receiving the warrant. State and municipal law enforcement agencies shall develop protocols for determining whether misdemeanor rearrest warrants are entered in the COLLECT system.**

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## **Extradition**

Extradition is the surrender by one state (the holding state) to another (the requesting state) of a person accused or convicted of a criminal offense outside of its own jurisdiction but within the jurisdiction of the other. The state demanding extradition of the person must have the jurisdiction to try and punish him or her.

The Uniform Criminal Extradition Act (UCEA), which is not a focus of this study and will not be discussed in detail, governs the recovery of fugitives across state lines. It establishes a procedure whereby fugitives charged with a crime in a state can be returned from the holding state to the requesting state. All states but Missouri and South Carolina have adopted the UCEA.

Extradition is a government function. However, the UCEA also limits the traditional practice of bounty hunting across state lines and, since the late 1980s, courts have ruled the UCEA applies to bail fugitives. Under the Uniform Criminal Extradition Act, a bail enforcement agent can recover a bail fugitive accused of a crime in another state for which the punishment

is at least one year of imprisonment (generally considered a felony offense). However, the bail fugitive must be brought before a judge or magistrate within 24 hours of apprehension. He or she is taken into custody by the holding state pending the formal extradition process from the requesting state.

There are three issues regarding extradition of bail fugitives:

- the state's decision to extradite and the rearrest warrant process;
- state cost associated with transporting fugitives; and
- state regulations governing private prisoner transport employees carrying firearms during the course of their duties in Connecticut.

**Decision to extradite.** In Connecticut, the state's attorney prosecuting the case has unilateral discretion to determine whether a fugitive defendant apprehended in another state will be extradited back to Connecticut. Extradition is not sought in all criminal cases. It is typically ordered if the defendant is charged with a felony, has a serious criminal history, may be sentenced to a significant prison term, and/or the state has a strong case against the defendant.

Case law establishes the state is under no obligation to extradite a fugitive or to pay for transportation. For many reasons, the state's attorney may decline extraditing a fugitive for prosecution especially if the fugitive is facing a more severe sentence in the holding state than he or she would receive for the charges pending in Connecticut. If extradition is declined, the state's attorney can dismiss the charges against the person and vacate the rearrest warrant or retain the pending charges and have the rearrest warrant served if the fugitive is eventually apprehended in Connecticut.

As previously stated, not all rearrest warrants including those flagged as extraditable are entered into the COLLECT or NCIC systems. Currently this is solely within the jurisdiction and discretion of the arresting police department. As the program review committee found, this process hampers the state's and bail bondsman's ability to recover the bail fugitive within the six-month stay period thereby avoiding payment of the bond forfeiture.

*A bail bondsman or surety insurer contractually agrees to assume financial liability for a defendant's appearance in court, but does not have authority to require extradition of a fugitive defendant recovered in another jurisdiction.*

**A bond forfeiture shall be vacated and the professional bail bondsman or surety insurer relieved of payment if: (1) the fugitive is incarcerated in another state, territory, or country for a period of time exceeding the mandatory six-month stay period for the forfeited bond; (2) the professional or surety bail bondsman or surety insurer provides proof of such incarceration to the state's attorney prosecuting the case and a Superior Court judge; and (3) the state's attorney prosecuting the state's criminal charges against the fugitive defendant declines extradition. The judicial branch shall notify the Department of Administrative Services of all vacated bond forfeitures.**

**Transport costs.** The state requesting extradition is responsible for arranging and paying for transportation of the fugitive. In many cases, returning the bail fugitive to Connecticut is all that is required. However, due to the UCEA process and other state criminal court proceedings, in some cases, extradition requires transporting a fugitive up to three times between jurisdictions, with the requesting state paying the transportation costs.

Standard operating procedures for extradition require an escort team of at least two officers per fugitive. If the fugitive is a female then one of the officers must also be female. Fugitives who are identified as a high risk for escape and/or are dangerous may require a larger escort team. Usually, the escort team is composed of officers from the original arresting police department, but Division of Criminal Justice inspectors, state police troopers, or U.S. marshals can also be assigned.

In Connecticut, the Office of the Chief State's Attorney oversees extradition and assumes all costs to transport fugitive offenders. Currently, the chief state's attorney's office approves officers from the arresting agency, assigns state police or Division of Criminal Justice inspectors, or contracts with the U.S. Marshal to serve as the escort team. Frequently, however, limited staff resources make it difficult for a police department to reassign officers to extradition duty. In some cases, the department may attempt to forgo extradition by requesting the state's attorney vacate the warrant.

Table 16 shows the annual extradition costs in Connecticut. Extradition costs typically include airfare, hotel, meals, car rental, and any overtime costs for the municipal or state officers.

The marshal service, in comparison, charges a flat rate of \$1,289 per fugitive for transportation from and to anywhere in the United States. Drop off locations, however, are regionalized and the requesting state is required to transport the fugitive from the drop off location to its

jurisdiction. The nearest extradition hub to Connecticut used by the marshal service is the airport in Newburg, New York.

**Table 16. Annual Extradition Costs**

<i>Year</i>	<i>Total Annual Cost</i>	<i>Provider</i>
1999	\$100,802	TransCor America, Inc.
2000	\$103,747	TransCor America, Inc.
2001	\$220,842	CSA
2002	\$150,804	CSA
2003*	\$184,217	CSA
TOTAL	\$760,412	

\*Partial year data: January through October 2003.

Source of Data: Office of the Chief State's Attorney

The transportation schedule is set by the marshal service, not the requesting state. The transport process can last for days if not weeks as prisoners are dropped off and picked up at a network of hubs across the country. The marshal service can cancel a planned pick-up without the approval of the requesting state. This may not meet the prosecutorial needs of the requesting state.

Until 2001, as shown in Table 16, the chief state's attorney's office contracted with TransCor America, Inc., a private prisoner transport service. The chief state's attorney told program review committee staff the company's rates were reasonable and its service reliable.

However, in 2000, a prisoner being transported by TransCor America, Inc. escaped in Waterbury. The Waterbury Police Department alleged TransCor did not provide timely notice of the escape. TransCor's position was that it notified the chief state's attorney's office (its client) and was willing to cooperate with the local police department to locate the fugitive upon authorization from the chief state's attorney's office to release information. Eventually all parties cooperated and the fugitive was recovered without further incident. However, Governor Rowland ordered the state's contract with TransCor America, Inc. terminated and only municipal, state, or federal law enforcement officers be used to transport extraditable prisoners.

As shown in Table 16, there was over a 100 percent increase in costs from 2000 to 2001 after the TransCor contract was ended. Extradition costs have since leveled off due to close monitoring by the chief state's attorney's office, but are still higher than under the TransCor America, Inc. contract. It should be noted at the time of the governor's order the chief state's attorney had recently lost its dedicated allocation from the

collected forfeited bond funds that were used in part to subsidize extradition.

*The use of a private prisoner transport company appears to be a more effective and cost-efficient method of transporting extraditable fugitives to and from Connecticut.*

**The chief state's attorney shall be allowed to contract with a private prisoner transport company for transporting bail fugitives and other fugitives from justice to and from Connecticut to face prosecution of pending criminal charges or to serve a sentence imposed by the Superior Court.**

**Firearm permits.** The Division of State Police did not support the use of a private prison transport company because it found such companies generally did not comply with the existing state firearm permit laws. The division interpreted the state law as requiring all employees of a private company to obtain individual firearm permits when transporting prisoners to and from Connecticut. TransCor American, Inc. held it was governed by federal law and therefore did not require each employee to obtain a state firearm permit.

In 2000, Congress enacted the Interstate Transportation of Dangerous Criminals Act that requires the U.S. Attorney General to promulgate regulations relating to the interstate transportation of violent prisoners by private companies. The regulations include standards on:

- background checks and pre-employment drug testing for employees;
- type and length of pre-service and in-service training in prisoner transport, use of restraints, searches, use of force, firearms and weapons, CPR, map reading, and defensive driving;
- restrictions on the number of hours an employee can be on duty during a given time period;
- number of personnel required to supervise and transport prisoners and employee uniforms and identification;
- establishing categories of prisoners and clothing they must wear to identify them as prisoners;
- requirement for restraints used when transporting prisoners including leg shackles and double-locked handcuffs;
- notification including 24-hour prior notification to local law enforcement of a pick-up or drop off in its jurisdiction; and

- immediate notification to the appropriate law enforcement agency and governmental agency that contract with the company of an escape.

Any person found in violation of the new federal law is subject to a civil penalty up to \$10,000 and may be required to make restitution to any municipal, state, or federal governmental agency apprehending a prisoner who escaped from a private prisoner transport company.

*The federal Interstate Transportation of Dangerous Criminals Act meets the intent and qualification criteria of the state's firearm permit laws.*

**A private prisoner transport service or company and its employees operating in Connecticut shall be exempt from state firearm or weapon permit requirements. Its written policies for pre-employment screening of applicants, pre- and in-service training, and firearms, weapons, use of restraints, and use of force must meet the minimum standards established under the federal Interstate Transportation of Dangerous Criminals Act and shall be approved by the Division of State Police prior to entering into any contract with the state.**

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Bail enforcement includes locating, apprehending, and returning to state custody a defendant on bail who has failed to appear in court or has otherwise violated the conditions of a bail bond. This section deals only with bail fugitive recovery. It should be noted a person may be considered a fugitive from justice and wanted by the state for pending criminal charges or to serve a sentence.

If fugitive recovery is carried out by a governmental entity (i.e., law enforcement agency or state's attorney) it is a criminal process, but is a civil process when performed by a bail bondsman or bail enforcement agent. The state's and commercial bail bond industry's fugitive recovery practices will be discussed separately.

## **State Fugitive Recovery Process**

There is no state agency specifically tasked with locating and apprehending bail fugitives and serving failure to appear rearrest warrants. Fugitive recovery is part of general routine police work and differs among all state and municipal law enforcement agencies.

In the course of patrol, a police officer can temporarily detain or arrest a person for a variety of reasons including a motor vehicle violation, felony or misdemeanor criminal offense, or to verify the person's identity or purpose for being in a particular location or situation. In the course of questioning, issuing a summons, or making an arrest, a police officer generally runs a person's name through the COLLECT system (and PRAWN if available to that department) to verify his or her identity and to determine if the person has any outstanding arrest warrants.

If there is a warrant for the person's arrest, the police take him or her into custody on the basis of the warrant even if there is no other reason to arrest (e.g., the person had not committed another crime or has been issued a summons or infraction). The law enforcement agency posting the warrant is then notified.

*Since most fugitive offenders are apprehended during routine police work, it is critical outstanding warrants are entered into the COLLECT and NCIC system.*

Fugitive recovery is also a specialized tactical effort by law enforcement agencies. In Connecticut, federal, state, and municipal law enforcement agencies such as the state police, parole board, correction department, and FBI are involved in fugitive recovery. However, there is rarely a coordinated effort and fugitive recovery has not been a high priority in the state.

Recently, the chief state's attorney's office, the state police, the Hartford Police Department, and other federal and state law enforcement personnel (e.g., correction department, parole board, adult probation, and the FBI) coordinated a task force to serve about 7,000 outstanding rearrest warrants pending in Hartford against 3,000 offenders. Over the course of a four-day sweep in mid-November 2003, the task force only apprehended 119 fugitives. Most of the persons taken into custody were wanted for failure to appear in court, violation of probation, and other low level offenses (e.g., breach of peace, criminal mischief, motor vehicle violations). There were 42 persons wanted for serious and/or violent crimes, but only 3 were apprehended during the sweep.

The task force was initiated in part because of the backlog of outstanding warrants in Hartford. While this operation may ultimately lead to greater cooperation among the law enforcement and criminal justice agencies and an increased focus on locating and apprehending wanted persons, the task force was disbanded at the end of the four-day sweep.

**Fugitive recovery squad.** In 1994, the chief state's attorney's office created a fugitive recovery squad within its Bond Forfeiture Unit. The

squad was funded with dedicated forfeited bail bond revenue collected by the unit; one-third of the total forfeited bond funds collected went to the unit.

The fugitive recovery squad was responsible for locating and apprehending bail fugitives. Cases were referred to the squad from state's attorneys, adult probation division, parole board, municipal police departments, other state investigative entities (e.g., the welfare fraud unit), out-of-state law enforcement agencies, and licensed bail bondsmen.

For a period of time, the state's fugitive recovery unit worked in conjunction with the Federal Bureau of Investigation's Fugitive Task Force. The working relationship between the CSA office and the FBI ended in 1996 amid allegations the FBI falsified affidavits. Following this incident, the chief state's attorney's office's fugitive recovery squad was disbanded.

The Division of State Police had assigned three troopers to the FBI Fugitive Task Force. After the September 11, 2001 incident, the FBI task force's priorities were changed and the state police troopers were reassigned to a fugitive task force within the division's Bureau of Criminal Intelligence.

A trooper is assigned to fugitive recovery within each region of the state: Central, Eastern, and Western districts. The trooper coordinates the recovery investigations and apprehensions with the state police troops and local police departments. The focus is on locating and arresting persons wanted for serious and violent offenses.

*Fugitive recovery is an essential element to the bail process. It holds defendants released on bail accountable to meet the contractual obligations of the bail bond and assists with the orderly and effective administration of justice by ensuring defendants appear in court as ordered. It provides public and police officer safety by identifying and taking potentially dangerous offenders into custody.*

*Given the backlog of outstanding arrest warrants, the current state resources allocated to fugitive recovery are inadequate. To be most effective, fugitive recovery must be an on-going intelligence gathering and tactical process.*

**The Division of State Police shall expand its fugitive recovery unit and make locating and apprehending bail fugitives a priority. Thirty percent of the forfeited bond funds collected by the state shall be dedicated to the division for this function.**

As previously discussed, the civil collection of forfeited bail bonds generates significant revenue. In 2002, the chief state's attorney's office collected over \$5.5 million and between January and November 2003, almost \$4 million. Based on these amounts, the recommended allocation to the division would have been approximately \$1.7 million in 2002 and almost \$1.2 million in 2003.

The Division of State Police was not able to provide an estimate on the staffing or equipment resources needed to expand the existing fugitive task force. The division reported its efforts in this area would expand commensurate with the new resources. Obviously, the more state police troopers permanently assigned to fugitive recovery the more productive the process will be.

**Surveillance of defendants on bail.** A 1999 law (Public Act 99-240) requires the chief state's attorney, in consultation with the state police and Connecticut Police Chief's Association, to develop protocols for the surveillance of serious felony offenders released on bail. The parties met in 2000 and were unable to establish protocols. The chief state's attorney sought advice and assistance from the legislature's Judiciary Committee on the intent of the mandate. To date, no protocols are in effect.

The CSA office is required by state law to protect and provide surveillance of witnesses to serious felony crimes and operates a witness protection program to carry out this function. The CSA office reported it is more effective to protect the witness to the crime rather than the persons charged with the offense. In some cases, these offenders are not on bail due to the preventative detention mandate, which allows a judge to consider public safety when setting bail.

*The mandate for the surveillance of serious felony offenders released on bail is unworkable given current resources, jurisdictional issues, and caseload. The intent of the legislation is met through the witness protection program.*

**The state statute (C.G.S. §54-64g) requiring the Office of the Chief State's Attorney to develop protocols for the surveillance of persons charged with serious felony offenses who are out at bail shall be repealed.**

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## **Commercial Bounty Hunting**

**Right to "rearrest".** Fugitive recovery is an integral part of the bail bond industry. A surety has the right and authority to take a defendant into custody for the purposes of exonerating his or her financial liability on the

bail bond, commonly referred to as the right to “rearrest”. The right of the surety naturally extends to the bail bondsman by reason of his or her role as representative of and indemnitor to the surety.

Arrested persons on bail are deemed innocent unless proven guilty at trial, but are considered to be in a continual state of flight. The right to seize and surrender the defendant is established in the bail bond contract between the defendant and the bondsman. The bond agreement provides the surety posts the bail to secure the defendant’s release from custody. The defendant, in return, agrees the surety can retake him or her at any time to discharge the bondsman from financial liability, even before forfeiture of the bond. The defendant also implicitly agrees the bondsman may use reasonable force in apprehending him.

The broad power of a bondsman or bounty hunter to recover a bail fugitive is based on existing case law, much of it decided over 100 years ago. National experts, consultants, and judges agree courts would not reach the same decisions regarding the authority of a bondsman or bounty hunter to rearrest a fugitive were the cases heard today. The case law basis for this authority is *Taylor v. Taintor*<sup>10</sup> in which the U.S. Supreme Court found:

When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up to their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by retailer. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.

The right to “rearrest” is a civil process and not a matter of criminal procedure, although it is initiated in criminal court through the bond forfeiture and rearrest warrant. State law has supplemented the surety’s right to take a defendant into custody. For example, a bondsman can apply for a mittimus from a judge if he or she believes a defendant intends to abscond. A mittimus directs the proper authority to commit the defendant to the custody of the Department of Correction until disposition of the pending criminal charges. Once the defendant is in custody, the bondsman is released from the bond.

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<sup>10</sup> *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 21 L.Ed. 287 (1872)

In practice, this pre-trial law enforcement responsibility has generally been shifted to the commercial bail bond industry because it relieves the state of the costs of pre-trial incarceration and the industry appears more proficient than the police in guaranteeing a defendant will appear in court and retrieving those who fail to appear in court. A bail bondsman can make fugitive recovery a priority whereas police departments have other public safety mandates and issues to deal with.

It is understood the state will not interfere with a bondsman's private right of recapture. The surety's right differs from that of the state in that the state can take custody only through an arrest or can remove a defendant from another state only by the process of extradition.

**Bail enforcement agents.** Many bail bondsmen track and recover fugitives for whom they posted a bond without the assistance of an independent bounty hunter (known as a bail enforcement agent in Connecticut). However, a bondsman may employ or contract with a bounty hunter to retrieve a "skip". The bounty hunter is then the legal representative of the bondsman and is vested with the bondsman's same broad powers.

As discussed in Chapter 3, Connecticut mandates the licensing of persons performing fugitive recovery and provides the licensing authorities with general authority to regulate the industry. State law, however, does not specifically regulate the practice of fugitive recovery or define the authority of those licensed to perform this function.

Bail bondsmen and bail enforcement agents serve as the state's proxies in the fugitive recovery process thus making them quasi-law enforcement entities. The industry, however, benefits from broader powers than state or municipal police, without similar training, restrictions, or constitutional constraints. It is not uncommon for a bondsman's or bail enforcement agent's unchecked authority to result in unprofessional or illegal practices that can lead to unnecessary violence and restraint, destruction of property, criminal impersonation, and harassment or "arrest" of innocent victims.

Throughout the United States, the level of regulation and oversight varies with only seven states (Florida, Illinois, Kentucky, North Carolina, Oregon, South Carolina, and Wisconsin) outlawing commercial bounty hunting. Eleven states including Connecticut require persons engaged in fugitive recovery to be licensed, but beyond that the laws governing the practice of fugitive recovery are vague or nonexistent.

*The commercial bail bond industry's fugitive recovery practices in Connecticut are dangerously unregulated.*

**The existing statutory definition of a bail enforcement agent shall be amended to also include a person who otherwise locates, transports, or arranges the surrender or apprehension of a person who failed to appear in court and forfeited a bail bond. To apprehend or attempt to apprehend a bail fugitive in Connecticut, all out-of-state fugitive recovery personnel shall be licensed to operate in Connecticut or shall contract with a bail enforcement agent or professional or surety bail bondsman licensed in Connecticut to effect the recovery of a bail fugitive located in the state. Any person who operates as a bail enforcement agent in Connecticut without meeting the eligibility, insurance, and licensing requirements shall be guilty of a class A misdemeanor.**

**Existing state law shall be amended to further require any bail bondsman or bail enforcement agent to notify the local law enforcement agency of his or her intent to apprehend or attempt to apprehend a bail fugitive no more than six hours before doing so and to provide an update if the bail enforcement activities continue over an extended period of time or the location of the apprehension changes. The notification shall include:**

- name and license number of all bondsmen and/or bail enforcement agents present and participating in the apprehension;**
- name of the principal on the bond to be apprehended;**
- address or location where the apprehension will be attempted; and**
- any other information deemed necessary by the Division of State Police or required by the local law enforcement agency to protect its police officers and the public.**

**After taking a bail fugitive into custody, a bail bondsman or bail enforcement agent must deliver the person to the court or the police within five hours if apprehended in Connecticut or within 24 hours of apprehension in another state.**

**A professional or surety bail bondsman or a bail enforcement agent shall complete and submit an “In Custody Report” each time a principal on a bond has been remanded into custody after having forfeited a bond. The forms shall be maintained by the professional or surety bail bondsmen, with a copy provided to the bail enforcement agent, for a period of five years. The “In Custody Report” forms shall be made available by a bondsman or bail enforcement agent for**

**investigative purposes or review by the Division of State Police, Office of the Chief State's Attorney, a state's attorney, and any local, state, or federal law enforcement agency.**

**The Division of State Police shall develop and provide the "In Custody Report" forms to all licensed bail bondsmen and bail enforcement agents. The forms shall include:**

- **name of the apprehended principal on the bond;**
- **date, time, and location of apprehension;**
- **name and license number of all bondsmen and/or bail enforcement agents present and/or participating in the apprehension;**
- **police department or detention facility where the principal was surrendered into custody;**
- **a brief description of the circumstances surrounding the apprehension including notification of municipal or state police, any use of force by a bondsman and/or bail enforcement agent, and any physical injuries sustained by a bondsman, bail enforcement agent, fugitive defendant, or third party; and**
- **any other information deemed necessary by the Division of State Police.**

**Any violations of the above referenced provisions shall be an infraction of Connecticut state law and/or may result in a license suspension or revocation or fine imposed by the Division of State Police. A pattern of infractions or violations shall be grounds for license revocation.**

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## **Appendix A**

### **Case Studies**

Two recent bond forfeiture cases highlight problems caused by the Insurance Department's failure to exercise its regulatory authority. Its lack of enforcement hinders the efforts of the chief state's attorney and the state police to collect forfeited bonds and to curb the illegal pricing practices among the commercial bail bond industry.

#### **AEGIS Insurance Company and Capital Bail Bonds**

By September 2003, AEGIS Insurance Company and its retail seller of bonds, Capital Bail Bonds, owed the state of Connecticut \$1.1 million for 12 forfeited bonds. Capital Bail Bonds, which is now underwritten by Harco Insurance Company, has a history of delinquent payments of forfeited bonds in Connecticut.

The chief state's attorney's office began its recent collection efforts against Capital in early 2003. The forfeited bonds were not paid within the compromise schedule allowing for payment at a reduced rate within a specified time period (this process is discussed in Section 3 of the report) and were due in full. Capital did not dispute either owing the money or the \$1.1 million balance due.

Because of the large amount due, Capital attempted to negotiate a schedule of payments with the chief state's attorney's office. The chief state's attorney's policy has been to not negotiate or accept partial payments after the 30-day compromise period has lapsed. However, to expedite the collection process, the chief state's attorney's office agreed to allow Capital to make scheduled payments and to pay the total dollar amount due by July 31, 2003. In return, Capital was to agree to remain up to date on future bond forfeitures and to give up its right to a hearing in the event the state suspended its surety bondsman license for failure to pay. Capital never finalized or signed the agreement.

In early July 2003, Capital Bail Bonds issued a partial payment of \$200,000; the check was returned for insufficient funds. Two other payments were submitted but refused by the chief state's attorney's office because for one payment the check was not certified and the other was a partial payment. Capital then failed to make any of the other agreed upon payments, but did pay \$275,000 in mid-August 2003. The chief state's attorney's office continued to request full payment for the balance.

In August 2003, the chief state's attorney again attempted to collect payment of the bond forfeitures from AEGIS Insurance Company. AEGIS made no payments.

Throughout the process, the chief state's attorney's office repeatedly asked the Insurance Department to suspend Capital Bail Bonds surety bondsman licenses and/or to take regulatory action against AEGIS Insurance Company. The department refused on the following grounds: (1) Capital and AEGIS had paid some of the money owed and had offered to make partial payments; (2) state statutes do not specifically require a bondsman license be suspended for nonpayment of forfeited bonds; and (3) the Insurance Department was concerned Capital would file a civil suit if the department took some enforcement action.

On August 18, 2003, a meeting was held between the two agencies to discuss the insurance department's assistance in the chief state's attorney's efforts to collect the forfeited bonds. Program review committee staff attended the meeting.

The chief state's attorney again requested the surety bondsman and insurer licenses be suspended for nonpayment. The Insurance department indicated it would review its regulatory policies.

On August 25, 2003, the Insurance Department notified AEGIS Insurance Company in writing it had until September 4, 2003 to make full restitution for the forfeited bonds or the department would issue a cease and desist order to prevent AEGIS from doing business in Connecticut.

In late August 2003, Capital Bail Bonds informed the chief state's attorney's office it intended to file a motion for a release of liability on the forfeited bonds if it was not allowed to make payments on the balance due. Capital claimed the state failed to provide proper notification of the bond forfeitures and, therefore, no payment was owed. (The judicial branch sends out weekly reports to all licensed professional and surety bondsmen listing all active, terminated, and forfeited bonds. If a defendant fails to appear in court, the judge states for the record the bond is forfeited and orders a rearrest warrant. A forfeiture notice is then sent to the bail bondsman. It is the responsibility of the bondsman to notify the licensing authority of any change of address.)

Capital requested a meeting with the chief state's attorney to discuss its intent to file the motion. The chief state's attorney's office responded it had not changed its policy on negotiated or partial payments.

The Insurance Department scheduled an administrative hearing in accordance with the UAPA regarding the forfeited bond debt owed by AEGIS. The hearing was postponed until the disposition of Capital's motions pending in the criminal court.

On October 10, 2003, AEGIS paid almost \$1.5 million to satisfy its forfeited bond debt. The administrative hearing was then cancelled by the Insurance Department.

In accordance with the Uniform Administrative Procedures Act, the Insurance Department then sent a letter to Capital Bail Bonds indicating its intention to take action against Capital's corporate surety license. Capital's written response was due Tuesday, November 18, 2003, but Capital asked for and was granted an extension until Tuesday, November 25, 2003.

Capital Bail Bonds provided a written response indicating reasons why the Insurance Department should not proceed with its action against Capital's license. As of January 27, 2004, the department's counsel was analyzing Capital's response. If it is recommended the department proceed, the commissioner will set a hearing date.

On November 18, 2003, Capital Bail Bonds withdrew its motions for release of liability on the forfeited bonds pending before the Superior Court in New Britain.

Since paying almost \$1.5 million in October 2003, Capital and AEGIS Insurance Company have accumulated another \$338,000 in forfeited bail bonds as of December 3, 2003. As stated, Capital Bail Bonds is currently posting bail bonds in Connecticut underwritten by Harco Insurance Company. As of December 3, 2003, the chief state's attorney's office reported Harco and Capital owe \$655,000 in forfeited bail bonds. In total, almost \$1 million in bail bonds posted by Capital have been forfeited and this amount most likely will increase as more bonds are forfeited.

Capital Bail Bonds was also a retail seller of bail bonds for Legion Insurance Company and Highlands Insurance Company. It has outstanding forfeited bonds underwritten by both companies. These debts remain outstanding.

Legion and Capital owe \$436,000 in bond forfeitures. Legion Insurance Company was declared insolvent and is liquidating its assets. Connecticut is one of its creditors. The chief state's attorney's office reported the liquidators are establishing the process to file a claim against Legion's assets.

Currently, Highland Insurance Company and Capital owe a \$100,000 forfeited bond. The chief state's attorney notified Highland of its liability for the forfeited bond on July 31, 2003, but has received no payment or response.

Due to financial difficulties and a restructuring plan, Highlands stopped writing bail bonds in Connecticut as of December 2001.

Capital is required to apply for a surety bail bondsman license renewal between November 2003 and January 2004. In accordance with the Insurance Department's amended license renewal process, a criminal background check will be done by the state police for all surety bail bondsmen associated with Capital Bail Bonds. Any person with a felony conviction or a conviction for any of the specified misdemeanors will be denied a surety bail bondsman license.

### **Ranger Insurance Company and Aladdin Bail Bonds**

Ranger Insurance Company and its retail seller of bonds, Aladdin Bail Bonds, owed \$198,250 in 22 forfeited bonds. Ranger claimed to have never received proper notification of the forfeitures and, therefore, refused to pay. Aladdin Bail Bonds cited several different reasons for not paying (e.g., the defendant was arrested and in the custody of another jurisdiction at the time of forfeiture, some bonds were already paid, and the state failed to notify it of the forfeitures). However, Aladdin was unable to submit proof of its claims to the chief state's attorney's office.

The chief state's attorney's office and the judicial branch documented the bond forfeiture notices sent to Aladdin and Ranger. The records show the dates the notices were mailed, the addresses on file to which the notices were mailed, and the change of address records submitted by Aladdin bondsmen. All notices were mailed within two weeks of a judge forfeiting the bonds.

The judicial branch records indicate Aladdin Bail Bonds requires its bondsmen to use its business address as their mailing address. Most of the Aladdin bondsmen did not submit the proper address. The records also showed Aladdin Bail Bonds changed its mailing address four times since 2001.

The chief state's attorney's office had asked the Insurance Department to suspend Aladdin Bail Bonds' license and/or to take regulatory action against Ranger Insurance. The Insurance Department stated it could not take action until it had received verification of the forfeiture notices to Ranger and Aladdin. The chief state's attorney's office provided the records to the insurance department in July 2003. The Insurance Department took no regulatory action against Aladdin or established a payment deadline for Ranger.

On September 11, 2003, the Insurance Department notified Ranger of its obligation to pay the forfeited bail bonds and of the department's intent to start administrative proceedings to take action against Ranger's license to operate in Connecticut if it failed to pay its debt.

On October 1, 2003, the insurance commissioner met with Ranger Insurance Company officials to discuss the issue. Ranger indicated it was not aware of the forfeited bonds and that its agent, Aladdin Bail Bonds, had not paid. Ranger was willing to pay the forfeited bond amount but wanted documentation of its debt. At the request of the Insurance Department, the chief state's attorney's office provided Ranger with copies of the appearance bonds, powers of attorney, and forfeiture notices for the forfeited bail bonds.

On October 21, 2003, Ranger Insurance Company paid \$104,000 to satisfy its debt. All but three of the forfeited bonds were paid at the compromise rate of 50 percent as per a negotiated settlement with the chief state's attorney's office. Three bonds were paid in full (100 percent).

The Insurance Department reported it is not proceeding with any enforcement action against Aladdin Bail Bonds until after the current license renewal period. The company is required to apply for a license renewal between November 2003 and January 2004. In accordance with the Insurance Department's amended license renewal process, a criminal background check will be done by the state police for all surety bail bondsmen associated with Aladdin Bail Bonds. Any person with a felony conviction or a conviction for any of the specified misdemeanors will be denied a surety bail bondsman license. Aladdin Bail Bonds is currently writing bail bonds in Connecticut.

**Appendix B. Overview of Estimated Generated Revenue and Dedicated Funds for Bail System**

<i>Bail System Function</i>	<i>Recommended Revenue Source</i>	<i>Estimated Dedicated Funds*</i>	<i>Estimated Costs</i>
<b>Licensing &amp; Regulating the Bail Bond Industry</b>	\$250 Licensing & renewal fee for bond industry	\$163,500 per year based on current number of licensees <ul style="list-style-type: none"> <li>• Transfer existing Insurance Department resources to State Police</li> </ul>	\$473,493 for new State Police positions: 4 detectives and 3 processing technicians  Potential need to add State Police staff attorney position; unable to determine increase in administrative hearing workload and number of new positions needed
	Infraction & administrative fines	Unable to determine potential revenue	
	10% of collected forfeited bond funds	\$844,298 based on total forfeited bond amount owed in 2002	
		<b>Subtotal \$1,007,798</b>	<b>Subtotal \$473,493</b>
<b>Administrative Process of Bonds &amp; Re-establish Jail Re-interview Project</b>	\$25 processing fee for all financial bonds over \$500	\$2.4 million annually based approximately 96,000 posted financial bonds in 2002	\$10,000 annually for bail bond status reports produced by court  Unable to accurately estimate costs of other judicial branch bail functions  \$363,000 annually for new positions (7 bail commissioners) for jail re-interview project  Unable to accurately estimate costs for additional community-based program resources
			<b>Subtotal minimum of \$373,000</b>
			<b>Subtotal \$2,400,000</b>
<b>Civil Collection of Forfeited Bail Bonds</b>	10% of collected forfeited bail bond funds	\$844,298 based on total amount of forfeited bonds owed during 2002	No new costs
	<ul style="list-style-type: none"> <li>• Recommended 10 % discount for early payment</li> </ul>	<ul style="list-style-type: none"> <li>• \$759,868 million based on discounted rate</li> </ul>	
		<b>Subtotal \$844,298</b>	
<b>Fugitive Recovery</b>	30% of collected forfeited bail bond funds	\$2.5 million based on total amount of forfeited bonds owed during 2002	Unable to estimate staffing or equipment resources needed; efforts would expand commensurate with new resources
		<b>Subtotal \$2,500,000</b>	

\*New dedicated funds in addition to the agencies' General Fund money currently appropriated to these functions.  
50% of collected forfeited bail bond funds deposited in state's General Fund; approximately \$4.2 million.

**Appendix C**  
**Agencies Responses**

STATE OF CONNECTICUT



DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE COMMISSIONER

Arthur L. Spada  
Commissioner

January 21, 2004

Chief Attorney/Acting Director Carrie E. Vibert  
Legislative Program Review and Investigation Committee  
State Capitol, Room #506  
Hartford, Connecticut 06106

Dear Acting Director Vibert:

The following correspondence is prepared in response to the "Bail Services in Connecticut," Legislative Program Review & Investigations Committee report, as was received by this department under your cover letter of January 8, 2004. In this material your office invited comment, and formal agency response, pertaining to the aforementioned report. This agency's review of this material raises several areas of comment for your consideration. These areas are set forth below.

A primary consideration for this agency, in the event that the Department of Public Safety undertakes oversight of surety bondsmen, is the attendant increase in workload and personnel that would be necessary to properly satisfy this responsibility. (The "Bail Services in Connecticut" report contains an estimate that approximately \$473,493 (see page B-1) in added funding will be necessary to fund seven new state police positions providing oversight of surety bondsmen, including four detectives and three processing technicians. While it is recognized that these preliminary estimates were provided to your office by representatives of the Department of Public Safety, a more thorough review of these added responsibilities indicates that these initial figures underestimated these new responsibilities and that some modification is necessary.)

At the outset, 350 (new bondsmen) divided by 40 (cases per detective) produces a need for 8.75 new positions, not seven. Additionally, the one detective and one processing technician who currently address professional bondsmen, and who are used as the "measuring sticks" in these calculations, in fact covers thirty-four (34) professional bondsmen, not forty. Furthermore, the number of surety bondsmen to be assumed by the Department of Public Safety is 397, not 350. 397 (actual number of bondsmen to be assumed) divided by 34 (actual detective and processing technician workload) produces a need for up to eleven (11.67) and two-thirds new detective positions, in addition to a corresponding number of Processing Technicians.

It is our belief that the assumption of oversight of surety bondsmen can be accomplished with the creation of eight new detective and six new Processing Technician positions. The approximate cost of these positions is as follows:

1111 Country Club Road  
P.O. Box 2794  
Middletown, CT 06457-9294  
An Equal Opportunity Employer

FISCAL YEAR 2004 SALARY AND FRINGE BENEFITS

Sworn Detective

Salary Cost:	(NP-1 Contract Step 6)	\$49,931.00 Annual Salary
Fringe Benefit Cost:	(45.35% of Salary)	\$22,643.71 Annual Fringe
Estimated Overtime Allotment:	(10% Estimate Figure)	\$ 4,993.10 Overtime Cost
Total Per Detective:		\$77,567.81 Per Position
Number of Positions Necessary:	(Multiplied by 8)	\$620,542.48 Detective Cost

Processing Technician

Salary Cost:	(Salary Group 16, Step 5)	\$39,806.00 Annual Salary
Fringe Benefit Cost:	(45.82% of Salary)	\$18,239.11 Annual Fringe
Estimated Overtime Allotment:	(10% Estimate Figure)	\$ 3,980.60 Overtime Cost
Total Per Processing Technician:		\$62,025.71 Per Position
Number of Positions Necessary:	(Multiplied by 6)	\$372,154.26 Technician Cost

**GRAND TOTAL COST: (Aggregate of the Two) \$992,696.74**

It is emphasized, of course, that the calculations of persons needed to fulfill this function are estimates. It is possible that after the first year of providing this oversight we may come to realize that more, or even less, personnel are necessary to properly satisfy this obligation.

It should also be noted that the figures that have been utilized in arriving at the above calculations are based solely on the assigned personnel conducting background investigations and investigating complainants regarding the surety bondsmen. The Legislative Program Review & Investigations Committee report, however, raises several other issues impacting upon this agency's personnel needs, as are identified below:

- a. The report indicates that the state police must exert a strong regulatory presence to enforce the recommended reforms. The report also wants the state police to take a strong proactive enforcement role at the twenty-three (23) geographical area courthouses. Additionally, the surety bondsmen will not turn in monthly reports but instead, must maintain a log of their bond activities. This log is to be inspected by state police personnel, which requires that the assigned detectives regularly go to the bondsmen's offices throughout the state to conduct such an inspection. The report further encourages the state police to be highly reactive and to thoroughly investigate all complaints against bondsmen in a timely and expeditious manner, further committing department resources in this regard;

- b. Of additional concern is that the 397 surety bondsmen licenses will expire on the same day, January 31<sup>st</sup>, rather than having staggered expiration dates throughout the year. Background investigations to be conducted on bondsmen take approximately two (2) months per investigation to complete and the process, while absolutely essential, is also generally cumbersome: The applicant is required to submit an abundance of required documents, which are rarely submitted in full and complete fashion. This necessitates (as is the case even now) that the assigned investigator(s) spend up to several hours on the telephone, assisting the applicant and/or following up on missing documents. Once all the paperwork is finally complete, the detective must then verify all purported financial assets, conduct a criminal background check on the bondsman, verify the bondsman's credit report, verify the bondsman's four recommendation letters, and conduct an employment history and a personal interview of the applicant. The annual renewal process will consist of verifying all financial assets and credit report and a criminal background check.
- c. The investigation of alleged misconduct, on the part of the State Insurance Department, has been limited to non-criminal matters, by definition limiting their oversight, responsibilities and time commitment. Any allegation of criminal behavior brought to the attention of the State Insurance Department on the part of a surety bondsman was transferred to appropriate law enforcement officials for investigation. Claims of misconduct on the part of surety bondsmen under the oversight of the Department of Public Safety of both a criminal and administrative nature will be investigated by the Department of Public Safety, however, thus further expanding this agency's responsibilities in this arena.
- d. The Legislative Program Review & Investigations Committee report intimates that the current oversight of the surety bondsmen profession has been less than adequate. As a result, it is further surmised that a considerable effort will be necessary on the part of the Department of Public Safety, at least initially, in bringing the surety bondsmen profession into compliance with their statutory and regulatory requirements. Accordingly, the assets provided to the Department of Public Safety to meet these challenges must be commensurate with this recognized condition.

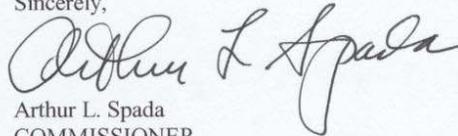
Beyond the aforementioned staffing considerations, the degree of potential sanctions to be imposed upon a bondsman for an alleged act of misconduct is in need of identification and/or clarification. It would appear that observations of solicitation and other unprofessional behavior on the part of a bondsman would result in the issuance of an infraction. Currently there are no criminal or administrative sanctions for these and related unprofessional activities on the surety side of the bondsmen profession. Such sanctions are limited, at present, to the professional side and as such, would need to be legislatively addressed. Additionally, appropriate consideration should be given to criminalizing the more significant violations, thus affording the investigating law enforcement officer the option of a custodial arrest, and the judicial system the option of a heightened penalty. Serious offenses such as "undercutting" or "improper business solicitation" should be treated and investigated as criminal and not relegated to the functional equivalent of a "ticket."

In parallel fashion, a regulatory framework to be utilized by the Department of Public Safety to convene administrative misconduct hearings against a surety bondsman will also need to be legislatively adopted. While professional bondsmen matters of this nature are "presented" by a department attorney, and "heard" by a department hearing officer under the dictates of Conn. Gen. Stat. 29-147, entitled "Removal, Revocation or Suspension of License," a similar enabling statute must be created to permit such proceedings against surety bondsmen. The absence of such an effective system undermines the state's ability to redress deficient bondsmen conduct.

Finally, your attention is drawn to the recommended increase in the initial bondsman application fee, from \$100.00 to \$250.00. In light of the volume of oversight responsibility imposed upon whomever is the designated oversight agency, consideration might properly be given to a substantial increase in this fee beyond this preliminary estimate of \$250.00. A figure of up to \$500.00 is suggested and it is further noted that even at this recommendation, the expenses heretofore associated with this oversight exceed the revenue to be generated by such fees.

It is my hope that the foregoing comments and considerations are of assistance to you in this regard.

Sincerely,



Arthur L. Spada  
COMMISSIONER

cc: Secretary Marc Ryan, Office of Policy and Management  
Mr. Marvin Lyon, Office of Fiscal Analysis



CHRISTOPHER L. MORANO  
CHIEF STATE'S ATTORNEY

**State of Connecticut**  
DIVISION OF CRIMINAL JUSTICE

OFFICE OF  
THE CHIEF STATE'S ATTORNEY

300 CORPORATE PLACE  
ROCKY HILL, CONNECTICUT 06067  
TELEPHONE (860) 258-5800

January 22, 2004

Carrie E. Vibert, Esquire  
Chief Attorney/Acting Director  
Legislative Program Review and  
Investigations Committee  
State Capitol, Room 506  
Hartford, CT 06106

**VIA FAX # 240-0327**

Dear Attorney Vibert:

Thank you very much for providing a draft copy of the Committee's final report on Bail Services in Connecticut. I appreciate the Committee's extensive and thorough review of the challenges and current practices of this function.

The Division of Criminal Justice fully supports the vast majority of the recommendations put forth by committee staff, including transferring the collection process to the Department of Administrative Services. However, after consultation with the thirteen State's Attorneys during our monthly meeting, I am requesting that the responsibility for litigation of contested, uncollected forfeited bail bonds remain with this agency. I make this request pursuant to provisions in state law, case law and common law which place jurisdiction of all matters relating to prosecution of criminal matters with this agency.

If my recommendation is adopted, I would utilize representatives of the Office of the Attorney General designated as Special Deputy Assistant State's Attorneys for this purpose. This would be similar in nature to prosecutions currently handled by such specially designated AAG's with regard to home improvement schemes and other consumer protection matters.

Once again, I commend the Committee for its efforts to improve the Bail Services function in this State. If you have any questions, or if you need additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Christopher L. Morano", is written over a faint, mirrored watermark of the signature.

Christopher L. Morano  
Chief State's Attorney

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DEPARTMENT OF ADMINISTRATIVE SERVICES



STATE OF CONNECTICUT

165 Capitol Avenue  
Hartford, CT 06106-1658

**Department of Administrative Formal Agency Response  
to the LPRIC Final Report on  
Bail Services in Connecticut**

The Department of Administrative Services (DAS) supports the findings and recommendations of the Legislative Program Review and Investigations Committee (LPRIC) regarding bail bond processing and the collection of forfeited bonds. DAS has developed expertise in the collection of civil debts owed to the state, currently providing revenues to the State of Connecticut in excess of seven hundred million dollars per year. Moreover, DAS has built strong working relationships with other agencies in its collections operations. Therefore, DAS is the logical choice to assume the collection of forfeited bonds owed to Connecticut. DAS is confident that it could provide these services if the statutory changes that the LPRIC has recommended in this area, including the recommendations regarding inter-agency notice and communication, are passed.

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**STATE OF CONNECTICUT**  
**DEPARTMENT OF CORRECTION**  
**24 WOLCOTT HILL ROAD**  
**WETHERSFIELD, CONNECTICUT 06109**

**Theresa C. Lantz**  
**Commissioner**

Telephone: 860-692-7482  
Fax: 860-692-7483

January 22, 2004

Ms. Carrie Vibert  
Chief Attorney/Acting Director  
Legislative Program Review and Investigations Committee  
State Capitol, Room 506  
Hartford, CT 06106

Dear Ms. Vibert:

In response to your letter of January 8, 2004 offering an opportunity for state agencies to comment on the report "Bail Services In Connecticut," I would like to address two of the recommendations. These recommendations apply directly to the Department of Correction and will further enhance our ability to effectively manage our pre-trial population.

The report suggests the enhancement of the Jail Re-interview Program, which was originally established in 1997. This program has proved to be very beneficial to the Department, and offers a reasonable alternative for accused individuals who do not possess the means or meet the established criteria of their initial bond obligations. Furthermore, it allows for bail commissioners to reassess an individual's need(s) and place them in an alternative release plan as deemed appropriate. The most important aspect of this program is the assurance that an accused individual is not placed back into the community with no management component, restrictions, or access to predetermined treatment/program requirements. These individuals are monitored and held accountable to the court imposed conditions of their release to ensure that public safety is not compromised.

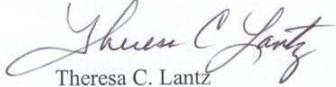
In addition, as the Chairperson of the Prison and Jail Overcrowding Committee, I think it is also important to inform you that this program is one of the recommendations provided in the January 15, 2004 annual report to the Governor and the Legislature.

Page 2

Lastly, the report suggests establishing a \$25 processing fee for all financial bonds of \$500 or more. A percentage of this fee would ultimately be provided to the Judicial Branch to fund the Jail Re-interview Program and thus make the program self-sustaining. The Department of Correction supports this fee structure in the hope that this program can remain intact through established funding.

Thank you for the opportunity to provide written response to the recommendations contained in the report, specifically those which impact the Department of Correction.

Sincerely,

  
Theresa C. Lantz  
Commissioner

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Office of The Attorney General  
**State of Connecticut**

January 26, 2004

The Honorable Joseph Crisco, Co-chair  
The Honorable Julia Wasserman, Co-chair  
Program Review and Investigations Committee  
State Capitol  
Hartford, Connecticut 06106

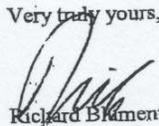
*Joe* *Julia*  
Dear Senator Crisco and Representative Wasserman:

I am writing with regard to the draft final report on Bail Services in Connecticut. I commend the committee's staff on its professional work researching this complex issue and developing recommendations to improve state supervision over the delivery of bail services.

I appreciated the opportunity to work with committee staff on the issue of enhancing state collection of forfeited bail bonds. I support the recommendations to place the collection of forfeited bail bonds in the Department of Administrative Services (DAS). My office provides legal representation to DAS in the collection of debts owed to the state and has worked closely with DAS to recover millions of dollars each year. DAS, working with my office, can increase the amount of money the state can recover from forfeited bail bonds. Mandatory license suspension or revocation for bail bondsmen who fail to pay the state for forfeited bonds will also enhance the state's ability to recover such funds.

If your committee needs any further information, please contact me or Special Counsel Richard Kehoe at 860/808-5322.

Very truly yours,

  
Richard Blumenthal

RB/RFK/sk