

## 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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