



FACT SHEET

Understanding the Findings from the Bureau of Justice Statistics Report, “Pretrial Release of Felony Defendants in State Court”ⁱ

In recent months, proponents of financial bail – namely, the commercial bail bonding for profit industry – have been claiming that the findings of a Bureau of Justice Statistics (BJS) report, entitled *Pretrial Release of Felony Defendants in State Court*, “settles for all time the debate over which is the most effective method of pretrial release. **The chief finding is that, beyond question, commercial bail is the most effective method of pretrial release.**”ⁱⁱ (Emphasis in original.)

The findings that the commercial bail bonding industry cites are attributed to the BJS State Court Processing Statistics (SCPS) Project. The Pretrial Justice Institute (PJI) has been administering SCPS for BJS since 1988. Thus, we feel obligated to provide this Fact Sheet to describe why the bail bonding industry’s conclusions cannot be supported by the SCPS data.

What is SCPS?

SCPS is a comprehensive examination of felony case processing in state justice systems. Every even-numbered year since 1988, SCPS collects data on the processing of felony cases in 40 of the 75 most populous counties in the country. Samples are drawn from specified days in the month of May. Data are collected on a number of factors related to the felony case and the defendant, including: defendant demographics; current criminal justice status and prior criminal record of the defendant; pretrial release and detention outcomes; adjudication outcomes, sentence, pretrial rearrests, and failure to appear in court. In each SCPS series, between 14,000 and 16,000 cases are included in the sample. Consistent with its mandate to provide national data, BJS reports the SCPS data from the 40 counties in the aggregate. In its report, which covers the period of 1990 to 2004, BJS notes that the failure to appear rate for commercial surety bail is 18 percent, compared to 22 percent for non-financial conditional releases and 26 percent for release on recognizance.

Release Type	Failure to Appear	Rearrest	Any Misconduct
Release on recognizance	26%	17%	34%
Conditional release	22%	15%	32%
Commercial surety bail	18%	16%	29%
Property bail	14%	17%	27%
Deposit bail	22%	14%	30%
Full cash bail	20%	15%	30%
Unsecured bail	30%	14%	36%
Emergency release	45%	17%	52%

Source: *Pretrial Release of Felony Defendants in State Courts*.

Is commercial surety bail more effective than the non-financial release types at getting defendants back to court, as these figures would suggest?

SCPS is not designed to answer the question of effectiveness. It does not take into consideration the differences between individual counties, and these differences drive how decisions are made and the outcomes of those decisions. For example, in some counties highly functioning pretrial services programs exist that conduct thorough investigations and risk assessments of defendants to help the pretrial release decision making judicial officer make informed decisions. Other counties in SCPS have no pretrial program at all, while others have programs that are limited through resources in what they can do. Looking at aggregate data across all counties does not account for this.



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Also, defendants given non-financial conditions (i.e., reporting requirements, drug testing, electronic monitoring) face various levels and quality of supervision. In some SCPS counties defendants are actively supervised by experienced caseworkers with manageable caseloads. In others, there may be so many defendants released with conditions that there is no meaningful supervision. In other SCPS counties, there is no supervision at all. But all cases where non-financial conditions are imposed are combined into one category in the SCPS report called “conditional release” and treated as if they are the same.

Can we look at each SCPS county individually and determine effectiveness of release types?

No, SCPS does not collect enough information to do that. To evaluate the effectiveness of one release type over another requires controlling for all the factors that might influence how release decisions are made and how defendants perform while on release. Factors such as residential and employment status and drug use history that have been shown to have statistically significant relationships to pretrial misconduct currently are not captured by SCPS. SCPS is also unable to identify which defendants underwent objective risk assessments prior to the decision being made on the type of release, or whether the court followed the recommendation of the pretrial services program – or even whether there was a recommendation.

Also, the way that the SCPS data are currently configured, SCPS cannot sort out those defendants who are given non-financial conditions in combination with a money bail. We are hearing from our SCPS counties that this is a growing practice. When this occurs, BJS counts the release as financial, thus the effect that the non-financial conditions may have had on assuring court appearance cannot be measured.

How are we to ever know which type of release is better at getting people back to court?

The value of these release types can be judged by other factors. For example, do we want to continue to allow potentially dangerous defendants to buy their way out of jail? Do we want low risk indigent defendants to take up expensive jail space because they cannot afford the services of a bail bondsman?

If we cannot use SCPS findings to evaluate the effectiveness of release types, how can we use them to improve pretrial release outcomes?

Failure rates are high for all release types in SCPS – overall FTA rates ranged from 21 percent to 25 percent between 1990 and 2004, while rearrest rates ranged from 10 percent to 13 percent. SCPS has drawn attention to the need to improve the pretrial release decision making process. It has also shown that there are many counties that are able to achieve high non-financial release rates and low failure rates. By focusing on those counties that have good results, we can better identify best practices in pretrial release decision making.

For more information, contact PJI Executive Director Tim Murray or Senior Research Associate Dr. David Levin at 202-638-3080.

ⁱ Thomas H. Cohen and Brian A. Reaves. 2007. *Pretrial Release of Felony Defendants in State Courts*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Available for downloading at www.ncjrs.gov.

ⁱⁱ Letter from William B. Carmichael, President of the American Bail Coalition, May 11, 2007.