

States Struggle to Regulate the Bond Industry

While critics question the fairness of the bail bonds industry, proponents argue that its services save states money and keep defendants from fleeing.

[Russell Nichols](#) | April 2011

On the chilly afternoon of Jan. 16, 2010, police in West Haven, Conn., responded to a 911 call from a 6-year-old boy. "Daddy hit mommy," the caller said, referring to Selami Ozdemir, the owner of a local pizzeria. Around 5:30 p.m., Ozdemir, who had been arrested on domestic violence charges a few months prior, was brought in to the West Haven Police Department and booked. His bond was set at \$25,000.

Just 90 minutes later, Ozdemir posted bond and was released from custody. By 3:30 the next morning, Ozdemir was driving back home, drunk, with a Glock 9mm handgun by his side. Just before 4 a.m., the 911 dispatch center received another call from Ozdemir's house, but dispatchers could only hear muffled crying and loud banging. By the time police officers gained entry, Ozdemir had killed his wife and shot himself in the head.

The murder-suicide sent shockwaves through the state, raising questions about how authorities had allowed Ozdemir to commit such a heinous act. Much of the debate centered on how Ozdemir had been able to post bond so quickly. The bail bondsman who posted his bond allegedly didn't receive any money up front or set up any kind of payment plan, according to a report released after a five-month investigation by the state district attorney's office. "Under normal circumstances, the defendant would have had to raise \$2,500 to pay the bondsman prior to his release or provide \$25,000 cash himself to the police," the report said. "His ability to immediately be released prevented any cooling off period and allowed him to immediately leave the police department and obtain the handgun used in this homicide."

The idea that the bail bonds system might be broken wasn't news to former Connecticut Rep. Michael Lawlor. For more than a decade, Lawlor worked as a fierce advocate for bail reform, attacking issues of overcrowding, racial disparities and a general lack of oversight of the industry. (Lawlor left the Legislature this January to serve as undersecretary for criminal justice policy and planning for incoming Gov. Dannel Malloy.) The number of bail bondsmen in Connecticut has exploded in recent decades, from a few dozen in the early 1990s to more than 400 surety bail bondsmen today. The newer agents have been known to take extreme measures to undercut the competition, often charging clients far less than the standard 10 percent bail -- sometimes as low as 2 or 3 percent. It's illegal and very hard to prove, because the discounted prices are paid in cash. In a 2003 study, the state's Legislative Program Review and Investigations Committee called Connecticut's bail industry "dangerously unregulated," with pervasive undercutting, fraudulent bond posting and other illegal practices.

For years, Lawlor pushed numerous bills to regulate the bail bond business. But, he says, his efforts were no match for the bail industry lobbyists. "These bills dealt with setting up a system for overseeing the industry, getting them to play by the rules they were supposed to play by," he says. "They got derailed each and every year."

The issues in Connecticut are also playing out in states nationwide. Of the more than 767,600 inmates in jails across the U.S., 60 percent are unconvicted offenders awaiting court action on a current charge, according to Bureau of Justice Statistics data from 2009. Defendants typically don't have to wait in jail if

they can pay bail agents 10 percent of the bail amount and pledge to show up in court. As the bail bond industry has grown, the agents have become more aggressive. They swarm state courthouses, flashing special deals to defendants awaiting trial and shoving business cards into bathroom stalls, pay phones and pockets.

The bail industry argues that their commercial services save states money and keep defendants from fleeing, which lowers failure-to-appear rates. In many states, bond enforcement agents -- bounty hunters -- can track fugitives down, unbound by public enforcement restrictions. But critics say the bail system unfairly penalizes low-income defendants who can't afford the nonrefundable fee. It subverts the justice system, they argue, because defendants who can afford to buy their freedom -- even those that may pose a relatively greater risk—are free to go. "It's just inappropriate," says John Goldkamp, a professor of criminal justice at Temple University, who has been studying bail, pretrial release and detention for a quarter century. "When the bail system is based on dollars, there will be issues of accountability, greed, corruption and poverty."

As an alternative to the commercial bail industry, local and state governments for the past 50 years have developed pretrial services programs that identify low-risk defendants and allow them to remain in the community before a trial. Advocates say these programs help manage overcrowding in jails without punishing the poor. However, in the face of steep deficits and an increasingly strong bail industry, the future for these programs is uncertain. And that's a problem, says Goldkamp, who believes that bail agents have no business making justice decisions. "They're in it for profit," he says. "Dollars don't accomplish anything except [to] cause the detention of people who can't afford release."

The American bail bond system has its origins in medieval England, when sheriffs could release defendants from jail if they promised to return for trial. This promise might have been backed up by a bond, but many times, a friend or family member, known as a surety, would be held accountable to take their place. Centuries later, after American independence, states began replacing personal sureties with a commercial system that would evolve to become a private-sector industry and the most popular form of pretrial release. (As massive as the bail industry has become in America, it's mostly unknown around the globe. Only the U.S. and the Philippines have private bail agents. Other countries, including England and Canada, have outlawed the practice as an obstruction of justice.)

In the 1960s, attitudes about the bail system began to shift over concerns that it oppressed the poor. The Vera Institute of Justice, a nongovernmental organization founded in 1961, launched the country's first pretrial screening program, which identified defendants eligible for release based on character, not cash. The New York City program was so successful that it convinced President Lyndon Johnson to sign the Bail Reform Act of 1966, which favored releasing defendants on their own recognizance. Two years later, the Bail Agency for the city of Washington, D.C., developed the first formal pretrial services program, and other jurisdictions soon followed suit.

Public-sector pretrial programs have been battling with the industry ever since. Four states -- Illinois, Kentucky, Oregon and Wisconsin -- have outlawed commercial bail bonds altogether. Such bans are an effort to place criminal justice decision-making squarely in the public sector. But there are drawbacks. Since Oregon abolished private bond agents in 1978, for example, defendants' failure-to-appear rates have skyrocketed, according to Joshua Marquis, district attorney in Clatsop County, Ore. Nonetheless, he says, reinstating private bail companies -- something the industry is pushing for in Oregon -- is out of the question. "I'm extraordinarily opposed to the privatization of law enforcement," Marquis says. "They're not controlled by the statutes and codes that police are, and they have a profit motive. I don't want a bunch of guys looking like bikers, kicking down doors to nab some guy because some bail bond company has \$1,000 at risk."

Advocates of public pretrial release programs point to high-profile corruption headlines as evidence that the bail industry lacks sufficient regulation. In 2004, the FBI arrested two judges in Jefferson Parish, La., for accepting bribes from a bail bonding company. In 2007, a family of Connecticut bail bondsmen—along with the top narcotics officer for New Haven—pleaded guilty in federal court on charges of bribery and theft of government funds. Bail agents reportedly owe New York City more than \$2 million from cases in which judges ordered bail money forfeited.

When communities try to promote publicly funded pretrial programs, however, the bail industry frequently galvanizes to shutter the programs. Its most visible demonstration of political power took place a few years ago in Broward County, Fla. In 2007, county commissioners doubled the funding, to \$6 million, for the sheriff's already successful pretrial services program. Within a year, the expanded program reduced the number of incarcerated pretrial inmates so much that the sheriff was able to close an entire wing of the county jail, saving taxpayers \$20 million. More savings came from operations expenses: The pretrial services program cost the county \$7 per inmate per day, versus \$115 a day to house them in jail. Most impressive, keeping defendants out of jail saved the county from building a planned \$70 million detention center.

Public safety officials hailed the Broward program as a major success. But area bail bondsmen opposed it, saying it was too expensive and that it cut into their business. The local bail association hired a lobbyist, Ron Book, to convince commissioners to change their minds. (Book had unique access to the elected officials: He was already getting paid as the county commission's own lobbyist.) In January 2009, two years after they'd doubled funding for pretrial services, the Broward County commissioners voted to gut the program and place strict limits on who is eligible for pretrial release. Now, the bail industry is reportedly using the bondsmen's success in Broward County as a blueprint for how to squelch similar pretrial programs elsewhere.

This past February, hundreds of bail bond agents from all over the country gathered at the Flamingo Hotel in Las Vegas for the 30th anniversary winter conference of the Professional Bail Agents of the United States (PBUS). The organization hosts these conferences twice a year, bringing bail professionals together to network, learn about new technology and get advice on how to survive in challenging economic times. The four-day event included sessions on cyber-tracking, maximizing profits and a keynote address from special guest Duane Chapman, better known as "Dog the Bounty Hunter," from the A&E reality series of the same name.

Bounty Hunter chronicles Chapman—a muscled thug in a blond mullet—as he and his wife Beth track down delinquent defendants, kicking in doors and cornering court no-shows. It's action-packed, but it offers a skewed impression of the service that bail bondsmen provide, says Stephen Kreimer, executive director of PBUS, which represents 15,000 elected or appointed bail agents nationwide. In truth, he says, bondsmen offer a valuable service to the community as integral players in the justice system. It's a vital industry, Kreimer says, but one that's under attack. "The reality is that the government's trying to put us out of business."

That doesn't make sense, he says, because bail bond agencies save states money. Here's his reasoning: A man hits his spouse, gets arrested, goes to jail. As part of a publicly funded pretrial release program, he is released under the condition that he must take a drug test every other week, keep a job and stay out of trouble. If he violates his agreement or tries to flee, the burden falls back on the courts or the police, wasting taxpayer dollars.

"Police are overworked, understaffed and already arrested him once," Kreimer says. "These states are laying off teachers, cutting public services and taking these funds to pay for a pretrial release program."

Why are we spending money on a program that the private sector will do at no [taxpayer] cost?"

In a tight economy, he says, the commercial bail industry provides better services without straining state resources: Bounty hunters can break into homes without a warrant, make arrests and, with the threat of forfeiture, they have an incentive to make sure defendants get to court at the appointed time. As for the notion that the bail system rewards the rich and penalizes the poor, Kreimer says it's a myth perpetuated by the government to make the bail industry look bad. "If there are poor people languishing in jail, then by all means, there should be a pretrial release program that gets them out," he says. "But they don't have proof to back up that story. We have facts and figures that demonstrate that the bail industry saves the states millions."

Kreimer points to two studies that have suggested that states ultimately save more money with a bail system. In the first, Michael K. Block, professor emeritus of economics and law at the University of Arizona, analyzed more than 20,000 cases of pretrial releases in 12 of California's largest counties between 1990 and 2000. His research, published in 2005 and funded in part by various bail companies, found that defendants released on their own recognizance or through a conditional release program were 60 percent likelier to fail to appear in court—and two and a half times likelier to remain a fugitive—than those released on surety bond. If California had a bigger proportion of surety bond releases, Block wrote, total cost savings in the counties could range from \$14 million to more than \$109 million per year.

Similarly, in a 2004 article in the *Journal of Law and Economics* based on independent research, economists Eric Helland and Alexander Tabarrok found that defendants released on surety bond were 28 percent less likely to fail to show up in court than those who had been released on their own recognizance. Bond-released defendants were also 53 percent less likely to remain at large, they reported. Helland and Tabarrok attributed the difference to the fiscal and legal advantages bail agents have over police officers. "These findings indicate that bond dealers and bail enforcement agents ('bounty hunters') are effective at discouraging flight and at recapturing defendants," the authors concluded. "Bounty hunters, not public police, appear to be the true long arms of the law."

Whether or not bail bondsmen save states money in the long run, many lawmakers continue to push for tighter regulations on the industry. In the wake of the Ozdemir murder-suicide in Connecticut, a legislative task force is picking up where Lawlor left off and proposing revised bills from legislation shot down in years past. Chaired by Rep. Mae Flexer, the task force believes recent family violence cases by inmates out on bond will spur action. "I think, at the very least, this is the year we're going to see meaningful bail bond reform as it relates to domestic violence measures," Flexer says. "It's still debatable whether we'll do something broader, but I'm hoping we will."

The task force faces a tough battle. Current Connecticut law still allows bondsmen to post a bond for an arrestee without taking any fee. The statute sets a maximum allowable percentage fee but not a minimum required fee. And a bondsman also doesn't have to immediately fill out paperwork. Such loopholes, according to the state's Division of Criminal Justice, allow defendants like Ozdemir to get out of jail fast, putting lives at risk.

Even some within the bail industry want to see policy changes. For example, Patrick Moynihan, a surety bail agent in Hartford, Conn., since 1993, has been a staunch advocate for boosting regulations and oversight of the bond industry. For the past 10 years, he's witnessed the flood of new surety agents and the rise of undercutting, which he says threatens his business. He's also seen how a broken system can lead to death, he says, adding that the system needs oversight with stronger penalties sooner than later. "We've been trying to get legislation passed for 10, 15 years," Moynihan says. "If there are no teeth in the regulations, more people will die from the failure to regulate bail."

The Manhattan Bail Project

In 1961, the Vera Institute of Justice launched the Manhattan Bail Project as an experiment to make the bail system fair for all defendants, regardless of their financial situation. Researchers conducted interviews with defendants and gathered data on their community ties, employment, financial situation and criminal record. They converted the information into a numerical score. Defendants with high scores were recommended to judges for release on their own recognizance. According to the Pretrial Justice Institute, the results highlighted two key findings:

- Many people accused of committing crimes remained in custody because they couldn't afford a nominal bail.
- People with strong community ties who were released on their own recognizance were very likely to return to court.

The project saved the New York Department of Corrections \$1 million and drastically cut down on overcrowding, according to the Institute. In 1964, Attorney General Robert Kennedy convened the first National Conference on Bail and Criminal Justice. In the wake of the results, President Lyndon Johnson signed into law the Federal Bail Reform Act of 1966 in favor of releasing defendants on their own recognizance.

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