

A BETTER FORM OF BAIL

I was both entertained and unsettled by Alex Tabarrok's romanticized description of the US bail-for-profit system ["The Bounty Hunter's Pursuit of Justice", Winter 2011 <http://www.wilsonquarterly.com/article.cfm?AT=0&AID=1775>]. In 1964, US Attorney General Robert Kennedy described this system as "cruel and illogical." The pretrial release of the accused, he said, is not determined by guilt or innocence, the nature of the crime, or the character of the defendant. The factor that determines release "simply is money." The entire Western world has outlawed bail for profit, with the exception of the United States. Why have they done so? Because this scandal-ridden approach results in the costly incarceration of low-risk defendants while it rewards those who have access to cash regardless of how they acquired it or the likelihood they will offend.

Most state laws require judges to consider both flight risk and potential danger to the community when making pretrial release decisions. The bail-for-profit industry and the colorful bounty hunters in Tabarrok's article are not concerned with preventing new crimes by their clients – such considerations are simply not part of their business model. Can we really expect an industry that profits every time one of its customers gets arrested and needs a new bond to aggressively seek to minimize fresh business opportunities?

The bail-for-profit industry and the author would have us believe that their reality-show model of justice is the only sensible approach. Bail reformers advocate the use of empirically-validated risk measurements (instead of cash) to guide judges in determining who can be safely released and who must be detained. This evidence-based approach neither favors the rich nor penalizes the poor but seeks to administer justice with a sharp focus on fairness and public safety - not on profits.

Timothy J. Murray
Executive Director
Pretrial Justice Institute
Washington, DC