

Police Transparency and Accountability Task Force
Logistics Subcommittee
Bail Fugitive Recovery

Public Act 20-6004 (subsection 12) expanded the mandate of the Police Transparency and Accountability task force, requiring the task force to review how commercial bail agents take into custody the principal on a bond under a failure to appear warrant (known as a bail fugitive). Specifically, the task force was charged with examining the laws in Connecticut and other states pertaining to (1) taking bail fugitives into custody and (2) the processes of address verification and providing documentation to residents where warrants were executed.

Recommendation

Based on the rationale set forth below, no recommendations were made to change the current laws and processes to locate, apprehend, and taking into custody bail fugitives. This is a civil process governed by case law, insurance law, and legal bail bond contract. There is little connection to policing other than state and municipal law enforcement agencies execute the warrants once a bail fugitive is returned to custody by a commercial bail agent. It is, therefore, outside the scope of the task force.

Rationale

The Logistics Subcommittee submits this summary of its research and review of the fugitive recovery by the commercial bail industry. The review was limited to the responsibility of the commercial bail industry after a defendant fails to appear in court and the laws governing and processes used to locate, apprehend, and return a bail fugitive to custody. It did not include a review of laws governing setting and posting bail or the systemic, complex issues surrounding the process of releasing defendants on bond and practices within the commercial bail bond industry.

Background. There are two categories of bail bonds: nonfinancial and financial. A nonfinancial bond allows a defendant to be released on a promise to appear (PTA) at all court proceedings and to comply with standard conditions of release. The defendant does not have to post a monetary amount or any collateral. A financial bond sets a monetary amount deemed sufficient to assure the defendant appears at all court proceedings and complies with any special conditions of release. A defendant must post the face value of the bond or procure a commercially secured bond to be released.

The commercial bail industry is comprised of insurance companies licensed by the state to underwrite surety bonds for defendants. In Connecticut, bail bonds are executed by surety bond agents or professional bond agents. The difference is surety bond agents are affiliated with and represent an insurance company whereas a professional bond agents post personal collateral and write bonds against that amount. Most bond agents in Connecticut are surety agents. Bond agents employ bail enforcement agents (BEAs) to locate, apprehend, and take fugitives into custody.

Commercial bond agents have sweeping rights under current case and statutory law. The surety bond contract, signed by defendants and indemnitors/cosigners, authorizes bond agents to take the defendant

into custody at any time to discharge the financial liability of the bond. It further allows bond agents to use reasonable force to apprehend a fugitive.

Bail Fugitive. The definition of a bail fugitive includes three specific status that must occur. A bail fugitive: (1) is a defendant in a pending criminal case who has been arrested and released from custody under a financially secured bond; **and** (2) has failed to appear in court or violated a bond condition resulting in a forfeited bond; **and** (3) the court has issued a failure to appear (FTA) rearrest warrant that orders the defendant be apprehended and returned to custody.

When state or municipal law enforcement agencies apprehend and take a fugitive into custody it is a criminal process. Only law enforcement agencies can execute the FTA rearrest warrant, which is a new criminal charge. When commercial bail agents or BEAs apprehend and return a fugitive to custody it is a civil process. Commercial bond agents can not arrest a fugitive and execute the FTA warrant. The bond agents must return fugitives to police custody to execute the warrant.

State Laws Regulating Commercial Bail. Connecticut law establishes training and licensing requirements for surety and professional bond agents and BEAs. There are, however, few statutory limits on their authority to take a fugitive into custody. Bond agents and BEAs must notify local police when taking a fugitive into custody within its jurisdiction. They are not required to provide a copy of the FTA rearrest warrant or any other documentation to the fugitive or residents of the place in which the fugitive was located and apprehended. They may not represent or identify themselves as police or wear clothing or uniform that represent them as police. Bond agents and BEAs must immediately surrender fugitives to police custody.

Bond agents and BEAs employ various legal tactics to locate and apprehend fugitives. The bond contract contains detailed information about the defendant including all addresses where the defendant lives or stays, addresses of spouses or partners, relatives, and friends, phone numbers, employers name and address and work schedule, and all vehicles used by the defendant. This information is used to track the fugitive and to pressure family and friends to provide information on the fugitive's whereabouts.

Bond agents may revoke the collateral or require full payment on a surety bond from the indemnitor/cosigner to force that person to assist in locating or contacting a fugitive. They also use commercially available databases and public records to track fugitives including checking that the fugitive is not in custody in another jurisdiction or state. They also will employ surveillance, subterfuge, threats, and other tactics.

The commercial bail industry is dangerously unregulated in most states including Connecticut. The laws and regulation vary considerably but there are no real limitations to the industry's practices. This makes regulating the industry very difficult and unethical or unreasonable practices are rarely reported to the police or other regulatory agencies. As a result, some states have focused on reforms to limit or eliminate commercial bail and to ban commercial fugitive recovery, including Kentucky, Maine, Massachusetts, Illinois, Nebraska, Oregon, Wisconsin, and Washington DC.

The following table shows frequently imposed laws governing commercial bail and the states in which those laws are in effect.

Overview of State Laws Regulating Commercial Bail and Fugitive Recovery	
Requirement	States
Notify local police prior to attempting to or taking a fugitive into custody	AZ, CT, IA, IN, LA, NH, NV, SD, UT
Prohibited from representing or identifying themselves as police or wearing clothing that represents them as police	CA, CT, GA, WV
Only enter a residence with consent of the residents	AZ, WV
Prohibited from using force to enter a residence	CA, IN, NC
Must surrender fugitive to police within a specified period	CA, NV
No training or licensing requirements	MA, ME, MI, MT, NE, NJ, RI, WY

Issues with Commercial Bail. There are several persistent issues with commercial bail that have proven to be difficult to resolve.

First, bail reforms have changed the commercial bail industry in Connecticut to reduce financial and systemic discrimination in the bail process and to make bail more affordable to defendants. These reforms have reduced the number of defendants needing commercial bail, which had dramatically limited the commercial bail business. It has also resulted in the increased face value amount of bail bonds, which impacts the financial liability on the bail for bond agents and insurance companies.

Second, for various reasons not all FTA rearrest warrants are entered in state and national databases, such as the state’s Paperless Arrest Warrant Network (PRAWN) and Connecticut Online Law Enforcement Communication (COLLECT) System and National Crime Information Center (NCIC) system. FTA warrants that are not entered into these systems are not executed by law enforcement agencies.

State’s attorneys authorize limited extradition orders, especially on low level cases or cases in which defendants and witness are reluctant or refuse to cooperation, due to state fiscal constraints. Not all arrest warrants result in extradition of a defendant or fugitive in custody in another jurisdiction. This limits commercial bond agents’ ability to request extradition for those fugitives and to subsequently return a fugitive to custody and limit financial liability on the bond.

State law allows for a forfeiture compromise schedule that sets reduced payment of surety bonds and authorizes rebates on forfeited bonds when a fugitive is recovered within one year of the forfeiture date. The reduced payments and rebates were intended to incentive commercial bond agents to pay forfeited bonds and to apprehend fugitives but, in practice, it allows them to mitigate the amount owed to the state on forfeited bonds.

Finally, the state’s bail reform laws significantly changed the commercial bail industry exacerbating most of these issues. Further reforms to the commercial bail industry would require a sizeable investment by the state. Because this is predominately a civil issues, the Police Transparency and Accountability Task Force determined it was outside its scope.