

Changing the Bail Culture and Improving Pretrial Release and Detention

Phoenix, Arizona
March 23, 2016

1

the what
and the why

Need to know the "fundamentals"

It's the only way to truly understand the scope of change needed

2

Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform



Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain A Defendant Pretrial

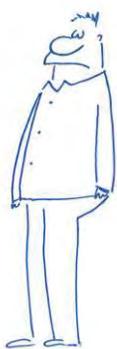
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Need To Know!

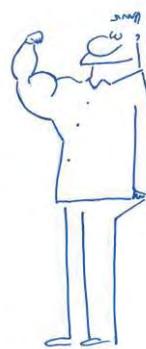
Why Change (The Problem)?

- History of Bail
- Legal Foundations
- Pretrial Research
- National Standards
- Terms and Phrases

4



5



6



7

“Third Generation of Bail Reform”

There have been previous generations.

Something must have been wrong before.

Something must be wrong today.

Question: Can we learn from previous generations and potentially make this our last generation of bail reform?

8

Your Back – The History of Bail



9

Understanding Bail Reform



10

“Bail/No Bail”

“Bail/No Bail” Includes the Notion that Bail Equals Release and No Bail Equals Detention



If anything is seen as abusing or interfering with this, history demands a correction

11

Bail = Personal Surety System

400-500 A.D. to 1800s – unsecured bonds administered through personal surety system



12

In America

Like England, "bail" equaled release with unsecured bonds and no profit or indemnification

Bail as release was incorporated into colonial charters, statutes, and constitutions

Even *more* of an emphasis on release and freedom

Personal surety system with unsecured bonds worked well with "bail" and "no bail" until . . .

13

1800s



14

Switch to Commercial Surety System

BAIL BONDS

1900 to present – secured bonds administered through a commercial surety system



15

America in the 20th Century

Secured bonds administered by commercial sureties



Interferes with "bail/no bail" dichotomy

16

Twentieth Century: The First Generation

1920s – 1960s

Finding Alternatives to the Traditional Money Bail System; Reducing Unnecessary Pretrial Detention of Bailable Defendants

Focused on "Bail" or Release

17

Twentieth Century: The Second Generation

1960s – 1980s

Allowing Consideration of Public Safety as a Constitutionally Valid Purpose to Limit Pretrial Freedom; Defining the Nature and Scope of Preventive Detention

Focused on "No Bail" or Detention

18

Why Did We Need a Third Generation?

Not all states used generational knowledge

New research helped us to understand the problems and the potential solutions

Secured financial conditions have continued to cause abuses to "bail" and "no bail" – history demands a correction

19

"Problems at both ends"



20

"Problems at both ends."

Parkland, WA, November 29, 2009



Officers Richards, Griswold, Owens, and Renninger

21

The Key to Understanding Bail Reform

Both "Bail" and "No Bail" are lawful if we do them right.



If we don't do them right, history demands correction.

22

The Third Generation

Implement proper "bail" and "no bail" dichotomy using risk

Use LEBP to do "bail" and "no bail" *correctly*, informed by generations one and two and current research

Mostly by replacing "charge and secured money" based systems with systems informed by risk and using less or no money

23

What Does the History Tell Us?

"Bail" was/is always about release – "No bail" was/is all about detention.

Interfering with "bail" or "no bail" requires reform/correction.

What Does the History Tell Us?

Secured money bonds have been interfering with both “bail” and “no bail” since 1900.

How to make this the last generation.

25

Your Arms – The Legal Foundations



26

History and the Law



27

Sources of Law – Your Mix

U.S. Constitution
 Federal Statutes, Federal Cases
 State Constitutions
 State Statutes, State Cases
 Muni Codes
 Court Rules
 Admin. Regs.



28

Law Is Sparse But Important & Often Ignored

Two Examples:

1. Individualization
2. Detention without due process

29

This is Changing!



30

The Language of Equal Protection

Certainly, keeping individuals in jail solely because they cannot pay for their release, whether via fines, fees, or a cash bond, is impermissible.

(Walker v. Calhoun, Georgia (N.D. Ga. Jan. 28, 2016))

31

Your Core – Pretrial Research



32

Research

Importance

Types

Producer/Consumer



33

Third Generation Research

Special mention: Risk Assessment, Risk Management, Outcomes

NIC Paper: “Money as a Criminal Justice Stakeholder”

34

What Does the SS Research Tell Us?

What works

Possibly what's lawful/unlawful

How to do “bail” and “no bail”

35

Your Head and Neck – Terms and Phrases

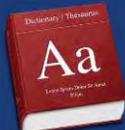


36

So What is Bail?

“Bail” is a process of release (Stack)
 The purpose of “bail” is to release
 The purpose of “no bail” is to detain

“Bail” and “No Bail” are both lawful if done correctly



Bail is Not . . .

Bail is *not* money



Money is a condition of bail or release/a limitation on pretrial freedom

With a different purpose

38

The fundamentals together tell us . . .

39

(Legal &) Evidence Based Decision Making

“Making decisions about how to achieve the *goals* of a given discipline by integrating the best available evidence.”

“What works to do what?”
 Health/medicine
 Bail?



History/Law – Goals for “Bail” or Release



Maximize Release
 Maximize Court Appearance
 Maximize Public Safety

Three Purposes for “Bail” and “No Bail”



Maximize Appropriate Placement
 Maximize Court Appearance
 Maximize Public Safety

42

History/Law – Goals for “Bail” or Release



Maximize Release
 Maximize Court Appearance
 Maximize Public Safety

43

Generations of Reform Attributes



44

Meeting of Minds



45



Changes



Implementing the Recommendations of the National Symposium on Pretrial Justice: The 2013 Progress Report

47

What Do All States Need?

Risk Assessment/ Risk Management/Supervision (even though it's been done for the entire history of bail)

Do “Bail” (Release) Right – LEBP – Everyone else out immediately on varying conditions and supervision techniques

Do “No Bail” (Detention) Right – Salerno

48

To Help Make All This Happen . . .



49

All States Have Two Options

Improve on Their Own or . . .

Wait and It'll Be Forced on Them (And That Won't Be Long – Federal Court, State Court -- *Brown*)

50

Fundamentals in Practice *State v. Brown* November 6, 2014



51



52

Questions?

53

Thank You!

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