

# Bail system puts court costs on backs of poor

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The New Orleans criminal justice system, critics charge, is funded on the backs of the poor who are processed by the tens of thousands each year and used as raw material to keep the insatiable machine churning.

Money generated from bail posted by defendants, the majority of whom are poor, black and charged with non-violent offenses, drives the enterprise, said Michael Jacobson, director of the Vera Institute of Justice, a criminal justice nonprofit based in New York. He's encouraging New Orleans to adopt a pretrial release program that largely takes bond decisions out of judges' hands.

Often times it seems as if there is no rhyme or reason to the bond process, said Derwyn Bunton, Orleans Parish chief public defender. Depending on who is overseeing first appearances, bond for marijuana possession can range between \$500 and \$25,000, he said.

The current system helps fund the courts and keeps the bail bonds industry flush with cash and criminal defense attorneys consistently busy. The ripple effect provides judges with overflowing campaign coffers. With so many hands in the jar, attempts to reform the system have been met with stiff opposition.

**Cash and connections:** When someone is arrested in New Orleans, they appear before the Magistrate Court where a judge or an appointed commissioner decides whether the defendant should be released on their own recognizance while awaiting trial or have bond set.

If the judge sets a \$10,000 bond, for example, the defendant can pay a bail bondsman 13 percent, or \$1,300, to get out of jail. The bondsman keeps \$1,000, and the remaining 3 percent is split among criminal court judges, the district attorney's office, the sheriff's office and public defenders.

A majority of people who find themselves in Orleans Criminal District Court are

poor and cannot afford to post bonds higher than a few hundred dollars, so they sit in jail for weeks waiting for the district attorney to accept or drop their charges, said said Tim Murray, executive director of the Pretrial Justice Institute in Washington, D.C. In the interim, they run the risk of losing their jobs and homes.

“It inherently discriminates against people who don’t have money, so you have jails full of the disenfranchised. And in this country, that means people of color,” Murray said. “You have people from certain neighborhoods where if they’re arrested, they’ll stay locked up and do more time waiting for their court date then the court will sentence them upon conviction. And it’s all at public expense.”

In New Orleans, whether or not someone is released while their trial is pending often depends on whether they can afford to buy their way out of jail, said Graymond Martin, Orleans Parish first assistant district attorney.

Monetary bonds are set solely at the discretion of judges and Magistrate Court commissioners. Rarely are defendants released on their own recognizance (ROR) without a cash bond unless they are well connected, Martin said.

“Right now ROR is about who you know, not who you are. It’s a system where if you know a good lawyer who knows a judge who he can call at 2 in the morning,” Martin said, “and the judge makes a call to central lockup you can get out of jail. Most people can’t do that. If you don’t know anybody and you don’t have any money, you can’t get out of jail.”

The system creates a financial incentive for attorneys and bail bondsmen, historically two of the largest contributors to the election campaigns of judges. “The judges are supported and elected by the criminal defense lawyers and bondsmen, so anything they don’t want the judges won’t want,” Martin said. “But it’s more than campaign money. It has to do with relationships judges have to have in order to make the system function.”

Only two countries in the western world still permit bonding for profit — the United States and the Philippines, Murray said.

“Great Britain, Canada and Australia not only abolished bail bonding for profit; they made it a crime similar to obstruction of justice and tampering of the jury,” Murray said. “You have pressures like elections, campaign contributions and

political influence that drive local practices. Those are pressures felt by New Orleans courts.”

**Resistance to change:** Magistrate Judge Gerard Hansen, who oversees the majority of first appearances where bonds are set, rejects the idea that he is for sale. He personally bankrolled his first election 36 years ago for \$250,000 and has held fundraisers for ensuing elections. But he said he has never taken money in exchange for setting high bonds and has fought the bail industry on numerous occasions.

“We don’t do things because of bonding companies,” Hansen said. “I don’t think judges should have to run for office because we’re subject to raising money. But it’s all public information. We’re not hiding anything.”

Hansen is firmly against any type of pretrial release system that takes discretion out of the hands of judges and gives it to bureaucrats. He said he considers all factors when setting bond and, if the case calls for it, he releases defendants on their own recognizance and refers those charged with small-time drug possession to drug court.

Hansen contends that public defenders are always in the courtroom making recommendations on behalf of defendants. Bunton, however, says judges and commissioners routinely dismiss or ignore their suggestions.

During a recent hearing, Hansen gave a man charged with prostitution and history of prostitution-related arrests a \$2,000 bond. He handed out a \$25,000 bond to an individual charged with simple burglary and no prior offenses but with a separate open case accusing him of possession of illegal weapons and

**Oxycodone:** Another defendant with no priors, charged with simple burglary after he entered a private residence and stole several computers and a television, was given a \$20,000 bond.

“I’d hate to see the city spend a lot of money on a program filled with people with no legal training to do what we’re already doing,” Hansen said. “It should always be up to the discretion of the court because we have to live with the decision in the end. Terrible things can happen and the buck will stop with the judges and that can end careers. No one will look to some nameless panel of bureaucrats.”

For many judges, there is the constant fear they will release someone who then commits a horrific crime bringing down the wrath of the media and electorate on their heads, retired Judge Calvin Johnson said.

A judge's initial instinct may be to set a high bond to ensure they avoid an incident that could hurt their chances at re-election. Orleans Parish judges are given a pension equal to 100 percent of their salary after serving 25 years.

"I released thousands of individuals over the course of the 18 years I was there and I always had a fear, my God in heaven I'm going to pick up the paper and that guy I released from jail was going to do something terrible," Johnson said. He admits the courts are "definitely" funded on the backs of the poor through bonds, fines and fees.

"I was as guilty of that as any when I was on the bench, but you have to fund yourself in some fashion," Johnson said. "And so you did it on the backs of the people who were least able to pay."

**Battling status quo:** In New Orleans, the strategy seems to be to lock up as many people possible, no matter what the charge, unless they can buy their way out of jail, said Jacobson with the Vera Institute.

He recently went before the City Council to propose changes to the bond system modeled after a pretrial release program in New York where more than 50 percent of defendants are released on their own recognizance. It keeps defendants out of prison without imposing a monetary penalty as long as they pose no threat to the public, are not flight risks, have strong community ties are not charged with violent crimes.

"This is based on a lot of research looking at tens of thousands of people who have come through court and all the research has shown if you have ties to community, you're stable, have a job, and the charge isn't serious, people will come back to court," Jacobson said. "I don't know of another city like New Orleans where basically everyone gets a money bond."

The program allows them to keep their jobs and homes while waiting for their day in court, Jacobson said, and it saves the taxpayer on incarceration costs. After their release, a panel of bureaucratic appointees supervises defendants in the program to ensure they appear in court. The cost to monitor each pretrial release defendant is \$6 a day.

By comparison, housing an inmate at Orleans Parish Prison costs \$23 daily.

The implementation of a pretrial release program does not sit well with the bail bonds industry, judges or criminal defense attorneys. Guy Ruggiero, south central director for the Professional Bail Agents of the United States, accuses Vera of manipulating the numbers to prove the effectiveness of such programs. The best way to ensure the appearance of defendants in court is to place a financial responsibility on them, he said.

“All over the country government is attempting to downsize and this pretrial release program attempts to expand government at the expense of taxpayers,” said Ruggiero, who also dismisses claims the system is rigged against the poor. “It’s not only the indigent who go to jail. We don’t believe officers are arresting people based on their income.”

Assistant DA Martin says judges and defense attorneys aren’t likely to cede their discretionary power as called for in the New York program.

“Only a judge can order a person released. (With a pretrial release program), you’re removing from the criminal defense lawyer and judge the ability to do what adds value to their services,” he said. “One third of what a criminal lawyer does is get his client out of jail. Do you think they will want to give that up?”

The bail bonds industry, which depends on the continuation of the existing system to survive, is against any reform and its opposition should not be taken lightly, said Rafael Goyeneche, executive director of the Metropolitan Crime Commission.

“Don’t underestimate how powerful a lobby the bail bonds industry is,” he said. “There are millions of dollars at stake.”

Goyeneche went to the state Legislature years ago to push for a system to return bond money to defendants, including the 10 percent that goes to the bondsmen, if the DA dropped their charges.

“I walked into the committee meeting with representatives from both the Orleans and Jefferson DA’s offices and a judge from Orleans Criminal District Court. I felt like Custer at Little Big Horn,” he said. “The room was stacked with bail bondsmen, literally standing room only. We didn’t even get it out of

committee.”

It’s an uphill battle to reform the system but one worth fighting, said Martin, who believes that a pretrial release program can be used for low-level offenders while other types of bonds, including commercial surety bonds from bail agencies, can better handle the more serious offenders.

“Most people like the status quo just fine. If you like what we have-the highest murder rate, most violent city, highest incarceration rate, if you like that a lot well just continue to do what we do. We’re really good at it.”