



Insurance Commissioner Dave Jones
An Exploration of California's Bail System

Tuesday, January 31st, 2017

9 a.m. to 12 p.m.

Milton Marks Conference Center Auditorium
455 Golden Gate Avenue, San Francisco, California 94102

OVERVIEW

What is Bail?

A bail agent is a person permitted to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer. In the context of the cash bail industry, a "bail" means a bond posted as security for the release of a defendant, which is posted by a bail bond company to the court as a guarantee for an arrestee's appearance to all mandated court appearances. The bail bond fee is the sum of money or collateral, which is exchanged between the arrestee and the bail bond company to secure the bond. There are approximately 175,000 bail bonds written per year in California.

When a person is arrested on suspicion of committing a crime they have the right to seek and post a bail bond for their release at the amount specified by the county-wide bail schedule for their alleged offense. Jails contain a posted directory of bail agencies. At the time of arrest and during the booking process the arrestee has an opportunity to make a call to a bail bond company to initiate the process of obtaining a bail bond. The law requires that a bail agent must be solicited for bail directly by the arrestee, the arrestee's attorney of record, or an adult friend or family member; bail agents may not solicit business.

A bail agent has the authority to negotiate the bond cost and complete the process of acquiring a bond from a surety insurer for any person who has been arrested and detained on a bondable offense. When the bail agent working with a bail bond company posts the guarantee of the total bail amount for the release of a suspect, the company assumes the responsibility for making sure the arrestee will be present in court for all court required appearances (or be required to forfeit the bond to the court).

Bail Process

Bail bonds are negotiated in several ways. Bail agents usually charge ten percent of the bail amount as the fee. For example, on a \$25,000 bail the ten percent fee is \$2,500. However, to become more competitive, a bail agent may choose to negotiate a lower fee by rebating, as allowed by Proposition 103. This is accomplished by calculating a lower fee percentage as a 'rebate' back to the bailee. Prevailing market conditions often dictate how much a bail agent must rebate in order to remain competitive. Thus, the amount of the fee can be lowered anywhere from an eight percent fee to a two percent fee (i.e., 8% of \$25,000 is \$2,000 and 2% is \$500.)

Some bail bond companies also offer "credit bail," where a down payment is made and partial payments are accepted until fully paid.

The bail agent may require the bond to be secured by a lien on real property owned by an arrestee or his or her family or friends. This procedure is used in cases of high bail amounts when the bail fee is also substantial (e.g. ten percent of \$100,000.) In this situation, the bail agent usually requires ten percent of the fee in cash, with the remaining amount secured by asset(s)/collateral.

The business costs of a bail bond company are typically 20% of the bail fee to be paid to the surety company, of which ten percent is placed into a so-called "buffer account". The buffer account is a holding account which provides a bail bond company the ability to absorb losses due to bond forfeitures. Once the buffer account has reached its maximum threshold, the ten percent payment is not necessary. The remainder of the bail fee is gross income to the bail bond company. Thus, on the \$2,500 premium example above, the bail agent or bail company will retain \$2,000 to \$2,250 of the money collected.

A bond company and/or bail agent may surrender the bailee to the court or custody if it is determined the bailee is a potential flight risk. Per California Code of Regulation (CCR) Title 10 §2090, if the bailee is surrendered, the bail fee is refundable minus administrative costs. It is illegal for a bail agent to surrender a bailee to custody solely for non-payment of bail fees.

If the bailee does not appear in court as required, the court orders the '*bail is forfeited*' and notifies the bail bond company there are 180 days to locate the defendant and surrender him to detention or present him to the court. The bail agent has the authority to hire a bounty hunter to locate and retrieve the bailee.

Bounty hunters have no more enforcement powers than an average citizen, as in a '*citizen's arrest*' or '*citizen's hold for arrest*.' At the end of an initial 180 days, the bail bond company may file a request for an extension, if a good cause can be shown, for an additional 180 days to locate and retrieve the bailee. An example of good cause would be if the bailee has been located in another state and additional time is necessary to return the bailee to the local jurisdiction. If the bailee appears voluntarily or has been placed in custody for an additional crime, the bond forfeiture is vacated and the bond is exonerated.

A bail bond company may file a motion to exonerate the forfeited bond prior to the 365 days allowed for returning the client once the bail has been forfeited. The motion may be based upon evidence the client cannot be produced due to death, permanent inability to appear because of disability, long-term hospitalization, mental illness, military detention, or incarceration. All motions for bail exoneration must be reviewed and approved by County Counsel, which will analyze the merits of the motion. The County Counsel's Office for each county in the State is responsible for collecting bail bond forfeiture debts. In the cases when the bond is forfeited by a Summary Judgment, the bond company has 30 days to pay the amount of the bail to the court. Failure to make the payment results in the bond company being disqualified from posting any bail within the jurisdiction of the court.

Regulation

The Bail Bond Regulatory Act was first adopted in 1937 and provided the statutory framework to regulate the bail bond business under the California Department of Insurance (CDI). The law also provided CDI with the authority to adopt administrative regulations. Generally the laws regulating bail include California Insurance Code (CIC) 1800 through 1823, CCR Title 10, §2054 through §2104, and Penal Code (PC) §1299 through §1306.

CDI's Licensing Services Division is responsible for licensing bail agents. In order to receive a bail agent license, a person must meet the following conditions: be a minimum age of 18 years; picture ID card issued by CDI; residency in the State of California; completion of a minimum of 20 hours of approved classroom study for which the curriculum was reviewed by the California District Attorneys Association, California State Sheriff's Association, and County Counsel Association; passage of a California licensing examination; passage of a fingerprint-based background check done by both the California Department of Justice and the Federal Bureau of Investigation; provision of a bond in the sum of \$1,000; and notice of appointment by a surety insurer. If a bail agent's appointment is terminated by their surety, they often find an appointment from a different surety to continue acting as a bail agent. Many bail agents have appointments with multiple sureties.

Currently, there are approximately 3,200 licensed bail agents and organizations and 17 sureties transacting bail in California. This number does not include bail fugitive recovery persons, or so-called "bounty hunters," which CDI is tasked with investigating despite the fact that they are not licensed and do not pay any fees to CDI. Bail fugitive recovery persons are held to certain limited education, notice, and conduct requirements outlined in Penal Code §1299-1299.12.

CDI's Enforcement Branch is responsible with investigating and enforcing the activities of bail agents. Violation of the bail sections of the CIC and/or CCR can be alleged as a crime (felony or misdemeanor) pursuant to CIC 1814. The violations can be part of other criminal activity and CDI must demonstrate and prove intent on the part of the bail agent to allege a crime occurred versus negligence or incompetence. CDI's Enforcement Branch collaborates with CDI's Legal Division to prosecute administrative cases and with District and City Attorneys to prosecute criminal cases.

Over the past few years the seriousness and number of bail complaints CDI has received have significantly increased. Subjects of recent bail complaints and enforcement actions, include: receiving stolen property/contraband in lieu of premium collected; bribery and money laundering; gang conspiracy and/or criminal enterprise; kidnapping and false imprisonment for purposes of extortion; perjury and filing false documents; unlicensed activity/illegal solicitation; using jail inmates and jail staff as recruiters for bail transactions; theft or embezzlement of collateral or premium; creating of fake or false bail bonds; website misrepresentation/misdirection; dishonest advertising; and abuse of unmonitored attorney-client jail visiting rooms.

CDI's Rate Regulation Branch determines whether bail premium rates charged to consumers in California are fair (i.e. not excessive, inadequate or unfairly discriminatory). Each surety company must file rates with CDI and bail agents representing a surety must charge the same filed rates. The court determines the amount of the bond, and the cost to the consumer is most commonly ten percent of the total amount of the bond, plus, actual, necessary, and reasonable expense incurred in connection with the transaction.

Alternatives

A bail agent provides a means for an incarcerated person to be out of custody until his or her day in court, allowing the defendant to continue his or her day-to-day life until the legal matter has been resolved. However, California bail schedules are among the highest in the nation and many arrestees cannot afford to make bail; approximately 62% of California's county jail population is made up of people awaiting trial or sentencing, costing taxpayers approximately \$100 to \$200 per day per inmate. The disparate impact of the bail system upon poor people has caused many stakeholders to consider alternatives to cash bail which support the same policy goals of promoting public safety and ensuring court appearances. Commercial bail bonding is illegal in Kentucky, Illinois, Oregon, and Wisconsin, and many states have significantly limited the use of money bail.

Alternatives and reforms examined by many stakeholders so far include, but are not limited to, eliminating for-profit bail, using risk-based assessment tools, enhancing pretrial supervision, and increasing use of citation release. Many states and jurisdictions have moved toward using evidence-based risk assessment tools that analyze data to help judges determine which defendants should be safely released, supervised, or detained.