

TESTIMONY OF MARY FRANCES SMITH
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
November 14th, 2019

Madam Chairwoman and Vice Chairwoman and Committee Members:

My name is Mary Frances Smith. I am the President of the Ohio Professional Bail Association. I am a Managing General Agent serving over 40 Agents in 4 States, and I work to provide continuing education for lawyers and judges. I have authored a handbook that is currently used to assist clerks and judges in courts across Ohio. I have recently marked 31 years working within the criminal justice system.

The so-called "bail reform" movement is best reflected in HR 4474, The No Money Bail Act of 2019. By making a state that uses a money bail system ineligible for federal funds under the Byrne JAG Program, this bill would eliminate the commercial bail industry in this nation. And, let's just be honest – that is the goal of the "bail reform" movement.

The bail reform movement is not about bail reform. Any time you hear that phrase it means bail elimination. These bail reform advocates want to get rid of monetary bail because of the mistaken belief that it somehow discriminates against the poor.

Commercial bail is not discriminatory against the poor. This is a myth.

Most accused persons can take advantage of a taxpayer funded Pretrial Release program and walk out of jail on a signature or promise to return to court. If a judge sets monetary bail as a requirement the accused can turn to a friend, his family or employ the services of a bail agent. Often the accused have friends and family who have money, but the family doesn't want the accused released from jail for very valid reasons.

First, the accused may have numerous failures to appear -- they haven't demonstrated that they can be trusted to be free while awaiting trial without some type of bail.

Second, their family might be demanding that they be kept in jail because that's the only way that their sobriety can be assured. Many, many people, myself included, have lost a relative who got out of jail and OD'd within hours. We tried to have them kept in jail, but the system insisted on releasing them on no monetary bail, despite repeated warning from family and friends that they were going to kill themselves or others.

So, this idea that commercial bail is cruel because it denies the poor their due process is a ruse. In the criminal justice system, lives are at stake. We have to rely on what works. Commercial bail works. It works because defendants show up for trial and sureties guarantee their appearance in court. If they don't show up, the surety is responsible and obligated to return the fugitive to court or pay the bond. This is why it works. And in commercial bail, the failure to appear rate is below 2%.

Pre-trial release programs already exist to ensure that no one sits in jail solely because they can't afford the monetary component. When the defendant doesn't appear for court and a warrant or capias is issued, local law enforcement attempts to serve the warrant. However, when a surety bond is placed with the court the surety agent becomes responsible for the apprehension and return of the fugitive back before the court.

Without any judicial involvement, my nephew Brent was released through the county risk assessment tool; this tool had determined that his risk for failure to appear was 5 out of 6. Within 48 hours he was dead due to an overdose. To the county, another statistic. A case dismissed. Believe it or not, because of the way the county counts and labels its results, it listed Brent's case as a success because his case was dismissed.

In reference to the use of risk assessments: In order to eliminate commercial bail, you have to take a judge's judicial discretion out of the process. Judges have seen it all, and they use their experience and their wisdom to make determinations of who will be released on OR, who should be detained until trial, and who should be offered bail. The bail reform movement is replacing judicial discretion with "risk-assessments." Most people don't know this, but most risk assessments are a brief list of 7-9 questions that asks things like, *have you ever been arrested before?* And to these questions, many accused (I know this is shocking) will not offer honest answers. So, the next time you hear the term risk assessment, understand that this is the mechanism by which an algorithm can replace the wisdom of a judge's discretion in deciding who should and should not be released while awaiting trial on bail.

There are hundreds of thousands of fugitive warrants in state computer systems across the country.

Yet, despite these atrocious statistics, there still is no accountability for pre-trial release programs.

- How much federal money is being spent on pre-trial at the state level through the Byrne JAG grants? *No one knows because Congress doesn't require the states to report.*
- How many accused that are funded with taxpayer dollars have failed to appear on previous releases? *No one knows because Congress doesn't require the states to report.*
- How many of the accused that are currently on pre-trial release have a history of violent crime? *No one knows because Congress doesn't require the state to report.*
- What is the failure to appear rates of current pre-trial release programs? *No one knows because Congress doesn't require the states to report.*

And we have these pre-trial release programs, that are not accountable – being heralded as the magic solution to so called “bail reform.”

So, if there is no accountability and no way to measure these programs, how can we support any bill that eliminates any state that uses monetary bail as an option?

In the last session, this Committee passed the Citizens Right to Know Act, which, for the first time, would have required pre-trial release programs to report their failure to appear rates.

The Citizens Right to Know Act was common sense legislation. That’s not too much to ask, is it? Citizens have a right to know if their tax dollars are being used efficiently, or whether those tax dollars are being used to prop up a failed system of revolving jailhouse doors that have no accountability.

If the Committee wants to enact meaningful reforms, rather than eliminate monetary bail, it should take an honest look at pre-trial release programs, and lay them side by side against commercial bail, **comparing failure-to-appear rates**. Only then will you get an accurate picture of what works and what doesn’t.

These horrific failure-to-appear rates from pre-trial must be examined and confronted head on.

So, while “bail reform” sounds noble, look under the hood. Hold States accountable for the money you give them. And allow judges to continue using their discretion and determining bail in accordance with the facts before them.

Thank you.