Bail Bonds System

DEPARTMENT OF LEGISLATIVE SERVICES 2012

Bail Bonds System

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

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October 11, 2012

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Maryland General Assembly

Ladies and Gentlemen:

A criminal defendant is entitled to be released pending trial unless a judicial officer determines that no conditions may be placed on the defendant's release to reasonably ensure the defendant's appearance in court or the safety of the alleged victim, another person, and the community. When release on personal recognizance alone is not appropriate, the bail system is designed to guarantee the appearance of a criminal defendant in court as directed pending the conclusion of the criminal case. The bail process and bail industry are, at times, highly technical and complicated.

In an effort to provide an overview of this topic, this report contains a discussion of State law relevant to the pretrial release process and the use of bail bonds, as well as a discussion on efforts to reform the bail bonds system in the State and nationwide.

The report was written by Amy Devadas, Michael Bender, and Guy Cherry. Tamela Burt and Shirleen Pilgrim provided editorial direction.

I trust that this information will be of assistance to you.

Sincerely,

Warren G. Deschenaux
Director

WGD/SMP/ckt

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Introduction

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and will be released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

For some defendants, making bail to obtain pretrial release will require the use of a bail bondsman. A bail bondsman posts bail for a defendant in return for a fee. While the premise may seem simple at first glance, the bail process and bail industry are, at times, highly technical and complicated. This paper provides a summary of the pretrial release process, the use of bail bonds, and efforts to reform the bail bond system in the State.

The Pretrial Release

Basis for Pretrial Release Determinations

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants registered with the sex offender registry maintained by the Department of Public Safety and Correctional Services and defendants

charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, *etc.*).[1] Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others or on both bail and such other conditions.

At the initial appearance, the commissioner has access to several criminal justice databases to review the defendant's criminal history and to determine whether there are any pending charges, any prior occasions when the defendant failed to appear in court, or any outstanding warrants. The databases include the Criminal Justice Information System, the National Crime Information Center, the Maryland Interagency Law Enforcement System, the Unified Court System, Motor Vehicle Administration records, Warrants, and the National Law Enforcement Telecommunications System. The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant's rap sheet, and information learned from the defendant.

Defendants who are denied pretrial release by a District Court commissioner or who for any reason remain in custody for 24 hours after a commissioner has determined conditions of release are required to be presented to the District Court for a bail review. In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the defendant or the defendant's family, and additional factors concerning the defendant's criminal history that were not available to the commissioner. Where local conditions provide for it, a pretrial release plan may be designed by the pretrial services unit so that the defendant may be released under supervision of that unit, providing an option for the release of some offenders who are unable to make bail or who ordinarily would be confined until trial. Supervision may include residential placement, home detention, electronic monitoring, and testing or treatment for alcohol and drug use.

Release on Bail

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bail bond, a certified check, intangible

[1] See Criminal Procedure Article § 5-202 for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

property, or encumbrances on real property, in an amount required by the judicial officer. If authorized by the court, a defendant may be released after posting cash equal to 10% of the full penalty amount or $25, whichever is greater.[2] However, security for a greater percentage of the penalty amount, up to the full amount of the bail, may be required by the judicial officer. When the defendant is unable to post the amount required, as is often the case, the defendant may seek the assistance of a bail bondsman to obtain a corporate surety or lien on the bail bondsman's real property to secure the bail bond with the defendant. The bail bondsman typically charges a fee equal to 10% of the required bail bond amount for this service. If a defendant deposits cash with the court and complies with his/her pretrial release, the deposit is refundable. Fees paid to bail bondsmen are not refundable.

Executing a Bail Bond

A defendant has two options in the event he or she is granted bail. The defendant may either post the entire amount of the bail or use the services of a bail bondsman. There are two types of bail bondsmen: property and corporate surety

Property Bail Bonds/Using Real Estate as Collateral Security for Bail

Property bail bondsmen post bail for defendants by pledging real estate as security for the defendant's appearance in court. Unlike corporate surety bail bondsmen, property bail bondsmen are not licensed by the Maryland Insurance Administration (MIA). Though all of the judicial circuits have the authority to regulate property bail bondsmen, only the Seventh Judicial Circuit (Calvert, Charles, Prince George's and St. Mary's counties) actively does so.[3] However, property bail bondsmen who post bail bonds in the District Court are subject to District Court standards statewide.

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[2] In July 2003, the Court of Appeals' Standing Committee on Rules of Practice and Procedure proposed revising Maryland Rule 4-216(e)(4)(b) to require a judicial officer who sets bail for a defendant at $2,500 or less to inform the defendant that he/she may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full bail amount. The proposed revision was adopted in November 2003 and took effect on January 1, 2004. In response to this revision, the General Assembly enacted Chapter 531 of 2004, which would give a defendant whose bail is set at $2,500 or less the option to post a bail bond by depositing 10% of the full penalty amount with the court ***only if he/she is expressly authorized to do so by a court or a District Court commissioner.*** Maryland Rule 4-216(e)(4)(b) has not been amended to reflect Chapter 531 of 2004. However, the District Court advises that if a commissioner sets bail at an initial appearance at $2,500 or less, the commissioner typically informs the defendant of the 10% self-posting option.

[3] According to the District Court of Maryland, anecdotal evidence suggests that with the exception of the Seventh Circuit, many circuit courts in the State do not accept property as collateral for a bail bond.

The following formula is used by the courts to calculate the value of real estate being used as collateral for a bail bond:

Value of Posted Property = 80% of tax assessment value – encumbrances on the property[4]

However, in the Seventh Judicial Circuit, property bail bondsmen may post bail bonds for up to four times the value of the property, minus encumbrances. Individuals (nonproperty bail bondsmen) posting property for bail in the Seventh Circuit are subject to the same 80% formula used in the rest of the State.

If a defendant or surety (bail bondsman) provides collateral security by pledging real estate, the pledge must be accompanied by a Declaration of Trust, and the bail bond must be secured by a Deed of Trust to the State or its agents.[5] The defendant or the surety (bail bondsman) must furnish a list of all encumbrances on each parcel of real estate subject to the Deed of Trust. The court must be satisfied that the real estate is worth the required amount before accepting the bail bond. Courts typically use the Department of Assessment and Taxation's real property database to verify property values. The clerk of the court will return the collateral security posted and release the Declaration of Trust on the property once the bail bond has been discharged (Maryland Rule 4-217).

If the defendant fails to appear, a District Court commissioner or court will place a lien on the property. After the lien is placed, it is up to the appropriate State's Attorney to decide whether or not to collect on the lien. According to the Maryland State's Attorney Association, after the lien is placed, most counties wait for the property to be sold at which time the lien is paid off.

The availability of property bail bonds is decreasing in the State. In the 1980s, several counties had professional property bail bondsmen. Currently, only the Seventh Judicial Circuit has professional property bail bondsmen. According to the Judiciary, with the exception of the Seventh Judicial Circuit, most circuit courts usually refuse property bail bonds. Corporate surety bail bondsmen comprise the vast majority of the State's bail bond industry.

Corporate Surety Bail Bonds

A corporate surety bail bond is a financial guarantee to the court that the defendant will appear in each and every court appearance as the court directs. A corporate surety bail bondsman, which is by far the more common of the two types, must be licensed by MIA and have an appointment from a surety insurance company (Insurance Article § 10-304). Like other

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[4] This formula is used whether the property is being posted by a bondsman or an individual.

[5] A Declaration of Trust is an assertion by a person who holds legal title to a property that the property is being held in trust for another person or for specified purposes. A Deed of Trust is a conveyance given as security for the performance of an obligation.

licensees, the Insurance Commissioner may deny a license or discipline a corporate surety bail bondsman for a variety of reasons, including the willful violation of a State insurance law or any fraudulent or dishonest practice in the insurance business (Insurance Article §10-126). Once licensed and appointed, a corporate surety bail bondsman acts as an agent on behalf of the surety insurance company. A corporate surety bail bondsman charges the defendant 10% (premium) of the bail bond; this percentage must be filed with and approved by the Insurance Commissioner. For example, a defendant who has been granted bail for $50,000 must pay a $5,000 premium to the corporate surety bail bondman to post bail. The corporate surety bail bondsman then remits the premium to the surety insurance company less a portion as a commission for the corporate surety bail bondsman's services. The commission is usually one or two percent of the bail bond's face amount.

Corporate surety bail bondsmen post bail by executing the bail bond as the agent or attorney in fact for the surety insurance company, which is liable to the State as the surety on the bail bond. Corporate surety bail bondsmen post bail by filing a Power of Attorney with the court with a clearly stated monetary limit that will cover the entire amount of the bail. The chief clerk of the District Court maintains a list of all corporate surety bail bondsmen authorized to write bail bonds in the State and the limit for any one bail bond specified in the corporate surety bail bondsman's general Power of Attorney on file with the chief clerk. No bail bond executed by a corporate surety bail bondsman may be accepted unless the corporate surety bail bondsman's name appears on the authorized corporate surety bail bondsmen list and the bail bond is within the limit specified in the corporate surety bail bondsman's general Power of Attorney as shown on the list, unless a special Power of Attorney is filed with the bail bond.

Corporate surety bail bondsmen are independent contractors and are contractually liable to the surety insurance company for any loss on the bail bonds they write. It is important to note that if the corporate surety bail bondsman uses a sub-agent, the sub-agent may not be contractually liable to the surety insurance company. The corporate surety bail bondsman underwrites the bail bond and monitors the defendant to ensure his/her appearance in court. If the defendant fails to appear, the corporate surety bail bondsman must track the defendant down and return the defendant to the court's jurisdiction. Failure to do so will result in the corporate surety bail bondsman having to pay the full penalty amount of the bail to the court. However, since the surety insurance company is technically the surety on the bail bond, if the corporate surety bail bondsman cannot pay the forfeiture to the court, the surety insurance company must do so.

There are numerous parties involved in each bail bond transaction: the defendant, the corporate surety bail bondsman, the surety insurance company, the State, and often a family or friend of the defendant who provides the premiums and co-signs the bail bond. Corporate bail bonds are a unique type of insurance because there is a low amount of risk involved for the surety insurance company, largely due to these relationships. While the surety insurance company is liable to the State as the surety on the bail bond, the corporate surety bail bondsman is contractually liable to the surety insurance company. If a defendant does not show up for a hearing, the corporate surety bail bondsman is responsible to pay the bail amount (*i.e.*, $50,000) because the corporate surety bail bondsman signed the bail bond. Liability of the corporate

surety bail bondman to the State is limited to the full face value of the bail bond (*i.e.*, $50,000). In turn, the corporate surety bail bondsman will attempt to collect the money from the other co-signor. Additionally, because the co-signor of the bail bond is often a friend or family member of the defendant, there is a strong deterrent against the defendant missing a court date.

Another unique aspect of corporate surety bail bonds is the apparent lack of competitive pricing. For example, a consumer who thinks he or she is being charged too much for auto insurance may look to another auto insurance company for a cheaper rate. This is not a possibility for defendants using the services of a corporate surety bail bondsman. As noted above, the corporate surety bail bondsman generally charges a 10% premium, an industry standard. However, because some consumers are unable to pay the entire 10% premium up front, a corporate surety bail bondsman may finance the premium by allowing the consumer to make installment payments. This practice often amounts to a marketing tool for corporate surety bail bondsmen. In an industry where the premiums are the same, a corporate surety bail bondsman is able to draw business in by advertising premium down payments as low as 1%. This enables a defendant who has been granted bail for $50,000 to pay as little as $500 to post bail. Some members of the Judiciary have expressed concern over the release of defendants for such a little initial amount of money. According to MIA, abuse of bail bond financing, such as not charging the entire 10% premium, is among the greatest issue facing the industry.

Failure to Appear and Forfeitures of Bail Bonds

If a defendant fails to appear in court as required, the court will order the forfeiture of the bail bond and issue a warrant for the defendant's arrest. If the defendant or surety (bail bondsman) can show that there were reasonable grounds for the failure to appear, a judge may strike the forfeiture in whole or in part. Where a surety executed the bail bond with the defendant, the surety has 90 days to satisfy the bail bond by either producing the defendant or by paying the penalty amount of the bail bond. The court may extend this period to 180 days for good cause shown.

If the surety does not satisfy the forfeiture within the court allotted time period, the clerk of the court must enter the forfeiture as a judgment in favor of the governmental entity entitled by statute to receive the forfeiture (usually the jurisdiction where the offense occurred) and against the defendant and the surety.[6] The judgment is for the full penalty amount of the bail bond with interest and costs. Interest on the penalty is calculated at an annual rate of 10% dating back to the date of forfeiture.

Should the defendant be produced subsequent to forfeiture of the bail bond, the surety may seek a refund of any penalty paid, less expenses incurred by the State in apprehending the

[6] If a corporate surety bail bond is forfeited, the judgment is entered against the defendant and the surety insurance company, not the corporate surety bail bondsman. However, due to the business relationship between the bondsman and the surety insurance company, the corporate surety bondsman is contractually liable to the surety insurance company for the full amount of the bond.

defendant. Effective October 1, 2011, this right of remission only exists if the surety paid the forfeiture within the time limit prescribed by the court, unless the surety can prove that the defendant was incarcerated outside of the State when the judgment of forfeiture was entered and the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity. If a surety appeals a forfeiture, but does not pay the forfeiture in the time allotted, and loses the appeal, the surety must pay the forfeiture and loses its right to remission. Remission of a forfeited bail bond may occur within 10 years after the date the bail bond was posted.

Every quarter, the chief clerk of the District Court compiles and distributes a *List of Absolute Bond Forfeitures in Default* for each surety insurance company. This list contains all bail bond forfeitures that have ripened into judgments and remain unpaid or unsatisfied in the District Court and the circuit courts. The list is distributed to each surety insurance company. If a surety insurance company is on the list, the surety insurance company must produce documentation that the forfeitures have been paid or stricken by the court within a certain number of days. If a surety insurance company fails to satisfy all of the outstanding forfeitures on its list, the surety insurance company and all of its agents (the corporate surety bail bondsmen who write bail bonds on behalf of the surety insurance company) are precluded from writing any business in the State until all of the forfeitures have been satisfied, with the exception of forfeitures that have been appealed. **Exhibit 1** contains information on forfeiture related activity in the District Court during calendar 2010.

Exhibit 1
Forfeiture-related Activity in the District Court
Calendar 2010

Total Bail Bond Forfeitures (criminal and traffic)	$36,302,902
Total Bail Bond Forfeitures Satisfied (surety surrendered defendant, surety paid forfeiture, defendant sentenced/tried, bail bond revoked by judge, defendant served bench warrant, forfeiture stricken, *etc.*)	$34,276,902
Total Collections (includes forfeitures that were not satisfied during the 90/180 day statutory time period, reached the civil judgment/lien phase, and were eventually paid)	$1,728,216.22
Total Open Forfeitures (forfeitures that have not been paid but do not fit into the categories listed above)	$297,783.78

Source: District Court of Maryland

The bail bond is discharged and the collateral is returned when all charges in the case have been disposed of by *nolle prosequi*, dismissal, acquittal, probation before judgment, or final judgment of conviction, or if the charges are placed on the stet docket. For a flowchart of the bail process in Maryland, see **Exhibit 2.**

Recent Efforts to Reform the Bail Process and/or the Bail Bonds System

Bail System Task Force – Recommendations Lead to 2008 Legislation

By an administrative order dated October 23, 2003, the Chief Judge of the Court of Appeals created a Bail System Task Force to consider the recommendations for changes to the bail bond system in the circuit courts and the Maryland District Court, made by internal auditors who expressed concern that the current laws, practices, and procedures governing the bail system may not be effective. The recommendations of the audit were as follows:

- eliminate differences between District Court and circuit court and among the circuit courts;

- move toward a unified system with access to comprehensive bail bond information by all Judiciary personnel involved in the bail bond process and provide training;

- create a central bail bond commissioner for the Judiciary to implement and facilitate practices and to track and monitor bail bonds Judiciary-wide;

- register/license professional property bail bondsmen; maintain information regarding net equity available on registered properties; create rules regarding accommodation sureties on property bail bonds to ensure collateral is worth the required amount, including (1) verification of ownership, value, and encumbrances; (2) confirmation of net equity and notification to chief administrative judge if collateral is insufficient; and (3) maintenance of information on accommodation sureties' outstanding property bail bonds in system;

- provide effective notice of the State's interest in property that has been used as collateral for bail bonds; record Declarations of Trust (accommodation sureties); record Deeds of Trust for registered properties of professional property bail bondsmen;

- establish procedures for timely release of bail bonds that have been satisfied and forfeitures that have been stricken; update bail bond system, land records, and civil judgment index;

- establish specified requirements for filing of judgments; and

- address "10 year" provision at Rule 4-217(j) and how this will apply to property bail bonds that have been forfeited and judgment enforced (*i.e.* property sold) and provide guidance for Judiciary personnel in rules or procedures.

The first draft report of the task force was issued on June 21, 2004, and included proposed draft legislation and proposed changes to the Maryland Rules. The draft legislation was not introduced, and the recommended changes to the rules were not made. On November 11, 2007, a revised version of the draft report was issued, with a final version of the report issued on December 13, 2007. There was one dissenting opinion written and issued by one member of the task force (discussed below).

The task force final report made seven recommendations:

1. There should be statewide licensure of property bail bondsmen by MIA, comparable to licensure of other sureties (corporate surety bail bondsmen).

2. Standard procedures for acceptance and processing of bail bonds should be formulated for all courts.

3. A comprehensive, unified system of bail bond information should be accessible to Judiciary personnel involved in the bail bond process.

4. Each of the eight judicial circuits should have a bail bond commissioner position modeled on the Seventh Circuit's position.

5. Effective notice of the State's interest in collateral depends upon recordation of Declarations of Trust or Deeds of Trust and prompt release on discharge of a bail bond.

6. Court personnel, the Attorney General, and MIA should coordinate to ensure effective enforcement of the laws governing the bail system.

7. The Chief Judge of the Court of Appeals, in conjunction with the Maryland Insurance Commissioner, should form an advisory committee to afford coordination in implementation of the recommendations in this report.

Task force member Brian J. Frank, President of Lexington National Insurance Corporation, a surety insurance company that underwrites bail, issued the one dissenting opinion. While Mr. Frank believed that recommendations 2, 3, 5, 6, and 7 should be adopted, he was opposed to recommendations 1 and 4. Mr. Frank's dissent was based on opinions that:

- recommendations 1 and 4 would be too expensive ("several million dollars");

- property bondsmen are not comparable to surety insurance companies;

- property bondsmen should be phased out; and

- separate bail bond commissioners would not provide consistency or efficiency.

Mr. Frank also challenged the task force report on three other grounds: (1) the proposed legislation would be drafted by MIA and was not available prior to the vote on it by the task force; (2) there was a failure to give due consideration to any changes in circumstances that may have occurred during the "three-year hiatus" of the task force; and (3) there was not a quorum of the task force present when the vote to accept the report was made.

Based on the task force report, during the 2008 legislative session, House Bill 1453 (Bail Bonds - Bail and Bail Bondsmen - Licensure and Regulation) was introduced as a departmental bill from MIA. The bill offered several changes to the bail system by requiring the licensure of property bail bondsmen by MIA and the appointment of a bail bond commissioner for each of the judicial circuits. The bill would have also repealed specific public local laws and established that any other laws inconsistent with the bill would be repealed to the extent of the inconsistency. The bill was to take effect January 1, 2009, but received an unfavorable report from the House Judiciary Committee.

After the bill's failure, the Chief Judge, by administrative order in July 2008, disbanded the task force as well as an advisory committee that had been established in March 2008 to assist in the implementation of the bill's provisions and other recommendations by the task force. To date, no further action on the bail bonds system has been taken by the Judiciary.

Legality of Installment Payments for Corporate Surety Bail Bonds

Accepting installment payments for a corporate surety bail bond was the subject of *Insurance Commissioner for the State v. Engelman,* a 1997 Maryland Court of Appeals case. In *Engelman*, the court held that a corporate surety bail bondsman is not prohibited from accepting promissory notes or other types of credit arrangements, with or without interest. MIA had alleged that by failing to collect the entire amount of surety bond premiums (10%) at the time the bail bonds were written Engleman, a corporate surety bail bondsman, had violated several provisions of the Insurance Article. (At the time of the decision, the relevant statutes were found at Article 48A, §§ 226(a), 230(b), and 242(e); however, the statutes are now located at Insurance Article §§ 27-212 and 27-216(b)(1).) The provisions in question prohibit insurance rebates and the collection of an insurance premium different than the rate filed with the Insurance Commissioner. The court reasoned that there was no violation as long as a corporate surety bail bondsman attempts to collect the unpaid portion of the premiums. In other words, the statutes require that a corporate surety bail bondsman collects the approved rate filing but not the method of collecting a premium.

While the court's decision solidified a corporate surety bail bondman's ability to setup installment payments, by basing its opinion on the assumption that the corporate surety bail bondsman "used every effort to collect the balances due under the notes," it made clear a

corporate surety bail bondsman must make attempts to collect the entire amount of the premium to avoid violating the provisions of the Insurance Article. Unfortunately, a corporate surety bail bondsman does not always make legitimate attempts to collect the remaining portion of the premium. Industry competition has created a situation where corporate surety bail bondsmen make under-the-table deals with defendants where it is agreed upon that the defendant only pay a portion of the 10% premium. The corporate surety bail bondsman then fabricates a paper trail to indicate the establishment of an installment contract. The corporate surety bail bondsman makes a lower percentage than he or she normally would but the practice provides for a competitive edge which allows for greater volume to counteract the lower collected premium. This greater volume also allows the corporate surety bail bondsman to negotiate a lower percentage of premium paid to the surety insurance company. This is a clear violation of the Insurance Article's antirebate statute and the requirement that a surety insurance company's premium equals the percentage rate filed with the Insurance Commissioner. With the knowledge that this practice occurs and is a violation of law, the issue stops being one of statute interpretation and becomes one of enforcement.

Other States

Maryland is not the only state where corporate surety bail bond financing has become an issue. Several other states attempted to address the issue in their 2011 and 2012 legislative sessions. A string of domestic violence incidents involving defendants able to secure bail with as little as no money down paid to bail bondsmen led Connecticut legislators to reform the state's bail bond process. The Connecticut law, Public Act No. 11-45, requires that a corporate surety bail bondsman provide a monthly certification, under oath, that the premium charged for each bail bond matches the approved premium rate approved by the insurance commissioner, an annual certification listing the total amount of bail bonds executed and the total amount of premiums collected in the preceding year. Perhaps more importantly, the Connecticut law requires that a corporate surety bail bondsman collect at least 35% of the premium when collecting a down payment and requires that the corporate surety bail bondsman file a civil court action seeking appropriate relief if the remaining portion is not paid within 75 days of its due date. The requirement to file a civil action provides a bright line for the Connecticut Insurance Administration in enforcing the collection of the total premium.

In 2011, Arkansas legislators considered two bills regarding corporate surety bail bond financing. One explicitly allowed the acceptance of installment payments on the premium (HB 1246) while the other (HB 2169) explicitly forbade it. A joint committee will study the issue this interim. The next regular session for the Arkansas General Assembly is in 2013.

Finally, a failed Idaho bill introduced in both 2011 and 2012 would have required bondsmen to collect the entire 10% bail bond premium upon a defendant's release. However, the bill did not prohibit third parties from providing financing. According to the bill's fiscal note, the bill's intent was to "require bail agents to compete on the basis of service as opposed to which bail agent can get a defendant released for the least up front expenditure and improve the professionalism of bail agents by prohibiting the marketing message of 'get out of jail free'."

Maryland

Currently in Maryland, a corporate surety bail bondsman must "maintain records of all bail bonds executed, in sufficient detail to enable the Insurance Commissioner to obtain all necessary information concerning each transaction." The corporate surety bail bondsman must make these records available for inspection by the Insurance Commissioner for at least one year after the end of the surety liability. (COMAR 31.03.05.08(A)) The difficulty lies in proving that a corporate surety bail bondsman did not make legitimate attempts to collect any unpaid portion of the premium.

Chapters 243 and 244 of 2012 specifically authorize corporate surety bail bondsmen to accept installment payments on the premium. In the event of an installment agreement, the statute requires a corporate surety bail bondsman to include specified information in an installment agreement; secure a signed affidavit of surety by the defendant and provide it to the court; take all necessary steps to collect the total amount owed; keep and maintain records of all collection attempts, installment agreements, and affidavits of surety; and certify to the Insurance Commissioner the veracity of these records. The bills are effective October 1, 2012.

Conclusion

It is no surprise that the bail process and the bail bond industry are complicated given the number of factors a court must consider when deciding if a defendant merits pretrial release with or without bail, the number of criminal defendants that pass through the judicial system each year, and the number and variety of transactions involved in processing bail for criminal defendants.

While recent efforts have been made to address concerns regarding the bail process and bail bond industry, it is unclear at this time as to what, if any, efforts will be made in the future.

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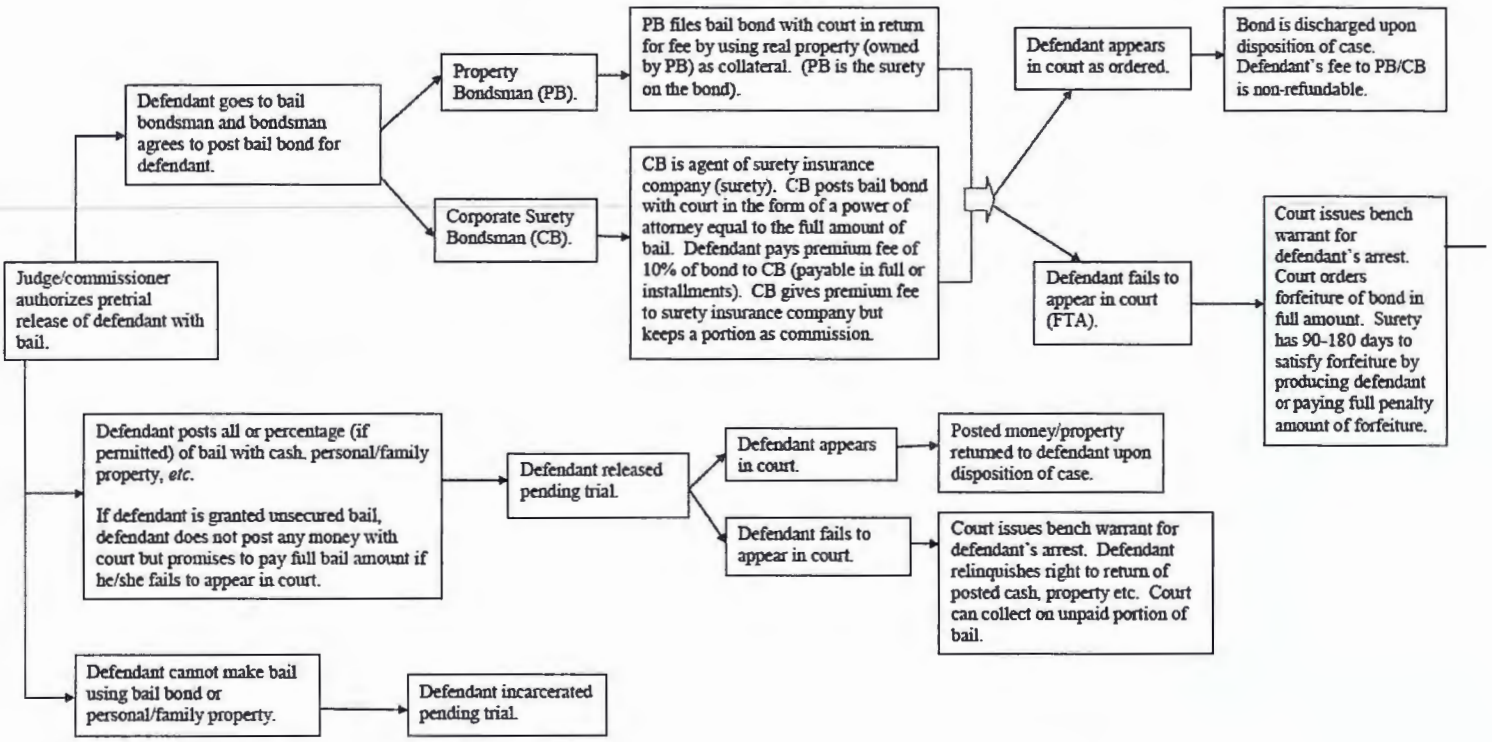
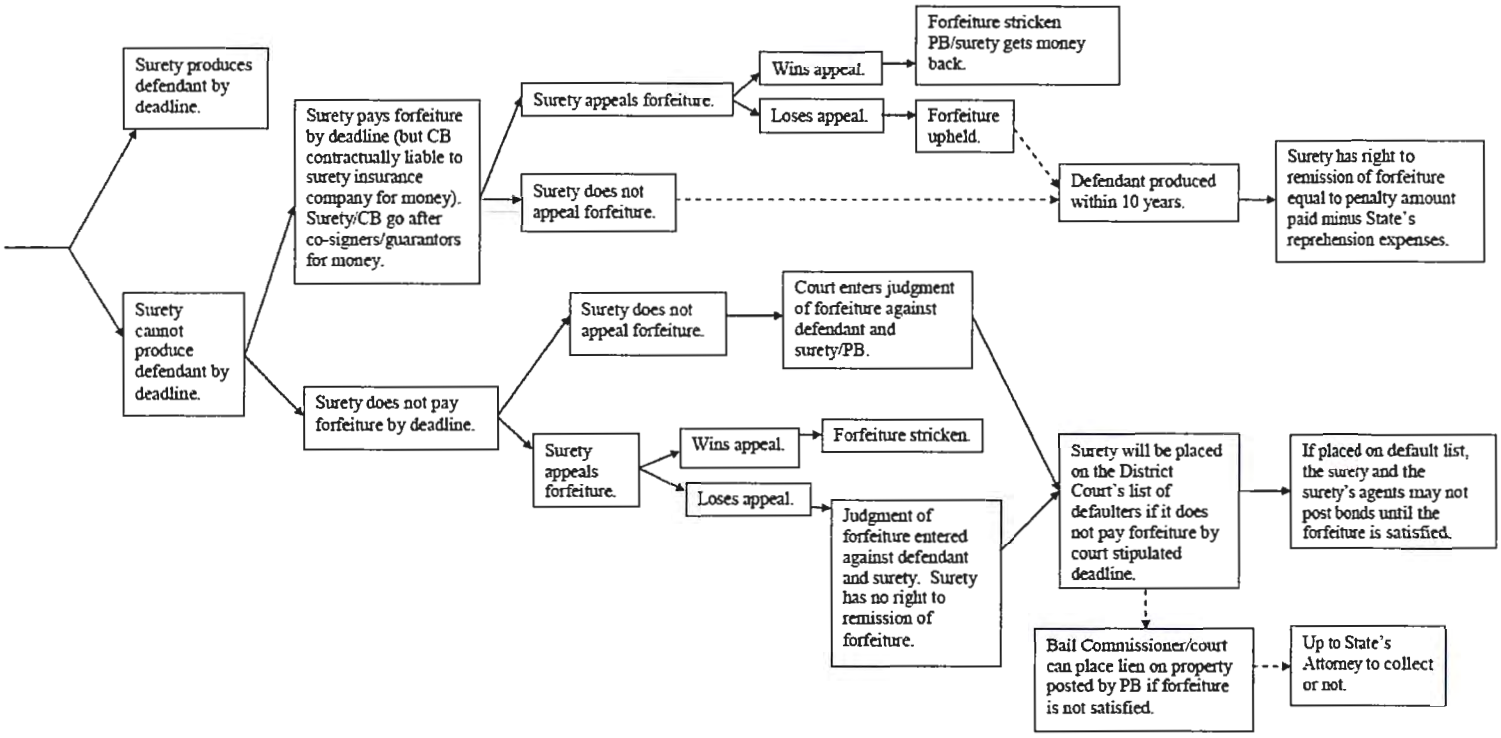
Exhibit 2
The Bail Process in Maryland



Note: Flow chart continues on next page.



Source: Department of Legislative Services