



## CB03 Bail Reform or Bail Elimination: A Historical Perspective and Case Analysis

*Patricia C. Smith, MSL\*, Harris County District Attorney's Office, Houston, TX 77002; Betsy Adelizzi, PhD\*, Fulshear, TX 77441*

**Learning Overview:** The goal of this presentation is to create an open and honest dialogue about the criminal justice system and those taxed with the responsibility of ensuring a fair and just system through inclusion, diversity, and public safety in mind.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by reminding all attendees of their role in making positive and effective changes to the criminal justice system by focusing on inclusion, public safety, and fairness to all parties through collaborative research and practice with multiple disciplines.

The bail system has been around for hundreds of years. Criminal justice was a “largely private, often brutal affair. Family members were expected to avenge their murdered kin. Any private citizen could kill an offender sentenced to “outlawry.”<sup>1</sup> Anyone caught in the act of committing a crime could be summarily executed.”<sup>1</sup> Gradually, personal blood feuds were exchanged for financial compensation to the victims by the offenders. There was a transition to a court-controlled justice system where ensuring appearances became a priority.

The offenders were tasked with finding another person to serve as a surety for the accused crime. However, the Industrial Revolution brought about more movement. Sureties were often family members or friends of the accused. Increased travel made locating sureties more challenging and created an incentive to flee the jurisdiction during trial or prior to verdict. In 1898, England passed the Bail Act to replace the previously required personal surety.<sup>2</sup> England proposed the Bail Act would be a more effective method of ensuring court appearances and curtail recidivism.

The United States did not initially enact bail legislation; instead, it produced the first commercial bondsmen. Bail bonds became a lucrative business and quickly sparked interest across the country. Many courts were requiring bail to be paid in full as a condition of release.<sup>2</sup> Offenders reached out to bondsmen who paid the bail in exchange for interest and full repayment. The courts continued to increase the use of cash bail; more people became reliant on bondsmen. This quickly became about money and less about ensuring appearances at future court dates.

The American Criminal Justice System, under the guidance of the Eighth Amendment Bail Clause, continue to evolve its bail system by adding different types of bonds.<sup>3</sup> The most common bonds are Surety Bonds, Personal Bonds, and Cash Bonds. Additionally, there are Cash percentage of Bond and General Order Bond. Most states utilize at least one of the previously mentioned bonds.

A Surety Bond is a promise by a bail bond company/agent to pay one party a certain amount if the second party fails to meet the obligation(s); the surety bond protects the obligee against losses resulting from the defendant's failure to appear and typically requires a non-refundable fee (usually 10%).<sup>4</sup>

A Personal Bond (Own Recognizance) is no money down and the person must agree to appear at future court dates. Personal Bonds are typically used for minor offenses and offenses where there is little to no threat to the public. A General Order Bond is treated the same.

A Cash Bond is paid in its entirety. A Cash Bond is where payment of the entire amount of the bond is given to the court clerk. The money can be returned at the end of the case if the defendant does not violate his/her bail agreement.

A Cash percentage of Bond is like a Cash Bond, but only 10% of the bond is given to the court clerk. Money will be returned after disposition/end of case/trial unless the person violates their bond conditions. Should the defendant violate the bail agreement, the State can seize property that will cover the entire amount.<sup>5</sup>

The individual states have evolved to the point of modifying, if not arguably eliminating, their state's bail system based on politics and capitalism. This presentation will review California's, Texas', South Carolina's, and New York's previous bail system, including comparing their current changes. This presentation will discuss specific Harris County cases and engage the audience through polling.

### Reference(s):

1. Seibler, John-Michael and Jason Snead. The History of Cash Bail. *The Heritage Foundation*, August 25, 2017. <https://heritage.org>.
2. Jackson, Angel. The Evolution of Money Bail Throughout History. *W. Haywood Burns Institute*, April 18, 2016. <https://burnsinstitute.org>.
3. U.S. Const. art. VIII.
4. McCullough, Jolie. Harris County Agreed to Reform Bail Practices that Keep Poor People in Jail. Will it Influence Other Texas Counties? *Texas Tribune*, July 31, 2019. <https://www.texastribune.org>.
5. Morrell, Jane. 4 Types of Bail Bonds in Rock Hill, South Carolina. Accessed May 28, 2020. <https://www.mlblaw.com/blog/types-bail-bonds/>.

### Bail, Bail Reform, Bail Elimination