

# **Privatizing Probation and Parole**

**by**

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## Executive Summary

One out of fifty adults free on the streets today is a convicted criminal released on probation or parole. That's 4.1 million people "under government supervision," and a majority are convicted felons. Some 50,000 government bureaucrats supervise these probationers and parolees.

The probation and parole systems have many problems, especially the fact that many of those released commit loathsome crimes.

- Criminals under government supervision commit 15 murders a day.
- Nearly four out of 10 people arrested for a felony crime are already out on probation, parole or pretrial release from a prior conviction or arrest.
- One in 10 probationers and parolees "abscond."

This year state and federal prisons will release 600,000 convicts, 38 percent more than in 1990, because of the enormous increase in the prison population over the last decade. Most are released on parole or other supervision because they have not served their full sentence.

The probation and parole systems could be made more effective and efficient by enlisting the private sector. Those released on probation (nonincarceration) or released early from prison could be required to post a financial bond guaranteeing behavior in accord with terms of the release. If individual accountability is the answer to crime, then it must include the most powerful kind of accountability: financial responsibility.

How would this work? It would simply transfer the successful commercial principles of our bail system to the probation and parole systems. In accord with our civil liberties, the criminal justice system allows most people who are arrested and charged with a crime to be released on bail pending trial. Bail operates on the principle that the accused can go free once he guarantees his presence in court on a certain date by posting a significant sum of money. If he shows up, he gets his money back; if he doesn't, he suffers a major financial loss.

Since many defendants do not have the money, the market provides the professional bail bondsman, or bail agent. If the bail agent is willing, he posts the entire bond in exchange for a fee, customarily 10 percent of the total bond. The bail agent loses the bond amount if the defendant fails to show up in court.

The private bail system works well, especially compared to public pretrial release programs ("free bonds") which have twice the failure-to-appear-in-court rates, fugitive rates and arrest rates of surety bond releases. Bail improves pretrial release behavior at no expense to taxpayers, and thus plays a key role in seeing that justice is done.

A bonding system promises to do the same for postconviction behavior. Harris county (Houston), Texas, operates a blended system of commercial bond posting and public supervision for pretrial releases with very good results, judging by a major drop in bench warrants issued for absconding. This amounts to partial privatization or contracting out an aspect of pretrial supervision to the private sector.

Organizations like the National Association of Bail Insurance Companies and the American Legislative Exchange Council, a national bipartisan group of conservative legislators, have pressed the idea that financially secured postconviction release works far better than unsecured release, and have formed alliances with law enforcement groups. Active opposition consists of parole and probation agencies, who fear invasion of their turf. But the promise of superior performance in reducing crime at lower taxpayer cost has strong appeal.

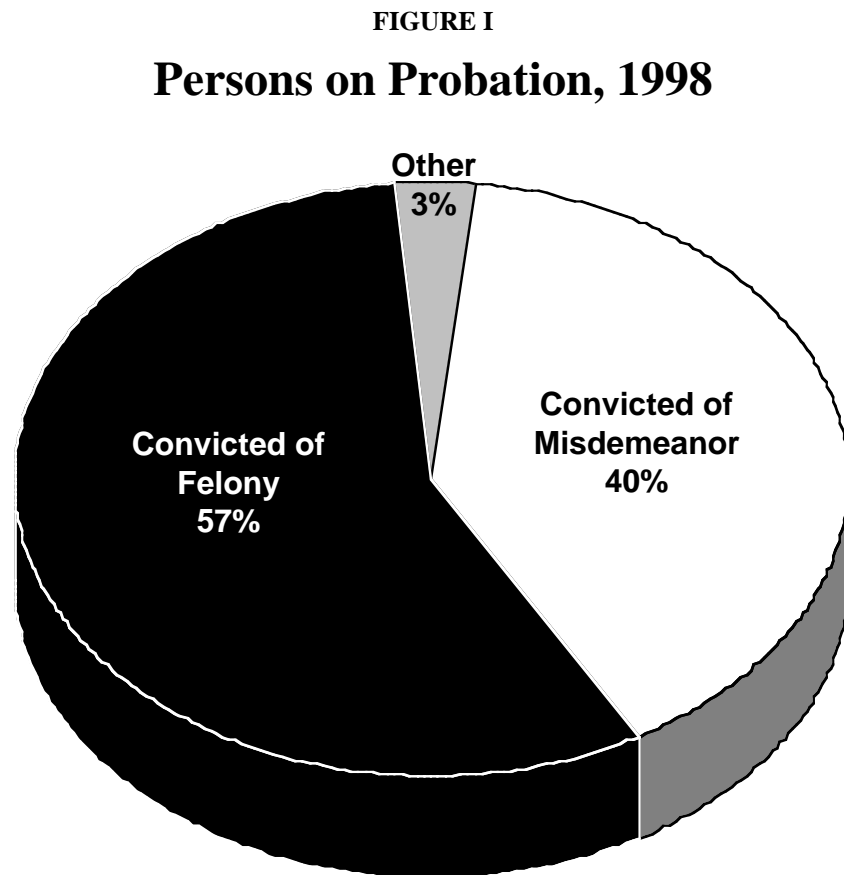
Thus far no bond for probation or parole has been written. Yet legislators are disgusted with the disrespect for the unsecured probation and parole system displayed by criminals. Bonding and the implied partial or complete privatization of postrelease supervision is a good idea whose time may be near.

## The Failing Probation and Parole System

At the end of 1998 (the latest year for which statistics are available), more than 4.1 million people in the United States were under the supervision of the criminal justice system, yet free on the streets — 3.4 million on probation and 705,000 on parole.<sup>1</sup> That's one in 50 adults. As Figure I shows, of those convicted and released to straight probation (nonincarceration), 57 percent were convicted of a felony crime (punishable by one year or more in prison), 40 percent of misdemeanors and the remaining 3 percent of other infractions. As for parole, more than four of every five prisoners are released short of serving their full sentences in favor of some form of "community supervision." A large public bureaucracy of probation and parole officers — 50,000 probation officers alone — is responsible for supervising these offenders.

**Criminals Commit New Crimes.** There are major problems with the performance of the current probation and parole systems. Many of those on probation or parole commit new crimes, some brutal and highly publicized. For example:

*"More than 4.1 million people are under the supervision of the criminal justice system, but free on the streets."*



Source: U.S. Bureau of Justice Statistics.

*“Thirty-six percent of persons arrested for felony crimes are already on probation, parole or pretrial release.”*

- Kenneth McDuff, a rapist and multiple killer from Texas whose death sentence was commuted to life imprisonment, was paroled—and shortly raped and murdered another woman.
- A California parolee abducted and murdered 12-year-old Polly Klaas in a case that drew national attention.
- In Florida, Louis Brooks served six years of a 15-year sentence for rape, then was paroled and returned to rape the same elderly woman in her home.
- One killer of former basketball star Michael Jordan’s father was a parolee, and his accomplice was under indictment.
- While on probation, Buford Furrow killed a Filipino letter carrier and wounded five people when he opened fire on a Jewish day-care center in Los Angeles.

In Furrow’s case, a judge in Washington state had ordered that he give up his guns, but the probation officer never checked to make sure he had done so. Nor did the officer ever make any of the recommended visits to Furrow’s home.<sup>2</sup>

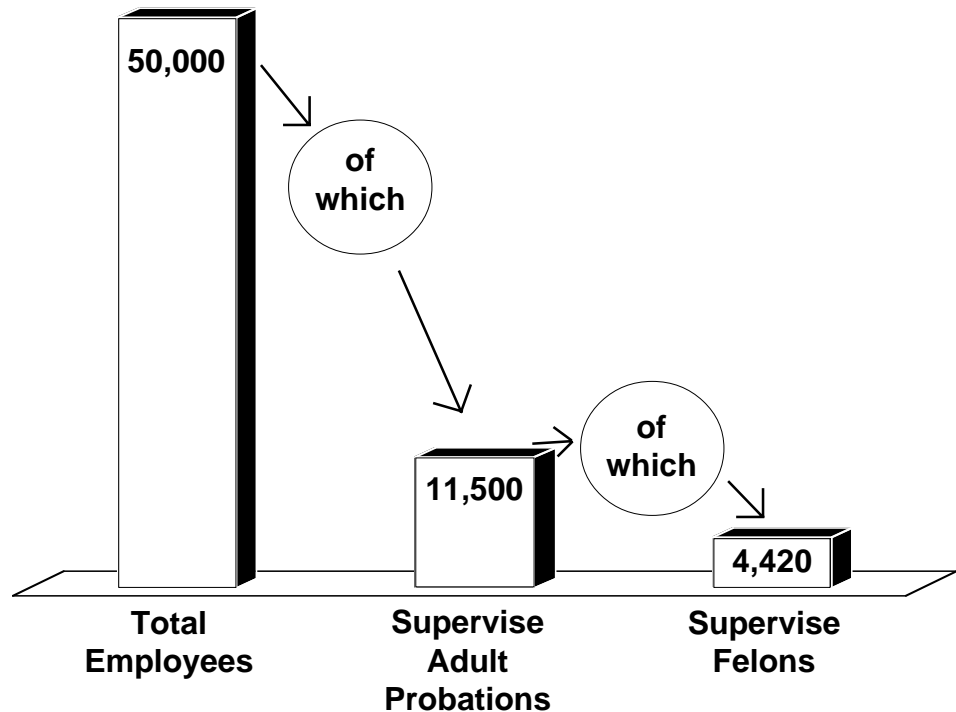
This is par for the course, according to a recent comprehensive study by the Manhattan Institute, a product of two years’ work by 14 experienced practitioners in the field, including leaders of the two industry associations.<sup>3</sup> Other data tell much the same story.

- Thirty-six percent of persons arrested for felony crimes are already on probation, parole or pretrial release.<sup>4</sup>
- A summary of 17 follow-up studies of adult felony probationers found that felony rearrest rates ranged from 12 to 65 percent.<sup>5</sup>
- More than 10 percent of those convicted of murder in Virginia from 1990 to 1993 were on probation at the time they killed.
- Nationwide, probationers convicted in 1991 were responsible for at least 6,400 murders, 7,400 rapes, 10,400 assaults and 17,000 robberies.<sup>6</sup>

Violators of parole and conditional release made up 206,000 of the 565,000 admissions to state prisons in 1998.<sup>7</sup> Even those who complete parole and conditional release supervision (“discharge”) return to prison or jail at the rate of 42 percent.<sup>8</sup> As worldnetdaily.com editor Joseph Farah points out, criminals under government supervision commit 15 murders a day.<sup>9</sup>

**Little Supervision.** In the probation bureaucracy of 50,000, only an estimated 11,500 directly supervise adult probationers, according to the *National Institute for Justice Journal*, producing an average caseload of 258 adult

**FIGURE II**  
**Makeup of the Probation Bureaucracy**



Source: *National Institute for Justice Journal*; and Michael Hotra, "Missing Persons: Most Probation Officers Aren't Watching Criminals," American Legislative Exchange Council, F.Y.I., May 22, 1998.

"Of 50,000 employees in the probation bureaucracy, only 4,420 supervise felons."

offenders versus an "ideal caseload" of 30.<sup>10</sup> Another study calculates that only 4,420 of these officers supervise felons, an average caseload of 337.<sup>11</sup> [See Figure II.]

Clearly, probation officers have more cases than they can effectively handle and relatively few incentives to perform energetically and efficiently.

- In nearly 70 percent of cases, probation officers do not make "collateral contact" to verify such things as employment or attendance in drug treatment programs.<sup>12</sup>
- At any one time, 1 in 10 adult probationers cannot be located because they have absconded.<sup>13</sup>

There have been relatively few scientific studies of the impact of probation on probationers. An estimated 43 percent of felony probationers and 62 percent of parolees are rearrested within three years, and the risk of arrest is highest in the first year.<sup>14</sup> More intensive forms of supervision have no differential impact on rearrests compared to ordinary probation, although probation appears to reduce criminal activities compared to prearrest periods when

not on probation.<sup>15</sup> Unfortunately, this impact reflects lower property and drug-dealing crimes, not reductions in violent crime.<sup>16</sup>

Similar problems affect the parole system. Not only are there too few officers to monitor parolees but parole boards are often forced to parole criminals to alleviate shortages of prison beds rather than decide which criminals are truly ready for a return to community life.<sup>17</sup> In 2000 nearly 600,000 state and federal prisoners will be released, a 38 percent boost over 1990, and four of five will be on parole or other conditional release.<sup>18</sup>

We can make the probation and parole systems more effective and efficient by turning to the private sector. Privatization is not a radical concept; it would involve little more than transferring the principles of the commercial bail bonding system, used successfully for criminal defendants, to those found guilty of crimes but eligible for early release on probation or parole.<sup>19</sup>

## How Bail Works

In accord with our civil liberties, the American criminal justice system allows most people who are arrested and charged with a crime to be released on bail pending trial.<sup>20</sup> Bail operates on the principle that the criminally accused will be freed from jail once he guarantees his presence in court on a certain date by posting a significant sum of money. If he shows up, he gets his money back; if he doesn't, he suffers a major financial loss. Since most criminal defendants do not have enough money to post the full amount, the market provides the professional bail bondsman, or bail agent. If the bail agent is willing, he posts the entire bond in exchange for a fee, customarily 10 percent of the total bond. The bail agent loses all of the bond and usually his 10 percent commission if the defendant fails to show up in court.

**Financial Incentives.** The private bail agent can stay in business only if the vast majority of his clients show up in court — 95 percent is the industry's break-even rule of thumb. Uncounted numbers of agents have gone broke because they failed to run their bonding business as a business. Surviving private bail agents are thus very efficient at ensuring the appearance of their clients — at no cost to the taxpayers. Frank Callahan, a bail agent in New Jersey, says, "I lose 100 percent of my profit if the guy jumps bail. That's a real incentive for me to monitor my people."<sup>21</sup> Bail bondsmen expend a great deal of energy and ingenuity in getting their defendants to court. Usually bondsmen require a cosigner for the defendant's bond, typically a family member. Callahan says, "I try to get Mom and Dad on the hook." With family members' property at risk, the odds improve that the defendant will come to court. If he is a no-show, his family as well as the bondsman lose a lot of money.

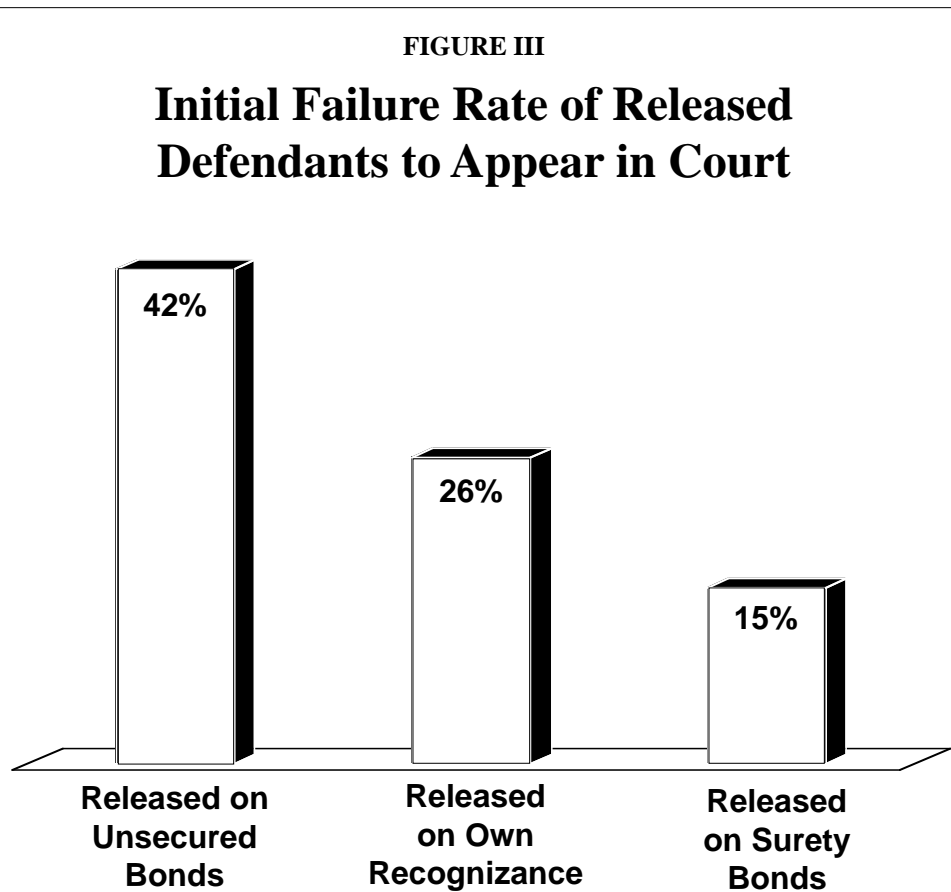
*"Private bail agents can stay in business only if the vast majority of their clients show up in court."*

**Bounty Hunters and Fugitives.** Another significant reason why private bail works is the use of bounty hunters, or “bail enforcement agents,” to recover fugitives. Most work part-time because their primary business is bail bondsman or private investigator. Every state requires that they be licensed and regulated. In a majority of cases, bounty hunters directly apprehend fugitives. In the remaining cases, they locate and identify fugitives and let the police make the arrests. They are driven by a powerful incentive: they receive no compensation unless fugitives are returned to the court. Bounty hunters generally earn between \$20,000 and \$30,000 a year (at \$1,000 to \$2,000 per fugitive recovered) for their part-time efforts.

**Comparing the Private and Public Systems.** On the whole, the private bail bonding system seems to work well, especially compared with public pretrial release programs (discussed below).

- As Figure III shows, only 15 percent of felony defendants released on surety bonds initially failed to appear in court, compared to 26 percent of those released on their own recognizance and 42 percent released on unsecured bonds, according to a 1992 Department of Justice study of the nation’s 75 largest counties.<sup>22</sup>

*“Only 15 percent of felony defendants on surety bonds initially failed to appear in court.”*



Source: U.S. Bureau of Justice Statistics, “Pretrial Release of Felony Defendants, 1992,” NCJ-148818, November 1994.

- Only 3 percent of defendants released on surety bonds are fugitives at the end of one year, compared to 9 percent for recognizance releases and 19 percent for unsecured bond releases.<sup>23</sup> (One study claimed that private bail agents have a 0.8 percent fugitive rate versus 8.0 percent for unsecured public releases.<sup>24</sup>)
- Felony defendants released on surety bonds had a 9 percent rearrest rate during their release compared to 15 percent for recognizance releases and 16 percent for those on unsecured bonds.<sup>25</sup>

The difference in privately secured release and public release persists despite a considerable advantage that pretrial service agencies have. The pretrial service agencies get first crack at recommending the release of the most eligible defendants (“cream skimming”) while bail bondsmen must deal with the remainder. The government bail system is administered by pretrial release bureaus, usually funded by county governments, that traditionally are subdivisions of state government but have significant local autonomy; the system operates alongside and in competition with commercial bail bonding. PTR staff members are government employees who interview defendants and recommend to judges whether they should be released. In this public system, defendants rarely post any kind of monetary bond and are usually released on their own recognizance. Under these “free bonds,” the defendant simply promises the judge that he or she will appear in court. As a result, the accused has little or nothing to lose if he or she fails to appear; accordingly, no-show and fugitive rates are far higher than under surety bonds or under the commercial bail system.<sup>26</sup>

A 1995 analysis of pretrial release data for Los Angeles, San Diego and San Francisco counties found that defendants released on surety bonds are accused of three times as many violent offenses as those on nonfinancial releases.<sup>27</sup> They were almost twice as likely to have multiple prior violent convictions and by almost any measure were a more violent and criminal population. Presumably, they would be less likely to treat their court appearance obligations seriously, especially since they have more to lose by going through the entire process.

Yet the private bail system did much better at ensuring that defendants appear at required times than the nonfinancial release system. Defendants on nonfinancial releases were twice as likely to fail to appear as those released through a private surety company. Defendants on nonfinancial releases also were 50 percent more likely to remain fugitives for a year or more. For those without a prior record of arrest, nonfinancial releasees were almost five times more likely to fail to appear than surety releasees.<sup>28</sup>

Harris County (Houston), Texas, has experimented with a blended system in which some defendants have been released on a combination of cash or surety bail bond plus supervision by the county’s pretrial services agency.

*“Under ‘free bonds,’ the accused has little or nothing to lose if he or she fails to appear.”*

This blended system seems to have sharply reduced failures to appear in court. From January 1994 to June 1997, the failure-to-appear rate as indicated by warrants issued was 8.5 percent for surety bond releases (8,246 warrants out of 97,176 straight surety bond defendants) but only 2.2 percent for the surety bond combined with pretrial supervision under judicial order (55 warrants issued out of 2,538 defendants).<sup>29</sup>

## Adapting Bail to Probation and Parole

The commercial bail system used for criminal defendants could make the probation and parole systems function better (lower recidivism) and at the same time reduce costs to taxpayers.

Those convicted of crimes but eligible for probation or early release from prison (parole) could be required to post a financial bond against specified violations of the terms of their probation or parole (reporting regularly to their bondsman, submitting to drug tests, and so on).<sup>30</sup> The amount should be set by the courts or parole boards based on the criminal's history, the amount necessary to be a significant inducement to good behavior (which will depend on the criminal's wealth) and the criminal's prospects for a productive, non-criminal life. A typical bond might be \$10,000.<sup>31</sup>

As with bail bonds currently, many criminals would have to seek the help of family and friends to acquire the cosigners and the initial wherewithal to pay the bondsman's fee and receive probation or parole. Another source of funds for parolees would be wages earned while in prison, under a liberalized prison labor system, or paying by installment from wages earned in the free world.<sup>32</sup>

If no intimate of the criminal or any private bondsman cared enough to risk their own money on the candidate for probation or parole, why should the general public risk that person on the streets? Privatizing the probation and parole systems provides a market mechanism for deciding whom to release on probation or parole and whom to continue incarcerating.

There would be no cost to taxpayers under complete privatization. A flat fee of, say, \$500 per year per probationer or parolee for supervision and processing by private bondsmen might be paid privately by the probationer or parolee. Alternatively, the fee might be a percentage of the bond, say 10 percent. Market competition could help to set and adjust these fees over time. There is ample precedent for payment of such fees since a majority of the states already allow local probation departments to collect fees from probationers.<sup>33</sup> Persons violating the terms of their probation or parole would forfeit their bond, generating revenues for the criminal justice system, victim restitution and other uses.

*"If no intimate or any private bondsman will risk money on the criminal, why should the general public risk that person on the streets?"*

**Advantages of Private Bonding.** A voluntary, privately financed market would be a tremendous help to parole boards and courts in separating promising parolees and probationers from the unpromising. A private bonding system would reduce, though probably not eliminate, the need for probation and parole officers on the public payroll. With their own money at risk, relatives and bondsmen would have a serious financial incentive to supervise their charges with care and assure that the fugitive rate would be low.<sup>34</sup> Dropping the absconding or failure-to-appear rates would reduce crime, save the taxpayers money and help restore confidence in the justice system and the rule of law.

Pursuit of those who violate probation or parole would be more effective because, unlike police, bounty hunters have strong incentives to recover fugitives — they get paid only if they get their man.<sup>35</sup> In addition, they can go freely to any jurisdiction and use any lawful means to apprehend a fugitive.<sup>36</sup> The Supreme Court, in an 1872 decision that is still good law, stated that these powers include the right to pursue a fugitive into another state, arrest him at any time and enter a fugitive’s house without a warrant. These powers have been granted to the bail bondsman who guaranteed a defendant’s courtroom appearance, but the bondsman can transfer his power to an agent of his choosing.

**Tentative First Steps in Some States.** Although some states explicitly prohibit private supervision of probationers, there is a trend toward contracting out some aspects of probation supervision to the private sector.<sup>37</sup> In at least 10 states, private agencies are currently responsible for providing primary probation supervision services for misdemeanor or lower-risk felony cases. Since 1987, the American Probation and Parole Association (APPA) has endorsed “private sector services to enhance or supplement supervision and case-work services.”<sup>38</sup> This open-mindedness to private sector involvement in administering probation contrasts sharply with the hostility of the pretrial service agencies.

The exact details of financial bonding for probationers and parolees would remain open to experimentation. Private surety agents could simply perform financial functions and aid in the apprehension of absconders and fugitives. Under this partial privatization arrangement, public agencies would continue to administer the drug testing, electronic monitoring (both tasks usually contracted to private companies anyway) and other conditions of probation and parole, presumably under a reformed system with increased efficiency, similar to the blended pretrial release system operating in Harris County. Alternatively, and more radically, surety agents and other private contractors would be responsible for performing all or most release and supervisory functions in a privatized parole and probation system.

*“There is a trend in at least some states to contract out some aspects of probation supervision to the private sector.”*

## Turf Wars and Resistance to Privatization

Bureaucracies are famously territorial about potential interlopers who might perform a core function they now monopolize. As Robert J. Bosco, director of the Connecticut Office of Adult Probation, says of the trend toward transferring government functions to the private sector, “The field of community corrections generally resists the trend. It is seen as a threat to our jobs and our security...an intrusion...a false promise to reduce crime effectively and efficiently, while also reducing taxpayer cost.”<sup>39</sup>

While the political battle to privatize probation and parole is in its early stages, we might learn from the similar, ongoing battle between the pretrial release (PTR) agencies and the private bail bond industry. An uncounted number of bench warrants for the rearrest of fugitives clog the justice system.<sup>40</sup> Like many public bureaucracies, the National Association of Pretrial Service Agencies (NAPSA) vigorously resists any public accounting for the results of its release recommendations, claiming it would be too expensive to gather the data and that no funding has been provided.<sup>41</sup>

Not surprisingly, NAPSA doesn’t like competition and states in its “performance standards and goals for pretrial release” that “the use of financial conditions of release should be eliminated.”<sup>42</sup> NAPSA also insists that “a presumption in favor of pretrial release on a simple promise to appear should apply to all persons arrested and charged with a crime,” and agencies should “provide direct services to pretrial releasees” and coordinate services with other agencies “for the benefit of pretrial releasees.”<sup>43</sup> Charles E. Noble, the retired executive director of the Harris County, Texas, pretrial services agency and a past vice president of NAPSA, calls NAPSA an organization of “zealots” who refuse to entertain any but their own ideology.<sup>44</sup>

It’s unfortunate that NAPSA focuses all its efforts on releasing criminal suspects without bail and not on the innocent who are all too often the victims of crimes perpetuated by those on release. NAPSA has been aided in its efforts to eliminate commercial bail systems by a substantial number of judges, criminal lawyers and legislators.

- An article by U.S. Judge James G. Carr of the Northern District of Ohio urges all federal courts to eliminate the use of corporate surety bonds, contending that they “fulfill no function and provide no service that cannot otherwise be accomplished within the framework of the [1984] Bail Reform Act.”<sup>45</sup>
- Another bail critic in 1965 asserted that “the bondsman’s few legitimate functions can be filled better by other agencies.”

*“Bureaucracies view privatization as a threat to their jobs, and are generally resistant.”*

- A 1976 study concluded that financial bail “does not perform any useful system function.”
- In 1980 the American Bar Association called for abolition of surety bonds.
- Three states, including Illinois, have eliminated commercial bail bonds and, thus, have removed an option for the accused.<sup>46</sup>

Yet the bail system has proven itself superior to pretrial release and release on one’s own recognizance in ensuring that the accused is properly tried in a court of law. The commercial bail system thus plays a critical role in seeing that justice is done, at no expense to taxpayers.

## Conclusion

Do these political difficulties spell doom for expanding surety bonding into parole and probation? No. At least three factors may help eventually overcome the opposition.

- Because corrections tops all other major categories in rate of spending growth, legislatures are pressing for ways to both improve performance and restrain the growth of public spending.
- The American Legislative Exchange Council, a nationwide bipartisan group of conservative legislators, has drafted model legislation, “Conditional Post Conviction Release Act,” and promoted the idea of privatizing probation and parole to legislatures.<sup>47</sup>
- The surety industry has worked for a decade to persuade legislators that secured release works and that such legislation should pass.

The market is potentially huge. With more than four million people on probation and parole, and a typical post-conviction release bond of \$5,000 or more, the potential bond market exceeds \$20 billion — which means direct revenues to bail agents of over \$2 billion.

Legislation to permit such secured, postconviction release may be closest in California. Key legislators there are receptive, partly because the surety industry has formed an alliance with the sheriffs’ association, judges’ association, prosecutors’ association and police and victim groups.<sup>48</sup>

“Legislators are starting to get it. They are upset with failures to appear and they realize the impact it has on the criminal justice system,” says Terry Fowler, a surety bonding consultant.<sup>49</sup> “They’re fed up, especially with the disrespect for the system, and they understand that secured release works.” Such releases produce fewer crimes committed and more personal accountability. Superior performance at lower taxpayer cost does have political appeal, eventually.

*“Bonds for probation and parole are a good idea whose time is near.”*

The active opposition consists of the parole and probation departments, bolstered by the power of the status quo. The bureaucracy is often unionized, in addition to belonging to the American Parole and Probation Association and sometimes the National Association of Probation Executives. Political clout combined with “expertise” and high motivation to protect turf make such bureaucratic opposition formidable. But in the long run, sound ideas prevail over vested interests, especially bureaucratic interests with little or no public support.

Bonds for probation or parole have yet to be written. But bonds for probation and parole are a good idea whose time may be near. If individual accountability is the answer to crime, then it must include the most powerful kind of accountability: financial responsibility.

NOTE: Nothing written here should be construed as necessarily reflecting the views of the National Center for Policy Analysis or as an attempt to aid or hinder the passage of any bill before Congress.

## Notes

<sup>1</sup> Bureau of Justice Statistics (BJS), Probation and Parole Statistics, at <http://www.ojp.usdoj.gov/bjs/pandp.htm>; and BJS, *Probation and Parole in the United States, 1998*, August 1999, NCJ-178234.

<sup>2</sup> “Reinventing Probation,” *Wall Street Journal*, August 19, 1999, p. A18.

<sup>3</sup> “‘Broken Windows’ Probation: The Next Step in Fighting Crime,” Manhattan Institute, Civic Report No. 7, August 1999, at [http://www.manhattan-institute.org/html/cr\\_7.htm](http://www.manhattan-institute.org/html/cr_7.htm). The report has few statistical facts but recommends “reinventing probation” which “requires leadership committed to enforcing violation warrants, supervising offenders primarily in the community rather than in probation offices, and not directing probation officers to avoid dangerous areas.” Most probation and parole officers fear for their personal safety and support carrying firearms, according to a national survey. Two-thirds of parole and probation agencies permit officers to carry weapons all the time and most permit them to carry for specific duties like making arrests or transporting offenders. See Charles Lindner and Robert Bonn, “Probation Officer Victimization and Fieldwork Practices: Results of a National Study,” *Federal Probation*, 1996, Vol. 60, No. 2, pp. 16-23.

<sup>4</sup> Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 1996*, October 1999, NCJ-176981, p. 8. One in four of those arrested for a serious crime are on probation or parole and 44 percent of criminals in prison were on probation or parole at the time of the conviction offense. See Joan Petersilia, “Probation and Parole,” in *The Handbook of Crime & Punishment*, edited by Michael Tonry, New York: Oxford University Press, 1998, p. 581. In 30 states both adult probation and parole functions are administered by the same state agency or local agencies. See U.S. Department of Justice, National Institute of Corrections, *State Organizational Structures for Delivering Adult Probation Services*, report prepared by LIS, Inc., NIC contractor, June 1999, p. 7. In 16 states, adult and juvenile probation are administered together.

<sup>5</sup> Michael Geerken and Hennessey D. Hayes, “Probation and Parole: Public Risk and the Future of Incarceration Alternatives,” *Criminology*, 1993, Vol. 31, No. 4, pp. 549-64, as cited in Joan Petersilia, “Probation in the United States,” *National Institute of Justice Journal*, September 1997, p. 4.

<sup>6</sup> Almost certainly the number of probationers convicted of a crime understates the number who actually commit crimes. On the last two figures, see “Broken Windows.”

<sup>7</sup> Allen J. Beck, Chief, Bureau of Justice Corrections Statistics, “State and Federal prisoners returning to the community: Findings from the Bureau of Justice Statistics,” presented at the First Reentry Courts Initiative Cluster Meeting, Washington, D.C., April 13, 2000.

<sup>8</sup> Beck, “State and Federal prisoners returning to the community.”

<sup>9</sup> Joseph Farah, “Crime and Punishment,” [worldnetdaily.com](http://worldnetdaily.com), March 30, 2000.

<sup>10</sup> Petersilia, “Probation in the United States,” p. 3.

<sup>11</sup> Michael Hotra, “Missing Persons: Most Probation Officers Aren’t Watching Criminals,” American Legislative Exchange Council, F.Y.I., May 22, 1998, pp. 8-9. More recently, Petersilia claims that “the average adult regular supervision caseload is reported to be 117 to 1” in “Probation and Parole,” p. 579.

<sup>12</sup> Hotra, “Missing Persons” and Petersilia, “Probation in the United States,” pp. 2-8. Only 12 percent of personal contacts between probationers and officers occur in the field, that is, at an offender’s home or at his job. See BJS, *Characteristics of Adults on Probation*, 1995, December 1997, NCJ-164267, p. 8.

<sup>13</sup> BJS, *Probation and Parole in the United States, 1998*. A California sample of 4,047 parolees showed 27 percent absconded. See Frank P. Williams III, Marilyn D. McShane, and H. Michael Dolny, “Predicting Parole Absconders,” *The Prison Journal*, March 2000, Vol. 80, No. 1, p. 36.

<sup>14</sup> Joan Petersilia, “Probation and Parole,” p. 580.

<sup>15</sup> Doris Layton MacKenzie, et.al., “The Impact of Probation on the Criminal Activities of Offenders,” *Journal of Research in Crime and Delinquency*, November 1999, Vol. 36, No. 4, pp. 423-53.

<sup>16</sup> In a study of 107 adult probationers in northern Virginia, only two percent or fewer self-reported crimes resulted in arrest and even fewer in convictions; see MacKenzie, et.al., “The Impact of Probation on the Criminal Activities of Offenders,” p. 446.

<sup>17</sup> Prisoners believe their own disciplinary conduct record is crucial to obtain early release. Ironically, prisoners seem to behave better after a denial of a parole hearing because they believe denials are caused by misconduct. See Jon L. Proctor and Michael Pease, "Parole as Institutional Control: A Test of Specific Deterrence and Offender Misconduct," *The Prison Journal*, March 2000, Vol. 80, No. 1, pp. 39-55.

<sup>18</sup> Beck, "State and Federal Prisoners Returning to the Community."

<sup>19</sup> On the success of the commercial bail bond system and the failure of public pretrial service/release agencies, see Morgan O. Reynolds, "Using the Private Sector to Deter Crime," National Center for Policy Analysis, Policy Report No. 181, March 1994, at <http://www.ncpa.org/studies/s181/s181.html>.

<sup>20</sup> Only 6 percent of felony defendants are denied bail; see BJS, *Felony Defendants in Large Urban Counties, 1996*, p. 21.

<sup>21</sup> John Carlisle, "Criminal Welfare: A Jail Reduction Failure," Policy Insights, April 1992, No. 406, Free Congress Research and Education Foundation, Washington, D.C., pp. 1-2.

<sup>22</sup> U.S. Bureau of Justice Statistics, *Pretrial Release of Felony Defendants, 1992*, November 1994, NCJ-148818, p. 10.

<sup>23</sup> *Ibid.*

<sup>24</sup> Jane Marino Reed and Rhonda Sue Stallings, "Bounty Hunting: The Alternative Justice System," publication of the Professional Bail Agents of the United States, Houston, Texas, August 1992, p. 5.

<sup>25</sup> BJS, *Pretrial Release of Felony Defendants, 1992*. These are the most recent published data available. See Note 41 below for an explanation of the failure to publish more recent data on failure-to-appear and fugitive rates.

<sup>26</sup> Reynolds, "Using the Private Sector to Deter Crime," and BJS, *Pretrial Release of Felony Defendants, 1992*, November 1994, NCJ-148818.

<sup>27</sup> Michael K. Block and Steven J. Twist, "Evidence of a Failed System: A Study of the Performance of Pretrial Release Agencies in California," American Legislative Exchange Council, Washington, D.C., April 1995.

<sup>28</sup> *Ibid.*, p. 22.

<sup>29</sup> Harris County Criminal Courts at Law, Office of Court Management, memorandum from Dennis Potts, Research Analyst, to Charles E. Noble, Director, Harris County Pretrial Services Agency, November 11, 1998. In a telephone interview with the author on December 10, 1999, Charles Noble, director of Harris County pretrial services from 1984-98, said that Harris County was unique in that at least three-fourths of defendants released were out on financial bail, especially the blended, conditional releases that included drug testing and electronic monitoring. No other county has administered these on a mass basis. Private bondsmen cannot administer mandatory drug tests and electronic monitoring, but pretrial service agencies can (usually contracted out to private enterprises).

<sup>30</sup> It was the late bail bondsman Gerald Monks of Houston, Texas, former executive director of the Professional Bail Agents of the United States, who originally brought this idea to my attention.

<sup>31</sup> The Eighth Amendment to the Constitution says, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." About half of those with bail amounts in 1996 had it set at \$10,000 or higher, including one in four at \$25,000 or higher. The median bail was \$10,000 and the mean \$31,000, with the mean for murder defendants with bail set at \$133,000. See Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 1996*, p. 18.

<sup>32</sup> Morgan O. Reynolds, "Factories Behind Bars," National Center for Policy Analysis, Policy Report No. 206, September 1996, at <http://www.ncpa.org/studies/s206/s206.html>; "The Economic Impact of Prison Labor," National Center for Policy Analysis, Brief Analysis No. 245, November 17, 1997, at <http://www.ncpa.org/ba/ba245.html>; and Mark Tatge, "Prison Labor: With Unemployment Low, a New Group Is in Demand: Ex-Cons," *Wall Street Journal*, April 24, 2000, p. A1.

<sup>33</sup> "Making the Offender Foot the Bill: A Texas Program," National Institute of Justice, U.S. Department of Justice, October 1992, NCJ-136839.

<sup>34</sup> All recovery programs recommend support groups to help prevent relapses. Unsecured release separates the criminal from the support group that matters most — his family.

<sup>35</sup> About 35,000 defendants (one in seven) jump commercial bail every year and bounty hunters return four out of five to justice; see *The Economist*, June 19, 1999, p. 18. Bounty hunters, an estimated network of 7,000, are paid approximately 10 percent of the bond value for recovery within a predetermined period of time.

<sup>36</sup> Charles A. Donelan, "The Bondsman's Right to Arrest," *FBI Law Enforcement Bulletin*, December 1972 and January 1973, reprint; John A. Chamberlin, "Bounty Hunters: Can the Criminal Justice System Live Without Them?" *University of Illinois Law Review*, Vol. 1998, No. 4, pp. 1175-1205; and Holly J. Joiner, "Private Police: Defending the Power of Professional Bail Bondsmen," *Indiana University School of Law*, 1999, Vol. 32, pp. 1413-35.

<sup>37</sup> U.S. Department of Justice, National Institute of Corrections, *Topics in Community Corrections, Annual Issue 1998: Privatizing Community Supervision*, American Probation and Parole Association, Position Statement: Privatization, Appendix, no page number.

<sup>38</sup> *Ibid.*

<sup>39</sup> Robert J. Bosco, "Connecticut Probation's Partnership with the Private Sector," pp. 8-12, in U.S. Department of Justice, National Institute of Corrections, *Topics in Community Corrections, Annual Issue 1998: Privatizing Community Supervision*.

<sup>40</sup> "Tide of Outstanding Warrants Sweeps over Police, Resources," *Houston Chronicle*, AP dispatch, July 6, 1999, p. 10A.

<sup>41</sup> Telephone conversation with Brian Nairin, President, National Association of Bail Insurance Companies, November 12, 1999. After being deposed in a lawsuit by the National Association of Bail Insurance Companies, BJS statistician Brian Reaves decided to drop the relevant tables in the 1996 report on felony defendants that previously had allowed interested parties to compare postrelease failure-to-appear and fugitive rates between nonfinancial and financial pretrial releases. However, unpublished tabulations provided by Reaves show a continuing advantage for financial releases.

<sup>42</sup> See <http://www.napsa.org/docs/Standards/NAPSA%20Standards1.htm>.

<sup>43</sup> *Ibid.*

<sup>44</sup> See Note 29 above. NAPSAs, stimulated by Noble's initiative (unbeknownst to the author at the time), invited the author to participate in a panel on privatization at its annual conference in October 1995 in Cincinnati, Ohio, where he was met by a surprisingly emotional series of attacks by other panelists. Help came from an unexpected quarter, when the first comment from the floor in a packed room asserted that if the session had been televised on ABC's Nightline, "The typical viewer would have believed that Dr. Reynolds had won the debate!"

<sup>45</sup> James G. Carr, "Bail Bondsmen and the Federal Courts," *Federal Probation*, March 1993, p. 9.

<sup>46</sup> *The Economist*, June 19, 1999, p. 18. The conditions in Illinois for bail are so onerous and restrictive that bail was effectively eliminated. The other states seem to be Oregon, Kentucky and possibly Wisconsin. However, bail was reintroduced in the city of Philadelphia recently. The elimination of bail reduces defendants' options and such systems experience higher failure-to-appear rates, larger jail populations and reduced respect for the justice system, because as Illinois is now demonstrating, those released have little or no financial accountability for subsequent court appearances.

<sup>47</sup> See the model legislation at <http://www.alec.org/viewpage.cfm?id=250>.

<sup>48</sup> Telephone conversation with Terry Fowler, surety bonding consultant and past president of the California Bail Agents Association, November 15, 1999.

<sup>49</sup> *Ibid.*

## About the Author

**Morgan O. Reynolds**, an NCPA Senior Fellow and a professor of economics at Texas A&M University, received his Ph.D. from the University of Wisconsin in 1971. He has published many articles in academic journals, edited *W.H. Hutt: An Economist for the Long Run* (1986), and authored *Public Expenditures, Taxes, and the U.S. Distribution of Income* (1977), *Power and Privilege: Labor Unions in America* (1984), *Crime by Choice: An Economic Analysis* (1985), *Making America Poorer: The Cost of Labor Law* (1987), and *Economies of Labor* (1995). He has been a consultant for the National League of Cities, the U.S. Department of Labor and many private organizations. He also serves on the board of the *Journal of Labor Research* and the *Review of Austrian Economics* and is a member of the Mont Pelerin Society and an adjunct scholar of the Cato Institute.

## About the NCPA

The National Center for Policy Analysis is a nonprofit, nonpartisan research institute founded in 1983 and funded exclusively by private contributions. The mission of the NCPA is to seek innovative private-sector solutions to public policy problems.

The center is probably best known for developing the concept of Medical Savings Accounts (MSAs). The *Wall Street Journal* called NCPA President John C. Goodman “the father of Medical Savings Accounts.” Sen. Phil Gramm said MSAs are “the only original idea in health policy in more than a decade.” Congress approved a pilot MSA program for small businesses and the self-employed in 1996 and voted in 1997 to allow Medicare beneficiaries to have MSAs.

Congress also relied on input from the NCPA in cutting the capital gains tax rate and in creating the Roth IRA. Both proposals were part of the pro-growth tax cuts agenda contained in the Contract with America and first proposed by the NCPA and the U.S. Chamber of Commerce in 1991. Two other recent tax changes — an increase in the estate tax exemption and abolition of the 15 percent tax penalty on excess withdrawals from pension accounts — also reflect NCPA proposals.

Another NCPA innovation is the concept of taxpayer choice — letting taxpayers rather than government decide where their welfare dollars go. Sen. Dan Coats and Rep. John Kasich have introduced a welfare reform bill incorporating the idea. It is also included in separate legislation sponsored by Rep. Jim Talent and Rep. J. C. Watts.

Entitlement reform is another important area. NCPA research shows that elderly entitlements will require taxes that take between one-half and two-thirds of workers’ incomes by the time today’s college students retire. A middle-income worker entering the labor market today can expect to pay almost \$750,000 in taxes by the time he or she is 65 years of age, but will receive only \$140,000 in benefits — assuming benefits are paid. At virtually every income level, Social Security makes people worse off — paying a lower rate of return than they could have earned in private capital markets. To solve this problem, the NCPA has developed a 12-step plan for Social Security privatization.

The NCPA has also developed ways of giving parents the opportunity to choose the best school for their children, whether public or private. For example, one NCPA study recommends a dollar-for-dollar tax credit up to \$1,000 per child for money spent on tuition expenses at any qualified nongovernment school — a form of taxpayer choice for education.

The NCPA’s Environmental Center works closely with other think tanks to provide common sense alternatives to extreme positions that frequently dominate environmental policy debates. In 1991 the NCPA organized a 76-member task force, representing 64 think tanks and research institutes, to produce *Progressive Environmentalism*, a pro-free enterprise, pro-science, pro-human report on environmental issues. The task force concluded that empowering individuals rather than government bureaucracies offers the greatest promise for a cleaner environment. More recently, the NCPA produced *New Environmentalism*, written by Reason Foundation scholar Lynn Scarlett. The study proposes a framework for making the nation’s environmental efforts more effective while reducing regulatory burdens.

In 1990 the NCPA’s Center for Health Policy Studies created a health care task force with representatives from 40 think tanks and research institutes. The pro-free enterprise policy proposals developed by the task force became the basis for a 1992 book, *Patient Power*, by John Goodman and Gerald Musgrave. More than 300,000 copies of the book were printed and distributed by the Cato Institute, and many credit it as the focal point of opposition to Hillary Clinton’s health care reform plan.

A number of bills before Congress promise to protect patients from abuses by HMOs and other managed care plans. Although these bills are portrayed as consumer protection measures, NCPA studies show they would make insurance more costly and increase the number of uninsured Americans. An NCPA proposal to solve the problem of the growing number of Americans without health insurance would provide refundable tax credits for those who purchase their own health insurance.

NCPA studies, ideas and experts are quoted frequently in news stories nationwide. Columns written by NCPA experts appear regularly in national publications such as the *Wall Street Journal*, *Washington Times* and *Investor's Business Daily*. NCPA Policy Chairman Pete du Pont's radio commentaries are carried on 359 radio stations across America. The NCPA regularly sponsors and participates in *Firing Line Debate*, which is aired on 302 public broadcasting stations. The NCPA each year sponsors 22 one-hour televised debates on the PBS program *DebatesDebates*, seen in more than 170 markets.

According to Burrelle's, the NCPA reached the average household 10 times in 1998. More than 36,000 column inches devoted to NCPA ideas appeared in newspapers and magazines in 1997. The advertising value of this print and broadcast coverage was more than \$56 million, even though the NCPA budget for 1998 was only \$4 million.

The NCPA has one of the most extensive Internet sites for pro-free enterprise approaches to public policy issues, [www.ncpa.org](http://www.ncpa.org), receiving about one million hits (page views) per month. All NCPA publications are available online, and the website provides numerous links to other sites containing related information. The NCPA also produces an online journal, *Daily Policy Digest*, which summarizes public policy research findings each business day and is available by e-mail to anyone who requests it.

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