

Supplemental
Analysis

Bail Services In Connecticut

December 21, 2004

Legislative Program Review
& Investigations Committee

Introduction

Bail Services In Connecticut: Supplemental Analysis

During 2003, the Legislative Program Review and Investigations Committee conducted a study of the Connecticut's bail system. In July 2004, the committee requested its staff to provide additional analysis related to bail, which this report contains.

The 2003 study included the bail setting and release process and the state licensing and regulation of the commercial (private sector) bail industry. The committee found conflicts, inconsistencies, confusion, and ineffective enforcement of the state's existing regulatory system, which is split between the Department of Public Safety's Division of State Police and the Insurance Department. It adopted a series of reforms to remedy identified problems.¹

Specifically, the program review committee found:

- the commercial bail bond industry is dangerously unregulated;
- illegal and unprofessional pricing and business practices such as undercutting, rebating, and posting fraudulent bonds among licensed bondsmen in Connecticut are pervasive and persistent;
- a mandatory fixed pricing schedule for professional and surety bail bondsmen supports the fundamental purpose of bail and is critical to preventing illegal and unfair pricing practices; and
- bail bonding generates revenue for the state, but the state has failed to fully realize the potential income from this source.

Legislation encompassing these reforms (HB 5404) was considered during the 2004 session. The major components of the bail reform proposal were to:

- consolidate the licensing and regulatory authority for surety bail bondsmen within the Division of State Police;
- strengthen eligibility standards and licensing criteria for professional and surety bail bondsmen and bail enforcement agents;
- set a fixed rate of 10 percent² for the nonrefundable fee charged by a professional or surety bail bondsman to post a bond; and

¹ See the Legislative Program Review and Investigations Committee report, *Bail Services in Connecticut* (December 2003). The report is available at www.cga.ct.gov/pri or from the committee staff offices at (860) 240-0300.

² Amendments to HB 5404 were under consideration to set a fixed rate schedule of 10 percent for any bond amount up to \$5,000 and 7 percent for any amount over \$5,000.

- repeal the Chief State's Attorney's authority to negotiate (or compromise) a forfeited bail bond at a reduced rate and establish a bond forfeiture collection process similar to the state's other debt collection efforts.

Despite widespread support for the reforms, the bill was not taken up before adjournment due to several concerns arising late in the session that several provisions might unintentionally impact minority persons negatively. Specifically, opponents of the reforms argued:

- strengthening the eligibility criteria and licensing standards would limit minority participation in the commercial bail industry, which according to some is already underrepresented by minority persons;
- establishing a fixed bond rate would make bail unaffordable to minority defendants because they receive higher bond amounts than Caucasian defendants and are often poor or indigent;
- bondsmen would not post bonds and assume the financial liability for high risk defendants if the forfeited bond compromise schedule was eliminated, which would have a disparate impact on minority defendants; and
- the rate of pre-trial incarceration among minority defendants would increase.

Although the program review committee completed its study of the state's bail system in December 2003, it voted in July 2004 to direct its staff to compile additional information to address these concerns. This report contains such supplemental data and analysis. Section 1 is an overview of minority participation in the commercial bail industry. Section 2 examines the question of racial and ethnic disparity in terms of bail types and amounts for arrested persons. Section 3 contains the program review committee's conclusions from this supplemental analysis.

Minority Participation in Commercial Bail Industry

As described in the committee's 2003 bail report, in Connecticut, the commercial bail bond industry is composed of bail bondsmen and bail enforcement agents (BEA). Surety insurance companies that underwrite the bail bonds are also part of the industry, but are not included in the supplemental analysis.

Connecticut law defines a bail bondsman as a person in the business of furnishing bail in criminal cases or who furnishes bail in five or more criminal cases in one year whether for compensation or otherwise. There are two types of bondsmen in Connecticut:

- *professional bondsmen* put up their own personal property or assets as security for bonds and have complete personal liability for forfeited bonds; and
- *surety bondsmen*, independent agents under contract with an insurance company, have powers of authority to execute or countersign bail bonds in criminal cases and have limited personal liability for forfeited bonds.

A bail enforcement agent is also known as a bounty hunter or fugitive recovery agent. A BEA is under contract with or employed by a bail bondsman to locate and apprehend any defendant for whom an arrest warrant has been issued for failure to appear in court.

Bail bondsmen and bail enforcement agents operate privately and for-profit, but must be licensed to operate in Connecticut. A person may hold any one or a combination of the three commercial bail licenses. State licensure laws require applicants for professional and surety bail bondsman and BEA licenses to meet certain eligibility criteria. In general, an applicant must:

- be a United States or naturalized citizen;
- have not been convicted of a felony or disqualifying misdemeanor offense;
- not be employed as a law enforcement official; and
- be "suitable³."

To review the concern about minority participation, the program review staff initially sought race and ethnicity data from the Division of State Police and the Insurance Department. These agencies do not collect the data as part of the current licensing process. To obtain the

³ "Suitability" applies to an applicant's personal and financial status. Personal suitability is currently interpreted as no criminal history. Financial suitability is based on an independent audit and review of an applicant's assets, debts, and financial history (e.g., bankruptcy, foreclosure). See the Legislative Program Review and Investigations Committee's 2003 bail report at pages 36-40 for a complete description of current eligibility criteria and licensing standards.

data, the committee surveyed all licensed bail bondsmen and BEAs. To avoid duplication, each licensee was mailed only one survey and asked to indicate the types of license currently held by him or her. Licensees were asked to report on their race, gender, and ethnicity. Participation in the survey was voluntary and no identifying information (e.g., name, license number) was collected.

Surveys were mailed to the 518 individual licensees and 145 responded. Although the response rate was low (28 percent), the respondent sample is representative of the commercial bail bond industry based on the type of commercial bail bond license held by the responding individuals.

The program review survey used the race and ethnicity categories established and now used by the U.S. Census Bureau. Different from previous census categories, Hispanic is now an ethnicity category, separate from race. U.S. Census data for the statewide employment demographics and statewide population were used for comparison to the committee's survey data. The U.S. Census statewide employment data covers the 10-year period prior to the 2000 census (1990-2000).

Table I-1 shows the racial and ethnic composition of the bail industry is consistent with the statewide employment demographic and the overall state population as reported by the U.S. Census Bureau.

Table I-1. CT Bail Industry Race & Ethnicity Breakdown			
	<i>CT Bail Industry</i>	<i>1990 Census: CT Employment Composition</i>	<i>2000 Census: CT Population</i>
RACE			
Caucasian	80%	83%	82%
African American	11%	9%	9%
Asian, Native American, Alaska Native, Native Hawaiian & Pacific Islander, or some other race	5%	6%	7%
Two or more races	4%	2%	2%
ETHNICITY			
Hispanic	16%	8%	9%
Not Hispanic	84%	92%	77%
Source of data: PRI survey and U.S. Census Bureau (2000)			

Regulatory actions. Regulatory actions taken by the Division of State Police and the Insurance Department between January 1, 2000 and July 1, 2004 were reviewed to determine if the reasons for license denial, suspension, or revocation were consistent with the statutory eligibility criteria and licensing standards.

Table I-2 lists the reasons for license denial. Since January 2000, the Division of State Police denied a total of 28 professional bondsman and BEA license applications and the

Insurance Department denied nine surety bondsman license applications. The most common reasons for license denial are: a conviction for a felony or disqualifying misdemeanor offense; lack of financial or personal suitability; and failure to disclose complete and accurate information on the application.

Also shown in the table are the number of commercial bail industry licenses revoked or suspended and the reasons for the regulatory actions. The Division of State Police took regulatory action against 17 licensees (professional bondsmen and BEAs) and the Insurance Department against eight surety bondsmen. The most common reasons for a license revocation or suspension are: a failure to meet financial standards such as lack of financial suitability or failure to meet financial obligations (e.g., nonpayment of bond forfeiture); or exceeding a bond limit. Other reasons for regulatory action include a criminal conviction, posting forged bonds, and unfair insurance practices.

Table I-2. Regulatory Actions Against Commercial Bail Industry (2000-2004)			
<i>Regulatory Agency</i>	<i>Insurance Dept.</i>	<i>Division of State Police</i>	
<i>Reason for Action</i>	<i>Surety Bondsmen</i>	<i>Professional Bondsmen</i>	<i>BEAs</i>
LICENSE DENIAL			
Disqualifying criminal conviction	9		5
Incomplete application	8		7
Lack of financial or other suitability		2	9
Conflict of interest		1	2
Failure to disclose info on application		1	
Application withdrawn			1
TOTAL	9	4	24
LICENSE SUSPENSION OR REVOCATION			
Lack financial suitability or failed to meet financial obligations (unpaid bond forfeiture or seized assets)	5	1	
Exceeding bond limit		10	
Unfair insurance practices	2		
Forged bonds	1		
Disqualify criminal conviction		1	5
TOTAL	8	12	5
VOLUNTARY SURRENDER			
Voluntary surrender/did not renew	1	6	
Failed to respond to license renewal application*	44		
TOTAL	45	6	0
*During its February 2004 license renewal process, the Insurance Department for the first time conducted a criminal history check on all applicants for re-licensure. Source of data: Division of State Police and Insurance Department			

As with their current licensees, neither the Division of State Police or the Insurance Department collect information on the race and ethnicity of persons subject to regulatory action,

including license denial, license suspension or revocation, or voluntary surrender. Thus the program review committee does not know the racial or ethnic demographics of the bondsmen or BEAs subject to these regulatory actions. However, the majority of licensing actions were based on objectively measured factors applied uniformly (e.g., disqualifying criminal conviction), and license suspensions and revocations may be contested through the state's Uniform Administrative Procedures Act (UAPA), which establishes the administrative hearing and right to appeal processes.

From the employment data comparison, it appears there is no statewide racial or ethnic disparity in the bail bond industry. The reasons for license denial and other regulatory actions were consistent with the statutory licensing criteria and standards and prohibited business practices. Based on this information, the program review committee found no pattern of exclusion of minority persons from the commercial bail industry in Connecticut.

Trends in Bail Types and Amounts

This section presents an analysis of bail trends from 1998 through 2002 and focuses on whether race is a factor in bail bond decisions. First, a summary of the bail release process including factors currently used by bail commissioners and judges to set bail and other special bail release conditions, described in detail in the committee's 2003 final report, is provided.⁴

Bail Release Process

Bail release factors. Connecticut constitutional and statutory law requires bail be set for all arrested persons except those charged with a capital felony (punishable by the death sentence) at the "least restrictive" amount necessary to insure the presence of the defendant in court and/or to insure the community is protected.

Bail commissioners and judges are required by state law to use "written uniform weighted" release criteria to assess a defendant's risk of failure to appear and dangerousness to determine the least restrictive bond necessary. The factors ensure the bail setting process is fair and effective. The statutory factors to evaluate the risk of nonappearance and dangerousness are:

- nature and circumstances of the crime;
- prior criminal history and record of appearance in court;
- family and community ties;
- employment and financial resources;
- seriousness of the charge;
- weight of the evidence against the defendant;
- history of violence;
- whether the defendant was convicted of the same offense while out on a prior bond; and
- likelihood the defendant will commit another offense while released on bail.

Bail commissioners and judges also consider other factors when setting bail including a defendant's:

- family and community ties;
- marital status;
- length of residence at present address and in the state;
- substance abuse history, if any; and

⁴ Police also set bail at arrest, but are not required to follow statewide criteria. The bail trend analysis presented in this section does not include police-set bail.

- physical or mental illness or disability, if any.

In assessing these factors, bail commissioners and judges rely on limited and, at times, unverified information, much of which is self-reported by the defendant. This occurs because of federal and state constitutional guarantees and state laws designed to release as quickly as possible and under the least restrictive bond all eligible defendants in pre-trial status. Given this, most defendants are arrested, interviewed by a bail commissioner, and presented for arraignment before a judge within several hours of arrest or at the most two to three days later if arrested on a weekend or holiday.

Financial and nonfinancial bail. There are two categories of bonds: nonfinancial and financial. Nonfinancial bonds do not include a monetary amount for release, but rather allow a defendant to be released on his or her promise to appear at all court proceedings as ordered. Financial bonds -- surety, 10 percent cash, and cash only -- set a monetary amount deemed sufficient by a bail commissioner or a judge to assure a defendant's appearance in court. The defendant must post the bond amount in cash or procure a commercially secured bond to be released. Failure by the defendant to appear in court results in the bond amount being forfeited to the state.

Implicit in the concept of financial bail is higher bail amounts will reduce the probability a defendant will fail to appear in court. If the defendant posts bail, the potential forfeiture of the bail gives him or her direct financial incentive to appear. By appearing at court proceedings, the posted bond amount is returned to the defendant upon disposition of the criminal charges, regardless of the verdict or sentence. If a defendant procures a commercial bond from a licensed bail bondsman, the bondsman charges a nonrefundable fee and assumes the risk of paying the bail amount should the defendant fail to appear in court. In this case, this is an indirect incentive to the defendant because the bondsman's fee is nonrefundable under any circumstances. The direct incentive is to the bail bondsman. Further, the underlying concept of commercial bail is a higher bond amount exposes the bondsman to greater financial liability. This might cause the bondsman to expend more resources to monitor a defendant's whereabouts prior to a scheduled court appearance and/or apprehend a defendant who fails to appear.

The result of the state's existing bail process is the majority of arrested persons are released on bail awaiting disposition or sentencing. It is estimated there are over 70,000 arrested persons on nonfinancial and financial bail in Connecticut on any given day and of those, only about 4,500 (6 percent) are incarcerated. Important to any discussion about bail is that only one-third of the defendants in Connecticut receive a financial bond; the majority of defendants (66 percent) are released on a nonfinancial bail including written promise to appear and nonsurety bond.

Bail Data Analysis

During its 2003 study of bail services, program review committee staff obtained judicial branch data on 354,240 criminal and motor vehicle arrest cases between 1998 and 2002 for

which either a bail commissioner or judge set bail.⁵ Staff used these data to track trends and patterns in the types and amounts of bail bonds and assess whether race is a factor in bail bond decisions by bail commissioners or judges.

As noted earlier, cases in which a defendant posted a police-set bond and was released prior to a bail commissioner interview and arraignment are not included. During its 2003 study of the bail system in Connecticut, the program review committee found almost 60 percent of arrested persons are released on bail by the arresting policy agency. Most of those are released on a nonfinancial written promise to appear bond, meaning the defendant simply “promised” to appear for all court proceeding and posted no money for release. The following analysis, therefore, focuses on the 40 percent of arrested persons who are not released on bail by the police, and whose bail decisions were made by bail commissioners or judges.

Defendant profile. The data contain defendant demographic information including race/ethnicity, age (only adults 16 years and older are included), and gender. The judicial branch does not use the U.S. Census Bureau race and ethnicity categories utilized in Section 1, and so includes Hispanic as a racial category. Over the five years, the demographic data show:

- 41 percent are Caucasian, 37 percent African American, 22 percent Hispanic, and less than 1 percent are another race such as Asian or Native American;
- 81 percent are male and 19 percent female; and
- 34 years is the average age among male and female defendants.

Two interesting trends in the data were:

- a significant annual increase in Caucasian defendants (38 percent in 1999 to 44 percent in 2002); and
- Hispanic defendants are significantly younger than either Caucasians or African Americans defendants.

Primary offense. Information about the primary offense, which is the most serious crime for which the defendant was arrested, was classified into eight categories for this analysis. They are:

- ***violent***: homicide, assault, sexual assault, robbery, kidnapping, and arson;
- ***property***: burglary, larceny, forgery, and fraud;
- ***drug***: manufacturing, sale, and possession;
- ***violation of probation*** (VOP);
- ***failure to appear*** (FTA) and extradition;

⁵ The data tracks arrest cases not individuals. A person may have been arrested more than once during the five-year time period under review.

- ***other crimes***: all remaining offenses such as weapon possession, risk of injury to a minor, conspiracy to commit a crime, perjury, and tampering with a witness or evidence;
- ***motor vehicle*** (MV): all driving and license violations; and
- ***violation or infraction of state law or local ordinance***: related to consumer protection, tax, environment, animal welfare, firearm permit, excessive noise, trespassing, loitering, and littering laws.

Any comprehensive analysis of crime includes, in addition to the number and type of offenses, a review of the severity of the offenses. For the purposes of this study, severity is measured by:

- ***felony offenses*** that are more serious and under state law punishable by more than one year in prison and/or another sanction such as special parole, probation or a fine;
- ***misdemeanor offenses*** that are less serious and punishable by a year or less in prison and/or another sanction such as probation or a fine; and
- ***unclassified crime, violation or infraction of state law, or a violation of a local ordinance*** that do not rise to the level of a felony or a misdemeanor offense.

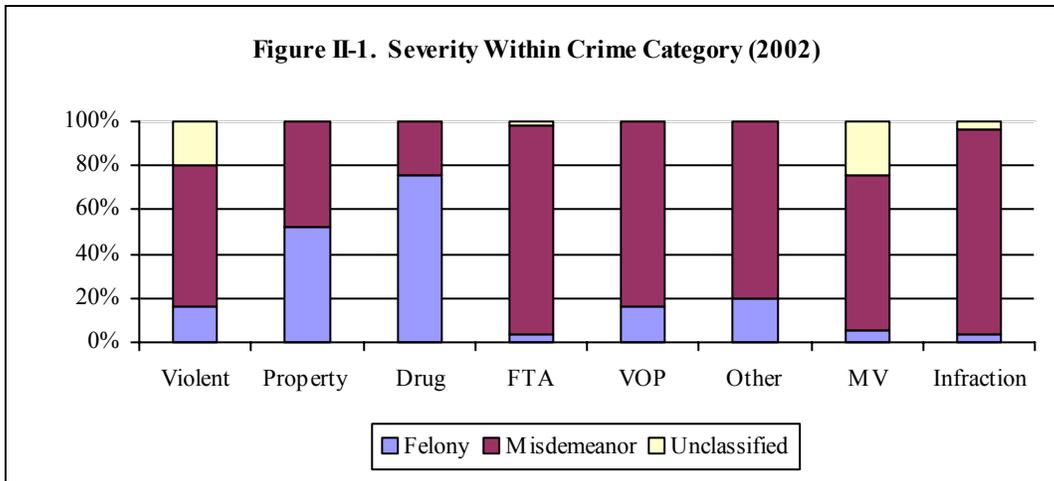
Figure II-1 shows the breakdown of the severity of the primary charge within each crime category for all defendants in 2002.⁶ Overall, 64 percent of all offenses are misdemeanors, 28 percent are felonies, and 8 percent are violations of state or local laws. The data show:

- most violent offenses (60 percent) were misdemeanors, less than 20 percent were felonies, and 20 percent were infractions or violations of state or local law;
- more than half of property crimes and three-quarters of drug crimes were felonies; and
- FTA, VOP, MV, and other crime categories were almost all misdemeanors.

Bond types. The data show the following breakout of bond type for the five-year period:

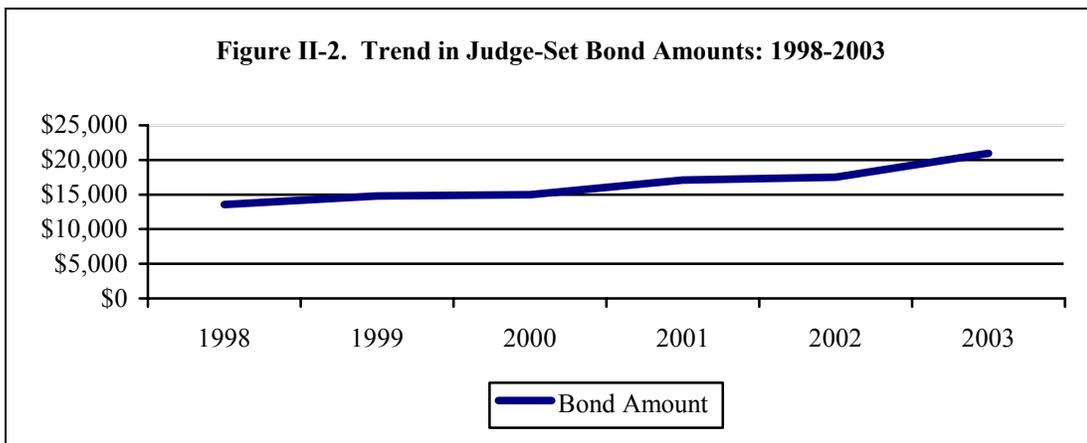
- about 60 percent are surety bonds;
- almost 40 percent are a WPTA or nonsurety bond set by a bail commissioner or judge; and
- less than five percent are 10 percent cash or cash only.

⁶ Because there was no significant change in the trend during each of the five years under review, the most recent full year for which there are data (2002) is presented.



There is no significant difference between the types of bonds set by bail commissioners and judges.

Financial bond amounts. Since 1999, the amount of financial bonds significantly increased. Figure II-2 tracks the trend in the average amount of financial bonds -- surety, 10 percent cash, and cash only -- set by judges. In 1998, the average bond was \$13,500 and has steadily increased to almost \$21,000 in 2003.



The trend in bond amounts set by bail commissioners is similar, showing a significant increase; however, bail commissioners tended to set lesser amounts than judges. The average financial bond amount set by a bail commissioner in 2002 was \$18,800 whereas the average amount set by a judge was almost \$21,000.

It is important to note this is an analysis of the bond amount set by a bail commissioner or judge, which in most cases is the symbolic price of release from custody. The actual price most defendants pay is the bondman's nonrefundable fee, which is supposed to be a percentage of the set bond amount. The current statutory variable rates professional bondsmen are required to charge is up to 10 percent for the first \$5,000 and up to 7 percent on any amount over \$5,000. The current fixed rates surety bondsmen are required to charge -- filed by insurance companies with the Insurance Department -- are 10 percent for the first \$5,000 and 7 percent on any amount over \$5,000.

Predictors of bond type and amount. The program review committee analyzed selected offense types with the offense categories to determine if the type and severity of the offense and the defendant's race impacted the amount of a surety bond. The selected felony and misdemeanor offenses include larceny, assault, and drug sale and possession. These offenses were selected because they are some of the more common crimes for which defendants are arrested (type) and at the felony and misdemeanor level cover a majority of the arrest cases (severity). Homicide was also included because it is the most serious crime type and severity.

Committee staff used a regression analysis⁷ to determine which defendant characteristics and offense factors are predictors of surety bond amounts. Overall, the type and severity of the crime are the overriding factors determining the surety bond amount set by a bail commissioner or a judge. The data show:

- no difference in the surety bond amounts for Caucasian or minority defendants arrested for misdemeanor crimes;
- no difference in the surety bonds amounts for Caucasian and minority defendants charged with homicide;
- slightly higher surety bond amounts for minority defendants arrested for felony offenses especially violent and drug crimes than for Caucasians arrested for similar offenses.

The defendant characteristics considered are age, gender, and race. The offense factors considered include the crime type, severity of the offense, the year in which the defendant was arrested, and criminal history (number of prior arrests and convictions). The data show:

- severity and type of the pending criminal charges were the best predictors of the surety bond amount;
- criminal history was a significant predictor of bond amount;
- felony offenses resulted in the higher bond amounts;
- defendants charged with violent or drug offenses received higher bail; and
- defendants arrested between 2000 and 2002 received higher bond amounts than those arrested in 1998 and 1999.

⁷ Regression analysis is a method of determining whether there is a statistically significant relationship between two or more variables.

A defendant's age, gender, or race are not significant predictors of surety bond amounts. Any differences in bond amounts were negligible after controlling for offense type and severity. The negligible differences may be attributed to other defendant characteristics such as family and community ties⁸ that are considered in bail decisions. For example, a defendant who is not a legal U.S. resident or does not have a valid Connecticut residence is considered a high risk for failure to appear. That risk will be reflected in the bond amount.

The program review committee found race is not a predictor of bail amounts. It appears bail commissioners and judges adhere to the nondiscriminatory statutory factors and risk criteria for determining the least restrictive bail for all defendants. Therefore, there is no disparate impact on minority defendants in bail setting in Connecticut.

The program review committee finding is supported by similar results reported by two recent studies of bail setting in Connecticut: the Court Support Services Division contracted study to validate its existing risk assessment tool used for bail decision-making⁹ and the 2003-2004 report released by the Commission on Racial and Ethnic Disparity¹⁰. Both studies found the severity and type of the charge and a defendant's criminal history were the best predictors of bail. Race was not a significant factor.

The program review committee further found the average surety bond amount especially for felony offenses for all defendants is increasing.

A potential explanation for the increase is judges are attempting to counteract the illegal pricing practice of undercutting by bondsmen by setting higher bond amounts. Undercutting occurs when a licensed surety bondsman charges less than the fixed bond rates. Judges base their bond calculations on the rates, but reported to the program review committee they are aware of the widespread and pervasive undercutting by bondsmen. Therefore, to ensure a defendant pays a fee close to or at the amount originally intended, a judge may increase the bond amount thereby intending to increase the fee charged by the bondsman.

Another way judges attempt to regulate undercutting is to set a cash only or 10 percent cash bond rather than a surety bond. Cash only and 10 percent cash bonds must be posted with the defendant's personal funds; a licensed bondsman may not post these bonds.

During the discussion about the bail reform bill, some people cited the fact that when bondsmen charge less than the required rates, the result was more affordable fees. Based on interviews with bail bondsmen, judges, bail commissioners, state and local police, and

⁸ The judicial branch reported in its study, *Validation of Connecticut's Risk Assessment for Pre-trial Decision Making*, that Hispanics as a group live significantly less time in Connecticut than either African Americans or Caucasians, and after controlling for time in Connecticut, the race differences in bond amounts were negligible.

⁹ *Validation of Connecticut's Risk Assessment for Pre-trial Decision Making*, Central Connecticut State University, Department of Criminology and Criminal Justice (Revised July 31, 2003)

¹⁰ The Commission on Racial and Ethnic Disparity, created by Public Act 00-154, is charged with examining and making recommendations to address racial and ethnic disparity in Connecticut's adult and juvenile criminal justice systems.

defendants and their families and observations of the arraignment and bail release processes, the committee staff found no evidence professional and surety bondsmen charge minority or poor or indigent defendants less than other defendants. In fact, there is some evidence to suggest these illegal pricing practices are in long run driving the increase in the average amount of a surety bond.

Committee Findings

The impetus for the committee's supplemental analysis was a concern some of the bail reform proposals would cause or exacerbate a trend in higher bond amounts for minority defendants. Overall, the program review committee found no disparate impact on minority defendants in bail decisions in Connecticut, but the average surety bond amount especially for felony offenses for all defendants is increasing.

The type and severity of the crime charged, not race, were the overriding factors to determining the type and amount of financial bail. Most of the trends indicating a difference between racial categories did not hold when race was controlled for by defendant's criminal history and type and severity of the pending offense. As the committee found, the differences by race were then negligible and based on other factors such as ties to the community.

The vast body of criminal justice research has repeatedly concluded the causes of crime and trends in the criminal justice process such as bail setting are often the result of numerous and complex socio-economic and cultural factors. It is difficult to disentangle racial and ethnic issues from those broad social issues and, therefore, examining race and ethnicity alone does not provide a complete or accurate assessment of a problem.

Another concern addressed by this analysis was the proposed bail reforms would exclude minorities from participating in the commercial bail industry (e.g., obtaining a bondsman or bail enforcement agent license). The program review committee found no pattern of exclusion of minority persons from the commercial bail industry to date.

Finally, even if a racially disparate impact were found, the state would not want to be in the position of condoning illegal pricing practices as a way to remedy the situation. Rather it should examine solutions that extend beyond the criminal justice system to address the broad socio-economic and cultural issues impacting minorities in the state.