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Get Out of Jail Free: Taxpayer-Funded Grants Place Criminals on the Street Without Posting Bail

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For fiscal year 2012, the House Appropriations Committee recommended \$357 million for the Edward Byrne Justice Assistance Grant (JAG) program (H.R. 2596). Byrne JAG grants, administered by the Bureau of Justice Assistance (BJA), can be used by state and local governments for 29 broad criminal justice purposes, including funding pretrial release services.¹

The original mission of pretrial release services during the 1960s was to assist in the release of the relatively few indigents who truly could not afford to post bail. However, the mission of too many pretrial services agencies has expanded beyond helping indigents to defendants who would normally secure release through private bond agents. These individuals are released on their own recognizance without offering anything of value to ensure that they return on their court dates. This, in turn, will most assuredly result in more criminals failing to appear in court and becoming fugitives from justice.

Philadelphia: A Case Study of Public Policy Disaster. About 40 years ago, Philadelphia assumed exclusive control over the city's bail system by abolishing private bail services and implementing its own pretrial release service. The typical Philadelphia defendant is required to deposit only 10 percent of his total bail assigned by the judge and sign a statement agreeing that he will owe the remaining 90 percent for failure to appear on the court date.² According to a recent investigation by *The Philadelphia Inquirer*:

For decades, Philadelphia court officials have presided over an ineffective bail system that allowed accused criminals to skip court vir-

tually without consequence. Defendants routinely failed to appear in court and just as routinely, failed to pay the forfeited bail that was supposed to come due as a result.³

Further, Philadelphia court officials admitted that no one made any effort to collect the money owed the city by those who had skipped their court dates.⁴

What is the result of the city's pretrial release services? Today, fugitive defendants owe the city more than \$1 billion for failing to appear for their trials.⁵ Further, there are more than 47,000 defendants wanted on bench warrants for failing to appear for trial.⁶

The Private Sector Does it Better (Again). Private bail bond insurers provide important services to defendants and society at no cost to taxpayers. In exchange for a fee, private bond agents secure the release of defendants from jail while the accused await trial. Compared to other types of pretrial release, research indicates that private bond agents are more effective at ensuring defendants make their court appearances.⁷ Individuals who obtain their release through private bond agents are 28 percent less likely to fail to appear before court than when freed on their own recognizance.⁸ When defendants fail to appear before the courts and remain at

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large for more than a year, private bond agents seem to be more effective at catching these fugitives than public law enforcement. Those released through the assistance of private bond agents have a fugitive rate that is 53 percent lower than the fugitive rates of those released on their own recognizance.⁹

Lack of Accountability. While the performance of private bail bonding is well known and documented, we know far less than we should about pretrial release services funded by the Byrne JAG program. This is important because under the Byrne JAG performance monitoring system, pretrial release services do not have to report how they are performing. Performance monitoring through the systematic and recurrent documentation of important features of program performance is crucial to assessing whether programs are operating as intended.¹⁰ When appropriately applied, performance monitoring can provide timely information on program performance to local program administrators and grant-making bureaus.

While most Byrne JAG recipients, including police departments, are required to report annual performance measures to the BJA, pretrial release agencies are not required to report any performance measures. To correct this deficiency, The Citizens Right to Know Act of 2011 (H.R. 1885), sponsored by Representative Ted Poe (R-TX), would require pretrial release agencies receiving federal taxpayer funding to report information regarding:

- The number and names of defendants assigned to pretrial services;
- The number and names of indigent defendants accepted into pretrial release programs;
- The current charges and all past criminal convictions of defendants accepted into pretrial release programs;
- The instances of defendants failing to appear at scheduled court appearances; and
- All warrants issued or arrests made of defendants accepted into pretrial release programs.

While Congress should not be in the business of funding pretrial release services through the Byrne JAG program, The Citizens Right to Know Act takes appropriate steps for gaining systematic information on the performance of federally funded pretrial release services.

Taxpayers Should Not Pay for Pretrial Release.

Government should not provide a public good when the private sector offers identical services with a similar—or as is often the case, greater—level of competence. In this case, Byrne JAG grants are being used to displace the services of private bond agents. Given the nation's dire financial straits, an even better idea would be for Congress to eliminate funding for the Byrne JAG program altogether.

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1. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, "Byrne Formula Purpose Areas," at <http://www.ojp.usdoj.gov/BJA/grant/byrnepurpose.html> (September 12, 2011).
2. Nancy Phillips and Craig R. McCoy, "Private Bail Industry Says It Could Help Philadelphia's Ailing Court System," *The Philadelphia Inquirer*, August 10, 2010, p. B1.
3. Nancy Phillips and Craig R. McCoy, "Philadelphia Courts Go After Deadbeats Starting Monday," *The Philadelphia Inquirer*, February 23, 2011, p. A1.
4. Phillips and McCoy, "Private Bail Industry Says It Could Help Philadelphia's Ailing Court System."
5. *Ibid.*, and Phillips and McCoy, "Philadelphia Courts Go After Deadbeats Starting Monday."
6. Phillips and McCoy, "Private Bail Industry Says It Could Help Philadelphia's Ailing Court System."
7. Eric Helland and Alexander Tabarrok, "The Fugitive: Evidence on Public Versus Private Law Enforcement From Bail Jumping," *Journal of Law and Economics*, Vol. XLVII (April 2004), pp. 93–122.
8. *Ibid.*, p. 108.
9. *Ibid.*, p. 110.
10. Peter H. Rossi, Mark W. Lipsey, and Howard E. Freeman, *Evaluation: A Systematic Approach*, 7th edition (Thousand Oaks, Cal.: SAGE Publications, 2004).