

BAIL AGENCY IN THE UNITED STATES OF AMERICA

Anushka Sharma

ABSTRACT

With the world sailing through rough rapid development in the field of law, niche notions are emerging as the solutions for per se has become a major criterion for redressal of cases. This paper explores the most puzzling aspects relating to the idea of 'bail agency' in united states. By providing an overview of the topic, the authors aim at imparting much-needed clarity to the readers regarding the system, its functions and problems associated with bail bond agency. The paper intends to encompass a clear understanding to the court precedents that regulate the bail bond agents. This paper further takes the readers on the journey of analyzing both, legality of right to arrest and right to search third party dwellings. Taking a deep dive into the evolution of the procedure in bail agency cases, the author reaches towards the conclusion, the significance of the judgments is stressed upon by highlighting the revolutionary change in the rules and law regulating bail bond agency.

I. INTRODUCTION

The Eighth Amendment to the Constitution of the United States guarantees that the bail should not be "excessive." Historical accounts suggest that judges regularly demanded that the perpetrator shall submit the money to be released before sentencing, even if he was deemed innocent unless proved guilty. For the past 50 years, the courts, the legislators, and other instruments of the state found that the method in the colonial-era of utilizing just funds to comprehend who can be freed from prison while awaiting court proceedings and who has to stay in prison is needless, along with unfair.¹ It is alarming as it is inefficient in differentiating among the defendants who are dangerous and those who are not.

¹ National Conference on Bail and Criminal Justice Proceedings, Dept. of Justice, 1964/1965.

As a consequence, legislation has improved across the country, presenting jurists with a lengthy range of options that analyzes the conditions and attributes of every person arrested, and not deciding the same through the notion of who has more amount to facilitate.² The possibilities vary from "release on recognition" (words of the accused to comply with those conditions) to "detention without the possibility of release" until conviction with the more risky offenders, including a diverse variety of exclusively tailored solutions within.³

In several states, this idea of a contemporary pre-trial discharge scheme is achieved by the aid of pre-trial arrangements. The government-financed services interview and examine defendants facing bond hearings, determine the defendants as a threat to society and failure to appear before the judge, and track and communicate directly to the bench on the terms that the bench sets out to mitigate the threats. The pretrial justice system ensures the offenders testify in criminal hearings without spending expensive prison accommodations on people who could easily be discharged – the majority of these might not return to jail if convicted.

This change of bail procedures has a resolute foe – the private bail bond commercial business. Since the early ages of the country, bail bonding firms engaged in contracts with offenders who would finance the services of agents by obtaining a non-refundable (even if the party arrives before the court as required) charge of ten percent or extra of the bail sum.

The usage of bail for release from prison for people facing conviction & legal proceedings has remained a part of the criminal justice system of the USA from the establishment.⁴ The United States' model of the bail-bond system is adapted from the Common Law of England.⁵ Bail is required where there aren't enough prisons to accommodate arrestees waiting for court proceedings.⁶ Bail bond agents provide funds to facilitate a criminal charged with any kind of crime to be discharged from prison till his/her expected pretrial hearing. In exchange, the agents receive a commission and are also accountable if the defendant remains unsuccessful in showing up before the judge. When the defendant skips bail, the bond agents are empowered

² Law on bail reform, 1966. At least forty States changed bail laws, modeled after releasing of the Bail Reform Act of 1966, detailing the conditions to be taken into account by the judge in the pre-trial release ruling. By December of 1984, twenty-six States amended the legislation on bail to incorporate risk evaluation as part of the pre-trial discharge decision. ("United States Code, Title 18, Sections 3141-3150; referred to as the 1984 Bail Reform Act"). By 2008, almost all state bail statutes refer to risk as a factor.

³ *United States v. Salerno*, 481 U.S. 739 (1987).

⁴ E. DeHaas, *Antiquities of Bail: Origin and Historical Development in Criminal Cases in the Year 1275* (New York: Columbia Univ. Press 1940).

⁵ W. F. Duker, *The Right to Bail: A Historical Inquiry*, 42 *Alb. L. Rev.* 33, 33–122 (1977).

⁶ A. Patrick, *Running from the Law: Should Bounty Hunters Be Considered State Actors and Thus Subject to Constitutional Constraints?*, 52 *Vand. L. Rev.* 171, 171–200 (1999).

with extensive authority to apprehend and produce them before the court of law.⁷ This often helps through the agents hiring subcontracted bounty hunters.

II. BAIL BOND SYSTEM: FUNCTIONS, ROLE AND PROBLEMS

The agents under the bail agency often perform a pragmatic function by providing legal counsel to defendants, consulting lawyers, informing them about the appearance dates and allotted courtrooms, and apprising them of the trials the defendant will be subjected to.⁸ Besides, bond agents provide administrative assistance to the courts by clearing errors and setting mandated court dates.

While often strongly condemned for working beyond the purview of rule of law and engaged in unnecessary brutality, the system of bail agency is still alive plus evolving, mostly due to government agencies depend on bond dealers to reduce the costs of pre-trial detention.⁹ The cost of jailing one prisoner in 1994 was projected to be as much as \$17,000 a year.¹⁰ Budget shortfalls¹¹ & the transformation of legal power prompted bail agents to lead duties incipiently undertaken by the system of criminal justice, including the detention & transfer of suspects to court.¹²

(a) Problems associated with the system of Bail Bond Agency

Bail-bond agents and their sub-contracted agents, bounty hunters are often criticized for the role that they have played in the history of the criminal justice system in the United States of America.¹³ The critics of this particular system have often termed this system as being full of activities involving corruption, outdated practice, and operating on its own and independently from the society that has been working according to the rule of law. Many a time these agents

⁷ R. Burns, P. Kinkade & M. C. Leone, *Bounty Hunters: A Look Behind the Hype*, 26 *Policing: An Int'l J. Police Strategies & Mgmt.* 118, 118–138 (2003).

⁸ M. A. Toborg, *Bail Bondsmen and Criminal Courts*, 8 *Justice Sys. J.* 141, 141–157 (1983).

⁹ E. Stout, *Bounty Hunters as Evidence Gatherers: Should They Be Considered State Actors Under the Fourth Amendment When Working with the Police?*, 65 *U. Cin. L. Rev.* 665, 665–690 (1997).

¹⁰ H. Joiner, *Private Police: Defending the Power of Professional Bail Bondsmen*, 32 *Ind. L. Rev.* 1413, 1413–1436 (1999).

¹¹ R. B. Ruback & M. H. Bergstrom, *Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications*, 33 *Crim. Just. & Behav.* 242, 242–273 (2006).

¹² M. M. Feeley & E. L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* (New York: Cambridge Univ. Press 1998).

¹³ A. Beeley, *The Bail System in Chicago* (Chicago: Univ. of Chicago Press 1927).

and hunters appear to be unregulated and free from the clutches of constitutional parameters and constraints of the criminal justice systems and thus are considered not as state agents but agents working privately. This also somehow gives them the leverage of applying methods that might involve extra-legal violence just to fulfill the conditions and requirements of the bond entered into by their agency. Acts like entering the house of a suspect without any warrant for the purpose of producing him before the court, arresting such a defendant by use of force that is excessive, or even apprehending a particular bail skipper without any authorization from the government.¹⁴ Such actions not only put the lives of the suspect or defendant in danger but also compromises the rule of law and the criminal justice system.

The unchecked authority that works concerning the bail bond agents and bounty hunters has turned out to be a cause for the increase in usage of excessive and unreasonable force, false imprisonment, unreasonable arrests, destruction of property of purely innocent residents. Lack of any proper regulation has also resulted in situations where the individuals often assume the role of an agent on their own and without any consent or official authority. In the late 1990s, some group of alleged ‘bounty hunters’ entered into a house of a resident, pointed guns at the occupant of that house, and at the end killed a purely innocent couple. Later on, the police investigation into the crime revealed that the men armed were not actually agents but assumed the role of bounty hunters for deception and murdering the couple.

Further, the existence of corruption in the business of bail bond agency is not anymore hidden under the wraps. Corruption prominently exists between the employees in the criminal justice system and the bail bond agents. In the history of various States in America, many judges have been caught red-handed accepting bribes from the agents or either the bail bond agents offering gifts to the officials in one form or another.¹⁵ Research into the records also suggests that many of these bounty hunters or bail bond agents have been convicted of the crimes like money laundering, bribing state officials, and even improper influence peddling.

¹⁴ B. Burton, *Bail Enforcer: The Advanced Bounty Hunters* (Boulder, CO: Paladin).

¹⁵ M. Kaufman, *An Analysis of the Powers of Bail Bondsmen and Possible Routes to Reform*, 14 J. Hum. Rts. (N.Y. Law Sch.) 287, 287–323.

III. COURT PRECEDENTS THAT REGULATE BAIL BOND AGENTS

The existing system of the bail bond is not appreciated mainly because heavily on the New York state case of *Nicolls v. Ingersoll, 1810*¹⁶, and the US Supreme Court decision of the nineteenth century in *Taylor v. Taintor, 1873*¹⁷. The New York SC held in *Nicolls* “that:

- the bail bond agent may appoint another to take and surrender their principal (i.e., the defendant to which a bond has been applied),
- that the person appointed by the bail bond agent may transport the defendant to another state at any time and in any place, and
- the bail bond agent may break open the outer door of the house to apprehend the defendant”

In *Taylor*’s judgment, the court extended the bail bond agents' powers that also now included:

- “continued custody over the defendant who is out on bail,
- seizure of the defendant without obtaining a warrant,
- imprisonment of the defendant until he or she can be taken into state custody,
- utilization of bounty hunters to return bail skippers,
- the pursuit of defendants into other states, and
- Breaking into and entering defendants' dwellings.”

While criticized as archaic, the decision in *Taylor* and *Nicolls* cases remains lawful in the United States of America with regards to bail agents. These judgments have shown that the bail bond agents under the function of bail agency are deemed as government agents, making it nearly impossible to curtail their operations. Most notably, the majority of the judges have found that the Fourteenth¹⁸ and Fourth Amendments¹⁹ do not extend to bail agents²⁰, granting the legality to their actions beyond the general understanding and interpretation of the “rule of law”. The research touches on two vital domains—the right to detain and the right to "search for third-party residences"—by the bail bond agents. Settling that the numerous decisions by the court have limited several powers of bail agents and the subcontracted agents, this report

¹⁶ *Nicolls v. Ingersoll*, (1810), 145, 154.

¹⁷ *Taylor v. Taintor*, (1873), 83 U.S. 366.

¹⁸ The Fourteenth Amendment guaranteeing due process to the citizens and equal protection.

¹⁹ The Fourth Amendment providing protection against “unreasonable searches and seizures” to the citizens.

²⁰ E. Stout, *Bounty Hunters as Evidence Gatherers: Should They Be Considered State Actors Under the Fourth Amendment When Working with the Police?*, 65 U. Cin. L. Rev. 665, 665–690 (1997).

seeks to throw light upon the "quasi-criminal justice" positions played by bail agents under the agency.

IV. LEGALITY OF RIGHT TO ARREST

The legality of arrest problems usually occurs in situations surrounding the executing the warrant which does not provide the name of the agent written in it, the degree of power any particular subcontracted agent could exercise when arresting a person, and the rights of the bail agents to “apprehend bail skippers”.

In the case of *Linder v. State, 1987*²¹, the question remained upon the legality of the execution of a warrant which did not have the name of the bail agent written on it. The appellant, in this case, Daniel Linder, was a registered bail agent in Brazos County. He managed to get hold of the copy of Woods' warrant from the bond firm & went to the residence of Woods' to apprehend him. When Woods showed up, Linder arrested him & rushed him to the office of the local sheriff. Linder was then accused of kidnapping. The court dismissed the appeal by stating that Texas law mandated that if a person other than a "licensed law enforcement officer" performs the execution of a warrant, the person must be expressly mentioned in the warrant.

*Bennett v. State, 1983*²², a judgment of Georgia SC, dealt with the degree of force that an agent may use while arresting a person. Bennett was appointed as a subcontracted agent to arrest the bail skipper, Charles after Charles refused to testify on appeal. Bennett then reached

Charles' house, fired a single shot in the backyard, approached through the front door, and pounded Charles with a pistol on his face and head. The Supreme Court of Georgia, in *Mullis v. State, 1943*²³, held that an officer “can use no more force than is reasonably necessary under the circumstances, and cannot use violence disproportionate to the resistance offered.” The Appellate court upheld his conviction stating the force used as unreasonable.

*Commonwealth v. Elmoby 2003*²⁴, included a bail bond company and a bail agent, Robert Clark, employed by it. This agent pursued and arrested Aymen Elmoby after he refused to appear before the court. Robert when found Elmoby in a restaurant, supplemented by two subcontractors of the firm, tapped on Aymen's door and introduced him to Aymen. When denied entrance, Robert got clearance from the head of the hotel to throw a brick at Aymen's window, where Aymen fled and was attacked with pepper-spray. The agent later found a loaded

²¹ Linder v. State, (1987), 734 S.W.2d 168 (Tex. Ct. App. 1987).

²² Bennett v. State, (1983), 311 S.E.2d 513 (Ga. Ct. App. 1983).

²³ Mullis v. State, (1943), 27 S.E.2d 91 (Ga. 1943).

²⁴ Commonwealth v. Elmoby, (2003), 823 A.2d 180 (Pa. Super. Ct. 2003).

gun, some cash, and marijuana in Aymen's bag. Finally, in this case, the court decreed that the bail agents under commercial bail agencies cannot be regarded as the state actors and must not cross the borders of the state to arrest the principal. All the above cases show that the bail agents also can misuse their extra-legal powers as they pursue bail skippers.

V. THE RIGHT TO SEARCH THIRD-PARTY DWELLINGS

A number of court rulings suggest that the bail agents do have certain rights to access the residence of any third-party and to lawfully apprehend bail skippers. The right of bail bond agent to access the principal's house physically was first identified in *Taylor*, which held that the bail agents could enter and capture the bail skippers.

In the case of *Herd v. State, 1999*²⁵, the appellant, Frederick, was a registered bail agent in Maryland. He was charged for "fourth-degree burglary" arising out of forced entry into the residence of a third party in pursuit of a "bail skipper". After he, along with his wife learned that the residence had been possessed by somebody else than the suspect, they asked for an apology. However, Frederick Herd was then prosecuted for burglary. Rejecting Herd's appeal, the appellate court found that both the statutory authority and the common law, do not permit an agent to breach a third party's home forcefully. The court concluded that the agent was supposed to monitor the house and speak with neighbors and see whether someone knew the defendant as living there.

In the case of *State v. Woods, 1999*²⁶, Terry Woods, working as a bail bond agent with the Missouri Bonding corporation, was convicted of first-degree trespassing and second-degree assault. Woods was trying to trace a bond skipper by the name William Hernandez. Woods reached the address believing that to be Hernandez's and met with occupant Martin. Martin said that probably he didn't identify William and that William didn't live there. Following ruckus from the exterior of the property, Woods shot his gun at Tong. Rejecting Woods' application, the Missouri Court of Appeals affirmed the verdict on the ground that there was inadequate proof to demonstrate that William was on the property. The court further held that Woods' dependence on the "bond I.D. card" that allowed him to "break his house for that purpose..." was unreasonable reliant on his awareness that Tong and not William lived there.

²⁵ *Herd v. State*, (1999), 724 A.2d 693 (Md. Ct. Spec. App. 1999).

²⁶ *State v. Woods*, (1999), 984 S.W.2d 201 (Mo. Ct. App. 1999).

Taylor's case reveals that certain courts found that bail agents do not have "the right to enter a third-party dwelling"²⁷ However, there was an implication made in the case for any third-party dwelling.²⁸ While Taylor's decision found that bail agents may "enter the dwelling" of the principal, forced entry into the residence of any third party was considered unconstitutional in many of the states. However, the SC of Ohio ruled that a law of the state allowing bail agents or subcontracted bounty hunters to apprehend a "bail skipper" at any particular time or location is legal (*State v. Kole, 2001*²⁹).

A variety of courts have examined the notion as to a bail bond attorney can have access to a third party's home while searching for the principal. In *McFarland v. State, 2003*³⁰, *Herd v. State, 1999*³¹, & *State v. Woods, 1999*³², the courts ruled- it was illegal for a bail-agents or even for "his subcontracted bounty hunter" to access any "third-party" residence. Every judgment had a finding basing on Taylor's common law, along with the state case laws & on the existing legislation. However, in *State v. Kole, 2001*³³, the bench held that the statute in the state allowed the agents to apprehend the principal anywhere at any time or location, even the residence of a third party. Similarly, in *State v. Mathis, 1998*³⁴, the bench held that bail agents under agency were legally allowed to reach and enter the residence of a third-party till the time the bail jumper lived at that place.

VI. CONCLUSION & SUGGESTIONS

Since its inception, the system of a bail bond in the USA has encountered several challenges. The bail bond agents are blamed for having a play in the criminal justice, in particular, brutality perpetrated under the cover of "quasi-criminal justice actors". In ruling on the validity of conduct of agents, uncontrolled jurisdiction granted bail to bond agents subjected various courts to refer the law developed in *Taylor's* case of the U.S. SC in the nineteenth century (1873). Cases involving third-party homes highlight the difficulty faced by agents and subcontracted agents over various requirements set by instant cases and particular state laws.

²⁷ *McFarland v. State*, 666 N.W.2d 621 (Iowa 2003); *Mishler v. State*, 660 N.E.2d 343 (Ind. 1996); *State v. Tapia*, 468 N.W.2d 342 (Minn. 1991); *State v. Woods*, 984 S.W.2d 201 (Mo. Ct. App. 1999).

²⁸ *State v. Lopez*, 734 P.2d 778 (N.M. 1986).

²⁹ *State v. Kole*, (2001), 750 N.E.2d 148 (Ohio 2001).

³⁰ *Commonwealth v. Elmoby*, 823 A.2d 180 (Pa. Super. Ct. 2003).

³¹ *Bennett v. State*, 311 S.E.2d 513 (Ga. Ct. App. 1983).

³² *Mullis v. State*, 27 S.E.2d 91 (Ga. 1943).

³³ *State v. Woods*, 984 S.W.2d 201 (Mo. Ct. App. 1999).

³⁴ *State v. Mathis*, 1998, 509 S.E.2d 155 (N.C. 1998).

The sweeping authority given to bail agencies through Taylor's decision was narrowed by legislations, constitutions of various states, and judicial decisions. Applications that perhaps the bail agency system is well out of date have also been resolved by state laws, preventing the bail bond agents from breaching third-party homes forcibly, owing expenses to certain principals, and attempting to "forfeit the bond" after the defendant misses obliging before the judge. While bail bond agents now face fewer procedural limitations than authorities under state, agents aren't entirely free to break the statute, the same also shown through the judgments outlined earlier in the research. The legislation and law from judicial decrees now forbid conduct that was previously allowed under common law. It's important seeing the application of parole is key to the U.S. criminal justice system owing to the lack of prison capacity for accommodating arrestees with pending judicial proceedings. Besides, bail bond agents helped to reduce the expense of pre-trial detention and represented the pragmatic desires and desires of the courts and the defendants.

Till the laws ensure that bail bond agents under the bail agency perform lawful deeds while helping them to accomplish their work without indulging in unlawful acts, the commercial bail agency will remain relevant in supporting the system of criminal justice. The best alternative to maintain an efficient bail agency is to enact rules that allow bail agencies (commercial in nature) to possess the power of producing principals before the court with no damaging or disrupting the daily life of the community.