Review of Tennessee's bail bond system exposes inequalities in US justice system

Warren Duzak
25 October 2017

In 1835 French historian Alexis de Tocqueville noted that when it came to criminal justice in the United States, "Bail is hostile to the poor & favorable only to the rich."

What De Tocqueville observed then holds true today, 182 years later.

"We have a justice system for wealthy people and a justice system for poor people," Nashville/Davidson County Public Defender Dawn Deaner said at a recent public meeting called to discuss the inequalities of the Nashville and Tennessee commercial bail bond business.

Accurately describing bail as "discriminatory pretrial detention" based on economic status, Deaner's office issued the following statement in promoting the meeting organized by the League of Women Voters:

"On any given day, a full fifth of the U.S. jail population—450,000 people—are awaiting trial. Hundreds of thousands of Americans go to jail without being convicted of a crime because jurisdictions across the country rely on money bail to determine who goes free before trial. Research shows that the assignment of bail makes defendants 12% more likely to be convicted; this may be attributed to being given the choice of remaining in jail (because they can't make bail) or pleading guilty in exchange for immediate release, many defendants opt for the latter option. In this way, pretrial incarceration could be seen as a method to coerce guilty pleas."

The practice of posting bail is 800 years old, but it is now only permitted in two countries—the United States and the Philippines. Some states like Kentucky have replaced commercial bail bonds, requiring instead deposits to courts instead of making payments to private bail/bond businesses, or simply trusting each defendant to show up for court.

The practice revealed that given the chance, most people can be trusted to show up for their court dates. "The vast majority of people come back to court," Deaner said.

Then why demand the cost of posting of bail when most appear voluntarily while only being accused of a crime, including lowly misdemeanors? There is a one-word answer—money!

Deaner said that in a single year there were $126.6 million posting of bonds in metropolitan Nashville/Davidson County. The bail-bonding companies charge non-refundable fees of 10 percent, resulting in $12.6 million in gross income.

Since most people, as Deaner noted, show up on their court date, the bail-bond companies make a tidy 10 percent on what could be a one- or two-week investment.

Bail-bonding companies attempt to depict themselves as small local operations. By the appearance of bail-bonding offices—often clustered around jails and courthouses—there does seem to be very little in the way of overhead.

But a recent report titled "Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System," by the American Civil Liberties Union and the group The Color of Change, indicates that the down-home image of a local business providing a needed social service does not hold up.

"The bail bonds industry portrays itself as small, 'mom and pop' bail bonds agencies…. that secure release from jail for a nonrefundable fee. In reality, multinational insurance corporations dominate the industry, underwriting each bond," the ACLU report stated.

There are fewer than ten insurers who underwrite most of the roughly $14 billion in bail bonds which are

© World Socialist Web Site

issued every year in the United States, the report noted.

"This money bail system allows corporate insurers to operate with little risk, meaning the industry profits even when its customers do not show up for court. It is a win-win for them. It is a lose-lose for justice," the report concluded.

Deaner said for one period in Nashville 21,000 people were arrested for misdemeanors. Of those, the vast majority, approximately 77 percent, were required to post a "surety bond" i.e. bail which typically amounted to $5,000. That would require a non-refundable payment of $500 to the bonding company.

That figure is significant. It has been widely reported, including by the WSWS, that a majority of Americans do not have the resources to cover an unexpected $500 bill.

Those required to post surety bonds are almost always workers and the poor who frequently make $30,000 year or less and have neither the cash nor the property to "guarantee" a court appearance.

In Memphis, the local group Fair City reported that in an average month 230 people are unable to post bonds under $5,000 and end up spending up to seven days in jail before being released.

Deaner told the audience that judicial commissioners, officials who serve as the equivalent of a night court judge, and judges often ignore other options for release although people may qualify.

"They don't, they skip right to the money bond," Deaner said.

Although nothing good was said about a bail/bond system fleecing workers and the poor for the benefit of investors, Deaner was unable to propose any way to fight back or even suggest that fighting back was necessary.

Asked if either the Democratic or Republican parties in Tennessee had made any effort to abolish the system, Deaner could only cite a few public officials who supported her efforts, not to abolish the rotten system, but to offer a Community Bail Bond Service in which well-to-do individuals could donate money to help a tiny minority post bail.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site