

# Impact of bail and house arrest



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## **Introduction**

Bail and house arrest are parts of the legal system that allow offenders to serve time or await trial outside of the normal jail settings. Bail allows a defendant to await trial outside of jail by paying a sum of money as a guarantee that he or she will show up to court at their designated time (Abrams & Rohlfs, 2011). House arrest allows the convicted to serve their appointed sentence at their home instead of in prison. This time served comes with conditions that require the convicted to remain at home and only go to pre-approved locations such as work, the grocery store, medical appointments, etc., at approved times.

They both offer the benefit of saving the government, be it federal or local, the money it typically spends on housing criminals in the jail/prison system. The Findlaw blog estimates that keeping someone in prison can cost more than \$20,000 per year. House arrest also aids in keeping the prison facilities from being overcrowded (Trinh, 2015).

Bail and house arrest do offer problems to the defendants and the public as well. This paper will look at some of the problems associated with the bail and house arrest options, namely the dangers to the public posed by both and the additional strain to recipients of house arrest. The following sources will help prove those points and examine the pros and cons of each.

## **Bail**

Bail is a promise a defendant makes in the form of cash or equal value in property to return to court in order to stand trial on the charges that they stand accused of in order to receive that payment back. A simplified way of

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looking at the bail process is that if you make someone pay \$1000, or equivalent value in property, they will return to court to stand trial with the promise of getting that money back (Feige, 2015).

The Fifth and Fourteenth Amendments of the Constitution each contain a clause on due process. This clause is there to protect citizens from arbitrary denial of life, liberty, or property by the government outside the sanction of law. The Eighth Amendment has an excessive bail clause which is designed to protect defendants from being subject to excessive bail set during pre-trial detention. One recent example of this clause protecting a defendant from excessive bail set can be found in the murder case of Robert Durst. Durst was given a \$3 billion bail during pre-trial activities in 2004. An appeals court in Texas later deemed it excessive and that no one could meet the requirements of a bail that high, not Durst himself, and definitely not the bail companies. The court then lowered the bail to \$450, 000. (CNN. com, 2004)

One of the issues with this clause is that it leaves too much room for interpretation when applying bail practices. The clause simply states: “excessive bail shall not be required” which is extremely vague. To remain in line with the Eighth Amendment, there should be a definitive explanation of the term “excessive” which doesn’t exist. This led to bail reform being sought out.

The Bail Reform Act of 1984 was designed address some concerns that pretrial detention may be violation of constitutional rights. The Act was supposed to help keep defendants from being presumed guilty before their trials occurred. This is definitely a benefit for a society based on the notion

that defendants are innocent until proven guilty. However, the Act has allowed for the extreme conditions of release for those defendants that can afford them (Zweig, 2010).

Another complaint with the bail system is that it favors the wealthy and discriminates against the poor. Poorer defendants do not have the “disposable income” to afford to pay bail and often have that used against them to force, or coerce, a guilty plea from them with a promise to avoid jail time, only to go home with a crime on their record. These blemishes on their criminal record can have a lasting negative affect on their ability to find employment in the future among other things. (Feige, 2015)

Yet another complaint with the bail system is that it puts the recipients back on the street while they await the completion of the judicial process. For the innocent defendants, this is not an issue. However, this is not the case for the defendants that are actually guilty. These guilty defendants are now in a position to recommit their crimes, or commit new crimes, including attempting to harm potential witnesses for case against them (Sacks & Ackerman, 2014).

## **House Arrest**

House arrest allows for a defendant in a case to serve time or await trial at their primary residence. House Arrest is designed to keep nonviolent offenders from becoming repeat offenders. House arrest won't necessarily restrict the defendant to their home, however. Some exceptions, like attending medical appointments, going to work or school, attending church, and certain shopping trips may exist and must be preapproved.

House arrest is an alternative to serving jail time and it is intended for nonviolent offenders accused of minor crimes. It also requires electronic monitoring of the offender. The offender is monitored 24 hours a day to track their whereabouts in ensure that they remain in predefined locations. It may seem like a benefit at first, because the offender gets to avoid jail time.

However, recipients soon find out that having their movements restricted and forcing other family members to complete functions they would normally perform can become more and more stressful as time goes on. Often times, the family of the prisoner begins to feel as if they are being punished as well; leading to strained relationships. One argument against house arrest is that it unfairly punishes the family of the prisoner for the duration of the sentence (Brown & Elrod, 1995).

Another issue with house arrest is that the offenders could be dragged back into court or before their parole officers when there is a malfunction with the device and risk a return to prison. Some offense that fit this description included losing a connection while taking public transportation, such as a subway, to a preapproved appointment, or just losing power to the device.

In fact, the prisoner, is responsible for ensuring that the device remains charged and powered on at all times. The prisoner is also required to pay the costs associated with electronic monitoring. For this reason, an offender with gainful employment is the ideal recipient of a house arrest sentence. The offender must also maintain a home phone land line without call waiting, call forwarding, caller id, other advanced features to be eligible for home

electronic monitoring. Repetitive violations of these requirements could land the prisoner back in jail.

One last noteworthy problem with house arrest, is that even though it is normally intended for nonviolent offenders, each jurisdiction makes their own rules for the conditions of house arrest. There have been times with some dangerous criminals have been allowed to serve time awaiting trial on house arrest. One notable occurrence of this fact can be seen in a gang member, Rashawn Hines, from the Wilmington neighborhood of Chicago being allowed to await trial under house arrest in November of 2014. Hines was later arrested for another charge. An investigation led to findings that his house was a local hangout for the Bloods street gang and that Hines distributed guns and drugs to members of the gang (Norton, 2014).

### **Conclusions:**

Bail and house arrest both get defendants/offenders out of the prison and jail system during the judicial process. This saves the governing agencies money on housing them in jail. It was noted earlier that incarcerating a prisoner costs the government more than \$20, 000 per year. It also allows the government to avoid the problem of overcrowding in the prison system.

However, they both have the possibility of putting criminals back on the street with the common public. While the intent of both practices is to deter individuals from repeating the offense or committing other offenses, the truth is there is no guarantee of that, especially when you give them the access to do so. Home monitoring can keep law enforcement aware of the individual's location, but it cannot stop them from committing any specific

action. In the case of Rashawn Hines, electronic monitoring could not stop criminals and gang members from coming to him.

Bail is way of helping to preserve the notion of “innocent until proven guilty” which our judicial system is based on, but not every defendant is actually innocent. Bail allows all recipients, innocent and guilty alike, back on the streets. The guilty are in a position to commit the offense again or commit new offenses, including fleeing from the jurisdiction they were arrested in or hindering the investigation against them.

Both provide benefits to the government, especially financial benefits.

However, they both raise concerns of safety to the public as well. There are benefits and consequences that should be weighed and considered in any possible system reforms.

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