



April 21, 2009

Senator James Webb
248 Russell Senate Office Building
Washington, DC 20510

Dear Senator Webb:

Thank you for introducing the National Criminal Justice Commission Act of 2009. We support, to quote your website, “the need for a blue-ribbon commission to look at every aspect of our criminal justice system with an eye toward reshaping the process from **top** to bottom.”

Today we are writing you about the “top” of the system that too often goes unexamined and unaddressed – bail reform. When someone is arrested, their release or detention pending trial should be based on a thoughtful, informed assessment of whether they will stay crime-free while on release and return to court for trial. This stage of the criminal justice system – when the arrestee is booked into a jail and awaits his bail setting hearing – provides an opportunity for risk and need assessment that in too many places in this country is ignored in favor of setting a monetary bond. This practice is dangerous to communities since it is based on money, and not practices that have been shown to work effectively; harmful to the family of those arrested; and serves only to profit the commercial bail bonding industry.

We urge you to include a wholesale review of bail practices in this country, and the involvement of a for-profit enterprise in what should be solely an informed, evidence-based judicial decision. The inmates in today’s jail are tomorrow’s prisoners. The pretrial justice system, as it operates today, produces grave racial and social disparity. But there are proven, evidence-based strategies that can address these disparities and reduce jail populations without any significant increase in crime.

We represent the nation’s only two organizations dedicated to reforming pretrial justice. The mission of the Pretrial Justice Institute, led by Tim Murray, is to advocate for fair and effective pretrial policies and practices that eliminate inappropriate detention, optimize diversion from prosecution, and maintain community safety. The mission of the National Association of Pretrial Services Agencies, led by Peter Kiers, is to promote pretrial justice through the development and support of pretrial services agencies.

We ask you to consider, among the reasons you list for why we urgently need this legislation, adding the following facts:

- Two-thirds of the nation’s jail population is inmates awaiting trial. In a jail population nationally of close to 1 million, this accounts for a large portion of county correctional expenditures.
- Most of these inmates have had monetary bond set by a judge, but are unable to meet the bond amount. The amounts are typically around \$5000, where the defendant can pay 10% to a bondsman, as a *nonrefundable* fee, to be released. In this economic crisis, this is proving to be even more of a burden, with some bail agents offering discounts (less than 10%) and even financing plans.



- Most of these inmates are not assessed for risk. Their ability to get out of jail pending trial is based solely on their ability to pay a bond. This is cause for grave public safety concerns, as illustrated by the first-ever fatal shooting of a Fairfax County police officer in May 2006 by an 18-year old mentally disturbed young man, Michael Kennedy. Two weeks prior to the shooting, he had been *released on \$33,000 bond* without being interviewed by Pretrial Services because it was the weekend. He was killed by return fire of police in Virginia. This tragedy could have been avoided had he been properly assessed and his risk to the community discovered.
- Defendants held on the same charge and with the same criminal record but who spent their pretrial phase out on bail are *less likely* to serve time post-adjudication than the same defendant who was held pretrial.
- When the punishment for a crime begins before the adjudication for that crime, due process and constitutional rights are being violated.

We fully believe that scholars, practitioners and advocates for bail reform should be included as among the “the best minds in America to confer, report, and make concrete recommendations about how we can reform the process.”

We want to help you fix the system. Please include the issue of bail reform in your national review of the criminal justice system. Let us know how we can help. We stand ready to serve.

A handwritten signature in black ink that reads 'Tim Murray'.

Tim Murray
Executive Director
Pretrial Justice Institute

A handwritten signature in black ink that reads 'Peter C. Kiers'.

Peter Kiers
President
National Association of Pretrial Services Agencies

