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The Regulation and Control of Bail Recovery Agents: An Exploratory Study

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Abstract

This article explores the current status of the licensing and regulation of bail recovery agents in the United States. By reviewing state legislative and administrative codes in all the 50 states, this study found that 24 states control bail recovery agents through licensure or the imposition of other occupational regulations. These state controls include age, criminal history, and pretraining and educational requirements; some states also require continuing education and training for licensure and/or regulation. In contrast, 18 states have no licensing or other occupational requirements for bail recovery agents. These findings raise questions about the actual utility and function of these laws, suggesting that states place minimal controls on this sector of the bail industry, oftentimes, relying upon voluntary self-regulation and governance of recovery agents. As such, the civil liberties of the public and criminal defendants may be at risk from this underregulated profession.

Keywords

courts/law, legal issues, courts/law, other, evaluation

Introduction

Bounty hunters, as they are known colloquially, work closely with members of the private bail industry and enjoy broad powers to detain and arrest absconded criminal defendants. They are considered the enforcement arm of the surety bail system, where their role is simple: They apprehend defendants who have failed to appear in court or have violated the conditions of their surety bond (Johnson & Warchol, 2003). In performing these activities, they have broad powers of apprehension, surpassing those powers that are granted to governmental officials when conducting arrests, searches, and seizures because of their status as a private actor. When combined with the fact that bounty hunters have operated in many states with little or no formal regulation, the potential for civil rights abuses exist.

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Currently, some states are engaged in a variety of legislative activities related to the licensing and regulation of bounty hunters. In July 2011, for example, legislators in Pennsylvania introduced a bill that would, for the first time, establish standards for bounty hunters operating in that state by requiring that bounty hunters be licensed (Pa. H. B. 1774, 2011). The Pennsylvania action reflects one approach to controlling bounty hunters: setting minimum entry-level qualifications with oversight by an administrative agency. Meanwhile, in 2010, the state of New Hampshire moved from minimal training and registration requirements to more strict licensing requirements for bail enforcement agents that now include minimum years of prior experience in law enforcement, private investigation, or other related fields (N.H. HB 651)—another effort to control the actions of bounty hunters.

In contrast, other states are eliminating or vetoing bail recovery legislation. For example, California, which had first enacted legislation requiring the certification and training of bounty hunters in 1999, allowed the provisions to lapse in 2010 through the operation of a sunset clause (Cal. Assembly Bill. 2238). As a result, there are currently no established standards for bounty hunters in that state; age, criminal background limitations, and training requirements for bounty hunters in California are no longer in effect. Meanwhile, in Wisconsin, a state where the surety bail system has been banned since 1979, the legislature included a provision in its 2011 budget bill that would have reintroduced the commercial bail industry (Wis. Act 32, 2011) and allowed bounty hunters to operate in that state. However, Wisconsin Governor Scott Walker vetoed this section of the budget bill, but nevertheless indicated support for the measure and called for its reintroduction as a separate piece legislation to give the state time to properly implement it (Marley & Stein, 2011).

These examples from Pennsylvania, New Hampshire, California, and Wisconsin illustrate the need for an understanding of how states are currently approaching the licensing and regulation of bounty hunters, an area that has been largely ignored in the academic literature. This study, therefore, provides a current and comprehensive review of existing laws in all the 50 states related to the licensing and regulation of bounty hunters, who are also called, for the purposes of this study, bail recovery agents.

The Role of Bail Recovery Agents in the Criminal Justice System

The use of surety bonds as a pretrial release mechanism is a fundamental component of the U.S. criminal justice system. It is one of the several forms of pretrial release that the courts can use to ensure that defendants will appear for their court appointments that include nonfinancial forms of release, such as release on recognizance, supervised release, and unsecured bond as well as other financial based mechanisms, such as deposit bonds (e.g., a 10% cash bond), full cash bonds, and property-related forms of release. In those states where the surety bond system exists, it often surpasses all other type of pretrial release, including release on recognizance (Cohen & Reaves, 2007).

Unlike other forms of release, however, surety bonds have some unique elements. Under a surety bond release, the defendant (or principal) is “bailed out” of court custody by a person (the indemnitor) who then contracts with a private bail bond agent or bondsman (the surety) who financially pledges or promises that the principal will meet the conditions of the bond. In exchange, the indemnitor pays a nonrefundable fee, usually 10% of the value of the bond, to the surety (but is nevertheless fully responsible for the full value of the bond if the accused should violate the conditions of the bond). Under this system, for example, if the bond is \$20,000, the indemnitor must pay \$2,000 (10% of the value of the bond) for the release of the principal to the bondsman, while agreeing to pay the additional \$18,000 if the principal violates the condition/conditions of the bond.

As part of the bail agreement, the principal also signs a contract with the surety which stipulates the principal must appear for all scheduled court appointments and meet other conditions set by the court (and even the bail bond company) that can include travel restrictions, no-contact orders,

mandatory check-in procedures, and even electronic monitoring. A principal who fails to uphold the conditions of the bond set by the court becomes a fugitive, and the full value of the bond posted by the surety (not just the 10% initial deposit) is forfeited to the court. The surety (or bail bond company) is then responsible for paying the full value of the bond to the court if the principal does not voluntarily surrender, or is not returned to the custody of the court by the bail bond agency within a certain time period. Moreover, even if the principal has fully complied with all conditions set by the court and by the private bail bond contract, if the indemnitor no longer wants to accept financial responsibility for the principal, the bail agreement can be revoked and the principal can then be required to surrender himself to the custody of a bail agent (or company) or the courts. Courts in some states recognize similar unilateral powers of surrender, without cause, on the part of the surety as well (Hirsh, 2007). If the bail agreement is revoked through the actions of either the indemnitor or the bail agent and principal does not surrender to the court, the principal can be deemed a fugitive from the courts and/or the bail bond company. In these instances, the bail system relies upon bail recovery agents to capture the fugitive. Inasmuch, the bail agent and bail recovery agent perform interdependent and symbiotic roles: one is the writer of bonds (the agent), while the other is the enforcer of the bail bond agreement (the recovery agent), preventing financial losses that would be incurred if defendants were to disappear or “skip” and their bonds were to be later forfeited to the court. Without their services, the recovery of fugitives would remain the sole responsibility of law enforcement officials. As a result, Burns, Kincade, and Leone (2005) suggest that bail recovery agents “relieve pressures” (p. 134) on the public sector and serve a needed function in the criminal justice system.

Bail recovery agents’ powers are granted to them contractually through the bail agreement, a private agreement; they do not have to abide by the constitutional limits and procedural safeguards that govern the actions of public sector government agents. Unlike public law enforcement officials, bail recovery agents are considered “private,” not “state” actors and are therefore they are not bound by the U.S. constitutional protections against unreasonable search and seizures under the Fourth Amendment, the privilege against self-incrimination under the Fifth Amendment, and the right to counsel under the Sixth Amendment (Freeland, 2009; Patrick, 1999). Furthermore, they are not subject to federal statutes governing “state actors,” such as 42 USC §1983 which provides for civil recovery by persons whose rights are violated (Ross, 2009; Tackas, 1994) or 18 USC § 242 which provides for the criminal prosecution of state actors for violating a citizen’s civil rights (Johnson & Bridgmon, 2009). As a result, bail recovery agents have unique powers that far surpass those of the police in America, raising concerns that the safety and civil rights of both fugitives and the public at large may be in jeopardy as a result of their actions.

When bail recovery agents err in the exercise of these powers, the consequences can be serious. The literature includes narratives describing armed bail recovery agents mistakenly breaking into the dwellings of innocent parties (Freeland, 2009), standoffs between the police and armed bail recovery agents in the home of a fugitive’s family (Hirsh, 2007), and the injury, kidnapping, and death of innocent parties (Fisher, 2009). While the frequency of such incidents has not been documented, the underlying potential for innocent victims to mental and physical injury at the hands of bail recovery agents is clear. In fact, specific incidents of abuse were the impetus behind some of the existing laws governing bail recovery agents (Merry, 1999) and they also were cited in support of proposed federal legislation House Bill 2964 (1999), the Bounty Hunter Responsibility Act of 1999, that would have provided greater rights to the victims of abuses by bail recovery agents, by extending the definition of acting under “color of law,” for the purpose of 42 USC §1983 and other suits alleging violation of constitutional rights, to include sureties on bail bonds, their agents, and bail recovery agents. One of the proponents of this bill (which ultimately did not pass) cited incidents from 13 different states in support of his argument for the need for greater control over the actions of bail recovery agents (“Hearing Before,” 2000).

Compounded with actual incidents, the bail recovery agent's function is often cloaked in myth and speculation because of the media's presentation of them. The popular press, Internet sites promoting bail recovery as a career, Hollywood movies, and best-selling works of fiction by authors including Janet Evanovich's (2008, 2009) series of books have added to the mystique and greater attention of the bail recovery agent in contemporary society. As such, the increased exposure of this profession has arguable brought a greater interest in and perhaps questions about the profession's regulation and control to the forefront, where some scholars have posited that there is a "stunted growth" in the legal evolution, oversight, regulation, and legislation of this extra-constitutional actor in the criminal justice system (Fisher, 2009) which is considered by some authors to be "medieval" and largely ignored by scholars (Woods, 2010).

The Literature

The bail recovery agent's role in the administration of justice is old, but its true origins are unclear. Some scholars suggest that bail-related actions date back to the ancient war practice of hostageship in England, a practice in which a person was held hostage, a surety (or a trustee) was appointed for the hostage, and this hostage was held until a promise was fulfilled (Sklansky, 1999). Others propose that it emerged from the *wergeld* practice, which allowed a person to pledge to pay for the accused's wrongs if the accused were to be found guilty (Chamberlin, 1998). The practice of "*baile*" also existed in pre-Norman England where the medieval sheriff would often release individuals to a third party who would guarantee the defendant's appearance at trial (Bail, An ancient, 1961; Drimmer, 1996). Later, this system changed where a surety pledged money (instead of the guarantor's word) to ensure the return of the defendant to court, leading to the creation of a commercial bail bond industry. Under this commercial system, third parties (sureties) would financially pledge the return of the defendant to the court for a fee. If the person failed to return, the surety (or his agent) became a "de facto" sheriff who could retrieve and return the accused to the custody of the court (Drimmer, 1996). Currently, bail recovery agents and the U.S. surety bond system may be considered an anachronism when compared to pretrial release mechanisms throughout the world: Only the Philippines has a surety bail system that is similar in structure and function (Clisura, 2010; Cohen, 2008).

In a legal context, the bail recovery agent's power to arrest and detain a criminal defendant is based on the English common law. Their powers are summarized in the often-cited United States Supreme Court case of *Taylor vs. Taintor* (1872):

When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. (p. 371)

While the broad powers described in *Taylor v. Taintor* (1872) have been modified by statute or court decisions in some states (Baker, Vaughn, & Topalli, 2008), the strong historical underpinning of the bail recovery agents' role nevertheless remains intact.

While there have been a number of studies relating to the occupation of bail recovery, none have looked broadly at the regulatory environment in which bail recovery agents operate in all the 50 states. However, some studies have looked at state laws for the purpose of determining the need for or a model for regulation of bail recovery agents in a specific state. For example, Merry (1999) reviewed state laws that provide the statutory or common law basis of the bail recovery agent's power to arrest, in connection with her article discussing proposed Arizona legislation regulating bail recovery agents. Similarly, the Virginia State Crime Commission (2004) examined the existing

regulation of bail recovery agents in the United States for the purpose of a report to the Virginia legislature which was considering regulation of the bail industry in Virginia. While the Virginia survey was more extensive than that undertaken by Merry, it is now out-of-date, due in part to the overall changes in laws and regulations throughout the United States in the last decade. Besides these two studies, Nieto, Lewicki, and Lewicki (2007) also examined bail bond laws in California (which no longer exist as of 2010) and other selected states for the purpose of evaluating the need for and effectiveness of California's regulatory scheme. Furthermore, Barsumian (1999) examined bail recovery laws in the state of Iowa, while Zeglarski (2004) also studied differences between legislation introduced in New Jersey and laws regulating bail recovery agents in other states. However, only selected aspects of the regulation of bail recovery agents were examined.

Other authors have conducted qualitative research on bail recovery agents. Burns et al. (2005) examined the background and qualifications of bail recovery agents. The authors concluded that, even though bail recovery agents perform law enforcement-related activities (arrest, investigations, and use of informants), they lack training and certification in bail enforcement tactics and legal issues. Burns et al. also found that there were indicators of a lack of professionalism, leading the authors to conclude that the industry needs to "professionalize" by changing its image while improving accountability, regulation, and licensure in the profession. Similarly, Simpson, Forsyth, Mire, and Lee (2008) found, through interviews with bail recovery agents, that the "Wild West" popular image of bail recovery agents does not match the reality of their day-to-day work. Instead, bail recovery agents interviewed for their study reported that the use of force in an apprehension was not typical. Furthermore, Johnson and Warchol's (2003) research provides insight into how bail recovery agents function within the overall context of the bail industry. The authors found that the police often do not fully understand the powers of bail recovery agents. Nevertheless, they found that bail recovery agents often have very good working reciprocal relationships with the police, who, with other members of the public sector, recognize their importance in fugitive recovery efforts. Finally, Stone (2006) concluded from her study of bail recovery agents that there is a common identity among them and, to a certain extent, they share a set of standards regarding effective and acceptable conduct. Stone also found that recovery agents were not necessarily opposed to government regulation of their profession, even though they did have concerns about the possible scope and implementation of any regulation.

Other studies have explored the bail recovery industry in more narrowly focused manner. Baker, Vaughn, and Topalli (2008), conducted a nationwide analysis of case law involving the Fourth Amendment actions of bail recovery agents (particularly entry without a warrant), where they concluded that the broad powers upheld by *Taylor* have eroded, since bail recovery agents in some states are regulated through more recent case law and legislation. Nevertheless, they concluded that, although bail recovery agents still have fewer restrictions than state agents, the "bail bond system is slowly adhering to the rule of law" (p. 130). Additionally, Mixon and Trevino (2003) examined the benefit of licensing bail recovery agents in an econometric model, using the analogy of fishing. Here, the authors proposed that, without licensing bail recovery agents, there could be too many of them, potentially leading to a drop in sustainable profits for these individuals, since there would not be enough fugitives (i.e., fish) to catch.

Method

This study uses a methodology consistent with content analysis to analyze the state legislation and administrative regulations governing bail recovery agents in the United States. Under this research methodology, only the qualitative aspects of the manifest messages are collected, coded, quantified, and then analyzed to identify any trends or patterns that exist (Bachmann & Schutt, 2007; Maxfield & Babbie, 2008). This methodology is readily accepted and heavily used in social science research.

It has, for example, been used to examine the laws regarding the right to counsel for juveniles (Caeti, Hemmens, & Burton, 1995), the history and evolution of personal protection orders (Eigenberg, McGuffee, Berry, & Hall, 2003), video voyeurism (Bell, Hemmens, & Steiner, 2006), and castle doctrine laws (Boots, Bihari, & Elliot, 2009).

The population for this study included all states ($N = 50$) in the United States. The unit of analysis was each state's most recent published statutory and administrative codes, which were retrieved from the state's website or from the Westlaw database. The unit of observation, meanwhile, was bail recovery agent laws, which, for the purpose of this study, are statutes and regulations that apply to individuals whose sole responsibility is the apprehension of fugitives. Laws exclusively governing "bail agents," who are those individuals who may engage in fugitive recovery, but whose primary task in the bail industry is the writing of bail bonds and not recovery per se, were not examined. In addition, the study did not examine laws governing interstate or the cross-border recovery of fugitives, namely laws that allow bail recovery agents to operate legally in one state and apprehend fugitives in another state. Statutory or administrative code amendments that were adopted after October 30, 2011, are also not included in this study.

The identification of bail recovery agent laws by state required a multistage process. First, code sections governing the bail industry and bail recovery agents in each respective state were identified through a combination of key word searches, index searches, and searches using known citations. These code sections (if present) were then examined by each researcher in order to determine the presence or absence of specific statutory provisions and regulations that controlled individuals performing fugitive recovery activities. Because different titles are used among the states to describe these individuals, the analysis was not restricted to one particular occupational title, such as "bounty hunter" or "bail recovery agent." The search focused, instead, on the function controlled by the statute or regulation: the apprehension of fugitives. Next, codes were examined for the terms *bounty hunters*, *recovery agents*, *fugitive recovery agents*, *bail recovery agents*, *bail enforcement agents*, *bail bond enforcers*, *surety recovery agents*, *runners*, and *solicitors*. The existing codes were then categorized by type:

1. Prohibited: states that specifically prohibit the use commercial bail or the use of bail recovery agents. States that do not allow independent bail recovery agents, but allow other licensed occupations, such as private investigators to perform apprehensions were included in this category;
2. Licensed: Bail recovery agents in these states must be properly licensed through their respective state agencies (i.e., departments of insurance and/or another state-level licensing entity). Licensing is defined as a governmental body issuing a license;
3. Regulated: Bail recovery agents are not licensed but must register with a government entity in the state in which they operate in order to engage in bail recovery activities; and
4. None: states that have no statutes or administrative codes regulating who may be a bail recovery agent.

Finally, for those states identified as having bail recovery agent laws (licensed and/or regulated), other specific data were collected that included the type of licensing or regulation, prelicensing and continuing education requirements, minimum age standards, and criminal history provisions.

A strategy of intercoder reliability (see Kuraski, 2000; Neuendorf, 2002) was also created. First, clear codebook definitions, decision rules, and protocols for each variable were constructed prior to the content analysis to ensure reliability in coding. Then, both authors were responsible for, and independently coded, bail recovery agent regulations into two separate data sets. This coding was also done in stages by each researcher in order to prevent coder fatigue; random reliability checks were also conducted by each researcher during the coding process. Upon completion of the two separate data sets, they were then compared against one another, variable by variable, for accuracy

and reliability prior to the creation of the final data set that was used for analysis. Using this diagnostic procedure, a total of six cases (and 13 variables within those cases) were in disagreement, comprising a crude agreement rate of 88% by case (44/50 states were in agreement) and a rate of 97.6% by complete data set (11 variables per case = 550 variables; 437 variables were initially coded correctly). To rectify these disparities, the researchers then collectively reviewed the original laws and/or codes, and based on the decision rules, recoded the data accordingly. This process resolved all of the disagreements in the data set. While adequate text was found for all states that had some type of bail recovery agent regulations and/or laws, the reliability of the “non-law” states was also verified. For states for which there was a finding of no licensing or regulation, consistent with Tremper, Thomas, and Wagenaar’s (2010) system or model of measuring and classifying law, the researchers also checked official governmental websites to confirm the validity that there was no licensing or regulation.

Findings

The Nature and Extent of Bail Recovery Legislation

Figure 1 provides an overview of states that have bail recovery agent-related laws in the United States ($N = 50$). Four states, Illinois, Kentucky, Oregon, and Wisconsin, do not permit the commercial bail bond industry to operate; therefore, public law enforcement officers perform all bail enforcement activities. The remaining 46 states allow the apprehension of fugitives released on surety bond by private actors (those other than the police). In these states, particular individuals (bail agents, bondsmen, etc.) have the legal authority to apprehend individuals who have violated conditions of their bonds. Among the states that grant recovery powers to private individuals, four states (Arkansas, Florida, and Ohio, and Texas) permit recovery only by a licensed bail agent or other separately licensed professional, such as a private investigator, 18 states have separate, formal licensing of bail recovery agents, and 6 states have less restrictive requirements for bail recovery agents involving various forms of registration. The remaining 18 states, Alabama, Alaska, California, Hawaii, Idaho, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, and Wyoming, have no statutory or administrative codes provisions for bail recovery agents. Figure 1 also shows the terminology used for bail recovery agents, reflecting that state laws use a variety of terms for bail recovery personnel. Of those, the term *Bail Enforcement Agent* is the most common term used ($n = 11$), followed by *Bail Recovery Agent* ($n = 6$). Of interest is that the traditional term *Bounty Hunter* is used to define bail recovery activities in only five states.

States That Prohibit Bail Recovery Agents ($n = 8$)

In total, eight states prohibit the recovery of bail absconders by independent bail recovery agents. These include the four states where the commercial bail system does not exist by law (Illinois, Kentucky, Oregon, and Wisconsin), and four other states (Arkansas, Florida, Ohio, and Texas) where independent bail recovery agents are prohibited from apprehending fugitives. In these four states, however, licensed bail agents (the writers of bail bonds) do have powers of apprehension. In addition, in Arkansas, Ohio, and Texas, licensed private investigators (and in Texas, licensed “private security”) may recover defendants who have absconded. These states emphasize their rejection of the bail recovery agent as a participant in the bail system by explicitly forbidding the use of the title “bounty hunter” and related terms. For example, Florida Statutes Annotated § 648.30 (2010) states “A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state” (n.p.). Likewise, §16-84-114 of the Arkansas Code Annotated

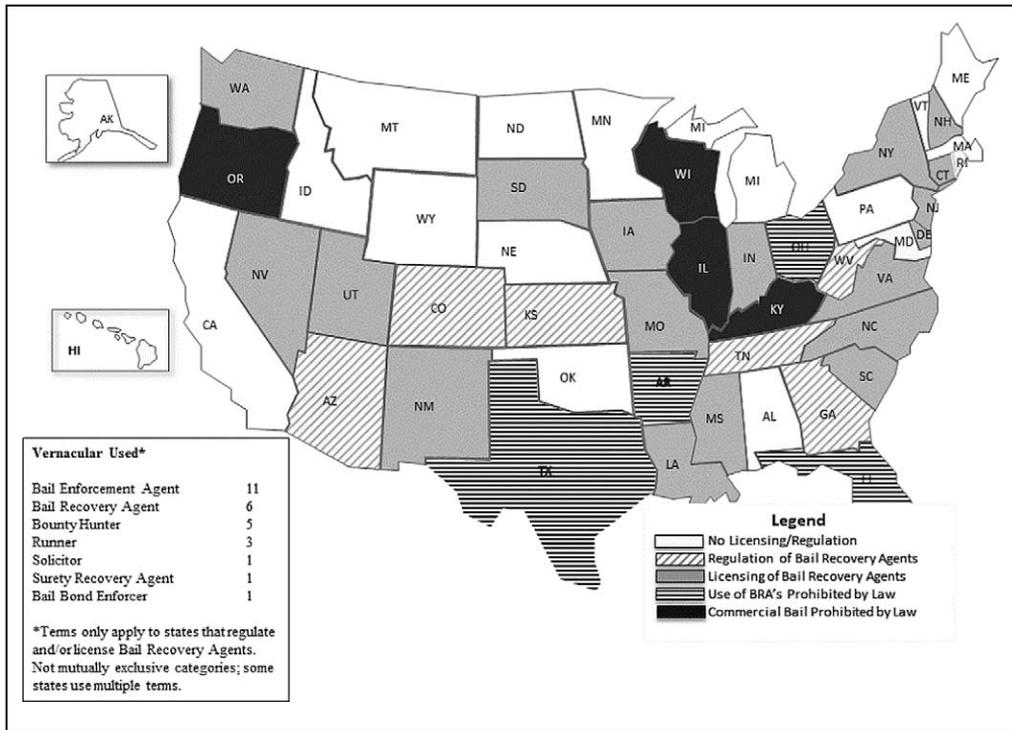


Figure 1. Bail recovery legislation by state.

(2010), states that “No person shall represent himself or herself to be a bail enforcement agent, bounty hunter or similar title” (n.p.). Ohio has a similar provision; House Bill 730 (2000) prohibits the use of the title “bounty hunter” or “bail enforcement agent” for those individuals allowed to apprehend fugitives. In Florida, Arkansas, and Ohio therefore, the traditional “bounty hunter” role does not exist, but the recovery of absconded defendants can be made by the limited class of persons identified in the respective state statutes.

The Licensing of Bail Recovery Agents (n = 18)

Table 1 provides an analysis of those states that allow bail recovery agents, but impose formal licensing (an official authorization issued by the government) requirements on them. A total of 18 states have some type of licensure that governs bail recovery agent activities. Table 1 shows that there are three different governmental departments that typically regulate bail recovery agents: (1) insurance; (2) public safety/police; and (3) other licensing agencies. Of these, bail recovery agents in the majority of states are regulated either by the state’s insurance commission or department (n = 8; 44.4%) or by the state’s department of police or public safety (n = 8; 44.4%). In two states (11.1%), meanwhile, bail recovery agents are controlled by another state licensing agency. In New York State, the licensing of bail enforcement agents is administered by the Department of State, Division of Licensing Services. In the State of Washington, meanwhile, the licensing of “bail bond recovery agents” is done by the Washington State Department of Licensing.

Bail Recovery Agent Qualifications in States That Require Licensing. Table 1 also shows the educational, age, and criminal history requirements for states that license bail recovery agents. The majority of

Table 1. States With Licensing of Bail Recovery Agents (*n* = 18).

State	Licensing Body			Licensing Requirements				
	Insurance Department	Public Safety	Other ^a	Education		Age	Criminal History Disqualifications	
				Prelicensing	Continuing Education		Misdemeanor	Felony
Connecticut		X	—	20	—	18	S	P
Delaware		X	—	•	—	21	S	P
Indiana	X	—	—	12	6	18	S	S
Iowa		X	—	—	—	18	S	P
Louisiana	X	—	—	8	12/2 ^b	18	S	P
Mississippi	X	—	—	40	8	21	S	P
Missouri	X	—	—	24	8/2 ^b	21	S	S
Nevada	X	—	—	80	1	21	S	P
N. Hampshire		X	—	Φ	—	18	S	P
New Jersey		X	—	Φ	—	25	S	P
New Mexico		X	—	30	15	18	S	P
New York		—	X	Φ	—	25	S	S
North Carolina	X ^c	—	—	12	3	18	S	P
South Carolina	X ^c	—	—	20	6	18	S	P
South Dakota	X ^c	—	—	—	—	21	S	S
Utah		X	—	16	8/2 ^b	21	S	P
Virginia		X	—	40	8/2 ^b	21	S	P
Washington		—	X	32	8	21	S	S

Note. P = Any offense in this category disqualifies the applicant.

S = Some offenses in this category disqualify the applicant.

Φ = Combination of education, experience, and training.

• = Content of training prescribed, but not number of hours.

^aIn New York, licensing of bail enforcement agents is done by the Department of State, Division of Licensing Services; In the State of Washington, licensing of “bail bond recovery agents” is done by the Washington State Department of Licensing.

^bThe designation “/2” represents the biannual number of hours required.

^cLicensed “runner” may only work for one bail bond agency.

the states (*n* = 16; 88.9%) require some type of prelicensing training. Of these states, the majority (*n* = 13; 81.25%) rely upon a prescribed number of hours of prelicensure training, ranging from 8 to 80 hr. One state, Delaware, while not prescribing a minimum amount of hours of prelicensing training, requires (under 7 DE Reg 1782) that bail enforcement agents must complete training in “Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents” (n.p.).

Other states (*n* = 3; 19%) have stricter requirements that include a combination of education, experience, and training, prior to licensure. In New Hampshire, for example, applicants who do not have an associate’s or bachelor’s degree in Criminal Justice or Fire Service must demonstrate a range of 2–4 years of experience working in specified fields, in addition to meeting other licensing requirements (N.H. H.B. 651). The state of New Jersey (38 N.J.R. 4801) requires that bail recovery agents must have at least 5 years’ experience as a law enforcement officer or private detective, in addition to a prescribed 16-hr training program in bounty hunting at a state-approved school. Similarly, the state of New York requires that applicants for licensing as bail recovery agents have 3 years of prelicensing work experience in law-enforcement-related occupations in addition to the completion of a 25-hr training course.

Table 2. States With Registration of Bail Recovery Agents ($n = 6$).

State	Type of Registration			Minimum Qualifications				
	Insurance Department	Public		Education		Age	Criminal History	
		Safety	Other	Preregistration	Continuing Education	Disqualifications	Misdemeanor	Felony
Arizona	X			—	—	18	N	P
Colorado		X ^a		•	—	18	N	P
Georgia		X ^b		♠	8	25	S	P
Kansas		X ^b		—	—	18	N	S
Tennessee	X			—	8	18	N	P
West Virginia		X ^b		—	—	21	N	P

Note. P = Any offense disqualifies the applicant.

N = Offenses do not disqualify the applicant.

S = Some disqualify the applicant.

• = Content of training prescribed, but not number of hours.

^aBackground check required, only.

^bLocal public safety notification only.

♠Requires license to carry firearm.

Table 1 shows that the majority of licensing states ($n = 11$; 61.1%) also have continuing education requirements, which mandate that bail recovery agents attend from 1 to 15 hr of training (or education) on an annual or biannual basis, depending upon the specific licensing requirements of the state. In the context of age, meanwhile, the majority of states mandate a minimum age of 18 ($n = 8$; 44.4%), while others require bail recovery agents to be at least 21 ($n = 8$; 44.4%), or 25 years of age ($n = 2$; 11.1%). The majority of states with licensing requirements also have standards for misdemeanor convictions. Here, all of the license-based states deny licenses to applicants who have some (S) types of misdemeanor offenses that include morals-based, drug, and weapons offenses. The data also show that most states with licensing-based requirements disqualify applicants (P) with any felony history ($n = 13$; 72.2%), while the balance of states have some disqualifying felony convictions ($n = 5$; 27.8%), based on the type of offense (e.g., weapons, moral character) and the length of time since the last conviction.

States That Regulate, But Do Not License, Bail Recovery Agents ($n = 6$)

Table 2 shows those states that do not require formal licensing of bail recovery agents, but which have other preservice requirements for persons who wish to act as bail recovery agents. A total of six states control bail recovery agents by requiring individuals to register with a designated state or local agency before performing recovery services. Among these states, four (66.7%) require bail recovery agents to register with a public safety organization with their respective states. Three of these four states require registration with local public safety organizations, while one requires registration with a state public safety agency. Two states (33.3%; Arizona and Tennessee) require the registration of bail recovery agents with another state-level agency, the Department of Insurance. In both of these states, a bail recovery agent must act under the authority of a bail bondsman when recovering fugitives. That is, these states do not allow independent bail recovery agents. Furthermore, in Arizona it is the responsibility of the bail bond company to verify that bail recovery agents (employees or independent) are “legitimate”; bail bond companies that employ or contract with bail recovery agents must, on an annual basis, report the names of their bail recovery agents to the Department of Insurance.

Table 2 also shows the minimum qualifications set by states that require the registration of bail recovery agents. In comparison to the licensing-based states, states with registration have limited requirements for training, continuing education, and criminal history. Only two states (28.6%) impose any preregistration educational requirements. In addition, only two states (28.6%) require continuing education. In the context of criminal history requirements, meanwhile, the majority of states ($n = 5$; 83.3%) prohibit felons from bail recovery agent work, while the majority of states ($n = 5$; 83.3%) do not prohibit bail recovery agent from having misdemeanor convictions. Three states, Arizona, Kansas, and West Virginia have no requirements for preservice training or continuing education and have no restrictions on persons with misdemeanors acting as bail recovery agents.

The data show that, out of these states, Kansas has perhaps the fewest requirements for bail recovery agents. Kansas prohibits felons with “personal felonies” from performing as bail recovery agents, and only requires that bail recovery agents inform local law enforcement authorities in the city or county in which the fugitive is located, while provide supporting documentation, including photo identification, before undertaking the apprehension (K.S.A. § 22-2809a). In addition, a felon may requalify to act as a bail recovery agent in Kansas 10 years after the date of his or her initial conviction. Similarly, the state of West Virginia (§ 51-10Aa) has limited requirements and dictates only that bail recovery agents register with the West Virginia State Police and work under a bail bondsman. The bail agent (or company) must also register the bail recovery agent as his or her agent on a continuing basis (in writing) for a period of 2 years, or a bail agent can also authorize a bondsman to act as a temporary agent (for a period of no longer than 60 days) to apprehend specific individuals.

States With No Statutory Control of Bail Recovery Agents ($n = 18$)

The remaining 18 states, Alabama, Alaska, California, Hawaii, Idaho, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, Wyoming, have no statutory or administrative code provisions regarding qualifications of bail recovery agents. Idaho limits its licensing requirements to bail agents themselves, but Idaho Code § 41-1045 states that, “For purposes of licensing and regulation . . . a bail agent is responsible for the actions of the bail agent’s employees, contractors, and agents acting on the bail agent’s behalf in relation to bail transactions and matters arising out of bail transactions” (n.p.). Thus, while Idaho does not impose direct statutory control over bail recovery agents, it establishes a form of indirect regulation whereby the licenses of the bail agents who employ bail recovery agents are at risk if they fail to adequately screen and supervise their bail recovery agents.

Discussion and Conclusion

This exploratory study has contributed to the body of knowledge related to the surety bail bond industry by providing a contemporary analysis of the regulation of bail recovery agents in the United States. The findings from this study show that the majority of states ($n = 42$) allow bail recovery agents to operate within their states. Most of these states ($n = 24$) have formal legislative or administrative codes to control bail recovery agents. At the same time, a large minority of states ($n = 18$) have no regulatory controls over the qualifications of bail recovery agents. The remaining states prohibit the use of bail recovery agents in the apprehension of fugitives ($n = 4$), or the surety system simply does not exist in those states, subsequently not requiring the need for bail recovery agents ($n = 4$).

As these figures suggest, there are wide disparities in the approaches taken by states toward the control of bail recovery agents. In fact, this study found that such controls are on a continuum. On the

“no control” side of the continuum, there are 18 states where, in theory, anyone can become a bail recovery agent regardless of education, training, or prior criminal history. In the “middle” meanwhile are the states that require the registration of bail recovery agents. Such states have standards that are more limited in the context of education and training when compared to licensing states. These states are also more liberal in what they allow in relation to criminal history, oftentimes allowing individuals with misdemeanor criminal histories to become bail recovery agents, regardless of the nature of the misdemeanor. Toward the other end of the continuum are licensing states. While the licensing states are fairly uniform in relation to criminal history requirements—all but four disqualify applicants with felony records and all also disqualify applicants with some misdemeanors—they vary significantly in the number of hours of prelicensing and postlicensing training they require. For example, Louisiana requires only 8 hr of prelicensing training, while Virginia requires a total of 40 hr. Only a small minority of states, such as New Hampshire, New Jersey, and New York, also go beyond basic age, criminal history, and training requirements and require applicants to have a specific number of years of experience in public safety or a related occupation to become a bail recovery agent.

Regardless of the way bail recovery agents are controlled at the state level—no controls, registration, or licensure at all—this study shows that most states are imposing minimal entrance requirements into the bail recovery agent profession. When considered in the context that bail recovery agents have broad powers (including the use of force to detain and arrest fugitives) that are unparalleled in the U.S. criminal justice system, the civil liberties of the general public and criminal defendants using the services of the surety bail bond agent may be at risk. Additionally, the absence of formal regulations suggests that states are relying upon other forms of control, with the state ruling at a distance (see Ayres & Braithwaite, 1992; Braithwaite, 2000). In this type of governance structure, as noted by Bartle and Vass (2007), the state no longer has monopoly of authority, but instead shares the governance and responsibility for such actions informally with other actors and institutions. Such controls may include civil law, criminal law, market forces, and self-regulation (Prenzler & Sarre, 2008).

Civil law and criminal sanctions, for example, may offer some form of control over the actions of bail recovery agents. Civil law offers individuals who have been injured by the illegal actions of a bail recovery agent the opportunity to obtain relief by filing suit. However, civil remedies, because of court rulings that have concluded that bail recovery agents are private actors and cannot be sued under 42 USC §1983 (Barsumian, 1999; Patrick, 1999). As recently as 2009, in *U.S. v. Poe*, the United States Court of Appeals for the 10th Circuit, following a long line of cases with similar holdings, ruled that bail recovery agents are not state actors and thus are not subject to constitutional restrictions. Although this and earlier decisions finding that bail recovery agents are not “state actors” have been criticized, they remain the law, thus cutting off one possible avenue for holding bail recovery agents accountable for their actions through the civil courts (Royval, 2010). However, this subsequently leaves aggrieved parties with remedies under state laws for torts such as assault, battery, or wrongful arrest. The effectiveness of civil remedies depends on the plaintiff’s ability to afford and find legal representation and prove a case in court. Furthermore, criminal remedies are subject to similar difficulties of proof. They are also not under the control of an injured party and they depend on the willingness of a prosecutor to bring a case against a bail recovery agent. Given that there may be no eyewitnesses to an alleged incident of abuse on the part of a bail recovery agent and, given that bail recovery agents are allied through their apprehension roles with law enforcement officials (see Johnson & Warchol, 2003), a person who has been injured due to the actions of a bail recovery agent may have difficulty obtaining redress through the criminal justice system.

An additional control mechanism that affects the bail industry is industrial self-regulation. Under the concept of industrial self-regulation, a great deal of rule making and enforcement is carried out by the industry itself (Gunningham & Reiss, 1997) for pragmatic reasons, a cost-saving alternative

for governments (Grajzl & Baniak, 2009), and even altruistic reasons, where the corporation may recognize its ethical and legal responsibilities to the public (Shamir, 2004). This self-regulation is not an artifact of the bail industry. It exists in other industries (Gamper-Rabindran & Finger, 2011) and even in some private “quasi-policing” professions, such as the field of private security where the state has relinquished its monopoly of force to private, third-party companies, oftentimes sharing the governance and responsibility for these industry groups with private actors and institutions (Bartle & Vass, 2007). While beyond the scope of this study, self-regulation is apparent in some state legislation; the states of North Carolina, South Carolina, and South Dakota all restrict bail recovery agents to working only for one bail agent. In doing so, this type of control appears to be designed to enlist the bail agent (for whom the bail recovery agent works for) as another instrument of control and to encourage bail agents to perform a policing function over the actions of their bail recovery agents. Even in states with no controls, this presence of industrial self-regulation exists. The state of Idaho, for example, establishes a form of indirect regulation whereby the licenses of the bail agents who employ bail recovery agents are civilly liable if the bail agents fail to adequately screen and supervise the bail recovery agents. Idaho Code § 41-1045 states that “For purposes of licensing and regulation . . . a bail agent is responsible for the actions of the bail agent’s employees, contractors, and agents acting on the bail agent’s behalf in relation to bail transactions and matters arising out of bail” (n.p.).

Self-regulation activities also exist on an individual and company level as a result of market forces and a bail agency’s interest in preserving its share of the local market for writing bonds. One practical issue, for example, is the bail agency’s (and bail recovery agents) relationship with the courts; a poor reputation could lead judges or court administrators (in some states) to prohibit a bail bond company from operating in its jurisdiction due to a high number of failures to appear, administrative errors, and/or unethical or illegal activities conducted by bail recovery agents. Another constraint could include insurance companies that bail bond companies are often partnered with. In order to have enough working capital, bail bond agencies often partner with an insurance company so they have the ability to underwrite a greater dollar amount of bonds. With the financial support of a large institution, they do not have to rely solely upon their own cash reserves to write bail bonds and pay for any failure to appear. If, however, a particular bail bond agency increases the risk of liability (i.e., increased failures to appear and subsequent bond forfeitures), the underwriter would be likely to increase its premiums or even discontinue its relationship with the bail bond agency, affecting the profitability (and subsequent survivability) of the bail bond company.

As part of this self-regulation, industry actors will also undoubtedly engage in risk management-related activities to ensure the public and actors in the criminal justice system that the bail recovery system is protecting one’s civil liberties, has integrity, and hence is a legitimate actor in the criminal justice system. Currently, for example, the bail industry also has a variety of national organizations including the American Bail Association, an alliance of insurance underwriters, the National Association of Bail Bond Investigators that advocates ethical conduct in its bylaws, and the Professional Bail Agents of the United States that engages in lobbying and education and training initiatives. There are also many state-level bail organizations that are also involved in educational and lobbying activities related to surety bail system. In fact, some states including Colorado and Georgia and New Hampshire have actually contracted with national- and state-level bail organizations and private vendors to provide bail bond training, continuing education, and certification programs for bail recovery agents. While beyond the scope of this study to examine these training programs in a comprehensive manner, a cursory review of some of these programs reveal that a variety of topics including laws of arrest, legal updates, and the use of force are part of the curricula (Bounty hunter training, 2012, Georgia bail bonding, 2012). Meanwhile, bondsmen themselves have lobbied for the control of bail recovery agents out of concern that civil liberties related violations could jeopardize their actions (Barsumian, 1999).

The self-regulation and absence of state licensing and other controls for bail recovery agents may become more important in the future as this industry group expands into the field of postconviction bail. Already, the states of Mississippi, Michigan, and South Dakota have passed postrelease conviction statutes (known as *Conditional Post-Release Bond Acts*) that are based on model legislation by the American Legislative Exchange Council. Under a postconviction bail model, judges or parole departments require prisoners eligible for early release from prison to post financial forms of collateral to ensure their good conduct while on parole, in effect privatizing the parole function for prisoners who could afford bail. The commercial bail bond industry and bail recovery agents would now serve as de facto parole agents, monitoring prisoners' actions. Hypothetically, this postconviction release of prisoners on bail would result in lower recidivism rates, based on the financial risk or loss associated with reoffending or violating the conditions of parole. Additionally, it would relieve some of the financial burdens related to prisons and community corrections that are borne by the states, and the workload and supervision demands on overburdened parole agencies. And arguably, postconviction bail would also enhance public safety through the increased and improved surveillance of offenders (Maruna, Dabney, & Topalli, 2012). However, with the expanded authority of monitoring prisoners, self-regulation of the industry may receive greater scrutiny, leading to new forms of licensing that are more aligned with those requirements that currently exist for parole agents.

While providing insight into the regulation and control of bail recovery agents in the United States, there are some limitations to this study. First, because this study was exploratory in nature, it is limited in the context of the depth of its findings. This atheoretical content analysis is nevertheless important in fostering scholarly inquiry, theory building, and framing future research related to the profession of bail recovery. Based on this study's findings, future research could also examine how state agencies tasked with the control of bail recovery agents actually monitor and control bail recovery agent actions. Moreover, as pointed in this discussion, the role of other regulatory forces, including civil law, criminal liability, and self-regulation in restricting the actions of bail recovery agents is needed. Future research could also examine if (or how) bail recovery agents conduct their jobs differently in those states that have bail recovery agent laws in comparison to those that do not in order to analyze the cognitive, behavioral, and affective components to determine if legislation does actually control the actions of bail recovery agents. Finally, an in-depth historical review of the evolution of bail recovery related legislation throughout the United States may provide insight if such legislation is part of a larger legal or social movement to regulate important, but tertiary private sector members of the criminal justice system. Through these and other endeavors, the scholarly community, practitioners, and the citizenry will gain a better understanding of the role of bail recovery agents in the administration of justice in the United States.

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