

THE LOWDOWN

Sheriff Charles S. Blackwood

This edition of *The Lowdown* is the second in a three-part series. Last month, I reviewed criminal process; this month's column covers the initial appearance hearing. With this information, I hope readers will have the background necessary for next month's concluding column about bail reform efforts.

The initial appearance hearing occurs when a deputy or other law enforcement officer brings a person under arrest to the magistrate for processing. The magistrate reviews the criminal charges with the defendant, provides the date and time of the first appearance in district or superior court, and sets the defendant's conditions of pre-trial release.

A written promise to appear in court on the assigned date is the least restrictive condition of pre-trial release. Ordering the defendant's confinement to the Detention Center without setting a bail is the most restrictive and can be used in cases of domestic violence or homicide. Frequently, the magistrate will set a bail amount between \$250 and \$500,000. Magistrates can also impose restrictions on the individual's behavior, such as prohibiting communication with a victim or being within 1000 feet of a certain location.

It is critical to understand the purpose of bail is to ensure the defendant's appearance in court, not to punish him or her. Our legal system holds that people are innocent until proven guilty. The system also places value on allowing an individual to assist unhampered in the preparation of a defense. Obviously, it is easier to collect evidence and work with an attorney if one is not confined to the detention center.

More serious crimes usually have higher bail amounts, because serious crimes carry harsher sentences. A defendant charged with serious crimes arguably has more incentive to flee the area and fail to appear in court.

A magistrate might also set a higher bail in cases where the defendant is likely to pose a threat to the victim(s), reoffend, or has no ties to the community. A local defendant charged with a DWI might receive a written promise to appear in court, whereas the magistrate might require a bail amount for an out-of-state defendant. The bail "incentivizes" the defendant's return for court.

If a defendant's record shows a history of missed court dates or absconding, the magistrate may determine a high bail amount is warranted. The past failure to appear as ordered may forecast future behavior.

Bail and *bond* are terms used interchangeably, but there actually is an important distinction. Bail is the amount of money a defendant must pay to get out of jail in advance of the court date. If the defendant complies with all court dates and court's directives, he or she will receive this money back at the resolution of the case.

If defendants cannot afford the full amount of bail, they may hire a bond agent or have a loved one post a property bond on their behalf. A bond agent charges a percentage, often 10%, of the bail amount. For example, a bond agent might charge \$1,000 to post the \$10,000 required to secure the defendant's pre-trial release. This fee is not refundable, and the agent assumes financial responsibility for the bail should the defendant fail to appear in court.

A property bond functions in a similar way – someone posts the value of property against the bail amount. If the defendant fails to show, the court can demand payment from the person who posted the property. If that person does not pay, the court may order the sale of the posted property.

While we all agree that people must be held accountable for their actions when they violate the law, we also abhor the idea of incarcerating or punishing an innocent person. While most people incarcerated in the detention center have a court hearing the next day, at which time a judge reviews and possibly reduces the bail, court is closed on weekends. We should have an equal opportunity to secure our freedom pending trial, but lower income people are less likely to be able to afford bail and therefore more likely to miss work. Missing work can cause the loss of employment and a resulting cascade of problems. The results can be catastrophic, and the impacts are often felt by children and innocent family members. Our criminal justice system is seeking bail reform to prevent innocent people from consequences of crimes they did not commit and to equalize the financial impacts of bail across income levels, while still protecting the public from truly dangerous people. I will write about these reform efforts next month.