



Metropolitan Crime Commission
Research in Brief, March 2005
An Analysis of Bail Bond Reductions in Orleans
Criminal District Court

The New Orleans Police Department and District Attorney's Office are usually the focus of public scrutiny and are held accountable for the crime problems that continue to plague New Orleans. However, scrutiny and accountability must also extend to Criminal District Court in order to fully assess how effectively the criminal justice system as a whole is addressing community safety. Through this report, the Metropolitan Crime Commission strives to focus attention upon an often overlooked but critically important criminal justice system process—Criminal District Court's bond-setting practices for individuals arrested on state charges.

Setting bond amounts and conditions for releasing criminal arrested subjects from custody plays a critical role in the safety of our community. Criminal defendants released from jail pending disposition of their cases, too often go on to commit additional crimes. Article 334 of the Code of Criminal Procedure sets forth specific considerations that need to be evaluated when setting bond for a defendant. At Criminal District Court, it is the primary function of Magistrate Court to weigh all of the legally mandated factors in an open court bond hearing and set an appropriate bond for arrested subjects.

Recent events in Jefferson Parish show the highly corrupting influences that inappropriate and uncontrolled bond practices can have on a criminal justice system. In Jefferson Parish, corruption surrounding the issuance of bail bonds has recently led to the termination of five high ranking Sheriff's Deputies and investigations leading to the prosecution of two judges. Inappropriate and excessive bond modifications may give the appearance of judicial impropriety by suggesting favoritism towards certain bondsmen, and by simplifying release for seemingly well-connected defendants.

An analysis of the data gathered for this report clearly shows that the bond release practices of one judge, Charles Elloie, undermine the role of Magistrate Court. He is one of twelve elected section judges and the only judge who systematically aids the release of arrested subjects outside the bond setting procedures applied by the remainder of the court. Judge Elloie is responsible for modifying the bail bond and/or setting the bond of one out of four (25%) defendants released on bond in New Orleans for state charges. Defendants released through the intervention of Judge Elloie have gone on to be arrested for numerous additional crimes while out on bail, crimes that include murder, armed robbery, and drug distribution.

The MCC is not advocating that arrested subjects should be denied access to a reasonable bond. Rather, we suggest that the magistrate system, established more than 30 years ago by Criminal District Court (CDC), be utilized to set bonds for all arrested subjects. Judge Elloie's actions in circumventing Magistrate Court indicate a lack of confidence and philosophical disagreement with the court's magistrate system. Although Judge Elloie's bond practices are within his judicial discretion, he is the lone CDC judge to routinely subvert the court-established Magistrate Court system, and he individually creates serious public safety concerns. The MCC recommends that Criminal District Court take action to appropriately restore the Magistrate Court's authority and ensure that all appropriate factors are weighed in bond decisions.



Research Findings

Using information furnished by the Clerk of Court's Office and Orleans Parish Criminal Sheriff, the Metropolitan Crime Commission examined all of the more than 12,000 bond releases for defendants arrested for state charges from July 23, 2003 through July 22, 2004. A 10% sample of Judge Elloie's bail orders were closely examined to determine factors like conviction and re-arrest rates for defendants whose release was aided by Judge Elloie.

There are four types of bond that are examined in this study:

1. Commercial Surety Bonds (CSBs) in which a defendant pays a bond company 12% of the total bond amount set by a judge in order to be released from jail. None of the money paid to a bond company is refunded to the arrested subject.
2. Release On Recognizance Bonds (RORs) in which a defendant agrees to appear for all court proceedings and is released by a judge at no cost.
3. Personal Surety Bail Undertakings (PSBUs) in which someone such as a friend or family member guarantees the appearance of a defendant and is personally obligated for the indicated amount of the bond until final disposition of the case.
4. Cash Bonds in which the entire bond amount is deposited in order to secure a arrested subject's release. With cash bonds, the full amount of bond is refunded when the case is concluded and the defendant does not miss any scheduled court appearances or otherwise violate the terms of release.

Typically, once a arrested subject is arrested, bond is set within 12 hours by a Magistrate judge/commissioner. In Magistrate Court bond hearings a defense attorney and state prosecutor present pertinent information and arguments to a magistrate judge who then sets the amount of bond. These hearings are intended to set bonds in consideration of the guidelines established by Article 334 of the Louisiana Code of Criminal Procedure which state:

“The amount of bail shall be such that, in the judgment of the court, commissioner, or magistrate, it will insure the presence of the defendant, as required, and the safety of any other person and the community, having regard to:

- (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.
- (2) The weight of the evidence against the defendant.
- (3) The previous criminal record of the defendant.
- (4) The ability of the defendant to give bail.
- (5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- (6) The defendant's voluntary participation in a pretrial drug testing program.
- (7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest.

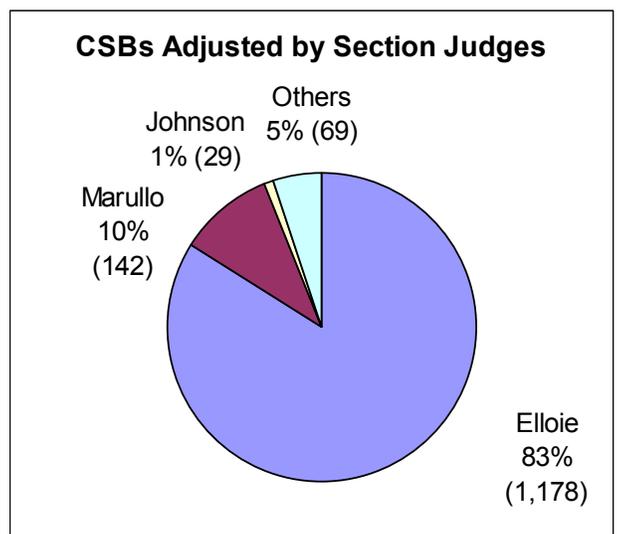
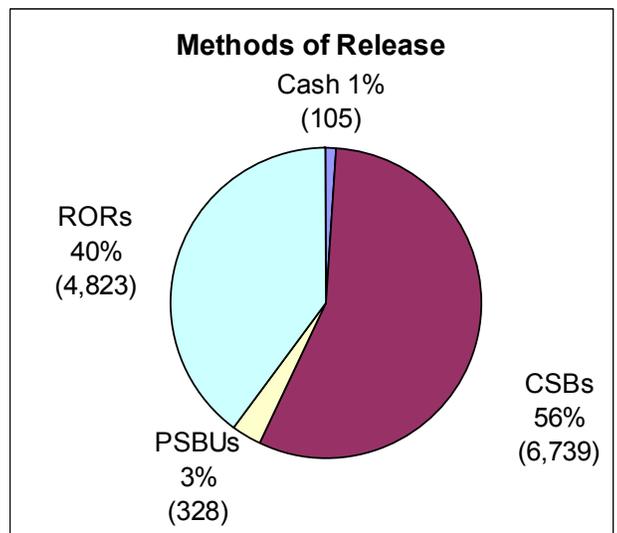


- (8) Whether the defendant is currently out on bond on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
- (9) Any other circumstances affecting the probability of defendant's appearance.
- (10) The type or form of bail.”

Upon setting bond, Magistrate Court sets a date to review the status of charges to ensure that defendants are not left lingering in jail unnecessarily or longer than is warranted for the circumstances of their arrests.

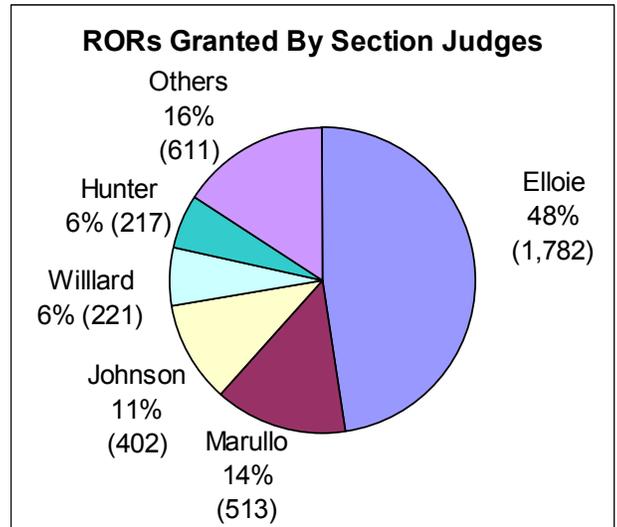
Often, judges will reconsider an arrested subject’s bond in order to secure his or her release at a cost lower than what is set in the original appearance in Magistrate Court. This research focuses on the practice of reducing and/or modifying defendants’ bonds that make it easier for them to afford the cost associated with securing their release.

- A total of 56% of arrested subjects released on bond during the one-year study period were released on a commercial surety bond. This is the most common type of bond used in Orleans Parish for arrested subjects.
- Twenty-one percent (21%) of the defendants released on a CSB were released as the result of a pre-set bond or bond reduction ordered by a CDC section judge.
- One judge, Judge Charles Elloie, ordered 1,178 or 83% of all CSB modifications granted by section judges at CDC. Comparatively, Judge Marullo modified 10% of CSB reductions, and no other section judge was involved in more than 1% of CSBs.
- On average, Judge Elloie ordered a 69% reduction in the face value of the CSBs that he modified to aid arrested subjects in obtaining release. Over the course of the 1-year study period, Judge Elloie ordered CSB reductions from a projected original total of \$17 million set by Magistrate Court down to \$5.25 million.
- Forty-one percent (41%) of the CSBs reduced by Judge Elloie were written by one bail bond company – Bayou-James Bail Bonds. During the one year study period, Bayou-James Bail Bonds wrote only 16% of the total CSBs issued in Orleans Parish, which may suggest favoritism by Judge Elloie for this bond company.





- A total of 4,823 or 40% of bond releases were through ROR bonds, and it is the second most common means by which arrested subjects obtain release from jail.
- Judge Elloie ordered nearly half (48%) of all ROR bonds granted by section judges of Criminal District Court.
- Judge Elloie granted RORs to defendants at a rate three times greater than any of the other eleven section judges. No other section judge accounted for more than 513 ROR bonds, compared to Judge Elloie's total of 1,782 RORs.



- Considering both CSBs and ROR bonds, Judge Elloie was responsible for 57% of all bond reductions ordered by the twelve section judges of Criminal District Court.
- A significant percentage of defendants securing their release with the assistance of Judge Elloie have gone on to commit additional serious offenses. As of January 2005, 27% of those defendants sampled who received either an ROR or CSB modification from Judge Elloie had been re-arrested for committing another state offense. Arrested subjects were re-arrested for a variety of charges including murder, armed robbery, aggravated battery, and drug distribution.
- Judge Elloie is *not* reducing bond in cases with weak evidence or that otherwise have low probabilities of prosecution. As of January 2005, the charges against 63% of defendants whose jail release was aided by Judge Elloie were later accepted for prosecution by the District Attorney's Office.
- Overall, Judge Elloie was involved in the release of 25% of all individuals arrested on state charges who were released on bond during the study period. In other words, one out of every four defendants released on some type of bond from Orleans Parish Prison on state charges received some form of bond reduction assistance from Judge Elloie.

Conclusions

The Magistrate section of Orleans Parish Criminal District Court was established by the Louisiana Legislature in the early 1970's and given primary responsibility for setting bond amounts for individuals arrested on state charges in New Orleans. Magistrate Court was established at the behest of CDC to allow section judges to devote more time to their trial dockets. An elected Magistrate Judge and four appointed Commissioners, with input from an Assistant District Attorney and a public defender, set initial bonds for virtually all state defendants. The input of defense and prosecuting attorneys helps to assure that legal guidelines for setting bonds are appropriately weighted in each bond decision.

Another important reason for establishing the magistrate system was to objectify and systematize the bond-setting process by minimizing the involvement of individual trial



court judges in bond setting. The routine practice by section judges of modifying bonds set by Magistrate Court can create serious integrity problems for the judiciary, for example “bond shopping”, the practice by attorneys and bail bond agents of going from judge to judge in an effort to get the lowest possible bond amount for their clients. “Bond shopping” to reduce bond amounts enables bail bondsmen to make more money and has been linked to potentially corrupting influence on the judiciary. The disproportionate number of bonds issued by Bayou-James Bail Bonds for defendants receiving bond reductions from Judge Elloie gives the appearance of bond shopping in Orleans CDC.

Bond modifications made by section judges outside of an adversarial hearing process are commonly made at the request of bondsmen, defense attorneys, or arrested suspects’ family members and without input from prosecutors. When these parties make bond requests directly to judges, they are unlikely to present unbiased and complete information regarding an arrested suspect’s criminal history or the potential threat a defendant poses to the community. Unilateral bond modification decisions increase the risk of endangering the public by facilitating the release of dangerous offenders from jail.

As one of twelve section judges, Judge Charles Elloie routinely circumvented the Magistrate Court system by ordering 25% of *all* the bail bonds (commercial surety bonds, ROR bonds) set annually by Criminal District Court that resulted in the release of a defendant from jail. To put the breadth of Judge Elloie’s bond setting activity into perspective, the *eleven other section judges combined* ordered only 19% of the bail bonds set annually at CDC.

Further, as previously noted, *Judge Elloie alone ordered 83%* of all commercial surety bond reductions granted by Criminal District Court section judges during the one-year study period. *The remaining eleven section judges combined ordered only 17% of the commercial surety bail bond reductions.*

Judge Elloie’s routine circumvention of the magistrate system, a system that based on the court’s budget costs taxpayers about \$1 million annually, and his highly disproportionate involvement in the reduction of commercial surety bonds and the substitution of these bonds with ROR bonds, place him far outside the mainstream of judicial practice and behavior at CDC.

Judge Elloie’s practices also pose a potential public safety problem for the citizens of New Orleans. By routinely reducing commercial bond amounts and granting ROR bonds, Judge Elloie hastened the release back to the community of nearly 3,000 defendants charged with state offenses. Over 27% of those released have been re-arrested on additional state charges for offenses they may not have had the opportunity to commit without the assistance of Judge Elloie.

Recent examples of the types of charges, and the defendants involved whose release from jail following their arrest was enabled by Judge Elloie’s actions, are attached as an appendix to this report.



Recommendations

1. Magistrate Court has clearly established rules and procedures that define the bail bond setting process used in determining bail. These rules and procedures, which are in conformity with state law and have been followed for decades in CDC, include the routine inclusion of input from the prosecution and the defense in determining bail.

In order to provide consistency in bail setting throughout the judicial process, to avoid the appearance of judicial impropriety, and to enhance public safety, the MCC strongly recommends that the judges of CDC adopt and adhere to court rules that require the convening of a contradictory hearing by all judges prior to modifying bail bond conditions previously set by Magistrate Court. Currently, no court rules exist that control bail bond modifications by section judges, yet Judge Elloie is the only judge that chooses to operate outside the judicial mainstream. The contradictory hearing should include the prosecution, the defense counsel, and other individuals, including police officers, who have information pertinent to bail bond determination.

2. Providing citizens and policy makers with accurate, objective, and readily accessible information on judicial performance, including the bail bond system and its impact on our community, is an extremely important means of reducing crime, creating transparency in the judicial process, and promoting judicial accountability.

Specifically, using the MCC's online access to key automated criminal justice information systems, the MCC proposes to create a website, accessible to the public, which provides routinely updated information on key measures of judicial performance, by court section, particularly reductions in the amount or terms of bail bonds ordered by individual judges. Currently, there is no easily accessible means of tracking judicial performance and the use of bail bonds by the judges of Orleans Criminal District Court.



APPENDIX

The following are profiles of recent CDC cases that exemplify the circumvention of the Magistrate Court system, principally by Judge Elloie:

Ferial "Curt" Johnson

(Johnson was killed on February 1, 2005 while attempting to burglarize a house in New Orleans)

Past Convictions: Burglary of an Inhabited Dwelling and Possession of Marijuana

Past Arrests Include: Numerous arrests including Attempted First Degree Murder, Armed Robbery (3 times), Burglary of an Inhabited Dwelling (4 times), Extortion, Possession of Stolen Property, and Possession With Intent to Distribute Crack

Arrested: 7/22/04 for Possession of Crack and Possession of Marijuana

Released: Magistrate Court set the bond amount at \$5,500. Johnson was released on 7/23/04 on an ROR bond granted by Judge Elloie.

Re-Arrested: 9/28/04 for Attempted Burglary of an Inhabited Dwelling

Released: Magistrate Court set the bond amount at \$52,500. Johnson was released on 10/01/04 after the bond amount was reduced to an \$11,000 CSB by Judge Elloie.

Re-Arrested: 11/29/04 for Burglary of an Inhabited Dwelling and Possession of Stolen Property

Released: Magistrate Court set the bond amount at \$50,000. Johnson was released on 12/15/04 after the bond amount was reduced to a \$20,000 CSB by Judge Marullo.

Kevin Frank

Past Convictions: Illegally Carrying a Weapon

Past Arrests Include: First Degree Murder, Attempted First Degree Murder, Second Degree Murder (twice), and Aggravated Assault With a Firearm

Arrested: 10/21/04 for Distribution of Heroin

Released: Magistrate Court set the bond amount at \$15,000. Frank was released from jail on 10/22/04 after the bond amount was reduced to a \$10,000 CSB by Judge Elloie.

Re-Arrested: 11/10/04 for Possession of Crack and Unauthorized Use of a Motor Vehicle

Released: Magistrate Court set the bond amount at \$7,000. Frank was released from jail on 11/10/04 on an ROR bond granted by Judge Elloie.



Sherman Williams

Past Convictions: Possession With Intent to Distribute Cocaine, Possession of Marijuana (6 convictions), Unauthorized Use of a Motor Vehicle

Past Arrests: 15 arrests on state charges for a variety of drug offenses, Crime Against Nature, Unauthorized Use of a Motor Vehicle, and Possession of Stolen Property

Arrested: 4/06/04 Possession With Intent to Distribute Crack and outstanding warrants

Released: Magistrate Court set the bond amount at \$21,000. Williams was released from jail on 4/20/04 on an ROR bond granted by Judge Elloie.

Re-Arrested: 4/26/04 for Possession of Marijuana (3rd offense) and Possession of Crack

Released: Magistrate Court set the bond amount at \$6,000. Williams was released from jail on 4/28/04 on an ROR bond granted by Judge Elloie.

Re-Arrested: 9/28/04 for Possession With Intent to Distribute Crack, Possession of a Firearm with a Narcotic, and probation violation.

Released: Magistrate Court set the bond amount at \$10,000. Williams was released from jail on 10/02/04 on an ROR bond granted by Judge Elloie.

Re-Arrested: 10/22/04 for Possession With Intent to Distribute Crack and probation violation

Released: Magistrate Court set the bond amount at \$75,000. Williams was released from jail on 10/31/04 on an ROR bond granted by Judge Elloie.

Christopher Hilliard

Past Convictions: Five convictions for Crack and Marijuana Possession, Two Theft convictions, and multiple convictions for Resisting an Officer

Past Arrests Include: Burglary of an Inhabited Dwelling, Aggravated Battery, Simple Criminal Damage, Distribution of Marijuana, Possession of Crack, Resisting an Officer, and two arrests for Possession of Stolen Goods

Arrested: 10/13/03 for Possession of Crack and being a Felon in Possession of a Firearm

Released: Magistrate Court set the bond amount at \$30,000. Frank was released from jail on 11/12/03 after Judge Elloie reduced the bond amount to a \$10,000 CSB.

Re-Arrested: 3/13/04 for Possession of Drug Paraphernalia, Public Drunkenness and Criminal trespassing.

Released: Hilliard was released from jail on 03/16/04 on \$2,000 Surety Bond for the drug paraphernalia charge and Judge Elloie paroled Hilliard for the other charges.

Re-Arrested: 4/15/04 for Possession of Marijuana and Possession of Crack. Charged with First Degree Murder on April 16, 2004.

Released: Judge Elloie granted an ROR for Hilliard's release on 06/05/04 for the pending drug charges after the First Degree Murder charge was refused by the District Attorney's Office.



Marchello Jones

Past Convictions: Possession of Crack

Past Arrests Include: Possession With Intent to Distribute Crack, Attempted Second Degree Murder

Arrested: 12/01/03 for Attempted second Degree Murder

Released: Magistrate Court set the bond amount at \$100,000. Jones was released from jail on 8/13/04 on a \$50,000 ROR issued by Judge Elloie plus \$11,000 in surety bonds for other pending charges.

Re-Arrested: 10/07/04 for Possession with Intent to Distribute of Marijuana, Methamphetamines, and three counts of Possession with Intent to Distribute Crack.

Released: After Magistrate set bond at \$37,000, Judge Elloie reduced it to a \$22,000 CSB to enable Jones' release on 10/09/04.

Re-Arrested: 02/03/05 for Second Degree Murder, Attempted Second Degree Murder, and two counts of Aggravated Battery

Broderick Burton

Past Convictions: Possession of Marijuana (2) , Two Counts of Aggravated Battery,

Past Arrests Include: Possession of a Firearm with Narcotics, Aggravated Assault, Distribution of Marijuana, Possession of Drug Paraphernalia (2), Possession of Marijuana, Possession of Cocaine, Burglary of an Inhabited Dwelling

Arrested: 05/12/04 for 9 separate counts of drug distribution including Methadone, Schedule 2 Narcotics, Schedule 3 Narcotics, and Schedule 4 Narcotics.

Released: Magistrate Court set the bond at \$100,000 and he was released from jail on 05/21/04 on a \$5,000 bond reduced by Judge Elloie.

Re-Arrested: 08/05/04 for Attempted Armed Robbery.

Released: 12/17/04 by Judge Willard when the court found no probable cause to substantiate the charges.