



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 20-260 – Regulations Relating to Bail Enforcement Agents
Department of Criminal Justice Services
September 27, 2006

Summary of the Proposed Regulation

Pursuant to legislation passed during the 2004 General Assembly session, the Criminal Justice Services Board (board) proposes regulations for licensure of bail enforcement agents (bounty hunters).

Result of Analysis

There is insufficient data to weigh the magnitude of costs versus benefits for this proposed regulation. Costs and benefits are discussed below.

Estimated Economic Impact

Previous to October, 2005, bounty hunters were not regulated by the Commonwealth. This proposed regulation replaces emergency regulations for licensure of bounty hunters and will require bounty hunters to:

- Be at least 21 years of age. Although bounty hunters must be at least 21 to be licensed, bail bondsmen are only required to be at least 18 years of age to be licensed and to engage in fugitive recovery.
- Have a General Equivalency Diploma (GED) or a high school diploma.
- Undergo a fingerprint background check through the Department of Criminal Justice Services (DCJS) (this costs \$60). Individuals will not be allowed licensure if they have ever been convicted of a felony or, except in certain limited cases, if they have been convicted of a misdemeanor in the last five years. DCJS does have a limited ability to license individuals who have a misdemeanor conviction so long as that conviction is not for 1) carrying a concealed weapon 2) assault and battery 3) sexual

- battery 4) a drug offence 5) driving under the influence 6) discharging a firearm 7) a sex offence or 8) larceny. This requirement is apparently more restrictive than conviction requirements for any other DCJS licensure program.
- Undergo 40 hours of bail enforcement core training and 14 hours of firearms training (if they intend to carry a gun while acting as a bounty hunter).
 - Take an exam (through DCJS).
 - Pay a licensure fee of \$200. An additional \$30 must be paid on an annual basis if a bounty hunter wants a DCJS firearms endorsement.
 - Undergo eight hours of in-service training before biannual re-licensure. Except under very limited circumstances, bounty hunters who fail to complete in-service training before their licenses expire will have to retake all 40 hours of bail enforcement core training.
 - Retain all records on fugitive recovery for at least three years (at a physical location known to DCJS).

The General Assembly is requiring licensure for bounty hunters because there have been a few rather notorious incidents in Virginia where bounty hunters mistakenly seized or tried to seize the wrong person. One of these incidents, in 2002, ended in the death of a Mexican immigrant in South Richmond. There have also been, in the past few years, some allegations of sexual misconduct by bounty hunters. These incidences appear to be anomalous and not indicative of how bond recovery usually happens: nonetheless, legislators believe that licensure with several restrictions as to who may be licensed will protect the public from possible harm.

Weighed against this possible benefit are the costs that will be incurred by bounty hunters, bail bondsmen, localities, the state and the tax paying public.

Bounty hunters who are not restricted from licensure will incur all explicit fees and training costs plus the implicit costs of time spent on becoming and remaining licensed (time spent in training, filling out paperwork, etc.). It is likely that three quarters of the individuals who worked as bounty hunters before October, 2005 would not have been eligible for licensure. (see discussion below under Projected Impact on Employment) These people would choose to continue working at bail recovery if the Commonwealth were not prohibiting that choice.

Because of this, these individuals have incurred costs equal to what they could have earned working as a bounty hunter minus whatever they earn in alternate employment.

Bail bondsmen will likely incur larger costs associated with a likely lower probability of being able to capture bonded fugitives and return them to court jurisdiction before bail is forfeited. The number of bounty hunters has likely dropped precipitously since licensure has been required (see discussion below under Projected Impact on Employment); this drop in supply of bounty hunters is likely to make their services more expensive to acquire and will also likely mean that some fugitives who would otherwise be recaptured remain at large.

Additionally, since bounty hunting appears to be a job that attracts risk seeking individuals who live on the fringes of mainstream society (individuals who may be good at recovering fugitives because they, too, have been on the wrong side of the law and know how to think like a criminal), there may not be a large population of eligible individuals who would be as effective at fugitive recovery as those who are now ineligible for licensure were. Although bail bondsmen are able to engage in bond recovery, they will still incur costs if they choose to do this job themselves since time spent engaging in bond recovery cannot be spent engaging in writing bonds (an activity which likely has a higher return).

Localities and the state (and tax paying citizens) will likely also incur costs associated with implementation of this proposed regulation (and its initiating legislation). Changes in the number and (potentially) the effectiveness of bounty hunters will likely mean that prisoners free on bond who choose to flee will be found and brought back for trial less often. When prisoners become fugitives, and remain at large, bail bondsmen have to forfeit their bonds to the court. Bail bondsmen are likely to respond to these monetary losses by refusing to offer bail to riskier prisoners. Other things remaining equal, this will mean that more prisoners will remain in jail longer or until their trial instead of being released. If this happens, and preliminary data would support that it will¹, the costs that localities and the state pay to house prisoners in jail will increase. The daily cost increase will be equal to the number of prisoners now housed (either

¹ Total jail populations grew at an average annual rate of 4.2% from FY 2001 through FY 2005. In FY 2006 (the year after implementation of bail enforcement agent licensure), total jail populations grew 9.96%. Growth rate changes for the jail subpopulation consisting of unsentenced individuals awaiting trial are even more startling. This subpopulation had an average annual growth rate of 4.3% from FY 2001 through FY 2005. In FY 2006, this subpopulation grew 12.7%. Jail populations have not experienced a comparable growth rate since FY 2000 when Virginia implemented bail reform.

until trial or during a more lengthy search for bond) rather than being released times the cost per day for housing, feeding clothing and guarding each prisoner in jail.

The public will also incur costs associated with possible increased fugitive rates. Although DCJS does not have information on individuals who fail to appear for court hearings or on individuals who are classified as fugitives because they remain at large for one year or longer, it is reasonable to assume that Virginia's numbers in these categories would be proportional to national numbers (after adjusting for types of release allowed in each state). Nationally, each year roughly one quarter (200,000) of all released felony defendants fail to appear for scheduled court hearings. Of these, approximately 30% (60,000) will remain at large for at least a year.² Virginia's portion of these individuals is a not an inconsiderable number. These fugitives impose significant costs on society. These costs would include those associated with lost court time and resources. Since approximately 16% of released defendants are rearrested for crimes committed while awaiting trial (and the actual percent of released individuals who commit crimes while awaiting trial is even higher than that), society also incurs a cost associated with higher crime. This cost may increase if fugitive rates for bonded defendants increase.

Whether the costs associated with licensing of bounty hunters outweigh the benefits will largely depend on whether licensure restrictions curtail further incidents of public harm caused by overzealous or unethical bounty hunters.

Businesses and Entities Affected

Bail bondsmen and bounty hunters currently practicing in the Commonwealth, as well as individuals who may want to join these occupations in the future, will be affected by the proposed regulation. Currently, DCJS licenses 378 bail bondsmen and 73 bounty hunters. Localities and the state will also likely be affected since these entities will absorb any extra jail expenditures brought about by the legislation that initiated this proposed regulation.

Localities Particularly Affected

Changes in the number and (potentially) the effectiveness of bounty hunters will likely mean that prisoners free on bond who choose to flee will be found and brought back for trial less often. When prisoners become fugitives, and remain at large, bail bondsmen have to forfeit their

² Source: Hellend and Tabarrok (2004)

bonds to the court. Bail bondsmen are likely to respond to these monetary losses by refusing to offer bail to riskier prisoners. Other things remaining equal, this will mean that more prisoners will remain in jail longer or until their trial instead of being released. If this happens, and preliminary data would support that it will, the costs that localities and the state pay to house prisoners in jail will increase. The daily cost increase will be equal to the number of prisoners now housed (either until trial or during a more lengthy search for bond) rather than being released times the cost per day for housing, feeding clothing and guarding each prisoner in jail. This cost will likely fall disproportionately on localities that house their prisoners in regional jails.

Projected Impact on Employment

The legislation that initiated this proposed regulation has reduced the number of individuals employed as bounty hunters. The magnitude of this reduction is unknown since there is no data on the number of bounty hunters who practiced in the state before licensure. It is likely, however, that bounty hunters experienced at least as great a drop in numbers as did bail bondsmen post licensure. The number of bail bondsmen fell from around 1,300 pre-licensure to approximately 380 post-licensure. Assuming comparable decreases, there would have been approximately 250 bounty hunters practicing in the Commonwealth prior to licensure. Additionally, the number of bail bondsmen practicing in Virginia may fall further if bail defaults increase enough to drive defaulting bondsmen out of business.

Effects on the Use and Value of Private Property

The value of bail bondsmen businesses may decrease if bail defaults increase. Property bail bondsmen, in particular, may lose any property used to secure bonds for prisoners who skip out on their court dates and are not found.

Small Businesses: Costs and Other Effects

Bail bondsmen may incur costs associated with increased bail defaults. Bounty hunters will incur costs for keeping records on all bail recoveries for three years as required by the proposed regulation. They will also incur explicit cost for training and licensure fees as well as opportunity costs associated with time spent getting and maintaining their licensure that could have been spent elsewhere.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Within the confines of legislative requirements for this licensure program, there is likely no alternate method that the board could have employed to minimize adverse impacts.

References

Hellend, Eric and Tabarrok, Alexander. "The Fugitive: Evidence of Public versus Private Law Enforcement from Bail Jumping". *Journal of Law and Economics*, Vol XLVII. April 2004.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.