

Bail? Hey!

**By Reg P. Wydeven
September 30, 2018**

Earlier this year I wrote about the “Eddie Murphy Rule,” a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which, for the first time, banned insider trading using nonpublic information misappropriated from a government source.

The nod came from the classic ‘80s movie, ‘Trading Places,’ which stars Eddie Murphy and Dan Aykroyd as traders in commodities. The duo trick the bad guys, the Duke brothers, by doctoring a copy of the U.S. Department of Agriculture’s orange crop report the brothers obtained illegally. The Dukes go broke and Eddie and Dan cash in and retire to a tropical island.

The movie starts, however, with Eddie’s character getting arrested for panhandling on the streets of Philadelphia. The Dukes bail him out of jail to conduct an experiment of nature vs. nurture: they want to see if Eddie Murphy could manage their brokerage firm as well as Dan Aykroyd, who had a great upbringing and an excellent education.

Without the Dukes’ sadistic help, Eddie Murphy would most likely not have been able to make bail (and the movie would have been pretty short). In another instance of life imitating art, the State of California is conducting a little social experiment of its own by eliminating bail altogether.

While other states have reformed their bail systems, California became the first one to eliminate it entirely when Gov. Jerry Brown signed the bill into law earlier this month. The state’s judicial council will instead be given broad authority to develop pretrial detention policies before the law goes into effect in October of 2019.

The superior court of each county will establish its own procedures for determining the guidelines for which suspects will be released before trial and those who will remain confined. As a result, the rules will vary throughout the state.

Under the new rules, officials have 24 hours to determine whether a suspect should be released before trial. This deadline can be extended by 12 hours if necessary. Presumably, though, suspects accused of nonviolent felonies will likely be released within 12 hours of booking, while those charged with serious, violent felonies will remain in custody until trial. Factors to consider when deciding include the suspect’s likelihood of returning to court and the danger posed to the public.

Proponents of the law argue that incarcerating someone should depend on that suspect’s risk to public safety, not the ability to pay, just like Eddie Murphy’s character in ‘Trading Places.’ State Sen. Bob Hertzberg, who drafted the bill, said that the criminal justice system “made a transformational shift away from valuing private wealth and toward protecting public safety.”

Opponents of the measure fear that dangerous suspects will go free and, with nothing to lose, not return for trial. Others, including the American Civil Liberties Union, suspect the new law will give judges too much power to decide who does or doesn’t get released. They worry this will facilitate racial biases and actually increase incarceration rates.

Many states will be following the implications of California’s elimination of bail. If successful, it’s a sure bet other states will follow suit. If it’s a disaster, states will know what not to do.

So there’s obviously a lot at stake for California’s experiment, unlike the Dukes, who wagered \$1 on the outcome of theirs.

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