

Essay about Criminal Procedure

Compare the purposes and rules that guide traditional bail with those that guide preventive detention.

Criminal procedure mostly deals with the set of rules that govern the proceedings through which the state uses to enforce the substantive criminal law. Usually, federal crimes are those cases that deal with activities extending beyond state boundaries and those that have direct impacts on national interests. Criminal procedure has federal rules that aid in conducting and carrying out trials that have a federal criminal aspect. Preventive detention is described as the practice of incarcerating or putting in prison people even before their trial is conducted. Usually, the assumption that is made is that the release of such individuals is not of the best interest of the public; they may pose a security threat or cause harm in case they are left to go.

The Bail Act of 1984 allows the court to detain an individual even before the trial or the charges are issued. This provision is allowed for cases that usually involve **serious felonies** and also when the state can convince the court with compelling evidence that the release of such an individual will be a security threat to a person in the community. If the court is properly convinced that a person in society will be safe if the person involved in crime is detained, then, preventive detention can occur. The nature and seriousness of the act also determine if an individual can be detained. If a person is accused of terrorism, for example, that person can be preventively be detained to ensure safety of the public. Traditional bail, on the other hand, is a form of property that is deposited or pledged to a court so as to convince the court to release a suspect from jail. This is usually done on the basis and understanding that the suspect will be available for trial and that if they forfeit the bail then they can be charged for failing to appear for their hearing (Samaha, 2012).

The ruling and the reasoning in U.S. v. Salerno (1987)

The case against Salerno was in connection to his involvement in a number of charges that revolved around the RICO statute violation. The controversy of this case came up when the respondent – Salerno- challenged the court for being detained without a chance of bail. However, detention that is only made as a regulatory measure so as to keep a criminal from running away in most cases is not in any way impermissible pre-trial punishment (Boss and Marek, 2004).

After it was determined that he was the leader of a crime family famously known as **“la cosa nostra”** the government decided that his release would be a security and safety threat to the community and so there was a request that he should be detained. His detention was to be under the provisions of Bail Reform Act of 1984. The detention was granted only to be recalled by the court of appeal because such pretrial detentions would cause unconstitutional liberty deprivation in the future. The decisions made by both these courts were made on the basis that the detention provisions were formulated not as a form of punishment for dangerous criminals, but as a potent solution to the pressing and serious societal problem of crimes committed by people on release. However, the government's regulatory interest in the safety of the community can, in appropriate circumstances, outweigh a person's liberty interest.

References

Samaha, J. (2012). Criminal procedure. Belmont, CA: Thomson Wadsworth.

Boss, B., & Marek, E. F. (2004). Federal criminal practice. Costa Mesa, CA: James Pub.