

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

April 10, 1991Hearing Room 357 1:00 p.m.Tapes 77 - 79

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

VISITING MEMBER:Rep. Kelly Clark

MEMBER ABSENT: Rep. Tom Brian

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2756 PH (Pretrial Release of Defendant) HB 2374 WS (Verification of Indigence) HB 2370 WS (Criminal Judgments)

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TAPE 77, SIDE A

003 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:00 p.m.

HB 2756 PUBLIC HEARING Witnesses: Pat Horton, AMWEST Insurane Company Judge William Snoffer, Multnomah County Judge Paul Libscomb, Marion County Kelly Brink, Oreogn Assoc. of Pretrial Practioners John Henry Hingson III, OCDLA Jim Henning, Metro Public Defenders Bill Linden, State Court Administrator Stevie Remmington, ACLU Walter Todd, Oregon State Bar Keith Burns

009 GREG CHAIMOV: Allows criminal defendant to post a corporate surety bond instead of real property to secure pre-trail release. \*Fiscal impact shows loss of revenue between \$1-2 million. \*Amendments prepared by proponents with explanatory letter. Generally housekeeping amendments. (EXHIBIT A) \*Letter from the State Court administrator discussing private bail bonds law and their effects. (EXHIBITS B, C) \*Memorandum from Lydia Grimm, House Researcher (EXHIBIT D) discussing the 197 3 law that stopped the bondsman practice.

033 CHAIR MILLER: Discusses letter from Judge Harl Haas (EXHIBIT E) in support of the bill.

045 PAT HORTON, AMWEST INSURANCE COMPANY: In favor of HB 2756. \*Describes AMWEST Insurance Co. \*HB 2756 does not resurrect laws in effect in 1972. \*Discusses pre 1972 types of corporate surety: 1) private bondsman who used property as a basis for issuing bonds, and 2) licensed insurance companies. The abuses were done by the private

bondsman. \*HB 2756 does not authorize private bondsman but insurance companies. \*Present system of pre-trial release is still in effect and not changed with HB 2756. This provides an option for the defendant. \*HB 2756 may help the high failure to appear rate. 25 to 40%. \*Provides a vehicle for highly regulated insurance companies to offer option for release for select number of defendants. \*Problem with present system is post release monitoring devices were not adequately funded. \*National failure to appear rate for insurance surety releases is 4%. \*HB 2756 can be used for people of modest means and/or cannot afford the cash 10% for release. Present system only accepts cash or certified checks whereas the insurance company will be more flexible. \*Provides a partial solution to jail overcrowding. Comments on federal jail cap policy. \*Trial court judges must approve the surety bonds. \*Discusses the fiscal impact.

199 REP. JOHNSON: What happens if the defendant appears and is found not guilty, will the money be returned?

204 HORTON: The money will be returned. \*90% of people currently using 10% security release will do it anyways. \*10% of defendants will use a corporate surety bond so majority of money still goes to the court. \*Predict that failure to appear rate with corporate surety bonds of 3 to 4%. HB 2756 provides for a forfeiture of the amount of bond if failed to appear.

230 CHAIR MILLER: With respect to fiscal impact, last session there was no fiscal impact.

246 JUDGE WILLIAM SNONFFER, OREGON STATE BAR JUDICIAL ADMINISTRATION COMMITTEE, MULTNOMAH COUNTY CIRCUIT JUDGE: Testifies against HB 2756. \*Comments that Judge Haas is in the minority with supporting this bill. \*Technical problems with HB 2756: irrevocable forfeiture of corporate bond amount if defendant does not appear. Comments on provisions regarding the court notifying the insurance company of the forfeiture or the company will keep the money. \*Technical objection to Section 3, page 2 regarding deletion of security release from the statute, which will cause the statute to read: a person in custody shall have the immediate right to release. \*Section 4, page 3 refers to security release agreement which is not defined in the bill. \*Policy objections are: not needed or necessary. Previous attempts to introduce bail bondsmen failed in this legislature. \*Will not improve the criminal system or the failure to appear rate.

345 CHAIR MILLER: Suggesting this will have a negative impact?

351 SNONFEER: No, not suggesting that is a necessary consequence. Discusses Oregon's previous bondsmen experience.

370 CHAIR MILLER: If the bail is set after a recommendation from a release officer, why would it make any difference where the money to secure the bail comes from?

SNONFFER: There is a schedule that determines the initial amount. \*The family members that put up the money with the bondsman never see the money again even if person comes back to court. \*The present system allows most of the money to be released back. There is a service charge and costs and attorneys fees will be kept and maybe restitution.

CHAIR MILLER: The 15% attributed to administration, is it really that amount?

SNOFFER: Believes it costs more than that.

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030 SNONFEER: The companies are another layer of bureaucracy that is not needed. \*Creates a publicly subsidized system and "rips off the public". \*Bondsmen will pick out defendants that are the "best risks". \*This bill will deny the revenue created by security release monies. Explains the amount of money involved.

062 REP. PARKS: Is the possibility of losing money the real issue?

SNONFEER: Bail bondsmen do not perform any real significant service.

REP. PARKS: What is the issue? Will this cost the counties a lot of money?

SNONFEER: Yes it will. Projects it will cost Multnomah County about \$70,000 a month.

092 REP. PARKS: It is then "immoral" for the bonding company to "rent the defendant", what about for the county to be in the business of "renting the defendant".

SNONFEER: The public system should remain.

100 REP. BAUMAN: Sounds like a considerable amount of fines and restitution that go to victims or the Multnomah County Court come from a proportion of the \$70,000 in bails posted every month that are not returned.

SNONFEER: Yes. The money that is there can be utilized in that fashion.

106 PAUL LIPSCOMB, DISTRICT COURT JUDGE, MARION COUNTY, DISTRICT COURT JUDGE'S ASSOCIATION: Opposed to the change. \*This will not save any taxpayers money because all public release officers and functions still have to be maintained. \*Discusses loss of revenue from use of bondsmen. HB 2756 will cause a decrease in collections rather than increase and the victims getting restitution would suffer.

142 REP. JOHNSON: What about making these companies liable for the amount of the bail secured, liable for the fines, restitution payments and fees?

LIPSCOMB: Does not know if it is workable or not.

REP. JOHNSON: Can say that they back up the defendant on the appearance and on the fee obligations if liable.

SNONFEER: The statute should be in such a way that the bondsmen should deal with those that are a greater risk.

159 REP. BAUMAN: What is the impact of this on recognizance release?

SNONFEER: Will remain, no attempt to change existing release forms

REP. BAUMAN: Discusses inserting an informed consent provision listing types of release.

178 SNONFEER: Would be a good idea to have "honesty built into the system".

184 REP. BAUMAN: Trying to reconcile the testimonies of Judge Snonfeer and Mr. Horton.

198 SNONFEER: If the bonding companies were limited to those least likely to appear, would not be eager to get involved in the business.

207 REP. BAUMAN: What portion of bail money is forfeited for failure to appear and what is retained upon a guilty finding and what proportion would be retained on error?

218 LIPSCOMB: If not guilty, money is returned automatically. \*Suggests the figures vary from county to county and judge to judge.

SNONFEER: Does not have any specific monetary figures to present.

232 KELLY BRINK, PRETRIAL RELEASE OFFICER, OREGON ASSOCIATION OF PRETRIAL PRACTITIONERS: Opposed to HB 2756. \*Oregon currently has a progressive pretrial release system and the bailbond is a step backwards. \*Bond system is exclusionary because it is only for those who have the money and does little for the indigent defendant. \*Explains the bail bonds man system and security releases. Explains pretrial release methods. \*Conditional and supervised release are as effective as other types of release keeping the arrest and failure to appear rates low. \*Defines conditional release and who qualifies for it. \*Bail bondsmen do not have any interest of society, the defendant, or the court. Oregon has a progressive pretrial program that has gained recognition across the country.

365 JOHN HENRY HINGSON III, OCDLA: Opposes the bill. \*Comments on a book Criminal Lawyers, an Endangered Species. \*Passage of this bill will decrease the number of private criminal defense lawyers in Oregon because of money. \*Security release amount are assigned to the defendant as partial payment of fees. \*The public has a financial interest in keeping few people on the indigent defense lawyers. \*Middle class will be impacted by passage of HB 2756. \*Discusses article in National Law Journal (EXHIBIT F).

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091 JIM HENNING, METROPOLITAN PUBLIC DEFENDER: Testifies in opposition. \*There is a great deal of money involved with bail bondsmen. \*Bondsmen will take in a lot of low risk money to begin with, coming from those who would otherwise be released on their own recognizance or the low risk bail. \*Remittance, the money that will be given back. \*Discusses the previous relationships between the bondsmen and the judges. \*Over 32 statutes require money from the defendant which pays for training police officer to crime victims restitution. This comes from bail and will be lost with the bail bondsmen. \*Three types of failure to appear in Multnomah County: 1)recognizance releases, 2) 10% bail posted, and 3) released because the jails cannot accept that person in because the matrix is full.

194 BILL LINDEN, STATE COURT ADMINISTRATOR, JUDICIAL DEPARTMENT AND OREGON JUDICIAL CONFERENCE: Opposes the bill. \*American Bar Association, the National DA Association and the National Association of Pretrial Services Agencies are opposed to this. \*Discusses bonding regarding failure to appear rate. 90% of defendants will come back into the system

because of policemen or pure apprehension about the system. \*No research to indicate bondsmen have any impact on jail over crowding. Discusses strike by bondsmen in Omaha, Nebraska. \*Believes this bill will not create new revenues for the state. \*HB 2756 will take away financial resources and make it more difficult to meet defendant's obligations. \*HB 2756 requires the court to set up tracking and notification procedures which will take time and no dollar figure has yet been attached to it.

323 STEVIE REMMINGTON, ACLU OF OREGON: (EXHIBIT G) Opposed to the bill. Supports law as currently is. \*Current system has never been adequately monitored to ensure defendants are given their rights. \*Need a mandate from the legislature to require state to collect data regarding release decisions in order to correlate the dates on failure to appear rate. \*Discusses what is needed to improve HB 2756.

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007 WALTER TODD, OREGON STATE BAR, INDIGENT DEFENSE: Opposed to HB 2756. \*Refers to comments previously made in opposition. \*Current statute provides that interest accrued on bail money posted is retained in the criminal system and HB 2756 will allow that to go to the bondsmen. \*Oregon Council on Crime and Delinquency is opposed to the bill. \*Should be concerned about the potential misuse by bondsmen with regard to police and guards in order to get earlier contact with a defendant and then the guard will get a "kickback".

036 CHAIR MILLER: Is the purpose of bail to make money for the state or secure the return of the defendant?

TODD: To secure the return of the defendant. Just pointing out that amount of money would be lost to the state.

040 REP. BAUMAN: Comments on the Chair's question. What is the cost in processing existing defend with private bail programs in California?

056 KEITH BURNS: Discusses the previous discusses from last session regarding this same issue.

143 CHAIR MILLER: Closes hearing on HB 2756.

(Tape 78, Side B) HB 2370 - WORK SESSION Witnesses: Bill Linden, State Court Administrator Dave Phillips, Depart. Revenue Jim Marquis, Oregon Collectors Association

154 GREG CHAIMOV: Allows the judicial department to assign criminal judgments with restitution for collection to the Dept. of Revenue or other collection agencies. \*Criminal judgment is to be collected like a civil judgment. \*Could not offset expenses of collection against what has been collected regarding fines that have been levied before the effective date of the act.

172 CHAIR MILLER: Comments on the fiscal impact statement.

191 BILL LINDEN, STATE COURT ADMINISTRATOR: (EXHIBIT H) The February 25 letter offers three ways to look at collection. \*1) Requires defendant to pay the cost. \*2) Requires agencies receiving funds collected to pay cost. \*3) Allows agency seeking collection to add the cost to amount owed.

CHAIR MILLER: Which is preferred?

219 LINDEN: Would like the ability to turn these accounts to Dept. of Revenue or other collecting entities. Does not matter who is "stuck" with the collection costs.

223 REP. SUNSERI: Are there other agencies that are allowed to turn collections over to outside agencies?

LINDEN: Not certain. Believes there is some authority to contract out. Dept. of Justice does not currently have it.

245 GREG CHAIMOV: Responds that Dept. of Revenue can collect accounts for other state agencies and has the authority to use a collection agency.

CHAIR MILLER: Alternative "1" (EXHIBIT H) allows collection from defendant.

LINDEN: It would require defendant to pay cost of collection. Cannot take the collection cost out of the satisfied judgment.

286 DAVE PHILLIPS, REGIONAL MANAGER WITH DEPARTMENT OF REVENUE: Currently accepts assignment of accounts from about 91 agencies and collects their debts. Cannot address what other agencies have the authority to do but know that some are assign collection out.

299 REP. SUNSERI: How much is discounted to the collection agencies?

PHILLIPS: The Department is not sending other agency accounts out to private collection if cannot collect, just returning them to the agency. \*For tax debts, do contract with collection agencies.

REP. SUNSERI: What is the discount? When it is turned to a collection agency, the principle balance is reduced by a number of dollars which is a profit for the collection agency.

316 PHILLIPS: Charging about 25% of what is collected.

329 REP. PARKS: Proposes amending the bill to provide all sums due and payable shall bear interest at rate of 15% on unpaid balance. \*An interest rate that is fixed and grows over time more accurately reflects the state's cost in collecting.

360 JIM MARQUIS, OREGON COLLECTORS ASSOCIATION: There are several agencies assigning to private collection agencies. The accounts are not discounted but bided for.

378 REP. PARKS: The percentage is a reasonable fee for the services. \*12% would be a reasonable rate and 18% is too high. Believes 15% is fair.

394 REP. BAUM: Rep. Parks wants to put in a clause that would strike out the last two sentences of Section 1 and simply state a state agency can assign collection and interest will run at 15% until such time as it is paid and leave out the reasonable collection costs? Sounds reasonable.

410 LINDEN: Debts to the states can accrue interest.

PHILLIPS: The agencies charge different rates of interest on the debts.

CHAIR MILLER: Not to exceed 15%?

REP. PARKS: Want a way to determine upfront what the collection costs would be rather than a collection agency deciding.

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016 PHILLIPS: Under the statute, the Dept. of Revenue can charge cost. Currently charging a percentage at about 20%.

REP. PARKS: Is that yearly basis or 20% of the debt?

PHILLIPS: 20% of the debt.

REP. SUNSERI: Other agencies charge differently.

MARQUIS: Confusing interest with actual collection costs. Mr. Phillips is discussing collection costs.

REP. SUNSERI: 20% is the collection fee and add interest on top of that.

MARQUIS: Yes. There may or may not be interest on top depending on the agency.

CHAIR MILLER: Actual costs do not exceed 20%?

PHILLIPS: Could accomplish it by allowing the department to add up to 20% for cost of collection. If costs were over 20% would have to "eat it".

051 REP. PARKS: Discusses the percentage and the interest. Want to get away from the percentage and get to reasonable amount and disclose what that is.

REP. SUNSERI: Expresses concern about high interest and high percentage as a collection fee. \*There are a lot of people working hard to make this work and if the balance is increased as they owe it by high amounts, they might give up in paying it. \*Wants to avoid that mess and the high costs of this practice.

062 LINDEN: Defers to alternative 2. It holds the defendant harmless and makes the agency the one to "eat the cost" of collection.

069 PHILLIPS: The Department did not take a position either way on bill. \*Concern over public policy of this setting a precedent towards collecting debts owed third parties rather than those owed to states agencies.

074 CHAIR MILLER: Closes work session.

(Tape 79, Side A) HB 2374 - WORK SESSION Witnesses: Bill Linden, State Court Administrator Doug Harkelroad Steve Rodeman, Credit Union League

085 GREG CHAIMOV: This bill is about verifying defendant's indigence. Financial institutions expressed concern about adding certainty to obligation under the bill. \*Discusses letter from Credit Union League and proposed amendments (EXHIBIT I). \*Discusses proposed amendments from Judicial Dept. (EXHIBIT J).

099 BILL LINDEN, STATE COURT ADMINISTRATOR: Discusses offered amendments dated April 10 (EXHIBIT J). Agreeable to deleting Section 7 and 18 because the affect would make some information confidential.

109 DOUG HARKELROAD: Comments on the information that would be made confidential which is currently public because it is nonfinancial in nature.

119 LINDEN: The amendments address Rep. Johnson's concern about the courts using the information in sentencing process. \*Recommends not imposing a fee for the financial record search.

135 STEVE RODEMAN, CREDIT UNION LEAGUE: (EXHIBIT I) Discusses Credit Union amendments which try to remove confusion. \*The \$5 fee is there for reasonable costs and this sets a standard.

148 CHAIR MILLER: Closes work session. Adjourns meeting at 3:07 p.m.

Submitted by:      Reviewed by:

Kathy Neely, Assistant      David Harrell, Office Manager

EXHIBIT LOG: A -            Letter on HB 2756 - Dave Fiskum - 4 pages  
B            -            Material on HB 2756 - Bill Linden - 25 pages  
C            -            Testimony on HB 2756 - Bill Linden - 6 pages  
D            -            Memorandum on HB 2756 - Lydia Grimm - 7 pages E -            Letter  
on HB 2756 - Judge Harl Haas - 2 pages F-            Material on HB 2756 -  
John Hingson - 1 page G -            Testimony on HB 2756 - Stevie  
Remmington- 2 pages H            -            Letter on HB 2370 - Bill Linden - 7 pages  
I            -            Letter/Material on HB 2374 - Oregon Credit Union League - 5  
pages J -            Amendments to HB 2374 - Bill Linden - 1 page