Tape 17 - Side 2 - 325

August 29, 1972

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Mr. Donald R. Blensly
Senator Wallace P. Carson, Jr.
Mr. Robert W. Chandler
Mr. Donald E. Clark
Representative George F. Cole
Attorney General Lee Johnson
Representative Leigh T. Johnson
Representative Norma Paulus
Mr. Bruce Spaulding
Representative Robert M. Stults

Excused: Judge Charles S. Crookham

Staff Present: Mr. Donald L. Paillette
Mr. Bert Gustafson

Also Present: Mr. Jim Hennings
Ms. Helen Kalil
Mr. Robert Stoll
Ms. Melinda Woodward

Chairman Yturri reconvened the meeting at 8:30 a.m.

Release of Defendants; Preliminary Draft No. 2; August 1972

Mr. Paillette called attention to a letter the Commission had received from Mr. Jerome E. LaBarre supporting the Release of Defendants draft, copies of which were distributed to all members. A copy of the letter is attached hereto as Appendix B. Mr. Paillette indicated that it contained a thorough discussion of some of the shortcomings of the present bail system and asked that the members review its contents sometime during the course of the discussion on this draft.

Mr. Gustafson explained that the Release of Defendants draft was a major departure from existing law in the area of bail reform. He commented on the San Francisco Bail Project and the Manhattan Bail Project and called attention to the statistics cited on pages 45 and 46 of the draft.

Mr. Gustafson next listed the reasons bail reform was needed in Oregon and said the proposed draft differed from existing law in at least six respects:

(1) The release decision or the judge's determination of the amount of bail; current law contained no guidelines.

(2) The security release. The justification for bail or determination of the bondsman's assets to support his bond was at the present time entirely within the discretion of the court.

(3) Present law contained no specific provision for posting of commercial security bonds.

(4) Present recognizance procedures favored a presumption that the defendant must assert that he is qualified for recognizance release.

(5) Bail today is based on property and not on criminal sanctions.

(6) Current law does not provide for continuance of bail from one court to another.

Mr. Gustafson explained that the draft would provide for continuing bail, establish guidelines for release and would rely on a criminal sanction instead of a property sanction to enforce the bail laws. This would remove the burden from the poor who were unable to post a property type bond. It would also allow the defendant to post 10% of the amount of the bond, and if the defendant showed up for trial, 90% of the deposit would be refunded to him.

Mr. Gustafson added that the draft would establish guidelines for all courts to follow to further a conformity of justice and would thereby insure the same treatment to the rich and the poor. It also provided procedures for a speedy release under a security release schedule, a conditional release or personal recognizance.

Chairman Yturri asked if any consideration had been given to the possible expense to the smaller counties in the appointment of a release assistance officer. Mr. Gustafson replied that such appointment was purely optional, and Mr. Paillette added that the officer could be paid on a part-time basis, on a full-time basis or his services could even be on a voluntary and unpaid basis. Many of the bail projects conducted throughout the country used the unpaid services of individuals such as law students, and the draft would permit that procedure in Oregon.

Section 1. Release of defendants; definitions. Mr. Gustafson explained that subsection (2) defining "magistrate" would make the provisions of this draft applicable to all courts at all levels.

He advised that "release" was used in this draft in place of "bail" and was defined in subsection (4). To indicate a change in philosophy,

the draft proposed a change in terminology. Subsection (4) was later amended in connection with the discussion of section 5. See page 54 of these minutes.

Subsection (6) set forth criteria for the court to use in determining "release criteria." In reply to a question by Mr. Clark concerning paragraph (g) of subsection (6), Mr. Gustafson explained that it was aimed at persons such as a narcotics offender and was intended to recognize his problem and permit the court to send him, for example, to a rehabilitation center or other agency where he could be given some form of assistance.

Senator Burns moved that the Commission continue with the balance of the draft before approving section 1. Motion carried. Approval of section 1 will be found on page 70 of these minutes.

Section 2. Release assistance officer. Mr. Gustafson explained that section 2 authorized the magistrate to appoint a release assistance officer on a purely optional basis while subsection (2) stated the responsibilities of that officer.

Mr. Clark asked if paragraph (b) of subsection (2) was intended to imply that the deputy would not have the authority to make the release decision. Mr. Gustafson replied that under subsection (3) the magistrate would appoint the release assistance officer and the deputies who would be responsible to the release assistance officer. Generally, a deputy would have the same powers as the release assistance officer unless that officer directed otherwise.

Senator Burns commented that section 2 permitted a magistrate, who could be a justice of the peace, to delegate release authority to a non-judicial person. He believed the ultimate decision should be retained by the judiciary so that if either side objected to the decision, grievances could be addressed to the magistrate in a judicial form.

Mr. Paillette replied that other parts of the draft would cover the point raised by Senator Burns. Section 4 specifically provided that a person would have either an immediate right to a security release or to be taken before a magistrate without delay so that even though a release assistance officer had been appointed under section 2, it would not preclude the defendant's right to appear before a magistrate.

Senator Carson added that the draft merely provided additional methods of getting the defendant out of jail in a more speedy manner than was possible at the present time. However, the magistrate bore the responsibility for the release decision. Mr. Johnson pointed out

that the section enabled the magistrate to delegate authority, and this procedure was being followed at the present time in some counties.

Mr. Johnson moved approval of section 2. Motion carried with Senator Burns voting no.

Section 3. Releasable offenses. Mr. Gustafson explained that subsection (1) of section 3 provided for the constitutional right to be released on bail while subsection (2) stated the constitutional exception.

Mr. Spaulding remarked that as a practical matter, section 2 meant that without some cooperation from the district attorney which amounted to his statement that he would agree to the release conditions, there would be no bail in a murder charge because there was no procedure for determining whether "the proof is evident or the presumption strong that the person is guilty." He believed that, consistent with the Constitution, a method could be provided for making such a determination. The argument against his proposal, he said, would be that the district attorney would not want to show his hand and tell what proof he had at the time bail was set.

Mr. Johnson reiterated his position that murder should not be treated differently from other crimes, one reason being that statistics showed that a murderer was one of the best possible risks so far as bail was concerned.

Tape 18 - Side 1

Mr. Paillette said that in some counties at the present time the defendant could move for a hearing at which the state was required to come forward and put on proof to support the presumption of guilt. It was, he said, being used as a discovery device and if the state didn't want to make a showing, bail was allowed by the court.

Mr. Spaulding repeated his belief that the statute should provide for that type of hearing.

Senator Burns commented that if a hearing were required, the effect would be that persons who were now being released would not then be released. If the hearing showed that the district attorney had a strong case, the judge might feel that he could not release the individual. Mr. Paillette replied that if there was a stipulation by the state, there would not be a hearing.

Chairman Yturri suggested that the hearing be made permissive and proposed to add a subsection stating:

> "The magistrate may require such hearing as he deems necessary to determine whether the proof is evident or the presumption strong that the person is guilty."

Mr. Spaulding said that Senator Burns had made a good point that such a proposal might have an effect exactly opposite to the result that was intended.

Chairman Yturri expressed the view that the closest the Commission could come to showing that they intended for bail to be available in murder and treason cases was language on the order of what he had proposed. It would be permissive and if there was a stipulation, a hearing would be unnecessary. The only time it would be necessary was when the district attorney was adamant and refused to show any proof.

Mr. Chandler agreed that the proposed amendment plus an expanded commentary would cover the situation.

Mr. Clark asked if the proposed amendment would create an appeal problem and was told by the Chairman that under the amendment to ORS 138.060 which the Commission had approved the previous day, the pre-trial appeals would have to relate specifically to an order denying return of seized property, and there could not therefore be an appeal under this section.

Mr. Chandler moved to adopt the amendment suggested earlier by the Chairman by adding subsection (3) to section 3 stating:

> "(3) The magistrate may conduct such hearing as he considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty."

Motion carried.

Mr. Chandler moved to approve section 3 as amended. Motion carried unanimously.

Section 4. Release decision. Mr. Gustafson explained that when a person's liberty was in jeopardy, he would come under the provisions of section 4. Originally, he said, subsection (2) contained a 24 hour release provision but one of the recognizance officers from Portland had told the subcommittee that 24 hours was unworkable and it was therefore changed to 48 hours. The provision, however, did not mean that the release decision could not be made before the expiration of that period of time.

Mr. Clark stated that subsection (2) was writing into the statute a requirement that was really a management problem. The jails, he said, could be managed more efficiently in Multnomah County and he expected to see reforms in that area in the not too distant future. He objected to writing the law exclusively to accommodate Multnomah County.

Mr. Chandler commented that in view of the action taken the previous day on the Arraignment draft providing for arraignment within 36 hours, subsection (2) was in effect talking about 36 plus 48 hours.

Mr. Blensly said that the time problem would be even more severe in the outlying counties because there a full-time recognizance officer was not on duty at all times. In many cases, he said, the person gave the police a false name and his true identity was not known until a fingerprint report came back from the FBI. It was a virtual impossibility to get those reports back within the time frame in this draft. He said he agreed with the philosophy of releasing defendants as quickly as possible, but on the other hand the law enforcement agencies should not be so hamstrung as to require them to release offenders before they had an opportunity to check them out.

Chairman Yturri said that in Malheur County and other border counties the majority of the crimes were committed by persons who were passing through the area. Under the draft, when a person was arrested for burglary and placed in custody, he was entitled to release within 48 hours unless there was information to show that the release was unwarranted. If that person was from, for example, Los Angeles, in all probability the police would not have any information on his status within that time period. He asked if a recognizance release would be required in the situation where no information of any kind was available. Mr. Gustafson replied that the magistrate would then set a security amount. He noted that under subsection (1) (i) of section 1, the definition of "release criteria" said: "Any other facts tending to indicate the defendant is likely to appear." The fact that there was no information whatever available would fall under the phrase, "any other facts."

Mr. Paillette added that "release criteria" took into consideration all the criteria considered together and the mere lack of information could constitute facts showing that a recognizance release was unwarranted.

Chairman Yturri asked if his understanding was correct that when the police knew nothing about the defendant, the magistrate would not be required to release him on his own recognizance but could provide for a conditional or security release. Mr. Paillette confirmed that the Chairman's assessment was correct.

Mr. Blensly contended that the way subsection (3) was worded it lead the reader to the opposite conclusion; namely, that the defendant would have to be released upon his personal recognizance unless release criteria showed that the release was unwarranted. He asked who had the burden to show what the release criteria was and was told by Mr. Gustafson that the burden would be the court's.

Senator Burns expressed concern that the wording of subsection (3) was unclear. He said that unless defendants had strong community ties,

family ties, etc., they should have bail set. The draft apparently reached that conclusion, he said, but in view of the language in subsection (3) it was worded in a backward manner.

Mr. Paillette disagreed that the language was backward. Contrary to the existing law where ROR was a last resort type of release, this draft emphasized and clearly stated under subsection (3) that the defendant was to be released on ROR unless there were reasons not to do so. His opinion was that if the draft were to state that he was not to be released on ROR except in certain circumstances, it would then be worded backward.

Chairman Yturri replied that his understanding of what Senator Burns wanted was to change "unless" to "if" and "unwarranted" to "warranted" in subsection (3). Senator Burns and the Chairman urged that the commentary should be made perfectly clear that if no release criteria was available on the defendant, he was entitled to either a security release or a conditional release.

Senator Carson suggested amending the last clause of subsection (3) to read: " . . . released upon his personal recognizance if release criteria show to the satisfaction of the magistrate that such a release is warranted."

Mr. Paillette's view was that Senator Carson's proposal, which was the same as that suggested earlier by the Chairman, would place the magistrate in the same position he was in at the present time under ORS 140.720. He reiterated that the rationale of the draft was that he should be released on his own recognizance unless there was good reason not to do so.

Chairman Yturri asked if there would be any objection to having the commentary show positively and affirmatively that if there was no release criteria or information available on the defendant, he would not be entitled to release on his own recognizance and the magistrate would then have to resort to either a security release or a conditional release. Mr. Spaulding said he would not want to make a definite rule in that regard, but he would not be opposed to stating that a lack of information was to be taken into consideration as an affirmative fact.

Mr. Johnson said the proposed statute was entirely clear to him. If an individual was being held who had no ties to the community, the release criteria clearly did not warrant his release on his own recognizance.

Chairman Yturri said that the Commission was obviously in agreement as to the intent of the draft and suggested that the commentary show that in the event there was no positive release criteria or information available, it did not necessarily mean he was entitled to release on his own recognizance. Mr. Johnson said it should also be pointed out that the absence of information should be considered as part of the release criteria.

After further discussion, it was the concensus of the Commission that the commentary to section 4 would be revised to clearly show the intent conveyed by the previous discussion.

Mr. Blensly asked if his understanding was correct that if the crime committed was not listed on the bail schedule and if the defendant committed that crime on a Saturday night, he would still have to be taken before a magistrate without delay. The present arraignment statute, he noted, said "without undue delay." Mr. Gustafson replied that the "delay" would have to be modified by the 48 hours after arraignment.

Mr. Blensly moved to insert "undue" before "delay" in subsection (1). Motion carried.

Mr. Chandler moved to approve section 4 as amended. Motion carried with Senator Burns and Mr. Blensly among those who voted against the motion.

Section 5. General conditions of release agreement. Mr. Gustafson explained that section 5 was broken into two subsections, the first relating to pre-trial matters and the second to post-conviction.

He reported that the subcommittee wanted the Commission to specifically discuss paragraph (c) of subsection (1). At the subcommittee meeting Mr. Milbank stated that the bondsmen did not require defendants to agree that they would not depart the state without leave of the court as a part of the bond application. However, Mr. Gustafson indicated that he had a copy of a bond application which stated that the person being released would not leave the jurisdiction of the court without approval of the bondsman which was even narrower than the requirement in section 5. It would not prevent a defendant from leaving the state providing the court approved of his doing so.

Mr. Chandler said it would permit a car salesman who lived in Portland and worked in Vancouver to go to work each day with the approval of the court. He asked if he would have to obtain specific permission on a day by day basis and was told by Mr. Gustafson that the court could give blanket permission for such period of time as was necessary.

Mr. Clark inquired as to the necessity of "reasonable" in paragraph (d). Mr. Johnson moved to delete "reasonable" from paragraph (d) of both subsections (1) and (2). Motion carried.

Representative Paulus asked why "of the court" was omitted from paragraph (c) of subsection (1) but was included in subsection (2) (c). Senator Carson stated the phrase should be inserted in subsection (1) (c) and so moved. Motion carried.

Mr. Blensly inquired as to the meaning of "the court having jurisdiction" in subsection (1) (a). When a defendant started out in district court and then went to circuit court, he asked which court would have jurisdiction. Mr. Johnson replied that it referred to the court that had jurisdiction at the time. Mr. Chandler agreed and said that if a defendant started in justice court then went to circuit court, he certainly should not have to go back to justice court to get permission to take a trip out of the state.

Mr. Spaulding expressed the view that the release assistance officer should have authority to grant that leave. Mr. Gustafson explained that the section dealt with an agreement between a defendant and the court, and the release assistance officer was an agent of the court. If the magistrate wanted to delegate that authority to the release assistance officer, there was nothing to prevent his doing so.

Representative Cole indicated that it was difficult to relate subsection (1) to release before conviction and moved to amend it by substituting "judgment" for "conviction."

Mr. Blensly asked why subsection (2) (a) required the defendant to agree that he would duly prosecute his appeal. Senator Burns said that when the defendant was not going to appeal, there was no reason to release him; he should begin serving his time. Mr. Blensly contended that he should not be released until he had perfected his appeal in any event. Representative Stults commented that if Representative Cole's motion to substitute "judgment" for "conviction" were approved, the problem would be solved.

Mr. Stoll pointed out that "judgment" included sentencing and frequently after a case was tried and a defendant convicted, there was a delay before the judgment was entered. Mr. Johnson replied that section 5 was designed to break the time span between the time when the defendant was on appeal and when he was not on appeal.

Vote was then taken on Representative Cole's motion to change "conviction" to "judgment" in subsection (1). Motion carried.

Section 1, subsection (4). Representative Stults pointed out that subsection (1) of section 5 related back to the definition of "release" in subsection (4) of section 1. To be consistent, section 1 (4) should be amended to read: " . . . from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed." That would take care of the period of time between a verdict and imposition of sentence.

Representative Stults moved to insert "judgment of" before the first "conviction" in subsection (4) of section 1. Motion carried.

Section 5. Mr. Hennings pointed out that if "conviction" were not changed to "judgment" in subsection (2), it would create a hiatus. "Judgment," he said, was the sentence whereas "conviction" was the verdict.

Mr. Spaulding remarked that the moment after the jury read its verdict of guilty, the statute should not say that the defendant would not be released unless he promised to appeal. Mr. Blensly replied that the time when there was a different criteria to be considered as to whether or not the person should be turned loose on the street was when the jury had convicted him.

Chairman Yturri asked what would happen to the period between the return of the verdict and the judgment if subsection (2) were amended to read: "after judgment of conviction." Mr. Spaulding replied that subsection (1) would apply. In that event, the Chairman said, subsection (2) should be revised.

Representative Stults moved to amend subsection (2) of section 5 to read: "If the defendant is released after judgment of conviction . . . . " Motion carried.

Mr. Chandler moved to approve section 5 as amended. Motion carried.

Section 5 was further amended. See page 69 of these minutes.

Section 6. Release agreement. Mr. Gustafson explained that section 6 set forth the duty of the defendant to file either a release agreement or a security deposit with the clerk of the court.

Representative Cole asked if the section referred to every release agreement including an ROR. Mr. Gustafson replied that the release agreement was a personal promise and the defendant was required to sign it.

Mr. Spaulding asked what the situation would be when the person was released by a policeman and was told by Mr. Chandler that circumstance would constitute a citation in lieu of arrest. Mr. Paillette added that there were separate provisions in ORS dealing with the situation where a defendant failed to appear after a citation in lieu of arrest.

Mr. Stoll commented that from the search and seizure standpoint, every time a defendant was cited and his freedom was jeopardized, the courts spoke of his being in custody and Miranda type warnings were required. It might raise a problem, he said, if "custody" in section 6 were interpreted to mean the same as in some of the search cases. It could mean that the defendant would have to file a release agreement before he could be released by an officer.

Mr. Paillette suggested that the problem could be resolved by writing in a separate section at the beginning of the Article or a separate subsection with respect to release specifically excluding the application of this Article from any of the so-called "citation in lieu of arrest" statutes in ORS chapter 133. That would prevent the operation of this Article upon those statutes -- ORS 133.045 to 133.080.

The Commission unanimously agreed to direct the staff to add the section proposed by Mr. Paillette in the appropriate place in this Article.

Mr. Spaulding moved adoption of section 6. Motion carried unanimously.

Following a recess, Chairman Yturri asked how many subcommittee meetings were held with respect to the Article on Release of Defendants and was told by Mr. Paillette that there had been two. The Chairman next asked if any of the bail bondsmen were notified of the meetings and received an affirmative reply from Mr. Paillette. Chairman Yturri asked if any had appeared and Mr. Paillette replied that at the first subcommittee meeting two Salem bondsmen appeared but they did not participate in the discussion nor did they submit any information or materials to the subcommittee. He added that the bondsmen had also been notified of this Commission meeting, but he had not received any information from any representative of the bondsmen.

Section 7. Conditional release. Mr. Gustafson advised that the rationale of a conditional release was to continue to avoid a security release wherever possible and to provide for some form of release other than ROR that would still guarantee the appearance of the defendant. A conditional release would not be a promise of money but a promise by another person to assure the defendant's appearance. If the supervisor aided the defendant in breaching his conditional release, he would be liable for contempt under section 12 (2) of the draft.

Mr. Gustafson pointed out that subsection (2) used the word "reasonable" which was taken from United States v. Cramer, 10 Cr L 2197 (Ct App 5th Cir 11/23/71), and was intended to furnish a guideline for the court.

Mr. Clark asked if the recognizance officer would be empowered to impose the conditions of a conditional release and was told by Mr. Chandler that he would if the magistrate had delegated that responsibility to him.

Mr. Blensly asked if the defendant would have a defense under subsection (2) on the grounds that the court had imposed an unreasonable restriction. To illustrate, he cited a hypothetical situation where the judge released the defendant, one of the restrictions being that he would stay away from liquor. The defendant then contended that the restriction was unreasonable because he was an alcoholic.

Mr. Blensly further inquired as to whether a criminal penalty could be imposed for escape from official detention in the situation where the defendant was released during working hours to go to his job but failed to return. Mr. Paillette explained that a distinction would have to be drawn between a breach of the conditions of his release and an actual failure to appear. A breach of conditions would be punishable as contempt whereas failure to appear was punishable under the criminal code.

Mr. Blensly observed that a person who failed to return to a correctional facility when he had been released for a temporary period of time was guilty of escape under the criminal code. He asked if the defendant who failed to return to jail under a conditional release would also be guilty of escape.

Mr. Paillette replied that "escape" was defined in ORS 162.135 (4) as the "unlawful departure, including failure to return to custody after temporary leave granted for a specific purpose or limited period, of a person from custody or a correctional facility." "Custody" was defined under subsection (3) of that section as "imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order but does not include detention in a correctional facility, juvenile training school or a state hospital."

Chairman Yturri commented that in view of those definitions, failure to return to a jail under section 7 would constitute an escape. He asked if the Commission wanted that result and several members replied that they did not.

Senator Carson suggested that a subsection be added stating breach of the conditions of a conditional release was grounds for having the conditional release modified.

Chairman Yturri suggested that it should be indicated somewhere in this draft that a breach of the conditions imposed under section 7 was punishable by contempt or by imposition of a security release.

Mr. Gustafson observed that subsection (2) of section 12 was drafted to cover the situation where the defendant breached the conditions of section 7 and to say that the magistrate had the option to punish him by contempt or, if the breach was of a more serious nature, he could charge him with escape from custody.

Chairman Yturri commented that it was not clear whether that provision would preclude a charge of escape from custody and there was also a question as to whether it would prevent imposition of a security release when there was a breach of one of the regulations.

Mr. Hennings stated that one of the problems was that the judge could decide that the breach was contempt, but that decision was not necessarily binding upon the district attorney. The statute should be clear that while the defendant was under the authority of the magistrate, it would be up to him to decide which remedy to use.

Mr. Johnson pointed out that under section 4, subsection (1), a defendant had a right to an immediate security release or to be taken before a magistrate without undue delay. He was of the opinion that the judge could refuse to let him out on his own recognizance and also refuse to let him post bail but instead impose a conditional release which in effect would preclude preventative detention. The question he raised was whether the defendant always had a right to post a security release other than when he was charged with the crime of murder. Mr. Spaulding noted that under the Constitution he had that right, and the Commission was in agreement that he should have it at any time.

Mr. Paillette explained that the Commission was concerned with the defendant who had been granted a conditional release by the court but who did not like one of the conditions that had been imposed and wanted to post a security release in lieu of the conditional release. He called attention to subsection (1) of section 11 which provided for a review of the terms of the release agreement. "Release agreement" as used in that section, he said, would include a conditional release and the defendant could make his request for a security release under that provision.

Mr. Johnson said that section 11 only gave him the right to have the court look at the agreement. Mr. Blensly noted also that under section 6 the defendant could not be released unless he executed the release agreement containing the conditions.

Mr. Johnson moved that the staff insert a section in the appropriate place to make it clear that the defendant was always entitled to bail. Motion carried.

Mr. Paillette then spoke to Mr. Blensly's earlier question concerning escape and suggested that as a part of this draft, ORS 162.135, subsection (4), could be revised to amend the definition of "escape" to include a sentence to the effect that escape does not include a breach of a release agreement under the provisions of the Release of Defendants Article.

Mr. Clark moved to adopt Mr. Paillette's proposal. Motion carried.

Representative Paulus asked if employment would be included under "activities" in subsection (2) of section 7 and received an affirmative reply from the Chairman.

Mr. Johnson moved the adoption of section 7. Motion carried.

Section 8. Security release. Senator Carson stated that the problem the Commission had discussed under section 7 concerning a defendant's right to a security release could be resolved by rewording

subsection (1) of section 8. He moved to amend the first portion of subsection (1) to read:

> "If the defendant is not released on his personal recognizance under section 6 or granted conditional release under section 7 of this Article, . . . . "

The balance of the paragraph would then be amended to indicate that if the defendant is not granted or does not consent to the conditions under section 7 of this Article, the magistrate shall set a security amount. Motion carried.

Mr. Gustafson explained that section 8 allowed the defendant to deposit 10% of the face amount of the bail with the court. It was based on the Illinois law where the system had proved successful and he cited statistics to support his statement. Under section 8 a defendant would deposit $1,000 to cover a $10,000 bond. Also, $100 was the maximum amount the court could keep should the deposit be forfeited.

Mr. Johnson asked if his understanding was correct that if a person deposited $1,000 on a $10,000 bond, he would get $900 back when he showed up in court. If he defaulted, he had posted $1,000 and there would be an additional default against him for $9,000, but no financial statement was required stating that the defendant could actually meet that indebtedness. Mr. Gustafson confirmed Mr. Johnson's understanding as correct.

Mr. Chandler was of the opinion that when the defendant appeared for trial and was not convicted, the full amount of his deposit should be refunded to him. Mr. Gustafson advised that a case on that point had been decided by the U. S. Supreme Court last year which held that it was reasonable to retain 10% of the deposit. Schilb v. Kuebel, 10 Cr L 3043, ___ US ___ (December 20, 1971).

Mr. Spaulding replied that the fee in the proposed statute was the same as the bail bondsmens' fees. In effect, it put the state in the position of the bail bondsman, and the state would get the profit. Mr. Johnson added that the state was bonding the defendant and was being paid for the bonding responsibility.

Mr. Chandler moved to insert a sentence in front of the last sentence of subsection (2) to read:

> "If the defendant is not convicted, the state shall not retain any amount."

Motion failed.

Mr. Blensly contended that there should be something in the statute saying where the funds would go. Mr. Gustafson replied that

section 10 took care of that. Mr. Blensly pointed out that section 10 spoke only to a forfeiture but not to the 10% deposit that was retained by the clerk. Chairman Yturri remarked that those funds should probably be handled in the same manner. An amendment to correct this criticism was subsequently adopted. See page 61 of these minutes.

Mr. Stoll commented that at the meeting of the Association of Defense Counsel there was a discussion revolving around the fact that in the federal court in Portland the judges appeared to look at the 10% deposit as the total bail. The suggestion was made that the proposed statute should contain a statement to the effect that the 10% deposit was not to be looked upon as the total bail.

Chairman Yturri was of the opinion that section 8 was perfectly clear in that regard. However, a statement in the commentary along the lines of the comments in Mr. LaBarre's letter [Appendix B] would take care of that objection. The members concurred and it was so ordered.

Representative Stults moved to strike from subsection (2), line 7, the following language: "on a day certain and thereafter". His reason for making the motion was that a judge oftentimes would not know precisely when he wanted the defendant to appear.

Mr. Blensly noted that if the motion were adopted, the same amendment would have to be made in section 5 (1) (a). He objected to the proposed amendment because if a day certain were not set, it was necessary to go out and find the defendant after the date was set. The statute as drawn would also avoid the problem of whether there was a wilful failure to appear when he had not been notified to appear on a certain date.

Chairman Yturri suggested that the phrase to which Representative Stults had reference be changed to "on a day certain or thereafter." Mr. Blensly pointed out that "and" was preferable because he should not only be given a day certain but also thereafter he would have to appear at arraignment and for trial.

Vote was taken on Representative Stults' motion. Motion failed.

Mr. Gustafson pointed out that there was an incorrect reference to section 11 in subsection (2). Senator Burns moved that the staff make the appropriate editorial change to correct the subsection. Motion carried.

Mr. Gustafson explained that subsection (3) provided for an alternative to subsection (2) and would permit the defendant to deposit the full amount in cash, stocks, bonds or real or personal property.

Representative Cole asked if the defendant would have to actually put up the stocks, bonds, etc. or if he could sign an affidavit pledging them. Mr. Gustafson replied that the decision would be discretionary with the court. Mr. Spaulding noted also that the statute said "may deposit."

Mr. Clark said that in Multnomah County the district court had not been granting recognizance but the circuit court had. He asked if the language of subsection (2) would in any way interfere with that practice and the Chairman told him that it would not.

Mr. Blensly called attention to the sentence in the middle of subsection (2) which began, "Once security has been given and a charge is pending . . . . " In a case where a defendant was charged, for example, with assault in the second degree and it was later determined that the facts would support a charge of assault in the first degree or even murder, it appeared to him that no provision was made for that situation. It should, he said, permit a different charge on the indictment from that on the original information. The circuit court should not be bound by the security imposed by the district court when a totally different fact situation was involved.

Mr. Blensly moved to amend the third sentence of subsection (2) to read:

> "If a charge is pending and security has been given, if said charge is thereafter filed in or transferred to a court of competent jurisdiction, the latter court shall continue the original security in that court subject to sections 10 and 11 of this Article."

His motion also included an amendment to section 11 to amend subsection (1) to read:

> " . . . the defendant may request or the court on its own motion may modify the release agreement or the security release."

Motion carried unanimously.

To resolve the question raised earlier by Mr. Blensly as to the disposition of funds retained as security release costs, Representative Cole moved to amend the sentence ending on the fifth line from the bottom of the page in subsection (2) by adding after "deposited" the phrase "to be paid into the general fund of the appropriate political subdivision."

Mr. Blensly said he favored the intent of the motion but suggested that the amendment be phrased in the same terms as section 10.

Representative Cole revised his motion and moved that subsection (2) of section 8 be revised to conform to the intent of his original motion by inserting language to correspond with that used in section 10. Motion carried unanimously.

With respect to subsection (3), Mr. Blensly said that presently the district attorney was given notice of securities and this served a useful purpose. He asked what the rationale was for taking the district attorney out of subsection (3) and leaving the decision strictly with the magistrate. Mr. Chandler said he assumed that the magistrate could ask the district attorney to investigate the worth of any given stock if he wanted to do so. Mr. Blensly remarked that subsection (3) would involve the magistrate in the actual determination rather than just requiring him to hear the facts and make a decision based on those facts.

Senator Carson asked why the district attorney was any more qualified to make that determination than the judge. Mr. Blensly answered that one reason was that the district attorneys would have investigators to make the necessary investigations and, secondly, they were somewhat more like advocates than was an impartial magistrate. Senator Carson questioned whether this was a proper place for an advocate. Mr. Johnson commented that the judge would be likely to use his recognizance officer for investigation purposes. Mr. Blensly agreed this would undoubtedly be true in the counties that had recognizance officers.

Mr. Paillette advised that Preliminary Draft No. 1 of this draft contained a detailed procedure with respect to deposit of securities. It was discussed in subcommittee at considerable length and was ultimately deleted as noted in the commentary on page 23. At the same time, the repealers remained in this draft so the result of the subcommittee's action was that the existing statutes were repealed and no procedures whatsoever would remain in the statutes other than what appeared in section 8 as far as examining the sufficiency of the security in this type of situation. Under this proposal the sufficiency would be determined only by the court.

Representative Cole asked how the political subdivision would get 1% of the security deposit when the defendant put up stocks, bonds or real property in lieu of cash. The Chairman replied that it would not get 1% in that situation. Mr. Johnson explained that under subsection (3) he would be putting up the entire amount of the bond and was self-insuring himself.

Mr. Chandler moved to approve section 8 as amended. Motion carried.

Section 8 was subsequently amended in connection with the discussion of section 10. See page 64 of these minutes.

The Commission recessed for lunch and reconvened at 1:00 p.m. with the same persons in attendance as were present for the morning session.

Section 9. Taking of security. Mr. Gustafson explained that section 9 provided a procedure for the taking of security by a person in the jail and was intended to codify existing practice. The person taking the money would be designated by the magistrate. Section 9 also allowed a magistrate to establish a security schedule, or bail schedule, for a particular offense.

Mr. Spaulding asked if "a particular offense" as used in the first sentence related to the category of the offense and not to the particular charge against a person and received an affirmative reply from Mr. Gustafson. Mr. Spaulding said a particular offense was one violation and questioned whether the language was sufficiently clear. Chairman Yturri noted that the clause, "may take the security in accordance with the provisions of this Article," related back to the bail schedule for the particular offense, and he believed the intent was clear.

Mr. Blensly moved approval of section 9. Motion carried unanimously.

Section 10. Forfeiture and apprehension. Mr. Gustafson advised that section 10 permitted the court to issue a warrant for the arrest of a person at liberty upon personal recognizance, conditional or security release if he breached any of the conditions of his release.

Chairman Yturri asked what conditions were attached to a security release other than that the defendant would appear at a certain time. Mr. Gustafson replied that under this draft the only condition was that he would appear as directed by the court.

Mr. Spaulding suggested that subsection (1) be amended to read: "If failure of a person to comply is not without sufficient cause to comply . . . . " He said there could well be circumstances where he could not possibly get to court. Mr. Chandler pointed out that the verb in subsection (1) was "may" so it was discretionary with the judge. Chairman Yturri was of the opinion that it would cause a number of problems if "sufficient cause" were introduced into the subsection.

Mr. Gustafson advised that subsection (2) provided for notice to the defendant and included a 30 day grace period, the same as current law. Mr. Spaulding commented that subsection (2) took care of the objection he had raised.

Chairman Yturri noted that subsection (2) provided that the notice could only be given by mail and in many cases it would be personally served. Mr. Gustafson said that could be corrected by adding: "or any other method calculated to reach the defendant."

Representative Cole moved that that portion of subsection (2) relating to notice be amended to provide that notice may be given in any manner reasonably calculated to bring to the attention of the accused the possibility of forfeiture. Chairman Yturri suggested the following specific language:

> "Due notice of the forfeiture shall be given forthwith by personal service, by mailing or by such other means as are reasonably calculated to bring to the attention of the defendant the possibility of forfeiture."

Motion carried.

Mr. Blensly said he assumed the subsection did not anticipate the partial remission of the security when the defendant appeared and surrendered himself but had no good reason for being late. Chairman Yturri said this was correct and he believed it was as it should be. Mr. Blensly said he would have no objection to that policy.

Mr. Chandler moved to change "address" to "addresses" on line 5 of subsection (2). Motion carried.

Mr. Gustafson explained that subsection (3) provided for execution of the judgment and distribution of the cash to satisfy the judgment. If it were a state offense, the money would go to the county; if it were a city offense, the money would go to the city. The subcommittee wanted to make it clear, he said, that the provisions of this subsection did not apply to the forfeiture provisions of the motor vehicle statutes, the boating offenses or to fish and game offenses.

Representative Cole inquired as to the rationale behind the exclusion of those offenses and was told by Mr. Gustafson that one reason was that this money had the assessments on it and the subcommittee did not want to get into that problem. Furthermore, the moneys collected for violation of those offenses went to different places and if that area were entered, provision would have to be made for distributing those funds.

Subsection (4), Mr. Gustafson said, provided for the liquidation of stocks, bonds, personal and real property in case of forfeiture.

Tape 18 - Side 2

Section 8. Chairman Yturri noted that subsection (3) of section 8 dealing with the deposit of stocks, bonds, real property, etc., used the term "unencumbered equity." He said that any equity a person had in property was necessarily unencumbered because that was the portion that was left after all previous encumbrances, and he was therefore at a loss to know the meaning of "unencumbered equity."

Senator Carson asked how a person would submit an unencumbered part of a parcel that was encumbered and was told by Mr. Spaulding that there was no such animal.

Mr. Gustafson said that if the Commission wanted to allow a person to put up property that was mortgaged, section 8 (3) could be amended to so provide. Representative Cole believed it was a virtual necessity and the Chairman agreed.

Senator Carson and Senator Burns were of the opinion that the state should not be second in line. Mr. Spaulding expressed the opposing view that there would be nothing wrong with it when there was, for example, a $5,000 mortgage on a piece of property worth $20,000.

Chairman Yturri said that the entire problem would be resolved by deleting "unencumbered" on the fourth line of subsection (3) of section 8. The provision would then be in compliance with realities and section 10 (4) would be all right.

Mr. Spaulding moved to reconsider the vote by which section 8 was approved. Motion carried.

Mr. Spaulding next moved to amend subsection (3) of section 8 by deleting "unencumbered". Motion carried.

Mr. Spaulding moved to readopt section 8 as further amended. Motion carried.

Section 10. With respect to subsection (1) of section 10, Ms. Woodward suggested that the Commission include a section to permit municipal courts to issue warrants for arrest that could be served anywhere in the state. As she traveled throughout the state, she said, she often heard municipal judges use as an argument against releasing persons on their own recognizance that if that person went outside the city limits, municipal arrest warrants could not be honored and they had no way to bring him back. Even though a person had ties in the community, if he lived a mile outside the city limits, the judges were reluctant to use ROR for this reason.

Mr. Paillette said there was some feeling in subcommittee that this might be a proper subject for a separate bill in view of the fact that it was before the last session of the legislature but was not enacted. The subcommittee had decided to add some commentary on the subject in the Arrest draft but no specific legislation was drafted which would authorize state-wide service of municipal warrants. The subcommittee had also discussed the possibility of amending subsection (1) of section 10 to provide that for the limited purposes of this draft, an arrest warrant would be serviceable state-wide, but that policy was not adopted.

Mr. Paillette stated his recommendation would be to provide for a limited extra-territorial service of arrest warrants issued by municipal courts. The argument against having municipal warrants generally serviceable throughout the state was that there was a fear

that all kinds of warrants would be floating all over the state for failure to appear on minor traffic offenses, parking violations, etc.

Mr. Paillette added that if ROR's were to be encouraged, the possibility of a court saying that ROR's were not used because the defendant could not be brought back if he skipped out should be negated.

Chairman Yturri requested a show of hands by those who wanted to amend section 10 to provide for extra-territorial service of warrants in this limited area only. A majority favored that policy and the Chairman directed the staff to draft the language.

The specific language drafted by Mr. Paillette to accomplish the policy adopted by the Commission was to add to section 10 (1):

> "(b) A warrant issued under this section by a municipal officer as defined in subsection (6) of ORS 133.030 may be executed by any peace officer authorized to execute arrest warrants."

The first portion of subsection (1) would be renumbered (1) (a) and the above paragraph would be added as paragraph (b). Mr. Paillette explained that ORS 133.030 (6) contained the definition of "magistrate."

Mr. Chandler moved adoption of the above amendment. Motion carried with two members voting in opposition.

Representative Paulus moved to amend subsection (1) of section 10 by inserting the following language after "personal recognizance" on the third line:

> "or if the court has good reason to believe that the defendant is going to flee its jurisdiction".

She explained that her motion was intended to cover the situation where the police learned from a reliable source that the defendant was going to fly out of the country on the following day.

Mr. Paillette questioned the advisability of permitting an arrest for something that had not yet occurred. Chairman Yturri noted that under section 11 the court on its own motion could change the conditions of the release and had a right to call the defendant back in should the circumstances warrant.

Senator Burns commented that Representative Paulus' objection would be met by amending section 11 to provide that the district attorney or the defendant may request the court to modify the release agreement.

Representative Paulus withdrew her motion pending the consideration of section 11.

Mr. Chandler moved to adopt section 10 as amended. Motion carried.

Section 11. Release decision review and release upon appeal. [Note: Section 11 was previously amended in connection with the discussion of section 8. See page 61 of these minutes.]

Senator Burns moved to amend subsection (1) of section 11 to read:

> "If circumstances concerning the defendant's release decision change, the district attorney or defendant may request . . . . "

The proposed amendment, he said, would satisfy the question raised by Representative Paulus during the discussion of the previous section.

Motion carried.

Mr. Hennings commented that many of his clients would probably find a change in conditions about once a day and section 11 seemed to imply that a hearing was necessary in each instance. He said he had suggested to the subcommittee that the defendant be permitted to raise his custody status at every appearance before a judge without granting him the right to have a special hearing, and he suggested that the Commission consider that possibility. Mr. Johnson advised that Mr. Hennings' recommendation was discussed by the subcommittee and while they recognized the point he made, they decided the provision should be left open because all the court had to do was to deny the request for a hearing.

Mr. Hennings advised that under present law once a judge had denied bail, the attorney was liable for contempt if he reraised the issue of bail before another judge. That provision was being repealed and it could be that the only change in condition would be that another judge would be the judge of the jurisdiction. He wanted to know whether the Commission would take the position that that was sufficient cause to reconsider bail.

Senator Burns said he was of the opinion that the statute should provide flexibility for the attorney to apply again, and others agreed.

Mr. Chandler moved to delete from subsection (2) the phrase: "for any crime other than murder or treason." Speaking on the motion, Mr. Chandler said he believed that if a defendant appealed after conviction, the judge should have the discretion to release him on bail during the prosecution of his appeal. Mr. Johnson commented that the judge did not have that discretion at that point in the case because of the Constitution. Motion failed.

Senator Burns moved to approve section 11 as amended. Motion carried unanimously.

Section 12. Penalties. Senator Burns asked why only the supervisor of a defendant on conditional release was punishable by contempt and why that provision should not be applicable to anyone who knowingly aided him in breaching the conditions of his release. Mr. Gustafson replied that the only person upon whom this draft placed a duty was the supervisor as provided in section 7.

Mr. Hennings explained that another person could not be held for contempt because he was not before the court. In the situation contemplated by section 12 the supervisor was before the court because he he was there to supervise the person whereas another person would have to be brought in on a separate charge.

Mr. Spaulding moved to adopt section 12. Motion carried.

ORS 140.180. Right of district attorney to be heard on application for admission to bail. Mr. Blensly noted that the draft did not contain a statute giving the district attorney a right to be heard at a release hearing. He asked if it was anticipated that the district attorney would not have a right to appear and represent the state on the original release decision. Under the present law, he said, the district attorney had an absolute right to be heard and that statute was being repealed. Some courts might interpret that repeal to mean that the district attorney could not be heard.

Mr. Gustafson conceded that the proposed draft did not specifically provide for the district attorney's appearance, but he had assumed that he would be present at the time of the release decision. He suggested that the problem could be resolved by deleting the repealer on ORS 140.180 and rewording it to conform to the release draft by amending it to read:

> "Upon an application for [admission to bail or to take bail] release, the district attorney, either in person or by anyone authorized by him, is entitled to appear and be heard in relation thereto."

Mr. Blensly moved to delete the repeal of ORS 140.180 and reword the statute as suggested by Mr. Gustafson.

Mr. Gustafson asked Mr. Blensly where he would recommend placing the amendment and was told that it should probably go in section 4.

Mr. Hennings commented that if the amendment were adopted, it appeared to him that the district attorney could then deny the release whenever he chose to do so or he could cause the release to be denied for a "reasonable" period of time. It would, he said, be contrary to the goal of the release draft which was to bring about a speedy release.

Ms. Kalil commented that if the draft only allowed the district attorney to go in after the release decision to modify the release conditions, it would defeat the purpose behind the draft because the defendant could violate the conditions of his release during the period of time that he was out on recognizance. Also, a court, having once released a person, was usually reluctant to tighten the provisions of his release. Mr. Blensly pointed out that the situation was further complicated by the fact that the section permitting the district attorney to be heard was based not upon a discovery of new knowledge but upon a change of conditions.

Mr. Johnson observed that the state had never encountered any problem in being able to appear before a judge and he opposed the motion.

Vote was then taken on Mr. Blensly's motion to amend ORS 140.180. Motion was defeated with only Mr. Blensly voting in favor of it.

Section 5. Ms. Kalil indicated that she could foresee two problems that might be caused by enactment of section 5, subsection (2) (e). One was that the provision did not speak to the situation where the defendant had been released on parole rather than being sentenced to a prison term or even when he had been released on probation. In that situation after the judgment was affirmed on appeal, it would serve no purpose to require him to go to jail, be booked in and surrender himself again.

The second problem involved the term, "forthwith surrender." The attorney would have the problem of notifying the defendant that the judgment had been affirmed. A question also arose as to the meaning of "forthwith" as to the point at which a warrant should be issued to bring him in. The practice in Multnomah County, she said, was that when the mandate was handed down, the defendant was required to appear at that time and if he did not appear, there was a means of proceeding against him. Representative Paulus commented that it could be weeks before the mandate was handed down. Ms. Kalil replied that her recommendation would be that when the judgment was affirmed, there should be provision for an immediate hearing before the sentencing court.

The Commission recessed to give Mr. Paillette and Ms. Kalil an opportunity to draft language to cure the questions she had raised.

When the meeting was reconvened, Mr. Paillette proposed to amend subsection (2) (e) of section 5 to read:

> "If the judgment is affirmed or the cause reversed and remanded for a new trial, immediately appear as required by the trial court."

Mr. Paillette explained that under the proposed amendment the action of the trial court would have to be in conformance with whatever took place in the appellate court.

Mr. Johnson moved adoption of the amendment proposed by Mr. Paillette. Motion carried unanimously.

Mr. Chandler moved to approve section 5 as amended. Motion carried.

Section 1. Mr. Johnson moved to approve section 1. Motion carried unanimously.

Next Meeting of the Commission

September 18 and 19, 1972, were tentatively scheduled as the dates for the next Commission meeting. Mr. Paillette indicated that the agenda would consist of materials considered by Subcommittee No. 3 on ORS chapters 137, 144, 147 and 148 dealing with sentencing, probation, parole and related areas. There would also be a review of the accomplishments to date plus some necessary amendments to drafts previously approved by the Commission resulting from revisions made subsequent to the time those drafts were initially considered.

The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Criminal Law Revision Commission

CAREY & STOLL
ATTORNEYS AT LAW
10TH FLOOR, STANDARD PLAZA
PORTLAND, OREGON 97204

HENRY A. CAREY, JR.
N. ROBERT STOLL
JEROME E. LABARRE

TELEPHONE
(503) 224-5355

August 16, 1972

Criminal Law Revision Commission
311 State Capitol
Salem, Oregon 97310

Re: Proposed Criminal Procedures
for Release of Defendants

Gentlemen:

I have just reviewed Preliminary Draft No. 1; May, 1972, concerning release of defendants which is included in your Part III, Article 6, of your proposed revision of Oregon Criminal Procedures. I strongly support this draft.

I am interested in seeing present Oregon law on bail as stated in ORS Chapter 140 changed because of the close contact I had with it during my three years in the Multnomah County District Attorney's office. I worked with the law both as a member of the Civil Department staff, who was primarily responsible for enforcing it, and as a Senior Deputy District Attorney in the Criminal Department of that office. In those capacities, I had an opportunity to observe many weaknesses in the law which rendered it impracticable to enforce as well as some shocking practices by bail bondsmen.

Many of my objections to the current situation have already been stated by some close observors of this system in recent newspaper articles here in Portland. However, I would like to set out other objections which might not yet have come to your attention as a basis of my support of the proposed new law. I should also state that I would be more than happy to testify before you about these matters and lend whatever other support I could to the adoption of the concept embodied in Preliminary Draft No. 1.

Below I have broken down my objections to the present system into several categories:

I. Forfeitures. Although in theory Chapter 140 is intended to assure the appearance of defendants by threatening forfeitures of bail, in Multnomah County the actual incidence of forfeiture is very rare. During the time I was in the District Attorney's office, which extended up to April of this year, I saw numerous cases where professional bail bondsmen failed to produce defendants for required court appearances. However, the bail bonds were forfeited only in a handful of these instances. Not only are judges reluctant to forfeit bail bonds, but when they do declare a forfeiture it is seldom that the county ever sees the money from the forfeiture. This is so because of the provisions of ORS 140.610 - 140.640, which allow bondsmen to easily avoid payment of a forfeiture by obtaining a remission. At the very least bondsmen can long delay any judgment against them by skillfully using dilatory tactics made easy by the terms of the statute. In those cases where the District Attorney's office actually obtains a judgment, great difficulty is usually experienced in collecting upon it. In summation there is no effective "club over the head" of a bondsman if he fails to produce a defendant as required in court.

II. Financial Statements. A related problem to the forfeiture problem frequently occurs in Multnomah County in connection with establishing whether professional bondsmen meet the qualifications of bail set out in ORS 140.120. For those professional bondsmen who are not backed by corporate sureties, monthly financial statements must be submitted showing that each of the two individual sureties have a financial worth in excess of their contingent liabilities of outstanding bail bonds. Given the limited resources of the District Attorney's office which can be devoted to monitoring bail bondsmen, it was virtually impossible to verify the financial statements which they submitted either in terms of verifying their assets or liabilities. It was my own feeling as well as that of other Deputy District Attorneys that bondsmen frequently misstated their net worth in their monthly reports. In one case where we did undertake a major effort to verify a financial statement of a bondsman, we uncovered numerous misstatements of his financial position. However, even in that instance, all we could force the bondsman to do was to file an accurate financial

statement and we could not keep him from doing business in Multnomah County because of the limits of the statute. In the case I am referring to, I would estimate well over 50 hours went into trying to verify the financial statement but this verification soon became outdated since the bondsman involved transferred his assets frequently.

This problem of ascertaining whether a bondsman actually has the financial backing to cover his contingent liabilities is linked closely to the problem of collecting forfeitures. If bondsmen were to lose a substantial number of their bail bonds by forfeiture, I seriously question whether many of them would have sufficient net worth to cover the forfeitures. While I am most familiar with the procedures in Multnomah County, I think the situation is not unique there. During my time in the District Attorney's office I did have an opportunity to talk with many other District Attorneys around the state and I know that in most of those counties no system exists whatsoever to monitor the financial condition of bondsmen.

III. Other Abuses and Improper Practices. It was shocking for me to learn that bondsmen normally try to have their customers put up real property as security for the bond. I am aware of one bondsman, who, by his own admission, at any given time had quit claim deed title to over a dozen homes of individuals who had come to him for a bail bond. This bondsman told me that he always gave the titles back after the cases were closed but I cannot think of any legal guaranty for this particularly if the title was transferred to a bonafide purchaser. It is appalling to consider that when people are upset and confused, such as they usually are, when they go to have someone bailed out of jail the bail bondsman can engage in overreaching methods to get absolute security for his bail bond. This fact along with the other above-mentioned objections graphically demonstrates how little risk is actually involved in the professional bail bond business.

Bondsmen also frequently employ ex-convicts to work for them. The tactics they engage in to find defendants who have skipped bail are at best questionable. The caliber of people involved in this business is certainly not on the level of those in the other components of the criminal justice system.

Many situations now occur where an individual is arrested on a Friday or a weekend and would be released on recognizance on the following Monday, but for the fact that a bail bondsman talks to him in jail and convinces him to put up bail to get out of jail immediately. In these cases the bondsman is only profiting on the ignorance of the defendant eager for freedom.

I hope these observations will be of use to you in deciding whether to adopt the proposed revision. My only concern about the draft is the fear that if it is adopted some judges may start setting bail in terms of the 10 percent of the security amount which is to be posted. In other words, I would not like to see an attitude adopted on the bench where instead of setting bail at $3,000 on a run of the mill drug case bail was set at $30,000 because the judge thinks only in terms of what the defendant must actually put up. Some criminal defense lawyers voice this as a very real threat. To eliminate this problem I suggest you consider incorporating language which would dissuade judges from thinking in these terms.

Please let me know if I can do anything to help get your proposal adopted by the committee and enacted into law. Thank you for your consideration of these views.

Very truly yours,

Jerome E. LaBarre

JLB:eis