

TESTIMONY OPPOSING HB 2263, Given By  
Judge William C. Snouffer  
February 8, 1989

Mr. Chairman, Members of the Committee: Thank you for spending some additional time on HB 2263 and giving me the opportunity to testify. I am a Circuit Judge from Multnomah County. After the 1973 Criminal Procedure Code was adopted by this legislature -- and it included significant bail reforms -- I wrote a detailed study of the legislation, its history and its intent. [The article is printed in 53 Oregon Law Rev. 273 (1974).] I am here this afternoon speaking as an individual, and I hope I can shed some light on this Bill and its significance.

The philosopher George Santayana, in his book The Life of Reason, included a famous aphorism with which you are all familiar: "Those who cannot remember the past are condemned to repeat it."

HB 2263 seeks to revive the corrupt bailbond system and inject it back into Oregon criminal law. The Bill should be resisted strenuously by all who care about the quality of our criminal justice system.

HB 2263 is identical to SB 856 introduced in the 1987 Session. SB 856 was defeated. Nothing has happened in the past two years that justifies adopting this Bill now.

HB 2263 has probably been pitched to you as an added tool that will help the criminal justice system and reduce the problem of FTA's -- Failures to Appear in Court. You probably got a nice soft sell that the present system is not working well and this Bill will help. You may have been told that, by adding some private enterprise to the system, the public will save money. But beware

young district attorneys who work at the intake and arraignment levels of the system. The same goes for Judges who find free tickets to ball games on their desks and "Christmas cheer" in their offices, and free dinners at their favorite restaurants. Frankly, we just don't need that kind of additional sleaze back in Oregon. (I hope nobody takes this criticism personally; I'm not referring to anyone presently supporting this Bill; I'm just pointing out that it worked this way in the past and can do so in the future.)

One might say, well that's not fair criticism -- this Bill will require bondsmen to be regulated by the Dept. of Insurance and Finance. I say nonsense. That's just a soft, fuzzy sop thrown into the Bill to try to make it more acceptable. Where's the money to finance that aspect of the Bill? Where is the appropriation? How much will it cost to add an unknown number of regulators to the Dept?

And isn't there some curious language in the Bill on this point? As it is presently written it says only that the insurance company that issues the bond is to be regulated --it says nothing about the agents, the bondsmen. Who is going to regulate them? Where is there a provision that establishes licensing and testing for these agents? Where is there in the Bill a provision for disciplinary review? Where does the Bill say anything about a Code of Ethics? Where is there a requirement of public accountability and reporting?

The reality is that there will be no controls over bondsmen. If you were to add the kind of controls and regulations that I refer to, in order to insure against corruption, you won't find a lot of eagerness from the industry to support the Bill.

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the judgment stood. On that point, it probably has been pitched to you that this Bill would generate revenue to the state.

But that is utter nonsense. Why? Because forfeitures are remitted. When the bondsman "finds his man," and returns a defendant to custody, he goes to the local judge and asks for his money back. Because he and the judge are buddies, the money gets paid back. And the public loses all of the "soft" costs of delayed hearings and rescheduled trials. Notice that this Bill [Sec. 6, p. 4, line 11] extends the forfeiture judgment time for 30 to 180 days, which gives the bondsman 6 months to locate the defendant before a judgment can even be entered against the bond. Why is that done? Because most people who miss their court dates are found again by the police (not the bondsmen) within that time. So if the police rearrest the FTA, and he is back in custody, no judgment is entered against the bond, and the public has to eat the expenses of disruption of court and corrections schedules and the costs of the rearrest process. But even if the FTA is not back in custody within 6 months, and a judgment is entered, the bondsman can go to his pal, the local judge, tell a sad story of woe about how difficult and expensive it was to find the FTA, and get some if not all of the bond money back.

I should hasten to add the Oregon has a fine judiciary; they are not corrupt. What I am pointing out is the prime opportunity for abuse that exists under the Bill. And where there is opportunity, someone eventually will cave in to the pressure. It has happened in the past; it will happen again.

I'd like to cover one other area before closing, and that has to do with Lane County. That county is one of the most beautiful in the state; it has a wonderful major city and lots of nice towns,

But the FTA rate is caused by too little jail space for the numbers of people we are dealing with, and the federal court caps that have been placed on jail populations. We are required to release from custody those whom nobody (not even bondsmen) would take out. Then when they fail to appear, as they will, another FTA statistic is generated. Some where there is the proper ratio of jail bed space to the FTA rate; I know that in Multnomah County, now that we have some new, added jail space, more people are making their court dates on time and the FTA rate is dropping. So it doesn't follow that our bad FTA rates are caused by the 1973 bail reform.

Nor does it follow that bondsmen will improve the FTA situation. I think it would be just the reverse. The reason for that is that bondsmen work very hard to get "the cream of the crop." They want to take out the very best prisoners, those who are most likely to reappear. (These are the prisoners who should be released on recog or conditional release to a third party.) If the most reliable persons are out on bail bond, then the rest of the prisoners must be combed through by the release officers to find the next level of reliability, who are recogged. After that you get the unreliable ones who are most likely to FTA. But the bondsmen won't touch these folks -- they won't release them. They won't take them out of jail and reduce population problems. Instead, those folks have to be kicked out by the sheriff, given a recog release and a new court date and a guaranteed FTA. So it should be clear that bondsmen will not add anything to the system and will not help to reduce population problems in jails, because they will be taking out of custody only those who would have been recogged anyway.

The "Mounties'" image is a myth. The reality is that most FTA's who have skipped are rearrested by public officials -- the police. Police agencies then arrange the return of prisoners through extradition. Many states have extradition compacts that facilitate exchange of each others' prisoners at economical -- but public -- expense. If it is cheaper to use the public system, bondsmen let it work. Then, as I said earlier, after the prisoner is back in custody, they go to the judge and try to get their money back. Judges often will do that, keeping however the extradition expenses the public has incurred. So the reality is that it is the public system that gets FTA's back into custody for court appearance purposes.

In closing, this Bill will do nothing to improve the workings of our criminal justice system. Instead, it injects risks of undermining the system: (1) by eliminating revenues the system now generates; (2) by adding costs the system does not now spend; (3) by failing to have any substantial impact on jail populations; (4) by failing to reduce FTA rates; and (5) by adding a significant potential for corruption to our police and criminal justice system participants. We don't need that.

My final word is this quote: "The most intensive study and the deepest reflection on the role of the bondsmen fail to disclose any meaningful service which these aggressive businessmen render to the administration of criminal justice." Kamin, Bail Administration in Illinois, 53 Ill. Bar J. 674, 680 (1965).