OCDLA Oregon Criminal Defense Lawyers Association

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March 25, 2013

The Honorable Jeff Barker, Co-Chair
The Honorable Chris Garrett, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: House Bill 2548

Dear Chair Barker, Vice-Chairs and Members,

RE: OCDLA's position in opposition to HB 2548

Dear Chairs and Members:

The Oregon Criminal Defense Lawyers Association joins other stakeholder organizations in the public safety sector in opposing the reauthorization of commercial surety bail in Oregon. We encourage you to maintain the farsighted and principled stance adopted by the 1971 Oregon Legislature in keeping Oregon free from the bail industry's inherent flaws and failings.

Government Accountability and Transparency:

There is no greater exercise of government power than to deprive a citizen of personal freedom. Who is in jail and who is not in jail ought to be a determination for which government is exclusively accountable. Under current law, Oregon courts and counties are responsible for the management of pretrial justice practices and accordingly, they alone are accountable when jail populations are imbalanced by race or socio-economic factors or when an individual commits a new crime upon release.

As the American Bar Association's Standards on Criminal Justice note:

> *[T]he central evil of the compensated surety system is that it generally delegates public tasks to largely unregulated private individuals.*[1]

[1] ABA Standards on Criminal Justice, p. 115.

One must only look to Washington to see how a profit-motivated industry destroys this transparency and accountability. In November 2009, the re-release on bail of Maurice Clemmons, a dangerously mentally ill man who had committed new crimes while out of custody on a prior bail, had tragic consequences in the murder-execution of four Lakewood police officers.[2] Ever since, the bail industry and the courts in Washington have been at cross-purposes in blaming the other for the recklessness and irresponsibility of Clemmon's release.

By keeping management of jail populations exclusively within government control, Oregon assures its citizens transparency and accountability of this essential government function.

Government Integrity:

The practice of commercial bail release has been outlawed in every nation except the United States and the Republic of the Philippines. In all other countries, the practice of "bounty hunting" is illegal.[3]

The bail industry is competitive in nature, and a bail agent's success or failure is dependent upon favor and referral from those within the criminal justice system. Accompanying this letter is the testimony of The Honorable William Snouffer in opposition to 1991 HB 2263, an earlier attempt by the bail industry to seek readmission to Oregon. Judge Snouffer is a former prosecutor and had personal knowledge of the influence and practices of the industry prior to 1973. Police officers were encouraged to carry agency business cards and refer arrestees in an agent's direction; defense lawyers entered into exclusive referral arrangements with bond agencies; prosecutors were courted to support an agent's request to reduce or set aside a forfeited bail; judges were courted to exonerate, set aside or reduce the amount of forfeiture.

In contrast to most states, Oregon's criminal justice system is refreshingly free of allegations of graft or abuse. Preventing a profit-motivated industry dependent upon favor and referral from participating in its functions is a critical step in maintaining this integrity.

Net Revenue Loss:

Proponents claim that bond agencies promptly pay 100% of the penal sum of bail when the defendant fails to appear. National practice shows otherwise. Nationwide the bail bond industry has a history of chronic neglect and avoidance of payment when judgment of forfeiture is entered.[4]

HB 2548 seeks procedures that favor the bail industry more liberally than defendants on 10% security bail. Under existing law, ORS 125.280(3) gives the defendant on 10% security release a 30 day window in which to appear in court. If the defendant fails to appear (FTA) within 30 days, the 10% security is

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[2] "Four Days in May Set Stage for Sunday's Tragedy," Seattle Times, December 1, 2009.

[3] Illegal Globally, Bail for Profit Remains in U.S.". *U.S.* (The New York Times). Retrieved 2008-01-29.

[4] A recent study by the Harris County District Attorney's Office uncovered over $26 million of uncollected forfeiture judgments, some over two decades old. "Bail bonds no bounty for Harris County," Houston Chronicle, February 22, 2010. New Jersey revoked Capital Bail Bonding Corp's license in 2004 for arrears in paying over $100 million in unpaid bond forfeitures. The LA District Attorney's Office estimated in 2004 that bail bonding companies owed the county $30 million in unpaid forfeitures, and estimated that the statewide figure to be between $100 and $150 million. "Facts & Positions: The Truth About Commercial Bail Bonding in America," The National Association of Pretrial Services Agencies, Advocacy Brief, Vol. 1, fn. 4, August 2009.

forfeited. A study by the Oregon Judicial Department in June 2010 established that 64% of defendants on security release appear within 30 days of an FTA event.

In contrast, HB 2548 contains a provision requiring the court to set aside the forfeiture if the defendant is apprehended within 60 days *for any reason whatsoever* even if the defendant has fled the state and is arrested on new criminal offense.[5] In short, even if the defendant commits a new crime and is apprehended by police and not by the bail agent, HB 2548 would mandate that the forfeiture be set aside if this event occurs within 60 days. One can anticipate the bail industry will seek to extend that 60 day window even further in future legislative sessions, as every bill submitted prior to HB 2548 has sought a 180 day window.[6]

Hostility to Pre-trial Service Agencies

Effective pretrial service programs such as in Multnomah and Lane County are the bail bondsman's greatest competitors, as release officers are imbedded in the booking facilities, have quick and easy access to arrestees and can release a defendant on conditional release without paying a fee. Consequentially, the bail industry has aggressively pursued legislation nationwide that is hostile to the continued vitality of pre-trial service programs – legislation that would reduce or defund a pretrial service agencies' budget, burden agencies with excessive administrative reporting requirements, limit or eliminate judicial discretion in release decisions, or, most notably, eliminate altogether the opportunity for 10% security bail.[7] A stark and telling example is Broward County, Florida, where the bail industry successfully used its lobbying clout to convince the county commission to de-fund the pretrial service agency even though it was effective and saved the county money.[8]

Conclusion

It is rare when every organization representing interests in the public safety system view a policy determination in the same way. In this instance, the public safety sector stands together in opposing the return of commercial surety bail in Oregon. The Oregon Criminal Defense Lawyers Association is pleased to join its colleagues in opposition.

Thank you for your consideration of our comments.

Sincerely,

Lane Borg, President
OCDLA Board of Directors

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[5] HB 2548, Section 9.
[6] 1989 HB 2263 Section 6; 1991 HB 2756 Section 7; 2009 HB 2682-4, Section 14 (4); 15 (1)(e); 16(b).
[7] "Facts & Positions: The Truth About Commercial Bail Bonding in America," The National Association of Pretrial Services Agencies, Advocacy Brief, Vol. 1, August 2009
[8] "Bondsman Lobby Targets Pretrial Release Programs," National Public Radio, January 22, 2010. http://www.npr.org/templates/story/story.php?storyId=122725849.