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FOURTH JUDICIAL DISTRICT
STATE OF IDAHO

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Judge Darla Williamson
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Good afternoon Chair Barker and members of the Committee. Thank you for allowing me to testify. I am Judge Darla Williamson. I have been a judge in Idaho for 33 years, serving in the most populated judicial district in our state. I recently retired but I continue to work on cases as a senior judge. During my judicial career I served in both levels of our trial court system, presiding over 1000's of criminal cases. I also served 8 years as the ADJ (in Oregon you refer to the position as the presiding judge). I have also served on numerous judicial committees, including a bail bond committee. I have served as president of one of our judges association. Through my experiences as a judge, and in serving on the bail committee, and in talking with many judges, and discussions at our judges' association meetings, I am very familiar with our trial judges' thinking on our current bail system in the use of private bail surety in Idaho.
Based on my experience, the facts, and the evidence, the following are issues trial judges have with private surety.

Criminal defendants generally lack financial resources, and a private bail surety system does not make the best of those limited resources. The money defendants pay to purchase bail often creates more debt to defendant. The money paid to the bondsman cannot be used to pay restitution, fines, and costs placing defendants into greater debt at sentencing. Increased debt impedes defendant's rehabilitation. MILLIONS OF DOLLARS ARE paid to the private bail industry each year for premiums in the purchase of bail bonds. Typically the industry charges 8 to 10% for the premium. The bail company keeps this money. It is not therefore available to pay restitution to the crime victims, or to pay fines and court costs.

Two anecdotal examples 1. Bond set at 250K. Defs mother sold some real estate and paid the bondsman $25,000 to bond out the defendant. The defendant was sent to prison for child sexual abuse. He is indigent and unable to pay the child victim restitution for counseling and her mental health needs.

2. Bond set at one million. The defendant's parents paid the premium for the bond to get their son out of jail. The defendant violated a condition of his release and he was back in jail about 3 weeks later. The defendant was convicted at trial of murder. He was represented by the public defender, he has no money or assets to pay restitution to the victim's wife and children.

The money paid to the bondsman is the property of the bondsman and not available to the victim, or to pay fines and costs.

BASED ON my experience, the facts, and the evidence, the following are concerns trial judges have with credit bail:

Historically in Idaho, the bail company would require 10% of the bond be paid in premium up front before the defendant could be bonded. About 11 years ago, a bail company by the name of Two Jinn moved into Idaho and implemented credit bail. I'm not aware of any bail companies using credit bail prior to that. Credit bail allows a defendant or another on behalf of the defendant to sign a contract with the bail company to pay the balance of the premium by promissory note. The down payment on the premium can be very low, as much as zero.

Credit bail undermines the intent of the court. If a judge sets bond at $100,000 we previously expected the defendant to pay about 10k to post bond. With credit bail we have no idea what the defendant will pay to get out of custody and it is changing the benchmarks in determining what is an appropriate bond by adding another variable to the judge who is trying to decide how much bail is needed to ensure the defendant's appearance and compliance with conditions of bail.

Another concern with credit bail:

The bail set on an arrest warrant is initially set based on the representations made by the state without the input of the defendant or his counsel. If bail is set too high, the defendant can appear before a judge soon after his arrest to present his side. Credit bail usurps this process. Defendants who want to be released will not wait to appear before the judge for input on

the bail and they or their family or friends are enticed by the prospect of a quick and easy release into signing a promissory note for a bail that can be too high. Another concern with credit bail is
The notion of the bail agency being the lender is a practice that reflects negatively on the justice system. The bail agent trying to make the sale provides an enticing offer too good to pass up. We now see t.v. commercials by bond companies offering enticing easy ways for defendants to get out of jail. Two Ginn opposes any attempt in Idaho to eliminate credit bail.

BASED ON my experience, the facts, and the evidence, trial judges have concern with increase litigation:

The bail company known as Two Ginn has filed over 400 cases in the Fourth Judicial District in the past five years. Many of these were in small claims for the collection on promissory notes signed by defendant or another for payment of the premium. Some of these suits involve suits against government officials. Two Jinn recently won a case against the Department of Insurance in which the court decided bail companies can require defendants and or their cosigners to sign a contract to reimburse the bail company for all apprehension costs in returning the defendant to Idaho.
In addition to these lawsuits, in the criminal cases the trial judges have to decide motions to exonerate bail, to set aside forfeitures of bail, and to reduce the amount of forfeiture.

BASED ON my experience, the facts, and the evidence shows, the following is an additional concern of trial judges:

The bondsman has no responsibility to see that the defendant complies with conditions of release or is law abiding. The only responsibility of the bail company is to pay the forfeited bond in the event the defendant does not show. However, even so, it can be difficult for the court to collect a forfeited bond. The bail companies will litigate to avoid payment. They will look for any clerical mishap by the court that could get them out of payment. They will also file motions after the forfeiture to ask the court for reduction in the forfeited bond.

BASED ON my experience, the facts, and the evidence shows, that there is little financial risk to the bail company:

Most all bonds posted are secured by the defendant or someone else close to the defendant. The bail company will take defendant's or another's automobiles, land, homes, whatever property they have as security for payment of the bond in the event of forfeiture. There are cases where the person providing security did not fully realize what was at stake. In one case, the defendant was illegally in our country. Bond was set at $30,000.00 The family wanted to get defendant out of custody. Their neighbor agreed to provide her house as security for the bail. The defendant bonded and fled to Mexico. Defendant's 30 K bond was forfeited. The neighbor stood to lose her house to the bail company. At a forfeiture hearing, the bail company appeared with the neighbor. I immediately knew the neighbor was the real party that would have to pay the bond. She did not want to lose her house. It was an ugly position for the court. She did not fully understand what was at stake in giving her house as security.

In addition to the security the bail company receives, at the time the contract to purchase the bail is made, the bail company can contract with the defendant or co-signer to pay all apprehension costs.

All these comments are based on my experience, the facts and the evidence.

Thank you for this opportunity to comment.