

Public Hearing

before

SENATE LAW AND PUBLIC SAFETY COMMITTEE

“The Public Hearing will be held in accordance with Rule 24:3 of the New Jersey Senate on Senate Concurrent Resolution 107(1R)”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 14, 2012
9:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Donald Norcross, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Nicholas J. Sacco
Senator Christopher “Kip” Bateman
Senator James W. Holzapfel



ALSO PRESENT:

Anne M. Stefane
Committee Aide
Office of Legislative Services

Lisa Friesz
Senate Majority
Committee Aide

Frank Dominguez
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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SENATOR DONALD NORCROSS (Chair): We're going to, at this point -- unless there's any further business -- close the Law and Public Safety Committee portion of this meeting. And we're going to open up the hearing on SCR-107, known as the Bail Reform Bill.

We need to start with a roll call.

MS. STEFANE (Committee Aide): For the hearing: Senator Holzapfel.

SENATOR HOLZAPFEL: Here.

MS. STEFANE: Senator Bateman.

SENATOR BATEMAN: Yes, what is this for? The hearing?

MS. STEFANE: The public hearing.

SENATOR BATEMAN: I have another meeting, Mr. Chairman, but is this the vote for the public hearing?

SENATOR NORCROSS: There will be no vote; we're taking testimony on the bail bill.

SENATOR BATEMAN: Okay, so what's the roll call for?

MS. STEFANE: Just that you're here.

SENATOR BATEMAN: I'm here. (laughter) Here for the time being; I'm coming back. Thanks.

MS. STEFANE: Senator Sacco.

SENATOR SACCO: Here.

MS. STEFANE: Senator Greenstein.

SENATOR GREENSTEIN (Vice Chair): Here.

MS. STEFANE: Senator Norcross.

SENATOR NORCROSS: Here.

MS. STEFANE: We have a quorum.

SENATOR NORCROSS: Thank you.

We'd like to have the hearing on the proposed bail bill that will allow, through the discretion of State judges, in setting bail. This is a constitutional amendment. The Committee unanimously approved this measure back on the 4th of June and at this point, as part of that process, we need to hold, and should hold, a public hearing.

It's important to note that we listened very carefully to the stakeholders from this group and this is intended, quite frankly, to keep the worst of the worst off the street. We're not talking about trying to keep somebody who stole bubble gum from 7-Eleven; this is a matter of making our streets safe for those, particularly in those high-crime areas, who have been victimized, just to see somebody arrested and make it back out on the street the next day -- whether they're trying to terrorize their victims or trying to get others to keep from testifying. This, quite frankly, is long overdue and I'm glad to see that we're finally moving it along.

First up to testify is from the Camden City Police Department, Greg Carlin.

Greg, welcome.

And Gladys Rodriguez.

GLADYS E. RODRIGUEZ, ESQ.: If it's all right -- if I sit with him?

SENATOR NORCROSS: Absolutely come up together.

MS. RODRIGUEZ: We're double-teaming today.

LIEUTENANT GREGORY CARLIN: Chairman Norcross, Vice Chair Greenstein, Committee, thank you for the opportunity to testify today in favor of this important legislation.

My name is Greg Carlin; I'm the Detective Bureau Commander for the City of Camden. I have 18 years of experience as a police officer. I've risen through the ranks in the Camden Police Department. I held various operational investigative positions and commands, and I've witnessed and experienced firsthand the difficulties of providing public safety to one of the most challenged cities in our nation.

What I offer today to you is not speculation, conjecture, or hearsay; rather, intelligence from the front line.

Police officers risk their lives every day to remove society's most dangerous criminals from the streets, but are quickly frustrated by the current bail system. It expedites the return to the same corners we're trying to protect for the good residents who live unjustly in terror.

The Constitution of the State of New Jersey in its current reading entitles individuals charged with a crime the right to bail prior to trial. While that principle of allowing defendants free from detention to await trial may be prudent in most scenarios, the judiciary should be able to exercise in terms of bail eligibility for certain offenders. Factors such as the nature of the crime, criminal history, the protection of the public, flight risks, witness protection, and the likelihood of additional crimes being committed by those offenders should be considered for bail eligibility. This bill would have an immediate, positive impact on law enforcement statewide, and perhaps even greater impact in urban environments such as the City of Camden.

On many occasions the offenders have told arresting officers that they'd be out on bail before they were even done completing their arrest reports. Many of these offenders have set up bail franchises that

allow them to easily funnel the proceeds of their daily wares through a spider-web-like network, and use it to secure their freedom and obstruct the judicial process through intimidation and threats. In its simplest terms, it is someone robbing a bank then using those proceeds to secure their freedom to rob another with impunity.

If offenders knew that bail was not automatic -- rather, subject to scrutiny and process -- the mental calculus of criminals in the City of Camden would be immediately altered and serve as a deterrent.

Three years ago, June 5, 2010, Avner Daniels was shot and killed in the City of Camden by one Ronnie Rogers. Rogers, at that time, was out on bail awaiting trial for other charges. Only days after the murder Rogers was arrested and given, seemingly, an unreachable bail. In early 2011, Rogers was arrested again, this time in possession of a firearm in Cherry Hill, New Jersey, while out on bail for the murder.

You can imagine the chagrin of law enforcement who, with only a finite amount of resources, risk life and limb to remove suspects such as Rogers, only to keep seeing them return to the streets. It's literally like a horror movie film, where, regardless of the actions taken, after a brief pause and everyone thinks that everything is okay and you're now safe, the figure shockingly sits upright and begins wreaking havoc once again.

This is one example of many of those who commit serious offenses who are allowed to function freely in society, but still pose serious threat to public safety. Without an amendment to current law and the ability to exercise prudence before allowing certain offenders to obtain a bail -- which is often dictated by schedule -- a great public safety and law enforcement threat will exist.

In the City of Camden, with extremely limited resources, a great deal of coordination goes into targeting individuals influencing violence and those who have committed violent acts. Oftentimes after a shooting the witnesses and, in most cases, the actual victims of those shootings -- they won't discuss with investigators what happened or anything about their assailant. Urban areas possess a certain code whereby no one will snitch on anyone. But this code is emboldened by the fear from the victims and witnesses that cooperation with police will be answered with violence from offenders who quickly are released on bail.

The victims and witnesses in the City of Camden have little faith in the system that appears to promote the swift release of offenders routinely. The mindset of innocent victims and witnesses being apprehensive to come forward and work with police, due to fear of immediate retaliation, must cease. The silence code will only be penetrated when officials show the capacity to make decisions that will protect them.

Knowing that bail may not be an option for an offender may take some time to be realized by victims and witnesses, but the shift in culture that currently exists must begin now.

Society's worst criminals do not fear long-term ramifications as a result of their criminal activity. They would fear the likelihood of a no-bail scenario based on prescribed factors. The landscape of criminal activity in the City of Camden would immediately be impacted favoring public safety. Confidence in those who are yearning to work with the police when victimized would grow. Witnesses would be more likely to come forward and offer police assistance.

Committee members, this bill is truly a game changer for law enforcement in the State of New Jersey. Five percent of the criminal population commits two-thirds of all violent crime. Right now they're afforded the opportunity to offend at-will and have the right to bail and the ability to re-offend. The most hardened criminals do not fear State or local police in New Jersey -- they fear the Feds. Not because Federal handcuffs are made of stronger steel or Federal prisons are tougher. It's because that at the moment of their arrest, when they're caught committing a serious crime, their predatory life -- wherein might equates to right -- ceases to exist.

A Federal judge will deny bail because they are a risk to society and they will sit in jail until their court date and then be further sentenced for the crime they've committed. To realize these potentials, those entrusted with law enforcement, prosecution, and judiciary processes must be empowered to make objective decisions rendering some offenders ineligible for bail.

Thank you.

SENATOR NORCROSS: Thank you. I appreciate that -- certainly the impact it has on the street.

Gladys.

MS. RODRIGUEZ: Thank you.

What I wanted to add to that was that we had a very specific situation that just came up, and I thought it would be interesting to add to this testimony today.

We had a defendant who was arrested on January 3, 2012, and charged with murder. His bail was set at \$1 million. He posted that bail on January 6, 2012, and was released from jail. On May 6 -- which was just a

month ago -- he was arrested in a narcotics sting where he came to purchase 13 kilos of cocaine from an undercover agent. He had \$320,000 in cash on him to purchase the drugs. He was riding a \$98,000 Corvette that was paid for in cash -- the receipt for the car was in the glove box -- and he was wearing a \$6,000 watch. This is an example of where bail, no matter how high the amount is, will not serve the public interests, as this defendant had access to large sums of money. He was a danger to the public by virtue of the fact that he had already been arrested for committing a homicide, and he was continuing to embark on illegal criminal activity on a large-scale basis.

This bail franchise -- which the lieutenant recently just spoke about -- truly exists in our city and our county. We have a specific individual who rose from the Camden City high school system as a basketball player to become a professional basketball player. He was injured later, but he continues to post bail for many of the drug offenders and dangerous criminals in Camden City. He is part of that group we have not been able to-- He insulates himself well, but because he has millions of dollars available to him, he acts as his own personal bail franchise for these people. We once thought that the bail source hearing process would be something that would help assist prosecutors; in other words, we would make a motion and the people would have to prove that the bail that they're posting came through legitimate sources. But when Dajuan Wagner is posting someone's bail, he has legitimate millions of dollars through his professional basketball career; but he's posting bail for offenders involved in very, very serious crimes of homicide, shootings, gun activity, and narcotics distribution.

The biggest challenge that we have in the city and in the county, in terms of prosecuting cases, is witness intimidation issues. Witnesses will fail to come to court; they'll make themselves scarce; they fail to cooperate with law enforcement. And that's all a result of the doors -- in the jailhouse door one day, and out the jailhouse door the next day. We've had serious witness intimidation issues where witnesses have not only been intimidated but have actually been physically harmed and hurt, and the witnesses fail to come forward because they know that a defendant is going to be released very soon. Or if he's got a bail, he's going to be able to make that bail because of this system that we currently have.

So as prosecutors, we support this bill.

SENATOR NORCROSS: Thank you, I appreciate it.

Any questions? (no response)

If not, thank you very much for coming up and giving your testimony.

Steve Finkel from the Attorney Generals' Office.

Thank you.

B. STEPHAN FINKEL: Thank you, Senator. I'm happy to be here to testify. As you know, I testified in favor of this bill when it -- this resolution -- when it was heard in Committee. We continue to strongly support it.

I echo the comments of the Camden County Prosecutors Office and police officer. The Federal government has had preventative detention since 1984. As you said, it is high time New Jersey has it. It is intended to keep the public safe. It's not going to be prone to abuse. We believe it's a strong measure and very warranted at this point, both in terms of types of

crimes, the types of future offenses such as domestic violence where there are threats against people, where the criminal justice process may be put at risk with the release of somebody. It's an alternative to high-money bails. It will ultimately result in greater reliance on conditions of release that can be monitored to keep the public safe. We strongly support it.

SENATOR NORCROSS: Thank you.

SENATOR GREENSTEIN: I have a question.

SENATOR NORCROSS: Senator.

SENATOR GREENSTEIN: Do you know-- I know the Federal government does this -- Federal law has it -- but do any other states do it?

MR. FINKEL: Yes. There are about nine states that don't have the same constitutional right to bail, and another seven or eight that have a similar constitutional right to bail but make exceptions for public safety -- for example, Pennsylvania and California. So there are other states that do that. We would not be unique by any means, but we would be in among those states that place a greater emphasis on public safety.

SENATOR GREENSTEIN: Thank you.

SENATOR NORCROSS: Any other questions? (no response)

Thank you for your testimony.

Next up, from the League of American Families, John Tomicki -- did I get that right?

J O H N T. T O M I C K I: You got it right, but that's what my grandfather, when he got off the boat, said it was -- John Tomicki. But I'd rather be Ivan Ivanovich, especially when I go into the old Soviet Union to help Jews escape, which I love doing.

We weren't here to testify on the bill. We have been active in the past in prison ministry. We concur in the pleading in the necessary (*sic*) to change the bail system. That's one of the problems of the law of unintended consequences when we abolished the death penalty in Jersey. At this point in time everybody, therefore, is available for bail.

The reason I'm a little bit tortured: Even though I checked off "opposed," it's like we want to see it changed -- (indiscernible) has changed. Pennsylvania's now moving through their system to change and modernize what has to be done. The detective is 100 percent correct about what happens with intimidation of witnesses, and particularly being able to reach out from jail through networks. But what concerns me is the broader language. When he said we should be able to do it in certain circumstances, it's hard on a constitutional amendment to start listing what cases. Obviously we know the capital case was easy to identify, or what's now happening in some of the cities -- we have invasions of homes, rapes, and shootings that are going on. Nobody cares about taking innocent life. Sometimes they're just in it for the drugs -- that's what the problem is.

So I'm hoping-- I don't know whether you can change it at this point of time since you're on a constitutional amendment problem -- that there's a vagueness that's there. I wish the judges in this state not only did the correct thing -- have the same power that you have up at the Federal level. That's the way we should be going. The judge determines, based upon what comes in from the prosecutorial authority, that this person is definitely a risk based upon what the detective said: A man's running around with that much cash, running around, you know where he's going. Mr. Green is in his car and he's going to move. And, therefore, people

always believe that a judge should have the right to say, "No. In this case, no bail. We're not going to let you back out on the street no matter what."

So I'm concerned with the language because it says that the Legislature can further act. I'd rather see it specifically listed: These are the cases, now the judge must not. We have the total authority to say, "No, you can't, bail will be denied." And I don't know how to resolve that problem at this stage. It has to be done. We've got to give the judges the constitutional right. But maybe it's just to trust them, without that extra section, that the Legislature can further tweak with it.

What Pennsylvania is doing right now -- and I understand the need immediately to put the message out on the street in this state, "You're going to fool around, you're going to spend your time in jail. I'm going to do everything we can to convict you and put you away for a long, long time." That's another part of the equation -- on sentencing. But I just don't know how to work the language. I've been troubled with it; I'm sorry we weren't here for the hearing. We might have learned some more, because that's where I agree with Deborah Jacobs: It's good to have a process.

So we're supportive of the concept; we're going in the right direction, but I don't know whether the language is going to satisfy and we might (indiscernible) -- things come running amok.

Back to the death penalty for a second, on the close: On Mondays I'd be for it, on Tuesdays I'd be against it, on Wednesdays I'd be for it -- because you never wanted to see, in the judicial system, an innocent person put at risk for their life when they were truly innocent. And we've had too many cases. So the problem here is we don't want people back on

the street who, by all discernment, you know they are definitely a risk to the public and to society. I don't know whether this language is going to go too far or too short. We are concerned. But the process will move on.

SENATOR NORCROSS: Thank you.

Any questions?

SENATOR SACCO: Until we began these hearings, I didn't realize that a New Jersey judge had to set a bail. I thought they could keep people incarcerated without bail. So it was enlightening to me to see that that was only on the Federal level, and New Jersey was behind at least nine other states.

People who commit some of the worst crimes have access to the greatest amount of money and can make bail no matter how high it's set. So this is the time to move forward on this and get this amendment passed. I agree completely and thank you, as the sponsor, for moving this.

SENATOR NORCROSS: Thank you.

Any others wishing to give testimony? (no response)

If not, this concludes the public portion of the meeting. We're adjourned.

(MEETING CONCLUDED)