

Testimony of Nicholas J. Wachinski, Esquire
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Regarding Senate Bill 1441

Committee on Banking and Insurance, September 23, 2014

Good morning Mr. Chairman, Chairman Stack, esteemed members of the Committee, fellow criminal justice stakeholders and others who have showed an interest in the meaningful positive change in the administration of criminal justice embodied by Senate Bill 1441. My name is Nicholas Wachinski and I serve as the Executive Director of the American Bail Coalition. Founded in 2001, the American Bail Coalition the singular goal of developing a system of best practices to be adopted by state government that maximizes the pretrial release of criminal defendants, minimizes days between arrest and pretrial release of criminal defendants and accomplish both through means that protect public safety as an additional benefit.

Before my comments, please allow me to thank Senator Alloway for his enthusiasm in this legislative project, Senator Stack for his commitment and help in moving this bill forward as an effective criminal justice tool, Senator White for seeing the importance of this issue, and all the co-sponsors for identifying the value of the bill. I would also like to thank the Pennsylvania Insurance Department and the Pennsylvania District Attorneys Association for their help in crafting the language of this bill, their suggestions and alterations developed a good bill into a great bill, which is why all of their suggestions were included into the resulting language.

Historically, bail is one of the most often misunderstood legal principles. Its purpose and intent often frustrated, which is further complicated when a bail bondsman becomes involved in the process. This frustration is not based upon the actions of the bail bondsman but rather, because of the reliance upon civil law principles in a criminal law setting. Without sufficient clarity on which rules of procedure apply, which burdens of proof apply and absent a clear expectation of the bail bondsman in law, the system has been degraded to the point where this legislation is necessary to assure the continuation of a healthy criminal justice system and further ensure that county jails will not become choked with the burden of overpopulation.

Senate Bill 1441 provides one inexorably true maxim, clarity is key. Clarity in defining the role of the bondsmen, the expectations of the court and the regulatory scheme necessary to

license the bondsmen. The text of this bill establishes bright line rules for a bail bondsman to obtain licensing and approval to do business in our County Court Systems. It provides a clear expectation of the bail bondsman when a defendant fails to appear as required by the Court and provides bright line rules enabling the Counties to respond if the bail bondsman fails to meet those expectations. Finally, this bill provides a clear and unambiguous definition of the relationship between the Courts who rely upon the services of bail bondsmen and the Pennsylvania Department of Insurance, who license and regulate the bail bondsmen as a profession.

In former years, the role of who would license and regulate the bail industry was unclear and confusing. With the changes to this statute the bail industry has asked that it be allowed to rely upon the tried and true measures for licensing insurance producers as a necessary first step in ensuring a healthy relationship between the industry and the Courts. Through the requirements of testing, pre-testing education, and continuing education, bail bondsmen will be informed and kept informed about the sensitive trends in providing services to consumers, most especially consumers who are often times afraid and unclear of what happens after their arrest.

This bill is at minimum revenue neutral and likely over time will see a positive trend in the amount of budget dollars consumed in the needless pursuance of bail monies that go unpaid as a matter of unclear legal process in declaring those monies payable to the Commonwealth as well as further steps necessary to ensure payment. The former system relied upon many hours of staff time to assess these transactions, court hearing time to determine the appropriateness of forfeiture and consumes district attorney staff, judges and other related personnel. The system embodied in Senate Bill 1441 statutorily establishes another clear and unambiguous expectation of the bail bondsman. Based upon a series of bright line rules defining notice of a claim for payment of bail monies and rules relating to an automatic timeline for payment or return the defendant to justice, this bill returns the function of bail back to the expectation that the return of the defendant to stand for trial is the optimal outcome for all criminal justice stakeholders and partners.

SB 1441 removes the potential for bail bondsmen to reign in any one county unchecked and unsupervised while establishing four layers of accountability in the bail bondsmen who serve this Commonwealth. Those four layers of accountability are 1.) the bail bondsman to consumer, 2.) the bail bondsman to the Court, 3.) the bail bondsman to the Pennsylvania Insurance Department and finally, 4.) the Court to the Pennsylvania Insurance Department. The bail bondsman will always be sensitive of his or her relationship with the consumers of the services

provided, but under this new framework as insurance producers and quasi officers of the Court, that consumer is further protected by the Court and the Pennsylvania Insurance Department.

The proposed changes provide a clear and unambiguous meaningful process for the oversight and ultimately the discipline of wayward bail bondsmen. Rather than a county by county system, if a bondsmen belies the trust of any one county, that county can commence and bring an action to fruition that will terminate the bail bondsmen from providing bail services on a statewide basis. This will enable the concerns over lack luster service to be removed and the industry to truly become a criminal justice partner.

Senate Bill 1441 requires that each bondsmen must secure the appointment of an insurer who is licensed and approved by the Pennsylvania Insurance Department prior to providing bail services. In ensuring that the bail bondsmen is backed by an insurer, the Court assures professionalism and reliability through guaranteed payment of monies owed, without having to rely on long complicated collections litigation. In the event that the bail bondsmen is deficient in his or her role with the court that there is another layer of accountability, that of the business relationship between the insurer and the bail bondsmen.

In an effort not to discount the concerns of all, a grandfathering clause has been included in this bill that will enable those bail bondsmen who currently operate without an insurance producers license to automatically receive the same upon application to the Pennsylvania Insurance Department, thus allowing them to continue to operate their businesses under the new and more accountable system.

In short, this bill will likely improve the fiscal condition of the individual counties in the form of paid forfeitures and reduced jail time through the use of professional responsible and transparent bail bondsmen as a mechanism of release. It further frees court time previously consumed by lengthy and complicated bail money collections litigation through the implementation of a series of bright line rules that makes recovery of funds and defendants an function of law. This bill will make District attorney's lives easier and the Court's lives easier and hopefully increase the ability of the system to improve upon secured release of defendants. From a public policy perspective, and a national view of best practices, this bill is an example for all to follow.

I would again like to thank Senator Alloway, Senator White, Senator Stack, all the co-sponsors, the Pennsylvania Insurance Department and the Pennsylvania District Attorneys Association for the hard work in dedication relating to this important issue.