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2005 HOUSE JUDICIARY

HB 1178

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1178

House Judiciary Committee

Conference Committee

Hearing Date 1/12/05

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-2.9

Committee Clerk Signature

Aaron Penrose

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1178.

Representative Maragos: I am a sponsor of this bill. HB 1178 was introduced this session to follow up on a bill we put in last year to start modernizing and updating the bail bonding profession.

Chairman DeKrey: Thank you. Further testimony in support of HB 1178.

Reed Soderstrom, attorney from Minot: I am an attorney in Minot and also a licensed bail bond agent, having approximately a dozen bail bond agents or partners around the state of North Dakota. What I have found through these other agents and partners around the state, is that bail bonding is all over the map in ND. There is no uniformity, no consistency around the state. Although I respect the various courts' autonomy and how they choose to do bail bonding, that has created some problems, and I tried to incorporate those problems in the bill. A brief introduction, bail bonding is not taught in law school, I don't believe it is taught at the police

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academy, it's a bit isoteric. A lot of people don't know what we do. We are an important part of the judicial system. We do, as bail bondsmen, save the city, the counties, the state, a lot of money. But the jails in ND are the most expensive hotels in the state and the taxpayers pay for it. When you include security, food, heat, water, medical, potential for lawsuits of prisoners, jails are expensive. Throughout this proposed bill, I changed all references to bail bondsmen to bail bond agent, to make it gender neutral. The first section amendment, is in regard to gender neutral, section 2 on the first page of this bill talks about reciprocity. I just visited with Lori Wolf, from the Insurance Commissioner's office. She told me that they already have this statute in the books. You don't need it. I agree with what she said. But being in the trenches as a bail bondsmen, we didn't experience that. Lori said she should have been told. Maybe we don't need the change in section 2. MN has been great. I have agents in the Red River Valley that go across the border, Wahpeton, Fargo, Grand Forks. MN has been a good place to bail bond. They treat ND resident bail bond agents very well. I have had the opposite experience in SD and MT. I have agents in Williston, Watford City that were competing with Sidney agents that come across and do bail bonding in ND, they had a very hard time going into MT and getting licensed. I had to jump through a lot of hoops. SD, the biggest hurdle we experience is that they give one test per year, as a bail bond agent to get licensed. In ND, you can take the bail bond exam three times in a day if you can get the time and registration to get in. SD offers it one time a year. It is very hard to get licensed down there. Turning to page 2, section 3, I anticipate arguments from the courts on section 3. I added a sentence that specifically says "a court may not accept a bail bond premium, but may accept a cash bond, may release a defendant on ROR. It sounds awful, we are tying the courts' hands. Here is what we have experienced as bail bond agents. When

there is someone in jail with a \$10,000 bond, we should get paid 10%. We can get paid \$1,000.

If that defendant does not show up for court, we owe the court, the state of ND, \$10,000.

Unfortunately, I had to do that before. If we do our job right we get collateral and ultimately it comes out as a wash. That's the risk we take. But some of the courts are saying that we are going to take your premium, it's a \$10,000 bond, you pay the court a \$1,000. Now in my way of thinking, we're competing with the government. When the defendant doesn't show for his hearing, and court has taken a \$1,000 premium payment, who's going to pay the forfeiture. I doubt that the court will. They won't. They have nothing to lose. We in the private sector, we can't compete with that. We have to pay the forfeiture when the defendants don't show for their court dates. Courts don't. I don't think we should have to compete with that. Section 4 is gender neutral. Page 3 of this amendment, it looks like it is gender neutral language I put on page 3. Page 4 the same gender neutral language. Page 5, maybe there is a selfish interest here. We're trying to raise the rates of the commission. We do take a risk out there, about 20% of the time these people skip and it's very high risk. We need to check on the collateral, to make sure there aren't liens on it, etc. That is why we are trying to increase the commission. I've also heard that the state could use more money in its coffers. I thought it would be good to place a tax on to anybody charged. I understand that every defendant that's charged is innocent until proved guilty. But still they have to go through a system that costs money. The intent was to bring some money in the state's coffers and let the bail bond agent have a little bit more money for taking the risks that they are taking and for the services that they are providing to the state of ND. Section 9, here a problem I see in the trenches. When we do have a forfeiture, when the \$10,000 defendant doesn't appear for his hearing, we have to go out and find him. Sometimes we hire a

bounty hunter, sometimes we assist the bounty hunter, whatever it takes we have to bring the defendant in, because we don't want to pay the \$10,000. If we do it ourselves, we work hand in hand with law enforcement. If we hire a bounty hunter, they work with law enforcement. Then the police take over. Then some courts say that since the bail bond agent didn't personally bring the defendant in, I'm holding you accountable for the forfeiture. That's not fair, every time we need to bring in a defendant, we will work with law enforcement to some degree. Sometimes we bring them in ourselves, many times if the defendant is dangerous, we're going to work with law enforcement so nobody gets hurt. The intent of section 9 is to specifically say that the bail bond agent has 90 days following a failure to appear to pay the forfeiture or return the defendant. It also says that regardless of who brings the defendant back, if the defendant comes back himself, if law enforcement brings him back, or if we bring him back, we have an opportunity to get our forfeiture money back. If law enforcement is expending time and energy helping us, we'll pay for that. Don't make us pay for the full forfeiture, just make us pay the actual and real costs that law enforcement assisted us with. At the bottom of section 9, I added a sentence, bail bond agent petitions the court, the court may assess restitution against the defendant. Many times, the person that doesn't show up for the \$10,000 forfeiture, we pay the \$10,000. The defendant is long gone, they come back, finally there is an adjudication, this guy pleads guilty, is found guilty, it would be so simple if the court could say that the defendant is responsible to paying the \$10,000 back. There are courts in the state that say, no we're not going to give you restitution for the money lost, you can sue this guy civilly. Most bail bond agents aren't attorneys, and that adds more costs to the bail bond to try and get the money back. I'm not asking to recover twice, just to give the court the discretion to give us restitution. It's common in the state of ND to give all the other

victims of crimes some restitution. I am asking the same for the bail bond agents. Section 10, I'm not sure where this is going. It talks about house arrest. Everywhere you look the jails are full. House arrest is coming. I'd like the bail bonding industry be on the forefront of that. I think it is going to be expensive, either with GPS or ankle bracelets, I'd like bail bonding agents to be able to diversify, work with the courts, the courts approve a good plan, let us again have the opportunity to save the state of ND money by getting these people out of the most expensive hotel in ND, getting them home if the court approves of our plan to monitor these people. That was the intent of Section 10. Again, thank you for your time. I think this bill can be tweaked and amended, there are things we can do with it yet. I hope you understand where this was coming from.

Chairman DeKrey: Traditionally the fee for a bail bond agent is 10%.

Reed Soderstrom: 10% or \$75, whichever is more.

Chairman DeKrey: With passage of this bill, we would be taking a lot of the risk out of that business for you. Would you be amenable then to lowering the percentage of commission. The reason it is so high is that the risk is there, but if we're going to lower the risk for you, shouldn't there be a savings to the defendants on the other end, because we are reducing your risk.

Reed Soderstrom: Most of the bail bonds that are done around the state, are misdemeanors. Most of them are \$75 bonds. As I see this bill, we're raising it \$25.00. The state is taking another \$25. There's not a lot of wiggle room, not a lot to cut. As far as reducing the %, maybe that's not a problem because on the larger bonds like the \$10,000 bond, we are going to want to take 10% or we're not going to do it at all, or we're going to get 100% collateral in our hands, possession of it, or we're not going to do the bonds. I don't the increase is that significant.

People want to get out of jail. For \$125, they're going to come up with it. Even the poorest people will find the money very quickly.

Chairman DeKrey: I take exception to you calling yourself a victim. A victim of a crime is a victim, something that is perpetrated on them that they didn't ask for. You willingly went into this business relationship. I'm not sure I allow you to call yourself a victim.

Reed Soderstrom: Victim perhaps was the wrong choice of words. However, when you lose \$10,000 you certainly feel like a victim, sometimes. It is a consensual relationship, true.

Representative Delmore: How many bail bond agents are you representing with this bill. How many do we have statewide and who are you representing.

Reed Soderstrom: Last time I checked, there were around 30-35, that was a year ago. I know it has gone up, probably between 30-50 right now.

Representative Delmore: As we look at section 8, we've added a number of court costs, that will make it very expensive. What you're asking for here is that we as the legislature, mandate what our judges are going to do in the courts, and they don't like that. Here you aren't giving them any discretion as to setting a reasonable amount of bail. Aren't we asking for a lot of money for someone may have perpetrated a crime because they had no money in the first place.

Reed Soderstrom: Maybe, but if you are taking away the discretion from the courts, you are only taking a little bit away. What I see around the state, if you are charged with a DUI, you're going to pay at least \$1,000. That's what the bond said, \$1,000. Thirty miles away in Bottineau, it's \$300. It's all over the board, as far as what the courts are charging. There are communities in the state that don't even use bail bond agents. I don't know what they are charging for DUI's. Is it too much, when I look at section 8, subparagraph 2c, when most of our bail bond agents are

doing misdemeanors, we are asking if they write a bad check, if they do something stupid, even minor, we are asking them to pay \$125.00 to the bond or sit in jail. We haven't taken the discretion away from the court because the court, being in session 5 days a week/Monday through Friday, they still have the discretion to say, here is your hearing, you don't have a bondsmen, you can't afford one, you can go. We have only tied their hands as to the amount, a minimum of \$1,000. But they still have the power to release any defendant they want to.

Representative Delmore: You can't get blood out of a turnip. Somebody who has written a \$25 check that bounced, that's a great deal to ask for that person to pay. I guess there's a reason that courts have discretion, and sometimes those dollar amounts are all over the board, because reasonable bail is basically what was traditionally set. I'm just wondering if you aren't trying to take something away from our court system, from the judges.

Reed Soderstrom: I respect that point of view; however, very unscientifically, I think what we're also trying to do is put a quarter to half a million dollars into the state coffers by taxing defendants that have gotten themselves in stupid situations. My experience is that on all misdemeanors, anybody and everybody finds the money to get out of jail.

Representative Delmore: But as you are lining the coffers, you are also lining your pockets.

Reed Soderstrom: By an additional \$25 per bond, yes.

Representative Klemin: First of all, section 3, the new language, that the court may not accept a bail bond premium. Could you explain what that means. What is the bail bond premium.

Reed Soderstrom: What I meant to convey with that language, is we are paid 10% or \$75 per bond, whichever is more. There are courts in the state that are doing that. They're saying if you get a \$1,000 bond, you can pay the court \$100 and get out of here, and when that person doesn't

show, there's no liability or accountability on the courts. That's what I am trying to take away. I don't to compete with the government. I want the private sector bail bonding to be competitive in and of itself.

Representative Klemin: Under this provision, the court would no longer be allowed to do that, but rather they'd have to go to a bail bondsmen to get the same kind of equivalent to be released.

Reed Soderstrom: Yes, or the court can take a cash bond, and there are certain courts that only take cash bonds and they can always release the defendant on their own recognizance, free of charge.

Representative Klemin: But the reason that the court could not accept the bail bond premium is because that's in competition with bail bondsmen.

Reed Soderstrom: I don't think it does anything to the State of ND when they don't show up. To the best of my knowledge, the forfeiture is never going to be paid by the state. There's no accountability for that forfeiture when certain courts in the state just take a premium and the defendant bolts.

Representative Klemin: On section 8, in the new section, for A, B, and C felonies, the court would have the discretion to set bonds, but for A and B misdemeanors, there's a minimum level set. What's the purpose of not having the court have any discretion on the felonies but setting minimums for misdemeanors.

Reed Soderstrom: I felt that felonies could be all over the board, as far as being extremely heinous as to, for example, statutory rape, murder to some minor felonies, and the court's

discretion to look at the facts as they are charged out, would be able to set appropriate bonds. I didn't dare delve into that area.

Representative Klemin: So why shouldn't the court have the discretion to set appropriate bonds for misdemeanors.

Reed Soderstrom: Misdemeanors in my opinion, are cut and dried, driving without liability insurance, DUI, driving under suspension, are the bulk, open containers for the kids. Yet, around the state, you've got jurisdictions charging \$300 and some charging \$1,000 or even more. There is no uniformity.

Representative Klemin: Say that releasing confidential information is a Class C felony, the court may release somebody that's charged with that particular crime without setting any kind of bond; but yet if the \$25 bad check, we've got a \$1500 bond, minimum required.

Reed Soderstrom: I look at it as a class C, a \$1,000 bond for \$100 for writing a \$25 bad check. If the charges are true, they've stolen \$25 worth of merchandise, and to pay \$100 to get out of jail, maybe that isn't so insignificant.

Representative Klemin: Question on the 90 days in section 9. You have that in order to establish statewide uniformity then on the amount of time.

Reed Soderstrom: Yes, there are courts that say give me the money now and other court systems that say I just want you to bring back the defendant, go get them.

Representative Klemin: If you do that, you get back 95% of the forfeiture.

Reed Soderstrom: Sometimes.

Representative Klemin: Under this bill, you would.

Reed Soderstrom: Under this bill, yes.

Representative Klemin: Does that take into account the 5% that the state would keep, would that be sufficient in all cases to compensate for the additional costs the state may have incurred in say tracking down the person themselves.

Reed Soderstrom: We could tweak that part of it to say that we would pay actual costs and there are courts in the state where we revoke a bond. If a \$10,000 person we find, commits another crime in another county, they bring him into jail and now we revoke the bond and say that we don't want anything to do with this guy. Now they have to bring him from Grand Forks to Minot. There are some courts that will say you don't have to pay the forfeiture, but you will pay for the cost of transporting you to the other town or county. I think that is very fair. Maybe the 5% doesn't cover that and maybe it's more than what is necessary, depending on the amount of the bond.

Representative Klemin: How did you arrive at that.

Reed Soderstrom: It was there in the books, in the previous statute.

Representative Klemin: Is that current law then.

Reed Soderstrom: Yes, Section 26.1-26.6.

Representative Klemin: So that's really not a change, except for the 6 months.

Reed Soderstrom: Correct.

Representative Klemin: So the current law is that if you return that person within 6 months, the court returns the forfeiture, less the 5% court costs. So you would be changing that to 90 days. Why would you want to make it harder on yourself.

Reed Soderstrom: I meant to change it to 90 days to pay the forfeiture, a year or longer to get our money back or 95% of that, and I also meant to change it to say that regardless of the means

or methods of how this defendant is brought back into our judicial system, the bondsmen has the chance to recoup most of his or her money.

Representative Koppelman: On page 5, section 8, item 2c, it reads for a class B misdemeanor and all other alcohol related offenses, what was the intent of that.

Reed Soderstrom: The intent was to probably satisfy the Mothers Against Drunk Drivers, to satisfy those who are against alcohol related offenses, change DUI BAC level down to 0.8 for teens.

Representative Koppelman: I don't think the "other" should be there. It implies that all class B misdemeanors are alcohol related.

Reed Soderstrom: That was not my intent.

Representative Onstad: You made reference in section 8, you talked about trying to make things more uniform, and your section 10 on house arrest. Have you had discussions with those courts and judges, and what is their comments prior to making these changes, that's what we're working with. Have you had those discussions.

Reed Soderstrom: No we have not. We don't have an organized bail bond association. We have not had the opportunity to visit with the judges, but the way this proposed bill, section 10 is drafted, the discretion is with the court. The court may utilize bail bondsmen. I was hoping to put that in the book to show it's there and begin a dialog. I wanted the courts to know that we are out there and many are eager to begin this type of diversification of the bail bond business.

Representative Onstad: It is up to them, if they wanted to use the bail bondsmen, it is up to the court and judges to do that now.

Reed Soderstrom: I imagine it is. I think courts can do almost anything they want to, but I believe it is the Dept of Probation and Parole that is utilizing certain non-profit organizations right now in the realm of probation and parole. I am unaware of any house arrest services that are being utilized other than through the government probation and parole.

Representative Onstad: Back in section 8, where you are setting minimum, your references to one court charging \$300 bond and another court might have a \$1,000 bond. That was the point to visit with the judges about in those courts. Maybe they are okay with \$500 uniform across the board. It seems that the discussion should be started there too. They set those limits, and they have reasons for setting that.

Reed Soderstrom: My opinion is that bail bonding agents have been the poor cousin in the judicial system. Maybe some judges and courts think that they've got insurance, let's just forfeit and grab their money, which isn't true. Every licensed bail bond agent, is personally responsible for the forfeiture. There is not one liability insurance company that will pay for it, and not want to get their money back from the licensed agent. Because of that fact that no one really deals with bail bond in law school, police academy, etc. that is the reason I'm here today. Let's address it, let's start here.

Chairman DeKrey: Thank you. We will take further testimony in support of HB 1178.

Testimony in opposition to HB 1178.

Scott Busching, Sheriff of Williams County: We didn't know anything about this bill until this morning. We decided that we do not like that section 8. My jail is full and Ward County is full. I find myself in position of jail administrator, trying to get the people out of jail. Some

people belong there, some people don't. I need the room. I don't want anything mandatory that requires the judges to set a bail that is not obtainable by a lot of people.

Representative Zaiser: So your problem is with section 8 that would require or cause more people to be in jail. The other sections you don't have a problem with.

Scott Busching: That is correct at this time. However, I haven't had time to really study this bill or present it to my constituents. There may be other issues that we have a problem with. I don't know at this time.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1178.

Judge Gail Hagerty, District Court Judge: (see written testimony).

Representative Koppelman: Part of the concern of Mr. Soderstrom, he feels like his industry is in competition with the court system. Coming from the other side, it seems like it may be a case where its forcing the court to do business with bail bond agents.

Judge Gail Hagerty: It certainly a move in that direction. One of the problems is when I set bond, and I have a cash bond, I have all kinds of conditions of bond. They might be you can't contact the victim, you have to stay in the state, stay in the county, you can't consume alcohol. Most of the bail bonds only assure that the defendant will appear as required, so they're not ensuring all the conditions of bond and so that's why in most cases, I require a cash bond and not a surety bond, because a lot of times it is very important that all the conditions of bond be complied to ensure that the defendant will appear and we are also allowed to consider some public safety factors in setting bond.

Representative Koppelman: Are you familiar in your association with judges in other states, do any other states do this or something similar; have a system of this.

Judge Gail Hagerty: I'm not aware of that. I did send a link to this bill to all of the district judges in the state last week, I received comments from several and I know some of them have been in contact with members of the committee. Nobody wrote back and said that they thought it was a good idea. But that is not a scientific position of our association.

Representative Meyer: A bail bondsmen gets involved, when you ask a defendant for a bond and they can't afford it.

Judge Gail Hagerty: Yes.

Representative Meyer: That is the only time they are given an option that they can go to a bail bondsmen.

Judge Gail Hagerty: When we set bond in our district, we set whether it would be a cash bond or it could be posted by a bail bondsmen. If the bond is set, so that we would allow a bail bond, then that's a private transaction between the defendant and the bond agent.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1178.

Chad Nodland, attorney: I would like to talk about this bill on two levels. The first level is a legislative drafting level. On page 1, line 10, I think the word "use" should be "used" and I would concur with Judge Hagerty that the gender neutrality provisions are a good idea. On page 2, you look at the new language in lines 6-8, on a legislative drafting level, I'm not sure what that sentence is doing in that provision. It appears to be talking about people disqualified using bond agents, it seems like those provisions in that sentence should be somewhere else, if you are going to amend this, I would urge you to do that. In addition, it also looks like that sentence potentially could apply to everybody including bond agents. It does not say circumstances under which a cash bond can and cannot be paid. It looks, just the first part of the sentence, a court may not

accept a bail bond premium but may accept a cash bond. The next part seems to be a different sentence, and may release a defendant on the defendant's own person recognizance. The problem is that it looks like the bail bond agent has to file the entire bond. When you are talking about whether or not someone can file a surety, the right to file a reasonable surety is guaranteed by the state constitution, Article 1, section 11. To say that they can't file a surety, there is a problem with that. Again, the two parts of that sentence seem to be independent from one another. The definition of a bail bond premium. I had the same question. I think that's a term derived from the bail bond profession. I think if those words are going to be in there, there should probably be a definition. It sounds like, after hearing the testimony, with respect to a bail bond premiums, this legislation would attempt amend a rule of criminal procedure that allows for the filing of % bond. When you talk about amending rules of criminal procedure, you get into a different constitutional problem, and that's the separation of powers problem. On page 5, section 8 amendment, if there are multiple offenses, this section applies. It sounds like it might apply to infractions. There might be a constitutional problem with taxing a person who are accused of crimes. There's also a question, under the rules of criminal procedure, if a person appears, they get their money back. If so, who is going to pay the \$25. Where is that going to come from. Is it going to come from the court's budget. Something should be in here that says where the money is going to come from. There's obviously the question of why it should be discretionary to set an A, B, C felony bond as opposed to the A and B misdemeanor bonds. This doesn't happen a lot, but courts can set bond in a felony charge at \$0 and if the bond is set at \$0, then where is the \$50 going to come from that has to go to the state fund. Problem on page 6, line 12, talk about established policies and there is no guidance in here for who's going to

establish the policies. Is it going to the courts establishing rules of criminal procedure to address house arrest.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1178.

Joel Gilbertson, State Bar Association of ND: The board of governors of the State Bar Association and our legislative committee has looked at this bill, and they have some comments. I think they would have agreed with Judge Hagerty. Two primary problems, first is section 8, mandatory bond schedule (see written testimony).

Chairman DeKrey: Thank you. Further testimony in opposition of HB 1178.

Terry Traynor, ND Assoc. Of Counties: We are opposed (see written testimony).

Chairman DeKrey: Thank you. Further testimony in opposition. Mr. Soderstrom you will have 3-5 minutes to rebut the testimony.

Reed Soderstrom: I have learned something today, apparently everybody agrees on the gender neutral language. However, there is one more thing that I would like to get out of this bill. We can't compete with the court system, and the Hon. Judge Hagerty has said they'll take a premium of \$1,000 cash on a \$10,000 bond with conditions. I don't think they are doing anything to monitor those conditions, and she is taking \$1,000 cash and if she keeps it if they don't show up, that's fine. But where is the accountability. She has indicated all these costs, the day before trial, the jury coming in, now the court system has a \$1,000 cash on a \$10,000 bond. Who is going to pay the \$10,000. She could just as well call it a \$1,000 cash bond. But the expense that Judge Hagerty is talking about, the day before a trial, the court's not going to pay that, but the bail bondsmen will. We're accountable. I'm asking that in section 3, we can't compete with the courts. If they are taking 10% or \$75 or whatever is higher, and they're not having to pay the

forfeiture, the bail bond agent cannot compete and shouldn't have to. Let's keep the bill gender neutral and don't make us compete with the courts. In many courts, they are taking the easy cases, keeping the money where they know the defendant isn't going to show up. The high risk ones are being given to the bondsmen. As far as the sheriff's concerns, we don't want the jails overcrowded. It's expensive on the taxpayers.

Chairman DeKrey: We will close the hearing on HB 1178.

2005 HOUSE STANDING COMMITTEE MINUTES


BILL/RESOLUTION NO. HB 1178

House Judiciary Committee

Conference Committee

Hearing Date 1/17/05

Tape Number	Side A	Side B	Meter #
2		xx	7.2-12.7

Committee Clerk Signature 

Minutes: 14 members present.

Chairman DeKrey: What are the committee's wishes in regard to HB 1178.

Representative Maragos: I move the gender neutral change; removes all the offensive language; on page 1, line 10 to change use to used, per the Attorney General's office; line 11, change approved to licensed.

Representative Meyer: Second.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have HB 1178 as amended before us.

Representative Klemin: I move a Do Pass as Amended.

Representative Delmore: Seconded.

11 YES 3 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

VK
1/18/05
1082

HOUSE AMENDMENTS TO HOUSE BILL NO. 1178 JUD 1-19-05

Page 1, line 1, remove "create and enact a new section to chapter 26.1-26.6 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to house arrest services provided by a bail bond agent; to"

Page 1, line 5, remove "the regulation of the" and replace "agent profession and a state fee for bail bond; and to" with "agents."

Page 1, line 6, remove line 6

Page 1, line 10, replace "use" with "used"

Page 1, line 17, remove the overstrike over "**and continuing**" and remove "- Reciprocity - Continuing"

Page 1, line 19, remove ". The commissioner may not grant licensure reciprocity to"

Page 1, remove line 20

Page 1, line 21, remove "reciprocity to a North Dakota bail bond agent"

HOUSE AMENDMENTS TO HB 1178 JUD 1-19-05

Page 2, line 1, remove "Limitations of"

Page 2, line 2, remove "courts -"

Page 2, line 6, remove "A court may not accept a bail bond"

Page 2, remove line 7

Page 2, line 8, remove "personal recognizance."

HOUSE AMENDMENTS TO HB 1178 JUD 1-19-05

Page 5, line 3, remove the overstrike over "~~er-fee~~" and remove "- Bonding schedule - State fees"

Page 5, line 4, remove "1."

Page 5, line 6, remove the overstrike over "scvonty fivc" and remove "one hundred"

Page 5, line 7, remove "twenty-five"

Page 5, remove lines 8 through 21

Page 5, line 25, after the first "~~bondsman~~" insert "bail bond agent", remove the overstrike over "~~-if the~~", after the second "~~bondsman~~" insert "bail bond agent", remove the overstrike over "~~returns~~", and remove "bail bond"

Page 5, remove lines 26 and 27

2072

HOUSE AMENDMENTS TO HB 1178 JUD 1-19-05

Page 5, line 28, remove "bail bond agent pays the forfeiture, if after the ninety days expires" and remove "is returned or"

Page 5, line 29, remove "returns", remove the overstrike over the overstruck comma, remove "and" and replace "petitions" with "may petition"

Page 5, line 30, remove ", the court shall return the forfeiture, less five percent for"

Page 5, line 31, remove "court costs", remove the overstrike over the first "the", after "bondsman" insert "bail bond agent", and remove the overstrike over "returns the defendant to the jurisdiction of the court within six"

HOUSE AMENDMENTS TO HB 1178 JUD 1-19-05

Page 6, remove the overstrike over line 1

Page 6, line 2, remove the overstrike over "potion by the", after the first "bondsman" insert "bail bond agent", remove the overstrike over ", less five percent for court costs. If the" after the second "bondsman" insert "bail bond agent", and remove the overstrike over "returns the"

Page 6, remove the overstrike over line 3

Page 6, line 4, remove the overstrike over "appear, the court may return the forfeiture upon receipt of a petition from the", after "bondsman" insert "bail bond agent", and remove the overstrike over ", less"

Page 6, line 5, remove the overstrike over "five percent for court costs" and remove "a bail bond agent petitions the court, the court may assess"

Page 6, remove lines 6 through 13

Renumber accordingly

Date: 1/17/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1178

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Klemin* Seconded By *Rep. Delmore*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein		✓	Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser		✓
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman		✓			
Representative Kretschmar	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment *Rep. Maragos*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1178: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1178 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 26.1-26.6 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to house arrest services provided by a bail bond agent; to"

Page 1, line 5, remove "the regulation of the" and replace "agent profession and a state fee for bail bond; and to" with "agents."

Page 1, line 6, remove line 6

Page 1, line 10, replace "use" with "used"

Page 1, line 17, remove the overstrike over "**and continuing**" and remove "- Reciprocity - Continuing".

Page 1, line 19, remove ". The commissioner may not grant licensure reciprocity to"

Page 1, remove line 20

Page 1, line 21, remove "reciprocity to a North Dakota bail bond agent"

Page 2, line 1, remove "Limitations of"

Page 2, line 2, remove "courts -"

Page 2, line 6, remove "A court may not accept a bail bond"

Page 2, remove line 7

Page 2, line 8, remove "personal recoqnizance."

Page 5, line 3, remove the overstrike over "**or fee**" and remove "- Bonding schedule - State fees"

Page 5, line 4, remove "1."

Page 5, line 6, remove the overstrike over "ccvnty fivc" and remove "one hundred"

Page 5, line 7, remove "twenty-five"

Page 5, remove lines 8 through 21

Page 5, line 25, after the first "~~bondsman~~" insert "bail bond agent", remove the overstrike over "~~- If the~~", after the second "~~bondsman~~" insert "bail bond agent", remove the overstrike over "~~returns~~", and remove "bail bond"

Page 5, remove lines 26 and 27

Page 5, line 28, remove "bail bond agent pays the forfeiture, if after the ninety days expires" and remove "is returned or"

Page 5, line 29, remove "returns", remove the overstrike over the overstruck comma, remove "and" and replace "petitions" with "may petition"

Page 5, line 30, remove ". the court shall return the forfeiture, less five percent for"

Page 5, line 31, remove "court costs", remove the overstrike over the first "~~the~~", after "~~bondsman~~" insert "bail bond agent", and remove the overstrike over "returns the defendant to the jurisdiction of the court within six"

Page 6, remove the overstrike over line 1

Page 6, line 2, remove the overstrike over "petition by the", after the first "~~bondsman~~" insert "bail bond agent", remove the overstrike over ", less five percent for court costs. If the" after the second "~~bondsman~~" insert "bail bond agent", and remove the overstrike over "~~returns the~~"

Page 6, remove the overstrike over line 3

Page 6, line 4, remove the overstrike over "appcar, the court may return the forfeiture upon receipt of a petition from the", after "~~bondsman~~" insert "bail bond agent", and remove the overstrike over ", less"

Page 6, line 5, remove the overstrike over "five percent for court costs" and remove "a bail bond agent petitions the court, the court may assess"

Page 6 , remove lines 6 through 13

Renumber accordingly

2005 SENATE JUDICIARY

HB 1178

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1178

Senate Judiciary Committee

Conference Committee

Hearing Date February 15, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 3600
		X	1382 - 2000

Committee Clerk Signature *Maria L. Solberg*

Minutes: Relating to Relating to bail bond agents

Senator Syverson, Vice Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Andrew Maragos, Dist #3 Introduced the bill This is a continuation in streamlining the statute on bail bonding. This was started in the last session.

Sen. Trenbeath asked about the extensive amendment that had been presented to him? Yes they are mine but others behind me will detail them.

Reed Soderstrom - Attorney from Minot ND and Bail Bond Agent. In the house they spent much of the debate on the fee scheduling that is not in the bill. The industry is full of small business owners across ND. These hardworking individuals usually do this along with another job. They are certified. They save the state of ND in my opinion hundreds and thousands of dollars a year. We serve a purpose. Jails in ND are the most expensive hotels we have. Bail

bond agents take them out of jail and guarantee to the court that they show up for the court date. I

do not support the bill with the amendments. The heart of the bill is the premium for example on

a \$1,000 bond the fee is \$100 (10%) for the bonding agent. In a no show they are liable and will

find the bail jumper and bring it back or pay the \$1000 fee. The court is doing their own bonding

and when a person jumps bail and does not show up for the hearing the court loses the \$1000.

We have the accountability. Courts are doing this in Williston, Minot, Fargo, and Bismarck. It

looks like a cash infusion to the court. Sited process. If bail is posted and the court gets left no

one pays the bond. If we post it and they skip, we have to pay it. This is not equal. We do not

take any power away from the judges. Discussed cash bonds verses assurity bonds. Sited why

they need ninety days to get there "ducks in a row" to pay off a bond. Forfeiture example (meter

870)

Sen. Trenbeath stated that the sum of Mr. Soderstroms amendment make his business risk free?

No, I do not think so, I think it makes it fair. **Sen. Trenbeath** sited that the law already states the

court returns the bond amount? Discussion.

Mike Larson, Bail Bond Agent from Carrington, ND (meter 2000) This is a sideline job my real

job is a plumbing salesman. What got me into this is as a city councilman of 7 yr., we met with

our County Commissioners on how we were going to deal with the costs of courts. The cost of

prisoners, housing, food, not working due to being in jail... By me being a bail bondsman, I have

alleviated the counties the costs, by bailing them out. I am appreciated by the sheriffs. Sited

cases of how saving them money. No two courts do things the same way and it is frustrating.

Discussed a case that was a double jeopardy situation between Devils Lake and Grand Forkes.

By the courts being in this business, they take my customers away and that is not fair.

Orlando Rosman? - Bail Bonds Inc. Minot - Sited the competition between state and government and how the courts undercut our industry. If the jumper does not show the court does not have to pay back courts and we do. High bonds are rare and not often. We take collateral. We save the state a lot of money. I approve all of amendment in Att. #1.

Testimony in Opposition of the Bill:

Judge Gail Hagerty, District Judge in Bismarck (meter 1450) Gave testimony - Att #2 and submitted amendments Att. #1. We are not in competition with the bail bond industry.

Submitted second amendment Att. #3. Sited how money used in a bail can go toward a fine or court fees and that is sometimes a benefit. Opposed to the portion to provide special restitution systems. Bail bond agents are private business people and should collect the same way others would

Senator Hacker questioned if the judges accepted cash only or collateral also? I only accept cash but on a rare occasion a judge might.

Testimony Neutral to the Bill:

Jim Thorson - Chief Deputy, Sheriffs office in Fargo Stated that from a practical standpoint a bond on a misdemeanor offense, which are the majority of offenses, given by the courts go directly towards the fines or fees. The bail bond money does not.

Senator Syverson , Chairman closed the Hearing

Senator Syverson , Chairman reopened the Hearing (meter 1208)

The committee discussed the amendment on the 90 days. Sen. Trenbeath stated that they either pay or return the person to court not both. Reviewed Judge Hagerty's amendment.

Page 4

Senate Judiciary Committee

Bill/Resolution Number HB 1178

Hearing Date February 14, 2005

Senator Triplett made the motion to Do Pass Att #3 and **Sen. Trenbeath** seconded the motion.

All were infavor motion passes.

Sen. Trenbeath made the motion to Do Pass as Amended and **Senator Triplett** seconded the motion. All were in favor and motion passes.

Carrier: **Sen. Trenbeath**

Senator Syverson, Chairman closed the Hearing

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1178

Page 1, line 3, after "agents" insert "and bond forfeiture; and to provide a penalty"

Page 1, line 18, after "agents" insert "- Courts"

Page 1, line 23, after the first period insert "A court may not accept a bail bond premium but may accept a cash bond and upon receipt of a cash bond may release a defendant on the defendant's personal recognizance."

Page 5, line 1, "appear" insert "and bond forfeiture"

Page 5, line 2, after "agent" insert "in writing of the bond forfeiture. Upon issuance of the written notice of bond forfeiture, a bail bond agent has ninety days either to pay the forfeiture or to return the defendant", overstrike "If" and insert immediately thereafter "In the case of a bond forfeiture paid by a bail bond agent, if", and remove "bail"

Page 5, line 3, remove "bond agent", overstrike "returns the", and after "defendant" insert "is returned"

Page 5, line 4, remove the second "bail bond"

Page 5, line 5, remove "agent", overstrike "returns the", after "defendant" insert "is returned", overstrike "six months" and insert immediately thereafter "one year", overstrike "receiving" and insert immediately thereafter "issuance of the written"

Page 5, line 6, overstrike "failure to appear" and insert immediately thereafter "bond forfeiture"

Page 5, line 8, overstrike "beyond six month of receiving" and insert immediately thereafter "more than twelve months following the issuance of the written" and overstrike "failure to"

Page 5, line 9, overstrike "appear" and insert immediately thereafter "bond forfeiture" and overstrike "may" and insert immediately thereafter "shall"

Page 5, line 10, after the period insert "Upon notification of the court by the bail bond agent, the court may assess restitution against the defendant on behalf of the bail bond agent."

Re-number accordingly

Date: 2/14/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1178

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amendment Att #3 (Judge Hagerly)*

Motion Made By Senator *Triplett* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor		X	Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) *56* No 0

Absent *10*

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/14/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1178

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By Senator *Trenbeath* Seconded By Senator *Triplett*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor		X	Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment *Sen Trenbeath*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1178, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1178 was placed on the Sixth order on the calendar.

Page 5, line 6, after "return" insert "at least fifty percent of" and remove "bail"

Page 5, line 7, remove "bond agent" and overstrike ", less five percent for court costs" and insert immediately thereafter "bail bond agent"

Renumber accordingly

2005 TESTIMONY

HB 1178

Klemin, Lawrence R.

From: Goodman, Ronald [RGoodman@ndcourts.com]
Sent: Friday, January 07, 2005 4:30 PM
To: 'ddekray@state.nd.us'; 'lklemin@state.nd.us'; 'wkretschmar@state.nd.us'
Cc: Geiger, Richard; Hagerty, Gail; McClintock, John
Subject: House Bill 1178

Gentlemen,

I wanted to comment on House Bill 1178 dealing with changes in the bail bond bill. The House Judiciary Committee will be holding a hearing on the bill on Wednesday, January 12th. As a judge I am very concerned about the bill as proposed as are several other North Dakota judges. The bill requires the posting of a bond in virtually every criminal case we may have before us. Such a requirement is not only unworkable, it is probably unconstitutional and it takes away the judge's discretion in setting a reasonable cash bond or a personal recognizance bond. The bill also shortens the time a bail bondsman, or bond agent under the new terminology, has to be committed to the bond. The 90 day period suggested is not always practical. I am including comments from Judge Richard Geiger of Grafton, and Judge John McClintock which will give you an idea of the problems the bill would cause if it is passed in its present form. Please consider the bill with our comments in mind. Thank you.

Judge Ron Goodman
 Southeast Judicial District

1. 26.1-26.6-03---- It seems this statute already provides for what is being added to it ,,i.e., a court cannot receive any benefits from the execution of a bail bond.
2. 26.1-26.6-08---- These proposals have three problems. First, a defendant is entitled to a REASONABLE amount for bail. That is his or her constitutional right. Any amount of bail may be inappropriate other than an unsecured amount or personal recognizance. Therefore, the minimum fees required under subsection two will likely not pass constitutional muster. Second, even if they did I hope the drafters appreciate the administrative burden imposed by this proposal. Most defendants will come up with this amount of money. But at least by my experience I have several defendants who walk into the courtroom with little cash. So, if these amounts were assessed, they would have to be placed into custody and processed by jail personnel until friend or family show up to post the bond and the court staff would have to do additional paperwork all because of that as well. Third, there is no discretion. What if the person for whom bail is required has a significant health condition and no insurance. Do you think the corrections people will want that defendant in jail for any amount of time for the county to incur medical costs when there really is no security risk?
3. 26.1-26.6-09---- this proposal causes me to have two concerns. First, whether its within 90 days or after 90 days this proposed amendment will REQUIRE the court to return all but 5%of the bond. It does not allow the court to take into account the length of time the defendant has been on the lamb, what violations of law he or she committed during their absence(can you imagine if this was a Kyle Bell and he had committed horrible offenses while on the run and then his bond agent somehow brings him in, the public outrage that would occur with the required bond return?) and finally it does not take into account government efforts and costs to apprehend the defendant. I believe the court should have broad discretion as to what amount of bond should be returned and not be limited to 5%. A bond agent makes a business decision when they agree to provide bond for an individual . They and their company should be prepared to suffer the consequences when their contract with the court is not met. Second, the last provision provides for a restitution hearing for the bond agent against the defendant. This involves a contract between these two parties. Why shouldn't the bond agent proceed in civil court like every other citizen?
4. 26.1-26.6- a new section ten---First, is reference to the "state" a reference to the state as a prosecutor's office or does it mean the whole state of North Dakota? I am presuming the former but to me it is not clear. Second, how do I determine the fiscal impact on the state? What factors do I consider? Last, how does a bail bond agent get involved in house arrest?

-Dick Geiger

So, in my reading of the proposed bill, if a single mother with young children at home issues a \$25 no account

1/11/2005

check at the local supermarket, she'll have to post a \$1,500 cash or surety bond to get released. Obviously, she doesn't have any money, consequently, she'll remain in custody and county social services will have to intervene to take care of the children.

John McChute

House Bill 1178

Testimony by Gail Hagerty, District Judge

Mr. Chairman, Members of the Committee:

I am Gail Hagerty. I'm a district judge from Bismarck.

I like House Bill 1178 to the extent that it changes the term "bail bondsman" to "bail bond agent."

Rule 46 of the North Dakota Rules of Criminal Procedure deals with release from custody – it's the rule judges look at when they're setting bail or bond. Rule 46 requires that a person charged with a crime be released on a promise to appear, unless the judge determines such release won't reasonably assure the appearance of the defendant.

Section 8 of this legislation requires posting of a minimum bond – with a portion of the bond to become the property of the State. People who are accused of crimes are presumed to be innocent, and they have a constitutional right to a reasonable bond. Bond is returned to the defendant when the defendant has made the required court appearances. It simply does not belong to the State if all required appearances are made.

When bond is posted for a defendant, and the defendant fails to appear, the bond is forfeited to the State.

Section 9 of this bill states that if a defendant doesn't appear, the bond agent has 90 days to pay the forfeiture or return the defendant. If I'm ready for a trial and a defendant doesn't appear, it doesn't seem reasonable that the entire bond must be returned if the defendant is produced 86 days later. The State has gone to considerable expense for a trial, and that money is lost. Cases are more difficult to prosecute as they age. A whole panel of jurors has appeared and been paid.

But, even worse, Section 9 requires that if bond is forfeited, and the defendant is returned or returns to the jurisdiction, the Court must return 95 percent of the amount forfeited. The defendant doesn't have to be returned by the bond agent. It could require substantial law

enforcement resources to return the defendant. The provision is in effect whether the defendant is returned in 92 days or 10 years. The Court has no discretion.

Finally, Section 9 appears to give the bail bond agent a method of collecting restitution without bringing a civil action. I'm not sure why bail bond agents shouldn't collect restitution through a civil action, as any other business person would.

Section 10 provides for house arrest services. I'm not sure who would establish policies and procedures for bail bond agents. The Courts are not in the corrections business. Jails and detention staffs are subject to state rules and regulations.

I would urge you to adopt only the changes in terms from "bail bondsman" to bail bond agent." If a defendant fails to appear as required, bond should be forfeited. Give the judges discretion on how much, if any, of the bond is to be returned if the bail bond agent returns the defendant to the Court.

Gail Hagerty
District Judge
P.O. Box 1013
Bismarck, ND 58502-1013
phone: 701-222-6682, ext. 115
e-mail: qhagerty@ndcourts.com

Comments - H.B. 1178
Joel Gilbertson, Vogel Law Firm
On Behalf of the State Bar Association of North Dakota

Two primary problem areas:

1. Section 8 - Mandatory Bond Schedules

This is unwise legislative micromanagement of a separate branch of government. We do not believe it is wise to tie the hands of the courts in setting bond amounts.

We also do not believe it should be the duty of criminal defendants, including those that show up for every hearing and are ultimately determined to be not guilty of a crime, to be forced to pay mandatory amounts into the general fund.

2. Section 10 - House Arrest

This section allows the bail bond agent to essentially set up a private jail. The bail bond agent, for all practical purposes, is an agent of the judicial system.

The language is vague and potentially dangerous. The court is charged with making a finding of a "negative fiscal impact" but there are no due process procedures for notice or any other procedures for how the court makes that determination. This probably replaces judicial orders for house arrest that now are under judicial supervision.

This would be a very troublesome direction for the criminal justice system in North Dakota to turn.

We have no objection to licensing and regulating bail bond agents, but we have serious objection to Section 8 and Section 10 of this bill.

Joel Gilbertson
Lobbyist No. 1
Before the House Judiciary Committee
January 12, 2005

**Testimony To The
THE HOUSE JUDICIARY COMMITTEE
January 12, 2005 by
Terry Traynor, Assistant Director
North Dakota Association of Counties**

REGARDING HOUSE BILL 1178

Mr. Chairman and committee members, I appear before you today to express the concerns of the North Dakota Association of Counties and particularly the North Dakota State's Attorneys Association with the impacts of House Bill 1178 on counties.

The first concern noted by our members is the administrative burden that the mandatory bonding could create. Unless, each defendant was arrested with sufficient cash in their pocket, it is likely they all would need to be booked into jail, which is becoming more and more difficult, and costly, as our jails remain full. To go through the entire intake process, just to release them, is a waste of taxpayer money. This situation is exacerbated if the defendant has any medical problems – problems that immediately become the taxpayers' problems.

The most serious concern however is the long-term impact of this bill on jail space, and therefore county costs. While certain costs of running a jail remain fairly constant, an increase in population ultimately results in more staff, more meals, more medical costs, and eventually more construction. This bill appears to require locking up more people, and particularly more minor offenders, at property tax expense.

If a defendant should be jailed, the court is certainly in the best position to make that decision. This law could result in jailing the County Recorder for improperly recording a deed or a bank president for failing to sell real estate within 5 years, or anyone for calling a product "dairy" if it doesn't have milk in it, or for any of the other 378 B misdemeanors in Century Code.

Mr. Chairman and committee members, unless the impacts of this bill can be addressed, we urge a Do Not Pass recommendation.

Hagerty, Gail

From: Geiger, Richard
Sent: Monday, February 14, 2005 8:05 AM
To: 'jtraynor@state.nd.us'; 'ttrenbeath@state.nd.us'
Cc: Hagerty, Gail
Subject: HB1178

Senators,

HB1178 is a bill relating to bail bonds. After hearing in the House Judiciary committee a number of proposed changes were removed. The reason I am e-mailing you relates to a change that was made in the last legislative session.

In the last session NDCC 26.1-26.6-09 was amended to MANDATE that in the event a bond agent returned a defendant to the court within six months of a notice of a failure to appear, the court was required to return all the bond less 5% for costs. Before what amount was returned was discretionary. This now prevents the trial court from using its discretion and taking into account among other things the efforts and resources expended by law enforcement in recovering the defendant during this time period, the seriousness of the offense for which bond was set and from which the defendant had fled, what crimes may have been committed by the defendant while he was absent, and what efforts and resources had been expended by the bond agent to recover the defendant.

Some day one of us judges will be faced with a "Kyle Bell" type defendant and we will be locked in to the limitations of this law as it currently exists. I am puzzled why the Legislature would want to limit the courts' ability to take into account these and other factors noted above. I respectfully request that you consider returning this statute to the law as it existed before the changes of the last session or to at least consider substantially increasing the per cent that can be forfeited by the court in the first six month period. Thank you for your consideration.

Richard Geiger, District Judge

Testimony on House Bill 1178

Senate Judiciary Committee
by Gail Hagerty, District Judge

AH #2

Mr. Chairman, Members of the Committee:

I am Gail Hagerty. I'm a district judge from Bismarck.

When presented to the House, this bill contained many provisions that concerned me. The House amended the bill so that all it does at this point is to make language gender neutral. I think that is a good change.

I have a minor concern with current law, and am proposing an amendment to meet that concern.

Under current law, if a bail bond agent posts a bond, and a defendant fails to appear, the bond is forfeited. If the bail bond agent returns the defendant within six months of receiving notice of the failure to appear, the court is **required** to return 95 percent of the amount forfeited. The five percent retained is to cover court costs.

Unfortunately, there is no real relation to actual court costs. If a defendant fails to appear for a jury trial, for example, the court has expended hundreds of dollars in juror fees. A judge has set aside trial time, as have prosecutors and defense attorneys. If a \$1,000 bond was forfeited, and the defendant was returned after five months, \$950 would have to be returned to the bail bond agent and \$50 would go to the state to cover court costs.

It might be argued that even returning 50 percent is unfair to the state, but I am suggesting that at least 50 percent be returned so bail bond agents have incentive to return defendants who have failed to appear. The court would have discretion to return more.

With the current language, if a bail bond agent returns a defendant to the court more than six months after receiving notice a defendant has failed to appear, the court has discretion concerning how much of the bond should be returned to the bail bond agent, and may return up to 95 percent of the bond.

I am providing you with language which I believe will accomplish the change I am suggestion.

Thank you.

Att #3

Proposed Amendment to House Bill 1178

On line 6, after the words "the court shall return" insert the words "at least 50 percent of"

On line 7, remove the comma and the words "less five percent for court costs"

The sentence on lines 4 - 7 would then read:

If the bail bond agent returns the defendant to the jurisdiction of the court within six months of receiving notice of the failure to appear, the court shall return at least 50 percent of the forfeiture upon petition by the bail bond agent.