

DISTRICT OF COLUMBIA BAIL AGENCY

220

HEARING
BEFORE
SUBCOMMITTEE NO. 5
OF THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 15065 and H.R. 15242

BILLS TO ESTABLISH THE DISTRICT OF COLUMBIA

BAIL AGENCY

H. R. 15860

JUNE 8, 1966

Printed for the use of the Committee on the District of Columbia



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DISTRICT OF COLUMBIA BAIL AGENCY

WEDNESDAY, JUNE 8, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 5 OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 9:30 o'clock a.m., in Room 1310, Longworth House Office Building, Honorable Basil Whitener (Chairman of the Subcommittee), presiding.

Present: Representatives Whitener (Chairman of the Subcommittee), Fuqua, and Nelsen.

Also Present: James T. Clark, Clerk; Hayden S. Garber, Counsel; Donald Tubridy, Minority Clerk; and Leonard O. Hilder, Investigator.

Mr. WHITENER. The Subcommittee will come to order.

We will proceed to hear testimony on H.R. 15065, a bill to establish a fact-reporting bail agency in the courts of the District of Columbia and for other purposes, and H.R. 15242, on identical bill.

At this point in the record we will insert the bills into the record. (H.R. 15065 and H.R. 15242 follow:)

(H.R. 15065, 89th Cong., 1st sess., by Mr. Whitener on May 16, 1966, and H.R. 15242 by Mr. Nelsen on May 24, 1966)

A BILL To establish a fact-reporting bail agency in courts of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Bail Agency Act".

SEC. 2. There is hereby created for the District of Columbia a bail agency which shall secure pertinent data and provide for any court or judicial officer in the District of Columbia reports containing verified information concerning any individual with respect to whom a bail determination is to be made.

SEC. 3. As used in this Act—

(a) The term "judicial officer" means, unless otherwise indicated, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, the United States District Court for the District of Columbia, and the District of Columbia Court of General Sessions, or any judge of any of said courts, a United States Commissioner and, when applicable, the Supreme Court of the United States or a Justice thereof; and

(b) The term "bail" means "bail" as used in chapter 207 of title 18, United States Code; when applicable as used in rules 46, 38, and 32 of the Federal Rules of Criminal Procedure and rules of court in the District of Columbia; as used in sections 23-106 and 404 District of Columbia Code (1961), title 16-806 District of Columbia Code (1961), and as used in chapter 6 of title 23, District of Columbia Code (1961); and

(c) The term "bail determination" means any order by any judicial officer respecting the amount of bail, or terms and conditions of release of any person arrested in the District of Columbia for any offense except a charge of intoxication or traffic violation, and shall include a like order respecting any person deemed to be a material witness in any criminal proceeding in the District of Columbia; and

(d) The term "bail agency" means the agency herein created.

SEC. 4. (a) The agency shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the District of Columbia, subject to section 3(b), who is to appear before a United States Commissioner or whose case arose in or is before any court in the District of Columbia. The agency shall seek independent verification of information obtained during the interview, shall secure any such person's prior criminal record which shall be made available by the Metropolitan Police Department, and shall prepare a written report of such information for submission to the appropriate judicial officer. The agency shall present such report with or without a recommendation for release on personal recognizance, personal bond, or other nonfinancial conditions, but with no other recommendation, to the appropriate judicial officer and shall provide copies of such report to the representative of the United States attorney, to the representative of the Corporation Counsel of the District of Columbia if pertinent, and to counsel for the person concerning whom the report is made. The report shall include but not be limited to information concerning the person accused, his family, his community ties, residence, employment, prior criminal record if any, and may include such additional verified information as may become available to the agency.

(b) The agency when requested by any appellate court or a judge or justice thereof shall provide a report as provided in section 4(a) respecting any person whose case is pending before any such appellate court, or to which an application for a bail determination shall have been submitted.

(c) Such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential except for members of the agency staff, and such members shall not be subject to subpoena concerning information in their possession and such information shall not be the subject of court process for use in any other proceeding.

(d) The preparation by the agency and the submission of its report as provided in section 4 shall be accomplished at the earliest practicable opportunity.

(e) A judicial officer in making a bail determination shall consider the agency's report and its accompanying recommendation, if any. The judicial officer may impose such terms and set such conditions upon release as shall appear warranted by the facts presented and pursuant to the provisions of the statutes and rules of court specified in section 3(b), and whenever applicable, pursuant to the provisions of the "Bail Reform Act of 1966", and otherwise as authorized by law.

SEC. 5. (a) The agency shall function under authority of and be responsible to an executive committee of five members of which three shall constitute a quorum. The executive committee shall be composed of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or if circumstances may require, the designee of any such chief judge; and a fifth member who shall be selected by the said chief judges.

(b) Within thirty days of the date of enactment of this Act, the executive committee shall meet and shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia.

SEC. 6. The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall receive such compensation as may be set by the executive committee but not in excess of that amount classified as GS-15 in the Classification Act of 1949, as amended. The Director shall hold office at the pleasure of the executive committee.

SEC. 7. The Director, subject to the approval of the executive committee, shall employ a chief assistant and such assisting and clerical staff and may make assignments of such agency personnel as may be necessary properly to conduct the business of the agency. The staff of the agency, other than clerical, shall be drawn from law students, graduate students, or such other available sources as may be approved by the executive committee. The chief assistant to the Director shall receive compensation as may be set by the executive committee, but in an amount not in excess of that classified as GS-11 in the Classification Act of 1949, as amended, and shall hold office at the pleasure of the executive committee. All other employees of the agency shall receive compensation as set by the executive committee, but in amounts not in excess of that classified as GS-7 in said Classification Act; salaries of clerical personnel shall be set at levels comparable to those allowed in the offices of the Legal Aid Agency and the United States Attorney for the District of Columbia. From time to time, the Director, subject to the approval of the executive committee, may set merit and longevity salary increases.

SEC. 8. The Director shall on June 15 of each year submit to the executive committee a report as to the agency's administration of its responsibilities for

the previous period of June 1 through May 31, a copy of which report will be transmitted by the executive committee to the Congress of the United States, and to the Administrative Office of the United States Courts. The Director shall include in his report, to be prepared as directed by the Administrative Office, a statement of financial condition, revenues, and expenses for the past June 1 through May 31 period.

Sec. 9. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated to the judiciary such sums as may be necessary which shall be disbursed by the Administrative Office of the United States Courts. The Administrative Office so far as is possible will follow its standard fiscal practices. Budget estimates for the agency shall be prepared by the Director and shall be subject to the approval of the executive committee.

Sec. 10. (a) When imposing a sentence of imprisonment of any person convicted of an offense in the court of general sessions or in the United States district court, the sentencing judge shall give credit toward the service of such sentence as may be imposed for any days spent in custody while awaiting trial, or prior to the imposition of sentence, if it shall appear that such person shall have been so incarcerated solely because of his financial inability to provide bail as determined by any judicial officer: *Provided*, That such credit shall not be afforded to any such person who, after a bail determination, shall have violated the terms or conditions of his release by the commission of another offense while at liberty.

(b) The provisions of section 10(a) shall not be deemed to have repealed or modified any provision of section 3568 of title 18, United States Code.

Sec. 11. Whoever, having been released pursuant to law or as set forth in section 4 of this Act, willfully fails to appear before any judicial officer as required by the terms of any bail determination, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than 5 years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Sec. 12. (a) Except as provided in subsection (b) hereof, this Act shall take effect on the date of its enactment.

(b) Sections 6, 7, and 8 shall take effect on the date of enactment of the first Act appropriating moneys to carry out the purposes of this Act which is enacted after the date of enactment of this Act, and section 4 shall take effect on the ninetieth day after the date of enactment of said first appropriation Act.

Mr. WHITENER. I introduced this bill, to establish a fact-reporting bail agency in the courts of the District of Columbia for the District of Columbia Circuit, at the request of the circuit judges of the U.S. Court of Appeals, who met in council on May 11, 1966.

This legislation has been thoroughly considered by the judges of the Circuit Court of Appeals and represents the thinking of many knowledgeable persons in the field of criminal jurisprudence. It is drafted to implement the provisions of the now pending Federal Bail Reform Act of 1966.*

It has as its basic purpose the establishment of a system whereby worthy defendants in criminal cases may have an orderly procedure available to them and to the courts for the determination of the preliminary question of bailability, amount of bail, and other relevant factors which are daily passed upon by the judges in the District of Columbia.

In addition, the fact-reporting entity will also make its services available upon request to the judges of the U.S. Court of Appeals and to any Justice of the Supreme Court whenever bail pending appeal becomes an issue.

*Subsequently this was approved June 22, 1966, as Public Law 89-465 (See Appendix, p. 39).

It is contemplated that the annual cost of this advanced and improved program of handling bail matters will not exceed \$80,000 per year. It is further contemplated that this amount will be recouped manifold because of the advantages to the worthy accused whose family and community ties justify release under terms fixed by the courts. The need for placing the family on relief, the possibility of continued employment of the accused, not to mention the cost of detention, are factors which we feel will bring benefits greatly in excess of the cost of the program.

The distinguished chairman of the Committee on the District of Columbia of the House of Representatives has been interested in this problem for some time, and I introduced the bill with his full concurrence in order that the Congress may have an opportunity to consider it and hear the testimony of interested parties.

We have with us today Judge John A. Danaher, of the United States Court of Appeals for the District of Columbia Circuit.

This bill bears your imprint very heavily. We would like to hear from you. And we would like to insert any formal statement you have in the record and let you just talk off the cuff. We will be glad to do it that way, or you may proceed as you like.

May I ask you this before we start? As you know, we passed the Bail Reform Act of 1966, which was reported out of the Judiciary Committee. And that bill was passed yesterday, it being a Senate bill. We are assuming that the Senate will probably go along with the amendments that we made to the bill in the House. So it should become law real soon.

Now the bill that we have before us, H.R. 15065, I believe, was prepared with consideration being given to S. 1357, the Bail Reform Act of 1966, is that right, sir? And there is nothing in our bill to conflict with it, is there?

STATEMENT OF HON. JOHN A. DANAHER, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Judge DANAHER. They dovetail, Mr. Chairman, in such fashion that if the Bail Reform Act of 1966 becomes law, as you anticipate, all the more will we in the District of Columbia need the services of a fact-reporting bail agency. It is on that account that the two bills have been interlocked, as the language of H.R. 15065 will make apparent.

I have not a formal statement, Mr. Chairman, but I think the record briefly may be made in respect to the background, the steps that follow the initiation of the effort, and just where we are now.

In that connection, I should say at the outset that in 1962 at the Judicial Conference of the District of Columbia Circuit Court it was broached that steps be taken to ameliorate the hardships due to the bail problems, particularly with reference to the indigents.

The conference listened to the proposals then made by the now Mr. Justice Fortas of the Supreme Court, and Mr. Edward Carey, a practitioner here in the District of Columbia, and their proposals were literally hooted down.

The attitude of the Bar and Bench at that time was hostile, I may say, to the very idea that we have now developed and are fostering through this proposed legislation. However, Chief Justice Wilbur K. Miller, of the Court of Appeals, then appointed a committee to look

into the problem. On that committee he appointed District Judge Edward A. Tamm, now Circuit Judge of the District of Columbia Court of Appeals; Judge Frank H. Myers, District of Columbia Court of Appeals; a prominent practitioner, Mr. Harry L. Alexander; John H. Pratt, then President of the District of Columbia Bar Association; and myself, who was named Chairman.

We were commanded by the Conference to look into the problem and report back a year hence. We had the assistance of the Junior Bar Section of the District of Columbia Association, which conducted diligent inquiry into the problem throughout the ensuing months. Its report* was informal. It was necessarily sketchy.

But Chairman James A. Belson and his assistants performed a remarkable task just the same.

So it was in 1963 we were so far encouraged that when we reported to the Judicial Conference at its May session in 1963, the Committee appointed in 1962 affirmed its willingness to continue for another year, provided that we could get grants from some foundation or other to assist in carrying on the detailed inquiry.

The Ford Foundation advanced \$65,000 for the first year, and \$65,000 for each of two ensuing years, with Georgetown University named as grantee.

That inquiry, then, went forward.

But the grant is now expiring, the result of which is that unless we have legislation to carry on the work so nobly advanced under the auspices of the Ford Foundation, the entire project will die.

It is on account of the urgency thus reflected that we took up with Congressman Whitener the problem and its background, and enlisted his cooperation, which I want to have the record show I thoroughly appreciate.

He introduced H.R. 15065, and procured for me copies of that bill. I sent a copy to every judge of whatever court, except the Juvenile Court, in the District of Columbia.

Also I sent at that time to every judge a copy of his remarks as they appeared in the Congressional Record of May 16.

At our Judicial Conference this year, the entire conference went on record in urging immediate action.

Moreover, when the Judges of this Circuit, all Federal Judges met in Executive Session on June 1, 1966, all U.S. Circuit of Appeals Judges in active service, and all U.S. District Court Judges in active service were in attendance. The legislation was brought up, considered, discussed, and a resolution then was passed, a certified copy of which I brought, and which I offer for the record, which will show that unanimously the Judges in Executive Session have recommended that the legislation be enacted.

(The document referred to follows:)

JUDICIAL CONFERENCE OF THE DISTRICT OF COLUMBIA CIRCUIT

(Convened pursuant to Title 28 section 333 United States Code)

At an Executive Session of the Judicial Conference of the District of Columbia Circuit held on June 1, 1966, there were present all United States Circuit Judges in active service and all United States District Judges in active service in the District of Columbia, at which time were presented for consideration H.R. 15065,

*See "The Bail System of the District of Columbia", report of the Committee on the Administration of Bail of the Junior Bar Association of the District of Columbia.

introduced by Congressman Whitener, and S. 2721, introduced by Senator Bible; Circuit Judge Danaher submitted an oral report concerning the status of the proposed legislation following which there was discussion among the judges.

Whereupon on motion duly made and seconded it was unanimously Resolved:

(1) That the Judges in said Executive Session urge early enactment of legislation to establish a fact-reporting Bail Agency in the courts of the District of Columbia;

(2) That the Bail Agency so to be created shall function in the main along lines and in execution of policies heretofore evolved from the experience of the District of Columbia Bail Agency previously authorized pursuant to official action by the Judicial Conference for the District of Columbia Circuit;

(3) That such proposed legislation shall include, in principle, the recommendations of the Judicial Conference pursuant to the resolution adopted in May, 1965;

(4) That Nathan J. Paulson as Secretary of the Judicial Conference cause to be transmitted to the House Committee on the District of Columbia and the Senate Committee on the District of Columbia, respectively, copies of this resolution.

The foregoing is a certified copy of an extract from the minutes of said Executive Session and of the resolution of the judges adopted the first day of June, 1966.

Attest:

NATHAN J. PAULSON, *Secretary.*

Judge DANAHER. I have discussed the matter further with Chief Judge Andrew Hood, District of Columbia Court of Appeals, and with Chief Judge John Lewis Smith, Jr., of the Court of General Sessions. Both of those Judges have authorized me to speak in their behalf today today urging early enactment of the proposed legislation.

One of the problems that has confronted us in the Court of Appeals as distinguished from those so commonly known to all members of this committee at the trial court level is the fact that where bail is sought pending appeal, we have no factual basis upon which to act. We have rules, yes. Federal Rule 46, and Court of Appeals Rule 33 deal with the problem of bail pending appeal. But we have no fact-finding machinery.

So the legislation which is before you for the first time will call upon the bail agency, the fact-reporting entity, to make available its interview reports to us in the event that bail on appeal is sought.

In that connection I have here a memorandum that was written by Chief Justice Warren in the case of *Leigh v. U.S.* handed down on May 11, 1962. (82 S. Ct. 994).

There he reviewed the problem that confronts a Justice of the Supreme Court when bail application is made to one of those justices.

I think that it would be instructive if we include in the record a copy of the memorandum by Chief Justice Warren containing a review of the problems inherent in a situation such as we are trying to cure.

Mr. WHITENER. We will make it a part of the record at this point, if you will hand the reporter a copy.

Judge DANAHER. I will do that.

(The document referred to follows:)

SUPREME COURT OF THE UNITED STATES

Richard E. Leigh, Applicant, v. United States.

On Application for Bail.

[May 11, 1962.]

MR. CHIEF JUSTICE WARREN.

This is an application for bail pending disposition of the applicant's case in the Court of Appeals for the District of Columbia Circuit. While I am reluctant to disturb the judgments of the courts below in denying such relief, I am, by Fed.

Rule Crim. Proc. 46(a)(2), required to make an independent examination of the case.

On October 3, 1960, an indictment was filed in the United States District Court for the District of Columbia charging the applicant in four counts with forgery and four counts with uttering a false check. He stood trial by jury on December 15, 1960, Judge Joseph R. Jackson, a retired Judge of the United States Court of Customs and Patent Appeals, presiding by designation pursuant to 28 U. S. C. § 294(d). Applicant was found guilty on all counts, and he has been confined since the date of his conviction. On January 6, 1961, he was sentenced to concurrent prison terms of three to nine years on each count. He filed a timely motion for leave to appeal *in forma pauperis*, which motion was denied by the trial judge on January 23, 1961. However, Judge Jackson did not certify that applicant's appeal was not sought in "good faith." See 28 U. S. C. § 1915(a). Applicant then sought leave to appeal *in forma pauperis* from the Court of Appeals. That court appointed counsel to represent applicant, and ordered a transcript of the trial proceedings at the expense of the United States. Appointed counsel filed a memorandum in support of applicant's request for leave to appeal *in forma pauperis* on July 28, 1961. That memorandum raised two questions which counsel contended were of sufficient merit to warrant allowing applicant to proceed *in forma pauperis*. The first question related to the admission into evidence at applicant's trial of a small card from the files of the District of Columbia Police. A space had been provided on the card for listing previous offenses. In the space were handwritten the words "Arrested for checks, California, Nevada, New York." These words were alleged to have been written by the applicant while in police custody. The card was introduced into evidence as an exemplar of applicant's handwriting, and was thus used to identify the handwriting on the allegedly forged checks. Applicant's trial counsel objected to the admission of the card on the ground that it was prejudicial. The objection was overruled. No instruction was given limiting the jury's consideration of this exhibit. Counsel argued that it was error to permit the jury to receive the information of applicant's unrelated prior arrests through the device of a handwriting sample. The second question challenged the validity of applicant's conviction in the light of Judge Jackson's participation. It was applicant's claim that a retired Judge of the Court of Customs and Patent Appeals could not constitutionally be assigned to preside over trials of felony indictments in the District of Columbia.

On September 1, 1961, the Court of Appeals ordered applicant's motion for leave to appeal held in abeyance pending this Court's decision in *Lurk v. United States*, No. 481, 1961 Term, presenting the same question as the second of applicant's contentions. No further action on applicant's motion for leave to appeal has been taken by the Court of Appeals since September.

In February 1962 applicant applied to the trial judge for bail pending appeal. Although unopposed by the United States Attorney, the application was denied. A similar application was then made to the Court of Appeals, which also denied bail, one judge dissenting.

The applicant renews his request for bail here, and asks that it be set at \$170—the face amount of the four checks that underlie his present conviction. The Solicitor General concedes that the issues applicant has sought to raise on his appeal are not frivolous. Nor does he allege that applicant is appealing for purposes of delay. See Fed. Rule Crim. Proc. 46(a)(2). He opposes bail on the grounds that between 1950 and 1958 appellant has sustained four convictions for offenses comparable to the ones for which he has now been convicted, and, further, that as these convictions were returned in widely separated parts of the country, applicant appears to be a "drifter" who may well repeat his crime if released on bail.

The rule authorizing bail pending appeal establishes two criteria by which an application for such relief is to be judged: whether the appeal is not frivolous or whether it is not taken for delay. If these standards are met, bail should ordinarily be granted for, as has been pointed out, bail is "basic to our system of law." *Herzog v. United States*, 76 S. Ct. 349, 351. It is to be denied only in cases in which, from substantial evidence, it seems clear that the right to bail may be abused or the community may be threatened by the applicant's release. Compare *Cohen v. United States*, 82 S. Ct. 8; *Ellis v. United States*, 79 S. Ct. 428, with *Carbo v. United States*, 82 S. Ct. 662; *Ward v. United States*, 76 S. Ct. 1063. Cf. *Stack v. Boyle*, 342 U.S. 1, 5-6.

On the facts of this case, bail should be granted. The applicant has been continuously incarcerated since December 1960 on a conviction yet to be reviewed by the Court of Appeals. This Court's decision in *Lurk v. United States*, 366 U.S. 712, rendered prior to the date on which applicant's counsel filed his memorandum

in support of the motion for leave to appeal in the Court of Appeals, was clear precedent that this applicant's motion to proceed *in forma pauperis* should have been granted on the second issue raised in counsel's memorandum. Our decisions in *Ellis v. United States*, 356 U.S. 674, and *Coppedge v. United States*, 369 U.S. —, also indicate that the applicant's motion for leave to appeal *in forma pauperis* should have been granted long ago as to the first issue. There is no adequate reason why initial appellate review of applicant's case should not have been completed by this time.

It seems clear that this appeal is not frivolous, and that such delays as have occurred can hardly be attributed to applicant. The Government does not contend that there is a likelihood that applicant will flee the jurisdiction. The crimes for which he has been convicted are nonviolent. Nevertheless, as the offenses for which he was convicted are serious felonies, bail should be more substantial than that proposed by applicant. In the light of all the circumstances of the case, bail will be set at \$1,000, pending completion of review of applicant's case by the Court of Appeals, the bond to be settled by the District Court and filed with its Clerk.

Judge DANAHY, Mr. Chief Justice Warren found that in his judgment Leigh was entitled to be released on bond. He fixed an amount, obviously in the dark, of a thousand dollars. But although Leigh was entitled to bail, Leigh was never able to raise the thousand dollars. So he was not released.

You couldn't ask for a better illustration of the need for the fact-reporting entity so far as Appellate judges are concerned than is to be noted with reference to that very situation.

Now, while all this was going forward in the District of Columbia courts, Senator Ervin and others became interested in legislation which was offered in 1964 under S. 2838, S. 2839 and S. 2840, as to which Federal bail procedures hearings were held on August 4, 5, and 6.

I make this reference in the record to the end that anyone who chooses to do so may have recourse to those hearings. I do not offer the volume for the record, but mention it to the end that it will be available for those who wish to study what the problems were as seen on a national level.

That report is a magnificent compilation submitted by the law professors, practitioners, judges and others familiar with the problem.

Senator Bible introduced S. 2721 last fall. S. 2721 would create a bail agency, as we call it, or a fact-reporting entity in the District of Columbia Circuit. It does not, however, include in its provisions various recommendations which had been offered by the Judicial Conference of the District of Columbia Circuit.

On June 3, 1965, I sent to Senator Bible and to Congressman John L. McMillan, Chairman of this Committee, a letter which gave the background for the recommendations that our Judicial Conference chose to submit.

I would like that letter to be noted for the record at this time, and I will supply a copy of it, Mr. Chairman.

Mr. WHITENER. We will make it a part of the record.
(The letter referred to follows:)

DISTRICT OF COLUMBIA BAIL AGENCY

9

U.S. COURT OF APPEALS,
DISTRICT OF COLUMBIA CIRCUIT,
Washington, D.C., June 8, 1966.

Senator ALAN BIBLE,
Chairman, Senate Committee on the District of Columbia,
Senate Office Building, Washington, D.C.

Hon. JOHN L. McMILLAN,
Chairman, House Committee on the District of Columbia,
Rayburn House Office Building, Washington, D.C.

GENTLEMEN: The Judicial Conference for the District of Columbia Circuit some three years ago caused to be created a Conference Committee on Bail Problems. Throughout the year 1963-64, the operations of the "D.C. Bail Project" were conducted pursuant to a grant of the Ford Foundation which had required that oversight be maintained by our Conference Committee. For the period from November 1, 1964 to October 31, 1966, the Ford Foundation grant will fund continued study by the D.C. Bail Project but under the auspices of Georgetown Law Center. The Ford Foundation grant so specified.

Meanwhile, the Committee of which I was chairman reached firm conclusions on some phases of the problems which had come to our notice. One such is the fact that Title 18 U.S.C. § 3146, subtitled "Jumping Bail," does not apply to persons admitted to bail in the Court of General Sessions in the District of Columbia. We believe that to be an important omission which should be corrected forthwith, amending the D.C. Code accordingly.

Another inadequacy involves the fact that Title 18 U.S.C. § 3568, available with respect to federal prisoners generally, applies only to situations where the statute requires the imposition of a minimum mandatory sentence. Yet, there are many prisoners who have been incarcerated awaiting trial solely because of financial inability to provide bail. It would seem reasonable that where the present statute requires the Attorney General to give credit against a mandatory sentence for pre-sentence detention, like credit should be allowed against the minimum sentence pronounced by the judge even though that minimum is not mandatory, in cases where the prisoner could not provide bail solely because of his poverty.

The Judicial Conference adopted resolutions recommending amendments in the foregoing respects.

Furthermore, the Conference has recommended that Congress provide for the benefit of courts in the District of Columbia an entity with a staff which will conduct pre-arraignment investigation as to the status of each prisoner. Such a unit would investigate at the earliest feasible moment after arrest and then would render pre-arraignment assistance to all committing magistrates in the making of bail determinations. Such a unit would if authorized, in future carry on the work of the D.C. Bail Project upon the expiration of the Ford Foundation grant.

Substantial benefits have flowed from the operations of the Project. When a prisoner is first arraigned in court or presented to a committing magistrate as the case may be, the judge or the magistrate knows nothing about him, his ties to the community, his past record of employment, his family situation or other background information. In the past, in the absence of such information, the fixing of bail has occurred largely in a vacuum. Substantial numbers of prisoners have been detained whose cases are ultimately dismissed, but the prisoners have been locked up at community expense and, often with otherwise damaging results.

While the Conference itself had voted that its resolutions should be sent to the Senate and House Committees on the Judiciary, I have taken it upon myself to prepare this letter to you gentlemen. I think the Senate and House Committees on the District of Columbia are primarily concerned with problems here, though not mentioned in the Conference resolution. I think your respective Committees may wish to take jurisdiction of such subject matter.

Thus I have written in a spirit of helpfulness and also because of my acquaintance with various phases of the problem during my service as Conference chairman.

I have the honor to remain, with esteem,

Faithfully yours,

JOHN A. DANAHY,
U.S. Circuit Judge, Chairman,
Committee on Bail Problems)
Judge EDWARD A. TAMM.
Judge FRANK H. MYERS.
HARRY T. ALEXANDER, Esq.
JOHN H. PRATT, Esq.

Judge DANAHER. Attached to it was a copy of the Resolution of the Judicial Conference of the District of Columbia Circuit passed on May 13, 1965. That, too, I shall offer.

Mr. WHITENER. We will make that a part of the record at this point.

(The document referred to follows:)

RESOLUTION PROPOSED BY THE JUDICIAL CONFERENCE COMMITTEE ON BAIL PROBLEMS (JUDGE EDWARD A. TAMM, JUDGE FRANK H. MYERS, HARRY T. ALEXANDER, ESQ., JOHN H. PRATT, ESQ., JUDGE JOHN A. DANAHER, CHAIRMAN) AT THE JUDICIAL CONFERENCE OF THE DISTRICT OF COLUMBIA CIRCUIT, MAY 13, 1965

Resolved by the Judicial Conference of the District of Columbia Circuit:

(1) The Judicial Conference for the District of Columbia Circuit recommends to the Congress that Title 18 U.S.C. § 3146 subtitled "Jumping Bail," be amended so that its provisions shall be made applicable to any person who shall have been admitted to bail for appearance before the Court of General Sessions in the District of Columbia.

(2) The said Conference recommends to the Congress that Title 18 U.S.C. § 3558 subtitled "Effective date of sentence; credit for time in custody prior to the imposition of sentence," be amended so that any person who shall have been incarcerated solely because of his financial inability to provide bail as determined by any committing magistrate in the District of Columbia shall be entitled to credit toward service of such sentence as may be imposed for any days spent in custody while awaiting trial.

(3) This Conference approves as the norm in bail determinations pursuant to Rule 46(a)(1) of the Federal Rules of Criminal Procedure, the presentence release of accused persons on nonfinancial conditions, with particular application of criteria based upon community ties, with due regard to evidence of apparent responsibility, and otherwise in accordance with applicable rules of court and with the policies developed by the Judicial Conference Committee on Bail as more fully set forth in the staff report of the D.C. Bail Project, this day submitted and now approved.

(4)(a) Motions pursuant to Rule 46(a)(2), FED. R. CRIM. P., for postconviction allowance of bail pending appeal or certiorari, should first be addressed to a judge of the trial court who, in the event of denial, shall set forth the reasons therefor (cf. *Carbo v. United States*, 7 L.Ed. 2d 769, 82 Sup. Ct. 662 (1962); *Leigh v. United States*, 8 L.Ed. 2d 269, 82 Sup. Ct. 994 (1962)), after which applications pursuant to Rule 33(f) of the Rules of the United States Court of Appeals for the District of Columbia shall conform to the requirements of said Rule, supplemented by appropriate showing agreeably to the criteria of Paragraph (3), *supra*, and otherwise as the United States Court of Appeals may prescribe.

(4)(b) Applications for postconviction relief directed to the District of Columbia Court of Appeals, or any judge thereof, pursuant to Rule 45 of the Rules of said court, shall conform substantially with the provisions of Paragraph (4)(a) hereof.

(b) The respective courts of this Circuit should exercise their rule-making power to the extent necessary to achieve the objectives more particularly set forth in Paragraphs (3) and (4) hereof.

(6) The said Conference recommends that legislation be drafted which in principle will provide for the creation of an entity comparable to that heretofore known as the "D.C. Bail Project" with appropriate staff to render presentence assistance to all committing magistrates within the District of Columbia in bail determinations, agreeably to the standards set forth in Paragraph (3), *supra*, and to render like assistance to the United States Court of Appeals when said court shall so request as to postconviction applications for bail as treated in Paragraph (4), *supra*.

(7) The report of the Conference Committee on Bail Problems is hereby approved and accepted, and the Committee is discharged from further service under the appointment of September 19, 1962.

(8) Copies of this resolution and of the report of the staff of the D.C. Bail Project shall be transmitted forthwith by the Secretary of this Conference to the Judicial Conference of the United States, the Administrative Office of United States Courts, and to the Committees on the District of Columbia and on the Judiciary of the United States Senate and House of Representatives.

Dated at Washington, D.C. this 13th day of May, 1965.

Judge DANAHER. With that as a background, H.R. 15065, Congressman Whitener, was introduced.

Mr. WHITENER. I might point out, Judge, that Mr. Nelsen also has introduced H.R. 15242, which is an identical bill. Mr. Nelsen and I have discussed this and felt that a bipartisan effort would not be any disadvantage.

Judge DANAHER. I have just picked it up, Mr. Chairman, and I was about to make reference to it. I wish to thank Congressman Nelsen for his understanding and cooperation in the matter.

I realize as you do that when we use the word "bipartisan" in connection with a problem like this, there is no politics in it, we are all earnestly trying to do what has to be done.

Now, so far as the Bail Reform Act of 1966 is concerned (that is S. 1357) I would call attention to Senate Report No. 750, 89th Congress, 1st session. The background there stated will also supply additional and valuable material which will show the need for the correlation of our proposal with the objectives of the Bail Reform Act of 1966.

The language in our bill, as I have already said, dovetails and overlaps in the required respects.

Mr. WHITENER. Judge, you took into account in this statement you have just made the amendments which the House, the Judiciary Committee and the House of Representatives added to S. 1357?

Judge DANAHER. I have taken that material into account, for I had before me, Mr. Chairman, a copy of the report of the House Committee on the Judiciary, which is House Report No. 1541, 89th Congress, 2d session. And may that appear also, Mr. Reporter.

(The document referred to appears in the Appendix, p. 43.)

Judge DANAHER. Yes, we did take account of the amendments.

Turning now to the language of the bill itself, I think it perhaps is advisable that I speak briefly.

PROVISIONS OF THE BILL

In Section 2 we specify that "There is hereby created within the District of Columbia a bail agency which shall secure pertinent data and provide for any court or judicial officer reports containing verified information concerning individual as to whom a bail determination is to be made."

At this point, I refer you to Section 3(a) where we undertake to define the terms within which we are speaking.

"Judicial officer" is defined to mean, unless otherwise indicated "the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, the United States District Court for the District of Columbia, the District of Columbia Court of General Sessions, or any judge of any of said courts, a United States Commissioner, and when applicable, the Supreme Court of the United States or a Justice thereof."

In subsection (b) we define the term "bail" as meaning "as used in chapter 207 of Title 18, United States Code; when applicable to the Rules 46, 38, and 32 of the Federal Rules of Criminal Procedure and rules of court in the District of Columbia", etc.

At that point I should note, Mr. Chairman, that the Chief Justice of the Supreme Court sent to the Congress in February a series of recommended amended Federal Criminal Rules. And in Rule 46,

subsection (c), there is a completely new provision respecting the "terms"—and that is the subtitle of that subsection—the terms upon which bail release may be provided.

The very fact that such terms are now to be provided for in the Bail Reform Act of 1986 supplies the link which binds our present effort to what nationally the Committee on the Judiciary is hoping to accomplish.

"Bail" is further mentioned in Title 23, Sections 106 and 404 of the District of Columbia Code.

Sec. 106 deals with the cash deposit which is to be permitted at times, with default and forfeiture provisions applicable in certain situations.

Sec. 404 deals with bail as to fugitives.

Title 16, sec. 806, of the District of Columbia Code deals with release on bail of applicants for habeas corpus writs, for in some situations where the offense is bailable, bail may be taken. So we must include a reference to that.

And also the term is used in Chapter 6 of Title 23 of the District of Columbia Code. That Chapter 6 deals entirely with professional bondsmen, and their operations in the District of Columbia.

Subsection (c) defines the "bail determination" to mean any order respecting release.

Section 4 imposes upon the agency the duty except when impracticable to interview any person detained pursuant to law or charged with an offense in the District of Columbia, subject to subsection 3(b), which is to say the Rules and the Statutes, who is to appear before a U.S. Commissioner or whose case arose in or is before any court in the District of Columbia.

Now, at that point, Mr. Chairman, a little problem has arisen which I think can be met in a simple way.

Do you by any chance have at hand a copy of the bill, sir?

Mr. WHITENER. Yes.

Judge DANAHER. Will you please look at page two, line 21. That is in subsection (c). That specifies that bail determination means an order as to any person arrested in the District of Columbia for any offense. It is our proposal that there be stricken at that point the words "except a charge of intoxication or traffic violation."

I will explain. I shall offer to the reporter in due course the text with this amendment in it. And in lieu of that language at that point, Mr. Chairman, an amendment would follow the first sentence of Section 4, subsection (a), on page three, line eight.

Now, you will notice that the first sentence of 4(a) requires the agency to interview any person charged with an offense in the District of Columbia.

On its face that would seem to include intoxication and traffic violations, which run into the hundreds of thousands. But Chief Judge John Lewis Smith has informed me that occasionally there are problems in their Court of General Sessions arising from charges of intoxication, or traffic violations, as to which some provisions should be made.

And therefore in order to take account of his recommendations, and that of a representative of the Department of Justice when testifying with reference to the Bible bill, as they call it, we propose that there be interpolated this sentence:

Such interview, but only when requested by a judicial officer, shall also be undertaken respecting any person charged with intoxication or traffic violation.

In other words, the bail agency interviewers certainly should not be called upon to interview the hundreds of thousands of violators charged with the offense of intoxication or with traffic violations.

On the other hand, to the end that such people so charged may receive the protections that are available to everyone else, this language will authorize a Judge in a proper case to call for an investigation, and the agency thereupon must interview and report.

And that is the purpose of this amendatory language, Mr. Chairman.

And as I suggested, it takes account of what Chief Judge John Lewis Smith feels is a real need, and it reflects the advice of the Department of Justice previously stated.

Now, on page four, in line 3, we reach the problem that I was pointing out earlier about the Appellate Courts:

The agency when requested by any appellate court or Judge or Justice thereof shall provide a report as provided in Section 4(a) respecting any person whose case is pending before any such appellate court, or as to which application for bail determination shall have been submitted.

We deem that of very great importance, Mr. Chairman, and we urge that that alone is enough to justify what we are trying to do here.

Mr. WHITENER. Judge, may I interrupt you?

Judge DANAHER. Yes.

Mr. WHITENER. In the bill, and in your statement, you referred to Title 16, Section 806.

Judge DANAHER. Yes.

Mr. WHITENER. I am told by our counsel that in the recodification of the District of Columbia Code, that section was dropped.

Judge DANAHER. It has been dropped?

Mr. WHITENER. Yes.

Judge DANAHER. That had not come to my notice, I must confess frankly.

Mr. WHITENER. I imagine it actually was a transfer of numbers.

Judge DANAHER. I am informed by this gentleman here that the carry-over in the Code now will make the reference applicable, Title 16, 1906, with an additional possible reference in Title 16, 704. And it may be of assistance to counsel to have that information.

Mr. WHITENER. 1906. That is the section entitled "Inquiry into the Cause of Detentions, Bails, Bond"—is that the one?

Mr. KNEIPP. Yes, Mr. Chairman, it is. And then Title 16, Section 1704 earlier in the Public Law 88-241 also makes reference to bail. And there may be other provisions. I have not gone through the Title 16 as it has been codified and enacted into positive law, but there may be other references there to bail, but these are two that appear in Title 16 now.

Judge DANAHER. My references, as the bill indicates, were to the Codes of 1961. But I am glad to have those interpolations, and the exact references. And I am sure that we can readily accommodate ourselves to the changes.

Mr. WHITENER. May I ask this. Mr. Kneipp, would you work with our staff on getting the technical changes made with reference to these code citations?

Mr. KNEIPP. I would be glad to, sir.

Judge **DANAHER**. Now, briefly to continue, and shortly to conclude, Mr. Chairman, in subsection (c) we deem it of great importance that information obtained by the agency, or in its files, or as a result of the interviews, shall be protected, shall not be divulged except for bail determination purposes. The material should be surrounded by the confidentiality upon which the success of the project depends, and it shall not be subjected to court process for use in any other proceeding.

That is of the utmost importance, as those in the direct field can readily attest.

It takes some time, I might add, as our experience shows, for those who have been arrested to voice a sense of confidence in those who are really trying to help them. And if the prisoner were led to think that whatever he says is going to be turned over to a prosecutor, for example, or other use made of the confidential information, you can readily see the havoc that would be wrought.

Now I think the most important single next change from the Bible bill occurs on page five, section five. We think in our court—and we think through the Executive Session of the Judges as well—that there should be an executive committee of five, of which three should be a quorum, four of whom shall be the chief judges of the respective courts affected and named in section 5.

Those four will select a fifth member. And that fifth member, having been selected, will join the four judges as a policy-making figure.

The housekeeping provisions have been submitted to the Administrative Officers of the United States courts. And we come now to page seven, Section 10.

I need not tell you, I am sure, that Section 3568 of Title 18 of the U.S. Code provides for credit against mandatory minimum sentences. However, there is no provision applicable to a sentence that does not involve a mandatory minimum as a result, a judge who might be inclined to sentence a man to serve one year in jail discovers upon checking the record that he has been in jail two months or three months in default of bail, can say, "I intend now to give you credit for the time you have spent in jail in default of bail. And on that account your sentence will not be one year, but it will be ten months or nine months, or whatever other term is provided by the pronouncement."

Mr. **WHITENER**. Judge, in the Bail Reform Act, the House of Representatives, and the House Judiciary Committee had a similar provision, but it provides that the Attorney General shall give any such person credit before he serves his assignment.

Now, under Bill H.R. 15065, the trial judge would give this credit. Do you think that this is the best approach?

Judge **DANAHER**. I think it is better the way we have it, for the reason that a vast volume of the offenders will be in the Court of General Sessions, and they are District of Columbia offenders largely. And it is that type of situation we are trying to reach.

And so far as the Federal offenses are concerned, I would not anticipate that there would be any problem where the Attorney General has the chore, either under the Bail Reform Act of 1966, or under present law, I doubt that there would be any conflict.

Mr. **WHITENER**. The bill that we have before us does not limit this credit giving to cases where there is a fixed minimum penalty in the statute, does it?

Judge DANAHER. Absolutely not, you are right.

Mr. WHITENER. As a practical matter, how would a judge do this? He would say to the prisoner that "I could give you up to twenty years for this offense, but I have decided to give you eight years," and since you have been in the lock-up for two months, I am going to give you eight years less two months." Is that the way it works?

Judge DANAHER. I would anticipate, sir, that a judge who makes a pronouncement to that effect is dealing with a Federal prisoner who is going to be committed to the care of the Attorney General anyhow, and the Attorney General under your Bail Reform Act of 1966 will have custody of that prisoner. Under our bill, we are really talking about the eight months and the ten months and the six months' type of offense, and not eight years or ten years. And if we choose to and deem it necessary, we could easily make that apparent in an accompanying report.

Mr. WHITENER. In a housebreaking or burglary case, it could very well arise—no, that would be in the District Court, wouldn't it?

Judge DANAHER. That is right.

But let me point out another feature of this section, if you please.

At the top of page eight there is a proviso in which we note that—

such credit shall not be afforded to any such person who, after a bail determination, shall have violated the terms or conditions of his release by the commission of another offense while at liberty.

In other words, suppose a man is in jail a month before he is released. He knows very well that now he is at liberty, and should he turn recidivist he forfeits any time he spent in jail.

It is nothing but a gimmick, but psychologically it is very effective, I can assure you, just as in the same sense that it is psychologically of value if the judge says, "I intended to give you one year, but I see you have been in jail for two months, so I am going to make it only ten months." At least it removes from the mind of the offender a sense of unfairness. It is psychological, but it is of great value as a practical matter.

We also note, incidentally, that in subsection (b) in no way whatever do we infringe upon Title 13, section 3868, which has to do with the mandatory minimum under the regular Federal sections.

Now, in Section 11 we have incorporated a provision almost bodily which was in your Bail Reform Act of 1966, Mr. Chairman. We have there made bail-jumping an offense, and now extended it for the first time to the Court of General Sessions. And by its having been incorporated here, we have just one more string on that individual who might betray his trust and who might flee the jurisdiction. And it has proved of value in the Federal system over a long period of years.

Now, in the main I have tried to hit only the high spots in the interest of conserving the time of the Committee. But I will try to answer questions if any there be.

Mr. WHITENER. What do you estimate the cost of this will be per annum to the Government?

Judge DANAHER. Well, we have to—suppose I were to say, right off the top of my hat, \$125,000. I might be high. Suppose I say \$85,000. I could be too low. But I know that whatever it costs it is more than made up in the savings to the community, in the values to the saved family, to the individual who is not deprived of his liberty.

At least a third of all people arrested, Mr. Chairman, ultimately

find their cases either dismissed or that they result in a not guilty verdict. So that if detention is utilized as a means of punishment of a man who presumably is innocent, a gross injustice would be worked.

So there are savings of many facets, cost of detention, for instance, and all that sort of thing, which add up to hundreds of thousands of dollars annually. I would say that people here on the staff will be better able than I to estimate the cost. I just don't have those figures.

Mr. WHITENER. May I ask this question. Is there anything in this bill which would slow down the bail-making process in a typical criminal case in the District of Columbia, that is, any that would interfere with the right of a judge in the Court of General Sessions or other judges covered by this to make a decision on his own without taking the time to get a recommendation from the bail officer?

Judge DANAHER. He is free to do that. The bail entity shall make recommendations only when the factors on which a recommendation fairly may be based will justify it. But even then a judge doesn't have to accept that. He is the judge. He makes the determination.

Mr. WHITENER. Does he have to make the request of the original determination by the Commission?

Judge DANAHER. No; he does not. If you look at Section 4(a) on page 3, sir, the first sentence: "The agency shall make that investigation."

Now you go down about fifteen lines and you will see, "The agency turns in a report with or without recommendation." But the judge may accept or reject it—it doesn't say he has to, he is not bound by fact-finding entity.

Mr. WHITENER. Let's assume a hypothetical case, that a man is arrested by the Metropolitan Police for the crime of assault with a deadly weapon. He is brought in. And everything appears to the judge that this is just a routine assault with deadly weapon case, with no real aggravated conditions. And this is a young fellow eighteen years of age, with no previous record that he knows of, and he just wants to say immediately, "I want to fix his bond at \$50 or \$100." Now, is there anything here in this bill which would require that judge to await a report from this bail agency?

Judge DANAHER. The answer is no, sir. But I would hope that he would wait, because the reports can be turned up maybe the same day, and at any rate within twenty-four hours. An assault with a deadly weapon is a serious offense, whether the man has a previous record or not.

Mr. McCarthy, who has had three years' experience as Director, tells me that the report normally would be in the judge's hands the minute he makes the bail determination anyhow.

Mr. WHITENER. Suppose this person is arrested at midnight, and he is brought before the judge for arraignment at nine o'clock the next morning. There wouldn't be any bail agency report made up at that time, would there?

Judge DANAHER. It would be ready. Normally, yes, put it that way.

Mr. WHITENER. May I ask another question about the bill? It seems that the Bail Reform Act of 1966, and this bill, H.R. 15065,

omits any reference to the juvenile judges of the Juvenile Court. Now, I realize that in the normal function of the Juvenile Court dealing with juveniles that it is very understandable. But suppose that it is a case which falls within the jurisdiction of the Juvenile Court which deals with the criminal offense by adults—nonsupport of illegitimate children, child labor law violations, and cases of that sort. The bail agency under our bill does not project itself into that at all?

Judge DANAHER. No, sir.

Mr. WHITENER. Why?

Judge DANAHER. In the first place, Juvenile Court, while called a court, actually is a highly specialized social agency. The overwhelming bulk of its work involves no criminal charge.

Another facet to it is that should the Juvenile Court judge, after hearing, and an investigation through its own staff, of the family situation of the juvenile, nonetheless should decide that this case should be waived over the District Court, the District Court is in a position then to make a bail determination if it chooses to do so. In that event the staff can go forward with its interview and give that District judge whatever information the District judge wants.

Mr. WHITENER. It is your feeling, then, that the Juvenile Court is properly omitted in the bill?

Judge DANAHER. Definitely, yes, sir.

Mr. WHITENER. Gentlemen, we have other witnesses here in connection with the bill at the table.

How many of you have prepared statements?

Would you object to having your statements made a part of the record?

Will you identify yourselves, please?

**STATEMENT OF WILLIAM W. GREENHALGH, ESQ., CHAIRMAN
OF THE CRIMINAL LAW COMMITTEE, DISTRICT OF COLUMBIA
BAR ASSOCIATION**

Mr. GREENHALGH. Professor William Greenhalgh, Georgetown University Law Center, representing the District of Columbia Bar Association on behalf of the President, Paul McArdle. I am the Subcommittee Chairman of the Committee on Criminal Law, and Mr. McArdle asked me to include his letter in the record.

Mr. WHITENER. Mr. Greenhalgh, we will make your statement a part of the record. And will you tell us briefly the position of your committee?

Mr. GREENHALGH. Mr. Chairman, the Bar Association unequivocally endorses the bail agency concept as a fact-finding entity. And it passed a unanimous resolution to that effect. And we have no difficulty with your bill in this record.

Mr. WHITENER. You have heard the recommendation of Judge Danaher?

Mr. GREENHALGH. I concur with it completely.

Mr. WHITENER. Now, at this point we have a letter from the Bar Association which we will make a part of the record, the letter signed by Mr. Paul F. McArdle, President of the Bar Association of the District of Columbia.

(The letter referred to follows:)

THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., June 7, 1966.

Re H.R. 15065 and H.R. 15242.

Hon. JOHN L. McMILLAN,
House of Representatives,
Chairman, House District Committee,
Longworth Office Building,
Washington, D.C.

DEAR MR. McMILLAN: The Bar Association of the District of Columbia by unanimous resolution of its Board of Directors endorses legislation establishing a fact-reporting bail agency in the District of Columbia Courts. It is the view of the Association that a bail agency is urgently needed in the District of Columbia. The Association is also of the view that the services of the agency should include the District of Columbia Court of General Sessions.

Unfortunately, I cannot be present at the hearing because of previous medical examination commitments. If there is any further assistance that we may offer in this matter, please do not hesitate to get in touch with me.

Sincerely,

PAUL F. McARDLE, *President.*

Mr. WHITENER. Now, our next gentleman.

STATEMENT OF RICHARD C. MOLLEUR, DIRECTOR, DISTRICT OF COLUMBIA BAIL PROJECT, WASHINGTON, D.C.

Mr. MOLLEUR. My name is Richard Molleur. And I have a prepared statement, Mr. Chairman, that is a joint statement actually of David J. McCarthy, Chairman of the Supervisory Board of the District of Columbia Bail Project, and myself as Director of the District of Columbia Bail Project. I would like to have that included in the record.

Mr. WHITENER. Without objection your statement will be included in the record at this point.

(The statement referred to follows:)

STATEMENT OF DAVID J. MCCARTHY, JR., CHAIRMAN OF THE SUPERVISORY COMMITTEE OF THE DISTRICT OF COLUMBIA BAIL PROJECT, AND RICHARD R. MOLLEUR, DIRECTOR

Mr. Chairman, the House of Representatives, now considering the proposed Bail Reform Act of 1966, is well aware of the many injustices and inequities existing in our present financial bail system and of the reforms that have been proposed as remedies. Much of the impetus for modernization and reform has come from the more than fifty experimental bail projects now in operation throughout the country.¹ An equally important by-product of these bail experiments is the fact-finding assistance provided for the courts. In the past, most courts have been forced to apply the present bail system without sufficient facts. The pending legislative reforms will require these facts.

One of the original pilot bail reform experiments has been in operation here in the District of Columbia. In 1962, the Committee on Bail Problems of the

¹ Among the states in which projects are operating are: New York, California, Texas, Florida, Colorado, Missouri, Oklahoma, Connecticut, Delaware, Iowa, Kentucky, Maryland, Massachusetts, New Jersey, New Mexico, Ohio, Pennsylvania, Utah, West Virginia, Wisconsin, and Georgia.

The origin and effectuation of these experiments may be seen from the following: Beoley, *The Bail System in Chicago* (1927); U.S. National Commission on Law Observance and Enforcement, *Criminal Justice Surveys Analysis* 89-91 (1931); Morse & Beattie, *Survey of the Administration of Criminal Justice in Oregon*, 11 Ore. L. Rev. 1, 86-117 (Supp. 1932); Note, *Compelling Appearance in Court: Administration of Bail in Philadelphia*, 102 U. Pa. L. Rev. 1031 (1954); Note, *A Study of the Administration of Bail in New York City*, 106 U. Pa. L. Rev. 693 (1958); Foote, *Introduction: The Comparative Study of Conditional Release*, 108 U. Pa. L. Rev. 230, 294-97 (1960); Ball, *An Ancient Practice Re-examined*, 70 Yale L.J. 966, 967-8 (1961); Ares, Rankin and Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pre-trial Parole*, 38 N.Y.U. L. Rev. 1, 67-93 (1963); Freed and Wald, *Bail in the United States: 1964, A Report to the National Conference on Bail and Criminal Justice*, Washington, D.C., May 27-29, 1964; McCarthy and Wahl, *The District of Columbia Bail Project: An Illustration of Experimentation and a Brief for Change*, 53 Geo. L.J. 615-748 (1965); and McCarthy, *Practical Results of Bail Reform, Federal Probation*, September 1965.

Judicial Conference of the District of Columbia Circuit, working in conjunction with the Junior Bar Section of the District of Columbia Bar Association, conducted an extensive study of the bail system in the District of Columbia. Among other things, this study pointed out the tremendous burden placed on the D.C. Jail as a result of pretrial incarceration of many individuals eligible for bail but who could not afford bail or bond premiums.² Translating this burden in financial terms, it was reported that in 1962 the cost of maintaining defendants in the D.C. Jail who were eligible for bond prior to or pending completion of trial was almost \$500,000.³ The Junior Bar report also revealed the existence of many bad practices and the resulting severe injustices which have eroded the bail system in the District of Columbia. Among its many recommendations, the Junior Bar Section recommended that a pilot project similar to the pretrial release program conducted by the Vera Foundation in New York City be established in the District of Columbia.

In May of 1963 the Judicial Conference adopted the Junior Bar Section's recommendation and directed its Committee on Bail Problems, headed by Circuit Judge John A. Danaher, United States Court of Appeals for the District of Columbia Circuit, to undertake the establishment of such a project. Judge Danaher's committee in turn was ultimately responsible for a three-year grant from the Ford Foundation to the Georgetown University Law Center to finance the project. Under the terms of the grant, the supervision of the project was placed initially with the Committee on Bail Problems of the Judicial Conference and reverted to the Law Center at the end of the first grant year. Thereafter, Dean Paul R. Dean of the Georgetown University Law Center appointed a supervisory committee representing area law schools, civic institutions, the Police Department, and the Bench and Bar of the District of Columbia.

The District of Columbia Bail Project began operations in January of 1964 on a limited basis and thereafter continued to expand until the present where it operates in the United States District Court, the United States Commissioner's Office, and the United States Branch of the General Sessions Court for the District of Columbia. The operational make-up of the project is perhaps best stated in the recent editorial in the Sunday edition of the *Washington Star*, March 20, 1966:

"The premise of the experiment, begun in 1963 under a Ford Foundation grant, was that numerous criminal defendants awaiting court appearances, and denied freedom for long periods because of their inability to obtain bail, might more sensibly be released during these periods on their personal bond. The essential job of the project task force has been to recommend to the courts fit candidates for this special treatment, on the basis of careful screening, intensive personal investigation and follow-up contacts with the defendants during periods of release.

"Since early 1964, some 2,191 recommendations for release have been made to the courts on this basis. The judges have seen fit to follow the advice in 1,859 cases. And in roughly 97 percent of these cases, ranging from serious crimes to misdemeanors, the defendants have made good on their later appearances in court."

Present project data indicate that as of Friday, June 3, 1966, the District of Columbia Bail Project has made a total of 2,456 recommendations for release on personal bond. The courts have followed approximately 85% of these recommendations with the result that 2,084 persons have been released on their word that they would return. Presently, over 97% of those released have appeared in court as they promised. It is interesting to note that 47 of the 59 defaulters have been returned to custody and 40 of these were rearrested in the Washington, D.C. area. A further matter of interest is the fact that 50 faced misdemeanor charges at the time of default.

While the criteria utilized by the project for determining whether the defendant would return to court if released were not primarily devised for any other purpose, experience has demonstrated that the criteria are meaningful as well when related to the safety of the community. To illustrate, of the 2,084 releases, 2.5% were charged with serious subsequent offenses arising during the period of their releases; 5% were charged with less serious subsequent offenses; and 1.6% were charged with subsequent municipal code offenses. It should be noted, in this connection, that while 17% of these subsequent charges remain pending, 31% were dismissed, nolle, ignored, or resulted in acquittals.⁴

² In 1962 between 30 and 40 per cent of the D.C. Jail population was composed of persons awaiting trial or in the process of trial or sentence. Of those awaiting trial, over 84 per cent were eligible for release on bail. *The Bail System of the District of Columbia*, Report of the Committee on the Administration of Bail of the Junior Bar Section of the Bar Association of the District of Columbia (1962), p. 29.

³ *Ibid.*, p. 31.

⁴ The remaining 62% resulted in the following dispositions: 6% convicted and given probationary sentences; 48% convicted and incarcerated; 2% convicted and forfeited collateral.

In its annual meeting here in May of 1965, the Judicial Conference for the District of Columbia Circuit voted unanimous approval of the District of Columbia Bail Project. The Conference also adopted a resolution providing in effect that nonfinancial conditions be considered as the norm for pretrial release, and the Conference went on record as urging Congress to enact legislation to provide a proper vehicle to effectuate the experimentally tested procedures. Again in 1966 the Judicial Conference unanimously approved the Bail Project and called for speedy enactment of the bail agency legislation pending before the Congress. As the Judicial Conference's actions indicate, the successful experiment has resulted in virtually unanimous judicial and civic recognition of the need for the continuation of this program on a permanent basis.

H.R. 15065 and H.R. 15242 constitute effective proposals to establish on a permanent basis the valuable fact-finding entity which will enable the judges to effectuate the necessary bail reforms. An equally important effect of this legislation will be the resultant ability of the courts to make reasonable bail determinations related to the particular facts of each defendant. Consequently the existence of the bail agency will indirectly assist more effective management of judicial calendars thus constituting a remedial contribution to a very pressing judicial problem.

A more obvious benefit of the enactment of this legislation will be to remedy in part one of the many staggering problems confronting the community under the present financial bail system, viz., the tremendous burden placed on the District of Columbia Jail by the pretrial incarceration of defendants and the resulting cost of maintaining the large number of people who must languish in jail prior to trial because they lack the funds for a bond premium. In addition, there are other costs, such as welfare expenses and loss of wages, which may be involved with pretrial incarceration of large numbers who cannot afford bond premiums. The determination of the scope of this aspect of the bail problem has been part of the continuing research function of the District of Columbia Bail Project under its three-year grant. Preliminary results of this study are at hand, and for the first time, will be made available to this committee.

A comparative study of persons released on bond in 1963 before the project began operations, with persons released on bond in 1965 when the project was at maximum operating capacity, has revealed that as a result of the Bail Project's operations in 1965 over \$60,000 has been saved in jail costs of the D.C. Jail and in welfare costs. These jail costs savings pertain to the projected number of people who, if not released on personal bond, would have been required to stay in jail for an over-all average of 47,167 man-days. The welfare costs pertain to the expenditures that the Welfare Department would have expended in cases where the supporting head of the household would have been incarcerated. In addition, the cost study reveals that the Department of Corrections would have expended over \$12,000 in transporting from the jail to the courts and back the persons who were released as a result of the Bail Project operations in 1965 and who, but for this personal bond release, would have been incarcerated.

Therefore, the preliminary result of the cost of detention study conducted by the D.C. Bail Project reveals that over \$72,000 in jail and other related costs were saved by the District of Columbia as a result of the Bail Project's experimental operation during the year 1965. Projecting the jail costs alone it is estimated that with operation capacity identical to that in 1965, the Bail Project would save in 1967 a total of over \$61,000. The increase, of course, is attributed to the current trend of rising jail costs.

Another aspect of this cost of detention study has been to project on the basis of the present operation of the project the savings which would inure to the District of Columbia Government should the Bail Reform Act and the pending bail agency legislation be enacted into law. Assuming that these two statutes would increase the number of personal bond and other nonfinancial condition releases by at least one-fourth of those still incarcerated who cannot presently qualify under the project's experimental criteria or afford the price of a bond premium, it is estimated that the District of Columbia will save almost \$110,000 per year in jail costs alone. If this ratio of pretrial release can be effectively increased to one-half or three-fourths of those presently incarcerated pretrial, it is estimated the savings thus inuring per year in jail costs alone will be over \$170,000 and \$224,000 respectively.

H.R. 15065 and H.R. 15242 reflect almost entirely the successfully tested procedures of the District of Columbia Bail Project. Since the grant under which the project has been run is about to terminate, we respectfully suggest the pressing need for enactment of this excellent legislation. It should be noted that during the life of the experiment, judicial officers in the District of Columbia have

had occasion to refer cases to the project in order to obtain the facts necessary for bail determinations or bail re-evaluations. We think that this procedure should be continued and may not be encompassed by the wording of the proposed legislation. Accordingly, may we suggest that Sec. 4(b) be rewritten to remove the restriction to appellate courts as follows:

"(b) The agency when requested by any judicial officer shall provide a report as provided in Sec. 4(a) respecting any person whose case is pending before any such judicial officer to whom an application for a bail determination shall have been submitted."

Two other aspects of the proposed legislation deserve comment. Lest the phrase "any court in the District of Columbia" in Sec. 4(a), line 8, page 3, be deemed to include courts or judicial officers not included in Sec. 3(a), that phrase should be deleted and replaced by, "any court set forth in Sec. 3(a) of this Act."

Sections 10 and 11 of the proposed legislation reflect almost totally the intent of the Bail Reform Act of 1966 now pending before Congress, and in so doing give full meaning to the expressed intent of the bail agency legislation to conform to the Bail Reform Act. Should the Bail Reform Act of 1966 be enacted into law, the proviso in Sec. 10(a) of H.R. 15065 and H.R. 15242, were it so worded or interpreted as to apply to time spent in jail on the charge arising during the period of release, would reflect a modification of 18 U.S.C. § 3563 as amended by the Bail Reform Act of 1966, and a proposal often suggested by those seeking to remedy the problem of crimes committed during pretrial release.

In sum, the enactment of this legislation will provide not only the best medium for equitable and rational bail determinations but an invaluable remedy to aid in the solution of the tremendous court-administration problems of which we are all aware.

Mr. MOLLEUR. And also appended to it, because there is reference in the statement, is a printed copy of the study of the D.C. Bail System which is conducted by the Junior Bar Committee of the District of Columbia Bar Association in 1962 and 1963.

Mr. WHITENER. I think we should file that with the committee rather than print it.

Mr. MOLLEUR. All right, Mr. Chairman.

Mr. WHITENER. We will make that statement of Mr. McCarthy a part of the record.

Mr. MOLLEUR. It is a joint statement.

Mr. WHITENER. We will make it a part of the record.

Mr. MOLLEUR. I have nothing to add, really, over what is in this prepared statement, and what has been stated by Judge Danaher this morning. We perfectly concur with his comments.

I would only like to call the committee's attention to pages five and six of the prepared statement wherein we have set forth the first time before this committee the preliminary results of an extensive cost study which the project has been carrying out for the last year, which indicates that the project in its maximum operation in the year of 1965 saved the District of Columbia in terms of cost, not having been required to be extended, upwards of \$72,000. That is in jail costs and other related costs such as Welfare costs. And assuming that a bail agency were created if this bill were enacted into law, along with the Bail Reform Act which I understand has been passed by the House yesterday, assuming that the number of persons who are now still being incarcerated because they can't afford bond, or cannot qualify under our program, which is still an experimental one, the number of persons is increasing, the releases are increased by at least one-quarter, the savings would go over \$110,000 per year, and if the number of people released conceivably would be increased over a quarter, the savings could conceivably go from 170 to approximately \$200,000 per year.

With reference to the Chairman's question, in the last part of Judge Danaher's statement, I can point out that we have prepared a budget for the proposed agency. And excluding office space the budget would indicate that the agency could operate at less than \$95,000 per year. If you contemplate expanding the agency's functions, or will include an item for office space, conceivably the expenses could go over \$125,000 per year.

Mr. WHITENER. All right, sir.

Mr. MOLLEUR. That is all I have.

Mr. WHITENER. Did you have a copy of that proposed budget, Mr. Molleur?

Mr. MOLLEUR. No, I don't have a copy of that with me. I could furnish it to the committee.

(Subsequently, the following estimates were filed with the Committee:)

DISTRICT OF COLUMBIA BAIL PROJECT,
Washington, D.C., June 10, 1966.

Hon. BASIL L. WHITENER,
Committee for the District of Columbia,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN WHITENER: This is in reply to your question to me at the hearings Wednesday morning, June 8, 1966, on H.R. 15065 and H.R. 15242 pertaining to a break-down of the \$95,000 figure which I gave as our estimate of what the proposed bail agency would cost. --

Enclosed is a break-down of that figure which, as you will see, totals to \$93,275.00. I must point out in this regard that this budget estimate was prepared almost a year ago and the figures therein were obtained by using many of the costs which the Bail Project had experienced up to that time under its grant. As I indicated to you at the hearings, this amount does not include quarters because at the time it was believed that quarters could be furnished by the courts. In my opinion, this budget figure can be considered as a reasonable minimum amount for the operation of the proposed bail agency.

However, in view of the fact that both H.R. 15065 and H.R. 15242 in Sections 6 and 7 provide maximum salary levels for the director, chief assistant to the director, and all other members of the agency as not exceeding amounts classified as GS 15, GS 11, and GS 7 respectively, I am also submitting an additional budget break-down which reflects these maximum salary levels. In addition, I have noted also the amount which we estimate as a maximum for quarters for the proposed agency.

If there are any further questions regarding this or other matters pertaining to the legislation introduced by you as well as that introduced by Mr. Nelson, please rest assured that I stand ready to be of complete assistance to you and your staff.

Very truly yours,

RICHARD R. MOLLEUR, *Director.*

I. The proposed bail agency budget at \$93,275 per fiscal year is broken down as follows:

Salaries:	
Director.....	\$12,000
Chief assistant.....	7,200
8 assistants at \$5,000.....	40,000
3 clerical.....	13,500
Fringo benefits (at 7 percent figure).....	5,075
Part-time staff and clerical assistance.....	2,000
Equipment.....	3,000
Office supplies and expenses.....	3,000
Communications.....	2,000
Transportation and similar expenses.....	2,000
Printing.....	2,000
Contingencies.....	1,500
Total.....	93,275

II. Proposed bail agency budget as per salary levels in H.R. 15065 and H.R. 15242, per fiscal year:

Salaries:	
Director.....	¹ \$17,055
Assistant Director.....	¹ 8,961
8 interviewers at \$6,269.....	¹ 50,152
3 clerical at \$5,702.....	² 17,100
Part-time assistance.....	³ 2,000
Equipment.....	³ 3,000
Office supplies and expenses.....	³ 3,000
Communications.....	³ 2,000
Contingencies.....	³ 1,500
Subtotal.....	104,774
Office equipment 1st year add.....	⁴ 2,000
Office space rental.....	⁵ 13,800
Total.....	⁶ 120,574

¹ Present classification act schedules for GS 15—Director, GS 11—Assistant to the Director, and GS 7—Interviewers.

² It is estimated that a maximum of three secretaries will be required at a GS level not to exceed GS 6, presently \$5,702. It may be that only one such secretary will be needed at a GS 6 and possibly two others at GS 5.

³ Since we can only estimate these costs on the basis of the project's cost experience, these items are listed in the same amounts as set forth in the break-down of the \$93,275 figure above.

⁴ It is believed that \$5,000.00 will be the maximum amount necessary for the initial purchase of office furniture and furnishings for the agency staff the first fiscal year of operation. Every year thereafter the equipment amount should not exceed \$3,000.00.

⁵ The office space rental was arrived at by a total estimate of 3,000 square feet of office space required to house the agency staff, files and equipment. A rental rate of \$4.60 per square foot was used since we understand that that is the rate presently being paid by the District of Columbia government in renting the office space for the Legal Aid Agency. It is believed that this rental rate is representative of the rates which are presently being charged for similar office accommodations in available buildings surrounding the courthouses of the District of Columbia. Obviously the bail agency will have to be housed as close as possible to the courts to permit maximum efficient operation.

⁶ This total reflects the maximum salary amounts as set forth in H.R. 15065 and H.R. 15242 and does include office space rental. The eight interviewers listed in this budget would permit the agency to operate at a minimum in the D.C. and Traffic Branches of the General Sessions Court in addition to the operations in the U.S. Branch of the General Sessions Court and the U.S. District Court. If the agency's functions were expanded to cover more than just the minimum of cases in the D.C. and Traffic Branches of the General Sessions Court, the budget would be increased by the salaries and other pertinent equipment for two or three more interviewers.

Judge DANAHER. Mr. Chairman, will you please accept my apologies. I must go on the Bench. I had the cases postponed until ten-thirty.

Mr. WHITENER. We appreciate you being with us.

Judge DANAHER. And will you please accept my thanks once again for your courtesy to me. I appreciate it.

Mr. WHITENER. Thank you, Judge Danaher.

Now our next witness, please.

STATEMENT OF DAVID J. MCCARTHY, JR., CHAIRMAN, SUPERVISORY COMMITTEE OF THE DISTRICT OF COLUMBIA BAIL PROJECT

Mr. MCCARTHY. My name is David McCarthy. I have served as Director of the Project initially, and now as Chairman of the Supervisory Committee. And I join, as was previously noted, in the statement by Mr. Mollaur.

I should only like to state that I think the passage of this legislation would accomplish four ideal goals.

One, it would assist the judges of the District of Columbia to effectuate the proper functioning of the Bail Reform Act which was just passed.

And second, it would enable the District Judges and the Judges of the Court of General Sessions to make bail determinations more closely related to the particular facts of an individual's case, whether or not those determinations involve personal recognizance, release or other conditions under the Bail Reform Act, in such a way, I think, as to reduce fairly substantially the problem of overcrowding in the D.C. jail.

Third, I think this will enable the judges of the District of Columbia, because of the additional pre-trial freedom that will be involved, to more judiciously manage their judicial calendars, which have become, as you know, quite a problem in the past few years.

And finally, it will provide the judges with the facts which they have have so long had to operate without until the institution of the experimental project which is now coming to an end.

And I respectfully suggest the immediate enactment of this legislation.

And I thank the Committee for its time.

Mr. WHITENER. Thank you, Mr. McCarthy.

Of course, the Bail Reform Act, being applicable to the Court of General Sessions of the District of Columbia, presents to this court a problem of greater magnitude than any other jurisdiction would have under the Bail Reform Act.

And the requirement upon the judge to make certain findings of fact under the Bail Reform Act when he does allow bail or permit persons to go on their own recognizance would be a tremendous burden for the judge to have to carry here without some assistance, wouldn't it?

Mr. MCCARTHY. That is correct, sir. And the legislative history of the Bail Reform Act specifically indicates the necessity for this type of agency.

This brings to mind a question which you asked Judge Danaher which I should like to comment on in this regard.

Given the fact of the Bail Reform Act of 1966, to answer your question about the time element involved in the operation of the fact-finding entity, I would suggest, in view of the comment you just made, which is quite accurate, that the bail agency would in fact speed up the procedures in the District of Columbia courts, especially under the Bail Reform Act.

In fact, the bail project, as you know, has been operating for a couple of years in General Sessions Court.* And it has not to our knowledge served in any way to add to the backlog or contribute to delay of any sort in the court, despite the fact of its operation.

So I think we can safely say that the operation of this entity will certainly not cause delay, and will more than likely speed up the bail determinations, and at the same time assist those determinations in being equitable ones under the Bail Reform Act of 1966.

Mr. WHITENER. Thank you, sir.

And now our next witness.

* See "The District of Columbia Bail Project: An Illustration of Experimentation and a Brief Exchange", by David J. McCarthy, Jr. and Jeanne J. Wahl, *The Georgetown Law Journal*, Vol. 53, No. 3, Spring, 1965.

**STATEMENT OF DANIEL J. FREED, ESQ., ACTING DIRECTOR,
OFFICE OF CRIMINAL JUSTICE, U.S. DEPARTMENT OF JUSTICE**

Mr. FREED. Mr. Chairman, I am Daniel J. Freed, Acting Director of the Office of Criminal Justice. I appear today to indicate the strong support of the Department of Justice for legislation to create a D. C. Bail Agency.

I would like, if I may, to submit my prepared statement for the record.

Mr. WHITENER. All right. We will make it a part of the record. (Mr. Freed's prepared statement follows:)

**STATEMENT OF DANIEL J. FREED, ACTING DIRECTOR, OFFICE OF CRIMINAL
JUSTICE, ON H.R. 15065**

I appreciate the opportunity to appear today and express the strong support of the Department of Justice for legislation to create a District of Columbia Bail Agency. The experience of the privately-financed D.C. Bail Project, which is now expiring, has demonstrated the importance of such an Agency to the administration of the criminal laws in the nation's capital. This experience, in turn, has led to widespread efforts to make the Project a permanent part of the District of Columbia criminal court process. Endorsements have been given by the President in his March 9, 1966 crime message to Congress; by the Judicial Conference of the District of Columbia Circuit at its annual meeting two weeks ago; by the President's Commission on Crime in the District of Columbia; by the D.C. Board of Commissioners; by the United States Attorney; by the private bar and the local press.

We view the Bail Agency legislation as an important counterpart to S. 1357, the proposed Bail Reform Act, which passed the Senate last September and was approved by the House yesterday. The fact-gathering functions which the proposed Bail Agency would perform are intended to furnish the information which judicial officers will need to set conditions of release under the Bail Reform Act. The Reform Act requires bail decisions to be based on facts; the Agency Act will establish an organization to supply those facts.

The legislation which you are considering has a solid foundation in experience. The D.C. Bail Project has operated for over two years in the United States District Court, the D.C. Court of General Sessions and the U.S. Court of Appeals. The Project itself was patterned after the Vera Foundation's highly successful Manhattan Bail Project. In May 1964, at the National Conference on Bail and Criminal Justice, these two projects drew nationwide attention as models of procedure for providing facts about accused persons to bail-setting magistrates. Today, dozens of bail projects have been established in all parts of the country. They are premised on two important principles: first, that an accused person's release prior to trial should be based on a factual inquiry into his reliability, not his money; and second, that accused persons with community ties can often safely be released on nonfinancial conditions, instead of having their pretrial freedom conditioned on their ability to pay bondsmen.

It is important to emphasize the clear line which is drawn between the duty of the bail agency and the duty of the court. The Bail Agency will interview defendants, verify facts and submit reports and recommendations to the court. But the bail decision remains the exclusive province of the judiciary. Only a judicial officer may determine the conditions to be imposed on the release of the defendant.

The Bail Project has proven to be of great value to individuals, courts and the administration of justice generally in the District of Columbia. For the first time in this jurisdiction, it has enabled a large number of persons to be released on personal bond when, without a fact-finding project, they would either have remained in jail or been made to suffer financial hardship to raise a bondsman's fee. A recent report indicated that in its first two years, nearly 76% of the Project's recommendations for release without money bail were honored by judges in felony cases, and 93% in misdemeanor cases. This means that almost 2100 persons have been released because of information supplied by the Project. We understand that the 3% default rate in Bail Project cases is less than that in bail bond cases. We also understand that charges of serious criminal conduct during periods of pretrial release have shown a similarly low rate: Bail Project reports indicate that less than 2.5% of persons released on its recommendation have been

so charged, and that a majority of the charges disposed of to date have been dismissed.

The Project enables many persons to secure their liberty, retain their jobs, prepare their defense and maintain family relationships. Its cost savings to the community from eliminating unnecessary detention in the D.C. Jail run to many thousands of dollars. Our court system is able to make more meaningful decisions because they can be based on information not previously available. These results clearly demonstrate the desirability of establishing the Project as a permanent independent agency in the District of Columbia.

In urging enactment of H.R. 15005, the Department would like to suggest several changes to bring the language of the bill into line with the Bail Reform Act provisions of S. 1357, and to make its provisions effective in the full range of criminal cases which arise in the District of Columbia. First, we fully agree with the bill's imposition of criminal penalties on persons who flee after being released under its provisions. Section 11, however, appears unnecessary to achieve this purpose since the newly revised federal bail jumping statute, 18 U.S.C. § 3150, will be fully applicable to District of Columbia courts as soon as the Bail Reform Act becomes effective.

Second, we fully agree with H.R. 15005's effort to give credit against sentence for all time a defendant spent in custody prior to commencing service of that sentence. But such a provision, applicable to D.C., is already contained in the Bail Reform Act passed yesterday by the House. To the extent that Section 10 of H.R. 15005 differs from S. 1357, we much prefer the text of the latter.

Finally, we urge the deletion of that language in H.R. 15005 which would preclude the Bail Agency from assisting courts in intoxication cases and traffic violations. This limitation would mean that although the Agency could furnish information to help release persons charged in even the most serious cases, it could do nothing to avoid jail for persons charged with an important group of lesser crimes. Offenses such as drunk or reckless driving, driving without a permit, driving after a permit has been revoked, or leaving the scene of an accident often give rise to relatively long periods of detention for want of bail. During 1965, D.C. Jail records indicate that 271 defendants were detained on those charges. A sample of approximately 5% of those defendants averaged 24 days in detention. The jail lists for the first three months of 1966 indicate that some traffic detainees spend up to four months in detention. Indeed, detention in traffic cases is more widespread and longer in duration than for any D.C. Branch offense except intoxication cases. We therefore urge the elimination of Section 3(c)'s limitation.

In conclusion, we believe that H.R. 15005 represents a highly desirable and much needed addition to the bail system of the District of Columbia. Its enactment appears to be a matter of considerable urgency because the Bail Project is going out of business at the end of this month. If there is any way in which the Department of Justice can assist your Committee in its further consideration of this important bill, we would be happy to be of service.

Mr. FREED. Thank you, sir.

I believe that Judge Danaher and the witnesses who have preceded me have covered the need for this legislation abundantly. And I think it is fair to say that the great advances which have been made in the District of Columbia over the past several years in the bail system might never have taken place were it not for Judge Danaher. And I would like to pay honor to his work today.

I would in the course of submitting this statement like to make just a few comments about the provisions of the bill.

The Department of Justice completely endorses Judge Danaher's suggestions with respect to amending the Section 3(c) of the bill to remove the limitation on Agency assistance to judges in intoxication and traffic violations. And I believe the committee will find at pages 161 through 168 of the hearings conducted by the Senate District Committee an explanatory statement, which we prepared in conjunction with the bail project representatives and local law enforcement agencies, designed to show what the addition of intoxication and traffic cases would mean in terms of the slight extra burden on the Agency.

There are actually only about five hundred cases a year in which persons charged with either of these offenses would be in great need of the Agency's services and would have been excluded by H.R. 15065 before Judge Danaher's amendment. In other words, there are only five hundred people who are detained each year for want of bail in connection with such offenses. Judge Danaher's amendment would secure the services of the Agency to assist in bail determination with regard to those people.

With respect to the Bail Reform Act, which the House passed yesterday, I think it is fair to say that Sections 10 and 11 of the bill which are pending before this committee today are probably not necessary.

Both the bail-jumping provisions of the Bail Reform Act and the provision for credit against sentence in that bill passed yesterday are fully applicable to all courts and all offenses in the District of Columbia.

The provisions of Section 11 of the bill before your committee today are almost identical to the Bail Reform Act. It would be virtually a re-enactment to include bail-jumping provisions in this bill.

With respect to the credit against sentence provisions, I believe that the bill pending before this committee today is inconsistent with the provisions which as amended by the House Judiciary Committee last month were adopted by the House yesterday. And I think from the point of view of the Department of Justice we would see no need to have any further enactment with respect to credit against sentence.

We believe that all credit should be given administratively for all time spent in detention prior to the imposition of sentence in the District of Columbia under the Bail Reform Act.

Mr. WHITENER. Now, that is the point I raised with Judge Danaher. There is a difference in the language in this bill and that contained in the Bail Reform Act. In the Bail Reform Act the Attorney General gives the credit for the period of incarceration. In this bill, the trial judge does that. So it is not the same provision at all.

Mr. FREED. It is not, Mr. Chairman. And I believe that the reason why the House Judiciary Committee made the change from having the judge give credit against sentence to having the Attorney General give credit against sentence was for the purpose of making it an administrative determination, so that everyone would automatically receive credit for time spent in custody.

This was designed to make the Attorney General give that credit by statutory directive rather than leave it as a matter of judicial discretion. The Attorney General has responsibility for custody of all persons detained in the District of Columbia. The provisions of the Bail Reform Act make it clear that that Act applies to anything done by a judge of the District of Columbia Court of General Sessions, and that the term "offense" include violation of any Act of Congress.

There are several other differences in that credit provision, if the committee would want to go into them. But all the differences would be removed if the Act passed yesterday was simply left intact with respect to the District of Columbia.

Mr. WHITENER. You feel that if we left sections 10 and 11 in this present bill that there would be some conflict between the two Acts, that is, the Bail Reform Act and this Bail Agency Act in the District of Columbia which would give trouble to the courts?

Mr. FREED. With respect to Section II, I believe there would simply be a duplication. With respect to section 10, there would be an inconsistency between the two statutes. Federal prisoners in the District of Columbia would be treated differently, and would be given less credit than Federal prisoners in any other district in the United States. And I believe for that reason that it might create some serious problems.

Mr. WHITENER. Have you discussed this with Judge Danaher?

Mr. FREED. I have not had an opportunity to do that, sir.

Mr. WHITENER. You know, as he pointed out here this morning, he and the other judges of the District of Columbia have met on this bill, and have all approved it as written. I think if you wouldn't mind doing so it would be well for you to mention your contentions to judge Danaher and let him, and the other judges, get some communication in writing as soon as they can. It may be that they would agree with you. If they have a strong feeling to the contrary, then the committee would have to referee between the Justice Department and the judges, I suppose.

Mr. FREED. I would be happy to take this up with Judge Danaher, and furnish a communication to the committee.

Mr. WHITENER. I am sorry that he had to leave because of his judicial duties, otherwise we could ask him here today.

Are there any other suggestions you have, Mr. Freed?

Mr. FREED. I don't believe there are any others that the committee need to take up its time on today.

But I would like to volunteer on behalf of the Department of Justice to assist this committee in any way in granting early approval to a bill to create a bail agency in the District of Columbia.

Mr. WHITENER. Do you as a spokesman for the Department of Justice agree that the Juvenile Court is properly omitted from this legislation?

Mr. FREED. We have not made any special inquiry into the need of the Juvenile Court to be included in this bill. However, I think in terms of background, the Juvenile Court was never included either in the Bail Reform Act or in this bill because the Juvenile Court has never had a bail system as such. Money bail is never set. And it is my understanding that the staff of the Juvenile Court make an individual determination in the case of each juvenile to determine whether and on what conditions that juvenile can be released into the custody of his parents or into another institution. It has not been brought to our attention that the Juvenile Court would need the services of a bail agency.

It would be my personal belief that if the services of the Juvenile Court are inadequate to conduct the kind of background investigation needed to set proper terms and conditions of release, that deficiency should be made up by augmenting the staff of the Juvenile Court rather than imposing an additional burden on the bail agency.

Mr. WHITENER. Do you mind taking that up with your colleagues in Justice and let us have some communication with them?

Mr. FREED. I believe that Mr. Mollur has some additional remarks, Mr. Chairman. But if the Department of Justice has any additional views on the Juvenile Court, I will be happy to furnish them promptly.

Mr. WHITENER. All right.

Mr. MOLLEUR. Mr. Chairman, in view of that question, I would just like to point out what I think is pertinent here, because it was asked twice this morning. Last fall I had an extensive meeting with Judge Morris Miller of the Juvenile Court. And at that time we discussed the necessity and the need for extending the project's activities into the Juvenile Court. And the Judge told me that—outlined these special procedures which the Juvenile Court had for recognizance release of juvenile offenders, and some of the adult persons that come before that court. And therefore he indicated to me that he did not feel that there was any special need for the project to operate in that court.

Mr. WHITENER. Thank you, Mr. Molleur.

Now, Mr. David Bress, United States Attorney for the District of Columbia.

We have kept you quite longer than we should have.

**STATEMENT OF DAVID BRESS, ESQ., U.S. ATTORNEY FOR THE
DISTRICT OF COLUMBIA**

Mr. BRESS. In view of what has been said, I have very little to add. I think the bail agency is desirable, even without the Bail Reform Act. With the Bail Reform Act I think the bail agency bill is indispensable.

With respect to Sections 10 and 11, it is my opinion that it would be undesirable to add Section 10, leave 10 in this bill, in view of the differences between Section 10 and its parallel provision in the Bail Reform Act. I think that there is an inconsistency between the two. Under Section 10 a sentencing judge is required to give credit for pre-trial detention. And if he does that, under the Bail Reform Act it may well be that the Attorney General will also be called upon to give credit. I think that one or the other ought to do it.

Since we now have the Bail Reform Act passed, I think we ought to leave that subject alone and let it be handled administratively by the Attorney General. It seems to me in principle that it will be fairer if it is handled administratively, and the judge would then be imposing the sentence without regard to pre-trial detention.

I am satisfied that there is nothing additional that I need say in support of this bill.

Mr. FUQUA. Mr. Bress, is it your opinion that both Sections 10 and 11 in toto should be deleted in this bill we are considering now, 15065?

Mr. BRESS. Yes, sir, I think so, in view of its inclusion in the Bail Reform Act.

Mr. FUQUA. And that is because this is covered in the Bail Reform Act?

Mr. BRESS. Yes, sir.

Mr. WHITENER. Mr. Bress, of course you know that in the House Judiciary Committee that the problems of the incarceration credit provision—and it is much broader in Section 10 of this bill, because it not only applies to criminal offenses, but it applies to criminal acts, which, as we understand it, mean that in the case of a criminal intent, or I suppose quasicriminal actions, that this credit shall prevail as well. I think maybe this is desirable in the District of Columbia and elsewhere, that it has to be done. But we will take into account your recommendations and those of Mr. Freed.

And I assume, Professor, you and Mr. McCarthy and Mr. Mollur have no adverse comment to make about that recommendation, do you?

MR. GREENEALGH: Well, since Dean McCarthy outranks me I would have to yield to him.

I am sure that we can work it out.

MR. MCCARTHY: We commented in our statement about the possible effects of this other Bail Reform Act. I think it is fair to say that when this was drafted by Judge Danaher of course the Bail Reform Act had not yet, as you know, finally come out of the House Judiciary Committee. And I think that he was attempting to reflect a proposal which has often been made in connection with bail releases. But I do think, as Mr. Freed and Mr. Bress have indicated, that in view of the passage yesterday, and the obvious imminent enactment into law of the Bail Reform Act of 1966, section 10 with its various provisions is possibly inconsistent with the Bail Reform Act. Insofar as 11 is concerned, I believe it is virtually the same language as is in the Bail Reform Act. And if it serves any purpose by being in this Act it would merely be to emphasize that this Act did not intend to conflict with the Bail Reform Act. But it would serve no other function.

MR. WHITNER: At the time this bill, H.R. 15065 was being prepared, the Judiciary Committee was dealing with S. 1357, which at that time had in addition to this time credit some sort of payment formula based on the Minimum Wage Act.

I want to make the record clear that Judge Danaher agreed with me and a majority of the House Judiciary Committee that that was a cumbersome and unworkable proposition. So not knowing how the committee would amend that section—but I suppose operating under the suggestion from me as a member of the Judiciary Committee—I thought that we would take out a part of it, a part of that section. He and his judicial colleagues, in drafting this bill, were almost faced with the necessity of having a sensible provision about time credit on credit for the time incarcerated prior to trial. And I believe if you gentlemen will talk to Judge Danaher in the light of what has happened to S. 1357 since he and I were having our preliminary discussions about the content of this bill, you may find that you are not in disagreement.

We will include in the record at this point the letter of Mr. Bress to Chairman McMillan, dated June 2, 1966.

(The letter referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
Office of the U.S. Attorney,
Washington, D.C., June 2, 1966.

Hon. JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference your communication of May 20, 1966, pertaining to H.R. 15065, a bill to "establish a fact-reporting bail agency in courts of the District of Columbia, and for other purposes" and your invitation to address my recommendations and report to the Committee, this is to advise that I am in full accord with the basic principle embodied in the bill. In fact, on Wednesday, May 25, 1966 I again voted affirmatively in the Judicial Conference of the District of Columbia in favor of establishing a fact-reporting bail agency to continue the work of the District of Columbia Bail Project.

With respect to the specific details, the bill is presently being studied by my office and the Department of Justice. I regret to inform you that neither the Department nor I have arrived at a final position respecting all aspects of the bill. However, as a preliminary comment, I note that Section 11 (2) and (3) of the bill has the effect of rendering misdemeanor violations of Section 4 prosecutable within the sole jurisdiction of the United States Attorney, notwithstanding some of the violations will pertain to substantive crimes within the prosecuting jurisdiction of the Corporation Counsel, as provided for in Sections 3 (b) and 11 (c) of the bill. It would perhaps be more consistent with the administration of justice already established by Congress if Section 11 (2) and (3) would be so worded as to cause the Corporation Counsel to retain jurisdiction of those matters resulting from prosecutions instituted by him, as delineated in 22 D.C.C. § 101, in which "... the maximum punishment is a fine only, or imprisonment not exceeding one year..." See also *District of Columbia v. Moody, et al.*, 118 U.S. App. D.C. 67, 304 F. 2d 943 (1962); *United States v. Strothers*, 97 U.S. App. D.C. 65, 228 F. 2d 34 (1955).

I shall continue our study of the bill and coordination with the Department of Justice so that the Committee might have benefit of our views at the earliest possible date.

Thank you for bringing this important matter to my attention.

Sincerely yours,

DAVID G. BRESS, U.S. Attorney.

Mr. WHITENER. Mr. Reporter, we have a letter here from Chief Judge Matthew McGuire, of the U. S. District Court for the District of Columbia, this letter being dated May 23, 1966. Also, we have a letter dated May 27, 1966, from Chief Judge John Lewis Smith, Jr., of the District of Columbia Court of General Sessions. We will make these letters a part of the record. These letters support the enactment of H. R. 15065.

(The letters referred to follow.)

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,
Washington, D.C., May 23, 1966.

Hon. JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
U.S. House of Representatives,
Washington, D.C.

MY DEAR CONGRESSMAN: This will acknowledge receipt of your letter of May 20, 1966 enclosing therewith a copy of H. R. 15065 "To establish a fact-reporting bail agency in courts of the District of Columbia, and for other purposes" which has been referred to your Committee.

In reply, you are advised that I have examined the Bill, having become familiar with its genesis, and although it is a much different Bill from that originally proposed some time ago, the object is the same and I think it worthwhile, and I have no hesitancy in saying so.

Sincerely yours,

MATTHEW F. McGUIRE, Chief Judge.

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS,
Washington, D.C., May 27, 1966.

Hon. JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
House of Representatives, Washington, D.C.

DEAR MR. McMILLAN: Receipt is acknowledged of your letter of May 20th requesting recommendations concerning H.R. 15065, "To establish a fact-reporting bail agency in courts of the District of Columbia, and for other purposes". I am in favor of the passage of the proposed bill, but believe that it should also apply to the traffic and D.C. branches of the court.

With kind personal regards and best wishes, I am,

Sincerely,

JOHN LEWIS SMITH, JR.

Mr. WHITENER. Now we will hear from Mr. Kneipp. We have a statement or report from the Commissioners, which will be made a part of the record at this point,
(The letter referred to follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
Washington, June 7, 1966.

HON. JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia,
U.S. House of Representatives, Washington, D.C.

DEAR MR. McMILLAN: The Commissioners of the District of Columbia have for report H.R. 15085, 89th Congress, a bill "To establish a fact-reporting bail agency in courts of the District of Columbia, and for other purposes."

The bill creates an independent bail agency to secure data and provide for any court or judicial officer in the District of Columbia reports containing verified information concerning any individual with respect to whom a bail determination is to be made. According to section 3 of the bill, the terms "judicial officer" and "bail determination" have the following respective meanings:

"The term 'judicial officer' means, unless otherwise indicated, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, the United States District Court for the District of Columbia, and the District of Columbia Court of General Sessions, or any judge of any of said courts, a United States Commissioner and, when applicable, the Supreme Court of the United States or a Justice thereof."

"The term 'bail determination' means any order by any judicial officer respecting the amount of bail, or terms and conditions of release of any person arrested in the District of Columbia for any offense except a charge of intoxication or traffic violation, and shall include a like order respecting any person deemed to be a material witness in any criminal proceeding in the District of Columbia."

The agency established by the bill is required, "except when impracticable", to interview persons detained pursuant to law or charged with offenses in the District of Columbia, who are to appear before a U.S. Commissioner or whose cases arose in or are before any court of the District of Columbia. The agency is to independently verify information obtained from such interview, secure the person's prior criminal record from the Metropolitan Police Department, and prepare a written report of such information for submission to the appropriate judicial officer. The agency is authorized to present such report to the appropriate judicial officer with or without a recommendation for release on personal recognizance, personal bond, or other non-financial condition, but without any other recommendation. It must also provide copies of such report to the United States Attorney, to the Corporation Counsel if pertinent, and to counsel for the person who is the subject of the report. The report must at least include information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, if any.

The information contained in the agency's files, presented in its report, or divulged during the course of any hearing, is to be used only for the purpose of a bail determination and is to be otherwise confidential. It cannot be made subject to court process for use in any other proceeding. The agency is to function under the authority and be responsible to a five-member executive committee consisting of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, and a fifth member to be selected by the four chief judges.

The bill provides for the appointment of a Director of the agency, selected by the executive committee, whose compensation may not exceed that of a GS-15. The bill also provides, in section 7, for the employment of agency personnel. In this regard, the language of section 7 appears to be somewhat involved, and the Commissioners believe it desirable, from the standpoint of flexibility and clarity of expression, to amend section 7 to read as follows:

"Sec. 7. Subject to such policies as the executive committee may establish, the Director shall employ and compensate such personnel as may be required to carry out the functions of the Agency. Such compensation shall be at rates provided for similar work under the Classification Act of 1949, as amended."

Section 8 of the bill requires the submission to the Congress and to the Administrative Office of the United States Courts of a report on the agency's activities.

Section 9 authorizes appropriation of such sums as may be required for the operation of the agency, to be disbursed by the Administrative Office of the United States Courts.

Section 10 provides that persons convicted of offenses in the District of Columbia Court of General Sessions or in the United States District Court for the District of Columbia shall be given credit toward the service of such sentence as may be imposed for any days spent in custody while awaiting trial, or prior to the imposition of sentence, if it should appear that such person was so incarcerated solely because of his financial inability to provide bail. The Commissioners believe it only equitable that a person who has been sentenced to imprisonment after having been held in custody in connection with an offense should receive credit toward the service of such sentence for the days spent in custody while awaiting trial or prior to the imposition of the sentence.

Section 11 provides penalties for persons who willfully fail to appear before a judicial officer as required by the terms of a bail determination. Section 12 provides for the effective dates of the various provisions of the bill.

One feature of the bill is of considerable concern to the Commissioners. They note that the definition of "bail determination" has the effect of excluding from the coverage of the bill persons charged with the offense of intoxication or with a traffic violation. The Commissioners believe that anyone who is held in custody on a charge of intoxication or for a traffic violation, by reason of his being unable to post bail, should be subject to the provisions of the bill in like manner as persons charged with other, and perhaps more serious, offenses. Accordingly, the Commissioners recommend the deletion of the phrase "except a charge of intoxication or traffic violation" where such phrase occurs in lines 21 and 22 on page 2 of the bill.

The Commissioners generally favor the principle of the bill in the belief that, when determining whether an accused person or material witness should be enlarged on bail, the court or judicial officer should have available full information respecting such a person. Accordingly, the Commissioners favor the enactment of the bill, preferably with the amendments they have suggested, and particularly the amendment recommended in the preceding paragraph.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

STATEMENT OF ROBERT F. KNEIPP, ESQ., ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA

Mr. KNEIPP. Mr. Chairman; as the Commissioners have indicated in this report to the Committee of June 7, 1966 they favor the enactment of the bill.

They did, however, propose two amendments. One of them to Section 7 to make the personnel features more flexible. And this was backed by the Bureau of the Budget. The Bureau of the Budget feels that Section 7 of the bill was a little too inflexible in its language, and they would prefer the amendment set forth in the Commissioners' Report.

Mr. WHITENER. What page is that?

Mr. KNEIPP. It is on page three of the Commissioners' Report, which offers an amendment of Section 7 of the bill appearing on page six.

Mr. WHITENER. All right, sir.

Mr. KNEIPP. The other amendment the Commissioners have proposed is that in part offered by Judge Danaher, striking in lines 21 and 22 on page 2 of the bill the phrase, "except in charges of intoxication and traffic violations."

The Commissioners saw no reason why persons held in custody for failure to make bail should not be subject to this bail determination in like manner as persons charged with other offenses.

Mr. WHITENER. What you are saying is that the suggested amendment of Judge Danaher is in line with the thinking of the Commissioners?

Mr. KNEIPP. The first part of it, sir. The second part, the addition of a sentence in line eight on page three, which Judge Danaher offered the committee:

Such interview, but only when requested by a judicial officer, shall also be undertaken with respect to any person charged with intoxication or a traffic violation.

I feel that that would be agreeable to the Commissioners. It does lend some control over this vast amount of business that the District has with respect to intoxication and traffic violations. As Mr. Freed has said, the additional number of cases would be about 500, as estimated. And the additional cost based on the present budget of the bail project agency, or bail agency project, and the number of cases it handles, would come to around \$10,500 additional over and above the cost of the bill without such an amendment.

Other than that point, sir, I have nothing further to say.

Mr. WHITENER. Mr. Kneipp, I might tell you that in the discussion of the bill before it was finally drafted, it was suggested that to require this bail agency to make an inquiry into every public drunkenness case or of speeding or minor traffic case, would bring about such a skyrocketing cost of operation of the bail agency that we could not very well defend it on the floor. Now, I can see where the term "traffic violation" may be too broad, because there are some rather serious offenses that can be called traffic violations. And I think that with Judge Danaher's suggestion you can avoid that matter of having to have the bail agency function every time someone is locked up for some little petty public drunkenness case or running a red light or speeding or that sort of thing. So perhaps his suggestion is best. The Judge, if he feels that this is a case of such seriousness that it requires information upon which he can form a judgment as to the bail procedure that he will follow, that that would protect the taxpayer from an unnecessary expenditure of money.

Mr. KNEIPP. Mr. Chairman, most of these cases of intoxication or traffic violation are of a very minor nature, and they are disposed of very quickly. It would only be an unusual kind of case where the judge would want to hold the person to bail that this would come into operation. And it is that kind of case that we estimate is in the order of perhaps five hundred a year or so.

Mr. WHITENER. You are thinking now, I suppose, about cases as hit-and-run driving, or negligent homicide?

Mr. KNEIPP. Or perhaps speeding, and things of that sort—traffic violations other than those prohibited by statute, violations of regulations adopted by the Commissioners. The things you mentioned, hit-and-run, personal injury, reckless driving, driving while drunk, this kind of thing is prohibited by statute. And the individuals would probably be held on many of those. And at that point the judge would ask for this bail determination. But the ordinary run-of-the-mill speeding and drunk cases, no.

Mr. WHITENER. You are not suggesting that in each arrest, regardless of the offense, that there should be this bail fact-finding procedure?

Mr. KNEIPP. No, sir. Only those more serious cases in which the judge feels the person should be held to bail and then ask for this bail determination.

Mr. WHITENER. Gentlemen, we appreciate your coming here so much. We know that we have the legal lights of the Capital City with us this morning. And we appreciate the good work that you have done.

And I want to take this opportunity to say in public, Mr. Bress, that some of us have been very greatly impressed with the work that you and your Department have been doing. A case has been brought to my attention by a constituent which reflects credit on the work of your office. And we appreciate the good work that you are doing in law enforcement.

And we always appreciate what Mr. Kneipp does to help us in the consideration of these technical legal bills.

And you gentlemen from the law schools and the Justice Department have been very helpful to us today.

I think if we could, as soon as possible, though, get this information that we have talked about informally here, that it would be helpful to us, because I am personally very anxious, and so is Mr. Nelsen, to move this bill as fast as we can.

(Subsequently, the following recommendations were received by the Committee:)

DISTRICT OF COLUMBIA BAIL PROJECT,
Washington, June 8, 1966.

HON. BASIL L. WHITENER,
Committee for the District of Columbia,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WHITENER: Pursuant to a conversation of June 8, 1966, between Judge A. Danaher and Mr. James T. Clark, we are sending to you our comments concerning questions raised by you and Congressman Fuqua during the hearings on H.R. 15085 and H.R. 15242. In addition, this letter contains a restatement of the other amendments presented by Judge Danaher, the Department of Justice and representatives of the D. C. Bail Project who testified at the hearings.

We are authorized to state that Judge John A. Danaher has discussed each of these amendments with us and has no objection to any of them. Your office was notified by Judge Danaher that pursuant to your instructions we have met and agreed upon the suggested changes listed herein.

We thus unanimously propose that the following changes be made in H.R. 15085 and H.R. 15242, and that these changes as agreed to by us and Judge Danaher shall be in lieu of the suggested changes contained in our respective statements included in the hearing record yesterday morning.

Page 2, line 21 and 22

Delete the phrase starting on line 21 "except a charge of intoxication or traffic violation," and

Page 5, line 8

Delete the phrase "any court in the District of Columbia" and insert in lieu thereof:

"any court named in Sec. 3(a) of this Act. Such interview when requested by a judicial officer shall also be undertaken with respect to any person charged with intoxication or traffic violation."

Page 4, line 8

Strike lines 3 through 7 and insert in lieu thereof the following:

"(b) The agency when requested by an appellate court or a judge or justice thereof, or by any other judicial officer, shall furnish a report as provided in section 4(a) respecting any person whose case is pending before any such appellate court or judicial officer or in whose behalf an application for a bail determination shall have been submitted."

Commencing on page 7 at line 18 and continuing on page 8 through line 25, strike out Sec. 10(a), (b) and Sec. 11.

In lieu thereof insert the following:

"Sec. 10. The Bail Reform Act of 1966 shall apply to any person detained pursuant to law or charged with an offense in the District of Columbia."

Renumber Sec. 12 to read "Sec. 11."

Very truly yours,

DANIEL J. FREED,
Acting Director of the Office of Criminal Justice,
U.S. Department of Justice.

DAVID J. MCCARTHY, Jr.,
Assistant Dean, Associate Professor of Law,
Georgetown University Law Center,
Chairman, District of Columbia Bail Project.

RICHARD R. MOLLEUR,
Director, District of Columbia Bail Project.

COMMENTS

At a meeting between Judge Danaher and Messrs. Freed, McCarthy, and Molleur Wednesday afternoon, June 8, 1966, the suggested amendments listed hereinbelow for H. R. 15065 were agreed upon as representing the only necessary changes to the bill to insure that the bail agency legislation is in full agreement with the Bail Reform Act of 1966, S. 1357.

The suggested deletion on lines 21 and 22, page 2, Sec. 3(c) with the suggested amendment to be inserted in line 8, page 3, Sec. 4(a), is designed to insure that the judicial officer involved in a particular bail determination relating to an intoxication or traffic violation could request that the defendant be interviewed by the bail agency staff. The amendments will eliminate the need for the agency to interview intoxication and traffic defendants whose cases will be disposed of at the first hearing in court, but will permit the agency to assist judicial officers upon request in bail determinations which might otherwise result in detention.

This suggested amendment * * * is designed to permit judicial officers, in addition to appellate court judges and justices, to request the agency to furnish a report in an individual case. It was felt that this particular delineation was necessary in light of the Bail Reform Act. While appellate judges certainly need the authority to refer, there may also arise occasions where a judicial officer other than an appellate judge will be required to review a bail determination in light of different circumstances in order to impose conditions for release different from those set at the initial bail determination.

With respect to the suggested amendment on pages 7 and 8 regarding the striking of Sec. 10 (a), (b) and Sec. 11, it should be noted that after reviewing the matter fully with Judge Danaher, it was agreed that these provisions need not be set forth in full in H. R. 15065 because the credit against sentencing and bail jumping provisions in the Bail Reform Act of 1966 would be controlling in the District of Columbia. Therefore, as indicated at the hearing, present Sections 10 (a), (b) and 11 were considered unnecessary in H. R. 15065 and should be deleted to avoid any conflict or confusion. However, it was agreed that the new Sec. 10 herein suggested would make clear Congress' intent that the provisions of the Bail Reform Act were fully applicable to any person detained pursuant to law or charged with an offense in the District of Columbia. H. R. 15065 as thus amended will comport with the provisions of the Bail Reform Act of 1966 as passed by the House of Representatives, June 7, 1966.

These suggestions and comments are, of course, equally applicable to H. R. 15242.

If there is nothing further, we have another little matter to proceed with.

(Whereupon, at 10:50 o'clock a.m., the Subcommittee proceeded to the consideration of other matters.)

APPENDIX

BAIL REFORM ACT OF 1966

Public Law 89-465

(89th Congress, S. 1357)

June 22, 1966

AN ACT

To revise existing bail practices in courts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bail Reform Act of 1966".

Sec. 2. The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

Sec. 3. (a) Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

"§ 3146. Release in noncapital cases prior to trial

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

"(1) place the person in the custody of a designated person or organization agreeing to supervise him;

"(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

"(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

"(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

"(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

"(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed

them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

"(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided, That*, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

"(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

"§ 3147. Appeal from conditions of release

"(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

"(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3146(a). The appeal shall be determined promptly.

"§ 3148. Release in capital cases or after conviction

"A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided, That* other rights to judicial review of conditions of release or orders of detention shall not be affected.

"§ 3149. Release of material witnesses

"If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"§ 3150. Penalties for failure to appear

"Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

"§ 3151. Contempt

"Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

"§ 3152. Definitions

"As used in sections 3146-3150 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the District of Columbia Court of General Sessions; and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3146. Release in noncapital cases prior to trial.

"3147. Appeal from conditions of release.

"3148. Release in capital cases or after conviction.

"3149. Release of material witnesses.

"3150. Penalties for failure to appear.

"3151. Contempt.

"3152. Definitions."

Sec. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows:

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

Sec. 5. (a) The first sentence of section 3041 of title 18, United States Code, is amended by striking out "or bailed" and inserting in lieu thereof "or released as provided in chapter 207 of this title".

(b) Section 3141 of such title is amended by striking out all that follows "offenders," and inserting in lieu thereof the following: "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death."

(c) Section 3142 of such title is amended by striking out "and admitted to bail" and inserting in lieu thereof "who is released on the execution of an appearance bail bond with one or more sureties".

(d) Section 3143 of such title is amended by striking out "admitted to bail" and inserting in lieu thereof "released on the execution of an appearance bail bond with one or more sureties".

(e)(1) The heading to chapter 207 of such title is amended by striking out "BAIL" and inserting in lieu thereof "RELEASE".

(2) The table of contents to part II of such title is amended by striking out "207. Bail" and inserting in lieu thereof "207. Release".

Sec. 6. This Act shall take effect ninety days after the date on which it is enacted: *Provided*, That the provisions of section 4 shall be applicable only to sentences imposed on or after the effective date.

Approved June 22, 1966.

LEGISLATIVE HISTORY

House Report No. 1541 (Committee on the Judiciary).

Senate Report No. 750 (Committee on the Judiciary).

Congressional Record:

Volume 111 (1965): September 21, considered and passed Senate.

Volume 112 (1966):

June 7, considered and passed House, amended.

June 9, Senate concurred in House amendments.

89TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 1541

BAIL REFORM ACT OF 1966

MAY 18, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CELLER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1357]

The Committee on the Judiciary, to whom was referred the bill (S. 1357) to revise existing bail practices in courts of the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Amendment No. 1

On page 1, line 4, strike "1965" and insert "1966".

Amendment No. 2

On page 1, line 5, strike the language "FINDINGS AND PURPOSE".

On page 3, lines 4 and 5, strike "AMENDMENTS TO CHAPTER 207 OF TITLE 18, UNITED STATES CODE".

On page 10, line 8, strike "CREDIT FOR TIME SPENT IN CUSTODY".

On page 11, line 14, strike "TECHNICAL AMENDMENTS".

Amendment No. 3

On page 1, line 6, strike all the language down through page 2, and through line 3 on page 3, and insert in lieu thereof the following:

SEC. 2. The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

Amendment No. 4

On page 4, strike the language on lines 1 and 2.

Amendment No. 5

On page 4, strike the language on lines 5 and 6, and reword condition No. (7) to read as follows:

impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

and renumber the conditions so as to read:

Strike "(3)" and insert "(2)".

Strike "(4)".

Strike "(5)" insert "(3)".

Strike "(6)" and insert "(4)".

Strike "(7)" and insert "(5)".

Amendment No. 6

On page 5, lines 18 through 23, strike the language after "imposed." down through the word "condition" and insert in lieu thereof the following:

A person who is ordered released on a condition which requires that the return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement.

Amendment No. 7

On page 6, lines 9 through 11, strike the language beginning with "condition number" and insert in lieu thereof the following:

a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

Amendment No. 8

On page 6, line 22, strike the language and insert in lieu thereof the following:

a condition requiring him to return to custody after specified hours is continued, after

Amendment No. 9

On page 7, line 21, strike the word "waiting" and insert the word "awaiting".

Amendment No. 10

On page 8, line 21, strike the language: "§ 3150. Violation of conditions of release" and insert in lieu thereof:

"§ 3150. Penalties for failure to appear.

Amendment No. 11

On page 9, line 19, after the word "person", insert the words "or court".

Amendment No. 12

On page 9, line 21, insert between the words "to" and "release" the words "bail or otherwise" and strike the word "for" and insert in lieu thereof the word "before".

Amendment No. 13

On page 10, following line 7, delete "3150. Violation of conditions of release." and insert in lieu thereof:

"3150. Penalties for failure to appear.

Amendment No. 14

On page 10, lines 14 and 15, delete the words "Any such person shall be given" and insert in lieu thereof the words "The Attorney General shall give any such person".

Amendment No. 15

On page 10, line 16, after the word "offense", insert the words "or acts".

Amendment No. 16

On page 10, line 17, insert a period after the word "imposed" and delete the remainder of the section through the word "judgment." on page 11, line 8.

Amendment No. 17.

On page 12, after line 14, insert a new section 6, to read as follows:

SEC. 6. This Act shall take effect 90 days after the date on which it is enacted: *Provided*, That the provisions of section 4 shall be applicable only to sentences imposed on or after the effective date.

PURPOSE OF THE AMENDMENTS

Amendment No. 1 is a technical amendment to correct the citation of the act so as to be current.

Amendment No. 2 is a technical drafting amendment striking headings as contained in the Senate version. Since the bill contains amendments to title 18, United States Code, which have been codified and enacted into positive law, there is no need for these headings.

Amendment No. 3 deletes the findings as contained in the bill but retains as section 2 of the amended version the purpose of the legislation. It is the opinion of your committee that findings are not necessary but in order to emphasize the legislative intent and to afford adequate guidelines for the administration of the bill, the purpose of the act should be retained.

Amendment No. 4 eliminates as one of the conditions upon which a defendant may be released the placement of the individual under the supervision of a probation officer. Since the probation officer is an arm of the court, who, under normal circumstances, only enters into a case after conviction, your committee is of the opinion that in order to avoid any possibility that any constitutional right of the defendant be invaded this provision should be deleted. It is obvious that if a probation officer assumes the responsibility for a defendant where a case has not yet been disposed of, he would necessarily make inquiry concerning the defendant. In view of condition No. 1, which authorizes the placing of a person in custody of a designated agency or individual, there does not appear to be any need for the use of a probation officer. Moreover, the use of a probation officer would involve additional duties and might require additional personnel.

Amendment No. 5 eliminates the condition No. 4 requiring the return to custody after daylight hours under designated conditions.

However, it does permit under condition No. 7 the imposition of any other condition deemed reasonably necessary to assure the appearance as required including a condition requiring that the person return to custody after specified hours. In the opinion of your committee, the phrase "daylight hours" is too general and vague. If the purpose is to release a man from custody so that he may be employed, there is no certainty that his employment would be limited to daytime. Therefore, in order to provide the judicial officer or court fixing the condition of release with greater flexibility and discretion the use of the term "specified hours" is afforded.

The remainder of this amendment is technical so as to conform the numbering of the conditions in accordance with amendments Nos. 4 and 5.

Amendment No. 6 is to conform the language of section 3(d) with the language inserted by amendment No. 5.

Amendment No. 7: This amendment to section 3(e) is to conform the language contained therein as provided in amendment No. 5.

Amendment No. 8 is also technical so as to conform the language of section 3(g) with the language provided by amendment No. 5.

Amendment No. 9: The purpose of this amendment is merely grammatical.

Amendment No. 10: This is a technical amendment rewording the title of the proposed new section 3150 of title 18, United States Code. In the opinion of your committee, the language, "Penalties for failure to appear," is a more precise wording of the substantive provisions of the proposed section than "Violations of conditions of release." This amendment makes no substantive change in the provision itself.

Amendment No. 11 adds to the definition of the term "judicial officer" the phrase "or court". Since the act includes a judge of the District of Columbia court of general sessions in the definition of "judicial officer", it is necessary to add the words "or court" because those judges sit as committing magistrates for felonies to be tried in the U.S. District Court for the District of Columbia.

Amendment No. 12 is a technical amendment to conform the language to include not only bail but to otherwise release a person before trial instead of limiting the language merely to the release of a person for trial. The amendment makes no substantive change.

Amendment No. 13 is a technical amendment to conform with the language inserted by amendment No. 10 so that the chapter analysis will be in conformity with the heading of the new section 3150 of title 18, United States Code.

Amendment No. 14 directs that the Attorney General give a person credit for time served in custody prior to his conviction. Upon imposition of sentence, the convicted defendant is turned over to the custody of the Attorney General and, therefore, from the administrative standpoint the Attorney General should be the individual who would give the credit to the convicted defendant. The purpose of this amendment is to make the direction more specific.

Amendment No. 15 would insert the phrase "or acts" so as to include not only the offense but also acts for which sentence was imposed as a basis for credit toward service of a sentence for days spent in custody. The purpose behind this amendment is to cover a condition where the defendant may have been arrested for a crime but subsequently is convicted of a lesser crime; thus, under the amendment, even though convicted of a lesser crime, he is given credit for the time spent in

custody while awaiting trial on the charge of a greater crime. It would also permit the giving of credit for time spent in custody while awaiting trial where a defendant may have been originally arrested and held in custody on a State charge and eventually turned over to the Federal Government for prosecution of a Federal violation.

Amendment No. 16 would eliminate the provision of the act which provided that where a person who has been convicted of an offense and is required to pay a fine, there shall be a deduction from the amount of that fine a sum equal to the wages for an 8-hour workday at the Federal minimum wage, multiplied by the number of days that a person spent in custody prior to conviction and pending an appeal for the offense for which the fine was imposed. Provision is made also that no such credit shall be given if the judge in imposing the sentence of imprisonment or fine takes into consideration the number of days spent in custody in connection with the offense for which such sentence or fine is imposed and so records in his judgment.

This language providing for credit against fines has been eliminated as unnecessary and inappropriate to a statute which is concerned with custody. In addition, the proviso which would withhold credit in any case in which the judge states in his judgment that he has already taken presentence detention into account is eliminated because the committee believes that full credit for custody should be recorded automatically, as a matter of administrative computation rather than a matter of discretion.

Amendment No. 17 provides an effective date provision to give the courts and others 90 days in which to prepare whatever procedures are necessary to evaluate the statute. In order to avoid the possibility of giving prisoners who were previously sentenced double credit for time spent in custody prior to sentence, a proviso has been inserted requiring credit to be recorded only as to sentence imposed on and after the effective date.

PURPOSE

The purpose of S. 1357, as amended, is to revise existing bail procedures in the courts of the United States including the courts of the District of Columbia in order to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest. In addition, it will assure that persons convicted of crimes will receive credit for time spent in custody prior to trial against service of any sentence imposed by the court. Accordingly, the bill amends chapter 207 of title 18, United States Code, by repealing the present bail jumping section (sec. 3146) and inserting in lieu thereof seven new sections, numbered 3146 through 3152. It would further amend the first paragraph of section 3568 of title 18, United States Code, relating to the effective date of sentence and would make technical changes in sections 3041, 3141, 3142, and 3143 of title 18 of the United States Code, as well as the heading to chapter 207 and the table of contents to part II of title 18, United States Code.

This legislation does not deal with the problem of the preventive detention of the accused because of the possibility that his liberty might endanger the public, either because of the possibility of the commission of further acts of violence by the accused during the pre-trial period, or because of the fact that he is at large might result

in the intimidation of witnesses or the destruction of evidence. It must be remembered that under American criminal jurisprudence pretrial bail may not be used as a device to protect society from the possible commission of additional crimes by the accused. While it is true that the U.S. Constitution does not specifically grant a right to bail, nevertheless, the eighth amendment states: "Excessive bail shall not be required." However, the Judiciary Act of 1789 provided that "upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death." It made bail in capital cases discretionary, depending upon the nature and circumstances of the offense and of the evidence and usages of law. Obviously, the problem of preventive detention is closely related to the problem of bail reform. A solution goes beyond the scope of the present proposal and involves many difficult and complex problems which require deep study and analysis. The present problem of reform of existing bail procedures demands an immediate solution. It should not be delayed by consideration of the question of preventive detention. Consequently, this legislation is limited to bail reform only.

LEGISLATIVE HISTORY

Senate Report 750, 89th Congress, first session, sets forth the legislative history of this proposal in the Senate of the United States as follows:

LEGISLATIVE HISTORY

Since 1958 the Subcommittee on Constitutional Rights has been engaged in a far-reaching investigation of the need to safeguard the constitutional rights of American citizens in the administration of criminal justice. Apart from its continued study of arrest, police detention, involuntary confessions, discovery, venue, and the right to counsel, the subcommittee has for several years focused its attention on existing Federal bail procedures. As a result of this study, in May 1964, Senator Ervin, chairman of the subcommittee, introduced, for himself and Senators Johnston, Williams of New Jersey, Bayh, Douglas, Long of Missouri, Hruska, Fong, and Keating, three bills (S. 2838, S. 2839, and S. 2840) designed to modify and improve Federal bail procedures. Following the introduction of these bills, the subcommittee sought comments on the bills from law professors, Federal and State law enforcement officials, and other persons or groups interested in the administration of criminal justice. Joint hearings on the bills were held on August 4, 5, and 6, 1964, by the Subcommittee on Constitutional Rights and the Subcommittee on Improvements in Judicial Machinery. The bills received strong support from the Department of Justice and from virtually all other persons and groups involved with the administration of criminal justice.

Similar bills (S. 646, S. 647, and S. 648), cosponsored by 20 Senators, were introduced by Senator Ervin on January 22, 1965. Senator Ervin stated at that time that efforts were being made to develop an omnibus bail reform measure which would embody the substance of S. 646, S. 647, and S. 648 with revisions and additions suggested by repre-

representatives of the Department of Justice and by other witnesses who testified at the 1964 hearings.

On March 4, 1965, Senator Ervin introduced, for himself and 16 other Senators, the present omnibus bail reform measures, S. 1357. As introduced, S. 1357 expanded the provisions of S. 646, S. 647, and S. 648 in three main respects:

First. It provided Federal courts with additional methods of releasing persons accused of criminal offenses. S. 646 provided only for release on personal recognizance and S. 648 provided for release upon deposit in the court of 10 percent of the amount of bond set. S. 1357 set forth seven enumerated methods of release and authorized "any other restriction which the judge may reasonably require to insure appearance as required."

Second. It provided for an appeal of release orders by persons aggrieved by the release conditions imposed. No right to appeal release orders was specifically stated in the earlier bills.

Third. It provided credit for pretrial confinement against any fine imposed by the court as well as against any sentence imposed. S. 647 provided only for credit against sentence.

On June 15, 16, and 17, 1965, the Senate Subcommittee on Constitutional Rights and the Senate Subcommittee on Improvements in Judicial Machinery, under the chairmanship of Senator Joseph D. Tydings, held joint hearings on the four bills, S. 1357, S. 646, S. 647, and S. 648.

In the House of Representatives a number of bills were introduced to revise existing bail practices in courts of the United States, and for other purposes. They were: H.R. 3576; H.R. 3577; H.R. 3578; H.R. 5923; H.R. 6271; H.R. 6934, and H.R. 10195. The latter, introduced by Congressman Celler, paralleled the proposal, S. 1357. Hearings were held by a subcommittee on those proposals including this proposal, S. 1357.

In these hearings Members of the House and the Senate presented their views on these proposals, as did the Deputy Attorney General of the United States, a representative of the American Bar Association, and other local bar associations. All of those witnesses favored the enactment of this proposal, including the Chairman of the Committee on Administration of Criminal Procedure of the Judicial Conference of the United States.

The only opposition heard by the committee to this legislation was that presented by bondsmen.

Upon completion of the hearings, the subcommittee, in executive session, ordered reported to the full committee S. 1357, with amendments. With the exception of one or two minor amendments, which were of a technical or clarifying nature, the full committee ordered the bill favorably reported.

GENERAL STATEMENT

Bail originated in medieval England as a device to free untried prisoners. At the outset, sheriffs exercised their discretion to release a prisoner on his own promise, or that of an acceptable third party, that he would appear for trial. Under this system the surety had in

effect been a hostage who could be jailed in place of the fugitive from justice. Later, this enforcement was relaxed, but the surety was subject to the penalty of forfeiture of his property. Subsequently, sureties were committed to forfeit promised sums of money in case of failure to appear.

Later, in the 13th century, the discretionary bail power of the sheriffs was regulated by specifying which offenses wereailable and which were not. Eventually, the sheriff's bailing functions were transferred to justices of the peace. The exercise of their discretion in fixing bail was based upon such factors as the nature of the charge, character of the accused, and the weight of the evidence. The Bill of Rights in 1688 established protection against excessive bail. Today, in England, the bail surety relationship continues to be a personal one. Under the discretionary nature of bail the procedure is sufficiently flexible to permit denial in cases where the magistrate believes that the defendant is likely to commit no offenses or tamper with the evidence if he is released.

In the United States, bail practices and rights developed a different pattern from that in England. The eighth amendment to the Constitution of the United States states only that "Excessive bail shall not be required." Thus, there is no specifically granted right to bail. Since the Judiciary Act of 1789, however, Congress has provided that persons shall be admitted to bail upon arrest in criminal cases except where the punishment may be death. It also provided that bail is discretionary in capital cases depending upon the nature and circumstances of the offense and of the evidence and usages of law. The practice of providing a private surety who would personally guarantee to produce his bailee proved inadequate. Eventually, the posting of bail became the function of a professional bondsman who in return for a money premium guaranteed the appearance of the defendant at the time of trial. It was also in this manner that the posting of bail bonds became a commercial venture.

The experience of many years of bail practices in the United States became the subject of criticism in the 1920's. Since then, the bail procedures have been subject to increasing criticism. Studies of the administration of criminal justice have shown that in many instances these procedures actually fail to give proper protection to the essential rights of the accused. The practice in admitting persons to bail which places primary reliance on financial inducements as the means to assure the presence of the accused at the time of trial seems to ignore the fact that those defendants of limited means who are unable to secure the necessary bail are faced with an impossible situation.

Recently, the Attorney General's Committee on Poverty and the Administration of Criminal Justice Procedure submitted its report where it made this conclusion:

The bail system administered in the Federal courts, relying primarily on financial inducements to secure the presence of the accused at the trial, results in serious problems for defendants of limited means, imperils the effective operation of the adversary system, and may even fail to provide the most effective deterrence of nonappearance by accused persons.

The present system of monetary bail would be adequate if all could afford it. The facts, however, are to the contrary. The rich man

and the professional criminal readily raise bail regardless of the amount. But it is the poor man, lacking sufficient funds, who remains incarcerated prior to trial. But the mere incarceration is not the only evil effect of the monetary bail system. Studies have shown that failure to release has other adverse effects upon the accused's preparation for trial, retention of employment, relations with his family, his attitude toward social justice, the outcome of the trial, and the severity of the sentence. For example, in preparation for his trial, the defendant who remains in jail does not have the same access to his counsel as the man free on bail. He is limited in his ability to collect witnesses for his defense. Often, he loses his employment, his family may become the subjects of welfare payments, and in many instances in the Federal system he becomes a financial burden to the Federal Government in that the Federal Government reimburses local authorities when a defendant is incarcerated in a local jail.

It is the opinion of your committee that the enactment of this legislation will result in achieving the goal of eliminating the evils which are inherent in a system predicated solely upon monetary bail. It will provide reforms that are long overdue and badly needed.

The President of the United States, in his recent crime message to the Congress, requested reform of the bail system. That message stated as follows:

We must reform our bail system.

The administration of criminal justice must be fair as well as effective.

Whether a person, released after arrest, is likely to flee before trial or endanger society is not determined by the wealth he commands. Yet all too often we imprison men for weeks, months, and even years—before we give them their day in court—solely because they cannot afford bail.

Effective law enforcement does not require such imprisonment.

The Judicial Conference of the United States has recommended this legislation as indicated by a letter from the Administrative Office of the U.S. Courts, dated October 5, 1965, which is attached hereto and made a part of this report. Likewise, the Department of Justice recommends enactment of this legislation in letters dated September 5, 1965, and March 21, 1966, both of which are attached hereto and made a part of this report.

SECTIONAL ANALYSIS

Section 1 merely states the title of the act as the "Bail Reform Act of 1966."

Section 2: This section states the purpose of the bill, which is to revise practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

Section 3(a) relates to release in noncapital cases prior to trial. It amends chapter 207, title 18, United States Code, by striking out the present Federal bail jumping statute—section 3146—and inserting in lieu thereof seven new sections, numbered sections 3146 to 3152. The

new section 3146 provides that any person charged with a noncapital offense as defined in the new section 3152 shall, at his appearance before a judicial officer, as defined in that same new section, be released on his personal recognizance or upon the execution of an unsecured appearance bond, unless the judicial officer determines, in the exercise of his discretion, upon a showing of good cause, that such a release will not reasonably assure the appearance of the accused as required. In such a case, he shall then impose one or more of five additional conditions of release, deemed reasonably necessary to assure the appearance as required.

Under this subsection, release on one of the conditions is required unless it appears from the nature of the offense charged or the accused's record of previous failures to appear or flight to avoid prosecution, for example, that such a release is inadvisable under the circumstances. Only in those cases may the judicial officer then impose one or more of the additional conditions of release set forth in the act, thus giving priority to nonfinancial conditions before considering the requirement of financial security.

It should be noted that under this subsection (a) of section 3146, the judicial officer is required to consider under a priority system the conditions in the order in which they are set forth in the bill. Under this subsection, the conditions are (1) that the person may be placed in the custody of the designating organization or person agreeing to supervise him, or (2) restrict travel, association, or place of abode during the period of release; (3) require the execution of an appearance bond in a specified amount and a deposit in the court in cash or other security a sum not to exceed 10 percent of the amount of the bond; (4) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash in lieu thereof, and (5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

Under the amended version of section 3146(a), the sequence of conditions has been rearranged so that release for specified hours has been moved to the lowest priority so as to authorize judicial officers to use it in appropriate cases only where the enumerated conditions of release will not suffice.

Subsection (b) of this section enumerates factors to be considered by the judicial officer in imposing conditions of release. Included in these conditions are those now set forth in rule 46(c) of the Federal Rules of Criminal Procedure, namely, nature and circumstances of the offense charged, the weight of evidence against the accused, his financial ability to give bail, and his character. However, this subsection adds additional factors, namely, the accused's family ties, employment, financial resources, character and mental condition, his length of residency in the community and his record of appearance at court proceedings, or of flight to avoid prosecution or failure to appear in court. His record of prior convictions is also a factor to be considered.

Section 3146(c) relates to release orders. It provides that the judicial officer authorizing the release of any persons under conditions specified in the bill shall issue an order containing his statement of the conditions imposed and shall inform the person of the penalties applicable to violations of those conditions, and shall inform the person that a warrant for arrest will issue immediately upon violation. This

subsection does not require that the release order contain a statement of evidence.

Section 3146(d) relates to the review of release conditions. It provides that a person for whom conditions of release are imposed and who is still detained after 24 hours from the time of the release hearing because of his inability to meet the conditions, shall be entitled, upon application, to have those conditions reviewed by the judicial officer who imposed them. Unless that release order is amended so as to enable the person to obtain his release, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. In addition, if the person was ordered released on a condition which required that he return to custody after specified hours he, too, shall, upon application, be entitled to a review by the judicial officer who imposed that condition. Unless that requirement is removed and the person is thereupon released upon another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement.

If the judicial officer does not amend the release order so that the accused can be immediately released, he shall set forth in writing the evidence and factors upon which his decision is based.

If the judicial officer who imposed the conditions of release is not available, any judicial officer in the district may review such conditions.

Section 3146(e) provides that a judicial officer ordering the release of a person on any of the specified conditions in this section may, at any time, amend the order to impose additional or different conditions. Provision is made, however, that if the imposition of different or additional conditions results in the detention of the accused as a result of his inability to meet such conditions, then the provisions of subsection (d) of this section shall apply, namely, review of the release conditions. In addition, the same review is applied where the release was for specified hours with the requirement to return to custody. This provision does not require a hearing before amending a release order, nor does it require that any amendment result in the release of the accused. It does, however, require that, if the imposition of additional or different conditions of release result in the detention of the accused for more than 24 hours because of his inability to comply with such conditions, the judicial officer must amend the release order to include a statement of his reason for requiring the conditions imposed. Under both sections 3146(d) and 3146(e) no additional hearing need be ordered if the judicial officer does not deem one to be necessary. The rights of the accused are amply provided for in section 3147, which provides for appeal of release orders.

Section 3146(f) provides that the rules governing the admissibility of evidence in courts of law do not apply in connection with orders entered pursuant to this section. This permits the judicial officer to consider all available relevant facts in making his determination.

Section 3146(g) provides that nothing in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court. The need for this provision is set forth in the Senate Report 750, 89th Congress, 1st session, on pages 14 through 17, as follows:

Forfeiture of collateral not affected

As noted above, section 3152(2) defines "offense" in such a way as to include violations of the District of Columbia Code. This has the effect of making the release procedures of the bill applicable to all cases prosecuted in the District of Columbia court of general sessions. This would include not only the serious misdemeanors prosecuted by the U.S. attorney's office in the U.S. branch of the court of general sessions, but also a large variety of minor offenses, such as drunkenness, disorderly conduct, and traffic offenses, prosecuted by the Corporation Counsel. This latter group, the committee understands, runs into the tens of thousands of cases each year. The overwhelming majority of these cases are currently disposed of either by forfeiture of collateral security or by summary trials in the District of Columbia branch of the court of general sessions. It was pointed out to the subcommittees by the Honorable Walter N. Tobriner, President of the Board of Commissioners of the District of Columbia, and by Deputy Attorney General Clark in a memorandum submitted for inclusion in the record of the hearings, that the bill might be construed to prohibit continuation of the practice of forfeiture of collateral in these cases. It is clear, however, that the release provisions of the bill, which envision investigation and verification of a number of factors relevant to a proper bail determination, as well as the possibility of several levels of judicial scrutiny of the determination, are neither necessary, nor feasible, in the vast majority of cases of this kind.

Recognition is given to this fact in section 3146(g), which is designed to permit the continued disposition of minor offenses by forfeiture of collateral security where such disposition is authorized by the court. Section 748(a) of title 11, District of Columbia Code, authorizes the defendant to post collateral in lieu of posting a bond. No law or court rule, however, expressly states that a forfeiture of such collateral must result in dismissal of the criminal charges. Nevertheless, as a matter of practice in the court of general sessions, in those cases in which collateral is accepted, it is understood that a forfeiture will not be followed by further action against the defendant. Section 3146(g) is designed to permit this procedure to continue, thus avoiding the necessity for trials for minor offenders who wish to post and forfeit collateral, while making the liberal release procedures of the bill available to the rare defendant who desires to contest a minor case. The bill is not intended to make the disposition of minor cases by forfeiture of collateral less desirable to future defendants than it is at present. Demands for hearings will, in the view of the committee, continue to be rare, and thus the bill should not have the undesirable result of further inundating the already overburdened court of general sessions.

"Station-house bail" not affected

As indicated above, serious misdemeanors under the District of Columbia Code are prosecuted by the U.S. attorney's

office in the U.S. branch of the court of general sessions. While disposition of those cases by forfeiture of collateral is legally possible under section 748(a) of title 11, District of Columbia Code, the subcommittees have been told that the court does not permit it. In these cases, bail must be set and pretrial release is now gained either by posting "station-house bail" according to a set bond schedule administered by the police at the station house immediately after arrest, by posting a surety bond in court, or by being released on recognizance by the court. Clearly, the Bail Reform Act will have a significant effect on bail practices in these cases. A consideration of the volume of cases involved indicates the scope of this effect and the nature of the problem which would result were station-house bail to be prohibited.

In fiscal 1964, according to information given to the subcommittees by the Department of Justice, nearly 14,000 cases were processed through the U.S. branch of the court. In nearly all of these, bail was set. In about one-third of the cases release was obtained at the station house by the posting of money bail. Since S. 1357 would establish a release procedure under which preference would be given to nonmonetary release, it is not entirely clear whether release on station-house bail immediately following arrest would be still permissible. If it were not, thousands of defendants arrested at night would be required to remain in jail overnight until they could appear in court the next day. The Committee agrees with Deputy Attorney General Clark that this would be an unwarranted hardship which can be avoided by the retention of release on station-house bail and, accordingly, recommends its retention for the present.

To accomplish this, section 3146(a) has been amended in the substitute bill to provide that the accused shall be ordered released under the provisions of the bill "at his appearance before a judicial officer." This phrase is intended to make it clear that the release provisions of section 3146 are not to take effect until the appearance of the accused before a judicial officer; that is, until after the station-house phase of the case. Hence, the police are not precluded by the bill from continuing to release defendants at the station house upon the posting of money bail.

The committee emphasizes that the considerations which motivated recommendation of S. 1357, coupled with representations of the Department of Justice, persuade us that station-house bail is an undesirable practice which should be continued only until the court of general sessions can adjust its procedures and practices so as to handle all cases under the provisions of the bill.

Among the administrative reforms recommended by the Department of Justice is the establishment of a night court to dispose of the great volume of cases which enter the judicial system after the close of court each day, and thus obviate the need for release on station-house bail. Other needed reforms cited by the Department include the appointment of assistant U.S. attorneys to handle the duties of analyzing the background of defendants in order to assist the courts in mak-

ing release determinations under the act. This function would be substantially aided if there were a permanent official bail agency in the District of Columbia to accumulate and verify relevant data. The committee, therefore, joins the Department of Justice in recommending the establishment of such an agency.

The committee recognizes that, until the reforms noted above are instituted, it is possible that the Bail Reform Act will not be fully effective in the District of Columbia. It is felt, however, that the act will immediately improve the system in many respects and that the protection of the community against dangerous or untrustworthy persons will in no way be diminished by it. By compelling the accumulation of relevant data concerning the bailability of defendants, the act will promote a more rational separation of good risks from bad. Finally, the committee believes that the act will serve as a catalyst in bringing about fairer and more efficient criminal procedures in the District of Columbia.

It should be noted that the Department of Justice has thoroughly considered the problems noted above and has advised the committee that, for the same reasons stated above, the Department "supports the inclusion in the Bail Reform Act of 1965 of all cases prosecuted in the District of Columbia court of general sessions."

Section 3147 relates to appeal from conditions of release.

Subsection (a) provides that a person who is ordered detained or who is released on a condition requiring him to return to custody after specified hours is continued, after a review of his application, pursuant to section 3146 (d) or (e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged, or a judge of the U.S. Court of Appeals or a Justice of the Supreme Court of the United States, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Provision is also made that such a motion shall be determined promptly. Prompt determination as required in this subsection means that such a motion shall be given priority and that determination shall be expedited in conformity with the underlying purpose of this legislation, namely, that the accused shall not needlessly be detained pending his appearance to answer charges when such detention serves neither the ends of justice nor the public interest. This legislative intent also applies to the use of the word "promptly" as contained in subsection (b) of this section.

Where conditions of release are imposed in the first instance by the district court having original jurisdiction over the offense with which the accused is charged, no motion to amend is necessary before taking appeal to the appropriate appellate court. Nor is such a motion necessary in those cases in which the conditions of release are imposed in the first instance by a judge of the U.S. Court of Appeals or a Justice of the Supreme Court of the United States.

Under subsection (b) of section 3147, where a person is detained after (1) a court has denied a motion under subsection (a) to amend an order imposing the condition or conditions of release, or (2) the conditions of release have been imposed or amended by a judge of a court having original jurisdiction over the offense charged,

an appeal may be taken to the court having appellate jurisdiction over such court. An order so appealed shall be affirmed if it is supported by the proceedings below. This means by the statement of evidence in the release order and the order of the trial court on the accused's motion to amend. If the order is not so supported, the appellate court may remand the case for a further hearing, or may itself, with or without a hearing to produce additional evidence, order the person released pursuant to the conditions set forth in section 31466(a).

Section 3148 relates to release in capital cases or after conviction. This section provides that persons accused of capital offenses and convicted persons awaiting sentencing, appeal or certiorari, shall be treated in accordance with section 3146 unless the court or the judge has reason to believe that such a procedure will not reasonably assure that the person will not flee or pose a danger to any other person or to the community. The person accused of capital offenses or convicted may be ordered detained if the risk of flight or the danger to a person or the community is believed to exist, or if it appears that the appeal is frivolous or taken merely for the purpose of delay.

This section treats those accused of capital offenses and convicted persons differently from persons accused of noncapital offenses. This section accordingly provides that such persons are presumptively to be released under section 3146, but may be ordered detained if the circumstances indicate that release would not be advisable. Since there is no absolute right to bail in capital cases nor in the cases of convicted persons, the courts are empowered to elect to detain defendants in such cases.

Section 3149 relates to the release of material witnesses. This section vests authority in judicial officers to impose conditions of release in the case of material witnesses whose presence cannot practicably be secured by use of a subpoena. The material witness must be one in a criminal proceeding and if it is shown that it may become impracticable to so procure his presence, a judicial officer is authorized to impose conditions of release pursuant to section 3146. The showing of materiality and impracticability shall be by affidavit. However, further provision is made that no material witness shall be detained because of his inability to comply with any of the conditions of release imposed upon him if his testimony can be adequately secured by deposition and that further detention is not necessary to prevent a failure of justice. Release may be delayed, however, for a reasonable period of time until the deposition of the witnesses can be taken pursuant to the Federal Rules of Criminal Procedure, specifically, rule 15.

Section 3150 relates to penalties for failure to appear. It provides that a person released pursuant to chapter 207 of title 18, United States Code, who willfully fails to appear before any court or judicial officer as required, shall, in addition to any forfeiture of security given as a pledge for his release, be fined not more than \$5,000 or imprisoned not more than 5 years, or both, if he was released on a charge concerning a felony, or while he was awaiting sentence or pending appeal or certiorari, after the conviction of any such offense. If such person was released in connection with a misdemeanor charge, the penalty shall be not more than that provided for such misdemeanor. In the case of a material witness, the penalty is a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both.

Although the provision authorizes courts to impose the maximum penalty of a \$5,000 fine, or imprisonment for 5 years, or both, upon persons who fail to appear, as ordered, after being released while awaiting sentence or pending appeal or certiorari at the conviction of any offense, including misdemeanors, it is contemplated that the courts will exercise discretion in treating misdemeanants more leniently than felons.

Section 3151 deals with contempt and provides merely that this chapter shall not be construed to interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

Section 3152 deals with definitions as contained in sections 3146-3150, chapter 207. Subsection (1) defines the term "judicial officer" as used in those sections to mean, unless otherwise indicated, any person or court authorized pursuant to section 3041 of title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending an appeal in any court of the United States and any judge of the District of Columbia court of general sessions.

Subsection (2) defines the term "offense" to mean any criminal offense other than a trial by court-martial, military commission, provost court, or any other military tribunal, which is in violation of an act of Congress.

Subsection (b) is a technical amendment of the analysis of chapter 207 of title 18, United States Code, so as to conform to the new sections as set forth in this proposal.

Section 4 of the bill amends section 3568 of title 18 of the United States Code in order to provide credit for time spent in custody. Such a person shall receive credit toward service of a sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. This credit shall be given by the Attorney General. This language requires that credit be given for the time spent in custody in connection with the charge or acts on which the person was arrested or on which he was sentenced. This will cover the situation where a person is arrested on a serious charge but convicted and sentenced later for a lesser offense. It would also include credit for time spent in State custody on a charge which subsequently evolves as a Federal offense.

Section 5 of the bill, in subsections (a) through (e), are minor technical amendments to various sections of title 18 of the United States Code in order to conform the section headings in the table of contents made by the amendments by sections 1 through 4 of the legislation.

Section 6 is a new section which provides that this act shall take effect 90 days after the date of enactment, and, further, provides that the provisions of section 4 relating to credit for time spent in custody shall be applicable only to sentences imposed on or after the effective date.

SEPTEMBER 25, 1965.

Re S. 1357 and H.R. 10195, Bail Reform Act.

HON. EMANUEL CELLER,
 Chairman, House Judiciary Committee,
 House of Representatives, Washington, D.C.

DEAR MR. CELLER: I am enclosing for your consideration a comparison of the differences between S. 1357 as it passed the Senate and H.R. 10195. I think the comparison is self-explanatory.

We have no objection to most of the changes incorporated in S. 1357. With respect to paragraph 10, page 4, we prefer the House version. With respect to paragraph 11, we prefer the House version, also, but the Senate Judiciary Committee made this change after considering our point of view and under the circumstances we accept the change and do not object.

We do believe that a general savings clause should be added to the bill.

As you know, we are very much interested in the enactment of this legislation at an early date. We are grateful for all that you have done in this important area and certainly hope that your committee can take up and consider S. 1357 during this session.

Sincerely,

BAREFOOT SANDERS,
 Assistant Deputy Attorney General.

MEMORANDUM RE COMPARISON OF S. 1357, AS REPORTED BY THE SENATE JUDICIARY COMMITTEE, AND H.R. 10195

The significant differences between the Senate Judiciary Committee version of the Bail Reform Act of 1965 and H.R. 10195 are as follows:

A. Changes necessitated by the inclusion of offenses under the District of Columbia Code which are tried in the District of Columbia court of general sessions

1. S. 1357 (p. 11, lines 8-9) contains the phrase "at his appearance before a judicial officer" in discussing the stage at which an accused shall be released under the procedures established by the act. The quoted phrase is designed to insure the retention of station house bail for misdemeanors under the District of Columbia Code tried in the District of Columbia court of general sessions by making it clear that the act does not become operative until the accused is brought before a judicial officer. Although the need to retain station house bail was pointed up by the inclusion of District of Columbia Code offenses tried in general sessions, it is also needed for felonies tried in the U.S. district court and misdemeanors under the United States Code tried in general sessions. H.R. 10195 contains no similar provision.

2. S. 1357 (p. 14, lines 16-19) provides that the pretrial release procedures established by the act shall not be construed to prevent the disposition of cases by forfeiture of collateral security where such a disposition is authorized by court. This provision was added to accommodate the needs of the District of Columbia court of general sessions. H.R. 10195 contains no similar provision.

3. S. 1357 (p. 14, line 25, and p. 15, lines 3 and 10), in establishing review procedures, uses the phrase "court having original jurisdiction over the offense" charged instead of the "district court", which is used

in H.R. 10195. This change results from the inclusion of offenses under the D.C. Code which are tried in the court of general sessions. It recognizes that the court of general sessions, and not the U.S. district court, is the appropriate court to conduct the initial review of bail determinations relative to defendants in the general sessions court.

4. S. 1357 (p. 18, lines 3-4) defines "offense" as any criminal offense "in violation of an Act of Congress and * * * triable in any court established by an Act of Congress," thus bringing all offenses tried in the District of Columbia court of general sessions within the purview of the bill. This includes cases brought in the District of Columbia branch, as well as all cases brought in the U.S. branch. H.R. 10195 contains no similar provision.

B. General changes

1. S. 1357 (p. 11, lines 14-22 and p. 12, lines 1-17) establishes a priority for nonfinancial conditions of release, as does H.R. 10195, but goes further and establishes priorities within the two classes of release—nonfinancial and financial. In addition, it permits release on recognizance or unsecured appearance bond to be combined with release on conditions when reasonable to assure appearance. H.R. 10195 contains no similar provisions.

2. S. 1357 (p. 12, lines 5-6) provides as a condition of release for release during the day and return to custody at night. H.R. 10195 contains no similar provision.

3. S. 1357 (p. 12, lines 16-17) contains a "catchall" condition of release which permits the imposition of any condition reasonably necessary to assure appearance. H.R. 10195 contains no similar provision.

4. S. 1357 (p. 13, lines 4-5 and 7-9) requires the judicial officer authorizing an accused's release to issue an order stating the conditions imposed and to advise the accused that an arrest warrant will be issued for a violation of a condition of release. H.R. 10195 contains no similar provision.

5. S. 1357 (p. 13, lines 18-21) makes the imposition of daytime release subject to review by the judicial officer imposing it. This is similar to the review afforded in both bills for detention resulting from inability to meet a condition of release. Review is provided by S. 1357 on the theory that daytime release-nighttime custody is a form of detention. H.R. 10195 contains no similar provision, since it does not provide for daytime release.

6. S. 1357 (p. 13, lines 23-24 and p. 14, lines 1-2) provides that in the event the judicial officer who imposed conditions of release is not available to review such conditions, any other judicial officer in the district may conduct the review. H.R. 10195 contains no similar provision.

7. S. 1357 (p. 14, sec. 3147(a)) does not contain a provision found in H.R. 10195 (sec. 3148(a)), which requires that when a review of an order of a judicial officer is made by a district court, it shall be made by the court for the district in which the judicial officer sits.

8. S. 1357 (p. 17, line 19), in defining the term "judicial officer," does not use the words "or court" in addition to "person," as does H.R. 10195. In addition, lines 22-24 include a judge of the District of Columbia court of general sessions in the definition of "judicial officer." This is necessary because such judges sit as committing

magistrates for felonies to be tried in the U.S. District Court for the District of Columbia. H.R. 10195 contains no similar provision.

9. S. 1357 (p. 17, line 25 and p. 18, lines 1-2) contains a definition of the term "offense" which is different from that contained in H.R. 10195 in that military offenses, such as those tried by court-martial, military commission, etc., are excluded by S. 1357 from the purview of the act.

10. S. 1357 (p. 18, line 17) permits credit against sentence for any days spent in custody in connection with the offense for which "sentence was imposed," as compared with H.R. 10195, page 8, line 3, which also gives a convicted person credit against sentence for any days spent in custody in connection with the offense for which "he was arrested."

11. S. 1357 (p. 18, lines 17-21 and p. 19, lines 1-3) contains a provision under which credit against fine will be given for days spent in custody. H.R. 10195 contains no similar provision.

12. S. 1357 (p. 19, lines 3-8) provides that no credit against sentence or fine shall be given if the sentencing judge considers the days spent by the defendant in custody in arriving at the sentence and makes a record of such consideration.

13. S. 1357 (pp. 19-20, sec. 5) contains a number of technical amendments not contained in H.R. 10195.

14. S. 1357 does not provide for an effective date. H.R. 10195, section 5, provides that the act is to take effect 30 days after the date of its enactment.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 21, 1966.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: As I indicated during my testimony on S. 1357 and H.R. 10195, before Subcommittee No. 5 on March 9, I am herewith transmitting a set of our proposed amendments to S. 1357. The amendments cover four subjects: daytime release, credit against sentences, effective date, and technical changes. If the meaning or purpose of any of these is unclear, or if there is any other way in which we can be of assistance in enabling you to complete action on this important legislation, please let me know.

With kind regards,
Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

AMENDMENTS PROPOSED BY THE DEPARTMENT OF JUSTICE TO S. 1357

Daytime release

1. On page 4 of S. 1357, lines 5 and 6, delete condition No. (4) and reword condition No. (7) to read: "impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after daylight

hours." Renumber conditions (5), (6), and (7) to read (4), (5), and (6).

2. On page 5, reword lines 18-22, beginning with "A person" and ending with "is amended," to read: "A person who is ordered released on a condition which requires that he return to custody after daylight hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement."

3. On page 6, reword lines 9-11, beginning with "condition number", to read: "a condition requiring him to return to custody after daylight hours, the provisions of subsection (d) shall apply."

4. On page 6, reword line 22 to read: "a condition requiring him to return to custody after daylight hours is continued, after".

Credit against sentence

5. On page 10, lines 14-15, delete the words "Any such person shall be given" and substitute the words "The Attorney General shall give any such person".

6. On page 10, line 16, after the word "offense", insert the words "for which he was arrested or".

7. On page 10, line 17, insert a period after the word "imposed" and delete the remainder of the section through the word "judgment" on page 11, line 8.

Effective date

8. On page 12, add as a new section 6 the following: "This Act shall take effect 90 days after the date on which it is enacted: *Provided*, That the provisions of section 4 shall be applicable only to sentences imposed on or after the effective date."

Technical amendments

9. On page 9, line 19, after the word "person", insert the words "or court".

10. On page 9, line 21, insert between the words "to" and "release" the words "bail or otherwise".

11. On page 1, line 4, delete "1965" and substitute "1966".

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., October 5, 1966.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: This is in reply to your request of March 23, 1965, for the views of the Judicial Conference of the United States on H.R. 6271, a bill to authorize release on a personal recognizance of persons otherwise eligible for bail, to credit time spent in custody for lack of bail toward service of sentence, and to further implement the constitutional right to bail.

The purpose of this legislation is to improve present bail practices and to correct certain defects therein. At its session on September

22-23, 1965, the Judicial Conference voted to approve a substantially similar bill (S. 1357) in the form in which it passed the Senate.

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as reported. Matter proposed to be stricken by the bill as reported is enclosed in black brackets. New language proposed by the bill as reported is printed in italic.

CHAPTER 207, TITLE 18, UNITED STATES CODE

[§ 3146. *Jumping bail.*

[Whoever, having been admitted to bail for appearance before any United States commissioner or court of the United States, incurs a forfeiture of the bail and willfully fails to surrender himself within thirty days following the date of such forfeiture, shall, if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than five years, or both; or, if the bail was given in connection with a charge of committing a misdemeanor, or for appearance as a witness, be fined not more than \$1,000 or imprisoned not more than one year, or both.

[Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.]

§ 3146. *Release in noncapital cases prior to trial.*

(a) Any person charged with an offense, other than an offense punishable by death, shall at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after 24 hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: Provided, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

§ 3147. Appeal from conditions of release.

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3147(a). The appeal shall be determined promptly.

§ 3148. Release in capital cases or after conviction.

A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: Provided, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

§ 3149. Release of material witnesses.

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

§ 3150. Penalties for failure to appear.

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than \$5,000 or imprisoned not more than 5 years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§ 3151. Contempt.

Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

TITLE 18, SECTION 3041, UNITED STATES CODE**§ 3041. Power of courts and magistrates.**

For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found; and at the expense of the United States, be arrested and imprisoned, [or bailed] or released as provided in chapter 207 of this title, as the case may be, for trial before such court of the United States as by law has cognizance of the offense.

TITLE 18, SECTION 3141, UNITED STATES CODE**§ 3141. Power of courts and magistrates.**

Bail may be taken by any court, judge, or magistrate authorized to arrest and commit offenders, [but in capital cases bail may be taken only by a court of the United States having original or appellate jurisdiction in criminal cases or by a justice or judge thereof] but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death.

TITLE 18, SECTION 3142, UNITED STATES CODE**§ 3142. Surrender by bail.**

Any party charged with a criminal offense [and admitted to bail] who is released on the execution of an appearance bail bond with one or more sureties, may, in vacation, be arrested by his surety, and delivered to the marshal or his deputy, and brought before any judge or other officer having power to commit for such offense; and at the request of such surety, the judge or other officer shall recommit the party so arrested to the custody of the marshal, and indorse on the recognizance, or certified copy thereof, the discharge and exoneretur of such surety; and the person so committed shall be held in custody until discharged by due course of law.

TITLE 18, SECTION 3143, UNITED STATES CODE**§ 3143. Additional bail.**

When proof is made to any judge of the United States, or other magistrate authorized to commit on criminal charges, that a person previously [admitted to bail] released on the execution of an appearance bail bond with one or more sureties on any such charge is about to abscond, and that his bail is insufficient, the judge or magistrate shall require such person to give better security; or, for default thereof, cause him to be committed; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued, by such judge or magistrate, setting forth the cause thereof.

[89th Cong., 2d sess., House of Representatives, Report No. 1658]

DISTRICT OF COLUMBIA BAIL AGENCY ACT

June 24, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McMillan, from the Committee on District of Columbia, submitted the following report to accompany H.R. 15860

The Committee on the District of Columbia, to which was referred the bill (H.R. 15860) to establish the District of Columbia Bail Agency, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Page 7, line 11, after the date "1966" insert the following: "(Public Law 89-465)".

PURPOSE OF THE BILL

The purpose of the bill is to alleviate some of the injustices and inequities existing in the present financial bail system in the District of Columbia, by creating an independent fact-gathering-and-reporting Bail Agency to secure data and provide to any judicial officer in the District of Columbia (as defined in the bill) reports containing verified information concerning any individual with respect to whom a bail determination is to be made.

In addition, the fact-finding Bail Agency will also make its services available upon request to the judges of the U.S. Court of Appeals for the District of Columbia Circuit and to any Justice of the Supreme Court, whenever bail pending appeal becomes an issue.

H.R. 15860 has as its basic purpose the establishment of a system whereby worthy defendants in criminal cases, as well as material witnesses in any criminal proceeding, may have an orderly procedure available to them and to the courts for the determination of the preliminary question of bailability, amount of bail, and other relevant factors which are daily passed upon by the judges in the District of Columbia.

It is important to emphasize the clear line which is drawn in the bill between the duty of the Bail Agency and the duty of the court. The Bail Agency, as a part of its prearrest investigation, will interview defendants, verify facts, and submit reports with or without recommendations to the judicial officers. But, the bail decision remains the exclusive province of the judiciary, who may accept or reject the report and recommendations; only the judicial officer may determine the conditions of release to be imposed on the defendant.

As drafted and as reported by your Committee, this proposed legislation is designed to implement the Bail Reform Act of 1966, which was passed by the House on June 7, 1966, and signed by the President on June 22, 1966 (P.L. 89-465).

BACKGROUND

Many bail reforms have been proposed throughout the United States, seeking to foster the practice of the release on personal recognizance of an accused person whose ties to the community reasonably assure his presence for trial.

According to information furnished to your Committee, more than 50 experimental bail projects are in operation. Among such states where such projects are performing are the following:

California	Kentucky	Ohio
Connecticut	Maryland	Oklahoma
Colorado	Massachusetts	Pennsylvania
Delaware	Missouri	Texas
Florida	New Jersey	Utah
Georgia	New Mexico	West Virginia
Iowa	New York	Wisconsin

In 1962, the Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, appointed a Committee on Bail Projects which made a study of the bail system in the District of Columbia. That Committee, working in conjunction with the District of Columbia Bar Association, Junior Bar Section, reported that its study showed that, in 1962, between 30% and 40% of the District of Columbia jail population was composed of persons either awaiting trial or in the process of trial and sentencing, and that of those awaiting trial, 80% were eligible for release on bail.

Translating this burden into financial terms, the Bar Committee further reported that the cost, in 1962, of maintaining in the District of Columbia jail, defendants who were eligible for bond prior to or upon completion of trial, was almost \$500,000.

In the District of Columbia during 1963, 1,640 persons, or 80% of all defendants charged with felonies, spent some time in detention between arrest and final disposition of their cases. The median time spent in jail was 75 days. This does not include any time such defendants may have spent undergoing observation at a hospital or mental institution. Many defendants who spent some time in detention were ultimately able to post bond.

Prolonged detention, it was found, was not necessarily due to crowded court calendars, but often resulted from delays attendant to the making and execution of defendant's motions for continuance, severance, and the like.

Among its many recommendations, the Bar Committee recommended that a pilot project, similar to the pre-trial release program conducted by the Vera Foundation in New York City, be established in the District of Columbia.

THE D.C. BAIL PROJECT

In May of 1963 the Judicial Conference of the District of Columbia Circuit adopted this recommendation and, through its Committee on Bail Problems, proposed an experimental project designed to cover cases where the bail applicant appears to have a stable connection with the community even in the absence of the posting of security by a bondsman. In such cases, it was proposed, the relevant facts would be summarized, and such information, together with a recommendation of release on personal recognizance, would be made available to the presiding magistrate.

As a result, the Ford Foundation granted funds (\$65,000 for each year for 3 years) to the Georgetown University Law Center, which made possible the institution and operation of a three-year experimental program that is scheduled to terminate in September, 1966.

Originally, this experiment covered only felony cases. However, in August, 1965, the coverage was extended to misdemeanor cases. Also, in 1964, the experiment's operations were expanded to include fact-investigation in cases involving bail pending appeal.

HOW THE BAIL PROJECT WORKS

Under this experiment, accused persons are being interviewed by staff members immediately after being brought before a committing magistrate. The arresting officers are also interviewed at this time. Thereafter, independent verification of the information is sought from the accused's relatives, friends, employers, unions, welfare officials, clergy, and the like. The accused's criminal record, if any, including Juvenile Court records, is obtained. Finally, a brief staff conference evaluates the case to determine whether a recommendation should be made that the accused be released on personal recognizance.

It should be stressed here that this decision is based on the community ties of the accused, and not on the alleged facts of the offense. The latter are usually not known by the staff unless they were brought out at initial presentment. Neither the accused nor any other contact is asked matters pertaining to the facts of the alleged offense.

The importance of this point is that the Chief Judge of the D.C. Court of General Sessions, in commenting upon the D.C. Bail Project, said that this experiment has produced some very good results, but voiced the reservation that it is necessary for the judges to reject the recommendations for release upon personal recognizance in some cases because the facts of the offense may make such rejection in the public interest, regardless of the personal data regarding the defendant. In other words, the Chief Judge is emphasizing what was said at the outset, namely, the judicial officer, in the final analysis, must alone exercise his discretion in determining conditions of release, or whether there shall be release of the accused.

Recommendations for release upon personal recognizance are submitted to the appropriate court or to the United States Commissioner. The entire procedure is concluded in periods of time ranging from the same day on which the accused appeared initially to a few days after his initial appearance, depending upon the difficulties encountered in obtaining necessary information from both private and official sources.

Upon release, each defendant is advised by a member of the staff of the penalties for failure to appear for trial. Also, certain follow-up procedures are used to

assure the return of the accused for required court appearances. For example, felony defendants are asked to telephone the office weekly. This is not strictly enforced, however. This serves as a means of notifying defendants of required court appearance. Also, the released defendants and relatives and friends who have agreed to accept notification are notified in advance of required court appearances and reminded of the penalties for failure to appear.

RESULTS OF D.C. BAIL PROJECT

The following information was furnished your Committee by the officers of the D.C. Bail Project now in operation, as to its operations to date:

Present project data indicate that as of June 3, 1966, the District of Columbia Bail Project has made a total of 2,456 recommendations for release on personal bond. The courts have followed approximately 85% of these recommendations with the result that 2,084 persons have been released on their word that they would return. Presently, over 97% of those released have appeared in court as they promised. It is interesting to note that 47 of the 59 defaulters have been returned to custody and 40 of these were rearrested in the Washington, D.C. area. A further matter of interest is the fact that 50 faced misdemeanor charges at the time of default.

While the criteria utilized by the project for determining whether the defendant would return to court if released were not primarily devised for any other purpose, experience has demonstrated that the criteria are meaningful as well when related to the safety of the community. To illustrate, of the 2,084 releases, 2.5% were charged with serious subsequent offenses arising during the period of their releases; 5% were charged with less serious subsequent offenses; and 1.6% were charged with subsequent municipal code offenses. It should be noted, in this connection, that while 17% of these subsequent charges remain pending, 31% were dismissed, nolle, or resulted in acquittals. The remaining 52% resulted in the following dispositions: 6% convicted and given probationary sentences; 43% convicted and incarcerated; 2% convicted and forfeited collateral.

The Acting Director of the Office of Criminal Justice, Department of Justice, testified in support of the proposed legislation, and particularly as to the experience of the pilot D.C. Bail Project stated as follows:

"The Bail Project has proven to be of great value to individuals, courts and the administration of justice generally in the District of Columbia. For the first time in this jurisdiction, it has enabled a large number of persons to be released on personal bond when, without a fact-finding project, they would either have remained in jail or been made to suffer financial hardship to raise a bondsman's fee. A recent report indicated that in its first two years, nearly 75% of the Project's recommendations for release without money bail were honored by judges in felony cases, and 93% in misdemeanor cases. This means that almost 2,100 persons have been released because of information supplied by the Project. We understand that the 3% default rate in Bail Project cases is less than that in bail bond cases. We also understand that charges of serious criminal conduct during periods of pretrial release have shown a similarly low rate: Bail Project reports indicate that less than 2.5% of persons released on its recommendation have been so charged, and that a majority of the charges disposed of to date have been dismissed.

"The project enables many persons to secure their liberty, retain their jobs, prepare their defense and maintain family relationships. Its cost savings to the community from eliminating unnecessary retention in the D.C. jail run to many thousands of dollars. Our court system is able to make more meaningful decisions because they can be based on information not previously available. These results clearly demonstrate the desirability of establishing the Project as a permanent independent agency in the District of Columbia."

PROVISIONS OF THE BILL

Section 1 names the Act.

Section 2 creates the District of Columbia Bail Agency.

Section 3 provides the following definitions: "Judicial officer" is defined as the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, United States District Court for the District of Columbia, the District of Columbia Court of General Sessions, and the Juvenile Court of the District of Columbia (but only with respect to proceedings under Section 11-1566 of the D.C. Code) or any justice or judge of such courts or a United States Commissioner.

"Bail determination" means any order by a judicial officer respecting the terms and conditions of release (including any order setting the amount of bail bond or any other kind of security given to assure appearance in court) of (A) any person arrested in the District of Columbia, or (B) any material witness in any criminal proceeding in any of the courts referred to above, for trial or sentencing or pending appeal.

Section 4 provides that the Bail Agency established by the bill is required, "except when impracticable", to interview persons detained pursuant to law or charged with offenses in the District of Columbia, who are to appear before a U.S. Commissioner or whose cases arose in or are before any court specified in the bill. The Agency is to independently verify information obtained from such interview, secure the person's prior criminal record from the Metropolitan Police Department, and prepare a written report of such information for submission to the appropriate judicial officer. The Agency is authorized to present such report to the appropriate judicial officer, with or without a recommendation for release on personal recognizance, personal bond, or other nonfinancial condition, but without any other recommendation. It must also provide copies of such report to the United States Attorney, to the Corporation Counsel (if pertinent), and to counsel for the person who is the subject of the report. The report must at least include information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, if any.

The information contained in the Agency's files, presented in its report, or divulged during the course of any hearing, is to be used only for the purpose of a bail determination and is to be otherwise confidential. It cannot be made subject to court process for use in any other proceeding.

Section 5 provides that the Agency is to function under the authority and be responsible to a five-member executive committee consisting of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, and a fifth member to be selected by the four chief judges.

Sections 6 and 7 provide for the appointment of a Director of the Agency, selected by the executive committee (whose compensation may not exceed that of a GS-15 Employee) and for the employment of agency personnel.

Section 8 of the bill requires the submission to the Congress and to the Administrative Office of the United States Courts of a report on the Agency's activities.

Section 9 authorizes the appropriation of such sums as may be required for the operation of the Agency, to be disbursed by the Administrative Office of the United States Courts. Budget estimates for the Agency are to be prepared by the Director of the Agency, and are subject to the approval of the executive committee of the Agency.

Section 10 states that the Bail Reform Act of 1966 (Public Law 89-465) shall apply to any person detained pursuant to law or charged with an offense in the District of Columbia. Your committee wishes to make clear it is the intent of the Congress that the provisions of the Federal Bail Reform Act, approved June 22, 1966, are fully applicable to any person detained pursuant to law or charged with an offense in the District of Columbia.

Upon the recommendation and request of the Chief Judge of the Juvenile Court of the District of Columbia, your Committee included that Court within the terms of H.R. 15860 (sec. 3), but only with respect to criminal non-support cases under D.C. Code 11-556.

ESTIMATED COSTS OF LEGISLATION

According to testimony before your Committee, the estimated annual costs of the operation of the D.C. Bail Agency, based upon the experience to date in the experimental project, will be between \$95,000 and \$120,000, depending upon the size of the staff ultimately required and the office space and equipment which may be needed.

ESTIMATED SAVINGS FROM THE LEGISLATION

A more obvious benefit of the enactment of this legislation will be to remedy in part one of the many staggering problems confronting the community under the present financial bail system, viz., the tremendous burden placed on the District of Columbia Jail by the pretrial incarceration of defendants and the resulting cost of maintaining the large number of people who must languish in

jail prior to trial because they lack the funds for a bond premium. In addition, there are other costs, such as welfare expenses and loss of wages, which may be involved with pretrial incarceration of large numbers who cannot afford bond premiums.

According to testimony before your Committee, a comparative study of persons released on bond in 1963 before the project began operations, with persons released on bond in 1965 when the project was at maximum operating capacity, has revealed that as a result of the Bail Project's operations in 1965 over \$60,000 has been saved in jail costs of the D.C. Jail and in welfare costs. These jail cost savings pertain to the projected number of people who, if not released on personal bond, would have been required to stay in jail for an over-all average of 47,157 man-days. The welfare costs pertain to the expenditures that the Welfare Department would have expended in cases where the supporting head of the household would have been incarcerated. In addition, the cost study reveals that the Department of Corrections would have expended over \$12,000 in transporting from the jail to the courts and back the persons who were released as a result of Bail Project operations in 1965 and who, but for this personal bond release, would have been incarcerated.

The preliminary result of the cost of detention study conducted by the D.C. Bail Project reveals that over \$72,000 in jail and other related costs were saved by the District of Columbia as a result of the Bail Project's experimental operation during the year 1965. Projecting the jail costs alone it is estimated that with operation capacity identical to that in 1965, the Bail Project would save in 1967 a total of over \$61,000. The increase, of course, is attributed to the current trend of rising jail costs.

Another aspect of this cost of detention study has been to project on the basis of the present operation of the project the savings which would inure to the District of Columbia Government should this bill, like the Bail Reform Act of 1966 (P.L. 89-465), be enacted into law. Assuming that these two statutes would increase the number of personal bond and other nonfinancial conditional releases by at least one-fourth of those still incarcerated who cannot presently qualify under the project's experimental criteria or afford the price of a bond premium, it is estimated that the District of Columbia will save almost \$110,000 per year in jail costs alone.

ENDORSEMENT OF LEGISLATION

The President of the United States, in his special message to Congress against crime, in his first-stage recommendations to enhance justice in our courts—calling for immediate action—proposed as follows:

"We must reform our bail system.

"The administration of criminal justice must be fair as well as effective.

"Whether a person, released after arrest, is likely to flee before trial or endanger society is not determined by the wealth he commands. Yet all too often we imprison men for weeks, months, and even years—before we give them their day in court—solely because they cannot afford bail.

"Effective law enforcement does not require such imprisonment.

"To correct this injustice, I urge the Congress to complete action on the pending Federal Bail Reform Act and to give favorable consideration to the District of Columbia Bail Agency bill.

"These measures will insure fairness. They will provide an enlightened model for those States and communities which have not already undertaken bail reform."

HEARING

A full hearing was held by Subcommittee No. 5 of your Committee on H.R. 15085 (the original bill) on June 8, 1966, at which time its enactment was urged by all witnesses present. Judge John A. Danaher of the United States Court of Appeals for the District of Columbia Circuit, who chaired the Committee on Bail Problems of the Judicial Conference of the District of Columbia Circuit, presented the support of the Judicial Conference which unanimously approved the proposed legislation at its recent annual meeting attended by all the judges of the U.S. Court of Appeals, and of the U.S. District Court for the District of Columbia Circuit.

Favorable recommendations were also presented on behalf of the Chief Judges of the District of Columbia Court of Appeals, of the District of Columbia Court of General Sessions, and of the Juvenile Court, as well as the U.S. Department of Justice, and the President's Commission on Crime in the District of Columbia.

Representatives of the Bar Association of the District of Columbia; the U.S. Attorney for the District of Columbia; officers of the District of Columbia Bail Project; and the Assistant Corporation Counsel of the District of Columbia, all supported the legislation and presented helpful amendments which the Committee adopted before introducing the present bill.

CONCLUSION

Your Committee, in the light of the foregoing, urges the immediate enactment of H.R. 15860, as reported.



