PRETRIAL RELEASE AND DETENTION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION
ON
H.R. 7747

AN ACT TO AMEND TITLE 23 OF THE DISTRICT OF COLUMBIA CODE WITH RESPECT TO THE RELEASE OR DETENTION PRIOR TO TRIAL OF PERSONS CHARGED WITH CERTAIN VIOLENT OR DANGEROUS CRIMES, AND FOR OTHER PURPOSES.

JANUARY 31 AND FEBRUARY 6, 1978

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PREPARED STATEMENT OF THE WASHINGTON URBAN LEAGUE, PRESENTED BY EUGENE L. RHODEN, JR.

Mr. Chairman and member of the Subcommittee, I am Eugene L. Rhoden, Jr., Director of the Washington Urban League Youth Arbitration Center. We appreciate this opportunity to express the Washington Urban League's views and those of low income black and Latino citizens of the District of Columbia, on the House-passed amendments to the District of Columbia Pre-Trial Detention Law (H.R. 7747). The Washington Urban League is an interracial, non-profit, non-partisan community service organization using the tools and methods of social work, economics, law and other disciplines to secure equal opportunities in all sectors of society for black Americans and other minorities. Our mission is to eliminate discrimination and segregation in the Washington area, increase the economic and political empowerment of blacks and other minorities, and in short, help all Americans share equally in the responsibilities and rewards of full citizenship.

Much of our testimony derives directly from face-to-face, bilingual interviews with a thousand low income black and Latino District residents, whom the Washington Urban League surveyed by door-to-door random sample in 18 District Census tracts, and whose opinions and problems we reported last year in a study entitled SOS '76 — Speak Out for Survival! Important to this hearing is the fact that survey households, who represent over a third of all District households by income level, identified crime as their third most important concern — after the high cost of goods and services, and housing, but ahead of jobs, education, health, social aid, and a lack of responsiveness by local government.

In particular, citizens said that though they daily walk the streets in fear of crime, they want the criminal justice system to provide both fairer law enforcement and faster dispensation of justice. They expressed concern that the criminal

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justice system inadequately distinguishes between victims and criminals, leading to unfair treatment of minorities and low income people by the D.C. Courts. Four out of five residents indicated that they did not think that the D.C. Courts treat low income people "fairly" and blamed judges, prosecutors and lawyers for it. We take the position that certain provisions of H.R. 7747 if implemented, will reinforce if not confirm those beliefs, and contribute to existing feelings of apathy, alienation, and despair. It should be obvious that such attitudes discourage citizen support, confidence and cooperation essential to the efficient operation of any criminal justice system.

Initiation Of Pre-Trial Hearings By A Judicial Officer

The first provision of H.R. 7747 with which we take issue is an amendment to the D.C. Bail Reform Law, which in effect encourages judges to initiate pre-trial detention hearings. Under current law these hearings must be initiated by prosecutors who represent state interests. We believe this is a sensible arrangement — because citizens expect on the other hand that, if any part of the criminal justice system is unbiased, it will more likely be its judges. Citizens think judges will more likely protect their interests against errant police officers, prosecutors, correctional personnel, and even their own defense attorneys. They see judicial officers as referees who "oversee the game" and ensure that the rules are followed. Unfortunately, the proposed amendment makes a judge appear to be an advocate of pre-trial detention, impunes a judge's impartiality, and in our judgment seriously damages an intended balance in the criminal justice system.

Ten-Day/Ninety-Day Holding Periods Prior To Trial

Other unacceptable amendments involve the substitution of a ten-day holding

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period for defendants awaiting parole or probation, for the current five-day maximum in such cases...and the substitution of a 90-day holding period maximum for the current 60-day one, from the time of arrest to the time trials must begin. Representatives responsible for these amendments must have been sensitive to the possible unfairness of longer pre-trial detention, because in Sec. 3(a) subsection (e) of Section 23-1322 of Title 23 as amended by H.R. 7747, the bill's language allows a subsequently convicted defendant to receive credit toward service of sentence for the time he was detained. But what compensation is provided under law for innocent persons spending an additional 30 days in jail?

We might ask this question another way. How many innocent defendants will be forced to pay, and for how many days, for the failure of the criminal justice system — despite the introduction of computers and other modern technology — to step up its adjudicative process, coordinate its components effectively, and improve communications between such components as prosecution, bail, parole and probation?

Another even more fundamental question is: "How many days and under what circumstances should a defendant be held awaiting trial without compromising his rights to a speedy trial guaranteed by the Constitution?"

Our final concern involves the economic cost of an envisaged 30-day increase in the length of time the average defendant is detained. Current practices, combined with the effect of these two amendments, will add substantially to capital outlays for facilities and to per diem costs for accomodating an increased detainee population.

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Economic Costs Of Increased Detention Associated With H.R. 7747

H.R. 7747 makes it easier to detain people, makes possible the detention of more people, and establishes a legal framework leading to longer detention of people. It is difficult to quantify its high social cost to families in the District of Columbia, though for example 46% of District pre-trial defendants in 1975 were employed at the time of arrest, and 5% were students, according to a 1977 report by the D.C. Office of Criminal Justice Plans and Analysis. Easier to quantify are the direct economic costs emenating from H.R. 7747 amendments.

For whatever reason, the District's average daily detainee population has risen by an alarming 75% since 1973, even without the impact of H.R. 7747. According to the D.C. Department of Corrections, average daily detainee population was 786 in 1973...879 in 1974...976 in 1975...and 1,376/7 in 1976 and 1977. Between 1972 and 1977 the number of District detainees per 100,000 residents increased from 107 a day, on the average, to 193 a day. This is a major increase, a very high ratio of detainees to residents compared to other states, and certainly means either that more people are already being detained, or that detention periods are already increasing, or some combination of both.

Daily costs per detainee have also risen alarmingly — to the point that today it costs $36.21 a day to keep a defendant in the Jail Annex...$53.41 in the Women's Detention Center and $35.36 in the New Detention Center. Last year it cost about $52,000 a day to detain an average daily population of 149 women and 1,228 men. The District is already planning two new wings to the recently-built Detention Center, which will accomodate 480 additional detainees at a cost of $12 million, or about $27,000 per bed. In addition, local taxpayers will have to support new expenditures of $17,000 a day for staff, food, utilities, etc., if the current

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rate at the Detention Center prevails without inflation. That's $6.2 million annually...and in our opinion H.R. 7747 surely promises to fill the new beds.

But despite all this investment, neither H.R. 7747 nor two new wings at the Detention Center are going to speed up the trial process, improve the quality of local justice, or provide more expeditious and just means of securing punishment and treatment for the guilty on the one hand, and vindication for the innocent on the other. This is what low income black citizens of the District of Columbia meant, when they said in SOS '76 that the current criminal justice system is failing to distinguish between victims and criminals, and punitively treating innocent low income minorities in the process.

H.R. 7747's Failure To Address Actual Problems

District citizens of all income levels including the Washington Urban League's constituents, want speedier separation of guilty from innocent defendants, speedier and surer sentencing of the guilty. The irony is that H.R. 7747 not only will not accomplish purported objectives, but by putting more people in pre-trial detention for longer periods of time, will aggravate current problems of our criminal justice system. In 1974, according to a report by the Institute for Law and Social Research entitled Operations of the D.C. Criminal Justice System, 59% of local arrests did not lead to sentencing or incarceration, and an additional 4% which came to trial were acquitted. That is, in 21% of arrests, prosecutors rejected the case at the initial referral,...and in another 38% of arrests, the case was dismissed after screening on its merits. Only 30% of arrests in 1974 pled guilty or were found guilty. We do not know how many of the 59% were victims or criminals, but the Institute's report concluded that

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the major reason for case failure was either inadequate evidence or lack of witnesses.

We think H.R. 7747 will aggravate both problems. The matter of scheduling and obtaining witnesses is administrative and logistical. Experience tells us that witnesses are easier to locate when such contact is sought closer to the time of the incident and arrest. Furthermore, witness recall is clearer the earlier the contact is made. Adding more detainees for a longer period of time will simply overload the system and foster longer delays, not only in obtaining reliable witnesses, but also in the collection of evidence which involves considerable skill and ingenuity, investment of time and cooperation among several branches of the criminal justice system and by citizens. The Institute's report reached a similar conclusion, asserting that the number of District case refusals and court dismissals could be substantially reduced by administrative and logistical improvements and the provision of necessary additonal resources to make them.

District citizens of all income levels including our constituents are also tired of being victimized by the same offenders — but we fail to see, on the basis of available data, how increasing the number of per-trial detainees and lengthening the time they are detained, is going to reduce repeat offenders or recidivism rates. The Institute's Interim Report on Recidivism in the District of Columbia studied the number of repeat offenders who were arrested, prosecuted or convicted for felonies and misdemeanors in the District, over a five-year period. The Report showed that 7% of arrested individuals accounted for 24% of all arrests during the period. Six percent of prosecuted individuals accounted for 20% of

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all prosecutions during the period. And 35% of all convictions involved defendants who were convicted two or more times during the period. Our system of justice does not sanction the harassment of persons who may have been convicted more than once, or of the 93% of persons during this period who may not have been arrested previously, or of the 96% of persons who may not have been prosecuted previously. Indiscriminately broadening the base of detainees and increasing the number of those detained, or holding the majority of accused persons longer, will not attack the problem of recividism. Only an expeditious bringing to trial of repeat offenders will do so, and there is nothing unconstitutional about that, as long as there is adequate time for the preparation of a defense.

Recommendations

"Operation Doorstop" is an example of an effective alternative solution to these problems. In the District of Columbia it accelerates the adjudicative process for dangerous and recidivist offenders under detention, by placing them ahead of others in the court calendar but without jeopardizing defense preparations and a fair trial. It also allows innocent citizens to return as promptly as possible to their community responsibilities.

We recommend the addition of new resources to that part of the criminal justice system having adjudicative responsibilities, specifically the courts. A Washington Star editorial, January 18, 1978 revealed there is a backlog of 1,400 felony cases and 2,750 misdemeanor cases in the D.C. Superior Court, and that the time between arrest and trial has lengthened from 170 days to 237 days in the last four years. The 1978 Comprehensive Criminal Justice Plan for the

District of Columbia, and Chief Judge Harold Green of the D.C. Superior Court, report a decrease in court employees and a considerable increase in case volume.

We also recommend passage of speedy trial legislation for the District. A carefully prepared speedy trial bill has the potential for:

- Increasing protection of the rights of the accused, guaranteed under the Sixth and Eighth Amendments to the Constitution;
- Enhancing the constitutional presumption of innocence by reducing the possibilities of punishment before trial and the establishment of guilt;
- Speeding up the adjudicative process so the guilty can begin as early as possible to undergo treatment, rehabilitation, punishment, correction or make retribution;
- Speeding up the process so the innocent can be vindicated, reestablish themselves and meet their responsibilities free of suspicion and doubt from the community in which they live;
- Demonstrating to the community — both law-abiding and law-violating — that justice is certain, quick and fair, and that the accused do get to trial with reasonable dispatch;
- Decreasing some of the problems, concerns, and fears that extended pre-trial release creates for many community residents;
- Reducing negative feelings created by extended holding of innocent victims, which often gives rise to anti-social behavior;
- Increasing the reliability and credibility of witnesses, who may be more likely to recall events incident to the crime if trials are held more expeditiously;
- Increasing the likelihood that witnesses can be located and available for testimony;

- Reducing the enormous costs associated with the pre-trial incarceration of the accused, many of whom are found "not guilty" or are released to probation after conviction.

We also recommend the development of more sound third-party custody programs which would be appropriate for certain categories of offenders...the creation of restitution programs for certain types of property offenses...and more extensive and creative use of pre-trial diversion.

Finally, we feel that many of the problems that the House attempts to address in H.R. 7747 would be reduced if the components of the criminal justice system pursued total, system-wide goals and objectives, and began to plan and develop strategies cooperatively. Citizens of the District should be permitted to play more active roles in this process.

Thank you.