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ON HOUSE BILL 1963: REGULATING THE PRACTICE OF BAIL ENFORCEMENT

BEFORE THE SUBCOMMITTEE ON THE COURTS

OF THE HOUSE JUDICIARY COMMITTEE

JANUARY 13, 1998

Good morning. My name is Dave Jaros. I am the Legislative Assistant at the American Civil Liberties Union of Pennsylvania. I would like to thank the Subcommittee for providing me with this opportunity to present testimony on House Bill 1963. I would like to add that my testimony is not based upon information specific to Pennsylvania, but rather is founded upon cases and trends which have occurred across the nation.

The ACLU of Pennsylvania believes that House Bill 1963 represents an important and much needed step toward protecting the safety of Pennsylvania's citizens and their constitutional rights. The role of bail enforcement officers has evolved considerably throughout the twentieth century as have the legal doctrines which govern their treatment. House Bill 1963 provides much needed protections against abuse by bail enforcement officers as well as guidance as to the limits on their powers. Further, House Bill 1963 fills an important void by providing for training and registration for a profession that requires considerable skill and can involve the use of deadly force.

There is little question that bail enforcement officers provide valuable services. The private bail system has helped to ease prison overcrowding, saves the State the considerable cost of pre-trial incarceration, and, most importantly, avoids the imprisonment of a person whom the law still presumes to be innocent. For the system to work, bail enforcement officers are needed to assure that those people who skip out on their bail are brought back for trial. This service not only ensures the financial stability of the bonding system, but also aids law enforcement in the task of bringing potentially dangerous offenders to justice.

But, while bail enforcement and the recovery of bail "jumpers" are necessary and important aspects of our judicial system, the lack of proper regulation for this profession has led

to some horrifying abuse. Bail enforcement officers or “bounty hunters” enjoy powers greater than those of a police officer to arrest and pursue fugitives, yet they are exempt from the limitations that the Constitution places upon officers of the state with regards to search and seizure.¹ In addition, although bounty hunters are empowered to use “necessary force” to arrest defendants and are paid by the bondsman *only* if they present either the defendant or the defendant’s death certificate to the court, the law does not require that bounty hunters receive any formal training in the use of force.²

The lack of constitutional restrictions on bounty hunters and the absence of training in the use of force has had tragic consequences. In arresting suspects, bounty hunters commonly use excessive and indiscriminate force, resulting in not only unnecessary deaths and injuries to defendants the law still presumes to be innocent, but to third parties as well.³ The litany of complaints involving defendants who have been unnecessarily brutalized by bounty hunters range from an episode in Georgia where a bounty hunter beat a suspect in the head and face with a pistol,⁴ to an incident in Connecticut in which a bounty hunter held a pillow over a struggling defendant’s face until the man stopped breathing, thereby enabling the bounty hunter to more easily handcuff the unconscious defendant. Bounty hunters have also been known to mace or pepper-spray both defendants and bystanders to more easily facilitate apprehension. In one such case, a bounty hunter used a pepper grenade to ensure that no bystanders came to the assistance

¹ Houston Law Review [Vol. 33:731] (1996) p. 769

² Ibid p. 771

³ Ibid p. 774

⁴ Bennet v State, 311 S.E2d 513, 514 (Ga. Ct. App. 1983)

of the man he was subduing. According to the hunter's own testimony, the "grenades left more than twenty people on their knees clawing at their tearing eyes."⁵

House Bill 1963 rightly subjects bounty hunters to the same constitutional constraints as police officers searching for bail jumpers. While bounty hunters will continue to enjoy broader powers of search and arrest than do ordinary citizens in performing their important public functions, HB 1963 will require them to submit to the protections guaranteed by the Bill of Rights. For example, under HB 1963, bounty hunters will be required to obtain a warrant by showing probable cause that a suspect will be found at a particular residence prior to breaking into that residence. Such a restriction is needed to prevent episodes like the one in Orange County, Florida, in which bounty hunters kicked open the door to an innocent family's hotel room and held them at gun point in the mistaken belief that a fugitive was inside.⁶

House Bill 1963 would also require a bounty hunter who wishes to arrest a defendant prior to the defendant's trial date to present new facts demonstrating that the defendant either poses a substantial risk of fleeing the jurisdiction, has committed an additional felony, or otherwise threatens the security of the bond. The ACLU believes that suspects released on bail should not be regarded as being in a state of perpetual flight. Such suspects, unlike prisoners who have escaped confinement, are free through a legal, state-sanctioned, and regulated procedure that the Constitution explicitly guarantees.⁷

⁵ *Tyranny on the Streets: Connecticut's Need For The Regulation of Bounty Hunters*, (14 Quinnipiac Law Review 479, Fall 1994)

⁶ Houston Law Review [Vol. 33:731] (1996) p. 775

⁷ Ibid p. 789

In addition to protecting the safety and constitutional rights of Pennsylvania citizens, House Bill 1963 will help to resolve some of the ambiguities about bounty hunters which have developed in the past century.

In an 1810 case, called *Nicolls v. Ingersoll*, the Supreme Court of New York granted bounty hunters broad powers to pursue and arrest a suspect “at all times and places.”⁸ (7 Johns. 145). In 1872, the U.S. Supreme Court similarly determined that bounty hunters enjoyed broad powers to control defendants. *Taylor v. Taintor*, 1872 (83 U.S. 266). These same courts concluded, however, that despite the bounty hunters’ expansive powers to act “like a sheriff,” bounty hunters were, nonetheless, not state actors and therefore not subject to the constraints placed upon other law enforcement officials by the Constitution and the Bill of Rights.⁹ The basis for this opinion was the assumption that a bounty hunter’s power arose not from a judicial procedure, but from the bond contract itself.¹⁰

However, since the turn of the century, the Court’s “state action doctrine” has evolved significantly and some modern courts have determined that a private citizen need not act “pursuant to court process” to be considered a state actor.¹¹ For example, in *Jackson v. Pantazes*, the Maryland Supreme Court found that Pantazes, a bounty hunter, was a state actor and therefore could be sued under section 1983 for civil rights violations.¹² (810 F.2d 426). House

⁸ Ibid p. 752

⁹ Ibid p. 754

¹⁰ *Nicolls v. Ingersoll*, 7 Johns. 145 (N.Y. 1810)

¹¹ See *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972) and *Houston Law Review* [Vol. 33:731] (1996) p. 778

¹² *Jackson v. Pantazes* (810 F.2d 426) See also: *Kear v. Hilton* (699 F.2d 181) (4th Cir. 1983)

Bill 1963, by clearly setting forth the requirement that bounty hunters must conform to constitutional constraints which are applicable to other law enforcement officers, resolves any ambiguity about what bounty hunters are permitted to do under the law.

The ACLU of Pennsylvania believes that House Bill 1963 makes important strides toward preserving the privacy and protection of Pennsylvania's citizens. We hope that this Subcommittee and the General Assembly will support the passage of this important legislation. That concludes the prepared portion of my testimony. I would be happy to answer, to the best of my ability, any questions you might have.