

American Surety Company
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Statement on Governor's Bill No. 18
Joint Committee on Judiciary
Testimony of Michael J. Whitlock
Executive Vice President

My name is Michael J. Whitlock, Executive Vice President of American Surety Company, a Property & Casualty Company domiciled in Indiana. American Surety Company is admitted to 49 states. We've been a corporate citizen of the State of Connecticut since 1999.

My testimony pertains to the proposed 10 percent cash deposit option in lieu of 100 percent security of the established bail amount. Simply put, 10 percent does not cover 100 percent. Accepting 10 percent of the bail amount in cash does not satisfy the requirement set forth in Section 14 of the Constitution of Connecticut which states,

"All prisoners shall, before conviction, beailable by sufficient sureties, except for capital offences, where the proof is evident, or the presumption great; and the privileges of the writ of Habeas Corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it; nor in any case, but by legislature."

Upon setting of bail, the prisoner (defendant) is expected to provide security equal to the full amount of bail either in full cash equivalent or a bail bond backed by a surety insurer approved by the State of Connecticut. In the case of a 10 percent cash deposit bond, 90 percent of the bond remains unsecured and therefore uncollectible. By setting a bond option of just 10 percent of the original bail amount the court has effectively reduced the bail by 90 percent undermining the court's original bail ruling.

The sole purpose of bail is to allow a defendant to be released from jail pending trial with a third party guarantor that will insure their appearance in court at all time required up to and including trial. A deposit of cash equal to just 10 percent of the bail amount does not meet this standard.

At trial, the judge, prosecutor, defense attorney, victim and witnesses for the defense and prosecution can all be present, if the defendant is not present the case cannot go forward. The defendant's appearance in court secured by sufficient sureties is the linchpin to the entire judicial process.

Governor Malloy has voiced concerned the premium costs to purchase a bail bond is nonrefundable and therefore unfair to the criminal offender. He favors 10 percent cash bail because the deposit is returned to the defendant upon appearing in court. There is a belief a defendant knowing they will receive a refund of their bail deposit if they return to court will in itself be sufficient incentive to return to court. I would argue the 10 percent cash bail option actually makes it easier for criminal offenders to obtain release from jail quickly without concern for supervision or apprehension if/when the fail to appear.

Bail bonds are backed by approved sureties companies and secured by third party co-signors (parents, employers and friends) who often times pledge their homes as collateral. The threat of a financial loss equal to the full amount of bail is ten times the greater incentive over 10 percent cash bail, for a defendant to appear in court.

Attorney fees. A defendant who can afford to pay the 10 percent deposit bail amount would also have the means to pay for a private attorney. Keeping in mind Governor Malloy's concern for the financial well-being of criminal offenders, why then does he not address in his bill the issue of non-refundable attorney fees? Should criminal offenders have the option of placing legal fees into escrow with the state only to be returned after the case has been concluded? This would be in keeping with the Governor's concern for the financial well-being persons committing illegal acts in Connecticut.

Lastly, if Governor Malloy is offering criminal offenders a 90 percent discount on bail and the possibility of a refund if the defendant complies what is the Governor offering the law abiding citizens of Connecticut? Will they receive refunds on civil penalties once they comply? If not, why his generosity only directed at very criminal offenders committing crimes against property and persons of Connecticut?

Ultimately, the sole purpose of 10 percent deposit bail is to raise money for the state when defendants fail to appear for court. In that regard, the state should profit handsomely as without the defendant being held accountable to appear in court there will be substantial abuse of that trust.

American Surety Company opposes any expansion or reinforcement of the use of any cash deposit in less than the full amount of bail. We request any reference to 10 percent cash bail be removed from this proposal.