

entitled "The Administrative Code of 1929," further providing for rights of crime victims and local correctional facilities.

SENATE CONCURRENT RESOLUTION

WEEKLY ADJOURNMENT

Senator LOEPER offered the following resolution, which was read, considered, and adopted:

In the Senate, February 6, 1995

RESOLVED, (the House of Representatives concurring), That when Special Session No. 1 adjourns this week it reconvene on Monday, February 13, 1995 unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when Special Session No. 1 of the House of Representatives adjourns this week it reconvene on Monday, February 13, 1995, unless sooner recalled by the Speaker of the House of Representatives.

Ordered, That the Secretary of the Senate present the same to the House of Representatives for concurrence.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 12 (Pr. No. 12) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator FISHER.

Senator FISHER. Mr. President, I rise to urge support for Senate Bill No. 12. Senate Bill No. 12 will be the fourth bill that this Senate has considered on final passage during the Special Session on crime over the past 2 weeks.

Mr. President, Senate Bill No. 12 is indeed another important bill in that overall package which tries to improve not just our laws but our Constitution to make it tougher on criminals across this Commonwealth. Mr. President, how many times have we heard from our constituents when they were upset about someone who they learned was out on bail who was subsequently arrested for committing another crime, whether it be for the commission of a crime in stalking an ex-wife, a girlfriend, or whether it be a crime in committing a random shooting in their community after they have been previously arrested and placed out on bail?

Mr. President, one of the reasons for these facts having occurred in this Commonwealth is that our Constitution limits the right of our State courts to deny bail to that one area of cases which are referred to as capital cases, or death penalty cases.

Mr. President, Senate Bill No. 12 proposes an amendment

to the Constitution of this Commonwealth which will bring our law in line with the law of approximately 25 other States and the Federal government, which will allow our courts to detain pretrial a person whom the court believes that "no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community...."

Mr. President, I think this is a very needed change in our law for the reasons that I have previously stated. I believe that the State courts across this Commonwealth, when petitioned by the district attorney, should have the right to say once evidence is produced, once a prima facie case is made, that an individual defendant is so dangerous, whether it be to one person or to the community, whether it be because of his propensity for violence, whether it be from his past record, whether it be from his large-scale drug dealing that he or she is involved with, that the courts should have the right to protect the community. Today our courts do not have that right.

Mr. President, this is a proposal which will need to be approved in two consecutive Sessions by both the Senate and the House of Representatives. In having worked with the Ridge administration and with the House, I know that there is widespread support for this legislation. There is support for this legislation in the police community. There is support for this legislation among the district attorneys across the Commonwealth. I have had the opportunity to talk with the FBI agents in this State, I have had the opportunity to talk with U.S. Attorneys who work here in the Commonwealth of Pennsylvania, and all of them have shared with me their experience in how the Federal system has worked well for them, not in a broad number of cases but in those limited numbers of cases where, in fact, there are dangerous people who should be denied bail pretrial.

So, Mr. President, I would urge that as we move forward in this Special Session, as we look at the various causes of crime, whether it be rape, whether it be juvenile violence, whether it be repeat offenders, that we take this step to address an issue where we are, quite frankly, out of step with the majority of States across this nation and where we take this step forward to amend Pennsylvania's Constitution, to give our courts and to give our prosecutors another tool to keep those people in jail who pose a threat to our community. Mr. President, I would urge strong bipartisan support for Senate Bill No. 12.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator FUMO.

Senator FUMO. Mr. President, I rise out of concern for the basic premise that in America, as different from most other countries in the world, an individual is innocent until proven guilty. Mr. President, there is no stronger premise in our Constitution or in our belief as a free society than the fact that a person is innocent until proven guilty beyond a reasonable doubt.

Mr. President, I have often said that regrettably through media hype and ignorance of our own voters, that it would be impossible to pass in this Chamber today the Bill of Rights that keeps this country as strong as it is. Everyone is concerned with their own rights and not at all concerned with the rights of others.

Mr. President, there is no doubt that there are those occasions where someone is out on bail and may have committed another crime. There is no question about that. But I submit to you that in Philadelphia there is even a bigger problem, and that is the fact that because of a prison cap we cannot keep people in jail whether they make bail or not, and because of a prison cap and a total breakdown of law and order, defendants do not even show up for court. At last count, I believe there were something like 50,000 or 70,000 bench warrants in the city of Philadelphia that have been going unnoticed and are not able to be enforced because we simply do not have the space, and that breaks down law and order.

Mr. President, I disagreed with the Federal courts when they instituted this bizarre concept, because if you take the concept to its logical end, what does it say? It says that we, the government, the prosecutor, the police, and remember, the Bill of Rights was designed to protect citizens from their government. We are unique in the world with the Bill of Rights, but our forefathers recognized how government could get too big, how government could get too powerful, and how individuals needed some protection from government.

But in this constitutional amendment, what we are saying is that government can determine whether or not an individual is so dangerous to society that they should be denied the very basic right of bail. It is not what the crime was, it is not even the fact that they were convicted of a crime, but the determination is being made on the character of the individual.

If I read from the bill, it states, for crimes "which the maximum sentence is death or life imprisonment," we understand that, "or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community...." Very pious words. Very well sounding words. The kinds of words that make the public think we are doing something for them. But who is going to make that determination, Mr. President? Government will make that determination.

Mr. President, it was said much better by Justice Stevens of the U.S. Supreme Court when he looked at this very same issue, and he stated in the opinion of *United States v. Salerno*, "If the evidence of imminent danger is strong enough to warrant emergency detention, it should support that preventive measure regardless of whether the person has been charged, convicted, or acquitted of some other offense...It is equally unrealistic to assume that the danger will vanish if a jury happens to acquit them."

And that is the ultimate logic here, Mr. President. What we are saying is that government will now have the right to arrest someone and say you are so dangerous we are going to incarcerate you. You are dangerous maybe because of prior convictions, you are dangerous because we do not like the color of your skin, you are dangerous because you live in a bad neighborhood, you are dangerous because we do not like your ethnicity, you are dangerous because we say you are dangerous. Well, has that person gotten any less dangerous because a jury ultimately found them not guilty? Not by this logic.

Then why do we have jury trials? Why do we even have trials? Mr. President, it has often been said that an enlightened

dictatorship is the most effective form of government and the most efficient form of government known to man. The only problem is, how do we get together to pick the dictator and what happens if we make a mistake? Mr. President, as was said by Thurgood Marshall, "Honoring the presumption of innocence is often difficult; sometimes we must pay substantial social costs as a result of our commitment to the values we espouse. But at the end of the day the presumption of innocence protects the innocent; the shortcuts we take with those whom we believe to be guilty injure only those wrongfully accused and, ultimately, ourselves."

Mr. President, I can think of nothing more repugnant to the freedom of man than to even consider this. However, I recognize the conservative bent, I recognize how everybody thinks we are going to protect them from crime by doing these kinds of stupid things, but in the end we have thrown the baby out with the bath water.

Mr. President, I have sat here for many weeks and watched this Special Session in action, and I was not about to comment today but I think I must now that I see this type of legislation coming forth. Mr. President, all we have done in the last few weeks is to say to victims, after they have become victims, if we are lucky we have caught the guy and we are putting him away forever. But we have done nothing to prevent that person from becoming a victim in the first place because we do not want to hear anything about social programs. That is not meant for a Special Session on crime. So we will continue to fuel the flames, we will continue to infuriate the public, we will satiate every demand that they may have that arises out of anger and frustration. We will abdicate our responsibility to lead, and we will become flamethrowers. Mr. President, in the end we will have done nothing to prevent the number of victims, yet we will have trampled over the rights of every citizen in this Commonwealth.

Mr. President, I plead with my fellow Members of this Senate, and I am shocked by the number of people who I see have sponsored this, both in my party and in the Republican Party. I can only assume that they did so without really thinking about the consequences of their act. I am not worried too much about the rights of criminals; no one is. But I do worry about the rights of an innocent individual who has been charged wrongfully. It was not too long ago that I can remember back when police departments were out of hand, when the quickest way to get a confession was to beat somebody up in a police station and have them sign on a dotted line, but we as a society said no, we cannot allow that to happen. Yet we come back with this type of legislation that says we can take away the basic right, the basic right of an individual, that individual's right to freedom, because we suspect. A, they may have done something wrong, and, B, we think they are dangerous. Mr. President, there can be no more dangerous precedent set than that type of legislation. Someday it may happen to you, and then I will be hearing some people complain about their rights.

I remember as a young trial attorney when I was doing criminal defense work, and when I would be at cocktail parties the big thing was Miranda. Well, what is this nonsense that we

have to give these criminals this warning that they cannot talk to us without a lawyer? How absurd that is. And then I waited a little bit and the drug problem began to spread into the middle class. It was no longer poor kids, black and white, in the inner city getting arrested for marijuana, now it was suburban kids with parents of affluence, parents who were doctors and lawyers. And now when I would get these kids and their parents in my office, the first thing they would say to me, the very first thing: the police never gave him his rights. All of a sudden that case had some meaning because the problem had spread to their community, and now there was some concern for the rights of the accused because their own children were the accused.

We have to lead in this Senate. We have to set an agenda that is reasonable. We have to be smart on crime, not tough on crime. Try telling the next victim of a shooting that we are tough on crime and we will catch that person and put him away, but by the way, it is a shame you are in that wheelchair for the rest of your life, but we will get them the next time. That does nothing for that victim, and this type of legislation just tramples, tramples on 200 years of proud history in this democracy, people who have fought for the Constitution, people who did not know how to read and write in the Army, who went and fought and gave their lives for the Constitution that they could not read but they knew the basic principle was that they were free men and women. This takes that freedom away and says that the government will now determine who will be free, not the individual. And that is 200 years of history down the drain.

And I am not impressed that those bimbos in the United States Congress adopted this cockamamie thing, the same way I am not impressed with the way they have driven up the Federal deficit. And I am not impressed that there are some other colleagues of ours around the country who also have lost the spirit of democracy and adopted other such lousy legislation. I am concerned with Pennsylvania and I am concerned with my rights and the rights of my constituents here in this State, and I can only plead to the gathered intelligence in this room to reject this concept and make sure that at least Pennsylvanians, where this country began, will continue to have the very basic right in our democracy, and that is the right of freedom.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, I do believe that Senate Bill No. 12 is an effort to do something that I think should be done, and that is to in some way address the problem of people who may be threats to the safety of particular people or a community in general. I believe that that approach should be done with some precision and some legal certitude, and I believe that that can be done.

I believe that Senate Bill No. 12, however, addressing the bail question, not only is off the mark but may very well be beyond the bounds of our basic structure of government and, therefore, overreaching. In short, it may not solve the problem that our constituents need and want solved.

As it reads, if one looks at it very closely, it says that there

is an offense which is in the mind of some judge, and that offense merely is whether or not the offense that you are charged with is theft or some other kind of felony which may be innocuous, if that judge, for whatever standard, believes or says he believes that no condition or combination of conditions other than the punishment of imprisonment will ensure the safety of some general person, then you are imprisoned. You are imprisoned; therefore, sentenced.

I suggest that that creates another crime. It does not even connect what is in that judge's mind with the crime that brought you before him in the first place. It does not say if as in the famous O.J. case that you have beaten your wife, as is alleged, and it may be dangerous and severe, that if we have some kind of a hearing and we determine by evidence that you should be detained, it says you should be imprisoned for whatever the crime is. If that judge decides in his mind he does not like you, you may not look like him, you may be a Republican or a Democrat or a communist, or whatever you might be, he merely decides under this provision, he looks at you and says no condition or combination of conditions other than putting you in jail, imprisonment, punishing you, will reasonably assure something he thinks should relate to another person who is in the community.

I believe that this provision is so poorly drawn and so ineptly crafted to meet a condition that our voters are concerned about that we need to take at least a close and effective look at it. It does not follow that because we want to put criminals off the streets and we want to rectify the circumstances under which they get bail, it does not automatically follow that a rhetorical provision which says something does that. So it is my observation, it is my plea that I would love to see something that does that. But my observation is that this is so ineptly drawn that it really does not say anything.

Let us say that someone is charged with the crime of theft or larceny. He went in a big place and stole a lot of money, and he is a Republican Indian fellow from Utah, but he was in New York. And under this, all judges are not always cool, all Senators are not always cool, all Democrats, all Republicans, all lawyers, all anything are not always cool. And history has proven that given the power, oftentimes absolute power results in what our country resulted in: that is, a revolution to bring about some basic rules that avoids absolute and corruptible power. This provision allows for a judge to have absolute power to send that Republican Indian from Utah to prison. It says he can do that. It says, I decide, no condition, and that judge may be someone who cannot help not liking Republican Indians from Utah who are charged with stealing some emeralds from wherever. That is what it says.

Now, there are a lot of other hypotheticals that might sound more simple and more crazy, but can we draft something that gives absolute power to one person and apply it to a case like that that has no connection? I submit that is exactly what this provision says: no bail unless no condition, blah, blah, blah, and the judge decides that. It does not even say unless the crime that you are charged with has some connection with the danger that he finds.

I would like to vote for a bill that adjusts the bail and also adjusts the danger that exists in our various communities because we do not do something with the people we have in there already. That is to say, we have overcrowded prisons which some people belong in and thousands belong out, and no one has the drive to put those out who could be out and put those in who should be in.

I, therefore, urge defeat of this bill for the simple reason that it would ultimately be a legislative failure addressing a very serious problem for which our citizens are waiting for some relief. I urge the defeat and, hopefully, a redrafting of a bill that can pass muster.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I wonder if the maker of the legislation, the gentleman from Allegheny, Senator Fisher, would stand for brief interrogation?

The PRESIDENT. The gentleman from Allegheny, Senator Fisher, indicates he will.

Senator SCHWARTZ. Mr. President, just a couple of questions to be clear. We have heard a number of comments about what this bill would actually do, in reality. I wonder if the sponsor of the bill could speak to whether, in fact, it would be true that any judge could hold anyone pretrial, regardless of what they are arrested for, regardless of what the crime is, before they are tried or found guilty, but would it be true that anyone could be held regardless of what they are arrested for?

Senator FISHER. Mr. President, under the Rules of Criminal Procedure which govern bail in this Commonwealth, which this provision would come under if approved by the voters of the Commonwealth, once a person was arrested they would be brought first before a district magistrate. Currently, unless a case is a capital case, the district magistrate has to set a monetary amount of bail. If the Constitution were changed pursuant to Senate Bill No. 12, that district magistrate, who may be the first judicial person that the arrested defendant would see, that person could deny bail for any number of circumstances. The legal reason for which that person could deny bail are for those reasons stated within this constitutional amendment. If, in fact, a defendant has bail denied, they can immediately, through their attorney, whether it be a private attorney or a court-appointed attorney, petition a criminal court judge to review that decision of the district magistrate so that there would then be a full bail hearing on the issue of whether or not bail should be set, and if, in fact, bail would be set, the amount of the bail.

Now, let us say that that common pleas court judge determined that the district magistrate was right, and for the reasons stated in this Constitution because they felt the person was dangerous to a person and to the community, they sustained the magistrate's position and refused to set bail. That person could then appeal to the Superior Court of Pennsylvania. So there are at least three steps in the process by which an individual decision on an individual case could be reviewed on the issue of bail.

Senator SCHWARTZ. Mr. President, then I do understand that the short answer is, yes, while it might not be a single

judge, there might be a series if appealed, it is true that a person, regardless of what crime they are arrested for, there is no rule that, in fact, they could be denied bail and held pretrial? Is that correct, Mr. President?

Senator FISHER. Mr. President, well, it is hard to give a "yes" or "no," but if you force me to give a "yes" or "no," the answer would be "yes." I might say that today the same thing could happen. It would be just as arbitrary if the facts did not justify the refusal.

Senator SCHWARTZ. Mr. President, the maker of the bill has actually referred to the notion of dangerous offenders and has assured us in his previous comments that, in fact, it would not be broadly applied, and yet there is nothing in this bill that I can find that says anything about how narrowly or broadly it could be applied, or, in fact, the word "dangerous." The bill is actually fairly simple. What it basically says is that a person could be held if there is not reasonable assurance for the safety of the community or a person. That seems to be extremely broad. Could the sponsor of the amendment speak to how this would be limited? What would, in fact, assure us that someone, a series of judges, would not broadly interpret this and broadly interpret the notion of safety of the community? It is possible, we have been told, that someone who has been picked up for shoplifting could be held without bail prior to trial. Could the maker of the amendment actually explain what would reassure me, and possibly others of us, that this would not be broadly applied and what, in fact, the definition of safety would limit that definition of safety to not be something that makes us feel unsafe, and many of us feel unsafe, but truly is a danger to the community in some very, very serious way that we would deny some potential constitutional rights to this person?

Thank you, Mr. President.

Senator FISHER. Mr. President, certainly, as sponsor of this constitutional amendment, it is not my intention, nor would I hope it would be the intention of anyone in this Chamber who would vote on this bill, that, for instance, a person who was arrested for retail theft would be held without bail. But, in fact, in drafting Senate Bill No. 12, we have tried to take language from other statutes across this country and have attempted to define as best we could that category of person, that category of cases that should be put in our Constitution. It is my belief that utilization of the words "condition or combination of conditions" with the word "safety" are those words that best try to define what it is that we are trying to deal with in this bill.

Mr. President, I had indicated earlier that, in fact, if this bill is passed and approved by the voters of this Commonwealth, which a constitutional amendment takes, the definition of what will happen and how the procedures would be administered most likely in our Commonwealth would be decided by the further implementation of the Rules of Criminal Procedure. We could attempt to do that by statute, but I suspect that the Supreme Court would rule that that is within their jurisdiction. So I would fully believe that procedures will be set out and that various tests will be specified for the courts that will be dealing with the bail questions, but clearly it will be safety, and safety is connected to dangerous. Someone who is dangerous to another is obviously a threat to that person's safety or to the