

SENATE BILL REPORT

SHB 2313

As Reported By Senate Committee On:
Judiciary, February 25, 2004

Title: An act relating to bail bond recovery agents.

Brief Description: Regulating bail bond recovery agents.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Carrell, Boldt and Mielke).

Brief History:

Committee Activity: Judiciary: 2/20/04, 2/25/04 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: For a fee, bail bond agencies post a bond to guarantee that a person will appear for a court date. If the defendant does not show up as scheduled for a court date or within the grace period, he or she is considered a fugitive, and the bail bond agency is liable to pay the entire amount of the bond. Bail bond agencies and agents are licensed by Washington State.

Bail bond recovery agents, commonly known as "bounty hunters," are retained by bail bond agents to apprehend and produce bail fugitives in court or to law enforcement officers. Bail bond recovery agents are not regulated in Washington. Bail bond recovery agents may contract with one or more bail bond agencies or operate independently. The relationship is contractual with bail bond agents generally not exerting direct control over the methods used to recover bail fugitives.

In *Taylor v. Taintor*, 16 Wall. 366 (1872), the United States Supreme Court found that those who provide bail bonds may seize a bail fugitive and "deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done" and also that they may "break and enter his House for that purpose." A bail recovery agent may not, however, assault or trespass on the property of a third party without criminal liability. *State v. Portnoy*, 43 Wn.App. 455, 718 P.2d 805 (1986).

Summary of Amended Bill: A "bail bond recovery agent" (recovery agent) is a person who is under contract with a bail bond agent to locate, apprehend, and surrender a bail fugitive. General or limited authority law enforcement officers are not included in the definition.

Beginning January 1, 2006, no one may perform the function of a recovery agent unless the person is licensed. The Department of Licensing (DOL) must adopt rules, in consultation with

the industry, law enforcement, and prosecutors, for the recovery agent license, including pre-license training and examination. Continuing education requirements may be adopted. To obtain a license, the applicant must: pass an examination administered by DOL, be at least 21 years old and a citizen or legal resident alien, not have been convicted of a crime that directly relates to the anticipated duties, have a criminal background check, and have a current firearms certificate issued by the criminal justice training commission and current concealed pistol license if the recovery agent intends to carry a weapon. Bail bond agents acting as recovery agents must have an endorsement to their license.

Before contracting with a recovery agent, the bail bond agent must check the recovery agent's license. Recovery agents must operate under both the law and the specific authority given them in their contract with a bail bond agency. Contracts are not transferable. There must be a separate contract for each fugitive being sought. The recovery agent must carry a copy of the license and contract while working. If requested, the recovery agent must show the contract to the fugitive and to the owner or manager of any property the agent enters, but need not do this if exigent circumstances exist during an effort to apprehend a fugitive. Recovery agents from other states who are not licensed may operate in Washington only under the direct supervision of a licensed recovery agent.

It is unprofessional conduct: to function as a recovery agent without being both licensed and contracted; for a recovery agent to wear law enforcement-style clothing; to make statements that would reasonably cause another person to believe the recovery agent is a law enforcement officer; to be untruthful in applying for a license; or for a bail bond agent to use the services of a recovery agent who is not both licensed and under contract. Bail bond recovery agents must notify local law enforcement within ten business days whenever they discharge a firearm in the course of their work.

"Planned forced entry" is defined as going into a home or other structure without the permission or knowledge of the occupant in an effort to pick up a fugitive, if this action was planned in advance. It does not include situations, such as during a chase or a casual encounter, where the forced entry happens without advance planning. Before a planned forced entry, the recovery agent must notify an appropriate local law enforcement agency and provide specific information. During a planned forced entry, the recovery agent must wear a garment with the words "BAIL BOND RECOVERY AGENT" written on the front and back in letters at least two inches high. The words must be reflective and in a color that contrasts with the color of the garment.

Beginning January 1, 2006, it is a gross misdemeanor (punishable by up to 12 months in jail and/or a \$5,000 fine) for a bail bond recovery agent to make a planned forced entry without complying with both the notice and the identification requirements, perform as a recovery agent without a license and contract, perform as a recovery agent from another state without direct supervision, or employ an unlicensed recovery agent.

Amended Bill Compared to Original Bill: Recovery agents may wear badges whose design is approved by the Department of Licensing. Recovery agent addresses and phone numbers do not have to appear on the contract. Recovery agents may use dogs.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Bail bond recovery agents are not regulated under current law. The U.S. Supreme Court case enabling this activity is over 130 years old. This will curb the egregious activities of a small minority of recovery agents that make the whole profession look bad.

Testimony Against: Getting a concealed pistol license already requires a background check. There should be a grandfather clause to allow current professionals to continue business. This may restrict the use of informants.

Testified: PRO: Representative Carrell, prime sponsor; Gordon Walgren, Washington State Bail Bond Agents Association; CON: Robert Flood, BIA; Mike Rocha, Washington Association of Pro. Atm.; Richard Hansen; Ron Isaksen, Bail Agent.