Approved: 4-26-07
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 13, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Kyle Smith, Kansas Bureau of Investigations
Mike Life, Kansas Narcotics Officers Association
Detective Gary Borstelman, Johnson County Sheriff's Office
Ed Klump, Kansas Association of Chief's of Police
Helen Pedigo, Kansas Sentencing Commission
Chris Joseph, Kansas Professional Bail Bonds Association
Shane Rolf, Kansas Association of Professional Sureties
Pat Scalia, Kansas Board of Indigents' Defense Services
Wendell Betts, Shawnee County Public Defender Office
Tom Bartee, Northeast Kansas Conflict Office
Connie Alvery, Wyandotte, county District Attorney's Office
Judge Peter Ruddick, 10th Judicial District, Johnson County
Chief Judge Richard Smith, 6th Judicial District
Rick Guinn, Chief Counsel, Office of the Attorney General

The hearing on **HB 2545 – controlled substances, ecstasy and certain meth substances a felony**, was opened.

Kyle Smith, KBI, appeared before the committee as a proponent to the bill. He stated that filing of ecstasy cases have continued to rise since 2004. The proposed bill would increase the penalty for possession of this drug to a level 4 drug felony, which is the same as for cocaine. It sends a clear message that the use of this drug is dangerous and just as illegal as other drugs. (Attachment 1)

Mike Life, Kansas Narcotics Officers Association, stated that the proposed bill fixes two problems with current law: doesn't address the seriousness of ecstasy and doesn't increase penalties for repeat offenders. The charge of a level 4 drug felony should have minimal impact on prison populations. The increase in the sentence for repeat offenders will hopefully deter some individuals. (Attachment 2)

Detective Gary Borstelman, Johnson County Sheriff's Office, commented that ecstasy is "marketed" towards ages 12- 16 years olds. It's routinely sold at rave parties and other social events which young people attend. It's a dangerous drug and should be treated as so. (Attachment 3)

Ed Klumpp, Kansas Association Chief's of Police, provided the committee with a chart from the 2006 Kansas Communities That Care Survey showing an increase in the number of 6th, 8th, 10th, and 12th graders using this drug. (Attachment 4)

The hearing on **HB 2545** was closed.

The hearing on **SB 324 – repealing certain KSA sections concerning certain crimes**, was opened.

Helen Pedigo, Kansas Sentencing Commission, explained that the proposed bill simply repeals or amends statutes that fall into two categories: outdated class D&F felony penalties and repealing several statutes. The Commission proposed the bill to help clean up the criminal statute and eliminate those that are unnecessary. (Attachment 5)

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 13, 2007 in Room 313-S of the Capitol.

The hearing on **SB 324** was closed.

The hearing on **SB 203 – release prior to trial, appearance bonds, cash deposit required to equal amount of bond**, was opened.

Chris Joseph, Kansas Professional Bail Bonds Association, appeared before the committee as a proponent to the bill. He stated that the bill does two things:

(1) eliminates the judicially- created form of bail bonding
(2) clarifies when bonds may be forfeited and revoked, thereby creating uniformity across the state

In October 1993, Shawnee County District Court adopted local rule 3.324, which created the "own recognizance-cash deposit bond" (ORCD Bond). In February 1994, Attorney General Stephan issued an opinion concluding that the Shawnee County bond program was prohibited by statute. He stated that "while the courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions."

In January 1995 the Kansas Supreme Court Administrate Order 96 created an ORCD Bond. Order 96 authorizes judges to allow defendants to post bond by paying 10% of the total bond, in the form of cash, to the district court clerk. The court keeps this 10% as an administrative fee. However, in conflict with itself the Kansas Supreme Court has a Court Rule 114 which prohibits ORCD bonds.

Mr. Joseph explained that some courts have taken to forfeiting bonds and order bondsmen to pay when a defendant violates some other condition of bond, such as refraining from the use of drugs or alcohol. The proposed bill would simply recognize that the purpose of bail is to guarantee that a defendant will appear in court and should not be forfeited for any other reason than no failure to appear. (Attachment 6)

Shane Rolf, Kansas Association of Professional Sureties, stated that the proposed bill would not restrict the ability of a judge to control who may write bonds in his judicial district, would continue to allow him to set appearance bonds in a reasonable amount that would guarantee the appearance of a defendant. It would clarify that only the legislature has the authority to provide funding mechanisms for the courts. (Attachment 7)

American Bail Coalition, Kansas Professional Sureties, Kansas Professional Bail Bond Association, Mannie's Bonding Company, Manuel Baraban, did not appear before the committee but requested their written testimony in support of the bill be included in the committee minutes. (Attachments 8-12)

Pat Scalia, Kansas Board of Indigents' Defense Services, appeared as an opponent of the bill because it would impact the amount of money they receive in reimbursement fees for attorneys. (Attachment 13)

Wendell Betts, Shawnee County Public Defender Office, appeared as an opponent of the bill. He believes the courts have constitutional authority to do bonding because it helps the court with their functions. ORCD bonding is only a bad deal to the bondsmen because they lose money. Individuals bonding out lose 10% of their money either way. (Attachment 14)

Tom Bartee, Northeast Kansas Conflict Office, appeared before the committee as an opponent of the bill. He stated that the ORCD bonds are beneficial to those individuals who are not wealthy and do not have anything to put up as collateral. He cited Article 3, Section 3 of the Kansas Constitution for allowing the court the authority for bonding because there is no express prohibition that the courts can't collect bonds. (Attachment 15) Chairman O'Neal pointed out that the Order 96 refers to Article 1, Section 3.

Connie Alvery, Wyandotte County District Attorney's Office, was concerned that the bill would take away the courts authority to require ORCD bonds or a combination of cash plus assets, or cash with work release. (Attachment 16)

Judge Peter Ruddick, 10th Judicial District, explained that Johnson County does ORCD bonds by combination of local rule, Supreme Court rule and constitutional authority. They require a 10% deposit of the total amount of the bond. 10% of that amount is retained for administrative fees. Once the case is concluded the remaining

funds are first applied to restitution, appointed counsel fees, and court costs. Any remaining funds are returned to the defendant. (Attachment 17)

Chief Judge Richard Smith, 6th Judicial District, appeared before the committee in opposition of the bill. He commented that any available funds that they are now collecting towards restitution would be given back to the bondsmen if **SB 203** passes. (Attachment 18)

Rick Guinn, Chief Counsel, Office of Attorney General, commented that the issue before the committee is really one of public policy. Allowing the courts the ability to do ORCD bonds provides for greater protection for victims by allowing the fees to fund bonding supervision, therefore, allowing a closer watch on those accused of crimes. (Attachment 19)

The Office of Judicial Administration, 14th Judicial District, The Kansas Judges' Association, Kansas Association of Criminal Defense Lawyers, and Johnson County Sheriff's Office, did not appear before the committee but requested their testimony in opposition of the bill be included in the committee minutes. (Attachments 20–24)

The hearing on **SB 203** was closed.

The committee meeting adjourned at 6:10 p.m.

Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

Testimony in Support of HB 2545
Before the House Judiciary Committee
Kyle Smith, Deputy Director
Kansas Bureau of Investigation
March 13, 2007

Chairman O'Neal and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in strong support of HB 2545, raising the penalty for simple possession of MDMA, most commonly known as "ecstasy".

The use and perception that 'club drug' use is somehow safer than other illicit drugs is a dangerous problem. 3,4 Methylenedioxymethamphetamine, a.k.a. MDMA or Ecstasy, and its sister hallucinogenic phenthylamines, are probably the most common 'club drug' used in Kansas. A combination of stimulant and hallucinogen, the feeling of euphoria and reduction in restraints make it a natural for people out to 'party'. But as explained in the attached National Institute of Drug Abuse information sheet, the risks are similar to using other stimulants such as cocaine and methamphetamine – up to and including death.

Another, hidden problem is the common mixing of chemicals in ecstasy tabs, where users may get a combination of drugs, including methamphetamine, and not just the MDMA they thought they purchased. This unknowing and unexpected drug usage can lead to even more serious complications.

In Kansas, there seems to be a growing trend of use of MDMA and its various permutations, based upone cases submitted to the KBI's forensic laboratory:

Calendar Year 2004: 48 cases
Calendar Year 2005: 78 cases
Calendar Year 2006: 143 cases

HB 2545 addresses this problem by increasing the penalty for possession of MDMA and its sister creations to a level 4 drug felony, the same as for cocaine or methamphetamine possession. The non-prison sanctions under SB 123 will still apply to these cases but the 'hammer' over the heads of these addicts will be greatly increased, with the hopes of an increase in motivation towards treatment. It also sends the clear message that the use of these club drugs is a dangerous and illegal activity. If we punish it the same as marijuana, then kids reason it is no more dangerous than marijuana. Instead, since it is as dangerous as methamphetamine or cocaine, maybe we should punish it like methamphetamine or cocaine.

Thank you for your time and attention. I would be happy to try and

House Judiciary
Date 3-13-07
Attachment # 1

NIDA InfoFacts: MDMA (Ecstasy)

PDF Version [336K] Printer-friendly Version En Español

MDMA (3,4 methylenedioxymethamphetamine) is a synthetic, psychoactive drug chemically similar to the stimulant methamphetamine and the hallucinogen mescaline. Street names for MDMA include Ecstasy, Adam, XTC, hug, beans, and love drug. MDMA is an illegal drug that acts as both a stimulant and psychedelic, producing an energizing effect, as well as distortions in time and perception and enhanced enjoyment from tactile experiences.

MDMA exerts its primary effects in the brain on neurons that use the chemical serotonin to communicate with other neurons. The serotonin system plays an important role in regulating mood, aggression, sexual activity, sleep, and sensitivity to pain.

Research in animals indicates that MDMA is neurotoxic; whether or not this is also true in humans is currently an area of intense investigation. MDMA can also be dangerous to health and, on rare occasions, lethal.

Health Hazards

For some people, MDMA can be addictive. A survey of young adult and adolescent MDMA users found that 43 percent of those who reported ecstasy use met the accepted diagnostic criteria for dependence, as evidenced by continued use despite knowledge of physical or psychological harm, withdrawal effects, and tolerance (or diminished response), and 34 percent met the criteria for drug abuse. Almost 60 percent of people who use MDMA report withdrawal symptoms, including fatigue, loss of appetite, depressed feelings, and trouble concentrating.

Cognitive Effects

Chronic users of MDMA perform more poorly than nonusers on certain types of cognitive or memory tasks. Some of these effects may be due to the use of other drugs in combination with MDMA, among other factors.

Physical Effects

In high doses, MDMA can interfere with the body's ability to regulate temperature. On rare but unpredictable occasions, this can lead to a sharp increase in body temperature (hyperthermia), resulting in liver, kidney, and cardiovascular system failure, and death.

Because MDMA can interfere with its own metabolism (breakdown within the body), potentially harmful levels can be reached by repeated drug use within short intervals.

NIDA INFO

Recommend

- NIDA Researc MDMA/Ecstas
- NIDA newslet on Club Drug Notes)
- NIDA Commu Alert Bulletin

Other NIDA

- ClubDrugs.or
- NIDA for Tee

Users of MDMA face many of the same risks as users of other stimulants such as cocaine and amphetamines. These include increases in heart rate and blood pressure, a special risk for people with circulatory problems or heart disease, and other symptoms such as muscle tension, involuntary teeth clenching, nausea, blurred vision, faintness, and chills or sweating.

Psychological Effects
These can include confusion, depression, sleep problems, drug craving, and severe anxiety. These problems can occur during and sometimes days or weeks after taking MDMA.

Neurotoxicity
Research in animals links MDMA exposure to long-term damage to neurons that are involved in mood, thinking, and judgment. A study in nonhuman primates showed that exposure to MDMA for only 4 days caused damage to serotonin nerve terminals that was evident 6 to 7 years later. While similar neurotoxicity has not been definitively shown in humans, the wealth of animal research indicating MDMA's damaging properties suggests that MDMA is not a safe drug for human consumption.

Hidden Risk: Drug Purity
Other drugs chemically similar to MDMA, such as MDA (methylenedioxyamphetamine, the parent drug of MDMA) and PMA (paramethoxyamphetamine, associated with fatalities in the U.S. and Australia) are sometimes sold as ecstasy. These drugs can be neurotoxic or create additional health risks to the user. Also, ecstasy tablets may contain other substances in addition to MDMA, such as ephedrine (a stimulant); dextromethorphan (DXM, a cough suppressant that has PCP-like effects at high doses); ketamine (an anesthetic used mostly by veterinarians that also has PCP-like effects); caffeine; cocaine; and methamphetamine. While the combination of MDMA with one or more of these drugs may be inherently dangerous, users might also combine them with substances such as marijuana and alcohol, putting themselves at further physical risk.

Extent of Use

National Survey on Drug Use and Health (NSDUH)*
In 2004, an estimated 450,000 people in the U.S. age 12 and older used MDMA in the past 30 days. Ecstasy use dropped significantly among persons 18 to 25—from 14.8 percent in 2003 to 13.8 percent in 2004 for lifetime use, and from 3.7 percent to 3.1 percent for past year use. Other 2004 NSDUH results show significant reductions in lifetime and past year use among 18- to 20-year-olds, reductions in past month use for 14- or 15-year-olds, and past year and past month reductions in use among females.

Community Epidemiology Work Group (CEWG)**
In many of the areas monitored by CEWG members, MDMA, once used primarily at dance clubs, raves, and college scenes, is being used in a number of other social settings. In addition, some members reported increased use of MDMA among African-American and Hispanic populations.

Monitoring the Future (MTF) Survey ***
Lifetime****** use dropped significantly among 12th-graders in 2005, from 7.5 percent in 2004 to 5.4 percent. The perceived risk in occasional MDMA use declined significantly among 8th-graders in 2005, and perceived availability decreased among 12th-graders.

Lifetime Prevalence of MDMA Use by Students
Monitoring the Future Survey, 2003–2005

	2003	2004	2005
8th-Graders	3.2%	2.8%	2.8%
10th-Graders	5.4	4.3	4.0
12th-Graders	8.3	7.5	5.4

For more information, please visit www.ClubDrugs.org and www.Teens.drugabuse.gov.

** NSDUH (formerly known as the National Household Survey on Drug Abuse) is an annual survey of Americans age 12 and older conducted by the Substance Abuse and Mental Health Services Administration. Copies of the latest survey are available at www.samhsa.gov and from the National Clearinghouse for Alcohol and Drug Information at 800-729-6686*

*** CEWG is a NIDA-sponsored network of researchers from 21 major U.S. metropolitan areas and selected foreign countries who meet semiannually to discuss the current epidemiology of drug abuse. CEWG's most recent reports are available at www.drugabuse.gov/about/organization/cewg/pubs.html*

**** These data are from the 2005 Monitoring the Future Survey, funded by the National Institute on Drug Abuse, National Institutes of Health, DHHS, and conducted annually by the University of Michigan's Institute for Social Research. The survey has tracked 12th-graders' illicit drug use and related attitudes since 1975; in 1991, 8th- and 10th-graders were added to the study. The latest data are online at www.drugabuse.gov.*

***** "Lifetime" refers to use at least once during a respondent's lifetime. "Annual" refers to use at least once during the year preceding an individual's response to the survey. "30-day" refers to use at least once during the 30 days preceding an individual's response to the survey.*

Revised 04/06 This page has been accessed 3148812 times since 11/5/99.

[InfoFacts Index]

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The National Institute on Drug Abuse (NIDA) is part of the National Institutes of Health (NIH), a component of the U.S. Department of Health and Human Services. Questions? See our **Contact Information**. *Last updated on Monday, May 15, 2006.*

WRITTEN TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HB 2545
Presented by Lt. Michael D. Life
On behalf of the
Kansas Narcotics Officers Association

March 13, 2007

House Judiciary Committee
Rep. Mike O'Neal, Chairman

Mr. Chairman and Committee Members,

This testimony is in support of HB 2545

Mr. Chairman and Members of the Committee, I am Lt. Mike Life with the Junction City Police Department. I have been a police officer for over 21 years. Over 13 of those years I have been working narcotics investigations exclusively. I am the supervisor of a county wide drug task force and am the current president of the Kansas Narcotics Officers Association. I am here on behalf of the Kansas Narcotics Officers Association. We are a proponent of HB 2545.

HB 2545 addresses and I'd like to say, fixes, 2 deficiencies currently in Kansas statute 65-4162. These deficiencies are, first, the statute does not address the seriousness of Ecstasy and designer drugs, and second, it does not increase penalties for repeat offenders except with marijuana.

3,4, methylenedioxymethamphetamine, which is frequently referred to by the acronym MDMA or the street name of Ecstasy, is a dangerous drug. There is substantial scientific evidence that proves it has numerous risks associated with its use. For some people, Ecstasy can be addictive. In one survey of Ecstasy users, 43% met the accepted diagnostic criteria for dependence.

Ecstasy can also interfere with the body's ability to regulate temperature, sometimes leading to a sharp increase in body temperature (hyperthermia), resulting in liver, kidney and cardiovascular system failure, and death.

Research in animals links Ecstasy exposure to long-term damage to neurons that are involved in mood, thinking, and judgment. A study in nonhuman primates showed that exposure to Ecstasy for only 4 days caused damage to serotonin nerve terminals that was evident 6 to 7 years later.

For the purposes of brevity in this testimony, I will not quote the research and data individually but will list sources for this data at the bottom of my written testimony. The

bottom line is Ecstasy is a dangerous drug, it causes brain damage, and people can die from it.

State wide Ecstasy use is on the rise. According to Kansas Bureau of Investigations statistics, from 2005 through 2006 total arrests in Kansas under 65-4162 were down 15%. Most of these were for marijuana. Now in that same time period, if you just look at arrests for Ecstasy and the related designer drugs under the same statute, you will see an increase of 84%.[1] In my own jurisdiction, 5 years ago you never saw Ecstasy but now it's readily available.

For most Ecstasy users, this drug is thought of as harmless and with no risks. This way of thinking is only validated by its current misdemeanor status under current Kansas law. Changing this drug to a felony will address the seriousness of its use, and assure that people arrested for it will be placed on monitored probation to receive the attention and help they need. This change will have minimal impact on prison populations.

The remaining 9 drugs proposed by HB 2545 for change to felony status are all amphetamine or methamphetamine derivatives, or commonly called "designer" drugs. "Designer" drugs are drugs created when a chemist takes the basic design of known illegal drugs, and changes the molecule a little bit in order to by-pass the laws. Again, these are all amphetamine or methamphetamine derivatives and do not belong in misdemeanor status.

The second deficiency currently in 65-4162 is the fact that there is no increased deterrent for repeat offenders, unless they are repeat offenders for marijuana exclusively. The proposed changes in HB 2545 will change that deterrent to repeat offenders for all the misdemeanor class drugs in 65-4162.

In conclusion, on behalf of the Kansas Narcotics Officers Association, we believe HB 2545 is a good bill and support the changes to 65-4162 which are proposed by it. I want to thank you for the opportunity to speak to you and I will be happy to respond to any questions you may have.

Sources of Information

a. National Institute on Drug Abuse, InfoFacts: MDMA, May 2006, located at: http://www.drugabuse.gov/infofacts/ecstasy.html

b. National Institute on Drug Abuse, Research Report: MDMA (Ecstasy) Abuse, March 2006, located at: http://www.nida.nih.gov/ResearchReports/MDMA/

c. National Institute on Drug Abuse, Study Suggests Cognitive Deficits in MDMA-Only Drug Abusers, 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol19N5/Study.html

[1] Kansas Bureau of Investigation statistics do not include Kansas City, Topeka, or most of Johnson County.

d. National Drug Intelligence Center, Fast Facts: MDMA (Ecstasy), 2003, located at http://www.usdoj.gov/ndic/pubs3/3494/index.htm

e. Testimony Before the Subcommittee on Criminal Justice, Drug Policy and human Resources, Committee on Government Reform, Untied States House of Representatives-Research on MDMA, Glen R. Hanson, D.D.S., Ph.D., September 19, 2002, located at http://www.drugabuse.gov/Testimony/9-19-02Testimony.html

f. Office of National Drug Control Policy, Club Drugs, February 2007, located at http://www.whitehousedrugpolicy.gov/drugfact/club/index.html

g. National Drug Intelligence Center, NIDA Conference Highlights Scientific Findings on MDMA/Ecstasy, December 2001, located at http://www.drugabuse.gov/NIDA_Notes/NNVol16N5/Conference.html

h. National Drug Intelligence Center, MDMA May Reduce Gray Matter in Key Brain Regions, January 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol19N5/MDMA/html

i. National Drug Intelligence Center, NIDA's Latest Research Report Focuses on MDMA (Ecstasy) Abuse, January 2005, located at http://drugabuse.gov/NIDA_notes/NNvol19N5/tearoff.html

Frank Denning
Sheriff

Telephone
913-791-5800
Fax
913-791-5806

OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

David Burger
Undersheriff

Kevin Cavanaugh
Undersheriff

To: Chairperson O'Neal, Vice Chairperson Kinzer and distinguished members of the House Judiciary Committee.

From: Detective Gary Borstelman, Johnson County Sheriff's Office

Date: March 13, 2007

Chairperson O'Neal and Committee Members,

My name is Gary Borstelman and I am a detective with the Johnson County Sheriff's Office. I am submitting written testimony in support of House Bill number 2545. Thank you for allowing me to testify this afternoon on this important bill before you.

I have been an officer with the Johnson County Sheriff's Office for almost nineteen years and have been involved in the investigation of narcotics cases for the past fourteen years. My duties have included working undercover as well as being a case officer during numerous investigations. During my assignment as a narcotics investigator I was assigned for several years to the DEA Taskforce and then later assigned to the FBI Organized Crime Squad as a taskforce officer. My experience in these cases ranges from the investigation of street level sales to the investigation of large multi-national narcotics distribution groups.

Based on my experience as a narcotics investigator I believe that MDMA (Ecstasy) poses a serious threat for several reasons. Ecstasy is a synthetic, psychoactive drug similar to the stimulant methamphetamine. Studies completed by the National Institute on Drug Abuse indicate that 43 percent of those who reported ecstasy use met the accepted diagnostic criteria for dependence. Almost 60 percent of people who use MDMA report withdrawal symptoms, including fatigue, loss of appetite, depressed feelings and trouble concentrating.

The use of ecstasy can cause harmful physical effects on the body. According to the National Institute on Drug Abuse users of ecstasy face many of the same risks as users of cocaine and amphetamines. This includes increases in heart rate and blood pressure, involuntary teeth clenching, nausea, blurred vision, faintness and chills.

Ecstasy is marketed to adolescents and teenagers. Ecstasy is routinely sold at rave parties and other social events targeting young people. Ecstasy is sold in a colored pill form often with some type of logo that creates an appearance of something safe or benign.

Ecstasy is a dangerous drug. Possession of this drug should carry penalties similar to possession of other dangerous drugs in the state of Kansas. I urge you to support House Bill 2545. I am available to answer any questions my testimony may raise.

Gary Borstelman

Detective Gary Borstelman
Johnson County Sheriff's Office

House Judiciary
Date 3-13-07
Attachment # 3

WRITTEN TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB 2545
Presented by Ed Klumpp
On behalf of the
Kansas Association of Chiefs of Police

March 13, 2007

House Judiciary Committee
Rep. Mike O'Neal, Chairman

Mr. Chairman and Committee Members,

This testimony is in support of HB 2545 which enhances the penalties for possession of certain drugs, primarily party drugs including MDMA, also commonly known as ecstasy. Recognizing the current concern for the sentencing structure of drug violations, we closely looked at the necessity of this bill and the indicators for the magnitude of this drug problem.

MDMA is a drug commonly seen at RAVES and party settings. It is a drug whose users are often our youth who see the drug as a relatively "safe" drug. This misconception about the risks is supported by the current state statute status of a misdemeanor. Ecstasy is a stimulant resulting in extended periods of high activity beyond normal physical capacity. Medical research has shown there are serious health effects to the brain with extended use of ecstasy. Risks also include stroke, heart attack and cardiovascular system failure.

I have attached some charts showing survey results from the 2006 Kansas Communities That Care Survey. The data shows an increase in the number of 6th, 8th, 10th, and 12th graders using MDMA in the 30 days preceding the survey. This increase is more marked among the 10th and 12th graders. One might assume this is another big city problem. But it is not just in the big cities of Kansas. The survey shows the top eight counties in percentage of youth who have used MDMA in the past 30 days are: Meade, Harper, Atchison, Scott, Ellis, Grant, Marion and Cowley. Several counties tie for 9th place including Wyandotte, Morton, Kingman and others. Johnson, Shawnee and Sedgwick counties are even lower. This clearly shows it is a statewide problem impacting the rural as well as the urban communities.

The passage of this bill will clearly establish a public policy recognizing the hazards of this abused drug and send a message to our youth that it is not a safe recreational drug.

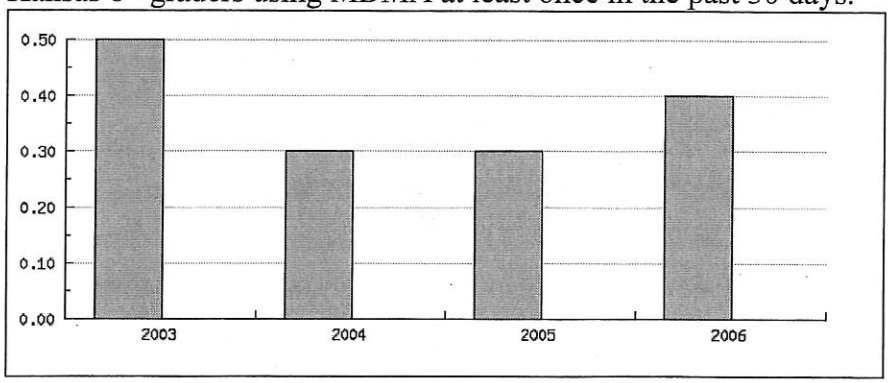
We urge you to recommend HB 2545 favorably for passage.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

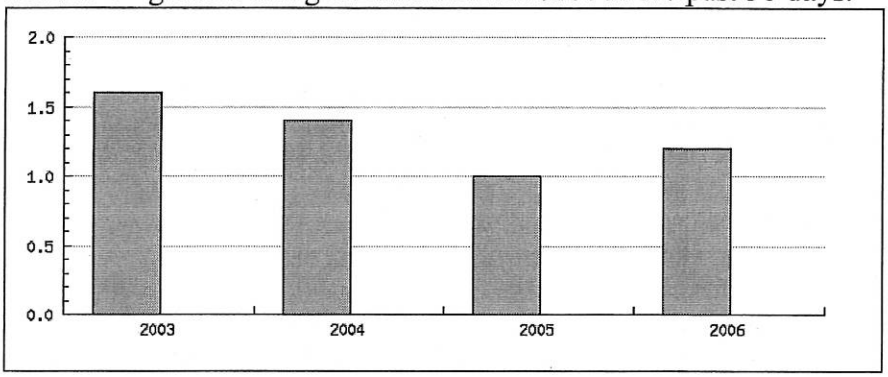
Legislative Committee Chair
Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net; Phone: (785) 235-5619; Cell: (785) 640-1102

House Judiciary
Date 3-13-07
Attachment # 4

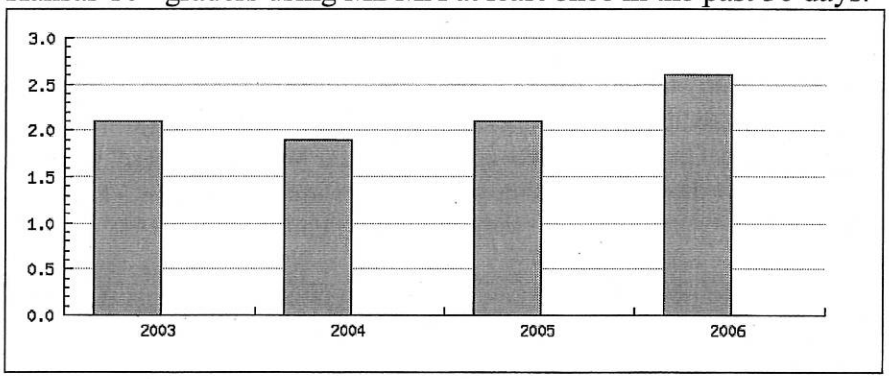
Kansas 6th graders using MDMA at least once in the past 30 days.



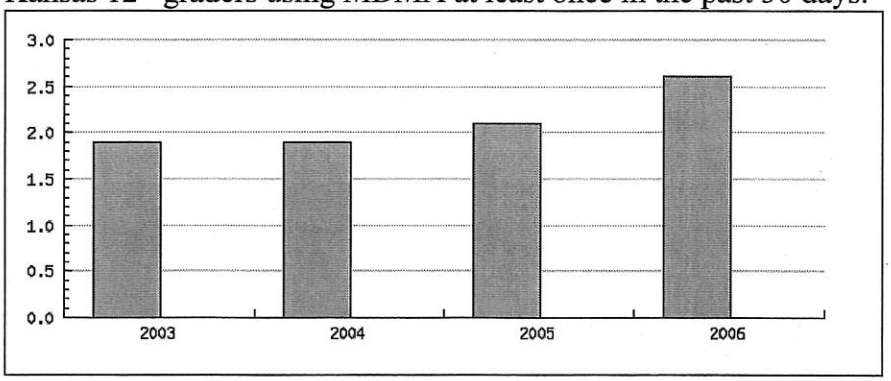
Kansas 8th graders using MDMA at least once in the past 30 days.



Kansas 10th graders using MDMA at least once in the past 30 days.



Kansas 12th graders using MDMA at least once in the past 30 days.



SOURCE: 2006 Communities That Care Survey

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
Attorney General Paul Morrison, Vice Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

HOUSE JUDICIARY COMMITTEE
Honorable Mike O'Neal, Chairman

TESTIMONY ON SENATE BILL 324
Helen Pedigo, Executive Director
March 13, 2007

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today. I appear on behalf of the Kansas Sentencing Commission, to support Senate Bill 324. The bill repeals or amends statutes that fall into the following categories: those that include outdated class D and E felony penalties, one for which the elements of the crime were repealed and one that is in conflict with the animal cruelty law passed in 2006. The repealed statutes are attached to my testimony.

K. S. A. 17-1311a	Cemetery corporations; misuse of the permanent maintenance fund, a class D felony, amended to a severity level 7 nonperson felony.
K. S. A. 47-604	Protection of domestic animals; penalty for second or subsequent violation of quarantine, a class D felony, amended to a severity level 7 nonperson felony.
K. S. A. 65-28,107	Healing Arts; falsifying or forging the declaration of another, a class E felony, amended to a severity level 7 person felony.
K. S. A. 21-3727	Injury to domestic animals, a class A nonperson misdemeanor – conflicts with K. S. A. 21-4310, animal cruelty, a nonperson felony, repealed.
K. S. A. 66-276	Railroads; relates to K. S. A. 66-275, which was repealed in 1998, repealed.
K. S. A. 75-7b19	Private investigative or security operations; knowingly falsifying fingerprints or photos, a class E felony, repealed.

Most of the statutes, with the exception of injury to domestic animals, were last amended during the 1960's and 70's. Data in our journal entry database indicates that no convictions exist for any of the statutes contained in the bill during the last three years.

The Commission's purpose in proposing this bill was to clean up the criminal statutes and eliminate those that are unnecessary. I ask you to give this bill a favorable recommendation. Thank you for your time and I would be happy to answer questions.

JAYHAWK TOWER, 700 SW JACKSON STREET, SUITE 501, TC
Voice 785-296-0923 Fax 785-296-0927 http://www.k

House Judiciary
Date 3-13-07
Attachment # 5

Chapter 21.--CRIMES AND PUNISHMENTS
PART II.--PROHIBITED CONDUCT
Article 37.--CRIMES AGAINST PROPERTY

21-3727. Injury to a domestic animal. (a) Injury to a domestic animal is willfully and maliciously:

(1) Administering any poison to any domestic animal;

(2) exposing any poisonous substance with the intent that the same shall be taken or swallowed by any domestic animal; or

(3) killing, maiming or wounding any domestic animal of another without the consent of the owner.

(b) This section shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(c) Injury to a domestic animal is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-3727; L. 1992, ch. 239, § 122; L. 1993, ch. 291, § 81; July 1.

Chapter 66.--PUBLIC UTILITIES
Article 2.--DUTIES AND LIABILITIES OF RAILROAD COMPANIES

66-276. Same; penalty. Any officer or employee of such railroad company who shall violate any of the provisions or conditions of the preceding section shall upon conviction be deemed guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

History: L. 1909, ch. 190, § 2; March 10; R.S. 1923, 66-276.

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
Article 7b.--PRIVATE INVESTIGATIVE OR SECURITY OPERATIONS

75-7b19. Falsification of fingerprints or photographs; violation of act; penalties. Any person who knowingly falsifies the fingerprints or photographs required to be submitted under this act shall be guilty of a class E felony; and any person who violates any of the other provisions of this act shall be guilty of a class A misdemeanor.

History: L. 1972, ch. 315, § 19; July 1.

KPBBA

1508 SW Topeka Boulevard
Topeka, Kansas 66612

Kansas Professional Bail Bond Association, Inc.

House Judiciary Committee

March 13, 2007

Testimony and Exhibits for

Support of SB203

House Judiciary
Date 3-13-07
Attachment # 6

KPBBA

1508 SW Topeka Boulevard
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Tommy Hendrickson

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General Counsel
Christopher Joseph, Joseph & Hollander P.A.

Kansas Professional Bail Bond Association, Inc.

TO: House Judiciary Committee

FROM: Christopher M. Joseph, General Counsel

DATE: March 13, 2007

RE: Support for SB 203

Good afternoon Chairman and members of the Committee, my name is Chris Joseph and I am the General Counsel for the Kansas Professional Bail Bond Association, Inc. The KPBBA is an association of professional sureties in the State of Kansas. We are here to testify today in support of SB 203.

SB 203 accomplishes two objectives: (1) It eliminates a judicially-created form of bail that puts the courts in the bail bond business, and (2) it clarifies when bonds may be forfeited and revoked, thereby creating uniformity across the state.

Courts should not be in the bail bond business

Supreme Court Administrative Order 96, creates a hybrid bond, known as the "own recognizance-cash deposit bond" or "ORCD bond." The order authorizes judges to allow defendants to post bond by paying 10% of the total bond, in the form of cash, to the district court clerk. The court keeps 10% of this payment as an "administrative fee." This "ORCD bond" is set up to be direct competition to bondsmen. Jail staff routinely tell defendants that they should pay 10% to the courts instead of to a bondsman.

A brief history on Supreme Court Administrative Order 96 is helpful. On October 26, 1993, the Shawnee County District Court adopted local rule 3.324. The rule created the ORCD bond. **On February 22, 1994, Attorney General Robert Stephan issued Attorney General Opinion No. 94-25, concluding that the Shawnee County bond program was prohibited by statute.** *See* Exhibit 1. The opinion addressed concerns expressed by Representative Marvin Smith and Senator Lana Oleen. The Attorney General noted that "while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions." The Attorney General concluded that the ORCD hybrid bond was prohibited by statute. **On January 17, 1995, the Supreme Court issued Administrative Order Number 96, allowing district courts to implement programs allowing the bonds that Bob Stephan had determined were illegal.** *See* Exhibit 2. Administrative Order 96 provided that "in addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may be accomplished by promulgation of a local rule substantially as provided in the attached example." The attached rule was Shawnee County rule 3.324. The order was signed by former Chief Justice Richard W. Holmes.

It is worth noting that Supreme Court Rule 114 is inconsistent with Supreme Court

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Administrative Order 96. See Exhibit 3. The provisions of Rule 114, just like our current statute, do not allow for ORCD bonds.

This "10% to the courts" bond was modeled after programs in other states. **Studies have shown that such programs result in a high rate of defendants failing to appear in court as well as overwhelming law enforcement with warrants.** *See* Exhibits 4 and 5. Without a massive increase in funding to hire new officers, law enforcement is unable to actively seek out defendants who failed to appear in court. While such defendants roam the streets, they commit other crimes. **Each year, numerous such crimes are committed in Kansas by defendants who post this hybrid bond, fail to appear in court, and remain at large for months because no one is actively searching for them.** *See* Exhibit 6.

Studies attached to this memorandum provide compelling statistics. *See* Exhibits 4 and 5. For example, according to the Helland & Tabarrok study:

> Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance and if they do fail to appear they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on own recognizance. . . . Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to those released on cash bond. These finding indicate that bond dealers and bail enforcement agents ("bounty hunters") are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law.

Helland & Tabarrok, *Public versus Private Law Enforcement: Evidence from Bail Jumping*, 47 Journal of Law and Economics 93 (April, 2004).

SB 203 recognizes that the fee paid to bondsmen by defendants provides the funding for bondsmen to track whether defendants appear in court and, if they fail to appear, actively hunt them down and return them to jail. Without bondsmen providing this essential service, when a defendant fails to appear in court all that happens is that a warrant is issued, the criminal process stops, and the courts wait for the defendant to come into contact with law enforcement, most often in the form of a traffic stop. **Unless the legislature is prepared to provide millions of dollars to fund the hiring and training of hundreds of new police officers to actively hunt down defendants who fail to appear, SB 203 should be passed.**

Bail should be forfeited only upon a failure to appear in court

Section 9 of the Kansas Bill of Rights has provides for the right to bail by sureties. The definition of "bail" as a verb is this:

> To deliver the defendant to persons who, in the manner prescribed by law, become securities for his appearance in court. To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day

KPBBA

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> and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming.

Black's Law Dictionary 127 (5th ed. 1979). As a noun, "bail" means:

> The surety or sureties who procure the release of a person under arrest, by becoming responsible for his appearance at the time and place designated. Those persons who become sureties for the appearance of the defendant in court.

Black's Law Dictionary 128 (5th ed. 1979).

Case law has also made it clear that bail means delivering a person to a surety who guarantees the person's appearance in court. **A surety is not charged with any duty other than guaranteeing appearance in court. It follows that the surety cannot be made to pay the court if the defendant makes all court appearances.** This rule is followed by the vast majority of the courts in Kansas.

Unfortunately, a minority of courts attempt to forfeit bond and order a bondsmen to pay when a defendant violates some other condition of bond, such as refraining from the use of drugs or alcohol. SB 203 recognizes that the purpose of bail, indeed the constitutional guarantee to bail, is limited to guaranteeing that a defendant appears in court. A surety should not be required to pay the bond when a defendant violates a condition of bond other than failing to appear in court.

While a surety cannot be held to any guarantee other than assuring that a defendant appears in court, the court should have the authority to revoke bond for violations of any condition of bond. As written, the statute does not differentiate between revocation and forfeiture. SB 203 recognizes this distinction and limits bond forfeitures to instances where a defendant fails to appear in court and, at the same time, allows a court to revoke bond and return a defendant to custody when other conditions of bond are violated.

Office of the Attorney General
State of Kansas

Opinion No. 94-25
February 22, 1994

Re: Criminal Procedure--Conditions of Release--Release Prior to Trial--Local Court Rule Concerning Pretrial Release

Synopsis: District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court. Furthermore, it is not permissible for a court to retain any portion of a cash deposit for the purpose of bond, however, the "fee" which the third judicial district is currently collecting from the defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, does not have to be turned over to the state treasurer.

K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

Paragraph 15 of the district court rule requires that the court's order reflect the type of bond procedure that the defendant is using. Cited herein: K.S.A. 1993 Supp. 20-350; 22-2802; K.S.A. 22-2809; 22-2814; Kan. Const., art. 2, § 16.

The Honorable Marvin Smith
State Representative, Fiftieth District
State Capitol, Room 115-S
Topeka, Kansas 66612

The Honorable Lana Oleen
State Senator, Twenty-Second District
State Capitol, Room 136-N
Topeka, Kansas 66612

Honorable William Carpenter
Administrative Judge of the Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Dear Representative Smith, Senator Oleen and Judge Carpenter:

You request our opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. Briefly, the program which is administered by court services officers and employees of the department of corrections establishes an automatic bond schedule for pretrial release for certain crimes. Representative Smith and Senator Oleen are concerned that certain facets of this program violate the statutes which deal with pretrial release and surety bonds. Those concerns can be summarized as follows:

1. Do court services officers (CSOs) and employees of the department of corrections (DCOs) who are sworn as deputy clerks of the district court, have authority to admit to bail persons in custody?

2. Is it permissible for a court to allow an accused person to post 10% of the amount of an appearance bond?

3. Is it permissible for a court to retain 10% of an appearance bond as an administrative "fee" and must the court turn over this amount to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the defendant?

5. If a defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect that change?

Our inquiry will focus on whether certain provisions of district court rule 3.324 violate the statutes. In order to make that determination, it is important to not only review the rule itself but to understand the mechanics of how it operates.

The rule establishes an automatic bond schedule (schedule) for certain crimes ranging from county resolution violations to "C" felonies. The schedule sets forth the amount and type of bond which the court will accept. Under certain conditions, persons in custody are not eligible for schedule bonds. (Some of those circumstances include situations involving prior bond forfeitures, extradition, prior felony convictions and if there is a threat to public safety or fear that the accused may flee the jurisdiction.) If the schedule requires a surety bond in the amount of $1,000 or less, Shawnee county residents may be released on their own recognizance if they or their surety have significant ties to the county. (E.g. real estate, employment, Kansas driver's license, etc.) Such a defendant as well as his or her surety enter into a written recognizance bond by which the defendant agrees to appear in court when required. If the defendant fails to appear, the bond is forfeited and the surety or the defendant is liable for the face amount of the bond.

If the schedule requires a surety bond in an amount over $1,000 and less than $2,500, Shawnee county residents may be released if they or their surety meet the significant ties condition and if the defendant posts an "OR cash deposit bond" (OR-CD). This bond requires that the defendant or surety deposit 10% of the face amount of the bond to the clerk of the district court. If the defendant fulfills all the conditions that the bond requires, 90% of the deposited amount is returned to the defendant and the clerk retains the remainder as an "administrative fee" which is then turned over to the county. For example, if the bond amount is $2,500, the defendant or surety pays $250 to the clerk. If the defendant complies with the bond conditions, $225 is

returned to him or her and the clerk retains $25. If the defendant fails to comply and the bond is forfeited the surety or the defendant is liable for the face amount of the bond minus the amount previously deposited.

With this background, we will answer your queries keeping in mind that while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions. Therefore, a court cannot promulgate rules which contravene statutory provisions. Gas Service v. Coburn, 389 F.2d 831 (10th Cir. 1968), reversed on other grounds; Synder v. Harris, 89 S.Ct. 1053, 394 U.S. 332, 22 L.Ed.2d 319 (1969); 21 C.J.S. Courts § 126. Supreme court rule 105 authorizes judicial districts to make rules necessary for the administration of their affairs to the extent that they are not inconsistent with applicable statutes.

***3** 1. Do court services officers and employees of the department of corrections who are sworn are deputy clerks of the district court have authority to admit to bail persons in custody?

Paragraph 1 of district court rule 3.224 states, as follows:

"1. Court services officers (CSO) and Shawnee county department of corrections officers (DCO) who are sworn as deputy clerks of the district court, are authorized to admit to bail persons in custody in accordance with the provisions of this order."

Absent statutory authority nonjudicial officers may not admit accused persons to bail. 8 C.J.S. Bail § 50. Specifically, a district court clerk has no power to take or approve recognizances and the court may not deputize the clerk to do so. Morrow v. State, 5 Kan. 563 (1869); 8 C.J.S. Bail § 52; 8 Am.Jur.2d Bail and Recognizance § 21. However, admitting a person to bail is an entirely different act from the taking, accepting or approving bail after its allowance by a court; the former is generally considered to be a judicial act to be performed by a court or judicial officer while the latter is merely a ministerial function which may be performed by any authorized officer. 8 C.J.S. Bail § 39, 8 Am.Jur.2d Bail and Recognizance § 9. The act of taking and approving the bail bond in accordance with court orders has been held to be a ministerial act which may be delegated without statutory authority. Thus, after bail has been allowed and its amount fixed by the proper judicial officer, a clerk, by direction of the court, may accept and approve a bail bond. 8 C.J.S. Bail, § 53.

While the choice of language in paragraph 1 of the court rule is unfortunate because it appears to allow CSOs and DCOs to admit people to bail, in actuality, this is not what occurs. The court, through its inherent rule making power, has established bond amounts and types of bonds which are required for certain crimes. Basically, the court has decreed that if certain conditions exist, a person may be released from custody. The CSOs and DCOs do not set bond amounts nor do they determine whether a surety is required. They merely determine whether the defendant meets the conditions that the court has already prescribed, and, if so, they ensure that the appropriate paperwork is filled out by the defendant who is then released. In effect, the court has preset the bond amounts, the types of bonds, and the conditions under which a defendant may be released and it is the responsibility of the nonjudicial officers to ensure that the court's order is carried out. Consequently, it is our opinion that the district court rule does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the nonjudicial officers are merely performing ministerial acts pursuant to court order.

You indicate concern that this procedure may violate K.S.A. 1993 Supp. 22- 2802 by releasing defendants prior to their first court appearance. This statute states, in relevant part, as follows:

"Release prior to trial. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and assure the public safety."

There is nothing in the statutes which prohibits the release of a defendant on bond prior to his or her first appearance. In fact, K.S.A. 22-2901(1) and (3) contemplate that a person who is arrested be taken "without unnecessary delay" to a magistrate who can then fix the terms and conditions of an appearance bond. Consequently, it is our opinion that K.S.A. 1993 Supp. 22-2802 provides that if the defendant has not been released prior to the first appearance, the defendant will be released upon execution of an appearance bond.

2. Is it permissible for a court to allow accused persons to post 10% of the amount of an appearance bond?

K.S.A. 1993 Supp. 22-2802(3) and (4) provide, in relevant part, as follows:

"(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.
"(4) A deposit of cash in the amount of the bond may be made in lieu of the execution ofthe bond by sureties."

The statutes do not specifically address the propriety of the court's 10% OR- CD program. K.S.A. 1993 Supp. 22-2802 was originally enacted in 1970 and it drew heavily on federal bail reform law which was designed to encourage the release of defendants without money bail and to minimize the number of cases where the defendant would be detained pending trial. Kansas Judicial Council Bulletin, October, 1969, p. 45. Release on the person's own recognizance was the norm and money bail or pretrial detention in lieu thereof was contemplated only when special circumstances existed which could best be met by use of traditional bond.

K.S.A. 1993 Supp. 22-2802 contemplates three types of bonds: Appearance bonds with sureties, appearance bonds without sureties, and a cash bond in the full amount. On at least three occasions legislation has been introduced which would have variously prohibited or codified this 10% program. (House bill no. 2009 introduced during the 1985 session, house bill no. 2961 in 1986 and house bill no. 2252 in 1987). All three bills were defeated at various stages.

The court justifies its use of this program under the authority of K.S.A. 22-2814 et seq. which authorize each district court to "establish, operate and coordinate release on recognizance programs and supervised released programs". We have reviewed the legislative history of these statutes in order to determine whether the legislature intended to allow such a program under the auspices of these recognizance statutes.

These statutes were originally enacted in 1978, however, the supreme court concluded that they violated the one subject rule in article 2, § 16 of the Kansas constitution. State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980). The statutes were reenacted in 1981 without the constitutional infirmities.

Recognizing the unfairness of a system that relied heavily on money bail and professional bondsmen, these statutes were enacted to rely less on the financial resources of the defendant and concentrate on the risk of nonappearance. Minutes, Senate Committee on Federal and State Affairs, March 23, 1978.

"House bill No. 3129 would permit the establishment of release-on- recognizance (ROR) and supervised released programs in the state. These programs will permit the pretrial release of those selected individuals who are unable to post money bond but who have stable roots in the community indicating that they will appear at trial and their release will not jeopardize public safety. House bill no. 3129 would authorize each district court to establish, operate, and coordinate ROR and supervised released programs which would be administered by probation officers and other personnel of the district court." Proposal No. 14, Report on Kansas Legislative Interim Studies to the 1978 Legislature, Feb. 1978, p. 56.

Neither proposal no. 14 nor any of the testimony before the senate federal and state affairs committee included any discussion of a 10% cash deposit bond program. However, it is interesting to note that included in house bill no. 3129 was an amendment to then K.S.A. 1977 Supp. 22-2802 which would have allowed a defendant to execute an appearance bond and deposit with the court a sum not to exceed 10% of the bond amount -- the deposit to be returned if the defendant made the required appearances. (House bill no. 3129, sec. 5). However, the senate committee struck the amendment and the 10% cash deposit provision was never enacted.

In determining legislative intent, the historical background, legislative proceedings and changes made in the statutes during the course of their enactment may be considered in determining legislative intent. Urban Renewal Agency of Kansas City v. Decker, 197 Kan. 157 (1966). Rejection by the legislature of a specific provision contained in a proposed enactment is persuasive to the conclusion that the act should not be so construed as in effect to include that provision. City of Manhattan v. Eriksen, 204 Kan. 150 (1969). (In Erikson, the court interpreted the eminent domain act as not including as an element of damage the cost of removal of personal property -- noting that while the original bill included such a cost as an element of damage, the senate judiciary committee deleted the item.)

We cannot ignore the fact that when the ROR statutes were being considered this 10% cash deposit program - which is currently in use by the third judicial district court - was specifically rejected. Consequently, it is our opinion that the district court's 10% OR-CD program goes beyond the authority granted to district courts under the purview of K.S.A. 22-2814

***6** 3. Is it permissible for a court to retain 10% of the OR-CD bond as an administrative fee or must the clerk of the district court turn it over to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

In attorney General Opinion No. 89-113, we concluded that if an appearance bond is in the form of a cash deposit, the authority of the court to retain the deposit or to apply any of it to

court costs or fines depends on the statute because the court has no inherent power to do so. In the absence of such a statute, retention of the cash deposit is impermissible. While we realize that this opinion addressed K.S.A. 1993 Supp. 22-2802(4) - (a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties), the rationale can be applied to the situation at hand where the court accepts a percentage of the bond amount in cash and then retains a portion of that cash as a "fee." Consequently, it is our opinion that the third judicial district court lacks the power to withhold any amount from the cash deposit because there is no statutory authorization to do so.

However, this "fee" is not a "fine, penalty or forfeiture" which would trigger the operation of K.S.A. 1993 Supp. 20-350 which requires that "all moneys received by the clerk of the district court from the payment of fines, penalties and forfeiture shall be remitted to the state treasurer." A fee is generally regarded as a charge for some service whereas a fine, penalty, or forfeiture is a pecuniary punishment imposed by a tribunal for some offense. Executive Aircraft Consulting Inc. v. City of Newton, 252 Kan. 421 (1993); Vanderpool v. Higgs, 10 Kan.App.2d 1, 2 (1984); United States v. Safeway Stores, 140 F.2d 834, 839 (10th Cir. 1994); Missouri-Kansas-Texas Railroad Company v. Standard Industries Inc., 192 Kan. 381, 384 (1964). It is our opinion that the fees collected by the district court clerk do not fall under the purview of K.S.A. 1993 Supp. 20-350 and, therefore, do not have to be turned over to the state treasurer.

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the obligor?

Paragraph no. 14 of the district court rules states:

"It is a condition on all private or professional surety bail bonds in this judicial district that sureties shall agree to remain liable on all bail bonds until all proceedings arising out of the arrest and/or case for which the bond was posted are concluded or until they are released by court order. No surety shall be released on their obligation on a bail bond once posted without court approval. Any surety or person arrested and turned in on bond by their surety, may file a motion with the court for a determination of whether or not the bail bonds should be revoked or continued."

Your concern is whether this provisions violates K.S.A. 22-2809 which provides:

"Any person who is released on an appearance bond may be arrested by his surety ... and delivered to a custodial officer of the court in any county in the state in which he is charged and brought before any magistrate having power to commit for the crime charged; and at the request of the surety, the magistrate shall commit the parties so arrested and endorse on the bond ... the discharge of such surety; and the person so committed shall be held in custody until released as provided by law." (Emphasis added.)

An appearance bond is a contract between the principal (defendant) and surety on the one hand and the state on the other. State v. Indemnity Insurance Company of North America, 9 Kan.App.2d 53, 55 (1983). Theoretically, the court is a party to the contractual obligation between the surety and the defendant and, therefore, would have the right to negotiate a condition that the surety remain liable on the bond until the conclusion of the proceedings or until the court releases the surety on the bond. The problem with this theory is that we interpret K.S.A. 22-2809 as requiring the court to discharge the surety upon the latter's request (if the defendant is surrendered) and consequently paragraph 14's requirement that sureties agree to

remain liable until the criminal proceeding is over violates K.S.A. 22-2809's provision that sureties be released upon request. However, it is appropriate for the court to require that a surety file a motion for release as long as that motion is granted without delay.

5. If the defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect such a change?

Paragraph 15 of the district court rule states:
"Bail bonds designated as OR-cash, cash or professional surety shall be written only on the terms specified by the district judge. If a defendant requests release on a professional surety bond when cash or OR-cash deposit has been specified, the CSO or DCO shall contact the judge authorizing the bond, for modification of the bond."

Whenever a defendant has been released on bond, the court issues an order which designated the bond amount, bond conditions, and the type of bond (i.e. professional surety, nonprofessional surety, OR, OR-cash deposit, OR- supervised, cash). If the defendant desires to use a professional surety, the order will reflect this fact. If the order indicates a bond with a nonprofessional surety and the defendant desires to use a professional surety instead, then paragraph 15 requires that the CSO or DCO contact the court so that the order will reflect the change.

Senator Oleen indicates concern that the court is somehow restricting the ability of a defendant to obtain the services of a professional bondsman by requiring that a defendant select the OR-CD program. This complaint is beyond our purview and moot in light of our opinion that the court's OR-CD program goes beyond the authority granted to the court under K.S.A. 22-2814 et seq. We interpret this paragraph to require that the court order reflect the type of bond the defendant is currently using as well as the conditions of the bond and we find no violation of any statute in this procedure.

Summarizing our opinion, we conclude the following:

1. District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

***8** 2. K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court.

3. Furthermore, it is not permissible for a court to retain any portion of a cash deposit. However, the "fee" which the third judicial district is currently collecting from defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, would not be required to be turned over to the state treasurer.

4. K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests a discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

5. Paragraph 15 of the district court rule requires that the court order reflect the type of bond procedure that the defendant is currently using.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Mary Feighny
Assistant Attorney General

Kan. Atty. Gen. Op. No. 94-25, 1994 WL 869642 (Kan.A.G.)

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 96

In re: Pretrial Release

1. Reference: Article 1, Section 3, Kansas Constitution, K.S.A. 20-101, and K.S.A. 20-342.

2. In addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may also be accomplished by promulgation of a local rule substantially as provided in the attached example. Examples of necessary supporting materials are also attached.

3. Judicial districts whose current own recognizance-cash deposit pretrial release programs are not substantially in compliance with the attached example have until July 1, 1995, to submit a local rule substantially in compliance with the attached example. All other districts may adopt a local rule for this purpose whenever the judges of the district court determine such a rule should be adopted. An information copy of any OR-cash deposit local rule adopted shall be forwarded to the office of judicial administration concurrently with filing with the clerk of the supreme court.

BY ORDER OF THE COURT this 17th day of January 1995.

Richard W. Holmes
Chief Justice

Attachments

IN THE JUDICIAL DISTRICT OF KANSAS

DISTRICT COURT RULE NO.
PRETRIAL RELEASE

This District Court Rule establishes procedures and qualifications for release from custody in situations other than upon specific direction from a judge of the district court. (If applicable--This rule supersedes _____.)

1. Court Service Officers, Deputy Sheriffs and Correctional Officers who are sworn in as Deputy Clerks of the District Court are authorized to permit persons in custody to post bail bonds in accordance with the provisions of this rule.

2. The attached Automatic Bond Schedule (ABS) is approved for the amount of bail bonds for particular crimes. For those offenses where no bond is set or is designated "see judge," the accused shall be brought before a judge of the district court at the next court date to have a bond set. If a person has been in custody for 48 hours and no bail bond has been set, a judge of the district court shall be contacted.

3. Notwithstanding the ABS, persons in custody with any of the following conditions are not eligible for an ABS bond and shall be brought before a judge to have bond set:

(a) Prior bond forfeitures,
(b) Has been extradited or is awaiting extradition to another state,
(c) Has a detainer or hold from other states or federal authorities,
(d) Has a prior conviction of a felony classified as A, B, or C or level 5 or lower.
(e) Has been detained for a violation of probation.
(f) If a deputy clerk believes in good faith that the accused may flee, pose a danger to public safety or is not eligible for bond under the ABS, the matter of setting a bail bond shall be referred to a judge of the district court.

4. On bonds requiring $1,000 surety or less, _____ County residents eligible for bond under the ABS may be released on the person's own recognizance bond (OR) if they meet one of the following criteria:

(a) Own real estate located in _____ County in own name; or
(b) Any three of the following five:
    (1) Resident of _____ County- more than 6 months:
    (2) Valid Kansas drivers license;
    (3) Employment in _____ County-more than 3 months;
    (4) Current telephone service-in own name;
    (5) Is enrolled as a student in the State of Kansas; or
(c) Active duty military and stationed at a military base in the State of Kansas.

All factors shall be determined upon a sworn statement made under penalty of perjury by the accused or the accused's private surety. Court service officers, deputy sheriffs or correctional officers who are sworn in as deputy clerks are authorized to require further verification of any item as they deem appropriate before permitting a person in custody to post bond. Victims reflected in an arrest report cannot act as private surety on a bail bond.

5. On bonds requiring $1,000 surety or less _____ County residents eligible for bond under the ABS, but not meeting the criteria at paragraph 4, may be released on bond with a surety if the surety completes a sworn statement and qualifies under both items (a) and (b) of paragraph 4.

6. On bonds requiring surety of more than $1,000 and up to $2,500, _____ County residents eligible for bond under the ABS may be released by posting an OR cash deposit bond and meeting one of the criteria set forth in paragraph 4, sections (a), (b) or (c). A _____ County resident eligible for release under the ABS, but not meeting the criteria of paragraph 4 may be released by posting an OR-cash deposit bond and obtaining a private surety who qualifies under both items (a) and (b) of paragraph 4.

7. Persons may be admitted to personal recognizance cash deposit (OR-cash deposit) bail bonds who meet the criteria set forth in this rule or upon special screening and recommendation of a person authorized to permit posting of a bond in accordance with this rule. Any person determined eligible to be admitted to bail on an OR-cash deposit bond shall deposit with the clerk of the court cash equal to 10 percent of the amount of the bond and execute a bail bond in the total amount of the bond. All other conditions of the bond set by the court and this rule must be satisfied.

8. When an accused person qualifies for an OR-cash deposit bond, the cash deposit shall be held by the Clerk of the Court until such time as the accused has fully performed all conditions of the bond and is discharged from the person's obligation by the court. When an accused has been so discharged, 90% of the cash deposit shall be returned to the accused upon surrender of the cash deposit receipt previously issued by the clerk. Ten percent of the cash deposit shall be retained by the Clerk as an administrative fee. Cash deposit bonds shall be placed in an interest-bearing financial institution account by the clerk. No interest shall be paid to the person or surety posting a cash deposit bail bond. Annually the aggregate amount of administrative fees retained and interest earned on cash deposit bail bonds shall be turned over to the general fund of _____ County.

9. A cash receipt for an OR-cash deposit bail bond shall be issued only to the person being released on bond. Any person posting cash for another person shall be informed that any cash posted as a bail bond is the property of the accused person and may be subject to forfeiture, application to payment of fines, court costs and fees, and will be refunded only to the arrested party. Any arrangements to furnish bond money are between the lender and the accused person.

10. When an accused person who has posted a cash deposit bail bond is discharged from the person's obligation to the court and files the receipt for the cash deposit with the clerk at the conclusion of the proceedings, the refundable portion of the cash deposit may be allocated to restitution, court costs or to an attorney for payment of attorney fees, upon order of the court.

11. All OR-cash deposit bail bonds issued in this county shall be subject to the condition of forfeiture and the amount deposited will become the absolute and permanent property of the district court or of _____ County should one or more of the following occur:

(a) Accused person or surety makes a false statement or representation regarding the criteria for OR-cash deposit as set forth in paragraphs 3 through 6, above.
(b) Accused person fails to appear in court pursuant to court order at any stage of the proceedings.
(c) Accused person fails to report as directed to CSO.
(d) Accused person fails to perform any other condition of bail imposed by the court.

12. All persons admitted to bail on OR or OR-cash deposit bond shall be required to report as directed to a court service office (CSO).

13. Other special conditions may also be imposed by the court as a requirement of release on OR or OR cash deposit bonds.

14. All private or professional surety bonds in this district court shall have as a condition that sureties shall agree to remain liable on any bail bond until all proceedings arising out of the arrest or case for which the bond was posted are concluded or the surety is released by court order. No surety shall be released on an obligation on a bail bond without court approval. Either a surety or a person arrested and turned in on a bond by a surety may file a motion with the court for a determination of whether the bail bond should be revoked or continued in force.

15. Bail bonds designated as OR-Cash, Cash or Professional Surety shall be written only on terms specified by a judge of the district court. If an accused person requests release on a professional surety bond when cash or an OR-cash deposit bond has been specified, the deputy clerk shall contact the judge authorizing the bond for modification of the bond.

16. This rule shall not limit or restrict the right of any person to seek or obtain pretrial release under other statutory methods of admitting accused persons to bail or the authority of a judge of the district court to determine bail. The participation of an accused person in this program shall be on a voluntary basis.

17. This rule shall <u>not</u> apply to civil bench warrants.

18. Definitions:

(a) The term "cash" as used in this rule means United States currency, a money order, or a bank draft or certified check drawn on a Kansas banking or savings and loan institution.

(b) The term "court" as used in this rule refers to the_____ County District Court.

(c) The term "accused person" as used in this rule means a person in custody by reason of an arrest report or a defendant in a criminal, driving under the influence of drugs or alcohol, or traffic case.

BY ORDER OF THE JUDGES OF THE DISTRICT COURT IN _____ COUNTY, KANSAS.

Dated this _____ day of _____ 19___.

_____
Administrative Judge

IN THE DIST CT COURT OF COUNT , KANSAS
JUDICIAL DISTRICT

INFORMATION REGARDING OR - CASH DEPOSIT BONDS

1. Kansas residents who meet certain specified screening requirements may be eligible for release on their own nizance by posting a cash deposit with the Clerk of District Court.

2. When a defendant qualifies for an OR - Cash Deposit bond, ten percent of the bond in cash shall be deposited with and held by the Clerk of District Court until such time as the defendant has fully performed all conditions of the bond and is discharged, ninety percent of the cash deposit shall be returned to the defendant upon filing the receipt with the Clerk. Ten percent shall be retained by the Clerk as an administrative fee. No interest will be paid on the cash deposit. The Court will only refund cash deposits to the defendant or persons in possession of the receipt and an assignment executed by the defendant.

3. The cash deposit shall be retained by the Clerk of the Court until the defendant has performed all conditions of the bond and has been discharged from all obligations by the Court, including fines, court costs, attorneys fees, child support or any other Court ordered obligation.

4. The cash deposit may be forfeited should one or more of the following events occur:

a. Defendant makes a false statement or provides false information in the written document entitled "SUPPLEMENTAL CONDITIONS" which is attached to and becomes a part of his/her OR-Cash Deposit bail bond;
b. Defendant fails to make any required court appearance;
c. Defendant fails to report as directed to a Court Services Officer;
d. Defendant fails to perform any other condition of bail imposed by the Court.

If the defendant's bond is forfeited, the defendant and any sureties will be obligated for the full amount of the bond. The cash deposit will be applied to such obligation and remain the absolute property of the Court or the State of Kansas.

5. An application for return of the refundable portion of the cash deposit must be made within one year after termination and final judgment in the case. If such application is not made within such period of time, the cash deposit shall become the absolute and permanent property of the Court or County.

6. The OR - Cash Deposit bail bond program is voluntary. If a defendant does not participate in this program he/she retains the right to seek or obtain pretrial release under any other statutory provision for admitting defendants to bail.

7. PERSONS POSTING BOND FOR ANOTHER ARE DEEMED BY THE COURT AS MAKING A LOAN TO THE ARRESTED PARTY. THE COURT IS NOT UNDER ANY OBLIGATION TO REFUND A CASH DEPOSIT TO ANYONE OTHER THAN THE ARRESTED PARTY AND CASH DEPOSITS ARE SUBJECT TO APPLICATION TO FINES, COSTS AND FEES.

8. This information sheet should be attached to every receipt for an OR - Cash Deposit.

I have read the foregoing and have received a copy of this information sheet.

_____
(Defendant)

Date: _____

Name and Mailing Address (Please Print)

_____

_____

_____

IN THE DISTRICT COURT OF COUNTY, KANSAS
JUDICIAL DISTRICT

STATEMENT FOR OBTAINING OR AND ORC BONDS

Date_____

1 Please print the following information:
NAME_____ AGE:____ SEX____ RACE____
OFFENSE_____

2. Screening information to be furnished by defendant: (Check correct answers)
a. I am a Kansas resident. ____Yes ____No How long? _____(months)(years).
b Address:_____
How long at this address? _____ (months) (years)
c. Your home telephone number_____ Is this telephone listed in your name? ____ Yes ____No
d. I have had prior bond forfeitures. ____Yes ____No
e. I have been extradited or waived extradition on pending charges. ____Yes ____No
f. I have detainers or holds from other state or federal authorities. ____Yes ____No
g. Are there other charges pending against you? ____Yes ____No
Ifyes,explain:_____

3. Additional screening information furnished by defendant:
a. I have not been previously convicted of an A, B or C felony or a level 5 or lower felony. ____Yes ____No
b. Closest relative or family member living in County.
Name_____ Home telephone No._____ Address_____
c. I am presently employed in Kansas. ____Yes ____No
(If the answer is "yes", write employer's name and address below)
_____
_____Employer'sTelephoneNo._____
How long employed here? _____(months)(years).
d. I own an interest in real property in the State of Kansas ____Yes ____No
(If the answer is "yes", list the address or the legal description of the property)
_____
_____
e. I am a student in Kansas. ____Yes ____No
(If the answer is "yes", state the school or institution, date of last enrollment and class)
_____
_____

4. An active member of military service ____Yes ____No
(If yes, state Service number, duty station and name of commanding officer and c.o. telephone number)
_____

5. In addition to any special conditions required by the Court, I understand the following are conditions of this BOND:
a. That all of the foregoing statements are true.
b. That I will report as directed to Court Services Officer.

6. When this document is signed and sworn to by the defendant, it shall be attached to and become a part of the Recognizance for Appearance in the District Court of _____, County, Kansas.

_____
(DEFENDANT) (SURETY)

AFFIDAVIT OF DEFENDANT OR SURETY

I, the undersigned defendant, do solemnly swear under penalty of perjury that the foregoing statements are true, correct and complete. So Help Me God.

_____
(DEFENDANT) (SURETY)

Subscribed and sworn to before me this _____day of _____, 1993.

CLERK OF DISTRICT COURT

_____
DEPUTY CLERK

6-19

Kansas Judicial Branch Rules Adopted by the Supreme Court Rules Relating to District Courts

COMMENCEMENT OF ACTIONS, PLEADINGS, AND RELATED MATTERS

Rule 114 SURETIES ON BONDS

Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business in the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify the person as surety and the total amount of any liabilities, contingent or otherwise, which may affect the person's qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.

[**History**: Am. effective September 8, 2006.]

Public versus Private Law Enforcement: Evidence from Bail Jumping

Eric Helland* and Alexander Tabarrok**

Abstract

After being arrested and booked, most felony defendants are released to await trial. On the day of the trial, a substantial percentage fail to appear. If the failure to appear is not quickly explained, warrants are issued and two quite different systems of pursuit and rearrest are put into action. Public police have the primary responsibility for pursuing and rearresting defendants who were released on their own recognizance or on cash or government bail. Defendants who made bail by borrowing from a bond dealer, however, must worry about an entirely different pursuer. When a defendant who has borrowed money skips trial, the bond dealer forfeits the bond unless the fugitive is soon returned. As a result, bond dealers have an incentive to monitor their charges and ensure that they do not skip. When a defendant does skip, bond dealers hire bail enforcement agents, more colloquially known as bounty hunters, to pursue and return the defendants to custody. We compare the effectiveness of these two different systems by examining failure to appear rates, fugitive rates and capture rates of felony defendants who fall under the respective systems. We apply propensity score and matching techniques.

Keywords: bail, surety bond, pretrial release, bounty hunter, propensity score, matching method

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1. Introduction

Approximately one quarter of all released felony defendants fail to appear at trial. Some of these failures to appear (FTA) are due to sickness or forgetfulness and are quickly corrected, but many represent planned abscondments. After one year, some thirty percent of the felony defendants who initially fail to appear remain fugitives from the law. In absolute numbers, some 200,000 felony defendants fail to appear every year and of these, approximately 60,000 will remain fugitives for at least one year.[1]

Defendants who fail to appear impose significant costs on others. Direct costs include the costs of rearranging and rescheduling court dates, the wasted time of judges, lawyers and other court personnel and the costs necessary to find and apprehend or rearrest fugitives. Other costs include the additional crimes that are committed by fugitives. In 1996, for example, 16 percent of released defendants were rearrested *before* their initial case came to trial (Bureau of Justice Statistics 1999). We can be sure that the percentage of felony defendants who commit additional crimes is considerably higher than their rearrest rate. We might also expect that the felony defendants who fail to appear are the ones most likely to commit additional crimes. Indirect costs include the increased crime that results when high failure to appear and fugitive rates reduce expected punishments.[2]

The dominant forms of release are by surety bond, i.e. release on bail that is lent to the accused by a bond dealer, and non-financial release. Just over one-quarter of all

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[1] All the figures are from the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics and can be found in the reports of various years on *Felony Defendants in Large Urban Counties*. We describe the data at greater length below. The SCPS program creates a sample representative of one month of cases from the 75 most populous counties (which account for about half of all reported crimes). In 1996 the sample represented 55,000 cases, which in turn represent some 660,000 filings in a year and 1,320,000 filings in the nation. The absolute figures are calculated using this total and the release, FTA, and fugitive (defined as FTA for one year or more) rates from the random sample.

released defendants are released on surety bond, a very small percentage pay cash bail or put up their own property with the court (less than 5 percent combined); most of the rest are released on their own recognizance or on some form of public bail (called deposit bond) in which the defendant posts a small fraction, typically 10 percent or less, of the bail amount with the court.

Estimating the effectiveness of the pretrial release system in the US can be characterized as a problem of treatment evaluation. Treatment evaluation problems can be difficult because treatment is rarely assigned randomly. Release assignment, for example, is based on a judge's assessment of the likelihood that a defendant will appear in court as well as on considerations of public safety. Correctly measuring treatment effects requires that we control for treatment assignment. In this paper we control for selection by matching on the propensity score (Rubin 1974, 1977, Rosenbaum and Rubin 1983, 1984 Dehejia and Wahba 1999, Heckman, Ichimura and Todd 1999).

We begin with a brief history of pretrial release followed in section 3 by a further explanation of the different release forms and their incentive effects. Section 4 discusses the matching method. Section 5 presents the results of the matching and our estimates of the treatment effect. We estimate the treatment effect for three outcomes - the probability that a defendant fails to appear at least once; the probability that a defendant remains at large for one year or more conditional on having failed to appear (what we call the fugitive rate); and the probability that a defendant who failed to appear is recaptured as a function of time.

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[2] Justice delayed can mean justice denied in practice as well as in theory. Thousands of cases are dismissed on constitutional grounds every year because police fail to serve warrants in a timely manner (Howe and Hallissy 1999).

2. History of Pretrial Release

Bail began in medieval England as a progressive measure to help accused defendants get out of jail while they waited, sometimes for many months, for a roving judge to show up to conduct a trial. If the local sheriff knew the defendant he might release him on the defendant's promise to return for trial, sometimes backed up by some sort of bond – but more often the sheriff would release the accused to the custody of a surety, usually a family member or friend. Under the common law, custody over the accused was never *relinquished* but instead was *transferred,* which explains the origin of the extraordinary rights that sureties have to pursue and capture escaped defendants. Initially, if the accused failed to appear, the surety literally took their place and was judged accordingly. Over time, the penalty became less severe until the system of money forfeiture became common.[3] The English system was adopted by the United States in most particulars with the exception that personal surety was slowly replaced by a commercial system. By the end of the 19th century commercial sureties were the norm.

Although money bail is still the most common form of release, money bail and especially the commercial surety industry have come under increasing and often virulent attack since the 1960s.[4] As noted above, bail began as a progressive measure to help defendants get *out* of jail when the default option was that all defendants would be held until trial. In the twentieth century, however, the default option was more often thought

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[3] Freed and Wald (1964) describe the history of bail at greater length and provide references.

[4] Floyd Feeney (1976, xi), for example, writes that "the present system of commercial surety bail should be simply and totally abolished....It is not so much that bondsmen are evil – although they sometimes are – but rather that they serve no useful purpose." The American Bar Association (1985, 114-115) refers to the commercial bond business as "tawdry" and discusses "the central evil of the compensated surety system." When Oregon considered reintroducing commercial bail, Judge William Snouffer testified "Bail bondsmen are a cancer on the body of criminal justice..." quoted in Kennedy and Henry (1996). Supreme Court Harry Blackmun called the commercial bail system "offensive" and "odorous" (see SCHILB v. KUEBEL 404 U.S. 357 (1971), available on the web at http://laws.findlaw.com/us/404/357.html.)

of as release and thus money bail was reconceived as a factor that kept people *in* jail. In addition, the greater burden of money bail on the poor elicited growing concern.[5] As a result significant efforts were made, beginning in the 1960s, to develop alternatives to money bail.

In the early 1960s, the Vera Institute's Manhattan Bail Project gathered information on a defendant's community ties and residential and employment stability and summarized this information in a point score. Defendants with high point scores were recommended for release on their own recognizance. Felony defendants who were recommended for release by the Manhattan Bail Project had failure to appear rates that were no higher than those released on money bail. Largely on the basis of these results, in 1966 President Lyndon Johnson signed into law the first reform of the federal bail system since 1789. The Federal Bail Reform Act of 1966 created a presumption in favor of releasing defendants on their own recognizance.

Although the Bail Reform Act of 1966 applied only to the federal courts these reforms have been widely emulated by the states (where the reform process began). Every state now has some pretrial services program and four states, Illinois, Kentucky, Oregon and Wisconsin, have outlawed commercial bail altogether.[6] In place of commercial bail, Illinois introduced the "Illinois Ten Percent Cash Bail" or "deposit bond" system. In a deposit bond system the defendant is required to post with the court an amount up to 10 percent of the face value of the bond. If the defendant fails to appear,

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[5] In order to provide appropriate incentives, money bail is typically higher for the rich than the poor. Thus, it is not a priori necessary that money bail should discriminate against the poor although in practice this does occur due to non-linearities and fixed costs in the bail process. Assume that money bail is set so as to create equal failure to appear (FTA) rates across income classes. In such a case, there is no discrimination against the poor in the *setting* of bail. But if the bail amounts necessary to ensure equal FTA rates are not linear in wealth then such rates can generate unequal rates of release across income classes.

[6] In the Pretrial Services Act of 1982 pretrial service agencies were established in all 94 Federal district courts.

the deposit may be lost, and the defendant held liable for the full value of the bond. If the defendant appears for trial, the deposit is returned to the defendant, less a small service fee in some cases (National Association of Pretrial Service Agencies 1998). Some counties will also release defendants on unsecured bonds. Unsecured bonds are equivalent to zero percent deposit bonds. That is, defendants released on an unsecured bond are liable for the full bail amount if they fail to appear but they need not post anything to be released.

The Manhattan Bail Project showed that the failure to appear rates of *carefully selected* felony defendants released on their own recognizance were no higher than those released on money bail. But the Manhattan Bail Project released relatively few defendants and so could easily "cream-skim" the defendants who were most likely to appear at trial. As pretrial release programs greatly expanded across the states in the late 1960s and early 1970s, selection became more difficult and was made even more difficult as prisons became overcrowded. Using data from the 1960s and 1970s from some 15 cities, Thomas (1976) suggested that as the percent of defendants released on their own recognizance increased so did the failure to appear rate – a conclusion also reached by many police chiefs and other observers of the bail process (Romano 1991).

Economic studies of the bail system include Landes (1973, 1974), Clarke et al (1976) and Myers (1981). These studies examine the role of the bail amount in the decision to FTA, generally finding that higher bail reduces FTA rates. These earlier studies did not focus on the central issue of this paper - the different incentive effects of the various release types.[7]

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[7] Ayres and Waldfogel (1994) demonstrate the subtlety of the distinctions made by bond dealers in setting bail bond rates. Although the courts (in New Haven, Connecticut in 1990) set higher bail amounts for minority defendants than

3. Incentive Effects of Different Release Types

The pretrial release system is designed to ensure that defendants appear in court. It's often asserted that the commercial bail system *discourages* appearance because those released on surety bond are given few incentives to show up for trial. In a key Supreme Court case, for example, Justice Douglas argued that:

> ...the commercial bail system failed to provide an incentive to the defendant to comply with the terms of the bond. Whether or not he appeared at trial, the defendant was unable to recover the fee he had paid to the bondsman. No refund is or was made by the professional surety to a defendant for his routine compliance with the conditions of his bond. *Schilb v. Kuebel,* ((1971), 404 U.S. at 373-374).[8]

Similarly, Drimmer (1996, 742), says "hiring a commercial bondsman removes the incentive for the defendant to appear at trial." Goldkamp and Gottfredson (1985, 19) suggest that "use of the bondsman defeated the rationale that defendants released on cash bail would have an incentive to return" and in their influential set of performance standards for pretrial release the National Association of Pretrial Service Agencies (1998) says under commercial bail "the defendant has no financial incentive to return to court."[9]

In light of the persistent criticism that surety bail encourages FTA it is perhaps surprising that the data consistently indicate that defendants released via surety bond have lower FTA rates than defendants released under other methods. Part of this might be explained by selection – FTA rates, for example, may be higher for those defendants charged with minor crimes - perhaps these defendants reason that police will not pursue a failure to appear when the underlying crime is minor - and defendants charged with

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for whites, Ayres and Waldfogel find that bond dealers acted in precisely the opposite manner. What this pattern suggests is that judges set higher bail for minority defendants *compared to white defendants with the same probability of flight.* Bond dealers are then induced by competition to charge minorities relatively lower bail bond rates.

[8] The case can be found on the web at http://laws.findlaw.com/us/404/357.html.

[9] See also Thomas (1976, 13) who because of this issue calls the surety system "irrational."

minor crimes are more likely to be released on their own recognizance than on surety release. A second reason, however, is that bond dealers, just like other lenders, have numerous ways of creating appropriate incentives for borrowers.

Most obviously, a defendant who skips town will owe the bond dealer the entire amount of the bond just as with the deposit bond system. Defendants are often judgment proof, however, so bond dealers often ask defendants for collateral and family cosigners to the bond (which is not done under the deposit bond system). If hardened criminals do not fear the law, they may yet fear their mother's wrath should the bond dealer take possession of their mother's home because they fail to show up for trial. In order to make flight less likely, bond dealers will also sometimes monitor their charges and require them to check in periodically. In addition, bond dealers often remind defendants of their court dates and, perhaps more importantly, remind the defendant's mother of the son's court date when the mother is a cosigner on the bond (Toborg 1983).[10]

If a defendant does fail to appear the bond dealer is granted some time to recapture him before the bond dealer's bond is forfeited. Thus, bond dealers have a credible threat to pursue and rearrest any defendant who flees. Bond dealers report that just to break even, 95 percent of their clients must show up in court (Drimmer 1996, Reynolds 2002). Thus, significant incentives exist to pursue and return skips to justice.

Bond dealers and their agents have powerful legal rights over any defendant who fails to appear, rights that exceed those of the public police. Bail enforcement agents, for example, have the right to break into a defendant's home without a warrant, make arrests using all necessary force including deadly force if needed, temporarily imprison defendants, and pursue and return a defendant across state lines without necessity of

entering into an extradition process (Drimmer 1996). In Taylor vs. Taintor (16. Wall. U.S. 366, 1873), which remains good law, the Supreme Court noted (371-372):

> When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state; may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest, by the sheriff, of an escaping prisoner.

Bond dealers prepare for the possibility of flight by collecting information at the time they write the bond that may later prove useful. A typical application for bond, for example, will contain information on the defendant's residence, employer, former employer, spouse, children (names and schools), spouse's employer, mother, father, automobile (description, tags, financing), union membership, previous arrests etc.[11] In addition, bond dealers have access to all kinds of public and private databases. Bob Burton (1990), a bounty hunter of some fame, for example, says that a major asset of any bounty hunter is a list of friends who work at the telephone, gas, or electric utility, the post office, welfare agencies or in law enforcement.[12]

Bond dealers, however, recognize that what makes their pursuit of skips most effective is the time they devote to the task. In contrast, public police bureaus are often strained for resources and the rearrest of defendants who fail to show up at trial is usually given low precedence. The flow of arrest warrants for failure to appear has overwhelmed

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[10] Bail jumping is itself a crime which may result in additional penalties.

[11] We thank Bryan Frank of Lexington National Insurance Corporation for discussion and sending us a typical application form.

[12] Good bond dealers master the tricks of their trade. One bond dealer pointed out to us, for example, that the first three digits in a social security number indicate in what state the number was issued. This information can suggest that an

many police departments so that today many counties are faced with a massive stock of unserved arrest warrants. Baltimore alone had 54,000 unserved arrest warrants as of 1999 (Clines 2001). In recent years Cincinnati has had over 100,000 outstanding arrest warrants stemming from failures to appear in court. One Cincinnati defendant had 33 pending arrest warrants against him (Lecky 1997). In response to the overwhelming number of arrest warrants, most of which will never be served because of lack of manpower, some counties have turned to extreme measures such as offering amnesty periods. Santa Clara County in California, for example, has a backlog of 45,000 unserved criminal arrest warrants and in response has advertised a hotline that defendants can use to schedule their own arrests (Lee and Howe 2000).[13]

Although national figures are not available it is clear that the problem of outstanding arrest warrants is widespread. Texas, for example, is relatively clean with only 132,000 outstanding felony and serious misdemeanor warrants but Florida has 323,000 and Massachusetts, as of 1997, had around 275,000 (Howe and Hallissy 1999). California has the largest backlog of arrest warrants in the nation. The California Department of Corrections estimated that as of December 1998 there were more than *two and a half million* unserved arrest warrants (California Board of Corrections 1998, Howe, Hallissy 1999). Many of these arrest-warrants are for minor offenses but tens of thousands are for people wanted for violent crimes including more than 2,600 outstanding homicide warrants (Howe and Hallissy 1999). Howe and Hallissy (1999) report that "local, state and federal law enforcement agencies have largely abandoned

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applicant might be lying if he claims to have been born in another state (many SSNs are issued at birth or shortly thereafter) and it may provide a lead for where a skipped defendant may have family or friends.

[13] See Prendergast (1999) for description of a similar program in Kenton County, Kentucky.

their job of serving warrants in all but the most serious cases." Explaining how this situation came about, they write:

> As arrests increased, jails became overcrowded. To cope, judges, instead of locking up suspects, often released them without bail with a promise to return for their next court date. For their part, police, rather than arrest minor offenders, issued citations and then released the suspects with the same expectation.
>
> When suspects failed to appear for their court dates, judges issued bench warrants instructing police to take the suspects into custody. But this caused the number of warrants to balloon, and the police did not have the time or staff to serve them all.

4. The Matching Model with Multiple Treatments

Ideally in a treatment evaluation we would like to identify two outcomes: one if the individual is treated, Y_T, and one if no treatment is administered, Y_{NT}. The effect of the treatment is then $Y_T - Y_{NT}$. But we cannot observe an individual in both states of the world making a direct computation of $Y_T - Y_{NT}$ impossible (Rubin 1974). All methods of evaluation, therefore, must make some assumptions about "comparable" individuals. An intuitive method is to match each treated individual with a statistically similar untreated individual and compare differences in outcomes across a series of matches. Thus two statistical doppelgängers would function as the same individual in different treatments.

An important advantage of matching methods is that they do not require assumptions about functional form. When the research question is about a mean treatment effect, as it is here, matching methods also allow for an economy of presentation because they focus attention on the question of interest rather than on a long series of variables that are used only for control purposes. Unfortunately, matching methods typically founder between a rock and a hard place. The technique works best when individuals are matched across many variables but as the number of variables

increases, the number of distinct "types" increases exponentially so the ability to find an exact match falls dramatically.

In an important paper, Rosenbaum and Rubin (1983) go a long way to surmounting this problem. Rosenbaum and Rubin show that if matching on X is valid then so is matching on the probability of selection into a treatment conditional on X. The multi-dimensional problem of matching on X is thus transformed into a single dimension problem of matching on $Pr(T=1 \mid X)$ where $T=1$ denotes treatment.[14] $Pr(T=1 \mid X)$ is often called the propensity score or p-score.

The matching technique extends naturally to applications with multiple treatments through the use of a multi-valued propensity score with matching on conditional probabilities (Lechner 1999, Imbrens 1999). Assume that there are M mutually exclusive treatments and let the outcome in each state be denoted Y_1, Y_2, etc. As before, we observe only a specific outcome but are interested in the counterfactual; what would the outcome have been if this person had been assigned to a different treatment? Rather than a single comparison, we are now interested in a series of pairwise comparisons between treatments m and l. The treatment effect on the treated is written:

$$\theta_0^{m,l} = E(Y^m - Y^l \mid T = m) = E(Y^m \mid T = m) - E(Y^l \mid T = m), \qquad (1)$$

where $\theta_0^{m,l}$ denotes the effect of treatment m rather than l.

Identification of (1) can occur under appropriate conditions the most important being that treatment outcomes are independent of treatment selection after conditioning on a vector of attributes, X (the conditional independence assumption). Formally,

[14] Matching methods are common among applied statisticians and natural scientists but have only recently been analyzed and applied by econometricians and economists. Papers on the econometric theory of matching include Heckman, Ichimura, Todd (1998) and Imbrens (1999). More applied work includes Heckman, Ichimura and Todd

$$Y^1 \text{K}\ Y^M \perp T \mid X = x \tag{2}$$

If this assumption is valid we can use the conditional propensity score to identify the treatment effect (see Lechner 1999),

$$\theta^{m,l} = E(Y^M \mid T = m) - \underset{p^{m|ml}}{E}\left[E(Y^l \mid p^{m|ml}(X), T = l) \mid T = m\right], \tag{3}$$

In practice, the conditional propensity score, $p^{m|ml}(x)$, is computed indirectly from the marginal probabilities $p^l(x)$ and $p^m(x)$ estimated from a discrete choice model. In this case:

$$E[p^{m|ml}(x) \mid p^l(x), p^m(x)] = E[\frac{p^m(x)}{p^l(x) + p^m(x)} \mid p^l(x), p^m(x)] = p^{m|ml}(x). \tag{4}$$

The matching estimator in our case is created by an ordered probit model for reasons that will be discussed below. An outline of the basic procedure is given in Table 1.

It's important to emphasize that the propensity scores are not of direct interest but rather are the metric by which members of the treated group are matched to members of the "untreated" group ("differently" treated in our context). After matching, and given the conditional independence assumption, the treated and untreated group can be analyzed *as if* treatment had been assigned randomly. Thus, differences in mean FTA rates across *matched* samples are estimates of the effect of treatment.

Less formally, matching on propensity scores can be understood as a pragmatic method for balancing the covariates of the sample across the different treatments (Dehejia and Wahba 1998). Note that the covariates that we care most about balancing are those that affect the treatment outcome. Assume, for example, that X influences treatment

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(1997), Dehejia and Wahba (1998) and Lechner (2000). Our multi-treatment application is closest to that of Lechner (1999).

selection but does not independently influence treatment outcome. If the goal of the selection model were to consistently estimate the causes of treatment selection we would want to include X in the model but it is not necessarily desirable to include it when the purpose is to create a metric for use in matching (Augurzky and Schmidt 2000). A simple example occurs when X predicts treatment exactly. Inclusion of X would defeat the goal of matching because all propensity scores would be either zero or one. Similarly, we will include in the propensity score model variables that may affect the treatment outcome even if they do not casually affect treatment selection.

5. Data and Descriptive Statistics

We use a data set compiled by the U.S. Department of Justice's Bureau of Justice Statistics called State Court Processing Statistics (SCPS), 1990, 1992, 1994, 1996 (ICPSR 2038). We supplement with an earlier version of the same collection, the National Pretrial Reporting Program (NPRP), 1988-1989 (ICPSR 9508). The data are a random sample of one month of felony filings from approximately 40 jurisdictions where the sample was designed to represent the 75 most populous U.S. counties. The data contain detailed information on arrest charges, the criminal background of the defendant (e.g. number of prior arrests), sex and age of the defendant,[15] release type (surety, cash bond, own recognizance etc.), rearrest charges for those rearrested, whether the defendant failed to appear and whether the defendant was still at large after one year among other categories.

In addition to the main release types, there are minor variations on a theme. Some counties, for example, release on an unsecured bond for which the defendant pays no

money to the court but is liable for the bail amount should he fail to appear. Because the incentive effects are very similar, we include unsecured bonds in the deposit bond category.[16] Instead of a pure cash bond it is sometimes possible to put up property as collateral. Since property bonds are rare (588 observations in our data, less than 2% of all releases), we drop them from the analysis.[17] Finally some counties may occasionally use some form of supervised release. In the first year of our dataset, supervised release is included in the own recognizance category. Supervised release often means something as simple as a weekly telephone check-in, so including these with own recognizance is reasonable. Supervised release is not a standard term, however, and other forms, such as mandatory daily attendance in a drug treatment program are likely to be more binding. To maintain comparability across years we follow the practice established in the first year of the dataset by classifying supervised release with own recognizance. Because supervised release is more binding than pure own-recognizance, this can only lower FTA rates and other results in the own recognizance sample thus biasing our results *away* from finding significant differences among treatments.[18]

In Table 2, the mean FTA rates for release categories are along the main diagonal with the number of observations in square brackets. The preliminary analysis suggests that FTA rates are lower under surety bond release than under most other types of release. Off diagonal elements are the difference between the FTA rate for the row category and the FTA rate for the column category. The FTA rate for those released under surety bond

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[15] The SCPS is more complete and better organized than the NPRP data. The former, for example, includes information on the race of the defendant that the latter does not.
[16] We drop observations with missing data on the bail amount.
[17] Another reason to drop property bonds is that it's difficult to compare the bail for these releases for other release types. A defendant, for example, may put up a $250,000 house as collateral for $25,000 in bail. Although we know the bail amount we do no know the value of the collateral property other than that it must, by law in many cases, be higher

is 17 percent. Compared to surety release, the FTA rate is 3 percentage points higher under cash bonds, 4 percentage points higher under deposit bonds and 9 percentage points higher under own recognizance (all these differences are statistically significant at greater than the 1 percent level). Put slightly differently, compared with surety release, the FTA rate is approximately 18 percent higher under cash bond, 33 percent higher under deposit bond, and more than 50 percent higher under own recognizance.

We also present some information in Table 2 on emergency release. Emergency releasees are defendants who are released solely because of a court-order on prison overcrowding. Emergency release is not a treatment – the treatment is own recognizance – but rather an indication of what happens when neither judges nor bond dealers play their usual role in selecting defendants to be released.[19] One would expect that relative to those released under other categories these defendants are likely to be accused of the most serious crimes, have the highest probability of being found guilty and have the fewest community ties. In addition, these defendants have neither monetary incentive nor the threat of being recaptured by a bounty hunter to induce them to return to court. As a result, a whopping 45 percent of the defendants who are given emergency release fail to appear for trial. The large differences between the FTA rates of those released on emergency release and every other category indicate that substantial and successful selection occurs in the release versus not released decision. Emergency release is thus of some special interest, although not directly related to the focus of this paper.

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than the value of the bail amount. A cash or surety bond, therefore, is not equivalent to a property bond for the same bail amount.

[18] We find similar results by restricting the dataset to the years in which supervised release is given a distinct category.

[19] Even under emergency release some selection can occur. Judges and jailers, for example, could order that more inmates be paroled to make room for the most potentially dangerous accused defendants or inmates could be shipped out-of-state or the court-order could be (temporarily) ignored. The costs of selection, however, clearly rise substantially when jail space is tightly constrained.

Although the preliminary data analysis is suggestive, the difference in means analysis could confound effects due to treatment with effects due to selection on, for example, defendant characteristics such as the alleged crime.

6. Results

6.1 Propensity Scores from Ordered Probit

We generate propensity scores for matching using an ordered probit model. By law, judges must release defendants on the *least restrictive* conditions that they believe are compatible with ensuring appearance at trial.[20] Own recognizance, the least restrictive form of release, is our first category followed by release on deposit bond. Although defendants released on deposit bond must put up some cash, which they will forfeit if they fail to appear, the amount of the cash is typically less than $500.[21] Few people are ever held because of a failure to raise cash for a deposit bond. Defendants who were offered financial release (but not a deposit bond) and who paid their bonds in cash are the third category of release. Cash bond is more expensive than a deposit bond but does not involve the monitoring of sureties. Defendants released via surety bond are the fourth category. Although the Constitution guarantees that excessive bail shall not be required it does not require that bail should always be set low enough for a defendant to be able to afford release. Indeed, judges sometimes set bail in the expectation (and hope) that the defendant will not be able to raise bail. Thus, we include defendants held on bail or detained without bail as the final, most restrictive category, not released. Emergency

[20] The Federal Bail Reform Act of 1966 required that defendants be released on the least restrictive conditions that will ensure their appearance at trial and almost all states have adopted similar laws since that time.
[21] The median deposit bond amount is $5000 and releasees typically must deposit 10 percent or less of the bond amount.

releases are also included in the final category because, had it not been for the emergency, these individuals would have not have been released.

Thus, stringency of release, measured by z,* is a linear function,

$$z^* = \beta' x + \gamma_t + \lambda_k + \varepsilon,$$

where x includes all of the independent variables in the sample, γ_t are year specific intercepts for 1990, 1992, 1994, and 1996 and λ_k are county effects. The observed values of stringency are discrete and take on the value of 1 for those released on own recognizance, 2 for those on deposit bond, 3 for those on cash bond, 4 for those on surety bond and 5 if the defendant was not released. That is,

$$\begin{aligned} z &= 1 \text{ if } z^* \le 0 \\ &= 2 \text{ if } \mu_1 < z^* \le \mu_2 \\ &\text{M} \\ &= 5 \text{ if } \mu_4 \le z^* \end{aligned}$$

where $\mu's$ are the unknown cut points that can be estimated. Probabilities for each release type can then be constructed (see, for example, Greene 2000). From the ordered probit we generate conditional propensity scores for each possible pairwise comparison.[22]

Variables in the ordered probit specification include individual-specific indicators denoting whether the crime the defendant has been accused of is a murder, rape, robbery, assault, other violent crime, burglary, theft, other property offense, drug trafficking, other drug related, or driving related (with misdemeanors and other crimes in the constant). We also include variables for past experience with the criminal justice system. Three binary variables are set equal to one respectively if the defendant had some active criminal justice status at the time of the arrest (e.g. was on parole or probation), had prior

felony arrests, or had a prior failure to appear at trial. The defendant's sex and age are also included. Note that these variables are exactly the sorts of variables that judges use to make treatment selection decisions.[23] Other, non-individual variables include the police clearance rate, defined as the number of arrests divided by the number of crimes per county. The clearance rate provides a crude measure of police availability that may affect FTA rates.

County and year effects are included in the selection equation (county 29 and 1988 are excluded to prevent multicollinearity). The use of county effects in the selection equation is noteworthy because it implies that matching will occur with "quasi"-fixed effects. A true fixed-effects estimator would require that comparables come from within the same county. The matching estimator takes into account county effects when seeking a match but does not insist that every match must be within-county. In particular, some counties do not release on deposit bond and others do not release on surety bond. A fixed-effects estimator would not use information from these counties in estimating the effect of the deposit and surety treatments. The matching estimator will use information from these counties if matching is strong on other variables. A pure fixed-effects estimator may also be important, however, so we discuss this at greater length in the section below on unobservables. The results of the ordered probit estimation are in Table 3.

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[22] We have also estimated the results using a multivariate logit model. The results are substantively similar.

[23] Ayers and Waldfogel (1994) identify eight characteristics that judges may consider in setting bail: 1) the nature and circumstances of the offense (if relevant); 2) the evidence against the defendant; 3) the defendant's prior criminal record; 4) the defendant's prior FTA record; 5) the defendant's family ties; 6) the defendant's employment record; 7) the defendant's financial resources; and 8) the defendant's community ties. Although Ayers and Waldfogel's study deals only with Connecticut the criteria are similar in other states.

6.2 Matching Quality

A match is defined as the pair of observations with the smallest difference in propensity scores so long as the difference is less than a predefined caliper. If no observations can be matched within the caliper distance, the observations(s) is dropped. We use matching with replacement so the order of matching is irrelevant and every untreated observation is compared against every treated observation.[24]

The match quality is good, as we match large proportions of the sample despite using a caliper of only 0.0001.[25] Figure 1A presents a box and whiskers plot of the propensity scores for each treatment category (including the "treatment" of not-released) conditional on the actual treatment. The left most part of the graph, for example, gives the box and whiskers plot for the propensity of receiving the own, deposit, cash, surety and not released treatments for all defendants who received the own treatment.[26]

Figure 1B plots the box and whiskers for the pairwise (conditional) probabilities for the own v. surety comparison. The Pr. Own and Pr. Surety arrows indicate that we can find good comparables, statistical doppelgangers, for individuals released under either treatment. Many of the defendants released on surety bond, for example, were as likely to have been released on their own recognizance (3rd box from the left) as those who actually were released on their own recognizance (1st box from the left). Similarly, many of the defendants who were released on their own recognizance were as likely to

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[24] Dehejia and Wahba (1998) find that matching with replacement is considerably superior to matching with non-replacement.

[25] When matching on variables with fewer observations, such as fugitive rates conditional on FTA as we do below, we match using a caliper of .001. The caliper size makes little difference to the results.

[26] In a box and whiskers plot the box contains the interquartile range (IQR) the observations between the 75th percentile (the top of the box) and the 25th percentile (the bottom of the box). The horizontal line towards the center of each box is the median observation. The whiskers are the so called adjacent values which extend from the largest observation less than or equal to the 75 percentile plus 1.5 * IQR and the smallest observation more than or equal to the 25 percentile minus 1.5* IQR. Points outside the box and whiskers are called extreme values or outside points and for clarity are not plotted in this graph. In this plot, the width of the box is proportional to the square root of the number of observations in that category.

have been released on surety bond (2nd box from the left) as those who actually were released on surety bond (4th box from the left). Note that it's important that the boxes overlap *across* treatments, not that they overlap within treatments – i.e. the fact that in Figure 1A the propensity to receive the deposit bond treatment is everywhere lower than the propensity to receive own recognizance simply reflects the fact that deposit bond is a low probability event. More important is that the deposit bond treatment is a low probability event *regardless of actual treatment* – we can thus find good comparables across the treatments. Alternatively stated, the overlap in the boxes across treatments indicates that random factors play a large role in treatment selection thus aiding our effort to find true comparables.[27]

Although we can find good comparables across the release treatments we cannot find good comparables for those who were not released. Indeed, the Figure 1A box and whiskers plot of the propensity for not-released among those who in fact were not-released doesn't overlap *at all* with the propensity to be not-released for those who were released. Defendants who are not-released differ greatly from released defendants.[28] (This is consistent with the very high FTA rates we found for emergency releasees in Table 2). The fact that the model is capable of finding large selection effects if they exist, as they apparently do for those not-released, bolsters the finding that selection on observables is not overly strong among the release treatments.

6.3 Estimated Treatment Effects: Failure to Appear

In Table 4 the row variable denotes the treated variable and the column the untreated variable. For reference, the main diagonal includes the mean FTA rate in that

[27] Another interesting aspect of the box and whisker plot is that it suggests that almost everyone can be released on their own recognizance, even those who might in another time and place be released only with high bail. Thirty percent of released defendants accused of murder, for example, were released on their own recognizance.

category from the full sample.[29] Reading across the surety row, for example, we see the estimated difference in FTA rates caused by the surety treatment relative to the column treatment – i.e. the estimate of the effect of treatment on the treated. The matching estimator suggests that similar individuals are 7.3 percentage points or 28% less likely to fail to appear when released on surety bond than when released on their own recognizance. Similar individuals are also 3.9 percentage points or 18% less likely to fail to appear when released on surety bond than when released on deposit bond. The estimated treatment effect for those on surety bonds versus cash is small and not statistically significant.[30]

Two standard errors are presented in Table 4. The first takes into account uncertainty in the matched samples but assumes that the propensity score is known with certainty. The second estimate is a bootstrapped standard error that takes into account uncertainty propagating from the estimation of the propensity score. The "regular" and bootstrapped standard errors are close with the bootstrap errors being approximately 8-20 percent higher.[31] All the statistically significant results are significant at greater than the 1% level using either standard error. Since the estimation of the propensity score adds very little uncertainty to the matching estimators and because calculating bootstrap errors is very time and resource intensive we present only the regular standard errors in future

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[28] It is possible to find defendants who were released who might not have been released – thus the data is consistent with the adage that it is better to let 10 guilty men go free than jail one innocent man.

[29] The mean FTA rate for the full sample is included as rough guide to absolute effects. Note, however, that the matched sample is usually smaller than the full sample so the mean FTA rate for the matched and full samples can be slightly different.

[30] As a test of matching quality we also ran a linear regression on the matched samples that included Surety Bond and all the variables in Table 3. The results are similar, as they should be if the matched samples divide other covariates as if they were assigned randomly. The coefficient on Surety Bond in the surety versus own regression, for example, is –6.5 which is within one standard deviation of the –7.3 matching estimate. We do a more detailed comparison of linear regression and matching results further below.

[31] Not surprisingly, the smaller differences occur in comparisons using either of the largest groups, own or surety.

results.[32] Readers may add 15% to these errors to control for uncertainty in the estimation of the propensity score.

Unlike Table 2, both the top and bottom halves of Table 4 are filled in; this is because the estimate of the treatment on the treated is conceptually different from the estimate of the treatment on the untreated (differently treated). For example, the effect of the surety treatment relative to own recognizance for those who were released on surety bond is not necessarily the exact opposite of the effect of own recognizance relative to surety bond on those who were released on own recognizance. As it happens, however, our estimates of these effects are similar. The estimate of the effect of own recognizance relative to surety on those who were released on their own recognizance, for example, is 6.5 percentage points, similar in size but opposite in sign to the –7.3 surety effect relative to own recognizance of those who were released on surety bond. The similarities across diagonals suggest that either (or both) treatment selection or treatment effect does not interact strongly with defendant characteristics. One possible exception is that the deposit bond treatment relative to cash is estimated at 4.1 percentage points while the cash bond treatment relative to deposit is estimated at –1.5 percentage points.

In Table 5 we extend our matching algorithm so that it matches on the propensity score and the bail amount. Bail is determined by the same sorts of factors that enter into treatment selection (e.g. seriousness of crime, prior arrests etc.), and thus matching on p-score will match on bail to some extent. But in the matched surety bond sample, for example, the mean bail is $8243 but in the cash bond sample it is only $3883. The

[32] The bootstrap errors in Table 5 were calculated using 100 replications of the model. The procedure took over 48 hours on a reasonably fast Pentium computer.

difference is to be expected as defendants with low bail amounts will tend to self-select into cash rather than surety bail. If higher bail significantly discourages FTAs, differences in bail amounts could account for perceived treatment effects among release types. Thus, to ensure that the effects are not being caused by bail per se, we match on propensity score and the natural log of bail using the Mahalanobis distance as a metric.[33,]

In the surety v cash bond sample matching on bail suggests a small but statistically significant positive impact of surety bond on FTA rates. Matching does distribute bail amounts across the treatments. In the sample matched on bail and propensity score the mean bail amounts in the surety and cash bond sample are, $4011 and $3927 respectively. Thus, high-bail surety bond releases are thrown out in order to match surety releases to the cash bond sample. The results on the other treatment effects are similar to those found earlier. In particular, surety and cash bond both result in lower FTAs than deposit bond.

6.4 Estimated Treatment Effects: The Fugitive

A surprisingly large number of felony defendants who fail to appear remain at large after one year, approximately 30%. Alternatively stated, some 7% of all released felony defendants skip town and are not brought back to justice within one year. We call FTAs that last more than one year, fugitives.

The surety treatment differs most from other treatments when a defendant purposively skips town because this is when bounty hunters enter the picture.[34] If the surety treatment works, therefore, we should see it most clearly in the apprehension of

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[33] The Mahalonobis distance is a Euclidian (squared) distance that is weighted by the inverse covariance matrix for the matching variables. For details see Sianesi (2002).

[34] We use the term bounty hunter or bail enforcement agent to refer to private pursuers of felony defendants. Bond dealers typically pursue their own skips. Literal bounty hunters are typically not called in unless the skip is thought to

fugitives. Given that a defendant fails to appear, we ask what is the probability that the defendant is not brought to justice within one year and how does this vary with release type? Importantly, *once a defendant has decided to abscond* there is no reason why anything other than the different effectiveness of public police and bail enforcement agents should have a systematic effect on the probability of being recaptured.

Table 6 provides strong evidence that bounty hunters are highly effective at recapturing defendants who attempt to flee justice - considerably more so than the public police. The main diagonal of Table 6 contains the mean fugitive rate conditional on FTA along with the number of observations in each category. The estimated treatment effect for the row versus column variables are shown in the off diagonals with standard errors in parentheses. The probability of remaining at large for more than a year conditional on an initial FTA is much lower for those released on surety bond. The surety treatment results in a fugitive rate that is lower by 17, 15.5, and 25.6 percentage points compared to own recognizance, deposit bond and cash bond respectively. In percentage terms the fugitive rate under surety release is 53%, 47%, and 64% lower than the fugitive rate under own recognizance, deposit bond and cash bond respectively. Similarly, the own recognizance, deposit and cash bond treatments result in fugitive rates that are 29%, 47%, and 47% higher than under surety.

There are also some interesting non-surety effects in Table 6. Note that the fugitive rate *conditional on an FTA* is *higher* for cash bond relative to release on own recognizance. Earlier (see Table 5) we had found that the FTA rate was *lower* for cash bond relative to release on own recognizance. What this suggests is that defendants on

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have crossed state or international lines. Services like Wanted Alert, http://www.wantedalert.com, regularly post ads in USA Today that list fugitives and their bounties.

cash bond are less likely to fail to appear than those released on their own recognizance but if they do fail to appear they are less likely to be recaptured. The result is pleasingly intuitive. A defendant released on his own recognizance has little to lose from failing to appear and thus may fail to appear for trivial reasons. But a defendant released on cash bond has much to lose if he fails to appear and thus those who do fail to appear do so with the goal of not being recaptured.

The propensity score method can be very informative about the entire distribution of treatment effects. In Figure 2 we graph smoothed (running-mean) FTA and fugitive rates against surety p-scores for the own-recognizance and surety treatments (conditional on receiving either surety or own). (We omit graphs for the other treatment comparisons for reasons of length). The two downward-sloped less-thick curves graph smoothed FTA rates against the p-scores for those defendants released on their own recognizance or surety. The slope of each line indicates the direction and strength of the effect of observables on selection in that treatment. The difference between the own and surety lines at any given propensity score is an estimate of the treatment effect, controlling for observables. The difference is roughly constant which indicates that despite some mild selection the treatment effect is roughly independent of observables.

For both the own and surety treatments, FTA rates fall as the propensity for receiving surety increases. That is, FTA rates fall as observables move in the direction predicting surety release. The fall is gentle; moving from a near zero propensity to a near 1 propensity reduces the FTA rate by approximately 5 percentage points. The effect is sensible if we recall that many FTAs are short-term - the defendant forgets the trial date or has another pressing engagement. These sorts of FTAs are likely to be more common

for defendants with observables that predict low p-scores because judges release most defendants on their own recognizance and reserve surety release for defendants accused of more serious crimes. Few people will forget to show up for their murder trial but some may do so if the trial involves a driving offense. At the same time, however, we expect that defendants accused of more serious crimes - who have more to lose from being found guilty - are more likely to purposively abscond. If this is correct, we ought to see a positive correlation between the surety propensity score and the fugitive rate (failing to appear and not found within one year) conditional on having failed to appear.

The two upward-sloped and thick lines plot smoothed fugitive rates against the surety propensity score. As before the slope of the plots gives the direction and strength of effects caused by selection on observables and the treatment effect for any given propensity score is the difference between the FTA rates at that propensity score. Unlike FTA rates, the selection effects for conditional fugitive rates are positive – that is, as observables move in the direction of a greater propensity to be selected for surety release the fugitive rate increases. Interestingly, the effect of selection on defendants released on surety bond is less than that of defendants released on their own recognizance, deposit or cash bond (i.e. the "slope" of the plot is less). What this suggests is that the surety treatment works well even for those defendants whose observables would predict higher FTA rates. We examine the issue of unobservables at length below but since selection by observables has little influence on fugitive rates, Figure 2 already suggests that unobservables would have to be very different from unobservables in order to greatly affect the results.

6.5 Kaplan-Meier Estimation of FTA Duration

The higher rate of recapture for those released on surety bond compared to other release types can be well illustrated with a survival function. For a subset of our data, just over 7000 observations, we have information on the time from the failure to appear until recapture (return to the court). A survival function graphs the percentage of observations that survive at each time period. We estimate a survival function for each release type using the non-parametric Kaplan-Meier estimator. Typically, the Kaplan-Meier estimator is used only for preliminary analysis and is then followed by a parametric or semi-parametric model. Although parametric and semi-parametric models allow for covariates they require sometimes-tenuous assumptions about functional form. Instead, we follow our earlier approach of creating matched samples. Thus, using the same procedure as earlier, we create three matched samples surety v. own, surety v. deposit and surety v. cash. We then compare the survival function across each matched sample. The matching procedure ensures that covariates are balanced across the matched samples so it is not necessary to include additional controls for covariates.

Figure 3 presents the survival functions. In each case the survival function for those on surety bond is markedly lower than that for own recognizance, deposit bond, or cash bond. The ability of bail enforcement agents relative to police to recapture defendants who skip bail is evident within a week of the failure to appear.[35] By 200 days the surety survival rate is some 20 to 30 percentage points or 50 percent lower than the survival rate for those on cash bond, deposit bond or out on their own recognizance, i.e.

[35] A number of estimates have been made that bounty hunters take into custody between 25,000 and 35,000 fugitives a year, depending on the year (see various sources in Drimmer 1996 also Barr 2000). These figures are consistent with a recapture rate of over 95 percent and are consistent with the number of fugitives on surety bond. It appears, therefore, that almost all fugitives on surety bond are recaptured by bail enforcement agents and not by the police. Bounty hunters, however, will sometimes track down defendants and then tip police as to their whereabouts so police will sometimes be involved in some aspects of recapture.

the probability of being recaptured is some 50% higher for those released on surety bond relative to other releases. (Note that there are three surety bond survival functions, one for each comparison group, but that these are nearly identical). Figure 4 presents a similar regression matching on propensity score and bail. The survival functions appear more ragged but otherwise the results are very similar.

Table 7 shows the results of a log rank test (Kalbfleisch and Prentice 1980). The log rank test confirms Figures 3-4; we can easily reject the null of equality of the survivor functions - defendants released on surety bond are much more likely to be recaptured (i.e. less likely to remain at large, "survive") than are those released on their own recognizance, deposit bond or cash bond.

7. Looking for Unobservables

Matching is a powerful and flexible tool, but like linear regression, it is not a research design that magically guarantees the identification of causal effects. In this section we use a number of techniques to test for robustness and to rule out the potentially confounding effects of unobservables. Analyzing unobservables requires identification assumptions and, as always, such assumptions are open to question. Nevertheless, we are able to offer several identification strategies that allow us to analyze three classes of potentially unobserved variables; 1) unobservables associated with counties, 2) variables associated with individuals that are unobserved by us but observed by judges and 3) variables associated with individuals that are observed neither by us nor by judges. Analyzing each of these possibilities we converge on the finding that treatment effects rather than unobserved variables explain why FTA rates and fugitive

rates are much lower for defendants on surety bond compared to defendants on other forms of pre-trial release.

7.1 County Unobserveds

We begin with county unobservables. Counties vary on a wide set of dimensions such as size, population density, average crime rate, and prosecutorial and police strategies. If any of these are correlated across the data with FTA and fugitive rates and with the propensity to use commercial bail, this could bias our results. Earlier we noted that county variables in the ordered probit selection equation make the matching estimator a "quasi-fixed" estimator. We now examine whether we find similar results using a true fixed-effects regression. Some counties do not use some release programs. In running a particular fixed-effects regression, say of the surety versus own treatment, we could use every county that contains both treatments but instead we take a more conservative approach. Our fixed effects regression contains only those counties with *every* treatment program – we assume, in other words, that counties with *every* treatment program are the most comparable. This reduces the number of counties and observations by approximately 40 percent. The regression includes county fixed effects and all of the variables in Table 3. For comparison purposes we also run the matching estimator on the new sample and we run the probability model on the matched samples. By including fixed effects the identification of the treatment effect comes only from the *within-county* variation in FTA rates among treatment types. Thus, the fixed effects regression controls for *any* unobserved but fixed variable associated with counties.

In Table 8 we focus on the fugitive results and the surety treatment effect on the treated. The first number is the coefficient on surety bond in a linear probability model

followed by the matching estimate; respective standard errors are in parentheses.[36] The percentage point treatment effects are somewhat smaller than in the full sample but they are smaller when estimated by either the linear probability model with fixed effects or the matching estimator thus suggesting that the differences are due to sample and not to estimation technique. In percentages the surety treatment effect results in estimated fugitive rates that are lower compared to own, deposit and cash bond rates by 15-22%, 54-38%, and 40.7-41.5% (where the first number uses the linear probability model and the second the matching estimator). The fixed effects and matching estimates are within a standard deviation of one another, or a shade of a standard deviation in the Surety v. Deposit comparison. We conclude that the fugitive rate for those released on surety bond is considerably lower than it is for defendants released under other categories even after restricting the sample to the most comparable counties and including county fixed effects.

Using county fixed effects throws out the cross-county variation but arguably this variation is the most revealing because it may be the most "fortuitously random." Consider those states that have banned commercial bail. It seems plausible that matching can find two individuals who are comparable but for the fact that one individual *could not* have been assigned surety bail while the other could and *was* assigned surety bail. Comparing these individuals gives as a measure of what would happen if a county lifted its ban on commercial bail.[37]

Table 9 demonstrates that states that ban commercial bail pay a high price. We estimate that FTA rates are 7 to 8 percentage points or approximately 30% higher under

[36] We use a linear probability model to allow for full fixed effects. The marginal effect (discrete method) of Surety Bond in a probit model with a constant and one county variable dropped are virtually identical, -4.4, -16.3, and -15.3 respectively. Restricting the linear model to the matched sample makes little difference. The coefficients on Surety Bond in the full sample are –4.9, -11.0, and -16.5 respectively.

deposit or own recognizance compared to what they would have been if the same individuals were released on surety bond.[38] As before, we find that cash bond is about as effective as surety at controlling FTA rates. The fugitive rate conditional on FTA is much higher, under own, deposit, or cash release than under surety; higher by some 15, 20, and 36 percentage points or 78%, 85 and 93% respectively - even larger figures than we found earlier.

7.2 Unobserved by us but Observed by Judges

Unobserved variables may be associated with individuals rather than with counties. Since we do not have repeated data on individuals, controlling for individual observables requires stronger identification assumptions. If unobservables associated with individuals are important, however, it's worthwhile noting that they are likely to bias the surety treatment effects *downwards*. In assigning defendants to release treatments, judges are supposed to choose the least restrictive form consistent with reasonable assurance that the defendant will appear at trial. "Cream skimming," therefore, is built into the release process and *the cream gets released on own recognizance and deposit bond* while the *skim are held or released on cash or surety bond.*

Defendants who are released on cash or surety bond were not released on their own recognizance presumably, although not necessarily, because a judge thought the FTA likelihood under such a release form would be too high. If judges observe some information that we do not, we would expect cash and surety releases to have more

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[37] Since we are interested in the cross-county variation, the propensity scores for these tests were generated from an ordered probit that did *not* include county fixed effects but was otherwise identical to that used earlier.

[38] Note that in Table 9 we examine the treatment effect of own, deposit and cash relative to surety because this is the relevant comparison when considering the experiment of lifting the ban on commercial bail. As noted earlier, the

unobserved variables pointing in the direction of higher FTA rates than those defendants released under other treatments. For example, if judges are more likely to assess bail when the evidence against a defendant is strong or when the defendant has a surly demeanor and if strong evidence or surly demeanor is associated with higher FTA and fugitive rates (as it should be if judges are doing their job) then our estimates of the surety treatment effects are *too low*.

We have already found some evidence which would suggest the bias in our results is downward. Recall from Figure 2 that the effect of selection on *observables* is to raise the fugitive rate (we focus on the fugitive rate because it is most dispositive statistic concerning the effectiveness of the surety treatment). If selection on unobservables is in the same direction as selection on observables, then our estimates of the surety treatment effect are too low. Unless there is reason to think that the process that makes one variable observed and another unobserved is correlated with the outcome it's best to assume that selection on unobservables is in the same direction as selection on observables (because if the process that determines what is observable is random we should learn something about all variables from those that we observe). In addition to this general argument, we have a specific argument. We know that what judges are supposed to do is to assign defendants with higher FTA and fugitive rates to more restrictive release categories and they should do so using *all* the variables that they observe even if some of these variables are unobserved by us.

If judges have access to information that we do not, we might expect this information to be incorporated into the bail amount. Thus, one way of accessing this

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treatment effect on the treated and untreated are similar so we could also have examined the surety treatment effect relative to the alternative release types.

information is to match on the propensity score *and* the bail amount thereby controlling for information that is unobserved to us but observed (and used) by judges.

Earlier we matched on propensity score and bail amounts when matching on FTA rates. The motivation at that time was to control for the incentive effect of bail. We can see now, however, that matching on bail also controls for information observed by judges but not observed by us. When the outcome is fugitive rates *conditional on having failed to appear*, however, there is no longer an independent effect arising from the bail amount - once a defendant has failed to appear for any significant amount of time his bail is sunk and therefore irrelevant. The only reason to match on bail when the outcome is fugitive rates is to control for potentially unobserved judicial information.

Table 10 presents the results for matching on propensity score and (log) bail. The estimate of the surety treatment v. deposit bond is lower than without matching on bail but the surety v. cash treatment effect is nearly identical to that found earlier. Unless judges act perversely they will assign defendants with a higher propensity to fail to appear to more restrictive release categories. The information theory predicts, therefore, that matching on bail will result in a larger estimated treatment effect than matching on a reduced information set. The surety v. deposit estimate is different when matching on bail but it's smaller not larger than that found when matching on propensity score. In addition, no bail effect shows up in the surety v. cash estimates. Overall, this suggests that judges do not have much information in addition to that which we observe.

We have also matched on only predicted bail generated from a Tobit model. Results (available upon request) are very similar to those presented already and are omitted here for reasons of length.

7.3 Unobserved Individual Effects

Variables associated with individuals may be observed neither by us nor by judges. We propose two identification strategies. First, some 14 percent of defendants out on pre-trial release are arrested for another crime before they are sentenced for the first crime. We assume that the probability of being rearrested is positively correlated with the probability of becoming a fugitive. Suppose, for example, that guilty defendants are less likely to show up for trial than innocent defendants and innocent defendants are less likely to be rearrested than guilty defendants. There is good evidence for some such assumption because in the raw data defendants who are never rearrested have an FTA rate of 11% but defendants who are rearrested for another crime have an FTA rate of 43%.

If rearrest is positively correlated with the probability of becoming a fugitive and *if treatment does not influence rearrest rates,* then rearrest rates by treatment will track unobserveds. Table 11 provides evidence for the second clause - in the raw data there is very little variation in rearrest rates across treatment categories.

The evidence suggests that treatment does not influence rearrest rates so any differences in rearrest rates across treatment categories can be assigned to the influence of unobserveds. Nevertheless, it is useful to consider two reasons why treatment might influence rearrest rates. First, bond dealers have an incentive to ensure that their charges show up at trial. Although the rearrest of a defendant is not usually grounds for the forfeiture of the bond dealer's bond,[39] bond dealers do monitor their charges and such

[39] The only circumstance where this might occur is if the defendant is arrested in another state and for this reason fails to show up at trial. Even in this case the surety has some time, usually 90 to 180 days, to locate the defendant before the bail is forfeited. Reynolds (2002) suggests that parole and probation bonds be created such that bond dealers would forfeit their bonds if the defendant was rearrested. If this were to occur then bond dealers would have the same incentives to reduce defendant rearrest as they today have to ensure that defendants appear at trial.

monitoring might reduce rearrest rates. Second, bond dealers might be able to select defendants who are unlikely to flee and thus also unlikely to be rearrested.[40] Note that both of this hypotheses imply that all else equal, rearrest rates should be lower for those released on surety bond.

Table 12 (matching on propensity score and bail) presents the rearrest "treatment effects" for the various release types. In no case is the rearrest rate lower for surety bond compared to other treatment types. Thus there is no evidence that monitoring significantly reduces rearrest rates or that bond dealers selectively choose defendants with low rearrest and FTA rates. Thus any "treatment effect" is best interpreted as the influence of unobserved variables and the direction of this influence is indicative of the influence of unobserved variables on FTA and fugitive rates. The surety v. own and surety v. deposit comparisons show positive but very small and statistically insignificant effects suggesting that unobserved variables have little influence on FTA and fugitive rates across these comparisons. The surety v. cash bond comparison suggests that the surety treatment increases rearrest rates by 4.5 percentage points which implies that unobserved variables operate in a direction that *offsets* the true treatment effect of surety on FTA and fugitive rates. Recall from Tables 4 and 5 that we found that FTA rates were slightly higher under surety than under cash bond. The evidence from rearrest rates suggests that unobservables may be responsible for part of this and that the true treatment effect is somewhat lower. Similarly, although we found large negative effects on fugitive

[40] Note, however, that no bond dealer could stay in business if she only bonded the innocent.

rates from the surety treatment (relative to cash treament), the evidence suggests that, if anything, that the true treatment effects may be even more negative.[41]

The rearrest data also allows for another interesting comparison. For a small subset of our data, 1331 observations from 1988 and 1990, we know the re-release type for those individuals who are arrested and released on a second charge. We do not know whether the individual failed to appear on the second charge, which is why we don't have repeated observations. Nevertheless, the second arrest and release data may be revealing.

Suppose that the initial release is own recognizance and the second release is via surety bond. By monitoring and possibly recapturing the defendant if he skips on the *second* trial, bail bondsmen and their agents create a positive externality with respect to fugitive rates on the *first* trial. This potential externality means that we need not compare own recognizance to surety releases to measure a surety treatment effect. Instead, we can compare defendants who received own recognizance with other defendants who received own recognizance in their first release and surety in their second release. Similarly, we can compare fugitive rates on the first trial for defendants whose first and second releases were own and own with those whose first and second releases were own and surety. With this comparison we control for any selection effects on the first release.

The unconditional fugitive rate of defendants who are released on their own recognizance and *not* rearrested is 8.48 percent.[42] The fugitive rate of defendants who are released on their own recognizance and who are rearrested and then released again on their own recognizance is almost identical, 8.04 percent. But the fugitive rate for those

[41] Since we find that rearrest rates vary little by treatment category we should also find that treatment effects measured in the rearrest sample, i.e. using only those defendants who were subsequently arrested for a second crime, should be similar to those found in the one-arrest sample. We have run these matching tests on propensity score and bail and do find similar results which we omit for reasons of length. Results available upon request.

defendants initially released on their own recognizance but then rearrested and rereleased on surety bond is just 1.9 percent. The difference between the own and the own-surety fugitive rate is statistically significant at the greater than 1% level. The difference between the own-own and own-surety rate, which controls for rearrest, is also statistically significant at the greater than 1% level. Table 13 summarizes.[43]

Our last identification strategy uses an instrumental variable. When jails become overcrowded judges are pressured to release individuals on their own recognizance rather than running the risk of setting bail that the defendant might not be able to secure. Bond dealers understand that overcrowded jails mean less surety business. One Arkansas newspaper headline, for example, read "Crowded jails put squeeze on bondsmen." The article noted that local bond dealers were "feeling the pinch of jail overcrowding" because more suspects were being released on their own recognizance resulting in a significant drop-off in business (Kimbrough 1989).

We define ratio as the county jail population divided by the official jail capacity. A ratio greater than 1 indicates overcrowding. We suggest that jail overcrowding is not likely to be correlated with unobservables that affect FTA and fugitive rates. In addition, to test whether ratio is an useful instrument for surety bond (relative to own recognizance) we run a first stage regression of surety bond on ratio and every other exogenous variable including the crime variables and county and year fixed effects.[44] The coefficient on ratio is –16.4 with a robust standard error of .0189 (t=8.67). A rule of

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[42] Earlier we focused on fugitive rates conditional on having FTA. We focus on unconditional fugitive rates here because we have fewer observations. We have data on rearrest and re-release type for 1988 and 1990.

[43] We have also run similar tests where we control for the charges by focusing only on those individuals whose second charge was the same as the first charge. We again find that surety release results in significantly lower fugitive rates. Results available upon request.

[44] We focus on surety versus own because the deposit bond sample is small and overcrowding is unlikely to have a large effect on the cash/surety margin. Although judges could lower bail amounts thus encouraging cash bond this

thumb is that a t statistic of 3.2 or greater suggests a reasonable instrumental variable so ratio looks like a good instrument for surety bond. Table 14 presents estimates for the effect of surety bond on FTA rates and fugitive rates conditional on FTA with ratio used as an instrument.

In the FTA equation the coefficient on surety is –17.2, consistent in sign but larger in size to that found via matching but not statistically significant at conventional levels (p=.16). Similarly the coefficient on surety in the fugitive conditional on FTA equation is negative and much larger than that found previously and is statistically significant at the greater than 5% level.[45] We have found very little evidence of selection effects using previous tests (e.g. from Figure 1-2, and using the information from rearrest rates) in which case instrumental variables add noise to the estimating equation. A Hausman test comparing the OLS results using surety bond and the IV results verifies this finding. The IV results, therefore, give us additional confidence that our previous estimates of the surety treatment effect are not greatly contaminated by unobservables and, to the extent that unobservables are important, the IV results are consistent with the earlier results in suggesting larger not smaller surety treatment effects.

In this section we have controlled in a variety of ways for county effects, individual effects observed by judges but unobserved by us and pure unobserved effects of a very general nature. We have also noted the cream that judges skim goes to own recognizance and deposit bond while the skim are released on cash or surety bond. Consistent with this, observable selection effects on fugitive rates are positive. The evidence from rearrest rates and the IV suggests that unobservables are not biasing our

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does not guarantee a reduction in overcrowding. Indeed, lower bail amounts will not necessarily increase the number of releases because lower bail amounts discourage release via surety bond.

results upwards. Taken together the evidence suggests that we have good estimates that surety release reduces FTA rates, survival times and fugitive rates.

8. Conclusions

When the default was for every criminal defendant to be held until trial, it was easy to support the institution of surety bail. Surety bail increased the number of releases relative to the default and thereby spared the innocent some jail time. Surety release also provided good, albeit not perfect, assurance that the defendant would later appear to stand trial. When the default is that every defendant is released, or at least when many people believe that "innocent until proven guilty" establishes that release before trial is the ideal, support for the surety bail system becomes more complex. How should the probability of failing to appear and all the costs this implies, including higher crime rates, be traded-off against the injustice of imprisoning the innocent or even the injustice of imprisoning the not yet proven guilty? We cannot provide an answer to this question but we can provide a necessary input into this important debate.

Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance and if they do fail to appear they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on own recognizance. Requiring defendants to pay their bonds in cash can reduce the FTA rate to a similar rate than that for those released on surety bond. Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to

[45] We find similar results using an instrumental variables probit.

those released on cash bond. These finding indicate that bond dealers and bail enforcement agents ("bounty hunters") are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law.

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Table 1 : Algorithm for the estimation of $\theta_0^{m,l}$

Step 1	***Estimate the Propensity Score via an Ordered Probit*** For each treatment T=1…M and individual N=1…K obtain $[\hat{p}_N^1(x), \hat{p}_N^2(x), ..., \hat{p}_N^M(x)]$ and compute $\hat{p}_N^{m\|ml}(x) = \frac{\hat{p}_N^m(x)}{\hat{p}_N^l(x) + \hat{p}_N^m(x)}$.
Step 2	***Create a Matched Sample*** For a given pair of treatments m and l: i) Choose an observation *i* that received treatment m ii) Match i to an observation j in the treatment subsample that is less than the caliper distance and closest to *i* in terms of $\hat{p}_N^{m\|ml}(x)$. If no such observation exists drop observation *i*. (In the case of multivariate matching 'closeness' is based on the Mahalanobis distance.) iii) Repeat i) and ii) until no observations in m remain.
Step 3	***Estimate the Treatment Effect*** Subtract the mean outcome in the "untreated" matched group from the mean outcome in the matched treated group.

Table 2: Mean FTA Rates by Release Category, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond	Emergency Release
Own Recognizance	26% [20,944]	5*	6*	9*	-19*
Deposit Bond		21% [3605]	1	4*	-23*
Cash Bond			20% [2482]	3*	-25*
Surety Bond				17% [9198]	-28*
Emergency Release					45% [584]

Mean FTA rates for release categories, rounded to the nearest integer, are along the main diagonal with the number of observations in square brackets. Off diagonal elements are the difference between the mean FTA rate for the row category and the mean FTA rate for the column category.
* Statistically significant at the greater than 1% level.

Table 3: Ordered Probit on Stringency of Release, also includes county and year effects (not shown).

Variable	Coefficient
Local Conditions:	
Time, in days, to scheduled start of trial	-0.5821*
	(0.0038)
Local Clearance Rate (total arrest/ total crime)	0.3957
	(0.1799)
Defendant is Charged with:	
Murder	0.35915*
	(0.051044)
Rape	0.376661*
	(0.032135)
Robbery	0.146899*
	(0.028193)
Assault	0.208538*
	(0.039397)
Other Violent	0.048705***
	(0.02932)
Burglary	-0.10109*
	(0.027554)
Theft	-0.16676*
	(0.029142)
Other Property Crime	0.212824*
	(0.026824)
Drug Trafficking	-0.1147*
	(0.027033)
Other Drug Crime	-0.01139
	(0.041254)
Driving Related Crime	-0.18755*
	(0.016514)
Defendant Characteristics:	
Age of defendant	0.000854
	(0.000653)
Female (yes=1)	0.873055*
	(0.080055)
Active Criminal Justice Status	0.191588*
	(0.013974)
Previous Felonies	0.244761*
	(0.013558)
Previous Failure to Appear	0.123918*
	(0.015137)
Number of Observations	58,585

Asymptotic Standard Errors in parenthesis
* Statistically significant at the greater than 1% level (two sided).
** Satirically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 4: Treatment Effects of Row versus Column Release Category on FTA Rates using Matched Samples, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own Recognizance	26%	3.2* (1.0/1.1)	4.8* (1.1/1.2)	6.5* (.78/.78)
Deposit Bond	-3.1* (1.1/1.2)	21%	4.1* (1.5/1.6)	3.1* (1.1/1.3)
Cash Bond	-5.8* (1.3/1.6)	-1.5 (1.6/2.0)	20%	1.8/2.0 (1.4/1.8)
Surety Bond	-7.3* (.78/.89)	-3.9* (1.1/1.2)	1.7 (1.3/1.4)	17%

Mean FTA rates for release categories for the full sample are along the main diagonal. Off diagonal elements are the estimated treatment effects of the row category versus the column category. Standard errors in parentheses – the first standard error assumes the p-score is estimated with certainty the second uses bootstrapping to estimate the standard error including uncertainty of the p-score.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Satirically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 5: Treatment Effect of Row versus Column Release Category on FTA Rates using Samples Matched on Propensity Score and Bail Amount, 1988-1996

	Deposit Bond	Cash Bond	Surety Bond
Deposit Bond	21%	3.1 (1.9)	4.1* (1.2)
Cash Bond	-4.2** (2.0)	20%	-2.1 (1.7)
Surety Bond	-4.3* (1.3)	3.4** (1.6)	17%

Mean FTA rates for release categories for the full sample are along the main diagonal. Off diagonal elements are the difference between the mean FTA rate for the row category and the mean FTA rate for the column category. Standard errors are in parentheses.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 6: Treatment Effect of Row versus Column Release Category on the Fugitive Rate using Matched Samples, Conditional on FTA, 1988-1996

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own Recognizance	32% [5440]	-3* (2.6)	-4.9* (2.9)	9.4* (2.1)
Deposit Bond	-.2 (2.6)	33% [766]	-6.2 (4.1)	12.1* (2.7)
Cash Bond	11.9* (3.0)	-3.8 (4.4)	40% [506]	18.6* (3.7)
Surety Bond	-17* (2.0)	-15.5* (2.9)	-25.6* (4.2)	21% [1537]

Mean fugitive rates, defined as FTAs that last longer than a year, for release categories for the full sample are along the main diagonal with the number of observations in that category conditional on an FTA in square brackets. Off diagonal elements are the difference between the mean fugitive rate for the row category and the mean fugitive rate for the column category estimated using matching. Standard errors are in parentheses.
Matching Caliper=.001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 7: Log Rank Test of the Equality of the Hazard Functions

	Matching on Propensity Score			Matching on Propensity Score and Bail	
	Surety v. Own	Surety v. Deposit	Surety v. Cash	Surety v. Deposit	Surety v. Cash
Surety	1033 [787]	883 [678]	852 [629]	685 [563]	501 [373]
Own	1167 [1412]				
Deposit		817 [1021]		716 [837]	
Cash			507 [729]		287 [414]
Total	2200	1700	1359		
χ^2 against null of equality of hazard rates	121*	105*	151*	44*	85*
Matched on:	Pr(surety)	Pr(surety)	Pr(surety)	Pr(surety) and bail	Pr(surety) and bail

Column entries equal the actual number of FTAs returned to court. Column entries in brackets represent the expected number of FTAs returned.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 8: Effect of Surety Treatment versus other Release Types on Fugitive Rates in Fixed Effects Regressions Using Only Counties with All Release Types, 1988-1996

	Surety v. Own Recognizance	Surety v. Deposit Bond	Surety v. Cash Bond
Treatment Effect	-4.3***/-6.2* (2.5/2.4)	-16.5*/-11.7* (3.9/3.4)	-15.6*/-16.9* (2.8/5.3)
Observations	1853	1670	1909

The first number is the coefficient on Surety Bond in a linear probability model run on matched samples with all the covariates in Table 3 plus county fixed effects. The second number is the treatment effect estimated via matching. Respective standard errors are in parentheses.
Matching Caliper=.001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 9: Effect of Alternative Treatment versus Surety Bond on FTA and Fugitive Rates (conditional on FTA) Matching Individuals from States that have Banned Surety Bonds with Similar Individuals Released on Surety Bond, 1988-1996

	Own Recognizance v. Surety Bond	Deposit v. Surety Bond	Cash v. Surety Bond
Treatment Effect on FTA Rates	+7.8* (1.6)	+6.2* (1.8)	-1.6 (4.4)
Treatment Effect on Fugitive Rates	+14.8* (2.3)	+19.8* (2.9)	+35.7* (8.0)

Standard errors are in parentheses.
Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 10: Treatment Effect on the Fugitive Rate using Samples Matched on Propensity Score and Bail, Conditional on FTA, 1988-1996

Surety v. Deposit Bond	Surety v. Cash Bond
-9.4* (3.3)	-25.3* (5.5)

Matching Caliper=.0001
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
** Statistically significant at the greater than 10% level.

Table 11: Mean Rearrest Rates by Release Category, 1988-1996

Own Recognizance	14.9% [20,945]
Deposit Bond	13.3% [3605]
Cash Bond	14% [2482]
Surety Bond	12% [9202]

Percentage of rearrests by release category. Number of observations in square brackets.

Table 12: Effect of Surety Treatment Effect versus other Release Types on Rearrest Rates using Samples Matched on p-Score and Bail, 1988-1996

	Surety v. Own Recognizance	Surety v. Deposit Bond	Surety v. Cash Bond
Surety Bond	0.7 (0.6)	.58 (1.0)	4.5* (1.3)
Matched Observations	14,925	9,740	7,064

Matching Caliper=.001
Matching estimators of the surety treatment effect.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

Table 13: Unconditional Fugitive Rates by Arrest-Rearrest Category, 1988,1990

	1) Own and Not Rearrested	2) Own-Own	3) Own-Surety	*t*-test 1-3	*t*-test 2-3
Fugitive Rate	8.48 [17,828]	8.04 [191]	1.49 [134]	2.9 $p_{1>3=.0019}$	2.6 $p_{2>3=.0047}$

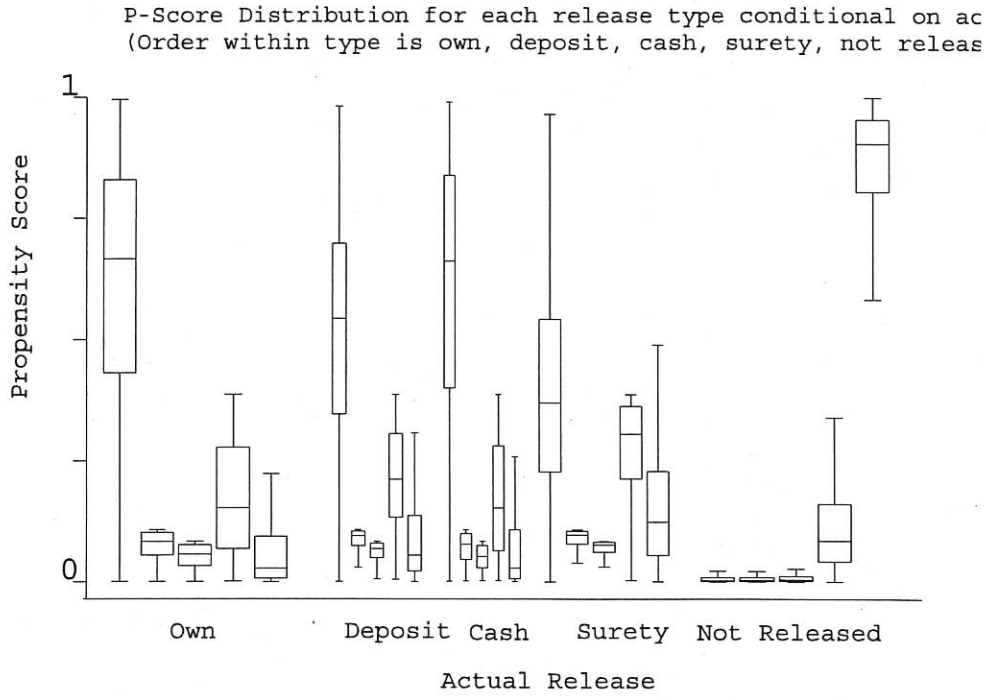
Own-Own indicates first release on own recognizance and second release on own recognizance. Own-Surety indicates first release on own recognizance, second release on surety.

Table 14: Surety vs. Own Recognizance Treatment Effect Estimated using Ratio as an Instrument for Surety Bond, 1988-1996

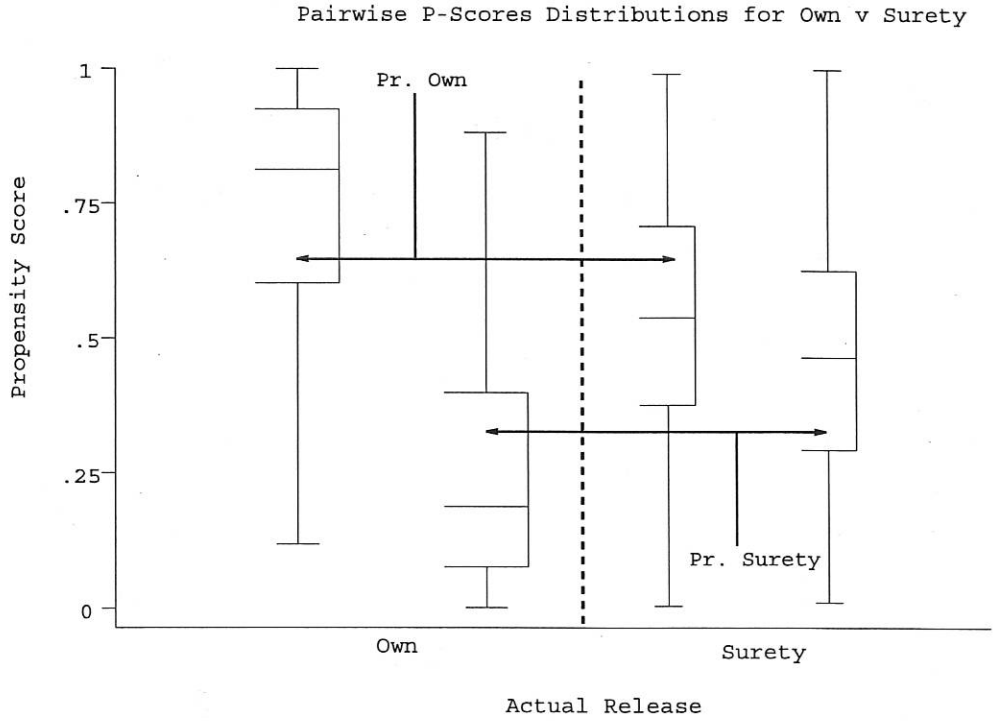
	FTA Rate	Fugitive Rate Conditional on FTA
Surety Bond	-17.2 (12.2)	-79.7** (36.3)
Observations	22,136	4698

Robust standard errors.
* Statistically significant at the greater than 1% level (two sided).
** Statistically significant at the greater than 5% level.
*** Statistically significant at the greater than 10% level.

A)


P-Score Distribution for each release type conditional on ac
(Order within type is own, deposit, cash, surety, not releas
Propensity Score
1
0
Own
Deposit
Cash
Surety
Not Released
Actual Release

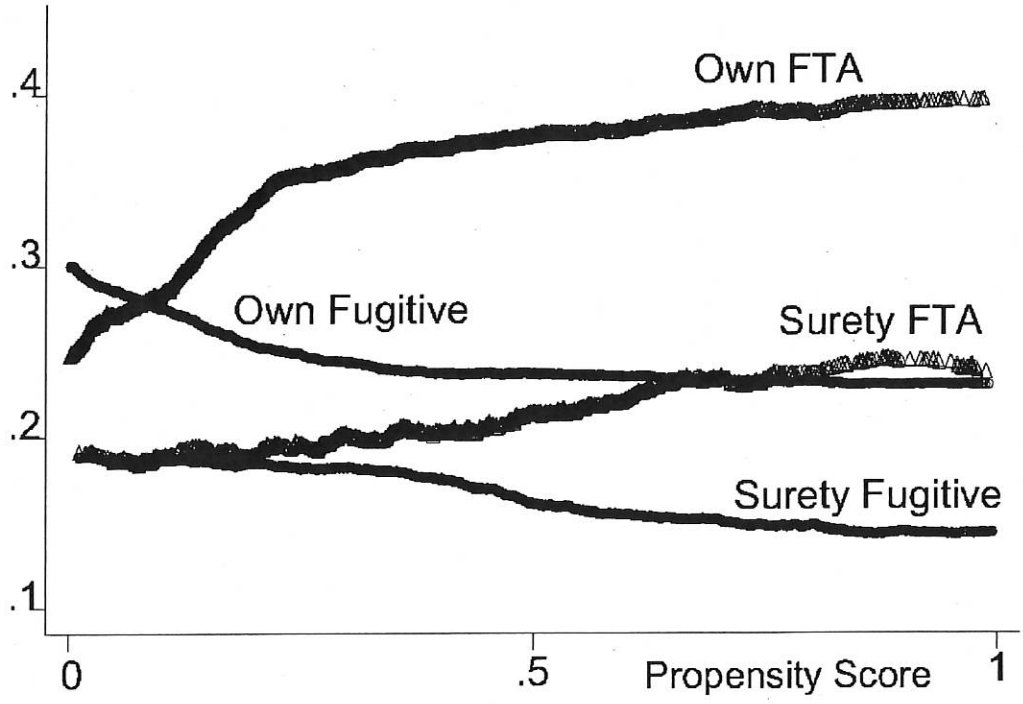
B)


Pairwise P-Scores Distributions for Own v Surety
Propensity Score
1
.75
.5
.25
0
Pr. Own
Pr. Surety
Own
Surety
Actual Release

6-71

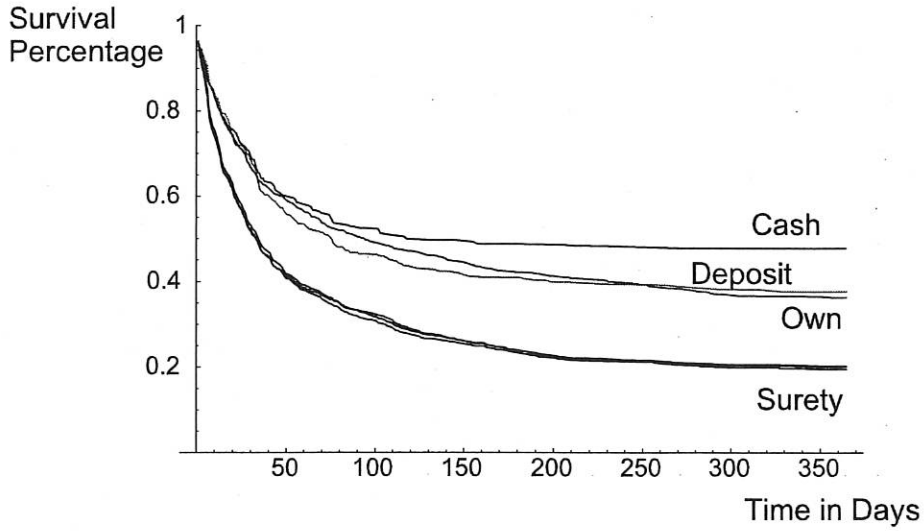
Figure 2

FTA and Fugitive Rates by Own v. Surety Treatment Plotted against Propensity Scores



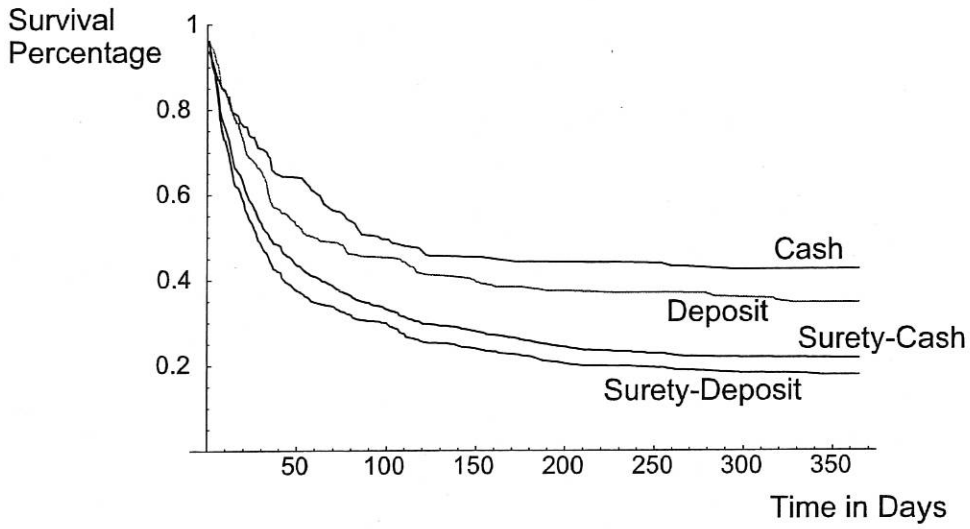
6-72

Figure 3



Kaplan-Meier Survival Function for Defendants on Surety bond versus those on Cash bond, Deposit bond or released on their own recognizance - using matched samples

Figure 4



Kaplan-Meier Survival Function for Defendants on Surety bond versus those on Cash and Deposit bond - using samples matched on propensity score and bail

THE EFFECTIVENESS AND COST OF SECURED AND UNSECURED PRETRIAL RELEASE IN CALIFORNIA'S LARGE URBAN COUNTIES: **1990-2000**

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March, 2005

EXECUTIVE SUMMARY

When an individual is released pending trial he or she must promise to appear at all required hearings and at trial. The promise to appear may be financially secured or it may be unsecured. The most common form of financially secured release is referred to formally, as Surety Bond. In California the most common forms of unsecured release are called Release on Own Recognizance (ROR) and Conditional or Supervised Release (CR).

In this study we use U. S. Bureau of Justice Statistics (BJS) data, called State Court Processing Statistics, for all the of California's large urban counties included in this data during 1990 to 2000 to analyze pre-trial releases. In particular, we compare the characteristics and performance of Surety Bond releases and ROR/CR releases. Our primary focus is the relative effectiveness of these two approaches in guaranteeing appearance at scheduled court proceedings and in preventing defendants from becoming fugitives.

We analyzed data from over 20,000 cases. This data was collected by BJS in 6 surveys over an eleven-year period from 12 of California's largest counties. Our findings from this analysis include the following:

- The proportion of defendants released before trial in these California counties was at 44% substantially below the national average of 62%.
- The proportion of releases on Surety Bond averaged 40% over the period while the proportion released on ROR/CR averaged 57%. In 2000 these percentages stood at 46% and 53% respectively for the California counties included in the BJS sample.
- A defendant released on ROR/CR was about 60% more likely to have failed to appear for a scheduled court appearance as a defendant released on Surety Bond - 32% vs 20%. (See Figure A below.)
- A defendant who failed to appear for a scheduled court appearance was approximately two and a half times more likely to remain a fugitive if he/she was released on ROR/CR than if he/she was released on Surety Bond.
- If the proportions released on Surety Bond and ROR/CR was reversed in California's 12 largest counties in 2000, we estimate that there would have been over 1000 fewer failures to appear in California's largest 12 counties.
- If Surety Bond had completely replaced ROR/CR as a release option in California's largest 12 counties in 2000, we estimate there may have been over 6000 fewer failures to appear in these large counties.
- A more aggressive use of Surety Bond could save taxpayers between $1.3 million and $10 million per year in budget outlays in California's largest 12 counties, depending on exactly how aggressive these counties are in replacing release on ROR/CR with release on Surety Bond. Total cost savings, including the social costs of failures to appear, could range from over $14 million to over $109 million per year in these counties again depending on how aggressive the 12 largest counties are in replacing ROR/CR with release on Surety Bond.

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FIGURE A

PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON SURETY BOND AND ROR/CR RELEASE OPTIONS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

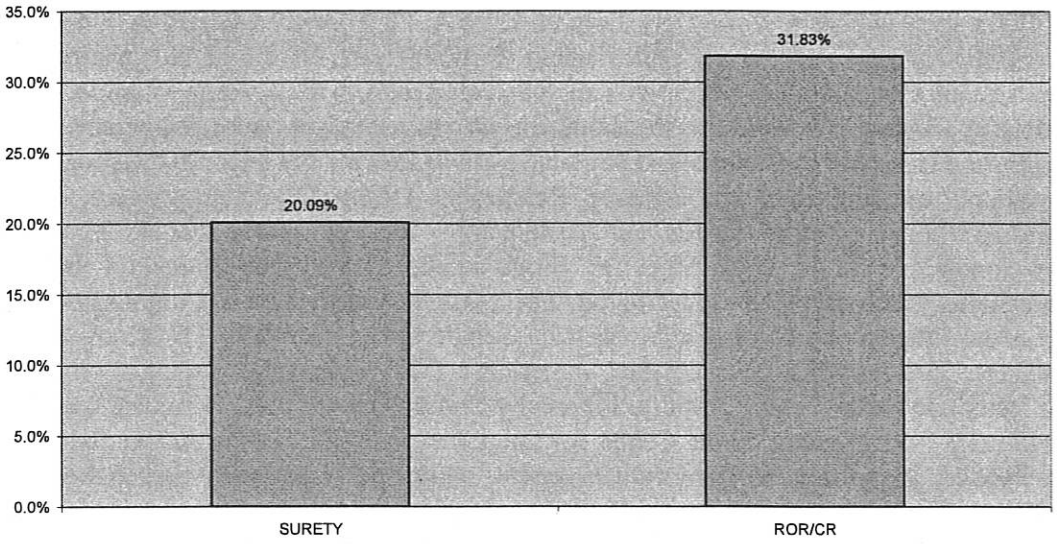
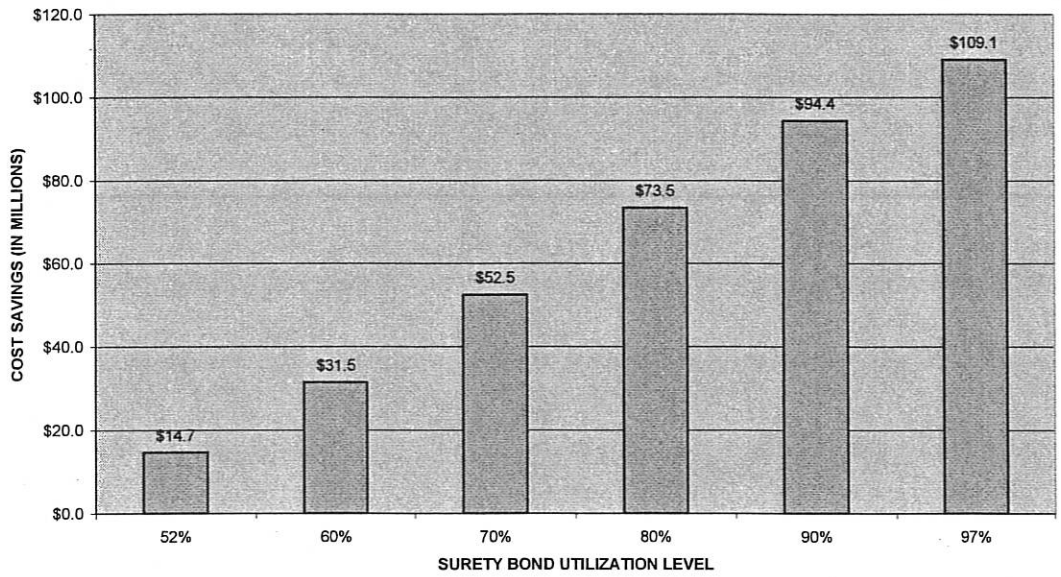


FIGURE B

ESTIMATED TOTAL COST SAVINGS THAT WOULD HAVE RESULTED FROM INCREASED USE OF SURETY BOND IN THE 12 LARGEST URBAN COUNTIES IN CALIFORNIA: 2000



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ABOUT THE AUTHOR

Michael K. Block is Professor of Economics and Law as well the Director of the Office of Economic Education at the University of Arizona. Dr. Block's specializes in applying economic analysis to legal and policy issues. In prior years, Dr. Block was chairman of the Arizona Constitutional Defense Council and chairman of the Arizona Juvenile Justice Advisory Council. . In addition, Dr. Block was also previously a senior policy advisor for Criminal Justice to the Governor of Arizona, a consultant for the Executive Office of the President; a member of the Arizona Residential Utility Consumers Board; and a consultant on regulatory reform and privatization for The World Bank's Economic Development Institute. Until 1989 Dr. Block served as a Commissioner on the U.S. Sentencing Commission in Washington, D.C. He was appointed a Commissioner by President Reagan and confirmed by the U.S. Senate in October 1985. Dr. Block has co-authored several books and published numerous articles in scientific journals; consulted for Hernando DeSoto at the Instituto Libertad y Democracia in Lima, Peru; and was from 1975 until 1982 Director of the Center for Econometric Studies of the Justice System at the Hoover Institution at Stanford University, where he was also a Senior Research Fellow. Dr. Block received his Ph.D. in Economics from Stanford University in 1972, where he previously received his B.A. and M.A., also both in Economics.

Introduction

California's constitution provides that "a person shall be released on bail by sufficient sureties . . ." and "may be released on his or her own recognizance in the court's discretion." While defendants charged with first-degree murder, or those whose release would pose a "substantial likelihood" of harm to others, may be denied these pretrial release options, the vast majority of those arrested in California are eligible for release pending trial.

When an individual is released pending trial he or she must promise to appear at all required hearings and at trial. This promise to appear may be financially secured or it may be an unsecured promise to a government official. Financially secured release is referred to as "bail" and in California may take the form of Surety Bond, Full Cash Bail, and Property Bail. Under unsecured release, the court makes a decision, either on its own or with the assistance of other public officials, to waive the requirement of financial security, and in essence assumes responsibility for the appearance of the defendant at all required proceedings. The most common forms of unsecured release in California are: Release on Own Recognizance (ROR); Conditional or Supervised Release (CR); Release on Citation; and Emergency Jail Release.

The purpose of this study is to compare and contrast the performance of secured release and unsecured release programs. In particular we will be interested in the relative performance of the most common release options: Surety Bond and ROR/CR. Our focus will be on the effectiveness of these two approaches in preventing failures to appear (FTA) at required court proceedings. The prevention of FTA's is important in both assuring the integrity of our judicial system and in controlling the costs of our criminal justice system. Failures to appear undermine the efforts of local government to assure the safety of persons and property and they impose a significant cost on taxpayers.

Methodology

On a biannual cycle, the U. S. Bureau of Justice Statistics (BJS) collects a sample of felony cases filed during one month (May) in 40 of the nation's largest 75 counties.[1] Of the 40 counties sampled, six to nine, depending on the year, are among the 12 largest counties in California. (The number has grown from six in 1990 to nine in 2000.) These California counties make up our sample and, while the sample does not contain all of the large urban counties in California, the sample always includes Los Angeles County, Santa Clara County, San Bernardino and a representative sample of the other large urban counties in the state.

In 2000, the most recent year for which we have data, the BJS sample counties (See Appendix) represented 89% of the population and 87% of the FBI Part I Modified Index

[1] For a good discussion of this data see, *Felony Defendants in Large Urban Counties, 2000* Bureau of Justice Statistics, U. S. Department of Justice 2003 (NUJ -202021)

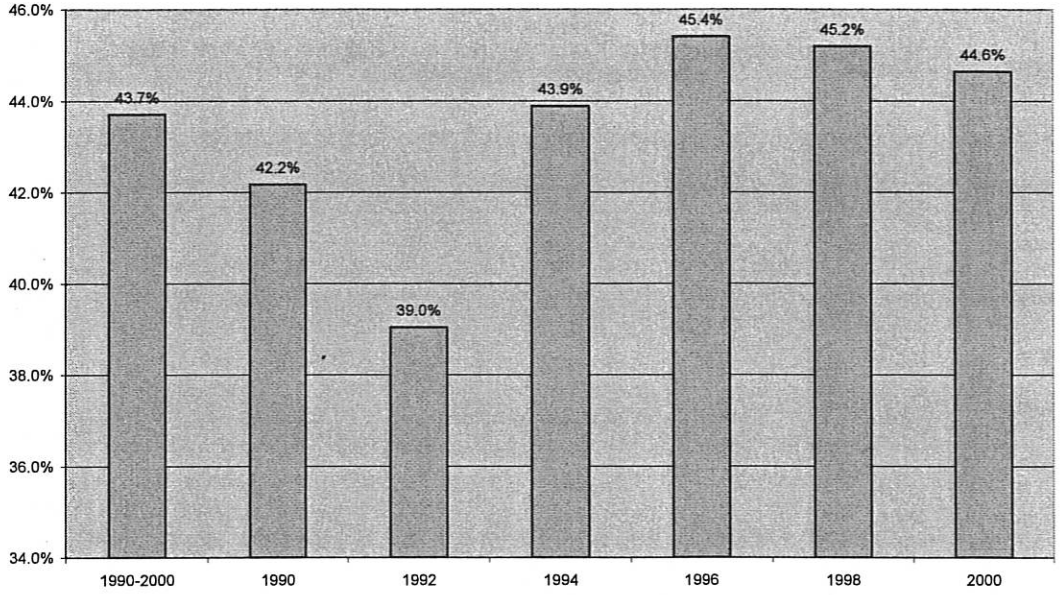
Crimes reported in California's 12 largest counties which themselves represented 77% of the State's population and 76% of the Modified Index Crimes reported in the State as a whole.[2] The years covered in this study are 1990 to 2000. We stop at 2000 because it is, as we noted above, the last year for which BJS data is currently available. The number of cases BJS sampled over the ten-year period in California was 20,811. All of these cases are involved in our present study.

As part of the information collected on these felony cases, BJS records information on pretrial release, including the type of release (e.g., Surety Bond, ROR, CR, etc.), BJS also follows the case for up to one year after filing. The "State Court Processing Statistics", which is BJS's name for the data series used in this report, contains rather detailed information on who gets released before trial, how they get released, and whether they appear for all required proceedings.

[2] FBI Part I Modified Index Crimes are Murder, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Auto Theft.

Pretrial Release Rates

FIGURE #1
PERCENTAGE OF DEFENDANTS RELEASED BEFORE TRIAL IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

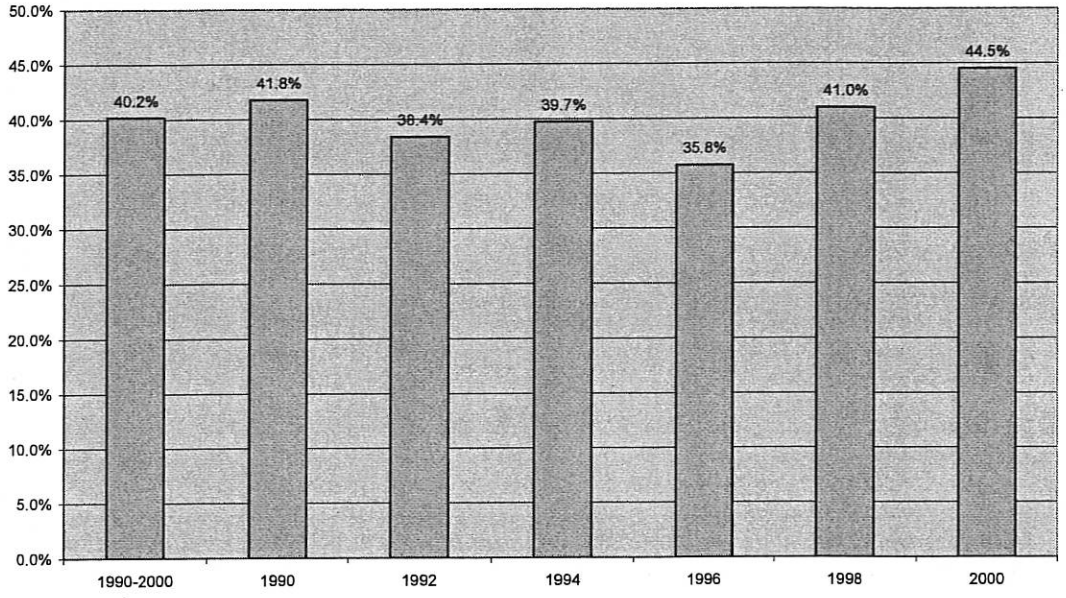


In California the percentage of defendants in large urban counties released before trial is about 44%. Nationwide the pretrial release rate in such counties is about 62%.

It appears, based on the histograms in Figure #1, that the proportion of defendants released before trial in California's large urban counties was relatively stable in the 1990's. In only one year, 1992, did the release rate fall below 40% and in no year did the rate exceed 45%. However, because the number and identity of the California counties included in the BJS sample varies from year to year the data in Figure #1 may not be a very accurate indicator of trends over time.

What we have done to supplement the analysis is to construct the same series using only the counties (Los Angeles, San Bernardino, Santa Clara) that were in the BJS sample every year. The results of this exercise are presented in Figure #1a. While the pattern over the decade is slightly different for these counties, the magnitudes are similar and there is the same evidence of relative stability; with perhaps a bit more significant of an increase in the release rate by the beginning of the 21st century.

FIGURE #1.a
PERCENTAGE OF DEFENDANTS RELEASED BEFORE TRIAL IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



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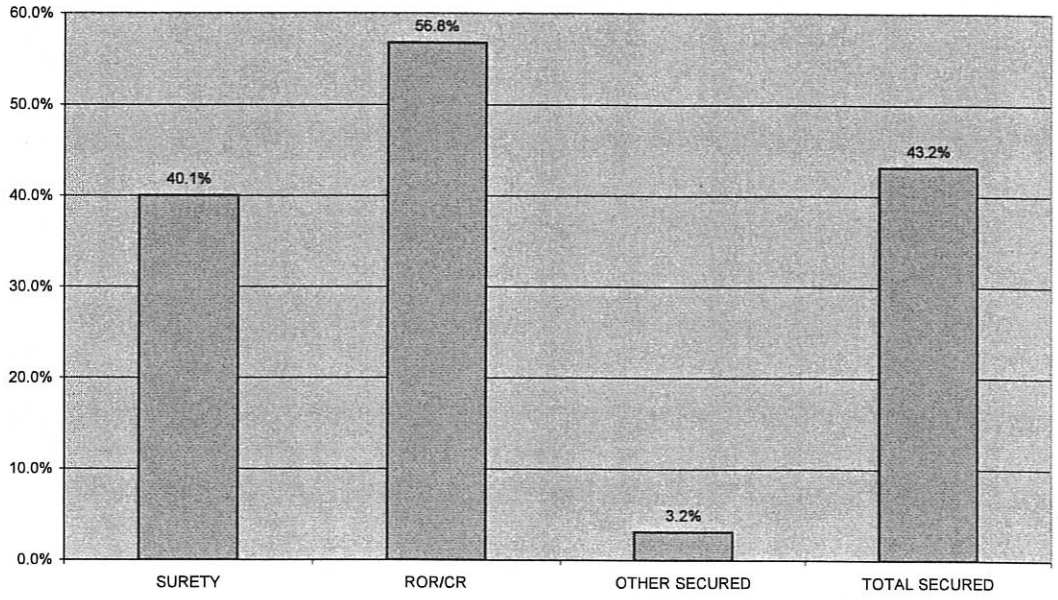
Secured and Unsecured Release

FIGURE #2
RELATIVE INCIDENCE OF SECURED AND UNSECURED PRETRIAL RELEASE MECHANISMS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



If we consider the entire period 1990-2000, the BJS data reveals that in California's large urban counties about 40% of all released defendants were released on Surety Bond. The proportion released on all forms of secured release was, over the same period, approximately 43%. The latter was obtained by adding releases guaranteed by Surety Bond, Full Cash Bond, Deposit Bond and Property Bond. The remaining 57% of all released defendants were released under the unsecured government release options of ROR and Conditional Release (CR).

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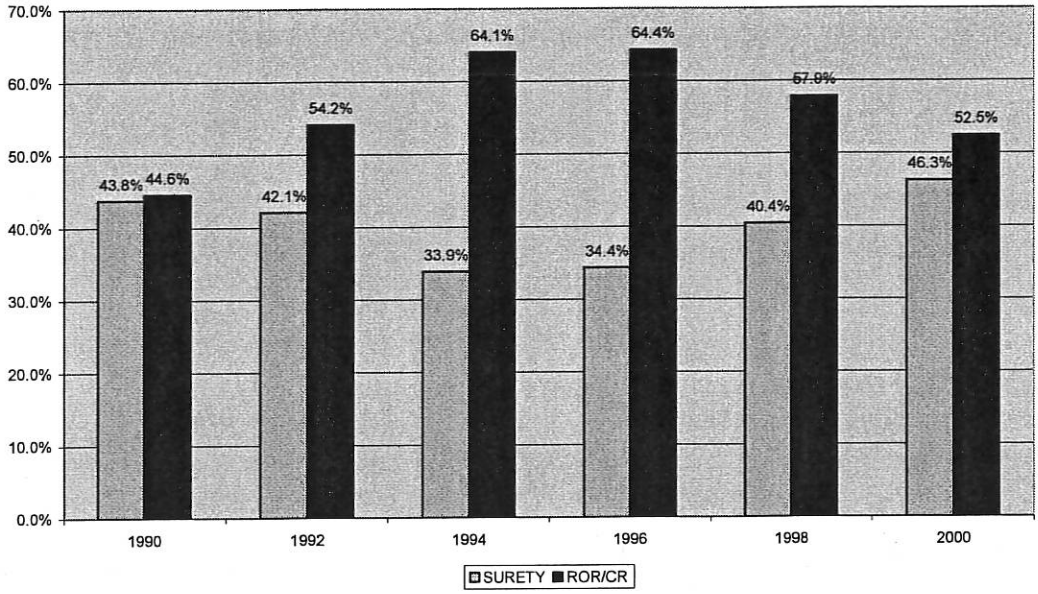
As is readily apparent in Figure #3 the trend during the early to mid-1990's of increased reliance on unsecured release has abated and to some extent been reversed. Nonetheless unsecured release was still somewhat more common in 2000 than it was in 1990.

FIGURE #3
RECENT TRENDS IN THE USE OF SURETY BOND AND UNSECURED RELEASE OPTIONS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

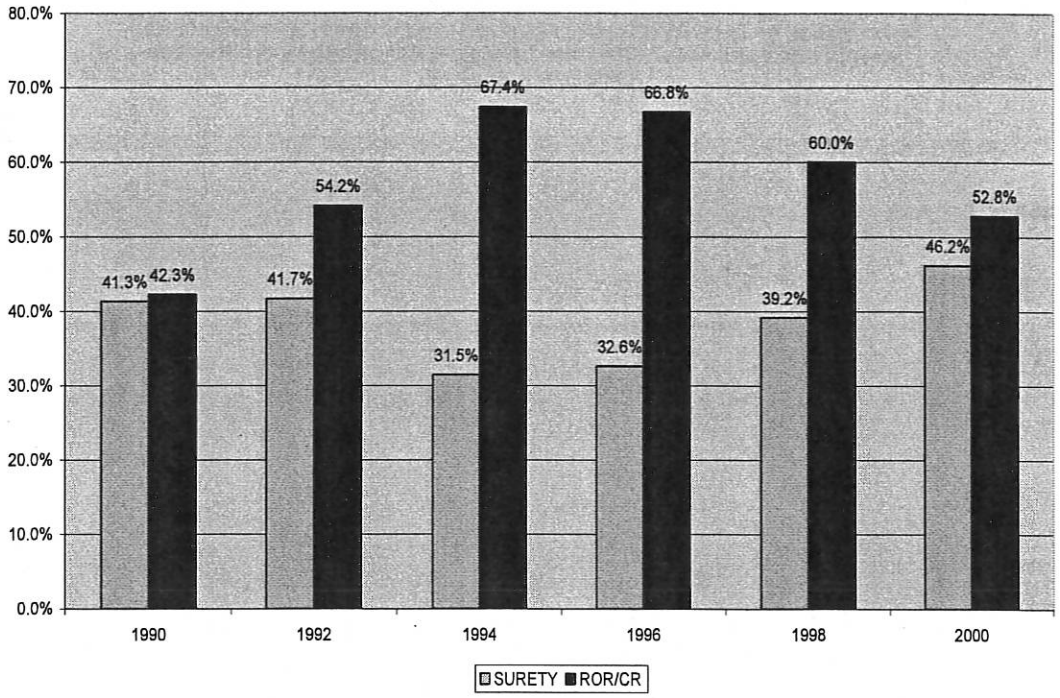


In 1990 about 45% of all releases were ROR or Conditional Releases. By 1996 this percentage had grown to 65%. However by 2000 it was back down to 53%, which was still quite a bit higher than it had been in 1990. Conversely, while Surety Bonds secured nearly 44% of all releases in 1990, this percentage had fallen to 34% by 1994. In 1996 this trend reversed itself so that by 2000 the percentage of releases secured by Surety Bond was, 46%, which was also somewhat higher than it had been at the beginning of the decade. Nonetheless releasees on ROR/CR grew more rapidly during this period than did releases on Surety Bond. Interestingly enough, by 2000 all other forms of privately secured release had virtually disappeared.[3]

[3] By 2000 Surety Bond and ROR/CR accounted for 98.8% of all releases in the California counties in the BJS sample.

6-84

FIGURE #3.a
RECENT TRENDS IN THE USE OF SURETY BOND AND UNSECURED RELEASE OPTIONS IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Again since the counties in the BJS sample change from year to year we supplemented the data in Figure #3 with a series on release that used only those California counties that were in all the BJS samples. The results of this effort are shown in Figure #3a. The data in this figure have virtually the same pattern as those in Figure #3.

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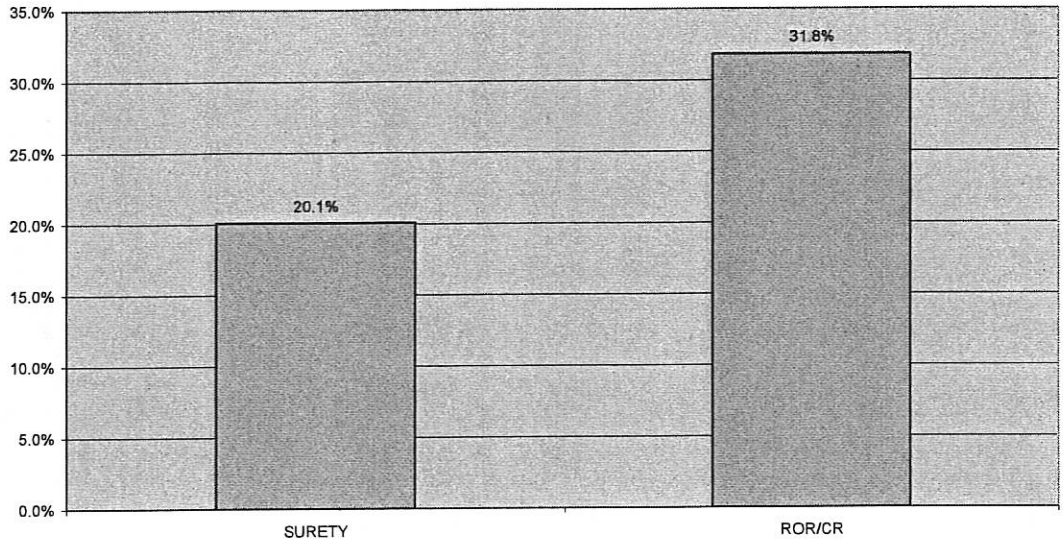
Relative Performance of Secured and Unsecured Pretrial Release

FIGURE #4

PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON SURETY BOND AND ROR/CR RELEASE OPTIONS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

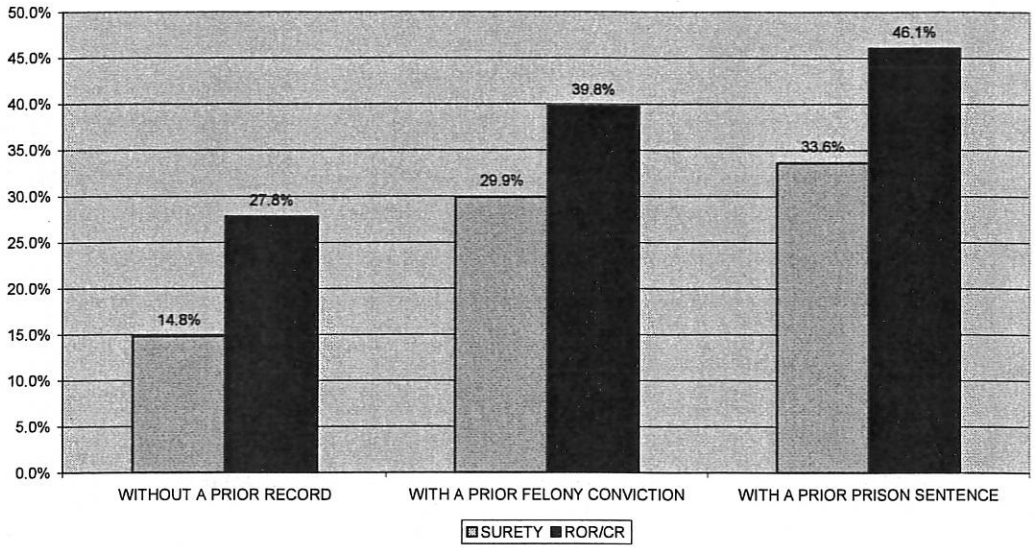


In Figure #4 we display the relative performance of Surety Bond and ROR/CR in assuring the defendant's appearance at all required proceedings. It is apparent that Surety Bond is a much more effective mechanism for preventing failure to appear at required proceedings (FTA). Over the period 1990-2000, approximately 20% of all defendants on Surety Bond secured release failed to make a court appearance in California's large urban counties. During the same period, about 32% of the defendants released on ROR/CR failed to make a required court appearance. It is striking that even though the defendants released on Surety Bond had more serious criminal histories than those released on ROR/CR, their failure to appear rate was about 60% lower than that of defendants released on ROR/CR.[4]

[4] For a summary of the criminal justice histories of releasees in the selected urban counties see Appendix Figures 4 and 5.

FIGURE #5

PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE BY CRIMINAL JUSTICE HISTORY AND TYPE OF RELEASE IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



The fact that Surety Bond has been a more effective method of assuring appearance at court proceedings than ROR/CR for a rather wide range of defendants is clearly evident in Figure #5. While Surety Bond has proven particularly effective, relative to ROR/CR, in assuring appearance of defendants without any prior criminal convictions (14.8% vs. 27.8%), it has also proven substantially more effective in preventing FTA's among more "hardened" defendants such as those with prior prison incarcerations.

In Figure #6, the FTA rate of both Surety Bond and ROR/CR appears to have increased since 1990. However, if we consider the failure to appear history during the 1990s in the counties that are in all BJS samples, the situation is somewhat different. Here, as shown in Figure #6a, it is only the releasees on Surety Bond that have experienced an increase in the failure to appear rate over the decade.[5]

[5] See Appendix Figure 4.

FIGURE #6

RECENT TRENDS IN THE PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON BOTH SURETY BOND AND ROR/CR IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

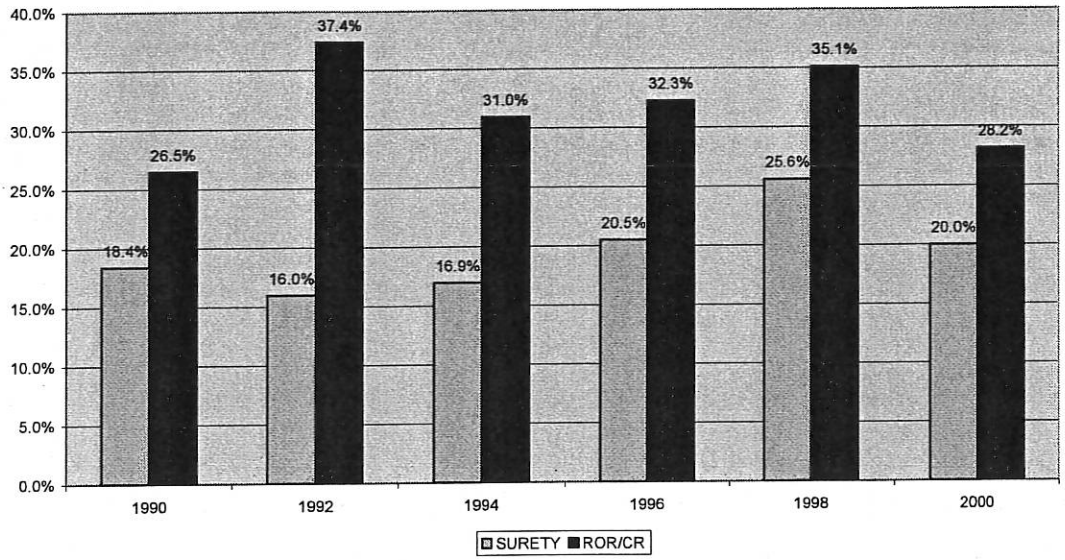
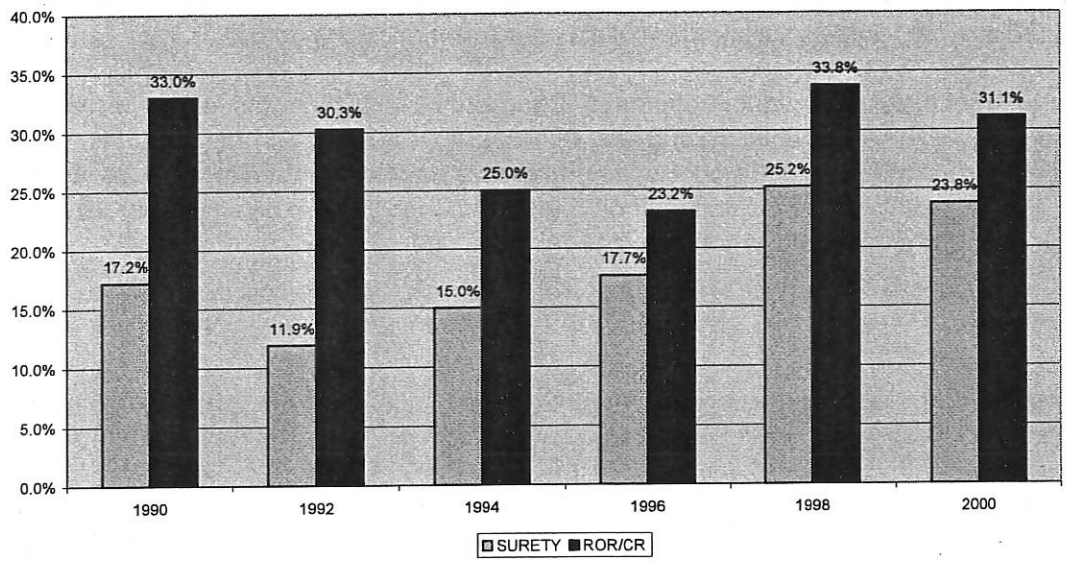


FIGURE #6.a

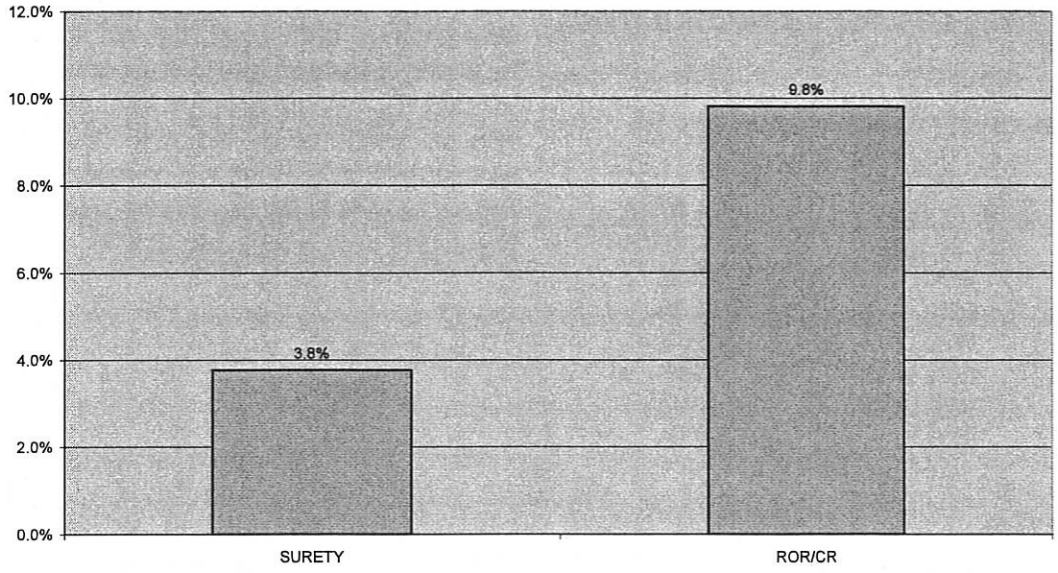
RECENT TRENDS IN THE PERCENTAGE OF DEFENDANTS WHO FAILED TO MAKE A COURT APPEARANCE ON BOTH SURETY BOND AND ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



6-88

FIGURE #7

PERCENTAGE OF RELEASEES WHO REMAIN A FUGITIVE IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Surety Bond has not only been more effective than government secured pretrial release in assuring appearance at court proceedings it has also, as we can observe in Figure #7, been better at eventually returning defendants who FTA to custody. Only about 4% of defendants released on Surety Bond remained fugitives after one year in California's large urban counties. The comparable percentage for ROR/CR was approximately 10%.

What If?

Since pretrial release secured by a Surety Bond appears to have been so much more effective than ROR/CR in assuring appearance in California's large urban counties during the 1990's, it is both interesting and relevant to ask the question: What would have been the failure to appear situation in California's 12 largest urban counties in 2000 if greater use had been made of Surety Bond releases?

Employing the BJS data for the entire time period and using standard statistical techniques that controlled for defendants characteristics, criminal histories, location and other relevant variables, we estimated what the failure to appear rate would have been if greater use had been made of release on Surety Bond in 2000. Our results are shown in Figure #8 and Table #1.

TABLE #1

ESTIMATED FAILURE TO APPEAR RATES IN CALIFORNIA'S LARGEST 12 URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000[6]

PROPORTION OF ALL ESTIMATED RELEASEES ON SURETY BOND	FTA RATE
45% (Actual)	29% (Actual)
52%	28%
60%	27%
70%	26%
80%	25%
90%	24%
97%	23%

The first estimate in Table #1 (the second entry in the table) corresponds to the level of Surety Bond releases that would have been obtained if the proportions of releasees on Surety Bond and ROR/CR were reversed in 2000. That is, instead of 52% of all releases in 2000 being ROR/CR 52% were secured by Surety Bond and conversely instead of 45% being secured by Surety Bond 45% were released ROR/CR.

We estimated that in this case the average failure to appear rate in California's 12 largest urban counties in 2000 would have been 28% instead of 29%. Even this very modest increase in the use of Surety Bond would have lowered the FTA rate by 3%. On the other hand, if Surety Bond releases were used much more aggressively and in fact replaced all ROR/CR releases over the period, the failure to appear rate would have been 23%, that is it would have been 21% below its actual level.

[6] Sacramento, San Francisco and Ventura Counties were not in the BJS 2000 sample and hence we used 1998 data for these counties.

FIGURE #9

ESTIMATED FAILURE TO APPEAR RATES IN CALIFORNIA'S LARGE URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000

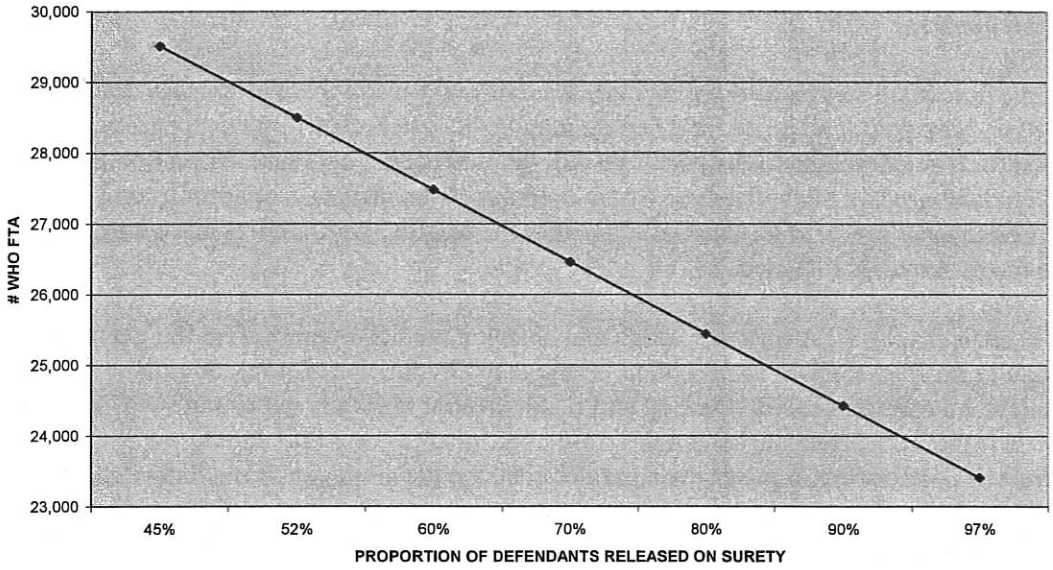


TABLE #2

ESTIMATED REDUCTION IN NUMBER OF FAILURES TO APPEAR IN CALIFORNIA'S 12 LARGEST URBAN COUNTIES AT SELECTED HIGHER LEVELS OF SURETY BOND UTILIZATION: 2000

SURETY BOND UTILIZATION LEVEL	ESTIMATED REDUCTION IN FTA'S
52%	1,018
60%	2,035
70%	3,053
80%	4,071
90%	5,089
97%	6,106

In Figure #9 and Table #2 we take this "What if" failure rate information and translate it into estimates of what the number of failures to appear would have been if the proportion of defendants released on Surety Bond had been greater in 2000. Figure #9 gives the estimated FTA levels and Table #2 the estimated reduction in FTA levels. For reference we have included in Figure #9, as the first point on the line, the actual failure to appear rate (.29) and the corresponding number of failures to appear (29,514).

As indicated in Table #2, we estimate that, if the proportion of releasees on Surety Bond and ROR/CR were reversed in 2000, there would have been 1,018 fewer FTA's in California's 12 largest urban counties in 2000. In the extreme, if Surety Bond had completely replaced ROR/CR in 2000 there would have been more than 6,100 fewer FTA's in these California counties.

Consequences of a Failure to Appear

When a defendant fails to appear for a required proceeding, the presiding judge or magistrate generally issues a Bench Warrant for his or her arrest. The defendant may remain a fugitive, or, as more likely, he/she may return to court either by surrender or apprehension.

If the defendant surrenders to the court, the court will recall the warrant, the defendant will be rebooked, and a new proceeding may be held to redetermine the conditions of release. If the defendant is arrested, he will be booked and detained. Upon booking the defendant appears in court where a new determination of release conditions will be made. A hearing may be held to determine whether the original bail bond, if there was one, is to be re-instituted or forfeited.

It is clear that an FTA imposes additional costs on the taxpayers and on the general population. The scale of the problem is suggested by the fact that in 2004 there were almost 2.5 million unserved felony and misdemeanor warrants in the state of California Even if the individual surrenders there are additional process and detention costs. Re-arrest of a defendant imposes even greater costs on the taxpayer. If the defendant remains a fugitive all of the original booking and hearing costs are wasted and the integrity of the criminal justice system is further compromised. Every defendant that remains a fugitive undermines the crime control efforts of local government.

Costing the Consequences of Failure to Appear

In order to gain some appreciation of the magnitude of the costs that every failure to appear imposes on taxpayers and on society in general, it is helpful to attach dollar values to both their relatively straight-forward budgetary (or fiscal) impacts as well as to their more difficult to assess social costs. In a previous study of this topic Steven Twist and the author developed a rather detailed set of failure to appear cost estimates based on data we were able to obtain from Los Angeles County. A very brief summary of our estimates appears in Tables #3 and #4. In both cases the costs have been re-indexed and expressed in current (Year 2005) dollars.

TABLE #3

Estimated Budgetary Costs of a Failure to Appear by Type of Eventual Return - Current Dollars

Return Method	Budgetary Cost
Surrender	$517
Arrest on a Bench Warrant	$927
Arrest on a New Crime	$3,009
Fugitive/No Return	$2,385

Table #3 presents the budgetary costs of a failure to appear corresponding to the method by which the defendant is returned to court. It includes estimates of the additional budgetary costs attributable to an FTA if the defendant eventually surrenders; if the defendant is arrested on a Bench War-rant for the FTA, if the defendant is eventually rearrested for a new crime, or if the defendant is never returned and remains a fugitive. In the latter case we consider that all costs before the defendant became a fugitive are wasted once he/she becomes a fugitive. Hence, all of the expenditure up to the time the defendant failed to appear is considered a budgetary cost of this type of FTA.

Table #4

ESTIMATED AVERAGE BUDGETARY AND SOCIAL COSTS OF A FAILURE TO APPEAR BY TYPE OF RELEASE - CURRENT DOLLARS

Type of Release	Average Budgetary Cost	Average Social Cost	Average Total Cost
Surety Bond	$1,230	$7,260	$8,490
ROR/CR	$1,409	$10,560	$11,969

In Table #4, under the column labeled "Average Budgetary Costs", we report the results of taking the costs reported in Table #3 and weighting them by the proportion of defendants who are returned by each method. This weighting generates an estimate of the average budgetary cost of an FTA. Because Surety Bond releases and ROR releases have different return profiles they have different estimated budgetary costs.

Since counting only the budgetary cost of an FTA that ends with the defendant in fugitive status seriously underestimates the impact on society of that event, we also calculated a social cost of fugitive status. This social cost calculation (based again on our previous study of Los Angeles County) attempts to attribute to fugitives the reduction in crime control that results from their status and the increased costs of crime associated with that reduction in crime control.[7] Our previous study suggests that every fugitive costs society more than $33,000 in lost crime control benefits. Hence since the average FTA in these large urban counties has between a 22% and 33% chance of ending in fugitive status after 1 year, we estimated that the social cost is likely to be between $7,260 and $10,560 per FTA.[8]

[7] For a more complete discussion of our methodology in calculating social cost see, *Runaway Losses: Estimating the Costs of Failure to Appear in the Los Angeles Criminal Justice System*, pp 23-25.

[8] While the fugitive rate in 2000 (in these 12 urban counties) after one year is between 22 and 32 percent the eventual fugitive rate will be lower and hence this social costs calculation will be an overestimate on this score. However, we also assume in calculating social cost that fugitives have the same probability of being convicted and going to prison as other defendants who FTA. This assumption clearly biases our estimates downward. On balance it is not clear that our estimate is systemically biased upward.

Potential Cost Savings from Increased Use of Surety Bond Releases

TABLE #5

ESTIMATED BUDGETARY AND SOCIAL COST SAVINGS THAT WOULD HAVE RESULTED FROM INCREASED USE OF SURETY BOND IN THE 12 LARGEST URBAN COUNTIES IN CALIFORNIA: 2000 (CURRENT DOLLARS)

SURETY BOND UTILIZATION LEVEL	ESTIMATED REDUCTION IN FTA'S	BUDGET COST SAVINGS	SOCIAL COST SAVINGS (IN MILLIONS)	TOTAL SAVINGS (IN MILLIONS)
45%	0	$0.0	$0.0	$0.0
52%	1,018	$1.3	$13.3	$14.7
60%	2,035	$2.9	$28.6	$31.5
70%	3,053	$4.8	$47.7	$52.5
80%	4,071	$6.7	$66.7	$73.5
90%	5,089	$8.7	$85.8	$94.4
97%	6,106	$10.0	$99.1	$109.1

Table #5 and Figure #10 bring together the information on reduced failure rate possibilities from our "What if" calculation and the estimated costs of a failure to appear. In Table #5 we show, assuming that the cost estimates based on Los Angeles County are at least indicative of costs in other large urban counties, the potential savings in terms of both budgetary costs and social costs, that would have resulted from a range of increased levels of Surety Bond utilization in California's 12 largest urban counties. In Figure #10 we display the total cost savings graphically. We show the results of a very modest increase in the role of Surety Bond implied by reversing percentages with ROR/CR in 2000 as well as the cost savings of a complete replacement of ROR/CR with Surety Bonds.

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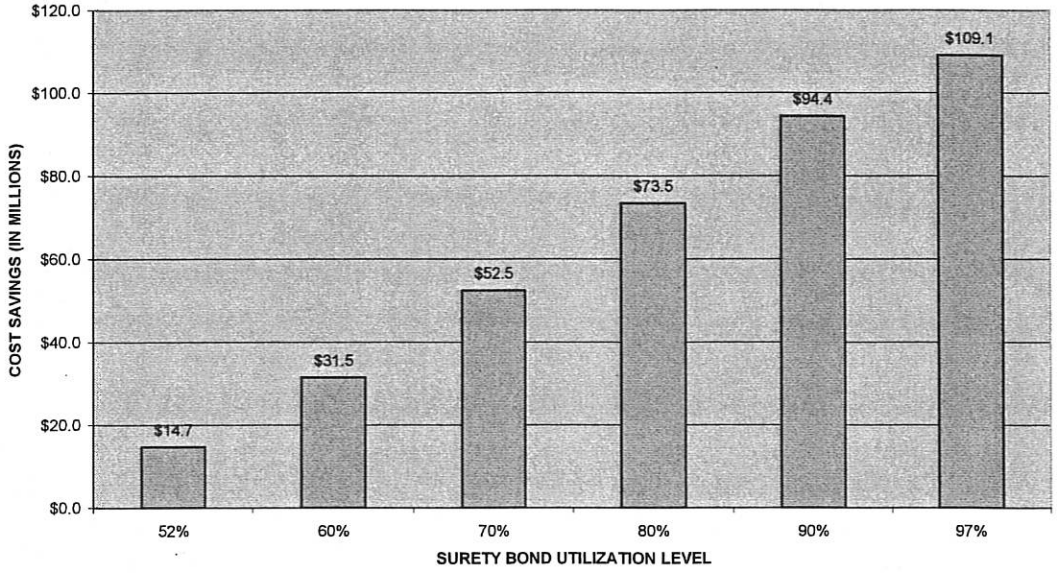
FIGURE #10

ESTIMATED TOTAL COST SAVINGS THAT WOULD HAVE RESULTED FROM INCREASED USE OF SURETY BOND IN THE 12 LARGEST URBAN COUNTIES IN CALIFORNIA: 2000



Specifically, we show the cost savings in 2000 that would have resulted from reversing the proportions of releasees on Surety Bond and ROR/CR in 2000, which would have involved raising the proportion on Surety Bond to 52%.

We also show cost savings for higher levels of Surety Bond utilization all the way up to completely replacing ROR with Surety Bond releases (97%).

We find that if Surety Bond releases comprised 52% rather than 45% of all releases in California's 12 largest counties in 2000, the budget savings in these urban counties would have been over $1.3 million without counting the budgetary reductions due simply to lower levels of pretrial program staffing. In addition, we estimate there would have been a savings in social costs due to a reduction in the number of fugitives of about $13.3 million. Hence, the overall savings of this very modest increase in the role of Surety Bond releases would have been over $14.7 million. At the other extreme if Surety Bond had completely replaced ROR/CR, total cost savings would have been close to $109 million. Budgetary savings alone of this radical restructuring of pretrial release would have been over $10,000,000. Of course Surety Bond could not actually replace ROR/CR, if only for the reason that some defendants could not qualify for a Surety Bond. However release on Surety Bond could have been used more often than it was in these California counties, and Figure #10 indicates what the savings would have been had it been used more frequently.

APPENDIX

I. Glossary
II. Sample
III. Weighting Techniques
IV. Appendix Figures

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GLOSSARY

Terms Related to Pretrial Release

- **Released Defendant**: Includes any defendant who was released from custody prior to the disposition of his or her case by the court. Includes defendants who were detained for some period of time before being released and defendants who were returned to custody after being released because of a violation of the condition of pretrial release.
- **Detained Defendant**: Includes any defendant who remained in custody from the time of arrest until the disposition of his or her case by the court.
- **Failure to Appear**: Occurs when a court issues a bench warrant for a defendant's arrest because he or she has missed a scheduled court appearance.

Financial Release Mechanisms

- **Surety Bond**: A bail bond company signs a promissory note to the court for the full bail amount and charges the defendant a fee for the service (usually 10% of the full bail amount). If the defendant fails to appear, the bond company is liable to the court for the full bail amount. Frequently the bond company requires collateral from the defendant in addition to the fee.
- **Deposit Bond**: The defendant deposits a percentage (usually 10%) of the full bail amount with the court. The percentage of the bail is returned after the disposition of the case, but the court often retains a small portion for administrative costs. If the defendant fails to appear in court, he or she is liable to the court for the full amount of the bail.
- **Full Cash Bond**: The defendant posts the full bail amount in cash with the court. If the defendant makes all court appearances, the cash is returned. If the defendant fails to appear in court, the bond is forfeited.
- **Property Bond**: Involves an agreement made by a defendant as a condition of pretrial release requiring that property valued at the full bail amount be posted as an assurance of his or her appearance in court. If the defendant fails to appear in court, the property is forfeited. Also know as "collateral bond".

Nonfinancial Release Mechanisms

- **Release on Recognizance (ROR)**: The court releases the defendant on a signed agreement that he or she will appear in court as required.
- **Unsecured Bond**: The Defendant pays no money to the court but is liable for the full amount of bail should he or she fail to appear in court.
- **Conditional Release**: Defendants are released under conditions and are usually monitored or supervised by a pretrial services agency. In some cases, such as those involving a third-party custodian or drug monitoring and treatment, another agency may be involved in the supervision of the defendant. Conditional release sometimes includes an unsecured bond.

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SAMPLE

County	1990	1992	1994	1996	1998	2000
Alameda			X	X	X	X
Contra Costa						X
Los Angeles	X	X	X	X	X	X
Orange	X			X	X	X
Riverside						X
Sacramento	X	X	X	X	X	
San Bernardino	X	X	X	X	X	X
San Diego	X	X				X
San Francisco		X	X	X	X	
San Mateo						X
Santa Clara	X	X	X	X	X	X
Ventura			X	X	X	

WEIGHTING TECHNIQUE

The pretrial release data used in this report was collected from large urban counties in California by BJS for one, two, three, or four weeks out of a year, depending on their relative size. The largest counties were sampled for one week, the smallest for four weeks, and counties with relatively moderate populations were sampled for two or three weeks. Frequency weights were assigned to the data so that the sample would be representative of the population, from which it was drawn, reflecting a whole month of data collection.

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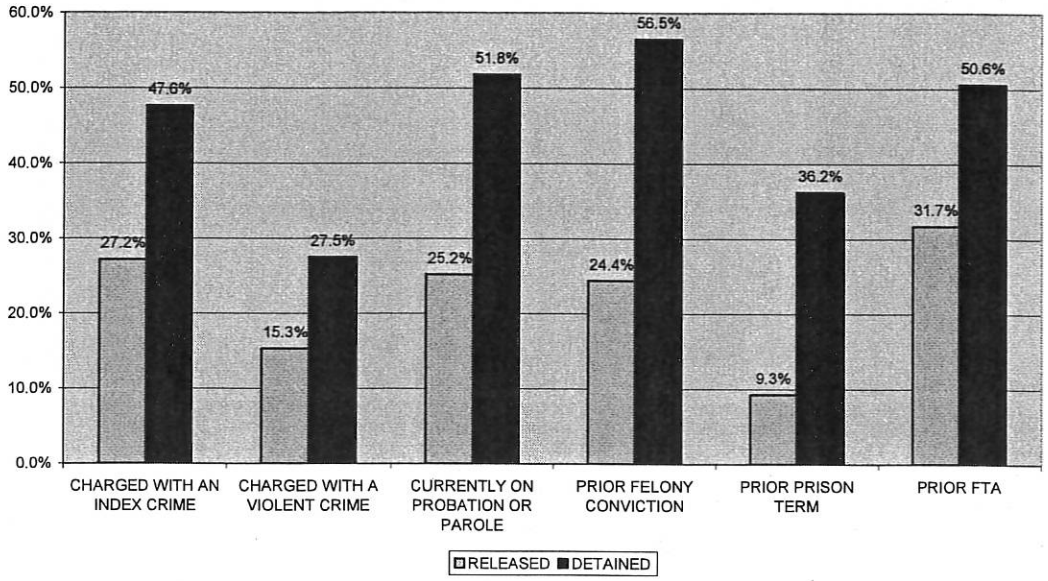
APPENDIX FIGURES

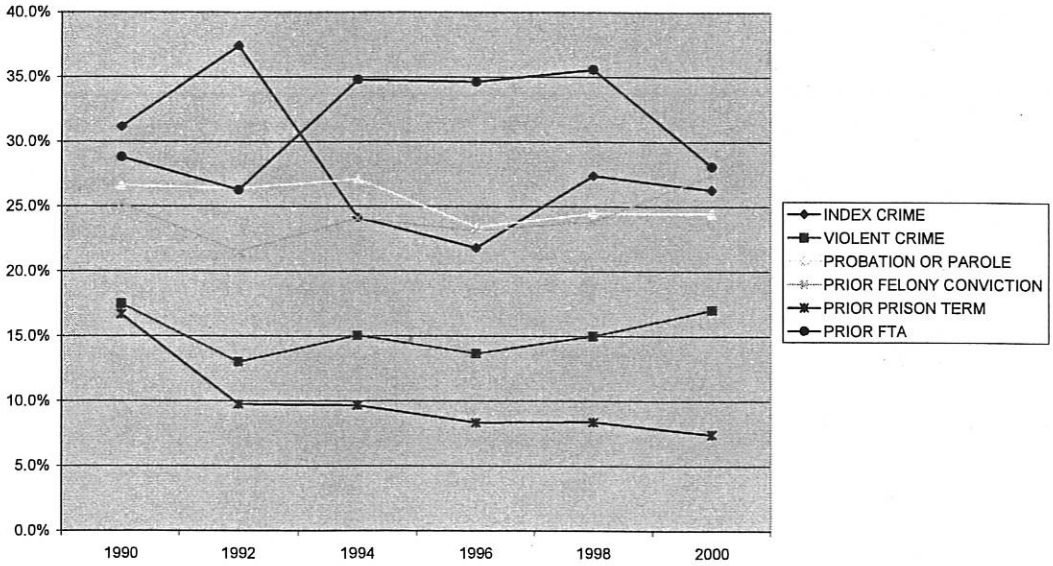
APPENDIX FIGURE #1

CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED OR DETAINED IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



APPENDIX FIGURE #2

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF RELEASED DEFENDANTS IN LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



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APPENDIX FIGURE #3

CRIMINAL JUSTICE HISTORIES OF DEFENDANTS ON SURETY AND ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

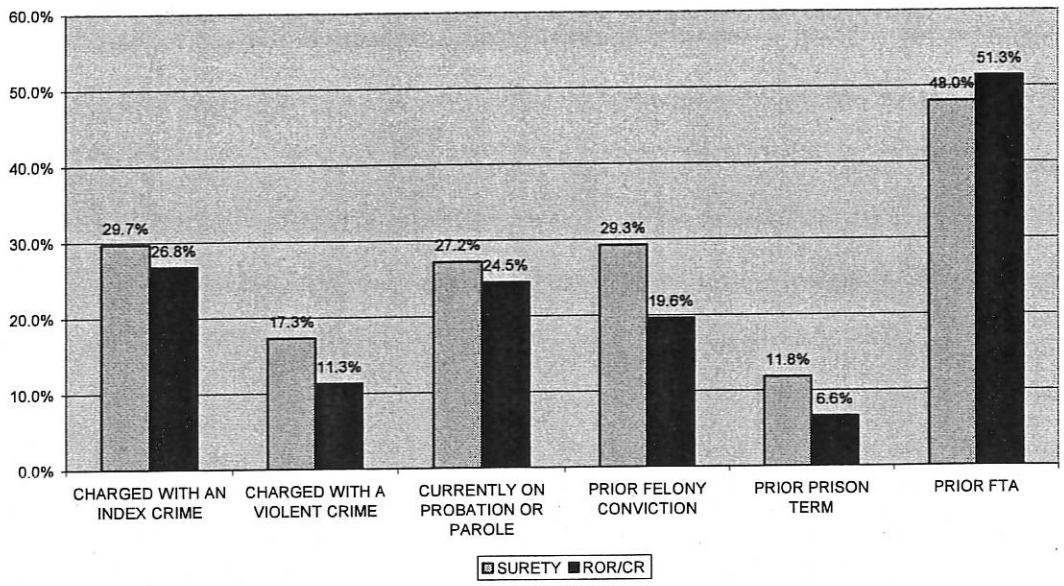

FIGURE #4

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED ON SURETY IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000

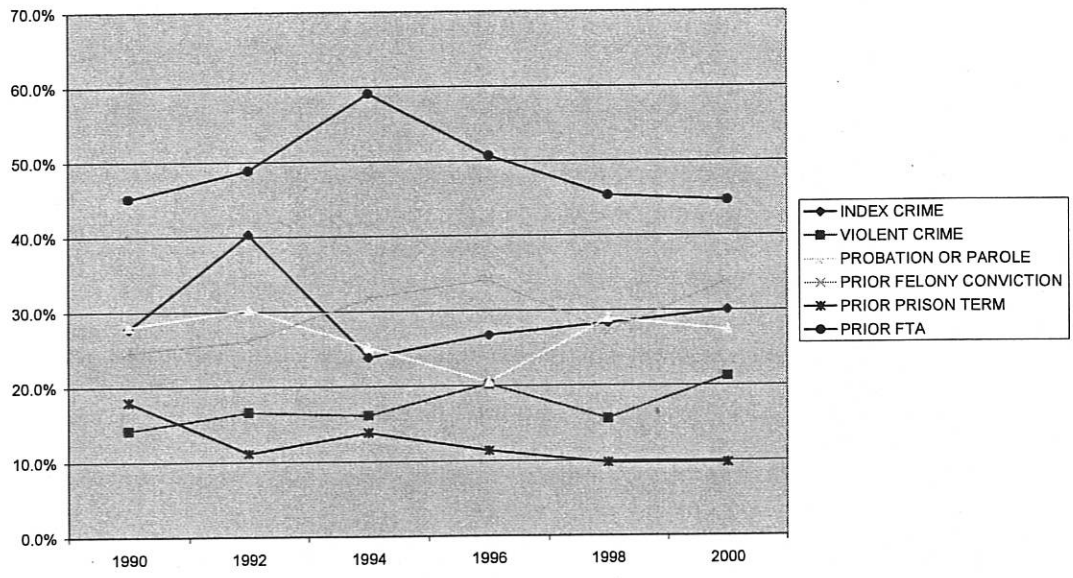

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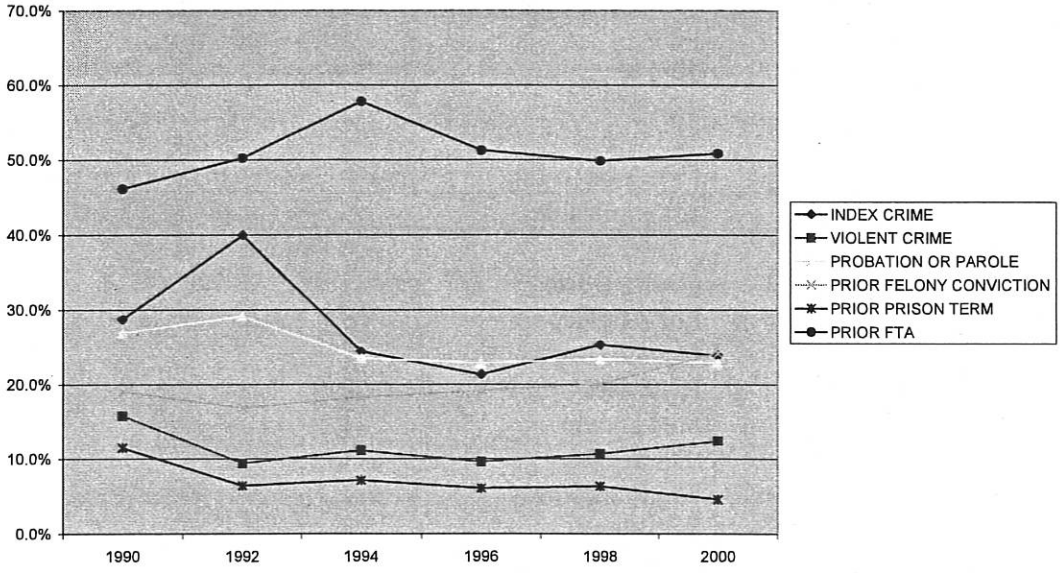
FIGURE #5

RECENT TRENDS IN CRIMINAL JUSTICE HISTORIES OF DEFENDANTS RELEASED ON ROR/CR IN SELECTED LARGE URBAN COUNTIES IN CALIFORNIA, 1990-2000



Appendix Figure #6

Independent Variables Used in Statistical Analysis

Independent Variable	Includes	Excludes
Time in days to adjudication	0-59 60-119 120-179 180-240 Over 240	Pending Cases
Clearance rate	All applicable	See County and Year
County	Alameda Contra Costa Los Angeles Orange County Riverside Sacramento San Diego San Francisco San Mateo Santa Clara Ventura	San Bernardino
Year	1992 1994 1996 1998 2000	1990
Arrest Charge	Rape Robbery Assault Other Violent Weapons Related Burglary Larceny and Theft Other Property Drug Sales Other Drug Driving	Murder Other Public Order
Age in years of arrestee	All applicable	N/A
Gender	Female	Male
Active criminal justice status?		N/A
Prior felony arrest?		N/A
Prior failure to appear?		N/A
Release Type	Surety Other Financial	ROR/CR N/A

Shirk's Criminal History

Shirk's Criminal History
Kara Fullmer

Justin Shirk, who police believe may have killed his ex-wife and run off with his daughter Wednedsay has had more than one run-in with the law. On the Wednesday he took off, he was meant to appear in court on charges of two counts of aggravated assault and criminal damage that happened only four months ago. He was charged for assaulting two teenagers and repeatedly ramming their car with his.

So why was Shirk allowed to be back on the streets? Shirk took advantage of a type of bond known as an Own Recognisance Cash Deposit, or ORCD, which one local attorney says makes it too easy for criminals to slip through the cracks.

Shawnee County Court set Justin Shirk's bond at 7500-dollars after he was charged with aggravated assault in June. Instead of going through a bonding agency for the money to get out of jail, Shirk used an ORCD bond collected by the county. He only had to pay 10% of the $7500, and promise to pay the rest if he didn't show up to court. When Shirk missed his appearance Wednesday, Attorney Chris Joseph who represents Viking Bail Bonds says he was not surprised.

"They put the money down, walk out the door and don't show up, time after time," Joseph explains.

This was only Shirk's first ORCD bond, but Joseph says in many cases ORCD's make it easier not to show up for court.

"The ninety-percent they are expected to pay, it's pretty well known that no one is out collecting that ninety-percent," says Joseph.

On a professional surety bond issued by a bonding agency, if a person is a no show, a bondsman will quickly track them down and take them to court. But when the county issues the bond, and the person doesn't show...

"A warrant is issued, the warrant goes to warrant department at the sherrif's office, and they're inundated with warrants. So often it just sits on the books until someone is pulled over or does something and is arrested again," Joseph says.

Joseph admits, in Justin Shirk's case it's not likely either the county or a professional bondsman would have been able to track him down this morning before he allegedly took off with his daughter. But, Joseph says he knows of at least three cases last year where a person released on an ORCD did not appear, and committed further crime.

Shawnee County District Court Rules 3.09
(Pretrial Release)

1. 1. Court Services Officers (CSO), Deputy Sheriffs and Correctional Officers who are sworn in as Deputy Clerks of the District Court are authorized to permit persons in custody to post bail bonds in accordance with the provisions of this rule.

2. The Automatic Bond Schedule (ABS) [F 3.309(2)] is approved for the amount of bail bonds for particular crimes. For those offenses where no bond is set or is designated "see judge", the ccused shall be brought before a judge of the district court at the next court date to have a bond set. For days when the court is not in session see Rule 3.322.

3. Notwithstanding the ABS, persons in custody with any of the following conditions are not eligible for an ABS bond and shall be brought to the next first appearance to have bond set:

A defendant who:

(a) Has been extradited or is awaiting extradition to another state.

(b) Has a detainer or hold from other states or federal authorities.

(c) Being detained on an arrest letter for violation of probation, parole, or bond condition.

(d) A deputy clerk believes in good faith may flee, pose a danger to public safety or is not eligible for bond under the ABS or positive identity cannot be established.

4. On bonds requiring $1,000 surety or less, Shawnee County residents eligible for bond under the ABS may be released on the person's own recognizance bond (OR) if they meet one of the following criteria:

(a) Own real estate located in Shawnee County in own name; or

(b) Any three of the following five:

(1) Resident of Shawnee County - more than 6 months;

(2) Valid Kansas drivers license;

(3) Employment in Shawnee County - more than 3 months;

(4) Current telephone service-in own name;

(5) Is enrolled as a student in the State of Kansas; or

(c) Active duty military and stationed at a military base in the State of Kansas.

All factors shall be determined upon a sworn statement made under penalty of perjury by the accused or the accused's private surety. Court service officers, deputy sheriffs or correctional officers who are sworn in as deputy clerks are authorized to require further verification of any item as they deem appropriate before permitting a person in custody to post bond. Victims reflected in an arrest report cannot act as private surety on a bail bond.

5. **On bonds requiring $1,000 surety or less Shawnee County residents eligible for bond under the ABS, but not meeting the criteria at paragraph 4, may be released (a) on an OR Cash deposit bond or (b) with a private surety if the surety completes a sworn statement and qualifies under both items (a) and (b) of paragraph 4.**

6. **On bonds requiring surety of more than $1,000 and up to $2,500, Shawnee County residents eligible for bond under the ABS may be released by posting an OR cash deposit bond and meeting one of the criteria set forth in paragraph 4, sections (a), (b) or (c). A Shawnee County resident eligible for release under the ABS, but not meeting the criteria of paragraph 4 may be released by posting an OR-Cash deposit bond and obtaining a private surety who qualifies under both items (a) and (b) of paragraph 4.**

7. **Persons may be admitted to personal recognizance cash deposit (OR-Cash deposit) bail bonds who meet the criteria set forth in this rule or upon special screening and upon recommendation of a person authorized to permit posting of a bond in accordance with this rule. Any person determined eligible to be admitted to bail on an OR-cash deposit bond under this rule or OR bonds set as OR cash deposit by a district judge, shall deposit with the Clerk of the Court cash equal to 10 percent of the amount of the bond and execute a bail bond in the total amount of the bond. All other conditions of the bond set by the court and this rule must be satisfied.**

8. **When an accused person enters into an OR-Cash deposit bond, ten percent of the cash deposit shall first be retained by the Clerk of the Court as an administrative fee.** OR-Cash deposit bonds shall be placed in an interest-bearing financial institution account by the Clerk, however, no interest shall be paid to the accused on an OR-Cash deposit bail bond. Annually the aggregate amount of administrative fees retained and interest earned on OR-Cash deposit bail bonds shall be turned over to the general fund of Shawnee County. The OR-Cash deposit, less the ten percent administrative fee, shall be held by the Clerk of the Court until such time as the accused is discharged from all appearances under the bond and all outstanding financial obligations to the court have been satisfied. "Outstanding financial obligations" as here used means any court ordered fines, fees, court costs, restitution, or other obligations imposed by judicial order, whether from the case in which the bond was posted or arising from any other case within the district court that remain unsatisfied. The Clerk shall ascertain any outstanding financial obligations due from records available, however, if restitution is indicated to be due or subject to determination, or if bond deposits are intended to be applied under a diversion agreement, no return of the deposit shall be made until a further order of the court fixing restitution or otherwise determining no restitution is due or, in the case of a diversion agreement, an order signed by the accused or his counsel and a member of the District Attorney's staff authorizing such withholding has been provided to the Clerk. Any balance remaining due from such OR-Cash deposit bond after application of the administrative fee and after the above withholdings have been ascertained and effected, shall be returned to the accused along with an accounting of the dispersal of funds under the bond upon surrender of the cash deposit slip previously issued by the Clerk.

9. A cash receipt for an OR-Cash deposit bail bond shall be issued only to the person being released on bond. Any person posting cash for another person shall be informed that any cash posted as a bail bond is the property of the accused person and may be subject to forfeiture, application to payment of court ordered financial obligations and will be refunded only to the arrested party. Any arrangements to furnish bond money are between the lender and the accused

person.

10. When an accused person who has posted a cash deposit bail bond is discharged from all appearance and financial obligations to the court and files the receipt for the cash deposit with the Clerk, the refundable portion of the cash deposit not allocated to court ordered financial obligations shall be refunded to the accused or assignee by the Clerk.

11. All OR-Cash deposit bail bonds issued in this county shall be subject to the condition of forfeiture and the amount deposited will become the absolute and permanent property of the State of Kansas should one or more of the following occur:

(a) Accused person or surety makes a false statement or representation regarding the criteria for OR-cash deposit as set forth in paragraphs 3 through 6, above.

(b) Accused person fails to appear in court pursuant to court order at any stage of the proceedings.

(c) Accused person fails to report as directed to a CSO.

(d) Accused person fails to perform any other condition of bail imposed by the court.

12. All persons placed on bond supervision shall be required to report as directed to a court services officer or to a community corrections officer.

13. All bail bonds issued in this judicial district are subject to this rule and the General Bond Conditions attached hereto. Other special conditions may also be imposed by the court as a requirement of release on any bail bond.

14. All sureties on private or professional surety bonds are required to remain liable on any bail bond until all proceedings arising out of the arrest or case for which the bond was posted are concluded or until the surety is released by court order. No surety shall be released on an obligation on a bail bond without court approval. If a person is arrested on an appearance bond pursuant to K.S.A. 22-2809, the surety shall provide a written sworn statement setting forth the reason(s) for the discharge when the person is delivered to the jail or alternatively the surety may bring the person before a judge or magistrate at which time the surety shall provide either a written or oral sworn statement to the court setting forth the reason(s) for the discharge. Unless there is a request for an evidentiary hearing by either the person arrested, his or her counsel, or the surety, the Court will determine at First Appearance whether the bail bond should be continued in force or whether the bail bond should be revoked and the surety discharged.

15. Bail bonds designated as OR-Cash, Cash or Professional Surety shall be written only on terms specified by a judge of the district court. If an accused person requests release on a professional surety bond when cash or an OR-cash deposit bond has been specified, the deputy clerk shall contact the judge authorizing the bond for modification of the bond.

16. This rule shall not limit or restrict the right of any person to seek or obtain pretrial release under other statutory methods of admitting accused persons to bail or the authority of a judge of the district court to determine bail. The participation of an accused person in this program shall be on a voluntary basis.

17. This rule shall <u>not</u> apply to civil bench warrants.

18. Definitions:

(a) The term "cash" as used in this rule means United States currency, a money order, or a bank draft or certified check drawn on a Kansas banking or savings and loan institution.

(b) The term "court" as used in this rule refers to the District Court of the Third Judicial District of the State of Kansas.

(c)The term "accused person" as used in this rule means a person in custody by reason of an arrest report or a defendant in a criminal or traffic case

19. (a) District Judges may condition any OR or OR Cash Deposit bond as "with Supervision" (ORS or ORDC - Supervised) bond.

(b) Persons released under supervised conditions shall report and maintain contact with personnel of the Shawnee County Court Services designated to supervise pre-trial release.

(c) Persons released under supervised conditions are subject to all of the Standard Conditions of Probation, as provided for in D.C.R. 3.308. Persons released upon supervised bonds shall be given written notice of these terms and conditions by the pretrial release supervisor.

(d) Any supervised bond shall be subject to revocation upon affidavit of the pretrial release supervisor which shall set forth the specific acts of violation. Upon review of an affidavit of revocation, a District Judge may revoke a supervised bond and issue an arrest warrant. After issuance of an arrest warrant, any party may make written application for a bond revocation hearing and/or for a new bond or reinstatement of the original bond.

EXAMPLE ORCD BONDS SET IN SHAWNEE COUNTY IN EXCESS OF THE $2,500 LIMIT

06CR15	Ronald Shanek	10,000 ORCD*	Drugs
06CR16	Barbara Brandon	5,000 ORCD*	Forgery, identity theft
06CR17	David Hixson	**40,000 ORCD**	**Aggravated indecent liberties with a child**
06CR19	Agnes New	10,000 ORCD	**Aggravated assault**
06CR24	Roberta Grier	15,000 ORCD	Drugs
06CR25	Antonette Wiseman	5,000 ORCD*	Theft
06CR28	Nathaniel Browning	15,000 ORCD	Drugs
06CR35	Nadeana Johnson	15,000 ORCD	**Aggravated arson**
06CR40	Calvin Jeffries	7,500 ORCD*	Fleeing & Eluding
06CR53	Kyle Craney	**25,000 ORCD**	Drugs
06CR58	James Long	10,000 ORCD*	**Aggravated battery**
06CR59	Jeremiah Reece	7,500 ORCD*	Criminal damage
06CR61	Edward Bowens	10,000 ORCD*	Domestic battery
06CR73	Melvin Shaffer	5,000 ORCD*	Forgery.
06CR92	Jeffery Mcmanaman	15,000 ORCD	**Sex offender failing to register**
06CR95	Harry Hayes	15,000 ORCD	**Sex offender failing to register**
06CR103	Damon Wilkins	10,000 ORCD	Obstruction of justice
06CR107	Elias Luons-Sanchez	10,000 ORCD	**Aggravated battery**
06CR108	Pablo Bargos	10,000 ORCD	**Aggravated battery**
06CR112	Philip Harsh	7,500 ORCD*	DUI 3rd
06CR116	Lance Franklin	15,000 ORCD	Theft
06CR122	Raymond Mauney	5,000 ORCD*	Theft
06CR125	Shawn Cummingham	5,000 ORCD	Battery
06CR131	Lance Franklin	**25,000 ORCD**	Drugs
06CR132	Carla Strong	10,000 ORCD	Drugs
06CR133	Casey Ferguson	15,000 ORCD	Drugs, weapons
06CR136	Joseph Johnson	5,000 ORCD*	Domestic battery
06CR138	Anthony Wilson	5,000 ORCD*	Theft
06CR139	Terra Moten	10,000 ORCD	Forgery, identity theft
06CR141	Kelly Marshall	10,00 ORCD*	**Aggravated battery**
06CR144	Kenneth Blake	5,000 ORCD	Aggravated assault
06CR153	Donald Mccants	5,000 ORCD*	DUI 3rd
06CR182	Sharon Bugg	15,000 ORCD	**Aggravated battery**
06CR195	Kenneth Holford	10,000 ORCD	Burglary
06CR202	Manuel Rayes	5,000 ORCD*	Domestic battery
06CR209	Carl Lawson	10,000 ORCD*	
06CR247	Ereginald Eetherson	5,000 ORCD*	Drugs
06CR249	Timothy Bauman	5,000 ORCD*	**Registration violation, sex offender**
06CR279	Jason Gfeller	5,000 ORCD*	Making a false writing

* Indicates that the defendant has already failed to appear on the ORCD bond. Note that some of the cases are only months old. Cases filed in early 2006 have higher failure to appear rates on the ORCD bonds, likely because defendants have not had much of an opportunity to fail to appear. Failure to appear rates are even higher for ORCD bonds under $2,500.

06CR292	Geoffry Beers	5,000 ORCD*	Drugs
06CR293	Robert Markham	5,000 ORCD*	**Aggravated battery**
06CR313	Sandra Jenkins	5,000 ORCD*	Battery against LEO
06CR316	Elizabeth Gibson	5,000 ORCD*	Theft
06CR318	Gerald Mckinney	5,000 ORCD*	Domestic battery
06CR326	Isahiah Walters	10,000 ORCD	17 counts of theft and burglary
06CR329	Bryan Wortz	5,000 ORCD*	Domestic battery
06CR349	Johnny Powers	5,000 ORCD*	Theft
06CR346	James Drewelow	5,000 ORCD*	DUI 4th
06CR354	Dewayne Cushinberry	5,000 ORCD*	Drugs
06CR367	Ryan Thompson	5,000 ORCD*	Burglary
06CR380	Nancy Armstrong	5,000 ORCD*	Theft, Drugs
06CR384	Loretta Tanner	5,000 ORCD	Violation of PFA
06CR398	Dorene Brown	10,000 ORCD*	**Registration violation, sex offender**
06CR402	Julius Brown	5,000 ORCD*	Theft
06CR340	Dewayne Berry	10,000 ORCD*	Violation of PFA
06CR453	John Wilks	5,000 ORCD*	Theft
06CR485	Juenal Espinosa	5,000 ORCD*	Criminal Damage, Battery against LEO
06CR490	Charles Spalding	5,000 ORCD	Battery, arrested on new charge
06CR517	Christopher Metland	5,000 ORCD*	Criminal Damage
06CR524	Brian Mudler	**25,000 ORCD**	Criminal Damage
06CR529	John Jeffries	**25,000 ORCD***	DUI 3rd, DWS 2nd
06CR532	Paula Ward	5,000 ORCD*	**Arson**
06CR540	Ryan Gayton	7,5000 ORCD	Aggravated Battery
06CR542	Lester MacDonald	5,000 ORCD*	Theft
06CR547	Matthew Syrokosz	5,000 ORCD*	DUI 3rd
06CR557	Clayton Hawkins	5,0000 ORCD	**Aggravated Indecent Liberties with Child**
06CR559	Carlos Perez	5,000 ORCD*	Violation of PFA
06CR563	Steven Burris	5,000 ORCD*	DUI 4th
06CR571	Diane Walker	5,000 ORCD *	**Aggravated Battery**
06CR574	Randall Burrell	5,000 ORCD*	Drugs
06CR587	Dawn Williams	50,000 ORCD	**Aggravated Robbery**
06CR595	Jeremy Howerton	5,000 ORCD*	Poss of Stolen Property
06CR604	Alexander Dehart	7,500 ORCD*	DUI 4th
06CR612	Sonia Barnes	10,000 ORCD*	Drugs
06CR633	Brian Wahweotten	5,000 ORCD	**Aggravated assault**
06CR643	Richard McClaurine	**30,000 ORCD**	**Aggravated Assault**
06CR652	Blake Swanson	5,000 ORCD	DUI 3rd
06CR653	Marcellino Gonzales	5,000 ORCD	DUI 3rd
06CR671	Donnell Timley	10,000 ORCD	Drugs
06CR681	Darin Newell	7,500 ORCD*	Assault

* Indicates that the defendant has already failed to appear on the ORCD bond. Note that some of the cases are only months old. Cases filed in early 2006 have higher failure to appear rates on the ORCD bonds, likely because defendants have not had much of an opportunity to fail to appear. Failure to appear rates are even higher for ORCD bonds under $2,500.

06CR700	Jeremiah Reece	7,500 ORCD	Violation of PFA
06CR756	Harry Ezell	5,000 ORCD*	Theft and DWS
06CR777	Anthony West	10,000 ORCD	**Aggravated Battery**
06CR778	Anthony West	10,000 ORCD	Burglary
06CR786	Darryl Humphrey	10,000 ORCD	**Aggravated Indecent solicitation of child**
06CR812	Nicholas Crites	**25,000 ORCD**	**Aggravated Indecent liberties with child**
06CR1478	Thomas Hall	**150,000** ORCD	**Electronic solicitation of a minor**
06CR1488	Michael Jackson	**100,000** ORCD	**Aggravated Battery**
06CR1489	Jesse Russell	10,000 ORCD	Fleeing and eluding
06CR1500	Randy Grittner	10,000 ORCD	Stolen property
06CR1508	Lisa Dirk	15,000 ORCD	**Involuntary manslaughter**
06CR1512	Casey Ferguson	**25,000 ORCD**	Drugs
06CR1518	Troy Bradley	10,000 ORCD	Criminal Damage
06CR1523	Jeremy Henderson	15,000 ORCD	Criminal Discharge of a firearm
06CR1529	Gernado Lozya	10,000 ORCD	Drugs
06CR1530	Brandon Amack	10,000 ORCD	**Aggravated Assault**
06CR1531	Bruce Hall	10,000 ORCD	Drugs
06CR1532	James Young	10,000 ORCD	Burglary
06CR1538	Willie Vasser	10,000 ORCD	Domestic Violence
06CR1541	Lee Spiller	15,000 ORCD	Drugs Forgery
06CR1551	Karwin Johnson	15,000 ORCD	**Aggravated Battery**
06CR1559	Brandi Warner	10,000 ORCD	Forgery
06CR1560	Anita Huggins	10,000 ORCD	Theft
06CR1585	Stephanie Miller	**50,000 ORCD**	**Aggravated Robbery**
06CR1586	Sheronda Washington	5,000 ORCD*	Theft
06CR1587	Brian Delaughter	10,000 ORCD	Domestic Battery
06CR1588	Terry Riley	25,000 ORCD	Domestic Battery
06CR1589	David Weiland	15,000 ORCD	Drugs
06CR1594	Aaron Dirk	10,000 ORCD	Criminal Damage
06CR1595	Jeff Jackson	15,000 ORCD	DUI 3rd
06CR1616	Kerry Baker	15,000 ORCD	Burglary
06CR1664	Miguel Rodriguez	20,000 ORCD	**Aggravated Assault**
06CR1677	Clyde Counts	10,000 ORCD	Fugitive from justice
06CR1685	Carl Lester	10,000 ORCD	Dom battery
06CR1691	Kevin Storm	10,000 ORCD	**Aggravated battery**
06CR1704	Jason Flesher	10,000 ORCD	DUI 3rd
06CR1711	Chris Bigelow	15,000 ORCD	**Aggravated weapons violation**
06CR1721	Alberto Solis	15,000 ORCD	Drugs
06CR1733	Eric Stevenson	20,000 ORCD	**Aggravated battery**
06CR1760	Donald Hovey	10,000 ORCD	Fleeing and eluding
06CR1767	Johnny Carnes	10,000 ORCD	Drugs

* Indicates that the defendant has already failed to appear on the ORCD bond. Note that some of the cases are only months old. Cases filed in early 2006 have higher failure to appear rates on the ORCD bonds, likely because defendants have not had much of an opportunity to fail to appear. Failure to appear rates are even higher for ORCD bonds under $2,500.

06CR1768	Ricky Freeze	15,000 ORCD	Abuse of child
06CR1790	Arrington Gayden	10,000 ORCD	Drugs
06CR1820	Cecil Wieland	**25,000 ORCD**	Drugs
06CR1821	James Gish	**25,000 ORCD**	Drugs
06CR1838	Gwyndell Declerck	15,000 ORCD	Fleeing and eluding
06CR1843	Anthony Sullivan	**250,000 ORCD**	**Aggravated battery**
06CR1844	Michael Whitfield	**250,000 ORCD**	**Aggravated battery**
06CR1845	Rickie Loyd	**25,000 ORCD***	**Aggravated robbery**
06CR1846	William Rogers	15,000 ORCD	**Aggravated battery**
06CR1847	Mary Shannon	10,000 ORCD*	Theft
06CR1848	Ernest Smith	**150,000 ORCD**	Kidnaping
06CR1849	Mike Blankenship	**150,000 ORCD**	Kidnaping
06CR1853	Travis Shepley	10,000 ORCD	Burglary
06CR1855	Douglas Stickle	10,000 ORCD	Fleeing and eluding
06CR1862	Greg Hanna	**100,000 ORCD**	**Aggravated assault on LEO**
06CR1863	Brian Thompson	10,000 ORCD	Dom battery
06CR1878	Derek Meek	10,000 ORCD	Fleeing and eluding
06CR1882	Austin Boraman	**25,000 ORCD**	**Involuntary manslaughter**
06CR1885	Daryl Mckinney	10,000 ORCD	Battery against LEO
06CR1893	Robby Mendez	10,000 ORCD	Forgery
06CR1916	Joni Dupuis	10,000 ORCD	Felony DUI and DWS
06CR1957	Courtney Austin	15,000 ORCD	Stolen property
06CR1960	Frank Newton	20,000 ORCD	Forgery, revoked reset at 500ca
06CR2001	Michael Dale	5,000 ORCD*	**Aggravated arson**
06CR2025	William Dickinson	10,000 ORCD	Drugs
06CR2045	Donald Jackson	10,000 ORCD	Drugs
06CR2054	Rodolfo Santellano	15,000 ORCD	Drugs
06CR2084	Jarrod Whitteker	10,000 ORCD	Failing to register
06CR2100	Donald Williams	**50,000 ORCD**	**Aggravated battery**
06CR2118	Lewis Vaughn	20,000 ORCD	Theft
06CR2129	Robert Ewing	10,000 ORCD	Drugs
06CR2135	Roderick Rivera	10,000 ORCD	Drugs
06CR2149	Dennis Davis	10,000 ORCD	4th DUI
06CR2172	Lisa Harris	**50,000 ORCD**	Drugs
06CR2181	Xavier Simms	**50,000 ORCD**	**Aggravated robbery**
06CR2182	Steven Lee	**50,000 ORCD**	Drugs
06CR2189	Paul Slugger	**25,000 ORCD**	Drugs.
06CR2190	John Coffman	10,000 ORCD	Domestic battery
06CR2195	Scott Glenn	10,000 ORCD	Violation of PFA
06CR2197	Travis Layne	**75,000 ORCD**	**Indecent liberties with a child**
06CR2218	Jerad Pressler	10,000 ORCD*	Forgery

* Indicates that the defendant has already failed to appear on the ORCD bond. Note that some of the cases are only months old. Cases filed in early 2006 have higher failure to appear rates on the ORCD bonds, likely because defendants have not had much of an opportunity to fail to appear. Failure to appear rates are even higher for ORCD bonds under $2,500.

06CR2221	Eric Kirtdull	10,000 ORCD	Arson
06CR2223	Steven Allen	10,000 ORCD	Drugs
06CR2226	James Harris	15,000 ORCD	Criminal Possession of a firearm by a felon
06CR2233	Glenn Martin	**250,000 ORCD**	**Aggravated robbery**
06CR2234	Joseph Kingcannon	**25,000 ORCD***	**Aggravated robbery**
06CR2237	Calvin Mounkes	10,000 ORCD	DUI 4th, DWS 2nd
06CR2239	Blake Wade	20,000 ORCD	**Rape**
06CR2246	Jeff Gregg	10,000 ORCD*	DUI 3rd
06CR2248	Tonya Edward	**25,000 ORCD**	Drugs
06CR2249	Myron Jones	**25,000 ORCD**	Drugs
06CR2252	Steven Richards	10,000 ORCD	Drugs
06CR2262	Kamet Gibson	10,000 ORCD	Drugs
06CR2267	Nancy Highsmith	5,000 ORCD*	Theft
06CR2297	Robert Counts	10,000 ORCD	Aggravated weapons violation
06CR2299	Diana Posch	**75,000 ORCD**	**Aggravated battery**

* Indicates that the defendant has already failed to appear on the ORCD bond. Note that some of the cases are only months old. Cases filed in early 2006 have higher failure to appear rates on the ORCD bonds, likely because defendants have not had much of an opportunity to fail to appear. Failure to appear rates are even higher for ORCD bonds under $2,500.

TESTIMONY IN SUPPORT OF SB 203

My name is Shane Rolf, I have been a professional bail bondsman in Olathe for over 20 years. I am here today to provide the House Judiciary Committee with testimony in support of Senate Bill 203.

Effects of Bill – History

This bill would essentially reaffirm the actions taken by this Legislature on at least four different occasions. When 22-2802 was first adopted in 1970, the Legislature had the option of providing for a 10% deposit option. In fact, this option was the sole aspect of the Federal Bail Reform Act which was left out of the Kansas Statute. Clearly, the Legislature did not want that option for Kansas. Later in 1985, 1987 and 1997 bills were introduced which would have provided statutory authority for a percentage deposit bail system. All three of those bills were defeated, [HB 2009 in 1985, HB 2252 in 1987, and SB 158 in 1997] reaffirming that the Legislature did not intend for Kansas to have a percentage deposit bail bond system.

In 1994, the Kansas Attorney General issued an opinion that indicated – again – that percentage deposit bonds were not permissible. In response to this, in 1995, the Supreme Court authored Administrative Order No. 96 which authorized percentage deposits bonds as a form of pre-trial release "**in addition** to the current statutory pretrial release system."

Propriety of Administrative Order 96

Does the Supreme Court have the ability and authority to write new *statutory* law?

Clearly, by its own language, Administrative Order No. 96 is outside of the current statutory scheme. It was not enacted by the Legislature, neither was it signed by the Governor. In other words, this "Administrative Order" which creates a process of release "in addition to the current statutory ... system," was vetted by only one branch of government. Specifically, the one branch that is not subject to electoral review.

Is it within the inherent rulemaking ability of the Supreme Court to create – *without statutory authority* – a system of pretrial release beyond the control and dictates of the Legislature? Various other courts have held that the *Legislature* designates the kind and character of security that is to be provided for release on bail. The Supreme Court determines the reasonableness and Constitutionality of that security.

According to the Opinion of the Kansas Attorney General [94-25]

> "courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions. Therefore, a court cannot promulgate rules which contravene statutory provisions. ….. Supreme Court Rule

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105 authorizes judicial districts to make rules necessary for the administration of their affairs to the extent that they are not inconsistent with applicable statutes."

While this opinion references District Courts, the question still remains, does the Supreme Court have the authority to promulgate rules which contravene statutory provisions?

To date the Supreme Court has not ruled 22-2802 as unconstitutional and in fact in the Court's own Rule 114 the Supreme Court indicates that:

> The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the **full amount of the bond**.

Is then the Supreme Court treading on ground and issues which are rightly the prerogative of the Legislature?

Obviously, we feel that the Court is overstepping its bounds.

This bill simply reaffirms that the Legislature has – and retains – the authority to establish the type and characteristics of bail available for pretrial release.

Purpose of Bail – Excessive Bail

In Kansas, Bail is a Constitutional right, with certain limitations. However, bail is not intended to be a source of revenue for the State.[1] Further, many courts have held that bond set in any amount higher than or for any purpose beyond securing appearance is to be considered "excessive." As noted above, excessive bail is also prohibited by the Kansas Constitution. If the purpose behind these "deposit bonds" is to generate revenue for the State or to simply ensure payment of court costs, then bail would be or should be considered excessive.

Another court, in Wisconsin, a state which has outlawed professional bail, indicated that the statute authorizing the seizing of bond funds **does [not] allow courts to set bail with an eye towards eventual imposition of a fine.**

The commercial bail bond industry provides a valuable service to both the accused defendant and the State. The accused defendant is able to gain his freedom pending a determination of guilt or innocence, while the State is provided assurance that the defendant will be present to answer those charges. The defendant is able to post bail amounts which might normally be beyond his means, thus providing significant and measurable incentive for reappearance, while the State is spared the cost of housing the defendant during the pre-trial period. This process has been described as "balancing competing concerns" and "paying full fealty to the basic principles of freedom and the concept of the presumption of innocence."

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[1] Kansas Supreme Court, State v. Midland Insurance. "The purpose of bail is not to beef up public revenues."

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With deposit bonds, this balance shifts away from the State and toward the criminal defendant. Deposit bonds may provide a less expensive means of release for the defendant, but this is only because deposit bonds carry less incentive for reappearance. The State and the taxpayers gain little from their use.

Effect on Commercial Surety Industry

Administrative Order No 96 and the programs it spawns have only one real functional purpose: to do away with the Commercial Surety Industry.

It is important to recognize that the required cash deposit amount in this Order (10%) is identical to the fee commonly charged by professional bail bondsmen. The goal of these programs is to siphon clients away from bail bondsmen and lead to their eventual elimination. This would have a negative economic effect on the Commercial Surety Industry. In Shawnee County that goal has largely been met.

In Johnson County alone, the commercial bail bond industry employs about 20 people full time and at least another 20 part time. There are 24 surety companies authorized to post bail. The Industry owns or leases commercial space which pays over $16,000 in annual property taxes, as well as paying hundreds of thousands of dollars in regular business expenses – advertising, rents, utilities, insurance, etc. – which contribute to the local economy. All those employees pay income taxes and property taxes themselves and contribute to the local economy, as well.

Statewide, there are hundreds of individuals and families who have dedicated their lives and their efforts to this industry.

Allowing Administrative Order 96 to continue to multiply across the State will have a very negative impact on the industry and those Kansas residents who are engaged in the surety bail bond business.

Performance

As I noted above, the Kansas Legislature has rejected percentage deposit programs in the past. The reason is simple: they do not do a good job of ensuring appearance. Given that the primary purpose of bail is to secure appearance, methods of release which do a poor job of ensuring appearance should not be supported.

There have been studies conducted – by impartial evaluators – to compare the appearance rate associated with various types of pre-trial release. The most basic of these studies was conducted by the Bureau of Justice Statistics, which is a branch of the Federal Department of Justice. BJS conducted a study, published in 1992 comparing the various types of release. Defendants released on deposit bonds failed to appear 25% more often than those released on surety bonds. Further, those who absconded on deposit bonds were twice as likely to still be at large after one year, when compared to surety bonds. When this comparison was first conducted, the goal was to demonstrate that surety bonds were not as effective as other types of pre-trial release. In actuality, the

results demonstrated that surety bonds were the MOST EFFECTIVE type of pre-trial release. As a result, BJS has never published this comparison data since then.

However, others have been given access to the raw data and have published studies of their own. In April 2004, a study was printed in the Journal of Law and Economics, which is published by the University of Chicago. The study is titled: The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping. In the study, two statisticians have attempted to compare apples to apples with various types of releases by using a propensity matching score for defendants. Their conclusions are stark. The paper indicates:

- The FTA rate for Deposit bonds is 33% higher than for Surety bonds.
- The Fugitive Rate[2] is 47% higher for deposit bonds
- Defendants who abscond on surety bonds are much more likely to be recaptured compared with other forms of release.
- "States which ban commercial bail pay a high price." The fugitive rate in those states is estimated to be 85% higher for deposit bonds than it would be using surety bonds.

Shawnee County Experience

Nine years ago, Johnson County was considering the possibility of a deposit bond program. They contacted the Shawnee County District Court to ask about their experience. Shawnee County officials wrote and indicated that their FTA rate was 4%. This was based upon the number of cases charging the offense of Aggravated Failure to Appear as a percentage of total case filings. (If this is the definition of failure to appear, then this means that I haven't had anybody fail to appear in over five years.) As it happens, the number of failure to appear *warrants* equaled about 34% of case filings. The research I did back then clearly demonstrated that Shawnee County officials were not above manipulating or redefining their data to support their program.

When Johnson County again looked at the prospect of a deposit bond program in 2005, I had to check the performance of the Shawnee County program again.

To determine the true FTA rate on ORCD bonds in Shawnee County, I reviewed 500 criminal cases from 2004. I did this in blocks of 100 sequential cases spread throughout the year[3]. In those 500 cases I found 162 ORCD appearance[4] bonds. Of those 162 bonds, 53 resulted in failures to appear. (My definition of failure to appear is the issuing of a bench warrant for non-appearance.) This is a **failure to appear rate of 32.7% or 1 in 3**. [This is remarkably similar to the FTA rate from 9 years ago.]

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[2] Fugitive Rate is defined as missing for at least one year following failure to appear

[3] 04CR100-199, 04CR500-599, 04CR1000-1099, 04CR1600-1699, and 04CR2000-2099

[4] Shawnee County allows defendants who have been arrested by the police, but not charged, to post what they refer to as bail, despite the lack of a judicial basis for setting bail. If charges are not filed within 90 days the deposit is refunded (less administrative fee). I have not included these "bonds" unless charges were filed and the bond was utilized to secure appearance in the underlying case.

The bottom line is that this program does not work, failures to appear are high, and revenue from administrative fees is less than revenue would be from bond forfeitures paid by surety companies.

To summarize the high points of the Shawnee County ORCD program:

- One in three defendants released on an ORCD appearance bond fail to appear;
- Shawnee County generates over $50,000 *less,* annually, in administrative fees than Johnson County generates in bond forfeitures;
- Shawnee County's incarceration rate is almost double that of Johnson County's (3.2 per thousand versus 1.7 per thousand). Put in other terms, if Johnson County had the same incarceration rate as Shawnee County, the jail would be holding over 1600 inmates right now;
- Shawnee County has the lowest rate of recovery of BIDS money of any county with a public defender's office, despite their claims of increased payments from these ORCD deposits[5];
- Shawnee County has one of the highest crime rates in the state, perhaps because their probation officers are busy supervising pre-trial releases rather than convicted defendants;

Clearly, Shawnee County is not the county to attempt to emulate.

Johnson County Experience

In late 2005, without any public hearings and without any input from the surety industry, the Johnson County District Court implemented a limited version of the Shawnee County program to test its effectiveness and/or viability in Johnson County.

Defendants were screened by court services officers on a daily basis. Those who successfully passed through several filters, including residency, criminal history, offense severity, lack of prior failures to appear were afforded the opportunity to post a deposit bond.

In order to assist in measuring the efficacy of these deposit bonds, I have tracked these bonds. The first ORCD bond was posted on October 14, 2005 and I have the numbers through March 1, 2007. They are as follows:

From 10/14/05 through 3/01/07 there were 206 ORCD bonds whose cases were successfully resolved. They were resolved as follows:

119 Sentenced
55 Diversion
28 Dismissed
2 Acquitted
1 Stay Order
1 Probation Revoked[6]

67 cases are still active and have yet to be resolved.

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[5] Indigent Defense in Kansas, A Report on State Policy and Management. H.Edward Flentje, Jay P. Newton. September 1995.

[6] Obviously, this bond was posted in violation of the local rules regarding ORCD bonds.

For this same time period there were 59 failures to appear. This gives us a working total of 265 bonds [206 + 59]. Of those 59 failures to appear, 27 are still missing. **This means that – after sixteen and a half months of this test program – the failure to appear rate of the ORCD program is 22.26%. [59 divided by 265] With 45.7 % of those who missed court, still being at large.** This number is particularly disturbing given that those defendants who were granted these bonds were screened, at great expense, and were considered to be the best risk to reappear. Certainly better risks to appear than those defendants who were given surety bonds.

Additionally, there are 13 other cases which I did not include in this total. These cases were resolved, but there were problems. These cases were resolved as follows:

2 – ORCD bond changed to PR after posting.
1 – Defendant committed suicide.
1 – Defendant surrendered bond
1 – Case was dismissed prior to any court appearances.
8 – ORCD bonds were revoked for bond condition violations.

I did not include these in the overall numbers because of the confusion as to where to place them. In theory, the revocations could be placed with the failures to appear, because there were violations of the bonds, however they were not failures to appear. The other five *could* have been placed with the successfully completed cases, except that the bond did not last the duration of the case. Given this confusion, I have not included these cases in my calculations. Either way, these cases do not substantially skew the overall failure to appear rate.

A program which allows almost 1 in 4 accused criminals to abscond with little or no repercussions would be difficult to justify.

DISCREPANCIES WITH JOHNSON COUNTY

To be fair, I should point out that I have included all ORCD bonds posted in Johnson County District Court to reach my overall FTA rate of 22.26% (59 Cases).

Johnson County, in their calculations has excluded traffic bonds, or at least has excluded traffic bonds as failures to appear.

My accounting indicates that ORCD bonds were posted as follows:

A) Criminal cases - 235 = 197 resolved + 38 FTAs - FTA rate = 16.1%

B) Traffic Cases - 30 = 7 resolved + 21 FTAs - FTA rate = 70.0%

C) All cases - 265 = 206 resolved + 59 FTAs - FTA rate = 22.2%

It is my understanding that Johnson County has calculated the FTA rate on ORCD bond to be roughly 14.3%. Johnson County has calculated its FTA rate using only the

failures to appear in criminal cases. However, they appear to have determined the failure to appear rate/percentage based upon the total number of ORCD bonds – including those allowed in traffic cases. [38 divided by 265 = 14.3%].

If one wished to calculate non-traffic FTAs, then all traffic cases should be removed.

Johnson County Revenue/Costs

As I noted, 59 ORCD bonds resulted in failures to appear. Of those, 27 are still at large. Ten Motions for Judgment on Bond have been granted. [The use of the Motion for Judgment on bond process brings up another problem. A Motion for Judgment on Bond is a special procedural matter which is allowed only for bonds posted under KSA 22-2802. KSA 22-2807 allows for a hearing to occur on a motion (rather than a separate lawsuit) and it allows service to be made upon the Clerk of the District Court, rather than the principal to the contract. ORCD bonds are an extra-statutory creation of the Supreme Court and as such would have to be treated like ordinary contracts. I.E. a separate lawsuit would need to be filed against the defendant to enforce them.]

Notwithstanding their legality, judgments in the amount of $15,500.00 have been granted. Deposits of $1,395.00 have been applied toward those forfeitures [$1,550.00 CD - $155.00 administrative fee]. This means that there is an outstanding uncollected (*and uncollectible*) balance of $14,105.00 in unpaid ORCD bond forfeiture judgments. Additionally, the ORCD bonds for the remaining defendants who have been missing longer than 60 days totals $11,800.00. If one factors the amount deposited less the administrative fees on those bonds, this means the State is out an additional $10,738.00 for those defendants.

Therefore it is easy to conclude that the test program in Johnson County has generated red ink in the amount of $24, 843.00 in unpaid bond forfeitures and judgments alone. This is to say nothing of the cost of administering the program [The man hours spent accounting for the funds, the cost of rearresting the individuals who fail to appear, the cost of screening dozens of defendants each week, etc.] While these costs are buried elsewhere, they are real costs and should be factored when considering the efficacy of this program.

I would note that over the same period of time, my company alone has paid $35,250.00 in bond forfeitures to the Clerk of the District Court. $14,100.00 of that total has been transferred into the General Fund of Johnson County and the remaining $21,150.00 has been paid to the General Fund of the State of Kansas. I cannot imagine that I would represent more than a quarter of all forfeitures paid. As such, I am assuming total surety bond forfeitures collected in Johnson County alone to be in excess of $140,000.00. This means that the Johnson County General Fund has received at least $56,000.00 in surety bond forfeiture payments. This is more than ten times the total administrative fees generated from ORCD bonds. When one compares the revenue generated for the State, you find $84,000.00 in bond forfeiture judgments paid to the State versus nothing in administrative fees and about $837.00 in collected forfeitures.

Also, over the past sixteen months, I have also spent over $45,000.00 in apprehension expenses to return my wayward clients back to custody. While it is hard to quantify the savings to the government, it is clear that there is absolutely no savings with ORCD bonds.

In short the deposit bond test program can be summed up at follows:
A failure to appear rate of over 20%
Over 45% of those fugitives are still at large.
Over $14,000.00 in uncollectible judgments, with another $11,000.00 coming due. .

Increased costs

Deposit bond systems can cause the state to incur substantial additional costs. These include:

Costs of Recapture – The government has to bear the expenses of recapturing all absconding defendants. This is a difficult cost to determine. A study in Illinois in the late 1980s indicated that the cost to return a fugitive to custody was $1,161.00 per fugitive. Kansas recently completed Operation Padloc III, which was a program to locate and recapture parole absconders and check on the status of registered sex offenders. The program was operated on a Federal Grant of $28,000.00. Operation Padloc III returned 12 individuals to custody. This is slightly more than $2,300.00 per fugitive. My company alone returned 162 fugitives to custody in 2006. This represents a savings of at least $188,000 and as much as $372,000 (using Operation Padloc II figures) to the various jurisdictions of the State of Kansas. And this is from just one surety company. Absent a healthy surety industry, the State will have to bear those costs itself.

Every jurisdiction, including Shawnee County, which has effectively done away with surety bail and replaced it with deposit bonds has had to establish large government agencies or staffs to run these programs, or simply watch their cases go away. In Cook County, Illinois, and Marion County, Indiana, for example, the pre-trial services offices have staff dedicated solely to resolving failures to appear – in essence they have had to establish their own warrants division (or in bonding terms, their own bounty hunters or fugitive apprehension staff). Cook County Pre-trial has established a Failure to Appear "booth" in the lobby of the courthouse. Defendants who have missed court can simply reschedule at the booth. A few years ago, Shawnee County (despite supposedly not having a FTA problem) attempted to get funds for a "private marshal" answerable to the court for purposes of apprehending fugitives. The money was not provided.

Costs of incarceration – Obviously, if more people fail to appear on deposit bonds – and the studies show that they do – those people are less likely to get back out once they are recaptured. As I noted earlier, Shawnee County has an incarceration rate almost double that of Johnson County. If Johnson County was forced to hold even an additional 300 inmates in custody at $75 per inmate, per day, the county would incur $8.2 Million in additional annual incarceration costs for Johnson County alone.

The BJS study further indicates that defendants on deposit bonds also take longer to secure their initial release than surety bonds. After one month only 82% of defendants who were to be released on deposit bonds had gained their release, versus 89% for surety bonds. Given the statewide jail population, any increase in pre-trial incarceration (say 7%) will increase incarceration costs dramatically.

Intangible costs – Justice Denied, Eroding Respect for the Criminal Justice System

If police officers are forced to deal with an increase in the number of fugitives, then they will be taken away from their primary function of protecting the citizenry. Or, if police officers are not retasked to this purpose, then criminal defendants will quickly learn that justice can be avoided by simply absconding. They will quickly deduce that their risk of recapture is simply a function of random bad luck (from their perspective).

This will help foster a "revolving door mentality" among charged defendants. The defendant is caught, he pays a "toll" in the form of a deposit bond, then he is gone again until, by a stroke of luck, he crosses paths with the police again. Since the jails have become overcrowded, he is released on yet another deposit bond and the cycle begins anew. All the while, justice is delayed and denied, and the victim of the crime is left to wonder about the futility of the criminal justice system. Police officers become embittered and frustrated about the increasing futility of *their* work, and the door opens for ambivalence and corruption.

These are real costs to society, although it would be difficult to attach a dollar figure to them.

It is quite easy to look at places that have adopted deposit bond programs. Life has not become better in those places. Crime has not gone down. The costs of running the criminal justice system have not gone down or even stabilized. Rather these locations have seen large jumps in their crime rates, enormous expenses in housing criminal defendants and increases in official corruption. Quality of life and property values have gone down. Obviously, the world has not come to an end in these places, but the taxpayers *have* suffered the burden of subsidizing the release of criminal defendants.

CLOSING

The bottom line is this:

If you feel that it is acceptable for the Supreme Court to use its rulemaking ability to override the will and intent of the Legislature;

If you support the Courts commandeering an entire industry and charging the fees it charges without providing the same service

Then you should oppose this bill.

However,

If you feel that it is important to have a healthy and vital surety bail bond industry, that we provide a valuable and important service; and

If you agree with the Colorado Supreme Court and the former Attorney General's opinion that this decision rests with the Legislature, and that the Legislature has already spoken on this matter;

Then I would ask you to support this bill.

Thank you for your time and consideration in this matter.

TO: Senate Judiciary Committee

FROM: David Stuckman, American Bail Coalition

DATE: March 13, 2007

RE: Written Support for SB 203

Good afternoon, Mr. Chairman, members of the committee, I am David Stuckman and I am writing to you on behalf of the American Bail Coalition. We bail agents are dedicated men and women who serve the communities in which we live. We guarantee that defendants appear in court to defend charges, and that victims of crime have their day in court.

We provide this service without cost to the taxpayers. The fee that we charge a defendant pays for us to track the defendant through court, making sure that they appear each time. If a defendant does not appear in court, the fee is used to pay for a recovery agent to find and arrest the defendant. We use many methods to find a defendant who has skipped court. We contact friends and family of the defendant, who usually are co-signers guaranteeing the defendant's appearance. We check the defendant's residence, with employers, and interview known associates. Eventually we find the defendant and bring him back to the jurisdiction at no cost to the taxpayers.

SB 203 ensures that bondsmen remain in business in the state of Kansas and are able to provide this vital service without raising taxes to pay for police to do the job.

MEMORANDUM

To: House Judiciary Committee Members

From: Doug Smith for the Kansas Professional Sureties

Date: March 13,2007

Our members reviewed the records and local rules of the Johnson County District Court relating to their Own Recognizance-Cash Deposit (ORCD) program for the last 15 months.

During that review we noted 88 instances were the Court exceeded their own rules on ORCD, and permitted defendants out on bond with either a bond amount that was set above the authorized limit or allowed a defendant who did not meet the qualifications to be included in the program.

Attached is a copy of the Johnson County Own Recognizance-Cash Deposit Local Rule and a brief summary of the cases we identified.

We request that the Committee support Senate Bill No. 203 and eliminate the Court created 10% program, which is not consistent with K.S.A. 22-2802 or the Supreme Court Rule 114.

House Judiciary
Date 3-13-07
Attachment # 9

JOHNSON COUNTY - CRIMINAL RULE NO. 8A

Own Recognizance-Cash Deposit

This rule establishes procedures and qualifications for Own Recognizance-Cash Deposit (10%) bonding for release from custody in certain situations. This rule provides an alternative to surety bonding or 100% cash bonding in qualifying cases, and is always subject to case-specific orders of the Court.

1. Definitions:
    A. The term "cash" as used in this rule means United States currency, a money order, or a bank draft or certified check drawn on a Kansas banking or savings and loan institution.
    B. The term "court" as used in this rule refers to the Tenth Judicial District Court of the State of Kansas, or Johnson County District Court.
    C. The term "accused person" as used in this rule means a person in custody by reason of charges in a criminal or traffic case.
2. Court Services Officers, Deputy Sheriffs and Correctional Officers who are sworn in as Deputy Clerks of the District Court are authorized to permit persons in custody to post bail bonds in accordance with the provisions of this rule.
3. **Cases qualifying for ORCD (Own Recognizance-Cash Deposit) bonding must meet both of the following qualifications:**
    A. Cases with bonds set at not more than $2,500.00; and
    B. Cases in which the most serious charge is classified as a misdemeanor, level 8, 9 or 10 non-person felony, level 4 drug felony or DUI.
4. **Accused persons qualifying for ORCD bonding must be residents of The State of Kansas with a criminal history of "G," "H," or "I," and to whom none of the following apply:**
    A. Prior non-traffic bond forfeitures.
    B. Has been extradited or is awaiting extradition to another state.
    C. Has a detainer or hold from other states or federal authorities.
    D. Has been detained for an alleged violation of probation.
5. Any accused person who qualifies under paragraph 4 above and whose case qualifies under paragraph 3 above, may deposit with the District Court Clerk cash equal to 10% of the total amount of the bond set by schedule or by the order of the charging judge, and execute a bail bond in the total amount of the bond. The Clerk shall furnish the accused a cash deposit receipt for the funds deposited. All conditions of the bond set by the Court and this rule must be satisfied by the accused person.
6. When an accused person is released on a ORCD bond, the cash deposit shall be held by the Clerk of the Court until such time as the accused has fully performed all conditions of the bond and is discharged from all appearance and financial obligations to the Court. When the accused has been so discharged, 90% of the cash deposit shall be returned to the accused upon surrender of the cash deposit receipt issued by the Clerk. **Ten percent of the cash deposit shall be retained by the Clerk as an administrative fee.** Cash deposit bonds shall be placed in an interest-bearing financial institution account by the Clerk; however, no interest shall be paid to the accused on a cash deposit bond. **Annually the aggregate amount of administrative fees retained and interest earned on cash deposits bail bonds shall be turned over to the General Fund of Johnson County, Kansas.**
7. A cash deposit receipt for ORCD bond shall be issued only to the person being released on bond. Any person posting cash for another person shall be informed that any cash posted as a bail bond is the property of the accused person and may be subject to forfeiture and/or application to payment of court ordered financial obligations, and will be refunded only to the accused party. Any arrangements to furnish bond money are between the lender and the accused person.
8. All ORCD bonds issued in Johnson County, Kansas shall be subject to the condition of forfeiture and the amount deposited will become the absolute and permanent property of the State of Kansas should one or more of the following occur:
    A. Accused person makes a false statement or representation regarding the criteria for ORCD bond.
    B. Accused person fails to appear in court pursuant to court order at any stage of the proceedings.
    C. Accused person fails to report as directed to a Court Services Officer.
    D. Accused person fails to perform any other condition of bond imposed by the Court.
9. Any person admitted to ORCD bond may be subject to Bond Supervision or other conditions imposed by the Court.
10. This rule shall not limit or restrict the right of any person to seek or obtain pretrial release under other statutory methods of admitting accused persons to bail or the authority of a Judge of the District Court to determine bail. The participation of an accused person in this program shall be on a voluntary basis.
11. This rule shall not apply to civil bench warrants.

Johnson County
ORCD Bonds posted in violation of local rules by either exceeding dollar amount allowable or qualification requirements

No.	Date Bonded	Case Number	Bond Amount	Qualify for ORCD?	Disqualification Reason	Charges
1	10/11/05	05CR2902	$1,000	No	DET	
2	12/30/05	05CR3625	**$5,000**	No	MO/$	Computer crime
3	1/2/06	06DV09	**$4,000**	No	$	Domestic battery
4	1/15/06	06CR132	**$3,500**	No	$	possession cocaine
5	1/16/06	06CR141	$1,500	No	MO	
6	1/16/06	06DV90	$2,500	No	PF	
7	1/18/06	98TC6505	$1,500	No	PBF	
8	1/18/06	02TC8160	$750	No	PV,DET,CH-C,PBF	
9	1/25/06	02TC11922	$300	No	MO	
10	1/26/06	06TR21	$500	No	Det	
11	2/1/06	05TC619	$1,500	No	AZ,PBF	
12	2/3/06	06TR37	$300	No	MO	
13	2/3/06	05TC7495	$250	No	MO	
14	2/12/06	94CR447	$1,000	No	WI	
15	2/14/06	06TR49	$750	No	MO - 2 FTAs rei	
16	2/17/06	03TR433	$1,500	No	MO, PBF	
17	2/19/06	06CR373	$100	No	CH	
18	3/7/06	06CR536	$1,000	No	CH	
19	3/7/06	05CR3611	$2,500	No	CH	
20	3/13/06	05TC10543	$750	No	CH	
21	3/18/06	06DV454	$2,000	No	PF	
22	3/18/06	06CR851	$2,000	No	PF	
23	3/28/06	06CR171	$2,500	No	Illegal	
24	4/4/06	06CR727	$1,500	No	PBF	
25	4/10/06	03TR433	$1,500	No	MO/PBF	
26	4/14/06	06DV590	$2,500	No	CH	
27	4/18/06	06DV606	$1,000	No	PBF	
28	4/21/06	06CR903	$2,000	No	CH	
29	4/21/06	01TR403	$750	No	MO/DET/PBF	
30	4/21/06	05TC8415	$350	No	MO/PBF	
31	4/22/06	06CR1148	$500	No	IL	
32	4/22/06	06CR1149	$2,500	No	PF	
33	5/8/06	06CR990	$1,000	No	MO	
34	5/8/06	06CR1287	$2,500	No	$, Ore DL	
35	5/12/06	06DV741	$500	No	LA DL	
36	5/16/06	06CR1376	$2,500	No	Illegal	
37	5/19/06	06CR1436	$1,000	No	MO DL	
38	5/25/06	06CR1494	$2,500	No	Illegal	
39	6/2/06	06CR308	$1,500	No	Det	
40	6/14/06	04TC6662	$750	No	PBF	
41	6/19/06	06TR91	$750	No	PBF	
42	6/20/06	03CR1867	$1,000	No	PV, CH	
43	6/25/06	06CR1814	$2,500	No	Det/CH	
44	6/28/06	05TC1564	$1,000	No	PBF	
45	6/28/06	06DV1030	$1,000	No	PBF	
46	6/28/06	05TC8413	$1,000	No	MO,PBF	
47	7/1/06	06CR1877	$2,500	No	CH = "C"	
48	7/1/06	06CR1880	$1,500	No	Illegal	
49	7/4/06	06DV1055	$2,500	No	Illegal	

No.	Date Bonded	Case Number	Bond Amount	Qualify for ORCD?	Disqualification Reason	Charges
50	7/5/06	06DV1070	$1,000	No	MO DL	
51	7/9/06	05CR3188	**$3,000**	No	$,PBF	(F) VCL
52	7/21/06	06CR2077	$2,500	No	PF	
53	8/2/06	05TC2891	$1,000	No	PBF	
54	8/2/06	05TR366	$750	No	PBF	
55	8/2/06	06TR345	$750	No	PBF, CH	
56	8/3/06	06TC6291	$750	No	PBF, CH, MO	
57	8/8/06	06CR1920	$2,000	No	PBF, CH	
58	8/17/06	06CR2318	$2,500	No	Ill	
59	9/5/06	06CR1296	$1,500	No	MO	
60	9/5/06	06CR2515	$2,000	No	MO	
61	9/6/06	06CR2528	$1,500	No	Ill	
62	9/9/06	06DV1421	$1,000	No	MO DL	
63	9/15/06	06CR2684	$2,500	No	Ill	
64	9/18/06	06CR2690	$2,000	No	CH	
65	9/19/06	06CR2702	$2,500	No	Ill	
66	9/19/06	06CR2701	$2,500	No	Ill	
67	9/28/06	06CR2446	**$10,000**	No	$, PF, CH	Fleeing LEO (PF)
68	9/28/06	06TC763	$750	No	Det	
69	9/28/06	06DV1524	$1,500	No	Ill?	
70	10/3/06	06CR2868	**$3,000**	No	$	Hosting a party
71	10/6/06	06CR2872	**$10,000**	No	$	Eavesdropping
72	10/27/06	06TR206	$750	No	PBF	
73	10/28/06	05TC4781	$750	No	MO	
74	10/30/06	06CR3108	$1,000	No	CH	
75	10/31/06	06CR3129	$2,500	No	CH	
76	11/3/06	06DV1700	$1,000	No	MO	
77	11/11/06	06DV1727	$500	No	MO DL	
78	11/12/06	06CR3257	**$5,000**	No	$, DET, Ill	Auto burglary
79	11/16/06	06CR3208	$2,000	No	Ill	
80	11/16/06	06CR3320	$2,000	No	PBF	
81	12/2/06	06CR3444	**$3,000**	No	$	Battery LEO
82	12/13/06	06CR3474	$1,500	No	Det	
83	12/13/06	06DV1850	$1,500	No	Ill - FTA stay	
84	12/22/06	06DV1177	**$5,000**	No	$,PF, Texas	Criminal threat (PF)
85	12/28/06	06TC699	$750	No	PBF	
86	12/28/06	06DV1949	**$5,000**	No	$	Domestic battery
87	1/5/07	06CR3500	$2,000	No	MO	
88	1/23/07	07CR185	$2,500	No	FLA DL	

PF = person felony
CH = Criminal history
$ = Bond amount exceeds allowable
DET = Detainer
Ill = Illegal Alien
PBF = Prior Bond Forfeiture
Priors = Criminal History
State Code = Non-resident

$167,050 Total of bonds

Kansas Professional Bail Bond Association, Inc.

KPBBA

1508 SW Topeka Boulevard
Topeka, Kansas 66612

TO: House Federal-State Committee

FROM: Darrel Manning, Recovery Agent

DATE: March 13, 2007

RE: Written Support for SB 203

Good afternoon Chairman and members of the Committee. My name is Darrel Manning and I am a bail bond recovery agent. I am writing to you in support of SB 203.

I was in law enforcement for 14 years, including being Osage County Undersheriff for two years, before I went to work in the bail bond industry in 2000. I work for various Kansas Bail Bond companies and specialize in the recovery of defendants who fail to appear in court. I have been asked to testify about recovery efforts when a defendant fails to appear in court.

When a professional surety posts a bond, the organization tracks the defendant's progress in court. Generally, the defendant is required to check in with the surety weekly. The defendant is constantly reminded about court dates. When a court date comes, the surety checks to make sure that the defendant appeared. Methods for such "court-checks" include sending an agent to court to verify appearance or calling the court clerk to verify appearance.

If a defendant is released on bond through a surety and fails to appear in court, a recovery agent immediately attempts to locate the defendant. We contact all of the persons who have agreed to payment of the bond, guaranteeing payment of the bond should the defendant fail to appear, as well as employers, family and friends. All of this information is obtained and verified when the bond is posted. In most cases, we are able to quickly locate and surrender the defendant to custody. Occasionally, a defendant will make a genuine effort to "run from the law" and head to another state. In such situations, if it does not make financial sense to travel to the other state, we contact a recovery agent in the other state and hire that agent to recover the defendant. The standard fee for such work is 15% of the face value of the bond plus expenses, but the fee is negotiable.

In contrast, when a defendant bonds out on cash and fails to appear in court, a warrant is issued by the judge and the local sheriff notified. Sometimes the warrant is entered into the national database, NCIC, allowing officers in other states to "see" that there is an active warrant. There is a fee for entering a warrant into this database, so only the more serious warrants are entered. Because law enforcement does not have funding for a dedicated staff of officers to actively track defendants who missed court, only the most serious cases are actively pursued. Even then, the warrants often must take a backseat to other law enforcement duties. The vast majority of warrants never have an officer actively seeking to enforce it. There simply are not enough officers to do this.

Thank you for the opportunity to speak in support of SB 203 and I encourage the committee to pass this bill. I am available for any questions that any members of the committee may have.

House Judiciary
Date 3-13-07
Attachment # 10

Randall J. Kahler
Testimony

Mannie's Bonding Company
302 E. Santa Fe
Olathe, Ks. 66061

Phone 913.782.0670
toll free 866.782.2245
Fax 913.780.6696

HOUSE JUDICIAL COMMITTEE

SENATE BILL NO. 203
MARCH 13, 2007

Mr. Chairman Oneal, Committee Members;

My name is Randall Kahler, I am the General Manager of Mannie's Bonding Company in Olathe, Kansas. I have been a bondsman for over 14 years.

I appear here today in support to Senate Bill 203 and hope the Committee pass the proposals put forth in this measure.

The bottom line is this: ORCD programs will cost the State and Counties millions of dollars every year. The 10 % ORCD bonding programs in effect today create a big black hole that **costs the State of Kansas and its taxpayers millions of dollars**. Each bond jumper ties up 2 to 6 Officers in an attempt to apprehend them. And that's only if they can be found. In addition, a bond jumper will probably not receive a new bond and will instead be incarcerated until their trial which necessitates the need for more jails. That of course, means millions of more dollars.

Remember that Wyandotte, Johnson, Miami Linn, and numerous other counties around Kansas are border towns, in which it only takes about 15-30 minutes to be in another state. The State line STOPS local law enforcement from apprehending bond jumpers. Once the defendant is thumbing his nose at our legal system from across the State line, The Sheriff can only call on outside agencies to help capture the defendant if the crime is a felony. Most of the law enforcement in other states are willing to assist, but there are a few that have their hands full with their own warrants and will not assist. Kansas City, Missouri is one of those jurisdictions. And you can believe that criminals know that can get away if they can make it one inch into KC, MO.

In 1995 the Johnson County Jail handled on the average of 285-325 inmates, by 2006 with two jails had doubled in size average 860-950 inmate's on a daily bases. That is with the current ORCD program and the Bond Supervision program in place.

Under the ORCD program, if the defendant has been released from jail and they jump bond, the judge is unlikely to give them a new 10% ORCD bond, (authorized by Kansas Supreme Court, Order 96). (Kansas Supreme Court order 96 is in direct violation of Kansas Supreme Court Rule 114), this will necessitate more space for them to stay in jail while awaiting a court date. As you all are well aware, our jails are expensive and they're overcrowded. Simply put, they will not be able to handle the extra load the ORCD program will force upon them. Currently, Johnson County farms out an average of three hundred fifty people a day with the 10% ORCD Program. Similarly, Wyandotte County farms their people out to Missouri. This is with the existing

Programs in place today. I'm not sure how many millions of dollars it will cost to build the new jails to facilitate what the ORCD programs generates, but I'm sure it will be tough to find the funds to do so.

The largest problem, however, is that local Sheriff's Offices in Kansas will have to depend on other agencies to apprehend the defendants, some of which may lack the manpower to do so. Then you will have to transport them back to Kansas through Security Transport Systems, or by sending Deputies to transport them themselves. The result is the same – local law enforcement will be forced to pull officers off the streets as a result of ORCD programs, and their already tight budgets will be stressed even further.

The ORCD Program will be a problem for the courts, by jamming up the system. When defendants fail to appear, it necessitates extra court appearances and burdens an already overwhelmed system. On the other hand, if you have a surety that signs for the defendant to get out, and if the defendant fails to appear the surety will go where ever he/she is and return them back to the jurisdiction they are wanted in. The current system leaves no cost to the taxpayers of Kansas or any other state and if the defendant is not apprehended then the surety has to pay the state the full Bond amount.

Question: How can the State of Kansas be sufficient surety for a defendant? Is the State going to pay Johnson County, Wyandotte County, or Shawnee County ect.., the full face amount of the bond, if the defendant doesn't show?

Reference:

Kansas Bill of Rights:

Section 9

All persons shall be bail able by SUFFICIENT SURETIES except for capital offences, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Supreme Court Rule 114
SURETIES ON BONDS

Whenever any bond is permitted or required to be taken by the clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court. It shall be sufficient if the surety thereon is a surety company admitted to do business in the state of Kansas. No corporation other than a surety company may be accepted as a surety unless ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach the bond a worn financial statement which reasonably identifies the assets relied upon to qualify the person as a surety and the total amount of any liabilities, contingent or otherwise, which may affect the persons qualifications as surety. No attorney or the attorney's spouse may act as a surety on a bond in any casein which the attorney is counsel. **The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the**

bond. The clerk shall retain the deposit until the bond is fully discharged and released or the court orders the disposition of the deposit.
(History: Am effective September 8 2006)

Statutory Pretrial Release and the ORCD Bond

Our Order No. 96 (issued January 17, 1995) gives all judicial districts discretion to adopt a pretrial release procedure similar to DCR 3.311. Paragraph 2 of Order No. 96 clearly says that any local rule dealing with pretrial release is "[i]n addition to the current statutory pretrial release system."

The legislature has addressed pretrial release procedures. Under K.S.A. 22-2802(1), persons charged with crimes "shall . . . be ordered released pending . . . trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety." Under paragraphs (3) and (4), 22-2802 contemplates three types of appearance bonds: own recognizance, surety, or a cash deposit instead of the bond. The bond is to have sufficient sureties, unless the magistrate decides that requiring sureties is not necessary to assure appearance. In lieu of a surety bond, cash may be deposited for the bond.

Under DCR 3.311, besides the statutory bonds described in 22-2802, the ORCD bond, a hybrid type of bond, is created. Paragraph 16 of DCR 3.311 provides that ORCD bond participation is on a voluntary basis and the statutory methods of providing bail are not to be limited or restricted. With the ORCD bond, the judge sets a bond amount (for example, $1,000). The accused is required to deposit 10 percent of that amount with the clerk of the district court ($100). The accused receives 90% of that deposit back upon completion of all obligations to the court--unless the accused has other financial obligations such as back child support or outstanding fines. If there are outstanding financial obligations, the $90 will be applied to those. Ten percent of the deposit ($10 in the example) will be kept as an administrative fee. Another key provision is Paragraph 15. This paragraph provides that when the court has specified the bond as cash or ORCD but the accused wants a professional surety bond, "the deputy clerk shall contact the judge authorizing the bond for modification of the bond."

Office of the Attorney General, State of Kansas. Opinion No. 87-11.

January 20, 1987.

Re: Insurance--General Provisions Relative to Casualty, Surety and Fidelity Companies--Bail Bonding Companies

Synopsis: There are generally two types of bonds accepted by courts in criminal proceedings. Insurance bail bonds are issued by a licensed surety under the authority of K.S.A. 40-1102. Non-insurance company bail bonds (commonly referred to as 'pocket bonds') are issued under the authority of K.S.A. 22-2806. Only a natural person may write 'pocket bonds' under the authority and regulation of K.S.A. 22-2806. A company may not write 'pocket bonds' under the purported authority of K.S.A. 22-2806 as such action would be in violation of K.S.A. 40-214 and the Uniform Unauthorized Insurers Act, K.S.A. 40-2701 et seq.

Cited herein: K.S.A. 22-2806; 40-201; 40-214;) 40-1101; 40-1102; **40-2701** et seq. look this up

40-201

Chapter 40.--INSURANCE
Article 2.--GENERAL PROVISIONS

40-201. Insurance company defined. For the purposes of this article the term "insurance company" shall, unless otherwise provided, apply to all corporations, companies, associations, societies, persons or partnerships writing contracts of insurance, indemnity or suretyship upon any type of risk or loss: *Provided, however,* That this definition shall not be held to include fraternal benefit societies as defined in section 40-701 of this code or hospitals or hospital associations which have been in operation ten years or more.

History: L. 1927, ch. 231, 40-201; L. 1935, ch. 193, § 1; March 14.

40-214

Chapter 40.--INSURANCE
Article 2.--GENERAL PROVISIONS

40-214. Conditions under which insurance may be written; certificate of authority; revocation, when; unlawful acts. It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions of the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for

any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245 and amendments thereto. Neither the enrollment of individuals under a group policy nor the inclusion of insurance in a credit transaction under an arrangement for its purchase by the creditor in compliance with the applicable provisions of the uniform consumer credit code shall constitute the effecting of a contract of insurance.

It shall be unlawful for any insurance company organized under the laws of this state to do business in any other state or territory of the United States without being first legally admitted and authorized to do business under the laws of such state or territory, and the insurance commissioner may revoke the license of any insurance company organized under the laws of this state and doing business in another state or territory without being first authorized so to do, and may require said company to pay the taxes upon the business so unlawfully written to the state or territory in which the business was written as provided by the laws of said state or territory. A company shall be considered admitted and authorized for the purposes of this section when it has been legally authorized to operate in such other state or territory as a nonadmitted insurer.

History: L. 1927, ch. 231, 40-214; L. 1929, ch. 196, § 1; L. 1959, ch. 209, § 1; L. 1974, ch. 184, § 2; L. 1979, ch. 133, § 1; July 1.

40-1101

Chapter 40.--INSURANCE
Article 11.--GENERAL PROVISIONS RELATIVE TO CASUALTY, SURETY AND FIDELITY COMPANIES

40-1101. Insurance company defined. Unless otherwise provided, the words "insurance company" as used in this article shall be construed to include any corporation having a capital stock as provided by section 40-1103, and organized for one or more of the purposes set out in section 40-1102.

History: L. 1927, ch. 231, 40-1101; June 1.

40-1102

Chapter 40.--INSURANCE
Article 11.--GENERAL PROVISIONS RELATIVE TO CASUALTY, SURETY AND FIDELITY COMPANIES

40-1102. Kinds of insurance and reinsurance authorized; limitations; paid-up capital and surplus requirements. Any insurance company, other than a life insurance company, organized under the laws of this state or authorized to transact business in this state may make all or any one or more of the kinds of insurance and reinsurance comprised in any one of the following numbered classes, subject to and in accordance with its articles of incorporation and the provisions of this code:

(1) (a) To insure against bodily injury or death by accident and against disablement resulting from sickness and every insurance appertaining thereto;

(b) to insure against the liability of the insured for the death or disability of or damages suffered by an employee or other person, and to insure the obligations accepted by or imposed upon employers under the laws for workmen's compensation;

(c) to insure against loss of or damage to, or destruction of property of the insured, or to the property interests of the insured, and to insure against such loss or damage to the property of others or to the property interests of others, for which loss or damage the insured may be liable;

(d) to become surety or guarantor for any person, copartnership or corporation in any position or place of trust or as custodian of money or property, public or private; to become a surety or guarantor for the performance by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, except contracts or policies of insurance;

(e) to insure titles to property and against loss by reason of defective titles or encumbrances;

(f) to insure the correctness of searches for all instruments, liens, and charges affecting property;

(g) to insure against loss by reason of the insufficiency of the security conveyed or pledged under mortgage or deed of trust;

(h) to insure the payment of bonds and notes secured by mortgages or deeds of trust, and to buy and sell mortgages or deeds of trust upon real property and interest therein;

(i) to insure against loss or damage which may result from the failure of debtors to pay their obligations to the insured, and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to any person so insured by the insurer;

(j) to insure the payment of money for personal services under contracts of hiring;

(k) to make inspections of and issue certificates of inspections upon elevators, boilers, machinery and all mechanical apparatus and appliances appertaining thereto;

(l) to insure against loss of use or occupancy caused by or resulting from any of the risks comprised within this class; and

(m) to insure against liability, loss or damage from any other risk, hazard, or contingency which may lawfully be the subject of insurance, and specific authority for the transaction of which has not been exclusively delegated to any other class or kind of company. Any company writing insurance against the loss or damage caused by fire, lightning, or by the perils of either marine or inland navigation or transportation, to buildings or other structures erected upon land, to piers, wharves, bulkheads, warehouses, marine vessels, railroad engines, rolling stock or equipment of railroads, or carrying charges for shipments of freight shall have a paid-up capital stock of at least . $900,000, a surplus of at least $600,000, and shall have deposited, pursuant to K.S.A. 40-229a, for the protection of its policyholders or creditors, or both with the commissioner of insurance securities authorized by K.S.A. 40-227, and amendments thereto, in an amount equal to not less than the minimum capital stock required by such a company, and shall maintain all reserves required by law for the kinds and classes of business transacted. The deposit required by this section for insurance companies not organized under the laws of this state may be deposited as provided herein or with the insurance department of any other state in the United States.

History: L. 1927, ch. 231, 40-1102; L. 1937, ch. 254, § 1; L. 1951, ch. 295, § 1; L. 1965, ch. 300, § 8; L. 1969, ch. 237, § 6; L. 1971, ch. 167, § 2; L. 1972, ch. 184, § 2; L. 1984, ch. 169, § 5; L. 1996, ch. 25, § 12; July 1.

ATTORNEY GENERAL OPINION NO. **94-25**

Criminal Procedure--Conditions of Release--Release Prior to Trial--Local Court Rule Concerning Pretrial Release

Synopsis:

District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

K.S.A. 22-2814 *et seq.* do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court. Furthermore, it is not permissible for a court to retain any portion of a cash deposit for the purpose of bond, however, the "fee" which the third judicial district is currently collecting from the defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, does not have to be turned over to the state treasurer.

K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

Paragraph 15 of the district court rule requires that the court's order reflect the type of bond procedure that the defendant is using. Cited herein: K.S.A. 1993 Supp. 20-350; 22-2802; K.S.A. 22-2809; 22-2814; Kan. Const., art. 2, sec. 16.

Summarizing our opinion, we conclude the following:

1. District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

2. K.S.A. 22-2814 *et seq.* do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court.

3. Furthermore, it is not permissible for a court to retain any portion of a cash deposit. However, the "fee" which the third judicial district is currently collecting from defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, would not be required to be turned over to the state treasurer.

22-2803

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

22-2803. Review of conditions of release; application for modification of conditions of release. A person who remains in custody after review of such person's application pursuant to subsection (6) or (7) of K.S.A. 22-2802 and amendments thereto by a district magistrate judge may apply to a district judge of the judicial district in which the charge is pending to modify the order fixing conditions of release. Such motion shall be determined promptly.

History: L. 1970, ch. 129, § 22-2803; L. 1976, ch. 163, § 7; L. 1986, ch. 115, § 56; Jan. 12, 1987.

22-2806

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

22-2806. Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102, and amendments thereto, shall justify by affidavit and may be required to describe in the affidavit the property by which such surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged and all such surety's other liabilities. No bond shall be approved unless the surety appears to be qualified. The appearance bond and the sureties may be approved and accepted by a judge of the court where the action is pending or by the sheriff of the county.

History: L. 1970, ch. 129, § 22-2806; L. 1992, ch. 314, § 3; July 1.

22-2807

Chapter 22.--CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
Article 28.--CONDITIONS OF RELEASE

22-2807. Forfeiture of appearance bonds. (1) If there is a breach of condition of an appearance bond, the court in which the bond is deposited shall declare a forfeiture of the bail.

(2) The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. If the forfeiture has been decreed by a district magistrate judge and the amount of the bond exceeds the limits of the civil jurisdiction prescribed by law for a district magistrate judge, the judge shall notify the chief judge in writing of the forfeiture and the matter shall be assigned to a district judge who, on motion, shall enter a judgment of default. By entering into a bond the obligors submit to the jurisdiction of any court having power to enter judgment upon default and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice thereof may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. No default judgment shall be entered against the obligor in an appearance bond until more than 10 days after notice is served as provided herein.

(4) After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subsection (2).

History: L. 1970, ch. 129, § 22-2807; L. 1976, ch. 163, § 9; L. 1977, ch. 109, § 17; L. 1986, ch. 115, § 58; L. 1999, ch. 57, § 30; July 1.

:

In Closing:

After reviewing the above cases there is no Kansas Status authorizing this type program except for Supreme Court Order 96 Which is in direct conflict with Supreme Court Rule 114. The judicial system is overwhelmed and the inmate population continues to grow. With the ORCD program in effect this will only increase the population of inmates, as to the studies in other states where they currently existing. This too will increase the sheriff duties in having to put more warrant officers on the street to apprehend the defendants

Thank you for your Time

R.J. Kahler

Running head: SENATE BILL 203

HOUSE JUDICIARYCOMMITTE

MANUEL BARABAN

TESTIMONEY OF MANUEL BARABAN

HOUSE JUDISARY COMMITTEE

SENATE BILL 203

MARCH 15TH 2007

MR. Chairman and Members of the House Judiciary Committee:

My name is Manuel Baraban and I have been in the bail bonding business for over 40 years in Olathe, Kansas. I have been a resident of the State of Kansas for 57 years. I am also a licensed Real Estate Broker in the state of Kansas and Missouri for over 50 years, and am a licensed private detective in Kansas.

The purpose of Senate Bill 203 is to clarify K.S.A. 22-2208 not change it. The purpose of bail is not to enrich the treasury but to guarantee the appearance of the defendant. If the defendant fails to appear and is not apprehended by the surety then 100% of the bond must be paid to the court. 60% of the forfeiture goes to the State of Kansas and 40% goes to the county general fund. 40% of 100% would bring in more money to the county and state then 10% of 100%.

In 1970 K.S.A. 22-2802 was revised to include release by personal recognizance. This was to be limited to residence of the state no prior record, no fail to appear and no threat to the community.

In March 23 1978: house bill 3129, permitted the release on recognizance and supervised release programs in the state. These programs will permit the pretrial release of those selected individuals who are unable to post a money bond but have stable roots in the community; dedicating that those individuals will appear at trail and their release will not jeopardize the public safety. House bill 3129 authorized each district court to establish, operate and coordinate supervised release programs, which would be administered by probation officers and other personnel of the district court. Johnson County and Wyandotte County has this program.

On three occasions the legislature introduced a bill, which would have independently prohibited or confirm the 10% program. These bills include house bill 2009, introduced in 1985, this bill would have authorized what the courts are doing now, house bill 2961 introduced in 1986, and house bill 2252, which was introduced in 1987. All three of this bill was defeated.

The 10% program began in 1986 on an administrative order by Judge William R. Carpenter, over the objection of the Shawnee County Bar, and his failure to get House Bill 2009 to pass which he sponsored in 1985. On Feb 16 1994 Judge Carpenter suspended the 10% system based on the opinion of Attorney General Stephen. That it was not legal. On the 17th day of January 1995, the Supreme Court authorized the 10% bond with out hearing a case that was appealed from the court of appeals that refused to hear the case to determine if it was legal to use the 10% system. The Supreme Court authorized Shawnee County to use the 10% system under the following rules. Bond limited to $2500.00 the defendant must be a resident of the county for 6 months, no prior convictions, no fail to appears, have a job, and no threat to the community no crimes of violence. Shawnee County did not follow the guidelines set out. All types of defendants charged with crimes were released on 10% including rape, aggravated robbery, aggravated assault, illegal use

of firearms and person even charged with murder, and bonds ranging up to $250,000.00. Johnson County has released defendants on 10% bonds as high a $10,000.00 and non residence of the state, defendants with prior fail to appear, and defendants already probation.

The average fail to appear on the 10% program is 33% in Shawnee County and in Johnson County it is 25%. The 10% program places on the sheriff office and local police departments a great burden to find the fail to appear as well failing to protect the public and protect the rights of the victims to get their day in court. All this is a great cost to the taxpayers. At one time Shawnee County wanted to hire 14 marshals to pick up the fail to appear due to the 10% program. The county commissioners refused to fund this because of the high cost to the taxpayers. The national average to apprehend a defendant that fails to appear range from $1800.00 to $3000.00.

The ORCD program generated 3,500,000.00 over a 6-year period for Shawnee County. This information was supplied to the Senate Federal State and Affairs Committee, the State received nothing. If the full amount of the bonds were collected the amount would be 35,000,000.00 if 100% were collected on bond forfeitures. The State would have received 60% of the $35,000,000.00 and the county would have received 40% of the 35,000,000.00. The state would have received 21,000.000.00 over 6 years and the county would have received 14,000,000.00, far more than the county received on their 10% program. The 10% program puts money in one pocket while taking a larger amount of money out of the other pocket. The taxpayers pay all this additional cost. The opponents to this bill will tell you that the county will lose money if the ORCD program is not allowed. This is its self is a conflict of interest. When the sitting judge believes that the county should make money off of the bond. This creates the image of impropriety that is self-evident. To get an honest $1000.00 bond Shawnee County sets the bond at $10,000.00. This means the defendant must place $1000.00 with the court. When the Court could set the bond at $1000.00 and let a bondsman make the bond the defendant would only have to come up with $100.00 to pay a bondsman. This not only causes the indigent defendant who can raise a $100.00 but not $1000.00 remains in jail. If he could raise the $1000.00 he would have $900.00 left to pay

an attorney. To justify that the 10% program makes money the court has to increase the amount of bond making harder for the defendant to get out of jail.

SUPREME COURT RULE 107
DUTIES OF THE ADMINISTRATIVE JUDGE
(a) Personal Matters.
(b) Trail Court Case Assignments.
(c) Judges Assignments.
(d) Information Compilation.
(e) Fiscal Matters.
(f) Committees.
(g) Liaison and Public Relations
(h) Improvement in the Functioning of the Court.

The Administrative judge shall evaluate the effectiveness of the court in administering justice and recommend changes. Release on 10% does not create effectives of the court to administer justice.

This bill will not affect the release on personal recognizance, bond supervision, or house arrest. Bond Supervision. ORCD program and bond supervision are two separate programs.

Quoting Senator Phillip B Journey, "I am also troubled that our courts are more concerned about generating revenues from cash deposits bonds than fulfilling their mission as a trail court. The legislature created laws for the courts to follow on appearance bonds. These laws were written to ensure the defendants appear in court and are designed to protect the public. The courts have decided to defy the law, legislate from the bench and establish their own rules, which they disregard. When an entity can't follow the laws of this

or its own rules it is our responsibility to correct the problem." Quote dated February 22 2007

Quoting Senator Greta Goodwin "Brought forth many voices on both sides of the issue. I do not believe this bill is about money but the underlying issue is who sets and has the responsibility to the public policy for our state. The legislature is the body, which formulates funding policies for the government and the public policy for our state. We must be willing to show leadership and do the right thing, which is to reaffirm our role as policy makers."

Supreme Court Rule 114

SURETIES ON BONDS

When ever any bond is permitted or required to be taken by the clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court it shall be sufficient if the surety thereon is a surety company admitted to do business in the state of Kansas. No corporations other than a surety company my accepted as a surety unless ordered and approved by the judge. When ever a natural person is accepted and approved as surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial deposit statement which reasonably identifies the assets relied upon to qualify the person as a surety and total amount of liabilities, contingent or otherwise which may affect the surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing surety, with the clerk of the district court cash

money in the full amount of the bond. The clerk shall retain the deposit until the bond is fully discharged and released or court order the disposition of the deposit.

The 10% program does not conform to the Kansas Constitution Bill of Rights Article (9), which states all person shall be bail able by sufficient surety except For capital offenses where the proof is evident and presumption great. It also does not comply with Supreme Court Rule 114. 10% of 100% is not sufficient surety.

In 1076 the legislature passed a bill authorizing the cities to release persons who are residence of the state with a valid driver's license to be released on a notice to appear. Since then the failure to appear in the cities by defendants has risen to 50% to 70% depending on which city you are referring to. The only time surety is used in the cities if the defendant fails to appear two or more times. Before the notice to appear in the cities the fail to appear rate was less than 5% and 95% of the bondsman appended those who failed to appear.
When a tax supported bail agency is created to assist the courts in screening defendants, Parkinson Law about bureaucracy inevitably set in. Personal needs soar, budget request climb, and in to time all the costs outweigh the bail agency's value to the community.

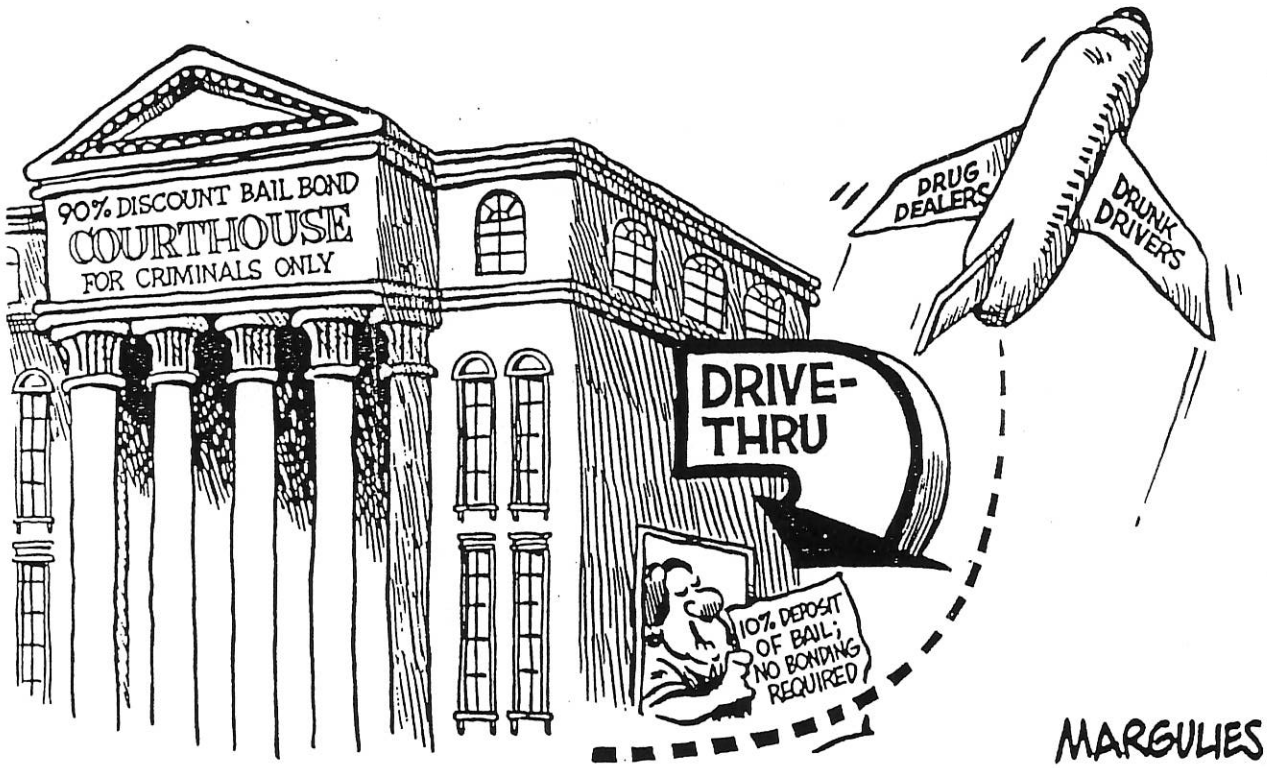
The real questions that you should consider in senate bill 2003 are:

1. **Does this change to the statue provide any benefit to the State? Yes**
2. **Does this change to t he statue provide savings to the taxpayers? Yes**

3. **Does this change protect the citizens and victims of the State of Kansas? Yes**
4. **Does this relieve law enforcement from having to spend time and money trying to apprehend fugitives and save taxpayers money? Yes**
5. **Does this bill conform to the Kansas Constitution, Bill of Rights Article (9)? Yes**
6. **All persons shall be bail able by sufficient surety except for capital offences where the proof is evident and presumption great. The question is 10% of 100% sufficient surety. No.**
7. **If the 10% program is allowed this would put 1500 bondsman out of work. If the average bondsman paid a minimum of $3000.00 in taxes to the state of Kansas the State would loose $4,500,000. A year in taxes.**

Representatives I ask that the Judiciary Committee votes to approve Senate Bill 203.

References



" Do you want a receipt ?... "

SB 184, An act concerning sexually violent predators; relating to costs of determination; amending K.S.A. 59-29a04 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 33, Nays 7, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Huelskamp, Jordan, Kelly, Lee, McGinn, Morris, Palmer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Betts, Haley, Hensley, Journey, Lynn, Ostmeyer, Pyle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote No on **SB 184.** I understand the burden placed upon counties to pay the costs of defense in civil commitment hearings. We are constitutionally mandated to pay for the defense when individuals released from custody are to be determined to be a danger to themselves or others. I support the law. The fact that the prosecution will have the purse strings of the defense is not appropriate. The image of impropriety is self evident. We should refer this topic for interim consideration and create the equivalent to the Board of Indigents Defense Services for these civil commitment hearings. The Attorney General has no rule and regulation authority. There are no limits. There is no way to estimate the costs. I oppose **SB 184.**—PHILLIP B. JOURNEY

Senators Betts, Hensley, Ostmeyer and Pyle request the record to show they concur with the "Explanation of Vote" offered by Senator Journey on **SB 184.**

SB 203, An act concerning criminal procedure; relating to appearance bonds; amending K.S.A. 22-2803 and K.S.A. 2006 Supp. 22-2802 and 22-2807 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 2, Absent or Not Voting 0.

Yeas: Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Umbarger, Vratil, Wagle, Wilson, Wysong.

Present and Passing: Allen, Teichman.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: Many valid questions have been raised about the legality of the "Own Recognizance Cash Deposit" (ORCD) bond program, the court bonding program for local, low- risk criminal offenders. Yet the Chief Judge of the 10th Judicial District, Johnson County, has given valid reasons why the ORCD program should be allowed to continue, and has expressed opposition to passage of **SB 203.**

In J.C., in the last 15 months, Johnson County courts bonded out 347 people through the ORCD program. Of these, the failure to appear rate has been substantially lower than cash/surety bond cases.

ORCD is a tool judges can use in limited circumstances to monitor defendants. It usually involves bond supervision through the Court Services Dept. Bond supervision requires the defendant to report to a bond supervisor while the case is pending; this supervision enhances rehabilitation of the defendant during the court process. It may include random drug testing, monitoring of employment and no contact orders, and substance abuse and mental health evaluation and treatment. Eliminating ORCD bonds could deter the rehabilitation of said defendants, and thus harm community safety in Johnson County.

Because of my unanswered questions on the ORCD program in Johnson County, I pass on **SB 203.**—BARBARA P. ALLEN

MR. PRESIDENT: **SB 203** brought forth many voices on both sides of the issue. I do not believe this bill is about money but the underlying issue is who sets and has the responsibility of the public policy for our state.

The legislature is the body which formulates the funding policies for the government and the public policy for our state.

We must be willing to show leadership and do the right thing, which is to reaffirm our role as policy makers.

Therefore I vote *yes* on **SB 203**.—GRETA GOODWIN

Senators Barone and Francisco request the record to show they concur with the "Explanation of Vote" offered by Senator Goodwin on **SB 203**.

MR. PRESIDENT: I vote "Yes" on **SB 203.** I am troubled that our courts are more concerned about generating revenues from cash deposit bonds than fulfilling their mission as a trial court. The legislature created laws for the courts to follow on appearance bonds. These laws were written to ensure that defendants appear in court and are designed to protect the public. The courts have decided to defy the law, legislate from the bench and have established their own rules, which they disregard. When an entity can't follow the laws of this state or its own rules, it is our responsibility to correct the problem.—PHILLIP B. JOURNEY

Senators Lynn and Petersen request the record to show they concur with the "Explanation of Vote" offered by Senator Journey on **SB 203**.

SB 210, An act relating to county treasurers; concerning drivers' license examinations; relating to vehicle registration; relating to county treasurers acting as agents of the state; amending K.S.A. 8-234a and K.S.A. 2006 Supp. 8-126 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 249, An act concerning cities and counties; relating to natural resource development districts, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 255, An act concerning insurance; pertaining to the use of lapse rates; amending K.S.A. 2006 Supp. 40-409 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

The bill passed, as amended.

SB 259, An act relating to the secretary of state; concerning corporations and partnerships; amending K.S.A. 56-1a104, 56-1a504, 56-1a606, 56-1a607, 56a-1201 and 56a-1202 and K.S.A. 2006 Supp. 17-2036, 17-2718, 17-4634, 17-4677, 17-6202, 17-7002, 17-7304, 17-7666, 17-76,123 and 17-76,139 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee,

12-12

Feb. 26, 1994 Topeka Capital-Journal

Bail bond program put on hold

Decision comes in wake of opinion by Stephan

By BILL BLANKENSHIP
and STEVE FRY
The Capital-Journal

Shawnee County District Court has suspended an 8-year-old court-administered bail bond program because Attorney General Bob Stephan ruled the court doesn't have the authority to operate such programs.

Rep. Marvin Smith, R-Topeka, and Sen. Lana Oleen, R-Manhattan, sought the attorney general's opinion on the court's own recognizance-cash deposit bond program.

Here is how the ORCD bond program works:

Criminal defendants who meet certain criteria can get out of jail before trial if they pay the clerk of the district court a 10 percent deposit of their required bond amount.

If the defendant makes all court appearances, the court will refund 90 percent of the cash deposit and keep the rest to recoup costs.

If the defendant fails to make a hearing, the court can revoke the bond and require its full payment.

Without the program, the arrested person would either be released without putting up any money or would have to post a bond backed by property or a bondsman.

Stephan determined no state law specifically authorizes such a program. He further determined the Legislature on at least three occasions didn't pass bills specifically authorizing ORCD bonds.

District Judge William R. Carpenter, the court's administrative judge, has touted the ORCD program, noting 98 percent of defendants released under it show up in court. The fee retained by the court has generated $73,121 for Shawnee County.

But Smith said he and others also are concerned about a lack of accountability for the program and the personnel costs of administering it.

Smith contends those administrative costs haven't been factored into a cost-benefit analysis of the program. He and others want a Legislative Post Audit probe of the ORCD program in Shawnee County and two other judicial districts.

Carpenter said in a prepared statement Friday, "We respect the attorney general and his opinions."

But in the order suspending the program, Carpenter noted an attorney general's opinion is only advisory. Carpenter said the program would remain suspended until the law is clarified perhaps through a review by the court's 13 judges.

As to the program's cost and accountability, Carpenter said the program hasn't generated substantial expense since ORCD bonds constitute a small percentage of all bonds. The program also is audited by independent auditors once a year, and the books are open for inspection, Carpenter said.

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 96

In re: Pretrial Release

1. Reference: Article 1, Section 3, Kansas Constitution, K.S.A. 20-101, and K.S.A. 20-342.

2. In addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may also be accomplished by promulgation of a local rule substantially as provided in the attached example. Examples of necessary supporting materials are also attached.

3. Judicial districts whose current own recognizance-cash deposit pretrial release programs are not substantially in compliance with the attached example have until July 1, 1995, to submit a local rule substantially in compliance with the attached example. All other districts may adopt a local rule for this purpose whenever the judges of the district court determine such a rule should be adopted. An information copy of any OR-cash deposit local rule adopted shall be forwarded to the office of judicial administration concurrently with filing with the clerk of the supreme court.

BY ORDER OF THE COURT this 17th day of January 1995.

Richard W. Holmes
Chief Justice

Attachments

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XII. Impact of pretrial release on public safety

Beyond the financial and workload impact of pretrial failures, public safety is also compromised. The 5,816 releasees in the pretrial study weighted sample accounted for 5,320 new arrests, or an average of almost one new arrest per person.[12] These arrests were for a wide range of charges, including both violent and property offenses.

Arrests, however, are not a complete measure of public safety impact. Conviction on the charge is a more definitive measure. In this study, slightly more than 50 percent of rearrests resulted in conviction. This victimization analysis, however, looks only at convictions on violent and property charges, because each of these crimes is assured of having at least one victim. These charges accounted for 60 percent of the total rearrests recorded for the sample. Releasees convicted of violent or property offenses accounted for at least 1,670 additional victimizations (527 before weighting), a number which represents a conservative measurement of the impact on public safety resulting from pretrial failure.

When the sample results are extrapolated to the population from which they were drawn, and the number of people released on all bond types studied is estimated over a one year period, the problem of compromised public safety becomes even larger. For instance, using the weighted sample of 5,816 releasees and assuming relatively consistent levels of release over time, an estimated 30,000 defendants receive at least one pretrial release during one year in Cook County. Assuming relatively consistent levels of rearrest (as based on the rearrests recorded for the sample) these 30,000 releasees account for an estimated 27,734 rearrests. Applying the sample conviction rate of slightly more than 50 percent results in an estimated 14,283 new convictions for these 30,000 pretrial releasees. Removing rearrests for drug, sexual, and public order charges, an estimated 8,708 victimizations are attributable to defendants released prior to trial during one year in Cook County.

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[12]These weighted totals are based on 2,127 actual releasees and 1,696 rearrests. For details of the weighting necessary for this sample, see the "Pretrial failure: a workload perspective" section.

KANSAS DISTRICT COURT

Chambers of
NANCY E. PARRISH
District Judge

Shawnee County Courthouse
Division Fourteen
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4067
Fax (785) 291-4917

Officers:
NORMA DUNNAWAY
Administrative Assistant
LINDA S. BEARD
Official Court Reporter

TO: Senators
FROM: Nancy Parrish NEP
Chief Judge, Third Judicial District
DATE: February 21, 2007
RE: S.B. 203

I am writing you to encourage you to vote "NO" on Senate Bill No. 203. Senate Bill 203 prohibits the Own Recognizance (OR) Cash Deposit program that has been in effect in Shawnee County for over 20 years. This pretrial release program is used for lower level bonds. For example, a defendant posts either a $2500 OR cash deposit bond or a $2500 bond with professional surety. The defendant either would pay $250 to a bondsman (generally the bondsman charges 10% the amount of the bond) or $250 into the court. If the $250 is paid into the court, $225 is held until the completion of a defendant's case and if he or she is convicted, the $225 will be applied to court costs, probation fees, K.B.I. fees, and restitution. The remaining $25 is returned to the County General Fund. If the $250 is paid to a bondsman the money is not available to apply to any costs, fees, fines, or restitution but instead goes into the bondsman's pocket.

In the last 6 years almost $3.5 million has been available from Shawnee County defendants to apply toward court costs, probation fees, reimbursement for indigent defense costs, etc. In other words, over half million per year has been collected for the State General fund. Approximately $55,000 a year is returned to the Shawnee County General Fund. The court does not retain any of the money for its own use.

S.B. 203 not only prohibits OR cash deposit bonds but the bill also prohibits the posting of a cash bond unless it is in the full amount of the bond which will eliminate another way that the State can recoup court costs, fees, fines, etc. In other words, a defendant would have the choice of a $2500 with professional surety with a payment of $250 to a bondsman or posting $2500 cash on the case. The bottom line is that the defendant will choose the least expensive choice and go to the bondsman and the court's collection of court costs, fees, fines, etc. will sustain a major reduction.

Please vote "NO" on Senate Bill 203.

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Year	Shawnee County OR Cash Deposit Received Yearly and Available to Apply Toward a Defendant's Court Costs, Fees, Restitution, etc.	10% returned to the Shawnee County General Fund
2006	$552.251.00	
2005	$656,425.00	$119,224.00
2004	$656,425.00	
2003	$760,525.00	$77,529.35
2002	$722,770.00	$144,495.72
2001	$592,730.00	
TOTAL	**$3,839,924.45**	**$341,249.07**

Source:

Third Judicial District Accounting Department

Meth case fugitives hunted down

Bonding company finds couple in Iowa

By TONY RIZZO
The Kansas City Star

Alva Allen Jr. and his wife, Melissa L. Allen, woke up Wednesday morning in an isolated house near the tiny town of College Springs, Iowa.

Barely two hours later they were being marched into a Johnson County courtroom, shackled, handcuffed and, according to one witness, looking like "two wet chickens."

The house, it turns out, wasn't secluded enough for the fugitive suspects allegedly behind an Olathe methamphetamine laboratory.

"People talk," said Joe Mannie, the bonding company employee who led the six-man team that surprised the Allens in bed just after dawn.

Mannie's Bonding Co. stood to lose $40,000 in the bonds it had posted for the Olathe couple after their arrests in 2002 for allegedly running the drug lab in their Olathe home.

Alva Allen, 34, went to trial in October in Johnson County District Court, and a jury found him guilty of four felonies connected to the drug operation. He was facing a

See FUGITIVES, B-2

First glance

■ When two fugitives in a Johnson County meth lab case failed to appear for court hearings, the bonding company that stood to lose $40,000 put in 1,000 man-hours to find them. On Wednesday, the two were arrested outside a small town in Iowa.

Continued from B-1

minimum prison sentence of 11 years and six months, and potentially much longer.

But he was a no-show on Nov. 25 when lawyers were to argue about post-trial motions. District Judge James Franklin Davis increased his $25,000 bond to $100,000 and issued a warrant for Allen's arrest.

Melissa Allen, 32, has not yet gone to trial. Her most recent court appearance was set for Dec. 5, but she too didn't show up. Davis increased her $15,000 bond to $100,000 and issued an arrest warrant.

Mannie said the company spent about 1,000 man-hours in its search for the couple, including seven trips to Iowa.

"We weren't coming back until we had them," he said.

The house where the Allens were arrested is on a hill that afforded the residents an unobstructed view of the surrounding area in southwestern Iowa, just a few miles from the Missouri border. To get close Tuesday night, one of Mannie's agents rode in a car down the closest road. As the car coasted in neutral, he bailed out into a ditch. He made his way to the house, at times concealing himself under snow.

On Wednesday morning, Mannie said, the agents "drove in like gangbusters" in two vehicles, catching the Allens by surprise.

The arrests were made without a struggle, and the drive to Olathe was uneventful. Mannie took the pair directly to Davis' courtroom. They were then taken across the street to the county jail.

Assistant District Attorney Brent Venneman, who is prosecuting the drug cases, said he intended to file additional felony charges of aggravated failure to appear. Additional bonds will be set in those cases.

Would Mannie consider bonding out the Allens again?

"Not on a bet," he said.

To reach Tony Rizzo, Johnson County court reporter, call (816) 234-7713 or send e-mail to trizzo@kcstar.com.

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or party may advise the court in writing, with copies to other counsel or parties, prior to the date of the call as to case status and submit requests for the scheduling of hearings, pretrials and trials.

Rule 105

LOCAL RULES

The judge or judges of each judicial district may make rules that are found necessary for the administration of the affairs of the district court, and of all courts of limited jurisdiction in the district, to the extent they are not inconsistent with the applicable statutes and rules promulgated by the Supreme Court.

District courts will not reproduce Supreme Court Rules in publishing their local rules. Local rules promulgated by the district courts shall be clear and concise and shall be effective upon filing with the Clerk of the Supreme Court.

Rule 106

CUSTODY OF COURT RECORDS

No file or record of the court shall be permitted to be outside of the physical possession and control of the clerk or judge except on the signed receipt of an attorney or of an abstracter whose place of business is within the county, and subject to being returned immediately upon request. No file or record shall be taken outside of the county of the clerk's office except with the knowledge and consent of the clerk or by order of the judge.

Rule 107

DUTIES OF ADMINISTRATIVE JUDGE

In every judicial district the Supreme Court shall designate an administrative judge who shall have general control over the assignment of cases within said district under supervision of the Supreme Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the district. The administrative judge of each district shall be responsible for and have general supervisory authority over the clerical and administrative functions of the court.

At least once a month in single-county districts and at least once every three months in multiple-county districts the administrative judge shall call a meeting of all judges within the district for the purpose of reviewing the state of the dockets within the district and to discuss such other business as may affect the efficient operation of the court. Within guidelines established by the Supreme Court, by the judges of the judicial district

or by statute, the administrative judge shall have the following responsibilities.

(a) *Personnel Matters.* The administrative judge shall have supervision over recruitment, removal, compensation, and training of nonjudicial employees of the court. He shall prepare and submit to the judges for approval rules and regulations governing personnel matters to ensure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.

(b) *Trial Court Case Assignment.* Cases shall be assigned under the supervision of the administrative judge. Under his supervision, the business of the court shall be apportioned among the trial judges as equally as possible and he shall reassign cases as necessity requires. He shall provide for the assignment of cases to any special division established in the court. A judge to whom a case is assigned shall accept that case unless he is disqualified or the interests of justice require that the case not be heard by that judge.

(c) *Judge Assignments.* The administrative judge, with the approval of the other judges, shall provide for the assignment and reassignment of judges to any specialized division of the court. The administrative judge shall prepare an orderly plan for vacations. The plan shall be approved by the judges of the court and shall be consistent with statewide guidelines.

(d) *Information Compilation.* The administrative judge shall have responsibility for development and coordination of statistical and management information.

(e) *Fiscal Matters.* The administrative judge shall supervise the fiscal affairs of the court.

(f) *Committees.* The administrative judge may appoint standing and special committees necessary for the proper performance of the duties of the court.

(g) *Liaison and Public Relations.* The administrative judge shall represent the court in business, administrative or public relations matters. When appropriate, he shall meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.

(h) *Improvement in the Functioning of the Court.* The administrative judge shall evaluate the effectiveness of the court in administering justice and recommend changes.

Rule 108

REPRODUCTION AND DISPOSITION OF ORIGINAL COURT RECORDS

(a) The administrative judge is authorized to provide for photographing, microphotographing, electra photographing, or reducing any form of court record which exists in that judicial

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ndard size paper. Typing shall be double-spaced except that single cing may be used for subparagraphs, legal descriptions of real estate, itemizations, quotations, and similar subsidiary portions of the instrument.

[History: Am. effective July 1, 1982; Am. effective July 1, 1988.]

Rule 112

DUTY TO PROVIDE ADDRESSES FOR SERVICE

In all instances in which the Code of Civil Procedure requires that the secretary of state, the commissioner of insurance, a clerk of court, or other public officer serve by mail, any summons, notice or other document on a named party, either a natural rson or corporation, at the instance and request of another rty, the latter party shall provide the officer with the name and address of the party to be served. If service is required to be by restricted mail, the necessary postal charge shall also be advanced by the party seeking service. If the address of a party to be served currently appears on a registry or other record required by law to be kept in the office of the officer, that address shall be used by the officer and none need be supplied by the party seeking to effect the service. Upon failure of the officer to locate the name and address from his registry he shall notify the party or his counsel within ten (10) days.

Rule 113

CLERK'S EXTENSION

In cases filed pursuant to Chapter 60 of the Kansas Statutes Annotated, the initial time to plead to any petition, as the time is stated on the summons served upon the party, may be extended once by the clerk of the court for a period of not to exceed ten additional days. The party seeking the extension shall prepare ... order for the clerk's signature, and copies thereof shall be served upon counsel for all adverse parties in accordance with K.S.A. 60-205. All other extensions of time to plead shall be by order of the judge.

[History: Am. effective July 1, 1982.]

Rule 114

SURETIES ON BONDS

Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do bu... ess in the State of Kansas. No corporation other than a s... company may be accepted as a surety unless so ordered

and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify him as surety and the total amount of any liabilities, contingent or otherwise, which may affect his qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.

Rule 115

ENTRIES OF APPEARANCE

In all actions in which a party shall enter his appearance solely by personally signing an instrument designed for that purpose, and no attorney subsequently appears of record to represent him, such entry of appearance shall be held to be ineffective to constitute service under K.S.A. 60-203 unless the signature of the party has been acknowledged before an officer authorized by law to take acknowledgements.

Rule 116

ADMISSION OF ATTORNEY FROM ANOTHER STATE

(a) Any attorney not admitted to the practice of law in Kansas but regularly engaged in the practice of law in another state or territory, and who is in good standing pursuant to the rules of the highest appellate court of such state or territory, who has professional business in the courts or any administrative tribunal or agency of this state, may on motion be admitted to practice law for the purpose of said business only, upon showing that he or she has associated with him or her, an attorney of record in the action, hearing or proceeding, who is a resident of Kansas, regularly engaged in the practice of law in Kansas, and who is in good standing under all of the applicable rules of the Supreme Court of Kansas. The Kansas attorney of record shall be actively engaged in the conduct of the matter or litigation, shall sign all pleadings, documents, and briefs, and shall be present throughout all court or administrative appearances. Service may be had upon the associated Kansas attorney in all matters connected with said action, hearing or proceeding, with the same effect as if personally made on the out-of-state attorney, within this state. Any out-of-state attorney admitted pursuant hereto shall be subject to the

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Law Office of Darrell Smith

7270 W. 98th Terrace Suite 220
Overland Park, KS 66212
(913) 381-4338
Fax: (913) 341-4780

January 23, 1997

Manuel Baraban
Mannie's Bonding Company
302 East Santa Fe
Box 546
Olathe KS 66061

Dear Mr. Baraban:

Thank you for providing me with a copy of proposed Senate Bill No. 28. After reviewing the new sections at the beginning of proposed Senate Bill No. 28, like you I became concerned about the possible impact this bill could have on the criminal justice system. As the former bond liaison with the Johnson County District Attorney's Office, as you know, I was in a position to observe quite closely the machinations of the present bonding system in Johnson County, Kansas. Like you, I am quite concerned that a cash recognizance system provides less incentive to a criminal defendant to appear in court. This belief is based upon my assumption that the remaining 90% exists only in the realm of fiction. I would be interested in seeing whether or not jurisdictions which have this system are actually collecting the remaining 90% when a forfeiture and judgment are incurred. I have strong doubts that this remaining 90% is ever being collected.

This situation is different from a bonding contract with a professional surety such as yourself where the contract provides security for the entire amount of the bond and in the case of a failure to appear followed by a forfeiture and judgment, the court knows the entire amount of the bond may be collected from the surety who assumes the risk of collecting reimbursement from his client. This situation obviously provides far greater incentive to a defendant who knows that the entire amount of the bond and not a paltry 10% will actually have to be paid if he fails to appear.

The predictable result if this legislation is enacted is that there will be far more warrants issued for defendants failing to appear once it becomes common knowledge what the actual consequences for failing to appear are. As a practical matter, a defendant who posts this 10% which must have cost deducted prior to being returned, will realize that in most cases, he is not going to see the money again, therefore, his incentive to show up for court is only the incentive to avoid having another warrant issued. In many cases, the defendant might opt for a warrant.

I am concerned that the priorities in this legislation are a short-sighted attempt to find another source of revenue while sacrificing a system the provides maximum incentive to criminal defendants to appear in court. In my opinion, the appropriate priority for society would be to make sure that people showed up for court, not provide a system for collecting costs and fees at the cost of possibly allowing accused criminals to escape justice. In the long run, any system which results in more failures to appear, I believe, will cost more money to the state in an indirect manner. Obviously, if criminal defendants fail to appear more frequently, more officers will be needed to serve warrants, more jail cells will be needed

to incarcerate those who cannot make their second bond if they are picked up and more failure to appear cases will in turn be filed by the District Attorney's Office. This does not account for the other costs incurred by a society in which people are out on the street on warrant status who should be in the criminal justice system.

After reading this bill and knowing the high number of appearances in the Johnson County district courts, I am reminded of a saying that my father was very fond of : "If it ain't broke, don't fix it." I would be very happy to discuss this matter with you further or anyone who wishes to receive my opinion. It is my understanding that the Kansas County and District Attorneys Association is also opposed to this legislation. I think that if this is correct, I think that the opinion of a statewide prosecutors office should be weighted heavily by the legislature.

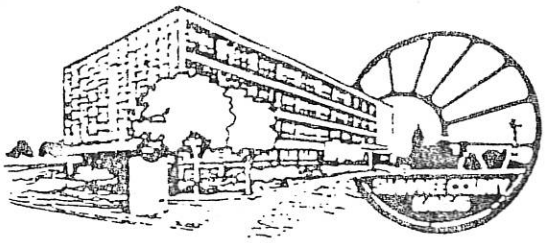
Please contact me if I can be of further assistance.

Sincerely,

Darrell L. Smith
Attorney

DLS/jv

12-22



Shawnee County
Sheriff's Department
Sheriff Dave Meneley

200 EAST 7TH STREET
TOPEKA, KANSAS 66603-3932
COURTHOUSE ROOM B-16 913-233-8200 EXT 4044

October 26, 1993

Representative James Lowther, Chairman
Legislative Post Audit Committee
Topeka, Kansas

Dear Chairman Lowther and Committee Members:

As Sheriff of Shawnee County and a career police officer in Topeka, I have a very good knowledge of the crime problem in Topeka and Shawnee County. I am aware of a bail bond program being conducted by the Judges in this district. It would appear from my review of the situation there is no legal authority for the program.

I believe that these type of programs do not deter crime, but in fact contribute to the crime problem. Anytime you make it cheaper to commit crimes that activity will increase. These type programs only send the message to those who would conduct themselves criminally that they will not be held accountable because the system again is making it cheaper for them to do business. What conclusion would you draw from this system if you were in their shoes.

I believe an investigation of the bail bond program is highly warranted. As a public official, I have no fear of investigations and if the Court is operating legally they should have no objection either. I personally disagree with any program which encourages criminal activity and this program can only stimulate the business of crime.

Sincerely,

Dave Meneley

Sheriff Dave Meneley
Shawnee County, Kansas

DM/jl

12-23

Dear Representative Smith, Senator Oleen and Judge Carpenter:

You request our opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. Briefly, the program which is administered by court services officers and employees of the department of corrections establishes an automatic bond schedule for pretrial release for certain crimes. Representative Smith and Senator Oleen are concerned that certain facets of this program violate the statutes which deal with pretrial release and surety bonds. Those concerns can be summarized as follows:

1. Do court services officers (CSOs) and employees of the department of corrections (DCOs) who are sworn as deputy clerks of the district court, have authority to admit to bail persons in custody?

2. Is it permissible for a court to allow an accused person to post 10% of the amount of an appearance bond?

3. Is it permissible for a court to retain 10% of an appearance bond as an administrative "fee" and must the court turn over this amount to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the defendant?

5. If a defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect that change?

Our inquiry will focus on whether certain provisions of district court rule 3.324 violate the statutes. In order to make that determination, it is important to not only review the rule itself but to understand the mechanics of how it operates.

The rule establishes an automatic bond schedule (schedule) for certain crimes ranging from county resolution violations to "C" felonies. The schedule sets forth the amount and type of bond which the court will accept. Under certain conditions, persons in custody are not eligible for schedule bonds. (Some of those circumstances include situations involving prior bond forfeitures, extradition, prior felony convictions and if there is a threat to public safety or fear that the accused may flee the jurisdiction.) If the schedule requires a surety bond in the amount of $1,000 or less, Shawnee county residents may be released on their own recognizance if they or their surety have significant ties to the county. (*E.g.* real estate, employment, Kansas driver's license, etc.) Such a defendant as well as his or her surety enter into a written recognizance bond by which the defendant agrees to appear in court when required. If the defendant fails to appear, the bond is forfeited and the surety or the defendant is liable for the face amount of the bond.

If the schedule requires a surety bond in an amount over $1,000 and less than $2,500, Shawnee county residents may be released if they or their surety meet the significant ties condition and if the defendant posts an "OR cash deposit bond" (OR-CD). This bond requires that the defendant or surety deposit 10% of the face amount of the bond to the clerk of the district court. If the defendant fulfills all the conditions that the bond requires, 90% of the deposited amount is returned to the defendant and the clerk retains the remainder as an "administrative fee" which is then turned over to the county. For example, if the bond amount is $2,500, the defendant or surety pays $250 to the clerk. If the

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 22, 1994

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ATTORNEY GENERAL OPINION NO. 94- 25

The Honorable Marvin Smith
State Representative, Fiftieth District
State Capitol, Room 115-S
Topeka, Kansas 66612

The Honorable Lana Oleen
State Senator, Twenty-Second District
State Capitol, Room 136-N
Topeka, Kansas 66612

Honorable William Carpenter
Administrative Judge of the Third
Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Re: Criminal Procedure--Conditions of Release--Release Prior to Trial--Local Court Rule Concerning Pretrial Release

Synopsis: District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court. Furthermore, it is not permissible for a court to retain any portion of a cash deposit for the purpose of bond, however, the "fee" which the third judicial district is currently collecting from the

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defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, does not have to be turned over to the state treasurer.

K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

Paragraph 15 of the district court rule requires that the court's order reflect the type of bond procedure that the defendant is using. Cited herein: K.S.A. 1993 Supp. 20-350; 22-2802; K.S.A. 22-2809; 22-2814; Kan. Const., art. 2, § 16.

* * *

Dear Representative Smith, Senator Oleen and Judge Carpenter:

You request our opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. Briefly, the program which is administered by court services officers and employees of the department of corrections establishes an automatic bond schedule for pretrial release for certain crimes. Representative Smith and Senator Oleen are concerned that certain facets of this program violate the statutes which deal with pretrial release and surety bonds. Those concerns can be summarized as follows:

1. Do court services officers (CSOs) and employees of the department of corrections (DCOs) who are sworn as deputy clerks of the district court, have authority to admit to bail persons in custody?

2. Is it permissible for a court to allow an accused person to post 10% of the amount of an appearance bond?

3. Is it permissible for a court to retain 10% of an appearance bond as an administrative "fee" and must the court turn over this amount to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

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4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the defendant?

5. If a defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect that change?

Our inquiry will focus on whether certain provisions of district court rule 3.324 violate the statutes. In order to make that determination, it is important to not only review the rule itself but to understand the mechanics of how it operates.

The rule establishes an automatic bond schedule (schedule) for certain crimes ranging from county resolution violations to "C" felonies. The schedule sets forth the amount and type of bond which the court will accept. Under certain conditions, persons in custody are not eligible for schedule bonds. (Some of those circumstances include situations involving prior bond forfeitures, extradition, prior felony convictions and if there is a threat to public safety or fear that the accused may flee the jurisdiction.) If the schedule requires a surety bond in the amount of $1,000 or less, Shawnee county residents may be released on their own recognizance if they or their surety have significant ties to the county. (E.g. real estate, employment, Kansas driver's license, etc.) Such a defendant as well as his or her surety enter into a written recognizance bond by which the defendant agrees to appear in court when required. If the defendant fails to appear, the bond is forfeited and the surety or the defendant is liable for the face amount of the bond.

If the schedule requires a surety bond in an amount over $1,000 and less than $2,500, Shawnee county residents may be released if they or their surety meet the significant ties condition and if the defendant posts an "OR cash deposit bond" (OR-CD). This bond requires that the defendant or surety deposit 10% of the face amount of the bond to the clerk of the district court. If the defendant fulfills all the conditions that the bond requires, 90% of the deposited amount is returned to the defendant and the clerk retains the remainder as an "administrative fee" which is then turned over to the county. For example, if the bond amount is $2,500, the defendant or surety pays $250 to the clerk. If the defendant complies with the bond conditions, $225 is returned to him or her and the clerk retains $25. If the defendant fails to comply and the bond is forfeited the surety or the defendant

is liable for the face amount of the bond minus the amount previously deposited.

With this background, we will answer your queries keeping in mind that while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions. Therefore, a court cannot promulgate rules which contravene statutory provisions. Gas Service v. Coburn, 389 F.2d 831 (10th Cir. 1968), reversed on other grounds; Synder v. Harris, 89 S.Ct. 1053, 394 U.S. 332, 22 L.Ed.2d 319 (1969); 21 C.J.S. Courts § 126. Supreme court rule 105 authorizes judicial districts to make rules necessary for the administration of their affairs to the extent that they are not inconsistent with applicable statutes.

1. Do court services officers and employees of the department of corrections who are sworn as deputy clerks of the district court have authority to admit to bail persons in custody?

Paragraph 1 of district court rule 3.224 states, as follows:

> "1. Court services officers (CSO) and Shawnee county department of corrections officers (DCO) who are sworn as deputy clerks of the district court, are authorized to admit to bail persons in custody in accordance with the provisions of this order."

Absent statutory authority nonjudicial officers may not admit accused persons to bail. 8 C.J.S. Bail § 50. Specifically, a district court clerk has no power to take or approve recognizances and the court may not deputize the clerk to do so. Morrow v. State, 5 Kan. 563 (1869); 8 C.J.S. Bail § 52; 8 Am.Jur.2d Bail and Recognizance § 21. However, admitting a person to bail is an entirely different act from the taking, accepting or approving bail after its allowance by a court; the former is generally considered to be a judicial act to be performed by a court or judicial officer while the latter is merely a ministerial function which may be performed by any authorized officer. 8 C.J.S. Bail § 39, 8 Am.Jur.2d Bail and Recognizance § 9. The act of taking and approving the bail bond in accordance with court orders has been held to be a ministerial act which may be delegated without statutory authority. Thus, after bail has been allowed and its amount fixed by the proper judicial officer, a clerk, by direction of the court, may accept and approve a bail bond. 8 C.J.S. Bail, § 53.

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While the choice of language in paragraph 1 of the court rule is unfortunate because it appears to allow CSOs and DCOs to admit people to bail, in actuality, this is not what occurs. The court, through its inherent rule making power, has established bond amounts and types of bonds which are required for certain crimes. Basically, the court has decreed that if certain conditions exist, a person may be released from custody. The CSOs and DCOs do not set bond amounts nor do they determine whether a surety is required. They merely determine whether the defendant meets the conditions that the court has already prescribed, and, if so, they ensure that the appropriate paperwork is filled out by the defendant who is then released. In effect, the court has preset the bond amounts, the types of bonds, and the conditions under which a defendant may be released and it is the responsibility of the nonjudicial officers to ensure that the court's order is carried out. Consequently, it is our opinion that the district court rule does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the nonjudicial officers are merely performing ministerial acts pursuant to court order.

You indicate concern that this procedure may violate K.S.A. 1993 Supp. 22-2802 by releasing defendants prior to their first court appearance. This statute states, in relevant part, as follows:

> "Release prior to trial. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and assure the public safety."

There is nothing in the statutes which prohibits the release of a defendant on bond prior to his or her first appearance. In fact, K.S.A. 22-2901(1) and (3) contemplate that a person who is arrested be taken "without unnecessary delay" to a magistrate who can then fix the terms and conditions of an appearance bond. Consequently, it is our opinion that K.S.A. 1993 Supp. 22-2802 provides that if the defendant has not been released prior to the first appearance, the defendant will be released upon execution of an appearance bond.

2. Is it permissible for a court to allow accused persons to post 10% of the amount of an appearance bond?

K.S.A. 1993 Supp. 22-2802(3) and (4) provide, in relevant part, as follows:

> "(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.
>
> "(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties."

The statutes do not specifically address the propriety of the court's 10% OR-CD program. K.S.A. 1993 Supp. 22-2802 was originally enacted in 1970 and it drew heavily on federal bail reform law which was designed to encourage the release of defendants without money bail and to minimize the number of cases where the defendant would be detained pending trial. Kansas Judicial Council Bulletin, October, 1969, p. 45. Release on the person's own recognizance was the norm and money bail or pretrial detention in lieu thereof was contemplated only when special circumstances existed which could best be met by use of traditional bond.

K.S.A. 1993 Supp. 22-2802 contemplates three types of bonds: Appearance bonds with sureties, appearance bonds without sureties, and a cash bond in the full amount. On at least three occasions legislation has been introduced which would have variously prohibited or codified this 10% program. (House bill no. 2009 introduced during the 1985 session, house bill no. 2961 in 1986 and house bill no. 2252 in 1987). All three bills were defeated at various stages.

The court justifies its use of this program under the authority of K.S.A. 22-2814 et seq. which authorize each district court to "establish, operate and coordinate release on recognizance programs and supervised released programs". We have reviewed the legislative history of these statutes in order to determine whether the legislature intended to allow such a program under the auspices of these recognizance statutes.

These statutes were originally enacted in 1978, however, the supreme court concluded that they violated the one subject rule in article 2, § 16 of the Kansas constitution. State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980). The statutes were reenacted in 1981 without the constitutional infirmities.

Recognizing the unfairness of a system that relied heavily on money bail and professional bondsmen, these statutes were enacted to rely less on the financial resources of the defendant and concentrate on the risk of nonappearance. Minutes, Senate Committee on Federal and State Affairs, March 23, 1978.

> "House bill no. 3129 would permit the establishment of release-on-recognizance (ROR) and supervised released programs in the state. These programs will permit the pretrial release of those selected individuals who are unable to post money bond but who have stable roots in the community indicating that they will appear at trial and their release will not jeopardize public safety. House bill no. 3129 would authorize each district court to establish, operate, and coordinate ROR and supervised released programs which would be administered by probation officers and other personnel of the district court." Proposal No. 14, Report on Kansas Legislative Interim Studies to the 1978 Legislature, Feb. 1978, p. 56.

Neither proposal no. 14 nor any of the testimony before the senate federal and state affairs committee included any discussion of a 10% cash deposit bond program. However, it is interesting to note that included in house bill no. 3129 was an amendment to then K.S.A. 1977 Supp. 22-2802 which would have allowed a defendant to execute an appearance bond and deposit with the court a sum not to exceed 10% of the bond amount -- the deposit to be returned if the defendant made the required appearances. (House bill no. 3129, sec. 5). However, the senate committee struck the amendment and the 10% cash deposit provision was never enacted.

In determining legislative intent, the historical background, legislative proceedings and changes made in the statutes during the course of their enactment may be considered in

determining legislative intent. Urban Renewal Agency of Kansas City v. Decker, 197 Kan. 157 (1966). Rejection by the legislature of a specific provision contained in a proposed enactment is persuasive to the conclusion that the act should not be so construed as in effect to include that provision. City of Manhattan v. Eriksen, 204 Kan. 150 (1969). (In Erikson, the court interpreted the eminent domain act as not including as an element of damage the cost of removal of personal property -- noting that while the original bill included such a cost as an element of damage, the senate judiciary committee deleted the item.)

We cannot ignore the fact that when the ROR statutes were being considered this 10% cash deposit program - which is currently in use by the third judicial district court - was specifically rejected. Consequently, it is our opinion that the district court's 10% OR-CD program goes beyond the authority granted to district courts under the purview of K.S.A. 22-2814.

3. Is it permissible for a court to retain 10% of the OR-CD bond as an administrative fee or must the clerk of the district court turn it over to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

In Attorney General Opinion No. 89-113, we concluded that if an appearance bond is in the form of a cash deposit, the authority of the court to retain the deposit or to apply any of it to court costs or fines depends on the statute because the court has no inherent power to do so. In the absence of such a statute, retention of the cash deposit is impermissible. While we realize that this opinion addressed K.S.A. 1993 Supp. 22-2802(4) - (a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties), the rationale can be applied to the situation at hand where the court accepts a percentage of the bond amount in cash and then retains a portion of that cash as a "fee." Consequently, it is our opinion that the third judicial district court lacks the power to withhold any amount from the cash deposit because there is no statutory authorization to do so.

However, this "fee" is not a "fine, penalty or forfeiture" which would trigger the operation of K.S.A. 1993 Supp. 20-350 which requires that "all moneys received by the clerk of the district court from the payment of fines, penalties and forfeiture shall be remitted to the state treasurer." A fee is generally regarded as a charge for some service whereas a

fine, penalty, or forfeiture is a pecuniary punishment imposed by a tribunal for some offense. Executive Aircraft Consulting Inc. v. City of Newton, 252 Kan. 421 (1993); Vanderpool v. Higgs, 10 Kan.App.2d 1, 2 (1984); United States v. Safeway Stores, 140 F.2d 834, 839 (10th Cir. 1944); Missouri-Kansas-Texas Railroad Company v. Standard Industries Inc., 192 Kan. 381, 384 (1964). It is our opinion that the fees collected by the district court clerk do not fall under the purview of K.S.A. 1993 Supp. 20-350 and, therefore, do not have to be turned over to the state treasurer.

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the obligor?

Paragraph no. 14 of the district court rules states:

> "It is a condition on all private or professional surety bail bonds in this judicial district that sureties shall agree to remain liable on all bail bonds until all proceedings arising out of the arrest and/or case for which the bond was posted are concluded or until they are released by court order. No surety shall be released on their obligation on a bail bond once posted without court approval. Any surety or person arrested and turned in on bond by their surety, may file a motion with the court for a determination of whether or not the bail bonds should be revoked or continued."

Your concern is whether this provisions violates K.S.A. 22-2809 which provides:

> "Any person who is released on an appearance bond may be arrested by his surety . . . and delivered to a custodial officer of the court in any county in the state in which he is charged and brought before any magistrate having power to commit for the crime charged; and at the request of the surety, the magistrate shall commit the parties so arrested and endorse on the bond . . . the discharge of such surety; and the person so committed

> shall be held in custody until released as provided by law." (Emphasis added.)

An appearance bond is a contract between the principal (defendant) and surety on the one hand and the state on the other. State v. Indemnity Insurance Company of North America, 9 Kan.App.2d 53, 55 (1983). Theoretically, the court is a party to the contractual obligation between the surety and the defendant and, therefore, would have the right to negotiate a condition that the surety remain liable on the bond until the conclusion of the proceedings or until the court releases the surety on the bond. The problem with this theory is that we interpret K.S.A. 22-2809 as requiring the court to discharge the surety upon the latter's request (if the defendant is surrendered) and consequently paragraph 14's requirement that sureties agree to remain liable until the criminal proceeding is over violates K.S.A. 22-2809's provision that sureties be released upon request. However, it is appropriate for the court to require that a surety file a motion for release as long as that motion is granted without delay.

5. If the defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect such a change?

Paragraph 15 of the district court rule states:

> "Bail bonds designated as OR-cash, cash or professional surety shall be written only on the terms specified by the district judge. If a defendant requests release on a professional surety bond when cash or OR-cash deposit has been specified, the CSO or DCO shall contact the judge authorizing the bond, for modification of the bond."

Whenever a defendant has been released on bond, the court issues an order which designates the bond amount, bond conditions, and the type of bond (i.e. professional surety, nonprofessional surety, OR, OR-cash deposit, OR-supervised, cash). If the defendant desires to use a professional surety, the order will reflect this fact. If the order indicates a bond with a nonprofessional surety and the defendant desires to use a professional surety instead, then paragraph 15 requires that the CSO or DCO contact the court so that the order will reflect the change.

Senator Oleen indicates concern that the court is somehow restricting the ability of a defendant to obtain the services of a professional bondsman by requiring that a defendant select the OR-CD program. This complaint is beyond our purview and moot in light of our opinion that the court's OR-CD program goes beyond the authority granted to the court under K.S.A. 22-2814 et seq. We interpret this paragraph to require that the court order reflect the type of bond the defendant is currently using as well as the conditions of the bond and we find no violation of any statute in this procedure.

Summarizing our opinion, we conclude the following:

1. District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

2. K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court.

3. Furthermore, it is not permissible for a court to retain any portion of a cash deposit. However, the "fee" which the third judicial district is currently collecting from defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, would not be required to be turned over to the state treasurer.

4. K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests a discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

5. Paragraph 15 of the district court rule requires that the court order reflect the type of bond procedure that the defendant is currently using.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Mary Feighny
Assistant Attorney General

RTS:JLM:MF:jm

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

ADMINISTRATIVE ORDER NO. 170

(Suspension of DCR 3.324)

It is the view of the Attorney General as stated in Opinion 94-25 that DCR 3.324 goes beyond the authority granted by K.S.A. 22-2814, et seq., although such statutes do not expressly prohibit the 10% O.R.C.D. procedure. This opinion is based upon the inferred legislative intent of the statutes as gleamed from their legislative history.

Although this is an advisory opinion only, DCR 3.324 is hereby suspended until further clarification of the law and/or decision of all District Judges sitting en banc. Shawnee County Corrections, Court Services and the Clerk of District Court are directed not to accept O.R.C.D. bonds from and after the date of this order. The Clerk is further directed not to retain the ten percent administrative fee when such cash deposits are refunded.

BY ORDER OF THE ADMINISTRATIVE JUDGE, Third Judicial District, Topeka, Kansas, this 23rd day of February, 1994.

WILLIAM R. CARPENTER
Administrative Judge

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RESULTS OF SHAWNEE COUNTY 10% BAIL YEAR 1992

FOR THE YEAR 1992 IN SHAWNEE COUNTY THERE WERE 469 TEN PECENT BAIL BONDS WRITTEN. FROM THIS THE ADMISISTRATIVE JUDGE CARPENTER GAVE THE COUNTY COMMISSIONERS A CHECK FOR $14.500.00. THE NET PROFIT FROM THE TEN PERCENT BAIL SYSTEM.

NOT KNOW ARE THE NUMBER OF FAIL TO APPEARS. NUMBER OF BONDS FORFITED. AMOUNTS OWED ON THE BALANCE OF THE TEN PERCENT BONDS.

THE ABOVE QUESTIONS NEED TO BE ANSWERED AS WELL AS THE FOLLOWING.

1. HOW MUCH OF THE NINETY PERCENT OF THE TEN PERCENT BONDS WAS EVER COLLECTED. ON BOND FORFITURES. (NONE OF RECORD AS OF THIS DATE). USING THE NATIONAL AVERAGE ON THE LOWER SIDE A MIMIMUN OF NO SHOWS ON TEN PERCENT BONDS WOULD BE THIRTY PERCENT ON TEN PERCENT BONDS WOULD BE 140 PERSONS WHO FAILED TO APPEAR. WITH A BOND AVERAGE OF 1500.00 THIS WOULD BE A LOSS TO THE STATE SCHOOL FUND OF $211.000.00.

2. HOW MANY BONDS NOT FORFITED . EVEN THOUGH THE DEFENDANTS FAILED TO APPEAR. SO THAT THE FIGURES CAN BE MUNULIPATED. SO THE RECORD APPEARS BETTER FOR THE TEN PERCENT SYSTEM.

3. NOT INCLUDED IN THE EXPENSE IS THE STATE PAID BOND ADMINISTRATOR FOR SHAWNEE COUNTY AT A COST OF OVER $30.000.00 PLUS HIS NUMEROUS ASSISTANCES AT A COST OF OVER 90.000.00 PER YEAR.

4. ESTIMITED COST TO THE SHERIFFS OFFICE AND DISTRICT ATTORNEYS OFFICE FOR PREPARATION OF WARRENTS AND COST OF THE SHERRIF TO SERVE THE WARRENTS USING THE MINIMUN OF 140 FAILED TO APPEAR WOULD COST AN AVERAGE OF 750.00 PER WARRENT WOULD BE $98.000.00.

5. COST OF CALLING JURIES AND WITNESS FOR PERSONS FAILING TO APPPER FOR TRAIL WOULD BE A MINIMUN OF $10.000.00

6. FAIL TO COLLECT RESTITUTION FOR PROPERTY STOLEN OR DESTROYED BY DEFENDANTS WHO FAIL TO APPEAR WOULD BE A MINIMUN OF $75.000.00

7. ANALYSIS OF THE 10 PERCENT SYSTEM FOR THE YEAR 1992

INCOME FOR 1992 NET $14.500.00

EXPENSES NOT SHOWN
BY THE COUNTY TO
COLLECT NET INCOME

UNCOLLECTED BOND FORFITURES	(LOST TO STATE)		$211.000.00
BOND ADMINISTRATOR COST			
JACK MCGINNIS	$30.000.00	PAID BY STATE	
MARY KELLEY	$30.000.00	PAID BY STATE	
KELLY LEE	$30.000.00	PAID BY STATE	$90.000.00
COST TO CALL JURIES			$10.000.00
COST OF SHERRIF TO SERVE WARRENTS &			$98.000.00
2 FULL TIME BOOKEEPERS	24.000 EACH		$48.000.00
4 COUNTY CLERKS FOR BONDING	20.000 EACH		$80.000.00
COST OF THE 10% SYSTEM			$537.000.00
PROFIT FROM THE 10 % SYSTEM			$14.500.00
NET LOSS FROM 10% SYSTEM			($522.500.00)

NOT INCLUDED THE LOSS OF RESTITUTION
TO VICTIMS.

STILL OBTAINING FIGURES FOR 1993 .1994 .1995

IN A RECENT CHECK OF RECORDS THE FOLLOWING RESULTS IN THE
DISTRICT COURT OF SHAWNEE COUNTY. ARE AS FOLLOWS.

FOR THE YEAR 1996

UP TILL AUGUST 1996

JAN 1 TO AUGUST 1996	OR10% BONDS FORFITED	617.500.00
JAN 1 TO AUGUST 1996	CASH BONDS FORFITED	164.313.00
JAN 1 TO AUGUST 1996	SURTY BONDS FORFITED	20.000 00

THE RECORD SHOWS THE FOLLOING INFORMATION AS TO FAIL TO APPEARS

IN THE DISTRICT COURT OF SHAWNEE COUNTY ON FIRST APPEARANCES.

MAY 3 1996	17 FAILED TO APPEAR
MAY 17 1996	28 FAILED TO APPEAR
MAY 24 1996	19 FAILED TO APPEAR
JUNE 7 1996	11 FAILED TO APPEAR
JUNE 21 1996	10 FAILED TO APPEAR
JUNE 29 1996	10 FAILED TO APPEAR
JULY 6 1996	17 FAILED TO APPEAR
JULY 19 1996	27 FAILED TO APPEAR
JULY 26 1996	22 FAILED TO APPEAR
AUG 2 1996	38 FAILED TO APPEAR
AUG 9 1996	25 FAILED TO APPEAR
AUG 16 1996	16 FAILED TO APPEAR

FURTHER INFORMATION WILL FOLLOW AS SOON AS I AM ABLE TO OBTAIN

CRIME IN TOPEKA KANSAS HAS RISEN 13 1/2 PERCENT AND SERIOUS CRIME HAS RISEN 23 PERCENT. TOPEKA. KANSAS HAS THE HIGHEST CRIME RATE IN THE NATION .

INSURANCE COMPANIES NOW CHARGE AN ADDITONAL $85.00 PER YEAR ON EACH HOME OWNER INSURANCE POLICY BECAUSE OF THE HIGH CRIME RATE IN TOPEKA. KANSAS.

SEE ATTACHED DOCUMENTS

ATTORNEY GENERALS OPINION 10% BAIL NOT LEGAL
LAW SUIT FILED IN TOPEKA. KANSAS CLASS ACTION
DOCUMENTS SUPPORTING BAIL BONDSMAN

Larry Peters, left, and Dorothy Friton viewed art on display at the opening Sunday of the Topeka Art Guild's Winter Show at the Studio Arts Gallery. The Kansas exhibit, on display until March 21, is open from 10

Serious crime rose in state, county in 1986

By BILL BLANKENSHIP
Capital-Journal law enforcement writer

Serious crime in Kansas and in Shawnee County increased last year, boosted primarily by a hike in the number of property crimes.

The state's serious crime rate jumped 9.1 percent in 1986, according to preliminary annual crime statistics released today by the Kansas Bureau of Investigation.

The incidence of grave crimes in the county increased 13.5 percent.

More rapes, robberies, aggravated assaults, burglaries, larcenies and motor vehicle thefts were reported in 1986 than in 1985 by the approximately 300 local law enforcement agencies that submit statistics on Part I crimes to the KBI.

First of a series

Part I crimes are offenses selected as an indicator of a community's crime problem because of their severity, their frequency of occurrence and their likelihood of being reported to local authorities, according to KBI reporting guidelines.

Murder was the only Part I crime that declined last year in Kansas.

The number of homicides dropped 11.6 percent. Rapes went up 11.7 percent; robberies rose 1.1 percent; and aggravated assaults increased 2.7 percent.

Overall, violent crimes increased 2.9 percent, accounting for only a fraction of the total upswing in serious crime. The KBI figures show

Continued on page 2, column 6

Kansas annual crime statistics

Offense	1985	1986	Percent Change
Murder	121	107	-11.6
Rape	720	804	+11.7
Robbery	1,924	1,946	+ 1.1
Aggravated assault	5,924	6,085	+ 2.7
Violent crimes	8,689	8,942	+ 2.9
Burglary	26,751	34,561	+29.2
Larceny	66,194	66,945	+ 1.1
Motor vehicle theft	5,277	6,243	+18.3
Property crimes	98,222	107,749	+ 9.7
Total	106,911	116,691	+ 9.1

Source: Kansas Bureau of Investigation

Shawnee County annual crime statistics

Offense	1985	1986	Percent Change
Murder	6	12	+100.0
Rape	56	66	+17.9
Robbery	229	248	+ 8.3
Aggravated assault	491	539	+ 9.8
Violent crimes	782	865	+10.6
Burglary	3,643	5,474	+50.3
Larceny	5,203	4,557	-12.4
Motor vehicle theft	315	388	+23.2
Property crimes	9,161	10,419	+13.7
Total	9,943	11,284	+13.5

Source: Kansas Bureau of Investigation

Crime increase

Chairlift accident kills five, injures 41

TARBES, France (AP) — A damaged chairlift pitched dozens of skiers onto rocks and snow far below Sunday, killing five and seriously injuring 41 at the Pyrenees resort of Luz-Ardiden, officials reported.

They said 76 other people on the lift were treated for lesser injuries or shock.

All of the victims who perished

gional governor's office as Francisco Pako San Sebastian of Isasondo-Alcabbda, Spain.

Some victims reportedly fell from heights of up to 130 feet.

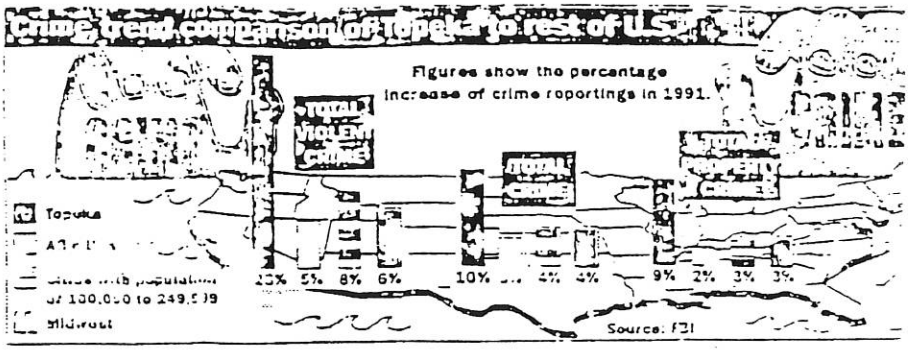
The accident occurred about 4:30 p.m., but the cause was not clear. Local news media gave conflicting reports, saying the lift cable snapped, that it jumped off a pulley,

The lift could carry 200 skiers at a time.

The chairlift, on the resort's upper slopes at an altitude of nearly 10,000 feet, was new and opened just two weeks ago.

The resort is high in the Pyrenees mountains running along the border between France and Spain. Luz-Ar-

12-40



Topeka violence soars in 1991

By BILL BLANKENSHIP
The Capital-Journal

Crime in Topeka, particularly violent crime, grew sharply higher here in 1991 than in the rest of the nation, according to a Capital-Journal analysis of FBI statistics released Sunday.

While preliminary figures from the FBI's Uniform Crime Reports showed total crime up 3 percent in the nation, the same report said total crime in Topeka had increased 10 percent in 1991.

The trend in property crime was higher in Topeka than in the nation — a 9 percent rise compared to a 2 percent increase across the country.

But the greatest increase was in violent crime — up 23 percent in Topeka compared to the national average increase of 5 percent.

The FBI report didn't include per capita crime rates, but using population numbers from the 1990 census, the Capital-Journal calculated those rates for the 182 cities of 100,000 population or greater for which the FBI had complete data.

Where did Topeka rank?

With 145 crimes per 1,000 people, Topeka ranked 53rd in total crime, ahead of Los Angeles (66th with 99.3

Crime Statistics Briefs

Figures rank total crime reportings for 1991 in cities with populations similar to Topeka. Also shown are total crimes committed per 1,000 people.

1	Tallahassee, Fla.	125,000	19,923	159
2	New Haven, Conn.	130,000	19,492	149
3	Beaumont, Texas	114,000	13,146	115
[illegible]	Topeka, Kan.	[illegible]	[illegible]	[illegible]
5	Hollywood, Fla.	122,000	12,614	103
6	Cary, Ind.	117,000	11,706	100
7	Laredo, Texas	123,000	11,823	96
8	Pasadena, Texas	119,000	11,290	94
9	Lansing, Mich.	127,000	10,340	81
10	Eugene, Ore.	113,000	9,052	80
11	Moreno Valley, Calif.	119,000	9,204	77
12	Fullerton, Calif.	114,000	8,098	71
13	Independence, Mo.	112,000	7,775	69
14	Lakewood, Colo.	126,000	8,534	67
15	Oceanside, Calif.	126,000	8,388	66
16	Santa Rosa, Calif.	113,000	6,981	61
17	Evansville, Ind.	126,000	7,658	60
18	Plano, Texas	129,000	7,593	58
19	Boise, Idaho	126,000	7,216	57
20	Scottsdale, Ariz.	130,000	7,360	56
21	Sterling Heights, Mich.	118,000	5,739	49
[illegible]	Overland Park, Kan.	122,000	5,429	[illegible]
23	Sunnyvale, Calif.	117,000	4,071	35

Source: FBI

Topeka Capitol-Journal
April 27, 1992

12-41

William R. Brady
Attorney at Law

Insurance Building, Suite 312
701 Jackson Street, Topeka, Kansas 66603
(913) 235-9257

October 10, 1985

Tom Hanna
Board of County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Tom:

This letter is in response to the question which you raised when we were visiting earlier today. Your question was directed to the legality of the "cash surety for bail bonds" recently implemented by the Shawnee County District Court.

The Statute in question is K.S.A. 22-2802, which is quite specific and clear as to the release of a person charged with a crime prior to trial. Sections (2) and (3) of said Statute pertain to the appearance bond.

Section (2) has two (2) alternatives; the bond can be executed in the amount set by the magistrate with sufficient sureties, or the magistrate may, in his discretion, find that sureties are not necessary to assure the appearance of the defendant. There are no other alternatives in said section.

Section (3) provides that a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

In my opinion, Administrative Orders No. 113 and 114 do not comply with the Statute, in that such procedure is not authorized and would be in violation of said Statute.

Trusting that the above answers your question, I am

Very truly yours,

Bill

WILLIAM R. BRADY

WRB:rs

12-42

OFFICE OF DISTRICT ATTORNEY
JUDICIAL & LAW ENFORCEMENT CENTER
111 E. 11TH STREET • LAWRENCE, KS 66044
TELEPHONE 913-841-7700

JAMES E. FLORY
DISTRICT ATTORNEY

SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY, KANSAS

March 5, 1985

Representative Jessie Branson
State Capitol
Topeka, Kansas 66612

RE: House Bill No. 2009

Dear Representative Branson:

I recently learned that House Bill 2009 passed the House Judiciary Committee. This letter is to inform you that I join the Kansas County & District Attorneys Association in opposing the measure. While the bill may appear to remedy some problems that exist in our present bail bond system, I believe that it will ultimately create significant difficulties for law enforcement and the courts.

Presently, the responsibility for locating and apprehending persons who fail to appear is on the professional bail-bondsmen; however, under HB 2009 this burden would shift exclusively to law enforcement. The expense and manpower involved in locating and extraditing fugitives is certainly not inconsequential, and the incentive of a bondsman faced with forfeiture is obvious.

Additionally, I believe that the concept embraced by H.B. 2009 is actually available under existing statutes. Courts may now use a mixed cash bond/personal recognizance system, and in that situation, the individual would still be responsible for the entire bond amount rather than just the deposited portion.

If you would like to discuss further these practical aspects of H.B. 2009, I would welcome the opportunity. Please feel free to contact me on this or on any matter of mutual concern.

Sincerely,

James E. Flory
District Attorney

JEF:db

12-43

Gene M. Olander
District Attorney
Kansas Third Judicial District
Suite 212 • Courthouse • Topeka, KS 66603 • 913/295-4330

February 12, 1985

Mr. William Roy, Jr., Representative
State Capitol Building
Topeka, Kansas 66612

RE: HOUSE BILL 2009

Dear Representative Roy:

It was called to my attention that House Bill 2009 passed the House Judiciary Committee by one vote. Please be advised that our State Prosecutors Association as well as myself are opposed to the passage of this measure.

Not only would this bill put the Clerk's Office in the bonding business, it would also, in my opinion, change the criminal bail bond system in a manner which would have an adverse effect on the whole criminal justice system.

We presently have sufficient statutory authority for either granting a surety bond or allowing those financially unable, but a reasonable risk to post their own recognizance. My feeling is that if we are going to require a bond in a certain amount to guarantee that person's appearance and then to say that they would only be responsible for up to 25% of that bond, that it would make no sense whatsoever.

I am aware that there are those who wish to eliminate professional bail bondsmen. Whether or not you like professional bail bondsmen, they perform a vital service in the implementation of article 9 of the Kansas Bill of Rights under our present system. When a $10,000 bail bond is posted, the bondsman has an incentive to see to it that that person is in Court and if the defendant fails to appear, the bondsman stands to lose the entire $10,000. There is, therefore, a great incentive to see to it that not only the defendant appear, but that he is apprehended and surrendered by the bondsman so that the bondsman does not have to pay the forfeited bond. This proposed new system does not do anything that the present recognizance system doesn't because once the bond is forfeited, the deposit may be forfeited, but no one is looking for the defendant to surrender him to avoid paying the full bond.

Granted, there is a need for a system where we take limited risks on misdemeanor and non-violent offenders. We already have that system under the present law. I view this bill as nothing more than an attempt to put the professional bail bondsman out of business, as we already have sufficient statutes on the books to take into account those defendants who would otherwise be detained solely because of their financial circumstances.

My personal observation has been that bonds which are posted on a defendant's own recognizance are forfeited at least 10 times more frequently than those who have a responsible surety on their bond. I do not see this bill as anything other than an unnecessary expansion of the presently very liberal recognizance program already in place. I have kept records in this office for several years as to forfeited bonds and believe me, when a professional bail bondsman has a forfeiture, usually within 30 to 45 days, he has either surrendered the defendant or has paid the forfeiture in full. I find this a much more effective system than that proposed under HB 2009.

Thanking you in advance for your time and attention.

Yours very truly,

GENE M. OLANDER
District Attorney

GMO: bjw

Kansas County & District Attorneys Association
827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

February 18, 1985

House of Representatives
State Capitol
Topeka, Kansas 66612

Re: HB 2009

Dear Representative:

The Kansas County and District Attorneys Association is opposed to HB 2009, because it is unnecessary and expensive.

At the present time, a magistrate may impose a cash bond, requiring the accused to post the full amount of the bond, and returning the entire amount to him/her upon satisfactory performance. So a scheme to require a defendant to post up to 25% of the face amount of bond is unnecessary. If the court is concerned that a defendant could not raise the cash, the court could simply lower the face amount of the bond.

The bill also increases expenses in that the county sheriff would be required to regain custody and transport to the court any defendant who absconds on a bond. And if the defendant has fled to another state, expensive and time consuming procedures are required before a defendant can be returned. By entering into a commercial bond, a defendant may be re-captured and returned by the bonding company without extradition costs. If the bonding company should fail to return the defendant, then the full amount of the bond is forfeited.

I thank you for you consideration.

Sincerely,

James W Clark

JAMES W. CLARK
Executive Director

JWC/lb

12-46

DOUGLAS E. WELLS
Attorney at Law

SHADOW WOOD OFFICE PARK
5897 SOUTHWEST TWENTY-NINTH STREET
TOPEKA, KANSAS 66614
TELEPHONE (913) 273-1141

September 16, 1985

The Honorable Judge William R. Carpenter
Division One
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Judge Carpenter:

When I read the Saturday Topeka Daily Capital Journal, I was surprised to read that a new District Court Rule and Policy had been adopted concerning criminal bail bonds. Although I do have an opinion concerning the propriety of this change, that is not the purpose of this letter. My concern here is with the lack of input that the bar had prior to the formulation of this new policy.

I understand the need for an equitably and efficiently run courthouse. I strongly believe that the organized bar and practicing attorneys can offer useful insight in the establishment of good policies and rules. Since the establishment of court rules and policies can have a measurable effect on an attorney's client, business, and income, the practicing bar should be offered input before local rules or policies are altered.

As a memeber of the Topeka Bar Association Bench and Bar Committee, I attended the last meeting wherein various rule and policy changes were discussed, but the bonding procedure was not mentioned. I considered the spirit of this meeting to be very positive, one which recognized the value of bar input before establishing policy. I contacted the Topeka Bar Association Criminal Law Committee and was informed the committee's input was not sought concerning bond reform. In my review of the Daily Legal News, I did not find any reference to any proposed changes of local rule in this area.

I am not an attorney who likes to be unnecessarily critical of local judicial policy and this letter will undoubtedly not endear me to the judges who I am copying, but I feel compelled to express my dissatisfaction with the manner in which this

12-47

ASSISTANT DISTRICT ATTORNEYS
[illegible]

Gene M. Olander
District Attorney
Kansas Third Judicial District
Suite 212 • Courthouse • Topeka, KS 66603 • 913/295-4330

OFFICE MANAGER
[illegible]

INVESTIGATORS
[illegible]

CHILD SUPPORT DIVISION
[illegible]

February 12, 1985

Mr. William Roy, Jr., Representative
State Capitol Building
Topeka, Kansas 66612

RE: HOUSE BILL 2009

Dear Representative Roy:

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Not only would this bill put the Clerk's Office in the bonding business, it would also, in my opinion, change the criminal bail bond system in a manner which would have an adverse effect on the whole criminal justice system.

We presently have sufficient statutory authority for either granting a surety bond or allowing those financially unable, but a reasonable risk to post their own recognizance. My feeling is that if we are going to require a bond in a certain amount to guarantee that person's appearance and then to say that they would only be responsible for up to 25% of that bond, that it would make no sense whatsoever.

I am aware that there are those who wish to eliminate professional bail bondsmen. Whether or not you like professional bail bondsmen, they perform a vital service in the implementation of article 9 of the Kansas Bill of Rights under our present system. When a $10,000 bail bond is posted, the bondsman has an incentive to see to it that that person is in Court and if the defendant fails to appear, the bondsman stands to lose the entire $10,000. There is, therefore, a great incentive to see to it that not only the defendant appear, but that he is apprehended and surrendered by the bondsman so that the bondsman does not have to pay the forfeited bond. This proposed new system does not do anything that the present recognizance system doesn't because once the bond is forfeited, the deposit may be forfeited, but no one is looking for the defendant to surrender him to avoid paying the full bond.

12-48

Granted, there is a need for a system where we take limited risks on misdemeanor and non-violent offenders. We already have that system under the present law. I view this bill as nothing more than an attempt to put the professional bail bondsman out of business, as we already have sufficient statutes on the books to take into account those defendants who would otherwise be detained solely because of their financial circumstances.

My personal observation has been that bonds which are posted on a defendant's own recognizance are forfeited at least 10 times more frequently than those who have a responsible surety on their bond. I do not see this bill as anything other than an unnecessary expansion of the presently very liberal recognizance program already in place. I have kept records in this office for several years as to forfeited bonds and believe me, when a professional bail bondsman has a forfeiture, usually within 30 to 45 days, he has either surrendered the defendant or has paid the forfeiture in full. I find this a much more effective system than that proposed under HB 2009.

Thanking you in advance for your time and attention.

Yours very truly,

GENE M. OLANDER
District Attorney

GMO: bjw

12-49

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

12-50

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

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We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

12-51

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

February 18, 1985

House of Representatives
State Capitol
Topeka, Kansas 66612

Re: HB 2009

Dear Representative:

The Kansas County and District Attorneys Association is opposed to HB 2009, because it is unnecessary and expensive.

At the present time, a magistrate may impose a cash bond, requiring the accused to post the full amount of the bond, and returning the entire amount to him/her upon satisfactory performance. So a scheme to require a defendant to post up to 25% of the face amount of bond is unnecessary. If the court is concerned that a defendant could not raise the cash, the court could simply lower the face amount of the bond.

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I thank you for you consideration.

Sincerely,

JAMES W. CLARK
Executive Director

JWC/lb

12-52

[redacted]

United States Senate

[redacted]

WASHINGTON, D.C. 20510

November 19, 1981

Mr. Manuel Baraban
9813 West 100th Terrace
Overland Park, Kansas 66061

Dear Mr. Baraban:

Thank you for your letter and for the essay you wrote regarding legislation to limit the use of personal recognizance in pretrial release and post-trial release pending conviction in criminal cases. I have read your comments with interest.

I am taking the liberty of enclosing for your review a comprehensive bill I introduced on this important issue. Please be assured of my continuing support for legislation to prevent the violent crime which has resulted from the widespread use of personal recognizance as a basis for bail in criminal cases.

Warmest regards,

Nancy Landon Kassebaum
United States Senator

12-53

Many accused criminals failing to show up for trial

By SUSIE PHILIPS
COURTHOUSE REPORTER

A growing number of people charged with crime don't bother to show up in court for trial even after giving their word they will be there.

Almost one out of each five people facing that situation fail to keep their word.

Some just skip town and do not come back.

Others say they live in a place that turns out to be a playground or an abandoned building.

The rest slip into the shadows.

Those are some of the findings in an analysis of the county's personal recognizance bond program for the year 1981.

The study was researched and written by Julie Hasdorff, a second-year law student at St. Mary's University, and sponsored by American Bail Bond Research.

Hasdorff's study revealed a PR bond forfeiture rate of 17 percent in felony cases and 26 percent in misdemeanor cases.

"If those figures are true, they mean a PR bond is like a free pass out of jail," said Assistant District Attorney Barry Hitchings.

Hasdorff's figures contrast sharply with those recorded by James Thorn, chief administrator of criminal district courts. His forfeiture rate for PR bonds issued in 1982 was 7.8 percent.

"What Julie Hasdorff's study has done is raise more questions," Hitchings said. "We need to take a stronger look at accurate source data to see if the PR system ... to set up a new process."

Not only are Hasdorff's findings alarming, but so are case studies she encountered.

In the following examples of abuse of the PR system, names have been changed to protect the privacy of the defendant:

- Mabel lives in Mexico but is arrested for arson in San Antonio. Although she gives a Mexican address, she is released on a PR bond. She is never heard from again.
- Mr. Moolo shoots and kills his mother-in-law. He is charged with murder, but is freed by a judge after signing a $20,000 PR bond. He disappears.
- Charlie is a confessed burglar. Nevertheless, the judge lets him go on a PR bond. Charlie regrets his confession and cannot be found.

"In these cases you've got a victim who is left helpless," Hitchings said. "You've got a person committing offenses who is never held account. ble."

The PR bond program evolved under the theory that a lot of people charged with a crime are not going to run, but they don't have enough cash to pay a commercial bondsman, Thorn said.

"We don't put people in jail before their trial to punish them," Thorn said. "We do it to make sure they show up in court."

Guidelines for the program state that judges and magistrates may issue personal recognizance bonds to first offenders who have lived within 75 miles of the county for a reasonable length of time, hold a steady job and are not charged with a serious crime such as murder, rape or robbery.

By letting a suspected criminal sign his own bond and pay no money, a judge or magistrate accepts the person's promise that he will be in court when his case goes to trial.

While most bondsmen support the PR bond program, they are frustrated at the way it cuts into their business.

"Let me be the first to say I believe in the PR program."

Carl Collazo of A & A Bonds feels bondsmen do a service to the county by making sure defendants appear in court.

12-54

The article below speaks for itself and points out what a joke the 10% plan is. What they should do is do away with this phony system of mythical figures and restore good bail posted by responsible surety!

The Dispatch

OHIO'S GREATEST HOME NEWSPAPER

B-1 C SUN., MAR. 1, 1981

Bond Forfeitures Cost Court Plenty

By Mark Ellis
Of The Dispatch Staff

More than $400,000 in forfeited appearance bonds has gone uncollected by Franklin County Municipal Court since 1978.

City Attorney Greg Lashutka said the money looks like a "pot of gold," but he is not sure of the best way to collect it.

Municipal Judge Dale Crawford said "several millions" owed the court have accumulated over the years. He wants the money collected.

ONLY "A MINIMAL amount . . . between $3,000 and $5,000" has been collected by the Franklin County prosecutor since '78, when municipal Clerk of Courts Ted Hysell began seeking judgments to enforce collections, Chief Deputy Clerk William Dawson said.

He said about 800 people now owe the court $426,270.

Appearance bonds provide release for a defendant when 10 percent of the bond is paid in cash.

A $500 appearance bond is standard for a first-degree misdemeanor. On that bond, a prisoner would need $50 for freedom.

IF THE FREED prisoner appears at court hearings he gets back $45. If the freed prisoner fails to appear, he or she loses the $50 and owes the court $450. An arrest warrant is issued.

Hysell sends a warning letter and then turns the case over to county prosecutor Michael Miller.

"We're not a collection agency," Dawson said.

Dawson said prisoners often provide phony addresses when arrested and their bonds become uncollectable.

Crawford believes collection of forfeited appearance bond money will force more people to return and make the court more efficient.

He criticized fellow judges who use appearance bonds for people on welfare, a practice he calls "silly."

CRAWFORD SUGGESTED the Ohio Bureau of Motor Vehicles could be given power to suspend the driving privileges of those who owe appearance bonds.

He also suggested Lashutka contract with "young lawyers" who could track down those who owe, collect the money and keep a percentage.

No one seems to blame Miller's office for not collecting more of the forfeited bond money. As attorney for municipal court, Miller has that responsibility, but any money collected goes to the city and not the county. Miller believes his staff is carrying a maximum workload.

Judge James Britt, municipal court administrative judge, said collecting appearance bonds is "very impractical from a civil standpoint."

"YOU GET A bunch of nothings," Britt said. He said an average prisoner released on a $500 appearance bond doesn't have $450 and probably "had to scrape up" $50 from family members to get out.

Britt concedes there is a problem with released prisoners failing to show on appearance bonds.

"The (case) volume has increased. People in general just don't want to appear."

Lashutka said Crawford's concern is a legitimate issue and a "lingering problem."

He said a possible solution is his appointment as a "special representative" for Miller to collect the money.

But, Lashutka said, his staff is "stretched pretty thin" and doesn't have time to track down released prisoners and their financial records.

Lashutka is to meet with city and county law enforcement officials this month to find solutions to the problem of prisoners released on both appearance and recognizance bonds who fail to appear in court.

12-55

on State v. Garber." Robert C. Casad, 16 K. L. R. 423, 428 (1968).

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1. Disbelief in existence of God does not render witness incompetent. Dickinson v. Beal, 10 K. A. 233, 62 P. 724.

2. Courts will not interfere with worship beyond carrying out trust. Feizel v. Trustees of German M. E. Society, 9 K. 592, 595.

3. Courts may restrain minority from perversion of church property. Hackney v. Vawter, 39 K. 615, 630, 18 P. 699.

4. Ordinance requiring authority from mayor for all street demonstrations, void. Anderson v. City of Wellington, 40 K. 173, 181, 19 P. 719.

5. Cited in upholding bequest to priest for celebration of mass. Harrison v. Brophy, 59 K. 1, 6, 51 P. 883.

6. Repeating Lord's Prayer and Twenty-third Psalm permitted in public schools. Billard v. Board of Education, 69 K. 53, 56, 76 P. 422.

7. Provision applies only to offices and elections contemplated by constitution. The State v. Monahan, 72 K. 492, 493, 501, 84 P. 130.

8. Rights of parent by adoption concerning minor child. Denton v. James, 107 K. 729, 736, 193 P. 307.

9. Prohibition of unnecessary Sunday labor held not to violate section. State v. Blair, 130 K. 863, 864, 288 P. 729.

10. Sunday labor laws, 21-952 and 21-955, held constitutional. State v. Haining, 131 K. 853, 855, 293 P. 952.

11. Use of tax funds for sectarian school; taxpayer's right to enjoin. Wright v. School District, 151 K. 485, 486, 99 P. 2d 737.

12. This section and § 2, art. 6 of Kansas constitution should be construed together; school regulation held to deny religious freedom. State v. Smith, 155 K. 588, 592, 594, 596, 597, 127 P. 2d 518.

13. Habeas corpus proper to secure release before trial, when. Kamen v. Gray, 169 K. 634, 669, 220 P. 2d 160.

14. Mortgage registration fee no restraint on religious activity. Assembly of God v. Saugster, 178 K. 678, 682, 290 P. 2d 1057.

15. Mentioned; consideration of religious beliefs in changing child custody; error. Jackson v. Jackson, 181 K. 1, 4, 309 P. 2d 705.

16. Religious liberty includes the absolute right to believe but only a limited right to act. State v. Garber, 197 K. 567, 572, 419 P. 2d 896. Dismissed: 386 U. S. 51, 88 S. Ct. 236, 19 L. Ed. 2d 50.

§ 8. Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

Research and Practice Aids:
Habeas Corpus⇐1, 2.
C. J. S. Habeas Corpus §§ 1 et seq., 3.

Law Review and Bar Journal References:
Mentioned in comment on habeas corpus, an extraordinary remedy, 3 K. L. R. 130 (1954).
Discussed in "Federal Habeas Corpus and the State Prisoner," Michael L. Marwell, 8 W. L. J. 248 (1969).

CASE ANNOTATIONS

1. Commencement of sentence under 62-1528 not violation of appellant's rights hereunder. Craven v. Hudspeth, 172 K. 731, 732, 242 P. 2d 823.

2. Cited in denying writ of habeas corpus for failure to exhaust available state remedies. Kinnell v. Crouse, 384 F. 2d 811, 812. Certiorari denied: 390 U. S. 999, 88 S. Ct. 1205, 20 L. Ed. 2d 98.

§ 9. Bail. All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Research and Practice Aids:
Bail⇐39 et seq.
Hatcher's Digest, Bail and Recognizance § 2.
C. J. S. Bail § 29 et seq.
Am. Jur. 2d Bail and Recognizance § 69; Constitutional Law §§ 329 to 331, 334.

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12-56

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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February 22, 1994

ATTORNEY GENERAL OPINION NO. 94- 25

The Honorable Marvin Smith
State Representative, Fiftieth District
State Capitol, Room 115-S
Topeka, Kansas 66612

The Honorable Lana Oleen
State Senator, Twenty-Second District
State Capitol, Room 136-N
Topeka, Kansas 66612

Honorable William Carpenter
Administrative Judge of the Third
Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Re: Criminal Procedure--Conditions of Release--Release Prior to Trial--Local Court Rule Concerning Pretrial Release

Synopsis: District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court. Furthermore, it is not permissible for a court to retain any portion of a cash deposit for the purpose of bond, however, the "fee" which the third judicial district is currently collecting from the

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defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, does not have to be turned over to the state treasurer.

K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

Paragraph 15 of the district court rule requires that the court's order reflect the type of bond procedure that the defendant is using. Cited herein: K.S.A. 1993 Supp. 20-350; 22-2802; K.S.A. 22-2809; 22-2814; Kan. Const., art. 2, § 16.

* * *

Dear Representative Smith, Senator Oleen and Judge Carpenter:

You request our opinion concerning a pretrial release program embodied in district court rule no. 3.324 of the third judicial district. Briefly, the program which is administered by court services officers and employees of the department of corrections establishes an automatic bond schedule for pretrial release for certain crimes. Representative Smith and Senator Oleen are concerned that certain facets of this program violate the statutes which deal with pretrial release and surety bonds. Those concerns can be summarized as follows:

1. Do court services officers (CSOs) and employees of the department of corrections (DCOs) who are sworn as deputy clerks of the district court, have authority to admit to bail persons in custody?

2. Is it permissible for a court to allow an accused person to post 10% of the amount of an appearance bond?

3. Is it permissible for a court to retain 10% of an appearance bond as an administrative "fee" and must the court turn over this amount to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the defendant?

5. If a defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect that change?

Our inquiry will focus on whether certain provisions of district court rule 3.324 violate the statutes. In order to make that determination, it is important to not only review the rule itself but to understand the mechanics of how it operates.

The rule establishes an automatic bond schedule (schedule) for certain crimes ranging from county resolution violations to "C" felonies. The schedule sets forth the amount and type of bond which the court will accept. Under certain conditions, persons in custody are not eligible for schedule bonds. (Some of those circumstances include situations involving prior bond forfeitures, extradition, prior felony convictions and if there is a threat to public safety or fear that the accused may flee the jurisdiction.) If the schedule requires a surety bond in the amount of $1,000 or less, Shawnee county residents may be released on their own recognizance if they or their surety have significant ties to the county. (E.g. real estate, employment, Kansas driver's license, etc.) Such a defendant as well as his or her surety enter into a written recognizance bond by which the defendant agrees to appear in court when required. If the defendant fails to appear, the bond is forfeited and the surety or the defendant is liable for the face amount of the bond.

If the schedule requires a surety bond in an amount over $1,000 and less than $2,500, Shawnee county residents may be released if they or their surety meet the significant ties condition and if the defendant posts an "OR cash deposit bond" (OR-CD). This bond requires that the defendant or surety deposit 10% of the face amount of the bond to the clerk of the district court. If the defendant fulfills all the conditions that the bond requires, 90% of the deposited amount is returned to the defendant and the clerk retains the remainder as an "administrative fee" which is then turned over to the county. For example, if the bond amount is $2,500, the defendant or surety pays $250 to the clerk. If the defendant complies with the bond conditions, $225 is returned to him or her and the clerk retains $25. If the defendant fails to comply and the bond is forfeited the surety or the defendant

is liable for the face amount of the bond minus the amount previously deposited.

With this background, we will answer your queries keeping in mind that while courts have inherent authority to make general rules, those rules must conform to constitutional and statutory provisions. Therefore, a court cannot promulgate rules which contravene statutory provisions. Gas Service v. Coburn, 389 F.2d 831 (10th Cir. 1968), reversed on other grounds; Synder v. Harris, 89 S.Ct. 1053, 394 U.S. 332, 22 L.Ed.2d 319 (1969); 21 C.J.S. Courts § 126. Supreme court rule 105 authorizes judicial districts to make rules necessary for the administration of their affairs to the extent that they are not inconsistent with applicable statutes.

1. Do court services officers and employees of the department of corrections who are sworn as deputy clerks of the district court have authority to admit to bail persons in custody?

Paragraph 1 of district court rule 3.224 states, as follows:

> "1. Court services officers (CSO) and Shawnee county department of corrections officers (DCO) who are sworn as deputy clerks of the district court, are authorized to admit to bail persons in custody in accordance with the provisions of this order."

Absent statutory authority nonjudicial officers may not admit accused persons to bail. 8 C.J.S. Bail § 50. Specifically, a district court clerk has no power to take or approve recognizances and the court may not deputize the clerk to do so. Morrow v. State, 5 Kan. 563 (1869); 8 C.J.S. Bail § 52; 8 Am.Jur.2d Bail and Recognizance § 21. However, admitting a person to bail is an entirely different act from the taking, accepting or approving bail after its allowance by a court; the former is generally considered to be a judicial act to be performed by a court or judicial officer while the latter is merely a ministerial function which may be performed by any authorized officer. 8 C.J.S. Bail § 39, 8 Am.Jur.2d Bail and Recognizance § 9. The act of taking and approving the bail bond in accordance with court orders has been held to be a ministerial act which may be delegated without statutory authority. Thus, after bail has been allowed and its amount fixed by the proper judicial officer, a clerk, by direction of the court, may accept and approve a bail bond. 8 C.J.S. Bail, § 53.

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While the choice of language in paragraph 1 of the court rule is unfortunate because it appears to allow CSOs and DCOs to admit people to bail, in actuality, this is not what occurs. The court, through its inherent rule making power, has established bond amounts and types of bonds which are required for certain crimes. Basically, the court has decreed that if certain conditions exist, a person may be released from custody. The CSOs and DCOs do not set bond amounts nor do they determine whether a surety is required. They merely determine whether the defendant meets the conditions that the court has already prescribed, and, if so, they ensure that the appropriate paperwork is filled out by the defendant who is then released. In effect, the court has preset the bond amounts, the types of bonds, and the conditions under which a defendant may be released and it is the responsibility of the nonjudicial officers to ensure that the court's order is carried out. Consequently, it is our opinion that the district court rule does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the nonjudicial officers are merely performing ministerial acts pursuant to court order.

You indicate concern that this procedure may violate K.S.A. 1993 Supp. 22-2802 by releasing defendants prior to their first court appearance. This statute states, in relevant part, as follows:

> "Release prior to trial. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and assure the public safety."

There is nothing in the statutes which prohibits the release of a defendant on bond prior to his or her first appearance. In fact, K.S.A. 22-2901(1) and (3) contemplate that a person who is arrested be taken "without unnecessary delay" to a magistrate who can then fix the terms and conditions of an appearance bond. Consequently, it is our opinion that K.S.A. 1993 Supp. 22-2802 provides that if the defendant has not been released prior to the first appearance, the defendant will be released upon execution of an appearance bond.

2. Is it permissible for a court to allow accused persons to post 10% of the amount of an appearance bond?

K.S.A. 1993 Supp. 22-2802(3) and (4) provide, in relevant part, as follows:

> "(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.
>
> "(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties."

The statutes do not specifically address the propriety of the court's 10% OR-CD program. K.S.A. 1993 Supp. 22-2802 was originally enacted in 1970 and it drew heavily on federal bail reform law which was designed to encourage the release of defendants without money bail and to minimize the number of cases where the defendant would be detained pending trial. Kansas Judicial Council Bulletin, October, 1969, p. 45. Release on the person's own recognizance was the norm and money bail or pretrial detention in lieu thereof was contemplated only when special circumstances existed which could best be met by use of traditional bond.

K.S.A. 1993 Supp. 22-2802 contemplates three types of bonds: Appearance bonds with sureties, appearance bonds without sureties, and a cash bond in the full amount. On at least three occasions legislation has been introduced which would have variously prohibited or codified this 10% program. (House bill no. 2009 introduced during the 1985 session, house bill no. 2961 in 1986 and house bill no. 2252 in 1987). All three bills were defeated at various stages.

The court justifies its use of this program under the authority of K.S.A. 22-2814 et seq. which authorize each district court to "establish, operate and coordinate release on recognizance programs and supervised released programs". We have reviewed the legislative history of these statutes in order to determine whether the legislature intended to allow such a program under the auspices of these recognizance statutes.

These statutes were originally enacted in 1978, however, the supreme court concluded that they violated the one subject rule in article 2, § 16 of the Kansas constitution. State ex rel. Stephan v. Thiessen, 228 Kan. 136 (1980). The statutes were reenacted in 1981 without the constitutional infirmities.

Recognizing the unfairness of a system that relied heavily on money bail and professional bondsmen, these statutes were enacted to rely less on the financial resources of the defendant and concentrate on the risk of nonappearance. Minutes, Senate Committee on Federal and State Affairs, March 23, 1978.

> "House bill no. 3129 would permit the establishment of release-on-recognizance (ROR) and supervised released programs in the state. These programs will permit the pretrial release of those selected individuals who are unable to post money bond but who have stable roots in the community indicating that they will appear at trial and their release will not jeopardize public safety. House bill no. 3129 would authorize each district court to establish, operate, and coordinate ROR and supervised released programs which would be administered by probation officers and other personnel of the district court." Proposal No. 14, Report on Kansas Legislative Interim Studies to the 1978 Legislature, Feb. 1978, p. 56.

Neither proposal no. 14 nor any of the testimony before the senate federal and state affairs committee included any discussion of a 10% cash deposit bond program. However, it is interesting to note that included in house bill no. 3129 was an amendment to then K.S.A. 1977 Supp. 22-2802 which would have allowed a defendant to execute an appearance bond and deposit with the court a sum not to exceed 10% of the bond amount -- the deposit to be returned if the defendant made the required appearances. (House bill no. 3129, sec. 5). However, the senate committee struck the amendment and the 10% cash deposit provision was never enacted.

In determining legislative intent, the historical background, legislative proceedings and changes made in the statutes during the course of their enactment may be considered in

determining legislative intent. Urban Renewal Agency of Kansas City v. Decker, 197 Kan. 157 (1966). Rejection by the legislature of a specific provision contained in a proposed enactment is persuasive to the conclusion that the act should not be so construed as in effect to include that provision. City of Manhattan v. Eriksen, 204 Kan. 150 (1969). (In Erikson, the court interpreted the eminent domain act as not including as an element of damage the cost of removal of personal property -- noting that while the original bill included such a cost as an element of damage, the senate judiciary committee deleted the item.)

We cannot ignore the fact that when the ROR statutes were being considered this 10% cash deposit program - which is currently in use by the third judicial district court - was specifically rejected. Consequently, it is our opinion that the district court's 10% OR-CD program goes beyond the authority granted to district courts under the purview of K.S.A. 22-2814.

3. Is it permissible for a court to retain 10% of the OR-CD bond as an administrative fee or must the clerk of the district court turn it over to the state treasurer pursuant to K.S.A. 1993 Supp. 20-350?

In Attorney General Opinion No. 89-113, we concluded that if an appearance bond is in the form of a cash deposit, the authority of the court to retain the deposit or to apply any of it to court costs or fines depends on the statute because the court has no inherent power to do so. In the absence of such a statute, retention of the cash deposit is impermissible. While we realize that this opinion addressed K.S.A. 1993 Supp. 22-2802(4) - (a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties), the rationale can be applied to the situation at hand where the court accepts a percentage of the bond amount in cash and then retains a portion of that cash as a "fee." Consequently, it is our opinion that the third judicial district court lacks the power to withhold any amount from the cash deposit because there is no statutory authorization to do so.

However, this "fee" is not a "fine, penalty or forfeiture" which would trigger the operation of K.S.A. 1993 Supp. 20-350 which requires that "all moneys received by the clerk of the district court from the payment of fines, penalties and forfeiture shall be remitted to the state treasurer." A fee is generally regarded as a charge for some service whereas a

fine, penalty, or forfeiture is a pecuniary punishment imposed by a tribunal for some offense. Executive Aircraft Consulting Inc. v. City of Newton, 252 Kan. 421 (1993); Vanderpool v. Higgs, 10 Kan.App.2d 1, 2 (1984); United States v. Safeway Stores, 140 F.2d 834, 839 (10th Cir. 1944); Missouri-Kansas-Texas Railroad Company v. Standard Industries Inc., 192 Kan. 381, 384 (1964). It is our opinion that the fees collected by the district court clerk do not fall under the purview of K.S.A. 1993 Supp. 20-350 and, therefore, do not have to be turned over to the state treasurer.

4. Does the court have the authority to impose certain conditions upon the surety relative to the surrender of the obligor?

Paragraph no. 14 of the district court rules states:

> "It is a condition on all private or professional surety bail bonds in this judicial district that sureties shall agree to remain liable on all bail bonds until all proceedings arising out of the arrest and/or case for which the bond was posted are concluded or until they are released by court order. No surety shall be released on their obligation on a bail bond once posted without court approval. Any surety or person arrested and turned in on bond by their surety, may file a motion with the court for a determination of whether or not the bail bonds should be revoked or continued."

Your concern is whether this provisions violates K.S.A. 22-2809 which provides:

> "Any person who is released on an appearance bond may be arrested by his surety . . . and delivered to a custodial officer of the court in any county in the state in which he is charged and brought before any magistrate having power to commit for the crime charged; and at the request of the surety, the magistrate shall commit the parties so arrested and endorse on the bond . . . the discharge of such surety; and the person so committed

> shall be held in custody until released as provided by law." (Emphasis added.)

An appearance bond is a contract between the principal (defendant) and surety on the one hand and the state on the other. State v. Indemnity Insurance Company of North America, 9 Kan.App.2d 53, 55 (1983). Theoretically, the court is a party to the contractual obligation between the surety and the defendant and, therefore, would have the right to negotiate a condition that the surety remain liable on the bond until the conclusion of the proceedings or until the court releases the surety on the bond. The problem with this theory is that we interpret K.S.A. 22-2809 as requiring the court to discharge the surety upon the latter's request (if the defendant is surrendered) and consequently paragraph 14's requirement that sureties agree to remain liable until the criminal proceeding is over violates K.S.A. 22-2809's provision that sureties be released upon request. However, it is appropriate for the court to require that a surety file a motion for release as long as that motion is granted without delay.

5. If the defendant requests to be released on a professional surety bond, can the court modify the bond which is currently in place to reflect such a change?

Paragraph 15 of the district court rule states:

> "Bail bonds designated as OR-cash, cash or professional surety shall be written only on the terms specified by the district judge. If a defendant requests release on a professional surety bond when cash or OR-cash deposit has been specified, the CSO or DCO shall contact the judge authorizing the bond, for modification of the bond."

Whenever a defendant has been released on bond, the court issues an order which designates the bond amount, bond conditions, and the type of bond (i.e. professional surety, nonprofessional surety, OR, OR-cash deposit, OR-supervised, cash). If the defendant desires to use a professional surety, the order will reflect this fact. If the order indicates a bond with a nonprofessional surety and the defendant desires to use a professional surety instead, then paragraph 15 requires that the CSO or DCO contact the court so that the order will reflect the change.

Senator Oleen indicates concern that the court is somehow restricting the ability of a defendant to obtain the services of a professional bondsman by requiring that a defendant select the OR-CD program. This complaint is beyond our purview and moot in light of our opinion that the court's OR-CD program goes beyond the authority granted to the court under K.S.A. 22-2814 et seq. We interpret this paragraph to require that the court order reflect the type of bond the defendant is currently using as well as the conditions of the bond and we find no violation of any statute in this procedure.

Summarizing our opinion, we conclude the following:

1. District court rule 3.324 does not sanction the practice of nonjudicial officers admitting persons in custody to bail. Rather, the court has determined bond amounts and types of bonds for certain crimes and the nonjudicial officers are charged merely with executing the court's mandate.

2. K.S.A. 22-2814 et seq. do not authorize the practice of allowing a defendant to post 10% of the bond amount with the clerk of the district court.

3. Furthermore, it is not permissible for a court to retain any portion of a cash deposit. However, the "fee" which the third judicial district is currently collecting from defendants is not a "fine, penalty, or forfeiture" pursuant to K.S.A. 1993 Supp. 20-350 and, therefore, would not be required to be turned over to the state treasurer.

4. K.S.A. 22-2809 requires that a court release a surety on the bond if the latter surrenders the defendant and requests a discharge from the obligation. Consequently, a court may not impose a condition in the bond obligation which requires that a surety remain liable on the bond until the criminal proceeding is over.

5. Paragraph 15 of the district court rule requires that the court order reflect the type of bond procedure that the defendant is currently using.

Very truly yours,

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION

Dewey R. Smith,
Bob D. Hendricks,
John W. Dozier,
Calvin C. Mounkes,
Brian C. Haynes,
Wallace Dixon,
Cassie Benoit,
Charles Herren
Plaintiffs,

Case No.

CLASS ACTION CERTIFICATION REQUESTED

V.

The State of Kansas,
The Third Judicial District of the State of Kansas
The Honorable James P. Buchele,
The Honorable Terry Bullock,
The Honorable Thomas Conklin,
The Honorable Fred Jackson,
The Honorable Marla J. Luckert,
The Honorable Eric S. Rosen,
The Honorable James M. MacNish,
The Honorable Franklin R. Theis,
The Honorable Frank Yeoman,
The Honorable Charles E. Andrews,
The Honorable Daniel L. Mitchell,
The Honorable Matthew J. Doud,
The Honorable Nancy Parrish,
The Honorable Jan Luenberger,

Defendants.

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PETITION

COME NOW the Plaintiffs and for their cause of action herein allege and aver:

I. NATURE OF THE CASE

1. That this is a class action suit brought by the above named representative Plaintiffs on behalf of a class of persons who have sought pretrial release in the Third Judicial District of Kansas.

2. That the Plaintiffs and the Plaintiff Class allege that the pretrial release procedures implemented in the Third Judicial District are unlawful, unconstitutional, and have resulted in the denial of certain fundamental rights guaranteed the Plaintiffs and their class by the laws of the state of Kansas, the Kansas Constitution and the Constitution of The United States of America.

3. The Plaintiffs and their class seek temporary and permanent injunctive relief and damages as prayed for below.

II. JURISDICTION

1. That this action arises under the Constitution of the United States of America, and the Fifth, Eight, and Fourteenth Amendments thereto, the provisions of 42 U.S.C. sec. 1983, The Kansas Constitution, specifically Article 1, sections 9 and 18, and the Kansas Tort Claim Act K.S.A. 75-6101 et seq.

III. PLAINTIFFS

1. **DEWEY R. SMITH:** That the Plaintiff Dewey R. Smith was arrested on April 3, 1996 in case number 96 CR 1106.

2. That the Plaintiff's bond was set at ten thousand dollars ($10,000.00) cash only.

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4. That the Plaintiff arranged with a commercial bondsman to have a $10,000.00 surety bond posted to secure his release.

5. That the Plaintiff attempted to post a surety bond in accordance with the provisions of K.S.A. 22-2802.

6. That the deputy clerk of the district court on duty at the Shawnee County jail told Plaintiff that he was not permitted to post a surety bond, and that his bond could only be deposited in cash.

7. That the Plaintiff appeared before the court on April 4, 1996, and requested that his bond be changed to a surety bond.

8. That the court denied Plaintiff's request to modify his bond.

9. That on or about April 14, 1996 the Plaintiff through his attorney Kristine Savage, renewed his request for a surety bond.

10. That the renewed request was denied, but Plaintiff's bond was reduced to $1,000.00 "cash only".

11. That the Plaintiff was unable to post that bond.

12. That on April 24, 1996 the Plaintiff again requested a surety bond.

13. That the the court denied the Plaintiff's request for a surety bond, increased Plaintiff's bond to $5000.00 ORCD, and allowed the Plaintiff to be released upon deposit in cash of 10% of the bond.

14. That Plaintiff's wife attempted to post the 10% cash bond, but was required to give the $500.00 to the Plaintiff.

15. That the Plaintiff, as a condition of his release, was required to assign the $500.00 to the court for payment of future court ordered obligations.

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16. That the Plaintiff was required to pay a non-refundable $50.00 fee to the court to secure his release.

17. That the Plaintiff was incarcerated for eleven (11) days.

18. That the Plaintiff was able and willing to post a surety bond on April 4, 1996.

19. **BOB D. HENDRICKS:** That the Plaintiff was arrested on an arrest report on June 6, 1996.

16. That the Plaintiff appeared before the court on June 5, 1996, where he requested a surety bond.

18. That Plaintiff's request for a surety bond was denied and Plaintiff's bond was set at $1,500.00 cash only.

17. That the Plaintiff contacted a commercial bondsman who was willing to post a surety bond.

18. That the Bondsman was not allowed to post a surety bond for the Plaintiff.

19. That the Plaintiff was released from the jail on June 12, 1996, after the District Attorney declined to prosecute.

20. That the Plaintiff was incarcerated for eight (8) days.

21. That the Plaintiff was able and willing to post a surety bond on June 5, 1996.

23. **JOHN W. DOZIER:** That the Plaintiff was arrested on July 20, 1996, in case numbers 95 CR 136, 94 CR 1824 and 95 CR 2207.

24. That the Plaintiff's bonds were set as follows: 95 CR 136, $500.00 commercial surety only; 94 CR 1824, $500.00 commercial surety only; 95 CR 2207, $1000.00 ORCD.

25. That the Plaintiff immediately contacted a commercial bondsman who was willing to post bonds in all three cases.

26. That the Plaintiff was not permitted to post a surety bond in case number 95 CR 2207.

27. That to secure his release in case number 95 CR 2207 the Plaintiff was required to make a $100.00 deposit, to assign that deposit for future court ordered obligations, and to pay a non-refundable $10.00 fee to the court.

28. That the Plaintiff was incarcerated for approximately 48 hours.

29. That the Plaintiff could have been released immediately if he had been allowed to post surety bonds in all three cases.

31. **CALVIN C. MOUNKES**: That the Plaintiff was arrested on June 28, 1995 in case number 95 DU 203.

32. That Plaintiff's bond was set at $250.00 cash.

33. That the Plaintiff immediately contacted a commercial bondsman who was willing to post a $250.00 surety bond.

34. That the Plaintiff was not permitted to post a surety bond.

35. That the Plaintiff attempted to contact his mother to borrow funds to post the $250.00 cash bond.

36. That the Plaintiff's mother had been hospitalized and Plaintiff was unable to contact her for two days.

37 That the Plaintiff was incarcerated for over 48 hours.

38. That the Plaintiff would have been released immediately if he had been permitted to post a surety bond.

41. **BRIAN C. HAYNES**: That the Plaintiff was arrested on July 20, 1996 in case

number 95 CR 1881.

42. That the Plaintiff's bond was set at $300.00 cash.

43. That the Plaintiff immediately contacted a commercial bondsman who was willing to write a surety bond.

44. That the Plaintiff was not permitted to post a surety bond.

45. That the Plaintiff was incarcerated for 22 hours before he could locate family members who were able to loan him the money to post the cash bond.

46. That the Plaintiff would have been released immediately if he had been permitted to post a surety bond.

47. **WALLACE DIXON**: That the Plaintiff was arrested on May 30, 1996.

48. That Plaintiff's bond was originally set at $500,000.00 ORCD.

49. That Plaintiff appeared before the court and requested a surety bond.

50. That Plaintiff's request was denied but his bond was lowered to $100,000.00 ORCD.

51. That from May, 30 1996 to the present the Plaintiff has made thirteen (13) requests to the court for a surety bond. Eight in writing, two orally, one by formal motion, and two through his attorney.

52. That each of these requests has either been denied by the court, or the Plaintiff has received no response to that request.

52. That the Plaintiff has been incarcerated eighty three (83) days.

53. **CASSIE BENOIT**: That the Plaintiff was arrested on July 15, 1996 in case number 96 CR 2084.

54. That Plaintiff's bond was originally set at $2500.00 ORCD.

55. That The Plaintiff appeared before the court on July 16, 1966.

56. That the court reduced her bond to $500.00 surety.

57. That the court informed the Plaintiff that no commercial bondsman would write a $500.00 bond.

58. That Plaintiff contacted several commercial bondsmen, none of whom were willing to write a $500.00 bond.

59. That on July 16, 1996 Plaintiff contacted a friend, Ms. Samantha McCready who was willing to post the $500.00 in cash.

60. That the deputy clerk of the District Court on duty at the jail informed Ms. McCready that the bond could not be posted in cash, and could only be posted by a commercial bondsman.

61. That on July 18,1996 the Plaintiff's bond was increased to $1,500.00 OR and she was released.

62. That the Plaintiff could have been released on July 16, 1996 had she been permitted to post her bond in cash.

63. That the Plaintiff was incarcerated four days.

64. **CHARLES HERREN**: That the Plaintiff was arrested on July 14, 1996.

65. That he was taken before the court on July 15, 1996 where he he was told that his mother would be qualified as a surety and and he could be released upon her execution of a bond.

66. That on July 15, 1996 the Plaintiff discovered that his bond had been set at $5,000.00 "cash only".

67. That the Plaintiff contacted his brother Ray Herren and asked him to arrange for a bondsman to write his bond.

68. That on July 16, 1996 the Plaintiff's brother and a commercial bondsman attempted to post a $5,000.00 surety bond for the plaintiff.

69. That they were informed by the Deputy clerk that the Plaintiff could not be released on a surety bond.

70. That the Plaintiff's brother and the bondsman requested the deputy clerk to contact the judge who had set the bond for modification of the bond pursuant to paragraph 15 of District Court Rule 3.311 (Pretrial Release).

71. That the Deputy Clerk contacted her supervisor, and then informed Plaintiff's brother that the deputy clerks had been instructed not to contact any judge regarding bond modifications.

72. That the Plaintiff is indigent and was without counsel until July, 20 1996.

73. That on July 20, 1996 the Plaintiff's bond was reduced $2,500.ORCD and he was released, upon deposit of $250.00 and payment of a $25.00 administrative fee..

74. That the Plaintiff could have been released on July 16, 1996, had he been allowed to post a surety bond.

IV. DEFENDANTS

1. That the Honorable James Buchele, in his official capacity as Criminal Assignment Judge of the Third Judicial District, implements procedures, policies and rules governing pre-trial release of persons accused of crimes in Shawnee County, Kansas.

2. That the Honorable Terry Bullock, in his official capacity as Administrative Judge of the Third Judicial District of Kansas is charged with the authority to adopt procedural rules for the operation of the Third Judicial District Court.

3. That the Honorable Thomas Conklin, The Honorable Fred Jackson, The

Honorable Marla J. Luckert, The Honorable Eric S. Rosen, The Honorable James M. MacNish, The Honorable Franklin R. Theis, The Honorable Frank J. Yeoman, The Honorable Charles E. Andrews Jr., The Honorable Daniel L. Mitchell, The Honorable Matthew J. Doud, The Honorable Nancy Parrish, The Honorable Jan Luenberger, The Honorable Terry Bullock and the Honorable James P. Buchele in their official capacities as District Court Judges of the Third Judicial District of Kansas have been authorized by the Kansas Legislature to establish conditions of pre-trial release pursuant to K.S.A. 22-2802 *Release prior to trial.*

4. That the Third Judicial District is a governmental agency of the state of Kansas.

5. That the State of Kansas is liable under the Kansas Tort Claims Act for the actions of its agents as more fully set forth below.

V. FACTUAL ALLEGATIONS

1. That the Eighth and Fourteenth amendments to the United States Constitution guarantee that persons awaiting trial shall not be subject to excessive bail.

2. That any condition of bail which does not serve to insure the presence of the accused to answer the charges against him, or which is not imposed to insure the public safety, constitutes excessive bail.

3. That the Fifth and Fourteenth amendments to the United States Constitution guarantee a person's right to due process of law and equal protection of the law.

4. That any rule, procedure, or policy which restricts a person's statutory and constitutional right to admission to bail, violates that person's right to procedural and substantive due process.

5. That any rule, procedure or policy which includes criteria arbitrarily differentiating between members of a class of persons seeking pretrial release denies equal protection of the law

to all members of that class.

6. That 42 U.S.C. sec. 1983, prohibits any person acting under color of state law, from depriving any other person of any rights, privilege and immunities secured by the Constitution.

7. That article 1, section 9 of the Kansas Constitution, provides that "All persons shall be bailable by sufficient solvent sureties except for capital offenses where the proof is evident or the presumption great..."

8. That Article 1, section 18 of the Kansas Constitution provides that justice shall be administered without delay.

9. That any rule, procedure or policy which delays or impedes a person's constitutional right to admission to bail violates that person's rights under Article 1, section 18 of the Kansas Constitution.

10. That the criteria for pretrial release of persons accused of crimes in Kansas is set out in K.S.A. 22-2802 *release prior to trial*

11. That K.S.A. 22-2802 limits the court's jurisdiction over pre-trial release to determining if a defendant should be released on his own recognizance (i.e. without bond); or, if a bond is required, to determining the amount of a bond reasonably necessary to insure the presence of the accused to answer the charges against him, and setting any other conditions necessary for the public safety.

12. That K.S.A. 22-2802 provides that a person may deposit cash in the amount of the bond in lieu of surety to obtain his release.

13. That all persons charged with non-capital crimes in the state of Kansas have an absolute right to admission to bail under K.S.A. 22-2802.

14. That as an adjunct to K.S.A. 22-2802 the Legislature has in K.S.A. 22-2814 *Release on recognizance and supervised release* authorized the various district courts to implement release on recognizance and supervised release programs.

15. That participation in release on recognizance and supervised release programs are wholly voluntary and "shall not affect the right of any person to seek or obtain release under K.S.A. 22-2802.."

16. That the Defendant, The State of Kansas, by and through its agents enumerated above, has, under color of state law, promulgated and implemented a pre-trial release procedure in the Third Judicial District which exceeds the jurisdiction granted to it by the Kansas Constitution and the Legislature.

17. **DISTRICT COURT RULE 3.311**: That Kansas Supreme Court Administrative Order No. 96, and District Court Rule 3.311 (DCR 3.311) (both marked as exhibit "A" and "B" respectively, attached hereto and incorporated herein by reference) establish a pretrial release procedure which has supplanted the pretrial release criteria established by the legislature in K.S.A. 22-2802.

18. That DCR 3.311 creates a new species of bail bond, Own Recognizance Cash Deposit (ORCD) or OR-cash bonds.

19. That DCR 3.311 is unconstitutional in that it violates the fundamental guarantees of procedural and substantive due process, equal protection under the law, and freedom from excessive bail of every person seeking pretrial release in the Third Judicial District.

20. That the pretrial release procedure authorized by Administrative Order 96 and implemented through DCR 3.311 is applied in an unconstitutional manner in the Third Judicial District.

21. That paragraph 15 of DCR 3.311 provides that bonds designated as Or-cash (ORCD), Cash or professional surety may only be written as specified; ie, a bond which is set as ORCD may not be posted by surety, a bond set as surety may not be posted in cash, etc.

22. That paragraph 15 of DCR 3.311 provides that persons whose bonds have been set as cash or ORCD and who wish to post a surety bond must request such a modification from the deputy clerk of the district court who shall notify the judge authorizing the bond of such persons' requests for surety bonds.

23. That despite the mandatory language of paragraph 15 of DCR 3.311, deputy clerks of the district court on duty at the Shawnee County jail have been instructed not to contact judges regarding bond modifications.

24. That there is no procedure in place in the Third Judicial District specifically designed to protect a person's right to admission to bail under K.S.A. 22-2802, or to advise persons that they have absolute right to admission to bail under that statute.

25 That persons arrested and brought into the criminal justice system are typically unsophisticated, unrepresented and entirely at the mercy of the system

26. That it is wholly unreasonable to expect that persons so situated would know that they have an absolute right to admission to bail under K.S.A. 22-2802, and it is further unreasonable to expect that such persons would affirmatively request a modification when another type of bond has been set by a judge.

27. That paragraph 16 of DCR 3.311 provides that rule shall not restrict the right of any person to obtain pretrial release under K.S.A. 22-2802.

28. That DCR 3.311 by definition restricts the right of a person to obtain pretrial release under K.S.A. 22-2802.

29. That the court in setting a "cash only" or ORCD bond determines the amount of money the accused must deposit to insure his presence to answer charges against him.

30. That a person seeking pretrial release under K.S.A. 22-2802 has an absolute right to admission to bail at the amount set by the Court in the "cash only", or ORCD bond.

31. That the court cannot legally deny a person admission to bail under K.S.A. 22-2802.

32. That the requirement of paragraph 15 of DCR 3.311 that a person seeking pretrial release under K.S.A. 22-2802 must affirmatively request modification of a "cash only " or ORCD bond constitutes excessive bail because it imposes an unnecessary, artificial, and unreasonable impediment to such person's statutory and constitutional right to admission to bail, the amount of the bond having been previously determined by the court.

33. That the requirement of paragraph 15 of DCR 3.311 that a person seeking pretrial release under K.S.A. 22-2802 must affirmatively request a bond modification violates such person's right to substantive and procedural due process by creating a superfluous, and unnecessary procedure which restricts and impedes such person's access to his statutory and constitutional right to admission to bail.

34. That the requirement of paragraph 15 of DCR 3.311 that a person seeking pretrial release under K.S.A. 22-2802 must affirmatively request a bond modification violates such person's guarantee justice without delay under Article 1, section 18 of the Kansas Constitution by unreasonably delaying such person's statutory and constitutional right to admission to bail.

35. That there is no procedure available under DCR 3.311 to persons whose bonds are set as professional surety and who wish to exercise their right under K.S.A. 22-2802 to post cash in lieu of surety.

36. That DCR 3.311 violates the substantive and procedural rights of persons whose bonds are set as professional surety by denying such persons their statutory right under K.S.A. 22-2802 to admission to bail by posting cash, in the amount of the bond, in lieu of surety.

37. That notwithstanding the provisions of paragraph 16 of DCR 3.311 which expressly provide that participation in this program (ie. pretrial release other than admission to bail under K.S.A. 22-2802) shall be on a voluntary basis, "participation" is mandatory in the Third Judicial District.

38. That notwithstanding the provisions of paragraph 16 of DCR 3.311 which expressly provide that that rule shall not restrict the right of any person to admission to bail under K.S.A. 22-2802, judges of the Third Judicial District routinely deny admission to bail to persons who request modification of their bonds under paragraph 15 of that rule.

39. That there is no authority either statutory or administrative which permits any district court judge in the state of Kansas to deny any person seeking pretrial release his right to admission to bail under K.S.A. 22-2802.

40. That DCR 3.311 as applied in the Third Judicial District denies procedural and substantive due process to all persons seeking pretrial release by making admission to bail discretionary with the court.

41. That DCR 3.311 as applied in the Third Judicial District denies equal protection of the law to all persons seeking pretrial release by making admission to bail under K.S.A. 22-2802 discretionary with the court, thereby resulting in some persons being admitted to bail, while other similarly situated persons are not, with no rational basis for, or compelling state interest in such distinction.

42. **CASH ONLY BONDS**: That the prerelease procedures implemented in the Third

Judicial District authorize the court to set bonds as "cash only".

43. That "cash only" bonds may not be posted by sureties, private or commercial, and may not be posted by third parties.

44. That there is no authority, statutory or administrative, which permits the court to set a bond as "cash only".

45. That "cash only" bonds are expressly prohibited by K.S.A. 22-2802, Article 1, section 9 of the Kansas Constitution and paragraph 16 of DCR 3.311.

46. That a person whose bond is set as "cash only" must assign his bond to the court for payment of any court ordered obligation, including payment of obligations wholly unrelated to the underlying charge; e.g., payment of debt awarded in domestic cases, payment of fines and costs in other criminal or traffic matters, child support etc., as well as costs, fines, restitution, etc., which may at some later date be assessed by the court (see exhibit "C" attached hereto and incorporated herein by reference).

47. That the requirement that a person posting a "cash only" bond be required, upon conviction, to pay court ordered obligations wholly unrelated to the charges for which the person is convicted constitutes cruel and unusual punishment in derogation of the Eighth Ammendment to the Constitution of the United States of America.

48. That DCR 3.311 does not provide for a pre or post deprivation due process hearing.

49. That failure to provide notice and opportunity for a hearing to a person whose property is subject to seizure by the state constitutes denial of such person's procedural and substantive due process rights.

50. That the requirement that a person post a bond by "cash only" denies such person

his guarantees of procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution by prohibiting him from exercising his statutory and constitutional right to post a surety bond.

51. That the requirement that a person assign a "cash only" bond to the court as a condition of release constitutes excessive bail in derogation of the Eighth Amendment to the United States Constitution.

52. That the requirement that an individual post both an appearance bond and a supersedeas bond is an artificial and unreasonable condition of bail, is antithetical to the presumption of innocence, does not insure that an accused will appear to answer the charges against him, and exists only to facilitate the collection of money by the court.

53. That "cash only" bonds violate an individual's right to equal protection of the law by requiring some persons awaiting trial to post a supersedeas bond to secure their release while not requiring others similarity situated to do the same, with no rational basis for, or compelling state interest in, making such distinction.

54. That requiring a person to assign his bond to the court for payment of debt owed to the state, as a condition of pretrial release, is seizure of such person's property without due process of law.

55. That the court must function as a neutral and detached magistrate at all stages of a criminal proceeding.

56. That our system of government is predicated upon the separation of powers between the three branches of government as defined in the United States Constitution and the Constitution of the State of Kansas.

57. That this separation of powers clearly distinguishes the authority of the judicial and

executive branches.

58. That the court, in its judicial capacity, is inherently separate from the state in its prosecutorial capacity.

59. That under the prerelease procedures implemented in the Third Judicial District the court abandons its role as a neutral and detached magistrate and functions as an agent of the state acting in its prosecutorial capacity.

60. That the court, having acted as an agent of the state in the pretrial stage of a criminal proceeding, cannot thereafter sit in judgement of, and pronounce sentence upon a person whose property has been seized by that court for the benefit of the state.

61. That this procedure results in a denial of an accused's procedural and due process rights by forcing the court into the dual role of collection agent for the state as well as neutral and detached magistrate.

62. That it is a common practice in the Third Judicial District for the state to request and the court to order "cash only" bonds in an amount necessary to satisfy anticipated court ordered obligations.

63. That the very nature of such practice encourages the state and the court to seek and set bonds in amounts intended, not to insure the presence of the accused to answer the charges against him, but to insure the payment of court ordered obligations in the event such person is convicted.

64. **ORCD BONDS:** That Own Recognizance Cash Deposit (ORCD) Bonds, as defined by DCR 3.311, and as administered in the Third Judicial District are unconstitutional.

65. That release on recognizance means that the court has determined that no bond is necessary, and that the person's naked promise to appear is sufficient to insure his presence to

answer the charged against him.

66. That "release on recognizance" and "release on bond" are mutually exclusive.

67. That ORCD bonds are fictitious for the reason that the state has no statutory authority to collect the "OR" portion of a forfeited "ORCD" bond.

68. That the state has never collected the "OR" portion of any forfeited "ORCD" bond in the Third Judicial District.

69. That the court in setting an ORCD bond has actually determined that a deposit of 10% of the stated amount of the bond is sufficient to insure the presence of an accused to answer the charges against him.

70. That requiring a promise to pay anything beyond the amount deposited is, by definition, excessive bail, and violates the eighth amendment guarantees of persons posting such bonds.

71. That persons posting ORCD bonds are charged a non-refundable administrative fee equal to 10% of the cash posted.

72. That there is no statutory authority for that "administrative fee".

73. That "ORCD" bonds are actually "cash only" bonds with all the constitutional and statutory infirmities complained of above.

74. That notwithstanding the clear and unambiguous language of Administrative Order 96, and DCR 3.311, the "ORCD" program as implemented in the Third Judicial District is mandatory.

75. That persons whose bonds are set as ORCD cannot "obtain pretrial release under other statutory methods". They cannot post surety bonds and can only be released upon payment of the deposit, assignment of that deposit to the court, and payment of the administrative fee.

76. That the ORCD bond system as implemented in the Third Judicial District violates a person's procedural and substantive due process rights to access to the bail system and the defendant's protection from excessive bail by charging a mandatory fee for the exercise of the defendant's constitutional and statutory right to bail.

77. That ORCD bonds deny equal protection of the law to similarly situated individuals for the reason that a person whose bond is set as "cash only" or surety will always forfeit the full amount of the bond if he fails to appear, while those whose bonds are set as "ORCD" will only forfeit 10% of the bond.

78. That ORCD bonds give the court a direct financial interest in the type and amount of appearance bond set.

79. That the 10% administrative fee paid to the court by persons whose bonds have been set as ORCD is paid over to the general fund of Shawnee County Kansas.

80. That the operation of the Third Judicial District is funded by the general fund of Shawnee County Kansas.

81. That officials of the Third Judicial District have publicly announced that the "ORCD" program is successful because it has generated income for Shawnee County.

82. That the court should have no financial interest in money posted as an appearance bond.

83. That this quid pro quo arrangement has a chilling effect upon the substantive and procedural due process rights of persons seeking pretrial release in that the court benefits from ORCD bonds.

84. **PROFESSIONAL SURETY ONLY:** That the pretrial release procedures implemented in the Third Judicial District authorize the court to set bonds as "Professional Surety

Only".

85. That persons whose bonds are set as professional surety only may not post their bonds in cash.

86. That K.S.A. 22-2802 expressly provides that cash may be deposited in lieu of surety.

87. That the requirement that a bond be posted by professional surety only unduly restricts a person's access to the bail bond system.

88. That such restriction violates that person's procedural and substantive due process rights, and constitutes excessive bail in contravention of the Eight Amendment.

89. That bonds set as professional surety only deny equal protection of the law by discriminating against similarly situated persons with no rational basis for, or compelling State interest in such distinctions.

88. That bonds set as professional surety only are tantamount to denial of bail in situations where the accused cannot obtain the services of a commercial bondsman, but who would otherwise be able to post a cash bond.

89. That every individual required to post a bond to secure pretrial release in the Third Judicial District has been damaged by the practices complained of above.

90. That every individual so damaged is entitled to compensation by the State of Kansas.

VI. CLASS ACTION ALLEGATIONS

1. Plaintiffs bring this action as a class action pursuant to K.S.A. 60-223.

2. The class consists of all persons arrested in the Third Judicial District since 1985 who have been required to post a bail bond to be eligible for pre-trial release.

3. The class is so numerous that joinder of all such citizens is impracticable. Plaintiffs estimate that such class is over 73,000, as of the time of filing this petition and grows by an average of 20 people per day.

4. Plaintiffs will fairly and adequately protect the interests of all class members as they are members of the class and their claims are typical of the claims of all class members, in every respect. Each of the Plaintiffs have been denied Constitutional rights by the enforcement of the court procedure and will aggressively pursue the interests of the entire class. Plaintiffs' interests in obtaining injunctive relief for the violations of constitutional rights and privileges are consistent with and not antagonistic to those of any citizens within the class.

5. The common questions of law and fact include, but are limited to:

a) Whether the procedure promulgated by Supreme Court of Kansas Administrative Order No. 96 and Third Judicial Court Rule 3.324 violates the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America and violates the provisions of Title 42 U.S.C. sec 1983; and,

b) Whether the above described procedure violates the provisions of the Fifth and Eighth Amendments to the Constitution of the State of Kansas; and,

c) Whether the above described procedure violates the provisions of K.S.A. 22-2802-Release Prior to Trial; and,

d) Whether the Plaintiffs and members of the Plaintiff Class are entitled to injunctive relief; and,

e) Whether the Plaintiffs and members of then Plaintiff Class are entitled to damages and restitution.

6. That the pre-trial release procedures complained of above have damaged all

members of the Plaintiff Class who have been arrested in the Third Judicial District since 1985 and will damage all persons arrested in the Third Judicial District until the relief sought herein is granted.

7. The common question of law and fact predominate, exclusively, over questions affecting only individual class members.

8. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:

a) A multiplicity of suits with consequent burdens on the courts and defendants should and ought to be avoided.

b) It would be virtually impossible for all class members to intervene as parties-plaintiffs in this action.

c) Upon adjudication of defendants' liability, claims of the class members can be determined by this Court.

8. Consolidation of all classes into a single class action suit is in the best interests of all parties involved, will promote convenience in obtaining evidence and presenting witnesses, and will promote judicial economy.

WHEREFORE, Plaintiffs pray this Court enter an Order:

1. Finding that this action should proceed as a class action.

2. Preliminarily and permanently restraining, enjoining and prohibiting the defendants individually and collectively from enforcing the pre-trial release procedures complained of herein, and compelling them to comply with the provisions of Article 1, Sections 9 and 18 of the Kansas Constitution and K.S.A. 22-2802.

3. Awarding Plaintiffs and the Plaintiff Class their costs of suit and attorney fees

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under Title 42 U.S.C. 1988, or any other applicable law.

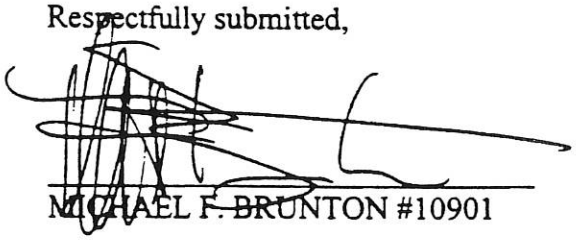
4. Awarding Plaintiffs and Plaintiff Class damages in an amount in excess of $10,000.00 per member.

5. Requiring the State to pay restitution to all members of the class who were forced to assign cash only bonds to the state to secure pre-trial release.

6. Requiring the State to pay restitution to all members of the class who were charged a 10% fee to exercise their right to pre-trial release.

7. For such other and further relief that this court may deem just and equitable.

Respectfully submitted,



MICHAEL F. BRUNTON #10901

12-90

Exhibit A

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 96

In re: Pretrial Release

1. Reference: Article 1, Section 3, Kansas Constitution, K.S.A. 20-101, and K.S.A. 20-342.

2. In addition to the current statutory pretrial release system, regulation of the conditions of and procedures for pretrial release of persons charged with crime in the district courts of Kansas may also be accomplished by promulgation of a local rule substantially as provided in the attached example. Examples of necessary supporting materials are also attached.

3. Judicial districts whose current own recognizance-cash deposit pretrial release programs are not substantially in compliance with the attached example have until July 1, 1995, to submit a local rule substantially in compliance with the attached example. All other districts may adopt a local rule for this purpose whenever the judges of the district court determine such a rule should be adopted. An information copy of any OR-cash deposit local rule adopted shall be forwarded to the office of judicial administration concurrently with filing with the clerk of the supreme court.

BY ORDER OF THE COURT this 17th day of January 1995.

Richard W. Holmes
Chief Justice

Attachments

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DCR 3.311
(Pretrial Release)

This District Court Rule establishes procedures and qualifications for release from custody in situations other than upon specific direction from a judge of the district court. This rule supersedes DCR 3.322 and 3.324.

1. Court Services Officers (CSO), Deputy Sheriffs and Correctional Officers who are sworn in as Deputy Clerks of the District Court are authorized to permit persons in custody to post bail bonds in accordance with the provisions of this rule.

2. The attached Automatic Bond Schedule (ABS) is approved for the amount of bail bonds for particular crimes. For those offenses where no bond is set or is designated "see judge", the accused shall be brought before a judge of the district court at the next court date to have a bond set, a judge of the district court shall be contacted.

3. Notwithstanding the ABS, persons in custody with any of the following conditions are not eligible for an ABS bond and shall be brought before a judge to have bond set:

(a) Prior bond forfeitures.
(b) Has been extradited or is awaiting extradition to another state.
(c) Has a detainer or hold from other states or federal authorities.
(d) Has a prior conviction of a felony classified as A, B, or C or level 5 or lower.
(e) Has been detained for a violation of probation.
(f) If a deputy clerk believes in good faith that the accused may flee, pose a danger to public safety or is not eligible for bond under the ABS, the matter of setting a bail bond shall be referred to a judge of the district court.

4. On bonds requiring $1,000 surety or less, Shawnee County residents eligible for bond under the ABS may be released on the person's own recognizance bond (OR) if they meet one of the following criteria:

(a) Own real estate located in Shawnee County in own name; or
(b) Any three of the following five:

(1) Resident of Shawnee County - more than 6 months;
(2) Valid Kansas drivers license;
(3) Employment in Shawnee County - more than 3 months;
(4) Current telephone service-in own name;
(5) Is enrolled as a student in the State of Kansas; or

(c) Active duty military and stationed at a military base in the State of Kansas.

All factors shall be determined upon a sworn statement made under penalty of perjury by the accused or the accused's private surety. Court service officers, deputy sheriffs or correctional officers who are sworn in as deputy clerks are authorized to require further verification of any item as they deem appropriate before permitting a person in custody to post bond. Victims reflected in an arrest report cannot act as private surety on a bail bond.

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5. On bonds requiring $1,000 surety or less Shawnee County residents eligible for bond under the ABS, but not meeting the criteria at paragraph 4, may be released on (a) on an OR Cash deposit bond or (b) with a private surety if the surety completes a sworn statement and qualifies under both items (a) and (b) of paragraph 4.

6. On bonds requiring surety of more than $1,000 and up to $2,500, Shawnee County residents eligible for bond under the ABS may be released by posting an OR cash deposit bond and meeting one of the criteria set forth in paragraph 4, sections (a), (b) or (c). A Shawnee County resident eligible for release under the ABS, but not meeting the criteria of paragraph 4 may be released by posting an OR-Cash deposit bond and obtaining a private surety who qualifies under both items (a) and (b) of paragraph 4.

7. Persons may be admitted to personal recognizance cash deposit (OR-Cash deposit) bail bonds who meet the criteria set forth in this rule or upon special screening and upon recommendation of a person authorized to permit posting of a bond in accordance with this rule. Any person determined eligible to be admitted to bail on an OR-cash deposit bond under this rule or OR bonds set as OR cash deposit by a district judge, shall deposit with the Clerk of the Court cash equal to 10 percent of the amount of the bond and execute a bail bond in the total amount of the bond. All other conditions of the bond set by the court and this rule must be satisfied.

8. When an accused person qualifies for an OR-Cash deposit bond, the cash deposit shall be held by the Clerk of the Court until such time as the accused has fully performed all conditions of the bond and is discharged from all appearance and financial obligations to the court. When an accused has been so discharged, 90% of the cash deposit shall be returned to the accused upon surrender of the cash deposit receipt previously issued by the Clerk. Ten percent of the cash deposit shall be retained by the Clerk as an administrative fee. Cash deposit bonds shall be placed in an interest-bearing financial institution account by the Clerk, however, no interest shall be paid to the accused on a cash deposit bail bond. Annually the aggregate amount of administrative fees retained and interest earned on cash deposit bail bonds shall be turned over to the general fund of Shawnee County.

9. A cash receipt for an OR-Cash deposit bail bond shall be issued only to the person being released on bond. Any person posting cash for another person shall be informed that any cash posted as a bail bond is the property of the accused person and may be subject to forfeiture, application to payment of court ordered financial obligations and will be refunded only to the arrested party. Any arrangements to furnish bond money are between the lender and the accused person.

10. When an accused person who has posted a cash deposit bail bond is discharged from all appearance and financial obligations to the court and files the receipt for the cash deposit with the Clerk, the refundable portion of the cash deposit not allocated to court ordered financial obligations shall be refunded to the accused or assignee by the Clerk.

11. All OR-Cash deposit bail bonds issued in this county shall be subject to the condition of forfeiture and the amount deposited will become the absolute and permanent property of the State of Kansas should one or more of the following occur:

(a) Accused person or surety makes a false statement or representation regarding the criteria for OR-cash deposit as set forth in paragraphs 3

through 6, above.

(b) Accused person fails to appear in court pursuant to court order at any stage of the proceedings.

(c) Accused person fails to report as directed to a CSO.

(d) Accused person fails to perform any other condition of bail imposed by the court.

12. All persons admitted to bail on OR or OR-Cash deposit bond shall be required to report as directed to a court service office (CSO).

13. All bail bonds issued in this judicial district are subject to this rule and the General Bond Conditions attached hereto. Other special conditions may also be imposed by the court as a requirement of release on any bail bond.

14. All private or professional surety bonds issued in this judicial district shall have as a condition that sureties agree to remain liable on any bail bond until all proceedings arising out of the arrest or case for which the bond was posted are concluded or until the surety is released by court order. No surety shall be released on an obligation on a bail bond without court approval. Either a surety or a person arrested and turned in on a bond by a surety may file a motion with the court for a determination of whether the bail bond should be revoked or continued in force.

15. Bail bonds designated as OR-Cash, Cash or Professional Surety shall be written only on terms specified by a judge of the district court. If an accused person requests release on a professional surety bond when cash or an OR-cash deposit bond has been specified, the deputy clerk shall contact the judge authorizing the bond for modification of the bond.

16. This rule shall not limit or restrict the right of any person to seek or obtain pretrial release under other statutory methods of admitting accused persons to bail or the authority of a judge of the district court to determine bail. The participation of an accused person in this program shall be on a voluntary basis.

17. This rule shall <u>not</u> apply to civil bench warrants.

18. Definitions:

(a) The term "cash" as used in this rule means United States currency, a money order, or a bank draft or certified check drawn on a Kansas banking or savings and loan institution.

(b) The term "court" as used in this rule refers to the Third Judicial District Court of the State of Kansas, or Shawnee County District Court.

(c) The term "accused person" as used in this rule means a person in custody by reason of an arrest report or a defendant in a criminal, driving under the influence of drugs or alcohol, or traffic case.

Exh C

SPECIAL NOTICE TO PERSONS PROVIDING CASH FOR BAIL BONDS

1. Any money received by the Jail for bail bonds is deposited in the inmates account and is considered the property of the inmate.

2. Money posted for Cash bonds or O R. Cash Deposit Bonds will be refunded by the Court to the inmate under certain conditions.

3. Any money paid to bail bondsman becomes the property of the bondsman and is not refundable to anyone.

4. ANY PERSON POSTING BOND FOR ANOTHER IS DEEMED BY THE COURT AS MAKING A LOAN TO THE ARRESTED PARTY. THE COURT IS NOT OBLIGATED TO REFUND A CASH DEPOSIT TO ANYONE OTHER THAN THE ARRESTED PARTY. ALL CASH DEPOSITS ARE SUBJECT TO FORFEITURE UPON DEFAULT AND TO APPLICATION TO COURT ORDERED FINANCIAL OBLIGATIONS.

5. THE FOREGOING MEANS THE ONLY PERSON YOU MAY LOOK TO FOR REPAYMENT OF MONEY YOU ADVANCE FOR A BAIL BOND IS THE PERSON BEING BONDED OUT (THE INMATE). NO ONE ELSE IS OBLIGATED TO RETURN MONEY TO YOU.

12-95

MEMORANDUM

TO: Tom Hanna, Vice-Chairman
Board of Shawnee County Commissioners

FROM: Dwight J. Parscale
Attorney at Law

DATE: October 9, 1985

SUBJECT: Percentage Deposit Bail

Under the present experimental program resulting from Judge Carpenter's recent unilateral administrative order county employees are responsible for releasing persons charged with crimes, on bond, in exchange for a percentage deposit bail by said defendant; and, the county and its employees are effectively required to serve as surety for said defendant, and to supervise said defendant and assure his appearance in court; and, the county is liable for the forfeiture of the balance of the bail in the event the defendant fails to appear.

Thus, this experiment implicates county employees, facilities, and funds. As such, it is important to note the responsibilities, duties, and powers of the county commissioners. "The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners." K.S.A. 19-103. And, in all suits or proceedings against the county the county shall be sued by suing the board of county commissioners. K.S.A. 19-105. See **APPENDIX "A."** And, if a judgment is rendered against county commissioners, the county is liable. Withers v. Root, 146 Kan. 822, 826, 73 P.2d 1113 (197). Further, the board of county commissioners has the power to make orders concerning property belonging to the county as they deem expedient, and to establish regulations, by resolution, as to the use of such property, and to proscribe penalties for violation thereof. K.S.A. 19-212. See **APPENDIX "B."** Further, the county commissioners have the power to represent the county and have the care of county property, and management of the business and concerns of the county, in every particular. K.S.A. 19-212. And, specifically, the county commissioners are responsible for the supervision of the Shawnee County Department of Corrections. See K.S.A. 19-1901, et seq. See **APPENDIX "C."**

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Where county facilities, county employees, and county funds are implicated, county employees given new job responsibilities and duties, and county funds used, county employees, the county, and the county commissioners all become exposed to liability under civil rights statutes (42 U.S.C. Section 1983 specifically) and the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. Thus, for instance, under 42 U.S.C. Section 1983, liability could be found on the part of county employees, county commissioners, and the county, if a person charged is released on bail, improperly supervised, and causes injury to person or property. Thus, it become incumbent upon the county commissioners to institute effective policies and procedures, supervision and training, overseeing, and to address itself to problems which become known regarding a program or employee's performance, all to prevent such injury to person or property. In short, the experimental program under the administrative order of Judge Carpenter has resulted in broad exposure, both officially and personally, to county officials, county employees, and to the county. Indeed, it is well settled that the county and commissioners can be sued for the actions of employees of the Shawnee County Department of Corrections (where Judge Carpenter is implementing his program to a substantial degree). See, e.g., Winchell v. Shawnee County, et al., Case No. 82-4027, in the United States District Court for the District of Kansas, in which case the county did not assert any defense that the commissioners and county were not liable for the actions of employees of the Shawnee County Department of Corrections. And, indeed, in that case former personnel director of Shawnee County, Judy Rickerson, testified that the termination of an employee of the Shawnee County Department of Corrections was not final until she, as county personnel director, approved same. See Rickerson Depo. at 33-34, and particularly lines 9-15 at p. 34. **See APPENDIX "D."**

In a memorandum of October 8, 1985, Mr. Davidson, Shawnee County Counselor, suggests that the administrative judge, a member of the judicial branch of the government, can effectively control, limit and hamstring the executive body of this county (Board of Commissioners) in meeting its obligations, carrying out its duties, and enforcing its powers, in the matter of county affairs! This position is supported by a reference to K.S.A. 20-349; this position is improper and not supported by said statute. Indeed, such a position is clearly misleading ~~and~~ a gross misconstruction of the statute. All K.S.A. 20-349 provides is that once a budget has been approved by the county commissioners for the operation of the district court, which budget will be paid by the county, the county thereafter relinquishes any control in the use of those monies by the district court in carrying out business of the district court (including employing persons who would be employees of the district court, e.g., employees of the state). **See APPENDIX "E."**

K.S.A. 20-345 makes it clear that, with the budget provided both by the county and the state, the administrative judge is only

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entitled to employ persons to be supervised under him and under the Supreme Court, that is, employees of the state--not employees of the county! And, he can only hire such employees with the approval of the majority of the district and associate judges; and, only to carry out duties imposed upon him by the Kansas Supreme Court, his boss! (The statute does not entitle the administrative judge to dream up some program, which was rejected by the legislature, and to cram it down the throats of county employees at county expense.) See APPENDIX "F."

In no fashion does K.S.A. 20-349 impose any restrictions whatsoever on the county commissioners in supervising county employees and in controlling county funds budgeted for purposes other than for the operation of the district court. Mr. Davidson's reading of this statute would give the administrative judge complete control of the entire courthouse simply because the county commissioners budgeted some county money to the district court. Such a suggestion is clearly ridiculous, and clearly contrary to the clear and compelling language of Kansas statutes cited above requiring the county commissioners to control county employees, facilities, and funds. In the final analysis the conduct of county employees remains the responsibility of the county commission--not the responsibility of the district court or the Kansas Supreme Court or the State of Kansas.

We would not contend that Judge Carpenter lacks the power to take money budgeted to him annually, by the county or the state, and employ new personnel under his supervision and the supervision of the state. We must contend that the judiciary does not have the authority to mandate to the county commissioners that they will fund the court's venture into private enterprise. Where the county commission is obviously required to adequately fund the court for the operations of its judicial system, it is just as obviously required to use the taxpayers' monies wisely. The additional cost inherent in the court's bonding business does nothing more than relieve the criminal of an expense which should rightfully be his/hers and not the taxpayers'. The law does not require the county commission to bow to the demands of the judiciary for additional capital to fund a court-run private enterprise.

It simply is not correct to state that the county commission has "very little discretion in the matter" because it approved the 1986 budget. These matters raised by this experimental program--and the employees, facilities and funds being used--had absolutely nothing to do with the 1986 budget allocation for the operation of the district court. Rather, this program encroaches upon money budgeted for other purposes. It is, however, correct that the county commission can and should reject any proposed budget in 1987 which would provide for personnel and funding for this private business venture (rejected by the Kansas legislature).

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Mr. Davidson cites K.S.A. 22-2802(c)(3) and suggests that the Kansas statute allows percentage deposit bail. Again, Mr. Davidson is being misleading and misconstruing the statute. All K.S.A. 22-2802(c)(3) provides is that if a judge, after proper and due consideration, sets a man's bail at $100,000.00, and the man can pay the full $100,000.00, the man will be released. And, this concept is as old as time. Nowhere in K.S.A. 22-2802, or any other Kansas statute, has the legislature provided for a percentage deposit bail. See APPENDIX "G." If it did, Judge Carpenter would not have been required to go to the legislature last session and ask for such a statute--and be turned down! Nor would he have to issue a unilateral and arbitrary administrative order. All he would have to do is start practicing percentage deposit bail.

The primary purpose of this memorandum is not to address the many ways in which the court's bonding service is improper and contrary to Kansas statute, case law, the Kansas constitution, and common sense; rather, the primary purpose is to point out the exposure to the county from such a program, and the appropriateness of the commission refusing to support such a program through county employees, facilities, and funds. Nevertheless, these few points should be made:

1. Who is the surety under the present system? K.S.A. 22-2802(c)(2) provides:

> The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered. [Emphasis added.]

And, likewise, Article 9 of the Bill of Rights of the Kansas Constitution requires that "all persons shall be bailable by sufficient sureties." [Emphasis added.] Is the surety the accused? If so, why does he have to deposit anything? And, what efforts are made to insure that he is solvent? Obviously the surety could not be the accused! Is it the county? If so, all of the responsibility and exposure discussed above comes squarely into play? Is it no-one? Clearly this is not the case; if it was, K.S.A. 22-2802(c)(2) would be clearly violated; that statute provides that a surety is not necessary upon a finding, on a case-by-case basis, and only upon a finding that a surety is not necessary to assure appearance in view of the circumstances of the particular case and accused. A blanket order

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excluding certain classes and types of cases, without any regard to the particular circumstances of the accused's case, obviously does not satisfy this statute! So, either Judge Carpenter has either appointed the accused as the surety, blatantly violated this statute, or unilaterally appointed the county as the surety. This commission must, to be on the safe side, assume that it is the later; and, this commission must take steps to protect the county, in keeping with the sworn oath of each commissioner.

2. A cursory reading of K.S.A. 22-2802 demonstrates that the purpose of bail is to assure the court appearance of the accused. Historically bail bondsman have accepted the exposure to liability involved in such assurance by undertaking to supervise the accused and compel his attendance (at personal financial risk to the bailbondsman). This venture into the bail bond business by Judge Carpenter eliminates the essential role of the bail bondsman, and places a huge responsibility and financial burden on the county--a responsibility and burden this county is not equipped to bear and should not be required to undertake.

One final note: It seems passing peculiar that the county counselor, who holds his office at the pleasure of the county commissioners (K.S.A. 19-246, **see APPENDIX "H"**), and whose duty it is to provide sound legal advice to the county commission (K.S.A. 19-247, **see APPENDIX "I"**) finds himself in the position of providing unsound advice, misleading information, and in the same breath threatening one of his employers with the possibility of "ouster proceedings." It seems that Mr. Davidson too has overstepped his bounds.

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The article below speaks for itself and points out what a joke the 10% plan is. What they should do is do away with this phony system of mythical figures and restore good bail posted by responsible surety!

The Dispatch

OHIO'S GREATEST HOME NEWSPAPER

B-1 C SUN., MAR. 1, 1981

Bond Forfeitures Cost Court Plenty

By Mark Ellis
Of The Dispatch Staff

More than $400,000 in forfeited appearance bonds has gone uncollected by Franklin County Municipal Court since 1978.

City Attorney Greg Lashutka said the money looks like a "pot of gold," but he is not sure of the best way to collect it.

Municipal Judge Dale Crawford said "several millions" owed the court have accumulated over the years. He wants the money collected.

ONLY "A MINIMAL amount . . . between $3,000 and $5,000" has been collected by the Franklin County prosecutor since 1978, when municipal Clerk of Courts Ted Hysell began seeking judgments to enforce collections, Chief Deputy Clerk William Dawson said.

He said about 800 people now owe the court $426,270.

Appearance bonds provide release for a prisoner when 10 percent of the bond is paid in cash.

A $500 appearance bond is standard for a first-degree misdemeanor. On that bond, a prisoner would need $50 for freedom.

IF THE FREED prisoner appears at court hearings he gets back $45. If the freed prisoner fails to appear, he or she loses the $50 and owes the court $450. An arrest warrant is issued.

Hysell sends a warning letter and then turns the case over to county prosecutor Michael Miller.

"We're not a collection agency," Dawson said.

Dawson said prisoners often provide phony addresses when arrested and their bonds become uncollectable.

Crawford believes collection of forfeited appearance bond money will force more people to return and make the court more efficient.

He criticized fellow judges who use appearance bonds for people on welfare, a practice he calls "silly."

CRAWFORD SUGGESTED the Ohio Bureau of Motor Vehicles could be given power to suspend the driving privileges of those who owe appearance bonds.

He also suggested Lashutka contract with "young lawyers" who could track down those who owe, collect the money and keep a percentage.

No one seems to blame Miller's office for not collecting more of the forfeited bond money. As attorney for municipal court, Miller has that responsibility, but any money collected goes to the city and not the county. Miller believes his staff is carrying a maximum workload.

Judge James Britt, municipal court administrative judge, said collecting appearance bonds is "very impractical from a civil standpoint

"YOU GET A bunch of nothings," Britt said. He said an average prisoner released on a $500 appearance bond doesn't have $450 and probably "had to scrape up" $50 from family members to get out.

Britt concedes there is a problem with released prisoners failing to show on appearance bonds.

"The (case) volume has increased. People in general just don't want to appear."

Lashutka said Crawford's concern is a legitimate issue and a "lingering problem."

He said a possible solution is his appointment as a "special representative" for Miller to collect the money.

But, Lashutka said, his staff is "stretched pretty thin" and doesn't have time to track down released prisoners and their financial records.

Lashutka is to meet with city and county law enforcement officials this month to find solutions to the problem of prisoners released on both appearance and recognizance bonds who fail to appear in court.

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the BAILBOND chronicles

10 COLLEGE AVENUE
GREENVILLE, PA 16125

NADENA OWENS, ASSOCIATE EDITOR

Vol. 4, No. 2

SUMMER SPECIAL EDITION 1993

COLORADO LEGISLATURE COMMENDED!

On February 18, 1993, the Colorado Legislature killed a "Bail Bond Reform Bill" supported by defense attorneys, misled do-gooders, anti-free enterprise and the "nobody should be in jail" mentality. The bond reform proposal was based on programs in the federal court system and a few states. In these areas the non-appearance rate reaches 50%. The bill would have created a pilot program in Boulder County designed to reduce the number of crimes committed by persons who are released on bail, to be more fair to persons with lower incomes and fewer assets, and pay for itself. The 10 percent cash deposit plan sounds good to those looking for pie in the sky but costs to the taxpayers is astronomical. They say this will help the poor or indigent. **FACT:** The poor and indigent do not have the 10 percent to begin with. This plan actually works in reverse. A perfect example is Cook County Illinois, where the jails are more crowded than ever. Before the 10 percent deposit plan a drunken driver in this area could pay a bondsman a $100 fee on a $1,000 bond. If the man should skip, the state was guaranteed their full payment of $1,000. Under the 10 percent plan a drunken driver is given a $5,000 mythical bond. So now the defendant must come up with $500 cash which is 10 percent of this mythical figure which is $400 more than the practical method. By having to come up with this extra money this hardly helps the poor or indigent. **FACT:** In the event of forfeiture, the state keeps the $500 deposit but that is $500 less than the $1,000 if it were posted by a bondsman. The only beneficiary is a bureaucracy and patronage jobs for the "in group". **FACT:** Backers of the 10 percent deposit state that a defendant signs a promissory note for the other 90 percent. If they check they will find that they have never collected one dime in the history of this plan. They are in a dream world. **FACT:** The major beneficiary of the 10 percent deposit plan are the professional shop lifters, drug dealers, organized crime and career criminals and throw in some wife beaters and child molesters. This group happily and easily comes up with this 10 percent. When they skip they know that they are not being looked for by the bureaucrats. The fugitive rate is easily covered up. There are over 100,000 absconders in northern Illinois. When a bondsman writes a bail his sole business is the defendant's day in court or pay the face of the bond. **FACT:** In essence all this 10 percent deposit is a 90 percent bail reduction and no third party responsibility for the above law breakers. If a defendant qualifies to have his bail reduced 90 percent why not just reduce it another 10 percent and allow them to sign their own bond. The only loser in this case would be some political hacks who have their cushioned jobs provided by this 10 percent deposit quagmire.

The sacred bail system and American justice is not a place to let appointees feed at the trough. Either give 100 percent good bail which protects the system or release those who qualify on a personal signature bond. When we say qualify this means first offenders on misdemeanors, with roots in the community not criminals and chronic lawbreakers. This 10 percent deposit system makes it all a pathetic hoax of much needed tax dollars that could be spent on worthwhile projects like summer jobs for deprived kids.

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CAPITA
DECE
Topeka Capital-Journal 12-6-93

CRIME

Serious crimes decline slightly

- Violent crime for the first six months of 1993 fell 3 percent, the FBI says, although murder figures stayed stable.
- Property crimes dropped by 5 percent.
- One official holds the statistics are misleading, saying some police squeeze figures to downplay the crime problem.

By CAROLYN SKORNECK
The Associated Press

WASHINGTON — Even as public fear of crime pushed Congress to vote for harsher criminal penalties and more police, the number of serious crimes declined slightly, the FBI reported Sunday.

Violent crime during the first six months of 1993 decreased 3 percent from the same period in 1992, while the number of property crimes dropped by 5 percent, according to preliminary findings of the FBI's Uniform Crime Reporting program.

"The small reported declines may be positive, but I doubt most Americans will draw much comfort from them because the levels of violent crime and drug trafficking remain so staggering," FBI Director Louis J. Freeh said in a statement.

The number of murders remained stable while all other reported violent crimes went down — Robberies by 5 percent, forcible rapes, 4 percent, and aggravated assaults, 1 percent.

Reported property crimes, meanwhile, were down across the board, with burglary falling 8 percent, motor vehicle theft, 5 percent, and larceny-theft, 4 percent. Arsons, which decreased by 15 percent, are not included in the FBI's determination of the overall crime index.

In Cincinnati, spokeswoman Lt. Cindy Johns said police have noticed crimes are more severe despite the fewer incidents.

"Victims tend to be subject to more violence," she said. "What used to be hitting someone on the head and taking their wallet now has become taking their wallet and shooting them in the leg. It's still a

Continued on page 2-A, col. 1

Topeka moves other way, posts 4.6% crime increase

The Asscciated Press

WASHINGTON — While serious crime fell across much of the nation in the first six months of 1993, Topeka crime rose, the FBI found.

Kansas City and Wichita crime, meanwhile, was down for the period.

The FBI found crime rose in Topeka by 4.6 percent in 1993's first half, including eight more murders. Police Lt. Patti Kaeberle said she didn't know why there were more killings.

"We've had domestic situations. We've had friends involved," Kaeberle said of the homicides. "I can't explain why they've gone up."

The FBI reported a dramatic 16.5 percent drop in Kansas City, Kan., crime. The plummet stems in part from the city's aggressive police hiring.

Kansas City, Kan., police spokesman Bill Sanders said the city has hired more officers recently, providing for more specific units to target gangs and illegal drug traffic.

There were decreases in all crime categories in Kansas City, Kan., including seven fewer homicides than the year before.

The FBI reported a 1.8 percent drop in serious crime for Kansas City, Mo. Decreases were reported in assaults, burglaries and robberies. Theft rose, however, particularly of autos. The 71 murders reported were four fewer than the year before.

Wichita, which has been dealing with rising gang-related crime, saw an 8 percent drop overall in crime during the first half of 1993, according to the FBI figures.

There were far fewer burglaries and larcenies but three more murders in Wichita.

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Kansas crimes increase in first months of 1986

By Vickie L. Walton
staff writer

More crimes were committed in Kansas during the first three months of 1986 than during the same period last year, according to the Kansas Bureau of Investigation.

Several cities in the metropolitan area, including Kansas City, Kan., Leawood, Lenexa, Olathe, Overland Park, Prairie Village and Shawnee, experienced parallel upswings in the crime rate, according to the state's quarterly statistics released this week.

Shawnee County, which includes Topeka, showed the greatest increase, 44.9 percent, over the first quarter of last year.

Johnson County was the second highest at 28.9 percent. Wyandotte County followed with a 23.7 percent increase. Sedgwick County, which includes Wichita, showed a 9.9 percent rise.

The first-quarter figures indicate that Part I crimes, which include robbery, aggravated assault, burglary, theft and arson, increased 15.5 percent statewide.

Murder and rape, Part I category crimes, dropped 10 percent and 0.7 percent, respectively.

Crimes against property climbed 16.7 percent, with burglary showing the largest increase at 29.6 percent.

Kansas City, Kan., police spokesman Lt. Ron Miller said he believes the statistics are "a barometer of whether people are reporting crime."

The number of reported rapes in Kansas City, Kan., for instance, increased to 32 from the 25 reported during the first quarter of last year, according to the KBI report. Overall the city experienced 3,997 crimes in the period, compared with 3,248 last year.

Lt. Miller said officers are not alarmed by the increases.

"The fact that crime fluctuates in any one quarter is not a [illegible] until there is a charted trend," he said.

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Driver once imprisoned cited again

■ Man convicted of vehicular fatality arrested in DUI case

By TIM HRENCHIR
The Capital-Journal

A Topeka man who committed a homicide in 1986 while driving drunk was arrested Friday in connection with driving under the influence of alcohol.


Gaylen Stumbaugh

It was the second DUI arrest in less than a year for Gaylen Stumbaugh, 34, 1416 S.E. Lott.

Stumbaugh was sentenced to three to 10 years for voluntary manslaughter in the July 1986 killing of Jack D. Norton, 22. Police said Norton was intentionally run down with a car in a parking lot near S.E. 21st and California.

Court records said Stumbaugh's blood-alcohol content an hour after the incident was 0.386 percent, nearly four times the legal limit at the time of 0.10 percent.

Stumbaugh acknowledged at his trial that he regularly drank 18 to 36 beers a day.

Stumbaugh was paroled in June 1991.

Police arrested Stumbaugh in connection with DUI on March 28, 1993, after an officer stopped a car he was driving 55 mph in a 30 mph zone.

Stumbaugh was then stopped about 5:20 p.m. Friday in the 1300 block of S.E. 23rd and booked into the Shawnee County Jail in connection with DUI and driving with an illegal license plate. He was released on a signature bond.

Jail bond program makes money

■ Eight-year-old initiative enables defendants to get out of jail less expensively than if they used a professional bondsman

By STEVE FRY
The Capital-Journal

It is the program that not only saves users money but actually generates revenue for the county general fund.

In 1993, the county's "own recognizance cash deposit" bond program was used by 735 people, a 151 percent increase over the 486 people in 1992, and churned out $12,185. In eight years, the county has received $73,122 from the program.

This past week, Shawnee County District Judge William Carpenter paid the county the money for its general fund. Carpenter is administrative judge for the Third Judicial District, which comprises only Shawnee County.

Of the $12,185, $3,073 was interest collected on bonds paid into the program and the rest was money collected as fees.

"We've had a good experience with it," Carpenter said.

The program serves a good purpose, Carpenter said, saving money for people who are released at a modest cost and generating a small revenue for the county.

Under the program, a low-risk criminal defendant charged with a crime pays 10 percent of the face value of a bond, then receives 90 percent of that back if he or she meets all the bond conditions.

For instance, someone who has been arrested and jailed would be released on a $1,000 ORCD. That means he or she would pay $100 to the county, then get $90 back if he or she makes all court appearances, complies with bond conditions, reports to a court services officer if told to and doesn't make false statements on the bond form. The other $10 is paid to the county.

If the bond is forfeited, the defendant is responsible to pay the face value of the bond. If the defendant is convicted, his or her ORCD bond deposit can be used to help offset fines and fees imposed by court.

When bonding out of jail on a conventional $1,000 surety bond, a defendant pays 10 percent or $100 to a bondsman. The bondsman keeps the $100 as the cost of providing a service. Less than 10 percent of the total bonds written in Shawnee County are ORCD bonds, Carpenter said.

In the eight years the program has operated, 39 criminal defendants and six traffic defendants have forfeited bonds in the program, Carpenter said. That is 1.5 percent of the 3,040 bonds issued.

When the program was first proposed, professional bondsmen criticized the program, saying the public would be at risk. Carpenter said that hasn't happened and calls the program a model for statewide use.

A defendant eligible for the ORCD bonds would be someone who either owns property in Shawnee County, a member of the military stationed at a base in Kansas or meets three of five criteria: has been a Shawnee County resident more than six months, has a Kansas driver's license, has been employed in Shawnee County more than three months, has a telephone and is enrolled as a student in Kansas.

The defendant also must not have a history of serious crimes.

Making money off bonds

Under the own recognizance cash deposit program, the users save money while the county makes money.

A defendant pays 10 percent of the bond's face value, then gets 90 percent of that back if he or she meets all bond conditions.

	Face value of bonds	Number of bonds issued	Money county received
1986	$41,070	169	$2,982
1987	$33,860	151	$4,246
1988	$49,959	228	$5,200
1989	$74,457	291	$7,765
1990	$93,720	486	$11,383
1991	$116,145	494	$14,472
1992	$97,910	486	$14,886
1993	$132,470	735	$12,185
TOTAL	$639,591	3,040	$73,121

Source: Shawnee County District Court — The Capital-Journal

Bonding companies to challenge arrest rules in court

The Associated Press

KANSAS CITY, Kan. — Rules making it harder for bonding companies to make arrests have led four of the companies to court, where they hope to get the rules changed.

The lawsuit, filed this week in Wyandotte County District Court, seeks an injunction against the rules issued in August by the Kansas City, Kan., police department. A hearing is set Thursday.

"Those regulations would put bonding companies out of business," said George Holt of Danny & Paul Bonding Co., one of the parties in the lawsuit. "We may need some regulations. But these (rules) are wrong."

Maurice Ryan, an assistant city attorney for Kansas City, Kan., said the new rules would stand up to legal challenge.

They rely on an 1873 U.S. Supreme Court decision that places a bonded person in the custody of the bonding company, which can jail them at any time.

The new rules place more limitations on bounty hunters. For example, they cannot break the law in arresting a fugitive and must obey a local law requiring a permit to carry a firearm. They also must have proof they have the correct person in custody.

Bail bond firms and bounty hunters usually have been given latitude in finding and arresting clients, but courts have begun limiting their power. In some recent cases, bounty hunters crossed legal lines, or arrested the wrong person.

12-105

STATE OF KANSAS

DON SALLEE
SENATOR FIRST DISTRICT
ATCHISON, BROWN, DONIPHAN, JACKSON
AND POTTAWATOMIE COUNTIES
RR 2
TROY, KANSAS 66087

COMMITTEE ASSIGNMENTS
CHAIRMAN: ENERGY AND NATURAL RESOURCES
JOINT COMMITTEE ON RULES AND REGULATIONS
MEMBER: AGRICULTURE
ELECTIONS
[illegible]
STATE RULES AND REGULATIONS

TOPEKA

SENATE CHAMBER

October 21, 1993

Representative James Lowther
Chairman
Legislative Post Audit Committee
Topeka, Kansas

Re: Request for investigation of 10% bail bond business conducted by District Courts.

Dear Chairman Lowther & Committee Members:

After reviewing Representative Marvin Smith's request and other information on the matter I wish to encourage you to give this matter your urgent attention. This situation should be given priority because there cannot be any others more important. In this situation it is obvious that members of the Judicial branch of government have intentionally circumvented the law and are operating a bail bond business from the courthouse in violation of State statutes and possibly in violation of appropriate judicial conduct.

Further, the Court is misusing State funds and employees not included in budgets that have been presented and approved. The cost of this business and the employees have been kept secret and no accounting has been made. All this in violation of State Law (See attached KSA-22-2802 and KSA-20-2801). The estimated time to perform this audit would be relatively short and chould be completed by one person (less than 5 weeks).

The actions of these Judges are clearly in definance of the legislature which overwhelmingly defeated legislation which would have legalized their proposed bail bond business in 1985. Failure to authorize an immediate post audit investigation could only be viewed by the voters and taxpayers as condoning illegal activities of a few Judges who believe themselves to be above the law and the Constitution.

To allow this activity to continue without an investigation can only add to the distrust already present

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among law enforcement and prosecution personel, taxpayers and victims of crime. Since the inception of this bail bond program in Shawnee County they have seen a dramatic increase in crime culminating with Topeka being recognized in the National news for its extraordinary crime problem on the Tom Brokaw news program.

We in the legislature must insist on the division of powers directed by the Constitution. It is imperative that an investigation be conducted of a State Court system, which is acting illegally, secreting funds from the State and misusing budgeted funds and employees in contradiction of the legislature.

I urge you in the strongest terms possible to order an investigation of this matter immediately. The integrity of our system of governement is clearly at stake here.

Sincerely,

Senator Don Sallee

P.S. No one especially Judges or their employees should object to this audit unless there is something to hide

cc: Legislative Post Audit Division

12-107

STATE OF KANSAS

MARVIN E. SMITH
REPRESENTATIVE, FIFTIETH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN GOVERNMENTAL ORGANIZATION & ELECTIONS
MEMBER EDUCATION
TRANSPORTATION
JOINT COMMITTEE ON ADMINISTRATIVE RULES & REGULATIONS

October 1, 1993

The Honorable James Lowther
Chairman, Legislative Post Audit Committee
1549 Berkeley Road
Emporia, Kansas 66801

RE: Investigation of District Court Handling of 10% Cash Deposit Bonds

Dear Chairman Lowther and Committee Members:

It has come to my attention that judges in the Third Judicial District, which encompasses primarily Shawnee County, the 11th and 20th Judicial Districts, have instituted and are operating a system of bail bonds not authorized by the statutes of Kansas. These three districts have taken it upon themselves to operate a 10% bail bond business, in which persons charged with crimes are allowed to post a sum of money equal to 10% of the amount of bail set by the same judges that collect the money.

If the defendant returns to Court as ordered they are entitled to the return of 90% of the deposit. The profits from their bail business is deposited into an account controlled by the judges. There are no public records accounting for these monies or any expenditures from the account. Since their is no legal authority for those programs there is no legal process to account for the funds. Presently none of the funds are turned over to the State as would normally be done pursuant to K.S.A. 20-2801.

A substantial number of attorneys agree that this program is illegal and not authorized by K.S.A. 22-2802. In fact when legislation was presented in 1985 to authorize this type of program it was soundly defeated. Even so these districts continued their programs and the Third Judicial District started theirs in defiance of the Legislature. The Kansas Code of Ethics for judges includes sections about the need to avoid the appearance of impropriety and conflict of interest. This program obviously places the judges in a position which violates those rules since they set the bail, post the bond, collect the bond fee without authority and then sit in judgment on their client. This system also opens the door for abuses such as what took place in the 11th Judicial District, where the profits were used to remodel offices in the courthouse.

Presently, this system of bonds is costing the taxpayers unnecessary and unapproved expense not included in any budget. It makes use of jail employees, who process and file paperwork, collect money, account for the funds, transfer those funds to the Clerk of the District Court, where the employees record, file and account for funds as well as refunds to defendants or making payments to attorneys, etc. as approved by judges. Additionally, Court Services now has

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additional duties for several people in screening, approving and supervising. None of these are necessary, legal or approved by the Kansas Legislature. Including the unnecessary time spent on this by Judges, it is quite clear that substantial expense is being incurred by the taxpayers (who fund the Court system), which is not authorized or subject to budget approval of elected officials. In fact, there is no public accounting of expenses and income at all.

I therefore, request that the Post Audit Committee direct that an investigation be implemented as soon as possible into these questions. I believe the investigative staff should be directed to follow-up on the legality of this system and the accounting of funds involved which are not being deposited pursuant to statute. They should be further directed to reach a conclusion as to substantial funds being allocated to salaries, equipment, copying, etc., to operate this program. This should include the use of the Sheriff's office to find and return those defendants who fail to appear.

It should be noted that when surety bail bonds are used none of these people or expenses are necessary. They are assumed by the surety.

Sincerely,

Marvin E. Smith

Marvin Smith

MS/dh

P.S. If any other agency of government would conduct itself in this manner, those responsible would have been reprimanded or dismissed and safeguards put in place to make sure it didn't happen again.

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STATE OF KANSAS

OFFICE OF THE LIEUTENANT GOVERNOR

2ND FLOOR, STATE CAPITOL

TOPEKA, KANSAS 66612-1501

913 296-2213

October 5, 1993

JAMES L. FRANCISCO
LIEUTENANT GOVERNOR

The Honorable James Lowther, Chairman
Legislative Post Audit Committee
1549 Berkeley Road
Emporia, Kansas 66801

Re: Investigation Request of 3rd, 11th & 20th Judicial Districts

Dear Chairman Lowther and Members of the Committee:

After being contacted by members of the legislature regarding their concerns in dealings of the 10% bail bond business being run by three judicial districts, I did some checking on my own. It would appear that these court-operated bail businesses are not legal. There is no legislation authorizing them. Also, there is no legislation authorizing the collection of funds or the deposit of those funds anywhere other than the State.

I encourage you to approve an investigation of this matter as soon as possible. It would appear that the laws of Kansas and the intentions of the legislature have been circumvented. This circumvention has resulted in unnecessary expenses to the taxpayer which had originally been the burden of the criminal defendant.

I personally cannot and will not condone any system which victimizes taxpayers unnecessarily for the benefit of criminals. There is no reason which could justify what is happening in these judicial districts.

Please give your approval to this investigation as I believe it to be very important to the taxpayers and voters of Kansas.

Sincerely,

JAMES L. FRANCISCO
LIEUTENANT GOVERNOR

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required employer and employee contributions to the system quarterly in advance with a report as may be required by the system.

(c) Any election by such judge under subsection (a) shall remain in effect until revoked in writing and received by the system or such judge becomes an employee of another participating employer or upon failure of such judge to remit to the system the employer and employee contributions required under subsection (b).

(d) This act shall be part of and supplemental to the retirement system for judges as provided in article 26 of chapter 20 of the Kansas Statutes Annotated and shall be governed thereby in all respects, except if words and phrases used in this act appear to have a different meaning, the provisions of this act shall prevail.

(e) The provisions of subsection (2) of K.S.A. 74-4916 and amendments thereto are not applicable to any person making an election under subsection (a).

History: L. 1989, ch. 232, § 33; L. 1991, ch. 237, § 5; July 1.

Attorney General's Opinions:

Election to continue participation in retirement system by certain judges; constitutionality; payments from KPERS fund; procedures; overpayments. 91-76.

Article 28.—FINES, PENALTIES AND FORFEITURES

20-2801. Disposition of fines, penalties and forfeitures. (a) At least monthly the clerk of the district court shall remit all moneys payable to the state treasurer from fines, penalties and forfeitures to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund, except as provided in K.S.A. 74-7336.

(b) In order to determine the amount of moneys available pursuant to this section, the director of accounts and reports or the state treasurer, whenever it is deemed necessary by either of such officers, may request the clerk of the district court to provide such information as provided in this section. Within 10 days of the receipt of any such request, such clerk shall certify the amount of moneys collected pursuant to this section to the director of accounts and reports and the state treasurer.

(c) This section shall not apply to municipal courts.

History: L. 1973, ch. 106, § 1; L. 1976, ch. 311, § 2; L. 1977, ch. 112, § 5; L. 1978, ch. 108, § 13; L. 1989, ch. 239, § 4; July 1.

Article 29.—NONPARTISAN SELECTION OF JUDGES OF THE DISTRICT COURT

20-2904. District nominating commission; lawyer members; qualifications; selection. (a) Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the clerk of the supreme court pursuant to rule 201 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district. The number of lawyer members to be elected to the district judicial nominating commission of a judicial district shall be as follows:

(1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of nonlawyer members appointed pursuant to subsection (a)(1) of K.S.A. 20-2905, and amendments thereto.

(2) In a judicial district consisting of two counties, four members shall be elected.

(3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.

(b) Between December 1 and December 15 of the year in which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901, and amendments thereto, the clerk of the supreme court shall send to each lawyer by ordinary first class mail a form for nominating one lawyer for election to the commission. Any such nomination shall be returned to the clerk of the supreme court on or before January 1 of the following year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for the same number of nominees as the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote and certifying that the ballot was voted by such person. In any judicial

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Kansas Legislature

20-2801

Chapter 20.--COURTS
Article 28.--FINES, PENALTIES AND FORFEITURES

20-2801. Disposition of fines, penalties and forfeitures. (a) The clerk of the district court shall remit all moneys payable to the state treasurer from fines, penalties and forfeitures to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except as provided in K.S.A. 74-7336, and amendments thereto.

(b) In order to determine the amount of moneys available pursuant to this section, the director of accounts and reports or the state treasurer, whenever it is deemed necessary by either of such officers, may request the clerk of the district court to provide such information as provided in this section. Within 10 days of the receipt of any such request, such clerk shall certify the amount of moneys collected pursuant to this section to the director of accounts and reports and the state treasurer.

(c) This section shall not apply to municipal courts.

History: L. 1973, ch. 106, § 1; L. 1976, ch. 311, § 2; L. 1977, ch. 112, § 5; L. 1978, ch. 108, § 13; L. 1989, ch. 239, § 4; L. 2001, ch. 5, § 79; July 1.

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Kansas Legislature

74-7336

Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES
Article 73.--CRIME VICTIMS COMPENSATION BOARD

74-7336. Disposition of district court fines, penalties and forfeitures. (a) Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly, the state treasurer shall credit 11.99% to the crime victims compensation fund, 2.45% to the crime victims assistance fund, 2.01% to the community alcoholism and intoxication programs fund, 2.01% to the department of corrections alcohol and drug abuse treatment fund and 0.17% to the boating fee fund. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

History: L. 1989, ch. 239, § 31; L. 1995, ch. 243, § 8; L. 2001, ch. 200, § 18; L. 2001, ch. 211, § 17; L. 2004, ch. 125, § 6; L. 2006, ch. 85, § 17; Jan. 1, 2007.

22-2611.

CASE ANNOTATIONS

3. Venue proper in either county where cause of death inflicted or county where death ensued. In re J.W.S., 250 K. 65, 69, 825 P.2d 125 (1992).

22-2616.

Law Review and Bar Journal References:
"Change of Venue in the Criminal Case," J. Roy Holliday, Jr., and Steven L. Opat, 11 J.K.T.L.A. No. 5, 9 (1988).

CASE ANNOTATIONS

23. Question of venue change in relation to companion case discussed. State v. Dunn, 243 K. 414, 424, 758 P.2d 718 (1988).

24. Principles underlying motion for change of venue examined. State v. Goss, 245 K. 189, 194, 777 P.2d 781 (1989).

25. Rules applicable to motion for change of venue, showing of sufficient prejudice examined. State v. Bierman, 248 K. 80, 87, 805 P.2d 25 (1991).

Article 27.—UNIFORM CRIMINAL EXTRADITION ACT

22-2701.

CASE ANNOTATIONS

9. Mandatory (22-2702) and discretionary (22-2706) extradition statutes compared; applicability of each determined. Kennon v. State, 248 K. 515, 809 P.2d 546 (1991).

22-2702.

CASE ANNOTATIONS

2. Mandatory and discretionary extradition statutes (22-2706) compared; applicability of each determined. Kennon v. State, 248 K. 515, 809 P.2d 546 (1991).

22-2703.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 251, effective July 1, 1993.

CASE ANNOTATIONS

11. Criminal suspect has no prearrest extradition rights violation of which can give rise to cause of action under 42 U.S.C.A. §1983; reversing 659 F.Supp. 1201 (1987). Ortega v. City of Kansas City, Kan., 875 F.2d 1497, 1499 (1989).

12. Mandatory (22-2702) and discretionary (22-2706) extradition statutes compared; applicability of each determined. Kennon v. State, 248 K. 515, 809 P.2d 546 (1991).

22-2706.

CASE ANNOTATIONS

3. Mandatory (22-2702) and discretionary extradition statutes compared; applicability of each determined. Kennon v. State, 248 K. 515, 809 P.2d 546 (1991).

22-2710.

CASE ANNOTATIONS

8. Habeas corpus proper remedy for challenging trial court's pretrial denial of double jeopardy claim. In re Habeas Corpus Petition of Mason, 245 K. 111, 112, 775 P.2d 179 (1989).

9. Criminal suspect has no prearrest extradition rights violation of which can give rise to cause of action under 42 U.S.C.A. §1983; reversing 659 F.Supp. 1201 (1987). Ortega v. City of Kansas City, Kan., 875 F.2d 1497, 1499 (1989).

22-2711.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 252, effective July 1, 1993.

22-2713.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 253, effective July 1, 1993.

22-2722.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 254, effective July 1, 1993.

22-2723.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 255, effective July 1, 1993.

22-2724.

CASE ANNOTATIONS

3. Extradition costs as mandatory court costs taxable to defendant (22-3801) determined. State v. Garrett, 14 K.A.2d 8, 9, 780 P.2d 168 (1989).

22-2726.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 256, effective July 1, 1993.

Article 28.—CONDITIONS OF RELEASE

Law Review and Bar Journal References:
"Pretrial Proceedings," K.L.R., Criminal Procedure Edition, 9, 14, 19 (1989).

Attorney General's Opinions:
Conditions of release release prior to trial; appearance bonds. 89-37

22-2801.

CASE ANNOTATIONS

3. Statute examined where appellate court ruled one cannot be charged with aggravated failure to appear (21-3814) for absence at probation revocation proceeding. State v. Miller, 15 K.A.2d 566, 568, 811 P.2d 1256 (1991).

22-2802. Release prior to trial. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's

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appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (11) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours; or

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

(5) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(6) The appearance bond shall set forth all of the conditions of release.

(7) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(8) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (7) shall apply.

(9) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(10) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(11) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant m
the defendant's counsel
be informed of the defer
sonally present in the c
proceeding if the defen
ercising the right to be
prejudice the defendant

History: L. 1970, c
1976, ch. 163, § 6; L.
1989, ch. 98, § 1; L. 19
1.

Revisor's Note:
Section was amended three
also 22-2802a and 22-2802b.

Attorney General's Opinions:
Conditions of release rele
bonds. 89-37.
Release prior to trial; exc
89-113.

CASE ANN

7. Statute examined whe
cannot be charged with aggr
3814) for absence at probation
v. Miller, 15 K.A.2d 566, 56
8. Condition of bond exce
did not affect defendant's at
case. State v. Smith, 16 K.
(1992).

22-2802a.

History: L. 1970,
1976, ch. 163, § 6; L.
1989, ch. 97, § 1; Repe
§ 2; July 1.

22-2802b.

History: L. 1970,
1976, ch. 163, § 6; L.
1989, ch. 92, § 27; F
107, § 2; July 1.

22-2804.

Law Review and Bar Jour
"Of Justice Delayed in F
J.K.T.L.A. Vol. XV, No. 2.

Attorney General's Opinion
Conditions of release rel
bonds. 89-37.

CASE AN

7. Statute examined wh
cannot be charged with agg
3814) for absence at probatic
v. Miller, 15 K.A.2d 566,

22-2805.

CASE AN

2. Right to confrontation
ing to set appearance bond
State v. Hamons, 248 K.

22-2806. Justifi
sureties. Every sure

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court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

History: L. 1970, ch. 129, § 22-2802; L. 1976, ch. 163, § 6; L. 1986, ch. 130, § 1; L. 1989, ch. 98, § 1; L. 1990, ch. 107, § 1; July 1.

Revisor's Note:
Section was amended three times in 1989 session, see also 22-2802a and 22-2802b.

Attorney General's Opinions:
Conditions of release release prior to trial; appearance bonds. 89-37.
Release prior to trial; exoneration; appearance bonds. 89-113.

CASE ANNOTATIONS

7. Statute examined where appellate court ruled one cannot be charged with aggravated failure to appear (21-3814) for absence at probation revocation proceeding. State v. Miller, 15 K.A.2d 566, 568, 811 P.2d 1256 (1991).

8. Condition of bond exceeds conditions of statute, but did not affect defendant's attorney's ability to investigate case. State v. Smith, 16 K.A.2d 478, 481, 825 P.2d 541 (1992).

22-2802a.

History: L. 1970, ch. 129, § 22-2802; L. 1976, ch. 163, § 6; L. 1986, ch. 130, § 1; L. 1989, ch. 97, § 1; Repealed, L. 1990, ch. 107, § 2; July 1.

22-2802b.

History: L. 1970, ch. 129, § 22-2802; L. 1976, ch. 163, § 6; L. 1986, ch. 130, § 1; L. 1989, ch. 92, § 27; Repealed, L. 1990, ch. 107, § 2; July 1.

22-2804.

Law Review and Bar Journal References:
"Of Justice Delayed in Propinquity," Gary N. Gorup, J.K.T.L.A. Vol. XV, No. 2, 17, 21 (1991).

Attorney General's Opinions:
Conditions of release release prior to trial; appearance bonds. 89-37.

CASE ANNOTATIONS

7. Statute examined where appellate court ruled one cannot be charged with aggravated failure to appear (21-3814) for absence at probation revocation proceeding. State v. Miller, 15 K.A.2d 566, 568, 811 P.2d 1256 (1991).

22-2805.

CASE ANNOTATIONS

2. Right to confrontation not violated by ex parte hearing to set appearance bond for reluctant material witness. State v. Hamons, 248 K. 51, 61, 805 P.2d 6 (1991).

22-2806. Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102, and amendments thereto, shall justify by affidavit and may be required to describe in the affidavit the property by which such surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged and all such surety's other liabilities. No bond shall be approved unless the surety appears to be qualified. The appearance bond and the sureties may be approved and accepted by a judge of the court where the action is pending or by the sheriff of the county.

History: L. 1970, ch. 129, § 22-2806; L. 1992, ch. 314, § 3; July 1.

22-2807.

Attorney General's Opinions:
Conditions of release release prior to trial; appearance bonds. 89-37.

22-2808.

Attorney General's Opinions:
Conditions of release release prior to trial; appearance bonds. 89-37.

Article 29.—PROCEDURE AFTER ARREST

Law Review and Bar Journal References:
"Pretrial Proceedings," K.L.R., Criminal Procedure Edition, 9, 14, 19 (1989).

22-2901.

Law Review and Bar Journal References:
"Criminal Procedure: Distinctions and Interactions—Fifth and Sixth Amendment Rights to Counsel [State v. Norris, 244 Kan. 326, 768 P.2d 296 (1989)]", Mary Lynch Matthews, 29 W.L.J. 106, 116 (1989).

22-2902.

Law Review and Bar Journal References:
"Juvenile Law: Prosecuting Juveniles As Adults," The Hon. Tom Malone, 60 J.K.B.A. No. 5, 39, 41 (1991).

CASE ANNOTATIONS

28. Accused may be bound over for trial on felony not charged in information. State v. Pioletti, 246 K. 49, 61, 785 P.2d 963 (1990).

29. Evidence arising from "reverse sting" drug operation sufficient to establish probable cause for violations of 21-3205(1) and 65-4127b(e) examined. State v. Starks, 249 K. 516, 820 P.2d 1243 (1991).

30. Factors to consider when determining whether constitutional right rather than statutory right to speedy trial violated examined. State v. Fitch, 249 K. 562, 564, 819 P.2d 1225 (1991).

22-2902a. Preliminary examination; admissibility of report of forensic examiner. At any preliminary examination in which the re-

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STATE OF KANSAS

EDWIN BIDEAU III
REPRESENTATIVE FORTY-SEVENTH
NEOSHO COUNTY
123 W MAIN
CHANUTE, KANSAS 66720-1790

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LABOR AND INDUSTRY
PUBLIC HEALTH AND WELFARE

April 23, 1986

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

RE: H.B. 2961

USE OF FUNDS IN CRAFORD COUNTY

In discussing this with Judge Allegrucci after the committee hearings I told him that I did recall reading that some of the money from the 11th Judicial District court bond program was used to remodel offices. I have not heard anyone state that he personally used any of these funds for his personal office. Judge Agllegrucci did confirm to me that under the previous Administrative Judge approximately $4,000.00 of funds from the program was used to assist in remodeling of the office of the Clerk of the District Court. It is therefore correct that funds from the program, derived from criminal defendants, were used for remodeling of offices for the court under the previous administrative judge.

This points out the fact that the use of the funds acquired is up to the individual administrative judge. This is an inherent danger in the program and a strong reason why the bill is needed. The court program creates a fee fund which is not subject to outside audit, control by rules and regulations or oversight. It is apparently simply under the control of the administrative judge. As in Crawford county, individual judges can differ on how the funds should be used. Unauthorized fee funds are unacceptable.

NEED FOR STATEWIDE UNIFORMITY

No county can operate a criminal justice program in a vacuum. A defendant charged in one county is often arrested in another, creating problems if bail bond procedures are not uniform. A high bond set in the charging county might be severely diluted if the defendant is arrested in a county with a 10% discount bond system in place. Criminal law enforement, including bonds, should be uniform, not diverse.

PUBLIC TRUST

Under the 10% court bond system the public can be easily misled. Under the 10% system the bond set does not equal the bond which is posted. A victim or a witness can leave the courthous feeling that a sufficiently high bond was set only to find to their surprise that catch-22, the 10% system, let them out on the street. Bond amounts set become therefore meaningless.

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Opposition to the bill comes from only three judges operating this type of program. One judge instituted the program in the face of legislative disapproval of enabling legislation. The Supreme Court has not adopted a similar state-wide program nor endorsed the local programs. There is very strong law enforcement support for the bill. I would urge you to support the bill if for no other reason to insure that the public and victims are not misled, can understand the bond system and to guarantee that bond posted equals bond set.

Respectfully Submitted,

Edwin ~~H.~~ Bideau III
State Representative
5th District

12-118

EDWIN BIDEAU III
REPRESENTATIVE 17TH DISTRICT
NEOSHO COUNTY
14 SOUTH 1ST
CHANUTE, KANSAS 66720-1442

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN LEGISLATIVE JUDICIAL AND CONGRESSIONAL APPORTIONMENT
MEMBER JUDICIARY
LABOR AND INDUSTRY

CLOSING REMARKS ON H.B. 2252

BAIL BOND REFORM

In considering your vote on this bill I would ask that you vote not for or against bail bondsmen and not for or against the judges who have created these programs. I would ask that you vote for the citizens who are the victims of the crimes and for the good public policy contained in this bill. In closing I would like to respond to some points raised by the opponents of the bill in the committee hearing.

FUND EXPENDITURES IN CRAWFORD COUNTY

A copy of a letter from Chris Johnson, Court Administrator of the 11th Judicial District in Pittsburg, Kansas is attached reflecting the payment from the discount bond fund of over $6,000.00 for remodeling of offices and purchase of office equipment. There is no question but that the court has used funds for its own use under this program which are not subject to oversight. Judge Allegrucci was not correct when he stated that only $4,000.00 had been used. Further, the court is considering spending even more funds from this account in the near future.

A private fee fund, without control over expenditures is bad public policy. This program creates a clear conflict of roles. There should be no financial incentive to a court for selection of any remedy in any law suit either criminal or civil. This program does create a role conflict and perhaps a conflict of interest. A judge should not have to consider or even be tempted to consider the funds which might be raised for court use by a defendant posting bond. That question has no place in the court room and this program should be ended.

CONSTITUTIONAL ISSUES

Use of bail bonds and setting of bonds for the purpose of insuring restitution and payment of appointed counsel fees is a clear violation of consitutitonal requirements for bail. Only the the likelihood of the defendants appearance in court and danger to the community can be constitutionally considered in setting bail. The bond type and conditions to be approved should have no bearing upon any other fiscal issues. Funding sources for other programs have no place in that process.

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JOHNSON COUNTY EXPERIENCE

Johnson county has flirted with this program for a short period of time and then abandoned it. A copy of a letter from Judge Walton is attached and he has advised Mr. Baraban that he supports the bill. A copy of a letter from the Clerk of the District Court of Johnson county supporting the bill has previously been circulated to the members of the committee. Johnson county concluded that this program would be far too expensive for the results obtained.

INFORMATION AVAILABILITY

The proponents of the bill have not been given records requested concerning these programs in other counties. I personally requested records and information on the discount bond program in Barton County. A copy of a letter to the county attorney there is enclosed. I again requested the information but it has not been forthcoming. I was not provided with the information at the hearing on the bill. Representative Laird requested records from Shawnee county and was not given them. He disagrees with Judge Buchelle's testimony on this issue. I was able to obtain a report from Crawford county which is attached.

LAW ENFORCEMENT POSITION

Judge Buchelle testified that Shawnee County District Attorney, Gene Olander had changed his position on this issue, had done so in writing and that he felt that Mr. Hiatt was aware of this. I certainly had not seen anything indicating a change in position so I asked the proponents to contact Mr. Olander. In a phone contact to Mr. Olander he reported that he has not changed his position, that he has not made any written statement changing his position and that his position is exactly the same as stated in his letter which was distributed to the committee.

This bill is supported by the Wyandotte County District Attorney, Nick Tomasic who testified in its favor before the Senate committee last session. It is also supported by the Kansas Sheriff's Association and the Kansas Peace Officer's Association.

ALTERNATIVES AVAILABLE TO THE COURT

It is my sincere and strong belief that the courts can handle their business properly without a discount bond program with no problems whatsoever. There simply is no reason to mislead the public and victims of crime into thinking that a surety bond has been posted when only 10% of the bond amount has been paid.

The program now in use in Sedgwick and Johnson counties operates well under current law and will continue in the same manner after passage of 2252. Under that program the court may grant a modified personal recognizance bond but require that a portion of the bond be secured by surety. No fee is charged to the defendant under this arrangement and the court does not therefore have a

financial interest in the outcome. If cash is deposited it is all available for payment to the defendant or for his obligations to the court without an administrative fee. Additionally, the court can still set relatively modest cash or surety bonds without discounting them and can grant a total personal recognizance release. The difference between these programs is that the discount bond program promotes a fiction, misleads the public and charges a fee to defendants who keep their commitment to appear.

The opponents of this bill have proposed in the past that the bill be amended to authorize the existing programs but to prohibit it in the rest of the state. This would totally gut the bill and would be the same as a defeat of the bill.

The issues for decision are as follows:

Should a bond program mislead the public and victims as to the bond set for a criminal defendant?

Should a court be involved in actually posting bond for a criminal defendant?

Should a court be permitted to charge a fee to a criminal defendant for posting his bond and should this fee be used for other purposes?

Should a bond program mislead the public and victims as to the bond set for a criminal defendant?

Should bond set = bond posted?

We would ask for your support for H. B. 2252.

12-121

Dwight J. Parscale
ATTORNEY AT LAW
3320 S.W. HARRISON
TOPEKA, KANSAS 66611
TELEPHONE 267-4190
AREA CODE (913)

October 31, 1985

Commissioner Tom Hanna
Shawnee County Courthouse
Topeka, Kansas 66603

Re: District Court Rules Concerning OR and OR - Cash Deposit Bonds

Dear Commissioner Hanna:

This is to advise you that I have taken a small amount of time to review the memorandum supplied to the commissioners by Judge Carpenter in reference to the above subject of cash deposit bonds. Without attempting to get into a conflict of personalities here and keeping this subject strictly on the terms of open debate I would like to make the following reflections on the subject. As I advised the commissioners previously, it is my understanding that all of the jurisdictions which I refered to, (i.e. New York, Florida, California, Texas, etc. . .), had specific statutes established by their state legislatures setting out the provisions for their cash deposit bond system and giving the court and the counties legal authority to establish such a procedure. Further, as I advised you each one of those jurisdictions no longer uses this particular system and in fact refers to the system as a complete failure.

Quite simply, as I stated previously, our state laws allow for OR Bonds (that being your own recognizance or personal recognizance bonds) which require no payments of monies. And two in the event that a Judge feels that a person is not trustworthy enough for an OR Bond then he can set a particular bond with adequate sureties. Absolutely no where in Kansas Statutes are there any provisions allowing for the deposit bond system established by the administrative rules 113, 114 and 115. It is apparent to this scrivener that Judge Carpenter is aware of that situation also in his statements made on page three (3) of his memorandum that, "there is no Kansas statute or Supreme Court Rule which prohibits OR - cash deposit bonds." If there would have been a statute allowing such bonds obviously that would have been pointed out to the commissioners. Instead, the court chooses to justify its position by claiming it has the authority because it has not been prohibited from doing such a thing. This reasoning runs contrary to everything I have ever been advised from the bench and most assuredly is not justified. If the legislature had intended for cash deposit bond to be made they would have written

12-122

Again, in the court's memorandum on number six (6) the allegation that there would be no additional expense to Shawnee County or the District Court resulting from this procedure is most obviously open for debate. By the court's own memorandum it becomes obvious that somebody is going to have to pay for the return of bail jumpers. The court in its memorandum stated, and I quote, " . . . National studies indicate that the vast majority of bail-jumping defendants are returned by law enforcement officers (viz. over ninety percent)." By simple reasoning it is quite apparent that if law enforcement officers return ninety percent of the bail jumpers now and bail bondsmen return ten percent then obviously law enforcement officers of our county will have to be returning more of them than they are presently if we are eliminating the bail bondsmen from that obligation. This brings up the question in my mind as to who will pay for the law enforcement officers travel, transportation, vehicle, meals, as well as, the expenses of the bail jumping defendant who will be returning from another jurisdiction. Under the old system these expenses were paid for by the bail bondsmen. Quite obviously under the system sought by the court the funds will have to come from the taxpayers and the county coffers.

As I pointed out to the county commissioners the studies done by the major insurance companies who write bail bonds nationwide, that of the ten percent fee that they take on a bond, ten percent is set aside for bond forfeitures and ninety percent is put aside for expenses, (i.e., personnel, office, and all other things that go into administering their bail bond program). In the system proposed by the court we give that ninety percent back to the criminal. Again, it is only apparent to this attorney that the advantages of this system are unilateral and one-sided towards the criminal and can do nothing more than increase costs to taxpayers of Shawnee County. As a taxpayer of Shawnee County I am personally opposed to the potential problems and costs inherent in this program, especially when I have had no input, nor have my elected representatives had any input into this program. The court has obviously subverted the representative form of government processes and such actions are illegal and not justified in any form. The court in its memorandum number five (5) has chosen to handle the written opinions given to this commission by myself and my fellow attorneys not by intelligent debate, but by simply casting it aside as being without substance.

It further appears to this scrivener that the court's memorandum advising you that you are without liability as is the court from litigation would run contrary to the series of cases being heard and determined in this country. The city of New York recently was ordered to pay Two Million Dollars for its failure to protect a child from its father in not responding properly to a call. Further, the city government was ordered to pay for the police's failure to retain a drunk driver until he had sobered up sufficiently enough to drive home when he left the police department and went out and killed someone while driving home. In the state of Conneticut another award was granted to a lady in the amount of Two Million Six Hundred Thousand Dollars against a city whose

police department failed to respond quickly enough to a domestic call. Earlier this year the Advisory Commission on Intergovernmental Relations, Washington, D.C., advised municipalities and local governments that they should review their liability insurance as a result of the flood gate of court judgments against these governmental units. Again, it is not my position to threaten the county with lawsuits or to falsely scare the county into believing there will be lawsuits, but I must point out that the potential for lawsuits is real and the liability is possible. This becomes especially true when we consider the fact that what the court has done is not authorized by statutes and therefore in my interpretation an illegal act. The statement that the court itself is immune from lawsuit also is somewhat misleading in light of the cases across the country in which courts are being sued and recovery being made. As I have previously said we have no argument that the statutes do allow the - persons to go free on their own recognizance and in such cases there is no surety. But the only alternative to that under the law is for a person to be provided bail with adequate sureties. The court's cash deposit system does not fit either definition.

In closing, it seems that the total arguments made by the court in its memorandum show through it that the only advantages to this system are to the criminal that has been arrested and held in jail. I find nothing in the total memorandum which points out that the system proposed by the court has even the slightest of advantages to the county or its taxpayers who in the end are the victims twice over of the actions of said criminals. It is apparent that no prudent and intelligent individual would believe that the system proposed by the court could be operated at no new additional expense. If the examples from the other states do not clearly point out the inadequacies and tremendous draw backs of this system then obviously the mass of material that has been provided to this commission has not been read. I sincerely believe that this commission should follow through on the proposed resolution and eliminate itself from any participation in or liability from the proposed program of the court.

Respectfully submitted,

Dwight J. Parscale
Attorney at Law

DJP:lp

12-124

This bill that would have allowed 10% bail for criminals did not pass either house

As Amended by House Committee

Session of 1985

HOUSE BILL No. 2009

By Special Committee on Judiciary

Re Proposal No. 25

12-18

Shawnee County Judge William Carpenter caused this bill to be introduced, upon failing to pass he began the unlawful program anyway without legislative authority.

AN ACT concerning criminal procedure; relating to appearance bond.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The administrative judge of any judicial district may provide by rule that a criminal defendant, instead of executing an appearance bond with sureties or a cash bail bond, may deposit with the clerk of the court a cash sum not to exceed 25% of the amount of the appearance bond. If the defendant makes such a cash deposit, 90% of the deposit shall be returned to the defendant upon performance of all required appearances, except that the court may: (a) Apply any part of the returnable portion of the deposit to the defendant's court-imposed obligations, including amounts ordered as reparations or restitution to victims of the defendant's crime, reimbursement to the state board of indigents' defense services or to the county general fund for the cost of defense services rendered on the defendant's behalf, fines or other court costs; or (b) assign any part of the returnable portion of the deposit to any private counsel retained by the defendant, in payment for services rendered on the defendant's behalf in the proceedings. The remainder of the deposit and any interest thereon shall be retained by the clerk of the court in a separate fund to be used as directed by the administrative judge of the judicial district for the exclusive purpose of paying the expenses of the cash deposit program authorized by this section, including the costs of assuring the appearance of criminal defendants released under the program. Before the end of each fiscal year, the administrative judge of the judicial district shall

determine the amount which will be necessary to pay the expenses of the cash deposit program during the following fiscal year. Within 30 days after determination of the amount necessary, the clerk of the district court shall remit to the state treasurer any moneys in the fund in excess of that amount. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

12-126

DOUGLAS E. WELLS
Attorney at Law

SHADOW WOOD OFFICE PARK
5897 SOUTHWEST TWENTY-NINTH STREET
TOPEKA, KANSAS 66614
TELEPHONE (913) 273-1141

October 11, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioners:

I have reviewed legal opinions prepared by James Davidson and Dwight Parscale pertaining to the County's exposure to liability arising from the execution of the percentage deposit bail bond system. Before analysing these opinions, let me confess my personal bias. I believe that the former bail bond system was effective, and I found professional bail bondsmen to be a useful tool to me in controling and assisting me in the presentation of my cases to the Court or jury when a professional surety bond was required. I also found that persons who had no criminal history and a local residence were frequently permitted to sign a signature bond without requiring the posting of any monies to either a bondsman or a cash deposit system, hence, the criminally accused who should be entitled to benefits are afforded those benefits.

Finally, I am afraid that this new cash deposit bail bond system will force professional bondsmen out of work, since the income that they can derive from bonding persons who are charged with the crimes which professional sureties can be required will produce insufficient income to allow a bondsman to pay his bond underwriting expenses along with other overhead expenses. In short, I am opposed to the new system of cash deposit bail bonds because the old system worked and you should not change an institution that is providing the best quality results that can be expected under the facts at hand. For the Commission's assistance, I have explained my views so that you can characterize my evaluation of the legal opinions as you deem necessary.

I have earlier expressed these opinions to Judge Carpenter and am not attempting to directly undermine his efforts to make local rules within the perview of his authority. In our system, I believe that individuals should express their opinions and I believe that governmental bodies should evaluate these opinions so that they can implement policies and supervise the administration of that entity's operation.

While the County Commission does have the authority to order county employees, i.e. the County Corrections Department, to implement any type of bail bond system it desires, this is a decision

12-127

which should be made by the County Commission, at least to the extent that it involves county employees, since you are accountable to your voters for re-election and you are accountable to the citizenry for the proper supervision of county employees. To abdicate your authority to supervise county employees in the administration of any policy could subject you to legal responsibility if injury to some person arises as a result of your abdication of your authority. To this extent, I agree with Mr. Parscale's opinion and I agree with Mr. Parscale's distinction between county employees and state or court employees.

As I read the applicable bonding statutes, there are three ways to make a bond: a bond guaranteed by a sufficient solvent surety, a release without any surety when it is determined that a surety is not necessary to assure appearance of the person, and a deposit of cash in the amount of the bond. I, again, support Mr. Parscale's analysis of the bail statute, in that the requirement of a dollar surety by a person arrested whould preclude the finding that no surety was necessary and that the requirement of such a "bond" may very well be construed to be insufficient and insolvent during a potential litigation where damages are sought for releasing a person inappropriately. Although a different governmental entity was involved and although different facts surrounded this case, the Yorky Smith case comes to mind. I do not believe that the cash deposit bond system is authorized by statute.

I hope that this has been helpful in analysing the County's responsibility.

Sincerely,

DOUGLAS E. WELLS

DEW:gec

12-128

Jacqueline Scheideman-Reid, J.D.
ATTORNEY AT LAW
[redacted]
(913) 233-4309

NEW ADDRESS:

1271 S.W. Harrison St.
Topeka, KS 66612

October 11, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioners:

Subsequent to the recent administrative order allowing percentaged deposit bail in Shawnee County I have reviewed legal opinions presented by both Dwight Parscale and James Davidson pertaining to the authorization provided by our Statutes for such a program. I have also reviewed a letter prepared by Douglas E. Wells in response to these legal opinions and the implementation of the cash deposit bond system.

After careful review of the memorandums and letters abovementioned, as well as the numerous applicable statutes, specifically but not limited to K.S.A. 22-2802, I would concur with Dwight Parscale's memorandum wholeheartedly. I find his interpretation of the Statutes and the applicable law in this matter to be the more extensive and appropriate as opposed to that set forth by James P. Davidson, Shawnee County Counselor.

As Douglas E. Wells has expressed, I too am perhaps speaking from a biased position. Although I have not practiced law for an extensive period of time, I have had numerous occasions to work with criminal defendants under our previous bonding procedures. I personally found that the professional bail bondsmen were an enormous asset to me in those cases when I was representing a defendant who did not have sufficient respect for the court system to appreciate the need for his personal appearances directed by the court. I also found that our previous program contained equitable provisions for those defendants with sufficient ties with the community to warrant a reduced bond expense.

Additionally, I am concerned as both Dwight Parscale and Douglas E. Wells have previously indicated, that the new bonding program will involve the county in additional liability and expense based upon the implementation of this new program. For these innumerated reasons, I would appreciate the county commissioners carefully scrutinizing the new program which has been put into effect as to its overall impact on the county liability and its possible violation of our Statutes.

Sincerely,

Jacqueline Scheideman-Reid

JSR:nk

12-129

ROONEY AND ROONEY
INSURANCE BUILDING, SUITE 317
701 JACKSON STREET
TOPEKA, KANSAS 66603
(913) 233-9757

CHARLES ROONEY, JR.

CHARLES ROONEY, SR. (1904-1)

October 11, 1985

Commissioner Tom Hanna
Board of Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioner:

I understand that you are leading the opposition to the so-called "cash surety for bail bonds", which recently went into effect by the District Court of Shawnee County, Kansas.

It appears to me from the reading of K.S.A. 22-2802 that such a system is contrary to that Statute. Sections (2) and (3) of the Statute address the matter of an appearance bond.

Section (2) has 2 alternatives, to-wit: The bond can be executed in an amount set by the magistrate judge with sureties, or the magistrate judge has the discretion to find that sureties are not necessary to assure the appearance of the defendant. In reading the Statute, there does not appear any other alternatives to Section (2) of the Statute.

Section (3) provides a cash deposit in the amount of the bond set, and can be in lieu of the posting of a bond by sureties.

It is my opinion that the District Court Administrative Orders 113 and 114 are contrary and not in compliance with the Statute; that the procedures in said Orders are not authorized and are in violation of K.S.A. 22-2802.

I had previously signed an instrument in opposition to these Orders, as well as many Attorneys in Shawnee County.

I am in your corner concerning this matter.

Respectfully yours,

Charles Rooney

CHARLES ROONEY, JR.

CR:rs

12-130

William R. Brady
Attorney at Law

Insurance Building, Suite 312
701 Jackson Street, Topeka, Kansas 66603
(913) 235-9257

October 10, 1985

Tom Hanna
Board of County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Tom:

This letter is in response to the question which you raised when we were visiting earlier today. Your question was directed to the legality of the "cash surety for bail bonds" recently implemented by the Shawnee County District Court.

The Statute in question is K.S.A. 22-2802, which is quite specific and clear as to the release of a person charged with a crime prior to trial. Sections (2) and (3) of said Statute pertain to the appearance bond.

Section (2) has two (2) alternatives; the bond can be executed in the amount set by the magistrate with sufficient sureties, or the magistrate may, in his discretion, find that sureties are not necessary to assure the appearance of the defendant. There are no other alternatives in said section.

Section (3) provides that a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

In my opinion, Administrative Orders No. 113 and 114 do not comply with the Statute, in that such procedure is not authorized and would be in violation of said Statute.

Trusting that the above answers your question, I am

Very truly yours,

Bill

WILLIAM R. BRADY

WRB:rs

12-131

PAUL D. POST
Attorney at Law

SHADOW WOOD OFFICE PARK
5887 SOUTHWEST TWENTY-NINTH STREET
TOPEKA, KANSAS 66614
TELEPHONE (913) 273-1383
273-1387

October 17, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Administrative Orders Pertaining to Bail Bonds

Dear Commissioners:

I have had an opportunity to review the Administrative Orders issued by Judge Carpenter pertaining to bail bonding, as well as the opinions prepared by James Davidson and Dwight Parscale concerning the County's exposure arising out of this new system. I wanted to take this opportunity to express my views concerning this matter.

First, an old saying comes to mind: "If it ain't broke, don't fix it." Why was it felt necessary to tamper with a good system that was working? Certainly, bail bondsmen were making money charging for bonds, but then, weren't they providing a service in exchange for the bonding premium paid by the criminal defendant? The bondsmen I have worked with kept track of defendants who had made bond, and insured their attendance in Court. Those defendants who "skipped" were often located and turned in by the bondmen, all at no expense to the taxpayer. Who is going to provide that service on percentage deposit system?

Second, isn't the percentage deposit system really a fiction? If a criminal defendant only has to post $100.00 on a $1,000.00 bond, isn't the bond really only a $100.00 cash bond?

Third, if a criminal defendant fails to appear, and his bond is forfeited, does anyone really believe that the face amount of the bond will ever be collected from an absent defendant?

To reiterate, I don't understand why a good system was changed to one which appears, at least to me, to create more problems than it solves.

Finally, it concerns me that no notice of the new rule was given to the public or to the Bar. Traditionally, proposed rule changes have been published in the Topeka Daily Legal News prior to implementation. This was not done in this case. Why?

12-132

I should also note that in my opinion, the District Court Aministrative Orders in question are in violation of the applicable statute, K.S.A. 22-2802, and could subject the County, as well as its employees, to potential litigation where damages are sought for releasing a person inappropriately.

I realize my letter poses many questions, but they seem to me to be valid questions which deserve answers. As a member of the Topeka Bar Association and as a concerned citizen of this community, I hope that you will be able to obtain the answers to these questions from those responsible.

Sincerely,

PAUL D. POST

PDP:gec

12-133

HENRY O. BOATEN
Attorney and Counselor at Law

Civic Center Building
629 Quincy Street, Suite 201
Topeka, Kansas 66603

Telephone 913/234-8677

October 11, 1985

MEMORANDUM

TO: Tom Hanna, Vice Chairman
Board of Shawnee County Commissioners

SUBJECT: Percentage deposit bail bond

Dear Mr. Hanna:

I have reviewed the Memorandum Opinion written to you by Dwight J. Parscale and County Counselor Davidson. In my point of view, Mr. Parscale succinctly analyzed the problems and liabilities of the present experimental program resulting from Judge Carpenter's administrative order that was recently issued. Mr. Parscale has undertaken a detailed analysis of the possible and potential liabilities that this program is likely to visit upon the county. The conclusions drawn from Mr. Parscale's Memorandum should be given serious and due consideration.

One major concern, which he discusses in his memorandum, is who would be the possible surety under the present experimental program?

K.S.A. 22-2802 mandates certain conditions upon which a person who is charged with a crime should be released prior to trial. A review of the provisions contained therein indicates that there is a necessity for a surety in a case where only a percentage of the bond required has been deposited. Under this program, who is the surety, the county, the judiciary, or the accused?

The surety has been defined as one who undertakes to pay money or do any other act in the event that his principal fails therein. See In Re Brock, 312 P. 92, 116(a) 778, 781. One who

12-134

bonds with his principal for the payment of a sum of money or for the performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him.

Obviously, the accused, who has only deposited a percentage of the bond set, cannot be the surety at the same time. If that be the case, there is a clear violation of K.S.A. 22-2802(c)(3). The judiciary, for obvious conflict of interest, cannot be the surety either under this particular system. Therefore, the only alternative left here is that the county becomes the surety. This is the conclusion reached by Mr. Parscale in his Memorandum to you. I believe that his analysis is correct under the present case law and the provisions of the statute. That being the case, all of the liabilities which he discusses in his Memorandum are real, and there is the potential of serious impact on the operation of the county.

Thank you for the opportunity to serve you and the county. Please do not hesitate to call if my services are needed.

Yours truly,

HENRY O. BOATEN
Attorney at Law

HOB/ced

12-135

ASSISTANT DISTRICT ATTORNEYS
[illegible]

Gene M. Olander
District Attorney
Kansas Third Judicial District
Suite 212 • Courthouse • Topeka, KS 66603 • 913/295-4330

OFFICE MANAGER
[illegible]

INVESTIGATORS
[illegible]

CHILD SUPPORT DIVISION
[illegible]

February 12, 1985

Mr. William Roy, Jr., Representative
State Capitol Building
Topeka, Kansas 66612

RE: HOUSE BILL 2009

Dear Representative Roy:

It was called to my attention that House Bill 2009 passed the House Judiciary Committee by one vote. Please be advised that our State Prosecutors Association as well as myself are opposed to the passage of this measure.

Not only would this bill put the Clerk's Office in the bonding business, it would also, in my opinion, change the criminal bail bond system in a manner which would have an adverse effect on the whole criminal justice system.

We presently have sufficient statutory authority for either granting a surety bond or allowing those financially unable, but a reasonable risk to post their own recognizance. My feeling is that if we are going to require a bond in a certain amount to guarantee that person's appearance and then to say that they would only be responsible for up to 25% of that bond, that it would make no sense whatsoever.

I am aware that there are those who wish to eliminate professional bail bondsmen. Whether or not you like professional bail bondsmen, they perform a vital service in the implementation of article 9 of the Kansas Bill of Rights under our present system. When a $10,000 bail bond is posted, the bondsman has an incentive to see to it that that person is in Court and if the defendant fails to appear, the bondsman stands to lose the entire $10,000. There is, therefore, a great incentive to see to it that not only the defendant appear, but that he is apprehended and surrendered by the bondsman so that the bondsman does not have to pay the forfeited bond. This proposed new system does not do anything that the present recognizance system doesn't because once the bond is forfeited, the deposit may be forfeited, but no one is looking for the defendant to surrender him to avoid paying the full bond.

12-136

Granted, there is a need for a system where we take limited risks on misdemeanor and non-violent offenders. We already have that system under the present law. I view this bill as nothing more than an attempt to put the professional bail bondsman out of business, as we already have sufficient statutes on the books to take into account those defendants who would otherwise be detained solely because of their financial circumstances.

My personal observation has been that bonds which are posted on a defendant's own recognizance are forfeited at least 10 times more frequently than those who have a responsible surety on their bond. I do not see this bill as anything other than an unnecessary expansion of the presently very liberal recognizance program already in place. I have kept records in this office for several years as to forfeited bonds and believe me, when a professional bail bondsman has a forfeiture, usually within 30 to 45 days, he has either surrendered the defendant or has paid the forfeiture in full. I find this a much more effective system than that proposed under HB 2009.

Thanking you in advance for your time and attention.

Yours very truly,

GENE M. OLANDER
District Attorney

GMO: bjw

12-137

Kansas County & District Attorneys Association
827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

February 18, 1985

House of Representatives
State Capitol
Topeka, Kansas 66612

Re: HB 2009

Dear Representative:

The Kansas County and District Attorneys Association is opposed to HB 2009, because it is unnecessary and expensive.

At the present time, a magistrate may impose a cash bond, requiring the accused to post the full amount of the bond, and returning the entire amount to him/her upon satisfactory performance. So a scheme to require a defendant to post up to 25% of the face amount of bond is unnecessary. If the court is concerned that a defendant could not raise the cash, the court could simply lower the face amount of the bond.

The bill also increases expenses in that the county sheriff would be required to regain custody and transport to the court any defendant who absconds on a bond. And if the defendant has fled to another state, expensive and time consuming procedures are required before a defendant can be returned. By entering into a commercial bond, a defendant may be re-captured and returned by the bonding company without extradition costs. If the bonding company should fail to return the defendant, then the full amount of the bond is forfeited.

I thank you for you consideration.

Sincerely,

James W. Clark

JAMES W. CLARK
Executive Director

JWC/lb

12-138

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

12-139

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

12-140

TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES
BEFORE THE
HOUSE JUDICIARY COMMITTEE

Senate Bill 203

Chairman O'Neal and Members of the Committee:

The Board of Indigents' Defense and the State General Fund will suffer a loss of funds if this bill is passed.

BIDS receives part of the bond money that is paid to the Clerk of the Court in those counties that do not require the use of professional bail bondsmen. Specifically, counties apply the bond money not just to court costs, but also to reimburse BIDS attorney fees for public defenders and assigned counsel, and to pay the BIDS administrative fee of $100.00 per case. Attorney fee reimbursement is returned to the State General Fund, and the administrative fee is retained by BIDS.

Both Shawnee County and Johnson County employee this system. The total funds received from these two counties in FY 05 and FY 06 is as follows:

FY 05	
Johnson County	$80,769
Shawnee County	$71,472

FY 06	
Johnson County	$77,566
Shawnee County	$49,953

Most of these funds will be lost to BIDS and the State General Fund if the proposed legislation is passed.

Respectfully submitted,

Patricia A. Scalia
Executive Director
Board of Indigents' Defense Services

PAS:bc

House Judiciary
Date 3-13-07
Attachment # 13

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE
IN OPPOSITION TO HOUSE BILL 203

House Bill 203 is no more than a blatant attempt by a special interest group to create a problem, then propose a self serving solution to that non-existent problem. The ORCD or Own Recognizance/Cash Deposit is used in a limited number of jurisdictions in this state and thus, is unfamiliar to most Kansans. I feel compelled to explain the situation that existed before the ORCD Bonds and the circumstances which necessitated its creation.

History

The purpose of any type of bond is to assure the attendance in court of an individual charged with a crime. Back in the late 1980's there existed three types of bonds. The first was an *own recognizance/signature bond* which only required a signature and a promise to appear in court. An amount of bond was set, i.e., $2,500.00, which the individual who signed the bond would be liable for should the defendant fail to appear in court. While the person who was required to sign the bond was usually the defendant, with the court's permission a third party could sign the bond. The second type of bond was a *cash bond* (some might argue that this was a kind of surety bond). This bond required the posting with the clerk of the district court a certain amount of money, i.e., $2,500.00. Should the defendant fail to appear he would be out the money and no further liability would accrue. With the court's permission certain property could be substituted for the cash. The third bond type was the *surety or professional surety bond.* With this type of bond the court would set an amount i.e. $2,500.00 and a third party usually a bondsman, certified by the court to act as surety, would sign a promise to pay the amount should the defendant not appear. The bondsman would charge a fee to act as such a surety. This fee was retained by the bondsman. If the defendant failed to appear, then the bondsman would be required to pay the amount of the bond. It was generally felt that the bondsman would actively protect his money by making sure the defendant appeared in court. Most bondsmen required collateral in an amount twice the face value of the bond to cover this potential loss.

The Problem

It was with these tools that the Late Honorable James P. Buchele sought unsuccessfully to correct a perpetual overcrowding problem at the Shawnee County Jail. It was clear to Judge Buchele that many of the people being held in jail at great cost to the county were charged with low level felonies which more often than not, would end up being placed on probation. For many reasons an *own recognizance bond/signature bond* was not deemed appropriate. The Judge concluded that these individuals remained in jail because they did not have the money to make the normal cash or surety bond. The Judge was concerned that too many people who had to be released to make room for people charged with more serious crimes were being released from jail on *own recognizance/signature* bonds which he deemed inappropriate, or on small cash bonds which he likewise deemed inappropriate. The Judge found that many defendants might have the money to pay the fee but could not meet the collateral requirements of the bondsmen. He complained the bondsmen were not willing to take many risks on the defendants they bonded as they only bonded individuals that they were very certain would show for court. Further, the

Judge noted that the bondsmen resisted writing small amount bonds, i.e., $1,000.00, because the amount the bondsman took in ($100.00) did not cover the potential costs. In the end Judge Buchele conceded the fact that he could not solve the jail overcrowding problem with the tools he had.

The Solution

It was clear to Judge Buchele that people who had money and collateral were bonding out of jail by paying just 10% of the amount of bond. Thus, an individual who had a $2,500.00 surety bond need only pay $250.00 dollars to a bondsman to bond out of jail and should he appear in court he would not lose his collateral. The $250.00 paid to the bondsman was not returned regardless of the outcome of his case. His solution was to produce a hybrid bond which was a cross between a own recognizance bond and a cash bond hence the name *ORCD or Own Recognizance Cash Deposit*. For the right people, the Judge concluded that a small cash deposit (10% of the amount of bond) similar to that charged by the bondsmen, and the ability to forfeit and collect the remaining 90% (just like an own recognizance/signature), would allow him a better bond option to solve the jail overcrowding problem. It was not perfect but it was better than before. Similar to a cash bond, the money was returned to the defendant if the court appearances were made and like an own recognizance bond, a judgement for the amount of the bond could be had if the defendant failed to appear. At first, the defendant had the option to apply the bond money to his costs and fees. Later, it became clear that these costs and fees were not being paid and the only solution to get them to pay was to put the individual in jail. This method of collection usually cost the county more than it collected so the costs and fees went unpaid. It seemed the better practice to get the money up front by using the bond money to cover any costs and fees imposed by the court. Judge Buchele knew that there would be costs in running the program so it was deemed fair to have the individuals who obtained the advantage of the program to pay for the cost of its operation, hence the retention of 10% of the posted moneys. The cost to the defendant was 1/10 of that which he would have had to pay to a bondsman. A coincidental result was the bondsmen did not write as many bonds and their income was reduced.

Is it Broke?

What is the justification in returning to the old system that cost the county thousands of dollars in unnecessary expenses? How can one denounce the fundamental soundness or fairness of the *ORCD bond*? Certainly OR bonds in certain situations are proper. Just as certainly, cash bonds under certain circumstances are proper. What makes the combination of these two proper bonds so inappropriate that we must ban them? Is this merely an attempt by a special interest group–bondsmen–to line their pockets?

Other Concerns

One of Judge Buchele's concerns was that money spent on a bondsman was money lost to the defendant and the court system. Requiring the return of cash bonds in effect denies the court of the money by assigning the court a lower priority as to others who might have a claim to the money. This also denied the defendant the use of the money when it was attached to cover

other liens, i.e., attorney fees, and not the costs and fees of the case. Regardless of whether the defendant uses a bondsman or pays cash, the money is lost to the court. Who among competing interests gets the money if the defendant wishes to apply the cash bond to his costs? The number of defendants who fail to pay costs and fees will increase with the passage of this bill. At first glance it may seem that a county would save money by using a bondsman to assure a defendant's presence in court, but if defendants unnecessarily remain in jail simply because they do not have any money, how does the county save money? It may *seem* better for the bondsman to take into custody a defendant who does not appear for court, but wouldn't the more prudent course be to have a trained law enforcement officer apprehend a defendant who fails to appear and have the officer funded not by taxpayer dollars but by bond money? Once again the money the defendant is out pursuant to an *ORCD bond* is less than if he has to hire a bondsman.

Conclusion

The *ORCD bond* is only a "bad deal" to bondsmen. In Shawnee County, it is a useful tool to assure the appearance of a defendant. It may not be right for every judicial district but it is not being forced upon every judicial district. It has worked for many years for the Third Judicial District. If it didn't it would have been replaced long ago just as the bond scheme proposed by House Bill 203 was. Please do not impose a costly alternative on the tax payers of Shawnee County. A total ban will improve nothing. Thank you for your time.

Sincerely,

Albert R. Bandy
Public Defender
3rd Judicial District

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March 13, 2007

Re: Testimony Before the House Judiciary Committee in Opposition to Senate Bill 203

Dear Chairman O'Neal and Members of the Committee:

I have been a public defender in Missouri and Kansas for 16 years. During this period, I have had the opportunity to work in many jurisdictions, including Shawnee County, and to draw some conclusions about pretrial release practices. I oppose Senate Bill 203 because it would end the own recognizance/cash deposit system in place in Shawnee County.

1. The Shawnee County ORCD program has been successful at maintaining a reasonable jail population and allowing the release of indigent defendants.

K.S.A. 22-2801 declares:

> The purpose of this article is to assure that all persons, *regardless of their financial status*, shall not needlessly be detained pending their appearance to answer charges or to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest [emphasis added].

Under Senate Bill 203, however, Shawnee County judges would be forced to either grant an own recognizance bond, which is unlikely to occur in some felony cases, or impose a cash or surety bond. Unfortunately, this would create a system in which financial status will often determine whether the accused is released on bond or sit in jail for months. Such a system raises serious equal protection issues.

Most jurisdictions, including the federal government, realized long ago that heavy dependence on the professional surety system results in indigent defendants unnecessarily

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languishing in jail. The federal government began to move away from over reliance on professional surety bonds with the Bail Reform Act of 1966, and continuing with the Pretrial Service Act of 1982 and the 1984 Bail Reform Act. Under the current federal statutes incorporating these reforms, a federal judge should not require the posting of a professional surety bond unless the judge first finds that "release of the person on personal recognizance, or upon execution of an unsecured appearance bond ... will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C.A. § 1342(b). Even if this finding is made, the federal judge must then consider 14 possible release conditions, one of which is "execut[ion] of a bail bond with solvent sureties." 18 U.S.C.A. § 1342(c)(xii). According to a 1996 study of federal pretrial release by the U.S. Department of Justice Bureau of Justice Statistics, available on the Web at www.ojp.usdoj.gov/bjs/pub/pdf/fprd96.pdf, "[o]f those defendants released pending trial, 59.7% were released on their own recognizance (21.7%) or on an unsecured bond (38%). ... About a quarter of those released were required to post bail to gain release; however, 61.2% were unable to post bail on the day they were eligible for release." Other states have followed the federal government's lead. In fact, the study provided by proponents of SB 203, Eric Helland and Alexander Tabarrok, *Public versus Private Law Enforcement: Evidence from Bail Jumping* 4, notes that the reforms of the Federal Bail Reform Act of 1996 "have been widely emulated by the states."

Senate Bill 203 is an attempt to roll back the clock to a system in which "professional bondsmen hold the keys to the jail in their pockets." *Pannell v. United States*, 320 F.2d 698, 699 (D.C. Cir. 1963) (Wright, J. concurring). Under such a system, in every case too serious for an own recognizance bond, a defendant remains in jail unless he or she is either able to reach a contractual arrangement with a professional surety or post the entire face amount of the bond. The professional surety will often be willing to post the bond if paid 10% of the face amount of the bond and if adequate collateral is pledged to cover the remainder of the face amount. For many an indigent defendant, even if 10% of the face amount of the bond could be borrowed from family or friends, the surety's additional collateral requirement will keep the defendant in jail. Thus, a professional surety system is perversely skewed in favor of criminals who have access to both cash and property that can be pledged to the bondsman, a profile more likely to include a successful drug dealer than an indigent defendant.

Furthermore, there is no guarantee that in any particular case a professional surety will be willing to post the bond even if the money and collateral can be raised. This is strictly an economic decision to be made by the surety. If, for example, the face amount of the bond is so low that no surety would find it profitable to invest the time it takes to draft the paperwork and suffer the risk of nonappearance, the defendant will remain in jail.

A bond system that so heavily favors those with money will clash with the reality that most criminal defendants are indigent, resulting in rising jail populations. Shawnee County has, like many other jurisdictions, implemented an own recognizance cash deposit system allowing for release of eligible defendants upon posting with the court 10% of the

face amount of the bond. The system has worked well in Shawnee County and the County should not be deprived of the opportunity to continue it.

2. ORCD bonds are often coupled with bond conditions that promote community safety as well as ensure appearance in court.

Proponents of SB 203 and the studies they cite assume that pretrial release procedures serve only to ensure the highest appearance rate possible. The testimony of Christopher Joseph emphasizes that under SB 203, sureties would have a single responsibility -- ensuring appearance at court. Under the bill, the court would be barred from forfeiting an appearance bond for any reason other than failure to appear. Thus, sureties have no financial incentive in monitoring the defendant to determine whether the defendant is committing new crimes or using drugs. If such monitoring is to occur, it will remain the court's responsibility to do so, even as the court loses any opportunity to recoup any portion of its expenses in doing so. Under the ORCD program in Shawnee County, in contrast, at-risk defendants may be placed on bond supervision, under which a Court Services officer monitors the defendant to ensure compliance with all bond conditions, not just appearance at court.

On the premise that ensuring appearance is the sole goal of pretrial release statutes, the proponents of SB 203 cite two studies purporting to show that defendants released on professional surety bonds have the highest appearance rates. Such studies are of questionable validity, however, because (1) "[t]he forfeiture rate ... varies considerably from place to place," and (2) "the amount of time elapsing from the defendant's release until the disposition of his case by the court ... must be considered the variable of greatest importance." Wayne R. LaFave, *Criminal Procedure*, § 12.1(b) (West 1999).

Of course, if ensuring the highest appearance rate were the single goal of pretrial release procedures, this goal could best be met by simply doing away with pretrial release. But pretrial release obviously serves other purposes. K.S.A. 22-3208(5) recognizes that the court must set conditions of bond that will "reasonably assure appearance and the *public safety*"[emphasis added]. Proponents of SB 203 focus on a single aspect of an ORCD program -- that only 10% of the face amount of the bond must be paid in order to gain release. The proponents fail to mention that under these programs, the judge can impose conditions of release that promote *community safety* and *offender rehabilitation* as well as appearance in court. K.S.A. 22-2802(1) authorizes the court to craft appropriate conditions of release. Such conditions may include:

- bond supervision by a pretrial release officer
- receive a drug abuse evaluation
- receive drug treatment
- undergo drug testing
- curfews
- electronic monitoring

Some of these conditions, e.g., receiving a drug abuse evaluation or obtaining electronic

monitoring, may require the defendant to pay substantial costs. If this money has already been given to a commercial bondsman, the money will not be available to comply with these conditions. Thus, ending the ORCD program will make it more difficult for the court to set conditions of bond that will help to ensure community safety as well as appearance.

3. Senate Bill 203's requirement that the entire cash bond be refunded at the conclusion of the case is bad public policy.

Senate Bill 203 would add the following provision to K.S.A. 22-2802(4):

> Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond after the final disposition of the criminal case if the person complies with all requirements to appear in court.

Even a criminal defense attorney must recognize the problems created by this provision.

If convicted, a defendant often owes a substantial amount of money for indigent attorney fees, court costs, probation fees, laboratory testing fees, and restitution to victims. Furthermore, the defendant may owe money to the court in other cases, e.g., for arrearage on child support. After conviction, restitution paid to the district court is then distributed to the KBI laboratory or crime victim. Defendants placed on probation are often in danger of suffering probation revocation due to their failure to pay the costs, a problem which currently can be avoided or at least mitigated if the court retains a portion of the cash bond. Considering all of this, it is simply bad policy to require the court to refund cash bonds to those who owe money to the court.

4. Proponents of SB 203 fail to acknowledge that *any* failure to appear -- including after release on a professional surety bond -- creates costs for the courts and law enforcement.

The testimony of the proponents of SB 203 implies that the courts and law enforcement apply two different procedures for handling a defendant's failure to appear. According to the proponents, "[i]f a defendant is released on bond through a surety and fails to appear in court, a recovery agent immediately attempts to locate the defendant," while, "[i]n contrast, when a defendant bonds out on cash and fails to appear in court, a warrant is issued by the judge and the local sheriff is notified." Testimony of Darrel Manning, February 14, 2007. Thus, an ORCD program such as that in Shawnee County would result in the unnecessary expenditure of government resources.

In fact, in my 16 years of experience as a criminal defense lawyer, I have *never* seen a judge rule that because the defendant used a professional surety to post bond, no

bench warrant would issue for a failure to appear. To the contrary, absent some good explanation for the failure to appear, a judge customarily issues a warrant, which makes its way to law enforcement for execution. Even if a bondsman locates the missing defendant before law enforcement does so, this typically occurs after the warrant has been issued.

Furthermore, Kansas law requires that sureties or bounty hunters contact law enforcement before arresting anyone who had been released on a surety bond:

> Any surety or agent of a surety, commonly referred to as a bounty hunter, who intends to apprehend any person in this state pursuant to K.S.A. 22-2809 and amendments thereto, or under similar authority from any other state, shall inform law enforcement authorities in the city or county in which such surety or agent of a surety intends such apprehension, before attempting such apprehension. The surety or agent of a surety shall present to the local law enforcement authorities a certified copy of the bond, a valid government-issued photo identification, written appointment of agency, if not the actual surety, and all other appropriate paperwork identifying the principal and the person to be apprehended. Local law enforcement may accompany the surety or agent.

This bill should not be passed on the faulty assumption that under its provisions, the court and law enforcement will no longer be involved in issuing warrants and ensuring the arrest of those who fail to appear in court.

Thank you for considering my objections to SB 203.

Sincerely,

Thomas W. Bartee

March 12, 2007

SENATE BILL NO. 203

I am Connie Alvey, Deputy District Attorney in Wyandotte County, Kansas. Part of my duties is to handle all bond forfeiture motions and resulting judgments. Because of my experience, I am here to testify in opposition to Senate Bill No. 203.

These are my concerns with SB 203:

1. This bill authorizes any person, who is solvent and resides in Kansas, to become a bondsman. If section (3) repeals K.S.A. 22-2806, these are the questions I have:
   a. Who monitors the bondsmen as to where they live?
   b. Who monitors the bondsmen as to whether they are solvent?
   c. What is the recourse to a bondsman who fails to comply with this bill, and is neither solvent nor resides in Kansas?
   d. With the administrative judge having no say or discretion as to who can be a bondsman, how or to whom does a potential bondsman make application to become a bondsman?

e. Does this bill allow bondsmen who have been suspended to again write bonds since no one monitors?

f. What about K.S.A. 22-2809a which does not allow a person who has been convicted of a person felony within the previous 10 years to be a bondsman, who will do a background check?

2. Section (7) mandates that a court shall not impose any administrative fee or keep any portion of a bond posted pursuant to this section. Does this mean that even if a defendant fails to appear for court, that no bond forfeiture can be ordered and that a court cannot impose a fee to monitor the bonds? What about the bond forfeiture costs that are imposed when a bond is forfeited?

3. Proposed section (4) takes away from the courts all authority to require a cash-only bond (with no surety) or a combination of cash plus assets, or cash with work release. This proposed bill allows a bondsman to take title to assets as part of the bond but denies the court the same right to take title to assets in lieu of cash or in a cash/asset combination.

What if a court wants a cash only bond for mainly safety reasons? Can a court impose a cash plus surety bond?

4. What about misdemeanor cases that routinely require cash only bonds, which many of our worthless check and traffic cases are, especially when the defendant has had several prior failures to appear?

CHAMBERS OF:
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DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

House Committee on Judiciary

Testimony in Opposition to Senate Bill 203

My name is Pete Ruddick. I have been a Criminal Court Judge in Olathe for the past 15 years. Thank you for allowing me the opportunity to speak in opposition to Senate Bill 203. I appear on behalf of my Judicial District and all the other districts which now operate, or might later choose to operate, court bonding programs.

SB 203 would prohibit all such programs, including the ORCD program we have in Johnson County. I'd like to share a little background about the development of the Own Recognizance/Court Deposit program in the Johnson County criminal court system.

Since late 2004, we have developed comprehensive Pretrial Release programs. The goal has been to immediately assess each eligible defendant in custody on new charges, so that bonds could be set not only on the nature of the charged crime, but also on the defendant's community ties and stability. Simply put, we wished to get out of custody as soon as possible those defendants who would be expected to appear as ordered and not be a threat to public safety, and supervise them at an appropriate level as their cases progressed.

Representatives of the Criminal Court Judges, Adult Court Services, Community Corrections, the Sheriff, the District Attorney and the Public Defender all participated in the development of these programs. A status report was presented to the Johnson

County Commissioners just two weeks ago. At the conclusion of the hearing, our County Commission expressed approval of the programs and support for their continued development and use in our community.

Court (ORCD) bonding is one element of these programs. Under our local rule, it provides an ***alternative*** to cash or surety bonding in certain eligible cases where assessment suggests a Personal Recognizance (signature) bond is not appropriate. If the defendant meets eligibility standards which are verified by the pretrial assessor, the defendant may deposit 10% of the total amount of the bond with the District Court Clerk, and is released subject to supervision by Court Services. That supervision may include regular reporting, drug and alcohol testing, mental health evaluation, and other conditions. 10% of that deposit is retained as an administrative fee. The remainder is returned to the defendant once the case is concluded, except that it ***is first applied to restitution, appointed counsel fees, and court costs.*** This is in clear contrast to a bond posted through a bail bondsman, who will retain the full deposit, returning nothing to the community. If a defendant has family resources, they may be required to guarantee the full amount of the bond with the bail bondsman, rather than be available to retain a private attorney.

In all our criminal, non-traffic cases, our statistics as of last week (March 7, 2007) show a Failure to Appear Rate on ORCD bonds of 13.97%, compared to a Failure to Appear Rate on Cash/Surety bonds of 15.66%. Presently we have 4.3% active warrants on ORCD cases, compared to 5.7% active warrants on cash/surety cases. It is noteworthy that in 2006 we had 417 defendants surrendered by their bondsmen. There are numerous reasons for those surrenders, but none of those defendants were appearing in court or otherwise satisfying bond conditions. Most had warrants issued. I guarantee that when the judge orders a bench warrant, the sheriff's office proceeds to execute it, without regard to how the bond might have been posted. These numbers simply do not bear out the proposition that ORCD bonds are ineffective or create an additional burden on law enforcement.

The history of court bonding in our State has in my view been misrepresented to you. There have been two cases, one Federal and one State, where the authority of the Kansas courts to set bonds through an ORCD program was challenged. Both courts denied relief. On two previous occasions, the bail bond industry has sought legislation to outlaw court bonding. In both cases, their effort failed. Now they wish to characterize court bonding as a power issue between the legislature and the courts, when nothing could be further from the truth. Setting bonds is and must always be a court function, based on a case-by-case analysis by an experienced judge who must weigh the sometimes conflicting interests of victims, public safety, economic, mental health and substance abuse issues of defendants, and over-crowded jails, as well as assure continued appearances in court. Court bonding is recommended by the American Bar Association Criminal Justice Section Standards and National District Attorneys Association standards. Court bonding is used successfully in dozens of states across the country.

Bail bondsmen provide an important service to the Criminal Court system in Johnson County, especially in cases with high bonds and/or out-of-state residences. With our shared boundary with the State of Missouri this is of considerable importance to us—out-of-state residents do not qualify for our court bond program. But the ORCD and other pretrial release programs we have in place are good for the Court system and good for our community. I hope the legislature will not allow the bail bond industry to sabotage the program to put a few more dollars in the bondsman's pocket.

HOUSE COMMITTEE ON JUDICIARY

Hon. Mike O'Neal, Chairman
Hon. Lance Kinzer, Vice Chairman
Hon. Janice Pauls, R.M. Member

March 13, 2007
3:30 p.m.
Room 313-S

Chief Judge Richard M. Smith
Sixth Judicial District
P.O. Box 350
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judgelndc@earthlink.net

TESTIMONY IN OPPOSITION TO SENATE BILL 203

My name is Richard M. Smith and I am the Chief Judge of the Sixth Judicial District. I would like to thank this honorable committee for allowing me the opportunity to speak in opposition to Senate Bill 203. I appear on behalf of a judicial district and several judges outside my district who do not have a court bonding program but are still very much opposed to Senate Bill 203. We oppose Senate Bill 203 for the following reasons:

- **Senate Bill 203 will take money now available for restitution of victims of crimes and redirects it to bondsmen.**
- **Despite the fact that Senate Bill 203 appears to only apply to criminal cases its passage will jeopardize if not abolish the issuance of "cash only" bench warrants seeking to enforce child support orders and citations in contempt in debt collection cases.**
- **Senate Bill 203 represents an historic shift away from ca[illegible]**

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case analysis trusting judicial discretion fixing the amount of bond and the nature of security.

- **It will end other options in securing a defendant's appearance including the use of property bonds and combinations of cash and surety.**

There is no current crisis. No where in this state is there an urgent problem with the appearances of defendants, inappropriate pre-trial detention of persons or rampant complaints about the amount or types of bail. Any representation to the contrary is merely histrionics aimed at accomplishing self-indulgent goals. There is time to thoroughly consider the ancillary impact of this legislation.

BONDSMEN PROFIT/VICTIMS LOSE

K.S.A. 22-2802, according to the advisory committee that drafted the statute, vests "a wide range of discretion to impose alternative pre-trial release conditions." One of these alternatives, regularly used by my district and many others, is "cash only" bonds which provide a benefit to both the victim and the accused.

As an example, in a bad check prosecution the judge has the authority to issue a cash only bond in the amount of restitution or restitution and costs. In our district a standard surety bond on a class A misdemeanor is $2,500 to $5,000. A cash only bond of $200 to $500 means that instead of paying a premium to a bondsman the defendant guarantees his appearance by posting cash which is later available for restitution. Generally, writers of worthless checks have very little means. Senate Bill 203 effectively forces the court to set a bond upon which an accused will then more likely pay a premium to a bondsman. This benefits no one other than the bondsman (Almost none of the defendants will be able to post the entire amount in cash).

Cash only bench warrants are also used by many judges in the course of probation revocation hearings. Senate Bill 203 will have the same effects in this context.

SENATE BILL 203 JEOPARDIZES CHILD SUPPORT/DEBT COLLECTION

Senate Bill 203, if enacted, will establish legislative intent and precedent that could jeopardize child support collection and judgement creditor collections (Chapter 61 debt collection.) Judges throughout this state regularly issue "cash only" bench warrants when so called "dead-beat" parents fail to appear in child support collection matters. Such warrants are also issued in attempts to enforce support orders. Debt collection attorneys regularly request cash only bench warrants when judgement debtors fail to appear for proceedings in aid of execution. There are no statutes in the civil procedure code that prescribe the courts authority to issue these warrants. The authority to do so must come from either the inherent powers of the court, analogous application of the authority vested by K.S.A. 22-2208 or both.

Consider the testimony of the proponents of this bill as an indication of legislative intent. Senate Bill 203, if passed, would make a clear legislative statement that courts do not have the inherent authority to set "cash only" bonds. In the absence of legislation clearly authoring their use in civil actions courts may be forced to apply Senate Bill 203 rules to child support and Chapter 61 cases. Bondsmen would reap the rewards of even more premiums, these at the expense of children in need of support and creditors who are entitled to collect on their judgements.

CONCLUSION

I agree with the proponents of Senate Bill 203 that the legislature needs to speak to many issues. There may need to be clarification between revocation of a bond and forfeiture. If a surety accepts a premium should that surety also guarantee conduct as well as appearance of the accused?

These issues, at least deserve interim study. Unless it can be demonstrated that courts are abusing their discretion, why not allow broad discretion in the setting of bond and the surety therefore? Such discretion that can make, on a case by case basis, orders that are just and protect the rights of the accused, the victim and the community.

Senate Bill 203 as currently drafted throws the baby out with the bath water. I urge it be rejected or sent to interim committee for study.

Upon learning of my intent to appear and testify about these issues I received e-mails joining me in my concerns from District and Magistrate Judges in the following counties:

Atchison
Barber
Bourbon
Chautuaqua
Cherokee
Clark
Cloud
Commanche
Cowley
Crawford
Edwards
Ford
Geary
Harper
Hodgeman
Jewell
Kingman
Kiowa
Labette
Lane
Leavenworth
Lincoln
Linn
Meade
Miami
Mitchell
Montgomery
Ness
Ottawa
Pawnee
Pratt
Republic
Rush
Saline
Sedgewick
Sumner
Washington

Respectfully submitted

Richard M. Smith
Chief District Judge
Sixth Judicial District

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PAUL J. MORRISON
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House Judiciary Committee
SB 203
Rick Guinn, Chief Counsel
Office of Attorney General

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

On behalf of the Office of Attorney General, I am here to testify in opposition to Senate Bill 203. SB 203 would limit the options of district courts in Kansas from setting appropriate conditions of bond for those accused of committing crimes. Currently, judges have the authority to determine the amount and specific conditions of bond which the accused must comply with in order to remain at large in the community pending the outcome of their criminal cases. One of the existing options allows judges to require an accused charged with a low level felony to post a 10% cash bond. As written, SB 203 eliminates the courts' option to require such a bond. The Attorney General's Office opposes SB 203 for the following reasons:

I. EXISTING LAW PURSUANT TO SUPREME COURT ADMINISTRATIVE ORDER NUMBER 96

A. 10% Cash Bonds result in more timely restitution payments to victims

One of the options that a few jurisdictions have chosen to implement allows for those accused of crimes to post a 10% cash bond. In these cases, the court allows the Defendant to post 10% of the total bond amount in cash. If thereafter, the accused complies with all of the conditions of his bond, then, at the conclusion of his case, the courts apply 90% of the cash amount toward the payment of court costs and restitution. In other words, victims of crimes begin receiving restitution payments much sooner under the 10% cash bond option.

B. 10% Cash Bonds result in no increase in failures to appear

The 10% cash bond option also provides greater incentive for the accused to appear in court since he knows he'll receive credit towards his court costs and restitution payments. In Johnson County, appearance rates have seen no adverse impact from the program when an accused is allowed to post a 10% cash bond. In other words, the statistics do not support the bonding companies' argument that failure to appear rates have increased.

C. 10% Cash Bonds provide greater protection for victims and communities–funding for

bond supervision

Another significant benefit to the 10% cash bond option is that district courts are able to keep 10% of the 10% cash bond amount as administrative fees. These fees are then used by the courts to fund bond supervision personnel. These personnel keep a much closer watch of all those accused of crimes including those who posted other types of bonds on more serious offenses. In this way, the community and victims of crimes have much greater protection from those who pose a danger.

II. IMPACT OF PROPOSED AMENDMENTS TO KSA 22-2802

A. There is no reason for bonding companies to be concerned with wide spread usage of the 10% cash bond option. In spite of the existence of the 10% cash bond option since 1995, there are currently only three counties in the State that have instituted 10% cash bond programs.

B. If enacted, courts will lose all of the benefits that the 10% bond program currently provides (See paragraphs A, B and C above).

C. If the 10% cash bond option was eliminated, families of the accused could be victimized

Before posting bonds, most bonding companies require the accused to agree to indemnify the bonding company should he fail to abide by the conditions of the bond. These companies also typically require family members of the accused to agree to indemnify the bonding company. Most bonding companies require collateral to be posted. Many times the required collateral takes the form of the home of family members of the accused. When the accused violates a condition of his bond, the family ends up having a lien placed on the home for thousands of dollars by the bonding companies.

D. Elimination of funding for Bond Supervision Officers–jeopardizes public safety

There exists a very real need for bond supervision officers to monitor those who are out on bond in the community. By eliminating 10% cash bonds, the courts will lose this funding source. The supervision officer monitors the activities of those on bond by assuring they maintain compliance with all conditions of their bonds, far in excess of their bail bondsman counterparts. For example, bond conditions such as alcohol consumption and no victim contact conditions are solely the responsibility of a bond supervision officer.

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Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

DOCUMENTS REFUTING TESTIMONY IN SUPPORT OF SB 203

In testimony before the Senate Judiciary Committee, there were several misstatements of fact made by the proponents of SB 203. The following information and supporting documents are offered to present a more complete picture than that presented to the Senate by the bail bondsmen proponents of SB 203.

As you may note in reviewing these materials, information regarding surety bonds, own recognizance cash deposit (ORCD) bonds, and other aspects of the criminal and civil justice systems is needed to appropriately assess some of the materials presented. Much information on these issues was presented to the Senate Committee by the proponents of SB 203, and additional materials explaining these issues and refuting some statements made to the Senate Committee are now presented by the opponents of SB 203. An additional issue regarding an apparently unintended effect of SB 203 on bonds in other types of cases, such as child support and debt collection cases, will be addressed in testimony from Judge Richard Smith. Also included as an attachment to this document is a summary of comments from judges across the state addressing the impact of SB 203 in their districts.

For these reasons and for the reasons noted below and in the attached documents, SB 203 should be defeated. At a minimum, an interim study of this issue may be an appropriate alternative to working this bill in the limited amount of time available to you during the remainder of this legislative session.

Previous Bills Before the Legislature Were Not in Fact As Characterized by the Bail Bondsmen

Bail Bondsmen presented testimony asserting that three bills previously before the Legislature were defeated, proving that the Legislature did not intend for Kansas to have a court bond system.

This assertion is not true. Following are the statements by the bail bondsmen: "On at least three occasions the legislature introduced a bill, which would have independently prohibited or confirm[ed] this 10% program. These bills include: house bill 2009, introduced in 1985, house bill 2961, introduced in 1986, and house bill 2252 which was introduced in 1987. All three of these bills were defeated." *Testimony of Manuel Baraban before the Senate Judiciary Committee, February 14, 2007, page 1.*

"Later in both 1985 and 1987 bills were introduced which would have provided statutory authority for a percentage deposit bail system. Both of these bills were defeated, [H]

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1985 and HB 2252 in 1987] reaffirming that the Legislature did not intend for Kansas to have a percentage bail bond system." *Testimony of Shane Rolf in Support of SB 203, p. 1.*

While the bail bondsmen did not include copies of these three bills with their testimony, the three bills and their legislative histories are included as Attachment A to this document. Two of the bills, 1986 HB 2961 and 1987 HB 2252, in fact include substantially the same language as 2007 SB 203, Sections (4), (6), and (7). Both of these bills would have prohibited the court bonding programs, just as would SB 203. In fact, the short title of both bills, as it appears on the legislative history, is "cash deposit appearance bond prohibited." The Legislature failed to enact these bills, and in doing so in fact took no action to prohibit the court bonding programs.

An earlier bill, 1985 HB 2009, would have authorized court bonding programs. However, the terms of the bill differ from those of the current programs in that 1985 HB 2009 would have authorized a cash bond not to exceed 25% of the amount of the appearance bond, while the court programs in operation all require only 10%. The bill would also have differed from current court programs in that it would have authorized the administrative judge of each judicial district to direct payment of the costs of cash deposit programs from the remainder of the cash deposit. On February 6, 1985, this bill was reported out of the House Judiciary Committee with a recommendation that it be passed as amended, but on March 13, 1985, it was stricken from the calendar without House floor action.

"Courts Should Not Be in the Bail Bond Business" –
Testimony of Christopher M. Joseph,
General Counsel for the Kansas Professional Bail Bond Association, p. 1.

The testimony presented by the bail bondsmen fails to acknowledge the weight of authority to the contrary. The American Bar Association's Criminal Justice Section Standards, Pretrial Release, Standard 10-1.4, which is included as Attachment B, states as follows:

> **Standard 10-1.4 Conditions of Release**
>
> (f) Consistent with the processes provided in these Standards, compensated sureties [bail bondsmen] should be abolished. **When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.** (Emphasis added.)

The United States Department of Justice, during the term of former Attorney General John Ashcroft, released a report in July 2003 entitled *Pretrial Services Programming at the Start of the 21st Century.* One of the purposes of the report was to evaluate "how the practice of pretrial programs compares to standards set by the American Bar Association (ABA) and the National Association of Pretrial Services Agencies." *Id* at p. 2. The report stated that "[t]he standards of the two associations specify several core services that a pretrial services program

should provide." *Id.* at p.13. Moreover, the United States Department of Justice report concluded that "it is important that individual programs adhere to national standards." *Id.* at p.49.

Specifically, the *Pretrial Services Programming at the Start of the 21st Century* report found:

> "Although the standards do not address directly the types of recommendations that pretrial services programs should make, ***the ABA standards state a clear preference*** for the use of nonfinancial release conditions over financial bail, and ***that whenever financial bail is necessary it should be in the form of a 10-percent deposit to the court***. (Standard 10-1.4(c))." (Emphasis added.) *Id.* at p.16.

The National Prosecution Standards adopted by the National District Attorneys Association also urges the use of "ten percent deposit bail" as an option to be considered as a condition for pretrial release. The National District Attorneys Association (NDAA) indicates that "a number of types of release alternatives should be considered so that the widest protection of interests – both individual rights and societal interests – is accomplished." *National Prosecution Standards* (Second Edition), p. 138, Alexandria, Virginia: National District Attorneys Association, 1991.

Specifically, the National District Attorneys Association advocates that, when it is found "that money bail should be set, the judicial officer should require one of the following:

> (1) The execution of an unsecured bond in an amount specified by the judicial officer;
>
> (2) The execution of a secured bond in an amount specified by the judicial officer, ***accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond. The deposit, less a reasonable administrative fee, should be returned at the conclusion of the proceedings***, provided the defendant has not defaulted in the performance of the conditions of the bond, or
>
> (3) The execution of a bond secured by the deposit of the full amount in cash or other property or the obligations if qualified . . . sureties." (Emphasis added.) *Id.* at p.145.

Included as attachment C is additional information compiled by Judge David Bruns of the 3rd Judicial District (Shawnee County) on National Standards for Pretrial Release.

An article included as an attachment to Mr. Joseph's testimony provides some background and history regarding bail bonds, and notes that the own recognizance bonding, such

as the Kansas ORCD programs, is the model used in the federal courts and is widely used in the states:

> The Federal Bail Reform Act of 1966 created a presumption in favor of releasing defendants on their own recognizance. Although the Bail Reform Act of 1966 applied only to the federal courts these reforms have been widely emulated by the states (where the reform process began). Every state now has some pretrial services program and four states, Illinois, Kentucky, Oregon and Wisconsin, have outlawed commercial bail altogether. In place of commercial bail, Illinois has introduced the "Illinois Ten Percent Cash Bail" or "deposit bond" system. In a deposit bond system the defendant is required to post with the court an amount up to ten percent of the face value of the bond. If the defendant fails to appear, the deposit may be lost, and the defendant is held liable for the full value of the bond. If the defendant appears for trial, the deposit is returned to the defendant, less a small service fee in some cases (National Association of Pretrial Services Agencies 1998). Helland and Tabarrok, *Public versus Private Law Enforcement: Evidence from Bail Jumping,* 47 Journal of Law and Economics 93 (April, 2004).

"Administrative Order Number 96 [authorized] district courts to implement programs allowing the bonds that Bob Stephan had determined were illegal."
– Testimony of Christopher M. Joseph, General Counsel for the Kansas Professional Bail Bond Association, p. 1.

In support of their contention of illegality, the bondsmen cite only a 1994 Attorney General opinion, which was written not by Bob Stephan, but rather by an attorney on his staff. However, that very opinion cited by the bail bondsmen, Attorney General Opinion No. 94-25, while critical of the Shawnee County program at that time, contains the statement: "[t]he statutes do not specifically address the propriety of the court's 10% ORCD [Own Recognizance Cash Bond] program." As the bail bondsman acknowledge through their current efforts to pass S.B. 203, current statutes do not expressly prohibit court bonding programs, which have existed in one or more judicial districts in Kansas since the 1970's and were initially modeled on similar programs authorized by the Federal Bail Reform Act in 1966 and in 28 states and the District of Columbia.

After the Attorney General opinion, the Legislative Division of Post Audit published a study of bond programs for the five year period from 1989 to1993, citing no significant issues with the court bonding programs, and certainly finding no legal defects in the programs. "Reviewing District Courts' Handling of Appearance Bonds for Persons Charged with Crimes," Legislative Post Audit (May 1994). After the Post Audit study, which contained some recommendations that the Office of Judicial Administration take a more active role in establishing procedures for these programs, the Kansas Supreme Court adopted Administrative Order No. 96 in January 1995, authorizing district courts to adopt ORCD programs by local rule but only if certain conditions set forth in detail in the attachment to Administrative Order 96 were met in the local rule. In February 1996, a federal district court dismissed a lawsuit challenging the constitutionality of Admin. Order 96 and Local Rule 3.324, Mounkes v. Conklin,

95-4143-SAC. In the order dismissing the lawsuit, the federal judge opined that Administrative Order 96 merely provides one more means of pretrial release, citing K.S.A. 1994 Supp. 22-2802 and 22-3814. K.S.A. 22-2802 was amended in 2001 and in 2005, but the Legislature did not amend the law to prohibit court bonding programs.

"Studies attached to this memorandum, Exhibit 1, provide compelling statistics [that defendants released on surety bond are more likely to appear]"
– Testimony of Christopher M. Joseph,
General Counsel for the Kansas Professional Bail Bond Association, p. 1.

The study noted for this assertion, Helland and Tabarrok, *Public versus Private Law Enforcement: Evidence from Bail Jumping,* 47 Journal of Law and Economics 93 (April 2004), bases its conclusions on data from the U.S. Department of Justice's Bureau of Justice Statistics called State Court Processing Statistics (SCPS) 1990, 1992, 1994, and 1996 and data from the National Pretrial Reporting Program, 1988-1989. Helland and Tabarrok at 13.

However, the Bureau of Justice Statistics (BJS) data noted does not distinguish between those persons who received pretrial services, such as the supervision offered by the Kansas ORCD programs, from those who are released with no pretrial supervision. In other words, the BJS data does not distinguish between those persons released on their own recognizance, to whom no pretrial release services are provided, and those who receive services similar to those offered to persons on probation, as with the ORCD programs. In response to similar uses of this data, the Director of the U.S. Department of Justice's Bureau of Justice Statistics wrote the following regarding the BJS and NPRP (National Pretrial Reporting Program) data:

> As BJS has already told Strike Back, as well as others, its comments are based on the premise that BJS statistics identify people who have been involved with a pretrial services agency. **This is not true.** BJS collects state court data on felony defendants that identify the type of pretrial release used. One such type, conditional release, is identified by BJS as 'usually' being under the supervision of a pretrial release agency. However, there is no way to determine which defendants granted 'conditional release' (or any other type of release for that matter) were actually under the supervision of a pretrial release agency. BJS data also does not address the involvement of a pretrial release agency in the form of information or recommendations in any release decision by the court. . . . As currently defined, these release categories do not allow for an assessment of the performance of pretrial release agencies. . . . **It is important to note that no analysis of NPRP data, no matter how exhaustive, will provide insight into the performance of pretrial release programs.**" [Emphasis added.] Spurgeon Kennedy and D. Alan Henry, *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision,* Monograph, November 1996. (Attachment D)

The testimony of Shane Rolf attempts to calculate a failure to appear rate for both the Shawnee and Johnson County ORCD programs. Absent from his testimony is any comparable information on the failure to appear rates for bail bondsmen. Testimony from Johnson County and Shawnee County will provide more information on this issue.

Bondsmen Address the "Effect on [the] Commercial Surety Industry" and Assert that "The goal of these [ORCD] programs is to siphon clients away from bail bondsmen and lead to their eventual elimination." Testimony of Shane Rolf, pp. 2, 3.

The intent of the ORCD programs is to provide an option under which offenders will be supervised while they are on release prior to trial, while at the same time offering a program under which offenders are motivated to appear at trial. Under the ORCD option, appearance at trial means the ten percent bond posted will be returned to the person charged or will be applied to restitution and other costs for which the person charged will be liable, as opposed to the bail bondsman retaining the entire ten percent fee, regardless of whether the person charged appears at trial or fails to appear.

The bail bondsmen make much of their assertion that they have a financial incentive to ensure that a person charged appears at trial, because they will have to forfeit bond if the person charged does not appear. The article included as Attachment D refutes this argument, explaining that "[B]ondsmen can demand collateral equal to the full bail amount – if the defendant fails to appear, the potential loss from a forfeiture is covered. As one Washington, D.C. bondsman explained: 'On a $10,000 bond, I can ask for $11,000. If he [the defendant] doesn't show, the court gets the $10,000 and I keep my $1,000.' This practice effectively eliminates any incentive the bondsman has to apprehend the absconder." Spurgeon Kennedy and D. Alan Henry, *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision,* Monograph, November 1996.

The bondsmen assert that "SB 203 recognizes that the fee paid to bondsmen by defendants provides the funding for bondsmen to track whether defendants appear in court and, if they fail to appear, actively hunt them down and return them to jail." Testimony of Christopher M. Joseph, General Counsel for the Kansas Professional Bail Bond Association, p. 2. The authors Kennedy and Henry note this as an argument asserted by bail bondsmen nationwide, and note that "most research suggests that bondsmen do little to bring in absconders. For example:

- A 1972 study of 1,000 surety release absconders in Los Angeles found that in 89 percent of the cases, police apprehended bail absconders with no help from bondsmen. In only six percent of cases did a bondsman locate and arrest an absconder without police assistance.

- A 1991 new article reported that nine out of 10 absconders on bail bonds in Harris County, Texas were returned by the police.

- A 1994 survey of bond forfeitures by the Pima County Pretrial Services Agency found that nearly all absconders were brought to court by law enforcement." [footnote citations provided in document.] Spurgeon Kennedy and D. Alan Henry, *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision,* Monograph, November 1996.

A number of additional arguments made by the proponents of SB 203 are addressed in the Kennedy and Henry article, which further notes that "Bail reform has formed the commercial surety industry to defend its role in the pretrial release process. Industry proponents regularly testify before city and county boards claiming to offer a bail option that is superior to nonfinancial releases, free to taxpayers, and responsive to public safety concerns. They also argue that pretrial services agencies – programs that help courts in many jurisdictions determine the most appropriate type of pretrial release or detention for individual defendants – should be eliminated or limited in scope to handling indigent defendants. Proponents of commercial surety bail often support these claims with misinformation about failure to appear (FTA) rates for nonfinancial and surety bail releases."

There is no doubt that bail bondsmen have much to gain with the enactment of SB 203, and that they have lost revenue due to ORCD programs. However, this does not justify eliminating these programs as an option for offenders who benefit from pretrial supervision and who would suffer the automatic loss of ten percent of their bond amount to the bail bondsmen, regardless of whether they appear or whether they fail to appear as ordered.

ADDITIONAL COMMENTS FROM KANSAS JUDGES

Included as Attachment E are additional comments received from Kansas judges regarding SB 203. These comments note how the enactment of SB 203 would impact district court operations across the state.

8-08

Attachment A

Session of 1986

HOUSE BILL No. 2961

By Representatives Aylward, Bideau, Cribbs, DeBaun, Dillon, Eckert, Erne, Freeman, Friedeman, Fry, Harper, Hayden, Holmes, Jenkins, Johnson, Justice, King, Laird, Long, Love, Mollenkamp, Neufeld, O'Neal, B. Ott, Ramirez, Reardon, Roper, Rosenau, Sallee, Sand, Smith, Sutter, Vancrum, Wilbert and Wisdom

2-12

AN ACT concerning criminal procedure; relating to appearance bond; amending K.S.A. 22-2802 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-2802 is hereby amended to read as follows 22-2802. (1) Any person charged with a crime, ~~other than a crime punishable by death where the proof is evident or the presumption is great, shall, at his or her~~ *at the person's* first appearance before a magistrate, *shall* be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate conditioned upon the appearance of such person before the magistrate when ordered ~~and, in the event of such person~~. *If the person is* being bound over for a felony, *the bond shall also be conditioned on the person's appearance* in the district court at the ~~next required day of court which occurs ten (10) or more days thereafter and~~ *time required by the court* to answer the charge against such person and ~~from time to time thereafter as the court may require~~ *at any time thereafter that the court requires*. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association, or place of

abode of the person during the period of release; *or*

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours.

(2) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(3) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties. *Such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of the bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all monies paid for the cash bond after the final disposition of the criminal case if the person complies with all requirements for court appearance and other conditions of release imposed by the court. No payment of or retention of an administration fee shall be imposed as a condition of release.*

(4) A person charged with a crime may, in the discretion of the court, be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements for court appearance and other conditions of release imposed by the court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person. No payment or retention of an administration fee shall be a condition of release on recognizance.

~~(4)~~ *(5)* In determining which conditions of release will reasonably assure appearance, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged, the weight of the evidence against the defendant, *the likelihood of injury to the community or victim of the crime charged, the propensity of the defendant to commit additional crimes while on release,* the defendant's family ties, employment, financial resources, character and

mental condition, ~~the~~ length of ~~said defendant's~~ residence in the community, ~~said defendant's~~ record of convictions, ~~and said defendant's~~ record of appearance *or failure to appear* at court proceedings ~~or~~ *and record* of flight to avoid prosecution ~~or failure to appear at court proceedings~~.

~~(5)~~ *(6)* The appearance bond shall set forth all of the conditions of release.

~~(6)~~ *(7)* A person for whom conditions of release are imposed and who continues to be detained as a result of ~~his or her~~ *the person's* inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. ~~In the event~~ *If* the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

~~(7)~~ *(8)* A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection ~~(6)~~ *(7)* shall apply.

~~(8)~~ *(9)* Statements or information offered in determining the ~~condition~~ *conditions* of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

~~(9)~~ *(10)* The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

Sec. 2. K.S.A. 22-2802 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

03/26/86 Senate—CR: Be passed by Local Gov.--SJ 1216
04/01/86 Senate—COW: Be passed--SJ 1288
04/02/86 Senate—FA: Passed; Yeas 40 Nays 0--SJ 1313
04/08/86 House—Enrolled and presented to gov.--HJ 2197
04/18/86 —Approved by gov.--HJ 2331

H 2956 Bill by Barr, Aylward, Baker, Cloud, Duncan, Eckert, Fox, Jenkins, Johnson, King, Mayfield, Miller, N.D., Miller, R.H., Nichols, Pottorff, Sand, Smith, Sughrue, Vancrum, Webb
Persons convicted of animal cruelty not eligible for certain licenses. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Fed. & State Affairs--HJ 1460
02/27/86 House—CR: Be passed as am. by Fed. & State Affairs--HJ 1585
03/20/86 House—COW: CR be adptd; be further am.; be passed as am.--HJ 1617
03/21/86 House—FA: Passed as am.; Yeas 104 Nays 16--HJ 1625
03/21/86 Senate—Received and introduced--SJ 1195
03/24/86 Senate—Referred to Fed. & State Affairs--SJ 1197
04/08/86 Senate—CR: Be passed as am. by Fed. & State Affairs--SJ 1398
04/10/86 Senate—EFA, amt. & debate: CR adptd; passed as am.; Yeas 39 Nays 0--SJ 1451
04/10/86 House—Concurred; Yeas 99 Nays 24--HJ 2242
04/15/86 House—Enrolled and presented to gov.--HJ 2377
04/25/86 —Vetoed by gov.; returned to house--HJ 2425

H 2957 Bill by Bowden
Air quality control board of Sedgwick county. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Local Gov.--HJ 1461
06/06/86 House—Died in House committee

H 2958 Bill by Douville
Workers' compensation, consulting other physicians, testimony supporting medical bills. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Labor & Industry--HJ 1461
02/27/86 House—CR: Be passed as am. by Labor & Industry--HJ 1590
03/11/86 House—COW: CR be adptd; be passed as am.--HJ 1727; EFA: Passed as am.; Yeas 112 Nays 6--HJ 1733
03/12/86 Senate—Received and introduced--SJ 1156
03/13/86 Senate—Referred to Labor, Industry & Sm. Bus.--SJ 1158
03/27/86 Senate—CR: Be passed as am. by Labor, Industry & Sm. Bus.--SJ 1229
04/01/86 Senate—COW: CR be adptd; be passed as am.--SJ 1292
04/02/86 Senate—FA: Passed as am.; Yeas 30 Nays 6--SJ 1314
04/07/86 House—Nonconcurred; CC requested; apptd Douville, O'Neal, Hensley--HJ 2153
04/07/86 Senate—Acceded; apptd Thiessen, D. Kerr, Steineger--SJ 1394
04/11/86 Senate—Adptd CCR, agreed to disagree; 2nd CC apptd: Thiessen, D. Kerr, Steineger--SJ 1474
04/11/86 House—Adptd CCR, agreed to disagree; 2nd CC apptd: Douville, O'Neal, Hensley--HJ 2266
06/06/86 House—Died in conference committee

H 2959 Bill by Ott, K.
Disposition of revenue received by cities from local sales taxes. Effective date: 05/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Ass. & Tax.--HJ 1460
02/27/86 House—CR: Be passed by Ass. & Tax.--HJ 1585
03/04/86 House—COW: Be passed--HJ 1620
03/05/86 House—FA: Passed; Yeas 100 Nays 22--HJ 1639
03/05/86 Senate—Received and introduced--SJ 1076
03/06/86 Senate—Referred to Local Gov.--SJ 1089
04/02/86 Senate—CR: Be passed by Local Gov.--SJ 1306
04/04/86 Senate—EFA, amt. & debate: Passed; Yeas 39 Nays 0--SJ 1382
04/12/86 House—Enrolled and presented to gov.--HJ 2329

04/22/86 —Approved by gov.--HJ 2331

H 2960 Bill by Helgerson
Establishing and prescribing powers and duties of state economic development agency designated Kansas, Inc. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Gov't Org.--HJ 1460
02/28/86 House—Withdrawn from Gov't Org.; Referred to Ways & Means--HJ 1595
03/27/86 House—CR: Be passed as am. by Ways & Means--HJ 1981
04/02/86 House—COW: CR be adptd; be passed as am.--HJ 2070
04/03/86 House—FA: Passed as am.; Yeas 99 Nays 26--HJ 2086
04/03/86 Senate—Received and introduced--SJ 1323
04/04/86 Senate—Referred to Ass. & Tax.--SJ 1354
04/09/86 Senate—CR: Be passed as am. by Ass. & Tax.--SJ 1433
04/11/86 Senate—EFA, amt. & debate: CR adptd; further am.; passed as am.; Yeas 35 Nays 4--SJ 1471
04/11/86 House—Nonconcurred; CC requested; apptd Braden, Heinemann, Helgerson--HJ 2265
04/12/86 Senate—Acceded; apptd F. Kerr, Salisbury, Karr--SJ 1512
04/25/86 Senate—Adptd CCR; Yeas 36 Nays 4--SJ 1632
04/26/86 House—Adptd CCR on house bill; Yeas 104 Nays 15--HJ 2463
05/02/86 House—Enrolled and presented to gov.
05/08/86 —Approved by gov.

H 2961 Bill by Aylward, Bideau, Cribbs, DeBaun, Dillon, Eckert, Erne, Freeman, Friedeman, Fry, Harper, Hayden, Holmes, Jenkins, Johnson, Justice, King, Laird, Long, Love, Mollenkamp, Neufeld, O'Neal, Ott, B., Ramirez, Reardon, Roper, Rosenau, Sallee, Sand, Smith, Sutter, Vancrum, Wilbert, Wisdom
Cash deposit appearance bond prohibited. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Judiciary--HJ 1461
02/19/86 House—Withdrawn from Judiciary; Referred to Fed. & State Affairs--HJ 1488
04/02/86 House—CR: Be passed by Fed. & State Affairs--HJ 2075
04/04/86 House—COW: Be passed--HJ 2128; EFA: Passed; Yeas 94 Nays 31--HJ 2137
04/04/86 Senate—Received and introduced--SJ 1367
04/07/86 Senate—Referred to Fed. & State Affairs--SJ 1388
04/12/86 Senate—Motion pending to withdraw from Comm. and place on GO--SJ 1511
04/23/86 Senate—Motion to withdraw from Comm. failed--SJ 1566
04/24/86 Senate—CR: Be passed by Fed. & State Affairs--SJ 1583
04/28/86 Senate—Motion to advance EFA failed; Remains in General Orders--SJ 1769
06/06/86 House—Died on General Orders in Senate

H 2962 Bill by Patterson, Harper
Child's preference as to custody in divorce cases. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Judiciary--HJ 1461
06/06/86 House—Died in House committee

H 2963 Bill by Roenbaugh, Flottman, Freeman, Harper, Jenkins, Mollenkamp, Neufeld, Shore, Smith, Sughrue
Requiring the testing and inspection of moisture measuring devices. Effective date: 01/01/87.
02/12/86 House—Introduced--HJ 1453
02/13/86 House—Referred to Ag. & Small Business--HJ 1460
06/06/86 House—Died in House committee

H 2964 Bill by Peterson, Dillon, Johnson, Justice, Love, Ramirez, Reardon, Rosenau, Sutter
Requiring engineers to be licensed land surveyors. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1454
02/13/86 House—Referred to Local Gov.--HJ 1461
03/06/86 House—CR: Be not passed by Local Gov.--HJ 1662; Dead, committee report

H 2965 Bill by Peterson, Dillon, Johnson, Justice, Love, Ramirez, Reardon, Rosenau, Sutter
Amount of service fee for worthless check. Effective date: 07/01/86.
02/12/86 House—Introduced--HJ 1454

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1987

2-10-87

Session of 1987

HOUSE BILL No. 2252

By Representatives Bideau, Aylward, Beauchamp, Cribbs, Dillon, Eckert, Francisco, Freeman, Fry, Graeber, Harper, Holmes, Jenkins, Johnson, Justice, King, Laird, Long, Love, R.D. Miller, Mollenkamp, Neufeld, O'Neal, Ott, Peterson, Ramirez, Rosenau, Sallee, Sand, Smith, Sutter and Wisdom

2-10

AN ACT concerning criminal procedure; relating to appearance bond; amending K.S.A. 1986 Supp. 22-2802 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the persons's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release; *or*

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours.

(2) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(3) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties. *Such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of the bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond after the final disposition of the criminal case if the person complies with all requirements for court appearance and other conditions of release imposed by the court. No payment or retention of an administration fee shall be imposed as a condition of release.*

(4) A person charged with a crime may, in the discretion of the court, be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements for court appearance and other conditions of release imposed by the court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person. No payment or retention of an administration fee shall be a condition of release on recognizance.

~~(4)~~ *(5)* In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate ~~shall~~, on the basis of available information, *shall* take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings ~~or~~ *and record* of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any

witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

~~(5)~~ *(6)* The appearance bond shall set forth all of the conditions of release.

~~(6)~~ *(7)* A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

~~(7)~~ *(8)* A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection ~~(6)~~ *(7)* shall apply.

~~(8)~~ *(9)* Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

~~(9)~~ *(10)* The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

Sec. 2. K.S.A. 1986 Supp. 22-2802 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Economic development revenue bonds; origination fees. Effective date: 05/07/87.
02/10/87 House—Introduced--HJ 168
02/11/87 House—Referred to Taxation--HJ 181
02/25/87 House—CR: Be passed as am. by Taxation--HJ 286
02/27/87 House—COW: CR be adptd; be passed as am.--HJ 312
03/02/87 House—FA: Passed as am.; Yeas 103 Nays 18--HJ 321
03/02/87 Senate—Received and introduced--SJ 211
03/03/87 Senate—Referred to Ass. & Tax.--SJ 221
03/25/87 Senate—CR: Be passed as am. by Ass. & Tax.--SJ 371
03/31/87 Senate—COW: CR be adptd; be passed as am.--SJ 436; EFA: Passed as am.; Yeas 38 Nays 0--SJ 440
04/02/87 House—Nonconcurred; CC requested; apptd Rolfs, Roe, Leach--HJ 720
04/02/87 Senate—Acceded; apptd F. Kerr, Salisbury, Francisco--SJ 485
04/09/87 Senate—Adptd CCR; Yeas 39 Nays 0--SJ 627
04/10/87 House—Adptd CCR on house bill; Yeas 112 Nays 12--HJ 901
04/14/87 House—Enrolled and presented to gov.--HJ 996
04/23/87 —Approved by gov.--HJ 940

H 2244 Bill by Apt
Restricted drivers' licenses, school activities. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 168
02/11/87 House—Referred to Transportation--HJ 181

H 2245 Bill by Heinemann
Qualifications of supreme court justices. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 168
02/11/87 House—Referred to Judiciary--HJ 181

H 2246 Bill by Sallee
State grain inspection department supervising weighmaster and warehouse examiner positions unclassified. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 168
02/11/87 House—Referred to Ag. & Small Business--HJ 181

H 2247 Bill by Francisco, (By Request)
Firearms (sale to or possession by felon). Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Judiciary--HJ 181

H 2248 Bill by Green
Motor vehicles, vintage license plates. Effective date: 01/01/88.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Transportation--HJ 181

H 2249 Bill by Miller, R.D., Shriver
Exemption of oil from severance tax. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Taxation--HJ 181

H 2250 Bill by Pensions, Investments & Benefits
Pooled money investment board, authorized repurchase agreements. Effective date: 05/14/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Pensions, Investments & Benefits--HJ 181
02/26/87 House—CR: Be passed by Pensions, Investments & Benefits--HJ 301; Now referred to Appropriations--HJ 301
03/10/87 House—CR: Be passed by Appropriations--HJ 444
03/11/87 House—EFA, amt. & debate: Passed; Yeas 123 Nays 1--HJ 479
03/12/87 Senate—Received and introduced--SJ 306
03/16/87 Senate—Referred to Ways and Means--SJ 308
04/03/87 Senate—CR: Be passed by Ways and Means--SJ 491
04/09/87 Senate—EFA, amt. & debate: Passed; Yeas 40 Nays 0--SJ 607
04/13/87 House—Enrolled and presented to gov.--HJ 996
04/21/87 —Approved by gov.--HJ 940

H 2251 Bill by Knopp
Overpayment of child support credited toward future support. Effective date:

07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Judiciary--HJ 181
02/27/87 House—CR: Be passed as am. by Judiciary--HJ 312
03/04/87 House—COW: CR be adptd; be further am.; be passed as am.--HJ 344
03/05/87 House—FA: Passed as am.; Yeas 94 Nays 30--HJ 358
03/05/87 Senate—Received and introduced--SJ 237
03/06/87 Senate—Referred to Ass. & Tax.--SJ 250
03/26/87 Senate—Withdrawn from Ass. & Tax.; Referred to Judiciary--SJ 369

H 2252 Bill by Bideau, Aylward, Beauchamp, Cribbs, Dillon, Eckert, Francisco, Freeman, Fry, Graeber, Harper, Holmes, Jenkins, Johnson, Justice, King, Laird, Long, Love, Miller, R.D., Mollenkamp, Neufeld, O'Neal, Ott, Peterson, Ramirez, Rosenau, Sallee, Sand, Smith, Sutter, Wisdom
Cash deposit appearance bond prohibited. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Fed. & State Affairs--HJ 181
03/27/87 House—CR: Be not passed by Fed. & State Affairs--HJ 629; Dead, committee report

H 2253 Bill by Ag. & Small Business
Sale of agricultural land by individual parcel following mortgage foreclosure. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Ag. & Small Business--HJ 181
03/09/87 House—CR: Be passed as am. by Ag. & Small Business--HJ 407
03/11/87 House—COW: CR be adptd; be further am.; be passed as am.--HJ 463; EFA: Passed as am.; Yeas 93 Nays 31--HJ 467
03/11/87 Senate—Received and introduced--SJ 299
03/12/87 Senate—Referred to Agriculture--SJ 305
03/31/87 Senate—CR: Be passed as am. by Agriculture--SJ 419
04/06/87 Senate—EFA, amt. & debate: CR adptd; passed as am.; Yeas 39 Nays 0--SJ 529
04/07/87 House—Concurred; Yeas 124 Nays 0--HJ 792
04/10/87 House—Enrolled and presented to gov.--HJ 939
04/17/87 —Approved by gov.--HJ 940

H 2254 Bill by Ag. & Small Business
Requiring notice to defendant owers of amount creditors will bid on execution sale of agricultural land. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Ag. & Small Business--HJ 181

H 2255 Bill by Beauchamp
Professional liability insurance coverage for certain coroners. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Insurance--HJ 181

H 2256 Bill by Beauchamp
Termination of security interest required. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Commercial & F.I.--HJ 181
03/06/87 House—CR: Be passed as am. by Commercial & F.I.--HJ 390
03/09/87 House—COW: Be passed over and retain a place on calendar--HJ 413
03/11/87 House—EFA, amt. & debate: CR adptd; further am.; passed as am.; Yeas 124 Nays 0--HJ 481
03/12/87 Senate—Received and introduced--SJ 306
03/16/87 Senate—Referred to F.I. and Insurance--SJ 308

H 2257 Bill by Hassler
Promoting obscenity; television and cable television. Effective date: 07/01/87.
02/10/87 House—Introduced--HJ 169
02/11/87 House—Referred to Judiciary--HJ 181

H 2258 Bill by O'Neal

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Session of 1985

HOUSE BILL No. 2009

By Special Committee on Judiciary

Re Proposal No. 25

12-18

AN ACT concerning criminal procedure; relating to appearance bond.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The administrative judge of any judicial district may provide by rule that a criminal defendant, instead of executing an appearance bond with sureties or a cash bail bond, may deposit with the clerk of the court a cash sum not to exceed 25% of the amount of the appearance bond. If the defendant makes such a cash deposit, 90% of the deposit shall be returned to the defendant upon performance of all required appearances, except that the court may: (a) Apply any part of the returnable portion of the deposit to the defendant's court-imposed obligations, including amounts ordered as reparations or restitution to victims of the defendant's crime, reimbursement to the state board of indigents' defense services or to the county general fund for the cost of defense services rendered on the defendant's behalf, fines or other court costs; or (b) assign any part of the returnable portion of the deposit to any private counsel retained by the defendant, in payment for services rendered on the defendant's behalf in the proceedings. The remainder of the deposit and any interest thereon shall be retained by the clerk of the court in a separate fund to be used as directed by the administrative judge of the judicial district for the exclusive purpose of paying the expenses of the cash deposit program authorized by this section, including the costs of assuring the appearance of criminal defendants released under the program. Before the end of each fiscal year, the administrative judge of the judicial district shall

determine the amount which will be necessary to pay the expenses of the cash deposit program during the following fiscal year. Within 30 days after determination of the amount necessary, the clerk of the district court shall remit to the state treasurer any moneys in the fund in excess of that amount. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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Session of 1985

HOUSE BILL No. 2010

By Special Committee on Judiciary

Re Proposal No. 25

12-18

AN ACT relating to criminal procedure; concerning release prior to trial; amending K.S.A. 22-2802 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime~~, other than a crime punishable by death where the proof is evident or the presumption is great,~~ shall, at ~~his or her~~ *the persons's* first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate conditioned upon the appearance of such person before the magistrate when ordered ~~and, in the event of such person~~. *If the person is* being bound over for a felony, *the bond shall also be conditioned on the person's appearance* in the district court at the next required day of court which occurs ~~ten (10)~~ *10* or more days thereafter ~~and~~ to answer the charge against such person and ~~from time to time thereafter as the court may require~~ *at any time thereafter that the court requires*. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association~~,~~ or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requir-

03/27/85 Senate—FA: Passed as am.; Yeas 40 Nays 0--SJ 421
04/01/85 House—Concurred; Yeas 124 Nays 0--HJ 697
04/03/85 House—Enrolled and presented to gov.--HJ 773
04/09/85 —Approved by gov.--HJ 843

H 2005 Bill by Spec. Comm. on Agriculture & Livestock
Regulation of weights and measures. Re Proposal No. 5. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 9; Referred to Ag. & Small Business--HJ 32
03/01/85 House—CR: Be passed as am. by Ag. & Small Business--HJ 381
03/08/85 House—COW: CR be adptd; be passed as am.--HJ 459
03/11/85 House—FA: Passed as am.; Yeas 124 Nays 0--HJ 490
03/11/85 Senate—Received and introduced--SJ 272
03/12/85 Senate—Referred to Agriculture--SJ 280
03/22/85 Senate—CR: Be passed as am. by Agriculture--SJ 372
03/27/85 Senate—COW: CR be adptd; be passed as am.--SJ 425
03/28/85 Senate—FA: Passed as am.; Yeas 40 Nays 0--SJ 435
04/02/85 House—Concurred; Yeas 121 Nays 2--HJ 713
04/03/85 House—Enrolled and presented to gov.--HJ 773
04/09/85 —Approved by gov.--HJ 843

H 2006 Bill by Spec. Comm. on Comm., Computers & Technology
Centers of excellence at institutions of higher education, appropriations for. Re Proposal No. 11. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Communication, Computers & Tech.--HJ 32
03/01/85 House—CR: Be passed as am. by Communication, Computers & Tech.--HJ 381; Now referred to Ways & Means--HJ 381

H 2007 Bill by Spec. Comm. on Comm., Computers & Technology
Public television and radio broadcasting, state commission and finance. Re Proposal No. 13 Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Communication, Computers & Tech.--HJ 32
01/30/85 House—CR: Be passed as am. by Communication, Computers & Tech.--HJ 201; Now referred to Ways & Means--HJ 202
02/25/85 House—CR: (as prev. am.) be further am.; be passed as am. Ways & Means--HJ 345
03/04/85 House—COW: CR be adptd; be further am.; be passed as am.--HJ 392
03/05/85 House—FA: Passed as am.; Yeas 119 Nays 4--HJ 419
03/05/85 Senate—Received and introduced--SJ 218
03/08/85 Senate—Referred to Gov't Org.--SJ 238
04/02/85 Senate—CR: Be passed as am. by Gov't Org.--SJ 483
04/04/85 Senate—COW: CR be adptd; be passed as am.--SJ 532
04/05/85 Senate—FA: Passed as am.; Yeas 29 Nays 7--SJ 542
04/09/85 House—Nonconcurred; CC requested; appid Aylward, Friedeman, Dean--HJ 846
04/09/85 Senate—Acceded; appid Vidricksen, Frey, Strick--SJ 566
04/12/85 Senate—Adptd CCR; Yeas 36 Nays 3--SJ 661
04/13/85 House—Adptd CCR on house bill; Yeas 119 Nays 0--HJ 981
04/19/85 —Enrolled and presented to gov.--HJ 1026
04/26/85 —Approved by gov.--HJ 1064

H 2008 Bill by Spec. Comm. on Education
Compulsory school attendance, exemptions, conditions. Re Proposal No. 17. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Education--HJ 32

H 2009 Bill by Spec. Comm. on Judiciary
Cash deposit appearance bond program. Re Proposal No. 25. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Judiciary--HJ 33

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02/06/85 House—CR: Be passed as am. by Judiciary--HJ 243
03/13/85 House—Stricken from calendar--HJ 569

H 2010 Bill by Spec. Comm. on Judiciary
Criminal procedure, considerations in setting bond. Re Proposal No. 25. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Judiciary--HJ 33
02/07/85 House—CR: Be passed as am. by Judiciary--HJ 247
03/13/85 House—Withdrawn from calendar, rereferred to Judiciary--HJ 569

H 2011 Bill by Spec. Comm. on Judiciary
No-fault automobile insurance; pip benefits increased. Re Proposal No. 28. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Insurance--HJ 33

H 2012 Bill by Spec. Comm. on Judiciary
Kansas Parentage Act. Re Proposal No. 50. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Judiciary--HJ 33
02/05/85 House—CR: Be passed as am. by Judiciary--HJ 229
02/18/85 House—COW: CR be adptd; be passed as am.--HJ 310
02/19/85 House—FA: Passed as am.; Yeas 122 Nays 0--HJ 316
02/19/85 Senate—Received and introduced--SJ 170
02/20/85 Senate—Referred to Judiciary--SJ 179
03/20/85 Senate—CR: Be passed as am. by Judiciary--SJ 351
03/21/85 Senate—COW: CR be adptd; be passed as am.--SJ 366; EFA: Passed as am.; Yeas 39 Nays 0--SJ 366
03/26/85 House—Nonconcurred; CC requested; appid Knopp, Wunsch, Solbach--HJ 639
03/26/85 Senate—Acceded; appid Burke, Frey, Parrish--SJ 412
04/11/85 Senate—Adptd CCR; Yeas 40 Nays 0--SJ 625
04/11/85 House—Adptd CCR on house bill; Yeas 124 Nays 0--HJ 913
04/16/85 House—Enrolled and presented to gov.--HJ 1026
04/24/85 —Approved by gov.--HJ 1023

H 2013 Bill by Spec. Comm. on Labor & Industry
Public employer-employee relations act as meet and confer law. Re Proposal No. 30. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Labor & Industry--HJ 33
03/08/85 House—CR: Be passed as am. by Labor & Industry--HJ 477
03/13/85 House—Withdrawn from calendar, rereferred to Labor & Industry--HJ 569

H 2014 Bill by Legislative Budget Committee
Salaries and compensation of certain state officers. Re Proposal No. 54. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Ways & Means--HJ 33

H 2015 Bill by Legislative Budget Committee
Copy of agency budget requests to legislative research department. Re Proposal No. 55. Effective date: 07/01/85.
12/18/84 —Prefiled for introduction
01/14/85 House—Introduced--HJ 10; Referred to Ways & Means--HJ 33
01/23/85 House—CR: Be passed as am. by Ways & Means--HJ 177
01/24/85 House—COW: CR be adptd; be passed as am.--HJ 179
01/25/85 House—FA: Passed as am.; Yeas 123 Nays 0--HJ 185
01/25/85 Senate—Received and introduced--SJ 54
01/28/85 Senate—Referred to Ways & Means--SJ 57
02/14/85 Senate—CR: Be passed by Ways & Means--SJ 154
02/19/85 Senate—COW: Be passed--SJ 173; EFA: Passed; Yeas 40 Nays 0--SJ 176
02/26/85 House—Enrolled and presented to gov.--HJ 362
03/01/85 —Approved by gov.--HJ 375

Attachment B

CRIMINAL JUSTICE

Criminal Justice Section Standards

Pretrial Release

PART I.
GENERAL PRINCIPLES

Standard 10-1.1 Purposes of the pretrial release decision

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.

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Standard 10-1.2. Release under least restrictive conditions; diversion and other alternative release options

In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

Standards 10-1.3. Use of citations and summonsese

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

Standard 10-1.4. Conditions of release

(a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own

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recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process. Whenever possible, methods for providing the appropriate judicial officer with reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function, as described in Standard 10-1.9.

(b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

(c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond.

(d) Financial conditions should not be employed to respond to concerns for public safety.

(e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

(f) Consistent with the processes provided in

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these Standards, compensated sureties should be abolished. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

Standard 10-1.5. Pretrial release decision may include diversion and other adjudication alternatives supported by treatment programs

In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.

Standard 10-1.6. Detention as an exception to policy favoring release

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

Standard 10-1.7. Consideration of the nature of the charge in determining release options

Although the charge itself may be a predicate to

20-20

Attachment C

NATIONAL STANDARDS FOR PRETRIAL RELEASE

The use of "Ten Percent Deposit Bail" as a condition for pretrial release is an accepted practice throughout the United States. In fact, "Ten Percent Deposit Bail" programs have been adopted in the majority of states and by the federal courts. The United States Department of Justice has defined "Ten Percent Deposit Bail" to mean a system "designed to serve as an alternative to security cash bond [wherein] the defendant deposits with the court 10 percent of the face amount of the bond. This amount is returned in full (sometimes minus a small administrative processing fee) at the successful conclusion of the pretrial period." *Pretrial Services Programming at the Start of the 21st Century,* p. 89, Washington, D.C.: U.S. Department of Justice - Bureau of Justice Assistance, 2003.

Importance of National Standards

During the administration of former Attorney General John Ashcroft, the United States Department of Justice studied pretrial services programs across the nation. This study resulted in the release of a report in July of 2003, which is entitled *Pretrial Services Programming at the Start of the 21st Century*. One of the purposes of the report was to evaluate "how the practice of pretrial programs compare to standards set by the American Bar Association (ABA) and the National Association of Pretrial Services Agencies." *Id* at p. 2. The report stated that "[t]he standards of the two associations specify several core services that a pretrial services program should provide." *Id.* at p.13. Moreover, the

United States Department of Justice report concluded that "it is important that individual programs adhere to national standards." *Id.* at p.49.

Specifically, the *Pretrial Services Programming at the Start of the 21st Century* report found:

> "Although the standards do not address directly the types of recommendations that pretrial services programs should make, ***the ABA standards state a clear preference*** for the use of nonfinancial release conditions over financial bail, and ***that whenever financial bail is necessary it should be in the form of a 10-percent deposit to the court***. (Standard 10-1.4(c))." (Emphasis added.)

Id. at p.16.

American Bar Association Criminal Justice Standards

The Third Edition of the American Bar Association (ABA) Standards on Pretrial Release are intended to serve as "black letter" standards for addressing issues relating to the pretrial release of persons arrested for a criminal offense. *American Bar Association Criminal Justice Standards on Pretrial Release* (3d ed.), Washington, D.C.: American Bar Association, 2002. The ABA standards specifically provide that if "financial bail is imposed, the defendant should be released on ***deposit of cash or securities with the court of not more than ten percent of the amount of the bail***, to be returned at the conclusion of the case." (Emphasis added.) *ABA Standard 10-1.4.(f)*. In addition, the ABA Standards provide that "the execution of an unsecured bond in an amount specified by the judicial officer, ***accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond***" is to be considered prior to requiring "a bond secured by the deposit of the full amount in cash or other property or by the obligation of " a surety. (Emphasis

added.) *ABA Standard 10-5.3.(d).* **National Association of Pretrial Services Agencies' Standards**

Similarly, the *Standards on Pretrial Release of the National Association of Pretrial Services Agencies* (Third Edition), which were published in October of 2004, provide that courts "should have a wide array of programs or options available for use in assigning [pretrial release] conditions, and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants who are released to the community." *NAPSA (2004) Standard 1.2.* "In our society liberty is the norm and detention prior to trial is the carefully limited exception." *Commentary to NAPSA Standards* at p.12 (quoting former Chief Justice William Rehnquist's majority opinion in *United States v. Salervmo*, 481 U.S. 739, 755 (1987)). Thus, the NAPSA found that "in order to have a viable system that uses pretrial detention only in limited circumstances, jurisdictions will have to develop a broad array of programs and options that can be used by a judicial officer in setting conditions of release." *Id.*

The NAPSA Standards provide: "When financial bail is imposed, the defendant should be released on the ***deposit of cash or securities with the court of not more than ten percent of the amount of the bail***, to be returned at the conclusion of the case." *NAPA Standard 1.4(c).* Furthermore, the NAPSA Standards state that when a court finds that a financial condition of release is appropriate, the first option to be considered should be "the execution an unsecured bond . . . ***accompanied by the deposit of cash or securities***

equal to ten percent of the face amount of the bond. . . ." *NAPA Standard 2.5(d) and Commentary, p.39.*

Moreover, the NAPSA Commentary states that "Standard 2.5(e) provides the key component of the deposit bail approach: the return of the deposit at the conclusion of the case if the defendant makes the required court appearances. Some jurisdictions provide for retention of a small percentage of the deposit to cover the administrative costs of handling the deposit bail transactions, but the amount of such a service charge is very nominal compared to the typical bondsman's fee." Id. at p.39. "The ten percent deposit option carries the risk of being liable for the full amount as well as losing the deposit in the event of failure to appear. It also, however, carries the incentive of a return of the deposit (probably reduced by the amount of a service charge) for defendants who make required court dates." Id. at p.39-40.

National District Attorneys Association's Prosecution Standards

The National Prosecution Standards adopted by the National District Attorneys Association also urges the use of "ten percent deposit bail" as an option to be considered as a condition for pretrial release. The National District Attorneys Association (NDAA) indicates that "a number of types of release alternatives should be considered so that the widest protection of interests - both individual rights and societal interests - is accomplished." *National Prosecution Standards* (Second Edition), p. 138, Alexandria, Virginia: National District Attorneys Association, 1991. The NDAA Standards further state that "in those cases in which money bail is required, ***the defendant should ordinarily***

be released upon deposit of cash securities equal to ten percent of the amount of bail." (Emphasis added.) *Id.* at 140.

Specifically, the National District Attorneys Association advocates that when it is found "that money bail should be set, the judicial officer should require one of the following:

> (1) The execution of an unsecured bond in an amount specified by the judicial officer;
>
> (2) The execution of a secured bond in an amount specified by the judicial officer, ***accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond. The deposit, less a reasonable administrative fee, should be returned at the conclusion of the proceedings***, provided the defendant has not defaulted in the performance of the conditions of the bond, or
>
> (3) The execution of a bond secured by the deposit of the full amount in cash or other property or the obligations if qualified . . . sureties." (Emphasis added.)

Id. at p.145.

CONCLUSION

From a review of the National Standards adopted by the American Bar Association, the National Association of Pretrial Services Agencies, and the National District Attorneys Association, it is clear that the use of "Ten Percent Deposit Bail" is advocated as an significant option which should be considered by judges and magistrates when setting conditions for pretrial release in both state and federal courts. Moreover, it is

important to recognize that the United States Supreme Court has upheld the constitutionality of "Ten Percent Deposit Bail" programs. See *Schilib v. Kuebel,* 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed. 2d 502 (1971). Finally, it should be noted that the "Ten Percent Deposit Bail" system utilized by the District Court of Shawnee County, Kansas has withstood legal challenges in both state and federal courts. See *Smith v. State,* 264 Kan. 348, 955 P.2d 1293 (1998); and, *Mounkes v. Conklin*, 922 F. Supp. 1501 (D. Kan. 1996).

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Attachment D

November 1996

Commercial Surety Bail: Assessing Its Role In the Pretrial Release and Detention Decision

Spurgeon Kennedy
D. Alan Henry

"The commercial bail system prevailing in most jurisdictions in the United States has long been criticized. . . . Two recent articles from the New Orleans Times-Picayune illustrate the reason for this tradition of criticism. The first of these recounts the complaints of commercial bail bondsmen that, because of jail overcrowding, judges have been releasing detainees who pose a low escape risk on their own recognizance or on that of someone personally connected to them. Thus, the bondsmen complain, these "bread and butter" clients are getting out of jail without having to pay the bondsmen, to the great detriment of their profits. The irony of the implication that the release system exists to enrich bondsmen rather than to secure appearance seems lost on all. To make matters worse in the bondsmen's view, continuing competition for the remaining clients forces them to consider writing bonds for higher-risk defendants, which poses a serious dilemma. Those "who don't want to take the risk of having to track down bail jumpers are seeing their profits dwindle." The unasked question is why should bondsmen profit if they are unwilling to secure the accused's appearance? The bondsmen's view of the system implied here is that it exists to provide them with low-risk profits from individuals sufficiently reliable that they could otherwise convince a judge that they are likely to appear. Thus, the system fails them to the extent that they are forced to choose between reduced profits or performing an actual service.

(F.E. Devine, *Commercial Bail Bonding: A Comparison of Common Law Alternatives*, 1991).

Reforms in pretrial release decision making in the past 30 years have helped promote the use of nonfinancial release options — such as own recognizance (OR) and conditional pretrial release — in every court system nationwide. Currently, 23 states, the federal system, and the District of Columbia mandate a *presumption of nonfinancial release* in their bail laws.[1] Oregon, Wisconsin, and Kentucky have abolished commercial surety bail in favor of nonfinancial release options and privately-secured money bail.[2]

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1 Contact the Pretrial Services Resource Center for a list of these states.

2 See Addendum.

These reforms have helped reduce the reliance of courts nationwide on commercial surety bail.[3] Data on pretrial release in the nation's most populous counties show that commercial surety bail was used in only 15 percent of felony cases in 1990[4] and 13 percent in 1992.[5] Further, in some states, defendants who once may have been subject to high surety bonds now qualify for pretrial detention under laws designed to protect public safety. In 1992, 16.6 percent of felony pretrial detainees in large counties were held under such provisions.[6]

Bail reform has forced the commercial surety industry to defend its role in the pretrial release process. Industry proponents regularly testify before city and county boards claiming to offer a bail option that is superior to nonfinancial releases, free to taxpayers, and responsive to public safety concerns. They also argue that pretrial services agencies — programs that help courts in many jurisdictions determine the most appropriate type of pretrial release or detention for individual defendants — should be eliminated or limited in scope to handling indigent defendants.

Proponents of commercial surety bail often support these claims with misinformation about failure to appear (FTA) rates for nonfinancial and surety bail releases. For example, in one Arizona county, these proponents argued that defendants released conditionally and supervised by the court's pretrial services agency had an FTA rate approaching 60 percent, while surety releases had a rate of only three percent.[7] A subsequent study by the pretrial services agency found that nonfinancial releases had an FTA rate nearly half that financial releases.

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3 Surety bail's decline was noted by Celes King, former president of the Professional Bail Agents of the United States. Speaking to the *Daily News* (Whittier, California), Mr. King stated: "In the 1960s . . . the bondsmen virtually had the keys to the jail. But the pendulum now has swung the other way." (*Daily News*, "Bail Bond Trade Slumps Despite Rising Crime," February 20, 1994).

4 *National Pretrial Reporting Program: Felony Defendants in Large Urban Counties, 1990* (Washington, D.C.: Bureau of Justice Statistics, May 1993), p. 8.

5 *National Pretrial Reporting Program: Pretrial Release of Felony Defendants in Large Urban Counties, 1992* (Washington, D.C.: Bureau of Justice Statistics, November 1994), p. 2, Table 2.

6 *Ibid.*

7 Taken from testimony by Jerry Watson, Chairman of National Association of Insurance Bail Underwriters' Legislative Committee, before the Pima County Board of Supervisors, September 13, 1993.

Supporters of nonfinancial pretrial release alternatives must be prepared to counter efforts by commercial surety proponents to discredit other pretrial release options. The most practical first step is to know the arguments these proponents make and how to address them.

This monograph discusses the assertions made by proponents of commercial surety bail regarding the value of that form of pretrial release. It seeks to address the claim that a pretrial release system heavily reliant on commercial surety bail can better provide for court appearance, public safety, and cost control.

ADVOCATES OF COMMERCIAL SURETY BAIL

While there are many local and regional groups advocating the use of commercial surety bail, three groups appear to be spearheading the agenda of these advocates nationwide. The National Association of Bail Insurance Companies (NABIC, formerly the National Association of Surety Bail Underwriters) is an association of 12 bail-underwriting insurance companies. It has "Legislative" and "Executive" Committees involved in lobbying and public relations. NABIC lobbyists have appeared at pretrial agency budget hearings and have solicited meetings with county judicial and legislative officials nationwide. They also have placed advertisements critical of pretrial services in local newspapers and sent fliers and letters to local and national legislators attacking these programs.

The American Legislative Exchange Council (ALEC) is a conservative, nonprofit organization whose membership includes 2,400 state legislators. Its biggest contribution to the surety industry is literature and "research" advocating the increased use of money bail.

Strike Back! is a partnership between NABIC and ALEC. Originally begun in California in 1994 as the surety bail industry's response to a loss of business and membership in that state, *Strike Back!* now has a national agenda to place legislative restrictions on the defendants eligible for

any release short of surety bail and attempt to "show the utter failure" of pretrial services agencies and their alleged danger to the community.[8]

SURETY PROPONENTS' ASSERTIONS ABOUT COMMERCIAL SURETY BAIL

Below are the most common arguments made by commercial surety bail advocates — in the context they usually appear — and the opposing facts.

- ***A United States Department of Justice-sponsored national study of pretrial services agencies proves that defendants "released" by these agencies have much higher failure to appear rates than defendants released on surety bail.***[9]

Since 1988, the United States Department of Justice's Bureau of Justice Statistics has sponsored the National Pretrial Reporting Program (now the State Court Processing Statistics program), an ongoing survey of felony case processing in 40 of the nation's 75 most populous counties.[10] In 1992, the last NPRP survey to be published by BJS, 13,206 felony cases, weighted to represent over 55,000 cases from the 75 largest urban counties, were sampled.

Among the data collected in the NPRP survey are pretrial release decision outcomes (whether defendants secure pretrial release and how) and rates of pretrial misconduct (failures to appear for scheduled court dates and rearrests). NPRP has reported varying pretrial misconduct rates for defendants securing different types of release. For example, in 1990, defendants securing conditional pretrial release and those released on surety bail had failure to appear rates of 14

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8 Taken from a statement by California Bail Agents Association lobbyist Danny Walsh, *CBAA News*, Fall 1994, p. 2.

9 This argument was advanced in *Strike Back!* and NABIC correspondence to mayors of cities participating in the National Pretrial Reporting Program: "The Federal Bureau of Justice Statistics has just finished an exhaustive study on the behavior of persons released pending trial on State charges . . . Among other findings, the following was reported:

1. Persons released through the taxpayer-funded methods [pretrial services agencies] are **LESS LIKELY TO MAKE THEIR COURT APPEARANCES** than are persons released through the standard "appearance guaranty" approach [commercial surety bail].
(Letter to the Hon. William A. Johnson, Mayor, Rochester, New York April 13, 1995)

10 The Pretrial Services Resource Center monitors NPRP data collection and reporting for the U.S. Department of Justice.

percent.[11] In the 1992 survey, the rates for surety releases was 15 percent, compared to 19 percent for conditional releases.[12] Using these data, advocates of commercial surety bail have implied that conditionally-released defendants are actually released by pretrial services agencies and that these "pretrial services agency releases" have worse failure rates than surety releases. However, both of these assumptions are wrong.

While some pretrial services agencies have limited release authority granted through the court, none have the same release powers as a court or bail bondsmen. Any discussion of release practices must consider those of the courts and bail bondsmen.

The fact that pretrial programs are not releasing agents has been made clear by the U.S. Justice Department agency that oversees NPRP. For example, responding to letters by *Strike Back!* to federal legislators, the Director of BJS wrote: "As BJS has already told Strike Back, as well as others, its comments are based on the premise that BJS statistics identify people who have been involved with a pretrial services agency. This is not true. BJS collects state court data on felony defendants that identify the type of pretrial release used. One such type, conditional release, is defined by BJS as 'usually' being under the supervision of a pretrial release agency. However, there is no way to determine which defendants granted 'conditional release' (or any other type of release for that matter) were actually under the supervision of a pretrial release agency. BJS data also does not address the involvement of a pretrial release agency in the form of information or recommendations in any release decision by the court. BJS publishes clear definitions of each pretrial release category used in its reports. (It should be noted that the term 'government-sponsored' release, often used by Strike Back, is not used in any BJS publications). As currently defined, these release categories do not allow for an assessment of the performance of pretrial release agencies."[13]

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11 *National Pretrial Reporting Program: Felony Defendants in Large Urban Counties, 1990*, p. 11, Table 13. The 1990 NPRP sample was the first to include conditional pretrial release as a distinct release type.

12 *National Pretrial Reporting Program: Pretrial Release of Felony Defendants, 1992*, page 10, Table 14.

13 Letter from Jan M. Chaiken, Director BJS to the Honorable Gene Green, July 8, 1996.

In addressing letters sent by NABIC to the mayors of NPRP jurisdictions, alleging that the survey showed persons "released through the local taxpayer-funded agency" (pretrial services) had worse court appearance rates, the Chief of BJS's Law Enforcement and Pretrial Statistics Unit wrote: "The reference to a pretrial services program is a misrepresentation of the NPRP. Upon examination of the NPRP data collection form, it is clear that while one can readily identify felony defendants released on surety bond with the NPRP data, a defendant's involvement with a pretrial program cannot be ascertained . . . Nothing is included in the NPRP data form that would allow an analyst, including those at BJS, to determine the involvement of a pretrial release program in any case."[14]

Also erroneous is the use of aggregate NPRP data results to assess all defendants released conditionally. For example, while the 1992 NPRP aggregate failure to appear rate for conditional release is 19 percent, 13 of the 28 NPRP jurisdictions where conditional release was used had failure to appear rates *below* this figure. These ranged from five percent to 16.7 percent.[15] Of the 25 NPRP jurisdictions where conditional and surety releases were used, 10 recorded lower failure to appear rates for conditional releases while two had rates for the release types within 0.2 percent of each other.[16]

A good example of how NPRP aggregate data may not apply to individual survey sites is Monroe County (Rochester), New York. *Strike Back!* and NABIC mailed correspondences to the mayor of Rochester stating that persons released "through taxpayer-funded methods" failed to appear more often. However, the 1992 NPRP survey found that defendants released conditionally and supervised by the county's pretrial services agency had a failure to appear rate more than two-thirds *lower* than those securing release through surety bail.

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14 Letter to NPRP Site Officials from Brian Reaves, BJS, May 10, 1995.

15 1992 NPRP database (machine readable file).

16 *Ibid.*

Finally, as comprehensive as NPRP is, it does not capture all the factors possibly related to pretrial misconduct. As the head of BJS's Law Enforcement and Pretrial Statistics Unit noted: "Of course, this study cannot control for factors that may be relevant to both the pretrial release decision and the pretrial conduct of released defendants, if they are not collected by the NPRP. Some examples of such factors are employment status, income, educational background, and drug abuse history. *It is also important to note that no analysis of NPRP data, no matter how exhaustive, will provide insight into the performance of pretrial release programs.*"[17] (Emphasis added).

It also should be noted that the only other multi-jurisdictional failure to appear study, sponsored by the Department of Justice and conducted in 1981 by The Lazar Institute, found that the average failure to appear rates for nonfinancial releases was 12.2 percent compared to 13.6 percent for financial releases.[18] Moreover, a 1992 study of pretrial release in Connecticut found that statewide, 11 percent of defendants released conditionally failed to appear compared to 15 percent of defendants released financially.[19]

- ***As entrepreneurs, bail bondsmen must do well to stay in business. In fact, as business people, bondsmen cannot afford a failure to appear rate above three percent. Therefore, bondsmen must carefully select whom they release.***[20]

By necessity, the most important criterion for bondsmen in choosing defendants for release is the person's ability to pay a bail premium: this is how bondsmen make a profit. The higher the premium, the more likely the bondsman (as a business person) will be to secure a defendant's release, regardless of the charge. For example, data from NPRP found that in 1992, when bonds

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17 *supra.*, note 13.

18 The Lazar Institute, *Pretrial Release; A National Evaluation of Practices and Outcomes: Summary and Policy Analysis Volume* 1981, p. 15.

19 Justice Education Center, Inc., *Alternatives to Incarceration Phase I: Pretrial Evaluation* (August 1993).

20 This view is reflected in an article by Gerald P. Monks, former director of the Professional Bail Agents of the United States: "We are the only ones (commercial surety bail bondsmen) in the criminal justice system who have an economic reason to guarantee the defendant's appearance in court. If they don't show up, we go broke." (Gerald P. Monks, *Caring Little Men Win, Big Bureaucracy Boys Lose!*, March 19, 1991).

were set from $10,000 to $20,000, release rates were higher for violent-charged defendants (44 percent) than for those charged with property (24 percent) or public order offenses (34 percent).[21] In 1988, when bonds were set above $20,000, defendants charged with drug offenses such as sale and trafficking were likelier to secure release than defendants charged with public-order crimes, 47 percent to 32 percent. However, drug-charged defendants were twice as likely to fail to appear.[22]

A release decision based mainly on a defendant's financial status is critically different from the assessment of release suitability used by the criminal justice system. While bondsmen primarily are interested in profit, courts are concerned with a defendant's potential for failure to appear or possible threat to public safety.

The emphasis on a financial criterion for pretrial release also illustrates perhaps the most disturbing aspect of commercial surety bail. When the court sets a surety, the actual release decision passes from an official accountable to the public to an entrepreneur accountable to no one. A judge may set a small bail intending the defendant to be released quickly or a large bail to make release unlikely. But a bondsman may focus on the higher bond since he will make the most profit there. In either case, the judicial intent is thwarted, resulting in unnecessary pretrial detention or the release of a high- risk defendant.

- ***Bondsmen have a strong financial incentive to locate and apprehend absconders.***[23]

This argument assumes that jurisdictions supervise bondsmen actively and require forfeiture of bail on surety absconders. While most states have guidelines for surety bail and bond forfeitures, regulation often is difficult or lax. For example, as of June 1996, the Florida Department of

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21 *National Pretrial Reporting Program: Pretrial Release of Felony Defendants 1992*, p.4, Table 3.

22 Bureau of Justice Statistics Bulletin, *National Pretrial Reporting Program: Pretrial Release of Felony Defendants 1988* (Washington, D.C.: U.S. Department of Justice, February 1991), p. 1.

23 See, for example, "Rethinking Bail," a monograph by the Free Congress Foundation, a group supporting the use of commercial surety bail: "If a defendant 'skips,' the bail agent has time, and a financial incentive, to find him and bring him in." (Free Congress Foundation, "Rethinking Bail," *Policy Insights*, Number 201., p. 1).

Insurance, which regulates commercial surety bondsmen in the state, had five staff persons assigned to oversee the state's nearly 1,000 licensed bondsmen.

A 1986 study on bail bonding in Fairfax, Virginia, Indianapolis, Indiana, Memphis, Tennessee, and Orlando, Florida concluded: "Although state insurance departments typically have regulatory authority over the bonding activities of at least the bondsmen who are agents of insurance companies, many of these departments have very little knowledge of bonding activities as a whole. There are several reasons for this. First, some states view bail bonding as simply one aspect of the entire insurance industry and do not single it out for special attention. Second, in other states where insurance departments regulate only the agents of insurance companies, many bondsmen may be unaffiliated with such companies. Finally, some states give the primary authority for regulating bail bondsmen to the local courts."[24]

The study also quoted bondsmen estimates that only one to two percent of the face value of bails written actually were forfeited.[25]

The West Memphis, Arkansas *Evening Times* reported that uncollected bond forfeitures in the Crittenden County Quorum Court dating back to January 1995 totaled $2,142,400.[26] The *Houston Chronicle* reported 20,000 outstanding bond forfeitures filed in Harris County, Texas between 1985 and 1991 and as much as $100 million in unpaid forfeitures dating from the 1960s.[27] The *Valley Morning Star* (Harlingen, Texas) reported that court officials in Cameron County, Texas collected $42,085 in bond forfeitures from 1990 to 1992, just over five percent of the total owed by bondsmen. Larger bail bond agencies "owned by lawyers who made political contributions paid proportionately less in forfeitures than smaller companies."[28]

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24 Mary A. Toborg, et al, *Commercial Bail Bonding: How it Works (Summary of Final Report)* (Washington, D.C.: Toborg and Associates, April 1986), p. 7.

25 *Id.*, p. 21.

26 "Payoff slow on forfeited bail bonds," *Evening Times*, June 25, 1996.

27 *Houston Chronicle*, July 21, 1991.

28 *Valley Morning Star*, December 12, 1993.

Further, bondsmen can demand collateral equal to the full bail amount — if the defendant fails to appear, the potential loss from a forfeiture is covered. As one Washington, D.C. bondsman explained: "On a $10,000 bond, I can ask for $11,000. If he [the defendant] doesn't show, the court gets the $10,000 and I keep my $1,000."[29] This practice effectively eliminates any incentive the bondsman has to apprehend the absconder.

Regarding the assertion that bondsmen and their agents actually bring in absconders, a committee of the Illinois legislature considered this claim 30 years ago and concluded that "with the nation-wide exchange of information between law enforcement agencies and the F.B.I., the average bail jumper has little chance of escape."[30] Given the current nation-wide systems for exchange of information between law enforcement agencies that chance has diminished even further.

Research on fugitivity by release type is mixed. NPRP data for 1992 show that the *fugitive rate* (defined as the percent of released defendants who failed to appear and were not returned to court after one year) for surety releases is slightly lower than for conditional releases, three percent to five percent.[31] On the other hand, a 1987 study of pretrial release in Durham, North Carolina found that the percent of fugitives released on surety was nearly twice as high as for other releases, 26 percent to 14 percent.[32]

However, most research suggests that bondsmen do little to bring in absconders. For example:

- A 1972 study of 1,000 surety release absconders in Los Angeles found that in 89 percent of the cases, police apprehended bail absconders with no help from bondsmen. In only

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29 "Unpaid Forfeitures Changing D.C. Bail Bond Business," *The Washington Post*, October 5, 1991.

30 Committee Comments — 1663, Ill. Ann. Stat., c. 38, p. 300.

31 *National Pretrial Reporting Program: Felony Defendants in Large Urban Counties, 1992*, p. 10, Table 14.

32 Stevens H. Clarke and Miriam S. Saxon, *Pretrial Release in Durham, North Carolina* (Chapel Hill, N.C.: Institute of Government, University of North Carolina, 1987), pp. 29 - 30.

six percent of cases did a bondsman locate and arrest an absconder without police assistance.[33]

- A 1991 news article reported that nine out of 10 absconders on bail bonds in Harris County, Texas were returned by the police.[34]

- A 1994 survey of bond forfeitures by the Pima County Pretrial Services Agency found that nearly all absconders were brought back to court by law enforcement.[35]

- ***A surety bondsman's services are free to taxpayers.***[36]

The costs of commercial surety bail go beyond dollars and cents. Perhaps the greatest cost is the court's surrender of its release power to private interests. When this occurs, release no longer depends on an individual's suitability as defined by law, but his or her ability to pay a bail. As the American Bar Association's (ABA) Standards on Criminal Justice note:

> *Indeed, the central evil of the compensated surety system is that it generally delegates public tasks to largely unregulated private individuals. Thus, although courts as a matter of form determine whether and on what conditions defendants should be released pending trial, in practice private sureties can override judicial orders by refusing to write bail bonds or surrendering bailed defendants at will.*[37]

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33 Office of the County Counsel, "Survey of County Counsel Case Files of Actions to Exonerate Bail Forfeiture" (Los Angeles, CA: Office of the County Counsel, 1972). (Taken from Wayne H. Thomas, Jr., *Bail Reform in America* (Berkeley, CA: University of California Press, 1972), pp. 255 - 256).

34 *Houston Chronicle*, July 21, 1991.

35 Memorandum from Kim M. Holloway, Director Pima County Pretrial Services, to Mike Boyd, Chairman of the Pima County Board of Supervisors, February 10, 1994, p. 6.

36 See, for example, the American Legislative Exchange Council, "Bail Reform: Restoring Accountability to the Criminal Justice System": "Utilizing the private bail system greatly improves the criminal justice system because the cost of the person's release is borne by the arrested person — not the taxpayer." (*The State Factor*, Volume 20, Number 1, January 1994).

37 *Id.*, p. 115.

Making release dependent on financial ability also reduces the fairness of the bail decision. As stated by the *News & Record* (Greensboro, North Carolina):

> *In practice, bail becomes an insurmountable obstacle for too many arrestees for whom the risk of flight or further crimes is low. Too often, the decision to tie up a jail bed at taxpayer expense is made by a bail bondsman with absolutely no regard for the public interest. Incredible as it seems, some prisoners await trial in jail because they are too harmless and therefore their bail is set too low to be financially interesting to a bondsman.*[38]

Another cost of surety bail is the corruption associated with its practice:

> *The essence of the bail bond practice is to get a person out of custody who posts a bond that the person buys from the bondsman. To get the good risks and the "cream of the crop" — that is, those who are most likely to reappear in court — bondsmen have to get there first, before another bondsman or a court release officer . . . In order to do that, the prisoner has to know about and call the bondsman. How does the prisoner know the name of the bondsman? He gets it from the cop who arrested him. How does the cop make the referral? He has the business cards given to him by the bondsman in exchange for drinks after work, tickets to the ball game, dinner, a weekend at a beach cottage, and so on.*[39]

Surety bail's record of abuse also is cited in the National District Attorneys Association's (NDAA) *National Prosecution Standards*:

> *The private bail bondsmen system has, however, been very prone to abuse. The system is criticized for four major shortcomings: (1) the high cost of securing a*

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38 "Our Crowded Jails" (Editorial) *News & Record* (Greensboro, North Carolina), June 26, 1990.

39 Testimony of the Honorable Judge William C. Snouffer on February 8, 1989 opposing Oregon House Bill 2263.

bondsman, (2) the discriminatory practices of many bondsmen and their power to determine who shall be eligible for pretrial release, (3) the corruption that the system spawns, (4) the inability of bondsmen to insure appearance as well as less costly and complicated system(s).[40]

The ABA Standards also describe commercial surety bail's history of corruption and abuse:

Historically, the commercial bond business has been one of the most tawdry parts of the criminal justice system. Although the extent of corruption involving sureties has probably been exaggerated, by its very nature, the bail bond business is always vulnerable to predatory and illegal practices . . . A system of public prosecution ought not to depend upon private individuals using personal means to bring defendants before criminal courts; it is not surprising that such a system leads to abuse.[41]

In an opinion affirming Wisconsin's ban on compensated sureties, an appeals court noted that private individuals acting as sureties are distinct from commercial sureties since they cannot subvert the judicial process nor "have the same business opportunity to corrupt police and officials as does a professional bondsman."[42]

Examples of abuses by surety bondsmen and their agents are many, including:

- A District of Columbia Superior Court clerk was convicted of altering court records to help bail bondsmen avoid $47,500 in bail forfeitures. The clerk received money from various bondsmen to alter court documents, making it appear that bond forfeitures had been waived. (*The Washington Post*, February 6, 1993).

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40 National District Attorneys Association, *National Prosecution Standards*, (1977) Standard 10.8, p. 142.

41 American Bar Association, *Criminal Justice Standards; Chapter 10, Pretrial Release*, Standard 10-5.5, Compensated Sureties (1985) pp. 114-115.

42 *Kahn* v. *McCormack* (App 1980) 299 N.W. 279.

- A board of Circuit Court judges in Utah ordered a bail bonding company to shut down for 10 days, following charges that a partner in the company offered to post bond for a client in exchange for sex. (*Salt Lake Tribune*, July 15, 1992).

- Two West Virginia state legislators with ownership interests in bail bond companies weakened a bill aimed at providing uniform procedures for bail bondsmen. The legislators eliminated a provision allowing defendants to post their own bonds to the court and a prohibition on bondsmen loaning money to defendants to cover their 10 percent fee. (Berkeley *Register-Herald*, February 28, 1990).

- Two bounty hunters were convicted of robbing and kidnaping two alleged drug dealers in Memphis, Tennessee. Police arrested the pair after one of the victims recognized one of the men as the person who had arranged her bail on a drug charge. (*Memphis Commercial-Appeal*, January 24, 1990).

- A City of Richmond, Virginia police officer, explaining why the reputation of bounty hunters with law enforcement "isn't that great," recalled an incident where a bounty hunter beat a suspect bloody, handcuffed him, threw him in a car, and drove away. The officer stated, "I don't believe one man's civil rights take a back seat to his being arrested for jumping bond." (*Richmond Metropolitan Monthly*, April 1994).

Clearly the criminal justice system gains nothing from bonding for profit and, in fact, loses a great deal — such as integrity and equal treatment before the law — by maintaining such an anachronistic practice.

Finally, proponents of surety bail assert that a cost *savings* occurs for the taxpayer whenever a bondsman takes a defendant out of jail. But available evidence does not show any such relationship. States that have abolished commercial surety for profit, for example, have local jails no more (or less) crowded than states that continue the practice. The argument that the

increased use of commercial surety bail will decrease the jurisdiction's jail population simply is not true. In fact, relying on bondsmen to decide who gets out of jail and who remains may help *cause* unnecessary and expensive pretrial detention.

SURETY PROPONENTS' ASSERTIONS AGAINST PRETRIAL SERVICES AGENCIES

Commercial surety bail proponents see the decline of their industry tied directly to the increased role of pretrial services agencies. Besides extolling the "advantages" of commercial surety bail, these proponents often attack pretrial agencies as huge, expensive, and irresponsible bureaucracies. As mentioned earlier, most of these arguments involve mis-use of NPRP data. Below are other attacks made against pretrial agencies.

- ***Pretrial release programs have failed because they have gone beyond their original mandate — providing release for defendants who cannot afford money bail.***

Eliminating the financial inequities of surety bail was but one goal behind the bail reform movement that created pretrial services agencies. A much broader aim was *ensuring that conditions of pretrial release or detention were suited to the circumstances of individual defendants and based on the least restrictive options needed to ensure appearance and, when applicable, public safety.*

Most bail laws recognize that for many defendants (regardless of economic status), adequate assurance of court appearance and public safety can be met through nonfinancial release. These laws also relegate money bail to cases where nonfinancial alternatives cannot reasonably ensure against failure to appear. As one court ruled:

> *The [Bail Reform] Act creates a presumption in favor of releasability on personal recognizance or upon the execution of an unsecured appearance bond. It is "only if 'such release will not reasonably assure the appearance of the person as*

required' that other conditions of release may be imposed." Congress has established a hierarchy of less favored conditions which may be considered, but which may be utilized only in the event that no preferred condition is deemed adequate to assure appearance. And so it is that the imposition of a money bond is proper only after all other nonfinancial conditions have been found inadequate.[43]

Since the purpose of bail setting is to use the least restrictive means needed to assure appearance and safety, the proper "scope" of pretrial services agencies is to provide the courts with the information needed to determine appropriate bail for *all* defendants.

☐ ***Pretrial services agencies are a major cause of crime.***[44]

This argument assumes that pretrial services agencies release defendants. As stated earlier, this is not so — courts set conditions of pretrial release or detention. This aside, research shows no real difference in rearrest rates between defendants the courts release conditionally and those who post sureties. NPRP results for 1992 show that surety releases had a nine percent rearrest rate while conditional releases had a 10 percent rate.[45] A 1992 study of pretrial release in Connecticut found that 10 percent of conditional releases were rearrested compared to 17 percent of financial releases.[46]

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43 *U.S.* v. *Leathers* 412 F.2d 169 (1969), 171. (Citations omitted).

44 See, for example, *The Bailbond Chronicles*, a newsletter published by surety bail advocates: "All we hear about now is crime and violence, but one of the major causes of crime in this country is **'PRE-RELEASE'** [emphasis in original].... Crime will continue to grow, as long as these agencies hoodwink their county commissioners, and governing bodies to give them funds to operate their agency to release these criminals without bail." ("Pre-Release Agencies Major Cause of Crime," *The Bailbond Chronicles*, Winter Edition 1993 (Volume 4, No. 4), p. 1.)

45 *National Pretrial Reporting Program: Pretrial Release of Felony Defendants, 1992*, p. 11 Table 15.

46 Justice Education Center, Inc., *Alternatives to Incarceration Phase I: Pretrial Evaluation* (August 1993).

The 1990 NPRP survey showed the rearrest rate for persons released conditionally was 11 percent and 13 percent for surety releases. Seven percent of all conditional releases were rearrested on a new felony charge, compared to nine percent of surety releases.[47]

NATIONAL PERSPECTIVES ON PRETRIAL SERVICES AGENCIES

The protests of the commercial surety industry aside, there is a general acknowledgment of the importance of pretrial services agencies in the criminal justice system. Speaking before a U.S. House of Representatives sub-committee in 1990, a National Association of Counties (NACo) official stated:

> *Pretrial services programs are established mechanisms for assisting jurisdictions to make informed decisions as to which arrestees can be safely released to the community with supervision to await trial and which should be held in jail.*[48]

In one of its publications, the U.S. Department of Justice "encourage(d) state and local agencies to consider use of block grant funds from the Anti-drug Abuse Act of 1988 to establish new pretrial services programs. The benefits to the public, the offender and the criminal justice system can be substantial."[49] The publication went on to describe pretrial services agencies as: "proven, effective ways to assist the court in selecting and monitoring defendants who pose little danger to the community if released. The need to identify these defendants correctly has become more crucial as jail populations increase and the problem of drugs and crime continue to drain scarce justice system resources."[50] In another publication, the Department noted:

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47 *National Pretrial Reporting Program: Pretrial Release of Felony Defendants, 1990*, p. 9 Table 13.

48 Testimony of the Honorable Mark Ravenscraft before the House Sub-Committee on Government Information, Justice, and Agriculture of the Committee on Government Operations, April 14, 1990.

49 Bureau of Justice Assistance, *Pretrial Services Program Brief* (Washington, D.C.: U.S. Department of Justice, 1990).

50 *Id.*, p. 4.

Formal pretrial services agencies provide an extremely valuable service to prosecutors and the courts by conducting a thorough risk assessment, recommending pretrial disposition and performing intensive monitoring of the arrestee. Such agencies are critical in effectively□ serving as coordinator between the system and various programs that fall in the category of intermediate sanctions.[51]

The ABA Standard for pretrial release:

... rests on a hypothesis that pretrial incarceration should never be resorted to without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible to release criminal defendants who might commit new, and in particular dangerous, offenses pending trial without also taking reasonable steps to protect the community against that danger. The standard, therefore, recommends that every jurisdiction establish a pretrial services agency or similar facility, empowered to provide supervision for released defendants.[52]

The U.S. Congress recognized the importance of pretrial services agencies when it expanded these agencies from ten demonstration sites to all federal districts in 1980. The Senate Committee on the Judiciary recognized the support for this move from the Judicial Conference of the United States, the NDAA, the American Correctional Association, the National Association of Counties, and the National Advisory Commission on Criminal Justice Standards and Goals.[53] The Committee also noted that analysis of the demonstration pretrial agencies by the Administrative Office of the United States Courts, the Federal Judicial Center, and the General

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51 *Edward Byrne Memorial State and Local Law Enforcement Assistance Program: FY 1991 Discretionary Program Application Kit*, "Enhanced Pretrial Services Documentation," February 1991 (p. 233).

52 American Bar Association, *Criminal Justice Standards; Chapter 10, Pretrial Release* (1985) pp. 25 - 26.

53 U.S. Senate Committee on the Judiciary, *Pretrial Services Act of 1980: Report* (No. 96-982), p. 12.

Accounting Office "indicate that pretrial services agencies perform functions essential to the bail process."[54]

Colorado, Georgia, Illinois, Kentucky, Oregon, Virginia, and the District of Columbia have legislation similar to the federal system mandating or encouraging the establishment of pretrial services agencies.

NATIONAL PERSPECTIVES ON SURETY BAIL

Three national criminal justice associations and one U.S. Department of Justice Commission have released criminal justice standards that recommend eliminating commercial surety bail. Excerpts from these standards appear below.

From the ABA's *Criminal Justice Standards*, Chapter 10: Pretrial Release; Standard 10-5.5, Commentary (1985, p. 113):

> *Compensated sureties should be abolished. Pending abolition, they should be licensed and carefully regulated.*

From the NDAA's *National Prosecution Standards, Second Edition*: Pretrial Release (1991, p. 149):

> *This edition of the standards continues the recommendation that compensated sureties be abolished. Indeed, the institution of bail bondsmen has greatly declined since the promulgation of the original standards in 1977 and there is little reason to believe this trend will be reversed in the 1990's.*[55]

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54 *Id.* at p. 11.

55 The NDAA's position was even more strongly worded in its original standard: "Recent analysis, beginning with the Vera Institute studies in the early 1960's have documented and expounded the basic weakness of money bail. Cash bail systems have been shown to be highly discriminatory, favoring the rich and punishing the poor and indigent — in spirit violating the concept of equal protection. Further, this system of release has not proven itself more effective in insuring trial appearance than any of the less complicated or less costly systems... there are strong arguments and statistical evidence to suggest that the bail bond system is no more successful in assuring trial appearance than other systems." National District Attorneys

From the National Association of Pretrial Services Agencies' (NAPSA) *Performance Standards and Goals for Pretrial Release and Diversion: Release* (1978, p. 25):

> *The constitutional policy, and practical advantages of nonfinancial release over the traditional money bail system, together with the successful use of nonfinancial pretrial release conditions as an effective method for assuring court appearances support the elimination of money bail as a condition of release . . . Further, the availability of detention orders . . . enables the court to detain high risk defendants without the hypocrisy of resorting to the imposition of high money bail.*

The National Advisory Commission on Criminal Justice, appointed in 1973 by the U.S. Department of Justice, also called for eliminating commercial surety bail, stating:

> *. . . whatever steps might be appropriate to insure appearance, the Commission vigorously endorses the removal of professional bondsmen from the entire area of pretrial release.*[56]

Criminal justice professionals are nearly unanimous in the belief that commercial surety bail is an archaic system. Reliance on private business persons does not improve defendant appearance in court nor safeguard public safety. Most bondsmen do not bring back defendants who abscond nor are held liable financially for failures to appear. Moreover, the abuses seemingly inherent in the system and the inequity of relying on financial ability rather than suitability for release suggest that surety bail is counterproductive to ensuring equal treatment under the law and the integrity of the criminal justice system. This is made even clearer by the existence of pretrial

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Association, *National Prosecution Standards*, Chapter 10: Pretrial Release, Commentary (1977, pp. 140 and 143).

56 *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Standard 4.6, 1978, p. 83.

release options that address appearance and safety concerns without the problems inherent in commercial surety bail.

STRATEGIES FOR ADDRESSING SURETY BAIL PROPONENTS' ASSERTIONS

- ***Frame the argument about pretrial release options to reflect the real issues.***

Proponents of commercial surety bail have attempted to gain control of the debate on pretrial release options by defining the argument's terms. This has put supporters of nonfinancial release alternatives on the defensive, answering charges of high failure rates and cost instead of presenting the subject's real issues. To move the discussion toward the real issues, advocates of nonfinancial release alternatives should stress the following points:

- *Pretrial services agencies have a legitimate and important role in criminal justice, a role surety bondsmen cannot play:* Pretrial services agencies help improve the release/detention decision by giving the court complete, accurate, and non-adversarial information. These agencies also monitor defendants the court believes are inappropriate for own recognizance release (OR) but not risky enough for detention. These are functions commercial surety bondsmen do not perform.

- *Comparisons of release decisions and their outcomes should be made between bondsmen and judicial officers, not bondsmen and pretrial services agencies:* Once a surety bail is set, a bondsman's release power is actually comparable to the court's. Conversely, the role of the pretrial services agency is not to release, but to help the court make the most informed bail decision. This is similar to the role a probation agency plays when it submits a pre-sentence investigation before sentencing.

- *Pretrial services agencies are more responsible in screening defendants for the court than surety bondsmen are in releasing defendants:* Pretrial services agencies check defendants' backgrounds, including court appearance and supervision history, before

submitting information for the court to use to determine appropriate release or detention. Many agencies also use risk assessments validated through local research to recommend release or detention. By contrast, the primary criterion for a bondsman's release consideration is often the defendant's ability to post bail. The laxity of bail forfeiture enforcement — and the bondsman's ability to demand collateral equal to the full bail amount — lessen their concern about failures to appear.

☐ ***Collect and keep accurate local pretrial data.***

Jurisdictions should keep current data on pretrial release, failure to appear, and rearrest rates. These data should be for *all* release types, including surety and other financial bails to establish accurate rates for each release option.

☐ ***Keep up with literature on bail bonding and pretrial release.***

Pretrial agencies should keep a library of material on pretrial release and bail bonding. For example, NPRP/SCPS reports are available through the Justice Statistics Clearinghouse (1-800-732-3277). NPRP/SCPS data and *The Pretrial Reporter*, a bi-monthly newsletter covering pretrial and jail overcrowding issues, are available through the Pretrial Services Resource Center. Other sources of information include:

- The state's bail statute, local court rules, and court cases dealing with pretrial release and detention.

- NAPSA: The national association publishes *NAPSA News*, which reports on national and local actions of interest to pretrial services practitioners, and holds an annual pretrial services conference.

- Pretrial release standards and positions of major criminal justice associations, such as the ABA, NDAA, and NAPSA.

- The March 1993 edition of *Federal Probation*, which focuses on pretrial services agencies.[57]

- *Commercial Bail Bonding: A Comparison of Common Law Alternatives* (New York: Praeger Publishers, 1991) by Dr. Frank E. Devine. This book compares the American commercial bail system to other pretrial release mechanisms used worldwide.

☐ ***Enlist support of others who are opposed to commercial surety bail.***

Many actors within and outside criminal justice have spoken out against expanding the commercial surety bail system. When the Milwaukee County Board's Committee on Legislation considered whether to support re-introducing commercial surety bail in Wisconsin, the county's District Attorney testified against the measure:

> *Having spent 15 years under both systems [with commercial sureties legal and with them abolished] . . . I just think in terms of the overall system, we're better off without them [commercial surety bondsmen].*[58]

The *Milwaukee Journal* expressed a similar opinion earlier (July 24, 1993):

> *As a rule, bondsmen select inmates with high bail amounts who can offer collateral to cover the remainder. Low income defendants, no matter how worthy they may be as bail candidates, can expect to sit while high-risk defendants with access to cash go free . . . Bail bonding programs in other states are notorious*

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57 This is available through the Administrative Office of the U.S. Courts (202 273-1620).

58 Testimony of E. Michael McCann before the Milwaukee County Board Legislative Committee, September 16, 1993. The measure of support was defeated six votes to one.

sources of corruption. Most telling, states that allow bail bondsmen find their jails just as crowded as Wisconsin's.

When the Oregon legislature considered re-introducing commercial surety bail in the state, a Multnomah County (Portland) judge testified against the measure:

> *Bail bondsmen are a cancer on the body of criminal justice — they cannot and do not help improve it. And they will not save money for the system — they will make it more costly to the public as a group and to citizens individually.*[59]

When commercial surety bail lobbyists attacked the pretrial program in Pima County (Tucson), Arizona, the program received help not only from its chief judge and sheriff, but also a local newspaper:

> *Giving bondsmen more authority would discriminate against poor people who can't afford their services. Bondsmen have no incentive to recommend that people awaiting trial, whether they can afford bondsmen's services or not, be released on their own recognizance — without having to post a bond. And it would allow bondsmen, instead of judges, to have a major hand in deciding who goes to jail and who goes free. Law enforcement officials recall the days before Pretrial Services when jails were bursting at the seams with petty offenders who couldn't afford to post bail . . . If bondsmen took over today, deputies predict, the situation would recur. And that would cost taxpayers far more than the current bill for Pretrial Services, which saves the taxpayers up to $10 million annually by keeping people out of jail. Profit motives don't blend well with the goals of equal justice. And profit-driven bondsmen should not be allowed to take over Pretrial Services.*[60]

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59 Testimony of the Honorable Judge William C. Snouffer on February 8, 1989 opposing Oregon House Bill 2263. The bill did not pass.

60 *Arizona Daily Star*, July 30, 1993.

Responding to bondsmen assertions that the "private sector" could better secure future appearance than "taxpayer-funded agencies," The Houston Chronicle wrote:

"If the private sector can do as good or better job, why should the be government be doing it?" .... Well, private bonding companies do not arrange bail for indigent defendants; the Pretrial Services Agency does. Private companies make bail for just about anybody who can pay their fees; the Pretrial Services Agency grants bonds only to those most likely to abide peacefully in the community and show up for trial. Private companies do not advise the court about the backgrounds and criminal records of defendants; the Pretrial Services Agency does. When the jail is crowded, private companies do not search out defendants who are likely candidates for pretrial release but who haven't been able to make bond; the Pretrial Services Agency does. [61]

☐ ***Educate others about the benefits of pretrial services agencies.***

Pretrial agency managers should educate others about their agency's role and its benefits to the entire criminal justice system. The more other actors know about these benefits, the more apt they are to offer their support when it is needed.

New members of *the judiciary* should know that pretrial services agencies provide information vital to assessing a defendant's potential for pretrial misconduct. This includes verified background information and criminal histories often not available from other sources, certainly not from bondsmen. Moreover, pretrial agencies offer the court a valid release alternative to OR and detention on bail — supervised pretrial release — as well as a court date notification system.

Corrections officials should understand that a pretrial services agency can help reduce needless pretrial detention by recommending a reasonable alternative to high money bail. Information collected by the pretrial program also can help jail officials classify inmates for placement in the jail.

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61 Editorial, *Houston Chronicle* June 9, 1996

The public should know that, by presenting accurate information on an individual's potential for misconduct, the pretrial agency helps enhance public safety by identifying defendants who may be detained pretrial. By offering an alternative to detention for eligible defendants, these agencies help reduce society's cost for managing its criminal justice system.[62]

The media's first exposure to a pretrial services agency should not result from attacks by bail bondsmen. Pretrial administrators should alert the media to their agency's goals and benefits to the criminal justice system. Administrators also should foster relationships with the media and "feed" positive information on release rates and successes of released defendants.

- ***Cite other types of financial release.***

When the court believes financial bail is needed, pretrial agencies should cite other types of money bail that are not as inherently abusive as surety bail. One example is *deposit bond*, where defendants post a percent of the bail's face amount directly to the court. If the defendant appears in court as required and abides by any conditions ordered, he or she receives the posted amount back. In some jurisdictions, the court keeps part of the posted amount as an administrative fee.

CONCLUSION

Over the past 30 years, a simple "release/detain" approach to bail has evolved into a system offering judicial officers a range of options to meet the risks presented by individual defendants. This has led to a more equitable system of pretrial release and detention and less dependence on a release option — commercial surety bail — many believe should be limited, if not abolished. However, while losing their near monopoly on pretrial release, bondsmen and their allies still have the power in many jurisdictions to influence local decision makers who must cut costs and who are often unfamiliar with issues of pretrial release. Supporters of nonfinancial alternatives to surety bail must ensure that, in searching for ways to solve current

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62 Pretrial agencies should have material — such as pamphlets or brochures — readily available. This material should describe the agency, its goals, and benefits to the criminal justice system and the public. Agency officials also should develop ties with private groups interested in criminal justice.

problems and manage dwindling resources, decision makers avoid embracing old and discredited approaches.

ADDENDUM

Wording of state bail laws limiting or outlawing commercial surety bail:

From the *Kentucky Revised Statutes*, Volume 16, §431.510 (a) (b):

It shall be unlawful for any person to engage in the business of bail bondsman as defined in KRS 304.34-010 (1), or to otherwise for compensation or other consideration:
(a) furnish bail or funds or property to serve as bail; or
(b) make bonds or enter into undertakings as surety; for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment or death, below any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such court upon a final disposition.

From the *Oregon Code*, Title 14, §135.245 (3), (4), and (6):

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless release criteria show to the satisfaction of the magistrate that such release is unwarranted.
(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall impose either *conditional release* or *security release* . . .
(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant.[63]

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63 The Oregon law defines "security release" as release secured by cash, stocks, bonds, or real property.

From the *Wisconsin Annotated Statutes*, Chapter 969, § 969.12, Sureties

(2) A surety under this chapter shall be a natural person, except a surety under s. 345.61. No surety under this chapter may be compensated for acting as such a surety.[64]

64 The law allows compensated sureties in traffic cases (§ 345.61). The state's elimination of compensated sureties in criminal cases was upheld in *Kahn* v. *McCormack* (App. 1980) 299 N.W. 2d 279.

Attachment E

Hon. Martin Asher
District Judge
1st Judicial District (Atchison and Leavenworth Counties)

Thank you for bringing this to our attention. I would oppose the change. We often set cash only bonds in cases that we know involve restitution, ie., worthless checks, we later forfeit these bonds upon a guilty finding. This allows the victims to be made whole in a timely manner. We would rather the defendants use their money to repay victims than a non-refundable fee to a bondsman. I note that the new law requires monies put up to be returned to the defendant. I hope you are successful in getting this defeated.

Hon. F. William Cullins
District Judge
14th Judicial District (Chautauqua and Montgomery Counties)

I looked at your e-mail on the proposed bill for bonds. If I understood what you wrote correctly, I am highly opposed to such a bill and you can inform the legislature of my opinion. Setting cash only bonds has been a tool our district has used for a long time to recover restitution the defendant has not paid or to make him pay other related court costs. It has been my experience that if an individual has been placed on probation and has failed to pay, when he violates if you set a cash bond, you will get your money almost immediately. Also, would this affect the bonds that are set on individuals who do not pay their child support? If it does, that would be a travesty. Setting cash bonds assures I can get some child support to the mother or father and the child. I have also used a combination of cash bonds/surety bonds to insure appearance and to get what few costs may be owed back into the Court system. I would view this bill as completely unnecessary. It seems squarely aimed at putting money in the pockets of bondsman and not aimed at correcting or alleviating a problem in the Judicial System.

Hon. Kent Lynch
District Judge
11th Judicial District (Crawford, Cherokee, and Labette Counties)

I agree with your opposition to SB 203. It appears to do nothing more than line the pockets of bondsmen. The ability to craft a bond arrangement to each case is essential to the efficient administration of justice. Restricting bond arrangements will cause problems with speedy trial and unnecessarily keep individuals in jail who could otherwise bond out.

Hon. J. Michael Smith
Chief Judge
19th Judicial District (Cowley County)

My objection to SB 203 has centered around Section 3(1) and 3(2). My objection is that the language (3)(1) would mean that we could FORFEIT the bond ONLY FOR NON

APPEARANCE. We could REVOKE for violations of conditions but obviously would need to turn around and set a new bond which a defendant could treat the same as the first one. Revoking means nothing to the surety - Forfeiture does. We want the surety to have an interest in seeing that the defendant complies with conditions too. The conditions are one way we can protect the public while the case is pending. If the only consequence of violating one or more conditions is to have the bond Revoked - the defendant has far less incentive to comply. Especially with a defendant who can arrange bond regardless of the amount. As you testify - I hope these 2 sections could be discussed and changed to give the court the discretion to EITHER forfeit OR revoke. I felt it was probably the insurance companies who wanted to avoid the risk of having to pay up on a defendant who tried to retaliate against victims or witnesses while on bond - didn't realize the bondsmen were the real lobby.

Hon. Van Hampton
District Judge
16th Judicial District (Clark, Comanche, Ford, Gray, and Kiowa Counties)

I agree with you that SB 203 should be opposed. We often set cash only bonds in our district for two reasons. First, the defendants must pay the bond premium to a bondsman and that money is lost to the defendant AND to the court. When we set a cash bond and the defendant is convicted, we often order a portion of the bond proceeds (or all of it) to be applied to the costs or fines. This is a good method of assuring recovery of costs. It also ultimately helps the defendants because they are able to pay some of the costs OR recover the bond if it was put up by a family member or friend. Otherwise the bond premium paid to a bondsman, obviously, would be lost.

We need the discretion to set cash only bonds and I hope you can be persuasive in your testimony in opposition to SB 203.

Hon. Don Alvord
District Magistrate Judge
20th Judicial District (Barton, Ellsworth, Rice, Russell, and Stafford Counties)

Our judicial district the 20th does have a court bonding system which has been in place for many years and works well for us. I too would be opposed to eliminating a Judge's discretion in dealing with bonds. Our court administrator, John Isern has gathered facts on our system to oppose this bill. You can reach John by email at: jibtdistcrt@cpcis .net or by phone at 620-793-1860 for details.

Hon. Patty Macke Dick
Chief Judge
27th Judicial District (Reno County)

I think more compelling than all of this is taking away the ability to offset costs and fees and restitution against bonds.

Hon. Bruce Gatterman
Chief Judge
24th Judicial District (Edwards, Hodgeman, Lane, Ness, Pawnee, and Rush Counties)

The Pretrial release program of the 24th Judicial District was established April 13, 1995 in accordance with Administrative Order 96 issued January 17, 1995 by Chief Justice Richard W. Holmes of the Kansas Supreme Court. This program has served our District well, and has also been beneficial for those person accused of commission of crimes, and the victims of those crimes.

Under local rule, all accused individuals on Court bond pretrial release are supervised by Court Services or Community Corrections, under specified bond release conditions. Our local experience suggests a far better appearance rate for accused persons with this level of supervision than with a commercial surety bond. A person posting bond through a commercial bond has lost that bond premium forever. Posting a cash or court bond provides an assurance to a defendant that the monies may be returned if all appearance requirements are met, or at the very least, such funds will be used to satisfy Court obligations imposed upon the defendant if he/she is convicted.

For those persons convicted of crimes, the court bond is available for payment of restitution, court costs, or fees of court appointed or retained counsel. This procedure helps protect victims of crime and reinforces that the Court system is very much concerned with the rights of crime victims. Funds on deposit may also be paid to the Board of Indigent Defense Services, for repayment of court appointed attorney fees. Often, an accused person may be found indigent and counsel is appointed. Later a friend or relative may post a cash bond for release. These cash bond funds are deemed to be the property of the accused, and thus available to satisfy court obligations of the accused person.

The pretrial release program applies only to residents of the 24th Judicial District and only for those crimes contained on the automatic bond schedule of the District. We freely recognize that situations exist which require commercial or professional surety. Frequently persons elect to use a commercial bondsman instead of the Court bond program, as is their right. There is no reason that the pretrial release programs cannot co-exist.

Hon. John Bingham
District Magistrate Judge
12th Judicial District (Cloud, Jewell, Lincoln, Mitchell, Republic, and Washington Counties)

It makes absolutely no sense to post a $1,000 or $2,500 surety bond on a bad check charge when a cash bond of $450 (or whatever) would have disposed of the Defendant's problem. It does enrich the bondsperson, harm the Defendant, and harm the victim who will get their restitution "sometime" or never. Besides, the family and Defendant have to wait for the bondsperson to travel to remote regions and/or get around to starting to travel.

Comparison of Bail Bondsmen Practice with District Court Bonding Programs

Prepared by the Office of Judicial Administration
March 13, 2007

Participation in the court bonding programs is voluntary. Persons charged with crimes can choose to post the full amount of bond (K.S.A. 2006 Supp. 22-2802) or may choose one of the following two options:
If bond is set at $2,500 . . .

10%, or $250, is paid to the bail bondsman.	10%, or $250, is paid to the court program.

What happens to the money paid to the bail bondsman or the court program?

The bail bondsman retains the full $250 fee.	If the person charged makes all court appearances and does not forfeit bail, 1% of the bond amount, or $25, is retained by the program and goes to the county. **The remaining $225 is returned to the person charged**. If the person charged owes restitution to a crime victim, court costs (a significant portion of which goes to the State General Fund), reimbursement to the State Board of Indigents Defense Services for representation, or any other obligation ordered by the court, these are paid from the $225 before any amount remaining is returned to the person charged.

What services are provided to the person charged under the bonding programs?

Bail under a private bondsman includes no services.	Services similar to those provided to probationers are provided to the person charged. This helps to provide employment services, substance abuse services, and other services to the person charged at an early stage in the process.

Is there an incentive to revoke the person's bond, only to have the person bond out again with the same bonding company?

Yes, and this practice occurs. The 20th Judicial District has implemented a local rule stating that a surety may only post a bond once for a case and may not bond a defendant, revoke the bond, and then bond the defendant again in the same case. The bail bondsman may charge the 10% fee each time a person bonds out.	No. This practice does not happen in the court bonding programs.

KANSAS DISTRICT COURT

Chambers of:
NANCY E. PARRISH
Chief Judge

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NORMA DUNNAWAY
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LINDA S. BEARD
Official Court Reporter

Testimony before the House Judiciary Committee on S. B. 203
March 13, 2007

On behalf of the judges in Shawnee County, I offer this testimony in opposition to Senate Bill 203. Senate Bill 203 prohibits the court bonding program known as the Own Recognizance (OR) Cash deposit bond. This program has been in effect in Shawnee County for over 20 years. Three other judicial districts have similar programs: the 10th Judicial District (Johnson County), 24th Judicial District (Pawnee, Edwards, Hodgeman, Rush, Lane, and Ness Counties,) and the 20th Judicial District (Barton, Ellsworth, Rice, Russell, and Stafford Counties).

This bonding program provides an option to posting a bond with a bail bondsman. For example, a defendant has the choice of posting either a $2,500 OR Cash Deposit bond or a $2,500 bond with professional surety. The defendant would pay $250 (10% of the bond amount) into the court for the OR Cash Deposit bond or pay $250 (the bondsman generally charges 10%) to a bondsman for the professional surety bond. If the $250 is paid into the court, $225 is held until the completion of the defendant's case and if the defendant is convicted, the $225 will be applied to restitution for victims, court costs, K.B.I. fees, probation fees, fines, or any other court-ordered obligations including child support. If the $250 is paid to a bondsman, the money is not available to apply to any restitution, costs, or fees but instead goes into the bondsman's pocket.

In Shawnee County in the last 7 years almost $2.4 million has been applied to defendants' court-ordered obligations such as restitution, court costs, attorney's fees (reimbursement for indigent defense costs), etc. That amounts to an average of over three hundred thousand dollars per year for victims and the state general fund, etc. (See the attached chart.) Another $55,000 to $60,000 a year is returned to the Shawnee County General Fund (this is the 1% Administrative fee that is retained). The court does not keep any of the money for its own use.

The judicial districts who have an OR Cash Deposit program are not trying to put bondsmen out of business. After over 20 years of having an OR Cash Deposit cash bond program, 17 bail bond companies currently are authorized to write bonds in Shawnee County. Judges recognize the need for professional surety bonds for certain defendants. However, the court recognizes its duty and responsibility to collect restitution for victims and to collect the court costs, fees, and fines that the legislature has enacted. The OR Cash Deposit program is an excellent collection tool. Without it, fewer victims will receive restitution and court collections will significantly be reduced.

The bondsmen and their lobbyists are maintaining that the courts have never had statutory authority to implement these programs. While we dispute this claim, if this is an issue that the legislature is concerned about, we urge the legislature to refer this bill to an interim committee

so that the legislature has an opportunity to review how the OR Cash Deposit program works and to determine if it has merit before totally banning these programs. The legislature certainly has the ability to set parameters for these programs such as bonding limits or eligibility criteria, all of which could be considered in an interim committee.

The other argument that the bondsmen are using is that the courts are violating their own rules. For example, they argue that courts cannot authorize OR Cash Deposit bonds for over $2500. This is **not** correct for the Shawnee County program. The $2500 limit only pertains to the Automatic Bond Schedule (ABS) which has established bond amounts for lower level charges and is set prior to a defendant seeing a judge. If a defendant is screened by a person authorized to permit posting of a bond, the OR Cash Deposit bond can be allowed for amounts higher than $2500. (See paragraph seven in the sample local rule that is required by the Kansas Supreme Court's Administrative Order No. 96). A court service officer provides a screening prior to the defendant's appearance before the judge and the judge makes the decision as to the amount and type of bond that will be authorized. The court is **not** violating its own rules.

We also dispute the bondsmen's claim that there is a higher rate of defendants' failing to appear on OR Cash Deposit bonds than on professional surety bonds. While the bondsmen provide statistics related to failures to appear on OR Cash Deposit bonds in Shawnee County and Johnson County, they conveniently neglect to provide comparable statistics on failures to appear on Professional Surety Bonds.

Finally, "ten percent deposit bail" programs are accepted practices throughout the United States. In fact, these programs have been adopted in the majority of states and by the federal courts. ABA Standards on Pretrial Release specifically provide that if "financial bail is imposed, the defendant should be released on deposit of cash or securities with the court of not more than ten percent of the amount of the bail." The National Association of Pretrial Services Agencies' Standards includes almost identical language. The National District Attorneys Association's Prosecution Standards lists the ten percent deposit bond as an acceptable option. Furthermore, the United State Supreme Court has upheld the constitutionality of "Ten Percent Deposit Bail" programs. See *Schilib v. Kuebel*, 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502(1971). Likewise the OR Cash Deposit program utilized in Shawnee County has withstood legal challenges in both state and federal courts. See *Smith v. State*, 264 Kan. 348, 955 P.2d 1293 (1998) and *Mounkes v. Conklin*, 922 F. Supp. 1501 (D. Kan. 1996).

The 3rd Judicial District judges respectfully request your opposition to Senate Bill 203 or, in the alternative, your referral of this issue to an interim committee.

Respectfully submitted,

Nancy Parrish, Chief Judge
Third Judicial District

Year	Shawnee County OR Cash Deposit Applied Toward Defendant's Court Costs, Fees, Restitution, Fines, County General Fund	10% returned to the Shawnee Indigent Defense Reimbursement, etc.
2006	$315,415.04	
2005	$313,851.08	$119,224.00
2004	$321,273.57	
2003	$352,712.11	$77,529.35
2002	$463,898.57	$144,495.72
2001	$308,304.64	
2000	$314,915.77	
TOTAL	**$2,390,370.78**	**$341,249.07**

Source:

Third Judicial District Accounting Department

The Kansas District Judges' Association

March 12 2007
via facsimile to 785-368-6365

Representative Michael O'Neal
State Capitol Building
Topeka, Kansas

RE: S.B. 203

Dear Representative O'Neal:

The Kansas District Judges Association is opposed to S.B. 203. The broad language proposed by the bill has implications for all judicial districts, not just the four districts that have some form of court bonding. The variety of warrant/bonding procedures employed by courts across the state will be affected. Further, the proposed language would seem to restrict the bond setting guidelines as provided in K.S.A. 22-2802.

At a minimum, the bill deserves further study in an interim committee for review of bonding practices throughout the state. There is no desire to supplant bondsmen or their role with the courts. However, the interests of justice and public safety are not served by unduly restricting the flexibility of the courts to use all the tools available for setting appropriate bonds and bond conditions.

Thank you for your consideration.

Sincerely,

Daniel L. Love
President
Kansas District Judges Association

DLL/pw

House Judiciary
Date 3-13-07
Attachment # 22

House Judiciary Committee
March 13, 2007

Testimony prepared by
Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers
Opponent of House Bill 2545

The Kansas Association of Criminal Defense Lawyers (KACDL) is a 250-person non-profit organization dedicated to justice and due process for those accused of crimes. KACDL opposes House Bill 2545 because it unnecessarily creates another drug felony with a substantial accompanying price tag.

HB 2545 does two things: 1) it would make possession of certain hallucinogenic drugs a severity level 4 drug felony (rather than a Class A misdemeanor as the case is now) and 2) would make a second or subsequent conviction of **any** hallucinogenic drug a severity level 4 drug felony (as opposed to only marijuana being subject to felony enhancement upon a second or subsequent conviction under present law).

The fiscal note contains an estimate of **$680,700 to $1,134,500 in the coming fiscal year** alone for additional 2003 SB 123 treatment. Furthermore, the fiscal note indicates a need for 27 to 46 prison beds (presumably per year) by FY 2017. While I am no statistician, this number seems low. According to the Kansas Sentencing Commission 2007 Report to the Legislature (p. 14 of 39), out of the 1,744 SB 123 cases that were closed as of November 30, 2006 (spanning from November 1, 2003 to November 30, 2006), **29%** were closed because of probation revocation. Using similar math, if 150 to 250 people in FY 2008 are subject to SB 123 treatment under changes made by HB 2545, and almost 30% are eventually revoked, that is about **45 to 75 additional people per year facing prison upon revocation from SB 123 probation**, rather than 27 to 46.

This monetary cost is not the only issue. Under HB 2545, we are looking **at 150 to 250 people per year becoming felons** where before they would have been facing a misdemeanor. That is 150 to 250 new people per year who will have problems getting a job, student loans/an education, a place to live, licenses for certain employment, benefits for them and/or their family and all of the other consequences that come with a felony conviction.

HB 2545 would be too costly, both in tax dollars and to people's futures.

Respectfully submitted,

Jennifer Roth
rothjennifer@yahoo.com
(785) 832-9583

House Judiciary
Date 3-13-07
Attachment # 23

Frank Denning
Sheriff

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913-791-5800
Fax
913-791-5806

OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

David Burger
Undersheriff

Kevin Cavanaugh
Undersheriff

Testimony of Sheriff Frank Denning
IN OPPOSITION
To SB 203

My opposition is framed in terms of my professional perspective as Sheriff of Johnson County.

It is the statutory obligation of the Sheriff to keep the jail and maintain care for and custody of inmates left in his charge. I have 543 beds in Johnson County, and I'm a few years from seeing that number increase.

On the other hand, the number of Johnson County inmates isn't waiting for the County to provide more jail space; it's increasing steadily. The results of studies of that growth tell us we can expect our daily count to be something over 1,300 in the next three years.

Today, March 13th, 2007, I've had to board just under 350 inmates in jails located in 19 eastern Kansas counties with whom I contract. The crisis, as you can see, is here today.

In the last two years, the Johnson County District Court has set in place a Bond Release Program as one of the efforts that will hopefully reduce, or at least slow the growth of our jail population. Other programs and initiatives are being looked at by my office, in concert with the Court and Community Corrections as I speak with you here today.

I feel, having collaborated in putting the current program into effect, and I support giving it some time to produce results. At this point, data is so limited that I can't tell you that there has been any dramatic effect on the jail census numbers. The count has remained fairly constant for the past year.

What I CAN tell you is that historically, our statistics show two things;

> **These numbers normally increase steadily but for a predictable drop, in the rate of increase occurring about every five years. and**

House Judiciary
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These numbers don't turn up OR down on a dime, and that is because of the nature of the supply line; the community.

For this reason, I recommend that we let the program run for a while. The true effect, good or bad, will be known in time. If the system is truly broken, then I will return to this podium with that evidence and a request for your assistance to fix it.

I want to thank you Mr. Chairman and all the members of this committee for holding these hearings, and now I'll be happy to stand for any questions.

Sheriff Frank P. Denning
Johnson County, KS