Approved: 5-17-11
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 7, 2011 in Room 144-S of the Capitol.

All members were present except: Representative Roth

Committee staff present:
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Lauren Douglass, Legislative Research
Robert Gallimore, Legislative Research
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:
Honorable Judge Phillip Journey
Christopher M. Joseph, General Counsel, KS Professionals Bail Bond Assoc.
Stephen Owens, Owens Bonding, Inc.
Shane Rolf, Shane's Aarecorp Bonding Bail Bond Agency
Mark Masterson, Sedgwick County Department of Corrections
Honorable Judge Kevin Moriarity, Johnson County
Honorable Judge Nancy Parrish, Chief Judge, Shawnee County
Charles Peaster, Bentley, Kansas

Others attending:
See attached.

Chairperson Colloton called the meeting to order and opened the floor for consideration of **HB 2321-Amendments to the recodified criminal code. Representative McCray-Miller moved to pass the bill out favorably for passage. Representative Pauls seconded.** A discussion followed. **Representative Meier moved an amendment regarding antique firearms, making a new section and to use the same language as the federal definition of antique firearms.** (Attachment 1) **Representative McCray seconded.**

After discussion **Representative McCray-MIller moved a friendly amendment to add antique firearms to Section 1. Representative Kelly seconded. Motion carried.**

Chairperson Colloton called for a vote on the original motion on the floor to add a new section regarding antique firearms. Motion carried.

Representative Pauls moved for Page 10, line 18, 19 and Page 12, line 23 to go back to current law. Representative Kinzer seconded. Motion carried with Representative McCray-Miller voting "no".

Representative Meier moved to remove Section 21 from the bill and Representative McCray-Miller seconded. Motion failed.

Representative Meier moved to remove Section 22. Representative McCray-Miller seconded. Motion failed.

Chairperson Colloton closed the consideration of **HB 2321** to continue at a later time and opened the hearing on **SB 37-Sentencing; payment of fines; employment of county and city prisoners.** The only party to testify was Honorable Phil Journey, Sedgwick County who testified as a proponent of the bill. He presented written copy of his testimony which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 2) A short question and answer session followed. With no others to testify or speak to the bill Chairperson Colloton closed the hearing on **SB 37** and opened the hearing on **HB 2259-Criminal procedure and appearance bonds.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill. (Attachments 3 & 4). The following appeared as proponents of the bill. They provided written copy of their testimony which can be found in its entirety in the offices of Legislative Administrative Services:

- Christopher M. Joseph, General Counsel, KS Professionals Bail Bond Assoc. (Attachment 5)

The minutes of the Corrections and Juvenile Justice Committee at 1:30 p.m. on March 7, 2011, in Room 144-S of the Capitol.

- Stephen Owens, Owens Bonding, Inc. (Attachment 6)
- Shane Rolf, Shane's Aarecorp Bonding Bail Bond Agency (Attachment 7)
- Chad Taylor District Attorney, Shawnee County (no written copy)
- Michael Crow, Morey Bonding Company, Wichita, Kansas, written only, (Attachment 8)

The following appeared as opponents of the bill. They presented written copy of their testimony which can be found in their entirety in the offices of Legislative Administrative Services:

- Mark Masterson, Sedgwick County Department of Corrections (Attachment 9)
- Honorable Judge Kevin Moriarity, Johnson County (Attachment 10)
- Honorable Judge Nancy Parrish, Chief Judge, Shawnee Count (Attachment 11)
- Charles, Peaster, Bentley, Kansas (Attachment 12)
- Robert Hinshaw, Sedgwick County Sheriff's Office, written only (Attachment 13)

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2259**.

The meeting was adjourned at 3:20 pm with the next meeting scheduled for March 8, 2011 at 1:30 pm in room 144-S.

CORRECTIONS & JUVENILE JUSTICE
GUEST LIST

DATE: 3-7-11

NAME	REPRESENTING
Kevin Bourne	KPBBA
Anne S Teigen	NCSL
SHANE ROLF	SHANE'S BAIL BONDS
Brad Evans	Ace Bail Bonds
Tommy Henderson	KPBBA
Bernard Koops	Hein Law Firm
Patrick Vogelsberg	KCDAA
Helen Pedigo	Court
Nancy Parrish	3rd Jud Dist
K Pmoore	10th Jud. Dist
Chris Joseph	KPBBA
Dennis Dermody	KPBBA
Chad Taylor	DAO 3rd J.D.
Tony Demmon	KDJA

HOUSE BILL No. 2321

By Committee on Corrections and Juvenile Justice

2-11

AN ACT concerning crimes and punishment; creating the crimes of armed criminal action and endangerment; relating to further amendments to the recodified criminal code; amending K.S.A. 2010 Supp. 21-4010 and 21-4012 and sections 9, 34, 37, 61, 68, 71, 81, 92, 93, 129, 130, 132, 136, 165, 197, 223, 224 and 300 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2010 Supp. 21-3302, 21-3446, 21-3447, 21-3506 and 21-4311.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Armed criminal action is committing or attempting to commit any felony under the laws of this state by use of a firearm.

(b) Armed criminal action is a nonperson felony. Upon conviction, a person shall be sentenced to a term of 12 months imprisonment. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the mandatory 12 months imprisonment, unless application of such a mandatory sentence would result in a manifest injustice.

(c) The crime of armed criminal action shall be treated as a separate and distinct offense from the crime or crimes committed, and the sentence imposed under this section shall be consecutive to any other sentence imposed.

(d) This section shall not apply when the felony committed is criminal distribution of a firearm to a felon, as defined in section 188 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal possession of a firearm by a convicted felon, as defined in section 189 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal possession of a firearm by a juvenile, as defined in section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal discharge of a firearm, as defined in section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or unauthorized possession of a firearm on the grounds of or within certain state-owned or leased buildings, as defined in section 194 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

hb2321_Meier_balloon.pdf
RS - JThompson - 03/07/11

11,

K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, and

(1)

House Corrections and Juvenile Justice
Committee
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Attachment # 1-1

but the conviction of the lesser included crime shall be annulled upon the filing of such charges. Evidence of the person's plea or any admission or statement made by the person in connection therewith in any of the proceedings which resulted in the person's conviction of the lesser included crime shall not be admissible at the trial of the crime charged. If the person is convicted of the crime charged, or of a lesser included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for the annulled conviction.

(d) Unless otherwise provided by law, when crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, the defendant:

(1) May not be convicted of the two crimes based upon the same conduct; and

(2) shall be sentenced according to the terms of the more specific crime.

(e) A defendant may not be convicted of identical offenses based upon the same conduct. The prosecution may choose which such offense to charge and, upon conviction, the defendant shall be sentenced according to the terms of that offense.

Sec. 7. Section 34 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 34. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime provided that the defendant believed the other person did have the actual intent to commit the underlying crime.

~~(b)~~ *(c)* It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

~~(c)~~ *(d) (1)* Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10.

Insert Section 11 of chapter 136 of the 2010 Session Laws of Kansas (attached). Renumber sections accordingly.

1-2

Section 11 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended as follows: Sec. 11. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(a) "Act" includes a failure or omission to take action.

(b) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(c) "Conduct" means an act or a series of acts, and the accompanying mental state.

(d) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(f) "Deprive permanently" means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(g) "Distribute" means the actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of

the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(h) "DNA" means deoxyribonucleic acid.

(i) "Domestic violence" means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(2) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(j) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence.

~~(i)~~(k) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(j)~~(l) "Expungement" means the sealing of records such that the records are unavailable except

to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

~~(k)~~(m) "Firearm" means any weapon ~~designed or having the capacity to propel a projectile by force of an explosion or combustion~~ , including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. "Firearm" does not include an antique firearm. "Antique firearm" means:

(1) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898;

(2) any replica of any firearm described in subsection (m)(1) if such replica: (A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (B) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) any muzzle loading rifle, muzzle loading shotgun or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this paragraph, "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock or any combination thereof.

~~(l)~~(n) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(m)~~(o) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(n)~~(p) "Law enforcement officer" means:

(1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of ~~sections~~ section 47 and subsection (d) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

~~(o)~~(q) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

~~(p)~~(r) "Obtains or exerts control" over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

~~(q)~~(s) "Owner" means a person who has any interest in property.

~~(r)~~(t) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

~~(s)~~(u) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(t)~~(v) "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

~~(u)~~(w) "Property" means anything of value, tangible or intangible, real or personal.

~~(v)~~(x) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(w)~~(y) "Prosecutor" means the same as prosecuting attorney in K.S.A. 22-2202, and

amendments thereto.

~~(x)~~(z) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(y)~~(aa) "Public officer" includes the following, whether elected or appointed:

(1) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state;

(2) a member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

(3) a judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

(4) a hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

(5) a law enforcement officer; and

(6) any other person exercising the functions of a public officer under color of right.

~~(z)~~(bb) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

~~(aa)~~(cc) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit a crime.

~~(bb)~~(dd) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(cc)~~(ee) "Stolen property" means property over which control has been obtained by theft.

~~(dd)~~(ff) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(ee)~~(gg) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Phillip B. Journey
7079 S. Meridian
Haysville, Kansas 67060
(Office) 316-660-5601

TESTIMONY BEFORE THE KANSAS CORRECTIONS/JUVENILE JUSTICE COMMITTEE IN SUPPORT OF SB-37
Presented on Monday, March 7, 2011

Madam Chair, Members of the Committee thank you very much for the opportunity to have a hearing and to testify before your committee in support of Senate Bill 37. When I originally made the request for SB 520, I intended to rectify what I perceived to be an inequity regarding labor provided either as a jail trustee or in community service in lieu of paying court assessed fines or costs for those indigent and unable to satisfy the obligation imposed by the court as a result of their convictions for various crimes and infractions. Currently, K.S.A. 22-4603 only provides for a credit of $5 per day in programs utilizing individuals in custody by a county sheriff, town marshal, chief of police, under the direction of county commissioners or the governing body of a city. The intent of the request was to bring provisions similar to K.S.A. 8-1567(j) into the statute proposed to be amended. I appreciate the committee's approval of the bill last session.

This bill was originally requested in 2010 and was denoted as SB 520. In 2010, the bill passed out of the Senate and this Committee, but it was taken below the line in the House at the end of the session. This session it passed the Senate on a vote of 32 to 6. The form of SB 37 is identical, with technical changes, to what was passed out of your committee last session.

This modification of current Kansas statute brings consistency to these similar provisions. Many of the defendants I see through my service to the state as a District Court Judge have run afoul of the law. They are indigent and do not have the means to satisfy their obligations to the court for fines and court costs. Many of the individuals who appear before me suffer with some type of disability and do not have the earnings capacity necessary to satisfy minimum fines mandated by statute. Their service to the community has the potential to provide value to our state far in excess of the $5 per hour rate granted by this statutory modification. It is important that individuals that are indigent have the ability to resolve these obligations to close these cases. This is an equitable modification of statute bringing inconsistent statutory provisions into a congruent public policy. Defendants, guilty of various crimes or infractions, are all given the same opportunity to resolve their cases and satisfy their probationary obligations in the same way as those convicted of DUI. It is, of course, the committee's and legislative body's prerogative whether court costs should be included in these provisions. K.S.A. 8-1567(j) does not allow for community service to be credited against assessments such as probationary fees or court costs, only for fines. Once again, let me thank the committee and the chairman for the opportunity to testify in support of SB 37. I hope that the proposed modifications and amendment to the statute are accepted by the committee as these are an expression of the original intent of the request.

Respectfully submitted,

Phillip B. Journey
PHILLIP B. JOURNEY

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-7-11
Attachment # 2

HOUSE BILL No. 2259

By Committee on Judiciary

2-9

AN ACT concerning criminal procedure; relating to appearance bonds; amending K.S.A. 2010 Supp. 22-2802 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (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. *When setting the amount of the appearance bond, the magistrate shall articulate on the record the factual basis for concluding that amount is sufficient to assure the appearance of the person and assures the public safety. The court shall take into consideration the factors set forth in subsection (8).* 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 or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. 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;

(d) place the person under a house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(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 pursuant to ~~paragraph~~ *subsection* (3). Except as provided in ~~paragraph~~ *subsection* (5), 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 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 deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to ~~paragraph~~ *subsection* (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at $2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

~~(A)~~ *(a)* Is a resident of the state of Kansas;

~~(B)~~ *(b)* has a criminal history score category of G, H or I;

~~(C)~~ *(c)* has no prior history of failure to appear for any court appearances;

~~(D)~~ *(d)* has no detainer or hold from any other jurisdiction;

~~(E)~~ *(e)* has not been extradited from, and is not awaiting extradition

to, another state; and

~~(F)~~ *(f)* has not been detained for an alleged violation of probation.

The magistrate is required to articulate the documentation for each of these qualifications on the record at the time the bond is set. If the magistrate does not have a factual basis for making each of these findings, the magistrate may not allow the person to deposit cash with the clerk in the amount of 10% of the bond.

(6) ~~In the discretion of the court,~~ *Provided the person meets the following qualifications, the magistrate may order that* a person charged with a crime may 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 to appear in 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.~~*:*

(a) The most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, or a drug severity level 4 felony;

(b) is a resident of the state of Kansas;

(c) has a criminal history score category of H or I;

(d) has no prior history of failure to appear for any court appearances;

(e) has no detainer or hold from any other jurisdiction;

(f) has not been extradited from, and is not awaiting extradition to, another state; and

(g) has not been detained for an alleged violation of probation.

When ordering release on a person's own recognizance, the magistrate is required to articulate the support on the record that such an appearance bond is sufficient to assure the appearance of the person and assures the public safety.

shall

(7) The court shall not impose any administrative fee.

(8) 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.

(9) The appearance bond shall set forth all of the conditions of release.

(10) 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.

(11) 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 (10) shall apply.

(12) 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.

(13) 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.

(14) 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 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.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed $15 per week of such supervision.

Sec. 2. K.S.A. 2010 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.

The Capitol Lobby Group, L.L.C.
909 S Kansas Blvd. • Topeka, Kansas 66612 • (785) 213-1111
Kevin A. Barone

March 7th, 2011

RE: HB2259 Supporting Changes

Chairwoman and members of the committee,

Before you is HB2259, which we have heard about specific language in the bill that caused some concerns for some Judges. After looking into those concerns, we understand their comments and have put forth the following changes in hopes of clearing up those concerns. I believe that the revisor has already done a balloon for these changes.

They are as follows:

Page 1 - line 15 - delete words "*and assures the public safety.*"

Page 3 - line 2 - delete words "*the documentation for each of these qualifications on the record at the time the bond is set.*"

Page 3 - line 27-28 - delete words "and *assures the public safety*"

A further change was brought to us by a District Attorney, whom is signed up and can further explain their purpose. The KPBBA has fully supports the purposed amendment and idea of how forfeited bonds are divided up. Giving a portion of forfeited monies to the DA's of the state, we believe this will help in ensuring that the people providing bonding service will be held to the standard they should be. I believe the revisor has some language being prepared for when the bill is worked, if the Committee decides to do so.

Sincerely,

Kevin Barone
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House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-7-11
Attachment # 4

KPBBA

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Kansas Professional Bail Bond Association, Inc.

TO: House Committee on Corrections and Juvenile Justice

FROM: Christopher M. Joseph, General Counsel

DATE: March 7, 2011

RE: Support for HB 2259

Good afternoon Chairwoman and members of the Committee, my name is Chris Joseph and I am the General Counsel for the Kansas Professional Bail Bond Association. The KPBBA is an association of professional sureties in the State of Kansas. We are here to testify today in support of HB2259.

Overview of appearance bonds in Kansas

There are three types of appearance bonds (commonly known as bail bonds) that a judge may set: (1) professional surety or cash, (2) own recognizance cash deposit ("ORCD"), and (3) own recognizance ("OR").

Professional surety or cash: A professional surety (commonly known as a bail bondsman) will post the bond and guarantee to pay the court the amount of the bond if the defendant fails to appear. Sureties are given a small window to apprehend a defendant who fails to appear in lieu of paying the amount. Statute allows a defendant to post cash in the amount of the bond instead of using a bondsman. Studies show that this type of bond is highly effective at ensuring defendants appear in court.

OR bonds: A defendant is allowed to sign a piece of paper promising to appear in court and, if they fail to appear, promising to pay to the court the amount of the OR bond. The OR bond is intended to be used sparingly and only for persons who will likely appear in court and are not likely to commit other offenses.

ORCD bonds: A defendant is allowed to deposit 10% of the amount of the bond with the court and sign a piece of paper promising to pay to the court the rest of the amount of bond if they fail to appear. The ORCD bond is also intended to be used sparingly and only for defendants who need a little more motivation to appear than provided by an OR bond.

Studies provide compelling evidence that professional surety bonds are vastly more effective than OR or ORCD bonds. 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).

The problem with overuse of OR bonds

Some judges routinely set OR bonds for defendants who are repeat offenders and are not likely to appear in court. When defendants choose not to go to court, a warrant is issued. The warrant goes to the sheriff to execute. In jurisdictions with a large volume of OR bonds, the number of warrants issued simply overwhelms the sheriff. As a result, these defendants are often returned to custody only after their next encounter with police, whether through a traffic stop or arrest for another crime.

Criminals know that the amount of an OR bond is meaningless. There is no incentive for prosecutors to request judgments against defendants who fail to appear. There is virtually never an attempt to make the defendants live up to their promise to pay a bond if they fail to appear.

What this bill does to correct the problem

This bill places limitations on the use of OR bonds. If a defendant does not even qualify for an ORCD bond, they certainly should not be allowed to have a less restrictive OR bond.

This bill also recognizes that prosecutors have no incentive to seek judgments against defendants or professional sureties. In many jurisdictions, both defendants and professional sureties know that there will be no effort to collect if a defendant fails to appear. This creates an environment where fly-by-night companies will write professional surety bonds for next to nothing and do nothing to track the defendants. Our association wants the industry to flourish, but wants to operate in an environment of accountability for both sureties and defendants. Such an environment is created when prosecutors have proper incentive to enforce promises to pay made by bondsmen and defendants.

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

By
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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.

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

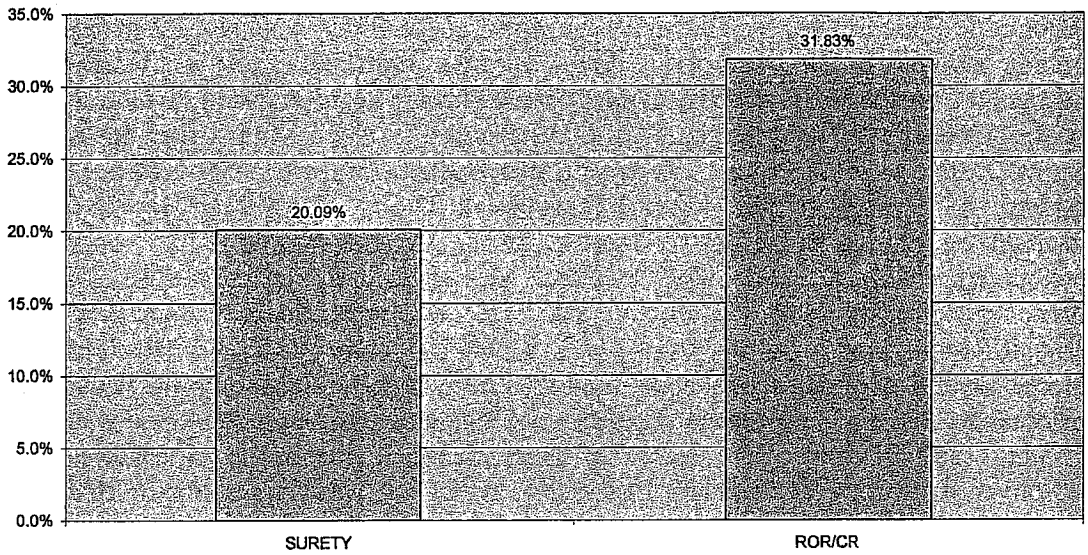
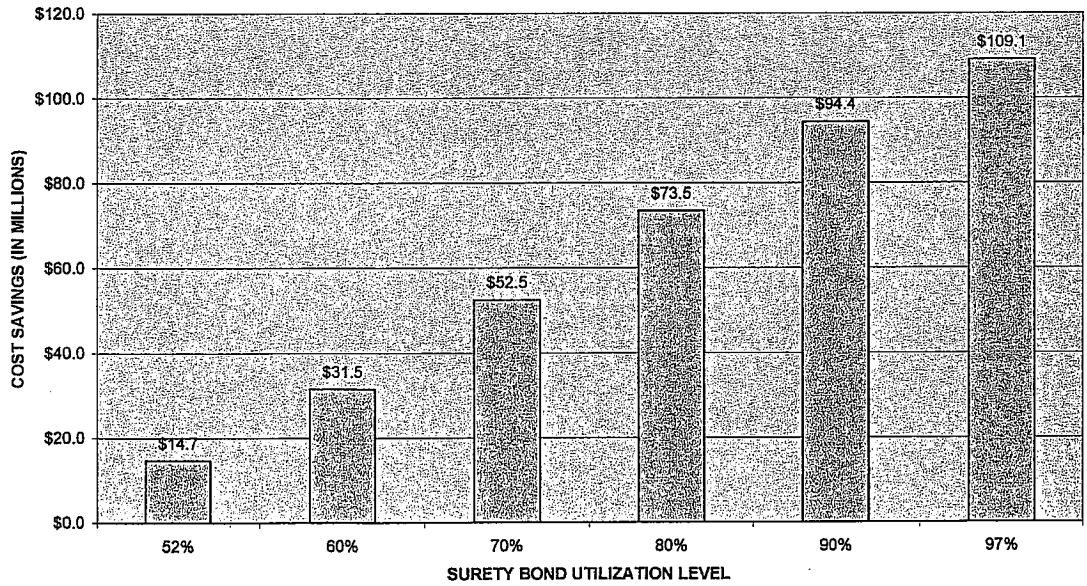


FIGURE B

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.

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

[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

[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,

[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]

[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 Rest can be in email

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

OWENS
BONDING CO.
Your Freedom is Our Business

March 7, 2011

House Corrections and Juvenile Justice Committee

RE: Written Comments in SUPPORT of HB2259

Ladies and Gentleman of the Committee:

Thank you for the opportunity to submit my written testimony in **Support** of HB2259. My name is Stephen Owens of Owens Bonding Inc. As a managing direct agent in the State of Kansas, I currently manage 15 agents that serve 50+ counties throughout the State of Kansas. We are underwritten by International Fidelity Insurance Company, a member of the AIA family of Surety Companies and have been operating for more than 10 years in this industry.

As a bondsman, it is my responsibility to ensure defendants appear in court. To put it simply, we operate as the courts "third-party accountability system". What happens if that accountability system is removed by allowing more and more defendants out on Own-Recognizance (OR) bonds?

1) **The Failure Appear Rates Increase Dramatically:**

This increase in Failure to Appear (FTA) rates is because virtually "NO ONE" is holding defendants accountable when they don't appear. With the increased use of OR bonds in Sedgwick County, there are nearly 13,000 warrants unfilled with only 5 warrant officers working only 40 hours per week (due to budget constraints) to apprehend these fugitives.

Numerous, very credible studies have established that the use of OR bonds directly correlates to higher FTA rates. Here are a few:

a) U.S. Department of Justice, through its Federal Bureau of Justice Statistics, measures performance of the two systems against each other. Their research was conducted in the nation's 75 most populous counties and their formal report was published at the end of 2007. *They found that failures to appear on unsecured releases were twice as high as those on surety bond.*

b) The Journal of Law and Economics published by the University of Chicago reports an extensive analysis of the performance difference between public versus private release pending trial. The conclusion was: *"Defendants released on surety bonds are 28% less likely to fail to appear than similar defendants released on their own recognizance",* that is, their unsecured promise to appear.

c) My agents and I released appx. 2353 defendants on surety bonds in 2010. Of those defendants, appx. 4%, or 95 defendants, failed to appear for court and of those 95 defendants, only 17 were not returned to custody. This represents .7% of defendants that were held unaccountable.

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-7-11
Attachment # 6-1

ExpertBail NETWORK TRUSTED BUSINESS 2010-2011

600 N Main St. Ste 200 Wichita KS 67203 / Office: (316) 337-5953 / Fax: (316) 337-5954 / stephen@owensbonding.com / www.owensbonding.com

2) **A Greater Number of Crime Victims:**

Programs promoting unsecured release are proven to be public safety dangers. There is no question that persons with unsecured releases commit more crimes while released than do persons whose release is financially secured. Here is a portion of the evidence on that.

a) The U.S. Department of Justice's Bureau of Justice Statistics *shows the recidivism rate, while on release, at almost twice as high for unsecured release as for secured release.*

b) The University of Chicago Study mentioned earlier also concludes a significantly higher rearrest rate for those on unsecured release.

3) **A Great Monetary Loss to the County:**

It has been clearly shown that an unacceptably high percentage of persons on unsecured pretrial release never come back to court. Can this high failure to appear rate be translated into financial costs to local governments? It can. For a few examples, consider;

a) The fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping is a very thorough study performed by highly credentialed scholars, and they remark that: *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. 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 result when high failure-to-appear (FTA) and fugitive rates reduce expected punishments.*

b) When persons on unsecured release abscond, the forfeited bail amount goes uncollected. These mounting debts have reached staggering sums in every county having a Pretrial Release Agency. Note: If those persons had been on secured release, they would either have been returned to custody by the surety or the bail amount would be paid in full. The Philadelphia Enquirer recently reported that uncollected bail forfeitures there exceed One Billion Dollars.

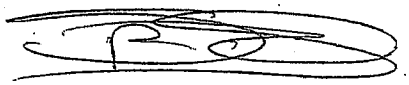
The evidence is clear; Own Recognizance bonds DO NOT enforce the mandatory court requirement that defendants be held accountable for their alleged criminal activity. Actually, OR bonds send the wrong message to those who are accused of a crime. That message is simple: "Don't worry, if you get arrested, we will let you out at no cost to you, and although you may be supervised, if you don't come to court, it's OK, we can't afford to come after you." Is this the message that we want to send to these defendants?

With the likelihood of a defendant failing to appear being twice, three, four times higher on an OR bond...Committee members I ask this question: If it was your home, your family, your friends that were victimized, wouldn't you want your day in court? Would you prefer the defendant be watched over by an agency that has a vested financial interest in that individual who WILL go after them if they fail to appear? Or would you prefer he/she be let out and "promise" to appear with no repercussion if he/she doesn't appear?

Ladies and Gentleman of the committee, HB2259 attempts to put limits on Own Recognizance bonds that only make sense. While there is a time and place for OR Bonds, defendants that have failed to appear, who aren't Kansas residents, or who are career criminals should not and cannot be trusted on their "word" to appear.

In conclusion, some would argue that OR bonds are the only option to reduce jail overcrowding. I would ask, what is the true cost of reducing jail overcrowding? What would the public prefer if they understood what is at stake? The answer is clear. Bondsman hold defendants accountable, government agencies cannot afford to.

Respectfully Submitted,



Stephen Owens, President

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1 b)., on page 1: Helland and Tabarrok, The
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Fugitive: Evidence On Public
Versus Private Bail Enforcement
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University of Chicago

SHANE'S

AARECORP BONDING
BAIL BOND AGENCY

Date: March 7, 2011

TO: House Corrections and Juvenile Justice Committee

RE: Written Comment in SUPPORT of HB 2259

House Corrections and Juvenile Justice Committee
2011 Session
Date 3-7-11
Attachment # 7-1

My name is Shane Rolf, I have been a bail bondsman in Olathe, Kansas for the past 25 years. In that time, I have posted bonds for tens of thousands of criminal defendants. I have been a constant observer of the pre-trial release process in Johnson County. I would like to speak in support of House Bill 2259.

The changes in this bill would create statutory parameters for the setting of Own Recognizance Bonds [OR Bonds]. Currently, no such parameters are codified for OR bonds, although the Legislature has set parameters for a 10% deposit option [Typically referred to as an ORCD bond].

The parameters that this bill suggests for OR bonds are slightly more stringent than the parameters established for ORCD bonds. OR bonds would only be an option for defendants who are Kansas residents, who have a minimal criminal history, and who do not have a history of failing to appear in court[1]. Additionally, OR bonds would only be available for crimes wherein the most serious charged offense is a low-level, non-personal felony charge or a misdemeanor offense.

Truth be told, most judges, except for the most activist types, already have an informal filtering process similar to this in determining when and to whom to grant OR bonds. In fact, the filters that are currently in place for ORCD bonds were derived from strictures developed by the Johnson County Criminal Bench/Bar committee. We believe that this filtering process should not be simply informal and should be codified.

Problems Inherent with O.R. Bonds

OR bonds (and to a lesser extend ORCD bonds) have certain fatal flaws, flaws that render them essentially meaningless as a guarantee or an incentive for appearance. The criminal defendant, with no additional backing, guarantees to pay the full amount of the bond in the event he fails to appear. However, if he fails to appear, then he is not around to make good on that guarantee. The old axiom that "you can't get blood from a stone" is exponentially more accurate when the proverbial "stone" is missing.

[1] Every study of the pre-trial release process indicates that a history of failure to appear is the most reliable predictor of future failure to appear.

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House Corrections + Juv. Justice
3-7-11 Attachment 7-1

Additionally, these criminal defendants are often charged with crimes such as theft, lying to the police, escape from custody, forgery, welfare fraud, making false writing, criminal non-support, etc. Individuals who are willing to steal from others, lie to and flee from the police, abandon and fail to support their own children and commit a host of additional offenses wherein they have victimized other people, those individuals generally have no real compunction about stealing – in essence – from the government by dishonoring their bond agreements.

Finally, in practice, even when the State actually pursues and obtains a Judgment on an OR bond, it is never enforced. This judgment is often uncollectable. This renders the amount of bond set meaningless. The criminal defendant who flees doesn't care if his bond is $1,000 or $100,000; he isn't planning on paying either one (and it is unlikely that he ever will be required to do so).

As an example, The City of Philadelphia, Pennsylvania essentially did away with its private bail bondsmen in the early 1970s, relying instead on OR and ORCD bonds. It was hailed a "model" program[2], an example of how the Criminal Justice System could move away from the use of commercial bail and suffer no ill effects. However, in 2009, the Philadelphia Inquirer began looking into the efficacy of this "model program[3]." In its expose, the newspaper revealed that criminal defendants owed the city over **$1 BILLION** in forfeited bail. The authors wrote: "It is a system that renders meaningless the threat of seizure of bail money, fueling a massive fugitive problem and leading to an astronomical amount of uncollected debt." As an example of how farcical this "model program" had become in Philadelphia, it was revealed in the Philadelphia Inquirer On March 2 of this year – that over six hundred *current* City employees owed over a million dollars in forfeited bail and costs.

In short, an OR bond is truly a "get out of jail free card," and as such should only be used in limited circumstances, such as the guidelines set forth in this bill.

Emblematic Example of O.R. Overuse

While I was working on this testimony – just this past Friday – I received a phone call from an inmate at the Johnson County jail trying to post bond. His situation was illustrative of the overuse of OR Bonds. Richard Hughes [Case # 04CR2114] was arrested in 2004 for writing two bad checks. This case, a relatively minor misdemeanor, is still unresolved after 6 ½ years. This is a synopsis of his case:

9/7/04 Arrested, bond set at $250 Cash or Surety
9/7/04 Bond modified to $250 OR
10/8/04 Defendant Fails to Appear, Bond Forfeited
2/10/05 Arrested on bench warrant, bond $500 Cash or Surety
3/4/05 Bond modified to $1,000 OR

[2] Bail Decision Making in Philadelphia, Goldkamp, John (1978)
[3] Philadelphia Inquirer, Feb 8, 2009, Phillips, N and McCoy, C., "Fugitives owe the city $1 Billion"

7-2

4/26/05 OR Bond posted[4]
5/27/05 Defendant Fails to Appear, Bond Forfeited
2/10/06 Judgment on Bond granted
10/11/07 Arrested on bench warrant, bond $3,000 Cash or Surety
10/19/07 Bond modified to $1,000 OR
12/21/07 Defendant Fails to Appear, Bond Forfeited
9/30/08 Judgment on Bond granted
2/25/11 Arrested on Bench warrant, bond $1,500 Cash or Surety
3/4/11 Request for Discovery filed (by defense counsel)

While there is an indication that Mr. Hughes probably should not have been granted the first OR bond[5], common sense tells us that the next two should not even have been considered. I asked Mr. Hughes why he had waited so long to call us about posting bond (it had been 9 days since he was arrested), he told me that he waited to go to court to see if the judge would give him a signature bond (the judge did not). When I pointed out that he had already missed court several times and asked him why he would have thought that the Court would even consider giving him a PR bond, he replied: "Well, they've done it before."

Note that the last entry is a request for discovery. The defense attorney realizes that this has become a very old case and a conviction may now be difficult to obtain. If this is the case, then Mr. Hughes will have beaten this charge by his repeated failures to appear. Additionally, he now has two separate $1,000 bond judgments against him, which will never be paid and which provided absolutely no incentive for him to appear as ordered.

This is simply one minor misdemeanor case, but sadly, it is not unique. It is very demonstrative of how the overuse of OR bonds can lead to a revolving door scenario.

Private Bail vs. Pre-Trial Release Programs

I want to stress that this bill is not a criticism of the current "bond supervision" programs currently in place in certain counties, including Johnson County. These programs can be a valuable addition to traditional bail to help monitor enforcement of pre-trial release conditions. Unfortunately, the national organizations that advocate Pre-Trial release programs are openly hostile to commercial bail and include the absolute abolition of all financial bail is a part of their mission statements. As such, both groups have viewed the other with suspicion and hostility.

However, the truth is that traditional bail and "Bond supervision" compliment each other very well. Each has its strengths and weaknesses. Traditional surety bail does an excellent job of ensuring appearance, and when there is a failure to appear, taking steps to return missing

[4] Mr. Hughes had been serving a sentence from the Olathe Municipal Court, which was the reason for the delay in posting the PR bond

[5] A review of Johnson County Court records shows earlier failures to appear in 1999 and 1994 criminal cases

defendants to court. This is not a strength of "bond supervision" programs. However, "bond supervision" does an excellent job of monitoring the non-appearance related conditions of bond, most specifically testing for drug and alcohol use. Those defendants who continue to abuse drugs and alcohol are often the same defendants who will ultimately attempt to flee or engage in additional negative behavior. Close monitoring of appropriate defendants can have a positive impact on the pre-trial release process.

In Johnson County, most defendants who are placed on bond supervision are subject to a traditional cash or surety bond as well. As such, in most cases, Johnson County gets the benefits of the best aspects of each program. However, these complimentary benefits are not afforded when OR bonds are overused.

Thank you for your time and consideration. I hope that you will agree that the Legislature should establish certain parameters around the issuing of OR bonds.

Shane Rolf

MOREY BONDING COMPANY
3316 S. BROADWAY
WICHITA, KS 67216
(316) 992-4040 OR (316) 522-4141

Date: March 7, 2011

To: House Corrections and Juvenile Justice Committee

RE: Written Comments in SUPPORT OF HB2259

Good afternoon Chairwoman and member of the committee, my name is Michael Crow and I am a Professional Bondsman in the State of Kansas. I am writing in support of HB2259.

A Professional Bondsman's job is to guarantee the defendant's appearance in court, nothing more, and nothing less. We do this well. Our company, Morey Bonding Company, of which I am co-owner, has been operating successfully and responsibly for over 35 years. We have over a 95 % success rate in insuring our clients go to court. We have paid the bond forfeiture costs on the remaining 5%.

Although it is my opinion, jail overcrowding should never be considered when a Bond Amount or condition is set, it is the opinions of some that an OR bond helps reduce the jail population greatly. While it may be true for those within these new OR guidelines, those outside of these guidelines are either repeat offenders, individuals who have showed contempt for the requirement to appear in court, or charged with serious crimes. An OR bond can actually increase the jail population by creating a revolving door. They OR out, don't appear in court, go to jail, OR out, don't appear in court, go to jail. There is no monetary penalty for this except to the tax payer who funds this cycle.

A Professional Bondsman saves the tax payers' money by reducing the court's docket load by reducing the failure to appear by defendants in the courts by getting most of their client's to court, thus eliminating the revolving door. If our clients do miss court, we insure that they are located. In most cases, they return to most courts on "walk in dockets", saving tax payers more tax dollars. If we do not produce the defendants; we pay a substantial monetary penalty. We work 24 hours a day, 7 days a week. We bond clients from jail at all hours and in all weather conditions, unless the court restricts or delays their release. In most cases, they did not have to appear in court before a bail bond is posted. This reduces the cost off containment of an inmate, which saves the tax payers money.

I want to thank you for your time and your understanding of this issue. I ask that you support our efforts to protect our business and save tax payers money.

Michael Crow
Morey Bonding Company

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-7-11
Attachment # 8

SEDGWICK COUNTY
DEPARTMENT OF CORRECTIONS

Mark Masterson, Director

Administration Office
700 S. Hydraulic, Wichita KS 67211-2704
(316) 660-9750
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www.sedgwickcounty.org

Presented To: Kansas House Standing Committee on Corrections and Juvenile Justice

Presenter: Mark Masterson, Director, Sedgwick County Department of Corrections

Date: March 7, 2011

RE: Testimony Opposing HB 2259

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-7-11
Attachment # 9-1

Chairwoman Colloton and Committee Members,

I am Mark Masterson, Director of Sedgwick County Department of Corrections and I am here today to share with you that Sedgwick County does not support the changes proposed in HB 2259 regarding criminal procedure and appearance bonds. We have a local process approved by the Judiciary that works well in managing the high number of individuals that are arrested and booked at the Sedgwick County Adult Detention Facility. My role in the local process is to operate Pretrial Services and I would like to briefly provide information about what we do and how it works.

The Pretrial Services Program was implemented in 1994 for the purpose of lowering the inmate population in the jail by providing an effective supervision program for accused adults who cannot afford to post bond on their own. The program continues with that same mission today. The assertion that Pretrial Services is in competition with the bail bond industry is not true. In fact, decisions were made at program inception, and reviewed several times over the years, to target indigent inmates to avoid competition with bondsmen.

In Sedgwick County 30,000 adults are arrested by law enforcement and booked each year at the Adult Detention Facility. They are positively identified and processed to determine if are eligible to be released without a hearing, using a bonding schedule set by the courts. The schedule is based upon the charges in the police report and specifies those who can be released on their own recognizance (OR bond) or the amount of bond required for certain offenses. In 2009, there were 11,790 individuals booked and released on OR bonds. HB 2259 would do away with bond schedules and require each individual to go before a judge prior to being released from jail.

It is our position that the current statute and practice works well and allows flexibility at the local level in managing detention and release decisions without increasing costs for more court hearings or jail space.

The Pretrial Services staff screens inmates six days a week and provides timely information and recommendations to the courts in order to assist the judge in making informed bond decisions for those that did not get released under the bond schedule. Judges hold hearings twice a day, five days a week to make these decisions. They assign defendants to the program to ensure their appearance at court and their compliance with bond conditions. Staff provides

monitoring and supervision, performs substance abuse testing, sends automated court reminders, uses electronic monitoring as appropriate, verifies residence, and meets with clients weekly to assist with problems and make referrals to community resources. The courts have respect for our program and know our policies and procedures are sound.

In 2010 the average number of adults per day supervised on the program was 277. Staff screened 1736 inmates and recommended 46% (791) for release onto the program. The court also assigns defendants that we do not recommend, when they could pay a high bond. These are typically individuals arrested for serious crimes and the court wants them supervised by our staff, even when a private bonding company is involved.

Sedgwick County is implementing proven programs to reduce cost and avoid the need to build more jail space. Pretrial Services is assisting the County in those efforts. In 2010, Wichita State University completed a study and found the program saved the County between 50,000 and 110,000 jail bed days, with a net savings between $2M and $5.4M. We urge you to reject the changes proposed in HB 2259 and continue to allow the local judiciary the discretion to establish efficient local practices that protect public safety.

Thank you for the opportunity to testify on this matter. I have attached a report showing costs and performance data for the Pretrial Services Program for your information.

Division of Public Safety
Department of Corrections
Pretrial Services Program (PSP)

Goal: To provide an effective community-based supervision program as an alternative to incarceration in the jail for accused adults who cannot post bond pending future court hearings.

Objectives:

- To reduce the number of inmates in the jail by increasing the annual average daily population on PSP to 300 or more.
- To increase the percentage of successful discharges on PSP to 65% or more.
- To reduce the percent of PSP clients forfeiting bonds for failing to appear for Court to 3% or less.
- To maintain bond revocations on PSP clients for new crimes at 7% or less.
- To maintain bond revocations on PSP clients for technical violations to 25% or less.

Performance Measures	2003 – 2007 Five Year Average	2008 Actual	2009 Actual	2010 Actual	2011 Projected	2012 Estimated
Average daily population	160	172	215 *	277	300	300
Percent successful discharges	56	57	62	66	65	65
Percent bond forfeitures (failure to appear)	7	1	2	7	3	3
Percent bond revocations for new crimes	8	11	8	7	7	7
Percent bond revocations for technical violations	29	31	28	20	25	25
Actual unit cost per day	$8.25	$8.44	$6.99	$7.07		
Number of clients served	917	952	1,331	1,743	1,800	1,875

*Growth reflects increased use by Municipal Courts beginning August 2009. The 4th quarter ADP grew to 248.

CHAMBERS OF:
KEVIN P. MORIARTY
DISTRICT JUDGE
DIVISION NO. 14

MONICA BROCKLING
ADMINISTRATIVE ASSISTANT
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DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

Johnson County Opposes House Bill 2259
Testimony in opposition
House Correction and Juvenile Justice Committee
March 7, 2011

Honorable Pat Colloton and Members of the Committee:

On behalf of the District Court Judges of the 10th Judicial District Court-Johnson County and in consultation with District Attorney Steve Howe, Johnson County opposes the implementation of HB 2259. Johnson County has ordered pretrial supervision since 1996 when it was primarily used for domestic violence cases. In 2004, it was expanded to include all criminal cases. In 2010, average daily caseload of defendants released on pretrial status was 525 a month. This occurs after a screening process and bond report is issued to the court at the time of first appearance on cases that have met prescribed local criteria for bond supervision. This program is shared with many stakeholders including the District Court, District Attorney, Public Defender, Community Corrections who provides the screening services and Court Services who provides the supervision component.

Those placed on bond supervision are generally deemed by the court to be at a higher risk to not appear or reoffend. These defendants are generally receiving face to face supervision and have requirements to complete urinalysis testing, maintain employment and have no contact orders closely monitored. Judges have come to trust this form of pretrial release for more insurance of compliance and public safety, many times in conjunction with a financial bond.

In addition, in 2010, Johnson County completed a program assessment of our program through one of the leading national agencies on pretrial services, the

Pretrial Justice Institute. We are in the process of implementing recommendations from this study to keep our program in line with current evidence-based practices.

Decisions at first appearance require a delicate balance of protecting the rights of those not yet convicted with public safety. We strongly feel that this is the role of the judiciary. We do not support legislation that prescribes this decision process by setting requirements for findings to be made. In particular, judges of the 10th Judicial Distract feel HB 2259 will result in decreasing discretion needed by the court to move cases forward and to allow for release as deemed appropriate. As proposed, HB 2259 could cause courts to set higher bonds than are needed to insure appearance that places undue hardships on the families who typically post the bonds and may potentially increase jail population.

We strongly urge you to not support HB 2259 and to continue to allow judges and individual jurisdictions to employ the methodology that works best for their community to make release decisions.

KANSAS DISTRICT COURT

Chambers of
NANCY E. PARRISH
Chief Judge

Shawnee County Courthouse
Division Fourteen
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4067
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Officers:
NORMA DUNNAWAY
Administrative Assistant
APRIL SHEPARD
Official Court Reporter

Testimony in Opposition to House Bill 2259
House Corrections and Juvenile Justice Committee
March 7, 2011

Thank you for the opportunity to appear in strong opposition to House Bill 2259. I appear personally and also on behalf of the Kansas District Judges Association.

H.B. 2259 severely limits a judge's discretion to allow a defendant to bond out of jail on his or her own recognizance. As introduced, H.B. 2259 also requires a judge to make findings on the record that the amount of the bond is sufficient to assure the appearance of the person and to assure the public safety.

My current assignment is hearing felony criminal cases. In my experience, felony defendants are rarely granted an OR bond when they initially are arrested. However, I do receive motions for OR bonds at two stages. The first one is after a defendant is arraigned on a lower level felony charge in which the sentence would be presumptive probation upon conviction of the charge(s). The defense counsel will move for an OR bond and the assistant district attorney will not object because of the time constraints in getting a detained person to trial. If a defendant remains in jail (and is only held on one case), the speedy trial statute requires the defendant be brought to trial within 90 days of his arraignment. If a defendant is not brought to trial within 90 days, the case would have to be dismissed. However, if a defendant is out on bond, the county or district attorney has 180 days to bring the defendant to trial.

Currently, all of our felony judges in Shawnee County stack three to six jury trials each week, hoping that some of the cases will resolve. If judges' discretion to allow OR bonds is restricted, many more defendants would remain in jail and would have to be brought to trial in 90 days. In order to avoid dismissal of cases, courts would need more judges than we have now to hear these trials within that 90 day time period.

The second situation in which I have granted OR bonds is after a defendant has entered a plea to a crime in which he or she will be granted probation. The granting of an OR bond after plea typically is part of the plea agreement, and the assistant district attorney joins

in the request for an OR bond. Keeping the defendant in jail until his sentencing appears to me to be a waste of jail space and taxpayers' money. The defendant will be placed on probation when sentenced and therefore is not likely to fail to appear for his sentencing. If released on an OR bond, the defendant would be supervised by Court Services until the sentencing. I have attached to my testimony the sentencing grid under sentencing guidelines. As you can see from the grid, many defendants eligible for probation would be ineligible for an OR bond under this bill. Only those defendants that are charged with a misdemeanor or charged with a level 8, 9 or 10 nonperson felony or a drug severity 4 felony and have either an H or I criminal history would be eligible for OR bonds.

Other situations in which OR bonds are used is when a defendant has a hold from another jurisdiction. Occasionally an OR bond is granted so that another jurisdiction can deal with a more serious case pending in that jurisdiction. Under H. B. 2259, these defendants would be ineligible to receive an OR bond because a hold from another jurisdiction makes the defendant ineligible for an OR bond.

Finally, OR bonds at times are granted in traffic and misdemeanor cases when the defendant initially is arrested. If a defendant has a job, the defendant is more likely to be able to hire his or her own attorney. If the defendant loses his or her job due to his detention in jail and the defendant becomes indigent, the defendant is eligible for court appointed counsel. If the charge is a felony the State pays for the attorney; if the charge is a traffic or misdemeanor, the County pays for the attorney. At sentencing, the defendant would be ordered to reimburse for attorneys fees, but collection can be slow and difficult.

Finally, the requirement to make findings on the record would be problematic when a defendant makes his first appearance in court. In Shawnee County, those First Appearances are conducted through video to the jail, and we do not use court reporters to take the record nor do we use digital recordings. For our judicial district, the requirement of a record would involve additional costs to the taxpayer in purchasing another digital recorder.

I am not aware of any problem(s) that H.B. 2259 would solve, but it certainly will create problems for the courts and the jails. Very few defendants would qualify under the eligibility restrictions in this bill and therefore more defendants will remain in jail prior to trial. This will increase the jail population and will make it impossible for the courts to get defendants to trial within the statutory speedy trial deadlines.

I appreciate the opportunity to testify in opposition to H.B. 2259 and I'd be glad to answer any questions.

SENTENCING RANGE – DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-2

18 months (up to) for felonies classified in Severity Level 3
and, on and after July 1, 2009, felony cases sentenced pursuant to K.S.A. 2010 Supp. 21-4729 (SB 123)

12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-2

24 months for felonies classified in Severity Level 3

12 months for felonies classified in Severity Level 4 except for some
K.S.A. 2010 Supp 21-36a06 (K.S.A. 65-4160 and 65-4162) offenses on and after 11/01/03.

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-3

12 months for felonies classified in Severity Level 4

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5

24 months recommended for felonies classified in Severity Levels 6-7

18 months (up to) for felonies classified in Severity Level 8

12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4

24 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-6

12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

March 7, 2011

To: House Corrections Committee

From: Mr. Charles Peaster, Bentley, KS (Sedgwick County)

Testimony opposing HB 2259

Many local governments are having problems with overcrowding in their jails. A large part of the overcrowding problem is created by state laws. HB 2259 if adopted in its current form would make this overcrowding problem dramatically worse.

That is why I am here today to oppose this bill. HB 2259 would dramatically increase the number of poor people, in many cases folks charged with misdemeanors and minor charges, in jail until a full court hearing to set bail could be held. Today, in my county, there is a standard list of bail amounts for misdemeanors and lower level felonies so there is no need for the additional bureaucratic paperwork and delay for lower level criminal charges. This bill is a way to clog jails while expanding the cost to people who have been charged, but not convicted of misdemeanor charges.

HB 2259 would require that local units set up courts of record just to establish bail. This would result in increased demand for bail bondsmen.

My county, Sedgwick, has been facing challenges with jail overcrowding. My county commissioner, Karl Peterjohn, has told me that there are close to 200 convicted felons who are serving their sentences in the Sedgwick County jail today because that is what state law requires.

If the expanded DUI felony law takes effect on schedule as of July 1, 2011, this number could grow dramatically. If the process of providing bail or setting own recognizance for charges is limited by state law, the number of people being held in county jails across this state will increase dramatically. I know this is a problem since I have regularly attended the CJCC meetings held in Sedgwick County that is working to address jail overcrowding.

There might be a need for more people who have been convicted of crimes being held in state prison. However, the most serious people who have been convicted of felonies are serving their sentences in state prisons under the KS Dept. of Corrections, and not in county jails. It is the reduction in beds in the state prison system that is putting the safety of Kansans at risk. Clogging the criminal justice system detention facilities with people who have been charged with low level charges is not enhancing public safety.

We need to keep our citizens as safe as possible at as reasonable a cost as possible. HB 2259 will cost local taxpayers additional funds for courts, for court staff, for paperwork delays, expanded people in custody, increased municipal jail fees, and not increase public safety. I urge this committee to defeat this bill.

SEDGWICK COUNTY, KANSAS

SHERIFF'S OFFICE
ROBERT HINSHAW
Sheriff

141 WEST ELM * WICHITA, KANSAS 67203 * TELEPHONE: (316) 383-7264 * FAX: (316) 660-3248

TESTIMONY HB 2259
House Standing Committee on Corrections and Juvenile Justice
March 7, 2011

Madame Chairperson Colloton and members of the committee, my name is Robert Hinshaw, Sheriff of Sedgwick County. Thank you for the opportunity to provide this written testimony on behalf of Sedgwick County in opposition to HB 2259.

The Sedgwick County Sheriff's Office strongly opposes HB 2259 which modifies current statutory language to require judges "state for the record" the reasons of granting an "own recognizance" (OR) bond. Currently, Sedgwick County has a bond schedule in place with criteria set by the judiciary that establishes who can be released on an OR bond, which typically is those accused of minor crimes. With current judiciary criteria in place, these individuals spend limited time in the custody of the Sheriff, thus having minimal affect on overall long term jail population.. Even though there is not sufficient evidence presented to show HB 2259 would increase public safety, it would in fact take away statutory authority of the judiciary and at the same time lead to dramatic increases in inmate population in many already overcrowded county jails in the more urban, higher populated counties of Kansas.

In opposition to HB 2259, it is our assertion that current statute and local practices work well allowing flexibility in controlling inmate population, managing detention and release decisions for minor crimes without increasing costs associated with the need for additional court hearings or increased jail space requirements due to extended stays while awaiting the required court appearances as recommended in the bill.

As a point of reference, there were 32,235 individuals booked into the Sedgwick County Detention facility in 2010. In January of 2011, there were 2644 people booked into the jail. Of those 2644, 786 (29.7%) were in custody for violations that fall under current judiciary criteria allowing for OR release. Actual release time for those 786 individuals varied between 1.57 hours and 17.38 hours based on actual charges with Domestic Violence offenders staying the longest and Miscellaneous Misdemeanants staying the shortest. Requiring those currently meeting OR release criteria to make mandatory court appearances, would change release times from as little as 1 ½ hours to possibly as much as three or more days depending on when the booking occurred, observed holidays, etc.

In opposition to HB 2259, we see only dramatic increased inmate populations, significant increases in operation costs, the loss of current judiciary authority which currently considers not only the need for public safety but also appropriate bond schedules, and a recommended bill with no factual guarantee of additional public safety.

Thank you Madame Chairperson for the opportunity to present this testimony.