

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2528**

As Agreed to March 26, 2010

**Brief\***

HB 2528 would amend current law on the court procedure for the forfeiture of an appearance bond. Specifically, the bill would:

- Add a provision establishing that an appearance bond would be revoked by the execution of a warrant for the defendant's arrest for a violation of a bond condition;
- Provide a court discretion to set aside a forfeiture, prior to the judgment of default, if the surety can provide the court a sworn affidavit setting forth details that the defendant is incarcerated somewhere within the United States;
- Require that no judgment may be entered against the obligor in an appearance bond until more than 60 days after notice is served on the clerk of the court; and
- Provide that no judgment may be entered against the obligor in an appearance bond more than 2 years after the defendant's failure to appear.

**Conference Committee Action**

The 2010 Conference Committee agreed to:

- Accept the Senate's amendment changing from 30 to 60 the number of days after which a judgment may be entered

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against the obligor in an appearance bond; and

- Increase from 1 to 2 the number of years after which no judgment may be entered against an obligor in an appearance bond.

### **Background**

Representatives of Owens Bonding, Inc. and the Kansas Professional Bail Bond Association appeared as proponents of HB 2528 in the House Committee. The President of the Kansas Professional Bail Bond Association and the American Bail Coalition also submitted written testimony in support of the bill. There were no opponents of the bill in the House Committee.

The House Committee recommended a substitute bill be passed, which restored the language of the forfeiture statute to current law, except that no default judgment shall be entered against the obligor in an appearance bond until more than 30 days, instead of 10 days as in current law, after notice is served.

The House Committee of the Whole amended the bill to:

- Add a provision establishing that an appearance bond would be revoked by the execution of a warrant for the defendant's arrest for a violation of a bond condition; and
- Provide a court discretion to set aside a forfeiture, prior to the judgment of default, if the surety can provide the court a sworn affidavit setting forth details that the defendant is incarcerated somewhere within the United States.

The proponent in the Senate Committee was an attorney representing the Kansas Professional Bail Bond Association and no opponents appeared.

The Senate Committee amended the bill to incorporate suggestions made by the attorney representing the Kansas Professional Bail Bond Association. The bill was amended to:

- Require that no judgment may be entered against the obligor in an appearance bond until more than 60 days after notice is served on the clerk of the court; and
- Provide that no judgment may be entered against the obligor in an appearance bond more than 1 year after the defendant's failure to appear.

The fiscal note indicates that the Office of Judicial Administration states that the bill would have no fiscal effect on the Judiciary, but it could reduce the amount of money collected from bond forfeitures, which would affect those currently receiving a portion of appearance bond revenue.

The Kansas Association of Counties states that the bill would require additional court mailings, the cost of which is borne by the counties. It is unable to estimate the number of mailings that the bill would generate, however, and therefore, cannot estimate the cost.

According to the fiscal note on the bill, as introduced, the State Board of Indigents' Defense Services (BIDS) received \$343,205 in bond forfeiture fees in FY 2009, an average of \$28,600 per month. Currently, BIDS receives monthly payments from the State Treasurer's Office. If HB 2528 were enacted, there would be a two-month delay in the receipt of fees, an amount that the Board must have to operate. Also, when defendants appear during the new 60-day time frame, the associated funding would be lost entirely. With the delay and diminished fees, the Board would have to look to the State General Fund to replace operating costs currently paid with forfeiture bonds. In addition, the bill relieves the bondsmen from the duty to advise whether the defendant is in custody in another jurisdiction. That burden would fall on the public defenders whose staff could not handle the extra work load.

The majority of defendants are out on bond. To determine whether those who fail to appear are incarcerated in another jurisdiction would require one support person for each of the six smaller public defender offices and at least two support people

in the three largest offices. The starting salary for the 12.00 FTE support positions would be \$324,000 from the State General Fund. Any fiscal effect associated with HB 2528 is not reflected in *The FY 2011 Governor's Budget Report*.

Judiciary; Courts; Bonds