



To: Senate Committee on Judiciary
From: Katie McElhinney, Municipal Judge
Date: March 20, 2024
Re: Opposition Testimony for HB 2755

On behalf of the City of Olathe, I stand in opposition to HB 2755. Of particular concern is the provision in Section 1 addressing a municipal judge's discretion to set bonds – specifically the ability to set lower cash amount bonds. Municipal courts need this flexibility as cash bonds motivate defendants to appear for court because if there is a guilty finding, there is a financial source to provide restitution to victims.

I have been on the bench serving as a Municipal Judge since 2010 for the cities of Olathe and Lenexa. I am also a past President of the Kansas Municipal Judge's Association (KMJA) having served several years on the executive committee. I previously worked as an Assistant District Attorney for 10 years in Shawnee County, so I am also familiar with district court processes.

HB 2755 has two main components, one that addresses discount bonding practices in district court cases and setting minimum standards for professional bonding companies. As a municipal judge, I have no issues with the portion of the bill amending K.S.A. 22-2809(b).

However, I am concerned with the proposed amendment to K.S.A 12-4301(a), which proposes to dictate how municipal judges set bonds on municipal bench warrants. Currently, the statute states: "Such appearance bond shall be set in an amount as determined by the municipal judge." Unfortunately, HB 2755 adds the following language: "*...and such amount shall be the same regardless of the method used to secure the appearance of the accused person*" which is problematic.

In Olathe Municipal Court, when defendants fail to appear for their court dates, a warrant is issued for their arrest and a bond is set. I give the defendants two options for how they can post their bond. A typical bond that I set on these bench warrants is "\$250 cash or \$1000 surety." Defendants who choose to post \$250 cash have their money held by the court until resolution of the case. Defendants who choose the surety option have their money go to a bonding company which then posts their bonds. Money paid to a surety is at least 10% (based on Section 2 of this bill) so defendants could pay \$100 and bond through the surety. There is nothing preventing a bonding company from charging 20-25% or even more to secure the bond.

The bonding companies argue that district courts are prohibited from using differing bond amounts per K.S.A 22-2802(5) and that municipal courts should have the same prohibition – so there is parity, and the two different court systems are subject to the same bond requirements. But what the bonding companies are leaving out in their amendment is that in misdemeanor

district court cases, the bond can be set at 10% cash deposit, which is a lower amount of cash paid directly to the district court. Allowing defendants to post a lower cash bond to the court is the very thing that municipal courts are already doing per K.S.A 12-4301 and what the bonding companies are complaining about.

The main consideration for any municipal court setting a bond amount is to secure the appearance of the defendant. Remember municipal courts are ONLY dealing with misdemeanors and simple traffic infractions, and the penalty for a vast majority of which involves fines only. Municipal judges, many of whom handle thousands of these cases every year, have a responsibility to resolve these cases and understand what bonds are most effective to ensure the appearance of municipal defendants in court. Municipal defendants who choose to post cash bonds know once their cases are resolved, their bonds (held by the Court) can be used to satisfy any unpaid restitution to victims, fines, and court costs, which motivates municipal defendants to appear. Defendants who choose to post bonds through a bonding company cannot use their bond money to help pay the costs of their cases.

One must ask, why do the bonding companies want to change the way that municipal courts set bonds on bench warrants? Are the bonding companies really concerned about parity between municipal courts and district courts? Or is it the fact their bottom line is affected when more municipal defendants opt to post a lower amount cash bond directly to the courts? It is no secret the number of municipal court cases in nearly every jurisdiction has greatly declined since COVID, so the income derived by the bonding companies has likely also declined. But asking the legislature to change the way municipal judges set bonds so bonding companies can get more business is just plain wrong.

My suggestion is for this committee to strike Section 1 of the amended bill and leave K.S.A 12-4301 as is. Municipal courts do not have the same issues as district courts involving discount bonds. Furthermore, the two court systems are vastly different as municipal courts are not dealing with violent felons, and as such, there is no need for municipal courts to have the same bond restrictions.

If the committee is not willing to strike Section 1 of the amended bill, then I suggest the committee strike this proposed language from Section 1: *"...and such amount shall be the same regardless of the method used to secure the appearance of the accused person"* as bonding companies should not be able to dictate and influence how municipal bonds are set in order to protect their bottom line.

Thank you for your consideration.

Hon. Katie McElhinney
Olathe Municipal Court
KMcElhinney@OlatheKS.org