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EIGHTEENTH JUDICIAL DISTRICT

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Neutral Testimony Regarding SB 157
Submitted by Aaron Breitenbach, Deputy District Attorney
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District

Honorable Chairwoman Humphries and Members of the House Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 157 on behalf of Marc Bennett, the District Attorney of the Eighteenth Judicial District. As a result of amendments to SB 157 in the Senate, I have moved from an opponent to a neutral conferee. In further consultation with the proponents, there are additional friendly amendments I believe we have agreed to. I offer my support of those amendments and my thoughts on one or two topics of relatively mild disagreement which remain.

First, the Senate amended SB 157 to address the sheriffs' concerns in subsection (a) by clarifying it is the court clerk's obligation to provide copies of warrants filed with the Court to sureties. As sureties will learn of the existence of a warrant upon the filing of the bond forfeiture, a copy of the warrant will generally not be needed unless a copy would be helpful weeks or months later when trying to apprehend a defendant in another jurisdiction. Accordingly, our proposed amendment clarifies that copies of warrants need only be provided upon request and that such requests (or answers to the same) need not be tied to the 14 days immediately following the issuance of the warrant.

Second, for clarity and to address concerns raised in the other chamber, the proponents now suggest separating their new forfeiture defense regarding deportation from the longstanding defense that a defendant is later incarcerated within subsection (c)(2)(A). As a standalone subsection (c)(2)(E), the proponents clarify the Court need not set aside a forfeiture if a defendant had an immigration detainer pending at the time the bond was posted. This is a welcome improvement and very necessary to avoid rewarding those who might seek to profit from helping a defendant avoid prosecution via a taxpayer funded trip to a foreign land.

In one of those areas of mild disagreement, I ask this committee to consider adding the following sentence to that subsection: *"The court shall not set aside a forfeiture under this subsection if a preponderance of the evidence establishes the surety or bail agent acting under the authority of the surety knew an immigration detainer was imminent or otherwise knew a defendant was subject to removal by the United States when the bond was posted."* This would help courts prevent bad faith behavior in this regard.

As a final matter, the current bill requires a court remit 95% of a forfeited appearance bond back to the surety if the defendant is returned to custody within 180 days after judgment is entered. Notably, this would be true whether the bondsman assists in the apprehension of the defendant or not.

First, recall the timeline of a bond forfeiture action. When a defendant fails to appear for court, a surety does not have to pay their obligated bond for at least 90 days by statute. In practice, that period is often longer. Second, while a defendant is on the run, the risk to victims and witnesses is particularly high, and the difficulty of trying a case as it gets older is obvious. I agree with the proponents that sureties should be incentivized to return a defendant to custody to resume the court process as soon as possible, and the pre-existing subsection (e) already authorizes courts to remit amounts to reward sureties who apprehend a defendant after payment of a bond forfeiture judgment. In Sedgwick County, our judges remit 75% of the payment if defendant is surrendered within 30 days, 50% if defendant is surrendered within 31-60 days, and 25% if defendant is surrendered within 61-90 days. Further remittals are within the discretion of the Chief Judge. Schedules like this exist in other counties in varying amounts.

In recent days, the proponents have provided insight in how neighboring states and others have remittal polices more in line with the subsection (e) language that passed the Senate. While I still have reservations about sureties receiving the vast majority of their forfeited bond back despite failing to do the job of insuring defendant's presence in court for several months, I have suggested an amendment to the proposed subsection (e)(2) that would graduate remittal over a longer period of time while maintaining some incentive to return defendants to custody sooner than later. I believe the proponents have drafted a proposed amendment that captures that concept, and I thank them for their thoughtful consideration of my concerns. Notably, they have also agreed to cap their recovery at 90% at the 90-day mark, which was my primary point of concern.

Given that last year's SB473 required bondsmen to collect at least 10% of the total bond amount as their fee for posting the bond, the surety could still turn a profit of at least 5% of the bond under the version passed by the Senate. While I recognize Oklahoma and other states permit as much as a 100% remittal upon return to custody within 180 days (or longer), I questioned the public policy of allowing a bondsman to profit despite materially breaching their contract with the Court for months. By capping their recovery at 90%, the proponents have removed (or at least demonstrably lessened) that likelihood.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Aaron Breitenbach
Deputy District Attorney