



**OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT**

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

Honorable Chairman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 157. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I come to ask you to hold bondsman liable to the contracts they sign to assure the timely presence of criminal defendants in court.

The Kansas Constitution affords all criminal defendants (except those charged with capital murder) the opportunity to post a pre-trial bond. In minor offenses, defendants are often released on their own recognizance. However, more serious cases, defendants often must obtain a professional surety to ensure someone will be responsible for their presence at future court proceedings. This helps provide some additional protection to the community from defendants awaiting trial while also helping the criminal justice system run more efficiently by avoiding cases being delayed by failures to appear.

The bonding process is based upon two fundamental contractual relationships:

- 1) defendants agree to pay the bondsman for the benefit of their freedom; and
- 2) bondsmen promise the court to ensure the defendant's bond compliance and appearance as ordered.

Like any contract, there are risks the other party won't hold up their end of the bargain, so some penalty must exist to keep both parties accountable.

SB 157's amendments to K.S.A. 22-2807(c)(2)(A) essentially remove any penalty from a defendant or bondsman for a defendant fleeing the country. In fact, a bondsman is arguably incentivized to allow a defendant to flee the country. They can collect whatever fee they can negotiate from an inmate to bond them out, allow them to leave the country, and then simply attest that they've left without having to risk forfeiting the amount they promised the Court they would pay if a defendant failed to appear.

Other portions of the bill also require a sheriff to notify a bondsman a warrant has issued. First, the language is inconsistent whether a copy must be "provided" or made "available." Unlike a law enforcement officer, who needs a copy or notice of an arrest warrant to apprehend someone, a bondsman can apprehend a bonded individual under

their inherent authority to recall a bond, let alone enforce a court's order to return them to court. If the concern is a bondsman may need a copy of the arrest warrant to assist them in securing the help of others to apprehend a defendant, note the potential conflict with K.S.A. 21-5906, Criminal Disclosure of a Warrant. If the concern is a surety not knowing a warrant has been issued for one of their clients, they receive notice of the bond forfeiture through the court clerk pursuant to K.S.A. 22-2807(d). If the legislature believes a copy of the warrant should also be provided, subject to the limitations in K.S.A. 21-5906, why would service through the court clerk not be sufficient? Otherwise, will the sheriff have to personally serve a bondsman with a copy of the warrant? What if a surety avoids service? Currently, a bondsman is responsible for monitoring the whereabouts, court dates, and status of their clients' cases. It's an expectation of their contractual relationship with the court, for which they are justly compensated by their client. This amendment makes it the sheriff's obligation to notify the bondsman when the defendant and bondsman have failed their obligations...while the Sheriff also must begin the process of attempting to find and arrest the defendant on behalf of the Court.

Finally, having been relieved of their obligation to keep a defendant in the country and know whether they have complied with their bond conditions, SB157 requires a court to give 95% of the appearance bond back to a surety (assuming they have otherwise been required to pay the bond) if defendant is returned within 180 days of judgment.

First, keep in mind the timeline of a bond forfeiture action. If a defendant fails to appear today for court, a surety will not have to pay a dollar of their obligated bond for at least 60 days by statute. In practice, that period is more than 90 days. 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. Sureties should be incentivized to return a defendant to custody to resume the court process as soon as possible. The current 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.

The proposed subsection (e)(2) would guarantee 95% recovery of a bond payment despite a defendant failing to appear in court for, in reality, at least 8-9 months, during which time untold harm could befall the State's case (most notably the victims and witnesses). And don't forget, bondsmen are obligated to collect *at least* 10% of the total bond amount up front, which means that even after failing to honor their obligations to the court for close to a year, the surety pockets a profit of at least 5% of the bond.

Last year, the legislature passed a series of amendments regulating the professional sureties to address a variety of ills. Those concerns included the low amount and varying forms of collateral being accepted to bond someone out, felons working on behalf of sureties, etc. In my county, the courts had such concerns about the surety industry that bond amounts had escalated significantly over the years. In the past few months, we have begun to see the effects of last year's legislation with more consistency in best practices for professional sureties and required bond amounts are starting to decrease in our county as a result. This is good news.

SB 157 reverses this positive momentum and endangers the public by increasing the likelihood criminals (particularly foreign nationals, those with ties to other countries, or those with financial means to flee the country) will not only be released from custody awaiting trial but will never face punishment for the crimes committed in our communities. And who would be most likely to take those steps: Those facing the most serious charges whom victims and communities are most interested in seeing held accountable. If courts believe there is less likelihood of enforcing their contractual relationship with sureties, they may again start increasing bond amounts to put pressure on the contractual relationship between defendants and bondsmen. To protect our communities and give our victims the best opportunity to obtain justice by making sure defendants appear in court, I implore you to reject this bill.

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

Respectfully submitted,

Aaron Breitenbach  
Deputy District Attorney