



**Senate Judiciary Committee
February 13, 2025
Senate Bill 188
Testimony of the BIDS Legislative Committee
Presented by Jennifer Roth
Neutral**

Dear Chair Warren and Members of the Committee:

We provide this testimony to give this Committee a few things to think about as it considers the policy changes proposed in Senate Bill 188. Because of time constraints, this testimony is likely to prompt more questions than it answers. We are willing to consult with our colleagues statewide (85% of felony criminal cases are handled by our agency/attorneys compensated through our agency, so our network is vast) if there are questions about how bond works on a daily basis.

It has long been the law of Kansas that conditions of release are to “assure the appearance of [a] person...and to assure the public safety.” *See* K.S.A. 22-2802(1). There are basically three ways for a person to be released while they are presumed innocent: (1) pay a surety a minimum of 10% of the amount of the bond, then the surety will post the bond (and the money will never be returned to the person who paid it); (2) pay the full amount of the bond in cash (which is deposited with the court and returned if the person complies on bond); or (3) not pay any money up front (“own recognizance”, known as OR bonds).¹

We would draw this Committee’s attention to the work of our state’s Pretrial Justice Task Force.² Formed in 2018, the Task Force released a report in 2020. The report’s conclusions included that “liberty is the norm and detention is the carefully limited exception” and “judges should first consider nonmonetary forms of release.” When the Task Force began, 53% of people in local jails had not yet been convicted of a crime. Two months ago, the Criminal Pretrial Practices and Procedures Advisory Committee was formed to implement the Task Force’s recommendations.³

A concerning change

Under the amendments to K.S.A. 22-2815 proposed in Section 11 (pages 12-13), a person “detained and charged, or to be charged, with” certain charges could not be released unless they pay a surety a portion of the bond or pay cash for the full amount of the bond.

¹ There is another way, where a person can pay 10% of a \$2,500 OR cash deposit bond to the court (and they would receive their money back if they comply with bond), but it applies to only a select category of people. *See* K.S.A. 22-2802(5). At the request of compensated sureties in 2007, this category was created by 2007 SB 103, which prohibited any other accused people from having access to OR cash deposit bonds.

² <https://kscourts.gov/About-the-Courts/Court-Administration/Court-Initiatives/Pretrial-Justice-Task-Force>

³ <https://kscourts.gov/Newsroom/News-Releases/News/2024-News-Releases/December-2024/Supreme-Court-creates-committee-on-pretrial-detent>

While there are a few charges on this list that are hard to argue with, there are others that do not belong there. For example, the list includes all forms of aggravated battery, which range from severity levels 3-8 (actually, all the way to severity level 10—the lowest level on the sentencing grid—if attempts are included). *See* K.S.A. 21-5413(h); K.S.A. 21-5301(c)(1). This means that people who are presumptive probation, or eligible for a “border box” finding for probation, would be denied release unless they pay a surety or pay cash.⁴

As examples, for people with an expected criminal history score of C, D, E, F, G, H, or I (so all but A or B), if they are “charged, or to be charged with” with a severity level (hereafter SL) 7 aggravated battery or a SL 8 reckless aggravated battery, they would be presumptive probation if they were convicted as charged (and remember, people have the presumption of innocence at this point, and are not always convicted or convicted of what the State initially charges them with). A person charged with SL 5 reckless aggravated battery could receive probation if the court makes border box findings. Same thing for people “charged, or to be charged, with” aggravated assault. That is most often a SL 7 offense (or a 6, if against a law enforcement officer), so for people with a criminal history score of C, D, E, F, G, H, or I, if they are eventually convicted of a SL 7, they would be presumptive probation, unless a special rule applies.

More broadly, this change would take local control away from our communities. Judges would no longer have discretion to take into account all circumstances—and all of the conditions of release factors that have long been the law in K.S.A. 22-2802(8)—to decide what will “assure the appearance of such person...and to assure the public safety.” *See* K.S.A. 22-2802(1). You might think there could never be a situation where people detained for certain charges should be released without paying money, but (1) we know all sorts of situations happen and (2) paying money to a surety or court to get out of jail does not ensure the public is safer or people will appear in court.⁵

A positive change

Despite our concerns with SB 188, it does propose a positive change in the law. On page 10, lines 10-15, it appears that people on “unsecured judicial release” would no longer be on the hook for any money in the future because there would be no dollar amount on their release paperwork.

Under current law, even when people are released without having to pay money up front, often their OR bond has a dollar amount. What that means is the person can be held responsible for that amount if they fail to comply with their bond. For example, if a person is released on a \$1,000 OR bond, and they fail to appear for a hearing, the court could not only issue a warrant for that person’s arrest, but also bring proceedings against them to require them to pay the \$1,000. Because all of our clients are indigent, the BIDS Legislative Committee supports the proposed change to relieve people from any future monetary obligations while on unsecured release.

Thank you for your time and consideration,
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⁴ *See* Sentencing Grid <https://www.sentencing.ks.gov/home/showpublisheddocument/918/638587251452330000>

⁵ As to a 2019 assertion that surety bail guarantees appearance better than any other type of pretrial release, the Task Force responded, “We do not know if this is or is not true in Kansas. We know that some studies in other parts of the country have concluded otherwise.” Pretrial Justice Task Force Report, page 83.