SHANE'S

AARECORP BONDING
BAIL BOND AGENCY

TESTIMONY IN OPPOSITION TO SB 140

February 13, 2015

My name is Shane Rolf, I have been a bail bondsman in Olathe, Kansas, for the past 29 years. I am the Executive Vice President of the Kansas Bail Agents Association, a graduate of Leadership Olathe, and a Member of the NFIB. I am providing this testimony in opposition to Senate Bill 140 as it is currently written.

Our reading of this bill is that it potentially does three different things:

1. It removes the discretion of the prosecutor to determine whether or not to pursue a Motion for Judgment on Bond, regardless of the circumstances of the case.

2. It appears to clarify that it is the responsibility of the prosecutor, and no other party, to pursue a Motion for Judgment on Bond. Although this language is potentially ambiguous.

3. Given the ambiguity of the language it *may* also authorize the "County" to file a Motion for Judgment on Bond, despite the fact that the county is not a party to the bond.

While we support the idea that it is the role of the prosecutor to pursue a Motion for Judgment on bond, we do not support mandating that the prosecutor MUST file the Motion, nor do we support allowing other parties, who are not parties to the bail bond contract, to attempt enforcement.

PROSECUTORIAL DISCRETION

We support the idea that it is the District Attorney's or County Attorney's job to make these decisions. They are intimately involved in the cases and have the job of determining the interests of the State, which *is* a party to the bail bond contract, in making the decision whether or not to pursue a Motion for Judgment on Bond.

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History of K.S.A. 22-2807

This statute was enacted in 1970 to streamline the enforcement of bail bond collections. Despite the fact that bail is given in a criminal case, the bail contract is itself a civil matter, and with certain exceptions, largely governed by the laws of civil procedure. As a result, prior to 1970, in order to enforce and collect a forfeited bail bond, the State would have to file a separate civil lawsuit against the defendant and the surety. In 1970, this process was streamlined to allow a bail judgment to be granted via motion within the civil case. However, voluminous case law around the country has clarified that despite this, it is still a civil action and is, in essence, a civil lawsuit filed within the criminal case. As such, prohibitions and sanctions against filing frivolous actions - for instance - could theoretically be imposed for the filing of a baseless Motion for Judgment on Bond, just as could be imposed for filing a baseless lawsuit.

As an example, if a defendant becomes incarcerated elsewhere and the surety files a Notice with the Court that the defendant is incarcerated, most districts with either not file the Motion, or if the Motion has been filed, will withdraw the motion or not pursue it. The surety typically does not file for a formal hearing on the matter because there is no need. However, if this bill is passed mandating the filing of a Motion, a surety will have to become very formal in its filings. There are other instances where the defendant has ended up hospitalized, or going through substance abuse treatment and has missed court, but the prosecutor is aware or has been made aware of the situation. In these situations and other less common situations, the prosecutor will often wait before filing a Motion for Judgment on Bond to allow the medical situation to resolve itself. All of this is done with the ultimate goal of getting the defendant back before the Court to address the charges against him.

Moreover, in most cases where a defendant misses court and is quickly returned, either by the police or the surety, no formal action is taken by anyone to close out the "declared" forfeiture. The defendant is back, and if a Motion for Judgment was filed it would be denied. Mandating that the prosecutor must file a Motion in every instance of an ordered forfeiture simply creates additional work and expense for everyone. The prosecutor is required to expend resources to pursue actions that he/she knows will fail. The defendants and/or sureties are required to file additional Motions to Set Aside in each and every instance of a failure to appear, regardless of how quickly it is resolved. The Courts then have to dedicate additional time to rule on these various Motions, the outcomes of which are foregone conclusions.

Most districts - but not all - allow a passage of time before the filing of a Motion, so that a great deal of busywork is avoided when the defendant is quickly returned. Changing this will create increases in time and expenses for everyone involved in the bail bond process.

AMBIGUOUS LANGUAGE and the PURPOSE OF BAIL

The purpose of bail is to allow an accused defendant a mechanism to remain out of custody while his case is being adjudicated, while at the same time creating an incentive for the defendant to reappear to answer the charges against him. The Kansas Supreme Court has already ruled that "the purpose of bail is not to beef up public revenues.[1]" So an enforcement scheme that is done for the sole purpose of increasing revenue is at odds with established case precedents.

[1] State v. Midland Insurance, 208 Kan 866

We are concerned that the current language of the bill may allow "the county" (as opposed to the "County Attorney") to file and pursue a Motion for Judgment on Bond. The "County" is not a party to the bail contract, and is not interested in enforcing the bail contract in a manner that best suits its purpose, i.e. incentivizing appearance. Rather, the "County" is simply seeking another source of revenue, which is pointedly NOT the purpose of bail.

[Note: The State allocates 40% of bond forfeiture revenue back to the General Fund of the County wherein the criminal case is filed. While this makes the County a partial beneficiary of a bond forfeiture judgment, it does not make them a party to the bail contract.]

The "County Attorney" on the other hand is tasked with the job of representing the interests of the State of Kansas and would be the appropriate party to pursue a Motion on behalf of the State. Further, as the prosecutor, the County Attorney (or District Attorney) would have knowledge of the underlying criminal case to determine whether or not such a filing was warranted by the circumstances. We have no problem with specifying that the "County Attorney" files a Motion for Judgment on Bond, however, we are concerned that not including the word "attorney" after the word "county" leaves a certain amount of ambiguity.

PROPOSED ALTERNATE CHANGE

Given our concerns about the negative impact the current proposed language could have on the bail bond process. Instead of the current proposal, we would propose the following change to the first sentence of paragraph (4),:

(4) When a forfeiture has not been set aside, the court shall on motion *by the county attorney or district attorney* enter a judgment of default and execution may issue thereon.

This change clarifies that it is the job of the prosecutor to pursue a Motion for Judgment on Bond, without impinging upon the prosecutor's discretion to do so, given the totality of the circumstances surrounding the case. It also clarifies that it is the county attorney and not the "county" that files such a motion.

CONCLUSION

Thank you for your time and consideration on this matter. We would urge you to either reject these proposed changes or modify the bill as we have suggested.

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