Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON Federal & State Affairs.

The meeting was called to order by Chairman Robert H. Miller at
Chairperson

1:30 a.m./p.m. on March 23, 1987 in room 526S of the Capitol.

All members were present except:

Representative Hensley

Committee staff present:

Lynda Hutfles, Secretary
Mary Galligan, Research
Mary Torance, Revisor's
Raney Gilliland, Research

Conferees appearing before the committee:

Representative Green
Elizabeth Taylor, Independent Tobacco Wholesalers
Eddie Dean, D & J Distributors
Frances Kastner, Kansas Food Dealers Association
Representative Ed Bideau
Representative Marvin Smith
Ralph Hiett, Professional Bail Agents of Kansas
Dwight Parscale
Bob Clester, Kansas Sheriff's Association
Glen Cogswell, Kansas Association of Professional Securities
Bill Kenny
Manual Baraban
Judge Buchele
Justice Don Allegrucci
Ron Smith, Kansas Bar Association

The meeting was called to order by Chairman Miller.

Representative Peterson made a motion, seconded by Representative Rolfs, to introduce as a committee bill a bill which requires due process hearings for teachers employed in nonpublic schools as well as public schools. The motion carried.

Representative Ramirez made a motion, seconded by Representative Peterson, to reconsider HB2309. The Chairman explained that if the motion carries, the bill will be retained in committee and held over until next year. The motion failed.

HCR5014 - Urging increased levels of activity by President, Congress and other State Legislatures to bring a rapind end to the racial apartheid system in South Africa

Representative Peterson made a motion, seconded by Representative Sebelius, to adopt the resolution. The motion carried.

HB2086 - Prohibiting certain sales & exchanges concerning cigarettes and tobacco products

Representative Green explained the bill and his reasons for introducing it. The bill prohibits the wholesaler of cigarettes or tobacco to sell or furnish cigarettes or tobacco to a retail dealer on credit, on a passbook or order on a store, in exchange for any goods, in payment for any service rendered, or by any extension of credit of any kind.

Elizabeth Taylor, Independent Tobacco Wholesalers, gave testimony in support of the bill because it seeks to alleviate the difficulty which arises when the tobacco wholesalers are allowed to offer credit sales of cigarettes to their customers yet pay the state taxes as well as the manufacturer's invoices up front. See attachment A.

Eddie Dean, D & J Distributors, gave testimony in support of the bill and explained the impact of it on his distribution. He told the committee that

there are big wholesalers from out of state taking their customers because they are taking tobacco products out of state and putting the Kansas stamp on and then selling to retailers in the state. The current price of a carton of cigarettes is $9.53; the tax on that carton is $5.53. There is a 40½¢ state tax on a carton of beer and $2.40 state tax on a carton of cigarettes.

Frances Kastner, Kansas Food Dealers Association, gave testimony in opposition to the bill. She explained that some retailers get their cigarettes along with their other products from their wholesaler and are billed for them along with the rest of their order. In larger communities the retailers have arrangements for an electronic fund transfer being made from the retailer's bank account into the wholesaler's bank account. Under this bill this would be considered "credit". See attachment B.

Hearings were concluded on HB2086.

Representative Peterson made a motion, seconded by Representative Long, to approve the minutes of the March 18 meeting. The motion carried.

The Chairman pointed out the revised agenda and reminded the committee that at this point in the session, the agenda could change frequently.

There was question of why the exclusive francise bill which was scheduled for a hearing had been cancelled. The Chairman said he felt that the smoke from SB141 needed to clear before other liquor legislation was taken up.

HB2252 - Cash deposit appearance bond prohibited

Representative Ed Bideau explained the bill which reforms procedures for setting bail bonds and prohibits the court from artificially reducing the amount of the defendant's bond by discounting it to a small percentage of the face amounts. It also permits a court to consider the likelihood of injury to the community, the propensity of a defendant to commit other crimes while on release of the defendant's record of failure to appear in addition to the factors which may not be considered in setting bond. See attachment C & D.

Representative Marvin Smith expressed his support of the bill and read Representative Laird's testimony which supports the bill. Representative Laird's testimony explained his unsuccessful efforts to obtain court records regarding ten percent deposit bail bonds. See attachment E.

Ralph Hiett, Professional Bail Agents of Kansas, gave testimony in support of the bill. Courts should be prohibited from having a financial interest in any criminal defendant or the defendants' bail bond. Judges should avoid any appearance of impropriety. In three judicial districts in Kansas, courts are acting as judge and bail agent at the same time. See attachment F.

Representative Peterson, who co-sponsored the bill, told Mr. Hiett he was distrubed by his testimony whereby it sounded as if he was accusing the judges of impropriety.

Dwight Parscale, Shawnee County Attorney, gave testimony in support of the bill. The bail bond system is the system of every democracy. There is no reason for government entities to get into the business of bail bonds. He told the committee he challenged judges to come up with a legal opinion of the legality of the 10% program.

Bob Clester, Kansas Sheriff's Association, gave support to HB2252.

Glen Cogswell, Kansas Association of Professional Securities, gave testimony in support of the bill. He said he did not think the court should be involved in a financial transaction which revolves around the setting or rrvoking of bonds and the outcome of the case. THere is no accounting of the funds collected from the 10% program. These funds should not be used for office supplies, redecorating offices, etc. He introduced Bill Kenny of Sedgwick

County and Manual Baraban of Johnson County, who expressed their support of the bill.

There was discussion of the amount of actual bond forfeitures, the percentage of persons who skip bail and how bonding relates to population of jails.

Judge Buchele gave testimony in opposition to the bill and explained why the 10% program works in Shawnee County. There has been one forfeiture as of the first of the year and five surety bonds that were not made good. Crawford and Barton counties have never had a forfeiture. Judge Buchele told the committee that Gene Olander had opposed HB2009 last year. Mr. Olander does not oppose HB2252 and his letter is still being circulated. District attorney's are not opposing the bill as they have in the past. Where the 10% program has been tried, its working. See attachment G.

Justice Allegrucci gave testimony in opposition to the bill. He opposed HB2009 last year. This program has worked in the 11th Ddistrict.

Ron Smith, Kansas Bar Association, gave testimony in opposition to the bill. Mr. Smith said the KBA opposes the bill for two reasons: (1) there are important constitutional problems with this particular bill, and (2) the prohibition is contrary to consistent public policy concerning the Board of Indigent Defense Services and fines and forfeiture receipts by the State general fund. See attachment H.

Hearings were concluded on HB2252.

The meeting was adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 3-23-87

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
Jane Fisher	701 north main Medicine Lodge	Green
Krislyn Schomaker	Rt 3 El Dorado	Green
Christy Doherty	221 Alvena Wichita	Green
Ron Smith	Topeka	KS Bar Assoc
Jim Clark	Topeka	KCDAA
Mary Lou McPhail	Topeka	KBT
Barb Reinert	"	KPOA
Bob Clester	Topeka	K.S.A.
[illegible]	Topeka	Ks Dist Ct Judges Assn
Marjorie Van Buren	Topeka	Office of Judicial Administration
Sarah Savedow	Phila Pa	
Martin Sanedow	Phila. Pa.	
FRANCES KASTNER	TOPEKA	Ks Food Dealers assn
[illegible] III	State Repr.	
[illegible]	Clark Kansas	Bondsman
[illegible]	Topeka	Visitor
Heather Jones	Hutchinson	Girl Scout
Dana Bryan	1421 Monterey Way Lawrence	GS
Glenn Cogswell	Topeka	Kansas association of Professional Sureties
W. R. Kenney	WICHITA	Professional Surety
Claudia Gibson	Dodge City	visitor
Eileen M. Jensen	Dodge City	visitor
Megan Heyka	Dodge City	visitor
[illegible] Heyka	Dodge City	Visitor
Elizabeth E. Taylor	Topeka	Independent Tobacco Wholesalers
Chip Wheelen	Topeka	McGill & Associates
Alan Steppat	Topeka	McGill & Assoc.

Taylor & Associates
A POLITICAL/ASSOCIATION MANAGEMENT COMPANY
BOX 397
TOPEKA, KANSAS 66601
913-354-1605

March 23, 1987

TESTIMONY IN SUPPORT OF HB 2086
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
presented by Elizabeth E. Taylor, Legislative Consultant to
Independent Tobacco Wholesalers
913-354-1605

Thank you for the opportunity to present the support of the Independent Tobacco Wholesalers for HB 2086. ITW represents approximately 15 of the 30 candy and tobacco jobbers in the state.

ITW supports HB 2086 because it seeks to alleviate the difficulty which arises when the tobacco wholesalers are allowed to offer credit sales of cigarettes to their customers yet pay the state taxes as well as the manufacturers invoices upfront. Many of the wholesalers pay cash for their cigarette tax stamps and, thus, generally carry accounts receivables on their cigarette customers for 30-, 60- or 90 days.

For those wholesalers who buy cigarette tax stamps on credit, approximately 3 million state dollars are tied up for the same credit period of 30 days.

ITW AMENDMENTS
In concept, ITW offers an amendment to HB 2086 which would:

- mandate the cash payment for cigarette stamps and
- mandate cash payment from the retailer to the wholesaler for cigarettes purchased.

In essence this amendment would:

- bring into the state tax coffers $3,000,000 constantly in accounts receivables and
- reduce the need for the bookkeeper/bookkeeping system currently used.

Attachment A

Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205
PHONE: (913) 384-3838

March 23, 1987

HOUSE FEDERAL & STATE AFFAIRS COMM.

HB 2086

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of wholesalers, distributors an retailers of food products throughout the State.

In checking with some of our members to see what affect **HB 2086** would have upon them, we find a variety of reasons why we **ARE OPPOSED TO HB 2086.**

Some retailers get their cigarettes along with their other products from their wholesaler and are billed for them along with the rest of their order, and the entire amount of the invoice due within a week's time. In larger communities the retailers have arrangements for an electronic fund transfer being made from the retailer's bank account into the wholesaler's bank account, which is done within several days after the week's order is received.

We do not consider these transactions "credit" but under terms of HB 2086, lines 0079 and 0080, we assume they both come under the prohibition of "credit of any kind, type or class".

Even in the instances where the retailer may not pay for products received from a distributor in either of the above methods, we do not believe that there should be a state law prohibiting the extension of any type of credit arrangement between a retailer and his wholesaler.

Attachment B

In our opinion, such a law would infringe upon the rights of individuals and companies to enter into specific contracts which are entirely agreeable between the parties involved.

When we visited with the supporters of this bill, the rationale was used that since cereal malt beverages are paid for at the time of delivery, it was logical to make that requirement for the sale of cigarettes. We have to disagree with that idea.

I should also add that we supported the bill SB 356 when hearings were held in the Senate Federal and State Affairs Committee permitting the use of credit cards for the purchase of CMB as well as all alcoholic beverages. And the credit card provisions are also in the House Substitute for SB 141 just recently passed out of this Committee.

We understand that the manufacturer requires the wholesaler to pay for the tobacco products within 30 days and this is their right under the premise that any businessman has the opportunity to negotiate the best possible contract.

By the same token we believe that the retailer should have the same opportunity to negotiate the best possible contract with a wholesaler. It is all part of the free enterprise system which permits entering into various kinds of business contracts.

We do not believe that the State should further infringe upon the rights of doing business in Kansas and therefore ask for you to **NOT GIVE HB 2086 FAVORABLE CONSIDERATION.**

Thank you for the opportunity of appearing before you today and presenting the views of the Kansas Food Dealers Association. I will be happy to answer any questions you may have.

Frances Kastner, Director
Governmental Affairs KFDA

STATE OF KANSAS

EDWIN BIDEAU III
REPRESENTATIVE, FIFTH DISTRICT
NEOSHO COUNTY
14 SOUTH RUTTER
CHANUTE, KANSAS 66720-1442

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: LEGISLATIVE, JUDICIAL AND CONGRESSIONAL APPORTIONMENT
MEMBER: JUDICIARY
LABOR AND INDUSTRY

H.B. 2252 - BAIL BOND REFORM

H.B. 2252 is identical to H.B. 2961 which was recommended by the House Federal and State Affairs Committee last session and which passed the House by 94 votes. H.B. 2961 got to the Senate floor but did not get acted upon during the veto session. H.B. 2961 had 35 bi-partisan sponsors including Mike Hayden as Speaker of the House.

This bill reforms procedures for setting bail bonds and prohibits the court from artificially reducing the amount of the defendant's bond by discounting it to a small percentage of the face amount. The bill guarantees that the public, victims and witnesses can rely upon the face amount of the bond as the **actual** amount of the bond the defendant must post.

The bill further permits a court to consider the likelihood of injury to the community, the propensity of a defendant to commit other crimes while on release and the defendant's record of failure to appear in addition to the factors which may now be considered in setting bond.

YOUR VOTE IN FAVOR OF THIS BILL WILL:

GUARANTEE THAT BOND SET = BOND POSTED

PROVIDE A UNIFORM STATE POLICY ON BAIL BONDS

PROHIBIT DISCOUNT BOND PROGRAMS WITHOUT LEGISLATIVE APPROVAL

PROTECT THE PUBLIC AND VICTIMS INSTEAD OF CRIMINALS

PLACE THE COST OF BRINGING BACK A BAIL JUMPER ON THE CRIMINAL AND BAIL BONDSMAN INSTEAD OF LOCAL LAW ENFORCEMENT.

REQUIRE HONESTY - THE VICTIMS AND WITNESSES CAN RELY UPON THE AMOUNT OF BOND SET AS THE TRUE AMOUNT - NO ARTIFICIAL REDUCTION

PREVENT UNAUTHORIZED FEE FUNDS WITHOUT BUDGET CONTROL.

RETURN CONTROL OVER BAIL BOND STANDARDS TO THE LEGISLATURE.

Attachment C

PROBLEMS WITH DISCOUNT BAIL BONDS

Discount bond programs have been created by mandate from Administrative Judges in several judicial districts in Kansas. These judges disregarded strong objections from prosecutors, law enforcement officers and defense attorneys. The 1985 legislature defeated a bill which would have authorized these programs yet only a few months later an administrative judge put such a program in place in one county. This bill guarantees that only the legislature can implement broad policy decisions on bail bond standards.

UNAUTHORIZED FEE FUNDS

Under a discount bond program the court charges defendants a fee for posting bond, generally 10 percent, of which a portion is totally retained by the court. The court has no statutory authority to charge this fee and is putting itself in the bail bond business in competition with private sureties.

The use of these funds has been very questionable. In Southeast Kansas in the 11th Judicial District, approximately $4,000.00 from this fund was previously used for remodeling of the office of the Clerk of the District Court. I have received confirmation last month that as of 12/31/86 Cherokee County holds $6,438.92, Crawford County holds $16,285.28 and Wilson County holds $3,606.20. The judicial administrator confirmed that within the past year even more funds were withdrawn in an approximate amount of $2,000.00 in Crawford County to purchase office equipment for the office. They are also considering using even more funds for remodeling in Wilson county and for equipment purchase in Cherokee county.

This points out the fact that the use of funds acquired is being determined by the individual judges without oversight. This money has been collected from the backs of defendants who probably should have been released on OR. The court has profited and continues to profit by this practice. Unauthorized fee funds are unacceptable and all of this money should be either returned to those who paid it or delivered to the General Fund. Low risk criminal defendants should not be forced to provide money to buy furniture.

LACK OF UNIFORMITY

One real danger of these programs is the lack of statewide uniformity. In the 11th Judicial District these 10% deposit bonds were originally granted to **all defendants** with standing orders to law enforcement. This permits the judge to avoid calls in the middle of the night requesting release on OR or bond reduction, but also permits dangerous criminals to go free. District Judges are very highly paid, particularly in these economic times, the public's safety should come before their inconvenience.

Under the 10% discount system very little underwriting is done when the court writes the bond. The court either does not have the time or does not care but this is not unexpected because the court has nothing to loose. It can only make money. In contrast, a private bondsman places himself and his insurance company at risk for the full amount of the bond. They investigate the defendants background and often require a friend or relative to sign an indemnity agreement. In short, they evaluate the risk. The private bondsman keeps track of the defendant during the court proceedings and will have to go track him down if he does not appear. In even higher class felony cases often the bondsman is the only one looking for the defendant when he fails to appear in court.

No county can operate its criminal justice program in a vacuum. A defendant charged in one county is often arrested in another creating problems if procedures are not uniform. A high bond set for good cause in the charging county might be severely diluted if the defendant is arrested in a county with a 10% discount program in place. Problems can even exist in cities like Topeka where the municipal court does not use the 10% system but the state court does. **Criminal law enforcement, including bonds, should be uniform, not diverse.**

PUBLIC TRUST

The 10% discount program can easily mislead the public because the bond set does not equal the bond which is posted. A victim or a witness can leave the courthouse feeling that a sufficiently high bond was set only to meet the defendant coming out the back door after posting a 10% Catch-22 bond. They are shocked when they find out that the 10% system let them out on the street. I have seen this actually occur and the victim was severely shaken by it. In this situation the bond amount actually becomes meaningless.

Attempts have been made to get information on the program operation in Shawnee County but I am advised that requests for information have been denied. I have requested information from Barton County on their program but I was told that it would not be provided until the hearings on this bill.

The opposition to this bill has come only from the judges operating these programs. The Supreme Court has not adopted a similar state-wide program nor has it endorsed the local programs. There is very strong law enforcement support for this bill and strong bi-partisan support. I would urge your support for the bill to insure that the public and victims are notmisled, can understand the bond system and to **guarantee that bond posted equals bond set.**

STATE OF KANSAS HB2961

HOUSE OF REPRESENTATIVES

04-04-86 CHAIR- HEINEMANN SEQ. NO.0423

YEAS 094 NAYS 031 PRES 000 ABS-NV 000

EFA PASSED

YEA

ACHESON; APT; AYLWARD; BAKER; BARKIS; BARR; BIDEAU; BLUMENTHAL
BOWDEN; BRADEN; BRANSON*; BROWN; BRYANT; BUEHLER; BUNTEN
CAMPBELL C; CHRONISTER; CLOUD; CRIBBS; CROMELL; CRUMBAKER
DEAN; DEBAUN; DILLON; DOUVILLE; DUNCAN; ECKERT; FLOTTMAN
FOSTER; FRANCISCO; FREEMAN; FRY; FULLER; GJERSTAD; GOOSSEN
GRAEBER; GREEN; GULDNER; HAMM; HARPER; HASSLER; HAYDEN
HEINEMANN; HOLMES; HOY; JENKINS; JOHNSON; JUSTICE; KING
KLINE; LAIRD; LEACH; LITTLEJOHN; LONG; LOUIS; LOVE; LUNTHER
MAINEY; MAYFIELD; MILLER D; MILLER R D; MOLLENKAMP; MOOMAW
NEUFELD; NICHOLS; O NEAL; OTT B; OTT K; PATRICK; PATTERSON
PETERSON; POLSON; POTTORFF; RAMIREZ; REARDON; REZAC; ROLFS
ROSENAU; RUNNELS; SALLEE; SAND; SHORE; SIFERS; SMITH; SNOWBARGER
SPRAGUE; SUGHRUE; SUTTER; TEAGARDEN; TURNQUIST; WALKER
WEAVER; WILLIAMS; WISDOM

NAY

ADAM; BRADY; CAMPBELL K; CHARLTON; DYCK; ERNE; FOX; FRIEDEMAN
GROTEWIEL; HARDER; HELGERSON; HENSLEY; JARCHOW; KNOPP
LACEY; LUZZATI; MILLER R H; ROE; ROENBAUGH; ROPER; ROY
SCHMIDT; SHRIVER; SOLBACH*; SPANIOL; VANCRUM; WAGNON; WEBB
WHITEMAN; WILBERT; WUNSCH

PRESENT

ABSENT-NV

Attachment D

Court Appearance Date 1-29-87 at 9:00a m.

FELONY AND MISDEMEANORS CONTINUING BOND

ROOM 301

RECOGNIZANCE FOR APPEARANCE IN THE DISTRICT COURT OF

SHAWNEE COUNTY, KANSAS

(Pursuant to the provisions of Chapter 22, K.S.A., an Act entitled Kansas Code of Criminal Procedure)

STATE OF KANSAS, COUNTY OF SHAWNEE, ss: Case No. A/R

WHEREAS, BOBBY HESTER has been arrested and is now held in custody to answer the charge/charges of having committed the offense/offenses of 2CTS. AGG. BATTERY;

NOW, I (WE), THE UNDERSIGNED, resident/residents of SHAWNEE individually, jointly and severally, bind myself/ourselves to the State of Kansas in the sum of SEVEN THOUSAND FIVE HUNDRED AND NO---------- dollars ($ 7500.00; OR/CD $750.00 POSTED

THE CONDITIONS of this obligation are that if defendant be now released that said defendant shall appear in the District Court of Shawnee County, Third Judicial District of Kansas, to answer the charge or charges in the complaint or information at all docket calls, hearings, arraignments and trials and at such other times as directed by said District Court, and on the further conditions:

Call 295-4117

then this obligation shall be null and void; otherwise, to remain in full force and effect.

SURETIES WILL TAKE NOTE that this recognizance is to serve as an appearance bond throughout the District Court proceedings in this matter, and includes the bond required for appearance pending new trial, unless the Court otherwise directs, but does not include an appeals bond to the Court of Appeals or to the Supreme Court.

DEFENDANT WILL TAKE NOTE that he must keep himself advised of the soundings of the Criminal Docket and all settings of his case and appear for same or be subject to forfeiture of his bond and re-arrest.

X Bobby Hester
Defendant

308 N. E. Paramore
Address

Topeka Kansas
City & State

CASH DEPOSIT
Surety

Address

Surety

Address

Approved by me this 23rd day of JAN., 19 87

JMM
Judge

Appearance Bond procedure

Clerk of the District Court

Deputy Clerk

DISTRICT COURT FILED JANUARY 29, 1987 SHAWNEE CO., KANSAS

AFFIDAVIT OF SURETIES

I (WE), THE UNDERSIGNED, SURETIES, Do solemnly swear that I (We) are resident of the State of Kansas, and that I (We) am (are) worth _____ dollars ($) over and above all exemptions, debt and liabilities, and that I (We) have no outstanding recognizances or bonds forfeited in Courts of this state on which judgments have not been paid, and further that I (We) have never been convicted of a felony.

Subscribed and sworn to before me this _____ day of _____ 19 _____

Surety

Surety

Any pretrial release of any criminal defendant, whether on bail or under another form of recognizance, shall be considered as a matter of law to include a condition that the defendant will not commit, cause to be committed or knowingly permit to be committed, on the defendant's behalf, the crime of intimidation of a witness or aggravated intimidation of a witness as provided by K.S.A. 1983 Supp. 21-3301.

Clerk of the District Court

Deputy Clerk

Bail bond programs again face threat

By MARTIN HAWVER
Capital-Journal legislative writer

A bill that would wreck county-operated bail bond programs in three judicial districts — including Shawnee County — was revived, and then debated in a Senate committee Wednesday.

The House-passed bill would shut down the operations in which district courts allow suspects in crimes to pay 10 percent of the amount of their bail into the court, and if they show up for later hearings, get back 90 percent of that initial payment.

The Shawnee County court's fledging program came under heavy fire from some lawyers, a bondsmen's lobbyist, prosecutors and sheriffs.

Supporters of the in-house bond business were two district court judges in whose districts the programs have been operating with apparently no problems for several years.

Passage of the bill would put the court out of the bail bond business.

Under the court-operated program, a suspect in a criminal case who shows up for court on time would pay only 1 percent of the amount of bond set by a judge. Because bondsmen don't offer rebates, the same suspect would pay at least 10 percent of whatever amount of bond was set by a judge.

State Rep. Charles Laird, D-Topeka, called the district court program here "welfare for criminals" by allowing people who are charged but not convicted of a crime to get most of their county bail back.

Topeka lawyer Dwight Parscale told the Senate Federal and State Affairs Committee that local lawyers were surprised last fall by Shawnee County District Judge William R. Carpenter's order that authorized the bond program. Parscale also said he wondered whether judges had authority to go into the bail bond business.

While most of the verbal punches were being thrown at the Shawnee County District Court and Carpenter, two judges who operate similar programs said they didn't want to have their programs wrecked.

Judge Herbert Rohleder, Great Bend, said his court has operated an in-house bond system for nearly nine years with no problems.

"Our program has been rocking along for years, and now Shawnee County's started a program, and I've had to make four trips to Topeka to try to keep our program safe.

> Passage of the bill would put the court out of the bail bond business.

"If there's a problem here, I don't know about it, and there isn't any problem in our judicial district.

"Maybe that's because we don't have a lot of cases, and a lot of bondsmen," Rohleder said.

Don Allegrucci, a former state senator and now administrative judge of the district that includes Pittsburg, said the real issue in the current tiff is the possibility bondsmen will lose money.

Carpenter last year campaigned unsuccessfully for a bill that would have put into state statute the system of in-house bonds. That failing, he used his authority as administrative judge to operate the courts here to impose the system for a test run, which is still under way.

The committee several weeks ago tabled the bill — nearly killing it for the session — but it was revived Wednesday by Sen. John Strick, D-Kansas City. Committee action on the bill is expected today.

Larry Peters, left, and Dorothy Fritton ... wed art on display at the opening Sunday of the To... Art Guild's ... Winter Show at the Studio A... exhibit, on display until Ma... Gallery, 505 Washburn. T... 31, is open from 10 a.m.

Serious crime rose in state, county in 1986

By BILL BLANKENSHIP
Capital-Journal law enforcement writer

Serious crime in Kansas and in Shawnee County increased last year, boosted primarily by a hike in the number of property crimes.

The state's serious crime rate jumped 9.1 percent in 1986, according to preliminary annual crime statistics released today by the Kansas Bureau of Investigation.

The incidence of grave crimes in the county increased 13.5 percent.

More rapes, robberies, aggravated assaults, burglaries, larcenies and motor vehicle thefts were reported in 1986 than in 1985 by the approximately 300 local law enforcement agencies that submit statistics on Part I crimes to the KBI.

First of a series

Part I crimes are offenses selected as an indicator of a community's crime problem because of their severity, their frequency of occurrence and their likelihood of being reported to local authorities, according to KBI reporting guidelines.

Murder was the only Part I crime that declined last year in Kansas.

The number of homicides dropped 11.6 percent. Rapes went up 11.7 percent; robberies rose 1.1 percent; and aggravated assaults increased 2.7 percent.

Overall, violent crimes increased 2.9 percent, accounting for only a fraction of the total upswing in serious crime. The KBI figures show

Continued on page 2, column 6

Kansas annual crime statistics

Offense	1985	1986	Percent Change
Murder	121	107	-11.6
Rape	720	804	+11.7
Robbery	1,924	1,946	+ 1.1
Aggravated assault	5,924	6,085	+ 2.7
Violent crimes	8,689	8,942	+ 2.9
Burglary	26,751	34,561	+29.2
Larceny	66,194	66,945	+ 1.1
Motor vehicle theft	5,277	6,243	+18.3
Property crimes	98,222	107,749	+ 9.7
Total	106,911	116,691	+ 9.1

Source: Kansas Bureau of Investigation

Shawnee County annual crime statistics

Offense	1985	1986	Percent Change
Murder	6	12	+100.0
Rape	56	66	+17.9
Robbery	229	248	+ 8.3
Aggravated assault	491	539	+ 9.8
Violent crimes	782	865	+10.6
Burglary	3,643	5,474	+50.3
Larceny	5,203	4,557	-12.4
Motor vehicle theft	315	388	+23.2
Property crimes	9,161	10,419	+13.7
Total	9,943	11,284	+13.5

Source: Kansas Bureau of Investigation

Chairlift accident kills five, injures 41

TARBES, France (AP) — A damaged chairlift pitched dozens of skiers onto rocks and snow far below Sunday, killing five and seriously injuring 41 at the Pyrenees resort of Luz-Ardiden, officials reported.

They said 76 other people on the lift were treated for lesser injuries or shock.

All of the victims who perished were French, except one Spaniard. He was identified by the Tarbes regional governor's office as Francisco Pako San Sebastian of Isasondo-Alcabbda, Spain.

Some victims reportedly fell from heights of up to 130 feet.

The accident occurred about 4:30 p.m., but the cause was not clear. Local news media gave conflicting reports, saying the lift cable snapped, that it jumped off a pulley, or that a support pylon may have collapsed.

The lift could carry 200 skiers at a time.

The chairlift, on the resort's upper slopes at an altitude of nearly 10,000 feet, was new and opened just two weeks ago.

The resort is high in the Pyrenees mountains running along the border between France and Spain. Luz-Ardiden is about 20 miles south of the pilgrimage town of Lourdes.

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351
EXECUTIVE DIRECTOR • JAMES W. CLARK

February 18, 1985

House of Representatives
State Capitol
Topeka, Kansas 66612

Re: HB 2009

Dear Representative:

The Kansas County and District Attorneys Association is opposed to HB 2009, because it is unnecessary and expensive.

At the present time, a magistrate may impose a cash bond, requiring the accused to post the full amount of the bond, and returning the entire amount to him/her upon satisfactory performance. So a scheme to require a defendant to post up to 25% of the face amount of bond is unnecessary. If the court is concerned that a defendant could not raise the cash, the court could simply lower the face amount of the bond.

The bill also increases expenses in that the county sheriff would be required to regain custody and transport to the court any defendant who absconds on a bond. And if the defendant has fled to another state, expensive and time consuming procedures are required before a defendant can be returned. By entering into a commercial bond, a defendant may be re-captured and returned by the bonding company without extradition costs. If the bonding company should fail to return the defendant, then the full amount of the bond is forfeited.

I thank you for you consideration.

Sincerely,

JAMES W. CLARK
Executive Director

JWC/lb

OFFICE OF DISTRICT ATTORNEY
JUDICIAL & LAW ENFORCEMENT CENTER
111 E. 11TH STREET • LAWRENCE, KS 66044
TELEPHONE 913-841-7700

JAMES E. FLORY
DISTRICT ATTORNEY

SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY, KANSAS

March 5, 1985

Representative Jessie Branson
State Capitol
Topeka, Kansas 66612

RE: House Bill No. 2009

Dear Representative Branson:

I recently learned that House Bill 2009 passed the House Judiciary Committee. This letter is to inform you that I join the Kansas County & District Attorneys Association in opposing the measure. While the bill may appear to remedy some problems that exist in our present bail bond system, I believe that it will ultimately create significant difficulties for law enforcement and the courts.

Presently, the responsibility for locating and apprehending persons who fail to appear is on the professional bail-bondsmen; however, under HB 2009 this burden would shift exclusively to law enforcement. The expense and manpower involved in locating and extraditing fugitives is certainly not inconsequential, and the incentive of a bondsman faced with forfeiture is obvious.

Additionally, I believe that the concept embraced by H.B. 2009 is actually available under existing statutes. Courts may now use a mixed cash bond/personal recognizance system, and in that situation, the individual would still be responsible for the entire bond amount rather than just the deposited portion.

If you would like to discuss further these practical aspects of H.B. 2009, I would welcome the opportunity. Please feel free to contact me on this or on any matter of mutual concern.

Sincerely,

James E. Flory
District Attorney

JEF:db

LAW OFFICES
ROONEY AND ROONEY
INSURANCE BUILDING, SUITE 317
701 JACKSON STREET
TOPEKA, KANSAS 66603
(913) 235-9257

CHARLES ROONEY, JR.

CHARLES ROONEY, SR. (1984)

October 11, 1985

Commissioner Tom Hanna
Board of Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioner:

I understand that you are leading the opposition to the so-called "cash surety for bail bonds", which recently went into effect by the District Court of Shawnee County, Kansas.

It appears to me from the reading of K.S.A. 22-2802 that such a system is contrary to that Statute. Sections (2) and (3) of the Statute address the matter of an appearance bond.

Section (2) has 2 alternatives, to-wit: The bond can be executed in an amount set by the magistrate judge with sureties, or the magistrate judge has the discretion to find that sureties are not necessary to assure the appearance of the defendant. In reading the Statute, there does not appear any other alternatives to Section (2) of the Statute.

Section (3) provides a cash deposit in the amount of the bond set, and can be in lieu of the posting of a bond by sureties.

It is my opinion that the District Court Administrative Orders 113 and 114 are contrary and not in compliance with the Statute; that the procedures in said Orders are not authorized and are in violation of K.S.A. 22-2802.

I had previously signed an instrument in opposition to these Orders, as well as many Attorneys in Shawnee County.

I am in your corner concerning this matter.

Respectfully yours,

Charles Rooney

CHARLES ROONEY, JR.

CR:rs

DOUGLAS E. WELLS
Attorney at Law

SHADOW WOOD OFFICE PARK
5697 SOUTHWEST TWENTY-NINTH STREET
TOPEKA, KANSAS 66614
TELEPHONE (913) 273-1141

October 11, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioners:

I have reviewed legal opinions prepared by James Davidson and Dwight Parscale pertaining to the County's exposure to liability arising from the execution of the percentage deposit bail bond system. Before analysing these opinions, let me confess my personal bias. I believe that the former bail bond system was effective, and I found professional bail bondsmen to be a useful tool to me in controling and assisting me in the presentation of my cases to the Court or jury when a professional surety bond was required. I also found that persons who had no criminal history and a local residence were frequently permitted to sign a signature bond without requiring the posting of any monies to either a bondsman or a cash deposit system, hence, the criminally accused who should be entitled to benefits are afforded those benefits.

Finally, I am afraid that this new cash deposit bail bond system will force professional bondsmen out of work, since the income that they can derive from bonding persons who are charged with the crimes which professional sureties can be required will produce insufficient income to allow a bondsman to pay his bond underwriting expenses along with other overhead expenses. In short, I am opposed to the new system of cash deposit bail bonds because the old system worked and you should not change an institution that is providing the best quality results that can be expected under the facts at hand. For the Commission's assistance, I have explained my views so that you can characterize my evaluation of the legal opinions as you deem necessary.

I have earlier expressed these opinions to Judge Carpenter and am not attempting to directly undermine his efforts to make local rules within the perview of his authority. In our system, I believe that individuals should express their opinions and I believe that governmental bodies should evaluate these opinions so that they can implement policies and supervise the administration of that entity's operation.

While the County Commission does have the authority to order county employees, i.e. the County Corrections Department, to implement any type of bail bond system it desires, this is a decision

which should be made by the County Commission, at least to the extent that it involves county employees, since you are accountable to your voters for re-election and you are accountable to the citizenry for the proper supervision of county employees. To abdicate your authority to supervise county employees in the administration of any policy could subject you to legal responsibility if injury to some person arises as a result of your abdication of your authority. To this extent, I agree with Mr. Parscale's opinion and I agree with Mr. Parscale's distinction between county employees and state or court employees.

As I read the applicable bonding statutes, there are three ways to make a bond: a bond guaranteed by a sufficient solvent surety, a release without any surety when it is determined that a surety is not necessary to assure appearance of the person, and a deposit of cash in the amount of the bond. I, again, support Mr. Parscale's analysis of the bail statute, in that the requirement of a dollar surety by a person arrested whould preclude the finding that no surety was necessary and that the requirement of such a "bond" may very well be construed to be insufficient and insolvent during a potential litigation where damages are sought for releasing a person inappropriately. Although a different governmental entity was involved and although different facts surrounded this case, the Yorky Smith case comes to mind. I do not believe that the cash deposit bond system is authorized by statute.

I hope that this has been helpful in analysing the County's responsibility.

Sincerely,

DOUGLAS E. WELLS

DEW:gec

William R. Brady
Attorney at Law

Insurance Building, Suite 312
701 Jackson Street, Topeka, Kansas 66603
(913) 235-9257

October 10, 1985

Tom Hanna
Board of County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Tom:

This letter is in response to the question which you raised when we were visiting earlier today. Your question was directed to the legality of the "cash surety for bail bonds" recently implemented by the Shawnee County District Court.

The Statute in question is K.S.A. 22-2802, which is quite specific and clear as to the release of a person charged with a crime prior to trial. Sections (2) and (3) of said Statute pertain to the appearance bond.

Section (2) has two (2) alternatives; the bond can be executed in the amount set by the magistrate with sufficient sureties, or the magistrate may, in his discretion, find that sureties are not necessary to assure the appearance of the defendant. There are no other alternatives in said section.

Section (3) provides that a deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

In my opinion, Administrative Orders No. 113 and 114 do not comply with the Statute, in that such procedure is not authorized and would be in violation of said Statute.

Trusting that the above answers your question, I am

Very truly yours,

Bill

WILLIAM R. BRADY

WRB:rs

HENRY O. BOATEN
Attorney and Counselor at Law

Civic Center Building
629 Quincy Street, Suite 201
Topeka, Kansas 66603

Telephone 913/234-8677

October 11, 1985

MEMORANDUM

TO: Tom Hanna, Vice Chairman
Board of Shawnee County Commissioners

SUBJECT: Percentage deposit bail bond

Dear Mr. Hanna:

I have reviewed the Memorandum Opinion written to you by Dwight J. Parscale and County Counselor Davidson. In my point of view, Mr. Parscale succinctly analyzed the problems and liabilities of the present experimental program resulting from Judge Carpenter's administrative order that was recently issued. Mr. Parscale has undertaken a detailed analysis of the possible and potential liabilities that this program is likely to visit upon the county. The conclusions drawn from Mr. Parscale's Memorandum should be given serious and due consideration.

One major concern, which he discusses in his memorandum, is who would be the possible surety under the present experimental program?

K.S.A. 22-2802 mandates certain conditions upon which a person who is charged with a crime should be released prior to trial. A review of the provisions contained therein indicates that there is a necessity for a surety in a case where only a percentage of the bond required has been deposited. Under this program, who is the surety, the county, the judiciary, or the accused?

The surety has been defined as one who undertakes to pay money or do any other act in the event that his principal fails therein. See In Re Brock, 312 P. 92, 116(a) 778, 781. One who

bonds with his principal for the payment of a sum of money or for the performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him.

Obviously, the accused, who has only deposited a percentage of the bond set, cannot be the surety at the same time. If that be the case, there is a clear violation of K.S.A. 22-2802(c)(3). The judiciary, for obvious conflict of interest, cannot be the surety either under this particular system. Therefore, the only alternative left here is that the county becomes the surety. This is the conclusion reached by Mr. Parscale in his Memorandum to you. I believe that his analysis is correct under the present case law and the provisions of the statute. That being the case, all of the liabilities which he discusses in his Memorandum are real, and there is the potential of serious impact on the operation of the county.

Thank you for the opportunity to serve you and the county. Please do not hesitate to call if my services are needed.

Yours truly,

HENRY O. BOATEN
Attorney at Law

HOB/ced

Jacqueline Scheideman-Reid, J.D.
ATTORNEY AT LAW
~~825 QUINCY SUITE 101~~
~~TOPEKA KANSAS 66603~~
(913) 233-8309

NEW ADDRESS:

1271 S.W. Harrison St.
Topeka, KS 66612

October 11, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Commissioners:

Subsequent to the recent administrative order allowing percentaged deposit bail in Shawnee County I have reviewed legal opinions presented by both Dwight Parscale and James Davidson pertaining to the authorization provided by our Statutes for such a program. I have also reviewed a letter prepared by Douglas E. Wells in response to these legal opinions and the implementation of the cash deposit bond system.

After careful review of the memorandums and letters abovementioned, as well as the numerous applicable statutes, specifically but not limited to K.S.A. 22-2802, I would concur with Dwight Parscale's memorandum wholeheartedly. I find his interpretation of the Statutes and the applicable law in this matter to be the more extensive and appropriate as opposed to that set forth by James P. Davidson, Shawnee County Counselor.

As Douglas E. Wells has expressed, I too am perhaps speaking from a biased position. Although I have not practiced law for an extensive period of time, I have had numerous occasions to work with criminal defendants under our previous bonding procedures. I personally found that the professional bail bondsmen were an enormous asset to me in those cases when I was representing a defendant who did not have sufficient respect for the court system to appreciate the need for his personal appearances directed by the court. I also found that our previous program contained equitable provisions for those defendants with sufficient ties with the community to warrant a reduced bond expense.

Additionally, I am concerned as both Dwight Parscale and Douglas E. Wells have previously indicated, that the new bonding program will involve the county in additional liability and expense based upon the implementation of this new program. For these innumerated reasons, I would appreciate the county commissioners carefully scrutinizing the new program which has been put into effect as to its overall impact on the county liability and its possible violation of our Statutes.

Sincerely,

Jacqueline Scheideman-Reid

JSR:nk

ASSISTANT DISTRICT ATTORNEYS
Jean A. Hamilton
R. Terry M. Hendershot
James J. Welch
C. William Osmann
David Debenham
Suzanne Carpenter
Kenneth R. Smith
Linda Jane Kelly
Gary L. Connell
Ann L. Smith
Arthur R. Weiss

Gene M. Olander
District Attorney
Kansas Third Judicial District
Suite 212 • Courthouse • Topeka, KS 66603 • 913/295-4330

OFFICE MANAGER
Kathy Murphy

INVESTIGATORS
Pamela J. West
Charles E. Cox

CHILD SUPPORT DIVISION
295-4333
Suzanne Nelson

February 12, 1985

Mr. William Roy, Jr., Representative
State Capitol Building
Topeka, Kansas 66612

RE: HOUSE BILL 2009

Dear Representative Roy:

It was called to my attention that House Bill 2009 passed the House Judiciary Committee by one vote. Please be advised that our State Prosecutors Association as well as myself are opposed to the passage of this measure.

Not only would this bill put the Clerk's Office in the bonding business, it would also, in my opinion, change the criminal bail bond system in a manner which would have an adverse effect on the whole criminal justice system.

We presently have sufficient statutory authority for either granting a surety bond or allowing those financially unable, but a reasonable risk to post their own recognizance. My feeling is that if we are going to require a bond in a certain amount to guarantee that person's appearance and then to say that they would only be responsible for up to 25% of that bond, that it would make no sense whatsoever.

I am aware that there are those who wish to eliminate professional bail bondsmen. Whether or not you like professional bail bondsmen, they perform a vital service in the implementation of article 9 of the Kansas Bill of Rights under our present system. When a $10,000 bail bond is posted, the bondsman has an incentive to see to it that that person is in Court and if the defendant fails to appear, the bondsman stands to lose the entire $10,000. There is, therefore, a great incentive to see to it that not only the defendant appear, but that he is apprehended and surrendered by the bondsman so that the bondsman does not have to pay the forfeited bond. This proposed new system does not do anything that the present recognizance system doesn't because once the bond is forfeited, the deposit may be forfeited, but no one is looking for the defendant to surrender him to avoid paying the full bond.

The above bill did not pass either house it would have allowed 10% bail - Nevertheless Some judges are now using 10% bail in defiance of the legislature!

Granted, there is a need for a system where we take limited risks on misdemeanor and non-violent offenders. We already have that system under the present law. I view this bill as nothing more than an attempt to put the professional bail bondsman out of business, as we already have sufficient statutes on the books to take into account those defendants who would otherwise be detained solely because of their financial circumstances.

My personal observation has been that bonds which are posted on a defendant's own recognizance are forfeited at least 10 times more frequently than those who have a responsible surety on their bond. I do not see this bill as anything other than an unnecessary expansion of the presently very liberal recognizance program already in place. I have kept records in this office for several years as to forfeited bonds and believe me, when a professional bail bondsman has a forfeiture, usually within 30 to 45 days, he has either surrendered the defendant or has paid the forfeiture in full. I find this a much more effective system than that proposed under HB 2009.

Thanking you in advance for your time and attention.

Yours very truly,

GENE M. OLANDER
District Attorney

GMO: bjw

PAUL D. POST
Attorney at Law

SHADOW WOOD OFFICE PARK
5897 SOUTHWEST TWENTY-NINTH STREET
TOPEKA, KANSAS 66614
TELEPHONE (913) 273-1353
273-1357

October 17, 1985

Shawnee County Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Administrative Orders Pertaining to Bail Bonds

Dear Commissioners:

I have had an opportunity to review the Administrative Orders issued by Judge Carpenter pertaining to bail bonding, as well as the opinions prepared by James Davidson and Dwight Parscale concerning the County's exposure arising out of this new system. I wanted to take this opportunity to express my views concerning this matter.

First, an old saying comes to mind: "If it ain't broke, don't fix it." Why was it felt necessary to tamper with a good system that was working? Certainly, bail bondsmen were making money charging for bonds, but then, weren't they providing a service in exchange for the bonding premium paid by the criminal defendant? The bondsmen I have worked with kept track of defendants who had made bond, and insured their attendance in Court. Those defendants who "skipped" were often located and turned in by the bondmen, all at no expense to the taxpayer. Who is going to provide that service on percentage deposit system?

Second, isn't the percentage deposit system really a fiction? If a criminal defendant only has to post $100.00 on a $1,000.00 bond, isn't the bond really only a $100.00 cash bond?

Third, if a criminal defendant fails to appear, and his bond is forfeited, does anyone really believe that the face amount of the bond will ever be collected from an absent defendant?

To reiterate, I don't understand why a good system was changed to one which appears, at least to me, to create more problems than it solves.

Finally, it concerns me that no notice of the new rule was given to the public or to the Bar. Traditionally, proposed rule changes have been published in the Topeka Daily Legal News prior to implementation. This was not done in this case. Why?

I should also note that in my opinion, the District Court Aministrative Orders in question are in violation of the applicable statute, K.S.A. 22-2802, and could subject the County, as well as its employees, to potential litigation where damages are sought for releasing a person inappropriately.

I realize my letter poses many questions, but they seem to me to be valid questions which deserve answers. As a member of the Topeka Bar Association and as a concerned citizen of this community, I hope that you will be able to obtain the answers to these questions from those responsible.

Sincerely,

PAUL D. POST

PDP:gec

The Honorable William R. Carpenter
Administrative Judge of the District Court
Shawnee County Courthouse
Topeka, Kansas 66604

Re: Percentage Deposit Bail

Dear Judge Carpenter:

I am the first one to admit, from my dissertation "The Holocaust of Criminal Welfare," that the bondsman is at the absolute mercy of the judiciary, in almost the form of a hostage with hands tied and a gun at his head. We have however, as stated in our pledge, been obligated to support the local community in its fight against crime, and therefore stand solidly on the side of the victim and the taxpayer.

We were given a great deal of credit for our support of the Federal Omnibus Crime Bill signed October 12, 1984. This changed dramatically the use of a federal deposit plan. It is no longer ten percent. The ten percent deposit plan, because of a $100,000 legislative research project by the California legislature and five years of pilot experimentation, has now been eliminated in the largest state in the United States of America. It was proven it just doesn't work!

The Florida Governor's Commission on Bail spent $80,000 to research the use of deposit bail, and the blue ribbon committee rejected it ten to one after one year's study. It is my opinion the ten percent deposit bail plan represents the greatest fraud ever perpetrated on the judges and the people of the United States. I dare anyone to prove one case where the total amount of bond was ever paid.

Enclosed is an article which, when examined by a knowledgeable insurance agent, will prove theoretically the incontrovertible truth, that deposit bail will cost the taxpayers a great deal of money. Please note that of the ten percent charged by a bail agent, ten percent of that is used to pay losses, and ninety percent is used to pay expenses to guarantee that the person appears in court. This is very similar to any other type of surety bond written in America today. When you return ninety percent of the deposit, you in essence are returning money needed to get the person to court, recovery and other expenses necessary for processing. The long run effect is a reduction of salaries for all county employees, or increases to the taxpayer.

The failure to appear rate of ten percent deposit bonds and the inability to collect the forfeiture represents disaster to the victims and the taxpayer. You will find those people who are criminal defendant advocates will support strongly the personal recognizant and ten percent deposit type programs. The criminal will surely welcome them.

The professional bail agent, following his pledge to fight crime in the community, is happy to stand on the side of the peace officers, district attorneys and victims, to oppose these proven failures.

It is my opinion, after six years of intensive research serving on the Criminal Justice Research Committee of the Houston Chamber of Commerce and the Pre-Trial Advisory Committee in Washington, D.C., that the future of our nation depends on those people who support victim rights. Please, with these new facts, reconsider your order to put your county in the bail bond business.

I would suggest to you that free enterprise at its worst delivers more than government at its best. I would also suggest to you that the professional bail agents might be some of the most honorable people in the criminal justice system, because they are the only ones who guarantee their performance. Please do not pull that trigger. Please conduct further empirical research.

Sincerely,

Gerald P. Monks, Ph.D.
Chairman
Victim Assistance Committee

GM:jp
Enclosure

cc: The Honorable Robert Dole
Mr. Paul Weyrich
Free Congress Research & Educational Foundation
Washington, D.C.

P.S.: It is my understanding that the legislature elected by the people rejected this deposit bail recently. It seems hardly appropriate for the judiciary, regardless of its wisdom, to enact this legislation almost in defiance of the people.

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

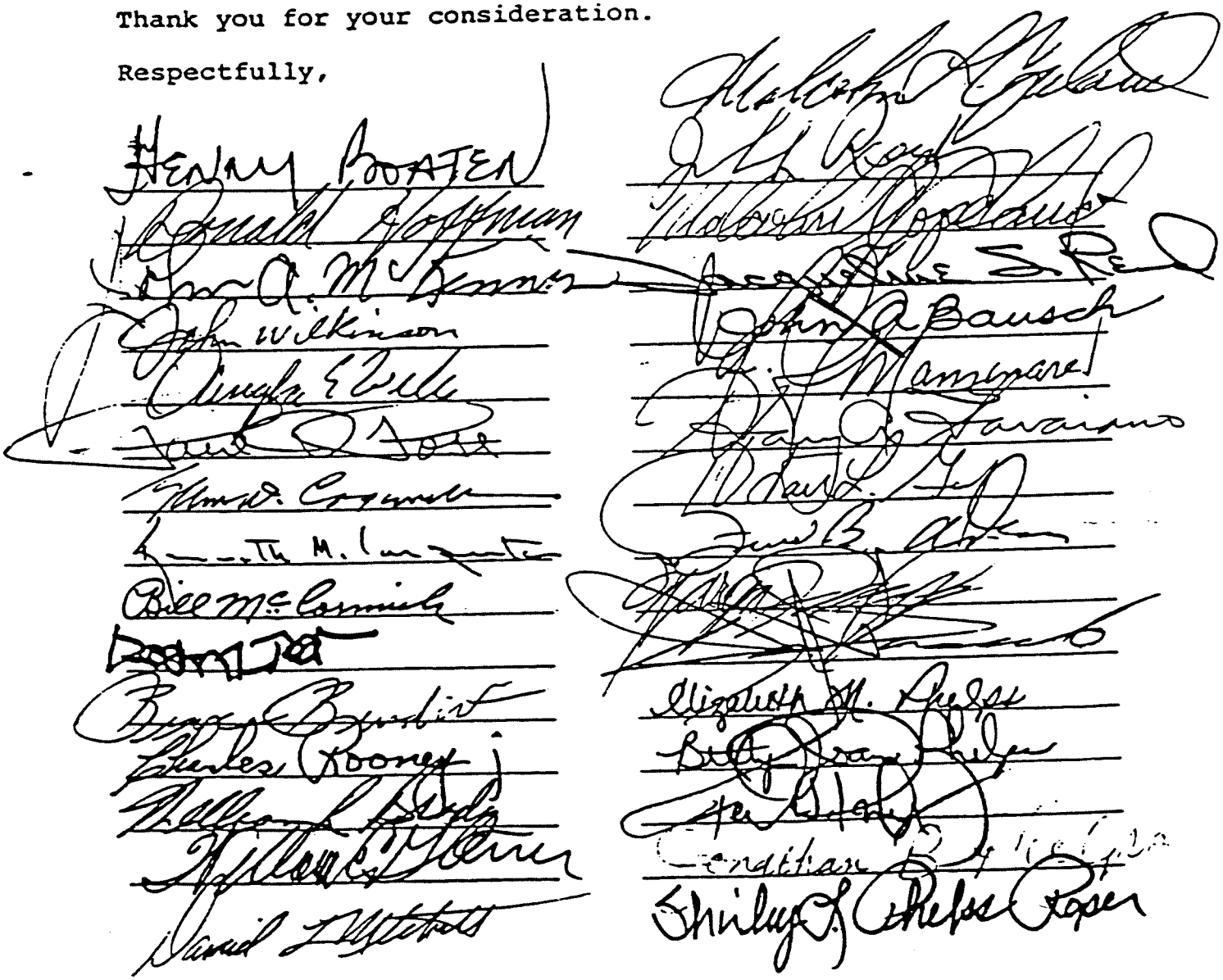
Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,



Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

—— THE INDIANAPOLIS STAR ——

WEDNESDAY, NOVEMBER 9, 1983

Mayor Koch says releasing of prisoners 'idiocy'

New York (AP) — A court order that has forced the city to release hundreds of prisoners from its jails was denounced as "idiocy" Tuesday by Mayor Edward I. Koch after police re-arrested one of those freed and accused him of raping a woman two days after his release.

But a spokesman for the jail system said it was only to be expected that crimes would be committed by some of those released because of a federal judge's edict against doubling up prisoners or using substandard cells in crowded city jails.

DEAN CRAIG, 36, was one of more than 400 prisoners released since last week on "cut-rate" bail to comply with U.S District Judge Morris Lasker's order. He was the first to be re-arrested.

Craig was arrested Monday night, and a 21-year-old woman picked him out of a line-up as the man who attacked her near a Bronx welfare office.

"He was one of those who got the discount," said Lt. Michael Sheehan, commander of the Bronx sex crimes squad.

Craig was booked Tuesday on rape and sodomy charges.

"I SAY there is a craziness in our society when you care more for the rights of those alleged to have committed crime than you do for the rights of society," a steaming Koch declared at City Hall.

"We expected this," said Ed Hershey, the Correction Department spokesman. "It would be statistically illogical to expect anything else."

HERSHEY SAID that under ordinary circumstances, one out of four prisoners released on full bail is accused of committing a crime while he is free.

The prisoners being released under Lasker's ruling had been held on bails of $1,500 or less. They had been unable to put up the full amounts, but under the cut-rate bail deal, they were released after putting up only 10 percent of their bails.

IT just doesn't work

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, D.C. 20510

November 19, 1981

Mr. Manuel Baraban
9813 West 100th Terrace
Overland Park, Kansas 66061

Dear Mr. Baraban:

Thank you for your letter and for the essay you wrote regarding legislation to limit the use of personal recognizance in pretrial release and post-trial release pending conviction in criminal cases. I have read your comments with interest.

I am taking the liberty of enclosing for your review a comprehensive bill I introduced on this important issue. Please be assured of my continuing support for legislation to prevent the violent crime which has resulted from the widespread use of personal recognizance as a basis for bail in criminal cases.

Warmest regards,

Nancy

Nancy Landon Kassebaum
United States Senator

DICKINSON COUNTY SHERIFF DEPARTMENT
109 EAST 1ST STREET
ABILENE, KANSAS 67410
913-263-4041

STEVEN R BRITT
SHERIFF

JAMES D CODDINGTON
UNDERSHERIFF

March 14, 1986

Robert H. Miller
Chairman Federal & State Affairs Committee
State Office Building
Toppeka, Kansas 66603

Dear Representative Miller:

I'd like you to know I'm in favor of House Bill # 2961, concerning criminal procedure; relating to appearance bond.

Thanks for your assistance.

Sincerely,

Steven R. Britt
Dickinson County Sheriff

March 14, 1986

Dear Sir:

I am in favor of House Bill No. 2961.

James W. Davis
District Magistrate Judge

9-15-85

24 Topeka Capital-Journal, Sur.

Man arrested after series of collisions

A 21-year-old Topeka man was arrested after someone driving a pickup truck sideswiped five vehicles parked on streets in the Oakland area and rammed a Kansas Highway Patrol trooper's car in northeast Topeka after the trooper spotted it being driven in a ditch.

Trooper Leo Connors said John F. Owens, 21, 2621 W. 7th, was arrested in connection with aggravated assault on a law enforcement officer and attempting to elude a police officer. Owens was booked into Shawnee County Jail and released Friday after a $5,000 signature bond was posted, a jail official said.

Law enforcement officials said no one was injured during the incident.

Topeka police patrolman [illegible] Dickey, hit-and-run investigator, said the pickup that rammed the trooper's car and struck the vehicles in Oakland was taken from US-24 near Goldwater between 10:05 p.m. and 10:30 p.m. Thursday. Officers said the pickup had been parked next to US-24 earlier Thursday night after the man driving it was taken into custody by another trooper on a traffic infraction. Members of the family owning the truck reported it missing when they arrived to claim it.

Dickey said the five cars that were damaged on Oakland streets were struck about 11:15 p.m. Thursday. Dickey said the vehicles sustained several thousand dollars damage. Vehicles owned by Ronald F. Quiett, 834 Green; William R. Miller, 822 Green; and Russell R. Ward, Manhattan; were parked in the 800 block of Green. A pickup owned by Gary A. McClain, 826 Poplar, was parked in the 800 block of Poplar, and a van owned by Roger D. Stansbury, 926 Green, was parked in the 900 block of Green.

At 11:20 p.m. Thursday, Trooper Leo Connors was searching for the missing pickup and was southbound on Goldwater when he spotted the truck being driven northbound.

"He came directly at me. I turned on all my lights," and the truck's driver accelerated to about 35 to 40 mph before it collided with the patrol cruiser almost head on, Connors said.

The driver of the truck then fled the vehicle. Law enforcement officers, including the police helicopter and canine officers, searched the area until about 12:30 a.m. Friday, when Owens was taken into custody at US-24 and Kaw Road.

Dickey said reports of the hit-and-run accidents would be sent to the Shawnee County district attorney's office to determine whether charges should be filed.

9-14-85

Judge's order puts county in bail bond business

By MARTIN HAWVER
Capital-Journal staff writer

A new policy that would put Shawnee County in the bail bond business on Oct. 1 was ordered by Shawnee County Administrative Judge William R. Carpenter Friday.

The new policy would allow people arrested on suspicion of crimes to make a 10 percent "cash surety" payment to the court. If the suspect appeared for trial, 90 percent of that "cash surety" would be refunded to either the suspect or his or her lawyer.

Carpenter's administrative order caught some people by surprise Friday.

Ralph Hiett, a local professional bondsman and president of the Professional Bail Agents of Kansas, said he was told by Carpenter that the alternative bond proposal would be distributed among people interested in the subject before it was ordered into effect.

Attempts to reach Carpenter, who issued a press release announcing the new bail policy, were unsuccessful Friday night.

The rebate provision of the bond plan would allow people who are charged with a crime and who show up as ordered by the court to reduce the price they paid for pretrial freedom to 1 percent of the bond.

Carpenter's press release said the "cash surety" program will be tried for six months, during which time it will be reviewed and extended or modified.

"The cash surety provision is merely an alternative to existing bail procedures," Carpenter said in

Continued on page 2, column 5

Judge's order

Continued from page 1

his release.

"Court studies show that 90 percent of all persons arrested are admitted to bail (out of jail) under the present system. Only 23 percent of such persons utilize professional sureties. It is the court's view that no more risk would be created to the community by use of cash sureties than by those persons released on professional surety bonds or personal property bonds," Carpenter said.

He said that the court would be able to turn over to the county treasury the 10 percent portion of cash sureties that are not returned to the suspect.

Carpenter's release said that people charged with serious crimes involving homicides, sex offenses and use of weapons or sale of drugs would have to be interviewed by a judge before they could qualify for the surety program. He said it would raise the bond for people charged with some serious other felonies.

Hiett said the plan amounts to the county extending credit to those charged with crimes.

"If they have to put down $150 in cash on a $1,500 bond, and they're not going to show up, do you think they are going to send in the rest of the $1,500?" he asked.

He said the plan would put professional bondsmen out of business, and noted that when a bondsman posts a bond on behalf of a suspect, "it is a full-liability, full-responsibility bond. If the person doesn't show up, we pay the full amount of the bond. We're obligated to."

"This is a criminal welfare system. It lets people put down 10 percent and go free and promise to show up. There is no bond other than the agreement that the suspect signs that he or she will show up, or pay the full amount of the bond if they don't."

Hiett said most professional bondsmen doing business in Shawnee County charge 10 percent of the full amount of the bond to suspects — the same as the cash surety plan.

Bondsmen don't make rebates to their clients as the county would, but

> A local professional bondsman said the plan amounts to the county extending credit to those charged with crimes.

he said that the bondsman also is responsible for making sure that the clients show up for court, a sort of ad hoc supervised probation for their clients.

A bill that would have created a statewide system similar to that ordered by Carpenter died in a Kansas House of Representatives committee last year, and it was opposed by bondsmen, Shawnee County District Attorney Gene M. Olander and law enforcement groups.

Carpenter said in a release that the 10 percent cash surety, and its provision for refunding 90 percent of that surety to the suspect or his or her lawyer, "should reduce the number of cases where the defendant pays cash to a bail bondsman to secure release from jail, then obtains a court-appointed attorney because he has no funds."

No formal plans for implementing the system have been worked out in the district court clerk's office, officials there said.

JOEL W. MEINECKE
ATTORNEY & COUNSELOR
829 QUINCY SUITE 101
TOPEKA, KANSAS 66603
913-233-8062

September 17, 1985

MR. RALPH HIETT
611 West 4th Street
Topeka, Kansas 66603

RE: Administrative Orders of 9/13/85

Dear Ralph:

I was surprised greatly by the news release issued last Friday concerning bonding procedure changes in the 3rd Judicial District. As a member of the Topeka Bar Association's Criminal Law Committee, I attended a meeting with Judge Carpenter recently, at which a number of proposed changes were presented and discussed . Among things not proposed, presented, or discussed was any change in the bonding procedures. When that meeting was nearing an end, one member of the committee, citing rumored changes in that area, asked whether that subject was being studied by the judges. The answer given was that it indeed was, but that no proposal had taken firm enough shape to be ready for presentation. The representation was made that when there was a proposal, it would be presented to the committee for comment prior to enactment.

I heard nothing more until I learned of the press release.

Inasmuch as you had earlier asked me to give you the time to tell me your position on the matter, and inasmuch as I advised you that until a proposal was on the floor, I preferred to wait, I think it appropriate that I write you to give you my recollection of the events. It now appears that I will have no input in formulating the bonding procedures in this county. It is therefore unfortunate but true, that our meeting to discuss the merits of professional surety systems is now moot. I do not know whether either approach is the better, but I do know that the methodology for the change does not meet the standards of consultation and deliberation that I would find minimally necessary for such a sweeping change.

Very truly yours,

JOEL W. MEINECKE

JWM:jp

HEARING

BEFORE THE

SUBCOMMITTEE ON
CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 460, S. 1297, S. 1598, S. 1601, S. 1875, S. 2212, S. 2245 and S. 3043

OCTOBER 2, 8, 9, 22, 23, NOVEMBER 4, DECEMBER 4, 1975 AND MARCH 17, 1976

Testimony of

HONORABLE WALTER H. McLAUGHLIN

Chief Judge of Massachusetts Supreme Court

...Our first contact with the criminal is when we arrest him; the immediate issue is bail. In 1971 our Legislature enacted one of the most liberal bail reform statutes in the country. It created a presumption that a defendant was entitled to be put on the streets on personal recognizance. The court is mandated by statute to try first those defendants who are in jail in lieu of bail or, more usually, on personal recognizance. Consequently, those released go their merry criminal ways until they get pinched again for another crime. One of the greatest causes of crime is letting known criminals loose upon the streets without bail or on small bail for months and sometimes years before we are able to reach them for trial...

continued –

Attachment D (cont)

...Any criminal list will demonstrate to any sitting judge that there are repeated offenses committed by defendants released on bail or personal recognizance while the court is unable to reach them for trial on current indictments. I knew that the Bail Reform Law of 1971 was too liberal. In the courtroom I could see defaults by the bushel. I gathered statistics. These figures represent the defaults in the major counties of the Commonwealth for the three years prior to the enactment of the Bail Reform Law and for the three years subsequent to the passage of the Bail Reform Law. Without bothering you with detailed statistics, let me indicate that in Suffolk County defaults increased six times after the passage of the new bail law; in Middlesex County they increased three times; in Essex County, they increased 17 times; in Worcester County, they tripled; in Hampshire County, they increased five times; and in the balance of the 14 counties of the Commonwealth, they tripled at least. When a defendant defaults, if you think he is immediately picked up and brought to court you are wrong. Without much criticism, because the police really have enough to do to keep up with current crime in the streets, the default warrant is usually placed in a pigeonhole in a desk at police headquarters. The next time we see the defendant is when we are lucky enough, and he is unlucky enough, to be picked up for another crime.

With this record, you would think that intelligent people would tighten up the bail laws. Not on your life! There is a new bail law flying through the Legislature which puts our present bail law to shame. It not only preserves the presumption that the defendant is entitled to be put on the street on personal recognizance, but it provides for a 5% deposit in cash on whatever bail is set. If a judge wanted to set honest-to-God bail of $50,000, he would have to set bail at $1 million. In addition to that, before a court can place bail, as we used to understand bail, he has to consider releasing the defendant in the custody of a friend or relative or place restrictions on his travel, his associates, or his place of abode. In other words, tell the defendant to be in at 10 o'clock at night or take his driver's license away from him. Under our new bail law, we do away completely with surety companies, and many times they were the only ones who had any interest in trying to find a defendant who had skipped.

It is apparent to me that the first mistake we are making in the criminal justice system is at the arrest stage. The present bail law and the proposed new bail law are just too liberal...

MADD COUNTY CHAPTER

MOTHERS AGAINST DRUNK DRIVING

September 6, 1985

Paid for by Pre-Trial Victim
Assistance Committee -P.B.U.S.

Gerald P. Monks, Executive Director
Professional Bail-Agents of the U.S.
4189 Bellaire Blvd., Suite 242
Houston, Texas 77025

Dear Gerald:

Currently, with the serious overcrowding of our court dockets, and jail and prison facilities, officials are considering alternatives to alleviate the overcrowding. Increased use of the 'personal recognizance' bonds and/or the reduction of current standard bail bond amounts seems to be an ineffective approach in solving a very serious, and very real problem. We should not be looking for ways to make it easier for the individuals charged with crimes, but rather to evaluate ways to address the problem without jeopardizing the safety of the community.

The requirement to post bail suggests to the individual that he is not a trustworthy citizen, and for most is a humiliating experience - and rightly so. It makes no sense to us to grant a PR bond - by doing so, we are saying that although someone has broken a law, we still expect them to behave responsibly by appearing in court.

The conviction rate in our county is approximately 92%! This would suggest that to release through PR bonds, or reduced bail amounts, would be to put more guilty individuals back on the streets. We would think an appropriate bail bond amount for DWI and DWLS should be at least $2,000. Drunk driving is the most frequently committed crime in the nation and causes more deaths than all other crimes combined! Most driver license suspensions are generated by DWI convictions and when these people are stopped again for violations, there is no justification for being lenient!

Studies should be done, by court, on the number of pending cases and on the average length of time it takes for cases to move through the various courts.

Many more areas need to be reviewed, but these studies will not be beneficial if the results are used to justify a softer approach to crime!

Lower bail amounts, early releases, and increased use of probation and the implementation of pretrial divergence programs, will only add to our crime problem!

We are facing a serious problem, but one that should be faced head-on and not side-stepped by bandaid approaches! The elected Judges are certainly in conflict of interest when addressing the overcrowding issue - this should be addressed by County Commissioners and state officials!

Sincerely,

Marinelle Timmons

Marinelle Timmons
State Director-MADD

The SUNDAY EXPRESS-NEWS, San Antonio, March 27, 1983 Page

Many accused criminals failing to show up for trial

By SUSIE PHILIPS
Courthouse reporter

A growing number of people charged with crime don't bother to show up in court for trial even after giving their word they will be there.

Almost one out of each five people facing that situation fail to keep their word.

Some just skip town and do not come back.

Others say they live in a place that turns out to be a playground or an abandoned building.

The rest slip into the shadows.

Those are some of the findings in an analysis of the county's personal recognizance bond program for the year 1981.

The study was researched and written by Julie Hasdorff, a second-year law student at St. Mary's University, and sponsored by American Bail Bond Research.

Hasdorff's study revealed a PR bond forfeiture rate of 17 percent in felony cases and 26 percent in misdemeanor cases.

"If those figures are true, they mean a PR bond is like a free pass out of jail," said Assistant District Attorney Barry Hitchings.

Hasdorff's figures contrast sharply with those recorded by James Thorn, chief administrator of criminal district courts. His forfeiture rate for PR bonds issued in 1981 was 7.8 percent.

"What Julie Hasdorff's study has done is raise more questions," Hitchings said. "We need to take a stronger look at accurate source data to see if the PR system is working. If it's not then they're not going to set up a new process."

Not only are Hasdorff's findings alarming, but so are case studies she encountered.

In the following examples of abuse of the PR system, names have been changed to protect the privacy of the defendant:

- Mabel lives in Mexico but is arrested for arson in San Antonio. Although she gives a Mexican address, she is released on a PR bond. She is never heard from again.
- Mr. Mooto shoots and kills his mother-in-law. He is charged with murder, but is freed by a judge after signing a $20,000 PR bond. He disappears.
- Charlie is a confessed burglar. Nevertheless, the judge lets him go on a PR bond. Charlie regrets his confession and cannot be found.

"In these cases you've got a victim who is left helpless," Hitchings said. "You've got a person committing offenses who is never held account. ble."

The PR bond program evolved under the theory that a lot of people charged with a crime are not going to run, but they don't have enough cash to pay a commercial bondsman, Thorn said.

"We don't put people in jail before their trial to punish them," Thorn said. "We do it to make sure they show up in court."

Guidelines for the program state that judges and magistrates may issue personal recognizance bonds to first offenders who have lived within 75 miles of the county for a reasonable length of time, hold a steady job and are not charged with a serious crime such as murder, rape or robbery.

By letting a suspected criminal sign his own bond and pay no money, a judge or magistrate accepts the person's promise that he will be in court when his case goes to trial.

While most bondsmen support the PR bond program, they are frustrated at the way it cuts into their business.

"Let me be the first to say I believe in the PR program."

Carl Collazo of A & A Bonds feels bondsmen do a service to the county by making sure defendants appear in court.

Don't Blame the Appearance Bail Bonds man for this. The citizen shouldn't blame the Sheriff, Police or Prosecutors for this. The citizen can only blame himself for not knowing the facts. Personal recognizance, OR ROR and 10% all can be considered "You can trust me bonds". "I've murdered, raped, stolen" says them to the Judge "You can trust me". And some Judges believe it.

10% bail project to be probed

By DAVID J. REMONDINI

A full review has been ordered for the Marion County-run bail bond project.

Judge Harold Kohlmeyer's order could spell the death of the program that has lost $178,165 in forfeited bonds in seven years.

Kohlmeyer is presiding judge of the Marion County Municipal Court. His remarks were sparked by the release last week of a defendant who posted 10 percent of a $2,000 bond with the county. The defendant was released from police custody barely five hours after he was jailed for skipping an earlier court appearance.

"THIS IS A hole we should look at," Kohlmeyer said. "I don't think it is a systemwide problem, but we should consider whether we should have a 10 percent program at all. I think it is worth looking very strongly at what it costs us to do this."

The 10 percent bail project, which Kohlmeyer said was initiated partly to drive bonding companies out of business, allows metropolitan area residents accused of misdemeanors and minor felonies to post a cash deposit for 10 percent of the bond. The project also was designed to ease jail overcrowding.

About 75 percent of the deposit is returned if the defendant makes every court appearance. The county retains a small administrative fee.

The 10 percent bail project is a benefit to defendants because it saves them from paying a bondsman a non-refundable premium.

But the county is unable to collect the balance of a 10 percent bond if the defendant fails to show up in court. Presently, the county is owed the $178,165 in forfeited 10 percent bonds dating to 1977 that probably will never be collected.

Bail project criticism widens

By DAVID J. REMONDINI

Judicial officers should decide when to release suspects from police custody, not law students acting as bail commissioners, a state representative and a lobbyist for a victims' rights group said Thursday.

Rep. David N. Jones, R-Indianapolis, and Ros Stovall of Protect the Innocent called for legislation to take the authority for releasing suspects away from Marion County bail commissioners and place the decision in the hands of officers of the court.

STOVALL SAID at a news conference that the Marion County Bail Project was run by "well-intentioned but overzealous people."

"Many of the individuals making the decisions are college students who don't possess street savvy, or they get caught up in paperwork," Stovall said.

Jones' and Stovall's remarks were sparked by an article in Wednesday's editions of *The Indianapolis Star* detailing problems in the Ten Percent Bail Project.

The seven-year-old program allows defendants accused of misdemeanors and minor felonies to post 10 percent of their bond in cash with the county to obtain their release. If the defendant makes every court date, 75 percent of the deposit is returned.

IT SAVES THE defendant from paying a 10 percent non-refundable premium to a professional bondsman for writing a bond.

The eight deputy bail commissioners are actually law students. But even local professional bondsmen, usually critics of the 10 percent project, say several of the commissioners are excellent and show good judgment in deciding whom to release.

Judge Harold Kohlmeyer, who oversees the project in presiding over the Municipal Court, said the commissioners only follow criteria set by the judges and actually exercise little discretion when allowing a release.

THE ARTICLE in *The Star* pointed out that $178,000 in 10 percent bonds had been forfeited since 1977, and there is no easy means to collect the money owed.

Jones, who was sworn in Friday to fill the seat of the late Rep. Doris Dorbecker, said he would not personally introduce the legislation in the next session of the General Assembly.

"Perhaps we can resolve this on a local level," he said.

The news conference was called, he said, to show "there is a sympathetic ear on the state, local and private sector levels" to this problem.

NOTING THAT "generally a seat overnight in the lockup is not that horrible," Stovall said the defendants should be brought before a judicial officer at the earliest moment.

"The bail commissioners are the bogeymen, in our view," he said.

Stovall also dismissed concerns that dismantling or restricting the project would add to jail overcrowding.

"Protect the Innocent feels that overcrowding is exactly the wrong reason you should make release easier."

N.Y. Times News Service

NEW YORK — The 75 criminal suspects who failed to appear for court dates in New York City last week after their release from jail to ease overcrowding are part of an army of suspects who daily avoid prosecution by simply ignoring the charges against them.

As of last week, 312,000 arrest warrants, a record, were outstanding. They had been issued by the city's judges for people who had jumped bail or failed to appear in court for some other reason, according to the police department. Some 31,000 warrants were issued for suspects accused of felonies, many on charges of violent crimes, according to the police.

The backlog of cases is so great that Police Commissioner Robert J. McGuire says he views the situation with anger and despair. What concerns him most, he said, is that the police department winds up spending time and money rearresting the same people.

"What I find to be unacceptable is that we are duplicating and sometimes triplicating our own efforts, and for no purpose and with

Chicago Tribune
THE WORLD'S GREATEST NEWSPAPER
Thursday, November 21, 1974

40,000 arrested here are on bail: Rochford

By Fred Orehek

POLICE SUPT. James Rochford reported Wednesday that more than 40,000 persons arrested by Chicago police in the last year were found to be out on bond for previous arrests.

Rochford, addressing a meeting called by civic groups to map plans against street violence, said:

"It is almost a rule rather than the exception that we are arresting robbers, rapists, burglars and auto thieves who are plying their trades while out on bond for a similar arrest. There are over 40,000 cases like this in the last year."

ROCHFORD said it does little good for police to arrest offenders if they are turned loose immediately thru malfunctions of the criminal justice system.

He also assailed plea-bargaining by prosecutors that reduces charges against offenders, as well as furloughs and other prison programs that put convicted felons back out on the street.

The meeting, in the City Council chambers, was called by the Coalition for the War Against Crime, and was directed by Ald. Clifford P. Kelly [28th]. Several law enforcement officials spoke.

A spokesman for State's Atty. Bernard Carey, informed of Rochford's remarks by reporters, disputed the police superintendent's figures.

"Is Rochford proposing that people arrested even for misdemeanors not be allowed back out on the street?" he asked.

THE SPOKESMAN said there are 5,800 felony indictments pending and about 3,000 more felony charges pending in which the defendants have not been indicted. Only half of these 8,800 are out on bond.

On Rochford's plea-bargaining remarks, the state's attorney's spokesman said:

"Our felony conviction record shows we are treating felons as felons, contrary to previous administrations. If a case is provable, a person charged with felony either pleads guilty to a felony or gets indicted for a felony.

The spokesman said it is "unfortunate" there are some cases that are weak because of insufficient police investigation, or weak indentification by witnesses in which the defendant is allowed to plead guilty to a misdemeanor.

CRIMINAL COURT Judge Richard J. Fitzgerald said Rochford must be talking about misdemeanor charges or traffic cases.

"Bond is not supposed to be oppressive," Fitzgerald said.

"The only basis on which the level of a bond can be set is whether the amount will guarantee the defendant's appearance in court.

"The judicial system has no right to keep a defendant in jail unless he is a threat to society, as when he is charged with murder."

Circuit Judge Eugene L. Wachowski, who presides over the first judicial district, which handles many preliminary hearings in criminal cases, said a judge cannot assume a man is guilty of a crime just because he has been arrested for another offense while out on bond.

WACHOWSKI SAID pending legislation would increase bonds tenfold for offenders arrested for a second offense while out on bond for another.

Defendants now are required to put up only 10 per cent of their bond in cash. The legislation would increase this to 100 per cent in cases of second offenses charged as one persons out on bond.

CHICAGO SUNDAY Sun-Times
Sunday, October 13, 1974

Tracking down fugitives becoming impossible job

By Michael Flannery

There are so many fugitives from the Cook County court system that the man who must track them down say their part in the system is in danger of collapsing.

Record-keeping is often so chaotic that officials admit they can't provide an accurate count of the bond jumpers, probation jumpers and others who have fled the system.

"It's a frightening portent of things to come," said Cook County Sheriff's Police Lt. Bernard Singer, a man who thinks a complete breakdown is possible in the near future.

Singer is in charge of the 16-man fugitive section of the sheriff's police, whose duties include pursuing bond or probation jumpers.

Sheriff's Police Chief Edmund F. Dobbs estimated that Singer would need an additional 100 investigators to make a dent in the fugitive backlog.

Singer said there may be 15,000 fugitives at-large in the county — most of them in Chicago—but another expert said that figure sounded conservative.

Circuit Court Associate Judge Peter Bakakos, who has made a study of bail reform, noted that a recent investigation in New York City revealed 130,000 court-release violators there.

During 1971 alone, the last year for which Bakakos had Cook County statistics, there were 22,746 bond forfeiture warrants issued by the Circuit Court.

His experience indicates that about one-third or one-quarter of these defendants became fugitives, Bakakos said.

That's at least 5,800 bond-jumping fugitives for 1974 alone. And that's not counting the number of probation jumpers, nor the fugitives still at large from previous years.

And it also fails to reflect the fact that indictments have more than doubled since 1972, according to figures from the State's Attorney's office. Assuming the fugitive rate remained constant — and some believe it may have increased — there could be an additional 11,800 new bond-jumpers this year alone.

When it comes to probation violators, it's even more of a numbers guessing game.

Richad Napoli, chief of Adult Probation for the Circuit Court, estimates that about 20 per cent of the 19,500 probationers his office handles "return to court — though not necessarily all are violators." That's about 4,000 persons.

Charges have repeatedly been leveled that the probation department, with 115 officers, is a patronage stronghold where efficiency is hardly the watchword.

"There's not a lot of good statistics on fugitives" from probation, Napoli said.

Some police officers contend that any such distinction would be academic anyway. Supervision is so lax, they say, that a probationer can return to a life of crime with ease. There are numerous examples of persons who committed repeated new offenses while on probation without ever having it revoked.

Napoli admitted that records are in such a shambles his office doesn't know how many probationers have fled the area.

Assistant State's Atty. Gino DiVito, in charge of the criminal section, said he was appalled to hear that a two—man team of Sheriff's Police investigators carries an average case load of from 300 to 500 fugitives.

"Each guy should have three or four cases he's really working on," DiVito said. "They should be able to follow them through for a while before giving up."

The 16 men in the fugitive section (who are also saddled with such chores as accompanying County Jail inmates to funerals, escorting extradited prisoners from other jurisdictions back to Cook County and serving thousands of writs annually) tend to be pessimistic about it all.

An investigator who works on the high-crime South Side of Chicago and who, with his partner, is currently supposed to be tracking down over 500 fugitives, said it works like this:

"If we knock on the door at the address given on the warrant and the people there say they've never heard of the subject — well, that's it.

"You can't really work on each case like you're supposed to. What we can we do?"

In 1964-66, the forfeiture rates in O.R. were 7%, 15%, 20.5%. In 1969-71, the forfeiture rates were 21.8%, 31.4% and 22.6%.

The analysts also looked at forfeiture rates for those released on 10% in the same two three year periods. The record shows the same trend in forfeitures, although not as severe as in the O.R. cases. For 10% releases, the forfeiture rates in 64-44 were 7.5%, 10.5%, and 11%. In 1969-71, they were 13.5%, 11.1% and 13.3 respectively.

The statistics from which the figures were taken were from an administrative report prepared by the clerk of the Court of Cook County to Judge Peter Bakakos, Chief Judge of the Surety Division.

By the way, the authors (Editor's Notes on ILLINOIS PLAN....

QUESTION: Were there any visible changes in the conduct of bail once it became a state business?

ANSWER: Yes, there were. Once the court had complete control over the release options of defendants, one of the first actions that took place involved an increase in the amounts specified in the bail schedule. (A bail schedule indicates how much bail is required for any particular charge. Bail amounts not only doubled, they tripled, and quadrupled.

THE COVETED 10%

In every state where the entrance of the State into

CLASSIC ARGUMENT: Bail agents do not refund a defendant's bail premium, even if the case is dismissed.

POINT: A BAIL PREMIUM represents the purchase of an INSURANCE POLICY. A bail insurance agent is pledging via the posting of a bond to do one of two things- either produce the defendant for trial or pay the full face amount of the bond to the court.

An agent risks losing more than 90% of the money he has made. How can he lose more than 90%? Easily. For those defendants who have fled, sums of money have been invested in the apprehension of the defendant. If, for example, a bail is $10,000., agents have been known to spend as much as $5,000. to avoid losing the $10,000. Of great importance is the simple fact

Do gooders and misled liberals must be aware of these facts: 10% or the elimination of the bondsmen does the following, it eliminates an alternative, your freedom is now totally in the hands of the state. Bondsmen give credit; bondsmen work 24 hours a day. Bondsmen are usually compassionate poeple. Bondsmen know how hard it is to make ends meet. Bondsmen are not bureaucrats. Does the accused want their freedom solely in the hands of a state bureaucracy? No wonder jails are full where bondsmen have been eliminated, that is why certain areas want bondsmen back. Remember, if a bondsmen writes 12 bonds a year, that is 12 less in jail that taxpayers are not supporting, and if they flee that is 12 more fugitives that are not written off at public expense.

MARION, INDIANA.....Bond fees collected by a city run system were ruled illegal and by a class action suit the city was ordered to return these illegally collected fees.

The L.A. Journal Jan 5, 84

COMPLAINTS GROW OVER CUT RATE BAIL

By GAIL DIANE COX

California's experiment in cut-rate bail, two years old this month, is producing a wealth of horror stories and few hard statistics on its effect on Los Angeles criminal courts.

AB 2 — drafted by then-District Attorney John Van de Kamp, carried by Assemblyman Howard Berman and backed by then-Gov. Edmund G. Brown Jr. — sought to free misdemeanor defendants who otherwise would languish in jail for lack of money to pay bailbondsmen. Previously, a defendant given $5,000 bail could get out of custody immediately by depositing the full amount with the court or by hiring a bailbondsman. Regardless of the outcome of the case, that defendant would lose the $500 he paid the bondman for underwriting his release.

Under the experiment, the county takes the place of the bailbondsman, no co-signer or collateral is needed, and all but $50 of that $500 deposit is refunded if the defendant reports as ordered to court.

The crucial question is whether the defendants — nicknamed 10-percenters under the new system — are reporting without the prompting of their neighborhood bondsman.

Some accounts of a rise in bail-jumping come from predictable sources. A study by the Independent Bailbondsmen Association of the first 1,300 consecutive cases in downtown Los Angeles Municipal Court under the measure asserts that out of 280 defendants using the 10 percent plan, more than two-thirds failed to appear and had to have bench warrants issued.

"It's been a dismal failure," says the author, Los Angeles bailbondsman Marvin Byron, who lobbied vigorously against the plan and has lost so much business to it that he has laid off all six of his employees.

"It's just common sense that we've got to see they make their appearances or we lose money," said Byron. "We get their grandfather's house deed, and the grandfather drives the guy to court himself. The county can't do that."

Surprising Complaints

But complaints are also coming from more surprising quarters.

"I'm hearing that the no shows of 10-percenters is up to 30 percent in some courts," said county Public Defender Wilbur Littlefield in an interview this week. In his mind, there is "no question" that AB 2 is to blame.

One of those reporting to him is deputy Paul Dolan, who has been in Van Nuys Municipal Court for the past four years. "It used to be in a day in master calendar we would have three or four names of those who had been picked up on bench warrants," he said. "Now we have a whole page of 10-percenters who skipped and were picked up again for something else. . . . Not so much on traffic violations, because they're afraid of losing their licenses. It's (those arrested for use of) heroin and PCP, and prostitutes, who are skipping."

"It's been a real disaster," agreed Glendale Municipal Court Judge Barbara Lee Burke.

Another example of -
Abuse on Recognizance - "No Money Bail"

HARTFORD COURANT - - - - Connecticut
October 24, 1976

Court Officials Say Bail Policy Failing

By GERALD DEMEUSY
And
BOB LaMACDELEINE

Judges and prosecutors, faced with new liberalized bail programs, are alarmed by the dramatic increase in the number of criminal suspects who ignore court appearances and thumb their noses at re-arrest warrants.

Most of these "no-shows" are persons released by police without bond after signing written promises to appear in court. About 40 per cent of them were arrested for serious crimes.

Although figures are difficult to get because overworked court personnel can't keep up statistically with what's happening, estimates are that the problem of trying to bring suspects into court has multiplied by at least 16 times and possibly as much as 120 times in the past decade.

This open defiance of the law is a statewide problem, but it is most severe in Common Pleas Court 14 in Hartford where criminal cases are pouring in at the rate of 12,000 a year.

Hartford police make an average of 1,000 arrests a month. They allow about 450 (45 percent) of these 1,000 defendants to leave on promises to appear on a designated court date. On the average, 100 defendants (about 22 percent) break that promise, and 36 (about 8 percent) are never seen again.

The "skip rate" of criminal suspects 10 years ago was documented at a half of 1 percent. Compared to the current skip rate in the Hartford Court, the increase is 16-fold.

Bail Commissioner Canio Zaccagnino compiled data indicating that Hartford police during the first nine months of this year released 3,845 of the 8,000 persons they arrested on written promises to appear.

Rearrest warrants had to be issued for 919 of these suspects.

Chief Judge Roman J. Leston of Common Pleas Court said the "promise to appear" system simply isn't working and that a "crackdown" is in order.

His guess is that as many as 60 percent of those arrested and released after promising to appear are not showing up in court. He said those who claim the system is working do not consider the welter of nolles granted to close out criminal cases after the statute of limitations expires.

If Leston's guess is correct, the current skip rate would be 120 times greater than that of 10 years ago.

Common Pleas Court Judge John M. Fitzgerald said if an indicator is needed to show a growing contempt for law and order, "this certainly is it."

"And," he said, "there's little doubt its effects are contagious because the problem is worsening all the time."

Palm Beach Times

Wednesday, September 14, 1977

Release on recognizance plan termed failure

By LAURA BELCASTRO
Times Staff Writer

MILWAUKEE

The 10% PLAN began here in 1970.. Of the forfeited bonds, 2/3 of the people who missed court were FELONIES.

-The Milwaukee Journal
"COURT BAIL JUMPERS"

NEW YORK

A third of all defendants awaiting trial-177,000 of them-have jumped bail. And they are not being pursued because the polise machinery for pursuing them because the police machinery for pursuing them has collapsed.
"177,000 Bail Jumpers Home Free: Legislator"
Senator Roy Goodman
New York Daily News

New York

The police and prosecutors say it is not unusual for a judge to release a suspect in his own custody(own recognizance) after the police have had to rearrest him on a warrant.

-New York Times
Staff Reporter

A report by the Illinois Legislative Council shows that the total number of prisoners in Bridevell Prison INCREASED 149% from 1964(the year that the Illinois Plan began that eliminated surety agents) to 1970. In the same period, sentenced prisoners decreased 32% while PRETRIAL HOLDOVERS(those awaiting trial)INCREASED 550%.

Put another way, pretrial holdovers accounted for only 21% of the jail population prior to the 10% plan. After the passing of 6 years, they accounted for 77%.

CHICAGO
Report of the Illinois Legislative Council

Indiana

In 1983 the Municipal Court run bail program processed 1,789 10% bonds- but failed to collect on $28,350 in forfeited bonds.
-Skip Hess, Staff Reporter
The Indianapolis News
Marion County

SAN ANTONIO

A growing number of people charged with a crime don't bother to show up in court for trial even after giving their word they will be there.
-Susie Phillips, Courthouse Reporter
Sunday Express News

Further, they claim that there has been virtually no prosecution of bail jumpers in Cook County because "little effort is made to apprehend the defendant after a warrant is issued."

Prosecutor Goldsmith described the 10% situation as a 'SAD STATE OF AFFAIRS'
-Skip Hess
Journalist
The Indianapolis News

Low-bail rearrests soaring

The Orlando Sentinel, Sunday, December 4, 1983

By FRANK FASO and ARTHUR BROWNE

Inmates freed from city jails under the court-mandated forced release program are being rearrested in growing numbers for serious crimes, including rape, robbery and sexual abuse, authorities said yesterday.

At the same time, authorities also revealed that up to 74 of the 610 inmates released from the jails have failed to show up for their scheduled court dates and now are subject to being rearrested as fugitives.

Statistics gathered from the city's district attorneys indicate that two weeks after the end of the forced release program, 19 inmates had been picked up for allegedly committing new crimes, including a 36-year-old man from the Bronx who was freed even though he had 42 prior arrests.

The 610 prisoners were released on 10% of a maximum $1,500 bail, or no bail at all, between Nov. 1 and Nov. 14 in an effort to reduce the population on Rikers Island. The release was ordered by federal Judge Morris Lasker who ruled that the jails there were unconstitutionally overcrowded.

There were 10,245 inmates in the jails when Lasker issued his order, and a Correction Department spokesman said yesterday the current population was about 9,500 and decreasing because of the traditional decline before the holidays.

"THESE ARE PEOPLE with long track records," said Bronx District Attorney Mario Merola, referring to the released inmates. "And we only know about the crimes committed by the people who have been picked up again. A lot of these inmates are committing crimes but just haven't been caught in the act yet. It's all coming home to roost now."

Mayor Koch said: "Obviously I'm concerned about (the no-shows). I believe that Judge Lasker should know the outcome of his order. Hopefully, we should never again be compelled to release prisoners."

The statistics show:

- Nineteen of the released inmates have been rearrested, including eight in Manhattan, five in the Bronx, three in Queens and three in Brooklyn. Among those rearrested were Evan Brown, 22, of the Bronx, who has a record of eight arrests and was picked up on Nov. 23 for armed robbery, and Milton Banks, 36, of the Bronx, who has 42 arrests. He was nabbed for allegedly attempting to steal shrimp.
- While 74, or 12%, of the prisoners have failed to show up for their court appearances citywide, the percentage of no-shows in Manhattan is much higher. A total of 166 Manhattan prisoners were scheduled for court appearances, but District Attorney Robert Morgenthau said 45, or 27%, failed to show.

"The people who are on Rikers Island committed the most serious crimes possible, which include murder, rape and robbery," Morgenthau said. "I don't think anybody should be surprised that more than one quarter of the people involved in Manhattan cases did not appear for court. The result of these releases is we have to devote police resources to look for these men. And most of the people had extensive records and are probably out committing other crimes."

ON DECEMBER 3, 1983 THE JAILS OF NEW YORK CITY WERE DEEMED OVERCROWDED. A JUDGE ORDERED RELEASE OF DEFENDANTS ON EASY BAIL - IT HAS BEEN DEEMED A DISASTER!

■ NEW YORK

WARRANTS IGNORED. The 78 criminal suspects who failed to appear for court dates in New York City last week after their release from jail to ease overcrowding are part of an army of suspects who daily avoid prosecution by simply ignoring the charges against them. As of last week, 312,000 arrest warrants, a record, were outstanding. They had been issued by New York judges for people who had jumped bail or failed to appear in court. About 31,000 warrants were issued for suspects accused of felonies, many of violent crimes, police said. Their main concern: The time, money spent rearresting people.

NEW YORK DAILY NEWS - December 2, 1983

December 2, 1983

Glendale

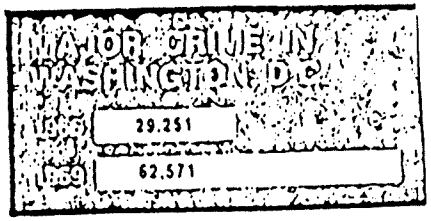
It has been a real disaster. The amount posted is so minuscule that they(the defendants) just figure it's the cost for doing business.
-Barbara Lee Burke, Judge
Glendale Municipal Court

San Francisco
of the 101 law on the
ustice system is terrible.
lter

D.A.

Inglewood

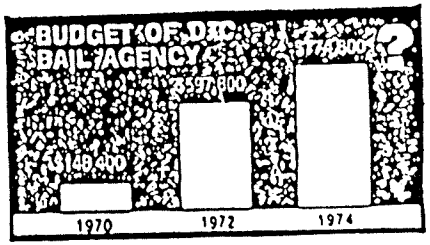
ll the court calendar and
uldn't be there, and we'd
wn and see they were 10
rs.
nch, Judge
od Municipal Court



WASHINGTON, D.C.

In the period from 1966(The Year the Federal Bail Reform Act was enacted) to 1969, Washington, D.C. became a capital of crime. In seven major categories, the number of offenses rose from 29,251 to 62,571more than double in just four years."Crime in tthe District of Columbia
Crime Index, Department of Justice

The budget of the District of Columbia Bail Agency for fiscal 1970 was 148,400. It's budget for fiscal 1971 was $337,035. nearly two and one half times as much.
Report of the D.C. Bail Agency



Since the advent of court sponsored bail programs in Illinois(1964) and Washington, D.C.(1966), information from around the country has conspicuously proved that it is ineffectual. The programs are an encumberance on county budgets, failure to appear rates soar in comparison to surety bonds, and pre-trial holdovers consistently increase.

Van Nuys

It used to be in a day in a master calendar we would have three or four names of those who had been picked up on bench warrants. Now we have a whole page of 10 percenters who skipped out and were picked up again for something else.
-Paul Dolan, Deputy Clerk
Van Nuys Municipal Court

"In my humble opinion, the system adopted in Illinois providing for the deposit of 10% of the total amount of the bond could have worked for a relatively short period of time, but we must fully realize that there is no one connected with the court interested in returning criminals who defaulted in appearance. When an accused gives a bond by a surety company and pays the proper premium and fails to show up in the court when required, the surety company is financially interested in having him apprehended and returned and will do so if humanly possible, rather than suffering a loss of 90% of the face amount of the bond.

Judge Aldo J. Simpson, Elkhart Circuit Court,
Goshen, Indiana

San Mateo

It's a problem here. People think the 10% bail is their chance to get out and NEVER SHOW UP.
-Myer Fender
San Mateo Municipal Court
Criminal Supervisor

San Francisco

There has been a 30% increase of bail jumpers in San Francisco since the implementation of AB2.
-San Francisco Bail Project

Los Angeles

A county that tried to collect on the bench warrants expended roughly $50,000 over a 6 month period to recover just $3,500.
-Administrative Analyst
Mike Antonovich

SAN FRANCISCO

They(court bail jumpers) are getting away without paying their bills, and collection problems are making the bill(AB2) a fiasco.
-Dominique Olcomendy, Judge
San Francisco
Municipal Court

County in violation of jail-crowding decree

By MARTIN HAWVER
Capital-Journal staff writer

The Shawnee County jail's prisoner count has stayed above court-set limits long enough that the county commission is in violation of a consent decree designed to reduce jail crowding, county officials said Friday.

The county commission faces possible contempt-of-court charges because the number of general-population male prisoners was at 80, eight above the maximum 72 to which the population must be reduced within five days of reaching 83. The population hit 83 Monday, corrections officials said.

By violating the decree on overcrowding, a judge could order prisoners released, or dispersed to nearby county jails, in addition to the possible contempt citation against the commission.

The overcrowding came despite efforts of judges to sort through the prisoners to determine who might be released without bail, or receive reduced bond requirements, one key to a two-year-old system of jail population management that apparently broke down this week.

Related story, page 25

Adding to the jail overcrowding is a decreased number of bail bonds being written by professional sureties, caused in part by the recent implementation of a court-sponsored bail bond program that bondsmen say skim off the best bond risks, and make professional bondsmen unwilling to accept as clients some suspects they might otherwise guarantee.

Shawnee County counselor Jim Davidson said at 5 p.m. Friday, "We had reached the trigger, the time we were supposed to have reduced the population to stay within limits of the order by (Brown County District Court) Judge (Robert) Gernon.

"Practically, up until this week, the jail population management plan worked exceedingly well, but this week it broke down," Davidson said.

"Technically, the county commission is in contempt of court," Davidson said. "Practically, it is a situation that we will have to work out Monday."

Gernon is supervising the county jail operations and construction of a new jail after local judges disqualified themselves from the case filed in 1974 by Kansas Legal Services Inc. against the county for unconstitu

Continued on page 2, column

Continued from page 1

tional conditions within the jail.

Jail population at 5 p.m. Friday — the deadline for reduction of prisoners under the consent judgment — was 80 males in the general population and eight females. Limits are 72 males and six females, according to Tom Merkel, division manager in the Shawnee County Department of Corrections.

Merkel and Tom Rork, specialist in population control and classification for the county corrections department, said that when the jail population rises to 83, as it did Monday, and is not reduced to 72 within five days, the county is out of compliance with the terms of the consent decree.

"We have reached 83 (males) about six times, but we have always been able to reduce the number within the five days. This time, we didn't," Merkel said.

The 5 p.m. Friday deadline represents five working days after the initial breach of the jail population limit. That five-day delay should allow time for an orderly reduction of population, according to Davidson.

> "We never had this problem before the judges put their new bond policy into effect."
>
> —Ralph Hiett
> bail bondsman

Larry Rute, deputy director of Kansas Legal Services which won the consent decree that also mandated construction of a new county jail, said the overcrowding was "a serious, very serious matter."

"This is the first time we have met the trigger point, and the first time we have seriously faced a weekend with the jail over its limits. I am going to be watching it closely over the weekend," he said.

He said he could seek a citation of contempt of court against the county commission, but was more interested in reducing the population within the jail. "That's the prime target, getting the population down to reduce chances of violence against inmates or guards," Rute said.

Ironically, both Rute and Davidson met with Gernon on Friday, but didn't mention the jail population problem, because they said they were unaware of it.

"We'll be talking to him Monday, though, and we'll bring it up then," Rute said.

Davidson said possible ways to reduce the number of prisoners include local judges approving lower or personal recognizance bonds, Gernon ordering prisoners released, or transfer of prisoners to other approved jails.

Shawnee County District Court Judge James Buchele, who as "duty" judge has been handling routine court matters, said he has "gone over and over the list, and there is a high number of B and C felons, people who are parole violators with prior felonies, and those aren't candidates for reduced bonds."

"We have been under considerable criticism by some county commissioners and some bondsmen, and we are at the point where we can't let people out.

"We have the responsibility to protect the public, and that is foremost. It's the county commission, not the judges, who are under the consent decree. If the county commissioners and the bondsmen want the jail population reduced, I'd be glad for them to pick out the prisoners whose cases they would like us to review.

"Or, they could go on the bond for some of the prisoners, help pay their bond if they don't think they need to be in jail," Buchele said.

Shawnee County Commissioner Tom Hanna called the situation "ridiculous." A consistent opponent of the new court-sponsored bonding procedure that Shawnee County Administrative Court Judge William R. Carpenter initiated last month, Hanna said that the program is a contributor to the overcrowding in the jail.

Under the program initiated by Carpenter, some suspects may post a 10 percent cash bond with the court, and receive 90 percent of the bond back if they appear as scheduled for court proceedings.

Hanna said the Carpenter program "skims the cream of the crop."

"Bondsmen, professional bondsmen, need the good risks and the bad risks together to make a go of their business, and to serve the role they have in the system, which reduced crowding. With Judge Carpenter's bond plan, they can't get the good-risk clients that they can make a profit on to balance the poorer-risk clients that they stand to lose money on," he said.

Local bail bondsman Ralph Hiett said Friday night, "We never had this problem before the judges put their new bond policy into effect. It never happened, and it didn't take long for the judge's bond plan to upset the system.

"We pointed it out to the judges, tried to, but they wouldn't listen," Hiett said.

Hanna said the commission "is caught in the middle of this thing. We are the ones under the consent decree, not the judges, nobody else.

"I guess the judges wanted to run the jail, and now they apparently are running it, and it's overcrowded.

"I'm about to the point where we should consider giving the jail back to the sheriff and getting rid of the overhead of the department of corrections and getting the judges out of it," Hanna said.

"They are just coddling criminals with this percentage cash bond deal Carpenter came up with, and it's hurting the system. I don't know about the contempt-of-court deal, but I'll tell you, if we have a jail overcrowding problem, I'd be glad to redesign the jail that Judge Gernon says we have to build, to take out the hospital wing and put in another 180 cells, and have the space to lock up the criminals.

"And after Judge Carpenter instituted this bail bond program after the Kansas Legislature turned it down, I am starting to agree with people that if we don't need to elect all our judges, maybe we ought to elect our administrative judge alone, to make him responsive to how the people of the county feel."

The Topeka Saturday
Topeka, Kansas, November 2, 1985
Official county and city newspap

Kansas Sheriffs Association

3601 S.W. 29th St. #125
Topeka, Kansas 66614

913-273-5959

April 17, 1986

RE: H.B. 2961

Dear Senator:

H.B. 2961 is supported by the Kansas Sheriffs Association and the Kansas Peace Officers Association. We feel the bill is in the best interests of the public.

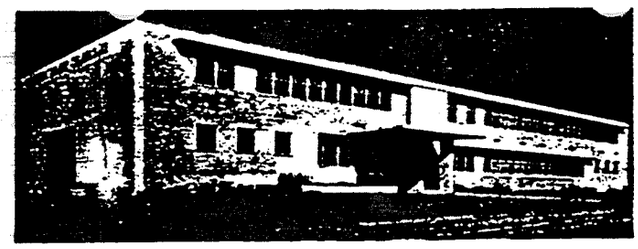
We therefore urge you to pass H.B. 2961 without amendments.

Your assistance will be very much appreciated.

Sincerely,

Robert R. Clester
Executive Director
Kansas Sheriffs Assn.

RRC:sc



DICKINSON COUNTY COURT HOUSE

ABILENE, KANSAS 67410

March 14, 1986

Members of the Committee on Federal & State Affairs:

Honorable Representatives:

We are writing as the Board of County Commissioners of Dickinson County, Abilene, Kansas to ask your support for House Bill 2961. The Board believes appearance bonds for persons charged with a crime should remain with the private sector and that state and counties should not become involved in the ciminal process or use taxpayers money to bond persons charged with a crime out of jail.

Your help in geting passage of HB 2961, ammending K.S.A. 22-2802 will be greatly appreciated.

Yours truly

Eldon K. Noel, Chairman

M.A. Anderson

Gerald Smith

Shawnee County
Board of Commissioners
Rm. 205, Courthouse Topeka, Kansas 66603
(913) 295-4040
Winifred Kingman, 1st district
Velma Paris, 2nd district
Tom Hanna, 3rd district

April 8, 1986

Senate Chamber
State Capitol
Topeka, KS 66612

Re: H.B. 2961

Dear Senator:

The above bill gives consideration to the victims of crime and to the taxpayers, and I support it.

This bill passed the House of Representatives by a vote of 94 to 31, and is supported by the Kansas and National Sheriffs Association, and the Kansas County and District Attorneys Association. It will eliminate 10 percent bonds for criminals which are subsidized by taxpayers. Courts should not be in the bonding business, nor should they set bonds and then retain a percentage of the bond for administrative fees. Such procedure is a conflict of interest, yet it is being done in three Kansas counties. The citizens of Topeka and Shawnee County do not want to be in the bonding business, it is dangerous and expensive.

If a judge wants to be a bail agent, let him use his own money and not taxpaers' funds.

I urge you to support H.B. 2961.

Respectfully,

TOM HANNA, CHAIRMAN
SHAWNEE COUNTY COMMISSIONERS

COUNTY OF CHASE
STATE OF KANSAS

OFFICE OF COUNTY ATTORNEY

WILLIAM L. FOWLER
County Attorney

302 Broadway
P.O. Box 640
Cottonwood Falls, Kansas 66845
316-273-6359

February 25, 1986

Representative Duane Goossen
State Capital Building
Topeka, Kansas 66612

Re: House Bill # 2961

Dear Duane:

Enclosed is a copy of House Bill #2961 which I would ask you to support when it comes before the Federal and State Affairs Committee next week.

This bill modifies the present law in two ways. It requires the Court to take into consideration the additional factors of (1) the liklihood of injury to the community for the victim of the crime charged, (2) the propensity of the defendant to commit additional crimes while on release, and (3) the prior record of the defendant for failure to appear for court proceedings when setting the amount and type of the appearance bond required. The other modification contained in the bill will prohibit the courts from imposing an administration fee for cash or recognizance bonds posted with the court.

I believe that both of the modifications set out above are in the best interests of the people above. The modifications related to additional factors to be considered by the judge setting the amount and type of appearance bond are designed to protect the public at large. It is my belief that the judges in my district have been considering those factors even though they have not been required to do so by the law. The system appears to be working good in Chase County and should work good for the rest of the state.

The other modifications contained in the bill is primarily designed to prohobit courts from becoming a self bonding system. These modifications will prohibit the court from retaining an administrative fee for

administration of any bail bond program or recognizance bond program. It is my belief that the Courts should not be in the business of setting the amount of the appearance bond and then also retain a percentage of that bond for an administrative fee. It is my belief that the court should consider the factors set forth in the statute relating to the conditions of release and then set the type and amount of the bond required. The Court should be precluded from having a financial interest in the appearance bond procedure.

Please feel free to give me a call if you have any questions regarding this bill.

Respectfully,

WILLIAM L. FOWLER
Chase County Attorney

WLF:sjo
Encl.

E

STATE OF KANSAS

CHARLES F. LAIRD
REPRESENTATIVE, FIFTY-NINTH DISTRICT
SHAWNEE COUNTY
3501 SHAWNEE COURT
TOPEKA, KANSAS 66605-2373

TOPEKA

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: PENSIONS, INVESTMENTS AND BENEFITS
MEMBER: EDUCATION
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
TRANSPORTATION

HOUSE OF
REPRESENTATIVES

March 16, 1987

State Capitol
Topeka, Kansas

Re: HB 2252

Dear Fellow Legislators:

On March 12, 1987, I personally went to the office of the Shawnee County Clerk of District Court, and requested public records regarding ten percent deposit bail bonds. The request was made of First Deputy Clerk, Linda Adams, who stated that she and Judge William Carpenter had said records, but that she was ordered by Judge Carpenter not to release the records to anyone unless he or Judge James MacNish gave her permission. Judge Carpenter's office was closed, and I was told that he would not return for about ten days. Judge MacNish's office was also closed, but I returned later and found it open. After waiting to see Judge MacNish for about fifteen minutes, he came out of his office and agreed to furnish me with the records that I requested. I asked him to call Linda in the Clerk's office in order that I could get the records. After calling Linda, Judge MacNish advised me to return to the Clerk's office to get the records. Upon my return at 1:55 p.m., Linda Adams advised me that Judge MacNish had just called her again, and that he decided not to allow me to have the records. I had made this same request of the Clerk at an earlier date and was told the ten percent bail bond records were sealed by order of Judge William Carpenter.

It is interesting to note that HB 2009 was introduced in the 1985 Legislative Session. That bill would have granted authority for Judge Carpenter and others to operate a ten percent bail bond program for criminals. HB 2009 did not pass either house. Having failed to pass this legislation, Judge Carpenter nevertheless without statutory authority, and in absolute defiance of the Legislature, illegally implemented his ten percent deposit bail bond program on his own. (See newspaper article attached). Now in further defiance, a member of this Legislature has been denied access to public records regarding this program, that should be available to any citizen. The refusal of the District Court to provide me with public records is unlawful, and is in direct violation of KSA 45-215 et seg. (See copy attached).

Attachment E

Even judges should be made to know that they are not above the law, and that they can not become judges and legislators at the same time.

HB 2252 is good legislation. It will save taxpayers money, and keep judges and the state out of the private enterprise sector. It will further send a message to those who would act unlawfully.

I urge you to vote "YES" on HB 2252.

Sincerely,

Charles F. Laird

Charles F. Laird
State Representative
59th District

CFL:je

Encl.

Bail bond programs again face threat

By MARTIN HAWVER
Capital-Journal legislative writer

A bill that would wreck county-operated bail bond programs in three judicial districts — including Shawnee County — was revived, and then debated in a Senate committee Wednesday.

The House-passed bill would shut down the operations in which district courts allow suspects in crimes to pay 10 percent of the amount of their bail into the court, and if they show up for later hearings, get back 90 percent of that initial payment.

The Shawnee County court's fledging program came under heavy fire from some lawyers, a bondsmen's lobbyist, prosecutors and sheriffs.

Supporters of the in-house bond business were two district court judges in whose districts the programs have been operating with apparently no problems for several years.

Passage of the bill would put the court out of the bail bond business.

Under the court-operated program, a suspect in a criminal case who shows up for court on time would pay only 1 percent of the amount of bond set by a judge. Because bondsmen don't offer rebates, the same suspect would pay at least 10 percent of whatever amount of bond was set by a judge.

State Rep. Charles Laird, D-Topeka, called the district court program here "welfare for criminals" by allowing people who are charged but not convicted of a crime to get most of their county bail back.

Topeka lawyer Dwight Parscale told the Senate Federal and State Affairs Committee that local lawyers were surprised last fall by Shawnee County District Judge William R. Carpenter's order that authorized the bond program. Parscale also said he wondered whether judges had authority to go into the bail bond business.

While most of the verbal punches were being thrown at the Shawnee County District Court and Carpenter, two judges who operate similar programs said they didn't want to have their programs wrecked.

Judge Herbert Rohleder, Great Bend, said his court has operated an in-house bond system for nearly nine years with no problems.

"Our program has been rocking along for years, and now Shawnee County's started a program, and I've had to make four trips to Topeka to try to keep our program safe.

> Passage of the bill would put the court out of the bail bond business.

"If there's a problem here, I don't know about it, and there isn't any problem in our judicial district.

"Maybe that's because we don't have a lot of cases, and a lot of bondsmen," Rohleder said.

Don Allegrucci, a former state senator and now administrative judge of the district that includes Pittsburg, said the real issue in the current tiff is the possibility bondsmen will lose money.

Carpenter last year campaigned unsuccessfully for a bill that would have put into state statute the system of in-house bonds. That failing, he used his authority as administrative judge to operate the courts here to impose the system for a test run, which is still under way.

The committee several weeks ago tabled the bill — nearly killing it for the session — but it was revived Wednesday by Sen. John Strick, D-Kansas City. Committee action on the bill is expected today.

45-202.
History: L. 1957, ch. 455, § 2; Repealed, L. 1983, ch. 171, § 16; Repealed, L. 1984, ch. 187, § 17; Feb. 9.

Revisor's Note:
As a result of technical error in enactment of L. 1983, ch. 171, the act was repealed and the sections reenacted, see 45-215 et seq.

CASE ANNOTATIONS

1. Computer tapes of records required to be kept by state agencies are public records; agency required to delete confidential information and to disclose non-confidential information upon request. State *ex rel.* Stephan v. Harder, 230 K. 573, 575, 580, 641 P.2d 366 (1982).

2. Trial court correct in ordering defendants to delete any personally identifiable information from the records sought. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 97, 102, 105, ____ P.2d ____ (1985).

45-203.
History: L. 1957, ch. 455, § 3; Repealed, L. 1983, ch. 171, § 16; Repealed, L. 1984, ch. 187, § 17; Feb. 9.

Revisor's Note:
As a result of technical error in enactment of L. 1983, ch. 171, the act was repealed and the sections reenacted, see 45-215 et seq.

45-204.
History: L. 1978, ch. 347, § 1; Repealed, L. 1983, ch. 171, § 16; Repealed, L. 1984, ch. 187, § 17; Feb. 9.

Revisor's Note:
As a result of technical error in enactment of L. 1983, ch. 171, the act was repealed and the sections reenacted, see 45-215 et seq.

CASE ANNOTATIONS

1. Unsuccessful applicant entitled to other applicants' files, subject to appropriate deletion. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 97, 102, 105, ____ P.2d ____ (1985).

45-205 to 45-214.
History: L. 1983, ch. 171, §§ 1 to 9, 13; Repealed, L. 1984, ch. 187, § 17; Feb. 9.

Revisor's Note:
As a result of technical error in enactment of L. 1983, ch. 171, the act was repealed and the sections reenacted, see 45-215 et seq.

45-215. Title of act. K.S.A. 1984 Supp. 45-215 through 45-223 shall be known and may be cited as the open records act.
History: L. 1984, ch. 187, § 1; Feb. 9.

CASE ANNOTATIONS

1. Provisions of this act not retroactive; due to repeal of 45-201 et seq. and enactment hereof, personnel files specifically excepted. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 97, 102, 105 ____ P.2d ____ (1985).

45-216. Public policy that records be open. (a) It is declared to be the public policy of this state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.
History: L. 1984, ch. 187, § 2; Feb. 9.

CASE ANNOTATIONS

1. Provisions of this act not retroactive; due to repeal of 45-201 et seq. and enactment hereof, personnel files specifically excepted. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 97, 102, 105, ____ P.2d ____ (1985).

45-217. Definitions. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

(c) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian under this act.

(d) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(e) (1) "Public agency" means the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appro-

priated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include: (A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or (C) any officer or employee of the state or a political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

(f) (1) "Public record" means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency.

(2) "Public record" shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(g) "Undercover agent" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

History: L. 1984, ch. 187, § 3; Feb. 9.

Law Review and Bar Journal References:

"Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act," Ted P. Frederickson, 33 K.L.R. 205 (1985).

45-218. Inspection of records; request; response; refusal, when; fees. (a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall remove original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 1984 Supp. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 1984 Supp. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for the denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by a preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 1984 Supp. 45-219.

History: L. 1984, ch. 187, § 4; Feb. 9.

Law Review and Bar Journal References:

"Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act," Ted P. Frederickson, 33 K.L.R. 205 (1985).

CASE ANNOTATIONS

1. Provisions of this act not retroactive; due to repeal of 45-201 et seq. and enactment hereof, personnel files specifically excepted. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 97, 102, 105, ____ P.2d ____ (1985).

45-219. Abstracts or copies of records;

F

PROFESSIONAL BAIL AGENTS OF KANSAS
611 West Fourth Street
Topeka, Kansas 66603

March 1987

Members of the Federal and State Affairs Committee
Kansas Legislature
Capitol Building
Topeka, Kansas 66612

Re: HB 2252

Dear Legislators:

Courts should be prohibited from having a financial interest in any criminal defendant, or the criminal defendants' bail bond. Judges are state employees and act in behalf of the state. Whenever a court issues a 10% deposit bond, it assesses and collects money from the criminal defendant, thereby becoming the criminal defendant's bail agent, with the State of Kansas as surety for the criminal defendant. The bail agent/judge thereafter sits in judgment of the criminal defendant.

Certainly any criminal, individual, or group who advocates for criminal defendants, welcomes such an arrangement, which causes a further distrust of the judiciary by our citizens. Many of our citizens presently ask why many criminals committing serious crimes are sentenced only to pay fines or are given probation, while others committing the same crime are sentenced to the penitentiary. These same citizens question the release of defendants on only 10% of the stated bond amount.

Judges, of all people, should avoid any appearance of impropriety, but in three judicial districts in Kansas, we find courts acting as both judge and bail agent at the same time. Clearly, this should be a conflict of interest, and raises questions as to fairness and impartiality.

In the 1985 legislative session, three judges requested the introduction of HB 2009, in an attempt to give them legal authority to issue 10% public bail bonds for criminal defendants. That bill did not pass either house. Nevertheless, these same judges systematically set about issuing 10 percent no liability, no responsibility bail bonds at taxpayers' expense, in absolute defiance of the Kansas Legislature. A yes vote on HB 2252 will make it crystal clear to these judges that they cannot enact their own legislation.

Attachment F

PROFESSIONAL BAIL AGENTS OF KANSAS

Never in history has a forfeited ten percent deposit bail bond ever been collected in full. These bonds are posted by courts, acting as bail agents, who accept no responsibility, or liability, for their actions. They do not return the criminal defendant to court when he fails to appear, nor do they pay the full amount of the bond as professional bail agents do. The taxpayers take the risk and the loss for these judges' actions. The 10% court bonds never pay off, make certain that crime pays, and are more worthless than counterfeit money. Ten percent bail eliminates jobs for Kansas citizens, and places the state in the bail bond business. The ten percent deposit plan was tried in California, and last year the California legislature eliminated it, and prohibited any court from issuing ten percent bonds. It was demonstrated that such a system just does not work. Any system based on deceit is unworkable. When a judge sets a bond at $1,000.00, and then requires only $100.00 to be paid, the public is deceived. If $100.00 will assure the defendant's appearance, the bond should be set at that amount in the first instance. Why use numbers games in the criminal justice system?

The few judges who issue and collect 10% for bail bonds are acting in direct competition to the free enterprise bail agent, who posts bonds in the full amount and at no expense to the public. Such conflicts of interest and unfair practices should not be tolerated in our system of justice. Why should a few judges, acting as bail agents, make the government and the taxpayers responsible for criminal bonds, especially at a time when our state is having difficulty budgeting for programs that assist the honest and deserving citizens of Kansas?

We urge the passage of HB 2252. Thank you for your consideration.

Sincerely,

Ralph Hiett

Ralph Hiett, President
Professional Bail Agents of Kansas

RH/lb

PROFESSIONAL BAIL AGENTS ARE THE ONLY PEOPLE
IN THE CRIMINAL JUSTICE SYSTEM THAT
GUARANTEE THEIR PERFORMANCE

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

Shawnee County Judges
Third Judicial District
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Percent Deposit Bail Bonds

Dear Judges:

We the undersigned members of the Topeka bar agree with District Attorney Gene M. Olander, that percent deposit bonding would have an adverse effect on the whole criminal justice system.

Therefore, we respectfully request that percent deposit bail bonding not be established in the Third Judicial District of Kansas.

Thank you for your consideration.

Respectfully,

County in violation of jail-crowding decree

By MARTIN HAWVER
Capital-Journal staff writer

The Shawnee County jail's prisoner count has stayed above court-set limits long enough that the county commission is in violation of a consent decree designed to reduce jail crowding, county officials said Friday.

The county commission faces possible contempt-of-court charges because the number of general-population male prisoners was at 80, eight above the maximum 72 to which the population must be reduced within five days of reaching 83. The population hit 83 Monday, corrections officials said.

By violating the decree on overcrowding, a judge could order prisoners released, or dispersed to nearby county jails, in addition to the possible contempt citation against the commission.

The overcrowding came despite efforts of judges to sort through the prisoners to determine who might be released without bail, or receive reduced bond requirements, one key to a two-year-old system of jail population management that apparently broke down this week.

Related story, page 25

Adding to the jail overcrowding is a decreased number of bail bonds being written by professional sureties, caused in part by the recent implementation of a court-sponsored bail bond program that bondsmen say skim off the best bond risks, and make professional bondsmen unwilling to accept as clients some suspects they might otherwise guarantee.

Shawnee County counselor Jim Davidson said at 5 p.m. Friday, "We had reached the trigger, the time we were supposed to have reduced the population to stay within limits of the order by (Brown County District Court) Judge (Robert) Gernon.

"Practically, up until this week, the jail population management plan worked exceedingly well, but this week it broke down," Davidson sa

"Technically, the county comm sion is in contempt of court," Dav son said. "Practically, it is a sit tion that we will have to work Monday."

Gernon is supervising the count jail operations and construction o new jail after local judges disqual led themselves from the case filed 1974 by Kansas Legal Services I against the county for unconsti

Continued on page 2, colum

Continued from page 1

tional conditions within the jail.

Jail population at 5 p.m. Friday — the deadline for reduction of prisoners under the consent judgment — was 80 males in the general population and eight females. Limits are 72 males and six females, according to Tom Merkel, division manager in the Shawnee County Department of Corrections.

Merkel and Tom Rork, specialist in population control and classification for the county corrections department, said that when the jail population rises to 83, as it did Monday, and is not reduced to 72 within five days, the county is out of compliance with the terms of the consent decree.

"We have reached 83 (males) about six times, but we have always been able to reduce the number within the five days. This time, we didn't," Merkel said.

The 5 p.m. Friday deadline represents five working days after the initial breach of the jail population limit. That five-day delay should allow time for an orderly reduction of population, according to Davidson.

> "We never had this problem before the judges put their new bond policy into effect."
>
> —Ralph Hiett
> bail bondsman

Larry Rute, deputy director of Kansas Legal Services which won the consent decree that also mandated construction of a new county jail, said the overcrowding was "a serious, very serious matter."

"This is the first time we have met the trigger point, and the first time we have seriously faced a weekend with the jail over its limits. I am going to be watching it closely over the weekend," he said.

He said he could seek a citation of contempt of court against the county commission, but was more interested in reducing the population within the jail. "That's the prime target, getting the population down to reduce chances of violence against inmates or guards," Rute said.

Ironically, both Rute and Davidson met with Gernon on Friday, but didn't mention the jail population problem, because they said they were unaware of it.

"We'll be talking to him Monday, though, and we'll bring it up then," Rute said.

Davidson said possible ways to reduce the number of prisoners include local judges approving lower or personal recognizance bonds, Gernon ordering prisoners released, or transfer of prisoners to other approved jails.

Shawnee County District Court Judge James Buchele, who as "duty" judge has been handling routine court matters, said he has "gone over and over the list, and there is a high number of B and C felons, people who are parole violators with prior felonies, and those aren't candidates for reduced bonds."

"We have been under considerable criticism by some county commissioners and some bondsmen, and we are at the point where we can't let people out.

"We have the responsibility to protect the public, and that is foremost. It's the county commission, not the judges, who are under the consent decree. If the county commissioners and the bondsmen want the jail population reduced, I'd be glad for them to pick out the prisoners whose cases they would like us to review.

"Or, they could go on the bond for some of the prisoners, help pay their bond if they don't think they need to be in jail," Buchele said.

Shawnee County Commissioner Tom Hanna called the situation "ridiculous." A consistent opponent of the new court-sponsored bonding procedure that Shawnee County Administrative Court Judge William R. Carpenter initiated last month, Hanna said that the program is a contributor to the overcrowding in the jail.

Under the program initiated by Carpenter, some suspects may post a 10 percent cash bond with the court, and receive 90 percent of the bond back if they appear as scheduled for court proceedings.

Hanna said the Carpenter program "skims the cream of the crop."

"Bondsmen, professional bondsmen, need the good risks and the bad risks together to make a go of their business, and to serve the role they have in the system, which reduced crowding. With Judge Carpenter's bond plan, they can't get the good-risk clients that they can make a profit on to balance the poorer-risk clients that they stand to lose money on," he said.

Local bail bondsman Ralph Hiett said Friday night, "We never had this problem before the judges put their new bond policy into effect. It never happened, and it didn't take long for the judge's bond plan to upset the system.

"We pointed it out to the judges, tried to, but they wouldn't listen," Hiett said.

Hanna said the commission "is caught in the middle of this thing. We are the ones under the consent decree, not the judges, nobody else.

"I guess the judges wanted to run the jail, and now they apparently are running it, and it's overcrowded.

"I'm about to the point where we should consider giving the jail back to the sheriff and getting rid of the overhead of the department of corrections and getting the judges out of it," Hanna said.

"They are just coddling criminals with this percentage cash bond deal Carpenter came up with, and it's hurting the system. I don't know about the contempt-of-court deal, but I'll tell you, if we have a jail overcrowding problem, I'd be glad to redesign the jail that Judge Gernon says we have to build, to take out the hospital wing and put in another 180 cells, and have the space to lock up the criminals.

"And after Judge Carpenter instituted this bail bond program after the Kansas Legislature turned it down, I am starting to agree with people that if we don't need to elect all our judges, maybe we ought to elect our administrative judge alone, to make him responsive to how the people of the county feel."

The Topeka Saturday
Topeka, Kansas, November 2, 1985
Official county and city newspap

ASSISTANT DISTRICT ATTORNEYS
Jean A. Hamilton
Randy M. Hendershot
James J. Welch
C. William Osmann
David Debenham
Suzanne Carpenter
Kenneth R. Smith
Linda Jane Kelly
Gary L. Connell
Ann L. Smith
Arthur R. Weiss

Gene M. Olander
District Attorney
Kansas Third Judicial District
Suite 212 • Courthouse • Topeka, KS 66603 • 913/295-4330

OFFICE MANAGER
Kathy Murphy

INVESTIGATORS
Pamela J. West
Charles E. Cox

CHILD SUPPORT DIVISION
296-4333
Suzanne Nelson

February 12, 1985

Mr. William Roy, Jr., Representative
State Capitol Building
Topeka, Kansas 66612

RE: HOUSE BILL 2009

Dear Representative Roy:

It was called to my attention that House Bill 2009 passed the House Judiciary Committee by one vote. Please be advised that our State Prosecutors Association as well as myself are opposed to the passage of this measure.

Not only would this bill put the Clerk's Office in the bonding business, it would also, in my opinion, change the criminal bail bond system in a manner which would have an adverse effect on the whole criminal justice system.

We presently have sufficient statutory authority for either granting a surety bond or allowing those financially unable, but a reasonable risk to post their own recognizance. My feeling is that if we are going to require a bond in a certain amount to guarantee that person's appearance and then to say that they would only be responsible for up to 25% of that bond, that it would make no sense whatsoever.

I am aware that there are those who wish to eliminate professional bail bondsmen. Whether or not you like professional bail bondsmen, they perform a vital service in the implementation of article 9 of the Kansas Bill of Rights under our present system. When a $10,000 bail bond is posted, the bondsman has an incentive to see to it that that person is in Court and if the defendant fails to appear, the bondsman stands to lose the entire $10,000. There is, therefore, a great incentive to see to it that not only the defendant appear, but that he is apprehended and surrendered by the bondsman so that the bondsman does not have to pay the forfeited bond. This proposed new system does not do anything that the present recognizance system doesn't because once the bond is forfeited, the deposit may be forfeited, but no one is looking for the defendant to surrender him to avoid paying the full bond.

The above bill would have allowed 10% bail
The above bill did not pass either house
Never the less some judges are now using
10% bail in defiance of the legislature

Granted, there is a need for a system where we take limited risks on misdemeanor and non-violent offenders. We already have that system under the present law. I view this bill as nothing more than an attempt to put the professional bail bondsman out of business, as we already have sufficient statutes on the books to take into account those defendants who would otherwise be detained solely because of their financial circumstances.

My personal observation has been that bonds which are posted on a defendant's own recognizance are forfeited at least 10 times more frequently than those who have a responsible surety on their bond. I do not see this bill as anything other than an unnecessary expansion of the presently very liberal recognizance program already in place. I have kept records in this office for several years as to forfeited bonds and believe me, when a professional bail bondsman has a forfeiture, usually within 30 to 45 days, he has either surrendered the defendant or has paid the forfeiture in full. I find this a much more effective system than that proposed under HB 2009.

Thanking you in advance for your time and attention.

Yours very truly,

GENE M. OLANDER
District Attorney

GMO: bjw

on State v. Garber," Robert C. Casad, 16 K. L. R. 423, 428 (1968).

INDEX TO CASE ANNOTATIONS

Actions
Adoption, 6
Divorce, 15
Injunction, 3
Courts, 1, 3, 12, 15
Subjects of litigation
Children, 6, 15
Churches, 2, 3, 14
Freedom of religion, 1 to 12, 14, 15, 16
Officers, 4, 11, 12
School, 6, 11, 12, 16
Taxation, 11, 14
Traffic, 4
Wills, 5
Validity of laws
Held unconstitutional, 12
Ordinances, 4
Regulations, 12
Sunday labor, 9, 10

CASE ANNOTATIONS

1. Disbelief in existence of God does not render witness incompetent. Dickinson v. Beal, 10 K. A. 233, 62 P. 724.

2. Courts will not interfere with worship beyond carrying out trust. Feizel v. Trustees of German M. E. Society, 9 K. 592, 595.

3. Courts may restrain minority from perversion of church property. Hackney v. Vawter, 39 K. 615, 630, 18 P. 699.

4. Ordinance requiring authority from mayor for all street demonstrations, void. Anderson v. City of Wellington, 40 K. 173, 181, 19 P. 719.

5. Cited in upholding bequest to priest for celebration of mass. Harrison v. Brophy, 59 K. 1, 6, 51 P. 883.

6. Repeating Lord's Prayer and Twenty-third Psalm permitted in public schools. Billard v. Board of Education, 69 K. 53, 56, 76 P. 422.

7. Provision applies only to offices and elections contemplated by constitution. The State v. Monahan, 72 K. 492, 493, 501, 84 P. 130.

8. Rights of parent by adoption concerning minor child. Denton v. James, 107 K. 729, 736, 193 P. 307.

9. Prohibition of unnecessary Sunday labor held not to violate section. State v. Blair, 130 K. 863, 864, 288 P. 729.

10. Sunday labor laws, 21-952 and 21-955, held constitutional. State v. Haining, 131 K. 853, 855, 293 P. 952.

11. Use of tax funds for sectarian school; taxpayer's right to enjoin. Wright v. School District, 151 K. 485, 486, 99 P. 2d 737.

12. This section and § 2, art. 6 of Kansas constitution should be construed together; school regulation held to deny religious freedom. State v. Smith, 155 K. 588, 592, 594, 596, 597, 127 P. 2d 518.

13. Habeas corpus proper to secure release before trial, when. Kamen v. Gray, 169 K. 634, 669, 220 P. 2d 160.

14. Mortgage registration fee no restraint on religious activity. Assembly of God v. Sangster, 178 K. 678, 682, 290 P. 2d 1057.

15. Mentioned; consideration of religious beliefs in changing child custody; error. Jackson v. Jackson, 181 K. 1, 4, 309 P. 2d 705.

16. Religious liberty includes the absolute right to believe but only a limited right to act. State v. Garber, 197 K. 567, 572, 419 P. 2d 896. Dismissed: 386 U. S. 51, 88 S. Ct. 236, 19 L. Ed. 2d 50.

§ 8. Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

Research and Practice Aids:
Habeas Corpus⇐1, 2.
C. J. S. Habeas Corpus §§ 1 et seq., 3.

Law Review and Bar Journal References:
Mentioned in comment on habeas corpus, an extraordinary remedy, 3 K. L. R. 130 (1954).
Discussed in "Federal Habeas Corpus and the State Prisoner," Michael L. Maxwell, 8 W. L. J. 248 (1969).

CASE ANNOTATIONS

1. Commencement of sentence under 62-1528 not violation of appellant's rights hereunder. Craven v. Hudspeth, 172 K. 731, 732, 242 P. 2d 823.

2. Cited in denying writ of habeas corpus for failure to exhaust available state remedies. Kinnell v. Crouse, 384 F. 2d 811, 812. Certiorari denied: 390 U. S. 999, 88 S. Ct. 1205, 20 L. Ed. 2d 98.

§ 9. Bail. All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Research and Practice Aids:
Bail⇐39 et seq.
Hatcher's Digest, Bail and Recognizance § 2.
C. J. S. Bail § 29 et seq.
Am. Jur. 2d Bail and Recognizance § 69; Constitutional Law §§ 329 to 331, 334.

INDEX TO CASE ANNOTATIONS

Constitution
Construction of, 5, 6, 11
Limitations, 4, 12
Courts, 8, 9
Criminal law and cases
Appeals, 7, 10
Arrest, 8
Bail, 6, 7, 10, 11, 14 to 17
Capital offenses, 6, 7, 11, 14, 15, 16, 20
Habeas corpus, 5, 11, 13
Imprisonment, 1 to 5, 9, 12, 13
Insanity, 16, 18
Procedure, 5, 10, 14, 15
Punishment, 1 to 4, 6, 8, 9, 18, 19, 20
Validity of criminal laws, 1 to 4, 8, 18
Subjects of litigation
Corporations, 4
Domestic relations, 8, 12
Fraud, 9
Liquor, 5
Validity of laws
Amendment and repeal, 6, 10
Cruel and unusual punishment, 18, 19, 20
Due process of law, 4, 9, 12
Equal protection of laws, 3
Taking of property, 4
Wisdom, 20

HEARING

BEFORE THE

SUBCOMMITTEE ON
CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 460, S. 1297, S. 1598, S. 1601, S. 1875, S. 2212, S. 2245 and S. 3043

OCTOBER 2, 8, 9, 22, 23, NOVEMBER 4, DECEMBER 4, 1975 AND MARCH 17, 1976

Testimony of

HONORABLE WALTER H. McLAUGHLIN

Chief Judge of Massachusetts Supreme Court

...Our first contact with the criminal is when we arrest him; the immediate issue is bail. In 1971 our Legislature enacted one of the most liberal bail reform statutes in the country. It created a presumption that a defendant was entitled to be put on the streets on personal recognizance. The court is mandated by statute to try first those defendants who are in jail in lieu of bail or, more usually, on personal recognizance. Consequently, those released go their merry criminal ways until they get pinched again for another crime. **One of the greatest causes of crime is letting known criminals loose upon the streets without bail or on small bail for months and sometimes years before we are able to reach them for trial...**

continued –

...Any criminal list will demonstrate to any sitting judge that there are repeated offenses committed by defendants released on bail or personal recognizance while the court is unable to reach them for trial on current indictments. I knew that the Bail Reform Law of 1971 was too liberal. In the courtroom I could see defaults by the bushel. I gathered statistics. These figures represent the defaults in the major counties of the Commonwealth for the three years prior to the enactment of the Bail Reform Law and for the three years subsequent to the passage of the Bail Reform Law. Without bothering you with detailed statistics, let me indicate that in Suffolk County defaults increased six times after the passage of the new bail law; in Middlesex County they increased three times; in Essex County, they increased 17 times; in Worcester County, they tripled; in Hampshire County, they increased five times; and in the balance of the 14 counties of the Commonwealth, they tripled at least. When a defendant defaults, if you think he is immediately picked up and brought to court you are wrong. Without much criticism, because the police really have enough to do to keep up with current crime in the streets, the default warrant is usually placed in a pigeonhole in a desk at police headquarters. The next time we see the defendant is when we are lucky enough, and he is unlucky enough, to be picked up for another crime.

With this record, you would think that intelligent people would tighten up the bail laws. Not on your life! There is a new bail law flying through the Legislature which puts our present bail law to shame. It not only preserves the presumption that the defendant is entitled to be put on the street on personal recognizance, but it provides for a 5% deposit in cash on whatever bail is set. If a judge wanted to set honest-to-God bail of $50,000, he would have to set bail at $1 million. In addition to that, before a court can place bail, as we used to understand bail, he has to consider releasing the defendant in the custody of a friend or relative or place restrictions on his travel, his associates, or his place of abode. In other words, tell the defendant to be in at 10 o'clock at night or take his driver's license away from him. Under our new bail law, we do away completely with surety companies, and many times they were the only ones who had any interest in trying to find a defendant who had skipped.

It is apparent to me that the first mistake we are making in the criminal justice system is at the arrest stage. The present bail law and the proposed new bail law are just too liberal...

PROFESSIONAL BAIL AGENTS OF KANSAS
611 West Fourth Street
Topeka, Kansas

State Capitol
Topeka, Kansas 66612

Re: House Bill 2252

Dear Legislator:

This bill prevents a criminal defendant from being allowed a 90 percent reduction in bond, and requiring only a 10 percent bond of which 90 percent of that is returned to the criminal defendant. This bill prevents the criminal from posting only 10 percent of his bond and go free, and when he fails to come to court he loses very little. Ten percent public bonds causes the taxpayer to take the loss and risk while the accused does as he pleases, knowing that a bail agent will not be looking for him. A judge has only to lower the bond to accomplish the same thing, thereby not misleading the non-criminal taxpayer. Why should the state set a bond at $5,000 and then only require the criminal to post $500? If $500 will guarantee his appearance, why not set the bond for that amount in the first instance? it is deceitful to tell the citizens that a criminal has been released on a $5,000 bond, when in truth it is only $500. Money cannot be collected from a bondjumper.

The professional bail agent posts full liability-full responsibility bonds, in whatever amount the judge sets. The bail agent supervises the defendant while on bond, and if he fails to appear in court the bail agent surrenders him to the court; and if the criminal cannot be located the bail agent pays the entire amount of the bond. With percent deposit 'public bonds' none of the above will happen. There would be no full liability-full responsibility bonds, no supervision of the defendant, no bail agent to take the defendant to court, and no one to pay the bond when forfeited. If you or your family were victims of crime what type of bond would you prefer the criminal defendant post. Never in history has a forfeited deposit bond paid off. These are public bonds paid for by the taxpayers, and if the defendant is rearrested by our already over burdened police officers, that cost is also paid by taxpayers, along with the additional crime committed by bondjumpers.

Percent deposit bail places the state in the bail bond business, and will abolish numerous Kansas businesses and jobs now being performed by private enterprise at no cost to the taxpayers. percent deposit (Public Bail) benefits only the criminal at the non-criminal taxpayers' expense. Why should we eradicate an

entire segment of private enterprise, the bail industry, in order to guarantee the criminal free and easy bail? Why shouldn't the criminal pay his own bills?

Judges who advocate the use of 10 percent deposit bonds, place themselves in direct competition with private enterprise by using taxpayers' money for criminal bonds. Would a judge take the same rise with his money? Why do some judges want 10 percent bonds? We agree with Shawnee County District Attorney, Gene Olander when he said that he viewed percent deposit bonding as nothing more than an attempt to put the professional bail bondsman out of business. (See attached letter). Bail agents are the only independent free enterprise business people in the criminal justice system. Some judges want total control. Wherever deposit bonding takes hold, bail agents fold. At that point all bonds will be public taxpayer bonds or there will be no bonds at all. Judges will totally decide who stays in jail and who gets out, much like dictatorial countries. There are no bail agents where dictators exist, such as many South American countries and Russia, where people are incarcerated for months or years because of their political beliefs. Thank God not all judges want easy free bail. Only 3 districts in Kansas have attempted such a thing. One reason is because the legislature has not provided for it. There is no statutory authority for deposit bail. That is why, in the last legislative session, H. B. 2009 was introduced; which would have given judges authority to establish the deposit bonding ideal. That bill did not pass either house. Nevertheless deposit bail was implemented in defiance of the elected representatives of the people (This Legislature). The passage of this bill, H.B. 2252 will make it perfectly clear that even a judge can not establish laws by administrative decree, after being turned down by the legislature.

In Shawnee County along there is an average of at least one bond forfeiture each day, as a result of taxpayer subsidized bonds.

There are those who say that because some defendants charged in Federal court, are released on their signature, that therefore the state should do likewise. That argument fails because less than one percent of all criminal cases filed, are in Federal court, and many of these are of the so-called 'white collar' nature. Further, the Federal government is better equipped to recapture defendants. Even so, many are not found.

We, of course, realize that a criminal defendant stands innocent until proven guilty. But, we must remember that over 90 percent of all people charged with crimes are found guilty. With percent deposit bonding a great many criminals will not be found guilty, because they will not return for trial.

The criminal element will view paying 10 percent of the bond as simply a small cost of doing business and never return. If he is located it will probably be in the commission of another crime. Then what will be done with him? Will he be released again on another public bond or kept in jail? This is what causes jail overcrowding. when bail is made easy, crime becomes more profitable and as a result, fuels the crimes and fills jails. This has proved true whereever easy bail prevails. The bail agent with his money at risk, supervises the defendant while on bond, and returns him to court, thereby reducing crime. We cannot have a criminal justice system without the defendant in court.

Certainty of punishment can only be provided by the professional bail agent.

Many honest business people and public officials, including law enforcement personnel, must post bonds guaranteeing their performance. Honest business people must post and pay for surety bonds to guarantee payment of sales tax. Honest contractors must post surety bonds, to guarantee their work performance. Even sheriffs and other public officials must post surety bonds to guarantee their performance. Yet, several liberal judges and social workers believe that criminals should not post bonds to guarantee their performance, and that the taxpayers should post their bonds for them. Bail agents are the only people in the criminal justice system that guarantee their performance.

There are those who say that government, by charging a one percent fee for providing taxpayer bonds for criminals will pay for this criminal service. The fact is, the retention of this so-called administrative fee would not even pay for one additional clerk, let alone bookkeeping, issuing refunds to criminals, special bank accounts, unpaid bond forfeitures, increased crime, additional sheriff deputies, and additional administrators. This liberal program would fast develop into one of the largest, most expensive, self-perpetuating bureaus in the state, costing millions.

All of this for the benefit of the criminal defendants. We wish as much attention was paid to the victims of the criminals, and the non-criminal taxpayers. Percent deposit bonding (Public Bonds) will place the non-criminal taxpayer in a position of paying for his own demise.

Percent deposit bonding was tried in California with misdemeanor cases. After spending millions of dollars for administrators and bond forfeitures with very few defendants showing up for court,

the California legislature recently abolished percent deposit because it was totally unworkable and expensive. In Kansas we now see many public bonds being issued for felons. Such a practice cannot be tolerated if we are to have any semblance of justice.

Government and the taxpayers are not required to pay for you and I to operate our business and they certainly should not be required to pay for the operation of the criminals' business. Those who commit criminal acts should be made to post sufficient surety bonds as required by the Kansas Constitution, Bill of Rights, Section 9 (See attached copy of that provision). Our goal should be to provide a strong criminal justice system not a criminal welfare system.

The Professional Bail Agents of Kansas stand with the victims, non-criminal taxpayers, law enforcement and free enterprise. We ask you to do the same and vote yes on H. B. 2252.

Respectfully submitted,

Ralph Hiett

Ralph Hiett, President
Professional Bail Agents of Kansas

lab
cc

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, FIRST SESSION

Vol. 127 WASHINGTON, FRIDAY, FEBRUARY 6, 1981 No. 22

Senate

By Mrs. KASSEBAUM:

S. 440. A bill to make certain amendments to title 18 relating to bail; to the Committee on the Judiciary.

AMENDMENTS TO THE UNITED STATES CODE RELATING TO BAIL

Mrs. KASSEBAUM. Mr. President, each of us has read news reports of some violent crime committed by repeat offenders who are free pending trial for an earlier crime. We shake our heads, castigate a lax judiciary and sympathize with an outraged constituency. Unfortunately, that is about all we do. It is time we did more.

When an offender first comes in contact with our criminal justice system, it should impress him with its commitment to the preservation of law and order. It is at this point that deterrence from future crime can best be accomplished. It is also at this point that those individuals evidencing a proclivity for further mischief can be identified and detained. Quite frequently, however, it is at this point of first contact that the opportunity for crime prevention is missed and the offender's impression of official weakness is reinforced.

Prior to the passage of the Bail Reform Act of 1966, bail for defendants awaiting trial on Federal criminal charges, and bail for convicted defendants who were appealing their conviction, was committed to the sound discretion of the trial judges, subject to the constitutional mandate of the eighth amendment that the purpose of the bail be to assure the presence of the defendant and that it not be excessive. The exercise of discretion in the fixing of bail was subject to review by appellate courts who were limited to determining only that the lower court did not abuse its discretion.

The Bail Reform Act, however, removed from trial courts the discretion to determine the type and amount of bail which could be imposed and mandated that, in all but the most exceptional cases, defendants are to be released from jail on their own signature—personal recognizance. In order to enforce this mandate for personal recognizance, the act requires that any defendants who are not released on their own signature are entitled to a court hearing after 24 hours. The defendant is also entitled to appeal bail determination, and, under the act, the court of appeals, instead of reviewing for abuse of discretion as the law previously permitted, is allowed to make its own independent determination of bail following the act's mandate that personal recognizance be used.

The effect of the act's mandatory personal recognizance provisions has been to straitjacket the trial court's ability to utilize alternative forms of bail, such as sureties and corporate bonds, in questionable cases. The trial courts, although best able to assess the circumstances affecting the defendant's character in the community, law-abiding tendencies, employment, family stability, and other factors properly bearing on the likelihood of reappearance, have been denied discretion to do so in favor of a congressionally imposed, inflexible standard which has permitted release of many defendants who have then committed further criminal activity and often fail to appear, becoming fugitives who must be located and recaptured.

In the last 3 calendar years, 1978 to 1980, there have been 11,164 Federal defendants who were released under the Bail Reform Act who failed to appear and became Federal fugitives. Many are still being sought by law enforcement agencies. As to these fugitives, justice has been thwarted and additional law enforcement resources consumed in efforts to relocate them. This large number of "bail jumpers" is convincing evidence that the Bail Reform Act preoccupation with personal recognizance was misplaced, and that trial judges should be restored their previous discretion to make determination of bail.

Although there is no constitutional right to bail for a convicted felon, the Bail Reform Act has again mandated that these convicted defendants shall be released on their personal recognizance except when the trial court has reason to believe that the defendant will flee or is a danger to the community. As in the pretrial bail situations, the trial court should be permitted broader discretion in the determination of bail on appeal than that permitted under the act, and alternatives to personal recognizance should be permitted rather than discouraged. Use of personal recognizance on appeal bonds should be dis-

allowed or limited only to highly exemplary situations within the trial court's discretion, and appeals should be limited to review of discretion.

Mr. President, in order to correct these abuses of the trial process I am introducing a bill today that would:

First, repeal those provisions of the act (18 U.S.C. 3146) which mandate use of personal recognizance in all but the most egregious cases, in favor of return to the courts of discretion to select the type and amount of bail consistent with constitutional standards.

Second, add a provision that magistrates and courts may in their discretion permit release on personal recognizance only in those cases where the defendant produces convincing evidence of his responsible character, family and community responsibility, lack of prior criminal record, and in cases where the crime charged did not involve acts or threats of violence to persons or property, possession of instrumentalities or substances capable of harming persons or property, trafficking in drugs, extortion or racketeering, and where the crime charged did not carry an aggregate sentence of more than 5 years confinement.

Third, repeal the Bail Reform Act provisions (18 U.S.C. 3147) which permit appellate courts to conduct independent determinations of bail before conviction, and substitution of a provision which provides for expeditious appeal of bail orders thought to be excessive, in which the court of appeals can only reverse the lower court for a clear abuse of its discretion.

Fourth, repeal the Bail Reform Act provision (18 U.S.C. 3148) which mandates release of convicted defendants pending appeal on personal recognizance except when the defendant is proved to be a danger to the community or likely to flee; and restore the discretion of the trial court to fix bail pending appeal in appropriate cases.

In addition to these reforms, the bill would also address the problems of bail forfeiture. Under current law, when a released defendant fails to appear, his bail is declared forfeited in accordance with 18 U.S.C. 3150, and Federal Rules of Criminal Procedure 46(e)(1). However, the present provision of FRCrP 46(e)(2) permits the court to set aside the forfeiture if it appears that "justice does not require the enforcement of the forfeiture." In practice, courts often set aside the entire forfeiture once the defendant is reapprehened, regardless of the causes of the defendant's failure to appear or the length of time of his flight. My proposal would amend FRCrP 46(e)(2) to permit setting aside of the entire forfeiture only if the failure of the defendant to appear, which caused the forfeiture, was not the result of his own conduct. Thus, if a defendant commits a crime while on bond and is arrested or convicted in another place, his own conduct caused his inability to appear. Likewise, intentional flight by the defendant should not permit the forfeiture to be totally excused once the defendant is finally reapprehended.

Mr. President, it is my belief that we can protect ourselves from some criminal activity by improving the deterrent nature of our laws and by isolating, as early as possible, those who appear likely to repeat their offenses. On the basis of that belief, I urge the Senate's attention to this proposal. I ask unanimous consent that the full text of the bill be printed at this point in the Record.

NATIONAL SHERIFFS' ASSOCIATION
SUITE 320 • 1250 CONNECTICUT AVENUE • WASHINGTON, D. C. 20036
TELEPHONE: CODE 202: 872-0422

RESOLUTION

WHEREAS The Eighth Article of Amendment to the Constitution of the United States prohibits the imposition of excessive bail only in cases appropriate for the extension of the bail privilege, and does not prohibit preventive pre-trial or post-conviction detention of criminal defendants who may pose a danger to the lives or property of the society, and

WHEREAS The Federal Bail Reform Act of 1966 provides that, in determining conditions of release, the pretrial officer shall consider only the offense, the weight of the evidence, the defendant's family ties, employment, financial resources, character and mental condition, length of residence, prior convictions, and prior record of appearance or flight; and that this examination is undertaken for the sole purpose of establishing bail in an amount sufficient to deter the defendant from flight to avoid prosecution, and this legislation has been widely adopted by the several states, and

WHEREAS The criminal defendant may, and in an estimated 15% of the arrests made annually in this national does actually, commit subsequent offenses against society while free on bail, and

WHEREAS The criminal defendant may, and frequently does, attempt to intimidate or injure witnesses and destroy physical evidence, and

WHEREAS This represents a further erosion of the status of the criminal justice community from a victim oriented system to an offender oriented system in perversion of the principles for its existence.

NOW THEREFORE BE IT RESOLVED

The National Sheriffs' Association urges the amendment of the Bail Reform Act of 1966 to require that judicial officers consider the threat posed by the criminal defendant to the society, and that it, by virtue of the totality of the circumstances, and particularly considering the defendant's prior criminal history, there appears an identifiable risk of further injury to persons or property, a criminal defendant charged with capital or other serious felonies against persons or property be denied bail, and

BE IT FURTHER RESOLVED

The National Sheriffs' Association urges the adoption of similar amendments to the bail statutes of the several states to avoid repetitive victimization of the society by criminal defendants identifiable as risks to society, and

BE IT FURTHER RESOLVED

The National Sheriffs' Association urges that both the federal and state court systems eliminate the provisions allowing the posting of an amount representing only 10% of the bail amount and require that the full amount of the bond set by a judicial officer be posted as a condition of release, and

BE IT FURTHER RESOLVED

The National Sheriffs' Association urges adoption of legislation at both the national and state levels requiring forfeiture of bails or bonds in the event of non-appearance by a criminal defendant, eliminating discretion by judicial officers in ordering such forfeitures, and making failure to recover forfeited bail or bonds misconduct sufficient to justify removal of the judicial officer, and

BE IT FURTHER RESOLVED

The National Sheriffs' Association reaffirms the principle that the criminal justice system exists for the protection of the lives, property and good order of the society, and that the interests of criminal defendants are ancillary to the interests of the general public, and

BE IT FURTHER RESOLVED

That the Executive Director be authorized and directed to transmit copies of this Resolution to the President of the United States, the Attorney General of the United States, the President Pro Tempore of the United States Senate, the Speaker of the United States House of Representatives, the Governors of the several states, and the Attorneys General of the several states.

Adopted this 20th day of June, 1974, at Mayo Civic Auditorium, Rochester, Minnesota

Judge Buchele C

District Court of Kansas
Third Judicial District
Shawnee County, Kansas

Chambers of
William Randolph Carpenter
Administrative Judge of the District Court
Division No. One
Shawnee County Courthouse
Topeka, Kansas 66603

January 15, 1987

Officers:
Carol A. Meggison, C.S.R.
Official Reporter
295-4351
Pamela S. Patton
Administrative Assistant
913-295-4365

Commissioner Winifred Kingman
Commissioner Velma Paris
Commissioner Tom Hanna
Shawnee County Courthouse
Topeka, Kansas 66603

Re: OR Cash Deposit Bond Program Check to Shawnee County General Fund

Dear Commissioners:

By court rule, the Shawnee County District Court adopted a pilot program for Own Recognizance (OR) Cash Deposit Bonds for the period October 8, 1985, through December 31, 1986. This program is similar to the one recommended by the American Bar Association in its Standards for Pretrial Release and as authorized by Congress in United States District Courts throughout the country.

Persons eligible to post OR Cash Deposit Bonds must deposit ten percent of the total bond with the Clerk of District Court when released on bail. If the defendant makes all required court appearances ninety percent of the deposit is refunded and ten percent plus interest generated during the holding period is retained by the Clerk and paid to the Shawnee County General Fund as provided by our court rule. In order to be eligible to post OR Cash Deposit Bonds, a defendant must satisfy stringent standards imposed by court rule. Such defendants must have a strong tie with Shawnee County or the State of Kansas and have no prior bond forfeitures or outstanding arrest warrants from other jurisdictions. Such bonds can only be posted during business hours of the court after screening by a Court Services Officer. Persons charged with the more serious felonies are not eligible. This criteria is designed to qualify only persons who have been determined by the Court to present no risk to the community and who are highly unlikely to jump bail.

Attachment 6

During the aforesaid period a total of 2,804 bail bonds in all categories were posted with the Clerk of District Court. Of this number 695 (25%) were professional surety bonds and 165 (6%) were OR Cash Deposit Bonds. During this period there were 35 professional surety bonds forfeited and only one OR Cash Deposit Bond forfeited. In that case the defendant was charged with Misdemeanor Theft and was subsequently brought before the Court for final judgment without incurring any expense to the Court or to state or local units of government. During said period, this program has generated $2,297.50 in administrative fees in cases which are no longer pending and $684.59 in interest for a total of $2,982.09.

In view of the foregoing facts, I consider the OR Cash Deposit Program to be an unqualified success.

Our District Court Rule provides the Court shall pay to the Shawnee County General Fund at the close of each calendar year the total of administrative fees and interest generated by the OR Cash Deposit Program. Accordingly, I herewith tender a check of the Clerk of the District Court in the sum of $2,982.09.

Sincerely yours,

William R. Carpenter
Administrative Judge

WRC:psp
Enclosure

Experimental bonding program receives go-ahead

An experimental bonding program in Shawnee County District Court received the go-ahead to operate full-time after netting almost $3,000 for the county general fund in its original one-year pilot period.

The own recognizance cash deposit bond program began in October 1985, after being recommended by the American Bar Association in its Standards for Pretrial Release. Administrative Judge William R. Carpenter said the obvious success of the program after it was completed last December was the basis for continuing the practice in the future.

The program allows certain individuals to post their own recognizance cash deposit bonds in an amount equal to 10 percent of the entire bond when released on bail. If the individual makes all the required court appearances, 90 percent of the deposit bond is refunded, with 10 percent plus the interest generated through the holding period being retained by the county.

In order to be eligible for the OR cash bonding program, a defendant must have a strong tie with Shawnee County or the state and have no prior bond forfeitures or outstanding arrest warrants from other jurisdictions. People charged with the more serious felonies are not eligible.

"We feel this program can produce some revenue for the county in a program that creates no risk to the community and very little risk of bail jumping, because these cases are very carefully screened and are not the more serious felonies," Carpenter said.

The OR cash bonds have accounted for only 6 precent of all bonds in the county court system during its pilot period, he said. Of those bonds, only one was forfeited. Carpenter said all the cases are closely monitored.

'It's fair because a lot of people charged with the lower grade felonies and misdemeanors are not hardened criminals," Carpenter said. "They have ties to the local community or the state of Kansas and there's a very high likelihood that they'll make all the appearances. This demonstrates an enlightened approached to pretrial release programs."

The money generated from the bonds is kept in a special account with the clerk of the District Court and turned over to the county's general fund at the end of each year, he said.

District Court of Kansas
Third Judicial District

Joyce D. Reeves
Clerk of the District Court
Third Judicial District
Suite 209, Shawnee County Courthouse
200 East Seventh Street
Topeka, Kansas 66603

Shawnee County Courthouse
Topeka, Kansas 66603

March 5, 1987

Offices of the Clerk of the District Court

Civil/Domestic:	295-4327
Criminal:	295-4117
Limited Actions:	295-4115
Probate/Juvenile:	295-4353

To: Joyce D. Reeves

From: Marie Stringer - Accounting Dept.

Re: O R CASH DEPOSIT Summary as of Feb. 27, 1987

Balance brought forward	$16,684.85
Amount received in February	4,000.00
Amount disbursed in February	1,620.00
Interest for February	69.87
Ending Balance	$19,134.72
10% in holding account	348.50
# of bonds received in February	22
# of bonds disbursed in February	6

CC: William Carpenter, Administrative Judge
Kay Falley, Court Administrator

Marie

District Court of Kansas
Third Judicial District

Joyce D. Reeves
Clerk of the District Court
Third Judicial District
Suite 209, Shawnee County Courthouse
200 East Seventh Street
Topeka, Kansas 66603

Shawnee County Courthouse
Topeka, Kansas 66603

Offices of the Clerk of the District Court

Civil/Domestic:	295-4327
Criminal:	295-4117
Limited Actions:	295-4115
Probate/Juvenile:	295-4353

TO: Judge Carpenter

FROM: Rhonda (Criminal)

RE: Bonds

The Number of total Bonds written for the time period Beginning October 8, 1985 and Ending December 31, 1986 2804

Number of OR Cash Deposits	165
Number of OR Cash Deposits Forfeited	1
Number of Professional Surety Bonds	694
Number of Professional Surety Bonds Forfeited	35
Number of Surety Bonds	186
Number of Surety Bonds Forfeited	13

Forfeited Surety Bonds paid 5 @ $6,000

H

March 23, 1987
HB 2252

Mr. Chairman. Members of the House Federal and State Affairs Committee. I am Ron Smith, KBA Legislative Counsel

> Absent information showing the court-created cash bonding programs imperil public safety, KBA opposes regulatory legislation or elimination of court-ordered cash bond programs.

KBA opposes this bill for two reasons: (1) there are important constitutional problems with this particular bill, and (2) the prohibition is contrary to consistent public policy concerning the Board of Indigent Defense Services and fines and forfeiture receipts by the state general fund.

While the legislature sets public policy on what constitutes adequate appearance bonds, you can do so only within the constraints of the Constitution. The Kansas constitution itself sets the public policy that even the legislature cannot change, absent a constitutional amendment. That public policy is much broader than even the U.S. Constitution. The Eight Amendment to the U.S. Constitution states:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Attachment H

However, Section 9 of the Bill of Rights to the Kansas Constitution, enacted in 1856, states:

> §9: All persons shall be bailable by sufficient sureties except for capital offenses where proof is evident or the presumption great. Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted." (emphasis added)

Usually constitutions are a declaration of principles of fundamental law, and the legislature must enact laws to carry out the purposes of the framers. However, it is entirely within the power of those who establish and adopt constitutional provisions to make any of the provisions self-executing. If the language is plain and unambiguous and doesn't need implementing legislation to work, then they are considered "self-executing." As a practical matter, if the constitution is self-executing, anything done in violation of the constitution is void. State v. Nelson, 210 Kan. 437, 445 (1972). The lottery provision has been considered "self-excuting" because it stated clearly that lotteries "shall be forever prohibited in this state." Nelson, ibid.

Because §9 of the constitution uses the word "shall," it also raises the question of whether §9 is self-executing so that legislation contrary to the provision is void. In other words, while the legislature may regulate bail procedures, it may not do so in violation of a self-executing provision of our state constitution.

What HB 2252 does is attempt to statutorily define what constitutes bail by "sufficient sureties." It says that a person using a cash bond program must post 100% of his bond in order to use the pro-

gram. But the accused who posts bond through private sureties doesn't have to come up with 100% of the bond.

Section 3(c) appears to stretch legislative power to discriminate a bit far. What rational basis does the legislature have to say that in order to get all your money back you have to put up 100% of your bond, but if you put up 15% then you don't get any of it back? The power to interpret the terms used in the state constitution resides solely with the Kansas Judiciary. Our court has held:

> "It is the function and the duty of this court to define constitutional provisions. * * * It is the nature of the judicial process that the constitution becomes equally as controlling upon the legislature of the state as the provisions of the constitution itself. * * * Any attempt by the legislature to obliterate the constitution so construed by the court is unconstitutional legislation and void. Whenever the legislature enacts laws prohibited by judicially constrtued constitutional provisions, it is the duty of the courts to strike down such laws." State v. Nelson, 210 Kan. 437, 444-445 (1972)

We think this provision may violate the "excessive bail" provision of §9 of our Constitution. The precise question of whether the legislature can prefer private bonding systems over public ones has never been litigated in Kansas.

It stands to reason, however, if the Judiciary has inherent power, absent abuse of discretion, to determine sufficient bail under the constitution, they have inherent and coequal power by court rule to determine how bail is obtained. There is nothing in our state or federal constitution which says that private bonding systems are to be preferred over public ones. The administrative rules in question do not

abrogate the private bonding systems within their jurisdictions; they supplement the private bonding system -- and only in certain types of cases.

Consistency of Public Policy

The FY 88 Kansas budget is going to barely fund the Board of Indigent Defense Services budget. This is unfortunate, because crime rates are increasing each year in Kansas. It is hard for you to convince your taxpayers they ought to spend more to pay lawyers to represent indigent defendants even though the Sixth Amendment requires it.

Under this cash bonding program, the judges in these three districts actually save taxpayer dollars. They in fact raise general fund money with these programs. When a person bonds himself through this cash bonding program and has made all appearances, if the judge has imposed a fine on the defendant, from the balance of that cash bond the fine is paid. That fine money goes to the state general fund.

If the court has appointed an attorney to represent this person, in most instances if there is anything left, this reimbursement is used to reimburse the AID fund, either partially or in total. In other words, in districts where this program is not in place, taxpayers pay all of the cost of defending that person. In these three districts, those defendants pay for part of their defense.

If the taxpayers were aware of these programs, which system do you think a taxpayer would adopt? The one that costs money, or saves money?

This bill affects revenues to the state general fund, and the level of funding you must make in the Indigent Defense Services Fund.

This house has seen tough battles this year on funding a tight budget. I hope you don't further create budget problems through this type of legislation.

Conclusion

The immediate public benefits of a cash bonding program are:

(1) less requirement on tax-funded payments to attorneys representing indigent defendants; and

(2) more revenue from fines for the state general fund.