

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Thursday, January 15, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Detective David Anderson, Lawrence Police Dept.
Manny Barbaran, Representing Kansas Professional Sureties and Manny's Bonding Co.
Shane Rolf, Shane's Bonding Co.
Kyle Smith, KBI

Others attending:

See Attached List.

SB 299 - Concerning Kansas surety agents

Chairman Vratil opened the hearing on **SB 299**, and distributed copies of a proposed balloon amendment to Committee members clarifying the meaning of "Surety" within **SB 299**. (Attachment 1)

Detective David Anderson, Lawrence Police Department, testified in support of **SB 299**. He said the problem of bail bondsmen and their agents commonly referred to as bounty hunters or recovery agents, committing irresponsible and sometimes even violent acts, while "doing their jobs", has existed for a long time. He gave background information on how the power that bounty hunters claim was derived, and stated that they have more power and jurisdiction than a trained, certified law enforcement officer possesses. He added that bounty hunters are often untrained, unqualified, and unrestricted.

Detective Anderson shared with the Committee actual outrageous acts inflicted on Kansans by unqualified, unregulated bounty hunters, and detailed same in his submitted written testimony. He said that some of the perpetrators of these acts were prosecuted criminally for their conduct, but under current Kansas law they can go right back to being "Surety Recovery Agents". He explained that civil lawsuits are not the solution as few of these "thugs" have any assets, and the bonding companies claim that the bounty hunters are independent contractors and not employees. He concluded by stating that **SB 299** would take great strides in regulating and restricting bounty hunters. The legislation would help ensure the safety and constitutional guarantees of all Kansans. (Attachment 2)

Senator Pugh inquired as to how the proposed legislation would stop the outrageous actions of bounty hunters. Detective Anderson replied that the power given to these individuals was derived from an 1872 U.S. Supreme Court decision, and a few states have been successful in trying to regulate what bounty hunters do. He said his department's hope and concern as a first step is to first regulate individuals who are doing this type of work. He explained that many of the bounty hunters are actually criminals or convicted felons themselves. Detective Anderson stated that implementing this legislation would prevent convicted felons or individuals found guilty of certain charges from being bounty hunters, and increase the level of professionalism in the industry. The second part of the proposal is that before a bounty hunter goes out to apprehend a wanted person, the bounty hunter is required to check with the appropriate law enforcement authorities. The main purpose of this provision is so law enforcement knows who exactly is going out and exercising authority as a bounty hunter, thereby giving the law enforcement time to do a records check on these individuals to make sure they are in compliance with this legislation.

Manny Barbaran, Mannies Bonding Company, testified in support of **SB 299**, and on behalf of the Kansas Professional Sureties (KPS) submitted written remarks in support of this proposed bill. (Attachment 3) He explained that the KPS members were property or "pocket" bondsman, which means they use their

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own assets, either real estate or other cash assets, to secure the bonds their companies guarantee. He stated that he has been in business 35 years and has only had one incident in that time where a family in Kansas City, KS., claimed one of his employees maced the family's children. He said a lawsuit and court case ensued, and the employee was found not guilty because of a weak prosecution case.

Mr. Barbaran testified that in its current form, **SB 299**, is a sound and affordable alternative to the language offered in **SB 248**. He stated that requiring communication between surety recovery agents and local law enforcement prior to an attempt to apprehend a bail or bond violator would be beneficial to all parties. Mr. Barbaran added that cooperation with local law enforcement is vital to the ability to conduct business. He said they also endorsed the proposed language in Section 3 prohibiting convicted felons from serving as surety recovery agents.

Mr. Barbaran requested an amendment be made to the proposed bill requiring a bondsman to be a resident of the State of Kansas for at least two years. He explained that the amendment would help eliminate the problem with Missouri bondsman coming into Kansas and paying \$50 through an insurance company and legally becoming a Kansas bondsman. He said Missouri has a law that if he wanted to go there he would have to put up \$25,000 to be a bondsman in Missouri.

Senator Haley inquired if Mr. Barbaran does background checks on individuals before hiring them, and Mr. Barbaran said his company checks them out and would not hire a convicted felon. Senator Haley asked if he knew of any other company that has hired convicted felons, and Mr. Barbaran responded that he knew Wyandotte County had two convicted felons, but did not know of any others.

Shane Rolf, Shane's Bonding Co., testified that he has been in the bail bond business in Johnson County since 1986. He stated he supported the intent of the proposed bill, although he felt that it needed a small amount of tweaking to clarify and avoid any potential problems in unusual circumstances. He explained that the bill calls for informing local law enforcement of any intended apprehension, however, there are instances where advance notification of law enforcement is not practical or perhaps even possible. He added in most instances this would involve the surety directly rather than a bounty hunter. (Attachment 4)

Mr. Rolf requested an amendment clarifying the language at the end of the sentence in Line 23 by inserting the phrase "except in exigent circumstances". He explained that by inserting this phrase the surety would retain the ability to immediately apprehend or detain his client in those circumstances where advance notification is impossible or impractical. Mr. Rolf said he supported the notion that convicted criminals should not be involved in the commercial bail bond business. He questioned the wording in Section 3 and the use of "involving", plus the use of the ten year time frame "immediately prior to the date of the intended apprehension".

Mr. Rolf proposed that Section 3 be rewritten and limited as follows: "No commercial surety or person acting as an authorized agent of a commercial surety or bounty hunter shall have been convicted in this, or any other jurisdiction, of a felony or a crime involving moral turpitude or dishonesty."

Senator Pugh inquired if there are provisions in the State of Kansas for the hiring of other people, i.e. doctors, social workers, or government employees. He said he was attempting to determine if Kansas was being consistent with other hiring areas.

Kyle Smith, Kansas Bureau of Investigation (KBI), injected that the language was taken from the Private Investigators Act and explained how the wording was derived. Committee questions and discussion continued regarding the language in this proposed legislation. Ernest Popovich, Geary County Sheriff's Department, Manny Barbaran and Randal Kahler (bounty hunter) of Mannies Bonding Co., offered comments regarding the proposed bill.

Chairman Vratil questioned Mr. Rolf in regard to his requested amendment in Line 23 involving the phrase "exigent circumstances". He asked if it wouldn't be prudent for the bonding companies to notify the Police Department as soon as they had any indication that a person was about to flee or violate their bond. The bonding company wouldn't have to wait until the last minute. Mr. Rolf responded that they

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would simply be giving law enforcement a laundry list of people who failed to make an appearance and that we might be getting them back. He stated he thought the police were more interested in having specific knowledge about specific cases so they could be aware of something that might occur.

Due to time restraints, Kyle Smith, KBI, briefly summarized what **SB 299** does. He said that he and Detective Anderson took a look at **SB 248** and decided a good portion of the problem could be addressed in a more streamlined and simplified manner, so **SB 299** was drafted. He explained that **SB 299** has two main parts which should fix most of the abuses that occur by the few bad bondsmen and bounty hunters that violate innocent citizens and damage the reputation of the profession. Mr. Smith stated that by requiring a prior check by law enforcement of their authority and by eliminating those persons from participating in the criminal justice system who have serious criminal history of their own, most of the abuses can be stopped. (Attachment 5)

Following brief discussion and questions, Senator Vratil closed the hearing on **SB 299**.

The Chair announced that hearings on **SB 298** and **HB 2293** would be rescheduled for another time, and expressed his apologies to the conferees who were present to testify on those two bills.

The Chair adjourned the meeting at 10:30 a.m. The next scheduled meeting is January 20, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: JAN. 15, 2004

NAME	REPRESENTING
David P. Anderson	Lawrence, KS. Police Dept
Kyle Smith	KBI
Michael White	KCDAA
Wayne White	KLS
Kathy Pucci	Judicial Branch
Sandy Barnett	KCSOV
Emily Watson	Sen. Barbara Allen
Julia Butler	Sentencing Comm.
Brenda Harmon	KSC
Patricia Biggs	KSC
Maui Graham	Kansas Ass. Judicial Sect.
Randall Kasper	SB299 Bail Bonds
Doug Smith	Pinegar, Smith & Associates
SHANE ROLF	SITANE'S BAIL BONDS
E.L. Popovich	Geary Co. Sheriff's Dept.
DAN HAMBLIN	JOHNSON COUNTY SHERIFF OFFICE
Jeff Be Henberg	Kansas Sho. & C. Ass'n
Ray Wilk	KS Dept of Revenue - Div. of Vehicles
John Peterson	Kc. Gov. ent'l Consulting
Kevia BARRE	Hein Law Firm

Senate Judiciary
1-15-04
Attachment 1

SENATE BILL No. 299

By Special Committee on Judiciary

9 AN ACT concerning surety agents.

10 *Be it enacted by the Legislature of the State of Kansas:*

11 Section 1. As used in this act: (a) "Surety" has the same meaning as
12 K.S.A. 40-1102 and amendments thereto.

13 (b) "agent of a surety" means a person not performing the duties of
14 a law enforcement officer who tracks down, captures and surrenders to
15 the custody of a court a fugitive who has violated a surety or bail bond
16 agreement.

17
18 Sec. 2. Any surety or authorized agent of a surety, commonly re-
19 ferred to as a bounty hunter, who intends to apprehend any person in
20 this state pursuant to K.S.A. 22-2809 and amendments thereto, or under
21 similar authority from any other state, shall inform law enforcement au-
22 thorities in the city or county in which such surety or agent of a surety
23 intends such apprehension, before attempting such apprehension. The
24 surety or agent of a surety shall present to the local law enforcement
25 authorities a certified copy of the bond, a valid government-issued photo
26 identification, written appointment of agency, if not the actual surety, and
27 all other appropriate paperwork identifying the principal and the person
28 to be apprehended. Local law enforcement may accompany the agent.

29 Sec. 3. No commercial surety or person acting as an authorized agent
30 of a commercial surety or bounty hunter shall have been convicted in this
31 or any other jurisdiction, of a felony, a violation of this section, or within
32 ten years immediately prior to the date of the intended apprehension,
33 been convicted of any crime involving moral turpitude, dishonesty, ve-
34 hicular homicide, assault, battery, domestic battery, assault of a law en-
35 forcement officer, misdemeanor battery against a law enforcement offi-
36 cer, criminal restraint, sexual battery, endangering a child, intimidation
37 of a witness or victim or illegally using, carrying or possessing a dangerous
38 weapon.

39 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
40 for the first violation and a level 9 nonperson felony upon a second and
41 subsequent violation.

42 Sec. 5. This act shall take effect and be in force from and after its
43 publication in the statute book.

means a person or commercial surety,
other than the defendant, that guarantees
the appearance of the defendant, by
executing an appearance bond

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
KANSAS SURETY RECOVERY AGENTS ACT (SENATE BILL 299)
DETECTIVE DAVID P. ANDERSON
LAWRENCE, KANSAS POLICE DEPARTMENT
JANUARY 15, 2004**

Chairman Vratil and Members of the Committee:

I am pleased to appear today on behalf of Chief W. Ronald Olin and the Lawrence Police Department. I am grateful that this committee is seriously studying an issue that can greatly effect the safety and constitutional rights of the citizens of Kansas.

The problem of bail bondsmen and their agents commonly referred to as bounty hunters or recovery agents, committing irresponsible and sometimes even violent acts, while "doing their jobs", has existed for a long time. The power that bounty hunters claim is derived from an 1872 United States Supreme Court decision, Taylor v. Taintor. In short, when bail is granted, the bail bondsman is considered as having been given custody of the defendant. This creates a private, contractual relationship between the bondsman and the accused and gives the authority and jurisdiction to the bondsman to deliver the defendant whenever and wherever the defendant is ordered to appear. Whenever the bondsman chooses to do so, the bondsman may apprehend the defendant and return the defendant to custody. Most typically, this occurs when the accused fails to make a court appearance. The bondsman may recapture and seize the defendant any time, day or night, without a warrant. A bondsman may pursue the defendant into other states.

The bail bondsman may exercise this authority in person or by agent (bounty hunter). The bondsman or his agent may even break and enter into the defendant's home to effect this apprehension.

The extraordinary, mostly unregulated, power that bondsmen and bounty hunters can exercise over defendants, most of whom have yet to have been actually convicted of a charge is far more power and jurisdiction than a trained, certified law enforcement officer possesses. Yet, bounty hunters are often untrained, unqualified, and unrestricted.

Without bail bondsmen and their agents, however, the criminal justice system would be crippled. Without bondsmen, bails would have to be significantly lowered or many accused would never be able to be released, pre-trial. Jails are already overcrowded now with those convicted. The extra burden placed on jails, if those awaiting court were added to the population, would likely overwhelm them. Thus, the bail bonding system as it exists in this country may be a necessary evil. Some states have enacted statutory restrictions on bounty hunters, Kansas has not. Let me review with you some reasons why Kansas should join those states that do set some standards. The following are just some of the outrageous acts inflicted on Kansans, by unqualified, unregulated bounty hunters.

On an evening in January 2001, in Lawrence, Kansas four bounty hunters arrived at the home of an elderly resident and her adult son. Two of the bounty hunters from Kansas City enlisted the assistance of two Lawrence bounty hunters. Their quest was to locate an individual who had been bonded by a Kansas City bonding agency and who had missed a court date

on a drug related charge. Believing that the resident's son had information on the whereabouts of the fugitive, the bounty hunters used bullying and misrepresentation to gain access to this residence, which was never listed as the residence of the fugitive. During the investigation and subsequent prosecution of three of these individuals, it was discovered that one of the bounty hunters from Kansas City was a Federal Parolee. The other bounty hunter from Kansas City was murdered before prosecution in this case was complete. It was further discovered that one of the Lawrence bounty hunters was also a convicted felon and six months later he was convicted of Aggravated Kidnapping, Aggravated Burglary, and Aggravated Robbery and was sentenced to over 20 years in prison on an unrelated Jefferson County case. At the sentencing of the bounty hunter from Kansas City, Douglas County District Court Judge Michael Malone stated, *"This was a presumptive probation case, but the crime was committed while you were on probation. And the Court has a very clear idea of what happened here, and it amazes me that our state still has common-law rules as it relates to bail bondsmen, which I believe gave you some belief that you could act without consequence in looking for an individual who jumped bail. The fact that you and your colleagues were even in that business tells the Court that the business of bail bondsman is poorly regulated. And by that I mean here was a gentleman hired to apprehend fugitives, when you yourself were a convicted felon. What this tells this Court is that the bail bondsman industry is poorly regulated and perhaps it's time for the state government to get involved in these matters"*.

In a recent Shawnee County case, a Topeka bail bondsman pled guilty in June of 2003 to Possession with Intent to Sell Methamphetamine. He was

subsequently placed on intensive probation supervision. However, under current Kansas law, he is still free to operate as a bail bondsman.

In Reno County, the owner of a Hutchinson bail bonding company was recently charged with 3 counts of Felony Possession of Stolen Property. The State has alleged that the bondsman was receiving stolen property in lieu of defendant's making their bond payments.

Two men in downtown Kansas City throw an apartment manager by the name of Lester Bishop on the hood of his own car. They place handcuffs on his wrists and drag the startled man to their vehicle, telling him only that they are, "going to Police Headquarters". Instead, they drive around the metropolitan area for two hours. Eventually, they arrive at the Kansas City, Missouri East Patrol Division building, where they quickly drop off Mr. Bishop. Who were these two men? Federal agents? Undercover Kansas City police officers? Ordinary criminals, kidnapping another random victim in a big city in America? The answer is, none of the above. These two men were bounty hunters who happened to grab the wrong man and then could not find a key to unlock the handcuffs they had put around his wrists. They apparently drove to Kansas City, Kansas, in an effort to locate their friend who was a security guard, hoping he might have a handcuff key. When they could not find the guard, they drove to the East Patrol where police had to remove the handcuffs. The disturbing part of this story is that to this day, no one knows the identity of the bounty hunters, as they left the police station too quickly. Mr. Bishop was simply told that bounty hunters "have the law on their side".

In another Kansas City case, police arrested a bondsman who was carrying a loaded pistol tucked in his waistband. He claimed authority to do so under the aforementioned Taylor v. Taintor case. Though this decision certainly does not authorize the carrying of a concealed weapon, the prosecutor's office declined to file charges against the bondsman. That the prosecutor's office declined to pursue charges is not all that surprising, given their workload. What was shocking was the information uncovered through a criminal history records check of the bondsman. This bondsman had been convicted of resisting arrest, aggravated assault, possession of a firearm, burglary, criminal damage, and unlawful use of a weapon. A sodomy charge was pending.

In a highly publicized case which also occurred in Kansas City, in June of 2002, three bounty hunters went to the home of a man wanted on Municipal Court warrants. As two of the bounty hunters handcuffed the individual they were seeking, a physical altercation broke out between the fugitive's brother and the third bounty hunter. Witnesses told police that the bounty hunters hit the men on their heads with flashlights and that the fugitive's brother was placed in a choke hold. When police arrived on the scene they found the fugitive, handcuffed and bleeding from the head. Police found the brother unresponsive. The medical examiner ruled that the brother died from strangulation and chest compression. The bounty hunter was found guilty of Second Degree Manslaughter.

On a night in January of 2002, a Kansas City, Kansas resident and his wife were sound asleep in their home when they heard loud knocking on the door. Voices on the other side of the door announced that they were law

enforcement officers and that they would kick in the door if it were not opened. When the resident opened the door, two men forced their way inside. One of the two intruders, later identified as a bail bondsman, told the resident that he was there to arrest him. It was soon determined that the bondsman was actually looking for the resident's son, who did not live there. The two men forced the couple to remain in their living room while they searched the house. When the resident attempted to retreat to his bedroom in order to put some clothes on, the bondsman put his hand on his handgun and told the resident that if necessary he would be forcibly restrained. This bondsman pled guilty to Aggravated Assault in Wyandotte County District Court.

In another more recent case which also occurred in Kansas City, Kansas, in September of 2002, an employee of a bail bonding company, accompanied by at least two other men, allegedly entered and searched the residence of an elderly female. The bondsman was seeking the whereabouts of the resident's son, who was wanted on an outstanding warrant. A physical altercation ensued between the bondsman and the elderly female. The resident claims that the bondsman brandished a metal baton and struck her with it several times, causing injuries to her arm, leg, and wrist. A medical examination revealed that the elderly female suffered a fractured arm. This bondsman has been bound over in Wyandotte County District Court on a charge of Aggravated Battery.

In Cherokee County, a Baxter Springs bail bondsman was bound over on charges of Insurance Fraud, Making False Information, and Falsely Reporting a Crime. The complaint in this case alleges that between May and

July of 2002, the bondsman reported that his car had been stolen, although he had conspired with another individual to destroy the car in order to collect insurance money. In an unrelated case, another complaint was filed against the bondsman that charged him with Rape and Illegal Acquisition of State Assistance. These charges stem from an allegation that he had sexual relations with a female client against her will on November 11th and November 12th, 2002, and also forced her to use her Kansas Vision Card to buy him groceries. While out on bond on both of the aforementioned cases, another case was filed against this bondsman which alleged that on December 3, 2002, he kidnapped a girl with the intent of holding her for ransom. This case was eventually dismissed when the girl failed to appear for Court. While still out on bond, another case was filed against this bondsman that alleged that on March 11, 2003, he was involved in the fraudulent sale of cars. He has been bound over on a charge of Making a False Writing in this case.

While some of the perpetrators of these acts were prosecuted criminally for their outrageous conduct, please remember that under current Kansas law, they can go right back to being "Surety Recovery Agents". Civil lawsuits are not a solution as few of these thugs have any assets and the bonding companies claim that the bounty hunters are "independent contractors", and not employees.

The aforementioned known cases undoubtedly represent only but a few of the many examples of bad behavior committed in recent years by bail bondsmen and their agents.

Clearly, we have a serious and recurring problem in Kansas. Senate Bill 299 would take great strides in regulating and restricting bounty hunters. This legislation would help ensure the safety and constitutional guarantees of all Kansans.

Thank you for your time and consideration. I would be happy to answer any questions.

MANNIES BONDING COMPANY

302 EAST SANTA FE • OLATHE • KANSAS • 66061

TESTIMONY OF MANNY BARBARAN SENATE JUDICIARY COMMITTEE SENATE BILL NO. 299 JANUARY 15, 2004

Dear Chairman Vratil, and Honorable Members of the Senate Judiciary Committee:

Thank you for the opportunity to submit remarks on Senate Bill No. 299. I am a property bondsman, operating primarily in Wyandotte and Johnson counties and have been in the business for 35 years. I am presenting these written remarks on behalf of the Kansas Professional Sureties. Our members are all property or "pocket" bondsman. Meaning we use our own assets, either real estate or other cash assets to secure the bonds we guarantee.

I am here today to offer our support for Senate Bill No. 299.

A bail bondsman, or surety, provides a valuable service to the judicial branch of government and to individuals involved in legal matters before the courts. When we write a bond for a defendant in a criminal case we are entering into a contractual agreement with the defendant assuring their next appearance, as directed by the court. We have a strong incentive, through our financial commitment, to ensure that the defendant appears. If the defendant fails to appear, we must both locate them and return them to the court or we must pay the face amount of the bond.

Senate Bill No. 299, in its current form, is a sound and affordable alternative to the language offered in Senate Bill No. 248. We do not believe that such a comprehensive piece of legislation as Senate Bill No. 248 is necessary

We believe that requiring communication between surety recovery agents and local enforcement prior to an attempt to apprehend a bail or bond violator will be beneficial to all parties. As a regular business practice we notify the local sheriff or police department whenever we are required to be in the field attempting to pick up someone who has forfeited their right to be out on bond. This is not only for our employee's legal and personal protection but offers a sense of security to the others involved, especially if we believe that the subject will refuse to comply with the Court's order. Cooperation with local law enforcement is vital to our ability to conduct business.

We also endorse the proposed language, in Section 3, prohibiting convicted felons from serving as surety recovery agents. This is a practice we have already adopted in our own business.

Thank you for your time and consideration this morning. We request that you act favorably upon Senate Bill No. 299

Senate Judiciary

1-15-04

Attachment 3

SHANE L. ROLF

TESTIMONY IN SUPPORT OF SB299

Senate Judiciary

1-15-04

Attachment 4

TESTIMONY IN SUPPORT OF SB299

My name is Shane Rolf. I have been in the bail bond business in Johnson County since 1986. I am a member of the Olathe Area Chamber of Commerce and completed their Leadership program in 1997. I am a member of the National Federation of Independent Business. I am also a husband and a father and a lifelong resident of the State of Kansas.

I would like to submit my comments in support of Senate Bill 299. I should clarify that I support the intent of the bill, although I feel that it needs a small amount of tweaking to clarify and avoid any potential problems in unusual circumstances.

ADVANCE NOTIFICATION

The bill calls for informing local law enforcement of any intended apprehension – (and/or surrender) pursuant to K.S.A. 22-2809 – *prior* to any attempt at apprehension. This, on its face, sounds reasonable and I generally support this requirement.

However, there are instances where *advance* notification of law enforcement is not practical or perhaps even possible. In most instances this will involve the surety directly rather than a bounty hunter. Some examples of these situations are, but not limited to:

1. Happen across a fugitive client – either at random, or in the course of searching for a different person.
2. Indemnitor delivers person directly to the surety, typically without advance notice.
3. Instances involving defendants and the courts.

I am sure it is not the intent of the Legislature to establish a situation where a surety legitimately and legally apprehends a fugitive client, but is then charged and put out of business for a decade for failure to notify law enforcement in advance when such advance notification was not possible nor practical or would have resulted in the escape of the fugitive client.

To alleviate this, I would propose inserting the phrase “*except in exigent circumstances*” at the end of the sentence in Line 23.

Black’s Law Dictionary has described exigency as: “Imperativeness. Something arising suddenly out of the current of events; any event of occasional combination of circumstances, calling for immediate action or remedy; a sudden and unexpected happening or an unforeseen occurrence or condition; case requiring immediate attention, assistance or remedy.”

Case precedents have defined exigent circumstances as:

“Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction or relevant evidence, *the escape of a suspect*, or some

other consequence improperly frustrating legitimate law enforcement efforts.” United States v. McConney, 728 F.2d 1195, 1199 (1984).

By inserting this phrase the surety would retain the ability to immediately apprehend or detain his client in those circumstances where advance notification is impossible or impractical.

Obviously these situations would be limited and if questions arose, the surety could then be required to justify the exigency of the particular circumstances.

PRIOR CRIMINAL CONVICTION

Again, I wholeheartedly support the notion that convicted criminals should not be involved in the commercial bail bond business. I do not think that anyone would contest restricting convicted felons or those convicted of crimes involving dishonesty or moral turpitude from engaging in any aspect of the bail bond industry. I think it would be far simpler to limit the restriction to those individuals.

I would not like to see situations where some minor confrontation (such as an assault) during the course of a legal apprehension of a fugitive defendant results in a bondsman being closed down for a decade. I have personally witnessed situations where a bondsman or bounty hunter has been attacked (oftentimes by a distraught or angry family member) while legitimately apprehending a fleeing defendant and in the course of defending himself the surety or bounty hunter has been threatened with or investigated for some of the very crimes referenced herein.

I am also concerned about the particular styling of Section 3. Specifically, “No ... person shall have been convicted ... of a felony, a violation of this section, or *within ten years immediately prior to the date of the intended apprehension*, been convicted of any crime *involving* moral turpitude, dishonesty, assault, battery, domestic battery, etc.”

There are two aspects of this section that concern me: First the use of the word “involving.” I understand crimes *involving* moral turpitude or dishonesty. However, all the instances referenced from Line 34 and beyond are actual statutorily defined crimes. The use of the word “involving” seems to indicate that one could be disqualified without actually being convicted of one of these crimes so long as the charge of which you were convicted “involved” one of the crimes referenced herein. If that is not the intent, then this should probably be reworded.

Second, the use of the ten year time frame “immediately prior to the date of the intended apprehension,” raises additional questions. Does this apply to sureties in their capacity as sureties (i.e. the posting of bail) or only as it relates to their ability to physically apprehend their clients?

I would propose that section 3 be rewritten and limited as follows:

Sec. 3. No commercial surety or person acting as an authorized agent of a commercial surety or bounty hunter shall have been convicted in this, or any other jurisdiction, of a felony or a crime involving moral turpitude or dishonesty.

This completely eliminates the participation of convicted felons in the bail bond industry, and does not present the ambiguities I have referenced above.

CLOSING

Obviously, I would like to see the changes I have suggested. Even with these concerns I have addressed herein I support passage of this bill and support the issues it addresses, specifically, promoting a close relationship between sureties and law enforcement in the apprehension of fugitive defendants and the restriction of convicted felons from involvement in the bail bond business.

Thank you for your time and your consideration of my testimony.



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
BEFORE THE JUDICIARY COMMITTEE
KYLE G. SMITH
SPECIAL ASSISTANT ATTORNEY GENERAL
IN SUPPORT OF SB 299
January 15, 2003

Dear Chairman Vratil and Members of the Committee:

I am pleased to appear in support of SB 299, finally addressing a neglected problem area of the criminal justice system. In addition to my work at the KBI, I also serve as the Kansas Peace Officer's Association Legislative Chairperson. As such, Detective Anderson contacted me regarding the problems they have had in his jurisdiction with bondsmen and bounty hunters. His interest hit a responsive cord with me, as the very first legislation I ever worked on was an effort to license bondsmen when I was an Assistant County Attorney in Emporia 20 years ago. My efforts then were unsuccessful but the problems did not go away. As you have heard from the collection of horrific abuses put together by Detective Anderson, we have serious problems in this area with serious abuses, not just to criminals but innocent citizens as well. Why do we give this dark corner of the criminal justice system so much power with absolutely no supervision or restrictions on who can exercise such power?

We reviewed SB 248, which is basically an adaptation of the Private Detective Licensing Act, as a very appropriate response to the problem. My only concerns with it are whether the AG's officer or KBI have people, space and resources to administrate such a program, and given

the state's fiscal crunch whether such an approach is viable to create a new administrative unit to license and monitor these surety recovery agents. So Detective Anderson and I thought a good portion of the problem could be addressed in a more streamlined and simplified manner and we came up with the proposal that is now before you as SB 299.

SB 299 has two main parts which should fix most of the abuses that occur by those few bad bondsmen and bounty hunters that have violated innocent citizens and damaged the reputation of the profession.

Section 1, a good addition by the revisors office, provides definitions of "Surety" and "agent of surety" to clarify who is, and is not, covered by the act.

Section 2 would require that prior to trying to apprehend a person, that the surety or their agent would have to inform local law enforcement and provide documentation of their identity and authority to be seizing a person. By having law enforcement know ahead of time of a potential conflict when the surety recovery agent tries to apprehend an individual, we will be able to avoid the dangers and confusion which result when an altercation is reported by citizens and law enforcement doesn't know what is going on. Requiring a showing of authority and disclosure of their activities should ensure that legitimate recovery efforts are planned and that the innocent will not be harmed.

Section 3 mandates that persons participating in the criminal justice system surety work not be criminals themselves. The list of prohibited prior convictions which would prohibit them from acting as bondsmen or bounty hunters, was taken from the prohibitions in the Kansas Private Detective Licensing Act. as far as prior criminal convictions,.

Section 4 makes it a class A misdemeanor for a first violation and a level 9 non-person felony upon the second or subsequent conviction to violate these new provisions.

During the interim hearings this summer Senator Allen asked why this problem hadn't been addressed before. While I can't be certain, I believe there are two reasons: the most common victims were criminals and their families, not the group with the most credibility or political clout, and everyone in the system recognized the problem but not as their problem. Prosecutors, cops, judges and defense attorneys all had horror stories of their exposure to bad bounty hunters but none felt they were in charge of them or pushing for change.

We feel that by requiring the prior check by law enforcement of their authority and by eliminating those persons from participating in the criminal justice system who have serious criminal history of their own, most of the abuses can be stopped. It seems ironic that people with a history of already seriously participating in the criminal justice system in another capacity, are supposed to make our criminal justice system work.

I appreciate the opportunity to address this committee and will be happy to answer any questions.