



"BAIL AGENTS ASSURE JUSTICE"

Kansas Bail Agents Association
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House Judiciary Committee
Testimony in Support of Senate Bill 157

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March 5, 2025

Chair Humphries and Members of the Committee,

My name is Shane Rolf. I am the Executive Vice President of the Kansas Bail Agents Association. I am providing this testimony on behalf of the KBAA in support of Senate Bill 157.

This bill would make 3 changes to K.S.A. 22-2807, all of which solve ongoing problems.

It would require that a compensated surety be provided a copy of the warrant issued following the declaration of a bond forfeiture on the bond they had posted.

This solves two problems. First, three years ago the Legislature made changes requiring a warrant to be issued within 14 days of the failure to appear if the state wished to pursue a bond forfeiture judgment. Some jurisdictions are refusing to provide the issuing date of the warrant, thus preventing the surety from availing itself of a statutory defense. Second, when traveling to certain other states, local law enforcement and local statutes often require the surety to provide a copy of the warrant along with a copy of the bond. By having this warrant copy, the surety is able to stay in compliance with the local regulations in other jurisdictions while attempting to apprehend our fugitives.

Senate changes: The Sheriff's Association did not want to have the responsibility of providing a copy of the warrant, so the Senate changed the language to direct that "the court" shall provide a copy of the warrant. We are amenable to the change made by the Senate, but we have attached proposed language that clarifies that the Court only needs to provide a copy of the warrant "upon request" of the surety. We think this will place the onus upon us to make the request.

The bill would provide a defense to forfeiture if the defendant has been deported from the United States and if the surety can provide facts substantiating that the defendant is no longer in the country. This is in response to the erratic nature in which the Federal Government chooses to enforce immigration law. One administration

may be very lax about deportation and another comes in with a different approach. The surety is often caught in the middle of these changing policies. While both California and Maryland have established case precedents that offer protection in the event of deportation, the Kansas courts have declined to offer any relief in those instances where the surety can actually demonstrate that the defendant has been removed. In terms of statutes, some State Legislatures have written this deportation defense into their legal codes.¹

Additionally, if a defendant has been expelled from the country, production of the defendant is *legally* impossible. Production of a defendant outside the borders of the United States is impossible for two reasons. First, bail contracts issued in the United States are not recognized by foreign countries. Second, federal statutes² proscribe anyone, including sureties, from bringing a defendant back into the United States and create criminal penalties for such actions.

Senate Changes and other proposals: The original language of the bill simply provided that it would be a defense if the defendant "left" the country. Law enforcement felt that was too broad as it could potentially include someone who fled the country. So the Senate changed "left" to "deported." Another conferee, Aaron Breitenbach, from the Sedgwick County District Attorney's Office, felt that this was still too broad, as it could allow an unscrupulous surety to post bond for a defendant who was subject to an immigration detainer, collect the fee and then be absolved of liability after the defendant was deported. We agree that this is a potential problem. As such, we have proposed language that would disallow this defense if the defendant was subject to an immigration hold at the time the bond was posted. I believe that Mr. Breitenbach would like additional language as to whether the surety knew or should have known that the defendant might be deported. This is certainly understandable; however, we feel that the existence of an immigration detainer is the best bright line determinant.

Finally, this provides a mechanism for a partial refund of a paid forfeiture should the missing defendant be returned within six months from the date the Judgment on Bond is entered. Establishing a set refund percentage and a set time will establish a consistent statewide standard for dealing with this, while still providing an incentive for the surety to continue to attempt to locate and apprehend the missing defendant. It is well established in Kansas law that the purpose of bail is not to beef up public revenues³ but rather to provide an incentive for the defendant to reappear and the surety to return the defendant if he does not. The statute currently leaves this post judgment refund to the discretion of the court. However, there is no consistency across Kansas in how or even if this is done. Certain jurisdictions have

¹ Georgia Code 17-6-72, Florida Statute 903.26,

² 8 U.S.C. §1327 Any person who knowingly aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.

³ State v. Midland Insurance, 208 Kan. 886 (1972)

refund formulas in their local rules⁴ while other districts employ policies prohibiting the refund of any portion of the paid forfeiture at all when the defendant is returned after judgment.

Proposed changes: The current language in the bill calls for a 95% refund if the defendant is returned within 180 days. Any potential refund after 180 days would still be left to the discretion of the Court. The idea of this 95% comes from similar statutory language in Oklahoma which allows for a 100% refund up to a full year after judgment. The Senate passed this 95% refund level without any changes. However, in discussions with Mr. Breitenbach, he expressed concerns about both the length of time and the large percentage refund. To that end, we are proposing alternative language that would offer a graduated approach. The proposed language would offer a 90% refund within 90 days, a 75% refund up to 180 days and a 50% refund out to 270 days.

All told, these changes will establish additional consistency in the enforcement of bond forfeitures and the KBAA would urge the passage of Senate Bill 157.

Shane L Rolf
Executive Vice-President
Kansas Bail Agents Association

⁴ Sedgwick and Wyandotte currently offer percentage refunds based upon time from judgment

SENATE BILL No. 157

By Committee on Judiciary

2-3

1 AN ACT concerning criminal procedure; relating to release prior to trial;
2 forfeiture of appearance bonds; requiring warrants for failure to appear
3 to be given to sureties; allowing bond forfeiture to be set aside if surety
4 can show ~~that the defendant left the country~~ **was deported from the**
5 **United States**; requiring remission in certain circumstances; amending
6 K.S.A. 22-2807 and repealing the existing section.
7

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

9 Section 1. K.S.A. 22-2807 is hereby amended to read as follows: 22-
10 2807. (a) If a defendant fails to appear as directed by the court and
11 guaranteed by an appearance bond, the court in which the bond is
12 deposited shall declare a forfeiture of the bail and issue a warrant for the
13 defendant's arrest. If the defendant is charged with a felony offense, the
14 sheriff shall enter such warrant into the national crime information center's
15 index **within 14 days of issuance of the warrant, and upon request, the**
16 **court shall make a copy of the warrant available to a compensated**
17 **surety who deposited the bond on behalf of the defendant** ~~within 14~~
18 ~~days of issuance of the warrant. If such warrant is not entered into such~~
19 ~~index, the sheriff shall notify the court thereof.~~

20 (b) An appearance bond may only be forfeited by the court upon a
21 failure to appear. If a defendant violates any other condition of bond, the
22 bond may be revoked and the defendant remanded to custody. An
23 appearance bond is revoked by the execution of a warrant for a defendant's
24 arrest for a violation of a bond condition. The magistrate shall promptly set
25 a new bond pursuant to requirements of K.S.A. 22-2802, and amendments
26 thereto.

27 (c) (1) The court may direct that a forfeiture be set aside, upon such
28 conditions as the court may impose, if it appears that justice does not
29 require the enforcement of the forfeiture.

30 (2) The court shall direct that a forfeiture be set aside, ~~upon such~~
31 ~~conditions as the court may impose, if:~~

32 (A) The surety can prove that the defendant ~~has left the country been~~
33 **~~deported from the United States~~** ~~or~~ is incarcerated somewhere within the
34 United States prior to judgment of default by providing to the court a
35 written statement, signed by the surety under penalty of perjury, setting
36 forth ~~details of the facts substantiating such incarceration claim;~~

37 (B) the warrant required to be issued by subsection (a) was not issued

1 within 14 days of the forfeiture;

2 (C) a warrant that is required to be entered into the national crime
3 information center's index ~~or provided to a compensated surety~~ pursuant to
4 subsection (a) was not entered ~~or provided~~ within 14 days of issuance
5 or provided by the court to the surety upon request pursuant to subsection (a),
6 unless there is good cause shown for the failure to enter such warrant into
7 the index ~~or provide such warrant to the compensated surety~~; or

8 (D) ~~the defendant has been arrested outside of this state and the~~
9 prosecuting attorney has declined to proceed with extradition.

10 (E) the defendant was not held subject to an immigration detainer when
11 the bond was posted and the surety can prove that the defendant has been
12 deported from the United States prior to judgment of default by providing
13 to the court a written statement, signed by the surety under penalty of
14 perjury, setting forth the facts substantiating the deportation.

15 (3) Upon the defendant's return, the surety may be ordered to pay the
16 costs of such return.

17 (d) When a forfeiture has not been set aside, the court shall on motion
18 enter a judgment of default and execution may issue thereon. If the
19 forfeiture has been decreed by a district magistrate judge and the amount
20 of the bond exceeds the limits of the civil jurisdiction prescribed by law
21 for a district magistrate judge, the judge shall notify the chief judge in
22 writing of the forfeiture and the matter shall be assigned to a district judge
23 who, on motion, shall enter a judgment of default. By entering into a bond
24 the obligors submit to the jurisdiction of any court having power to enter
25 judgment upon default and irrevocably appoint the clerk of that court as
26 their agent upon whom any papers affecting their liability may be served.
27 Their liability may be enforced on motion without the necessity of an
28 independent action. The motion and notice thereof may be served on the
29 clerk of the court, who shall ~~forthwith~~ promptly mail copies to the obligors
30 to their last known addresses. No judgment may be entered against the
31 obligor in an appearance bond until more than 60 days after notice is
32 served as provided ~~herein in this section~~. No judgment may be entered
33 against the obligor in an appearance bond more than two years after a
34 defendant's failure to appear.

35 (e) After entry of judgment pursuant to subsection (d), the court:

36 (1) May remit such judgment in whole or in part under the conditions
37 applying to the setting aside of forfeiture in subsection (c); and

38 (2) shall remit ~~95%~~ a portion of the amount of the appearance bond
39 to the obligor if the defendant is returned to custody within 180 the
40 following number of days after judgment is entered:

37 (i) 90% if the defendant is returned to custody within 90 days;

38 (ii) 75% if the defendant is returned to custody within 91 to 180 days;

39 (iii) 50% if the defendant is returned to custody within 181 and 270
40 days.

41 Sec. 2. K.S.A. 22-2807 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the statute book.