



O W E N S
BONDING CO.

Your Freedom is Our Business

Jan 30, 2012

Senate Judiciary Committee

RE: Written Comments in SUPPORT of SB321

Ladies and Gentleman of the Committee:

Thank you for the opportunity to submit my written testimony in Support of SB321. My name is Stephen Owens of Owens Bonding Inc. As a managing direct agent in the State of Kansas, I currently manage 18 agents that serve 50+ counties throughout the State of Kansas. We are underwritten by International Fidelity Insurance Company, a member of the AIA family of Surety Companies and have been operating for more than 10 years in this industry.

As a bondsman, it is our responsibility to Assure Justice and Ensure Justice. We accomplish this through the process of bonding and holding defendants accountable for what they have been charged. Part of that responsibility includes apprehending fugitives that fail to appear in court. I have attached an article to this testimony titled "The Truth about These Tough Guys" written by Eric Granof, Outreach Director and CMO of AIA. This article was recently published in the January 2012 issue of USA Today Magazine. It does a great job explaining what a bondsman does, why he does it, and the different forms of bail used in the United States.

This article articulates what an Own Recognizance (OR) bond is, it states: *"A less effective form of pretrial release is "unsecured." This does not include any sort of financial guarantee associated with a defendant's release. It is based only on the promise of the defendant showing up for court. This form of release has major shortcomings. First, if one removes financial incentive from the equation, its effectiveness diminishes. The results speak for themselves. Based on studies conducted by the Bureau of Justice Statistics, unsecured release has a failure-to-appear rate of approximately 28%, compared to that of commercial surety bail, which is around four percent."*

This bill was introduced as a public safety bill. Will it increase our business? Maybe slightly....but the majority of counties don't use OR Bonds to the extent they are used in counties such as Johnson and Sedgwick Counties. OR Bonds are not an answer to jail overcrowding...and ladies and gentleman, that is how they are being used.

If you would oblige, put yourself in the position of a victim of a crime. Say one night you are walking out of the mall, you get assaulted and your possessions are taken. Luckily, the police were able to find and arrest the assailant. He gets booked into jail on a \$50,000 bond for aggravated battery and aggravated assault. You have been victimized. You feel victimized. Then you find out a couple of days later, because the court believes the defendant couldn't "afford" to bond out, the judge chose to give the defendant an OR Bond. Who is watching over this defendant? Sure, he/she may have been put on pretrial services (which does a superb job monitoring their defendants), but the larger question is who is assuring the defendants appearance in court? Who goes after the defendant if he/she doesn't show up? The answer under this scenario is no one. Sure, a warrant may be issued for the defendant's arrest, but the county simply doesn't have the funds to go after these people. **As of January 30, 2012, there were over 13,670 active warrants in Sedgwick County (this does NOT include any municipal court warrants) and with only 5 warrant officers working only 40 hours per week looking for them.**



If you change the scenario, and because the defendants can't afford the \$50,000 bond which would cost \$5000, the judge lowers the bond to \$10,000, so he has to pay the bondsman \$1000. The defendant bonds out and is put on pretrial for monitoring...but then fails to appear in court. Who goes after him? We do! If we don't, we have to pay \$10,000 to the court within 60 days. This payment MUST be made or we lose our ability to continue bonding. As a side note, in the previous example the defendant was released on a \$50,000 OR bond, which technically means if he fails to appear he owes the court \$50,000. If the defendant can't afford the \$5,000 to a bondsman, how can he afford the \$50K to the court? Does the court even attempt to collect the \$50K on an OR Bond? I would ask the question: "When was the last time the court actually collected on an OR Bond?"

Another concern the opponents of this bill have, is the requirement that you cannot qualify for an OR bond if you have previously failed to appear in court. First of all, logic dictates that if you have failed to appear in court previously, why should we trust a defendant to appear in court on their own accord again? Secondly, current statutes state that someone's appearance history should be taken into account before an OR Bond is granted. Ladies and gentleman, if this was already being done, there would be little need for this portion of this bill. Through various lengthy research periods, we have found that many, many of the defendants released on an OR bond have already failed to appear on an OR bond or Surety Bond. Why would we then allow them to be put in a place to fail to appear again without knowing someone is going after them immediately?

There are numerous studies that show not only do defendants fulfill their court commitments more often while on bond with a bondsman, but the rate of recidivism is lower. The defendant knows the bondsman is aware of what they are doing and have the right/obligation to revoke their bond if they continue to get into trouble or fail to appear. Please see studies mentioned below.

Below are the studies referenced to support our reduced Failure to Appear Rates, Reduced Rates of Recidivism and the costs associated with failing to appear:

1) The Failure Appear Rates Increase Dramatically:

Numerous, very credible studies have established that the use of OR bonds directly correlates to higher FTA rates. Here are a few:

- a) U.S. Department of Justice, through its Federal Bureau of Justice Statistics, measures performance of the two systems against each other. Their research was conducted in the nation's 75 most populous counties and their formal report was published at the end of 2007. *They found that failures to appear on unsecured releases were twice as high as those on surety bond.*
- b) The Journal of Law and Economics published by the University of Chicago reports an extensive analysis of the performance difference between public versus private release pending trial. The conclusion was: *"Defendants released on surety bonds are 28% less likely to fail to appear than similar defendants released on their own recognizance",* that is, their unsecured promise to appear.
- c) My agents and I released 2023 defendants on surety bonds in 2011. Of those defendants, only 4%, or 80 defendants, failed to appear for court and of those 95 defendants, only 17 were not returned to custody. This represents .8% of defendants that were held unaccountable.

2) A Greater Number of Crime Victims:

Programs promoting unsecured release are proven to be public safety dangers. There is no question that persons with unsecured releases commit more crimes while released than do persons whose release is financially secured. Here is a portion of the evidence on that.

- a) The U.S. Department of Justice's Bureau of Justice Statistics *shows the recidivism rate, while on release, at almost twice as high for unsecured release as for secured release.*
- b) The University of Chicago Study mentioned earlier also concludes a significantly higher rearrest rate for those on unsecured release.

3) A Great Monetary Loss to the County:

It has been clearly shown that an unacceptably high percentage of persons on unsecured pretrial release never come back to court. Can this high failure to appear rate be translated into financial costs to local governments? It can. For a few examples, consider:

- a) The fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping is a very thorough study performed by highly credentialed scholars, and they remark that: *Defendants who fail to appear impose significant costs on others. Direct costs include the costs of rearranging and rescheduling court dates, the wasted time of judges, lawyers, and other court personnel, and the costs necessary to find and apprehend or rearrest fugitives. Other costs include the additional crimes that are committed by fugitives. In 1996, for example, 16 percent of released defendants were rearrested before their initial case came to trial. We can be sure that the percentage of felony defendants who commit additional crimes is considerably higher than their rearrest rate. We might also expect that the felony defendants who fail to appear are the ones most likely to commit additional crimes. Indirect costs include the increased crime that result when high failure-to-appear (FTA) and fugitive rates reduce expected punishments.*
- b) When persons on unsecured release abscond, the forfeited bail amount goes uncollected. These mounting debts have reached staggering sums in every county having a Pretrial Release Agency. Note: If those persons had been on secured release, they would either have been returned to custody by the surety or the bail amount would be paid in full. The Philadelphia Enquirer recently reported that uncollected bail forfeitures there exceed One Billion Dollars.

There are two parts of the statute 22.2809a that we hope to change. The first one addresses who can legally apprehend fugitives wanted for failing to appear in court. Currently, if you haven't had a person felony in the last 10 years, you can call yourself a fugitive recovery officer and be appointed by a bondsman to arrest and incarcerate a defendant that has failed to appear. It is time for that to be more stringent. It is our desire that fugitive recovery agents, as they are an arm of the justice system, are held to the same standard as law enforcement. To be a fugitive recovery agent, you cannot have ever committed a felony, even if it has been expunged; you do not need to be apprehending criminals.

With respect to the second change we propose to 22.2809a regarding out of state recovery agents, it is imperative that out of state fugitive recovery agents be held to the same standards that local agents are. This includes understanding the law and knowing what they can and cannot do. What better way to accomplish this than to require they contract a local bondsman who knows the laws and understands the implications if the situation isn't handled correctly? Many states such as Arizona, Arkansas and various other states have statutes requiring an out of state recovery agent contract with a local agent. Just as law enforcement, if they want to go work or investigate in a jurisdiction other than their own, they contact local law enforcement to work with them and assist them in their investigation. Shouldn't we?

The evidence is clear; Own Recognizance bonds DO NOT enforce the mandatory court requirement that defendants be held accountable for their alleged criminal activity. Actually, OR bonds send the wrong message to those who are accused of a crime. That message is simple: "Don't worry, if you get arrested, we will let you out at no cost to you, and although you may be supervised, if you don't come to court, it's OK, we can't afford to come after you." Is this the message that we want to send to these defendants?

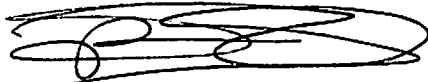
With the likelihood of a defendant failing to appear being twice, three, four times higher on an OR bond...Committee members I ask this question: If it was your home, your family, your friends that were victimized, wouldn't you want your day in court? Would you prefer the defendant be watched over by an agency that has a vested financial interest in that individual who WILL go after them if they fail to appear? Or would you prefer he/she be let out and "promise" to appear with no repercussion if he/she doesn't appear?

Ladies and Gentleman of the committee, SB321 attempts to put limits on Own Recognizance bonds that only make sense. While there is a time and place for OR Bonds, defendants that have failed to appear, who aren't Kansas residents, or who are career criminals should not and cannot be trusted on their "word" to appear.

Tightening regulations on who can apprehend fugitives makes sense. Having a local agent who knows the laws attend when an out of state recovery agents attempts to apprehend a fugitive in our state makes sense.

In conclusion, this legislation makes sense! Some would argue that OR bonds are the only option to reduce jail overcrowding. I would ask, what is the true cost of reducing jail overcrowding? What would the public prefer if they understood what is at stake? The answer is clear. Bondsman and fugitive recovery agents hold defendants accountable, government agencies cannot afford to.

Respectfully Submitted,



Stephen Owens,
President:
Kansas Bail Agents Association
Owens Bonding Inc.

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1 a)., on page 1: Bureau of Justice Statistics
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1 b)., on page 1: Helland and Tabarrok, The
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2 a)., on page 2: Bureau of Justice Statistics
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WHEN MOST people think of bail bonds, they immediately imagine dark alley thugs and large, rough men wearing fedoras and smoking cigars. While not a glamorous image, it is one that has been sold to the public for decades. From Hollywood directors to the news media, the bail profession has been positioned in such a negative light that the only way the average person can tell the difference between a bail agent and a criminal is by what side of the bars each is on. What most people do not realize is this negative portrayal of the bail profession could not be further from the truth.

The concept of bail goes back to English law and was brought to this country with the first settlers. In its simplest form, bail is an insurance policy guaranteeing that a person being released from custody while awaiting trial will show up for all court appearances until the case is adjudicated fully.

There are two main forms of pretrial release: secured and unsecured. The former involves the placement of a financial form of security to guarantee the defendant's appearance, while unsecured merely promises that the defendant will appear. There are a few forms of secured release: cash bail (defendant posts full amount of bail), deposit bail (defendant pays the court a small percentage of the bond set), and surety bail (a private party guarantees appearance of the defendant in court, otherwise pays the court the full amount of the bail). Commercial surety bail, which is what we will focus on, uses an insurance company whose agents post a bond as security to guarantee a defendant's appearance in court.

While bail is a simple concept at its core, it is a complicated process to understand fully because it is regulated so differently across the country. Currently, 46 states, along with Puerto Rico, allow commercial surety bail. (Kentucky, Oregon, Illinois, and Wisconsin utilize alternative forms of release.) These 46 states each regulate bail differently, not only at the state level, but at the county level as well.

In its broadest sense, bail works like this. When an individual is arrested for a crime, that person is booked into custody, and a background check is performed to make sure that individual does not have any outstanding warrants or is wanted by law enforcement elsewhere. If the background check is returned with no issues, bail is set by the court, usually by a magistrate or other official. The amount of the bond will depend on many factors, including the severity of the charge and previous history of the defendant, as well as other basic information on the current status of the defendant (job history, family situation, living arrangements, etc.). Based on these criteria, the bail amount is set and the defendant now has the ability to get out of jail while awaiting trial.

Why is this important? Imagine you are the person arrested. Maybe you were wrongly accused or just made one poor decision. How would you support your family or show up for

THE TRUTH ABOUT THESE TOUGH GUYS

BY ERIC GRANOF

"... The vast majority of bail agents are just average people trying to run a small business and make an honest living."

work and keep your job or handle all of the responsibilities in your life if you were being held in jail? Bail allows people not only to keep their promise to the court, but to those around them. It also allows the defendant to prepare properly for a defense while awaiting trial. Additionally, it keeps costs associated with incarceration down so that taxpayer dollars can be better spent on housing those that pose a serious threat to the community.

Who are these people who have chosen bail as a profession? Are they the rough and tumble characters typically portrayed in movies and on television? Do they wear bulletproof vests and run through the streets with guns? The reality of the bail profession is far less dramatic than the image we see in the media. It certainly has its characters, but the vast majority of bail agents are just average people trying to run a small business and make an honest living.

In addition to misperceptions of the profession, what few understand is the role that bail bonds play in the criminal justice system. The connection admittedly is not obvious. In fact, it might be entirely logical to think of bail as a necessary evil—something that must be available by law, but which most of us wish did not exist at all. However, the truth is more complex than that. While bail serves to free individuals

accused of crimes pending their trials, there also is the issue of public safety. In particular, the release back into society of a person accused of a violent crime usually raises the hackles of citizens. The constant concern is whether that individual offends again while free, or perhaps jumps bail—or, worse yet, both. This is where the situation becomes muddied and, despite public perceptions, perhaps the most important person helping to keep the community safe is the bail agent.

How can that be? To explain, let us refer back to our earlier description of how bail works using sample figures. For instance, when a bond is set, let us say for \$10,000, the defendant has options. One choice is he or she can post the full amount of the bond with the court. This is the cash bond form of secured release. It is easy to see why this option is not very popular, since most individuals do not have the financial resources to come up with that much cash quickly. The second option, one that is far more palatable for the common man on the street, is to post a bond through a bail bond agent. In this scenario, the defendant pays a nonrefundable fee—like an insurance policy premium—to the bail agent (typically 10%-15% of the bond amount) along with providing proof of assets or collateral equal to the full bond amount.



In the example of our \$10,000 bond, the defendant—or his family members or friends—needs to come up with \$1,000 to secure the defendant's release, as opposed to coming up with the full \$10,000. The bail agent enters into a contract with the defendant (and the family members/friends) who must co-sign on the bond, which states that the defendant, upon release, promises to make all court appearances until the court legally declares that the case has concluded.

If the defendant fails to make a single appearance, it is the bail agent's responsibility to remand (the legal term for "return") the defendant back into custody. However, if the defendant does not show up to court for any reason whatsoever and is not remanded, the bail agent becomes responsible for the full amount of the bond, which, in this case, is \$10,000.

As one can well imagine, the motivation to ensure the appearance of any defendant is extremely important to a bail agent's survival. Receiving \$1,000 for a service and then having to pay \$10,000 back if you do not do your job is strong motivation. Depending on the size of the bond, it only may take one or two bonds going bad to have a material impact on the agent's business.

In addition, anyone who signs on a bond al-

so is held accountable. In the case of a defendant who jumps bail, his family and friends face the very real possibility of having to pay the full amount of the bond to the bail agent, which in many cases may involve the deed to a car or house. The powerful financial incentive that is built into the bail system is what makes the bail bond industry so effective at what it does: getting defendants to show up for court.

A less effective form of pretrial release is "unsecured." This does not include any sort of financial guarantee associated with a defendant's release. It is based only on the promise of the defendant showing up for court. This form of release has major shortcomings. First, if one removes financial incentive from the equation, its effectiveness diminishes. The results speak for themselves. Based on studies conducted by the Bureau of Justice Statistics, unsecured release has a failure-to-appear rate of approximately 28%, compared to that of commercial surety bail, which is around four percent.

The second shortcoming is the incentive on the other side of the equation. The bail agent has a strong financial incentive to go after the defendant should that person not show up. If an individual is released with an unsecured bond issued through a government sponsored pretrial release program, there is no incentive for the

employee of the government agency overseeing the program to ensure the appearance of the defendant. If the defendant fails to appear, the government employee will do little more than inform law enforcement and have a warrant issued. Government programs do not have the resources, experience, or incentive to find these individuals and therefore must rely on an already overworked police force to do the job. Understandably, law enforcement already has its plate full and these types of warrants typically just sit and accumulate over time.

Government sponsored programs offer none of the societal safeguards inherent to the bail bond process. They are touted as free but, because they are publicly funded, the actual cost is borne by taxpayers. Moreover, the checks and balances offered by bail are absent. Essentially, what happens with pretrial release is a judge will allow a defendant to go free on his or her own recognizance.

The public safety element of bail probably is the most misunderstood. When a bail agent does his job effectively, he ensures that a defendant accused of a crime against another will show up for court. When that defendant appears to stand trial, the victim of that crime is provided with the opportunity for justice. Moreover, in the relatively few instances where a defendant jumps bail, the bail agent legally is empowered to bring that individual back to face justice.

For the past year, the AIA Family of Insurance Companies, the nation's largest bail bond underwriters, has been aligning itself and its national network of more than 5,000 bail agents, ExpertBail, with the National Center for Victims of Crime, the nation's foremost resource and advocacy organization for crime victims. As part of our work together, we conducted a joint survey with bail agents and victim advocates to determine how often each group interacts with victims of crime. Bail agents have a much greater interaction with crime victims than most people think, with 86% of the bail agents indicating they interacted with a victim of crime in their bail office at least once a month.

These cases typically center on domestic violence, in which the person who was battered is bailing out the person who battered him or her. We found that many times during these interactions, bail agents were in unique positions to provide guidance and direction to the victims. This is where the role of a bail agent and a victim advocate intersect. In those instances, a bail agent is having an important interaction with an individual in close proximity to the time of victimization. Because of this, bail agents are in an ideal position to provide the victim with information and guidance as to the resources that are available. While they should not be thought of as counselors, bail agents do have the potential to help guide victims and their families. ★

Eric Granof is outreach director and chief marketing officer of the AIA (Allegheny Casualty, International Fidelity, and Associated Bond) Family of Companies/ExpertBail Network, Calabasas, Calif.