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February 2, 2012

My name is Shane Rolf, I have been a bail bondsman in Olathe, Kansas for the past 25 years. In that time I have posted bonds for tens of thousands of criminal defendants. I have been a constant observer of the pre-trial release process in Johnson County. I would like to speak in support of Senate Bill 321.

The changes in this bill would create statutory parameters for the setting of Own Recognizance Bonds [OR Bonds]. Currently, no such parameters are codified for OR bonds, although the Legislature has set parameters for a 10% deposit option [Typically referred to as an ORCD bond].

The parameters that this bill suggests for OR bonds are slightly more stringent than the parameters established for ORCD bonds. OR bonds would only be an option for defendants who are Kansas residents, who have a minimal criminal history, and who do not have a history of failing to appear in court[1]. Additionally, OR bonds would only be available for crimes wherein the most serious charged offense is a low-level, non-personal felony charge or a misdemeanor offense.

This will establish a "tiered" system for the setting of pre-trial bonds. Low-risk, non-violent offenders with minimal criminal history would be eligible for release on an OR bond. Defendants who have an increased criminal history and slightly more serious charges would be eligible for release on ORCD bonds, while defendants with significant history, violent crimes and/or a history of failure to appear would be limited to cash or surety bonds, in an amount determined to be appropriate by the Court.

Truth be told, most judges, already have an informal filtering process similar to this in determining when and to whom to grant OR bonds. In fact, the filters that are currently in place for ORCD bonds were derived from strictures developed by the Johnson County Criminal Bench/Bar committee.

[1] Every study of the pre-trial release process, indicates that a history of failure to appear is the most reliable predictor of future failure to appear.

Further, there is excellent research to back up these type of restrictions. In 2007 the Bureau of Justice Statistics released a study of the state court systems over a 14 year period. That study indicated that a defendant who has failed to appear in the past is 94.4% more likely to fail to appear in court again. A defendant who is on parole is 68.4% more likely to fail to appear. Defendants who are on probation or who have other active cases are 57.8% more likely to fail to appear. Defendants with prior felony convictions fail to appear 47% more often than those with no prior record.

So there is sound reasoning and support for these types of filters. However, since this filtering process in far from uniform across the state, we believe that these filters should not be simply informal and should be codified into the statute.

PROBLEMS INHERENT WITH O.R. BONDS

OR bonds (and to a lesser extend ORCD bonds) have certain fatal flaws, flaws that render them essentially meaningless as a guarantee or an incentive for appearance. The criminal defendant, with no additional backing, guarantees to pay the full amount of the bond in the event he fails to appear. However, if he fails to appear, then he is not around to make good on that guarantee. The old axiom that "you can't get blood from a stone" is exponentially more accurate when the proverbial "stone" is missing.

Additionally, these criminal defendants are often charged with crimes such as theft, lying to the police, escape from custody, forgery, welfare fraud, making false writing, criminal non-support, etc. Individuals who are willing to steal from others, lie to and flee from the police, abandon and fail to support their own children and commit a host of additional offenses wherein they have victimized other people, sometimes violently so, these individuals generally have no real compunction about stealing – in essence – from the government by dishonoring their bond agreements.

Finally, in practice, even when the State actually pursues and obtains a Judgment on an O.R. bond, it is never enforced. This judgment is often uncollectable. This renders the amount of bond set meaningless. The criminal defendant who flees doesn't care if his O.R. bond is $1,000 or $100,000; he isn't planning on paying either one (and it is unlikely that he ever will be required to do so).

As an example, The City of Philadelphia, Pennsylvania essentially did away with its private bail bondsmen in the early 1970s, relying instead on OR and ORCD bonds. It was hailed a "model" program[2], an example of how the Criminal Justice System could move away from the use of commercial bail and suffer no ill effects. However, in 2009, the Philadelphia Inquirer began looking into the efficacy of this "model program[3]." In its expose, the newspaper revealed that criminal defendants owed the city over **$1 BILLION** in forfeited bail. The authors wrote: "It is a system that renders meaningless the threat of seizure of bail money, fueling a massive fugitive problem and leading to an astronomical amount of uncollected debt." As an example of

[2] Bail Decision Making in Philadelphia, Goldkamp, John (1978)
[3] Philadelphia Inquirer, Feb 8, 2009, Phillips, N and McCoy, C., "Fugitives owe the city $1 Billion"

how farcical this "model program" had become in Philadelphia, it was revealed in the Philadelphia Inquirer On March 2nd of last year – that over six hundred *current* City employees owed over a million dollars in forfeited bail and costs.

In addition, the City of Philadelphia has one of the highest fugitive rates in the country which is directly related to the ridiculously low conviction rate. Among large urban counties, Philadelphia has the nation's lowest felony conviction rate.

In November 2007, the Bureau of Justice Statistics released a Special Report on Pretrial Release of Felony Defendants in State Courts, 1990-2004. Table 7 from that study indicates failure to appear rates for various types of bonds. The definitions in the study would classify O.R. bonds as "Unsecured Bonds."

Type of Pretrial Release	FTA Rate	Fugitive[4] Rate
Property Bond	14%	4%
Surety Bond	18%	3%
Full Cash Bond	20%	7%
Conditional Release	22%	6%
Deposit Bond	22%	7%
Release of Recognizance	26%	8%
Unsecured Bond	30%	10%
Emergency Release	45%	10%

As you can see, the only method of release less secure than an O.R. bond is to simply open the doors to the jail and push people out.

In short, an OR bond is truly a "get out of jail free card," and as such should only be used in limited circumstances, such as the guidelines set forth in this bill.

Revolving Door - Emblematic Example of O.R. Overuse

A while back, I received a phone call from an inmate at the Johnson County jail trying to post bond. His situation was illustrative of the overuse of OR Bonds. Richard Hughes [Case # 04CR2114] was arrested in 2004 for writing two bad checks. This case, a relatively minor misdemeanor, remained unresolved for almost 7 years due to repeated failures to appear and repeated OR bonds. This is a synopsis of his case:

9/7/04 Arrested, bond set at $250 Cash or Surety
9/7/04 Bond modified to $250 OR – Posted
10/8/04 Defendant Fails to Appear, Bond Forfeited
2/10/05 Arrested on bench warrant, bond $500 Cash or Surety
3/4/05 Bond modified to $1,000 OR
4/26/05 OR Bond posted[5]

[4] The Fugitive Rate is defined as a defendant who fails to appear and remains missing for at least one year.

5/27/05 Defendant Fails to Appear, Bond Forfeited
2/10/06 Judgment on Bond granted
10/11/07 Arrested on bench warrant, bond $3,000 Cash or Surety
10/19/07 Bond modified to $1,000 OR – Posted
12/21/07 Defendant Fails to Appear, Bond Forfeited
9/30/08 Judgment on Bond granted
2/25/11 Arrested on Bench warrant, bond $1,500 Cash or Surety
3/4/11 Request for Discovery filed (by defense counsel)
3/7/11 Bond Modified to $750 OR – Posted
4/1/11 Attorney Appears, Defendant does not – case continued
6/13/11 Case Dismissed

While there is an indication that Mr. Hughes probably should not have been granted the first OR bond[6], common sense tells us that the next three should not even have been considered. I asked Mr. Hughes why he had waited so long to call us about posting bond (it had been 9 days since he was arrested), he told me that he waited to go to court to see if the judge would give him a signature bond. When I pointed out that he had already missed court several times and asked him why he would have thought that the Court would even consider giving him a PR bond, he replied: "Well, they've done it before." And, as it turned out, they did do it again

Note that one of the last entries is a request for discovery. The defense attorney realizes that this has become a very old case and a conviction may now be difficult to obtain. (As indeed was the case) As a result, Mr. Hughes has beaten this charge by his repeated failures to appear. Additionally, he now has two separate $1,000 bond judgments against him[7], which will never be paid and which provided absolutely no incentive for him to appear as ordered.

This is simply one minor misdemeanor case, but sadly, it is not unique. It is very demonstrative of how the overuse of OR bonds can lead to a revolving door scenario.

POTENTIAL ARGUMENTS AGAINST RESTRICTIONS ON O.R. BONDS

Various arguments against the passage of this bill have been made known to us, and I will address certain of those argument and explain why they should be discounted.

NO NEW/ADDITIONAL HEARING REQUIRED

It has been postulated that the courts will need to hold additional hearings and take up additional judicial resources to comply with this bill. This is not accurate. There will not be a need for additional court hearings to make these determinations on bond. The statute, as it is written now, already requires the court to consider all of the factors the bill specifies. In other words, the Court is already supposed to have this information when it makes the initial bond setting

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[5] Mr. Hughes had been serving a sentence from the Olathe Municipal Court, which was the reason for the delay in posting the PR bond

[6] A review of Johnson County Court records shows earlier failures to appear in 1999 and 1994 criminal cases

[7] Note that the accounting system does not reflect these judgments at all – i.e. no effort is being made to collect these forfeited bonds.

decision. This bill simply clarifies which factors would disqualify a defendant from receiving an O.R. bond.

This also does not prevent any court system from using a pre-set bond schedule. The factors set out in this bill would simply need to be incorporated into that schedule. All of the factors set out in this bill (See box below) are easily discernable to any law enforcement officer with access to an NCIC terminal. So the argument that additional court resources would need to be expended is simple inaccurate.

The following boxes demonstrate current considerations and how the proposed changes are already supposed to be factored into the bond setting decision.

Current Considerations

1. The nature and circumstance of the crime charged,
2. The weight of the evidence against the defendant,
3. Whether the defendant is lawfully present in the US,
4. The defendant's family ties,
5. Employment,
6. Financial resources,
7. Character,
8. Mental Condition,
9. Length of residence in the community,
10. Record of convictions,
11. Record of appearance of failure to appear at court proceedings or of flight to avoid prosecution
12. The likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto,
13. And, whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

SB 321 O.R. Restrictions

1. The most serious charge against the person is a misdemeanor, a severity level 8, 9, or 10 nonperson felony or a drug severity level 4 felony, **[1]**
2. Is a resident of the state of Kansas, **[9]**
3. Has a criminal history score category of H or I, **[10]**
4. Has no prior history of failure to appear for any court appearances, **[11]**
5. Has no detainer or hold from any other jurisdiction, **[11 - Flight]**
6. Has not been extradited from, and is not awaiting extradition to, another state, **[11 - Flight]**
7. Has not been detained for an alleged violation of probation, **[13]**
8. Is lawfully present in the United States **[3]**

NOT THE END OF JUDICIAL DISCRETION

It has been argued that these changes will be the end of judicial discretion in setting bonds. I think that this is hyperbole. While there would be common sense limitations on who can be released on O.R. bonds, every other aspect of judicial discretion is retained.

The Court is not *required* to set an O.R. bond.

The Court retains all authority in setting the conditions of release.

The Court retains all discretion in determining the *amount* of bond.

If there is a defendant who falls outside the parameters, but whom the Court feels, for whatever reason, is a good risk to appear and abide by other conditions of release, the Court clearly retains the discretion to set an exceedingly low cash/surety bond, thereby effectively ensuring that the defendant will secure his release. Further, I would put forth that requiring a defendant to posted a cash/surety bond of $50 or $100 actually provides more tangible security than some ridiculously inflated, financially meaningless O.R. Bond.

Further, some of the arguments being put forth - particularly surrounding the use of a preset bond schedule - seem to complain that the Courts would be required to actually exercise that discretion. If the Courts are going to delegate that discretion to a bond schedule, then they are not really exercising individual discretion, and the Legislature should step in and set some broad parameters.

Judicial discretion is a vital aspect of setting bond, however that discretion is not without limits. The current statute requires that discretion to be exercised through the prism of paragraph 8 and the factors set out therein. These changes proposed herein simply further refine that prism.

INDUSTRY DRIVEN BILL

A judge was quoted in the Wichita Eagle just a few weeks ago and indicated that O.R. Bonds are only granted for "low-level offenders who represent a minimal flight risk." Since all this bill does is limit O.R. bonds to Low-Risk, Non-Violent Offenders, one wonders why there would be any opposition. The bill will certainly not prevent low-risk, non-violent offenders from being granted O.R. bonds.

If the argument is that this is an industry-driven bill, whose sole purpose is to generate extra revenue for the bail bondsmen, then that argument is in direct opposition to the claim that only Low-Risk, Non-Violent Offenders are given O.R. bonds. This bill does not prevent those defendants from being granted O.R. bonds, so then where are we lining our pockets? If this Low-Risk, Non-Violent scenario is accurate, then passage of this bill shouldn't impact the Courts at all. Nothing will change.

If, on the other hand, that quote in the Eagle is inaccurate and O.R. bonds are in fact being granted to riskier, more violent offenders, then perhaps the bonding industry stands to benefit financially. However, if high-risk, violent offenders are being granted "Get out of Jail Free" cards by the Courts, then I think the question is not "are the bondsmen going to make money?" but rather "Why are these people being released without anything to secure their appearance?"

CONCERNS ABOUT JAIL OVERCROWDING

When it became obvious, that pre-trial release programs that did not utilize surety bail were not as effective at securing appearance as those which did, "taxpayer supported bail" advocates changed their approach and argued that it was necessary to provide more lenient release so that jails did not become overcrowded. The argument was that it was more cost-effective to release defendants than to incarcerate them. Most advocates of overuse of OR bonds point to this fact – it is cheaper to release criminal defendants than to incarcerate them, in terms of the financial cost[8]. However, there are societal costs – such as deterrence, the existence of real and tangible consequences for misbehavior, public safety, and a general respect for the Law – that are not served by making a mockery of the system (to use the words of the Philadelphia Inquirer).

Furthermore, I am not aware of any large scale empirical data that suggests that releasing criminal defendants on OR bonds results in any *long term* reduction in jail population[9]. Rather, by looking at states wherein commercial jail has been abolished, such as Illinois or cities like Philadelphia, one finds that their jails are among the most crowded in the country (on a per capita basis), with excessively long Average Length of Stay times. In short, in real-world implementation, lenient forms of non-financial release have not resulted in any reduction in jail populations. Rather, the revolving door scenario usually results in multiple failures to appear until the Court gets tired of the repeated failure to appear and simply sets the bond at level to high to post, thus filling up the jail.

CHANGES TO 22-2809a

This bill also proposes certain changes to 22-2809a. Since I was one of the original conferees on the bill that enacted that statute, I would like to touch briefly on these proposed changes.

Paragraph c) as currently proposed would simply remove the "person" qualifier, meaning that no one with a prior felony conviction in the last ten years would be able to act as a bondsman or a bounty hunter.

We do have a proposed amendment that would tighten that up even further. This proposed change would read:

c) No person who *has been convicted of, who has had an expunged conviction for, or has been placed on diversion by any state or the federal government for a crime which is a felony or its equivalent under the uniform code of military justice*, may act as a surety or an agent of a surety

[8] I would argue that this is only true when a jail exceeds its capacity. Until that time, the operation costs of a jail facility, which is mostly manpower, are largely fixed. Food and medical care would fluctuate with population changes, but these are not the predominant expenses.

[9] There are small scale, shorter term studies, such are those conducted by the Vera Institute, which have had positive results. However, those have been unsuccessful in large scale implementation. And simply opening the doors to the jail will naturally result in a temporary drop in jail population, until those defendants are rearrested for either failure to appear or for new crimes.

This language was borrowed directly from K.S.A. 74-5605 and would bring us in line with law enforcement standards as relates to felony convictions. At the original hearing, there was a chief of police present who suggested that we should be held to similar standards as his officers.

Just as a history note, when the bill left the Senate originally, the "person" qualifier was not present. When the bill arrived at the House, two bondsmen appeared and indicated that this restriction would apply to them and would effectively put them out of business. To accommodate those individuals, the House inserted the "person" qualifier. However, as another example of past behavior indicating future performance, both of those individuals ran afoul of the law again and are out of business.

The other change to 22-2809a would require bondsman or bounty hunter coming from out of state to contract with and be accompanied by a locally approved bonding agent. This type of restriction, in one form or another, is in place in several states. The language for this was borrowed from a similar statute in Arizona. Roughly half of the states have requirements that bounty hunter either be licensed in-state, be accompanied by someone who is, or reciprocally recognize other states' bounty hunter licenses.

This will probably have the most impact in areas like Johnson and Wyandotte Counties that are population centers close to the state line. Often times bounty hunters from Missouri will show up in Kansas City, Kansas, ignore the Police Department's protocols, create a ruckus and leave the fall-out for us to absorb. By requiring local involvement - as many states do - these types of problems can be avoided and we can work better with law enforcement.

Since this has been introduced along with the O.R. restrictions, it has been held out as an example of "just another way to line our pockets." It is however, an attempt to prevent people coming in from other places and creating problems in the areas and with the police department with who we have to interact on a regular basis.

We would like to reach a point where Kansas has a "Fugitive Apprehension License." In our association, we are studying various ways of implementing such a change. However, until the details of such a licensing can be worked out, we believe that this is a good first step.

Thank you for your time and consideration. I hope that you will agree that the Legislature should establish certain parameters around the issuing of OR bonds, as well as adopt the proposed changes to 22-2809a.

Shane Rolf