

Senate Committee on Judiciary

Senator Tim Owens, Chair

Senator Jeff King, Vice Chair

Senator David Haley, Ranking Minority Member

February 2, 2012

9:30 a.m.

Room 548 – S

Chief Judge James R. Fleetwood

Eighteenth Judicial District

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TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN OPPOSITION TO SB 321

I am James Fleetwood, Chief Judge of the Eighteenth Judicial District of the State of Kansas covering Sedgwick County, Kansas. I would like to thank this honorable committee for allowing me the opportunity to speak in opposition of Senate Bill 321 which addresses appearance bonds in criminal cases and in particular allowing surety for such bonds to be established by a defendant's own recognizance.

Under K.S.A. 22-2803, 22-2809a and K.S.A. 2011 Supp. 22-2802, district court judges of the State of Kansas set bonds for the statutory purpose of assuring a defendant's appearance at all future hearings and to assure the safety of the community without voiding the constitutional presumption of innocence mandated by the Federal and State Constitution. Matters considered by the court in establishing a bond and surety include such things as nature of the crime charged, weight of the evidence against the defendant,

family ties, employment, residence, nature of past criminal history, any record of a defendant's failure to appear as well as propensity of the defendant to commit other crimes. In short, every judge gives fair and careful consideration to the character of the defendant and the need of the community when contemplating the appropriate surety to be required.

Once the amount of the bond is established, a judge can then establish the method of surety. This may take the form of professional surety through a bonding company; reliance on the defendant's own recognizance, (commonly referred to as an O.R. bond;) or cash deposits with the court (a process recently limited by the bonding association's past legislative efforts). The type of surety is a matter of the judges' discretion upon considering the needs of the community and the defendant.

The need for O.R. bonds is well proven in the day to day operation of the court and law enforcement as well as its proven success in meeting the needs of the community. In Sedgwick County, over the last 3 years an average of 1,183 O.R. bonds were approved in felony cases, 1.9% went to warrant for various reasons, 88% were presumptive probation. The remaining cases involve defendants where a presumption of probation does not exist but the district attorney's office joined in a recommendation or voiced no objection to an O.R. bond. This is often due to the age of prior offenses or the fact that the defendant accepted responsibility and cooperated with the state in the final disposition of the case. I would point out that in 2011 the rate of bonds with professional sureties that went to warrant for failure to appear or other reasons was 1.33 percent. A measure that is indistinguishable from the rate of 1.32 percent for O.R. bonds.

The benefits arising from the use of O.R. bonds approved with careful discretion on the part of the judge are significant. Sedgwick County was recently on the verge of building an expanded jail facility. Through a cooperative effort involving the district attorney, the county commission, the sheriff, the court and many professionals involved in corrections and law enforcement, we were able to significantly reduce the growing demand for jail space while maintaining the safety of the community. This involved the use of individual risk analysis, pretrial supervision and O.R. bonds. Cash required to meet professional surety demands were redirected toward attorney fees, restitution and other costs. Also an O.R. bond with supervision allowed many criminal defendants to prove their desire to cooperate with community based supervision and treatment programs. It has allowed defendants with jobs to maintain employment and continue to provide support for families.

S.B. 321 also removes the present requirement of an out-of-state agent attempting to apprehend a defendant in Kansas to contact local law enforcement and provide proof of their authority to take such actions within Kansas. It will preempt the present notice requirement to local law enforcement officers allowing them the opportunity to accompany the out of state agent while executing arrest warrants. These present statutory safe-guards for Kansas citizens as well as police officers would be replaced with a simple requirement to hire a local bonding agent prior to making any arrests. Recent history in Sedgwick County seriously puts into question the value of this change. Bonding agents shot when attempting to apprehend a defendant have been local agents not out-of-state agents. Individuals chasing and arresting the wrong person have been local agents. Bounty hunters illegally misrepresenting themselves as law enforcement officers again

have been locals. There is no rationale that supports the proposition that this amendment improves the safety of the community. The single benefit of this amendment is a financial gain to local bonding agents

Without exaggeration SB 321 will void every advance in non-incarceration community based corrections achieved by Sedgwick County. It will lead to significant costs incurred by the taxpayers of the State of Kansas. It will significantly hinder the judges of this State from exercising well thought out discretion in cooperation with all the stakeholders in community based corrections. In return, the only recognizable benefit it will provide is a financial boon to local bonding agents.

Thank you for your consideration.

Hon. James R. Fleetwood
Chief Judge
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Sedgwick County, Kansas