Senate Judiciary Committee
Senate Bill 321
Testimony of Jennifer Roth – Opponent (written only)
February 2, 2012

Chairman Owens and Members of the Committee:

SB 321 restricts release on an "own recognizance" bond (often referred to as an OR bond) to defendants who meet the following qualifications:[1]

(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;
(2) is a resident of the state of Kansas;
(3) has a criminal history score category of H or I;
(4) has no prior history of failure to appear for any court appearances;
(5) has no detainer or hold from any other jurisdiction;
(6) has not been extradited from, and is not awaiting extradition to, another state;
(7) has not been detained for an alleged violation of probation; and
(8) is lawfully present in the United States.

One impact of this proposal is illustrated in the attached sentencing grids. On the nondrug grid, there would be six grid boxes of people eligible if charged with qualifying nonperson felony (if they met the other requirements). That means 24 grid boxes of presumptive probation people and three grid boxes of border box people would *not* be eligible. There would be zero grid boxes of people eligible if charged with a person felony. That means all 30 grid boxes of presumptive probation people and three grid boxes of border box people would *not* be eligible.

On the drug grid, there would be two grid boxes of people eligible if charged with a SL 4 drug felony (if they met the other requirements). That means three grid boxes of presumptive probation people, two boxes of possibly SB 123 discretionary people and five grid boxes of border box people would *not* be eligible.

Other impacts, briefly stated, include *but certainly are not limited to*:

Impact on Courts/Court Services

- A criminal history score analysis would have to be done on every defendant (preferably before first appearances, when the Court would set a bond) – whether charged with a misdemeanor (which don't use criminal history scores and grids at sentencing) or a felony. That responsibility would fall on courts and court personnel.

- Kansas law requires an in-custody defendant with no other holds to be brought to trial within 90 days of arraignment. SB 321 means more trials, much sooner.

[1] The language discussed herein was part of 2011 HB 2259, which was heard 3/7/11 in House Corrections and Juvenile Justice. No further action was taken.

- There would be more preliminary hearings. Sometimes defendants waive their preliminary hearings for a recommendation for an OR bond or in the hopes of successfully arguing for one. (These defendants are almost always ones who are presumptive probation, in my experience.) This would no longer be an option. Furthermore, Kansas law provides an in-custody defendant a preliminary hearing within ten days. There is no way the courts could keep up with this pace if defendants demand courts comply with the law.

- There could be fewer pleas, if a presumptive probation person cannot be released after a plea pending sentencing. Even if people do plea, defendants would push to have their sentencing as soon as possible, which means more work for court personnel who, by law, must prepare presentence investigation reports in all felony cases. (And presumptive probation people take up jail beds while waiting to be placed on probation.)

Impact on public defenders, appointed counsel and retained counsel

- See above RE: increased number of preliminary hearings, quicker trial settings, fewer pleas, etc.

- If a huge population of defendants has to post a bond through a bondsman, that is less money they have to retain counsel or help pay toward appointed counsel – i.e. more need for public defenders and appointed counsel.

Impact on jails

- Please consider the attached grids and analysis of them mentioned above, along with the other points raised here. I cannot imagine the bed impact on jails.

Impact on defendants

- The list is endless: could lose jobs, homes, children, benefits, schooling, medications, treatment, counseling, etc.

Two additional comments. First, one bondsman's testimony last year in HB 2259 said, "A Professional Bondsman's job is to guarantee the defendant's appearance in court, nothing more, nothing less." (Testimony of Michael Crow, Morey Bonding Company, 3/7/11). When a person is given an OR bond now, he/she can be ordered to bond supervision, which has requirements depending on the case and needs of the person. The bond supervisor can try to provide resources for the person, if necessary. This is more than a bondsman provides.

Second, I anticipate the proponents will argue something to the effect of "[i]f a defendant does not even qualify for an ORCD bond, they certainly should not be allowed to have a less restrictive OR bond." My response: the ORCD system should never have been severely limited to the point it is rarely used, in my experience – for many of the same reasons here (ex. the effect on presumptive probation defendants, etc).

I respectfully request that this Committee reject SB 321.

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if the charge is a nonperson felony:

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
I	[illegible] 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 [illegible]64	186 176 166	165 155. 14[illegible]
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	13[illegible] [illegible]1 123	123 117 109
III	247 233 221	22[illegible] [illegible]06	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 6[illegible]	61 [illegible]9 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 [illegible]	[illegible] 56 52	52 50 47	48 45 42	41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 [illegible]	[illegible] 32 31
VI	46 43 40	41 39 37	38 36 34	36 3[illegible] 32	32 30 28	29 27 25	26 [illegible] 24 [illegible]27	21 [illegible] 19	19 [illegible] 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	[illegible]	19 18 17	17 16 15	[illegible] 13 12	13 12 11
VIII	23 21 19	20 19 [illegible]	18 17	17 16 15	15 14 13	[illegible] 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 [illegible] 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 [illegible]	7 6 5	7 6 5

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5

24 months recommended for felonies classified in Severity Levels 6-7

18 months (up to) for felonies classified in Severity Level 8

12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4

24 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-6

12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

6 boxes

if the charge was a person felony:

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	[illegible]	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 [illegible] 166	[illegible] 155 147
II	493 467 442	[illegible] 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 [illegible] 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 [illegible]	[illegible] 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	[illegible]	[illegible] 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	[illegible] 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 [illegible] 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 [illegible]	[illegible] 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	[illegible] 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

no one qualifies

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5

24 months recommended for felonies classified in Severity Levels 6-7

18 months (up to) for felonies classified in Severity Level 8

12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4

24 months for felonies classified in Severity Levels 5-6

12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-6

12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

if the charge is a drug felony:

SENTENCING RANGE – DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misd.	1 Misd. No Record
I	204 / 194 / 185	186 / 176	187 / 178 / 169	179 / 170 / 161	170 / 162 / 154	167 / 150	154 / 146	42	154 / 138
II	83 / 78 / 74	77 / 73 / 68	72 / 68 / 65	68 / 64 / 60	59 / 55	59 / 56 / 52	57 / 54 / 51	54 / 51	49 / 46
III	51 / 49 / 46	47 / 44 / 41	42 / 40 / 37	36 / 34 / 32	30	26 / 24	23 / 22 / 20	19 / 18 / 17	16 / 15
IV	42 / 40 / 37	36 / 34 / 32	32 / 30 / 28	26 / 24 / 23	22 / 20 / 18	18 / 17 / 16	16 / 15	14 / 13 / 12	12 / 11 / 10

2 boxes

LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-2

18 months (up to) for felonies classified in Severity Level 3
and, on and after July 1, 2009, felony cases sentenced pursuant to K.S.A. 2011 Supp. 21-6824 (formerly 21-4729 SB 123)

12 months (up to) for felonies classified in Severity Level 4

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-2

24 months for felonies classified in Severity Level 3

12 months for felonies classified in Severity Level 4 except for some unlawful possession offenses committed on and after 11/01/03 pursuant to K.S.A. 2011 Supp.21-5706 (formerly K.S.A. 21-36a06)

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-3

12 months for felonies classified in Severity Level 4