## 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) 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.

<sup>&</sup>lt;sup>1</sup> 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.

Jennifer C. Roth

rothjennifer@yahoo.com/785.550.5365

## if the change is a nonperson felong: SENTENCING RANGE - NONDRUG OFFENSES

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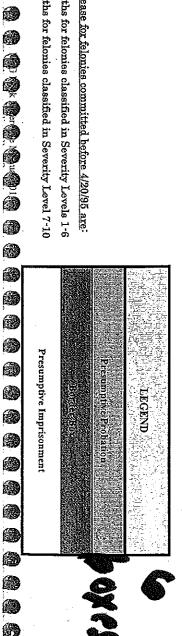
Probation Terms are: 36 months recommended for felonies classified in Severity Levels 1-5

- 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

24 months for felonies classified in Severity Levels 1-6 12 months for felonies classified in Severity Level 7-10 Postrelease for felonies committed before 4/20/95 are:



# f the charge was a person felony; sentencing range - nondrug offenses

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<u>Probation Terms are:</u>
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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

12 months for felonies classified in Severity Levels 7-10

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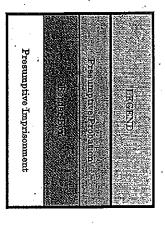
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## Probation Terms are

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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 24 months for felonies classified in Severity Levels 1-3 Postrelease for felonies committed before 4/20/95 are:

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)

KSG Desk Reference Manual 2011

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