

**Senate Judiciary Committee
Senator Jeff King, Chair
Senator Greg Smith, Vice Chair**

**Testimony in Support of SB 140
Relating to the Forfeiture of Appearance Bonds**

February 16, 2015

Chief Judge Merlin Wheeler, 5th Judicial District (Chase and Lyon Counties)

Thank you for the opportunity to appear in support of SB 140. This bill is the work product of the Kansas Judicial Branch Debt Collection Committee, which was appointed by the Supreme Court in an effort to enhance its collection of court-ordered debt.

Kansas Judicial Branch Debt Collection Committee – Background

Improving compliance with court orders, including orders to pay monetary fines, docket fees, and restitution, is an important function of the Judicial Branch. As noted by the National Center for State Courts (NCSC), “the ability of courts to effectively compel compliance goes directly to the perception of trust and confidence in the judiciary by the public, as well as by the legislatures that provide funding, and executive branch agencies that do business with the courts.” National Center for State Courts, *Process Review of Court-Ordered Monetary Sanctions for the Kansas Judicial Branch*, p. 3. “In particular, restitution for crime victims and accountability for enforcement of monetary penalties imposed on offenders are issues of intense public interest and concern.” National Center for State Courts, *Collection of Monetary Penalties*, www.courtools.org.

Kansas’ most recent efforts to enhance its collection of court-ordered debt began in 2011 with a review of debt collection activities by the Supreme Court’s Blue Ribbon Commission (BRC). Senator King served as a member of the commission and as chairman of the Finances and Courts work group. Committee members studied current collection efforts and ways to enhance those efforts. One recommendation made by commission members was that the Office of Judicial Administration should explore some of the debt collection methods used by other states.

To implement this BRC recommendation, the Judicial Branch applied for and received a State Justice Institute (SJI) grant for an NCSC study of current collections practices. Kansas Judicial Branch personnel, including the Kansas Judicial Branch Debt Collection Committee, worked with NCSC consultants, who issued a report including 33 recommendations for policies, operational changes, and statutory amendments aimed at improving the enforcement of court-ordered financial obligations.

The Judicial Branch Debt Collection Committee reviewed each of those 33 recommendations. After discussing each recommendation, committee members assigned them a ranking based upon the recommendation’s importance in the debt collection process, the

collections potential, the amount of staff workload increase, and the manner in which the item would promote the administration of justice and the public's faith and confidence in the court system. It was believed that all of the 33 recommendations, while important, could not be implemented immediately or at one time, mainly because of the workload implications for Judicial Branch staff. Several recommendations are dependent upon the purchase and implementation of a centralized case management system. As staffing and other resources permit, the committee believes that all of the recommendations should be implemented or that some related action should be taken in each of the areas noted by the consultants.

Debt Collections Committee members agree that they are motivated to take the steps necessary to increase the Judicial Branch's collection efforts and believe that other Judicial Branch employees share that same motivation. Simply put, compliance with court orders is important. It should be noted, however, that there are few, if any, recommendations that would not require at least some amount of additional time and effort from judges and court staff. In fact, a majority of these recommendations would require a significant commitment of time and effort.

SB 140 – Appearance Bond Forfeitures

The recommendation incorporated in SB 140 received the highest ranking from committee members. SB 140 would modify the procedure involved in declaring the forfeiture of an appearance bond. When a defendant fails to appear as directed by the court, the court must declare a forfeiture of the appearance bond, unless the court determines that justice does not require the enforcement of the forfeiture. Currently, statute provides that the court shall, "on motion," enter a default judgment if the forfeiture is not set aside, but the statute does not require that a motion be filed. SB 140 would clarify that the county or district attorney shall file a motion for a default judgment so that the matter is before the court and forfeiture may be entered.

It is important to note that the practice incorporated in SB 140 is the practice in some courts and with some prosecutors, but that forfeiture is not pursued in every case in every county.

The passage of SB 140 is anticipated to result in an increase in bond forfeiture revenue which, pursuant to K.S.A. 20-368 and 20-350(b), is split between the County General Fund (40 percent), the Indigents' Defense Services Fund of the Kansas State Board of Indigents' Defense Services (30 percent), and the State General Fund (30 percent). The amount of any increase in bond forfeiture revenue cannot be estimated with any certainty until the Judicial Branch has had an opportunity to operate under the provisions of SB 140.

Implementing this recommendation will take additional clerk and judge time to schedule and conduct these hearings. Committee members believe that court staff will be willing to do whatever they can do to implement this recommendation.

Thank you for your consideration of SB 140. I would be happy to stand for any questions you might have.