

Senate Judiciary Committee – Senate Bill 40

February 1, 2017

Kansas Association of Criminal Defense Lawyers

Opponent

Chairman Wilborn and Members of the Committee:

The Kansas Association of Criminal Defense Lawyers (KACDL) is a 350+ member organization dedicated to ensuring justice and due process for persons accused of crime or other misconduct. KACDL is opposed to SB 40, which would grant pretrial supervision officers the authority to arrest a defendant without a warrant.

Under current law, an appearance bond may be revoked for a violation of a bond condition by the issuance of a warrant for a defendant's arrest. SB 40 seeks to amend K.S.A. 22-2807 to allow a pretrial services supervision officer to arrest a defendant without a warrant when, in the judgement of that officer, the defendant has violated a condition of bond. The language in SB 40 mirrors *some* of the language in K.S.A. 22-3716(a) regarding arrest for violation of probation. However, pretrial release supervision is the supervision of a person during the pendency of a criminal case. Often this means supervision of a person who has not yet been convicted of a crime; whereas probationers are being supervised due to a criminal conviction. A person who has not yet been convicted of a criminal offense should not be subject to less protections than a person who is on probation.

In K.S.A. 22-3716, the probation officer's decision to arrest a probationer is ultimately reviewed by a judge and 22-3716(b) sets forth the process for a probation officer to notify the court and submit a written report to the judge. The court then has the probationer brought before it without unnecessary delay, for a hearing on the violation charged. The State has the burden of establishing a violation and the defendant has the right to be represented by counsel. SB 40 does not offer any of those same protections for a defendant alleged to have violated bond. It does not even provide for an opportunity to have a hearing to determine whether a violation has in fact occurred, it simply provides that a magistrate shall promptly set a new bond. SB 40 provides pretrial supervision officers more discretion to arrest than that which is given to probation officers.

SB 40 also gives greater leeway to arrest for pretrial supervision officers than for law enforcement officers. Under K.S.A. 22-2401, a law enforcement officer may arrest a person if the officer has a warrant, if the officer has probable cause to believe there is a warrant for a felony, if the officer has probable cause to believe that the person is committing or has committed a

felony (or in limited circumstances a misdemeanor offense), or if certain crimes have been committed in the officer's view. Under SB 40, a pretrial supervision officer would simply have to state that the defendant has, in that officer's judgment, violated the conditions of bond, which in many cases is not a criminal act.

KACDL is not aware of any problems with the current system of issuing a warrant for the violation of bond conditions. Revoking a person's bond is a very serious action which should be only be undertaken by issuing a warrant.

Thank you for your consideration,

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