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TO: Senate Judiciary Committee
FROM: Christopher M. Joseph
DATE: February 2, 2012
RE: Support to SB 321

Good morning Chairman and members of the Committee, my name is Chris Joseph and I am counsel for the Kansas Bail Agent Association. The KBAA is an association of professional sureties in the State of Kansas. We are here to testify today in support of SB 321.

Types of appearance bonds in Kansas

There are three types of appearance bonds (commonly know as bail bonds) that a judge may set: (1) professional surety or cash, (2) own recognizance cash deposit ("ORCD"), and (3) own recognizance ("OR").

Professional surety or cash: A professional surety (commonly known as a bail bondsman) will post the bond and guarantee to pay the court the amount of the bond if the defendant fails to appear. Sureties are given a small window to apprehend a defendant who fails to appear in lieu of paying the amount. Statute allows a defendant to post cash in the amount of the bond instead of using a bondsman. Studies show that this type of bond is highly effective at ensuring defendants appear in court.

OR bonds: A defendant is allowed to sign a piece of paper promising to appear in court and, if they fail to appear, promising to pay to the court the amount of the OR bond. The OR bond is intended to be used sparingly and only for persons who will likely appear in court and are not likely to commit other offenses.

ORCD bonds: A defendant is allowed to deposit 10% of the amount of the bond with the court and sign a piece of paper promising to pay to the court the rest of the amount of bond if they fail to appear. The ORCD bond is also intended to be used sparingly and only for defendants who need a little more motivation to appear than provided by an OR bond.

Studies provide compelling evidence that professional surety bonds are vastly more effective than OR or ORCD bonds. For example, according to the Helland & Tabarrok study:

> Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance and if they do fail to appear they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on own recognizance. . . . Given that a defendant skips town, however, the probability of recapture is much higher for those defendants on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared to those released on cash bond. These finding indicate that bond dealers and bail enforcement agents ("bounty hunters") are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law.

Helland & Tabarrok, Public versus Private Law Enforcement: Evidence from Bail Jumping, 47 Journal of Law and Economics 93 (April 2004).

The problem with overuse of OR bonds

There are no statutory limitations on the use of OR bonds. Because of this, there are times when a defendant who does not qualify for the more restrictive ORCD bond gets an OR bond. Many times, that defendant has a history of failing to appear for court, has significant criminal history, or is charged with a very serious crime. There are some outrageous examples of OR bonds that will be shared at the hearing.

The OR bond is simply abused. There is never any effort to collect the amount promised to be paid when a defendant fails to appear. Sadly, it is common to see OR bonds in the amounts of tens of thousands of dollars given to an indigent defendant with an appointed attorney. Most defendants know that the OR bond amount is a joke. They know they will never have to pay it. The only consequence of not appearing in court is the issuance of a warrant.

When defendants choose not to go to court, a warrant is issued. The warrant goes to the sheriff to execute. In jurisdictions with a large volume of OR bonds, the number of warrants issued simply overwhelms the sheriff. As a result, these defendants are often returned to custody only after their next encounter with police, whether through a traffic stop or arrest for another crime.

What this bill does to correct the problem

This bill places limitations on the use of OR bonds. If a defendant does not even qualify for an ORCD bond, they certainly should not be allowed to have a less restrictive OR bond. It adopts and slightly tightens the ORCD bond limitations for OR bonds. All other bonds, appropriately, should require a defendant to post cash or use a professional surety who will be accountable for the defendant's appearance.

The sky will not fall

Opponents have suggested that the result of passing SB 321 will be jails becoming overcrowded. If appearance bonds are set appropriately, there is no reason that defendants will be detained any longer than appropriate. Here is how it should work: If a defendant is a serious risk to society, the bond amount should be set appropriately high. On the other hand, if the only concern is providing sufficient motivation to appear, the bond amount need only be high enough that payment of the amount would make the defendant try very hard to remember to appear. If a defendant is indigent, that amount may be a low as $100.

The bottom line is that judges continue to have discretion over the amount of the bond set. This bill only dictates that only the lowest-risk defendants can get out of jail with a signature and nothing more.