"BAIL AGENTS ASSURE JUSTICE"

Kansas Bail Agents Association

2947 N. Athenian Ave., Wichita, Kansas 67204

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My name is Shane Rolf, I have been a bail bondsman in Olathe, Kansas, for the past 38 years. I am the Executive Vice President and Legislative Chair of the Kansas Bail Agents Association. I am providing this testimony on behalf of the KBAA in support of House Bill 2755.

About KBAA

The Kansas Bail Agents Association is dedicated to supporting and enhancing the entire bail bond industry, through five key objectives:

1. Promoting legislation and rules which will advance the profession.
2. Combating legislation and rules which may harm the profession.
3. Promoting and maintaining professional and ethical standards for the profession.
4. Improving relations between the industry and the legal community - attorneys, judges, clerks and sheriffs - and the general public, both locally and nationally.
5. To educate and train both the Professional Bail Agent as well as the Professional Recovery Agent.

The KBAA is the sanctioned Kansas State Association affiliate of the Professional Bail Agents of the United States. Our Corporate Members are founding members of the American Bail Coalition. The KBAA has about 210 members in Kansas and is responsible for providing Continuing Education under K.S.A. 22-2890b to all of the roughly 350 Bail Bondsmen in the state of Kansas. We provide at least 5 Continuing Education classes all across the state each year.

During the course of those many classes all over the State and reviewing our member feedback surveys, it became clear that this issues addressed by this bill are very important to the professional bail agents in the State of Kansas.

To that end, the KBAA offers its testimony in support of House Bill 2755.

BACKGROUND

In September 2023, Norma Williams was shot and killed in a road rage incident. The accused killer, Darion Boone, was arrested and charged with first degree murder. He bonded out of jail almost immediately. This sparked a number of articles in the news media, including one from KAKE titled Increase in people accused of violent crimes bonding out of jail.[1] In that article, the Sheriff indicated that this increase in violent offenders posting bail and being released was due to some bail "bond companies that are offering rates as low as one percent. ... This lower percentage is making it easier for those behind bars to get out, even if they're accused of a violent crime like murder." This practice was colloquially referred to as "discount bonding" since these bonds were being done at a significant rate below the industry standard of 10% of the face amount of the bond.

However, like other forms of more lenient pretrial release, "discount bonding" comes with a cost to public safety.

In late 2019, the State of New York implemented a version of Bail Reform that caused the City of New York to release about 35% of the population of Rikers Island, the city's main jail facility for holding pretrial detainees. Between mid-November and January 1, 2020, New York City released 2,000 criminal defendants who had previously been detained in lieu of bail. In the first 10 weeks after implementation of this change, crime in New York City went up by 20%. In his article, *More Criminals, More Crime: Measuring the Public Safety Impact of New York's 2019 Bail Law*[2], former prosecutor Jim Quinn documented the increase in crime in just this short period of time. Robberies were up by 34%; Shooting incidents were up by 23% and car thefts skyrocketed by an incredible 68%, thus reversing a trend that had seen crime fall by over 76% over the previous 27 years. By the time two years of lenient releases had passed, index crime in New York City had increased by over 36%.

The short take away from this is that lenient pretrial release policies increase crime.

In 2022, Wichita saw a larger increase in violent crimes than the rest of the state combined; 688 additional incidents versus 271 more incidents for the rest of the state.[3] Unsurprisingly, 2022 was when "discount bonding" in Wichita kicked into high gear.

One incident that particularly stands out is the case of Larry Armour. Mr. Armour was arrested in late December 2023 for an armed robbery – a carjacking with a knife[4]. After his arrest, Armour was identified as a suspect in a previous armed robbery from May, again with a knife. He was formally charged in both cases and bond was set at $100,000 in each case. At the time of his arrest, Armor was living in a hotel with a roommate and his most recent previous job had been several months earlier in

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[1] https://www.kake.com/story/49591389/sheriff-explains-why-theres-been-an-increase-in-people-accused-of-violent-crimes-bonding-out-of-jail

[2] https://manhattan.institute/article/more-criminals-more-crime

[3] Wichita Eagle: Wichita, Kansas crime went up, not down in 2022, state says after finding 'system error'

[4] https://www.kwch.com/2023/12/27/wichita-man-robbed-knifepoint-busy-parking-lot-car-stolen/

Oklahoma. Still, despite these violent criminal charges, minimal solid community ties, and no clear financial resources, Mr. Armour was released on two discount bonds on January 12, 2024.

On January 25, 2024, Armour stole his roommate's vehicle at knifepoint. Police located Armour and the vehicle shortly thereafter and short chase ensued. Armour fled from the vehicle and forcibly entered a local home where he held the resident hostage with the knife. After SWAT was called out and negotiations were attempted, Police were forced to shoot and kill Armour as he was threatening to kill his hostage[5].

Now a man is dead, an innocent citizen has been traumatized, and a police officer has to carry the burden of having killed a man. Had these bonds not been severely discounted, it is unlikely that Armour would have ever been released in the first place. And while this is anecdotal, there are doubtless many other instances like this that were not splashy enough to make the news.

No method of pretrial release can eliminate all recidivism, but lenient forms of release such as signature bonds, cite and release, and "Zero Bail" releases provide very little deterrence and invariably lead to more crime. It can be argued, especially with the example of Mr. Armour, that discounted bail has a similar impact.

House Bill 2755 proposes to address this by establishing minimum fees that a bail bondsman must collect prior to posting bail. Specifically, the bill proposes a minimum fee of ten percent of the face amount of the bond, with a requirement that at least half of that fee be paid prior to the posting of the bail.

This is not a new idea. A number of states and jurisdictions have implemented just such restrictions. The State of Indiana requires a surety to collect at least 8% of the bond prior to posting bail and the jail can demand proof of payment when the bond is being posted[6]. Connecticut also statutorily mandates a 10% fee and while the state allows some financing, it requires the surety to file suit if the financing is not paid. As of January 1, 2024, the State of Arkansas requires bail bondsmen to collect the entire fee prior to posting bail and does not allow financing[7]. In Harris County , Texas, the County Bail Bond Board[8] similarly enacted a requirement that the entire fee be paid prior to posting bond. And while a financing plan can be done, the bond cannot be posted until at least 10% of the face amount of the bond has been collected. Multiple other states have established pricing ranges through administrative regulations through their Departments of Insurance.

Historically, surety bail has been the most effective method to secure both appearance and public safety. Of course this would be dependent upon a properly written surety bond, with the fee

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[5] https://www.kake.com/story/50388103/suspect-fatally-shot-during-wichita-hostage-situation-faced-charges-for-recent-crimes

[6] IC 27-10-4-5 Failure of bail agent to collect full premium

[7] Arkansas statute 17-19-301

[8] https://bailbond.harriscountytx.gov/

collected and a member of the defendant's Community Support Network guaranteeing the bond. It is our position that placing a reasonable minimum on what a surety must charge and collect before posting bail will lower the incidents of additional crimes being committed by defendants on bond and allay public concerns about violent criminals being released with little security. Additionally, maintaining an option for partial financing by the surety will still ensure indigent defendants have options.

Viability

Another issue of concern with discount bondsmen is the issue of viability. At some point, forfeitures will be declared on these bonds for defendants who fail to appear and while bail bondsmen do an excellent job of getting fleeing defendants back into custody, ultimately, none of us are perfect and some defendants will successfully abscond and bondsmen will be obligated to pay these forfeitures. The State is the beneficiary of those forfeitures and has an interest in making sure that these are valid enforceable contracts which can be collected upon. One of the primary reasons that the various state Departments of Insurance require *minimum* fees from all insurers is to make sure that they can actually meet their obligations in the event of a claim. There is a concern that – at some point – discount bondsmen will "hit a wall" and be unable to satisfy all their potential liabilities.

HB 2755 Enhances Professionalism in the Bail Industry

The bill takes a number of steps to enhance the professionalism within the bail industry. It closed potential loopholes that would allow convicted felons to work in the industry. Currently the statute governing municipal courts has no express restrictions on felons posting surety bail and does not require the annual continuing education credit that are required at the district court level.

Additionally, we are receiving reports that there are convicted felons working in certain bail agencies, working in the office, doing paperwork, approving bonds, answering phones; essentially doing everything to post the bond except actually signing their name. This bill would stop this practice. (Note: This is already a requirement on the insurance side of the business.)

The bill establishes an enhanced protocol for background checks. The current requirement is to simply submit an affidavit swearing that the individual is not a convicted felon. This change would allow the Court to use this protocol to confirm the validity of that sworn affidavit.

It also requires that this bond be posted in person, at the jail, not remotely or electronically. This ensures that the person posting the bond is who they claim to be, and ensures that the bondsman is a local agent - not an insurance company clerk halfway across the country or even some computer hacker halfway across the world.

HB 2755 establishes a non-exclusive list of conduct that could result in suspension of the ability to act as a professional surety. These include filing false statements with the court, soliciting business at a jail, failing to charge to required fees mandated by this bill, bribing or offering gifts to jail personnel, paying jail inmates for business referrals, failing to return collateral used to secure the bond, and failing to pay bond forfeitures when due.

Prevents Denial of Constitutional Rights

Many municipal courts are currently setting bonds with an eye toward the future collection of fines. Often requiring "cash only" bonds, or setting a cash alternative bond significantly lower than the amount needed from a surety. For instance, an appearance bond in a municipal court may be set at $500 "cash only," meaning that the defendant does not have the option to utilize a surety, (either a bail bondsman or some other responsible party).

In another example, the bond may be set at $2,000 surety with a $500 cash alternative, thus requiring a significantly higher amount from a surety than would be required in cash.

Both of these practices are already prohibited at the District Court level. K.S.A. 22-2802(4) mandates that the "court may not exclude the option of posting bond" via a surety, thus prohibiting cash only bonds. Differing amounts are prohibited by K.S.A. 22-2802(5), which specifies that "the amount of the appearance bond shall be the same whether executed as described in subsection (3) [*surety*] or posted with a deposit of cash as described in subsection (4)."

These requirements, as found in K.S.A. 22-2802, are consistent with Article 9 of the Kansas Constitution, which states:

"All persons shall be bailable by **sufficient sureties** except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted."

Other states such as Minnesota[9], Ohio, and Tennessee have similar constitutional language and their courts have reached a similar conclusion, i.e. that "cash only" bail is prohibited by the sufficient surety clause of their state constitutions.

Since this is a part of the Kansas Bill of Rights, this clause is clearly present to prevent the government from simply incarcerating people and extorting money from them without giving them any other reasonable option to gain their freedom.

Therefore, in Kansas, bail by surety is a Constitutional right[10], with certain limitations (i.e. capital cases). However, bail is not intended to be a source of revenue for the State.[11] Further, many courts have held that a bond which is set in any amount higher than or for any purpose beyond securing appearance is to be considered "excessive." As noted above, excessive bail is also prohibited by the United States Constitution. If the purpose behind these "cash alternative bonds" is to generate revenue for the Cities or to simply ensure payment of court costs, then bail would be or should be considered excessive.

Since the Court has already determined that the lesser amount, i.e. the cash amount, is all that is needed to assure the defendant's appearance in court, then the setting of a surety bond in an amount higher

[9] Minnesota Supreme Court, State v. Brooks, 604 NW 2d 345

[10] Kansas Constitution, Bill of Rights, Article 9 – "**Bail.** All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required..."

[11] Kansas Supreme Court, State v. Midland Insurance. "The purpose of bail is not to beef up public revenues."

than the cash requirement serves no other purpose than to limit the defendant's ability to exercise a constitutional right.

This bill would simply bring Municipal Courts practice into line with the District Court and clarify that they cannot set surety bonds in differing amounts from cash bonds.

What HB 2755 Does Not Do

It DOES NOT create unconstitutionally excessive bail. It has been argued by many in recent years that "unaffordable bail" is unconstitutional. This argument has been repeatedly rejected by multiple courts at both the State and Federal levels. The Court in *Brangan v. Commonwealth*, a Massachusetts case from 2017 cites a long litany of cases, including from the United States Supreme Court refuting this claim (see footnote[12]).

Further, the amount that a bail bondsman charges, whether mandated by Statute, regulation or business practice is not a "condition of bond" that can render a bond excessive or not excessive. This was the exact finding of the Texas Court of Appeals in *Claiborne v. Harris County Bail Bond Board*. It is merely a regulation of the bondsmen and does not equate to a condition of bond set by the Court. Thus there are no constitutional concerns about regulating bail bond fees.

It DOES NOT create any sort of due process problems for the Court or defendants. A defendant is still free to pursue all due legal remedies to seek pretrial release and the court is free to consider all the statutory considerations, including the defendant's financial resources, when determining the appropriate amount of bond and any conditions thereto, and a Motion to Modify Bail is expressly authorized by K.S.A. 22-2803. This bill in no way interferes with that.

It DOES NOT create a competitive advantage or disadvantage for any particular surety or type of surety. Every surety would be obliged to follow the same standard in setting fees.

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[12] 3. *Whether bail must be affordable.* The arguments that Brangan and the amicus present also raise the question whether unaffordable bail is unconstitutional per se. We conclude that it is not, but in doing so, we recognize that the imposition of unaffordable bail is subject to certain due process requirements.

We previously have stated that an "amount of bail [is] not excessive merely because [a defendant] could not post it." *Leo v. Commonwealth*, 442 Mass. at 1026. Other courts have similarly concluded that a defendant is not constitutionally entitled to a bail that is affordable. See, e.g., *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988) ("a bail setting is not constitutionally excessive merely because a defendant is financially unable to satisfy the requirement"); *White v. Wilson*, 399 F.2d 596, 598 (9th Cir. 1968) ("The mere fact that petitioner may not have been able to pay the bail does not make it excessive."); *Hodgdon v. United States*, 365 F.2d 679, 687 (8th Cir. 1966), cert. denied, 385 U.S. 1029 (1967) (same); *State v. Pratt*, 2017 VT 9, ¶ 15 ("the Constitution does not require that a defendant have the ability to pay the required bail if it is otherwise reasonable"). Even Justice Jackson, in arguing for the importance of an individualized bail determination in *Stack*, qualified his point by noting that "[t]his is not to say that every defendant is entitled to such bail as he can provide." *Stack*, 342 U.S. at 10 (Jackson, J., concurring). Although the judge must take a defendant's financial resources into account in setting bail, that is only one of the factors to be considered, and it should not override all the others. Bail that is beyond a defendant's reach is not prohibited. Where, based on the judge's consideration of all the relevant circumstances, neither alternative nonfinancial conditions nor an amount the defendant can afford will adequately assure his appearance for trial, it is permissible to set bail at a higher amount, but no higher than necessary to ensure the defendant's appearance.

It DOES NOT create a solution that puts any bonding company out of business. There were proposals being floated by other concerned stakeholders to remove the multiple for property based sureties. This sort of change would almost certainly cause some number of bail bond businesses to be immediately put out of business. Rather than eliminate this multiple, the bill clarifies that this multiple is to be a statewide aggregate, not an aggregate in each judicial district.

CONCLUSION

We feel that HB 25755 will:

- Increase public safety
- Help restore public trust in both bail bonds and the criminal justice system
- Reduce the frequency of defendants on bond committing additional crimes
- Increase professionalism within the industry
- Protect the constitutional right to bail in Municipal Court

The Kansas Bail Agents Association strongly supports HB 2755 and respectfully requests the Committee to recommend passage.

Thank you,

Shane Rolf
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Legislative Chair
Kansas Bail Agents Association.