House Committee on Corrections and Juvenile Justice

John Rubin, Chairman
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TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN OPPOSITION TO HB 2070

I am Dan Creitz, Chief Judge of the 31st Judicial District of the State of Kansas which includes Allen, Neosho, Wilson, and Woodson Counties. I also serve on the Executive Board of the Kansas District Judges Association, and I am Legislative Co-Chair. I thank this honorable committee for allowing me the opportunity to speak in opposition of House Bill 2070 which would mandate additional requirements before a criminal defendant could be released without a surety bond.

A review of current law and court procedures proves that HB 2070 is unnecessary, increases costs, and may have unintended consequences.

Under current law, Kansas District Court and Magistrate Judges set bonds for the statutory purposes of assuring a defendant's appearance at all future hearings and assuring the safety of the community without voiding the defendant's constitutional right to a presumption of innocence. Factors considered by the court in establishing a bond and surety include: the crime charged, weight of the evidence against the defendant, family ties, employment, residence, past criminal history, any record of a defendant's

failure to appear, and/or propensity of the defendant to commit other crimes. Further, the issue of entitlement to bail is an individual right – preserved in the Kansas Bill of Rights, Sec. 9.

Once the amount of the bond is established, a judge can then determine the method of surety. This may take the form of cash deposits with the court, professional surety through a bonding company or reliance on the defendant's own recognizance, what is often referred to as an O.R. bond. Under current law, the type of surety is a matter of the judge's discretion upon considering the needs of the community and the defendant.

The need for O.R. bonds is often necessary in the day to day operations of the court, law enforcement, and in meeting the needs of the community. In most cases, where an O.R. Bond is set, the prosecutor joined in a recommendation or voiced no objection to the O.R. Bond. In these cases, not only is the judge reviewing the appropriateness of each O.R., but other stake holders in the final prosecution are involved. Factors including the age of prior offenses, the fact that the defendant accepted responsibility and cooperated with the state, employment, the medical condition of the defendant, and community association are also currently considered.

The benefits arising from the use of O.R. bonds approved with careful judicial discretion are significant and include reduction in community costs and greater use of proven alternative case disposition resulting from evidenced-based supervision.

An example of reducing community costs, and a frequent issue in the 31st Judicial District, occurs when an incarcerated defendant who is unable to post a bond has extraordinary medical needs. If the defendant is incarcerated, then the tax payers pay those medical bills. Thus, the Sherriff calls the judge asking for an O.R. Bond so that the county can avoid paying those extraordinary medical bills. Frankly, after considering all factors, I do not always grant these requests, but when I do, the savings are significant. For example, the financial burden for a small county paying for a kidney transplant could be devastating. O.R. Bond supervision practices may vary by district,

but supervision includes the use of individual risk analysis and pretrial supervision for O.R. bonds.

In some cases, under current law, money that could be used to meet professional surety demands is redirected toward attorney fees, restitution, and other costs. An O.R. bond with supervision has also allowed many criminal defendants to prove their desire to cooperate with community-based supervision and treatment programs. It has allowed defendants with jobs to maintain employment and continue to provide support for families. Other benefits are need, cost, and place of treatment can be established and considered by the judge when allowing an O.R. Bond.

With surety bonds, there is little or no direct supervision of defendants whereas with OR bonds, defendants are routinely subject to direct pretrial supervision involving experienced probation officers, electronic monitoring, regular blood and urine analysis, continuing treatment, and mental health evaluation.

HB 2070 would drastically change current law and practices by reducing judicial discretion. In cases where a defendant cannot post bond, it would result in increased jail populations, thus increasing costs for our counties. In cases where a defendant is able to post bond, that defendant, if convicted, will have less resources to pay costs, fees and restitution. In the best of circumstances, HB 2070 would mandate a delay of several days to establish that every defendant is legally present in the U.S. and has no prior incident of failure to appear pursuant to a court order. The phrase "has no prior history of failure to appear for any court appearances within the state" is a lifetime review of all jurisdictions within the State and applies to every Kansas district court and municipal court.

In conclusion, I ask, what problems would be solved by HB 2070? None. Why is it needed? It is not. What would passage of HB 2070 accomplish? Passage would replace the experience, review, and insight of judges exercising judicial discretion, as well as the experience of prosecutors and defense attorneys, with the self-interest of a private business owner. If HB 2070 is passed, communities,

individuals and justice are all losers. The only beneficiaries are the Bonding agents or bondsmen who receive a significant financial windfall.

Respectfully submitted,
Daniel Dale Creitz
Chief Judge of the 31st Judicial District
Co-Chair of the Kansas District Judges Association Legislative Committee