



02/10/13

House Committee on Juvenile Justice and Corrections

RE: **SUPPORT** of HB 2070

Chairman, Ladies and Gentleman of the Committee:

Thank you for the opportunity to submit my written testimony in **Support** of HB 2070. My name is Stephen Owens of Owens Bonding Inc. and President of the Kansas Bail Agents Association. As a managing direct agent in the State of Kansas, I currently manage 20+ agents that serve 50+ counties throughout the State of Kansas. We are underwritten by International Fidelity Insurance Company, a member of the AIA family of Surety Companies. I entered the bonding industry after completing my undergraduate studies at Bethel College and took my business full time shortly after completing my Masters in Business Administration from Southwestern College.

I am humbled by the opportunity to submit testimony that will hopefully help each of you to understand this issue. It certainly is not our intention to make a judges or administrators job any more challenging than it already is. It is, however, our intention to ask the legislature to create law defining what a low risk offender is, thus standardizing on a state level which defendants qualify to be let out on their promise to appear.

When a Judge releases a defendant from custody on an OR (Own Recognizance) bond of any amount, (*\$2,500, \$25,000 or \$250,000*) what does that mean? Many people, including some the public and many elected offices, believe it means that the defendant had to put up an amount in cash or property or they had to pay a percentage of cash to get out of jail. Well educated members of society and even local government leaders believe it means that if the defendant doesn't go to court they forfeit the amount of the bond to the court and the court is going after the defendant and the money. **WRONG ANSWER!** For example a \$250,000 OR Bond is the same as a \$0 OR Bond. **NO ONE** is responsible for the dollar amount preceding an OR Bond. **It is a fictional number that completely misleads the general public.** The state has never, nor does the state attempt, to collect this money upon failure to appear. How about a \$750,000, \$550,000, various \$250,000 and many \$100,000 OR Bonds...These are used ALL THE TIME! (See attached sheet of O.R. Bonds in the last year)

What about a Surety Bond? When a bondsman posts a \$250,000 bond and releases the defendant, the defendant must appear in court or the Judge orders the bond forfeited and we are given 60 days to locate the defendant or pay the bond. YES, PAY THE \$250,000 thus increasing the county and state budget if we fail at our job. No one pays for a failure if an OR Bond is used.

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The opposition to this bill will argue that this is an industry bill that will only increase bondsman pocket books and decrease judicial discretion while overcrowding jails throughout Kansas. Let's look at the facts:

1) Is this an industry Bill?

This bill was introduced by the Kansas Bail Agents Association to not only strengthen regulation on our industry, but to set the record straight on what OR bonds are and when they should be used. Do the auto insurance companies pass legislation? What about homeowner's insurance companies? We are no different. We write insurance policies to insure the State of Kansas that the defendant will appear or we pay.

2) Will it increase income to bondsman?

Will some defendants choose to use a bondsman to bond out as a result of this bill? The answer is yes, but only because they know their free ride is gone. Criminals are smart. They know how to play the system. They understand that if they receive an OR Bond, no one is watching; No One is coming after them if they fail to appear. The statistics prove this. For example, a study was completed of EVERY case that had a Failure to Appear in Sedgwick County District Court in 2012. The results showed that while the cases were evenly split between surety bonds and OR bonds, 78% of defendants on Surety Bonds were recaptured while only 27% of defendants on OR bonds were recaptured. This is not a made up number. This research was performed by a Wichita State University student that researched 778 cases that had failures to appear in 2012.

3) Does this bill decrease judicial discretion?

This bill no more reduces judicial discretion than what the law already mandates. Currently, KSA 22-2802 (8) states:

*(8) In determining which conditions of release will **reasonably assure appearance and the public safety**, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; whether the defendant is lawfully present in the United States; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.*

This bill standardizes what is already being done so that a consistent guideline is being used throughout the state of Kansas. It is difficult for the opposition to argue that they don't want judicial discretion restricted when some of them are speaking in support of other bills that limit their discretion by placing mandatory Surety bonds on certain crimes. Is this not reducing their discretion?

4) Will it cause an increase in jail overcrowding?

There is an argument that because the judge cannot release people on an OR bond, that they won't be able to post bond thus lengthening their incarceration time. This is simply not the case. Again...we are dealing with higher level felonies in this bill. This bill exempts ALL misdemeanors and many low level felonies. If we were creating a jail overcrowding problem, wouldn't the Sheriff's Association or Various Sheriff's be here arguing against this bill?

In addition to clarifying OR Bond Issues, this bill does two very important things for the bail industry.

- 1) This bill would make it illegal for ANYONE with a prior Felony Conviction to be a surety (bondsman) or agent of a surety (fugitive recovery agent). It is the belief of the KBAA and its members that individuals with a felony criminal conviction should not be bonding out or arresting fugitives. This is a professional industry and it is time for the laws that govern it to emphasize this fact. This puts our state in line with most other states in the country.
- 2) This bill would also make it a law that any fugitive recovery agent wishing to do business within the State of Kansas must contract with a local surety prior to apprehending a fugitive. It is imperative that agents from out of state understand and respect Kansas law. The majority of other states have a law on the books similar to this. This is another step in further strengthening the industry standards.

In conclusion, there are many judges, sheriff's and court administrators that acknowledge that this is a straight forward bill that makes perfect sense once they realize what an Own Recognizance bond really is. We remain committed to an industry that has proven its effectiveness since the early 1600's and this common sense bill will not only strengthen the regulation on the bail industry, but will reduce the misleading use of OR bonds.

Respectfully



Stephen Owens
President
Kansas Bail Agents Association

PARTIAL LIST OF OR BONDS THAT FAILED TO APPEAR IN SEDGWICK COUNTY IN 2012

12CR0651	OR	\$550,000	12CR2106	OR	\$50,000	11CR0292	OR	\$25,000
12CR0722	OR	\$250,000	12CR1012	OR	\$50,000	12CR0989	OR	\$25,000
11CR3324	OR	\$150,000	12CR1472	OR	\$50,000	12CR0704	OR	\$25,000
11CR3324	OR	\$150,000	12CR2963	OR	\$50,000	12CR0957	OR	\$25,000
12CR0650	OR	\$150,000	12CR1472	OR	\$50,000	10CR1291	OR	\$25,000
11CR0350	OR	\$100,000	10CR2683	OR	\$35,000	11CR2303	OR	\$25,000
12CR0366	OR	\$100,000	11CR2307	OR	\$25,000	11CR3067	OR	\$25,000
11CR2790	OR	\$100,000	11CR2188	OR	\$25,000	12CR0324	OR	\$25,000
12CR0478	OR	\$100,000	11CR3042	OR	\$25,000	12CR1459	OR	\$25,000
11CR2882	OR	\$100,000	12CR0361	OR	\$25,000	12CR1661	OR	\$25,000
11CR3103	OR	\$100,000	11CR2986	OR	\$25,000	12CR2410	OR	\$25,000
11CR3103	OR	\$100,000	12CR0766	OR	\$25,000	12CR1574	OR	\$25,000
11CR3338	OR	\$100,000	11CR1654	OR	\$25,000	12CR1435	OR	\$25,000
12CR1892	OR	\$100,000	11CR2986	OR	\$25,000	12CR1435	OR	\$25,000
12CR2103	OR	\$100,000	12CR0766	OR	\$25,000	12CR1435	OR	\$25,000
12CR0356	OR	\$100,000	12CR2682	OR	\$25,000	11CR3139	OR	\$25,000
12CR2244	OR	\$100,000	11CR2295	OR	\$25,000	08CR3363	OR	\$15,000
10CR3630	OR	\$75,000	11CR1423	OR	\$25,000	11CR3756	OR	\$15,000
12CR2552	OR	\$75,000	12CR0801	OR	\$25,000	12CR1669	OR	\$15,000
11CR1863	OR	\$75,000	11CR1423	OR	\$25,000	10CR2321	OR	\$15,000
12CR1731	OR	\$75,000	11CR2629	OR	\$25,000	12CR1256	OR	\$15,000
11CR3276	OR	\$75,000	11CR1423	OR	\$25,000	12CR1923	OR	\$15,000
12CR1493	OR	\$75,000	11CR3067	OR	\$25,000	12CR1923	OR	\$15,000
11CR2961	OR	\$75,000	11CR3715	OR	\$25,000	11CR2124	OR	\$15,000
12CR1492	OR	\$75,000	11CR2629	OR	\$25,000	12CR2516	OR	\$15,000
12CR2505	OR	\$75,000	11CR0800	OR	\$25,000	12CR2169	OR	\$15,000
12CR2505	OR	\$75,000	12CR3195	OR	\$25,000	12CR2169	OR	\$15,000
12CR0378	OR	\$60,000	12CR0988	OR	\$25,000	11CR1848	OR	\$10,000
12CR0545	OR	\$50,000	11CR3120	OR	\$25,000	09CR2354	OR	\$10,000
12CR1747	OR	\$50,000	11CR1957	OR	\$25,000	10CR2484	OR	\$10,000
12CR1305	OR	\$50,000	12CR1936	OR	\$25,000	12CR0399	OR	\$10,000
11CR3450	OR	\$50,000	11CR2383	OR	\$25,000	12CR1703	OR	\$10,000
10CR3922	OR	\$50,000	12CR1849	OR	\$25,000	11CR0449	OR	\$10,000
11CR3494	OR	\$50,000	12CR2254	OR	\$25,000	12CR1464	OR	\$10,000
12CR0602	OR	\$50,000	12CR2254	OR	\$25,000	12CR0398	OR	\$10,000
11CR2776	OR	\$50,000	12CR0019	OR	\$25,000	12CR1069	OR	\$10,000
11CR2924	OR	\$50,000	12CR2403	OR	\$25,000	11CR2217	OR	\$10,000
11CR0650	OR	\$50,000	12CR1919	OR	\$25,000	09CR1356	OR	\$10,000
12CR1403	OR	\$50,000	11CR3210	OR	\$25,000	10CR3230	OR	\$10,000
11CR3769	OR	\$50,000	11CR3625	OR	\$25,000	11CR2405	OR	\$10,000
11CR1649	OR	\$50,000	12CR2254	OR	\$25,000	10CR0137	OR	\$10,000
12CR0495	OR	\$50,000	11CR0292	OR	\$25,000	12CR2527	OR	\$10,000
12CR1505	OR	\$50,000	12CR0005	OR	\$25,000	10CR2688	OR	\$10,000
12CR1397	OR	\$50,000	12CR0396	OR	\$25,000	11CR0351	OR	\$10,000