Approved: 2-18-10
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 2, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative John Grange- excused
Representative Kevin Yoder- excused

Committee staff present:
Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Steven Owens-Owens Bonding Inc., Newton, Kansas
Shane Rolf- Member of the Kansas Professional Bail Bonds Association Board of Directors

Others attending:
See attached list.

Chairman Kinzer advised the committee additional information was given to each member as follows:
1) Supporting information from Jordon Austin on behalf of the National Rifle Association of America for the proposed amendment, consisting of several sections, which he offered during testimony at the hearing on **HB 2432** on February 1, 2010. (Attachment 1)

2) Written testimony from Jerome A. Gorman, Office of the District Attorney, Wyandotte County in support of **HB 2226**. (Attachment 2)

HB 2204 - Affidavits and sworn testimony in support of probable cause for issuance of warrant are open court records following execution of a warrant or summons; certain exclusions.
Chairman Kinzer announced the appointment of a sub-committee with respect to **HB 2204.** Representatives Colloton, Pauls and Jack were appointed to the committee with Representative Colloton being the chairperson. He advised there was a hearing on this bill last year and there was also a Judicial Council study on the issue. A relatively divided opinion came back from the Judicial Council with a recommendation to not proceed with the bill. He stated since there was a well thought out minority opinion, it warrants this committee to take a further look at this bill.

The hearing on **HB 2528 - Amending the court procedure for the forfeiture of an appearance bond** was opened.

Jill Wolters, Office of the Revisor of Statutes, provided an overview of the bill. She explained under current law, K.S.A. 22-2802, when a person is charges with a crime, at the person's first appearance, the person shall be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate and to assure public safety.

This bill would amend K.S.A. 22-2807 to do the following:

1) If a defendant fails to appear as directed by the court and guaranteed by an appearance bond, the court in which the bond is deposited shall forthwith declare a forfeiture of the bond.
2) An appearance bond is revoked by the execution of a warrant for a defendant's arrest for a violation of a bond condition.
3) The surety would no longer be required to prove the defendant is incarcerated somewhere else in

2/2

the United States.
4) The obligor does not by matter of law appoint the clerk of the court as their agent.
5) Under current law, no default judgement shall be entered against the obligor in an appearance bond until more than 10 days after notice is served. The amendment would establish a new procedure whereby judgement against the obligor in an appearance bond may not be entered until at least 60 days after the clerk mails copies to the obligor and no later than one year after a defendant's failure to appear. Judgement against the obligor in an appearance bond may not be entered if a defendant is returned to custody, or is otherwise in custody somewhere within the united States, on or before 60 days after the clerk mails copies to the obligors. (Attachment 3)

Steven Owens, of Owens Bonding Inc., from Newton, Kansas appeared before the committee on behalf of International Fidelity insurance Company and in support of the bill. He explained it is their responsibility and obligation to return the defendant if he fails to appear. The current Kansas law only allows 10 days to locate and remand a defendant to custody whereas Oklahoma allows 90 days, Missouri 6 months and Arkansas 120 days and it is imperative they have the needed time to apprehend the defendants. It is more important to have the defendant returned to custody than receiving the forfeiture. (Attachment 4)

Shane Rolf is a member of the Kansas Professional Bail Bonds Association Board of Directors and has been a bondsman in Olathe for over 20 years and appeared before the committee in support of the bill. He stated the 10 day window for a surety to apprehend and surrender a missing defendant is one of the smallest grace periods in the nation and attached a table comparing the 40 states which provide this time via statute and it shows Kansas is currently 37 out of 40 and the change in this bill would extend the grace period to 60 days and would place Kansas in the middle range at 23rd. He also spoke in support of the other changes this bill provides and believes they will have a positive impact on both the enforcement of bond forfeitures and upon the surety bail industry in general and will also bring Kansas more into line with most other states.(Attachment 5)

Written testimony was provided in support of the bill by Dennis Berndt-President of the Kansas Professional Bail Bond Association (KPBBA) (Attachment 6) and David Stuckman, Midwest Director for Kansas Professional Bail Agents and The American Bail Coalition. (Attachment 7)
There were no opponents.

The hearing on **HB 2528** was closed.

HB 2455 - Amendments to uniform principal and income act.
Representative Whitham moved to report **HB 2455** favorably for passage. Representative Colloton seconded the motion. Motion carried.

HB 2456 - Probate; filing of affidavits regarding decedent's probate estate.
Representative Pauls moved to report **HB 2456** favorably for passage. Representative Brookens seconded the motion.

Representative Brookens made a substitute motion to amend the bill to modify Line 19 to read "*value of the known real and personal property in the decedents probate estate is less than the total of all demands*" Representative Whitham seconded the motion. Motion carried.

Representative moved to amend Line 19 to insert the word *"known" so as to read "all known demands".* Representative King seconded the motion. Motion carried.

Representative Colloton moved to report **HB 2456** favorably for passage as amended. Representative King seconded the motion. Motion carried.

SB 223 - Emergency medical services board, authority to issue subpoenas.
Chairman Kinzer reminded the committee additional information was previously provided by the Board of Emergency Medical Services addressing the issue of "operation of a hearing" and confidentiality. They advised all hearings are handled under the Kansas Administrative Procedures Act (KAPA), and any hearing could be closed by the Investigative Committee to ensure patient confidentiality and maintain Health Insurance and

Minutes of the House Judiciary Committee at 3:30 p.m. on February 2, 2010, in Room 346-S of the Capitol.

HIPAA standards. (Attachment 8)

Chairman Kinzer asked the committee if anyone wanted to discuss the bill or if any member wanted to make a motion on the bill. No action was taken by the committee on **SB 223.**

The next meeting is scheduled for February 3, 2010.

The meeting was adjourned at 4:20 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 2-2-10

NAME	REPRESENTING
Stephen Owens	Owens Bonding Inc.
Dennis Berndt	Kansas Professional Bond Ass. B&K Bail Bonds Co
SHANE ROLF	SHANES BAIL BONDS KANSAS PROFESSION BAIL BOND ASSS
Doug Smith	Pinegar, Smith & Associates, Inc.
Lane Wells	Judicial Branch
Joseph Molina	KS BAR ASSN.
JEAN MILLER	CAPITOL STRATEGIES
Michael Jones	Mike Jones Bail Bonds LLC.
Heather Jones	mike jones Bail Bonds LLC.
DARRELL CONWAY	MIKE JONES BAIL BOND INC
Levi J. Henry	Sandstone Group LLC
Kevin Barnes	KBBA -

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030-7400

Explanatory Statement for the Amendment to SB 381 and HB 2432

This amendment consists of several sections all dealing with aspects of the self defense statutes. A few of them are technical in nature, but the main goal of this proposal is to redefine the terms "force" and "deadly force". We also want to build a presumption into the statute to provide an additional level of protection for KS citizens but will also allow for a clearer understanding of exactly what their self defense rights are.

The reason for the underlying bill as well as the proposed amendment is based on the ruling coming from the KS Supreme Court in October of 2009 in State v. Hendrix. The original language in SB 381 and HB 2432 at first seemed like the most reasonable solution to the problem, but upon more thorough review and after consulting with various other groups, including law enforcement, it was determined that the best fix would be to create two new definitions that would apply to Article 32 of Chapter 21. The first definition would concerns the term "force" and applies the meaning of, "any actual or constructive force" and then provides examples. The second definition would apply to "deadly force" and would describe this force as it applies in subsection (a), but specifically mention that displaying a weapon shall not constitute "deadly force".

The second section of the amendment is adding in "place of work" to the list of other places where self defense is justified.

The third section is creating a new section of statute that would provide a presumption that the use of force is justified under certain conditions. The essence of the presumption is to clearly outline when an attacker does certain things in certain places, then it shall be presumed that the attacker is there to do you harm and any force you deem necessary is justified. In this presumption section, the specifics are clearly outlined as well as the actions that would not provide one with a presumptive protection.

Section four is adding in some technical language to the section to make it more clear what other types of property are not covered since they are listed and addressed in other sections of code.

Sections five, six, and seven are all simply technical changes that the reviser would also likely make since we are addressing this Article of statute.

Section eight is a significant change in that we would be codifying some case law into the KS statute. In the court case, *State v. Heiskell*, 666 P.2d 207, 211-13 (Kan. Ct. App.

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1983), the ruling outlines that when law enforcement uses excessive force against a person, then that use of excessive force invokes the right of self defense for the person being attacked by law enforcement. The language chosen for this section comes directly from the case law and provides for self defense against excessive force used by law enforcement. We believe this is an important change because, while we feel that law enforcement should be held to some sort of standard when it comes to the use of force and should not be above the law, the KS Appeals Court feels that same way. The current statute in 21-3217 says the exact opposite and states that even if an individual thinks the arrest is unlawful, they still cannot use force against law enforcement. This is an important and necessary change.

Section nine further deals with law enforcement, but is primarily concerned with how use of force against a law enforcement officer should also be covered under the criminal prosecution and civil action immunity. As currently written, even if you used force against law enforcement and a court ruled it justified, the officer could still sue the person in civil court. It again doesn't seem fair that law enforcement should be given special privileges that normal citizens don't have when it comes to civil liability. This is especially true when their actions have been determined to be illegal.

The last two parts of section nine that are struck out are simply irrelevant sections of statute that are already understood to be standard procedure during an investigation involving a self defense shooting.

It may seem that this bill is going beyond the original intent of SB 381 and HB 2432, but based on the court ruling, it would be better to be as specific as possible in amending this statute. The overall protections remain the same, but with the added definitions and new presumption section, the law becomes much clearer. The NRA would like to encourage the committee to support the proposed amendments that we believe will strengthen this bill significantly. Feel free to contact me with any questions you may have.

Sincerely,

Jordan Austin
Kansas State Lobbyist
NRA-ILA

Kansas Use of Defensive Force

Sec. 1. **[New Section]**

21-32XX. As used in article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto: (a) "Force" means any actual or constructive force, including, but not limited to, threats, displays, or presentations of force or the means of force directed toward another person or the actual application of force upon another person.

(b) "Deadly force" means any actual force described in subsection (a) which is likely to cause imminent death or great bodily harm. Any threat to cause death or serious bodily harm, including by the display or production of a weapon, shall not constitute deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of himself or another.

Sec. 2. K.S.A. 21-3212 is hereby amended to read as follows:

21-3212. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, place of work, or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work, or occupied vehicle if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person using force to protect such person's dwelling, place of work, or occupied vehicle.

Sec. 3. **[New Section]**

(a) For the purposes of sections 21-3211 and 21-3212, a person is presumed reasonably to believe deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person if:

(1) The person against whom the force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the dwelling, place of work, or occupied vehicle of the person using the force or had removed or was attempting to remove another against that other's will from the dwelling, place of work, or occupied vehicle of the person using force; and

(2) The person using force had reason to believe that the unlawful and forcible entry or attempted entry or unlawful and forcible removal or attempted removal was occurring or had occurred.

(b) The presumption set forth in subsection (a) of this section does not apply if:

(1) The person against whom the force is used has the right to be in or is a lawful resident of the dwelling, place of work or occupied vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written order of no contact against that person; or

(2) The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the force is used; or

(3) The person who uses defensive force is engaged in or attempting to escape from a crime or is using the dwelling, place of work, or occupied vehicle to further a crime or escape from a; or

(4) The person against whom the defensive force is used is a peace officer who enters or attempts to enter a dwelling, place of work, or occupied vehicle in the lawful performance of his or lawful duties and the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

Sec. 4. K.S.A. 21-3213 is hereby amended to read as follows:

21-3213. A person who is lawfully in possession of property other than a dwelling, place of work, or occupied vehicle is justified in the ~~threat or~~ use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such degree of force or threat thereof as a reasonable man would deem necessary to prevent or terminate the interference may intentionally be used.

Sec. 5. K.S.A. 21-3214 is hereby amended to read as follows:

21-3214. The justification described in sections 21-3211, 21-3212, Sec. 3 and 21-3213, is not available to a person who:

~~(1)~~ (a) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

~~(2)~~ (b) Initially provokes the use of force against ~~himself~~ such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

~~(3)~~ (c) Otherwise initially provokes the use of force against ~~himself~~ such person or another, unless:

~~(a) He~~ (1) Such person has reasonable ~~ground~~ grounds to believe that ~~he~~ such person is in imminent danger of death or great bodily harm, and ~~he~~ such person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

~~(b)~~ (2) In good faith, ~~he~~ such person withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ such person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Sec. 6. K.S.A. 21-3215 is hereby amended to read as follows:

21-3215. ~~(1)~~ (a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to ~~effect~~ affect the arrest and of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using force likely to cause death or great bodily harm only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving death or great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

~~(2)~~ (b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

Sec. 7. K.S.A. 21-3216 is hereby amended to read as follows:

21-3216. ~~(1)~~ (a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which ~~he~~ such person would be justified in using if ~~he~~ such person were summoned or directed by a law enforcement officer to make such arrest, except that ~~he~~ such person is justified in the use of force likely to cause death or great bodily harm only when ~~he~~ such person reasonably believes that such force is necessary to prevent death or great bodily harm to ~~himself~~ such person or another.

(2) (b) A private person who is summoned or directed by a law enforcement officer to assist in making an unlawful arrest ~~which is unlawful~~ but who reasonably believes the arrest is lawful, is justified in the use of any force which ~~he~~ such person would be justified in using if the arrest were lawful.

Sec. 8. K.S.A. 21-3217 is hereby amended to read as follows:

21-3217. A person is not authorized to use force to resist an arrest which ~~he~~ such person knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful, unless such person reasonably believes that the officer or private person summoned to assist the officer is using excessive force to affect the arrest.

Sec. 9. K.S.A. 21-3219 is hereby amended to read as follows:

21-3219. (a) A person who uses force which, subject to the provisions of K.S.A. 21-3214, and amendments thereto, is justified pursuant to Sec. 1, K.S.A. 21-3211, 21-3212, Sec. 3, or 21-3213, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force~~, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person r using force knew or reasonably should have known that the person was a law enforcement officer~~. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

~~(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.~~

~~(c) A county or district attorney or other prosecutor may commence a criminal prosecution upon a determination of probable cause~~.

Office of The
DISTRICT ATTORNEY
JEROME A. GORMAN
Twenty-Ninth Judicial District of Kansas
Wyandotte County Criminal Justice Complex
710 North 7th Street, Suite 10 - Kansas City, Kansas 66101-3051
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January 28, 2010

Fax:
913-573-2948
913-573-2860
913-573-8151

Representative Lance Kinzer
House Judiciary Chairman
Kansas House of Representatives
Kansas Statehouse Capitol Building
Room 165 West
Topeka, Kansas 66612

RE: Testimony in Support of House Bill 2226

Dear Representative Kinzer:

I wish to offer this testimony in support of HB2226. I understand the House Judiciary Committee held a hearing on this bill last week. I apologize for not having this testimony available to the committee at that time.

As a twenty-three year front line prosecutor having tried well over two hundred jury trials, including nearly fifty homicide cases, I believe that I am one of the more experienced prosecutors in the state of Kansas. Further, as the elected District Attorney now for more than five years and having conducted two grand juries, I feel more than qualified to offer this insight.

I feel that the purpose of the bill is to allow prosecutors to have another tool available to them to more effectively fight crime in our state. This bill now allows the prosecutor the right to have a grand jury summoned and empanelled in order to bring charges involving the more serious crimes in our state. Presently, prosecutors are at the mercy of a citizen led and time consuming petition drive or at the mercy of a majority of the judges of a judicial district being in agreement with the prosecutor that a grand jury is needed. Investigating, charging and generally fighting serious crime should be in the hands of the prosecutors.

With that said I do offer a few issues that I believe would be an improvement to HB2226. First, HB2226 limits the grand jury to investigating and charging all off grid felonies and severity levels 1, 2, 3 or 4 felonies. I believe that the law should include the language "*severity level 5 felonies*" or "*all homicides*". The crime of involuntary manslaughter (a severity level 5 felony) is not now covered by HB2226. It would be included by either of the language I propose. Further, other serious crimes are severity level 5 crimes, such as: robbery, some aggravated batteries, battery of some correctional officers, aggravated criminal threat, some indecent

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liberties with a child, some sexual exploration of a child, some aggravated sexual batteries and criminal street gang intimidation.

Secondly, HB2226 would require that the prosecutor file a petition with the court in order require that a grand jury be summoned and empanelled. The statute states that the court *"shall then consider the petition and, if it is found that the petition is in proper form"*. However, nowhere does HB2226 describe what the contents of the petition shall contain. Without such guidance, the district court would be able to abuse its discretion and deny the summoning of a grand jury.

I suggest that language be included to describe the contents of the petition. Basic information, such as the probable crimes to be investigated, their severity levels and a short recitation of facts of the crime could be required. The statute should **not** require a certain level of factual showing such as probable cause.

Finally, HB2226 states that the petition filed by the prosecutor will be reviewed by, "*The judge or judges of the district court of the county*". There is no reason to have multiple judges review a petition required by the statute and filed by the prosecutor. One judge should be capable of reviewing the petition and make a determination whether the requirements of the statute are met by the petition. By having judges review the petition, would it require all judges in a judicial district or just those that want to participate in such a review? Again, such a requirement allows for abuse of discretion by district judges. Maybe the language should state," *the chief judge or their designee*".

Once again, I appreciate the opportunity to express my views on this matter. The concept of the prosecutor driven grand jury is valuable. I would be available in person or by phone, (913)573-2851, to answer further questions.

Thank you,

JEROME A. GORMAN
District Attorney

cc: Rep. Jeff Witham, Vice Chair
Rep. Jan Pauls, ranking Minority Member
Rep. Rob Brookens
Rep. Pat Colloton
Rep. Marti Crow
Rep. Raj Goyle
Rep. John Grange
Rep. Aaron Jack
Rep. Jeff King
Rep. Marvin Kleeb
Rep. Annie Kuether
Rep. Joe Patton
Rep. Gene Sullentrop
Rep. Milack Talia
Rep. Annie Tietze
Rep. Jim Ward
Rep. Kay Wolf
Rep. Kevin Yoder

Office of the Revisor of Statutes
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MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary
From: Jill Ann Wolters, Senior Assistant Revisor
Date: 2 February, 2010
Subject: HB 2528

Under current law, KSA 22-2802, when a person is charged with a crime, at the person's first appearance, the person shall be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate and to assure the public safety.

HB 2528 would amend K.S.A. 22-2807 to do the following:

1. If a defendant fails to appear as directed by the court and guaranteed by an appearance bond, the court in which the bond is deposited shall forthwith declare a forfeiture of the bail.
2. An appearance bond is revoked by the execution of a warrant for a defendant's arrest for a violation of a bond condition.
3. The surety would no longer be required to prove the defendant is incarcerated somewhere else in the United States.
4. The obligor does not by matter of law appoint the clerk of the court as their agent.
5. Under current law, no default judgment shall be entered against the obligor in an appearance bond until more than 10 days after notice is served. The amendment would establish a new procedure whereby judgment against the obligor in an appearance bond may not be entered until at least 60 days after the clerk mails copies to the obligor and no later than one year after a defendant's failure to appear. Judgment against the obligor in an appearance bond may not be entered if a defendant is returned to custody, or is otherwise in custody somewhere within the United States, on or before 60 days after the clerk mails copies to the obligors.

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Attachment # 3

Owens Bonding Co.
Your Freedom is Our Business

Feb 2, 2010

House Judiciary Committee

RE: House Bill 2528

Ladies and Gentleman of the Committee:

My name is Stephen Owens of Owens Bonding Inc. I currently manage 13 agents across the State of Kansas and I am here to speak in **SUPPORT** of House Bill 2528. I represent International Fidelity Insurance Company and have worked nearly 10 years in this industry. I feel it is my obligation to inform the public and private sector regarding the positive effect that this Bill would provide for the community and industry as a whole.

The commercial surety business has been the "Third Party Accountability System" for this country and many others for hundreds of years. As a commercial surety, it is our obligation to the judicial system to hold accountable those who have been accused of a crime. This happens at NO COST to the taxpayer. It actually saves the taxpayers money in the form of shorter jail stays while a defendant is awaiting trial. In the event the defendant fails to appear in court, it becomes our responsibility to return the defendant to custody, again, at NO COST to the Judicial System or society as a whole.

This is our responsibility. Not only is it our responsibility, it is our obligation to return the defendant if he fails to appear. With this in mind, it is imperative that we have the necessary time to locate them and apprehend them within the legal guidelines established by the state. The current guidelines allow only 10 days to locate and remand a defendant to custody. Of the 13 individuals that I paid bond forfeitures on last year, I can be reasonably sure that more than half of those individuals would have been returned to custody to be held accountable if this bill were passed.

Here are a few guidelines by other states in the US as it relates to the time allotted to apprehend an individual:

a) **Oklahoma:** The bail bondsman shall have ninety **(90) days** from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody. If the defendant is returned within the 90 day period, the judgment will be vacated. [59 Okl. St. Ann. § 1332] (as cited by the American Bail Coalition)
b) **Missiouri:** If any final judgment ordering forfeiture of a defendant's bond is not paid within a **six-month period of time**, the court shall extend the judgment date or notify the department of the failure to satisfy such judgment. The director shall draw upon the assets of the surety, remit the sum to the court, and obtain a receipt of such sum from the court. The director may take action as provided by section 374.755, regarding the license of the surety and any bail bond agents writing upon the surety's liability. (as cited by the American Bail Coalition)
c) **Arkansas:** The court shall promptly issue an order requiring the surety to appear, on a date set by the district court not more than **one hundred twenty (120) days** aft

OWENS BONDING COMPANY • 819 N. Main St
Office: (316) 284-2196 • Toll Free: (866) 830-Bond (2663

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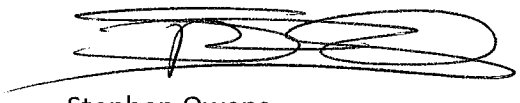
show cause why the sum specified in the bail bond or the money deposited in lieu of bail should not be forfeited. (as cited by the American Bail Coalition)

In Conclusion, it is imperative that we as bondsmen have the time needed to apprehend defendants that have failed to appear in court. As previously mentioned, many of the States surrounding Kansas understand that having the defendant returned to custody is much more important than receiving the bond forfeiture. I would encourage the members of this committee vote in favor of House Bill 2528.

Respectfully submitted,



Stephen Owens

KPBBA

1508 SW Topeka Blvd.
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President
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Treasurer
Tommy Hendrickson
medic2002_04@yahoo.com

General Counsel
Christopher Joseph,
Joseph & Hollander P.A.

Kansas Professional Bail Bond Association, Inc.

To: House Judiciary Committee

Ref: HB2528 – Testimony in support

Good afternoon, Chairman and members of the Committee. My name is Shane Rolf, and I am on the Kansas Professional Bail Bonds Association Board of Directors and have been a bail bondsman in Olathe for over 20 years. I am here today to provide testimony in support of HB2528.

PURPOSE OF BAIL

The purpose of bail is to ensure that a defendant appears in Court as ordered to answer the charges against him. In the event a defendant fails to appear, then the bail is supposed to act as an incentive for the surety to produce the missing defendant. If the surety fails to produce the defendant, then the entire bond is lost. This process works best when it is dynamically enforced.

CHANGES SOUGHT

This bill seeks to make certain changes to K.S.A. 22-2807, which is the statute that governs forfeiture and enforcement of bail. It is our belief that these changes will be beneficial to both the bail bond surety and the State of Kansas.

GRACE PERIOD

Currently, the statute provides a guaranteed window of 10 days for a surety to apprehend and surrender a missing defendant. This is one of the smallest grace periods in the nation. I have attached a table comparing the 40 states which provide this time via statute. Kansas is currently timed for 37th (out of 40) with Iowa and West Virginia. The changes proposed would extend this grace period to 60 days. Some states offer extremely long windows of opportunity to return defendants. Missouri and California are among a group of states which offer a six month grace period. A change to sixty days would place Kansas in the middle range of states at 23rd.

Extending this time is consistent with the second purpose of bail, that is, to provide an incentive, and an ample opportunity, to return the defendant to custody.

LIMITATIONS

Many of the states which provide an expanded grace period also have placed restrictions upon the State. Most often, this takes the form of a mandatory notice requirement. If the State does not notify the surety within a certain period of time that a failure to appear has occurred, then the surety is released from liability. Some of these notice times are ridiculously short (some only 5 days, the vast majority of these types of "Notice Requirements" are in the 90-120 day time frame. If the State has not taken some action within this time, they are deemed to have waived any c[illegible]

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The change we are advocating would create a limiting period of one year. This would be one of the longest limiting periods in the country (among states with such a restriction).

We feel that the practical impact of extending the grace period and creating a limiting period will be to spur the active enforcement of bond forfeitures, thus increasing the incentive to return missing defendants. If the State knows that its claim would be extinguished after a year, then it will be more dynamic in seeking enforcement. As I noted earlier, we feel that dynamic enforcement is the best way to have and sustain a healthy bail bond industry.

OTHER CHANGES

Lines 21-22 simply clarify that a bond is revoked upon execution of a bench warrant issued for violation of bond conditions. This change has benefits for both the surety and the State. For the surety, it clarifies that once a defendant is returned to custody for violating some non-appearance related condition, then the surety is no longer responsible for that defendant. For the State, it clarifies that the mere *issuance* of the warrant does not release the surety. Instead, the surety is still responsible for the defendant until the defendant is returned to custody.

Line 27 removes the language regarding "proof." This has been a problem in certain courts wherein the judges have relied on the word "proof" to require that evidence of incarceration comply strictly with the Rules of Evidence. By using this standard, a Notice of Incarceration from another jail might be rejected without supporting testimony from the issuing agency. However, nothing about this change allows a surety to lie to the Court.

CONCLUSION

I would ask you to adopt the changes we have proposed. I feel that these changes will have a positive impact on both the enforcement of bond forfeitures and upon the surety bail industry in general. I also feel that these changes will bring Kansas more into line with most other states regarding bond forfeiture enforcement.

State to State Comparison of
Statutory Time to Return Missing Defendant

		Days	
1	LA,LOUISIANA	210	
2	CA,CALIFORNIA	180	
3	CT,CONNECTICUT	180	
4	MO,MISSOURI	180	
5	NV,NEVADA	180	
6	TN,TENNESSEE	180	
7	UT,UTAH	180	
8	NC,NORTH CAROLINA	150	
9	AR,ARKANSAS	120	
10	AZ,ARIZONA	120	
11	GA,GEORGIA	120	
12	IN,INDIANA	120-365	After 120 days, surety is entitled to partial remission
13	NY,NEW YORK	120	
14	VA,VIRGINIA	45+60	Initial notice in 45 days, 60 days after to surrender
15	FL,FLORIDA	60/35	60 days to judgment, 35 more to pay, remission if back
16	ID,IDAHO	90	
17	MD,MARYLAND	90-180	Time may be extended an extra 90 days
18	MN,MINNESOTA	90	
19	MS,MISSISSIPPI	90	
20	MT,MONTANA	90	
21	OK,OKLAHOMA	90	
22	MI,MICHIGAN	7/56/365	Notice within 7 days, Payment 56 days after judgment, 1 year full remit
23	NJ,NEW JERSEY	45	
24	TX,TEXAS	30+	Texas follows notice/asnwer requirements of TCoCP
25	AK,ALASKA	30	
26	CO,COLORADO	30	
27	HI,HAWAII	30	
28	MA,MASSACHUSETTS	30	
29	ME,MAINE	30	
30	NM,NEW MEXICO	30	
31	OH,OHIO	30	
32	PA,PENNSYLVANIA	20	
33	SC,SOUTH CAROLINA	30	
34	WA,WASHINGTON	30	
35	AL,ALABAMA	28+	Hearing continued upon Motion of Surety
36	VT,VERMONT	10+	Hearing continued upon Motion of Surety
37	IA,IOWA	10	
38	**KS,KANSAS**	**10**	
39	WV,WEST VIRGINIA	10	
40	ND,NORTH DAKOTA	0	180 mandatory partial remission

KPBBA

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Kansas Professional Bail Bond Association, Inc.

To: House Judiciary Committee

Ref: HB2528 – Testimony in support

Chairman Kinzer, members of the Committee, my is Dennis Berndt and I am the President of the Kansas Professional Bail Bond Association and I have been a professional Bail Bondsman in Salina, Kansas for 10 years. I am here to today to testify in support of HB2528.

HB2528 simplifies the process of imposing judgment upon default to the courts. Furthermore, the judge has the authority to enter the motion without appointing an agent by an independent action.

Currently the court systems are overwhelmed with large caseloads that tie up the docket, which in turn add to the increasing expenses to the courts. With the addition to section (4) of allowing at least 60 days before judgment can be made against the obligor, we can free up the court docket by eliminating the need for a motion to be heard within 10 days from the fail to appear, a court date can be set 60 days out and the entire judgment can be resolved at one appearance instead of two minimum appearances now needed for judgment against the obligor.

The final addition I would like to address is, the statute of limitation of 1 year from the defendants fail to appear that a judgment can be sought on the obligor. Bonding companies are required to act quickly when a judgment is received, to apprehend the defendant and present them to the courts in order for their cases to continue and to also request the setting aside of said judgment. The courts responsibility and diligence in forwarding the Judgments in a timely manner, affords all parties involved to a speeding conclusion to the case. This in turn lightens the court dockets, saving both time and money.

In conclusion I would like to thank you for the opportunity to speak to you today concerning my support for HB2528. I believe that the revisions to this bill will benefit by allowing a more defined reading of the law, enabling us to perform our jobs more effectively and to help save the courts in additional expenses. I hope that after hearing me today you can support HB2528 and pass the bill favorably out of committee.

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PROFESSIONAL BAIL AGENTS
OF THE
UNITED STATES

TO: TUESDAY, Feb. 2nd. 3:30pm House Judiciary Committee

FROM: David Stuckman Midwest Director for

PBUS.

DATE: February 2nd 2010

RE: HB 2528

Hello members of the committee, I am David Stuckman a spokesman for a group of Kansas Professional Bail agents and The American Bail Coalition. We are dedicated men and women that make up a profession that serves the communities in which we live. I am submitting this written testimony in support of HB2528.

Before we post a bond, there are several factors we consider, and information that we collect before we will write the bond are below:

- Employment status
- Character
- Family ties and ties to the Community
- Length of residency in the community
- Prior arrest record
- Prior court appearance record

When the bond is written we will have the defendant check-in periodically usually on a weekly basis, until the defendant has fulfilled his obligation to the court. When the defendant doesn't make his required appearance, for his court dates, we are allotted short amount of time to retrieve the client. HB2528 helps define the responsibility of all parties involved and allows for responsible and diligent handling of the process. We thank you for your time and allowing me to submit written testimony. We hope you can support HB2528.

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PRESIDENTS OFFICE • Braswell Surety Services, Inc. • P.O. Box 1025 • Stuart, FL 34995 • 1-800/818-PRES • 772/287-4640 • FAX 772/287-2869
PBUS PAST PRESIDENTS • Gerald Monks, CBA (Deceased) • Celest King, CBA (Deceased) • Ronald Olszowy, CBA-NJ • Tony Madrid, CBA-NM • Ge

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KANSAS

DENNIS ALLIN, M.D., CHAIR
ROBERT WALLER, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Briefing

Date: January 27, 2010

To: The Honorable Representative Lance Kinzer

From: Robert Waller, Executive Director

RE: 2009 Senate Bill 223

Resides:	House Judiciary	**Chairman**:	Representative Lance Kinzer	**Status**:	Proponent

LANGUAGE

Senate Bill 223, as introduced, expands the subpoena power currently held by the Kansas Board of Emergency Medical Services (amending K.S.A 65-6130).

COMMITTEE UPDATE

During testimony, there was concern raised regarding the "operation of a hearing" and securing patient information during a hearing open to the public.

All administrative hearings are operated under the *Kansas Administrative Procedures Act (KAPA)*. The reference to those sections are located in K.S.A. 77-512 (et seq). Any administrative hearing could be closed by the Investigation Committee to ensure patient confidentiality and maintain Health Insurance Portability and Accountability Act (HIPAA) standards.

Also provided is a copy of the KBEMS Investigation policy which outlines how the Investigation process is conducted, and references KAPA as the method by with hearing will be held.

IMPLEMENTATION

KBEMS wants to continue to ensure that the language included in SB 223 is already upheld by current law, and passage of the bill would not add additional burden to the agency, the respondent, nor amend current administrative law.

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