



"BAIL AGENTS ASSURE JUSTICE"

Kansas Bail Agents Association
2947 N. Athenian Ave., Wichita, Kansas 67204

Testimony In Support of House Bill 2674

Rick Morey
President
Wichita, Kansas

February 14, 2022

Shane Rolf
Executive Vice-President
Olathe, Kansas

My name is Shane Rolf. I am the Executive Vice President of the Kansas Bail Agents Association. I am providing this testimony on behalf of the KBAA in support of House Bill 2674.

Dennis Berndt
Treasurer
Salina, Kansas

This bill would make changes to K.S.A. 22-2807 that would require a warrant to be issued in response to a failure to appear in court and resulting forfeiture of bail. Surprisingly, this requirement does not seem to be found in the Code of Criminal Procedure (although it is in civil, traffic and municipal procedure) and is typically what does occur following a failure to appear in a criminal case.

JC. Loewen
Vice-President
Newton, Kansas

Paul Forbes
Secretary
Parsons, Kansas

In addition, it would provide additional defenses to enforcement of the forfeiture in certain circumstances; specifically judgment could *not* be granted:

David Stuckman
At-Large Director
Manhattan Kansas

Bill Warfield
At-Large Director
Wichita, Kansas

1. If the required warrant was not issued within 14 days of the declaration of forfeiture; or
2. If the prosecutor declines to extradite a fugitive defendant captured in another state, or
3. If – upon formal written request by the surety – the Sheriff fails or refuses to enter the warrant into the NCIC for extradition purposes.
4. If the defendant is incarcerated elsewhere and the surety makes the proper notifications (note: This is already a part of the statute, the language has simply been repositioned by the Revisor).

Candy Crow
Education Director
Wichita, Kansas

Michael Crow
At-Large Director
Wichita, Kansas

Randy "Razz" McCarty
At-Large Director
Wichita, Kansas

Ryan Eastep
At Large Director
Wichita, Kansas

Issuance of a warrant following Failure to Appear

While it seems nonsensical that a Court would NOT issue a warrant when someone fails to appear, there are a handful of jurisdictions which are doing just that. Specifically, in instances where a surety bond has been posted – and JUST when a surety bond has been posted as opposed to a cash bond or an OR bond – they are waiting until after the Judgment on Bond deadline has passed to actually issue the warrant.

Cal Williams
At Large Director
Salina, Kansas

Danny Slusser
At Large Director
Wichita, Kansas

Angel Martinez
At Large Director
Wichita, Kansas

The argument for this appears to be that since it is the job of the bondsman to get the missing defendant back into custody, the State is obligated to do *nothing* to further the goal of getting the defendant back into custody. In truth, this behavior appears to demonstrate that the State has more interest in collecting bond forfeitures than prosecuting defendants.

Additionally, we have long argued that this has an impact on officer safety. Many bench warrants – even for people who have posted bond and failed to appear – are resolved through things as simple as a routine traffic stop. However, while the defendant *knows* he has missed court and may behave accordingly (that is to say *negatively*), the officer – absent a warrant being issued – likely does not know this about the person they’re engaging. If the officer knows that the person who just rolled through the stop sign is actually a felony fugitive and not just a soccer mom running late to a game, he or she will at least be prepared for the possible negative reaction.

NCIC and the NEED for a WARRANT

In addition to the basic notion that society would like all possible efforts being made to get fugitives back into custody, if the fugitive defendant has left the state, having an active warrant may be a *requirement* for us to bring that fugitive back from out of state.

There are four states that have outlawed commercial bail and private fugitive apprehension – Illinois, Wisconsin, Kentucky and Oregon (and the crime rates in places like Chicago, Milwaukee and Louisville has amply shown the lack of wisdom in that idea). We cannot go into those states to apprehend and return a fugitive without breaking the law in those states. The best we can do is locate the defendant and attempt to enlist local law enforcement in getting them arrested on the outstanding, extraditable warrant.

In addition to these 4 states, there are at least 17 other states that either require us to turn the defendant over to local law enforcement for extradition (California, Texas and Massachusetts are examples of this) or that require us to check in with local law enforcement who will verify the existence of an outstanding, extraditable warrant. Absent a warrant, we will not be allowed – by those States’ local criminal laws to apprehend the defendant.

We don’t want to create a situation where, in order to fulfill its contractual obligation, the bonding company would have to violate the laws of another state.

As I noted, Texas is one of those states which can be problematic. The proposed language regarding placing the warrant into NCIC was drawn directly from the Oklahoma bond forfeiture statutes. It was adopted in Oklahoma law largely as a direct response to the Texas restrictions on out of state fugitive apprehension.

Refusal to Extradite

I have attached a newspaper article from the Kansas City Star from April 2021. The article starts off with the sentence “Wyandotte County has a secret policy allowing low-level felony suspects to escape prosecution if they can just get a couple states away.” While this sounds sensational, it just means that Wyandotte County has an extradition policy stating that – except for person felonies – they will generally not travel past adjoining states, or more than 200 miles away, to bring a fugitive back on a warrant. This harkens back to the old “get out of town and don’t come back” approach to law enforcement.

To quote the KC Star: “The result: Prosecutors, courts and deputies are sending a message that criminals can skate if they just skate far enough. You better believe the criminal element knows about it, even if the law abiding public does not.”

Unfortunately, Wyandotte County is not the only jurisdiction that makes this sort of calculation. There are many of the smaller jurisdictions who have chosen this approach. Often, they will argue that it is simply too expensive to bring fugitives back from far flung locales. However, even if this is a good approach to law enforcement (and we would argue that it is not), it has no basis in fact when a bond forfeiture is involved. Given that the statute *already* allows the surety to be billed for the cost of returning an incarcerated defendant, there is no cost-savings rationale not to extradite. However, many of these jurisdictions will pursue a Motion for Judgment on Bond while at the same time refusing to extradite the defendant.

Motions for Judgment on Bond and Mitigation of Damages

This statute deals with Motions for Judgment on Bond. A Motion for Judgment on Bond, despite being referred to as a “motion” is actually a civil lawsuit that is allowed – for sake of convenience – to be filed as a motion within a criminal case. At its core, a Motion for Judgment on Bond is still a civil action for breach of contract. And like every other contract, the parties to that contract – particularly the aggrieved parties (in this case the State of Kansas) – have an obligation to mitigate their potential damages. Cornell Law School explains:

The Mitigation of Damages Doctrine, also known as the doctrine of avoidable consequences, prevents an injured party from recovering damages that could have been avoided through **reasonable efforts**.

A classic example of this is that if a pipe bursts in your house, a reasonable effort to mitigate the damages is to shut off the water so it stops leaking.

Conclusion

Requiring the State to issue a warrant in a timely fashion and actually seek extradition of fugitives is certainly *not unreasonable*, most jurisdictions do this already. We are simply asking that the state be required to “shut off the water” in order to pursue a Judgment on the bond. We think that passage of HB 2674 will accomplish this and as such ask that you support passage of this bill.

4/4/21

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Why so secret, Wyandotte County? Why are officials protecting non-extradition policy?

By Luke Nozicka

6-7 minutes

~~Wyandotte County District Attorney announces child sex charges against KCK officer~~

~~A Kansas City, Kansas, police officer is charged with aggravated indecent liberties with a child, Wyandotte County District Attorney Mark Dupree announced Wednesday.~~

~~Up Next~~

~~KCK firefighter charged with sexual exploitation of a child~~

~~A Kansas City, Kansas, police officer is charged with aggravated indecent liberties with a child, Wyandotte County District Attorney Mark Dupree announced Wednesday. By Luke Nozicka~~

Wyandotte County has a secret policy allowing low-level felony suspects to escape prosecution if they can just get a couple states away.

I know. It sounds crazy just typing that. But it's true. In fact, in one case, a suspect in multiple car burglaries in Kansas City, Kansas was allegedly found by his bondsman working in Texas as — get this — an in-home health aide. [What could possibly go wrong?](#)

But for some bizarre reason yet to be explained, the Wyandotte County District Attorney's office doesn't want the suspect brought back to face justice here — not even at the bondsman's expense. Why in the world not?

Wyandotte County District Attorney Mark Dupree's office has acknowledged its secret extradition policy in court-related documents, but has steadfastly refused to make it public, even though the Kansas Open Records Act would seem to require it.

It's particularly ironic, since [Dupree wrote in a Star guest commentary last summer](#): "For far too long, the Wyandotte County District Attorney's office has functioned in secrecy."

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It's even stranger when you consider that I was easily able to get Johnson County's much more robust extradition policy — and Jackson County's on the Missouri side — via email. Why so secret, Wyandotte County?

While taking care not to criticize anyone else's policies, Johnson County District Attorney Steve Howe says he sees no reason to keep his county's extradition policy secret: "From our perspective, there's no reason why we can't make it public."

Wyandotte County Sheriff Don Ash expresses no knowledge or even interest in the whole affair — saying the existence of the secret extradition policy, which his department is nonetheless carrying out, doesn't "make a difference." Really? Have you asked victims of crime if it "makes a difference" [whether the perpetrators are brought to justice?](#)

Not all suspects are worth a ton of money to go get, certainly. Officials have to draw the line somewhere, lest they

bankrupt the county with travel costs for two-bit crooks. Understood.

But it would be nice to know where the line is, and what the policy is, since it directly impacts public safety.

Still, as of this writing, Wyandotte County Judge Constance Alvey has curiously protected the secret document by quashing the bondsman's subpoena for it. The judge then suggested the bondsman request the extradition policy from the DA under the Kansas Open Records Act.

Bondsman Brian Underwood did just that. But the district attorney's office responded that the extradition policy is an "investigative" document exempt from release under the law.

As Underwood and his lawyer James Spies have noted, that's laughable. The document is a statement of policy, not one involved in any particular case. Adds Lawrence attorney Max Kautsch, a Kansas Open Records Act expert: "The requested policy is not an investigative record, and thus it is inappropriate for the DA's office to deny the request on that basis."

The result: Prosecutors, courts and deputies are sending a message that criminals can skate if they just skate far enough. You better believe the criminal element knows about it, even if the law-abiding public does not.

One other disheartening aspect of all this: I've examined the affidavit in the car burglary case, and it details an impressive bit of police work for a nonviolent crime. Victims of low-level non-person felonies such as car burglaries and theft of valuables from vehicles don't often get the kind of gumshoe effort that was applied in this case: Officers responding to the report of a car break-in Feb. 9 in the 6100 block of Leavenworth Road did their own sleuthing and found two more vehicles that had been broken into. They and other officers used security footage and other evidence to arrest three suspects, one of whom is the suspect in Texas.

Now, much of that good police work appears to have been wasted by the judicial system. And for no good reason.

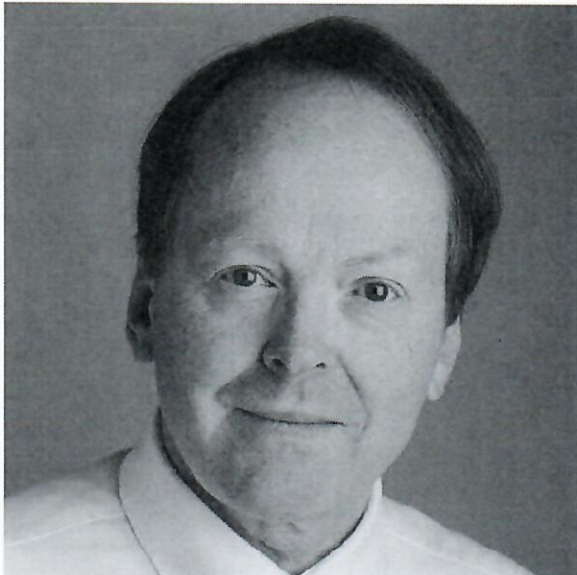
"I would much prefer that they were more aggressive on their extradition," said Shane Rolf of the Kansas Bail Agents Association and Shane's Bail Bonds in Olathe. He's being diplomatic.

In another case, Underwood said the Wyandotte County DA's office chose not to extradite a convicted felon in possession of a firearm from as nearby as Nebraska. And here I thought guns were supposed to be dangerous.

Wyandotte County's cryptic decision not to seek suspects' extradition not only jeopardizes public safety and wastes some very good police work, but in this case has also put the car burglary suspect's bondsman in an incredibly unfair vise: The county won't authorize Underwood to go get the suspect in Texas, but Judge Alvey has ordered him to surrender \$5,000 for the suspect's bond.

How does *that* work? You won't let the bondsman go get the fugitive, but you take the bondsman's money because the fugitive isn't here? That's absurd and unjust.

We won't know just how unjust or unsafe until the policy is released.



The Star's Michael Ryan, a Kansas City native, is an award-winning editorial writer and columnist and a veteran reporter, having covered law enforcement, courts, politics and more. His opinion writing has led him to conclude that freedom, civics, civility and individual responsibility are the most important issues of the day.