

House Committee on Judiciary
February 14, 2022
SB 457

Written Testimony of the
Kansas Association of Criminal Defense Lawyers
Opponent

Dear Chairman Patton and Members of the Committee:

We oppose this bill because (1) it restricts the ability of the magistrate to make individualized decisions regarding conditions of release; (2) as a matter of policy we should not require the waiver of a procedure, guaranteed by statute, for the grant of freedom for one merely charged with a crime, and; (3) the amendment may violate principals of federalism without addressing the actual problem.

First, we oppose the bill for the repeated use of the word “shall” instead of the permissive “may” used in other sections of the statute. The amendment as written does not allow the magistrate or judge any leeway in deciding whether or not to require a waiver of extradition as a condition of bond. Other than in specific cases¹, no other condition of bond is currently required as a condition of release. Risk of flight is already contemplated by the statute. If you are trying to address flight risks, that can be accomplished by the magistrate making an individualized determination of risk rather than blanket application of a waiver of right to extradition. This could be an optional condition of release rather than the norm.

Second, we disagree as a matter of policy that a waiver should be required for release from jail. In Topeka those being extradited to another state are given legal advice from the Public Defender as to their rights to contest extradition. If the Office of the Public Defender were to advise every person arrested in Topeka of the rights they would be giving up, it would unnecessarily clog the system and completely overburden the Public Defender requiring them to be on-call 24/7. When one is arrested on a charge they have the opportunity to post a bond before being seen by the magistrate in some cases. If they would be required to execute a waiver signed before a magistrate prior to release, that would similarly overburden the magistrate and the Sheriff’s office who would be facilitating this procedure.

In this regard, this amendment may not actually address the core issue of extradition. Please consider this scenario:

John Adam Smith (W/M 01/01/1990) was arrested for felony shoplifting in Topeka Kansas. He waives his right to extradition as a condition of release under this bill. John goes to his home state of Missouri and forgets about his Court date. The Court issues a warrant for his arrest. KCMO PD stops a car belonging to a different John Adam Smith born on the same day. This John Smith has never been to Topeka, has never been arrested, and has never been informed of his right to an extradition hearing nor has he waived that right. Would he be bound by the other John Smith’s waiver?

¹ No contact with alleged victim for at least 72 hours is required in the case of person misdemeanors and felonies.

At an extradition hearing, the primary issue is whether or not they are the person named in the warrant. If by some mistake the *wrong* person is arrested, that wrong person should be entitled to contest their extradition. In the vast majority of cases, if the person arrested is the person in the warrant, they are willing to come back to the originating state and move their case along. In cases where the police are wrong, we should have procedural safeguards in place to prevent errors.

Finally, this bill in application violates principles of federalism by legislating in other states. New section (c)(2) requires that there be an acknowledgment that “such person shall not be released prior to trial in any other state pending extradition to Kansas.” This section either limits the ability of other States to address their own issues of bond *or* requires Kansas to extradite on all felonies no matter how minute or petty.

What is the primary effect of this bill? In exchange for all the front end effort, what is the gain? This would not free up our judges from having hearings, it would speed up other States Courts. We would be interested in seeing a Fiscal Note addressing how many Governor’s warrants are issued on a yearly basis and at what cost as that is the primary financial effect of this bill. Additionally, a waiver must be knowing, voluntary, and intelligently made. If you are conditioning one’s freedom on waiving a right, that is incredibly coercive and arguably unenforceable. This bill would close one avenue of challenging extradition while opening up the door for another more time consuming one.

In conclusion, we oppose the bill as it is currently written. Our position would change if the requirement of a waiver of extradition as a condition of release were made (1) optional; and (2) predicated on a magistrate finding that based on the severity of the allegations and an individualized history of non-appearance or extradition by the accused it is *necessary* to require a pre-signed waiver to ensure appearance at Court. There should also be an escape valve provision for times when the wrong person is legitimately at risk of being dragged to another state against their will on the waiver of another. We should not remove the rights of your constituents merely because it is easy. The procedures in the extradition act serve to protect rights to liberty. We should not restrict liberty merely because it is easier to do so.

Respectfully submitted,
Max Iverson
Legislative Committee
Kansas Association of Criminal Defense Lawyers
Max.IversonLaw@gmail.com