BONDS

PAST, PRESENT AND DO MONEY

BONDS HAVE A FUTURE?
THINGS TO LEARN

• Articulate guiding principles for administration of bonds
• Compliance with Eighth Amendment
• Compliance with Due Process
• Know your finances
• Cooperation with Council, Sheriff and others
HISTORY OF BONDS

• Derived from 1,000-year-old English roots
  • wrongs settled by feuds or summary justice
    • Hue and cry

• Settled through “bots”
  • Payments designed to compensate grievances
HISTORY

• Crimes were private affairs
  • Suits sought remuneration as penalty
  • Small # of cases defendant mutilated or executed
Uh-oh. My audience has fallen into a PowerPoint coma.

The only thing I can do now is put them in funny poses and leave.

It looks like his finger hit brain.
HISTORY

• Concern grew that defendants would flee to avoid paying the “bot”
  • Prisons were costly
    • Arrestee was “replevied”
  • Set free as soon as surety became involved
SURETY

• Initially a family member, friend or neighbor
• Allowed to pledge personal or real property
• Surety matched the potential monetary penalty
COMMERCIAL BAIL BONDSMEN

• Taylor v Taintor 83 U.S. 366 (1872)
  • Authority of bail bondsmen to act as bounty hunters

http://www.youtube.com/watch?v=5iplQigk6Js
MCDONOUGH BROTHERS

• First true commercial bondsmen
  • Peter and Thomas McDonough
• “Bail set at a figure higher than an amount reasonably calculated to fulfill purpose [of assuring defendant’s attendance] is “excessive” under the Eighth Amendment”

• “Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon the standards relevant to the purpose of assuring the presence of that defendant”
BAIL REFORM

• Vera Foundation + New York School of Law = Manhattan Bail Project
  • Pioneered risk assessment
  • Initially recommended 27% for release
  • After 3 years recommended 65% for release
    • Less than 1% FTA rate
FEDERAL BAIL REFORM ACT 1966

• Presumption in favor of OR bonds
• Conditional pre-trial release with conditions to reduce FTA
• Restrictions of money bonds
• Allowed 10% cash deposit in lieu of full surety
• Review of bonds within 24 hours of incarceration
COMPREHENSIVE CRIME CONTROL ACT OF 1984

• Allowed courts to consider a defendant’s dangerousness to the community
ONLY 3 CONSIDERATIONS WHEN SETTING BONDS

• Likelihood of return to court
• Likelihood of new crimes
• Cannot be excessive
"I'm here for jumping my bond... Bail bond."
Q & A

- Bond schedule for warrantless arrests?
  - REASONS
    - Always did it this way
    - Pressure from governing body
    - Potential source of fine money
    - Transient population of offenders
    - Infrequent dockets
JUSTIFICATION

• Lawsuits- Equal Justice Under The Law
  • Since 2015 has filed 12 challenges against money bail in 9 states
    • Clanton, Alabama
    • Velda City, Missouri
    • Ann, Missouri
    • Moss Point, Mississippi
    • Dothan, Alabama
    • Ascension Parish, Louisiana
    • Dodge City, Kansas
Jail Costs -

• Do you know how much your city pays to house prisoners?

• Revenue received from those who are jailed?

• Does it create respect for the law?
COMMERCIAL SURETIES

• At least 32 surety companies underwrite bail
• In 2012 these companies underwrote 13.5 billion worth of bail bonds
• In 1992 Executives formed the American Bail Coalition (ABC)
  • Believed there was a “jihad” against commercial bail
  • Pretrial services inroads to commercial sureties market
• In 1994 ABC joined forces with American Legislative Exchange Coalition (ALEC)
COMMERCIAL SURETIES

• ABC undertook letter writing campaign to sheriffs, courts, judges and community leaders critical of pre-trial services
  • In 1990 commercial bail accounted for 23% of pretrial releases, OR bonds 40%
  • Today 23% are OR bonds and 49% are commercial bonds

• Since then ABC has written 11 ALEC “model bills” regarding bail
HOW DOES THIS AFFECT ME?
SENATE BILL No. 141

By Committee on Judiciary

2-1

AN ACT concerning criminal procedure; relating to municipal courts; relating to appearance bonds; amending K.S.A. 12-4301 and K.S.A. 12-4303 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-4301 is hereby amended to read as follows: 12-4301. (a) A person having the right to post bond for appearance shall, in order to do so, execute in writing a promise to appear at the municipal court at a stated time and place. Such appearance bond shall be in an amount as determined by the municipal judge, and such amount shall be the same regardless of the method of securing the appearance as described in subsection (b). Unless the judge makes a specific finding otherwise, every bond for a person charged with an offense that would be a person offense pursuant to state law shall have a condition of release prohibiting the person from having contact with the alleged victim of such offense for a period of at least 72 hours. Such bond may be secured by any one of the following methods, and when so secured, such person shall be released from custody. The court shall not exclude the option of posting bond pursuant to subsection (b)(2) or (b)(3).
SB 141

- Section 1(a) ...[bond]...amount shall be the same regardless of the method of securing the appearance [of the defendant]
- “The court shall not exclude the option of posting bond pursuant to subsection (b)(2) or (b)(3)”
- “A deposit of cash in less than the full amount of the bond shall not be permitted”
COMMERCIAL SURETIES

• Bail is unique in the insurance business in that it has virtually no losses

• Bail paid out less than 1% of revenue generated in 2012
  • In 2011 New York City owed more than $2 million in delinquent forfeitures
  • In 2010 over $26 million owed for forfeited bonds in Harris County, Texas
COMMERCIAL SURETIES

• Are you owed anything from commercial sureties?
• Four States do not allow Commercial sureties
  • Illinois
  • Oregon
  • Wisconsin
  • Kentucky
FORFEITURE

• Due process
  • Anyone who posts a bond entitled to due process before forfeiture
    • *Fuentes v Shevin* 407 U. S. 67 (1972)

• Due process can be waived
  • Courts indulge every presumption against a waiver
  • Waiver depends upon the facts of a particular case
  • Only good if done in an informed manner
    • In other words cannot be mere boilerplate language at bottom of bond form.
FORFEITURE

• IF DUE PROCESS IS NOT WAIVED ON A BOND FORFEITURE
  • Due process hearing
    • Notice to all parties
    • Hearing
    • If forfeiture, deadline for payment
    • Staggered payments?
WHAT DO YOU DO WITH THE MONEY?
FORFEITURE

• KCK has an administrative order:
  • Restitution
  • Old fines
  • General revenue
KCK EXPERIENCE

• 2009 budget cuts forced to answer many questions

• Established jail population committee with Sheriff, DA, Administrative Judge District Court, Pre-trial services, Municipal Court
<table>
<thead>
<tr>
<th>Jail Statistics</th>
<th>2009</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average population p/day</td>
<td>529</td>
<td>375</td>
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<tr>
<td>Held on municipal charges</td>
<td>61</td>
<td>21</td>
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<tr>
<td>Ave. Length of Stay (municipal)</td>
<td>2.1</td>
<td>1.7</td>
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<tr>
<td>County farm out costs</td>
<td>$4 million p/year</td>
<td>$1.5 p/year now $0</td>
</tr>
<tr>
<td>City payment to jail</td>
<td>$2 million p/year</td>
<td>$766,092</td>
</tr>
</tbody>
</table>
WHAT HAPPENED?

• Decrease in felony filings
• Decrease in Municipal court filings
• Coordination to release those with mental illness but who have local support
• Increased use of OR bonds
• Increased reliance on Pre-trial services
WHAT HAPPENED?

- Stopped using commercial bondsmen
  - Saved 20 hours p/month staff time coordinating bond forfeiture docket
  - Saved 2-3 hours p/month in court time
  - Increased income
    - However, purpose of court is not revenue generation
  - Increased payment to restitution victims
  - Helped pay off old fines
WHAT HAPPENED?

• Use cash only bonds
• No warrantless bonds
• Bonds set at fine + costs
• Bench warrant set aside policy
  • $100 sets aside warrants and resets on arraignment docket
  • If bond forfeited next BWSA bond is $50 more
• Bond companies said they are not interested in $100 bonds
DRIVERS’ LICENSE AS BOND

• K.S.A. 12-4301(d)
  • “… accused may deposit with arresting officer, or clerk of the municipal court a valid Kansas drivers’ license”
  • A receipt, …, in form approved by the State, recognized as a valid temporary license
  • A judge may extend the temporary receipt no more than 30 days from original hearing
  • If defendant FTA, send license to the State, which will suspend the license
  • If defendant applies for a replacement license, while license being held, in lieu of bond, the defendant shall be guilty of a misdemeanor.
PRETRIAL SERVICES

• Studies have shown that by asking a few questions you can determine who is going to come to court
  • Questions can be asked by you or, if cooperative, the jail
    • 12 questions listed in outline with scores between 0-5 for most and up to 0-15
    • Score between 0-82
<table>
<thead>
<tr>
<th>PRETRIAL RISK CATEGORY</th>
<th>COURT APPEARANCE RATE</th>
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<tbody>
<tr>
<td></td>
<td>UNSECURED BOND</td>
</tr>
<tr>
<td>1 (lower)†</td>
<td>97% (133/137)</td>
</tr>
<tr>
<td>2†</td>
<td>87% (181/208)</td>
</tr>
<tr>
<td>3†</td>
<td>80% (36/45)</td>
</tr>
<tr>
<td>4 (higher)†</td>
<td>43% (6/14) *</td>
</tr>
<tr>
<td>Average**</td>
<td>88% (356/404)</td>
</tr>
</tbody>
</table>

† All statistical comparisons showed no statistically significant differences. All $p > 0.12$.

* The 43% observed in this cell is based on a small sample size (n=14) and thus should be interpreted with caution. For example, if one more defendant in the unsecured bond group made all court appearances, the percentage would increase to 50%. If one more of these defendants had a failure to appear, the percentage would decrease to 36%.

** The court appearance rate for all unsecured bond defendants was not compared to the rate for all secured bond defendants because that analysis would fail to control for defendants’ risk.
<table>
<thead>
<tr>
<th>PRETRIAL RISK CATEGORY</th>
<th>PUBLIC SAFETY RATE</th>
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</tr>
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<tbody>
<tr>
<td></td>
<td>UNSECURED BOND</td>
<td>SECURED BOND</td>
<td></td>
</tr>
<tr>
<td>1 (lower)</td>
<td>93% (128/137)</td>
<td>90% (115/128)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>84% (174/208)</td>
<td>79% (343/434)</td>
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</tr>
<tr>
<td>3</td>
<td>69% (31/45)</td>
<td>70% (174/250)</td>
<td></td>
</tr>
<tr>
<td>4 (higher)</td>
<td>64% (9/14)</td>
<td>58% (54/93)</td>
<td></td>
</tr>
<tr>
<td>Average**</td>
<td>85% (342/404)</td>
<td>76% (686/905)</td>
<td></td>
</tr>
</tbody>
</table>

+ All statistical comparisons showed no statistically significant differences. All $p > 0.16$.

* The 64% observed in this cell is based on a small sample size ($n=14$) and thus should be interpreted with caution. For example, if one more defendant in the unsecured bond group had no new charges, the percentage would increase to 71%. If one more of these defendants had a new charge, the percentage would decrease to 57%.

** The public safety rate for all unsecured bond defendants was not compared to the rate for all secured bond defendants because that analysis would fall to control for defendants’ degree of pretrial risk.

**Summary of Findings**

Whether released defendants are higher or lower risk or in-between, unsecured bonds offer the same public safety benefit as do secured bonds. This finding is expected because although defendants can have their bond revoked if they receive a new charge while on pretrial release, they legally cannot be ordered to forfeit any amount of money or property under any bond type. Thus, the financial condition of an unsecured or secured bond cannot legally have an impact on defendants’ criminal behavior. This study’s failure to find a public safety benefit for one bond type over another is consistent with previous research (Helland & Tabarrok, 2004; Morris, 2013).
CONCLUSIONS

• All jurisdictions should be able to articulate their guiding principles or philosophies for administration of bail
• All jurisdictions should ensure that their principles comport with the Eighth Amendment in making sure bond schedules include individualized considerations
• All jurisdictions should know whether their bond procedures and forfeiture procedures comport with due process
• Know your finances and talk with your governing bodies and sheriffs to make arrangements to reduce the number of those incarcerated
SO LET IT BE WRITTEN
SO SHALL IT BE DONE