

BONDS IN MUNICIPAL COURT CASES

PRESENTED BY HON. KATIE MCELHINNEY

2016 Municipal Judges Conference

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WHAT IS THE DIFFERENCE BETWEEN BAIL AND BOND?

- While they both have the same effect -- temporary freedom -- they're actually different. The difference between bond and bail is a subtle one, but it ultimately comes down to the source of the money. Who and what is securing the defendant's freedom?
- Bail is the monetary amount a defendant must pay to secure his release. If he fails to appear at a specified time, he forfeits that amount. If the defendant or his family pays bail, he's been bailed out of jail.

WHAT IS THE DIFFERENCE BETWEEN BAIL AND BOND?

- But many criminal defendants don't have the funds to make bail. This is where bonds come in. Bonds are bail monies paid by a bail bond company. The defendant secures a loan with collateral, such as a car or house. He also pays a set fee, usually 10%-20% of the bail amount. The bail bondsman then pays the court a portion of the bail monies and guarantees that the rest will be paid if the defendant disappears. Courts accept this as assurance because the defendant loses his property if he flees.
- There's also the signature bond. The defendant makes a written promise to appear in court. If he fails to appear, he pays the court a set amount of money. This is reserved for low-level offenders who pose no flight risk.

WHAT IS THE PURPOSE OF BAIL / BOND?

- Ensure that defendants show up for court
- Protect the community

FOLLOWING LAWSUIT, ST. LOUIS SUBURB ENDS ITS 'ILLEGAL' BAIL SYSTEM THAT JAILED THE POOR

- Federal Court in St. Louis issued an injunction ending the use of secured bail money in Velda City and a declaratory judgment affirming the use of secured money bail schemes to detain impoverished people after arrest violates the US Constitution.
- Velda City (small suburb outside St. Louis) agreed to end a cash-only fixed bail system that had kept poor people imprisoned for days if they were arrested for violations of its municipal code.
- Defendants who could not afford to pay a certain amount of money were held in jail for three days and would never get to appear before the city's municipal court judge.
- Velda City sits on roughly one-sixth of a square mile and has just 1400 residents. The city brings in more revenue from fines and fees than it does from either sales tax or property taxes.

VARDEN V. CITY OF CLANTON, ALABAMA IS ONE OF NINE LAWSUITS FILED IN THE PAST YEAR

- Another similar lawsuit with the end goal of getting cities to abolish the practice of demanding secured money bail from pre-trial detainees as a condition of release.
- The lawyers bringing these suits argue that pre-trial detention should be based on objective evidentiary factors, like whether the person is a danger to the community or a flight risk—not how much money is in their pocket.

CLASS ACTION LAWSUIT FILED AGAINST THE CITY OF DODGE CITY, AND FORD COUNTY 15-CV-9344

- Class Action lawsuit filed on behalf of Lawrence J Martinez and about 100 similarly situated people who were arrested for a municipal ordinance violation and held in jail for 48 hours because they could not post bond.
- Those arrested were local residents.
- Bond amounts were fixed and predetermined for each offense.
- Those arrestees who were able to post their cash bonds were released from jail immediately after posting bond.
- Those arrestees unable to post bond stayed in jail for 48 hours and then were released from jail on their own recognizance.

FEDERAL CLASS ACTION LAWSUIT FILED AGAINST THE CITY OF DODGE CITY, AND FORD COUNTY 15-CV-9344

- Case is currently pending. Agreed Motion to Stay All Proceedings was approved. Case continued to April 24th. Parties to "explore a non-litigation resolution."
- Website for copy of the Class Action Complaint:
<http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/2015-10-21-complaint-with-exhibits-filed.pdf>

WHAT IS THE LAW IN KANSAS?

- **§ 9 of the Kansas Bill of Rights:** All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.
- **KSA Chapter 12** contains the Kansas code of procedure for municipal courts.
- **12-4206. Notice to appear; when used.** A notice to appear shall be used in all cases involving the violation of a municipal ordinance, except when a warrant is issued.

WARRANTS OR NOTICES TO APPEAR

KSA 12-4209. Warrants or notices to appear; when issued; limitations.

- (a) The city attorney shall cause a notice to appear to be issued, except that, if requested by the city attorney, a warrant for the accused shall be issued if the municipal judge finds from the complaint, or from an affidavit or affidavits filed with the complaint or from other evidence that there is probable cause to believe both that a crime has been committed and that the defendant has committed such crime.
- (b) More than one warrant or notice to appear may be issued on the same complaint.
- (c) If a defendant fails to appear in response to a notice to appear, a warrant shall be issued.
- (d) Affidavits or sworn testimony in support of the probable cause requirements of this section shall not be made available for examination without a written order of the municipal judge, except that such affidavits or testimony, when requested, shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.
- (e) No warrant shall issue for an ordinance traffic infraction or an ordinance cigarette or tobacco infraction unless the person charged has received service of a notice to appear and has failed to appear for the infraction.

WHAT IS THE LAW IN KANSAS?

KSA 12-4211. Detention; service of complaint and summons. A law enforcement officer may detain a person when:

- (a) He or she has a warrant commanding that such person be arrested; or
- (b) he or she has reason to believe that a warrant for the person's arrest has been issued by any municipal court; or
- (c) he or she has probable cause to believe that the person is committing or has committed a violation of an ordinance, and the law enforcement officer has probable cause to believe that such person will not be apprehended or evidence of the violation of the ordinance will be irretrievably lost unless such person is immediately detained, or such person may cause injury to himself, herself or others or damage to property unless immediately detained; or
- (d) any violation of an ordinance has been or is being committed by such person in his or her view.

A law enforcement officer having detained a person pursuant to the preceding paragraph, except subsection (a) or (b) thereof, **may** release the person or may prepare and serve upon such person a complaint and notice to appear, as provided by K.S.A. 12-4204 or 12-4205 and shall then release such accused person from such detention, **except in such instances where the law enforcement officer has power and authority to arrest such accused person as hereinafter set forth.**

WHAT IS THE LAW IN KANSAS?

KSA 12-4212. Arrest by law enforcement officer; when authorized.

(a) Except as provided in subsection (b), a law enforcement officer may arrest a person under any of the following circumstances:

- (1) The officer has a warrant commanding that the person be arrested.
- (2) A warrant for the person's arrest has been issued by a municipal court in this state.
- (3) The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that the person has intentionally inflicted bodily harm to another person.
- (4) The law enforcement officer detained the person pursuant to subsection (c) or (d) of K.S.A. 12-4211, and amendments thereto, and:
 - (A) The person refuses to give a written promise to appear in court when served with a notice to appear;
 - (B) the person is unable to provide identification of self by presenting a valid driver's license or other identification giving equivalent information to the law enforcement officer;
 - (C) the person is not a resident of the state of Kansas; or
 - (D) the law enforcement officer has probable cause to believe that the person may cause injury to self or others or may damage property unless immediately arrested.

(b) A law enforcement officer may not arrest a person who is charged only with committing an ordinance traffic infraction or an ordinance cigarette or tobacco infraction unless the person charged has received service of a notice to appear and has failed to appear for the infraction.

WHAT IS THE LAW IN KANSAS?

12-4213. Persons under arrest; procedures; right to post bond; release on personal recognizance.

(a) Any person arrested by a law enforcement officer shall be taken immediately by the law enforcement officer to the police station of the city or the office in the city designated by the municipal judge. At that time, the person shall have the right to post bond for the person's appearance, in accordance with K.S.A. 12-4301 and 12-4302, and amendments thereto, except as hereinafter provided.

(b) A law enforcement officer may detain a person arrested for violation of a municipal ordinance in protective custody for a period not to exceed six hours, including custody in a city or county jail, if such officer has probable cause to believe that: (1) Such person may cause injury to oneself or others, or damage to property; and (2) there is no responsible person or institution to which such person might be released. Any person so held in protective custody shall be permitted to consult with counsel or other persons who may act on such person's behalf. Such person held in protective custody for six hours shall be given an opportunity to post bond for such person's appearance in the municipal court.

- State v. Rickerson, 47 Kan.App.2d 648 (Kan.App. 2012), 276 P.3d 240

WHAT IS THE LAW IN KANSAS?

KSA 12-4213. Persons under arrest; procedures; right to post bond; release on personal recognizance.

(c) Any person held in custody pursuant to the provisions of this section, and who has not made bond for such person's appearance, may be held in custody until the earliest practical time for such person's appearance in municipal court upon a warrant being issued by the municipal court in accordance with K.S.A. 12-4209, and amendments thereto.

(d) Any person who remains in custody for 48 hours pursuant to the provisions of this section after arrest, and who is awaiting a first appearance before a municipal judge in the absence of a warrant being issued, shall be released on the person's personal recognizance. Bond shall be set within 18 hours of the person being placed in custody.

CITY OF WICHITA CHARTER ORDINANCE

- City of Wichita chartered out of 12-4212 and 12-4213 in 2015:
- A CHARTER ORDINANCE EXEMPTING THE CITY OF WICHITA, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4112, 12-4203, 12-4208, 12-4212, 12-4213, 12-4305, 12-4410, 12-4411, 12-4509, 12-4511, 12-4516 AND 12-4156a AND AMENDMENTS THERETO RELATING TO MUNICIPAL COURT PROCEDURES AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS OF THE SAME SUBJECT AND REPEALING CHARTER ORDINANCES 122, 163, 164, 167, 168, 170, 175, 199, 202, 204, 210, 217, 218 AND 220.

WICHITA ORDINANCE REGARDING WHEN LEO'S CAN ARREST

SECTION 3. Law Enforcement Officer's Power to Make an Arrest. A law enforcement officer may arrest a person when:

- (a) The officer has a warrant commanding that such person be arrested; or
- (b) The law enforcement officer has no warrant, but a warrant for the person's arrest has been issued by a municipal court in this state; or
- (c) The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that the person has intentionally inflicted bodily harm to another person; or
- (d) The law enforcement officer, having no warrant, has detained such person when:
 - (1) The officer has probable cause to believe that the person is committing or has committed a violation of a municipal ordinance and that such person will not be apprehended or evidence of the violation of the ordinance will be irretrievably lost unless such person is immediately detained, or such person may cause injury to self or others or damage to property unless immediately detained; or
 - (2) Any violation of an ordinance has been or is being committed by such person in the officer's view; and any of the following conditions also exist:
 - (A) such person refuses to give a written promise to appear in court when served with a notice to appear; or
 - (B) such person is unable to provide identification of self to the reasonable satisfaction of the law enforcement officer; or
 - (C) such person is not a resident of the State of Kansas; or
 - (D) the law enforcement officer has probable cause to believe that such person may cause injury to self or others or may damage property unless immediately arrested.
- (e) Any misdemeanor, except a traffic infraction, that has been or is being committed by the person in the officer's view and such misdemeanor has been designated specifically by the Chief of Police, with the approval of the municipal judge, as an offense for which an arrest shall be made.

JOHNSON COUNTY MUNICIPAL COURTS

- The vast majority of the municipal courts have cases filed with the police officers issuing Notices To Appear (NTA's) rather than arresting and jailing those accused of committing a city ordinance violation.
- **12-4302. Personal recognizance.** Notwithstanding the provisions of K.S.A. 12-4301, a law enforcement officer may release an accused person from custody without requiring security for his or her appearance, and shall release such accused person without requiring security for the appearance, pursuant to any rule or order of the municipal judge.
- Johnson County municipal judges utilize this section and pass Administrative Orders to ensure that officers are writing NTA's

OVERLAND PARK MUNICIPAL COURT ADMINISTRATIVE ORDER 2014-2

Pursuant to O.P.M.C. §2.33.310 and O.P.M.C. §2.33.320, all persons charged through Overland Park Municipal Court with a city ordinance violation must be allowed an opportunity to sign a notice to appear (NTA) on any city charges and be released from further detention unless:

- the person refuses to give a written promise to appear in court when served with a notice to appear;
 - the person is unable to provide identification of self by presenting a valid driver's license or other identification giving equivalent information to the law enforcement officer;
 - the person is not a resident of the state of Kansas; or
 - the law enforcement officer has probable cause to believe that the person may cause injury to self or others or may damage property unless immediately arrested.
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- In the case of a traffic infraction or tobacco infraction the person charged must be released after service of a NTA, no exceptions.

OVERLAND PARK MUNICIPAL COURT ADMINISTRATIVE ORDER 2014-2

- In addition, this Court has designated additional ordinance violations as subject to the signing of a Notice to Appear (NTA), such that all non-Kansas residents so charged are to be released upon the service of a NTA unless the person is unable to provide identification of self by presenting a valid driver's license or other identification giving equivalent information to the law enforcement officer. Said violations are noted by the an asterisk (*). The bond listed for said offenses is only applicable if the accused is not a Kansas resident and identification is lacking, as outlined above. All non-Kansas residents arrested for offenses that are not marked with (*) in the following bond schedule, are required to post the bond listed prior to their release.
- The following "Bond Schedule" is adopted effective August 5, 2014. This schedule is applicable only to new arrests. Arrests based on bench warrants are governed by the bond amount and method listed on the warrant. Bonds may be posted by cash, credit card or surety.

OVERLAND PARK MUNICIPAL COURT BOND SCHEDULE

O.P.M.C.	VIOLATION	BOND	O.P.M.C.	VIOLATION	BOND
5.05.020	License required for adult business	500	6.09.030	Injury to domestic animals	500
5.05.030	License required for managers, servers or entertainers	500	6.09.037	Commercial animal establishments requirements	500
5.05.040	Standards of conduct	500	6.09.040	Unlawful trapping	100
5.05.100	Manager on premises	500	6.09.050	Unlawful trading	200
5.05.110	Inspectors and inspections	1,000	6.10.020	Dangerous animals prohibited	500
5.06.020	Alarms - Unlawful acts	200*	6.10.070	Dangerous animals permit	500
5.06.040	Alarms - Unlawful acts	200*	6.12.020	Disease control operations	500
Chapt. 5.08	Violation of Chapter 5.08 - Carnival, Circus, Street Fair	200	6.12.030	Violation of quarantine	500
5.12.020	Retail soft CMB/nonalcoholic malt bev w/o license	500	6.12.040	Duty to report dead animals	200
5.12.060	CMB or non alcoholic malt beverages regulations	500	6.12.050	Removal large dead animals	200
5.12.080	Retail sales by wholesalers	200*	6.12.060	Removal of small animals	200
5.12.100	CMB or non alcoholic malt beverages sale on credit	100*	Chapt. 6.14	Beekeeping Regulations	200*
5.16.010	Christmas tree sales - permit	200*	Chapt. 6.15	Horses, donkeys, mules or other equines	300*
5.20.065	Clubs, drinking establishments, caterers - license fee	300*	7.04.100	Violation of Chapter 7.04	200*
5.24.030	Clubs, drinking establish, caterers - hours of operation	500*	7.04.180	Nuisances or unsafe structures	500*
5.24.050	Coin operated license required	100*	7.08.002	Noise Disturbance-Cause	200*
5.24.080	Coin operated regulations	100*	7.08.003	Noise Disturbance-Allow	200*
5.24.090	Coin operated conduct on premises	100*	7.12.010	Permits and regulation of food service establishments	200*
Chapt. 5.36	Violation of Chapter 5.36 - Blasting operations	300*	7.16.080	Violation of Chapter 7.16	200*
5.40.020	Fireworks prohibited	300*	7.20.100	Weed and Vegetation Enforcement Act	200*
5.40.090	Fireworks public display	300*	7.22.110	Violation of Chapter 7.22	200*
Chapt. 5.44	Violation of Chapter 5.44 - Garage sales	100*	7.26.260	Violation of Chapter 7.26	200*
5.46.080	Alcoholic liquor - Retailer's regulations	100*	7.32.160	Violation of Chapter 7.32	200*
Chapt. 5.48	Violation of Chapter 5.48 - Retail liquor sales	100*	Chapt. 7.36	Waste collection and disposal regulations	200*
Chapt. 5.50	Violation of Massage Therapy Regulations	300*	7.45.040	Recyclable materials regulations	300*
5.52.020	Pawnbroking regulation	100*	7.49.030	Violation of Chapter 7.45	200*
5.56.301	Violation of Chapter 5.56 - Taxicab regulations	100*	7.52.040	Violation of Chapter 7.52	200*
Chapt. 5.60	Violation of Chapter 5.60 - Sales on public right-of-way	300	10.04.060	Contamination of pools	500
5.64.020	Solicitation regulations	300	10.04.070	Animals in pool	150*
5.70.030	License required - Transient merchants	300	10.04.080	Pool hours	150*
6.04.010	Animal license fee	100*	10.06.070	Revocation of golf privileges	150*
6.04.040	Collar on harness required	100*	10.08.010	Park hours	150*
6.04.050	Nuisance special permits	100*	10.08.060	Alcohol in park	150*
6.08.020	Dog and cat control	100*	10.08.070	Animals in park	150*
6.08.025	Domestic animals fenced	100*	10.08.144	Motor vehicles in park	150*
6.08.030	Noisy animals and damage to property	100*	10.08.145	Vandalism in park	500
6.08.090	Animal bite procedure	100*			
6.09.010	Cruelty to Animals	500			
6.09.015	Illegal Ownership of Animals	500			
6.09.025	Abuse and neglect of animals	500			

OVERLAND PARK MUNICIPAL COURT BOND SCHEDULE

O.P.M.C.	VIOLATION	BOND	O.P.M.C.	VIOLATION	BOND
11.04.060	Attempt	Same as Charge	11.12.145	Theft of cable	500
11.04.070	Conspiracy	Same as Charge	11.12.147	Unlawful use of recording devise	500*
11.04.075	Aiding and abetting	Same as Charge	11.12.150	Temporary deprivation of property	300
11.08.010	Assault	500	11.12.155	Unlawful hunting	300
11.08.020	Battery	500	11.12.160	False tokens	300
11.08.021	Domestic Battery	500	11.12.170	Possession of caustic	1,000
11.08.030	Creating a hazard	500	11.12.180	Financial cards	1,000
11.08.040	Denial of civil rights	500	11.12.185	Counterfeiting	1,000
11.08.050	Custody of (unmated) person	500	11.12.190	Window peeping	1,000
11.08.060	Parental Custody	500	11.12.200	Throwing objects onto street, highway or railroad	500
11.08.070	Minors locked in car	500		Right-of-way	500
11.08.080	Mistreatment of confined persons	500	11.16.010	False signing of petition	500
11.08.090	Interference with firefighters	500	11.16.020	Computer trespass	500
11.08.100	Unlawful restraint	500	11.20.010	Resisting Arrest	500
11.08.110	Assault of police officer	1,000	11.20.030	Escape from custody	1,000
11.08.120	Battery of police officer	1,000	11.20.040	Failure to appear	300
11.08.130	Criminal defamation	300*	11.20.045	Failure to comply with traffic citation	300
11.08.140	Circulating false rumors	300*	11.20.050	False reporting	500
11.08.150	Exposing a paroled person	300*	11.20.060	Obstructing legal process	500
11.08.160	Blazing	300	11.20.065	Interference with the administration of justice	1,000
11.08.170	Bases dropping	500	11.20.070	Failure to report wound	500
11.12.010	Automobile master keys	500	11.20.080	Interference with police officer	500
11.12.020	Criminal damage to property	500	11.20.085	Law enforcement canine	500
11.12.030	Criminal trespass	500	11.20.090	False impersonation	500
11.12.035	Trespass on Public Property	500	11.20.100	Disclosure of warrant	300
11.12.040	Defrauding owner/keeper restaurant or lodging house	500	11.20.120	Intimidation of witness	1,000
11.12.050	Loitering	100*	11.20.150	Unlawful use of names	100
11.12.070	Opening, damaging or removing coin-ops	500	11.24.010	Adultery	100*
11.12.090	Possession of tools for opening, damaging or removing coin-ops	500	11.24.030	Lewd and lascivious	500
11.12.090	Tampering with landmark	300	11.24.035	Urinating/defecating in public	200*
11.12.100	Tampering with public notice	500	11.24.040	Patronizing a prostitute	1,000
11.12.110	Tampering with traffic signal	500	11.24.045	Telephone harassment	500
11.12.120	Theft	1,000	11.24.060	Prostitution	1,000
11.12.130	Theft of lost or mislaid property	500	11.24.070	Sodomy	500
11.12.135	Theft of motor fuel	500	11.24.155	Criminal Desecration	500
11.12.140	Theft of services	500	11.24.160	Contributing to a child's misconduct	500
			11.24.165	Regulation of materials harmful to minor	500

OVERLAND PARK MUNICIPAL COURT BOND SCHEDULE

11.24.180	Promoting obscenity	500	11.60.050	Unlawful use of air rifles, air pistols, B-B guns or pellet guns	300
11.24.185	Promoting obscenity to minors	750	11.60.060	Carrying concealed explosives	1,000
11.28.030	Use of noxious matter	500	11.60.070	Unlawful use of projectiles	500
11.28.040	Disorderly conduct	300	11.60.071.A1	Knowingly carry a bludgeon, sandclub, metal knuckles or throwing star	500
11.28.050	Giving a false alarm	500	11.60.071.A2	Knowingly carry concealed on one's person a billy, blackjack, slingshot or any other dangerous or deadly weapon or instrument of like character	500
11.28.060	Interfering with public business	500	11.60.071.A3	Knowingly carrying with intent to use unlawfully a tear gas, smoke bomb or projector or any object containing a noxious liquid, gas or substance	1,000
11.28.064	Funeral picketing	1,000	11.60.72	Unlawfully discharging or firing a gun, rifle, pistol, revolver or other firearm within the City	1,000
11.28.065	Residential picketing	1,000			
11.28.070	Loitering	100			
11.28.080	Remaining at an unlawful assembly	1,000			
11.28.090	Riot	1,000			
11.28.100	Unlawful assembly	500			
11.32.010	Misleading real estate advertisement	500			
11.32.020	Posting of advertisements	150			
11.44.040	Gambling	300			
11.44.050	Possession of gambling devices	300			
11.48.110	Minor in possession, consumption and receiving intoxicating liquor	300*			
11.48.120	Furnishing intoxicating liquor to minor	500			
11.48.125	Unlawful Hoisting	1,500			
11.48.130	Furnishing to incapacitated person	500			
11.48.155	Alcohol without liquid	500			
11.48.160	CMB and intoxicating liquor to public	200*			
11.48.162	Prohibited Hours	300*			
11.52.060	Purchase of Tobacco < 18	NTA			
11.52.065	Possession of Tobacco < 18	NTA			
11.52.070	Sale, give, furnish cigarettes/tobacco product to minor	500			
11.52.100	Prohibited smoking areas	100*			
11.56.140	Possession of drugs	1,000			
11.56.160	Records and inventories by certain persons	300			
11.56.170	Access to records - inspection	300			
11.56.175	Sale of Drugs-Vending Machines	500			
11.56.185	Selling drug paraphernalia	500			
11.56.200	Inhalation of fumes	500			
11.56.210	Aiding and abetting, toxic solvents	Same as charge			
11.56.250	Possession of explosives	1,000			
11.56.360	Answering police calls	500			
			12.04.006	Fail to Comply with LEO	200*
			12.04.018	Deface Traffic Control Device	500
			12.04.020	Play Stickers	200*
			12.04.022	Possession of Traffic Preemption Device	1,000
			12.04.023	Accident Involving Injury	500
			12.04.024	Accident Involving Property Damage	300
			12.04.025	Duty to Report	300
			12.04.026	Striking an Unattended Vehicle	300
			12.04.027	Duty to Report	300
			12.04.028	False Reports	500
			12.04.029	Reckless	500
			12.04.030	DUI (1 st offense)	1,400
			12.04.030.05	DUI (2 nd Offense)	1,500
			12.04.030.2(a)	Refusing to submit to an alcohol or drug test	same as above
			12.04.031	Blinding	500
			12.04.031.1	Tampering with an Interlock Device	500
			12.04.037	Drug Racing/Exhibition of Acceleration	300*
			12.04.074	Pedestrian under Influence of alcohol or drugs	300
			12.04.093.1	Abandonment of Vehicle	200*
			12.04.104	Loitering from Car	100*

All violations of Chapter 12.04 that are not listed below are ordinance traffic infractions. Pursuant to O.P.M.C. §2.33.320 all persons charged with ordinance traffic infractions must be released after service of a NTA, no exceptions.

OVERLAND PARK MUNICIPAL COURT BOND SCHEDULE

12.04.105	Consumption of CMB	100*
12.04.106	Transportation of CMB	200*
12.04.110	Driving to Avoid Traffic Control	200*
12.04.119	Child Restraints	100*
12.04.120	Driving Through a Procession	200*
12.04.122	Street Barrier	200*
12.04.125	Yard Farming	200*
12.04.126(c)	Failure to remove traffic hazard	300*
12.04.136	Rollerblades and Skateboards	100*
12.04.179	Spilling load on highway	200*
12.04.179.1	Transporting hazardous material	300*
12.04.180	Trailer and Safety Hitch	100*
12.04.191	No driver's license	300*
12.04.191.2	Restriction Violation	300*
12.04.192	Cancelled, suspended, revoked drivers license	
	(1 st offense)	500
	(2 nd offense)	1,000
12.04.192.1	Habitual Violator	1,000
12.04.193	Unauthorized operator	300*
12.04.194	Unauthorized minor	300*
12.04.195	Tags: Improper, Illegal, or Expired	100*
12.04.195.1	No Insurance	500*
12.04.196	Unlawful use of license	500
12.04.196.1	Overweight truck	equivalent to fine*
12.04.196.2	Gross weight on bridges	300*
12.04.196.3	Unlawful Use of Identification Card	300*
12.04.199	Owner allowing violation	300*
Chapt. 12.12	Truck Routes	300*
Chapt. 12.16	Parades	300*
16.04.300	Building code	300*
16.14.200	Fire prevention code	300*
16.20.010	Unsafe buildings	300*
18.01.010	Any violation of zoning requirements	200*

IT IS SO ORDERED, DATED THIS 5th DAY OF August, 2014
Ryan Dixon, Presiding Judge

LEAWOOD MUNICIPAL COURT BOND SCHEDULE

When Bond May Be Required

Persons charged with ordinance traffic infractions (i.e. charges with scheduled fines) or tobacco infractions **shall** be released following service of a notice to appear.

Persons charged with other ordinance violations **shall** also be released with a notice to appear unless:

- he/she refuses to sign the NTA; or
- he/she is unable to produce reliable identification; or
- he/she is not a Kansas resident; or
- the officer has probable cause to believe that he/she may injure him/her self or others, or may damage property if not immediately arrested.

LEAWOOD MUNICIPAL COURT BOND SCHEDULE

Bond Amounts/Traffic

- Reckless Driving.....\$4,000 surety or \$750 cash
- Fleeing/Eluding Police Officer.....\$4,000 surety or \$750 cash
- D.U.I.....\$4,000 surety or \$750 cash
- Hit and Run/Injury or Property.....\$4,000 surety or \$750 cash
- DWS/DWR.....\$1,000 surety or \$250 cash
- Illegal Vehicle License/Registration.....\$1,000 surety or \$250 cash
- No Proof of Liability Insurance\$1,000 surety or \$250 cash
- No D.L.....\$1,000 surety or \$250 cash

Bond Amounts/Public Offense Code

- Class "A" violations.....\$4,000 surety or \$750 cash
- Class "B" violations.....\$1,000 surety or \$250 cash
- Class "C" violations.....\$1,000 surety or \$250 cash
- Soliciting Without a Permit.....\$2,000 surety or \$500 cash
- Carry Concealed Handgun 11/103, sec 4.....\$4,000 surety or \$750 cash
- Any other city ordinance violation.....\$250 (cash or surety)

BONDS IN MUNICIPAL COURT CASES

KSA 12-4301. Appearance bonds; methods of securing appearance; driver's license as security, penalty.

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. 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 methods of securing the appearance of an accused person are as follows:

BONDS IN MUNICIPAL COURT CASES

- (a) Payment of cash, except that the municipal judge may permit negotiable securities or a personal check in lieu of cash.
- (b) The execution of an appearance bond by a responsible individual residing within the state of Kansas, as surety with the approval of the municipal judge.
- (c) A guaranteed arrest bond certificate issued by either a surety company authorized to transact such business within the state of Kansas, or an automobile club authorized to transact business in this state by the commissioner of insurance, except that such "guaranteed arrest bond certificate" must be signed by the person to whom it is issued and must contain a printed statement that the surety guarantees the appearance of such person and, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed upon such person not to exceed an amount to be stated on such certificate.

BONDS IN MUNICIPAL COURT CASES

- (d) In lieu of giving security in the manner provided by subsections (a), (b) and (c) above, if the arrest is for the violation of a city ordinance relating to the operation of a motor vehicle the accused person may deposit with the arresting law enforcement officer or the clerk of the municipal court a valid Kansas driver's license in exchange for a receipt therefor issued by the law enforcement officer or the clerk of the municipal court, the form of which shall be approved by the division of vehicles of the state department of revenue. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation of a motor vehicle by the accused person to the date of the hearing stated on the receipt.

LOBBYISTS FOR BONDING COMPANIES TRIED TO CHANGE THE LAW LAST YEAR

- 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). (b) The methods of securing the appearance of an accused person are as follows: (a)(1) Payment A deposit of cash in the full amount of the bond, except that the municipal judge may permit negotiable securities or a personal check in lieu of cash. A deposit of cash in less than the full amount of the bond shall not be permitted.

LOBBYISTS FOR BONDING COMPANIES TRIED TO CHANGE THE LAW LAST YEAR

- (b)(2) The execution of an appearance bond by a responsible individual residing within the state of Kansas, as surety with the approval of sufficient, solvent surety as approved by the municipal judge. (c)(3) A guaranteed arrest bond certificate issued by either a surety company authorized to transact such business within the state of Kansas, or an automobile club authorized to transact business in this state by the commissioner of insurance, except that such "guaranteed arrest bond certificate" must be signed by the person to whom it is issued and must contain a printed statement that the surety guarantees the appearance of such person and, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed upon such person not to exceed an amount to be stated on such certificate

LOBBYISTS FOR BONDING COMPANIES TRIED TO CHANGE THE LAW LAST YEAR

- Sec. 2. K.S.A. 12-4303 is hereby amended to read as follows: 12- 4303. In the event the accused person fails to appear at the time designated in the appearance bond, or at any subsequent time to which the appearance has been continued, the municipal judge shall declare the bond forfeited, except that, if it appears to the court that justice does not require the enforcement of the forfeiture, the court may set the same aside upon such conditions as the court may impose. Where the forfeiture of a bond has become final not been set aside, the court shall direct the application of the funds or that suitable action be instituted for the collection from the sureties obligors thereon or from the accused person pursuant to K.S.A. 22-2807, and amendments thereto. Sec. 3. K.S.A. 12-4301 and 12-4303 are hereby repealed

FORFEITURE OF APPEARANCE BONDS

K.S.A. 12-4303. Failure to appear. In the event the accused person fails to appear at the time designated in the appearance bond, or at any subsequent time to which the appearance has been continued, the municipal judge shall declare the bond forfeited, except that, if it appears to the court that justice does not require the enforcement of the forfeiture, the court may set the same aside upon such conditions as the court may impose. Where the forfeiture of a bond has become final, the court shall direct the application of the funds or that suitable action be instituted for the collection from the sureties thereon or from the accused person.

FORFEITURE OF APPEARANCE BONDS

KSA 22-2807. Forfeiture of appearance bonds. (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 declare a forfeiture of the bail.

(2) An appearance bond may only be forfeited by the court upon a failure to appear. If a defendant violates any other condition of bond, the bond may be revoked and the defendant remanded to custody. An appearance bond is revoked by the execution of a warrant for a defendant's arrest for a violation of a bond condition. The magistrate shall forthwith set a new bond pursuant to requirements of K.S.A. 22-2802, and amendments thereto.

(3) The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. If the surety can prove that the defendant is incarcerated somewhere within the United States prior to judgment of default by providing to the court a written statement, signed by the surety under penalty of perjury, setting forth details of such incarceration, then the court shall set aside the forfeiture. Upon the defendant's return, the surety may be ordered to pay the costs of that return.

FORFEITURE OF APPEARANCE BONDS

(4) When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. If the forfeiture has been decreed by a district magistrate judge and the amount of the bond exceeds the limits of the civil jurisdiction prescribed by law for a district magistrate judge, the judge shall notify the chief judge in writing of the forfeiture and the matter shall be assigned to a district judge who, on motion, shall enter a judgment of default. By entering into a bond the obligors submit to the jurisdiction of any court having power to enter judgment upon default and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice thereof may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. No judgment may be entered against the obligor in an appearance bond until more than 60 days after notice is served as provided herein. No judgment may be entered against the obligor in an appearance bond more than two years after a defendant's failure to appear.

(5) After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subsection (3).

IN PRACTICE...HOW DO WE FORFEIT A BOND?

How to forfeit a professional surety bond?

- Overland Park's Administrative Order on Surety Bond Policy lays out their rules and what the procedure will be.
- If a defendant fails to appear, a letter is sent to the surety advising that defendant failed to appear and the surety has 60 days to surrender the defendant or pay the bond forfeiture.
- In Gardner Municipal Court, the City files a Motion for Judgment of Default and Bond Forfeiture. A hearing date is set at least 60 days from date that defendant failed to appear. If the defendant has not been surrendered, the surety must pay the bond forfeiture or appear in Court. If the surety fails to pay or appear, a warrant is issued for the surety.

IN PRACTICE...HOW DO WE FORFEIT A BOND?

What about cash bonds posted by defendants or posted by third parties?

- Most bond forms that defendants sign make it clear to defendant that if he/she does not appear on the court date on their bond form or served copy of the warrant, then they will lose their cash bond.
- While these same bond forms that a third party may sign when posting a cash bond on behalf of a defendant warn that the cash bond may be forfeited if defendant fails to appear, the better practice is to contact that third party (by letter, with a Motion for Judgment of Default and Bond Forfeiture, or even a phone call).

EXONERATION, WHEN IS THE SURETY RELIEVED OF LIABILITY?

KSA 22-2808. Exoneration. When the condition of the appearance bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release them from liability.

A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

- **Have the conditions of the appearance bond been satisfied?** May want to review your bond forms to see if the condition(s) of the appearance bond are clearly laid out. Practically speaking...if a bond is posted on an unadjudicated case, once the case has been adjudicated—then the conditions of bond have been satisfied. After sentencing, for instance, the bond condition would be considered satisfied.
- **What about diversion?** If defendant posted a cash bond and then signs diversion agreement, has the bond condition been satisfied? May want to review your bond forms. If the bond is left intact after diversion agreement entered, any subsequent bond forfeiture for failure to appear on a Motion to Revoke Diversion should be included in the diversion agreement.

SURRENDER OF OBLIGOR BY SURETY; RELEASE OF SURETY

KSA 22-2809. Any person who is released on an appearance bond may be arrested by such person's surety or any person authorized by such surety and delivered to a custodial officer of the court in any county in the state in which such person is charged. Such person who is arrested as provided in this section shall be brought before any magistrate having power to commit for the crime charged. The magistrate shall indorse on the bond, or a certified copy of such bond, the discharge of such surety upon the sworn statement, either written or oral, of the surety setting forth the reasons for the discharge. The magistrate may commit the party who is arrested as provided in this section. Such person committed as provided in this section shall be held in custody until released as provided by law.