

PRETRIAL JUSTICE TASK FORCE

March 8, 2019
Judicial Center
Topeka, KS





WELCOME

9:00 A.M.



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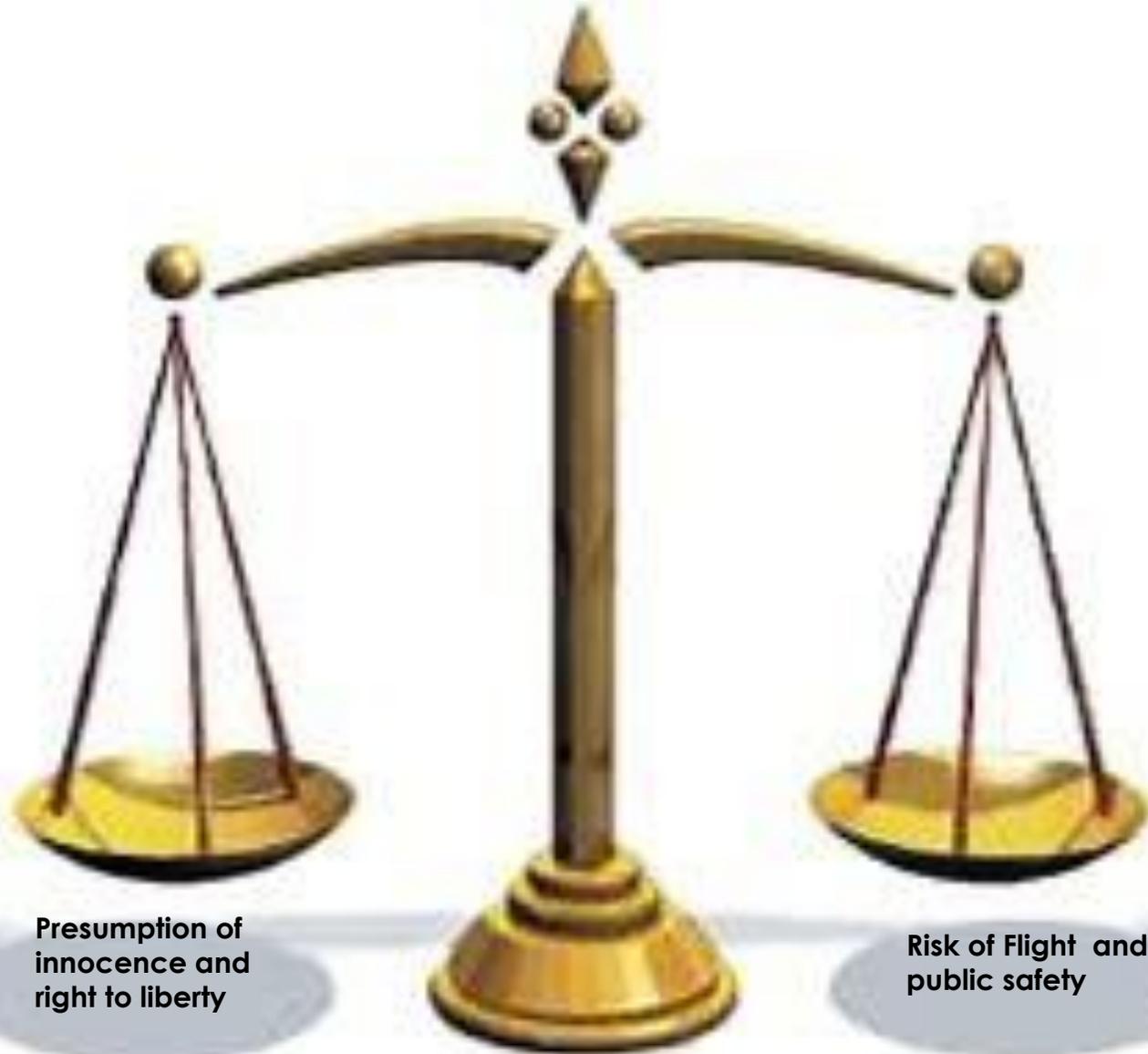
REP. STEPHEN OWENS

*KANSAS HOUSE REPRESENTATIVE OF
THE 74TH DISTRICT AND OWNER OF
OWENS BONDING, INC.*

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CHAIR REPORT

CHIEF JUDGE, KAREN ARNOLD-BURGER



**Presumption of
innocence and
right to liberty**

**Risk of Flight and
public safety**

WHAT WE WILL NOT BE ADDRESSING

- ▶ **Elimination of or continued viability of the commercial bond industry**
- ▶ **Ways to reduce jail costs**
- ▶ **Any post-trial incarceration**
- ▶ **Blame attributed to bonding agents, judges, prosecutors, defense attorneys, or legislators**

OVERARCHING CONCERN

- ▶ **Measurable problem**
- ▶ **Measurable solution**
- ▶ **Maintain the faith of all Kansans in their system of justice**



**WHAT YOUR CHAIR
HAS BEEN DOING
THE LAST 3 MONTHS**



SENDING YOU THINGS TO READ

MADE CONTACT WITH STAKEHOLDER GROUPS

- ▶ NAACP
- ▶ Kansas Urban League
- ▶ LULAC
- ▶ Association of Counties
- ▶ KCSDV
- ▶ WYCO DA
- ▶ Legislators
- ▶ Kansas Sheriff's Association

MADE CONTACT WITH STAKEHOLDER GROUPS

- ▶ **County and District Attorneys Association**
- ▶ **Association of Criminal Defense Lawyers**
- ▶ **Association of Court Services Officers**
- ▶ **Kansas Peace Officers Association**
- ▶ **Correctional Association**
- ▶ **Community Corrections Association**

TOP CONCERNS OF STAKEHOLDERS

Attorney General's Office

▶ **Accountability**

- ▶ If Court imposes conditions, who is accountable for:
 - ▶ Notifying victims of violations that threaten safety?
 - ▶ Notifying Court of violations?

▶ **Individualized Findings.** Court should make an individualized finding as to conditions:

- ▶ Crime specific – what is the threat and how will the conditions imposed address the threat?
- ▶ If no conditions will address threat, can the Court set no bond upon individual finding?

▶ **Public Safety.** Public safety consideration should be included in the Court's consideration as currently addressed in KSA 22-2802(8).

TOP CONCERNS OF STAKEHOLDERS

Kansas Association of Counties

- ▶ **Cost of jail space.** Holding individuals pre-trial takes away from jail space used to hold individuals post conviction, requiring some counties to send prisoners to other counties due to overcrowding.
- ▶ **Medical Care.** Local government is responsible for the medical care of individuals that are being held. This is potentially a large expense.

TOP CONCERNS OF STAKEHOLDERS

Retired District Judge Stephen Tatum

- ▶ **Identify crimes** that do not require incarceration.
- ▶ More emphasis and resources on **prevention and rehabilitation.**
- ▶ Align drug use and addiction more closely with consumption of alcohol and alcoholism, i.e. **emphasize responsibility for behavior** rather than a status law for possession.

TOP CONCERNS OF STAKEHOLDERS

Kansas Coalition Against Sexual Assault and Domestic Violence

- ▶ A victim of domestic violence is at most dangerous time when he or she reaches out for help from law enforcement. So even though domestic violence may be a low level offense, it is a highly dangerous time for the victim. So when there is a bond or release decision made there should be an **individualized consideration of the victim's safety**.
- ▶ In many areas of the state dual arrest, of both the victim and the abuser, is commonplace. In those cases the victim sits in jail while the abuser may have been released and be home with the children. **Each situation is unique and a one size fits all approach is not appropriate. The safety of the victim must be at the forefront.**

TOP CONCERNS OF STAKEHOLDERS

Kansas Urban League

- ▶ Possible solutions to eliminate the racial disparities and behaviors that create the disparities that continue to exist at the pretrial decision making point and across the justice system.

TOP CONCERNS OF STAKEHOLDERS

Kansas Peace Officers Association

- ▶ **Domestic Violence.** Maintaining adequate protections relating to domestic violence cases, persons to be released who are intoxicated on drugs or alcohol.
- ▶ **Safety of victim and public.** Maintain strong consideration of safety of victims and the public if released.
- ▶ **People with no identification.** Retain retention of those whose identity are in question.

TOP CONCERNS OF STAKEHOLDERS

Kansas Bail Agents Association

- ▶ **Should not eliminate commercial surety bail.** We are concerned that the Task Force's goal is the elimination of commercial surety bail, either as an unspoken goal, or as a consequence of potential recommendations.
- ▶ **Current system works.** The KBAA hopes that there will be an acknowledgment that the current system in Kansas is, in fact, an effective mix of pretrial options, giving judges broad discretion to make informed decisions about individual defendants and the types and amounts of bonds necessary for each individual case. Further, that any radical changes to the current pretrial release system will fundamentally alter the balance away from appearance and accountability
- ▶ **People not being held solely because they cannot post bond.** That there will be an acknowledgment that Kansas jails are not full of people who are being held "solely because they cannot buy their freedom." That unaffordable bail and excessive bail are not the same thing. That there is a rational basis for using financial bail.

TOP CONCERNS OF STAKEHOLDERS

Kansas Bail Agents Association

- ▶ **Risk Assessments not substitute for judicial discretion.** Risk Assessment Questionnaires may be valuable tools for providing the Court with additional information about each defendant, these Assessments are not a substitute for individualized judicial discretion and input from both the State and the Defense.
- ▶ **Savings to taxpayer.** The KBAA is also concerned that the Task Force will take into account the savings provided to the taxpayer when a surety bail bondsman is used. Studies have indicated that the cost to the taxpayers of a FTA can be as much as \$1500 per instance.
- ▶ **Consider the victim.** Taking into account the Victim of the crime is an essential part of the pre-trial system. Systems that find acceptable a high failure to appear rate fail to take into account the importance of the victim of the crime.

TOP CONCERNS OF STAKEHOLDERS

Kansas Association of Chiefs of Police

- ▶ **Public safety** concerns must remain the number one consideration.
- ▶ Persons whose **identity** are **in question** should be held until the identity is confirmed.
- ▶ Persons who have provided **false identity or attempting to flee or resist arrest** should not be eligible for an OR bond, based on a demonstration of a flight risk.
- ▶ **Certain cases should be exempt from immediate bonding**, especially an OR bond. For example, persons who are intoxicated (drugs or alcohol); persons who are making threats to victims, witnesses, or public safety; persons already on bond for similar offenses or the same victim; and domestic violence cases.

TOP CONCERNS OF STAKEHOLDERS

Rep. Stephen Owens, Owens Bonding Company

- ▶ That the task force will make assumptions that because other states are doing it, Kansas must follow suit.
- ▶ That adequate time will be spent on the failures of pre-trial reform in other states.

TOP CONCERNS OF STAKEHOLDERS

KOCH Industries

- ▶ Whenever possible, we favor a strong presumption of pre-trial release, strict timeliness and procedural protections, and the least restrictive and onerous conditions of pretrial release.
- ▶ Robust and early access to counsel can improve outcomes for defendants, the courts, and the system overall.

TOP CONCERNS OF STAKEHOLDERS

Kansas Sheriff's Association

- ▶ **Bonding is a necessary tool** to ensure compliance with pretrial stipulations. The suspect/family understand they could lose money or belongings if the suspect violates the bond or does not attend a court date which increases compliance.
- ▶ **Nonviolent offenders released pretrial tend to re-offend.** Too many NON VIOLENT OFFENDERS are released from jail immediately after the offense has occurred and re-offend while waiting on the disposition of the first case. These same offenders are often on pre-trial release monitoring or have conditions placed on them that are disregarded.
- ▶ **Education of the public is necessary.** The general public does not have a good understanding of pretrial release and sentencing. An education platform should be introduced before any changes occur or at the time changes do occur.
- ▶ **Bond decisions regarding dangerousness should be made solely by the court.** Sheriff's should not be in the business of determining if an defendant is too dangerous to be released to the public or not. That is solely a court decision.

**ATTENDING PJI
CONFERENCE**



STAKEHOLDER MEETINGS

Next 3 months

- ▶ **Prisoners**
- ▶ **Victims**
- ▶ **The Bail Project**
- ▶ **District Judges at Regional Trainings April**

Appearing at our June Meeting

- ▶ **Kurt Level**, Deputy General Counsel, KOCH Industries and
Monica Roth, Public Policy Specialist, KOCH Industries.
- ▶ **Tim Schnacke**, Center for Legal and Evidence Based
Practices, Pretrial Justice Institute, Denver
- ▶ **Washburn and KU Law Students-(maybe)**
- ▶ **Emily Richardson**, Law Enforcement Assisted Diversion,
Colorado, via web (maybe)

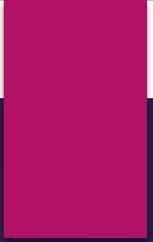
Meeting

June 14, 2019

9:00 am -4:00 pm

FATZER COURTROOM

JUDICIAL CENTER, TOPEKA, KS



September 13, 2019
December 13, 2019

FUTURE ALL TASK FORCE MEETINGS

Meet re: Regional Judges Training

- ▶ Judge Wurst
- ▶ Judge Johnson
- ▶ Judge Bolton-Fleming
- ▶ Judge Collett