

HOUSE BILL No. 2602

By Representative Schwartz

12-26

9 AN ACT concerning crimes and punishment; creating the crime of use
10 of a controlled substance endangering a child; amending K.S.A. 22-
11 2802 and repealing the existing section.
12

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

14 New Section 1. (a) Except as authorized by the uniform controlled
15 substances act, it shall be unlawful:

16 (1) For any person to knowingly introduce a controlled substance into
17 the body of a female whom that person knows to be pregnant;

18 (2) for any female who knows she is pregnant to knowingly use, con-
19 sume, ingest, inhale or otherwise introduce a controlled substance into
20 her body; and

21 (3) for any person to knowingly permit or intentionally cause a child
22 to use, consume, ingest, inhale or otherwise introduce a controlled sub-
23 stance into the child's body.

24 (b) For purposes of subsection (a)(2), it is a permissible inference
25 that a pregnant female has consumed a controlled substance if during the
26 pregnancy the female tests positive for the presence of a controlled sub-
27 stance or if the female or her newborn child tests positive for the presence
28 of a controlled substance upon the birth of the newborn child.

29 (c) For purposes of subsection (a)(2), upon the filing of the charge,
30 the court shall order such person to submit to a drug abuse examination
31 and evaluation in a public or private treatment facility or state institution
32 and, if determined by the head of such facility or institution that such
33 person is a drug abuser or incapacitated by drugs, to submit to treatment
34 for such drug abuse, as a condition of release.

35 (d) The provisions of this section shall not apply when the controlled
36 substance in question is legally used, consumed, inhaled, ingested or oth-
37 erwise introduced into the body of a pregnant female or child pursuant
38 to a valid prescription.

39 (e) As used in this section:

40 (1) "Child" means any individual under the age of 18 years and in-
41 cludes any unborn child, as that term is used in K.S.A. 2007 Supp. 21-
42 3452, and amendments thereto.

43 (2) "Controlled substance" means any drug, substance or immediate

1 precursor included in the schedules designated in K.S.A. 65-4105 and 65-
2 4107, and amendments thereto.

3 (f) Use of a controlled substance endangering a child is a severity
4 level 9, person felony.

5 (g) A physician or other licensed health care professional, or any per-
6 son employed or otherwise working with such physician or other licensed
7 health care professional, shall have no duty to report that a patient under
8 such physician's or other licensed health care professional's care may have
9 violated the provisions of subsection (a)(2), regardless of whether such a
10 report may otherwise be required pursuant to any other law. A physician
11 or other licensed health care professional who reports a person for vio-
12 lating the provisions of this section shall be immune from liability for
13 making such report unless the report was not made in good faith.

14 (h) This section shall be part of and supplemental to the Kansas crim-
15 inal code.

16 Sec. 2. K.S.A. 22-2802 is hereby amended to read as follows: 22-
17 2802. (1) Any person charged with a crime shall, at the person's first
18 appearance before a magistrate, be ordered released pending preliminary
19 examination or trial upon the execution of an appearance bond in an
20 amount specified by the magistrate and sufficient to assure the appear-
21 ance of such person before the magistrate when ordered and to assure
22 the public safety. If the person is being bound over for a felony, the bond
23 shall also be conditioned on the person's appearance in the district court
24 or by way of a two-way electronic audio-video communication as provided
25 in subsection (14) at the time required by the court to answer the charge
26 against such person and at any time thereafter that the court requires.
27 Unless the magistrate makes a specific finding otherwise, if the person is
28 being bonded out for a person felony or a person misdemeanor, the bond
29 shall be conditioned on the person being prohibited from having any
30 contact with the alleged victim of such offense for a period of at least 72
31 hours. The magistrate may impose such of the following additional con-
32 ditions of release as will reasonably assure the appearance of the person
33 for preliminary examination or trial:

34 (a) Place the person in the custody of a designated person or organ-
35 ization agreeing to supervise such person;

36 (b) place restrictions on the travel, association or place of abode of
37 the person during the period of release;

38 (c) impose any other condition deemed reasonably necessary to as-
39 sure appearance as required, including a condition requiring that the
40 person return to custody during specified hours;

41 (d) place the person under a house arrest program pursuant to K.S.A.
42 21-4603b, and amendments thereto; or

43 (e) place the person under the supervision of a court services officer

1 responsible for monitoring the person's compliance with any conditions
2 of release ordered by the magistrate.

3 (2) In addition to *the provisions of section 1, and amendments thereto,*
4 *and* any conditions of release provided in subsection (1), for any person
5 charged with a felony, the magistrate may order such person to submit
6 to a drug abuse examination and evaluation in a public or private treat-
7 ment facility or state institution and, if determined by the head of such
8 facility or institution that such person is a drug abuser or incapacitated
9 by drugs, to submit to treatment for such drug abuse, as a condition of
10 release.

11 (3) The appearance bond shall be executed with sufficient solvent
12 sureties who are residents of the state of Kansas, unless the magistrate
13 determines, in the exercise of such magistrate's discretion, that requiring
14 sureties is not necessary to assure the appearance of the person at the
15 time ordered.

16 (4) A deposit of cash in the amount of the bond may be made in lieu
17 of the execution of the bond pursuant to paragraph (3). Except as pro-
18 vided in paragraph (5), such deposit shall be in the full amount of the
19 bond and in no event shall a deposit of cash in less than the full amount
20 of bond be permitted. Any person charged with a crime who is released
21 on a cash bond shall be entitled to a refund of all moneys paid for the
22 cash bond, after deduction of any outstanding restitution, costs, fines and
23 fees, after the final disposition of the criminal case if the person complies
24 with all requirements to appear in court. The court may not exclude the
25 option of posting bond pursuant to paragraph (3).

26 (5) Except as provided further, the amount of the appearance bond
27 shall be the same whether executed as described in subsection (3) or
28 posted with a deposit of cash as described in subsection (4). When the
29 appearance bond has been set at \$2,500 or less and the most serious
30 charge against the person is a misdemeanor, a severity level 8, 9 or 10
31 nonperson felony, a drug severity level 4 felony or a violation of K.S.A.
32 8-1567, and amendments thereto, the magistrate may allow the person
33 to deposit cash with the clerk in the amount of 10% of the bond, provided
34 the person meets at least the following qualifications:

- 35 (A) Is a resident of the state of Kansas;
- 36 (B) has a criminal history score category of G, H or I;
- 37 (C) has no prior history of failure to appear for any court appearances;
- 38 (D) has no detainer or hold from any other jurisdiction;
- 39 (E) has not been extradited from, and is not awaiting extradition to,
40 another state; and
- 41 (F) has not been detained for an alleged violation of probation.

42 (6) In the discretion of the court, a person charged with a crime may
43 be released upon the person's own recognizance by guaranteeing pay-

1 ment of the amount of the bond for the person's failure to comply with
2 all requirements to appear in court. The release of a person charged with
3 a crime upon the person's own recognizance shall not require the deposit
4 of any cash by the person.

5 (7) The court shall not impose any administrative fee.

6 (8) In determining which conditions of release will reasonably assure
7 appearance and the public safety, the magistrate shall, on the basis of
8 available information, take into account the nature and circumstances of
9 the crime charged; the weight of the evidence against the defendant; the
10 defendant's family ties, employment, financial resources, character, men-
11 tal condition, length of residence in the community, record of convictions,
12 record of appearance or failure to appear at court proceedings or of flight
13 to avoid prosecution; the likelihood or propensity of the defendant to
14 commit crimes while on release, including whether the defendant will be
15 likely to threaten, harass or cause injury to the victim of the crime or any
16 witnesses thereto; and whether the defendant is on probation or parole
17 from a previous offense at the time of the alleged commission of the
18 subsequent offense.

19 (9) The appearance bond shall set forth all of the conditions of
20 release.

21 (10) A person for whom conditions of release are imposed and who
22 continues to be detained as a result of the person's inability to meet the
23 conditions of release shall be entitled, upon application, to have the con-
24 ditions reviewed without unnecessary delay by the magistrate who im-
25 posed them. If the magistrate who imposed conditions of release is not
26 available, any other magistrate in the county may review such conditions.

27 (11) A magistrate ordering the release of a person on any conditions
28 specified in this section may at any time amend the order to impose
29 additional or different conditions of release. If the imposition of additional
30 or different conditions results in the detention of the person, the provi-
31 sions of subsection (10) shall apply.

32 (12) Statements or information offered in determining the conditions
33 of release need not conform to the rules of evidence. No statement or
34 admission of the defendant made at such a proceeding shall be received
35 as evidence in any subsequent proceeding against the defendant.

36 (13) The appearance bond and any security required as a condition
37 of the defendant's release shall be deposited in the office of the magistrate
38 or the clerk of the court where the release is ordered. If the defendant
39 is bound to appear before a magistrate or court other than the one or-
40 dering the release, the order of release, together with the bond and se-
41 curity shall be transmitted to the magistrate or clerk of the court before
42 whom the defendant is bound to appear.

43 (14) Proceedings before a magistrate as provided in this section to

1 determine the release conditions of a person charged with a crime in-
2 cluding release upon execution of an appearance bond may be conducted
3 by two-way electronic audio-video communication between the defend-
4 ant and the judge in lieu of personal presence of the defendant or de-
5 fendant's counsel in the courtroom in the discretion of the court. The
6 defendant may be accompanied by the defendant's counsel. The defend-
7 ant shall be informed of the defendant's right to be personally present in
8 the courtroom during such proceeding if the defendant so requests. Ex-
9 ercising the right to be present shall in no way prejudice the defendant.

10 (15) The magistrate may order the person to pay for any costs asso-
11 ciated with the supervision of the conditions of release of the appearance
12 bond in an amount not to exceed \$10 per week of such supervision.

13 Sec. 3. K.S.A. 22-2802 is hereby repealed.

14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.