

HOUSE BILL No. 2545

By Committee on Judiciary

1-26

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to appearance bonds; amending K.S.A. 2009 Supp. 22-2802 and
11 repealing the existing section.
12

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

14 Section 1. K.S.A. 2009 Supp. 22-2802 is hereby amended to read as
15 follows: 22-2802. (1) Any person charged with a crime shall, at the per-
16 son's first appearance before a magistrate, be ordered released pending
17 preliminary examination or trial upon the execution of an appearance
18 bond in an amount specified by the magistrate and sufficient to assure
19 the appearance of such person before the magistrate when ordered and
20 to assure the public safety. If the person is being bound over for a felony,
21 the bond shall also be conditioned on the person's appearance in the
22 district court or by way of a two-way electronic audio-video communi-
23 cation as provided in subsection (14) at the time required by the court to
24 answer the charge against such person and at any time thereafter that the
25 court requires. Unless the magistrate makes a specific finding otherwise,
26 if the person is being bonded out for a person felony or a person mis-
27 demeanor, the bond shall be conditioned on the person being prohibited
28 from having any contact with the alleged victim of such offense for a
29 period of at least 72 hours. The magistrate may impose such of the fol-
30 lowing additional conditions of release as will reasonably assure the ap-
31 pearance of the person for preliminary examination or trial:

- 32 (a) Place the person in the custody of a designated person or organ-
33 ization agreeing to supervise such person;
- 34 (b) place restrictions on the travel, association or place of abode of
35 the person during the period of release;
- 36 (c) impose any other condition deemed reasonably necessary to as-
37 sure appearance as required, including a condition requiring that the
38 person return to custody during specified hours;
- 39 (d) place the person under a house arrest program pursuant to K.S.A.
40 21-4603b, and amendments thereto; or
- 41 (e) place the person under the supervision of a court services officer
42 responsible for monitoring the person's compliance with any conditions
43 of release ordered by the magistrate.

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

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

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

23 (5) Except as provided further, the amount of the appearance bond
24 shall be the same whether executed as described in subsection (3) or
25 posted with a deposit of cash as described in subsection (4). When the
26 appearance bond has been set at ~~\$2,500~~ \$25,000 or less and the most
27 serious charge against the person is a misdemeanor, a severity level 8, 9
28 or 10 nonperson felony, a drug severity level 4 felony or a violation of
29 K.S.A. 8-1567, and amendments thereto, the magistrate may allow the
30 person to deposit cash with the clerk in the amount of 10% of the bond,
31 provided the person meets at least the following qualifications:

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

39 (6) In the discretion of the court, a person charged with a crime may
40 be released upon the person's own recognizance by guaranteeing pay-
41 ment of the amount of the bond for the person's failure to comply with
42 all requirements to appear in court. The release of a person charged with
43 a crime upon the person's own recognizance shall not require the deposit

1 of any cash by the person.

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

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

16 (9) The appearance bond shall set forth all of the conditions of
17 release.

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

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

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

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

40 (14) Proceedings before a magistrate as provided in this section to
41 determine the release conditions of a person charged with a crime in-
42 cluding release upon execution of an appearance bond may be conducted
43 by two-way electronic audio-video communication between the defend-

1 ant and the judge in lieu of personal presence of the defendant or de-
2 fendant's counsel in the courtroom in the discretion of the court. The
3 defendant may be accompanied by the defendant's counsel. The defend-
4 ant shall be informed of the defendant's right to be personally present in
5 the courtroom during such proceeding if the defendant so requests. Ex-
6 ercising the right to be present shall in no way prejudice the defendant.
7 (15) The magistrate may order the person to pay for any costs asso-
8 ciated with the supervision of the conditions of release of the appearance
9 bond in an amount not to exceed \$15 per week of such supervision.
10 Sec. 2. K.S.A. 2009 Supp. 22-2802 is hereby repealed.
11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the statute book.