

Legislative Testimony

In **Opposition** to SB254

Senate Committee on Federal and State Affairs

February 27th, 2025

In Person Testimony

Chairman Thompson and members of the committee,

Thank you for the opportunity to provide testimony in strong opposition to Senate Bill 254. My name is Rashane Hamby, and I am the Director of Policy and Research for the ACLU of Kansas. On behalf of our 35,000 supporters across the state I am here to oppose SB254. This legislation seeks to prohibit undocumented students from accessing in-state tuition rates at Kansas public colleges and universities, while also imposing a rebuttable presumption of flight risk on undocumented individuals in the criminal justice system. If enacted, SB 254 would not only strip opportunities from hardworking Kansas students but also create a two-tiered justice system that disproportionately harms immigrant communities.

Impact on Higher Education and Kansas Students

The Higher Education Act (HEA) prevents undocumented students from receiving federal financial aid, including Pell Grants. However, since 2004, Kansas has recognized the value of education by allowing certain undocumented students to qualify for in-state tuition under K.S.A. 76-731a. These students must meet stringent residency and academic criteria, including attending a Kansas high school for at least three years and filing an affidavit stating their intent to seek lawful immigration status. This policy has enabled thousands of students to afford higher education, contribute to the Kansas economy, and fill critical workforce needs.

- Over 5,100 undocumented students have benefited from this policy between 2010 and 2021
- As of fall 2021, at least 425 undocumented students were enrolled in Kansas higher education institutions under in-state tuition. The majority attended community colleges, with the largest enrollments at Johnson County Community College and Kansas City Kansas Community College.
- Without in-state tuition, these students face tuition rates two to three times higher, making college unaffordable for many.

Denying in-state tuition will not change these students' residency status; it will simply force them out of higher education. Fred Logan, former Vice Chairman of the Kansas Board of Regents, emphasized the importance of maintaining in-state tuition policies, noting that these students "are innocent" and "are great Kansans" (Logan, 2013). The Kansas Board of Regents has noted that students stripped of in-state tuition "just won't go [to college] as opposed to paying the higher

www.aclukansas.org
913-490-4100
Post Office Box 13048
Overland Park, KS 66282

ACLU
Kansas

Legislative Testimony

In **Opposition** to SB254

Senate Committee on Federal and State Affairs

February 27th, 2025

rate." This loss of educational attainment would have long-term economic consequences for the state, reducing the number of skilled graduates entering Kansas' workforce.

Harmful Changes to Pretrial Bond Provisions

Beyond education, SB 254 amends K.S.A. 22-2802, the statute governing pretrial release, to introduce a dangerous rebuttable presumption of flight risk for undocumented individuals charged with a crime.

- **Amendment to K.S.A. 22-2802:** Under this bill, any individual determined to be "unlawfully present" in the United States will be presumed to be a flight risk when charged with a crime. This creates an unfair burden on undocumented individuals, many of whom have deep ties to their communities, including families, jobs, and long-term residency. The presumption disregards these factors and forces individuals to overcome a legal obstacle that does not apply to other defendants. Furthermore, research has shown that undocumented individuals do not pose a higher flight risk than other groups, making this provision both unjust and legally dubious.
- **Mandatory Immigration Status Verification:** SB 254 requires that any non-U.S. citizen charged with a crime have their immigration status verified through the U.S. Department of Homeland Security *before* bond is determined. This is a radical shift from the current use of the Systematic Alien Verification for Entitlements (SAVE) program. It is primarily designed to assist federal, state, tribal, and local government agencies in verifying an individual's immigration status when determining eligibility for public benefits, licenses, or other lawful purposes. Its primary function is not for use in the criminal justice system, such as setting bail or bond amounts. Utilizing the program before setting bond in criminal proceedings raises ethical and legal concerns.
- **Restrictions on Pretrial Release:** Due to the presumption of flight risk, judges may be forced to set higher bond amounts, deny release on personal recognizance, and increase reliance on detention for undocumented individuals. This measure undermines the principle of individualized justice by treating all undocumented individuals as inherently untrustworthy, rather than evaluating their personal circumstances. Similar laws in other states have been found unconstitutional. In *Lopez-Valenzuela v. Arpaio* (2014), the 9th Circuit Court ruled that Arizona's Proposition 100—which denied bail to undocumented individuals—violated due process rights. In 2011, Oklahoma's Supreme Court justices declared that the provision that "creates a presumption of flight risk" was "a special law prohibited" by the Oklahoma Constitution. SB 254's presumption-of-flight provision is similarly flawed and would likely face legal challenges.

Legislative Testimony

In **Opposition** to SB254

Senate Committee on Federal and State Affairs

February 27th, 2025

Conclusion

SB 254 is an unjust and harmful bill that seeks to penalize undocumented Kansans who contribute to our communities, workforce, and economy. Stripping students of in-state tuition serves no economic benefit and only hinders access to education. Similarly, amending our bond laws to presume undocumented individuals are flight risks contradicts constitutional due process protections and will result in excessive pretrial incarceration. I urge this committee to reject SB 254 and instead support policies that promote fairness, due process, and access to education. Thank you for your time and consideration.

Thank you.

Rashane Hamby

Director of Policy and Research

References

Kansas in-state tuition for undocumented students a success. (2023, January 1). The Kansas City Star. <https://www.kansascity.com/opinion/readers-opinion/guest-commentary/article270589572.html>

Logan, F. (2013). Testimony before the Kansas House Committee on Education. Lawrence Journal-World. Retrieved from <https://www2.ljworld.com/news/2013/mar/20/sides-clash-hearing-bill-would-repeal-state-tuitio/>

Kansas Legislature. (2025). Senate Bill 254: An act concerning immigration, state and local public benefits, and pretrial release. Kansas Senate. Retrieved from https://www.ksrevisor.org/statutes/chapters/ch22/022_028_0002.html

Lopez-Valenzuela v. Arpaio, 770 F.3d 772 (9th Cir. 2014).

Carter, Ray. (2024). Oklahoma Supreme Court decision benefited illegal immigrant felons. Oklahoma Council of Public Affairs. Retrieved from <https://ocpathink.org/post/independent-journalism/oklahoma-supreme-court-decision-benefited-illegal-immigrant-felons>

www.aclukansas.org
913-490-4100
Post Office Box 13048
Overland Park, KS 66282

ACLU
Kansas