



# **"BAIL AGENTS ASSURE JUSTICE"**

Kansas Bail Agents Association  
2947 N. Athenian Ave., Wichita, Kansas 67204

## **Senate Committee on Federal and State Affairs**

### **Neutral Testimony – Senate Bill 254**

**Rick Morey**  
President  
Wichita, Kansas

**Shane Rolf**  
Executive Vice-President  
Olathe, Kansas

**Dennis Berndt**  
Treasurer  
Salina, Kansas

**JC. Loewen**  
Vice-President  
Newton, Kansas

**Laura Frisbie**  
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Wichita, Kansas

**David Stuckman**  
At-Large Director  
Manhattan Kansas

**Terri Deede Ricketts**  
At-Large Director  
Wichita, Kansas

**Candy Crow**  
Education Director  
Wichita, Kansas

**Michael Crow**  
At-Large Director  
Wichita, Kansas

**Pat Hiebert**  
At-Large Director  
Wichita, Kansas

**Ryan Eastep**  
At Large Director  
Wichita, Kansas

**Cal Williams**  
At Large Director  
Salina, Kansas

**Danny Slusser**  
At Large Director  
Wichita, Kansas

**Jonathan Gear**  
At Large Director  
Wichita, Kansas

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Chairman Thompson and Members of the Committee,

My name is Shane Rolf. I am the Executive Vice President of the Kansas Bail Agents Association. I have been in the bail bond business for 38 years and I have been testifying on bail issues before the Kansas Legislature since 1995. I am providing this testimony on behalf of the KBAA regarding Senate Bill 254.

This bill seems to have two parts. First, it prohibits aliens unlawfully in the country from receiving public benefits. Second, it attempts to make some changes to K.S.A. 22-2802 relating to the setting of bail, particularly as relates to unlawful aliens. The KBAA has no position on the public benefits section. We would like to share our perspective on the proposed changes to K.S.A. 22-2802.

As we see it, the proposed changes to K.S.A. 22-2802 would 1) require that the immigration status of non-citizens be verified, 2) create a "rebuttable presumption" that someone unlawfully present is a flight risk, and 3) there is a implication, albeit not expressly stated, that this is intended to deny the "grant or issuance" of an appearance bond. In short, it appears to imply that bail can be denied to non-citizens.

### **Denial of Bail**

Article 9 of the Kansas Bill of Rights states that "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." The Kansas Constitution only allows denial of bail in death penalty cases. Similarly, K.S.A. 22-2802 requires that "any person charged" be ordered released upon the execution of an appearance bond. There is no exception in the Constitution or the statute for non-citizens. Other states' courts have looked at similar statutory restrictions<sup>1</sup> on illegal aliens and found them to be unconstitutional for various reasons, especially those states with similar constitutional language.

<sup>1</sup> Lopez-Matias v Missouri, 504 S.W.3d 716 (2016)

If the intent of this bill is to deny bail to all illegal aliens, this will certainly spark a constitutional challenge, as it has in other states. The outcome of such a challenge is uncertain considering the current composition of the Appellate and Supreme Courts, who have been advocating for so called “bail reform” for the past several years. There is no guarantee that the Kansas courts would be limited in their findings and could very well use such a challenge to expand zero bail releases, which would be detrimental to public safety in Kansas, just as it has been everywhere else it has been tried.

Thankfully, giving the courts the opportunity to re-interpret Article 9 is not necessary to accomplish the goals of increasing appearance and enhancing public safety. We simply need to make sure aliens are not being released on unaccountable bail.

### **Lawfully Present – Rebuttable Presumption of Flight Risk**

For purposes of considering the defendant’s immigration status, the Court is already *required* to consider immigration status when setting bond and conditions of bond.

See K.S.A. 22-2802, paragraph 8: “the magistrate *shall* ... take into account ... whether the defendant is lawfully present in the United States.”<sup>2</sup>

In as much as the statute already requires the Court to consider immigration status, and the Kansas Constitution does not allow for the denial of bail in non-capital cases, creating a “rebuttable presumption” that the alien is a “flight risk” is meaningless. Not because it’s not a good idea, but rather because there are no additional consequences if such a determination is made. Bail cannot be denied and the court is still free to set whatever bond and bond conditions the court chooses.

Even if the defendant is determined to be a flight risk, nothing prevents the court from granting a signature bond release to an unlawful alien.

If we are to use this “rebuttable presumption” standard, then we would suggest adding language that restricts the ability of the Court to grant signature bonds to individuals who have been determined to be a flight risk or public safety risk while at the same time requiring the Court to actually have a hearing before granting signature release. And this is an actual problem that we see on a regular basis, defendants being granted signature bonds and then turned over to ICE, never to be seen again or answer to the charges against them.

Restricting the use of signature bonds – especially when coupled with an individualized determination of flight risk does not spark any constitutional concerns. There is a constitutional right in Kansas to bail by sufficient surety. There is no constitutional right to unsecured bail. By requiring aliens to post a secured bond versus a signature bond, both crime and failures to appear can be limited<sup>3</sup>.

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<sup>2</sup> This language was added to the statute over 15 years ago. The KBAA supported the bill at the time.

<sup>3</sup> Yolo County California – Zero Bail Case Study – Zero Bail Policies Increased Crime in Every Category (2022), See also: Bail, Crime & Public Safety, Harris County District Attorney, Kim Ogg Report (9/2/21)

### **Verification**

The bill requires that “if the person charged with a crime is not a citizen or national of the United States, such person’s immigration status shall be verified with the federal government pursuant to 8 U.S. Code § 1373(c).” We definitely support the idea of quickly determining immigration status, but this still raises questions.

- Who is responsible for making this request of the federal government?
- Does this fall to the court, the state prosecutor or the arresting agency?
- How long does this verification process take? Days? Weeks?
- Is this information sealed or available in the court’s public record?

As bail bondsmen we definitely need to know if the defendant is subject to immigration action. Obviously, non-citizens who might be subject to deportation are at a heightened risk of failure to appear – either voluntarily or involuntarily – and having that information would definitely impact our decision making and willingness to post bail for such individuals. By quickly indentifying unlawful aliens and requiring a secured bail, this will increase public safety since defendants released on bail have a demonstrably lower rate of recidivism than those released without bail (or on signature bonds).

### **Placement within the statute**

We feel that the bulk of this new language belongs in paragraph 8 of K.S.A. 22-2802. This section deals with the factors the court is supposed to consider when setting bail and conditions of bail. Increased focus on immigration status seems to fit better there.

While we are neutral on the bill – after all we don’t want to be in the business of bonding out people who are subject to deportation – I have attached proposed amendments that solve most of the concerns we have with the bill. We feel that these amendments will tighten up the bill, still accomplishing the goals of limiting pretrial release of unlawful immigrants and enhancing public safety without crossing the line into actual “preventative detention” – which is not allowed under the Kansas Constitution.

Thank you for your time and consideration.

Shane L Rolf  
Executive Vice-President  
Kansas Bail Agents Association

## **PROPOSED AMENDMENTS TO SB 254**

Page 2 Lines 30-35 – Remove the new language

Page 3 Lines 29-23 – Remove and replace with:

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, **after a hearing with the person charged present** that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

Page 4 – Lines 29-34 – Remove and replace with:

(6) In the discretion of the court, a person charged with a crime, **who is not a flight risk or a risk to public safety**, may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

Page 4 – Line 39 – Insert new section:

***(8)(A) If the person charged with a crime is not a citizen or national of the United States, such person's immigration status shall be verified with the federal government pursuant to 8 U.S.C. § 1373(c). It shall be a rebuttable presumption that a person who has been determined to be an alien unlawfully present in the United States is at risk of flight.***