

HOUSE BILL No. 2389

By Committee on Federal and State Affairs

Requested by Representative Essex on behalf of Representative L. Williams

2-26

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to release prior to trial; requiring certain prior convictions be
3 considered when bond is being set for certain sex offenses; amending
4 K.S.A. 22-2802 and 22-2803 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 22-2802 is hereby amended to read as follows: 22-
8 2802. ~~(1)~~(a) Any person charged with a crime shall, at the person's first
9 appearance before a magistrate, be ordered released pending preliminary
10 examination or trial upon the execution of an appearance bond in an
11 amount specified by the magistrate and sufficient to assure the appearance
12 of such person before the magistrate when ordered and to assure the public
13 safety. If the person is being bound over for a felony, the bond shall also be
14 conditioned on the person's appearance in the district court or by way of a
15 two-way electronic audio-video communication as provided in subsection
16 ~~(14)~~ (n) at the time required by the court to answer the charge against such
17 person and at any time thereafter that the court requires. Unless the
18 magistrate makes a specific finding otherwise, if the person is being
19 bonded out for a person felony or a person misdemeanor, the bond shall be
20 conditioned on the person being prohibited from having any contact with
21 the alleged victim of such offense for a period of at least 72 hours. The
22 magistrate may impose such of the following additional conditions of
23 release as will reasonably assure the appearance of the person for
24 preliminary examination or trial:

25 ~~(a)~~(1) Place the person in the custody of a designated person or
26 organization agreeing to supervise such person;

27 ~~(b)~~(2) place restrictions on the travel, association or place of abode of
28 the person during the period of release;

29 ~~(c)~~(3) impose any other condition deemed reasonably necessary to
30 assure appearance as required, including a condition requiring that the
31 person return to custody during specified hours;

32 ~~(d)~~(4) place the person under a house arrest program pursuant to
33 K.S.A. 21-6609, and amendments thereto; or

34 ~~(e)~~(5) place the person under the supervision of a court services
35 officer responsible for monitoring the person's compliance with any

1 conditions of release ordered by the magistrate. The magistrate may order
2 the person to pay for any costs associated with the supervision provided by
3 the court services department in an amount not to exceed \$15 per week of
4 such supervision. The magistrate may also order the person to pay for all
5 other costs associated with the supervision and conditions for compliance
6 in addition to the \$15 per week.

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

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

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

29 ~~(5)~~(e) Except as provided further, the amount of the appearance bond
30 shall be the same whether executed as described in subsection ~~(3)~~ (c) or
31 posted with a deposit of cash as described in subsection ~~(4)~~ (d). When the
32 appearance bond has been set at \$2,500 or less and the most serious charge
33 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
34 felony, a drug severity level 4 felony committed prior to July 1, 2012, a
35 drug severity level 5 felony committed on or after July 1, 2012, or a
36 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
37 allow the person to deposit cash with the clerk in the amount of 10% of the
38 bond, provided the person meets at least the following qualifications:

39 ~~(A)~~(1) Is a resident of the state of Kansas;

40 ~~(B)~~(2) has a criminal history score category of G, H or I;

41 ~~(C)~~(3) has no prior history of failure to appear for any court
42 appearances;

43 ~~(D)~~(4) has no detainer or hold from any other jurisdiction;

1 ~~(E)~~(5) has not been extradited from, and is not awaiting extradition
2 to, another state; and

3 ~~(F)~~(6) has not been detained for an alleged violation of probation.

4 ~~(6)~~(f) In the discretion of the court, a person charged with a crime
5 may be released upon the person's own recognizance by guaranteeing
6 payment of the amount of the bond for the person's failure to comply with
7 all requirements to appear in court. The release of a person charged with a
8 crime upon the person's own recognizance shall not require the deposit of
9 any cash by the person.

10 ~~(7)~~(g) The court shall not impose any administrative fee.

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

25 ~~(9)~~(i) The appearance bond shall set forth all of the conditions of
26 release.

27 ~~(10)~~(j) A person for whom conditions of release are imposed and who
28 continues to be detained as a result of the person's inability to meet the
29 conditions of release shall be entitled, upon application, to have the
30 conditions reviewed without unnecessary delay by the magistrate who
31 imposed them. If the magistrate who imposed conditions of release is not
32 available, any other magistrate in the county may review such conditions.

33 ~~(11)~~(k) A magistrate ordering the release of a person on any
34 conditions specified in this section may at any time amend the order to
35 impose additional or different conditions of release. If the imposition of
36 additional or different conditions results in the detention of the person, the
37 provisions of subsection-~~(10)~~ (j) shall apply.

38 ~~(12)~~(l) Statements or information offered in determining the
39 conditions of release need not conform to the rules of evidence. No
40 statement or admission of the defendant made at such a proceeding shall
41 be received as evidence in any subsequent proceeding against the
42 defendant.

43 ~~(13)~~(m) The appearance bond and any security required as a condition

1 of the defendant's release shall be deposited in the office of the magistrate
2 or the clerk of the court where the release is ordered. If the defendant is
3 bound to appear before a magistrate or court other than the one ordering
4 the release, the order of release, together with the bond and security shall
5 be transmitted to the magistrate or clerk of the court before whom the
6 defendant is bound to appear.

7 ~~(14)~~(n) Proceedings before a magistrate as provided in this section to
8 determine the release conditions of a person charged with a crime
9 including release upon execution of an appearance bond may be conducted
10 by two-way electronic audio-video communication between the defendant
11 and the judge in lieu of personal presence of the defendant or defendant's
12 counsel in the courtroom in the discretion of the court. The defendant may
13 be accompanied by the defendant's counsel. The defendant shall be
14 informed of the defendant's right to be personally present in the courtroom
15 during such proceeding if the defendant so requests. Exercising the right to
16 be present shall in no way prejudice the defendant.

17 ~~(15)~~(o) The magistrate may order the person to pay for any costs
18 associated with the supervision of the conditions of release of the
19 appearance bond in an amount not to exceed \$15 per week of such
20 supervision. As a condition of sentencing under K.S.A. 21-6604, and
21 amendments thereto, the court may impose the full amount of any such
22 costs in addition to the \$15 per week, including, but not limited to, costs
23 for treatment and evaluation under subsection ~~(2)~~ (b).

24 *(p) If a defendant is charged with rape, as described in K.S.A. 21-*
25 *5503, and amendments thereto, criminal sodomy or aggravated criminal*
26 *sodomy, as described in K.S.A. 21-5504, and amendments thereto, sexual*
27 *battery or aggravated sexual battery, as described in K.S.A. 21-5505, and*
28 *amendments thereto, or indecent liberties with a child or aggravated*
29 *indecent liberties with a child, as described in K.S.A. 21-5506, and*
30 *amendments thereto, when setting the amount of an appearance bond and*
31 *conditions of release, the magistrate shall consider prior convictions of*
32 *such offenses or comparable out-of-state convictions.*

33 Sec. 2. K.S.A. 22-2803 is hereby amended to read as follows: 22-
34 2803. A person who remains in custody after review of such person's
35 application pursuant to ~~subsection (9) or (10) of~~ K.S.A. 22-2802(i) or (j),
36 and amendments thereto, by a district magistrate judge may apply to a
37 district judge of the judicial district in which the charge is pending to
38 modify the order fixing conditions of release. Such motion shall be
39 determined promptly.

40 Sec. 3. K.S.A. 22-2802 and 22-2803 are hereby repealed.

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