

SENATE BILL No. 188

By Committee on Judiciary

2-4

1 AN ACT concerning criminal procedure; relating to release prior to trial;
2 requiring a secured release when a person is charged with certain
3 offenses; replacing release on recognizance programs with unsecured
4 judicial release programs; amending K.S.A. 21-5703, 21-5709, 21-
5 5710, 21-5910, 21-5915, 21-6316, 21-6329, 22-2802, 22-2803, 22-
6 2814, 22-2815, 22-2816 and 22-2817 and repealing the existing
7 sections.
8

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

10 Section 1. K.S.A. 21-5703 is hereby amended to read as follows: 21-
11 5703. (a) It shall be unlawful for any person to manufacture any controlled
12 substance or controlled substance analog.

13 (b) Violation or attempted violation of subsection (a) is a:

14 (1) Drug severity level 2 felony, except as provided in subsections (b)
15 (2) and (b)(3);

16 (2) drug severity level 1 felony if:

17 (A) The controlled substance is not methamphetamine, as defined by
18 K.S.A. 65-4107(d)(3) or (f)(1), and amendments thereto, or an analog
19 thereof;

20 (B) the controlled substance is not a fentanyl-related controlled
21 substance; and

22 (C) the offender has a prior conviction for unlawful manufacturing of
23 a controlled substance under this section, K.S.A. 65-4159, prior to its
24 repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially
25 similar offense from another jurisdiction and the substance was not
26 methamphetamine, as defined by K.S.A. 65-4107(d)(3) or (f)(1), and
27 amendments thereto, or an analog thereof, in any such prior conviction;
28 and

29 (3) drug severity level 1 felony if the controlled substance is
30 methamphetamine, as defined by K.S.A. 65-4107(d)(3) or (f)(1), and
31 amendments thereto, or an analog thereof, or is a fentanyl-related
32 controlled substance.

33 (c) The provisions of K.S.A. 21-5301(d), and amendments thereto,
34 shall not apply to a violation of attempting to unlawfully manufacture any
35 controlled substance or controlled substance analog pursuant to this
36 section.

1 (d) For persons arrested and charged under this section, bail shall be
2 at least \$50,000 cash or surety, and such person shall not be released ~~upon~~
3 ~~the person's own recognizance~~ *on unsecured judicial release* pursuant to
4 K.S.A. 22-2802, and amendments thereto, unless the court determines, on
5 the record, that the defendant is not likely to re-offend, the court imposes
6 pretrial supervision, or the defendant agrees to participate in a licensed or
7 certified drug treatment program.

8 (e) The sentence of a person who violates this section shall not be
9 subject to statutory provisions for suspended sentence, community service
10 work or probation.

11 (f) The sentence of a person who violates this section, K.S.A. 65-
12 4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its
13 transfer, shall not be reduced because these sections prohibit conduct
14 identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to their
15 repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 21-
16 5705, and amendments thereto.

17 Sec. 2. K.S.A. 21-5709 is hereby amended to read as follows: 21-
18 5709. (a) It shall be unlawful for any person to possess ephedrine,
19 pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine,
20 anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or
21 their salts, isomers or salts of isomers with an intent to use the product to
22 manufacture a controlled substance.

23 (b) It shall be unlawful for any person to use or possess with intent to
24 use any drug paraphernalia to:

25 (1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
26 distribute a controlled substance; or

27 (2) store, contain, conceal, inject, ingest, inhale or otherwise
28 introduce a controlled substance into the human body.

29 (c) It shall be unlawful for any person to use or possess with intent to
30 use anhydrous ammonia or pressurized ammonia in a container not
31 approved for that chemical by the Kansas department of agriculture.

32 (d) It shall be unlawful for any person to purchase, receive or
33 otherwise acquire at retail any compound, mixture or preparation
34 containing more than 3.6 grams of pseudoephedrine base or ephedrine
35 base in any single transaction or any compound, mixture or preparation
36 containing more than nine grams of pseudoephedrine base or ephedrine
37 base within any 30-day period.

38 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;

39 (2) violation of subsection (b)(1) is a:

40 (A) Drug severity level 5 felony, except as provided in subsection (e)
41 (2)(B); and

42 (B) class B nonperson misdemeanor if the drug paraphernalia was
43 used to cultivate fewer than five marijuana plants;

1 (3) violation of subsection (b)(2) is a class B nonperson
2 misdemeanor;

3 (4) violation of subsection (c) is a drug severity level 5 felony; and

4 (5) violation of subsection (d) is a class A nonperson misdemeanor.

5 (f) For persons arrested and charged under subsection (a) or (c), bail
6 shall be at least \$50,000 cash or surety, and such person shall not be
7 released ~~upon the person's own recognizance~~ *on unsecured judicial release*
8 pursuant to K.S.A. 22-2802, and amendments thereto, unless the court
9 determines, on the record, that the defendant is not likely to reoffend, the
10 court imposes pretrial supervision or the defendant agrees to participate in
11 a licensed or certified drug treatment program.

12 Sec. 3. K.S.A. 21-5710 is hereby amended to read as follows: 21-
13 5710. (a) It shall be unlawful for any person to advertise, market, label,
14 distribute or possess with the intent to distribute:

15 (1) Any product containing ephedrine, pseudoephedrine, red
16 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
17 pressurized ammonia or phenylpropanolamine or their salts, isomers or
18 salts of isomers if the person knows or reasonably should know that the
19 purchaser will use the product to manufacture a controlled substance or
20 controlled substance analog; or

21 (2) any product containing ephedrine, pseudoephedrine or
22 phenylpropanolamine, or their salts, isomers or salts of isomers for
23 indication of stimulation, mental alertness, weight loss, appetite control,
24 energy or other indications not approved pursuant to the pertinent federal
25 over-the-counter drug final monograph or tentative final monograph or
26 approved new drug application.

27 (b) It shall be unlawful for any person to distribute, possess with the
28 intent to distribute or manufacture with intent to distribute any drug
29 paraphernalia, knowing or under circumstances where one reasonably
30 should know that it will be used to manufacture or distribute a controlled
31 substance or controlled substance analog in violation of K.S.A. 21-5701
32 through 21-5717, and amendments thereto.

33 (c) It shall be unlawful for any person to distribute, possess with
34 intent to distribute or manufacture with intent to distribute any drug
35 paraphernalia, knowing or under circumstances where one reasonably
36 should know, that it will be used as such in violation of K.S.A. 21-5701
37 through 21-5717, and amendments thereto, except subsection (b) of K.S.A.
38 21-5706, and amendments thereto.

39 (d) It shall be unlawful for any person to distribute, possess with
40 intent to distribute or manufacture with intent to distribute any drug
41 paraphernalia, knowing, or under circumstances where one reasonably
42 should know, that it will be used as such in violation of subsection (b) of
43 K.S.A. 21-5706, and amendments thereto.

- 1 (e) (1) Violation of subsection (a) is a drug severity level 3 felony;
- 2 (2) violation of subsection (b) is a:
- 3 (A) Drug severity level 5 felony, except as provided in subsection (e)
- 4 (2)(B); and
- 5 (B) drug severity level 4 felony if the trier of fact makes a finding that
- 6 the offender distributed or caused drug paraphernalia to be distributed to a
- 7 minor or on or within 1,000 feet of any school property;
- 8 (3) violation of subsection (c) is a:
- 9 (A) Nondrug severity level 9, nonperson felony, except as provided in
- 10 subsection (e)(3)(B); and
- 11 (B) drug severity level 5 felony if the trier of fact makes a finding that
- 12 the offender distributed or caused drug paraphernalia to be distributed to a
- 13 minor or on or within 1,000 feet of any school property; and
- 14 (4) violation of subsection (d) is a:
- 15 (A) Class A nonperson misdemeanor, except as provided in
- 16 subsection (e)(4)(B); and
- 17 (B) nondrug severity level 9, nonperson felony if the trier of fact
- 18 makes a finding that the offender distributed or caused drug paraphernalia
- 19 to be distributed to a minor or on or within 1,000 feet of any school
- 20 property.
- 21 (f) For persons arrested and charged under subsection (a), bail shall
- 22 be at least \$50,000 cash or surety, and such person shall not be released
- 23 ~~upon the person's own recognizance~~ *on unsecured judicial release*
- 24 pursuant to K.S.A. 22-2802, and amendments thereto, unless the court
- 25 determines, on the record, that the defendant is not likely to re-offend, the
- 26 court imposes pretrial supervision or the defendant agrees to participate in
- 27 a licensed or certified drug treatment program.
- 28 (g) As used in this section, "or under circumstances where one
- 29 reasonably should know" that an item will be used in violation of this
- 30 section, shall include, but not be limited to, the following:
- 31 (1) Actual knowledge from prior experience or statements by
- 32 customers;
- 33 (2) inappropriate or impractical design for alleged legitimate use;
- 34 (3) receipt of packaging material, advertising information or other
- 35 manufacturer supplied information regarding the item's use as drug
- 36 paraphernalia; or
- 37 (4) receipt of a written warning from a law enforcement or
- 38 prosecutorial agency having jurisdiction that the item has been previously
- 39 determined to have been designed specifically for use as drug
- 40 paraphernalia.
- 41 Sec. 4. K.S.A. 21-5910 is hereby amended to read as follows: 21-
- 42 5910. (a) In its discretion and upon good cause, which may include, but is
- 43 not limited to, the declaration of a party's attorney, to believe that

1 intimidation or dissuasion of any victim or witness has occurred or is
2 reasonably likely to occur, any court having jurisdiction over any civil or
3 criminal matter may issue any reasonable order necessary to remedy or
4 prevent the intimidation or dissuasion, including, but not limited to, an
5 order that:

6 (1) Any person before the court, including, but not limited to, a party,
7 subpoenaed witness or other person entering the courtroom of the court,
8 not violate any provision of this section or K.S.A. 21-5909, and
9 amendments thereto;

10 (2) any person described in this section maintain a prescribed
11 geographic distance from any specified witness or victim;

12 (3) any person described in this section have no communication
13 whatsoever with any specified witness or victim, except through an
14 attorney under such reasonable restrictions as the court imposes;

15 (4) calls for a hearing to determine if an order described in subsection
16 (a)(1), (a)(2) or (a)(3) should be issued; or

17 (5) a particular law enforcement agency within the jurisdiction of the
18 court provide protection for a victim or witness.

19 (b) Actions by a law enforcement agency pursuant to an order issued
20 under subsection (a)(5) shall be considered to be police protection within
21 the exemption from liability under the Kansas tort claims act for damages
22 resulting from the failure to provide, or the method of providing, police
23 protection.

24 (c) Violation of an order entered pursuant to subsection (a) may be
25 punished in any of the following ways:

26 (1) In the manner provided by K.S.A. 21-5909, and amendments
27 thereto, when applicable;

28 (2) as a contempt of the court making the order. No finding of
29 contempt shall be a bar to prosecution for a violation of K.S.A. 21-5909,
30 and amendments thereto, but:

31 (A) Any person held in contempt shall be entitled to have any
32 punishment imposed for contempt to be credited against any sentence
33 imposed upon conviction of a violation of K.S.A. 21-5909, and
34 amendments thereto; and

35 (B) any conviction or acquittal of a violation of subsection (a) or
36 K.S.A. 21-5909, and amendments thereto, shall be a bar to subsequent
37 punishment for contempt arising out of the same act; or

38 (3) by revocation of any form of pretrial release of a criminal
39 defendant or by the forfeiture of bail and the issuance of a bench warrant
40 for the defendant's arrest or remanding the defendant into custody. After a
41 hearing and upon a showing by clear and convincing evidence, the court,
42 in its sound discretion, may order the revocation whether the violation was
43 committed by the defendant personally or in any way caused or

1 encouraged it to be committed.

2 (d) (1) Any pretrial release of any criminal defendant, whether on bail
3 ~~or under another form of recognizance~~ *unsecured judicial release*, shall be
4 considered as a matter of law to include a condition that the defendant will
5 not commit, cause to be committed or knowingly permit to be committed,
6 on the defendant's behalf, any violation of this section or K.S.A. 21-5909,
7 and amendments thereto. Knowing violation of that condition is subject to
8 the sanction provided by subsection (c)(3), whether or not the defendant
9 was the subject of an order under subsection (a).

10 (2) Any receipt for any bail or bond given by any court, or by any
11 surety or bondsman and any written promise to appear ~~on one's own~~
12 ~~recognizance under an unsecured judicial release~~ shall contain notice of
13 the provisions of subsection (d)(1) in a conspicuous location.

14 (3) Any pretrial release of any criminal defendant whether on bail or
15 ~~under another form of recognizance~~ *unsecured judicial release* who
16 requests and is entitled to the assistance of counsel under the provisions of
17 K.S.A. 22-4503, and amendments thereto, shall be considered as a matter
18 of law to include a condition that the defendant shall pay the application
19 fee prescribed by K.S.A. 22-4529, and amendments thereto, and the failure
20 to pay such fee shall constitute a violation of this section. Knowing
21 violation of such condition is subject to the sanction provided by
22 subsection (c)(3), whether or not the defendant was the subject of an order
23 under subsection (a).

24 Sec. 5. K.S.A. 21-5915 is hereby amended to read as follows: 21-
25 5915. (a) Failure to appear is knowingly incurring a forfeiture of an
26 appearance bond and failing to surrender oneself within 30 days following
27 the date of such forfeiture by one who is charged with a misdemeanor and
28 has been released on bond for appearance before any court of this state,
29 other than the municipal court of a city, for trial or other proceeding prior
30 to conviction, or knowingly incurring a forfeiture of an appearance bond
31 and failing to surrender oneself within 30 days after such person's
32 conviction of a misdemeanor has become final by one who has been
33 released on an appearance bond by any court of this state.

34 (b) Aggravated failure to appear is knowingly incurring a forfeiture
35 of an appearance bond and failing to surrender oneself within 30 days
36 following the date of such forfeiture by one who is charged with a felony
37 and has been released on bond for appearance before any court of this
38 state, or knowingly incurring a forfeiture of an appearance bond and
39 failing to surrender oneself within 30 days after oneself's conviction of a
40 felony has become final by one who has been released on an appearance
41 bond by any court of this state.

42 (c) (1) Failure to appear is a class B nonperson misdemeanor.

43 (2) Aggravated failure to appear is a severity level 10, nonperson

1 felony.

2 (d) The provisions of subsection (a) shall not apply to any person
3 who forfeits a cash bond supplied pursuant to law upon an arrest for a
4 traffic infraction or cigarette or tobacco infraction.

5 (e) Any person who is released ~~upon the person's own recognizance~~
6 *on unsecured judicial realse*, without surety, or who fails to appear in
7 response to a summons or traffic citation, shall be deemed a person
8 released on bond for appearance within the meaning of subsection (a).

9 Sec. 6. K.S.A. 21-6316 is hereby amended to read as follows: 21-
10 6316. When a criminal street gang member is arrested for a person felony,
11 bail shall be at least \$50,000 cash or surety, and such person shall not be
12 released ~~upon the person's own recognizance~~ *on unsecured judicial release*
13 pursuant to K.S.A. 22-2802, and amendments thereto, unless the court
14 determines on the record that the defendant is not likely to reoffend, an
15 appropriate intensive pre-trial supervision program is available and the
16 defendant agrees to comply with the mandate of such pre-trial supervision.

17 Sec. 7. K.S.A. 21-6329 is hereby amended to read as follows: 21-
18 6329. (a) Except as provided in subsection (b), it is unlawful for any
19 covered person:

20 (1) Who has recklessly received any proceeds derived, directly or
21 indirectly, from a pattern of racketeering activity or through the collection
22 of an unlawful debt to use or invest, whether directly or indirectly, any part
23 of such proceeds, or the proceeds derived from the investment or use
24 thereof, in the acquisition of any title to, or any right, interest; or equity in,
25 real property or in the establishment or operation of any enterprise;

26 (2) through a pattern of racketeering activity or through the collection
27 of an unlawful debt, to recklessly acquire or maintain, directly or
28 indirectly, any interest in or control of any enterprise or real property; or

29 (3) employed by, or associated with, any enterprise to recklessly
30 conduct or participate, directly or indirectly, in such enterprise through a
31 pattern of racketeering activity or the collection of an unlawful debt.

32 (b) It is not unlawful for a covered person to violate subsection (a)
33 through the collection of an unlawful debt if such person was not a
34 participant in a violation described in ~~subsection (i) of~~ K.S.A. 21-6328(i),
35 and amendments thereto, ~~which~~ *that* created such unlawful debt.

36 (c) Violation of this section or conspiracy to commit a violation of
37 this section is a severity level 2, person felony.

38 (d) The provisions of ~~subsection (d) of~~ K.S.A. 21-5302(d), and
39 amendments thereto, shall not apply to conspiracy to commit a violation of
40 this section.

41 (e) (1) Notwithstanding the provisions of K.S.A. 21-6611, and
42 amendments thereto, any person convicted of engaging in conduct in
43 violation of this section, through which the person derived pecuniary

1 value, or by which the person caused personal injury or property damage
2 or other loss, may be sentenced to pay a fine that does not exceed three
3 times the gross value gained or three times the gross loss caused,
4 whichever is the greater, plus court costs and the costs of investigation and
5 prosecution, reasonably incurred.

6 (2) The court shall hold a hearing to determine the amount of the fine
7 authorized by this subsection.

8 (3) For the purposes of this subsection, "pecuniary value" means:

9 (A) Anything of value in the form of money, a negotiable instrument,
10 or a commercial interest or anything else the primary significance of which
11 is economic advantage; and

12 (B) any other property or service that has a value in excess of \$100.

13 (f) For persons arrested and charged under this section, bail shall be
14 at least \$50,000 cash or surety, and such person shall not be released ~~upon~~
15 ~~the person's own recognizance~~ *on unsecured judicial release* pursuant to
16 K.S.A. 22-2802, and amendments thereto, unless the court determines on
17 the record that the defendant is not likely to re-offend, an appropriate
18 intensive pretrial supervision program is available and the defendant
19 agrees to comply with the mandate of such pretrial supervision.

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

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

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

42 ~~(e)~~(3) impose any other condition deemed reasonably necessary to
43 assure appearance as required, including a condition requiring that the

1 person return to custody during specified hours;

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

4 ~~(e)~~(5) place the person under the supervision of a court services
5 officer responsible for monitoring the person's compliance with any
6 conditions of release ordered by the magistrate. The magistrate may order
7 the person to pay for any costs associated with the supervision provided by
8 the court services department in an amount not to exceed \$15 per week of
9 such supervision. The magistrate may also order the person to pay for all
10 other costs associated with the supervision and conditions for compliance
11 in addition to the \$15 per week.

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

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

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

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

- 1 ~~(A)~~(1) Is a resident of the state of Kansas;
- 2 ~~(B)~~(2) has a criminal history score category of G, H or I;
- 3 ~~(C)~~(3) has no prior history of failure to appear for any court
- 4 appearances;
- 5 ~~(D)~~(4) has no detainer or hold from any other jurisdiction;
- 6 ~~(E)~~(5) has not been extradited from, and is not awaiting extradition
- 7 to, another state; and
- 8 ~~(F)~~(6) has not been detained for an alleged violation of probation.
- 9 ~~(6)~~(f) In the discretion of the court, a person charged with a crime
- 10 may be released ~~upon the person's own recognizance by guaranteeing~~
- 11 ~~payment of the amount of the bond for the person's failure to comply with~~
- 12 ~~all requirements to appear in court on unsecured judicial release. The~~
- 13 ~~release of a person charged with a crime upon the person's own~~
- 14 ~~recognizance on unsecured judicial release shall not require the deposit of~~
- 15 ~~any cash by the person.~~
- 16 ~~(7)~~(g) The court shall not impose any administrative fee.
- 17 ~~(8)~~(h) In determining which conditions of release will reasonably
- 18 assure appearance and the public safety, the magistrate shall, on the basis
- 19 of available information, take into account the nature and circumstances of
- 20 the crime charged; the weight of the evidence against the defendant;
- 21 whether the defendant is lawfully present in the United States; the
- 22 defendant's family ties, employment, financial resources, character, mental
- 23 condition, length of residence in the community, record of convictions,
- 24 record of appearance or failure to appear at court proceedings or of flight
- 25 to avoid prosecution; the likelihood or propensity of the defendant to
- 26 commit crimes while on release, including whether the defendant will be
- 27 likely to threaten, harass or cause injury to the victim of the crime or any
- 28 witnesses thereto; and whether the defendant is on probation or parole
- 29 from a previous offense at the time of the alleged commission of the
- 30 subsequent offense.
- 31 ~~(9)~~(i) The appearance bond shall set forth all of the conditions of
- 32 release.
- 33 ~~(10)~~(j) A person for whom conditions of release are imposed and who
- 34 continues to be detained as a result of the person's inability to meet the
- 35 conditions of release shall be entitled, upon application, to have the
- 36 conditions reviewed without unnecessary delay by the magistrate who
- 37 imposed them. If the magistrate who imposed conditions of release is not
- 38 available, any other magistrate in the county may review such conditions.
- 39 ~~(11)~~(k) A magistrate ordering the release of a person on any
- 40 conditions specified in this section may at any time amend the order to
- 41 impose additional or different conditions of release. If the imposition of
- 42 additional or different conditions results in the detention of the person, the
- 43 provisions of subsection ~~(10)~~ (j) shall apply.

1 ~~(12)~~(l) Statements or information offered in determining the
 2 conditions of release need not conform to the rules of evidence. No
 3 statement or admission of the defendant made at such a proceeding shall
 4 be received as evidence in any subsequent proceeding against the
 5 defendant.

6 ~~(13)~~(m) The appearance bond and any security required as a condition
 7 of the defendant's release shall be deposited in the office of the magistrate
 8 or the clerk of the court where the release is ordered. If the defendant is
 9 bound to appear before a magistrate or court other than the one ordering
 10 the release, the order of release, together with the bond and security shall
 11 be transmitted to the magistrate or clerk of the court before whom the
 12 defendant is bound to appear.

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

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

30 Sec. 9. K.S.A. 22-2803 is hereby amended to read as follows: 22-
 31 2803. A person who remains in custody after review of such person's
 32 application pursuant to subsection-~~(9)~~ or ~~(10)~~ of K.S.A. 22-2802(i) or (j),
 33 and amendments thereto, by a district magistrate judge may apply to a
 34 district judge of the judicial district in which the charge is pending to
 35 modify the order fixing conditions of release. Such motion shall be
 36 determined promptly.

37 Sec. 10. K.S.A. 22-2814 is hereby amended to read as follows: 22-
 38 2814. Each district court may establish, operate and coordinate *unsecured*
 39 *judicial* release ~~on~~ ~~recognizance~~ programs and supervised release
 40 programs ~~which~~ ~~that~~ provide services to the court and to persons who are,
 41 or are to be, charged with crimes. *Unsecured judicial* release ~~on~~
 42 ~~recognizance~~ programs and supervised release programs shall be
 43 administered by court services officers and other personnel of the district

1 court. Participation by defendants in such programs shall be on a voluntary
 2 basis. Nothing in K.S.A. 22-2814 through 22-2817, and amendments
 3 thereto, shall affect the right of any person to seek or obtain release under
 4 K.S.A. 22-2802, and amendments thereto, regardless of participation or
 5 nonparticipation in *unsecured judicial release* ~~on recognizance~~ programs
 6 or supervised release programs.

7 Sec. 11. K.S.A. 22-2815 is hereby amended to read as follows: 22-
 8 2815. (a) *Unsecured judicial release* ~~on recognizance~~ programs shall
 9 consist of initial interviews with persons who are being detained and are,
 10 or are to be, charged with crimes, to obtain:

11 (1) Information about certain basic criteria closely related to the
 12 likelihood that the persons will appear in court if released,;

13 (2) an objective analysis of such information; and

14 (3) submission of such information and analysis to the court
 15 regarding those persons who are recommended to be released ~~on their~~
 16 ~~personal recognizance~~ *unsecured judicial release* under K.S.A. 22-2802,
 17 *and amendments thereto.*

18 (b) Among other criteria, the following basic variables shall be
 19 determined for each person interviewed under ~~a release on recognizance~~
 20 *an unsecured judicial release* program in ascertaining the likelihood that
 21 the person will appear in court if released:

22 (1) Length of residence in the local community;

23 (2) nature and extent of local family ties;

24 (3) time in the local area;

25 (4) stability of employment; and

26 (5) extent of prior criminal history.

27 (c) *No person shall be released on unsecured judicial release if such*
 28 *person is detained and charged, or to be charged, with:*

29 (1) *Capital murder as described in K.S.A. 21-5401, and amendments*
 30 *thereto;*

31 (2) *murder in the first degree as described in K.S.A. 21-5402, and*
 32 *amendments thereto;*

33 (3) *murder in the second degree as described in K.S.A. 21-5403, and*
 34 *amendments thereto;*

35 (4) *kidnapping or aggravated kidnapping as described in K.S.A. 21-*
 36 *5408, and amendments thereto;*

37 (5) *aggravated assault as described in K.S.A. 21-5412, and*
 38 *amendments thereto;*

39 (6) *aggravated battery as described in K.S.A. 21-5413, and*
 40 *amendments thereto;*

41 (7) *aggravated robbery as described in K.S.A. 21-5420, and*
 42 *amendments thereto;*

43 (8) *rape as described in K.S.A. 21-5503, and amendments thereto;*

1 (9) *criminal sodomy or aggravated criminal sodomy as described in*
 2 *K.S.A. 21-5504, and amendments thereto;*

3 (10) *aggravated sexual battery as described in K.S.A. 21-5505, and*
 4 *amendments thereto; or*

5 (11) *aggravated indecent liberties with a child as described in K.S.A.*
 6 *21-5506, and amendments thereto.*

7 Sec. 12. K.S.A. 22-2816 is hereby amended to read as follows: 22-
 8 2816. (a) Supervised release programs shall consist of extensive interviews
 9 with defendants who have been denied release on ~~personal recognizance to~~
 10 ~~select~~ *unsecured judicial release for the purpose of selecting* those
 11 defendants who, under some form of supervised release, are likely to
 12 appear in court when required, are likely to cooperate with and benefit
 13 from supervised release and are willing to actively participate therein.
 14 Defendants who are not residents of Kansas, ~~who~~ are the subject of
 15 specific detainer orders of other state or federal law enforcement agencies,
 16 *have been detained or charged with a crime that is described in K.S.A. 22-*
 17 *2815(c), and amendments thereto, or ~~who~~ are in need of physical or mental*
 18 *care or treatment, including care or treatment for any chemical dependency*
 19 *or intoxication, shall not be eligible for a recommendation for supervised*
 20 *release or to participate in a supervised release program.*

21 (b) Upon the basis of interviews and other available information,
 22 court services officers shall prepare and submit, in proper cases,
 23 recommendations to the court for supervised release of defendants and
 24 shall include suggestions for appropriate conditions for the release of the
 25 defendants. If the court orders the release of the defendant with the
 26 condition of specific participation in the supervised release program, the
 27 court services officer shall prepare and the defendant shall sign a written
 28 agreement containing:

29 (1) An acknowledgment of the relationship between the supervised
 30 release program and the defendant;;

31 (2) the details of the conditions of release; and

32 (3) a statement of the consequences of any breach of the agreement
 33 by the defendant.

34 (c) The supervised release program for each defendant shall be
 35 compatible with all required court appearances and ~~shall~~ include
 36 appropriate programs for diagnostic testing, education, skills training,
 37 employment and counseling. Each defendant under supervised release
 38 shall be closely supervised by a court services officer and may be
 39 terminated from the supervised release program by court order revoking
 40 the release order or by final disposition of the charges against the
 41 defendant.

42 Sec. 13. K.S.A. 22-2817 is hereby amended to read as follows: 22-
 43 2817. (a) For all purposes of *unsecured judicial release* ~~on recognizance~~

1 programs and supervised release programs, each district court may:

2 (1) Contract for services and facilities;

3 (2) receive property by gifts, devises and bequests; and

4 (3) sell or exchange any property so accepted and use, in any manner,
5 the proceeds or the property received in exchange.

6 (b) To the extent feasible, each district court establishing, operating or
7 coordinating *unsecured judicial release* ~~on recognizance~~ programs and
8 supervised release programs shall arrange, by contract or on such
9 alternative basis as may be mutually acceptable, for utilization of existing
10 local facilities and treatment and service resources, including, but not
11 limited, to employment, job training, general, special or remedial
12 education, psychiatric and marriage counseling; and alcohol and drug
13 abuse treatment and counseling. Each such district court shall approve the
14 development and maintenance of such resources by its own staff only if
15 the resources to be so developed and maintained are otherwise unavailable
16 to the court within reasonable proximity to the community where these
17 services are needed in connection with the *unsecured judicial release* ~~on~~
18 ~~recognizance~~ programs or supervised release programs. Each such district
19 court, to the extent feasible and advisable under the circumstances, may
20 use the services of volunteers for such programs and ~~may~~ solicit local
21 financial support from public, private, charitable and benevolent sources
22 therefor.

23 Sec. 14. K.S.A. 21-5703, 21-5709, 21-5710, 21-5910, 21-5915, 21-
24 6316, 21-6329, 22-2802, 22-2803, 22-2814, 22-2815, 22-2816 and 22-
25 2817 are hereby repealed.

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