

HOUSE BILL No. 2259

By Committee on Judiciary

2-9

1 AN ACT concerning criminal procedure; relating to appearance bonds;
2 amending K.S.A. 2010 Supp. 22-2802 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as
7 follows: 22-2802. (1) Any person charged with a crime shall, at the
8 person's first appearance before a magistrate, be ordered released pending
9 preliminary examination or trial upon the execution of an appearance
10 bond in an amount specified by the magistrate and sufficient to assure the
11 appearance of such person before the magistrate when ordered and to
12 assure the public safety. *When setting the amount of the appearance*
13 *bond, the magistrate shall articulate on the record the factual basis for*
14 *concluding that amount is sufficient to assure the appearance of the*
15 *person and assures the public safety. The court shall take into*
16 *consideration the factors set forth in subsection (8).* If the person is being
17 bound over for a felony, the bond shall also be conditioned on the
18 person's appearance in the district court or by way of a two-way
19 electronic audio-video communication as provided in subsection (14) at
20 the time required by the court to answer the charge against such person
21 and at any time thereafter that the court requires. Unless the magistrate
22 makes a specific finding otherwise, if the person is being bonded out for a
23 person felony or a person misdemeanor, the bond shall be conditioned on
24 the person being prohibited from having any contact with the alleged
25 victim of such offense for a period of at least 72 hours. The magistrate
26 may impose such of the following additional conditions of release as will
27 reasonably assure the appearance of the person for preliminary
28 examination or trial:

29 (a) Place the person in the custody of a designated person or
30 organization agreeing to supervise such person;

31 (b) place restrictions on the travel, association or place of abode of
32 the person during the period of release;

33 (c) impose any other condition deemed reasonably necessary to
34 assure appearance as required, including a condition requiring that the
35 person return to custody during specified hours;

36 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~

1 ~~21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas,*
2 and amendments thereto; or

3 (e) place the person under the supervision of a court services officer
4 responsible for monitoring the person's compliance with any conditions
5 of release ordered by the magistrate.

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

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

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

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

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

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

39 ~~(C)~~ (c) has no prior history of failure to appear for any court
40 appearances;

41 ~~(D)~~ (d) has no detainer or hold from any other jurisdiction;

42 ~~(E)~~ (e) has not been extradited from, and is not awaiting extradition
43 to, another state; and

1 ~~(F)~~ (f) has not been detained for an alleged violation of probation.

2 *The magistrate is required to articulate the documentation for each of*
3 *these qualifications on the record at the time the bond is set. If the*
4 *magistrate does not have a factual basis for making each of these*
5 *findings, the magistrate may not allow the person to deposit cash with the*
6 *clerk in the amount of 10% of the bond.*

7 ~~(6) In the discretion of the court, Provided the person meets the~~
8 *following qualifications, the magistrate may order that a person charged*
9 *with a crime may be released upon the person's own recognizance by*
10 *guaranteeing payment of the amount of the bond for the person's failure*
11 *to comply with all requirements to appear in court. The release of a*
12 *person charged with a crime upon the person's own recognizance shall*
13 *not require the deposit of any cash by the person.:*

14 *(a) The most serious charge against the person is a misdemeanor, a*
15 *severity level 8, 9 or 10 nonperson felony, or a drug severity level 4*
16 *felony;*

17 *(b) is a resident of the state of Kansas;*

18 *(c) has a criminal history score category of H or I;*

19 *(d) has no prior history of failure to appear for any court*
20 *appearances;*

21 *(e) has no detainer or hold from any other jurisdiction;*

22 *(f) has not been extradited from, and is not awaiting extradition to,*
23 *another state; and*

24 *(g) has not been detained for an alleged violation of probation.*

25 *When ordering release on a person's own recognizance, the*
26 *magistrate is required to articulate the support on the record that such an*
27 *appearance bond is sufficient to assure the appearance of the person and*
28 *assures the public safety.*

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

30 (8) In determining which conditions of release will reasonably
31 assure appearance and the public safety, the magistrate shall, on the basis
32 of available information, take into account the nature and circumstances
33 of the crime charged; the weight of the evidence against the defendant;
34 the defendant's family ties, employment, financial resources, character,
35 mental condition, length of residence in the community, record of
36 convictions, record of appearance or failure to appear at court
37 proceedings or of flight to avoid prosecution; the likelihood or propensity
38 of the defendant to commit crimes while on release, including whether
39 the defendant will be likely to threaten, harass or cause injury to the
40 victim of the crime or any witnesses thereto; and whether the defendant is
41 on probation or parole from a previous offense at the time of the alleged
42 commission of the subsequent offense.

43 (9) The appearance bond shall set forth all of the conditions of

1 release.

2 (10) A person for whom conditions of release are imposed and who
3 continues to be detained as a result of the person's inability to meet the
4 conditions of release shall be entitled, upon application, to have the
5 conditions reviewed without unnecessary delay by the magistrate who
6 imposed them. If the magistrate who imposed conditions of release is not
7 available, any other magistrate in the county may review such conditions.

8 (11) A magistrate ordering the release of a person on any conditions
9 specified in this section may at any time amend the order to impose
10 additional or different conditions of release. If the imposition of
11 additional or different conditions results in the detention of the person,
12 the provisions of subsection (10) shall apply.

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

17 (13) The appearance bond and any security required as a condition
18 of the defendant's release shall be deposited in the office of the magistrate
19 or the clerk of the court where the release is ordered. If the defendant is
20 bound to appear before a magistrate or court other than the one ordering
21 the release, the order of release, together with the bond and security shall
22 be transmitted to the magistrate or clerk of the court before whom the
23 defendant is bound to appear.

24 (14) Proceedings before a magistrate as provided in this section to
25 determine the release conditions of a person charged with a crime
26 including release upon execution of an appearance bond may be
27 conducted by two-way electronic audio-video communication between
28 the defendant and the judge in lieu of personal presence of the defendant
29 or defendant's counsel in the courtroom in the discretion of the court. The
30 defendant may be accompanied by the defendant's counsel. The defendant
31 shall be informed of the defendant's right to be personally present in the
32 courtroom during such proceeding if the defendant so requests.
33 Exercising the right to be present shall in no way prejudice the defendant.

34 (15) The magistrate may order the person to pay for any costs
35 associated with the supervision of the conditions of release of the
36 appearance bond in an amount not to exceed \$15 per week of such
37 supervision.

38 Sec. 2. K.S.A. 2010 Supp. 22-2802 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.

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