

**HOUSE BILL No. 2346**

By Committee on Corrections and Juvenile Justice

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to pretrial release of defendants; authorizing supervision by pretrial  
3 supervision entity or program; payment of fees; amending K.S.A. 22-  
4 2803, 22-2814 and 22-2816 and K.S.A. 2020 Supp. 22-2802 and  
5 repealing the existing sections.  
6

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

8 Section 1. K.S.A. 2020 Supp. 22-2802 is hereby amended to read as  
9 follows: 22-2802. ~~(1)~~(a) Any person charged with a crime shall, at the  
10 person's first appearance before a magistrate, be ordered released pending  
11 preliminary examination or trial upon the execution of an appearance bond  
12 in an amount specified by the magistrate and sufficient to assure the  
13 appearance of such person before the magistrate when ordered and to  
14 assure the public safety. If the person is being bound over for a felony, the  
15 bond shall also be conditioned on the person's appearance in the district  
16 court or by way of a two-way electronic audio-video communication as  
17 provided in subsection ~~(14)~~ (n) at the time required by the court to answer  
18 the charge against such person and at any time thereafter that the court  
19 requires. Unless the magistrate makes a specific finding otherwise, if the  
20 person is being bonded out for a person felony or a person misdemeanor,  
21 the bond shall be conditioned on the person being prohibited from having  
22 any contact with the alleged victim of such offense for a period of at least  
23 72 hours. The magistrate may impose such of the following additional  
24 conditions of release as will reasonably assure the appearance of the  
25 person for preliminary examination or trial:

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

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

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

33 ~~(d)~~(4) place the person under a house arrest program pursuant to  
34 K.S.A. 2020 Supp. 21-6609, and amendments thereto; or

35 ~~(e)~~(5) place the person under the supervision of a court services  
36 officer *or a pretrial supervision entity or program* responsible for

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

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

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

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

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

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

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

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

1       ~~(D)~~(4) has no detainer or hold from any other jurisdiction;  
2       ~~(E)~~(5) has not been extradited from, and is not awaiting extradition  
3 to, another state; and

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

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

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

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

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

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

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

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

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

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

18       ~~(15)~~(o) (1) The magistrate may order the person to pay for any costs  
19 associated with the supervision of the conditions of release of the  
20 appearance bond in an amount not to exceed \$15 per week of such  
21 supervision. As a condition of sentencing under K.S.A. 2020 Supp. 21-  
22 6604, and amendments thereto, the court may impose the full amount of  
23 any such costs in addition to the \$15 per week, including, but not limited to,  
24 to, costs for treatment and evaluation under subsection-~~(2)~~ (b).

25       (2) *A chief judge may direct the remittance of such funds to the state*  
26 *treasury in accordance with the provisions of K.S.A. 75-4215, and*  
27 *amendments thereto. Upon receipt of each such remittance, the state*  
28 *treasurer shall deposit the entire amount in the state treasury to the credit*  
29 *of the nonjudicial salary adjustment fund established pursuant to K.S.A.*  
30 *20-1a15, and amendments thereto. Such moneys shall not be considered*  
31 *supplemental compensation pursuant to K.S.A. 20-162(a) or 20-361(a),*  
32 *and amendments thereto.*

33       (3) *The defendant may petition the court to waive payment of the*  
34 *costs assessed pursuant to this subsection. The court may waive the costs*  
35 *in whole or in part for good cause shown.*

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

43       Sec. 3. K.S.A. 22-2814 is hereby amended to read as follows: 22-

1 2814. Each district court may establish, operate and coordinate release on  
2 recognizance programs and supervised release programs which provide  
3 services to the court and to persons who are, or are to be, charged with  
4 crimes. Release on recognizance programs and supervised release  
5 programs shall be administered by court services officers ~~and other~~  
6 ~~personnel of the district court~~ *or a pretrial supervision entity or program*.  
7 Participation by defendants in such programs shall be on a voluntary basis.  
8 Nothing in K.S.A. 22-2814 through 22-2817, and amendments thereto,  
9 shall affect the right of any person to seek or obtain release under K.S.A.  
10 22-2802, and amendments thereto, regardless of participation or  
11 nonparticipation in release on recognizance programs or supervised release  
12 programs.

13 Sec. 4. K.S.A. 22-2816 is hereby amended to read as follows: 22-  
14 2816. (a) Supervised release programs shall consist of extensive interviews  
15 with defendants who have been denied release on personal recognizance to  
16 select those defendants who under some form of supervised release are  
17 likely to appear in court when required, are likely to cooperate with and  
18 benefit from supervised release and are willing to actively participate  
19 therein. Defendants who are not residents of Kansas, who are the subject  
20 of specific detainer orders of other state or federal law enforcement  
21 agencies or who are in need of physical or mental care or treatment,  
22 including care or treatment for any chemical dependency or intoxication,  
23 shall not be eligible for a recommendation for supervised release or to  
24 participate in a supervised release program.

25 (b) Upon the basis of interviews and other available information,  
26 court services officers *or pretrial supervision programs designated by the*  
27 *judge* shall prepare and submit, in proper cases, recommendations to the  
28 court for supervised release of defendants and shall include suggestions for  
29 appropriate conditions for the release of the defendants. If the court orders  
30 the release of the defendant with the condition of specific participation in  
31 the supervised release program, the court services officer *or pretrial*  
32 *supervision program* shall prepare and the defendant shall sign a written  
33 agreement containing:

34 (1) An acknowledgment of the relationship between the supervised  
35 release program and the defendant;

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

37 (3) a statement of the consequences of any breach of the agreement  
38 by the defendant.

39 (c) The supervised release program for each defendant shall be  
40 compatible with all required court appearances and shall include  
41 appropriate programs for diagnostic testing, education, skills training,  
42 employment and counseling. Each defendant under supervised release  
43 shall be closely supervised by a court services officer *or pretrial*

1 *supervision program* and may be terminated from the supervised release  
2 program by court order revoking the release order or by final disposition  
3 of the charges against the defendant.

4 Sec. 5. K.S.A. 22-2803, 22-2814 and 22-2816 and K.S.A. 2020 Supp.  
5 22-2802 are hereby repealed.

6 Sec. 6. This act shall take effect and be in force from and after its  
7 publication in the statute book.