

SENATE BILL No. 176

By Committee on Judiciary

2-10

1 AN ACT concerning criminal procedure; relating to conditions of release
2 and bond; considerations by court; amending K.S.A. 2010 Supp. 22-
3 2802 and repealing the existing section.

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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. If the person is being bound over for a felony, the
13 bond shall also be conditioned on the person's appearance in the district
14 court or by way of a two-way electronic audio-video communication as
15 provided in subsection (14) at the time required by the court to answer the
16 charge against such person and at any time thereafter that the court
17 requires. Unless the magistrate makes a specific finding otherwise, if the
18 person is being bonded out for a person felony or a person misdemeanor,
19 the bond shall be conditioned on the person being prohibited from having
20 any contact with the alleged victim of such offense for a period of at least
21 72 hours. The magistrate may impose such of the following additional
22 conditions of release as will reasonably assure the appearance of the
23 person for preliminary examination or trial:

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

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

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

31 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~
32 ~~21-4603b~~ section 249 of chapter 136 of the 2010 Session Laws of Kansas,
33 and amendments thereto; or

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

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

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

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

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

- 32 (A) Is a resident of the state of Kansas;
33 (B) has a criminal history score category of G, H or I;
34 (C) has no prior history of failure to appear for any court
35 appearances;
36 (D) has no detainer or hold from any other jurisdiction;
37 (E) has not been extradited from, and is not awaiting extradition to,
38 another state; and
39 (F) has not been detained for an alleged violation of probation.

40 (6) In the discretion of the court, a person charged with a crime may
41 be released upon the person's own recognizance by guaranteeing payment
42 of the amount of the bond for the person's failure to comply with all
43 requirements to appear in court. The release of a person charged with a

1 crime upon the person's own recognizance shall not require the deposit of
2 any cash by the person.

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

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

18 (9) The appearance bond shall set forth all of the conditions of
19 release.

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

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

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

35 (13) The appearance bond and any security required as a condition
36 of the defendant's release shall be deposited in the office of the magistrate
37 or the clerk of the court where the release is ordered. If the defendant is
38 bound to appear before a magistrate or court other than the one ordering
39 the release, the order of release, together with the bond and security shall
40 be transmitted to the magistrate or clerk of the court before whom the
41 defendant is bound to appear.

42 (14) Proceedings before a magistrate as provided in this section to
43 determine the release conditions of a person charged with a crime

1 including release upon execution of an appearance bond may be
2 conducted by two-way electronic audio-video communication between
3 the defendant and the judge in lieu of personal presence of the defendant
4 or defendant's counsel in the courtroom in the discretion of the court. The
5 defendant may be accompanied by the defendant's counsel. The defendant
6 shall be informed of the defendant's right to be personally present in the
7 courtroom during such proceeding if the defendant so requests.
8 Exercising the right to be present shall in no way prejudice the defendant.

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

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

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

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