

[As Amended by House Committee of the Whole]

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[As Amended by Senate Committee of the Whole]

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Session of 2007

## SENATE BILL No. 203

By Committee on Judiciary

1-26

16 AN ACT concerning criminal procedure; relating to appearance bonds;  
17 amending K.S.A. 22-2803 and K.S.A. 2006 Supp. 22-2802 and 22-2807  
18 and repealing the existing sections.

19

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

21 Section 1. K.S.A. 2006 Supp. 22-2802 is hereby amended to read as  
22 follows: 22-2802. (1) Any person charged with a crime shall, at the per-  
23 son's first appearance before a magistrate, be ordered released pending  
24 preliminary examination or trial upon the execution of an appearance  
25 bond in an amount specified by the magistrate and sufficient to assure  
26 the appearance of such person before the magistrate when ordered and  
27 to assure the public safety. If the person is being bound over for a felony,  
28 the bond shall also be conditioned on the person's appearance in the  
29 district court or by way of a two-way electronic audio-video communi-  
30 cation as provided in subsection ~~(11)~~ (14) at the time required by the  
31 court to answer the charge against such person and at any time thereafter  
32 that the court requires. Unless the magistrate makes a specific finding  
33 otherwise, if the person is being bonded out for a person felony or a  
34 person misdemeanor, the bond shall be conditioned on the person being  
35 prohibited from having any contact with the alleged victim of such offense  
36 for a period of at least 72 hours. The magistrate may impose such of the  
37 following additional conditions of release as will reasonably assure the  
38 appearance of the person for preliminary examination or trial:

- 39 (a) Place the person in the custody of a designated person or organ-  
40 ization agreeing to supervise such person;  
41 (b) place restrictions on the travel, association or place of abode of  
42 the person during the period of release;  
43 (c) impose any other condition deemed reasonably necessary to as-

1 sure appearance as required, including a condition requiring that the  
2 person return to custody during specified hours;

3 (d) place the person under a house arrest program pursuant to K.S.A.  
4 21-4603b, and amendments thereto; or

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

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

15 (3) The appearance bond shall be executed ~~with sufficient solvent~~  
16 ~~sureties who are residents of the state of Kansas by a surety authorized~~  
17 ~~by the commissioner of insurance to write insurance bonds or by a surety~~  
18 ~~authorized by the court pursuant to K.S.A. 22-2806, and amendments~~  
19 ~~thereto~~ **with sufficient solvent sureties who are residents of the state**  
20 **of Kansas**, unless the magistrate determines, in the exercise of such mag-  
21 istrate's discretion, that requiring sureties is not necessary to assure the  
22 appearance of the person at the time ordered.

23 (4) A deposit of cash in the amount of the bond may be made in lieu  
24 of the execution of the bond ~~by sureties pursuant to paragraph (3). Such~~  
25 ~~deposit shall be in the full amount of the bond and in no event shall a~~  
26 ~~deposit of cash in less than the full amount of bond be permitted. Any~~  
27 ~~person charged with a crime who is released on a cash bond shall be~~  
28 ~~entitled to a refund of all moneys paid for the cash bond, **after deduction**~~  
29 **of any outstanding restitution, costs, fines and fees, after the final**  
30 **disposition of the criminal case if the person complies with all require-**  
31 **ments to appear in court. The court may not exclude the option of posting**  
32 **bond pursuant to paragraph (3).**

33 (5) *The amount of the appearance bond shall be the same whether*  
34 *executed as described in subsection (3) or posted with a deposit of cash*  
35 *as described in subsection (4).*

36 (6) *In the discretion of the court, a person charged with a crime may*  
37 *be released upon the person's own recognizance by guaranteeing payment*  
38 *of the amount of the bond for the person's failure to comply with all*  
39 *requirements to appear in court. The release of a person charged with a*  
40 *crime upon the person's own recognizance shall not require the deposit*  
41 *of any cash by the person.*

42 (7) *The court shall not impose any administrative fee ~~or keep any~~*  
43 *portion of a bond posted pursuant to this section.*

1     ~~(5)~~ (8) In determining which conditions of release will reasonably  
2 assure appearance and the public safety, the magistrate shall, on the basis  
3 of available information, take into account the nature and circumstances  
4 of the crime charged; the weight of the evidence against the defendant;  
5 the defendant's family ties, employment, financial resources, character,  
6 mental condition, length of residence in the community, record of con-  
7 victions, record of appearance or failure to appear at court proceedings  
8 or of flight to avoid prosecution; the likelihood or propensity of the de-  
9 fendant to commit crimes while on release, including whether the de-  
10 fendant will be likely to threaten, harass or cause injury to the victim of  
11 the crime or any witnesses thereto; and whether the defendant is on  
12 probation or parole from a previous offense at the time of the alleged  
13 commission of the subsequent offense.

14     ~~(6)~~ (9) The appearance bond shall set forth all of the conditions of  
15 release.

16     ~~(7)~~ (10) A person for whom conditions of release are imposed and  
17 who continues to be detained as a result of the person's inability to meet  
18 the conditions of release shall be entitled, upon application, to have the  
19 conditions reviewed without unnecessary delay by the magistrate who  
20 imposed them. If the magistrate who imposed conditions of release is not  
21 available, any other magistrate in the county may review such conditions.

22     ~~(8)~~ (11) A magistrate ordering the release of a person on any condi-  
23 tions specified in this section may at any time amend the order to impose  
24 additional or different conditions of release. If the imposition of additional  
25 or different conditions results in the detention of the person, the provi-  
26 sions of subsection ~~(7)~~ (10) shall apply.

27     ~~(9)~~ (12) Statements or information offered in determining the con-  
28 ditions of release need not conform to the rules of evidence. No statement  
29 or admission of the defendant made at such a proceeding shall be received  
30 as evidence in any subsequent proceeding against the defendant.

31     ~~(10)~~ (13) The appearance bond and any security required as a con-  
32 dition of the defendant's release shall be deposited in the office of the  
33 magistrate or the clerk of the court where the release is ordered. If the  
34 defendant is bound to appear before a magistrate or court other than the  
35 one ordering the release, the order of release, together with the bond  
36 and security shall be transmitted to the magistrate or clerk of the court  
37 before whom the defendant is bound to appear.

38     ~~(11)~~ (14) Proceedings before a magistrate as provided in this section  
39 to determine the release conditions of a person charged with a crime  
40 including release upon execution of an appearance bond may be con-  
41 ducted by two-way electronic audio-video communication between the  
42 defendant and the judge in lieu of personal presence of the defendant or  
43 defendant's counsel in the courtroom in the discretion of the court. The

1 defendant may be accompanied by the defendant's counsel. The defend-  
2 ant shall be informed of the defendant's right to be personally present in  
3 the courtroom during such proceeding if the defendant so requests. Ex-  
4 exercising the right to be present shall in no way prejudice the defendant.

5 ~~(12)~~ (15) The magistrate may order the person to pay for any costs  
6 associated with the supervision of the conditions of release of the ap-  
7 pearance bond in an amount not to exceed \$10 per week of such  
8 supervision.

9 Sec. 2. K.S.A. 22-2803 is hereby amended to read as follows: 22-  
10 2803. A person who remains in custody after review of such person's  
11 application pursuant to subsection ~~(6) or (7)~~ (9) or (10) of K.S.A. 22-2802  
12 and amendments thereto by a district magistrate judge may apply to a  
13 district judge of the judicial district in which the charge is pending to  
14 modify the order fixing conditions of release. Such motion shall be de-  
15 termined promptly.

16 Sec. 3. K.S.A. 2006 Supp. 22-2807 is hereby amended to read as  
17 follows: 22-2807. (1) ~~If there is a breach of condition of a defendant fails~~  
18 ~~to appear as directed by the court and guaranteed by~~ an appearance bond,  
19 the court in which the bond is deposited shall declare a forfeiture of the  
20 bail.

21 (2) ~~An appearance bond may only be forfeited upon a failure to ap-~~  
22 ~~pear~~ by the court [**upon a failure to appear**]. If a defendant violates  
23 any other condition of bond, the bond may be revoked and the defendant  
24 remanded to custody. The magistrate shall forthwith set a new bond pur-  
25 suant to requirements of K.S.A. 22-2802, and amendments thereto.

26 (3) The court may direct that a forfeiture be set aside, upon such  
27 conditions as the court may impose, if it appears that justice does not  
28 require the enforcement of the forfeiture.

29 ~~(3)~~ (4) When a forfeiture has not been set aside, the court shall on  
30 motion enter a judgment of default and execution may issue thereon. If  
31 the forfeiture has been decreed by a district magistrate judge and the  
32 amount of the bond exceeds the limits of the civil jurisdiction prescribed  
33 by law for a district magistrate judge, the judge shall notify the chief judge  
34 in writing of the forfeiture and the matter shall be assigned to a district  
35 judge who, on motion, shall enter a judgment of default. By entering into  
36 a bond the obligors submit to the jurisdiction of any court having power  
37 to enter judgment upon default and irrevocably appoint the clerk of that  
38 court as their agent upon whom any papers affecting their liability may  
39 be served. Their liability may be enforced on motion without the necessity  
40 of an independent action. The motion and notice thereof may be served  
41 on the clerk of the court, who shall forthwith mail copies to the obligors  
42 to their last known addresses. No default judgment shall be entered  
43 against the obligor in an appearance bond until more than 10 days after

1 notice is served as provided herein.

2 ~~(4)~~ (5) After entry of such judgment, the court may remit it in whole  
3 or in part under the conditions applying to the setting aside of forfeiture  
4 in subsection ~~(2)~~ (3).

5 Sec. 4. K.S.A. 22-2803 and K.S.A. 2006 Supp. 22-2802 and 22-2807  
6 are hereby repealed.

7 Sec. 5. This act shall take effect and be in force from and after its  
8 publication in the statute book.