

HOUSE BILL No. 2611

By Committee on Judiciary

Requested by Representative L. Williams

2-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to release prior to trial; providing limitations and restrictions on
3 releasing a person charged with a crime upon the person's own
4 recognizance; amending K.S.A. 2025 Supp. 22-2802 and repealing the
5 existing section.

6

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

8 Section 1. K.S.A. 2025 Supp. 22-2802 is hereby amended to read as
9 follows: 22-2802. (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 (n) at the time required by the court to answer the
18 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 (1) Place the person in the custody of a designated person or
27 organization agreeing to supervise such person;

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

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

35 (5) place the person under the supervision of a court services officer

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

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

15 (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 *after a hearing*
18 *at which the person charged is present*, that requiring sureties is not
19 necessary to assure the appearance of the person at the time ordered. *If the*
20 *magistrate determines that requiring sureties is not necessary, the*
21 *magistrate may release the person pursuant to subsection (f).*

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

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

42 (1) Is a resident of the state of Kansas;
43 (2) has a criminal history score category of G, H or I;

- 1 (3) has no prior history of failure to appear for any court appearances;
- 2 (4) has no detainer or hold from any other jurisdiction;
- 3 (5) has not been extradited from, and is not awaiting extradition to,
- 4 another state; and
- 5 (6) has not been detained for an alleged violation of probation.
- 6 (f) (1) In the discretion of the court, *after the hearing required in*
7 *subsection (c)*, a person charged with a *nonperson* crime may be released
8 upon the person's own recognizance by guaranteeing payment of the
9 amount of the bond for the person's failure to comply with all requirements
10 to appear in court *only if such person meets the following qualifications:*
11 (A) *Is a lawful resident of the state of Kansas;*
12 (B) *has no prior felony conviction;*
13 (C) *has no prior history of failure to appear for any court*
14 *appearances;*
15 (D) *has no detainer or hold from any other jurisdiction;*
16 (E) *has not been extradited from, and is not awaiting extradition to,*
17 *another state;*
18 (F) *has not been detained for an alleged violation of probation;*
19 (G) *has not been charged with a felony violation of K.S.A. 8-1567,*
20 *and amendments thereto; and*
21 (H) *has not been charged with a drug severity level 1, 2 or 3 felony.*
22 (2) The release of a person charged with a crime upon the person's
23 own recognizance shall not require the deposit of any cash by the person.
24 (g) The court shall not impose any administrative fee.
25 (h) In determining which conditions of release will reasonably assure
26 appearance and the public safety, the magistrate shall, on the basis of
27 available information, take into account the nature and circumstances of
28 the crime charged; the weight of the evidence against the defendant;
29 whether the defendant is lawfully present in the United States; the
30 defendant's family ties, employment, financial resources, character, mental
31 condition, length of residence in the community, record of convictions,
32 record of appearance or failure to appear at court proceedings or of flight
33 to avoid prosecution; the likelihood or propensity of the defendant to
34 commit crimes while on release, including whether the defendant will be
35 likely to threaten, harass or cause injury to the victim of the crime or any
36 witnesses thereto; and whether the defendant is on probation or parole
37 from a previous offense at the time of the alleged commission of the
38 subsequent offense.
39 (i) The appearance bond shall set forth all of the conditions of release.
40 (j) A person for whom conditions of release are imposed and who
41 continues to be detained as a result of the person's inability to meet the
42 conditions of release shall be entitled, upon application, to have the
43 conditions reviewed without unnecessary delay by the magistrate who

1 imposed them. If the magistrate who imposed conditions of release is not
2 available, any other magistrate in the county may review such conditions.

3 (k) A magistrate ordering the release of a person on any conditions
4 specified in this section may at any time amend the order to impose
5 additional or different conditions of release. If the imposition of additional
6 or different conditions results in the detention of the person, the provisions
7 of subsection (j) shall apply.

8 (l) Statements or information offered in determining the conditions of
9 release need not conform to the rules of evidence. No statement or
10 admission of the defendant made at such a proceeding shall be received as
11 evidence in any subsequent proceeding against the defendant.

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

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

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

36 (p) (1) If a defendant is charged with rape, as described in K.S.A. 21-
37 5503, and amendments thereto, criminal sodomy or aggravated criminal
38 sodomy, as described in K.S.A. 21-5504, and amendments thereto,
39 aggravated sexual battery, as described in K.S.A. 21-5505, and
40 amendments thereto, or indecent liberties with a child or aggravated
41 indecent liberties with a child, as described in K.S.A. 21-5506, and
42 amendments thereto, the magistrate shall determine prior convictions of
43 such offenses or comparable out-of-state convictions upon available

1 evidence.

2 (2) If the magistrate determines that such defendant has a prior
3 conviction of any crime that constitutes a sexually violent crime as defined
4 in K.S.A. 22-4902, and amendments thereto, bond shall be at least
5 \$750,000 cash or surety and have at least minimum conditions of no
6 contact with any victims or witnesses and the magistrate shall place the
7 person under a house arrest program pursuant to subsection (a)(4). Such
8 bond shall not be reduced or modified downward unless the magistrate
9 determines by a preponderance of the evidence at an evidentiary hearing
10 and makes a written finding on the record that the defendant is not a public
11 safety risk and not a flight risk. At such evidentiary hearing, there shall be
12 a presumption that the defendant is both a public safety risk and a flight
13 risk.

14 Sec. 2. K.S.A. 2025 Supp. 22-2802 is hereby repealed.

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