

**SENATE BILL No. 254**

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning immigration; relating to state and local public  
2 benefits and eligibility thereof; prohibiting aliens who are unlawfully  
3 present in the United States from receiving any state or local public  
4 benefit in accordance with applicable federal law; requiring individuals  
5 18 years of age and older who apply for any state or local public benefit  
6 to provide proof of being lawfully present; prohibiting the state or any  
7 county or local agency from providing any public benefit to any alien  
8 without first verifying that the alien is lawfully present by use of the  
9 existing systematic alien verification for entitlements program;  
10 requiring state and local agencies administering public benefits to  
11 cooperate with the United States department of homeland security in  
12 achieving verification of an alien's lawful presence; relating to release  
13 prior to criminal trial; requiring any person charged with a crime who is  
14 not a citizen or national of the United States to undergo verification of  
15 such person's immigration status; creating a rebuttable presumption that  
16 a person determined to be an alien who is unlawfully present is at risk  
17 of flight; amending K.S.A. 22-2802 and repealing the existing section.

18  
19 *Be it enacted by the Legislature of the State of Kansas:*

20 New Section 1. (a) No alien who is unlawfully present in the United  
21 States shall receive any state or local public benefit, except for state or  
22 local public benefits that are required to be offered by 8 U.S.C. § 1621(b).

23 (b) (1) In addition to providing proof of other eligibility requirements,  
24 at the time of application for any state or local public benefit, an individual  
25 applicant who is 18 years of age or older shall provide proof that the  
26 individual applicant is:

27 (A) A citizen or a permanent resident of the United States; or

28 (B) an alien who is lawfully present in the United States.

29 (2) Such affirmative proof shall include documentary evidence  
30 recognized by the division of motor vehicles when processing an  
31 application for a driver's license, as established in K.S.A. 8-240, and  
32 amendments thereto, as well as any document issued by the federal  
33 government that confirms an alien's lawful presence in the United States.

34 (c) (1) No state, county or local agency shall provide any public

1 benefit to any alien without first verifying that the alien is lawfully present  
2 in the United States and a qualified alien.

3 (2) Such verification shall occur through the systematic alien  
4 verification for entitlements program, operated by the United States  
5 department of homeland security.

6 (d) State and local agencies administering public benefits in this state  
7 shall cooperate with the United States department of homeland security in  
8 achieving verification of aliens' lawful presence in the United States in  
9 furtherance of this section.

10 (e) As used in this section:

11 (1) "Lawfully present in the United States" means the same as  
12 defined in 8 C.F.R. § 1.3.

13 (2) "Postsecondary educational institution" means the same as  
14 defined in K.S.A. 74-3201b, and amendments thereto.

15 (3) "Qualified alien" means the same as defined in 8 U.S.C. § 1641.

16 (4) (A) "State or local public benefit" means the same as defined in 8  
17 U.S.C. § 1621, except as provided in ~~subparagraphs~~ **{subparagraph}** (B)  
18 ~~and (C)~~.

19 (B) "State or local public benefit" does not include any license or  
20 identification card issued by the division of motor vehicles;

21 ~~(C) "State and local public benefit" includes {or any} reduced tuition~~  
22 ~~and fee amounts offered by postsecondary educational institutions to~~  
23 ~~residents {as described in K.S.A. 76-731a, and amendments thereto}.~~  
24 ~~No alien who is unlawfully present in the United States shall receive such~~  
25 ~~reduced tuition or fee amounts under any circumstances. Any provision of~~  
26 ~~K.S.A. 76-731a, and amendments thereto, that is contrary to the~~  
27 ~~prohibitions of this section shall be void.~~

28 Sec. 2. K.S.A. 22-2802 is hereby amended to read as follows: 22-  
29 2802. (1) Any person charged with a crime shall, at the person's first  
30 appearance before a magistrate, be ordered released pending preliminary  
31 examination or trial upon the execution of an appearance bond in an  
32 amount specified by the magistrate and sufficient to assure the appearance  
33 of such person before the magistrate when ordered and to assure the public  
34 safety. ~~If the person charged with a crime is not a citizen or national of the~~  
35 ~~United States, such person's immigration status shall be verified with the~~  
36 ~~federal government pursuant to 8 U.S.C. § 1373(c). For the purposes of~~  
37 ~~determining the grant of or issuance of an appearance bond, it shall be a~~  
38 ~~rebuttable presumption that a person who has been determined to be an~~  
39 ~~alien unlawfully present in the United States is at risk of flight.~~ If the  
40 person is being bound over for a felony, the bond shall also be conditioned  
41 on the person's appearance in the district court or by way of a two-way  
42 electronic audio-video communication as provided in subsection (14) at  
43 the time required by the court to answer the charge against such person

1 and at any time thereafter that the court requires. Unless the magistrate  
2 makes a specific finding otherwise, if the person is being bonded out for a  
3 person felony or a person misdemeanor, the bond shall be conditioned on  
4 the person being prohibited from having any contact with the alleged  
5 victim of such offense for a period of at least 72 hours. The magistrate  
6 may impose such of the following additional conditions of release as will  
7 reasonably assure the appearance of the person for preliminary  
8 examination or trial:

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

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

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

16 (d) place the person under a house arrest program pursuant to K.S.A.  
17 21-6609, and amendments thereto; or

18 (e) place the person under the supervision of a court services officer  
19 responsible for monitoring the person's compliance with any conditions of  
20 release ordered by the magistrate. The magistrate may order the person to  
21 pay for any costs associated with the supervision provided by the court  
22 services department in an amount not to exceed \$15 per week of such  
23 supervision. The magistrate may also order the person to pay for all other  
24 costs associated with the supervision and conditions for compliance in  
25 addition to the \$15 per week.

26 (2) In addition to any conditions of release provided in subsection (1),  
27 for any person charged with a felony, the magistrate may order such  
28 person to submit to a drug and alcohol abuse examination and evaluation  
29 in a public or private treatment facility or state institution and, if  
30 determined by the head of such facility or institution that such person is a  
31 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to  
32 treatment for such drug or alcohol abuse, as a condition of release.

33 (3) The appearance bond shall be executed with sufficient solvent  
34 sureties who are residents of the state of Kansas, unless the magistrate  
35 determines, in the exercise of such magistrate's discretion *and after a*  
36 *hearing at which the person charged is present*, that requiring sureties is  
37 not necessary to assure the appearance of the person at the time ordered.

38 (4) A deposit of cash in the amount of the bond may be made in lieu  
39 of the execution of the bond pursuant to subsection (3). Except as provided  
40 in subsection (5), such deposit shall be in the full amount of the bond and  
41 in no event shall a deposit of cash in less than the full amount of bond be  
42 permitted. Any person charged with a crime who is released on a cash  
43 bond shall be entitled to a refund of all moneys paid for the cash bond,

1 after deduction of any outstanding restitution, costs, fines and fees, after  
2 the final disposition of the criminal case if the person complies with all  
3 requirements to appear in court. The court may not exclude the option of  
4 posting bond pursuant to subsection (3).

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

- 15 (A) Is a resident of the state of Kansas;
- 16 (B) has a criminal history score category of G, H or I;
- 17 (C) has no prior history of failure to appear for any court  
18 appearances;
- 19 (D) has no detainer or hold from any other jurisdiction;
- 20 (E) has not been extradited from, and is not awaiting extradition to,  
21 another state; and
- 22 (F) has not been detained for an alleged violation of probation.

23 (6) In the discretion of the court, a person charged with a crime *who*  
24 *is not a flight risk or a risk to public safety* may be released upon the  
25 person's own recognizance by guaranteeing payment of the amount of the  
26 bond for the person's failure to comply with all requirements to appear in  
27 court. The release of a person charged with a crime upon the person's own  
28 recognizance shall not require the deposit of any cash by the person.

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

30 (8) (A) 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 of  
33 the crime charged; the weight of the evidence against the defendant;  
34 whether the defendant is lawfully present in the United States; the  
35 defendant's family ties, employment, financial resources, character, mental  
36 condition, length of residence in the community, record of convictions,  
37 record of appearance or failure to appear at court proceedings or of flight  
38 to avoid prosecution; the likelihood or propensity of the defendant to  
39 commit crimes while on release, including whether the defendant will be  
40 likely to threaten, harass or cause injury to the victim of the crime or any  
41 witnesses thereto; and whether the defendant is on probation or parole  
42 from a previous offense at the time of the alleged commission of the  
43 subsequent offense.

1       ***(B) If the person charged with a crime is not a citizen or national of***  
2 ***the United States, such person's immigration status shall be verified with***  
3 ***the federal government pursuant to 8 U.S.C. § 1373(c). For the purposes***  
4 ***of determining the grant of or issuance of an appearance bond, it shall***  
5 ***be a rebuttable presumption that a person who has been determined to***  
6 ***be an alien unlawfully present in the United States is at risk of flight.***

7       (9) The appearance bond shall set forth all of the conditions of  
8 release.

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

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

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

24       (13) The appearance bond and any security required as a condition of  
25 the defendant's release shall be deposited in the office of the magistrate or  
26 the clerk of the court where the release is ordered. If the defendant is  
27 bound to appear before a magistrate or court other than the one ordering  
28 the release, the order of release, together with the bond and security shall  
29 be transmitted to the magistrate or clerk of the court before whom the  
30 defendant is bound to appear.

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

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

1 supervision. As a condition of sentencing under K.S.A. 21-6604, and  
2 amendments thereto, the court may impose the full amount of any such  
3 costs in addition to the \$15 per week, including, but not limited to, costs  
4 for treatment and evaluation under subsection (2).

5 New Sec. 3. If any provision of this act is held to be unconstitutional  
6 under the constitution of the United States or the constitution of the state  
7 of Kansas, such provision shall be severed from the act, and the other  
8 provisions of this act shall remain valid and in effect.

9 Sec. 4. K.S.A. 22-2802 is hereby repealed.

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