

Crimes and Criminal Procedure; SB 186

SB 186 amends criminal procedure laws related to the availability of probable cause information, issuance of search warrants, setting bond for persons charged with certain sex offenses, forfeiture of appearance bonds, and the regulation of compensated sureties. The bill also revises the Kansas Criminal Code definition of certain sex crimes to include conduct related to artificially generated visual depictions and to define related terms.

Probable Cause Information—Warrant or Summons

The bill requires affidavits or sworn testimony supporting probable cause in the issuance of a warrant or summons to be made available to law enforcement agencies prior to the execution of such warrant or summons.

Issuance of Search Warrants

The bill amends law regarding who may provide sworn statements supporting a finding of probable cause to issue a search warrant to specify that only sworn statements provided by law enforcement may support such finding of probable cause.

Bond Setting—Sex Crimes

The bill amends criminal bond laws to require a magistrate to determine prior convictions of the underlying offense or comparable out-of-state convictions upon available evidence when setting bond if the defendant has been charged with:

- Rape;
- Criminal sodomy or aggravated criminal sodomy;
- Aggravated sexual battery; or
- Indecent liberties with a child or aggravated indecent liberties with a child.

If the magistrate determines that the defendant has a prior conviction of a sexually violent crime, as defined in continuing law, the bill requires a minimum bond amount of \$750,000. Additionally, the bill requires minimum conditions for the bond to include no contact with any victims or witnesses, and to require the magistrate to place the defendant under a house arrest program.

The bill prohibits reducing or modifying downward such a bond unless the magistrate determines by a preponderance of the evidence at an evidentiary hearing and makes a written finding on the record that the defendant is not a public safety risk or a flight risk. At the evidentiary hearing, there shall be a presumption that the defendant is both a public safety risk and a flight risk.

Forfeiture of Appearance Bonds

The bill requires warrants issued for failure to appear to be provided to a compensated surety, changes the criteria for setting aside bond forfeitures, and requires the return of a percentage of an appearance bond in certain circumstances.

Warrants Provided to Surety Upon Forfeiture

Under continuing law, whenever a defendant is charged with a felony offense and fails to appear as directed by the court, the sheriff must enter the warrant into the National Crime Information Center index within 14 days of issuance of the warrant. The bill requires, upon request, the court to make a copy of the warrant available to the compensated surety who deposited the bond on behalf of the defendant.

When Bond Forfeiture May Be Set Aside

The bill requires a court to set aside (not enforce) a forfeiture in certain circumstances, in addition to other ways the court may or must direct forfeitures to be set aside in continuing law.

The bill requires the court to set aside a bond forfeiture when the warrant has not been provided to the compensated surety as directed by the bill unless there is good cause shown.

The bill also requires the court to set aside a bond forfeiture when the defendant was not held subject to an immigration detainer when the bond was posted and the surety can prove that the defendant has been deported from the United States prior to judgment of default. The bill requires the surety to provide to the court a written statement, signed by the surety under penalty of perjury, setting forth facts substantiating the deportation.

Remission of Appearance Bond

The bill requires, when a forfeiture has not been set aside and a judgment of default has been issued, the court to remit (return) a portion of the amount of the appearance bond to the obligor if the defendant is returned to custody within a certain number of days after judgment is entered, as follows:

- 90 percent if returned within 90 days;
- 75 percent if returned within 91 to 180 days; or
- 50 percent if returned within 181 to 270 days.

Regulation of Compensated Sureties

The bill prohibits a compensated surety from making loans for the purpose of financing the minimum appearance bond premium required to be paid before posting a bond.

Under continuing law, a compensated surety must charge a minimum appearance bond premium of 10 percent of the face amount of the bond and post a bond only after the

compensated surety has received at least 5 percent of such premium. The bill specifies that a compensated surety shall not provide a loan, nor be affiliated with any financial institution providing such loan, for this 5 percent minimum.

[Note: The Kansas Code of Criminal Procedure defines “compensated surety” as any person or entity that issues appearance bonds for compensation, posts bail for four or more persons in a calendar year, is responsible for any forfeiture, and is liable for appearance bonds written by such person’s or entity’s authorized agents. A compensated surety is an insurance agent surety, a property surety, or a bail agent.]

Sexual Exploitation of a Child

The bill expands the conduct that constitutes the crime of sexual exploitation of a child to include possessing any artificially generated visual depiction with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

The bill defines “artificially generated visual depiction” as an obscene visual depiction produced through the use of computer software, digital manipulation, or other means that creates an image or video depicting a child under 18 years of age shown or heard engaging in sexually explicit conduct. The definition includes depictions that are obscene and indistinguishable from a real child, morphed from a real child’s image, or generated without any actual child involvement.

The bill defines “obscene” as a visual depiction or artificially generated visual depiction that, taken as a whole, appeals to the prurient interest of an average person, applying contemporary community standards, that is patently offensive, and that, taken as a whole, lacks literary, artistic, political, or scientific value.

Unlawful Transmission of a Visual Depiction of a Child

The bill also expands the definition of “visual depiction” as used in the crime of unlawful transmission of a visual depiction of an identifiable child to include, but not be limited to, such items created, in whole or in part, altered, or modified by artificial intelligence or any digital means to appear to depict or purport to depict an identifiable child, regardless of whether such identifiable child was involved in the creation of the original image.

Breach of Privacy

The bill also expands the crime of breach of privacy to include disseminating any videotape, photograph, film, or image that was created, altered, or modified by artificial intelligence to appear to depict or purport to depict an identifiable person regardless of whether such person was involved in the creation of the original image.

The bill specifies that the crime of breach of privacy shall not apply to a cable service, a provider of direct-to-home satellite services, or a multi-channel video programming distributor or affiliate as defined by federal law.