

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2070

By Committee on Judiciary

1-23

1 AN ACT concerning criminal procedure; relating to appearance bonds;  
2 surety or agent of surety; amending K.S.A. 22-2803 and 22-2809a and  
3 K.S.A. 2012 Supp. 22-2802 and repealing the existing sections; also  
4 repealing K.S.A. 2012 Supp. 22-2802c.  
5

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

7 Section 1. K.S.A. 2012 Supp. 22-2802 is hereby amended to read as  
8 follows: 22-2802.(+) (a) Any person charged with a crime shall, at the  
9 person's first appearance before a magistrate, be ordered released pending  
10 preliminary examination or trial upon the execution of an appearance bond  
11 in an amount specified by the magistrate and sufficient to assure the  
12 appearance of such person before the magistrate when ordered and to  
13 assure the public safety. If the person is being bound over for a felony, the  
14 bond shall also be conditioned on the person's appearance in the district  
15 court or by way of a two-way electronic audio-video communication as  
16 provided in subsection-(14) (n) at the time required by the court to answer  
17 the charge against such person and at any time thereafter that the court  
18 requires. Unless the magistrate makes a specific finding otherwise, if the  
19 person is being bonded out for a person felony or a person misdemeanor,  
20 the bond shall be conditioned on the person being prohibited from having  
21 any contact with the alleged victim of such offense for a period of at least  
22 72 hours. The magistrate may impose such of the following additional  
23 conditions of release as will reasonably assure the appearance of the  
24 person for preliminary examination or trial:

25 (a) (1) Place the person in the custody of a designated person or  
26 organization agreeing to supervise such person;

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

29 (c) (3) impose any other condition deemed reasonably necessary to  
30 assure appearance as required, including a condition requiring that the  
31 person return to custody during specified hours;

32 (d) (4) place the person under a house arrest program pursuant to  
33 K.S.A. 2012 Supp. 21-6609, and amendments thereto; or

34 (e) (5) place the person under the supervision of a court services  
35 officer responsible for monitoring the person's compliance with any  
36 conditions of release ordered by the magistrate. The magistrate may order

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

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

13 ~~(3)~~ (c) The appearance bond shall be executed with sufficient solvent  
14 sureties who are residents of the state of Kansas, unless: ~~(1) The person~~  
15 ~~meets all of the qualifications listed in subsection (e) or subsection (f); and~~  
16 ~~(2)~~ the magistrate determines, in the exercise of such magistrate's  
17 discretion, that requiring sureties is not necessary to assure the appearance  
18 of the person at the time ordered.

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

29 ~~(5)~~ (e) Except as provided further, the amount of the appearance bond  
30 shall be the same whether executed as described in subsection ~~(3)~~ (c) or  
31 posted with a deposit of cash as described in subsection ~~(4)~~ (d). When the  
32 appearance bond has been set at \$2,500 or less and the most serious charge  
33 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson  
34 felony, a drug severity level 4 felony committed prior to July 1, 2012, a  
35 drug severity level 5 felony committed on or after July 1, 2012, or a  
36 violation of K.S.A. 8-1567, and amendments thereto, *or K.S.A. 2012 Supp.*  
37 *8-1025, and amendments thereto*, the magistrate may allow the person to  
38 deposit cash with the clerk in the amount of 10% of the bond, provided the  
39 person meets at least the following qualifications:

40 ~~(A)~~ (1) Is a resident of the state of Kansas;

41 ~~(B)~~ (2) has a criminal history score category of G, H or I;

42 ~~(C)~~ (3) has no prior history of failure to appear for any court  
43 appearances;

1       ~~(D)~~ (4) has no detainer or hold from any other jurisdiction;  
2       ~~(E)~~ (5) has not been extradited from, and is not awaiting extradition  
3 to, another state; and

4       ~~(F)~~ (6) has not been detained for an alleged violation of probation.

5       ~~(6)~~ (f) ~~In the discretion of the court, The magistrate may allow a~~  
6 person charged with a crime ~~may to be released upon the person's own~~  
7 recognizance by guaranteeing payment of the amount of the bond for the  
8 person's failure to comply with all requirements to appear in court: ~~The~~  
9 ~~release of a person charged with a crime upon the person's own~~  
10 ~~recognizance shall not require the deposit of any cash by the person,;~~  
11 ~~provided the person meets at least the following qualifications:~~

12       ~~(1) The most serious charge against the person is a misdemeanor, a~~  
13 ~~severity level 8, 9 or 10, nonperson felony or a drug severity level 4~~  
14 ~~felony;~~

15       ~~(2) is a resident of the state of Kansas;~~

16       ~~(3) has no prior history of failure to appear for any court~~  
17 ~~appearances within the state;~~

18       ~~(4) has an appearance bond set at \$2,500 or less; and~~

19       ~~(5) is lawfully present in the United States.~~ **The release of a person**  
20 **charged with a crime upon the person's own recognizance shall not**  
21 **require the deposit of any cash by the person.**

22       ~~(7)~~ (g) The court shall not impose any administrative fee.

23       ~~(8)~~ (h) In determining which conditions of release will reasonably  
24 assure appearance and the public safety, the magistrate shall, on the basis  
25 of available information, take into account the nature and circumstances of  
26 the crime charged; the weight of the evidence against the defendant;  
27 whether the defendant is lawfully present in the United States; the  
28 defendant's family ties, employment, financial resources, character, mental  
29 condition, length of residence in the community, record of convictions,  
30 record of appearance or failure to appear at court proceedings or of flight  
31 to avoid prosecution; the likelihood or propensity of the defendant to  
32 commit crimes while on release, including whether the defendant will be  
33 likely to threaten, harass or cause injury to the victim of the crime or any  
34 witnesses thereto; and whether the defendant is on probation or parole  
35 from a previous offense at the time of the alleged commission of the  
36 subsequent offense.

37       ~~(9)~~ (i) The appearance bond shall set forth all of the conditions of  
38 release.

39       ~~(10)~~ (j) A person for whom conditions of release are imposed and  
40 who continues to be detained as a result of the person's inability to meet  
41 the conditions of release shall be entitled, upon application, to have the  
42 conditions reviewed without unnecessary delay by the magistrate who  
43 imposed them. If the magistrate who imposed conditions of release is not

1 available, any other magistrate in the county may review such conditions.

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

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

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

19 ~~(K)~~ (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 ~~(L)~~ (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. 2012 Supp. 21-  
33 6604, and amendments thereto, the court may impose the full amount of  
34 any such costs in addition to the \$15 per week, including, but not limited to,  
35 costs for treatment and evaluation under subsection ~~(2)~~ (b).

36 Sec. 2. K.S.A. 22-2803 is hereby amended to read as follows: 22-  
37 2803. A person who remains in custody after review of such person's  
38 application pursuant to ~~subsection (9) or (10) of K.S.A. 22-2802~~, and  
39 amendments thereto, by a district magistrate judge may apply to a district  
40 judge of the judicial district in which the charge is pending to modify the  
41 order fixing conditions of release. Such motion shall be determined  
42 promptly.

43 Sec. 3. K.S.A. 22-2809a is hereby amended to read as follows: 22-

1 2809a. (a) As used in this section: (1) "Surety" means a person or  
2 commercial surety, other than a defendant in a criminal proceeding, that  
3 guarantees the appearance of a defendant in a criminal proceeding, by  
4 executing an appearance bond;

5 (2) "agent of a surety" means a person not performing the duties of a  
6 law enforcement officer who tracks down, captures and surrenders to the  
7 custody of a court a fugitive who has violated a surety or bail bond  
8 agreement.

9 (b) Any surety or agent of a surety, commonly referred to as a bounty  
10 hunter, who intends to apprehend any person in this state pursuant to  
11 K.S.A. 22-2809, and amendments thereto, or under similar authority from  
12 any other state, shall inform law enforcement authorities in the city or  
13 county in which such surety or agent of a surety intends such  
14 apprehension, before attempting such apprehension. The surety or agent of  
15 a surety shall present to the local law enforcement authorities a certified  
16 copy of the bond, a valid government-issued photo identification, written  
17 appointment of agency, if not the actual surety, and all other appropriate  
18 paperwork identifying the principal and the person to be apprehended.  
19 Local law enforcement may accompany the surety or agent.

20 (c) No person who, ~~within the past 10 years,~~ has been convicted, in  
21 this or any other jurisdiction, of a ~~person~~ felony, may act as a surety or as  
22 an agent of a surety.

23 *(d) An out-of-state surety or agent of a surety who intends to*  
24 *apprehend any person in this state pursuant to K.S.A. 22-2809, and*  
25 *amendments thereto, or under similar authority from any other state, shall*  
26 *contract with an individual that has been authorized by any court in this*  
27 *state to act as a surety or agent of a surety, before attempting such*  
28 *apprehension, and be accompanied by such individual during such*  
29 *apprehension.*

30 ~~(d)~~ (e) Violation of this section is a class A nonperson misdemeanor  
31 for the first conviction of a violation and a severity level 9, nonperson  
32 felony upon a second or subsequent conviction of a violation.

33 Sec. 4. K.S.A. 22-2803 and 22-2809a and K.S.A. 2012 Supp. 22-  
34 2802 and 22-2802c are hereby repealed.

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