

HOUSE BILL No. 2081

By Committee on Judiciary

1-19

AN ACT concerning criminal procedure; relating to preliminary examinations; evidence; child witnesses and victims; amending K.S.A. 2000 Supp. 22-2902 and 22-2902a and repealing the existing sections; also repealing K.S.A. 22-3433.

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

Section 1. K.S.A. 2000 Supp. 22-2902 is hereby amended to read as follows: 22-2902. (1) Every person arrested on a warrant charging a felony or served with a summons charging a felony shall have a right to a preliminary examination before a magistrate, unless such warrant has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 10 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

(3) The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and ~~except for witnesses who are children less than 13 years of age as provided in K.S.A. 22-2902a, and amendments thereto,~~ the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. ~~Except for witnesses who are children less than 13 years of age,~~ The defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. ~~When the victim of the felony is a child less than 13 years of age, the finding of probable cause as provided in this subsection may be based upon hearsay evidence in whole or in part presented at the preliminary examination by means of statements made by a child less than 13 years of age on a videotape recording or by other means.~~

(4) If the defendant waives preliminary examination, the magistrate

1 shall order the defendant bound over to the district judge having juris-
2 diction to try the case.

3 (5) Any judge of the district court may conduct a preliminary exam-
4 ination, and a district judge may preside at the trial of any defendant even
5 though such judge presided at the preliminary examination of such
6 defendant.

7 (6) The complaint or information, as filed by the prosecuting attorney
8 pursuant to K.S.A. 22-2905 and amendments thereto, shall serve as the
9 formal charging document at trial. When a defendant and prosecuting
10 attorney reach agreement on a plea of guilty or *nolo contendere*, the de-
11 fendant and the prosecuting attorney shall notify the district court of such
12 agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210
13 and amendments thereto.

14 (7) The judge of the district court, when conducting the preliminary
15 examination, shall have the discretion to conduct arraignment, subject to
16 assignment pursuant to K.S.A. 20-329 and amendments thereto, at the
17 conclusion of the preliminary examination.

18 Sec. 2. K.S.A. 2000 Supp. 22-2902a is hereby amended to read as
19 follows: 22-2902a. (a) At any preliminary examination in which the results
20 of a forensic examination, analysis, comparison or identification prepared
21 by the Kansas bureau of investigation, the federal bureau of investigation,
22 the bureau of alcohol, tobacco and firearms of the United States depart-
23 ment of the treasury, the state secretary of health and environment, the
24 sheriff's department of Johnson, Shawnee or Sedgwick county, the police
25 department of the cities of Overland Park, Topeka or Wichita, the
26 Sedgwick county regional forensic science center, the drug enforcement
27 administration, the air force of the United States, the navy of the United
28 States, the army of the United States, the Missouri southern state college
29 regional crime laboratory or Bethany medical center, inc. located in Kan-
30 sas City, Kansas are to be introduced as evidence, the report, or a copy
31 of the report, of the findings of the forensic examiner shall be admissible
32 into evidence in the preliminary examination in the same manner and
33 with the same force and effect as if the forensic examiner who performed
34 such examination, analysis, comparison or identification and prepared the
35 report thereon had testified in person.

36 (b) *The hearsay statements of a child victim less than 13 years of age*
37 *shall be admissible in any preliminary examination.*

38 Sec. 3. K.S.A. 22-3433 and K.S.A. 2000 Supp. 22-2902 and 22-2902a
39 are hereby repealed.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the statute book.

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