

HOUSE BILL No. 2726

By Representative Merrick

2-4

AN ACT concerning criminal procedure; relating to preliminary examinations; amending K.S.A. 2003 Supp. 22-2902 and repealing the existing section.

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

Section 1. K.S.A. 2003 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. *Except as provided in subsection (8)*, the defendant shall be personally present and except for witnesses who are children less than 13 years of age, 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 shall order the defendant bound over to the district judge having juris-

1 diction to try the case.

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

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

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

17 (8) *The preliminary examination before a magistrate as provided in*
18 *this section may be conducted by two-way electronic audio-video com-*
19 *munication between the defendant and the judge in lieu of personal pres-*
20 *ence of the defendant or defendant's counsel in the courtroom in the dis-*
21 *cretion of the court. The defendant may be accompanied by the*
22 *defendant's counsel. The defendant shall be informed of the defendant's*
23 *right to be personally present in the courtroom during such preliminary*
24 *examination if the defendant so requests. Exercising the right to be present*
25 *shall in no way prejudice the defendant.*

26 Sec. 2. K.S.A. 2003 Supp. 22-2902 is hereby repealed.

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

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