

HOUSE BILL No. 2383

By Committee on Corrections and Juvenile Justice

2-9

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to depositions; amending K.S.A. 22-3211 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 22-3211 is hereby amended to read as follows: 22-
15 3211. ~~(1)~~ (a) If it appears that a prospective witness may be unable to
16 attend or prevented from attending a trial or hearing, that the witness'
17 testimony is material and that it is necessary to take the witness' deposi-
18 tion in order to prevent a failure of justice, the court at any time after
19 the filing of a complaint or indictment may upon motion of a defendant
20 and notice to the parties order that the witness' testimony be taken by
21 deposition and that any designated books, papers, documents or tangible
22 objects, not privileged, be produced at the same time and place.

23 ~~(2)~~ (b) If a witness is committed for failure to give bond to appear to
24 testify at a trial or hearing, the court on written motion of the witness and
25 upon notice to the parties may order that the witness' deposition be taken.
26 After the deposition has been subscribed the court may discharge the
27 witness.

28 ~~(3)~~ (c) The prosecuting attorney may apply to the court for an order
29 authorizing the prosecuting attorney to take the deposition of any witness
30 for any of the reasons and subject to the limitations stated in subsection
31 (1). Upon the filing of such application, the court shall set the matter for
32 hearing and shall order the defendant to be present at such hearing. If,
33 upon hearing, the court determines that a prospective witness may be
34 unable to attend or prevented from attending a trial or hearing, that the
35 witness' testimony is material and that it is necessary to prevent a failure
36 of justice, the court may authorize the prosecuting attorney to take the
37 deposition of the witness.

38 ~~(4)~~ (d) If the crime charged is a felony, the prosecuting attorney may
39 apply to the court for an order authorizing the prosecuting attorney to
40 take the deposition of any essential witness. Upon the filing of such ap-
41 plication, the court shall set the matter for hearing and shall order the
42 defendant to be present at such hearing. If, upon hearing, the court de-
43 termines that the witness is an essential witness, the court shall authorize

1 the prosecuting attorney to take the deposition of the witness in the
 2 county where the complaint or indictment has been filed. Upon appli-
 3 cation, the court may order that a deposition taken pursuant to this sub-
 4 section be videotaped.

5 ~~(5)~~ (e) The party at whose instance a deposition is to be taken shall
 6 give to every other party reasonable written notice of the time and place
 7 for taking the deposition. The notice shall state the name and address of
 8 each person to be examined. On motion of a party upon whom the notice
 9 is served, the court for cause shown may extend or shorten the time.

10 ~~(6)~~ (f) A deposition shall be taken in the manner provided in civil
 11 actions. The court, upon request of the defendant, may direct that a dep-
 12 osition be taken on written interrogatories in the manner provided in civil
 13 actions.

14 ~~(7)~~ (g) Whenever the court authorizes the taking of a deposition,
 15 other than a deposition upon written interrogatories, the court shall make
 16 a concurrent order requiring that the defendant be present when the
 17 deposition is taken. If it appears that the presence of the defendant may
 18 be coercive to the witness whose deposition is to be taken, the court shall
 19 order that the deposition be taken before a judge.

20 ~~(8)~~ (h) At the trial or upon any hearing, a part or all of a deposition,
 21 so far as otherwise admissible under the rules of evidence, may be used
 22 if it appears that:

23 ~~(a) The witness is dead;~~

24 ~~—(b) the witness is out of the state and the witness' appearance cannot~~
 25 ~~be obtained, unless it appears that the absence of the witness was pro-~~
 26 ~~duced by the party offering the deposition;~~

27 ~~—(c) the witness is unable to attend or testify because of sickness or~~
 28 ~~infirmity; or~~

29 ~~—(d) the party offering the deposition has been unable to procure the~~
 30 ~~attendance of the witness by subpoena or other process.~~

31 *A witness is unavailable, including, but not limited to, situations where*
 32 *the witness is: (1) Exempted on the ground of privilege from testifying*
 33 *concerning the matter to which the statement is relevant; (2) disqualified*
 34 *from testifying to the matter as established by the court; (3) unable to be*
 35 *present or to testify at the hearing because of death or then existing phys-*
 36 *ical or mental illness; (4) absent beyond the jurisdiction of the court to*
 37 *compel appearance by its process; or (5) absent from the place of hearing*
 38 *because the proponent of the statement does not know and with diligence*
 39 *has been unable to ascertain the witness's whereabouts. A witness is avail-*
 40 *able if the judge finds that the witness's purported unavailability is due*
 41 *to procurement or wrongdoing of the proponent of the statement for the*
 42 *purpose of preventing the witness from attending or testifying, or to the*
 43 *culpable neglect of such party.*

1 Any deposition may also be used by any party for the purpose of con-
2 tradicting or impeaching the testimony of the deponent as a witness. If
3 only a part of a deposition is offered in evidence by a party, an adverse
4 party may require the offering party to offer all of it which is relevant to
5 the part offered, and any party may offer other parts.

6 ~~(9)~~ (i) Objections to receiving in evidence a deposition or part thereof
7 may be made as provided in civil actions.

8 ~~(10)~~ (j) As used in this section, “essential witness” means a prospec-
9 tive witness in the prosecution of a felony who is an eyewitness to the
10 felony or without whose testimony a conviction could not be obtained
11 because the testimony would establish an element of the felony that can-
12 not be proven in any other manner.

13 Sec. 2. K.S.A. 22-3211 is hereby repealed.

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