

## SENATE BILL No. 562

By Senator Journey

2-14

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9 AN ACT concerning municipal courts; relating to the accused person's  
10 competency to stand trial; amending K.S.A. 22-3302 and repealing the  
11 existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) At any time after the defendant has been served  
15 with the complaint and before pronouncement of sentence, the municipal  
16 judge may request a determination of the accused person's competency  
17 to stand trial. If the municipal judge before whom the complaint is pend-  
18 ing finds that there is reason to believe that the accused person is incom-  
19 petent to stand trial, the proceedings shall be suspended and the munic-  
20 ipal judge shall refer the matter to the district court for a determination  
21 of competency, pursuant to K.S.A. 22-3302 et seq., and amendments  
22 thereto.

23 (b) If the district court finds the accused person to be competent,  
24 the proceedings which have been suspended shall be resumed for  
25 adjudication.

26 (c) As used in this section: (1) An accused person is "incompetent to  
27 stand trial" when such person is charged with a crime and, because of  
28 mental illness or defect is unable:

29 (A) To understand the nature and purpose of the proceedings against  
30 such person; or

31 (B) to make or assist in making such person's defense.

32 (2) Other terms used in this section shall have the meanings ascribed  
33 thereto in K.S.A. 12-4113, and amendments thereto.

34 (d) This section shall be part of and supplemental to the Kansas code  
35 of procedure for municipal courts.

36 Sec. 2. K.S.A. 22-3302 is hereby amended to read as follows: 22-  
37 3302. (1) At any time after the defendant has been charged with a crime  
38 and before pronouncement of sentence, *a municipal court, pursuant to*  
39 *section 1, and amendments thereto*, the defendant, the defendant's coun-  
40 sel or the prosecuting attorney may request a determination of the de-  
41 fendant's competency to stand trial. If, upon the request of either party  
42 ~~or~~, upon the judge's own knowledge and observation *or if referred by the*  
43 *municipal court as provided in section 1, and amendments thereto*, the

1 judge before whom the case is pending finds that there is reason to believe  
2 that the defendant is incompetent to stand trial the proceedings shall be  
3 suspended and a hearing conducted to determine the competency of the  
4 defendant.

5 (2) If the defendant is charged with a felony *or referred by the mu-*  
6 *municipal court pursuant to section 1, and amendments thereto*, the hearing  
7 to determine the competency of the defendant shall be conducted by a  
8 district judge.

9 (3) The court shall determine the issue of competency and may im-  
10 panel a jury of six persons to assist in making the determination. The  
11 court may order a psychiatric or psychological examination of the de-  
12 fendant. To facilitate the examination, the court may: (a) If the defendant  
13 is charged with a felony, commit the defendant to the state security hos-  
14 pital or any county or private institution for examination and report to  
15 the court, or, if the defendant is charged with a misdemeanor, commit  
16 the defendant to any appropriate state, county or private institution for  
17 examination and report to the court, except that the court shall not com-  
18 mit the defendant to the state security hospital or any other state insti-  
19 tution unless, prior to such commitment, the director of a local county or  
20 private institution recommends to the court and to the secretary of social  
21 and rehabilitation services that examination of the defendant should be  
22 performed at a state institution; (b) designate any appropriate psychiatric  
23 or psychological clinic, mental health center or other psychiatric or psy-  
24 chological facility to conduct the examination while the defendant is in  
25 jail or on pretrial release; or (c) appoint two qualified licensed physicians  
26 or licensed psychologists, or one of each, to examine the defendant and  
27 report to the court. If the court commits the defendant to an institution  
28 for the examination, the commitment shall be for not more than 60 days  
29 or until the examination is completed, whichever is the shorter period of  
30 time. No statement made by the defendant in the course of any exami-  
31 nation provided for by this section, whether or not the defendant consents  
32 to the examination, shall be admitted in evidence against the defendant  
33 in any criminal proceeding. Upon notification of the court that a defend-  
34 ant committed for psychiatric or psychological examination under this  
35 subsection has been found competent to stand trial, the court shall order  
36 that the defendant be returned not later than five days after receipt of  
37 the notice for proceedings under this section. If the defendant is not  
38 returned within that time, the county in which the proceedings will be  
39 held shall pay the costs of maintaining the defendant at the institution or  
40 facility for the period of time the defendant remains at the institution or  
41 facility in excess of the five-day period.

42 (4) If the defendant is found to be competent, the proceedings which  
43 have been suspended *either in district court or municipal court* shall be

- 1 resumed. If the proceedings were suspended before or during the pre-  
2 liminary examination, the judge who conducted the competency hearing  
3 may conduct a preliminary examination ~~or~~. If a district magistrate judge  
4 was conducting the proceedings prior to the competency hearing, the  
5 judge who conducted the competency hearing may order the preliminary  
6 examination to be heard by a district magistrate judge. *If a municipal*  
7 *judge was conducting the proceedings prior to the competency hearing,*  
8 *the judge who conducted the competency hearing shall order the case*  
9 *back to the municipal court.*
- 10 (5) If the defendant is found to be incompetent to stand trial, the  
11 court shall proceed in accordance with K.S.A. 22-3303 and amendments  
12 thereto.
- 13 (6) If proceedings are suspended and a hearing to determine the  
14 defendant's competency is ordered after the defendant is in jeopardy, the  
15 court may either order a recess or declare a mistrial.
- 16 (7) The defendant shall be present personally at all proceedings un-  
17 der this section.
- 18 Sec. 3. K.S.A. 22-3302 is hereby repealed.
- 19 Sec. 4. This act shall take effect and be in force from and after its  
20 publication in the statute book.