

SENATE BILL No. 203

By Committee on Judiciary

2-5

1 AN ACT concerning notices to appear; relating to witnesses; authorizing a
2 show cause notice to be issued for an unavailable witness or a material
3 witness; amending K.S.A. 22-2805 and 60-459 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 22-2805 is hereby amended to read as follows: 22-
8 2805. (a) If it appears by affidavit that the testimony of a person is material
9 in any criminal proceeding or in any proceeding under the revised Kansas
10 juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto, and
11 it is shown that it may become impracticable to secure the witness'
12 presence by subpoena, the court or magistrate may:

13 (1) Require the witness to give bond in an amount fixed by the court
14 or magistrate, or to comply with other conditions to assure the witness'
15 appearance as a witness. If a person fails to comply with the conditions of
16 release, the court or magistrate may, after hearing, commit the witness to
17 the custody of the sheriff or marshal pending final disposition of the
18 proceeding in which the testimony is needed. A material witness shall not
19 be held in custody more than 30 days unless the court or magistrate, after
20 hearing, determines that there is good cause to hold the witness for an
21 additional period of not more than 30 days. No material witness shall be
22 detained because of inability to comply with any condition of release if the
23 testimony of the witness can be secured for use at trial or in any
24 proceeding under the revised Kansas juvenile justice code, K.S.A. 38-2301
25 et seq., and amendments thereto by deposition, and further detention is not
26 necessary to prevent a failure of justice. Release may be delayed for a
27 reasonable time until the deposition of the witness can be taken pursuant to
28 K.S.A. 22-3211, and amendments thereto; or

29 (2) *if the person was personally served with a subpoena, issue a*
30 *notice to appear to answer to a charge of indirect contempt of court*
31 *pursuant to K.S.A. 20-1204a, and amendments thereto. Upon appearing,*
32 *the court may continue such charge for the duration of the proceeding for*
33 *which the subpoena was issued and order the witness to comply with any*
34 *condition that the court may impose to secure the witness' appearance.*

35 (b) The court or magistrate shall appoint counsel to represent a
36 witness committed to custody pursuant to ~~this section~~ subsection (a)(1)

1 when the court or magistrate determines that the witness is financially
 2 unable to employ counsel, based on the same standards as used to
 3 determine if a defendant is able to employ counsel. Such appointment shall
 4 be from the panel for indigents' defense services or as otherwise prescribed
 5 under the applicable system for providing legal defense services for
 6 indigent persons prescribed by the state board of indigents' defense
 7 services for the county or judicial district. In any proceeding under the
 8 revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and
 9 amendments thereto, such appointment shall be pursuant to K.S.A. 38-
 10 2306, and amendments thereto. The witness may obtain necessary
 11 investigative, expert and other services in the manner provided by K.S.A.
 12 22-4508, and amendments thereto. Payment for the counsel and other
 13 services shall be made in the manner provided by K.S.A. 22-4507, and
 14 amendments thereto.

15 Sec. 2. K.S.A. 60-459 is hereby amended to read as follows: 60-459.
 16 As used in K.S.A. 60-460, ~~its exceptions and amendments thereto~~, and in
 17 this section:

18 (a) "Statement" means not only an oral or written expression but also
 19 nonverbal conduct of a person intended by him or her as a substitute for
 20 words in expressing the matter stated.

21 (b) "Declarant" is a person who makes a statement.

22 (c) "Perceive" means acquire knowledge through one's own senses.

23 (d) "Public official" of a state or territory of the United States
 24 includes an official of a political subdivision of such state or territory and
 25 of a municipality.

26 (e) "State" includes the District of Columbia.

27 (f) "A business" as used in exception K.S.A. 60-460(m), *and*
 28 *amendments thereto*, shall include every kind of business, profession,
 29 occupation, calling or operation of institutions, whether carried on for
 30 profit or not.

31 (g) (1) "Unavailable as a witness" includes situations where the
 32 witness is:

33 ~~(1)~~(A) Exempted on the ground of privilege from testifying
 34 concerning the matter to which his or her statement is relevant; ~~or~~;

35 ~~(2)~~(B) disqualified from testifying to the matter; ~~or~~;

36 ~~(3)~~(C) unable to be present or to testify at the hearing because of
 37 death or then existing physical or mental illness; ~~or~~;

38 ~~(4)~~(D) absent beyond the jurisdiction of the court to compel
 39 appearance by its process; ~~or~~;

40 ~~(5)~~(E) absent from the place of hearing because the proponent of his
 41 or her statement does not know and with diligence has been unable to
 42 ascertain his or her whereabouts; *or*

43 (F) *has failed to appear as directed after service pursuant to K.S.A.*

1 22-2805(a)(2), and amendments thereto.

2 ~~But~~ (2) A witness is not unavailable if:

3 ~~(1) if~~ (A) the judge finds that ~~his or her~~ the witness' exemption,
4 disqualification, inability or absence is due to procurement or wrongdoing
5 of the proponent of ~~his or her~~ the witness' statement for the purpose of
6 preventing the witness from attending or testifying, or to the culpable
7 neglect of such party; or

8 ~~(2) if~~ (B) unavailability is claimed under ~~clause (4) of the preceding~~
9 paragraph (1)(D) and the judge finds that the deposition of the declarant
10 could have been taken by the exercise of reasonable diligence and without
11 undue hardship, and that the probable importance of the testimony is such
12 as to justify the expense of taking such deposition.

13 Sec. 3. K.S.A. 22-2805 and 60-459 are hereby repealed.

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