

**SENATE BILL No. 481**

By Committee on Judiciary

2-4

AN ACT concerning courts; establishing procedures in the Kansas code of procedure for municipal courts related to determination of an accused person's competency to stand trial; authorizing a municipal judge to order an examination; authorizing a district court judge to rely on a psychiatric or psychological examination ordered by a municipal court to facilitate an examination; amending K.S.A. 12-4113 and 22-3302 and repealing the existing sections.

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

New Section 1. (a) At any time after a defendant has been served with the complaint and before the satisfaction of sentence, if the municipal judge before whom the proceedings are pending finds that there is reason to believe that such defendant is incompetent to stand trial, all speedy trial requirements shall be suspended and, after a hearing, the court may order a psychiatric or psychological examination of such defendant in accordance with this section.

(b) To facilitate a psychiatric or psychological examination, the court may order that an examination and report be completed by:

(1) An appropriate state, county or private institution or facility;

(2) a licensed physician or psychologist who is qualified through training or experience; or

(3) an examiner from a list of competency examiners used in the district court where the municipal court is located.

(c) No statement made by a defendant during any examination provided for by this section, whether or not such defendant consents to the examination, shall be admitted in evidence against such defendant in any criminal proceeding.

(d) The costs for an examination ordered pursuant to this section shall be paid from municipal court funds or the general fund of the municipality.

(e) An examination ordered pursuant to this section shall be completed within 60 days of the court's order for such examination to determine the defendant's competency.

(f) Before the expiration of the 60-day examination period, an examiner approved by the court to examine a defendant shall certify to the court whether such defendant is competent to stand trial.

(g) Upon ~~notification of~~ **certification to** the court that a defendant

1 subject to examination under this section has been ~~found~~ **determined by**  
2 **the examiner to be** competent to stand trial, the suspended proceedings  
3 shall resume.

4 (h) ~~If the examination shows that a defendant is incompetent to stand~~  
5 ~~trial, the court shall conduct a hearing to determine competency of such~~  
6 ~~defendant.~~ **Upon certification to the court that a defendant subject to**  
7 **examination under this section has been determined by the examiner to**  
8 **be incompetent to stand trial, the court shall conduct a hearing to make**  
9 **a finding in writing regarding the competency of such defendant.** Such  
10 defendant shall be present for any hearing to determine competency.

11 (i) If the court ~~determines~~ **finds that** a defendant is incompetent to  
12 stand trial, the criminal charges against such defendant shall be dismissed  
13 **without prejudice** and the city attorney may:

14 (1) File a petition pursuant to K.S.A. 59-2945 et seq., and  
15 amendments thereto, in the appropriate district court; or

16 (2) request that the district attorney or county attorney review the  
17 case for the filing of a complaint in the district court.

18 (j) **If the city attorney receives credible information that a**  
19 **defendant who was previously found to be incompetent to stand trial has**  
20 **regained competency, the city attorney may refile the charges within the**  
21 **applicable statute of limitations.**

22 (k) **If a charge is refiled by the city attorney pursuant to subsection**  
23 **(j), the court shall conduct a hearing to make a finding in writing**  
24 **regarding the current state of the defendant's competency. The**  
25 **defendant shall be present for any hearing to determine competency.**

26 (l) This section shall be a part of and supplemental to the Kansas code  
27 of procedure for municipal courts.

28 Sec. 2. K.S.A. 12-4113 is hereby amended to read as follows: 12-  
29 4113. As used in this act:

30 (a) "Appearance bond" means an undertaking, with or without  
31 security, entered into by a person in custody by which the person is bound  
32 to comply with the conditions of the undertaking.

33 (b) "Accused person" means a person, corporation or other legal  
34 entity accused by a complaint of the violation of a city ordinance.

35 (c) "Arraignment" means the formal act of calling the person accused  
36 of violating an ordinance before the municipal court to inform the person  
37 of the offense with which the person is charged, to ask the person whether  
38 the person is guilty or not guilty and, if guilty, to impose sentence.

39 (d) "Arrest" means the taking of a person into custody in order that  
40 the person will appear to answer for the violation of an ordinance. The  
41 giving of a notice to appear is not an arrest.

42 (e) "Bail" is the security given for the purpose of insuring compliance  
43 with the terms of an appearance bond.

1 (f) "City attorney" means any attorney who represents the city in the  
2 prosecution of an accused person for the violation of a city ordinance.

3 (g) "Complaint" means a sworn written statement, or a written  
4 statement by a law enforcement officer, of the essential facts constituting a  
5 violation of an ordinance.

6 (h) "Custody" means the restraint of a person pursuant to an arrest.

7 (i) "Detention" means the temporary restraint of a person by a law  
8 enforcement officer.

9 (j) "Law enforcement officer" means any person who by virtue of  
10 office or public employment is vested by law with a duty to maintain  
11 public order and to make arrests for violation of the laws of the state of  
12 Kansas or ordinances of any municipality thereof.

13 (k) "Notice to appear" is a written notice to a person accused by a  
14 complaint of having violated an ordinance of a city to appear at a stated  
15 time and place to answer to the charge of the complaint.

16 (l) "Subpoena" is a process issued by the court to cause a witness to  
17 appear and give testimony at a time and place therein specified.

18 (m) "Ordinance traffic infraction" is a violation of an ordinance that  
19 proscribes or requires the same behavior as that proscribed or required by  
20 a statutory provision that is classified as a traffic infraction in K.S.A. 8-  
21 2118, and amendments thereto.

22 (n) "Warrant" is a written order made by a municipal judge directed  
23 to any law enforcement officer commanding the officer to arrest the person  
24 named or described in it.

25 (o) "Ordinance cigarette or tobacco infraction" is a violation of an  
26 ordinance that proscribes the same behavior as proscribed by ~~subsection~~  
27 ~~(m) or (n)~~ of K.S.A. 79-3321(m) or (n), and amendments thereto.

28 (p) *A person is "incompetent to stand trial" when such person is*  
29 *charged with a crime and, because of mental illness or defect, is unable*  
30 *to:*

31 *(1) Understand the nature and purpose of the proceedings against*  
32 *such person; or*

33 *(2) make or assist in making such person's defense.*

34 (q) "Treatment provider" means any mental health center or clinic,  
35 psychiatric unit of a medical care facility, psychologist, physician or other  
36 institution or person authorized or licensed by law to provide either  
37 inpatient or outpatient treatment to any patient.

38 Sec. 3. K.S.A. 22-3302 is hereby amended to read as follows: 22-  
39 3302. (a) At any time after the defendant has been charged with a crime  
40 and before pronouncement of sentence, the defendant, the defendant's  
41 counsel or the prosecuting attorney may request a determination of the  
42 defendant's competency to stand trial. If, upon the request of either party  
43 or upon the judge's own knowledge and observation, the judge before

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

4 (b) If the defendant is charged with a felony, the hearing to determine  
5 the competency of the defendant shall be conducted by a district judge.

6 (c) (1) The court shall determine the issue of competency and may  
7 impanel a jury of six persons to assist in making the determination. The  
8 court may order a psychiatric or psychological examination of the  
9 defendant. To facilitate the examination, the court may:

10 (A) Order that an evaluation be completed by an appropriate state,  
11 county or private institution or facility to be conducted in person or by use  
12 of available electronic means while the defendant is in jail, at any secure  
13 location or on pretrial release;

14 (B) designate an appropriate state, county or private institution or  
15 facility to conduct the examination while the defendant is in jail, at any  
16 secure location or on pretrial release; ~~or~~

17 (C) appoint a licensed physician who is qualified through training or  
18 experience or a licensed psychologist to examine the defendant and report  
19 to the court; *or*

20 (D) *rely on the psychiatric or psychological examination ordered by*  
21 *a municipal court to find a defendant incompetent to stand trial.*

22 (2) If the court orders the defendant committed to an institution or  
23 facility for the examination, the commitment shall be for a period not to  
24 exceed 60 days from the date of admission or until the examination is  
25 completed, whichever is the shorter period of time. No statement made by  
26 the defendant in the course of any examination provided for by this  
27 section, whether or not the defendant consents to the examination, shall be  
28 admitted in evidence against the defendant in any criminal proceeding.

29 (3) Before the expiration of the 60-day evaluation period, the  
30 professional approved by the court to examine the defendant or, if the  
31 defendant is committed for inpatient examination, the chief medical officer  
32 or head of the appropriate institution or facility shall certify to the court  
33 whether the defendant is competent to stand trial.

34 (4) Upon notification of the court that a defendant committed for  
35 psychiatric or psychological examination under this subsection has been  
36 found competent to stand trial, the court shall order that the defendant be  
37 returned no later than seven days after receipt of the notice for proceedings  
38 under this section. If the defendant is not returned within that time, the  
39 county where the proceedings will be held shall pay the costs of  
40 maintaining the defendant at the institution or facility for the period of  
41 time the defendant remains at the institution or facility in excess of the  
42 seven-day period.

43 (d) If the defendant is found to be competent, the proceedings that

1 have been suspended shall be resumed. If the proceedings were suspended  
2 before or during the preliminary examination, the judge who conducted the  
3 competency hearing may conduct a preliminary examination or, if a  
4 district magistrate judge was conducting the proceedings prior to the  
5 competency hearing, the judge who conducted the competency hearing  
6 may order the preliminary examination to be heard by a district magistrate  
7 judge.

8 (e) If the defendant is found to be incompetent to stand trial, the court  
9 shall proceed in accordance with K.S.A. 22-3303, and amendments  
10 thereto.

11 (f) If proceedings are suspended and a hearing to determine the  
12 defendant's competency is ordered after the defendant is in jeopardy, the  
13 court may either order a recess or declare a mistrial.

14 (g) The defendant shall be present personally at all proceedings under  
15 this section.

16 Sec. 4. K.S.A. 12-4113 and 22-3302 are hereby repealed.

17 Sec. 5. This act shall take effect and be in force from and after its  
18 publication in the statute book.