

SENATE BILL No. 104

By Committee on Judiciary

1-28

SB 104 – Balloon – DCF
February 13, 2015
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Office of Revisor of Statutes

AN ACT concerning courts; relating to use of two-way electronic audio-visual communication; amending K.S.A. 12-4402, 12-4404, 12-4408 and 22-3205 and K.S.A. 2014 Supp. 12-4213, 22-2802, 22-3208, 22-3405 and 60-243 and repealing the existing sections.

, 38-2203

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

Section 1. K.S.A. 2014 Supp. 12-4213 is hereby amended to read as follows: 12-4213. (a) Any person arrested by a law enforcement officer shall be taken immediately by the law enforcement officer to the police station of the city or the office in the city designated by the municipal judge. At that time, the person shall have the right to post bond for the person's appearance, in accordance with K.S.A. 12-4301 and 12-4302, and amendments thereto, except as hereinafter provided.

(b) A law enforcement officer may detain a person arrested for violation of a municipal ordinance in protective custody for a period not to exceed six hours, including custody in a city or county jail, if such officer has probable cause to believe that: (1) Such person may cause injury to oneself or others, or damage to property; and (2) there is no responsible person or institution to which such person might be released. Any person so held in protective custody shall be permitted to consult with counsel or other persons who may act on such person's behalf. Such person held in protective custody for six hours shall be given an opportunity to post bond for such person's appearance in the municipal court.

(c) Any person held in custody pursuant to the provisions of this section, and who has not made bond for such person's appearance, may be held in custody until the earliest practical time for such person's appearance in municipal court upon a warrant being issued by the municipal court in accordance with K.S.A. 12-4209, and amendments thereto. *Such appearance may be in person or by two-way electronic audio-visual communication between the defendant and the judge.*

(d) Any person who remains in custody for 48 hours pursuant to the provisions of this section after arrest, and who is awaiting a first appearance before a municipal judge in the absence of a warrant being issued, shall be released on the person's personal recognizance. Bond shall be set within 18 hours of the person being placed in custody.

Sec. 2. K.S.A. 12-4402 is hereby amended to read as follows: 12-

1 jurisdiction in the court or to charge a crime.

2 (5) A motion before trial raising defenses or objections to prosecution
3 shall be determined before trial unless the court orders that it be deferred
4 for determination at the trial.

5 (6) If a motion is determined adversely to the defendant, such
6 defendant shall then plead if such defendant had not previously pleaded. A
7 plea previously entered shall stand. If the court grants a motion based on a
8 defect in the institution of the prosecution or in the complaint, information
9 or indictment, it may also order that the defendant be held in custody or
10 that the defendant's appearance bond be continued for a specified time not
11 exceeding one day pending the filing of a new complaint, information or
12 indictment.

13 (7) Any *nonevidentiary* hearing conducted by the court to determine
14 the merits of any motion may be conducted by two-way electronic ~~audio-~~
15 ~~video~~ *audio-visual* communication between the defendant and defendant's
16 counsel in lieu of personal presence of the defendant and defendant's
17 counsel in the courtroom ~~in the discretion of the court. The defendant shall~~
18 ~~be informed of the defendant's right to be personally present in the~~
19 ~~courtroom during such hearing if the defendant so requests. Exercising the~~
20 ~~right to be present shall in no way prejudice the defendant, unless good~~
21 ~~cause is shown why such audio-visual communication should not be~~
22 ~~utilized.~~

23 Sec. 8. K.S.A. 2014 Supp. 22-3405 is hereby amended to read as
24 follows: 22-3405. (a) The defendant in a felony case shall be present at ~~the~~
25 *any arraignment in which a no contest or guilty plea is entered*, at every
26 stage of the trial including the impaneling of the jury and the return of the
27 verdict, and at the imposition of sentence, except as otherwise provided by
28 law. In prosecutions for crimes not punishable by death or life without the
29 possibility of parole, the defendant's voluntary absence after the trial has
30 been commenced in such person's presence shall not prevent continuing
31 the trial to and including the return of the verdict. A corporation may
32 appear by counsel for all purposes.

33 (b) The defendant must be present, either personally or by counsel, at
34 every stage of the trial of traffic infraction, cigarette or tobacco infraction
35 and misdemeanor cases.

36 ~~Sec. 9. K.S.A. 2014 Supp. 60-243 is hereby amended to read as~~
37 ~~follows: 60-243. (a) *Form and admissibility.* At trial, the witness'~~
38 ~~testimony must be taken in open court, unless otherwise provided by law.~~
39 ~~For good cause in compelling circumstances and with appropriate~~
40 ~~safeguards, the court may permit testimony in open court by~~
41 ~~contemporaneous transmission from a different location. Testimony by~~
42 ~~contemporaneous transmission from a different location may be allowed~~
43 ~~whenever any party requests the use of two-way electronic audio-visual~~

See Attachment A

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1 *communication by written notice at least seven days prior to the scheduled*
2 *hearing or proceeding. Such notice shall include the name and internet*
3 *protocol address of the witness who will testify by two-way electronic*
4 *audio-visual communication, and the date and time the witness will testify.*

5 (b) *Scope of examination and cross-examination.* A party may
6 examine any unwilling or hostile witness by leading questions. A party
7 may call an adverse party or an officer, director or managing agent of a
8 public or private corporation, a partnership or an association that is an
9 adverse party, may examine the witness by leading questions and may
10 contradict and impeach the witness as if the witness had been called by the
11 adverse party. The witness may be contradicted and impeached by the
12 adverse party, but may be cross-examined only on the subject matter of the
13 witness' direct examination.

14 (c) *Record of excluded evidence.* In a jury trial, if an objection to a
15 question to a witness is sustained, the examining attorney may make a
16 specific offer of what the examining attorney expects to prove by the
17 witness' answer. The offer must be made out of the jury's hearing. The
18 court may add any further statement that clearly shows the character of the
19 evidence, the form in which it was offered, the objection made and the
20 ruling on the objection. In nonjury trials the same procedure may be
21 followed, except that the court on request must take and report the
22 evidence in full unless it clearly appears that the evidence is not admissible
23 or is privileged.

24 (d) *Evidence on a motion.* When a motion relies on facts outside the
25 record, the court may hear the matter on affidavits or on declarations
26 pursuant to K.S.A. 53-601, and amendments thereto, or may hear it wholly
27 or partly on oral testimony or on depositions.

28 (e) *Interpreter.* In accordance with K.S.A. 75-4351 through 75-
29 4355d, and amendments thereto, the court may appoint an interpreter of its
30 choosing; fix reasonable compensation to be paid from funds provided by
31 law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b, and
32 amendments thereto, by one or more parties and tax the compensation as
33 costs.

34 Sec. 40. K.S.A. 12-4402, 12-4404, 12-4408 and 22-3205 and K.S.A.
35 2014 Supp. 12-4213, 22-2802, 22-3208, 22-3405 and 60-243 are hereby
36 repealed.

37 Sec. 41. This act shall take effect and be in force from and after its
38 publication in the statute book.

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, 38-2203

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Sec. 9. K.S.A. 38-2203 is hereby amended to read as follows: 38-2203. (a) Proceedings concerning any child who may be a child in need of care shall be governed by this code, except in those instances when the court knows or has reason to know that an Indian child is involved in the proceeding, in which case, the Indian child welfare act of 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding, K.S.A. 2014 Supp. 38-2234, and amendments thereto; ex parte custody orders, K.S.A. 2014 Supp. 38-2242, and amendments thereto; temporary custody hearing, K.S.A. 2014 Supp. 38-2243, and amendments thereto; adjudication, K.S.A. 2014 Supp. 38-2247, and amendments thereto; burden of proof, K.S.A. 2014 Supp. 38-2250, and amendments thereto; disposition, K.S.A. 2014 Supp. 38-2255, and amendments thereto; permanency hearings, K.S.A. 2014 Supp. 38-2264, and amendments thereto; termination of parental rights, K.S.A. 2014 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto; establishment of permanent custodianship, K.S.A. 2014 Supp. 38-2268 and 38-2272, and amendments thereto; the placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child in a guardianship arrangement under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

(b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 2014 Supp. 23-37,101 through 23-37,405, and amendments thereto, the district court shall have original jurisdiction of proceedings pursuant to this code.

(c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or upon issuance of an ex parte order pursuant to K.S.A. 2014 Supp. 38-2242, and amendments thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (2) been adopted; or (3) been discharged by the court. Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

(d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court, upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all parties or interested parties, shall enter an order discharging the child. Except upon request of the child pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if the child is in an out-of-home placement, is still attending high school and has not completed the child's high school education.

(e) When a petition is filed under this code, a person who is alleged to be under 18 years of age shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

(f) A court's order issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, or a comparable case in another jurisdiction, except as provided by K.S.A. 2014 Supp. 23-37,101 through 23-37,405, and amendments thereto, uniform child custody jurisdiction and enforcement act.

(g) In any proceeding under this code, the court may allow a child to appear by means of two-way electronic audio-visual communication in lieu of personal presence of the child.