

SENATE BILL No. 104

By Committee on Judiciary

1-28

SB104-Balloon-Revisor
February 17, 2015
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Office of Revisor of Statutes

1 AN ACT concerning courts; relating to use of two-way electronic audio-
2 visual communication; amending K.S.A. 12-4402, 12-4404, 12-4408
3 and 22-3205 and K.S.A. 2014 Supp. 12-4213, 22-2802, 22-3208, 22-
4 3405 and 60-243 and repealing the existing sections.

, 38-2343, 38-2344

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

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

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

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

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

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

11 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

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. 10. 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. 11. This act shall take effect and be in force from and after its
38 publication in the statute book.

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, 38-2343, 38-2344

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Attachment A

Sec. 9. K.S.A. 2014 Supp. 38-2343 is hereby amended to read as follows: 38-2343. (a) *Basis for extended detention, findings and placement.* Whenever a juvenile is taken into custody, the juvenile shall not remain in detention for more than 48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time the initial detention was imposed, unless the court determines after hearing, within the 48-hour period, that further detention is necessary because detention is warranted in light of all relevant factors, including, but not limited to, the criteria listed in K.S.A. 2014 Supp. 38-2331, and amendments thereto, and the juvenile is dangerous to self or others or is not likely to appear for further proceedings.

(1) If the juvenile is in custody on the basis of a new offense which would be a felony or misdemeanor if committed by an adult and no prior judicial determination of probable cause has been made, the court shall determine whether there is probable cause to believe that the juvenile has committed the alleged offense.

(2) If the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate.

(3) If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

(4) In the absence of the necessary findings, the court shall order the juvenile released or placed in temporary custody as provided in subsection (g).

(b) *Waiver of detention hearing.* The detention hearing may be waived in writing by the juvenile and the juvenile's attorney with approval of the court. The right to a detention hearing may be reasserted in writing by the juvenile or the juvenile's attorney or parent at anytime not less than 48 hours prior to trial.

(c) *Notice of hearing.* Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Except as otherwise provided by ~~subsection (e)(4)~~ of K.S.A. 2014 Supp. 38-2332(c)(1), and amendments thereto, notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived.

When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a certificate of oral notice with the clerk.

(d) *Attorney for juvenile.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney, and may recess the hearing for 24 hours, excluding Saturdays, Sundays and legal holidays, to obtain attendance of the attorney appointed.

(e) *Hearing.* The detention hearing is an informal procedure to which the ordinary rules of evidence do not apply. The court may consider affidavits, professional reports and representations of counsel to make the necessary findings, if the court determines that these materials are sufficiently reliable. If probable cause to believe that the juvenile has committed an alleged offense is contested, the court shall allow the opportunity to present contrary evidence or information upon request. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

(f) *Rehearing.* (1) If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(2) Within 14 days of the detention hearing, if the juvenile had not previously presented evidence regarding the determination of probable cause to believe that the juvenile has committed an offense, the juvenile may request a rehearing to contest the determination of probable cause to believe that the juvenile has committed an offense. The rehearing request shall identify evidence or information that the juvenile could not reasonably produce at the detention hearing. If the court determines that the evidence or information could not reasonably be produced at the detention hearing, the court shall rehear the matter without unnecessary delay.

(g) *Temporary custody.* If the court determines that detention is not necessary but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of some suitable person willing to accept temporary custody or the commissioner. Such finding shall be made in accordance with K.S.A. 2014 Supp. 38-2334 and 38-2335, and amendments thereto.

(h) *Audio-video Audio-visual communications.* Detention hearings may be conducted by two-way electronic ~~audio-video~~ audio-visual communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.

Sec. 10. K.S.A. 2014 Supp. 38-2344 is hereby amended to read as follows: 38-2344.

(a) When the juvenile appears without an attorney in response to a complaint, the court shall inform the juvenile of the following:

(1) The nature of the charges in the complaint;

(2) the right to hire an attorney of the juvenile's own choice;

(3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent; and

(4) that the court may require the juvenile or parent to pay the expense of a court appointed attorney.

Attachment A cont.

Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no request is made or the juvenile or parent is financially unable to hire an attorney, the court shall forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

(b) When the juvenile appears with an attorney in response to a complaint, the court shall require the juvenile to plead guilty, nolo contendere or not guilty to the allegations stated in the complaint, unless there is an application for and approval of an immediate intervention program. Prior to making this requirement, the court shall inform the juvenile of the following:

- (1) The nature of the charges in the complaint;
 - (2) the right of the juvenile to be presumed innocent of each charge;
 - (3) the right to jury trial without unnecessary delay;
 - (4) the right to confront and cross-examine witnesses appearing in support of the allegations of the complaint;
 - (5) the right to subpoena witnesses;
 - (6) the right of the juvenile to testify or to decline to testify; and
 - (7) the sentencing alternatives the court may select as the result of the juvenile being adjudicated a juvenile offender.
- (c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads nolo contendere, the court shall determine, before accepting the plea and entering a sentence: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4), (5) and (6); and (2) that there is a factual basis for the plea.
- (d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial to the court.
- (e) First appearance may be conducted by two-way electronic ~~audio-video~~ audio-visual communication between the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be personally present in court as long as a means of confidential communication between the juvenile and the juvenile's attorney is available.