

SENATE BILL No. 104

By Committee on Judiciary

1-28

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.
5

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

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

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

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

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

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

1 4402. Subject to the provisions of K.S.A. 12-4209, and amendments
2 thereto, the municipal judge may compel the appearance of an accused
3 person. In addition to the procedures provided in K.S.A. 12-4305, and
4 amendments thereto, the municipal judge, ~~upon request,~~ may permit
5 appearance, pleas and satisfaction of the judgment and sentence of the
6 court by counsel, *by two-way electronic audio-visual communication* or by
7 mail.

8 Sec. 3. K.S.A. 12-4404 is hereby amended to read as follows: 12-
9 4404. Arraignment shall be conducted in open court *or by two-way*
10 *electronic audio-visual communication between the defendant and the*
11 *judge*, by stating to the accused person the substance of the charge and
12 calling upon the accused to plead thereto. Arraignment for purposes of
13 accepting plea of not guilty may *also* be accomplished by telephone, mail
14 or appearance by counsel.

15 Sec. 4. K.S.A. 12-4408 is hereby amended to read as follows: 12-
16 4408. The Kansas code of criminal procedure shall govern, insofar as
17 applicable, the filing and disposition of motions. Motions may be oral or
18 written. *Any nonevidentiary hearing conducted by the court to determine*
19 *the merits of any motion may be conducted by two-way electronic audio-*
20 *visual communication between the defendant and the defendant's counsel*
21 *in the courtroom, unless good cause is shown why such audio-visual*
22 *communication should not be utilized.*

23 Sec. 5. K.S.A. 2014 Supp. 22-2802 is hereby amended to read as
24 follows: 22-2802. (1) Any person charged with a crime shall, at the
25 person's first appearance before a magistrate, be ordered released pending
26 preliminary examination or trial upon the execution of an appearance bond
27 in an amount specified by the magistrate and sufficient to assure the
28 appearance of such person before the magistrate when ordered and to
29 assure the public safety. If the person is being bound over for a felony, the
30 bond shall also be conditioned on the person's appearance in the district
31 court or by way of a two-way electronic ~~audio-video~~ *audio-visual*
32 communication as provided in subsection (14) at the time required by the
33 court to answer the charge against such person and at any time thereafter
34 that the court requires. Unless the magistrate makes a specific finding
35 otherwise, if the person is being bonded out for a person felony or a person
36 misdemeanor, the bond shall be conditioned on the person being
37 prohibited from having any contact with the alleged victim of such offense
38 for a period of at least 72 hours. The magistrate may impose such of the
39 following additional conditions of release as will reasonably assure the
40 appearance of the person for preliminary examination or trial:

41 (a) Place the person in the custody of a designated person or
42 organization agreeing to supervise such person;

43 (b) place restrictions on the travel, association or place of abode of

1 the person during the period of release;

2 (c) impose any other condition deemed reasonably necessary to
3 assure appearance as required, including a condition requiring that the
4 person return to custody during specified hours;

5 (d) place the person under a house arrest program pursuant to K.S.A.
6 2014 Supp. 21-6609, and amendments thereto; or

7 (e) place the person under the supervision of a court services officer
8 responsible for monitoring the person's compliance with any conditions of
9 release ordered by the magistrate. The magistrate may order the person to
10 pay for any costs associated with the supervision provided by the court
11 services department in an amount not to exceed \$15 per week of such
12 supervision. The magistrate may also order the person to pay for all other
13 costs associated with the supervision and conditions for compliance in
14 addition to the \$15 per week.

15 (2) In addition to any conditions of release provided in subsection (1),
16 for any person charged with a felony, the magistrate may order such
17 person to submit to a drug and alcohol abuse examination and evaluation
18 in a public or private treatment facility or state institution and, if
19 determined by the head of such facility or institution that such person is a
20 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to
21 treatment for such drug or alcohol abuse, as a condition of release.

22 (3) The appearance bond shall be executed with sufficient solvent
23 sureties who are residents of the state of Kansas, unless the magistrate
24 determines, in the exercise of such magistrate's discretion, that requiring
25 sureties is not necessary to assure the appearance of the person at the time
26 ordered.

27 (4) A deposit of cash in the amount of the bond may be made in lieu
28 of the execution of the bond pursuant to subsection (3). Except as provided
29 in subsection (5), such deposit shall be in the full amount of the bond and
30 in no event shall a deposit of cash in less than the full amount of bond be
31 permitted. Any person charged with a crime who is released on a cash
32 bond shall be entitled to a refund of all moneys paid for the cash bond,
33 after deduction of any outstanding restitution, costs, fines and fees, after
34 the final disposition of the criminal case if the person complies with all
35 requirements to appear in court. The court may not exclude the option of
36 posting bond pursuant to subsection (3).

37 (5) Except as provided further, the amount of the appearance bond
38 shall be the same whether executed as described in subsection (3) or
39 posted with a deposit of cash as described in subsection (4). When the
40 appearance bond has been set at \$2,500 or less and the most serious charge
41 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
42 felony, a drug severity level 4 felony committed prior to July 1, 2012, a
43 drug severity level 5 felony committed on or after July 1, 2012, or a

1 violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments
2 thereto, the magistrate may allow the person to deposit cash with the clerk
3 in the amount of 10% of the bond, provided the person meets at least the
4 following qualifications:

5 ~~(A)~~ (a) Is a resident of the state of Kansas;

6 ~~(B)~~ (b) has a criminal history score category of G, H or I;

7 ~~(C)~~ (c) has no prior history of failure to appear for any court
8 appearances;

9 ~~(D)~~ (d) has no detainer or hold from any other jurisdiction;

10 ~~(E)~~ (e) has not been extradited from, and is not awaiting extradition
11 to, another state; and

12 ~~(F)~~ (f) has not been detained for an alleged violation of probation.

13 (6) In the discretion of the court, a person charged with a crime may
14 be released upon the person's own recognizance by guaranteeing payment
15 of the amount of the bond for the person's failure to comply with all
16 requirements to appear in court. The release of a person charged with a
17 crime upon the person's own recognizance shall not require the deposit of
18 any cash by the person.

19 (7) The court shall not impose any administrative fee.

20 (8) In determining which conditions of release will reasonably assure
21 appearance and the public safety, the magistrate shall, on the basis of
22 available information, take into account the nature and circumstances of
23 the crime charged; the weight of the evidence against the defendant;
24 whether the defendant is lawfully present in the United States; the
25 defendant's family ties, employment, financial resources, character, mental
26 condition, length of residence in the community, record of convictions,
27 record of appearance or failure to appear at court proceedings or of flight
28 to avoid prosecution; the likelihood or propensity of the defendant to
29 commit crimes while on release, including whether the defendant will be
30 likely to threaten, harass or cause injury to the victim of the crime or any
31 witnesses thereto; and whether the defendant is on probation or parole
32 from a previous offense at the time of the alleged commission of the
33 subsequent offense.

34 (9) The appearance bond shall set forth all of the conditions of
35 release.

36 (10) A person for whom conditions of release are imposed and who
37 continues to be detained as a result of the person's inability to meet the
38 conditions of release shall be entitled, upon application, to have the
39 conditions reviewed without unnecessary delay by the magistrate who
40 imposed them. If the magistrate who imposed conditions of release is not
41 available, any other magistrate in the county may review such conditions.

42 (11) A magistrate ordering the release of a person on any conditions
43 specified in this section may at any time amend the order to impose

1 additional or different conditions of release. If the imposition of additional
2 or different conditions results in the detention of the person, the provisions
3 of subsection (10) shall apply.

4 (12) Statements or information offered in determining the conditions
5 of release need not conform to the rules of evidence. No statement or
6 admission of the defendant made at such a proceeding shall be received as
7 evidence in any subsequent proceeding against the defendant.

8 (13) The appearance bond and any security required as a condition of
9 the defendant's release shall be deposited in the office of the magistrate or
10 the clerk of the court where the release is ordered. If the defendant is
11 bound to appear before a magistrate or court other than the one ordering
12 the release, the order of release, together with the bond and security shall
13 be transmitted to the magistrate or clerk of the court before whom the
14 defendant is bound to appear.

15 (14) Proceedings before a magistrate as provided in this section to
16 determine the release conditions of a person charged with a crime
17 including release upon execution of an appearance bond may be conducted
18 by two-way electronic ~~audio-video~~ *audio-visual* communication between
19 the defendant and the judge in lieu of personal presence of the defendant
20 or defendant's counsel in the courtroom ~~in the discretion of the court,~~
21 *unless good cause is shown why such audio-visual communication should*
22 *not be utilized.* The defendant may be accompanied by the defendant's
23 counsel. ~~The defendant shall be informed of the defendant's right to be~~
24 ~~personally present in the courtroom during such proceeding if the~~
25 ~~defendant so requests. Exercising the right to be present shall in no way~~
26 ~~prejudice the defendant.~~

27 (15) The magistrate may order the person to pay for any costs
28 associated with the supervision of the conditions of release of the
29 appearance bond in an amount not to exceed \$15 per week of such
30 supervision. As a condition of sentencing under K.S.A. 2014 Supp. 21-
31 6604, and amendments thereto, the court may impose the full amount of
32 any such costs in addition to the \$15 per week, including, but not limited to,
33 costs for treatment and evaluation under subsection (2).

34 Sec. 6. K.S.A. 22-3205 is hereby amended to read as follows: 22-
35 3205. (a) Arraignment shall be conducted in open court and shall consist of
36 reading the complaint, information or indictment to the defendant or
37 stating to the defendant the substance of the charge and calling upon the
38 defendant to plead thereto. The defendant shall be given a copy of the
39 indictment or information before the defendant is called upon to plead.
40 Except as provided in subsection (b), if the crime charged is a felony, the
41 defendant must be personally present for arraignment; if a misdemeanor,
42 with the approval of the court, the defendant may appear by counsel. The
43 court may direct any officer who has custody of the defendant to bring the

1 defendant before the court to be arraigned.

2 (b) Arraignment *at which the defendant stands mute or enters a not*
3 *guilty plea* may be conducted by two-way electronic ~~audio-video~~ *audio-*
4 *visual* communication between the defendant and the judge in lieu of
5 personal presence of the defendant or the defendant's counsel in the
6 courtroom ~~in the discretion of the court~~, *unless good cause is shown why*
7 *such audio-visual communication should not be utilized*. The defendant
8 may be accompanied by the defendant's counsel during such arraignment.
9 ~~The defendant shall be informed of the defendant's right to be personally~~
10 ~~present in the courtroom during arraignment. Exercising the right to be~~
11 ~~present shall in no way prejudice the defendant.~~

12 (c) The court shall ensure that the defendant has been processed and
13 fingerprinted pursuant to K.S.A. 21-2501, and 21-2501a and amendments
14 thereto.

15 Sec. 7. K.S.A. 2014 Supp. 22-3208 is hereby amended to read as
16 follows: 22-3208. (1) Pleadings in criminal proceedings shall be the
17 complaint, information or indictment, the bill of particulars when ordered,
18 and the pleas of not guilty, guilty or with the consent of the court, nolo
19 contendere. All other pleas, demurrers and motions to quash are abolished
20 and defenses and objections raised before trial which heretofore could
21 have been raised by one or more of them shall be raised only by motion to
22 dismiss or to grant appropriate relief.

23 (2) Any defense or objection which is capable of determination
24 without the trial of the general issue may be raised before trial by motion.

25 (3) Defenses and objections based on defects in the institution of the
26 prosecution or in the complaint, information or indictment other than that
27 it fails to show jurisdiction in the court or to charge a crime may be raised
28 only by motion before trial. The motion shall include all such defenses and
29 objections then available to the defendant. Failure to present any such
30 defense or objection as herein provided constitutes a waiver thereof, but
31 the court for cause shown may grant relief from the waiver. Lack of
32 jurisdiction or the failure of the complaint, information or indictment to
33 charge a crime shall be noticed by the court at any time during the
34 pendency of the proceeding.

35 (4) The motion to dismiss shall be made at any time prior to
36 arraignment or within 21 days after the plea is entered. The period for
37 filing such motion may be enlarged by the court when it shall find that the
38 grounds therefor were not known to the defendant and could not with
39 reasonable diligence have been discovered by the defendant within the
40 period specified herein. A plea of guilty or a consent to trial upon a
41 complaint, information or indictment shall constitute a waiver of defenses
42 and objections based upon the institution of the prosecution or defects in
43 the complaint, information or indictment other than it fails to show

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*

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.