

## Substitute for HOUSE BILL No. 2447

By Committee on Judiciary

3-16

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to preliminary hearings; permitting witness testimony through two-way  
3 electronic audio-video communication devices; amending K.S.A. 2021  
4 Supp. 22-2902 and repealing the existing section.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2021 Supp. 22-2902 is hereby amended to read as  
8 follows: 22-2902. (1)(a) The state and every person charged with a felony  
9 shall have a right to a preliminary examination before a magistrate, unless  
10 such charge has been issued as a result of an indictment by a grand jury.

11 (2)(b) The preliminary examination shall be held before a magistrate  
12 of a county in which venue for the prosecution lies within 14 days after the  
13 arrest or personal appearance of the defendant. Continuances may be  
14 granted only for good cause shown.

15 (3)(c) The defendant shall not enter a plea at the preliminary  
16 examination. The defendant shall be personally present and except for  
17 witnesses who are children less than 13 years of age, the witnesses shall be  
18 examined in the defendant's presence. The defendant's voluntary absence  
19 after the preliminary examination has been begun in the defendant's  
20 presence shall not prevent the continuation of the examination. Except for  
21 witnesses who are children less than 13 years of age, the defendant shall  
22 have the right to cross-examine witnesses against the defendant and  
23 introduce evidence in the defendant's own behalf. If from the evidence it  
24 appears that a felony has been committed and there is probable cause to  
25 believe that a felony has been committed by the defendant, the magistrate  
26 shall order the defendant bound over to the district judge having  
27 jurisdiction to try the case; otherwise, the magistrate shall discharge the  
28 defendant. When the victim of the felony is a child less than 13 years of  
29 age, the finding of probable cause as provided in this subsection may be  
30 based upon hearsay evidence in whole or in part presented at the  
31 preliminary examination by means of statements made by a child less than  
32 13 years of age on a videotape recording or by other means.

33 (d) *The defendant and the state shall be permitted to present the*  
34 *testimony of a witness through a two-way electronic audio-video*  
35 *communication device.*

36 (4)(e) If the defendant and the state waive preliminary examination,

1 the magistrate shall order the defendant bound over to the district judge  
2 having jurisdiction to try the case.

3 ~~(5)(f)~~ Any judge of the district court may conduct a preliminary  
4 examination, and a district judge may preside at the trial of any defendant  
5 even though such judge presided at the preliminary examination of such  
6 defendant.

7 ~~(6)(g)~~ The complaint or information, as filed by the prosecuting  
8 attorney pursuant to K.S.A. 22-2905, and amendments thereto, shall serve  
9 as the formal charging document at trial. When a defendant and  
10 prosecuting attorney reach agreement on a plea of guilty or nolo  
11 contendere, the defendant and the prosecuting attorney shall notify the  
12 district court of such agreement and arrange for a time to plead, pursuant  
13 to K.S.A. 22-3210, and amendments thereto.

14 ~~(7)(h)~~ The judge of the district court, when conducting the  
15 preliminary examination, shall have the discretion to conduct arraignment,  
16 subject to assignment pursuant to K.S.A. 20-329, and amendments thereto,  
17 at the conclusion of the preliminary examination.

18 Sec. 2. K.S.A. 2021 Supp. 22-2902 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its  
20 publication in the statute book.