

HOUSE BILL No. 2354

By Committee on Judiciary

2-8

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to determinations of competency to stand trial; requiring that
3 involuntary commitment proceedings be commenced for a defendant
4 who is awaiting such determination; requiring the dismissal of the
5 underlying criminal case in certain circumstances; amending K.S.A.
6 2022 Supp. 22-3302 and repealing the existing section.
7

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

9 Section 1. K.S.A. 2022 Supp. 22-3302 is hereby amended to read as
10 follows: 22-3302. (a) At any time after the defendant has been charged
11 with a crime and before pronouncement of sentence, the defendant, the
12 defendant's counsel or the prosecuting attorney may request a
13 determination of the defendant's competency to stand trial. If, upon the
14 request of either party or upon the judge's own knowledge and
15 observation, the judge before whom the case is pending finds that there is
16 reason to believe that the defendant is incompetent to stand trial, the
17 proceedings shall be suspended and a hearing conducted to determine the
18 competency of the defendant.

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

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

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

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

32 (C) appoint a licensed physician who is qualified through training or
33 experience or a licensed psychologist to examine the defendant and report
34 to the court.

35 (2) If the court orders the defendant committed to an institution or
36 facility for the examination, the commitment shall be for a period not to

1 exceed 60 days from the date of admission or until the examination is
2 completed, whichever is the shorter period of time. No statement made by
3 the defendant in the course of any examination provided for by this
4 section, whether or not the defendant consents to the examination, shall be
5 admitted in evidence against the defendant in any criminal proceeding.

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

11 (4) Upon notification of the court that a defendant committed for
12 psychiatric or psychological examination under this subsection has been
13 found competent to stand trial, the court shall order that the defendant be
14 returned no later than seven days after receipt of the notice for proceedings
15 under this section. If the defendant is not returned within that time, the
16 county where the proceedings will be held shall pay the costs of
17 maintaining the defendant at the institution or facility for the period of
18 time the defendant remains at the institution or facility in excess of the
19 seven-day period.

20 (d) If the defendant is found to be competent, the proceedings that
21 have been suspended shall be resumed. If the proceedings were suspended
22 before or during the preliminary examination, the judge who conducted the
23 competency hearing may conduct a preliminary examination or, if a
24 district magistrate judge was conducting the proceedings prior to the
25 competency hearing, the judge who conducted the competency hearing
26 may order the preliminary examination to be heard by a district magistrate
27 judge.

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

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

34 (g) *If the total time that a defendant who is awaiting a competency*
35 *determination has been in custody is equal to or greater than the*
36 *maximum possible sentence for all charged crimes minus 21 days, then the*
37 *court, on its own motion or the motion of any party, shall order the*
38 *prosecuting attorney in the county where the charges are filed or the*
39 *secretary for aging and disability services to commence involuntary*
40 *commitment proceedings pursuant to article 29 of chapter 59 of the*
41 *Kansas Statutes Annotated, and amendments thereto. The prosecuting*
42 *attorney shall provide victim notification. Such proceedings shall be*
43 *commenced within 21 days after receipt of certification from the chief*

1 *medical officer of the institution or the head of the facility unless*
2 *exceptional circumstances warrant delay. The underlying criminal charges*
3 *shall remain in effect until the court has made a probable cause*
4 *determination pursuant to K.S.A. 59-2959, and amendments thereto, at*
5 *which time the underlying criminal case shall be dismissed.*

6 (h) The defendant shall be present personally at all proceedings under
7 this section.

8 Sec. 2. K.S.A. 2022 Supp. 22-3302 is hereby repealed.

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