Session of 2025

SENATE BILL No. 203

By Committee on Judiciary

2-5

AN ACT concerning notices to appear; relating to witnesses; authorizing a show cause notice to be issued for an unavailable witness or a material witness; amending K.S.A. 22-2805 and 60-459 and repealing the existing sections.

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

Section 1. K.S.A. 22-2805 is hereby amended to read as follows: 22-2805. (a) If it appears by affidavit that the testimony of a person is material in any criminal proceeding or in any proceeding under the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto, and it is shown that it may become impracticable to secure the witness' presence by subpoena, the court or magistrate may*:*

(1) Require the witness to give bond in an amount fixed by the court or magistrate, or to comply with other conditions to assure the witness' appearance as a witness. If a person fails to comply with the conditions of release, the court or magistrate may, after hearing, commit the witness to the custody of the sheriff or marshal pending final disposition of the proceeding in which the testimony is needed. A material witness shall not be held in custody more than 30 days unless the court or magistrate, after hearing, determines that there is good cause to hold the witness for an additional period of not more than 30 days. No material witness shall be detained because of inability to comply with any condition of release if the testimony of the witness can be secured for use at trial or in any proceeding under the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable time until the deposition of the witness can be taken pursuant to K.S.A. 22-3211, and amendments thereto*; or*

(2) if the person was personally served with a subpoena, issue a notice to appear to answer to a charge of indirect contempt of court pursuant to K.S.A. 20-1204a, and amendments thereto. Upon appearing, the court may continue such charge for the duration of the proceeding for which the subpoena was issued and order the witness to comply with any condition that the court may impose to secure the witness' appearance.

(b) The court or magistrate shall appoint counsel to represent a witness committed to custody pursuant to ~~this section~~ *subsection (a)(1)*

when the court or magistrate determines that the witness is financially unable to employ counsel, based on the same standards as used to determine if a defendant is able to employ counsel. Such appointment shall be from the panel for indigents' defense services or as otherwise prescribed under the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services for the county or judicial district. In any proceeding under the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto, such appointment shall be pursuant to K.S.A. 38-2306, and amendments thereto. The witness may obtain necessary investigative, expert and other services in the manner provided by K.S.A. 22-4508, and amendments thereto. Payment for the counsel and other services shall be made in the manner provided by K.S.A. 22-4507, and amendments thereto.

Sec. 2. K.S.A. 60-459 is hereby amended to read as follows: 60-459. As used in K.S.A. 60-460, ~~its exceptions~~ *and amendments thereto,* and in this section:

(a) "Statement" means not only an oral or written expression but also nonverbal conduct of a person intended by him or her as a substitute for words in expressing the matter stated.

(b) "Declarant" is a person who makes a statement.

(c) "Perceive" means acquire knowledge through one's own senses.

(d) "Public official" of a state or territory of the United States includes an official of a political subdivision of such state or territory and of a municipality.

(e) "State" includes the District of Columbia.

(f) "A business" as used in exception K.S.A. 60-460(m)*, and amendments thereto,* shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(g) *(1)* "Unavailable as a witness" includes situations where the witness is*:*

~~(1)~~*(A)* Exempted on the ground of privilege from testifying concerning the matter to which his or her statement is relevant~~, or~~*;*

~~(2)~~*(B)* disqualified from testifying to the matter~~, or~~*;*

~~(3)~~*(C)* unable to be present or to testify at the hearing because of death or then existing physical or mental illness~~, or~~*;*

~~(4)~~*(D)* absent beyond the jurisdiction of the court to compel appearance by its process~~, or~~*;*

~~(5)~~*(E)* absent from the place of hearing because the proponent of his or her statement does not know and with diligence has been unable to ascertain his or her whereabouts*; or*

(F) has failed to appear as directed after service pursuant to K.S.A.

22-2805(a)(2), and amendments thereto.

~~But~~ *(2)* A witness is not unavailable *if:*

~~(1) if~~ *(A)* the judge finds that~~ his or her~~ *the witness'* exemption, disqualification, inability or absence is due to procurement or wrongdoing of the proponent of~~ his or her~~ *the witness'* statement for the purpose of preventing the witness from attending or testifying, or to the culpable neglect of such party~~,~~*;* or

~~(2) if~~ *(B)* unavailability is claimed under~~ clause (4) of the preceding~~ paragraph *(1)(D)* and the judge finds that the deposition of the declarant could have been taken by the exercise of reasonable diligence and without undue hardship, and that the probable importance of the testimony is such as to justify the expense of taking such deposition.

Sec. 3. K.S.A. 22-2805 and 60-459 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.