

HOUSE BILL No. 2616

AN ACT concerning criminal procedure; relating to preliminary examinations; amending K.S.A. 2005 Supp. 22-2902 and repealing the existing section.

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

Section 1. K.S.A. 2005 Supp. 22-2902 is hereby amended to read as follows: 22-2902. (1) ~~The state and every person arrested on a warrant charging a felony or served with a summons charging~~ *charged with* a felony shall have a right to a preliminary examination before a magistrate, unless such ~~warrant charge~~ *charge* has been issued as a result of an indictment by a grand jury.

(2) The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 10 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

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

(4) If the defendant ~~waives~~ *and the state waive* preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.

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

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

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

Sec. 2. K.S.A. 2005 Supp. 22-2902 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.