

SENATE BILL No. 48

By Senator Journey

1-10

10 AN ACT concerning municipal courts; relating to the accused person's
11 competency to stand trial; amending K.S.A. 22-3302 and repealing the
12 existing section.
13

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

15 New Section 1. (a) At any time after the defendant has been served
16 with the complaint and before pronouncement of sentence, the municipal
17 judge may request a determination of the accused person's competency
18 to stand trial. If the municipal judge before whom the complaint is pend-
19 ing finds that there is reason to believe that the accused person is incom-
20 petent to stand trial, the proceedings shall be suspended and the munic-
21 ipal judge shall refer the matter to the district court for a determination
22 of competency, pursuant to K.S.A. 22-3302 et seq., and amendments
23 thereto.

24 (b) If the district court finds the accused person to be competent,
25 the proceedings which have been suspended shall be resumed for
26 adjudication.

27 (c) As used in this section: (1) An accused person is "incompetent to
28 stand trial" when such person is charged with a crime and, because of
29 mental illness or defect is unable:

30 (A) To understand the nature and purpose of the proceedings against
31 such person; or

32 (B) to make or assist in making such person's defense.

33 (2) Other terms used in this section shall have the meanings ascribed
34 thereto in K.S.A. 12-4113, and amendments thereto.

35 (d) This section shall be part of and supplemental to the Kansas code
36 of procedure for municipal courts.

37 Sec. 2. K.S.A. 22-3302 is hereby amended to read as follows: 22-
38 3302. (1) At any time after the defendant has been charged with a crime
39 and before pronouncement of sentence, *a municipal court, pursuant to*
40 *section 1, and amendments thereto*, the defendant, the defendant's coun-
41 sel or the prosecuting attorney may request a determination of the de-
42 fendant's competency to stand trial. If, upon the request of either party
43 ~~or~~, upon the judge's own knowledge and observation *or if referred by the*

1 *municipal court as provided in section 1, and amendments thereto*, the
2 judge before whom the case is pending finds that there is reason to believe
3 that the defendant is incompetent to stand trial the proceedings shall be
4 suspended and a hearing conducted to determine the competency of the
5 defendant.

6 (2) If the defendant is charged with a felony **or misdemeanor** or
7 *referred by the municipal court pursuant to section 1, and amendments*
8 *thereto*, the hearing to determine the competency of the defendant shall
9 be conducted by a district judge.

10 (3) The court shall determine the issue of competency and may im-
11 panel a jury of six persons to assist in making the determination. The
12 court may order a psychiatric or psychological examination of the de-
13 fendant. To facilitate the examination, the court may: (a) If the defendant
14 is charged with a felony, commit the defendant to the state security hos-
15 pital or any county or private institution for examination and report to
16 the court, or, if the defendant is charged with a misdemeanor, commit
17 the defendant to any appropriate state, county or private institution for
18 examination and report to the court, except that the court shall not com-
19 mit the defendant to the state security hospital or any other state insti-
20 tution unless, prior to such commitment, the director of a local county or
21 private institution recommends to the court and to the secretary of social
22 and rehabilitation services that examination of the defendant should be
23 performed at a state institution; (b) designate any appropriate psychiatric
24 or psychological clinic, mental health center or other psychiatric or psy-
25 chological facility to conduct the examination while the defendant is in
26 jail or on pretrial release; or (c) appoint two qualified licensed physicians
27 or licensed psychologists, or one of each, to examine the defendant and
28 report to the court. If the court commits the defendant to an institution
29 for the examination, the commitment shall be for not more than 60 days
30 or until the examination is completed, whichever is the shorter period of
31 time. No statement made by the defendant in the course of any exami-
32 nation provided for by this section, whether or not the defendant consents
33 to the examination, shall be admitted in evidence against the defendant
34 in any criminal proceeding. Upon notification of the court that a defend-
35 ant committed for psychiatric or psychological examination under this
36 subsection has been found competent to stand trial, the court shall order
37 that the defendant be returned not later than five days after receipt of
38 the notice for proceedings under this section. If the defendant is not
39 returned within that time, the county in which the proceedings will be
40 held shall pay the costs of maintaining the defendant at the institution or
41 facility for the period of time the defendant remains at the institution or
42 facility in excess of the five-day period.

43 (4) If the defendant is found to be competent, the proceedings which

1 have been suspended *either in district court or municipal court* shall be
2 resumed. If the proceedings were suspended before or during the pre-
3 liminary examination, the judge who conducted the competency hearing
4 may conduct a preliminary examination ~~or~~. If a district magistrate judge
5 was conducting the proceedings prior to the competency hearing, the
6 judge who conducted the competency hearing may order the preliminary
7 examination to be heard by a district magistrate judge. *If a municipal*
8 *judge was conducting the proceedings prior to the competency hearing,*
9 *the judge who conducted the competency hearing shall order the case*
10 *back to the municipal court.*

11 (5) If the defendant is found to be incompetent to stand trial, the
12 court shall proceed in accordance with K.S.A. 22-3303 and amendments
13 thereto.

14 (6) If proceedings are suspended and a hearing to determine the
15 defendant's competency is ordered after the defendant is in jeopardy, the
16 court may either order a recess or declare a mistrial.

17 (7) The defendant shall be present personally at all proceedings un-
18 der this section.

19 Sec. 3. K.S.A. 22-3302 is hereby repealed.

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