

## SENATE BILL No. 110

By Committee on Ways and Means

1-27

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9 AN ACT concerning criminal procedure; relating to a defendant's com-  
10 petency; amending K.S.A. 22-3302 and repealing the existing section.

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

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

23 (2) If the defendant is charged with a felony, the hearing to determine  
24 the competency of the defendant shall be conducted by a district judge.

25 (3) The court shall determine the issue of competency and may im-  
26 panel a jury of six persons to assist in making the determination. The  
27 court may order a psychiatric or psychological examination of the de-  
28 fendant. To facilitate the examination, the court may: (a) If the defendant  
29 is charged with a felony, commit the defendant to the state security hos-  
30 pital or any county or private institution for examination and report to  
31 the court, or, if the defendant is charged with a misdemeanor, commit  
32 the defendant to any appropriate state, county or private institution for  
33 examination and report to the court, except that the court shall not com-  
34 mit the defendant to the state security hospital or any other state insti-  
35 tution unless, prior to such commitment, the director of a local county or  
36 private institution recommends to the court and to the secretary of social  
37 and rehabilitation services that examination of the defendant should be  
38 performed at a state institution; (b) designate any appropriate psychiatric  
39 or psychological clinic, mental health center or other psychiatric or psy-  
40 chological facility to conduct the examination while the defendant is in  
41 jail or on pretrial release; or (c) appoint ~~two qualified licensed physicians~~  
42 ~~or licensed psychologists, or one of each,~~ *one qualified licensed physician*  
43 *or licensed psychologist* to examine the defendant and report to the court.

1 If the court commits the defendant to an institution for the examination,  
2 the commitment shall be for not more than 60 days or until the exami-  
3 nation is completed, whichever is the shorter period of time. No state-  
4 ment made by the defendant in the course of any examination provided  
5 for by this section, whether or not the defendant consents to the exami-  
6 nation, shall be admitted in evidence against the defendant in any criminal  
7 proceeding. Upon notification of the court that a defendant committed  
8 for psychiatric or psychological examination under this subsection has  
9 been found competent to stand trial, the court shall order that the de-  
10 fendant be returned not later than five days after receipt of the notice for  
11 proceedings under this section. If the defendant is not returned within  
12 that time, the county in which the proceedings will be held shall pay the  
13 costs of maintaining the defendant at the institution or facility for the  
14 period of time the defendant remains at the institution or facility in excess  
15 of the five-day period.

16 (4) If the defendant is found to be competent, the proceedings which  
17 have been suspended shall be resumed. If the proceedings were sus-  
18 pended before or during the preliminary examination, the judge who  
19 conducted the competency hearing may conduct a preliminary exami-  
20 nation or, if a district magistrate judge was conducting the proceedings  
21 prior to the competency hearing, the judge who conducted the compe-  
22 tency hearing may order the preliminary examination to be heard by a  
23 district magistrate judge.

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

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

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

32 Sec. 2. K.S.A. 22-3302 is hereby repealed.

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