

## SENATE BILL No. 481

By Committee on Judiciary

2-4

1 AN ACT concerning courts; establishing procedures in the Kansas code of  
2 procedure for municipal courts related to determination of an accused  
3 person's competency to stand trial; authorizing a municipal judge to  
4 order an examination; authorizing a district court judge to rely on a  
5 psychiatric or psychological examination ordered by a municipal court  
6 to facilitate an examination; amending K.S.A. 12-4113 and 22-3302  
7 and repealing the existing sections.

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

10 New Section 1. (a) At any time after a defendant has been served with  
11 the complaint and before the satisfaction of sentence, if the municipal  
12 judge before whom the proceedings are pending finds that there is reason  
13 to believe that such defendant is incompetent to stand trial, all speedy trial  
14 requirements shall be suspended and, after a hearing, the court may order a  
15 psychiatric or psychological examination of such defendant in accordance  
16 with this section.

17 (b) To facilitate a psychiatric or psychological examination, the court  
18 may order that an examination and report be completed by:

19 (1) An appropriate state, county or private institution or facility;

20 (2) a licensed physician or psychologist who is qualified through  
21 training or experience; or

22 (3) an examiner from a list of competency examiners used in the  
23 district court where the municipal court is located.

24 (c) No statement made by a defendant during any examination  
25 provided for by this section, whether or not such defendant consents to the  
26 examination, shall be admitted in evidence against such defendant in any  
27 criminal proceeding.

28 (d) The costs for an examination ordered pursuant to this section shall  
29 be paid from municipal court funds or the general fund of the municipality.

30 (e) An examination ordered pursuant to this section shall be  
31 completed within 60 days of the court's order for such examination to  
32 determine the defendant's competency.

33 (f) Before the expiration of the 60-day examination period, an  
34 examiner approved by the court to examine a defendant shall certify to the  
35 court whether such defendant is competent to stand trial.

36 (g) Upon notification of the court that a defendant subject to

1 examination under this section has been found competent to stand trial, the  
2 suspended proceedings shall resume.

3 (h) If the examination shows that a defendant is incompetent to stand  
4 trial, the court shall conduct a hearing to determine competency of such  
5 defendant. Such defendant shall be present for any hearing to determine  
6 competency.

7 (i) If the court determines a defendant is incompetent to stand trial,  
8 the criminal charges against such defendant shall be dismissed and the city  
9 attorney may:

10 (1) File a petition pursuant to K.S.A. 59-2945 et seq., and  
11 amendments thereto, in the appropriate district court; or

12 (2) request that the district attorney or county attorney review the  
13 case for the filing of a complaint in the district court.

14 (j) This section shall be a part of and supplemental to the Kansas code  
15 of procedure for municipal courts.

16 Sec. 2. K.S.A. 12-4113 is hereby amended to read as follows: 12-  
17 4113. As used in this act:

18 (a) "Appearance bond" means an undertaking, with or without  
19 security, entered into by a person in custody by which the person is bound  
20 to comply with the conditions of the undertaking.

21 (b) "Accused person" means a person, corporation or other legal  
22 entity accused by a complaint of the violation of a city ordinance.

23 (c) "Arraignment" means the formal act of calling the person accused  
24 of violating an ordinance before the municipal court to inform the person  
25 of the offense with which the person is charged, to ask the person whether  
26 the person is guilty or not guilty and, if guilty, to impose sentence.

27 (d) "Arrest" means the taking of a person into custody in order that  
28 the person will appear to answer for the violation of an ordinance. The  
29 giving of a notice to appear is not an arrest.

30 (e) "Bail" is the security given for the purpose of insuring compliance  
31 with the terms of an appearance bond.

32 (f) "City attorney" means any attorney who represents the city in the  
33 prosecution of an accused person for the violation of a city ordinance.

34 (g) "Complaint" means a sworn written statement, or a written  
35 statement by a law enforcement officer, of the essential facts constituting a  
36 violation of an ordinance.

37 (h) "Custody" means the restraint of a person pursuant to an arrest.

38 (i) "Detention" means the temporary restraint of a person by a law  
39 enforcement officer.

40 (j) "Law enforcement officer" means any person who by virtue of  
41 office or public employment is vested by law with a duty to maintain  
42 public order and to make arrests for violation of the laws of the state of  
43 Kansas or ordinances of any municipality thereof.

1 (k) "Notice to appear" is a written notice to a person accused by a  
2 complaint of having violated an ordinance of a city to appear at a stated  
3 time and place to answer to the charge of the complaint.

4 (l) "Subpoena" is a process issued by the court to cause a witness to  
5 appear and give testimony at a time and place therein specified.

6 (m) "Ordinance traffic infraction" is a violation of an ordinance that  
7 proscribes or requires the same behavior as that proscribed or required by  
8 a statutory provision that is classified as a traffic infraction in K.S.A. 8-  
9 2118, and amendments thereto.

10 (n) "Warrant" is a written order made by a municipal judge directed  
11 to any law enforcement officer commanding the officer to arrest the person  
12 named or described in it.

13 (o) "Ordinance cigarette or tobacco infraction" is a violation of an  
14 ordinance that proscribes the same behavior as proscribed by ~~subsection~~  
15 ~~(m) or (n)~~ of K.S.A. 79-3321 ~~(m) or (n)~~, and amendments thereto.

16 (p) *A person is "incompetent to stand trial" when such person is*  
17 *charged with a crime and, because of mental illness or defect, is unable*  
18 *to:*

19 *(1) Understand the nature and purpose of the proceedings against*  
20 *such person; or*

21 *(2) make or assist in making such person's defense.*

22 *(q) "Treatment provider" means any mental health center or clinic,*  
23 *psychiatric unit of a medical care facility, psychologist, physician or other*  
24 *institution or person authorized or licensed by law to provide either*  
25 *inpatient or outpatient treatment to any patient.*

26 Sec. 3. K.S.A. 22-3302 is hereby amended to read as follows: 22-  
27 3302. (a) At any time after the defendant has been charged with a crime  
28 and before pronouncement of sentence, the defendant, the defendant's  
29 counsel or the prosecuting attorney may request a determination of the  
30 defendant's competency to stand trial. If, upon the request of either party  
31 or upon the judge's own knowledge and observation, the judge before  
32 whom the case is pending finds that there is reason to believe that the  
33 defendant is incompetent to stand trial, the proceedings shall be suspended  
34 and a hearing conducted to determine the competency of the defendant.

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

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

41 (A) Order that an evaluation be completed by an appropriate state,  
42 county or private institution or facility to be conducted in person or by use  
43 of available electronic means while the defendant is in jail, at any secure

1 location or on pretrial release;

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

5 (C) appoint a licensed physician who is qualified through training or  
6 experience or a licensed psychologist to examine the defendant and report  
7 to the court; *or*

8 (D) *rely on the psychiatric or psychological examination ordered by*  
9 *a municipal court to find a defendant incompetent to stand trial.*

10 (2) If the court orders the defendant committed to an institution or  
11 facility for the examination, the commitment shall be for a period not to  
12 exceed 60 days from the date of admission or until the examination is  
13 completed, whichever is the shorter period of time. No statement made by  
14 the defendant in the course of any examination provided for by this  
15 section, whether or not the defendant consents to the examination, shall be  
16 admitted in evidence against the defendant in any criminal proceeding.

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

22 (4) Upon notification of the court that a defendant committed for  
23 psychiatric or psychological examination under this subsection has been  
24 found competent to stand trial, the court shall order that the defendant be  
25 returned no later than seven days after receipt of the notice for proceedings  
26 under this section. If the defendant is not returned within that time, the  
27 county where the proceedings will be held shall pay the costs of  
28 maintaining the defendant at the institution or facility for the period of  
29 time the defendant remains at the institution or facility in excess of the  
30 seven-day period.

31 (d) If the defendant is found to be competent, the proceedings that  
32 have been suspended shall be resumed. If the proceedings were suspended  
33 before or during the preliminary examination, the judge who conducted the  
34 competency hearing may conduct a preliminary examination or, if a  
35 district magistrate judge was conducting the proceedings prior to the  
36 competency hearing, the judge who conducted the competency hearing  
37 may order the preliminary examination to be heard by a district magistrate  
38 judge.

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

42 (f) If proceedings are suspended and a hearing to determine the  
43 defendant's competency is ordered after the defendant is in jeopardy, the

1 court may either order a recess or declare a mistrial.

2 (g) The defendant shall be present personally at all proceedings under  
3 this section.

4 Sec. 4. K.S.A. 12-4113 and 22-3302 are hereby repealed.

5 Sec. 5. This act shall take effect and be in force from and after its  
6 publication in the statute book.