

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.