

HOUSE BILL No. 2057

By Committee on Corrections and Juvenile Justice

1-21

1 AN ACT concerning forensic examinations; relating to admissibility;
2 amending K.S.A. 2010 Supp. 22-3437 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2010 Supp. 22-3437 is hereby amended to read as
7 follows: 22-3437. (a) (1) In any hearing or trial, a report concerning
8 forensic examinations and certificate of forensic examination executed
9 pursuant to this section shall be admissible in evidence if the report and
10 certificate are prepared and attested by a criminalist or other employee of
11 the Kansas bureau of investigation, Kansas highway patrol, *Johnson*
12 *County sheriff's laboratory*, *Sedgwick County regional forensic science*
13 *center*, or any laboratory of the federal bureau of investigation, federal
14 postal inspection service, federal bureau of alcohol, tobacco and firearms
15 or federal drug enforcement administration. If the examination involves a
16 breath test for alcohol content, the report must also be admissible
17 pursuant to K.S.A. 8-1001, and amendments thereto, and be conducted by
18 a law enforcement officer or other person who is certified by the
19 department of health and environment as a breath test operator as
20 provided by K.S.A. 65-1,107 et seq., and amendments thereto.

21 (2) Upon the request of any law enforcement agency, such person as
22 provided in paragraph (1) performing the analysis shall prepare a
23 certificate. Such person shall sign the certificate under oath and shall
24 include in the certificate an attestation as to the result of the analysis. The
25 presentation of this certificate to a court by any party to a proceeding
26 shall be evidence that all of the requirements and provisions of this
27 section have been complied with. This certificate shall be supported by a
28 written declaration pursuant to K.S.A. 53-601, and amendments thereto,
29 or shall be sworn to before a notary public or other person empowered by
30 law to take oaths and shall contain a statement establishing the following:
31 The type of analysis performed; the result achieved; any conclusions
32 reached based upon that result; that the subscriber is the person who
33 performed the analysis and made the conclusions; the subscriber's
34 training or experience to perform the analysis; the nature and condition of
35 the equipment used; and the certification and foundation requirements for
36 admissibility of breath test results, when appropriate. When properly

1 executed, the certificate shall, subject to the provisions of paragraph (3)
2 and notwithstanding any other provision of law, be admissible evidence
3 of the results of the forensic examination of the samples or evidence
4 submitted for analysis and the court shall take judicial notice of the
5 signature of the person performing the analysis and of the fact that such
6 person is that person who performed the analysis.

7 (3) Whenever a party intends to proffer in a criminal or civil
8 proceeding, a certificate executed pursuant to this section, notice of an
9 intent to proffer that certificate and the reports relating to the analysis in
10 question, including a copy of the certificate, shall be conveyed to the
11 opposing party or parties at least 20 days before the beginning of a
12 hearing where the proffer will be used. An opposing party who intends to
13 object to the admission into evidence of a certificate shall give notice of
14 objection and the grounds for the objection within 10 days upon receiving
15 the adversary's notice of intent to proffer the certificate. Whenever a
16 notice of objection is filed, admissibility of the certificate shall be
17 determined not later than two days before the beginning of the trial. A
18 proffered certificate shall be admitted in evidence unless it appears from
19 the notice of objection and grounds for that objection that the conclusions
20 of the certificate, including the composition, quality or quantity of the
21 substance submitted to the laboratory for analysis or the alcohol content
22 of a blood or breath sample will be contested at trial. A failure to comply
23 with the time limitations regarding the notice of objection required by this
24 section shall constitute a waiver of any objections to the admission of the
25 certificate. The time limitations set forth in this section may be extended
26 upon a showing of good cause.

27 (b) (1) In any hearing or trial where there is a report concerning
28 forensic examinations from a person as provided in paragraph (1) of
29 subsection (a), district and municipal courts may, upon request of either
30 party, use two-way interactive video technology, including internet-based
31 videoconferencing, to take testimony from that person if the testimony is
32 in relation to the report.

33 (2) The use of any two-way interactive video technology must be in
34 accordance with any requirements and guidelines established by the
35 office of judicial administration, and all proceedings at which such
36 technology is used in a district court must be recorded verbatim by the
37 court.

38 Sec. 2. K.S.A. 2010 Supp. 22-3437 is hereby repealed.

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