

HOUSE BILL No. 2447

By Committee on Judiciary

1-16

Proposed Amendments to HB 2447 - Carmichael

House Judiciary

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1 AN ACT concerning courts; relating to use of two-way electronic audio-
2 visual communication; amending K.S.A. 12-4402, 12-4404, 12-4408,
3 22-2803 and 22-3205 and K.S.A. 2019 Supp. 12-4213, 22-2802, 22-
4 3208, 22-3405, 38-2203, 38-2343, 38-2344 and 60-243 and repealing
5 the existing sections.
6

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

8 Section 1. K.S.A. 2019 Supp. 12-4213 is hereby amended to read as
9 follows: 12-4213. (a) Any person arrested by a law enforcement officer
10 shall be taken immediately by the law enforcement officer to the police
11 station of the city or the office in the city designated by the municipal
12 judge. At that time, the person shall have the right to post bond for the
13 person's appearance, in accordance with K.S.A. 12-4301 and 12-4302, and
14 amendments thereto, except as hereinafter provided.

15 (b) A law enforcement officer may detain a person arrested for
16 violation of a municipal ordinance in protective custody for a period not to
17 exceed six hours, including custody in a city or county jail, if such officer
18 has probable cause to believe that: (1) Such person may cause injury to
19 oneself or others, or damage to property; and (2) there is no responsible
20 person or institution to which such person might be released. Any person
21 so held in protective custody shall be permitted to consult with counsel or
22 other persons who may act on such person's behalf. Such person held in
23 protective custody for six hours shall be given an opportunity to post bond
24 for such person's appearance in the municipal court.

25 (c) Any person held in custody pursuant to the provisions of this
26 section, and who has not made bond for such person's appearance, may be
27 held in custody until the earliest practical time for such person's
28 appearance in municipal court upon a warrant being issued by the
29 municipal court in accordance with K.S.A. 12-4209, and amendments
30 thereto. *Such appearance may be in person or by two-way electronic*
31 *audio-visual communication between the defendant and the judge.*

32 (d) Any person who remains in custody for 48 hours pursuant to the
33 provisions of this section after arrest, and who is awaiting a first
34 appearance before a municipal judge in the absence of a warrant being
35 issued, shall be released on the person's personal recognizance. Bond shall
36 be set within 18 hours of the person being placed in custody.

1 Sec. 2. K.S.A. 12-4402 is hereby amended to read as follows: 12-
2 4402. Subject to the provisions of K.S.A. 12-4209, and amendments
3 thereto, the municipal judge may compel the appearance of an accused
4 person. In addition to the procedures provided in K.S.A. 12-4305, and
5 amendments thereto, the municipal judge, ~~upon request,~~ may permit
6 appearance, pleas and satisfaction of the judgment and sentence of the
7 court by counsel, *by two-way electronic audio-visual communication* or by
8 mail.

9 Sec. 3. K.S.A. 12-4404 is hereby amended to read as follows: 12-
10 4404. Arraignment shall be conducted in open court, *or by two-way*
11 *electronic audio-visual communication between the defendant and the*
12 *judge*, by stating to the accused person the substance of the charge and
13 calling upon the accused to plead thereto. Arraignment for purposes of
14 accepting a plea of not guilty may *also* be accomplished by telephone,
15 mail or appearance by counsel.

16 Sec. 4. K.S.A. 12-4408 is hereby amended to read as follows: 12-
17 4408. The Kansas code of criminal procedure shall govern, insofar as
18 applicable, the filing and disposition of motions. Motions may be oral or
19 written. *Any nonevidentiary hearing conducted by the court to determine*
20 *the merits of any motion may be conducted by two-way electronic audio-*
21 *visual communication between the defendant and the defendant's counsel*
22 *in the courtroom, unless good cause is shown why such audio-visual*
23 *communication should not be utilized.*

24 Sec. 5. K.S.A. 2019 Supp. 22-2802 is hereby amended to read as
25 follows: 22-2802. ~~(+)~~(a) Any person charged with a crime shall, at the
26 person's first appearance before a magistrate, be ordered released pending
27 preliminary examination or trial upon the execution of an appearance bond
28 in an amount specified by the magistrate and sufficient to assure the
29 appearance of such person before the magistrate when ordered and to
30 assure the public safety. If the person is being bound over for a felony, the
31 bond shall also be conditioned on the person's appearance in the district
32 court or by way of a two-way electronic ~~audio-video~~ *audio-visual*
33 communication as provided in subsection ~~(+4)~~ (n) at the time required by
34 the court to answer the charge against such person and at any time
35 thereafter that the court requires. Unless the magistrate makes a specific
36 finding otherwise, if the person is being bonded out for a person felony or
37 a person misdemeanor, the bond shall be conditioned on the person being
38 prohibited from having any contact with the alleged victim of such offense
39 for a period of at least 72 hours. The magistrate may impose such of the
40 following additional conditions of release as will reasonably assure the
41 appearance of the person for preliminary examination or trial:

42 ~~(+)~~(1) Place the person in the custody of a designated person or
43 organization agreeing to supervise such person;

1 ~~(b)~~(2) place restrictions on the travel, association or place of abode of
2 the person during the period of release;

3 ~~(e)~~(3) impose any other condition deemed reasonably necessary to
4 assure appearance as required, including a condition requiring that the
5 person return to custody during specified hours;

6 ~~(d)~~(4) place the person under a house arrest program pursuant to
7 K.S.A. 2019 Supp. 21-6609, and amendments thereto; or

8 ~~(e)~~(5) place the person under the supervision of a court services
9 officer responsible for monitoring the person's compliance with any
10 conditions of release ordered by the magistrate. The magistrate may order
11 the person to pay for any costs associated with the supervision provided by
12 the court services department in an amount not to exceed \$15 per week of
13 such supervision. The magistrate may also order the person to pay for all
14 other costs associated with the supervision and conditions for compliance
15 in addition to the \$15 per week.

16 ~~(2)~~(b) In addition to any conditions of release provided in subsection
17 ~~(1)~~(a), for any person charged with a felony, the magistrate may order
18 such person to submit to a drug and alcohol abuse examination and
19 evaluation in a public or private treatment facility or state institution and,
20 if determined by the head of such facility or institution that such person is
21 a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit
22 to treatment for such drug or alcohol abuse, as a condition of release.

23 ~~(3)~~(c) The appearance bond shall be executed with sufficient solvent
24 sureties who are residents of the state of Kansas, unless the magistrate
25 determines, in the exercise of such magistrate's discretion, that requiring
26 sureties is not necessary to assure the appearance of the person at the time
27 ordered.

28 ~~(4)~~(d) A deposit of cash in the amount of the bond may be made in
29 lieu of the execution of the bond pursuant to subsection ~~(3)~~(c). Except as
30 provided in subsection ~~(5)~~(e), such deposit shall be in the full amount of
31 the bond and in no event shall a deposit of cash in less than the full amount
32 of bond be permitted. Any person charged with a crime who is released on
33 a cash bond shall be entitled to a refund of all moneys paid for the cash
34 bond, after deduction of any outstanding restitution, costs, fines and fees,
35 after the final disposition of the criminal case, if the person complies with
36 all requirements to appear in court. The court may not exclude the option
37 of posting bond pursuant to subsection ~~(3)~~(c).

38 ~~(5)~~(e) Except as provided further, the amount of the appearance bond
39 shall be the same whether executed as described in subsection ~~(3)~~(c) or
40 posted with a deposit of cash as described in subsection ~~(4)~~(d). When the
41 appearance bond has been set at \$2,500 or less and the most serious charge
42 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
43 felony, a drug severity level 4 felony committed prior to July 1, 2012, a

1 drug severity level 5 felony committed on or after July 1, 2012, or a
2 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
3 allow the person to deposit cash with the clerk in the amount of 10% of the
4 bond, provided the person meets at least the following qualifications:

- 5 ~~(A)~~(1) Is a resident of the state of Kansas;
6 ~~(B)~~(2) has a criminal history score category of G, H or I;
7 ~~(C)~~(3) has no prior history of failure to appear for any court
8 appearances;
9 ~~(D)~~(4) has no detainer or hold from any other jurisdiction;
10 ~~(E)~~(5) has not been extradited from, and is not awaiting extradition
11 to, another state; and
12 ~~(F)~~(6) has not been detained for an alleged violation of probation.
13 ~~(6)~~(f) In the discretion of the court, a person charged with a crime
14 may be released upon the person's own recognizance by guaranteeing
15 payment of the amount of the bond for the person's failure to comply with
16 all requirements to appear in court. The release of a person charged with a
17 crime upon the person's own recognizance shall not require the deposit of
18 any cash by the person.

19 ~~(7)~~(g) The court shall not impose any administrative fee.
20 ~~(8)~~(h) In determining which conditions of release will reasonably
21 assure appearance and the public safety, the magistrate shall, on the basis
22 of available information, take into account: The nature and circumstances
23 of the crime charged; the weight of the evidence against the defendant;
24 whether the defendant is lawfully present in the United States; the
25 defendant's family ties, employment, financial resources, character, mental
26 condition, length of residence in the community, record of convictions,
27 record of appearance or failure to appear at court proceedings or of flight
28 to avoid prosecution; the likelihood or propensity of the defendant to
29 commit crimes while on release, including whether the defendant will be
30 likely to threaten, harass or cause injury to the victim of the crime or any
31 witnesses thereto; and whether the defendant is on probation or parole
32 from a previous offense at the time of the alleged commission of the
33 subsequent offense.

34 ~~(9)~~(i) The appearance bond shall set forth all of the conditions of
35 release.

36 ~~(10)~~(j) A person for whom conditions of release are imposed and who
37 continues to be detained as a result of the person's inability to meet the
38 conditions of release shall be entitled, upon application, to have the
39 conditions reviewed without unnecessary delay by the magistrate who
40 imposed them. If the magistrate who imposed conditions of release is not
41 available, any other magistrate in the county may review such conditions.

42 ~~(11)~~(k) A magistrate ordering the release of a person on any
43 conditions specified in this section may at any time amend the order to

1 impose additional or different conditions of release. If the imposition of
2 additional or different conditions results in the detention of the person, the
3 provisions of subsection ~~(10)~~ (j) shall apply.

4 ~~(12)~~(l) Statements or information offered in determining the
5 conditions of release need not conform to the rules of evidence. No
6 statement or admission of the defendant made at such a proceeding shall
7 be received as evidence in any subsequent proceeding against the
8 defendant.

9 ~~(13)~~(m) The appearance bond and any security required as a condition
10 of the defendant's release shall be deposited in the office of the magistrate
11 or the clerk of the court where the release is ordered. If the defendant is
12 bound to appear before a magistrate or court other than the one ordering
13 the release, the order of release, together with the bond and security shall
14 be transmitted to the magistrate or clerk of the court before whom the
15 defendant is bound to appear.

16 ~~(14)~~(n) Proceedings before a magistrate as provided in this section to
17 determine the release conditions of a person charged with a crime,
18 including release upon execution of an appearance bond, may be
19 conducted by two-way electronic ~~audio-video~~ *audio-visual* communication
20 between the defendant and the judge in lieu of personal presence of the
21 defendant or defendant's counsel in the courtroom ~~in the discretion of the~~
22 ~~court~~, *unless good cause is shown why such audio-visual communication*
23 *should not be utilized*. The defendant may be accompanied by the
24 defendant's counsel. ~~The defendant shall be informed of the defendant's~~
25 ~~right to be personally present in the courtroom during such proceeding if~~
26 ~~the defendant so requests. Exercising the right to be present shall in no~~
27 ~~way prejudice the defendant.~~

28 ~~(15)~~(o) The magistrate may order the person to pay for any costs
29 associated with the supervision of the conditions of release of the
30 appearance bond in an amount not to exceed \$15 per week of such
31 supervision. As a condition of sentencing under K.S.A. 2019 Supp. 21-
32 6604, and amendments thereto, the court may impose the full amount of
33 any such costs in addition to the \$15 per week, including, but not limited
34 to, costs for treatment and evaluation under subsection ~~(2)~~ (b).

35 Sec. 6. K.S.A. 22-2803 is hereby amended to read as follows: 22-
36 2803. A person who remains in custody after review of such person's
37 application pursuant to ~~subsection (9) or (10) of~~ K.S.A. 22-2802(j) or (k),
38 and amendments thereto, by a district magistrate judge may apply to a
39 district judge of the judicial district in which the charge is pending to
40 modify the order fixing conditions of release. Such motion shall be
41 determined promptly.

42 Sec. 7. K.S.A. 22-3205 is hereby amended to read as follows: 22-
43 3205. (a) Arraignment shall be conducted in open court and shall consist of

1 reading the complaint, information or indictment to the defendant or
2 stating to the defendant the substance of the charge and calling upon the
3 defendant to plead thereto. The defendant shall be given a copy of the
4 indictment or information before the defendant is called upon to plead.
5 Except as provided in subsection (b), if the crime charged is a felony, the
6 defendant must be personally present for arraignment; if a misdemeanor,
7 with the approval of the court, the defendant may appear by counsel. The
8 court may direct any officer who has custody of the defendant to bring the
9 defendant before the court to be arraigned.

10 (b) Arraignment *at which the defendant stands mute or enters a not*
11 *guilty plea* may be conducted by two-way electronic-~~audio-video~~ *audio-*
12 *visual* communication between the defendant and the judge in lieu of
13 personal presence of the defendant or the defendant's counsel in the
14 courtroom ~~in the discretion of the court, unless good cause is shown why~~
15 *such audio-visual communication should not be utilized.* The defendant
16 may be accompanied by the defendant's counsel during such arraignment.
17 ~~The defendant shall be informed of the defendant's right to be personally~~
18 ~~present in the courtroom during arraignment. Exercising the right to be~~
19 ~~present shall in no way prejudice the defendant.~~

20 (c) The court shall ensure that the defendant has been processed and
21 fingerprinted pursuant to K.S.A. 21-2501; and 21-2501a, and amendments
22 thereto.

23 Sec. 8. K.S.A. 2019 Supp. 22-3208 is hereby amended to read as
24 follows: 22-3208. ~~(1)~~(a) Pleadings in criminal proceedings shall be the
25 complaint, information or indictment, the bill of particulars when ordered,
26 and the pleas of not guilty, guilty or with the consent of the court, nolo
27 contendere. All other pleas, demurrers and motions to quash are abolished
28 and defenses and objections raised before trial which heretofore could
29 have been raised by one or more of them shall be raised only by motion to
30 dismiss or to grant appropriate relief.

31 ~~(2)~~(b) Any defense or objection which is capable of determination
32 without the trial of the general issue may be raised before trial by motion.

33 ~~(3)~~(c) Defenses and objections based on defects in the institution of
34 the prosecution or in the complaint, information or indictment other than
35 that it fails to show jurisdiction in the court or to charge a crime may be
36 raised only by motion before trial. The motion shall include all such
37 defenses and objections then available to the defendant. Failure to present
38 any such defense or objection as herein provided constitutes a waiver
39 thereof, but the court for cause shown may grant relief from the waiver.
40 Lack of jurisdiction or the failure of the complaint, information or
41 indictment to charge a crime shall be noticed by the court at any time
42 during the pendency of the proceeding.

43 ~~(4)~~(d) The motion to dismiss shall be made at any time prior to

1 arraignment or within 21 days after the plea is entered. The period for
2 filing such motion may be enlarged by the court when it shall find that the
3 grounds therefor were not known to the defendant and could not with
4 reasonable diligence have been discovered by the defendant within the
5 period specified herein. A plea of guilty or a consent to trial upon a
6 complaint, information or indictment shall constitute a waiver of defenses
7 and objections based upon the institution of the prosecution or defects in
8 the complaint, information or indictment other than it fails to show
9 jurisdiction in the court or to charge a crime.

10 ~~(5)~~(e) A motion before trial raising defenses or objections to
11 prosecution shall be determined before trial unless the court orders that it
12 be deferred for determination at the trial.

13 ~~(6)~~(f) If a motion is determined adversely to the defendant, such
14 defendant shall then plead if such defendant had not previously pleaded. A
15 plea previously entered shall stand. If the court grants a motion based on a
16 defect in the institution of the prosecution or in the complaint, information
17 or indictment, it may also order that the defendant be held in custody or
18 that the defendant's appearance bond be continued for a specified time not
19 exceeding one day pending the filing of a new complaint, information or
20 indictment.

21 ~~(7)~~(g) Any *nonevidentiary* hearing conducted by the court to
22 determine the merits of any motion may be conducted by two-way
23 electronic-audio-video ~~audio-visual~~ communication between the defendant
24 and defendant's counsel in lieu of personal presence of the defendant and
25 defendant's counsel in the courtroom ~~in the discretion of the court. The~~
26 ~~defendant shall be informed of the defendant's right to be personally~~
27 ~~present in the courtroom during such hearing if the defendant so requests.~~
28 ~~Exercising the right to be present shall in no way prejudice the defendant,~~
29 ~~unless good cause is shown why such audio-visual communication should~~
30 ~~not be utilized.~~

31 Sec. 9. K.S.A. 2019 Supp. 22-3405 is hereby amended to read as
32 follows: 22-3405. (a) The defendant in a felony case shall be present at ~~the~~
33 *any arraignment in which a no contest or guilty plea is entered*, at every
34 stage of the trial including the impaneling of the jury and the return of the
35 verdict, and at the imposition of sentence, except as otherwise provided by
36 law. In prosecutions for crimes not punishable by death or life without the
37 possibility of parole, the defendant's voluntary absence after the trial has
38 been commenced in such person's presence shall not prevent continuing
39 the trial to and including the return of the verdict. A corporation may
40 appear by counsel for all purposes.

41 (b) The defendant must be present, either personally or by counsel, at
42 every stage of the trial of traffic infraction, cigarette or tobacco infraction
43 and misdemeanor cases.

1 Sec. 10. K.S.A. 2019 Supp. 38-2203 is hereby amended to read as
2 follows: 38-2203. (a) Proceedings concerning any child who may be a
3 child in need of care shall be governed by this code, except in those
4 instances when the court knows or has reason to know that an Indian child
5 is involved in the proceeding, in which case, the Indian child welfare act of
6 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child welfare act may
7 apply to: The filing to initiate a child in need of care proceeding, K.S.A.
8 2019 Supp. 38-2234, and amendments thereto; ex parte custody orders,
9 K.S.A. 2019 Supp. 38-2242, and amendments thereto; temporary custody
10 hearing, K.S.A. 2019 Supp. 38-2243, and amendments thereto;
11 adjudication, K.S.A. 2019 Supp. 38-2247, and amendments thereto;
12 burden of proof, K.S.A. 2019 Supp. 38-2250, and amendments thereto;
13 disposition, K.S.A. 2019 Supp. 38-2255, and amendments thereto;
14 permanency hearings, K.S.A. 2019 Supp. 38-2264, and amendments
15 thereto; termination of parental rights, K.S.A. 2019 Supp. 38-2267, 38-
16 2268 and 38-2269, and amendments thereto; establishment of permanent
17 custodianship, K.S.A. 2019 Supp. 38-2268 and 38-2272, and amendments
18 thereto; the placement of a child in any foster, pre-adoptive and adoptive
19 home and the placement of a child in a guardianship arrangement under
20 article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments
21 thereto.

22 (b) Subject to the uniform child custody jurisdiction and enforcement
23 act, K.S.A. 2019 Supp. 23-37,101 through 23-37,405, and amendments
24 thereto, the district court shall have original jurisdiction of proceedings
25 pursuant to this code.

26 (c) The court acquires jurisdiction over a child by the filing of a
27 petition pursuant to this code or upon issuance of an ex parte order
28 pursuant to K.S.A. 2019 Supp. 38-2242, and amendments thereto. When
29 the court acquires jurisdiction over a child in need of care, jurisdiction may
30 continue until the child has: (1) Become 18 years of age, or until June 1 of
31 the school year during which the child became 18 years of age if the child
32 is still attending high school unless there is no court approved transition
33 plan, in which event jurisdiction may continue until a transition plan is
34 approved by the court or until the child reaches the age of 21; (2) been
35 adopted; or (3) been discharged by the court. Any child 18 years of age or
36 over may request, in writing to the court, that the jurisdiction of the court
37 cease. The court shall give notice of the request to all parties and interested
38 parties and 30 days after receipt of the request, jurisdiction will cease.

39 (d) When it is no longer appropriate for the court to exercise
40 jurisdiction over a child, the court, upon its own motion or the motion of a
41 party or interested party at a hearing or upon agreement of all parties or
42 interested parties, shall enter an order discharging the child. Except upon
43 request of the child pursuant to subsection (c), the court shall not enter an

1 order discharging a child until June 1 of the school year during which the
2 child becomes 18 years of age if the child is in an out-of-home placement,
3 is still attending high school and has not completed the child's high school
4 education.

5 (e) When a petition is filed under this code, a person who is alleged to
6 be under 18 years of age shall be presumed to be under that age for the
7 purposes of this code, unless the contrary is proved.

8 (f) A court's order issued in a proceeding pursuant to this code, shall
9 take precedence over such orders in a civil custody case, a proceeding
10 under article 31 of chapter 60 of the Kansas Statutes Annotated, and
11 amendments thereto, protection from abuse act, or a comparable case in
12 another jurisdiction, except as provided by K.S.A. 2019 Supp. 23-37,101
13 through 23-37,405, and amendments thereto, uniform child custody
14 jurisdiction and enforcement act.

15 (g) *In any proceeding under this code, the court may allow a child to*
16 *appear by means of two-way electronic audio-visual communication in*
17 *lieu of personal presence of the child.*

or parent

18 Sec. 11. K.S.A. 2019 Supp. 38-2343 is hereby amended to read as
19 follows: 38-2343. (a) *Basis for extended detention; findings and*
20 *placement.* Whenever a juvenile is taken into custody, the juvenile shall
21 not remain in detention for more than 48 hours, excluding Saturdays,
22 Sundays, legal holidays; and days on which the office of the clerk of the
23 court is not accessible, from the time the initial detention was imposed,
24 unless the court determines after hearing, within the 48-hour period, that
25 further detention is warranted based on the criteria in K.S.A. 2019 Supp.
26 38-2331, and amendments thereto.

27 (b) (1) If the juvenile is in custody on the basis of a new offense
28 which would be a felony or misdemeanor if committed by an adult and no
29 prior judicial determination of probable cause has been made, the court
30 shall determine whether there is probable cause to believe that the juvenile
31 has committed the alleged offense.

32 (2) In the absence of the necessary findings, the court shall order the
33 juvenile released.

34 (c) *Waiver of detention hearing.* The detention hearing may be
35 waived in writing by the juvenile and the juvenile's attorney with approval
36 of the court. The right to a detention hearing may be reasserted in writing
37 by the juvenile or the juvenile's attorney or parent at anytime not less than
38 48 hours prior to trial.

39 (d) *Notice of hearing.* Whenever it is determined that a detention
40 hearing is required the court shall immediately set the time and place for
41 the hearing. Except as otherwise provided by K.S.A. 2019 Supp. 38-
42 2332(c)(1), and amendments thereto, notice of the detention hearing shall
43 be given at least 24 hours prior to the hearing, unless waived.

1 When there is insufficient time to give written notice, oral notice may
2 be given and is completed upon filing a certificate of oral notice with the
3 clerk.

4 (e) *Attorney for juvenile.* At the time set for the detention hearing if
5 no retained attorney is present to represent the juvenile, the court shall
6 appoint an attorney, and may recess the hearing for 24 hours, excluding
7 Saturdays, Sundays and legal holidays, to obtain attendance of the attorney
8 appointed.

9 (f) *Hearing.* (1) The detention hearing is an informal procedure to
10 which the ordinary rules of evidence do not apply. The court may consider
11 affidavits, detention risk assessment tool results, professional reports and
12 representations of counsel to make the necessary findings, if the court
13 determines that these materials are sufficiently reliable.

14 (2) If probable cause to believe that the juvenile has committed an
15 alleged offense is contested, the court shall allow the opportunity to
16 present contrary evidence or information upon request.

17 (3) If the court orders the juvenile to be detained in a juvenile
18 detention facility, the court shall record the specific findings of fact upon
19 which the order is based, including any reasons for overriding a detention
20 risk assessment tool score.

21 (g) *Rehearing.* (1) If detention is ordered and the parent was not
22 notified of the hearing and did not appear and later requests a rehearing,
23 the court shall rehear the matter without unnecessary delay.

24 (2) Within 14 days of the detention hearing, if the juvenile had not
25 previously presented evidence regarding the determination of probable
26 cause to believe that the juvenile has committed an offense, the juvenile
27 may request a rehearing to contest the determination of probable cause to
28 believe that the juvenile has committed an offense. The rehearing request
29 shall identify evidence or information that the juvenile could not
30 reasonably produce at the detention hearing. If the court determines that
31 the evidence or information could not reasonably be produced at the
32 detention hearing, the court shall rehear the matter without unnecessary
33 delay.

34 (h) ~~Audio-video~~ *Audio-visual communications.* All hearings conducted
35 pursuant to this section may be conducted by two-way electronic ~~audio-~~
36 ~~video~~ *audio-visual* communication between the juvenile and the judge in
37 lieu of personal presence of the juvenile or the juvenile's attorney in the
38 courtroom from any location within Kansas in the discretion of the court.
39 The juvenile may be accompanied by the juvenile's attorney during such
40 proceedings or the juvenile's attorney may be personally present in court as
41 long as a means of confidential communication between the juvenile and
42 the juvenile's attorney is available.

43 (i) *Review hearing.* The court shall hold a detention review hearing at

1 least every 14 days that a juvenile is in detention to determine if the
2 juvenile should continue to be held in detention. The provisions of this
3 subsection shall not apply if the juvenile is charged with a crime that, if
4 committed by an adult, would constitute an off-grid felony or a nondrug
5 severity level 1 through 4 person felony. The review hearings provided in
6 this subsection are not required for a juvenile offender held in detention
7 awaiting disposition in such juvenile offender's case pursuant to K.S.A.
8 2019 Supp. 38-2360(f), and amendments thereto.

9 Sec. 12. K.S.A. 2019 Supp. 38-2344 is hereby amended to read as
10 follows: 38-2344. (a) When the juvenile appears without an attorney in
11 response to a complaint, the court shall inform the juvenile of the
12 following:

- 13 (1) The nature of the charges in the complaint;
- 14 (2) the right to hire an attorney of the juvenile's own choice;
- 15 (3) the duty of the court to appoint an attorney for the juvenile if no
16 attorney is hired by the juvenile or parent;
- 17 (4) that the court may require the juvenile or parent to pay the
18 expense of a court appointed attorney; and
- 19 (5) the right to be offered an immediate intervention pursuant to
20 K.S.A. 2019 Supp. 38-2346, and amendments thereto.

21 Upon request, the court shall give the juvenile or parent an opportunity
22 to hire an attorney. If no request is made or the juvenile or parent is
23 financially unable to hire an attorney, the court shall promptly appoint an
24 attorney for the juvenile. The court shall afford the juvenile an opportunity
25 to confer with the attorney before requiring the juvenile to plead to the
26 allegations of the complaint.

27 (b) When the juvenile appears with an attorney in response to a
28 complaint, the court shall require the juvenile to plead guilty, nolo
29 contendere or not guilty to the allegations stated in the complaint, unless
30 there is an application for and approval of an immediate intervention
31 program. Prior to making this requirement, the court shall inform the
32 juvenile of the following:

- 33 (1) The nature of the charges in the complaint;
- 34 (2) the right of the juvenile to be presumed innocent of each charge;
- 35 (3) the right to jury trial without unnecessary delay;
- 36 (4) the right to confront and cross-examine witnesses appearing in
37 support of the allegations of the complaint;
- 38 (5) the right to subpoena witnesses;
- 39 (6) the right of the juvenile to testify or to decline to testify; and
- 40 (7) the sentencing alternatives the court may select as the result of the
41 juvenile being adjudicated a juvenile offender.

42 (c) If the juvenile pleads guilty to the allegations contained in a
43 complaint or pleads nolo contendere, the court shall determine, before

1 accepting the plea and entering a sentence:
 2 (1) That there has been a voluntary waiver of the rights enumerated in
 3 subsections (b)(2), (3), (4), (5) and through (b)(6); and
 4 (2) that there is a factual basis for the plea.
 5 (d) If the juvenile pleads not guilty, the court shall schedule a time
 6 and date for trial to the court.
 7 (e) First appearance may be conducted by two-way electronic ~~audio-~~
 8 ~~video~~ audio-visual communication between the juvenile and the judge in
 9 lieu of personal presence of the juvenile or the juvenile's attorney in the
 10 courtroom from any location within Kansas in the discretion of the court.
 11 The juvenile may be accompanied by the juvenile's attorney during such
 12 proceedings or the juvenile's attorney may be personally present in court as
 13 long as a means of confidential communication between the juvenile and
 14 the juvenile's attorney is available.
 15 Sec. 13. K.S.A. 2019 Supp. 60-243 is hereby amended to read as
 16 follows: 60-243. (a) *Form and admissibility.* ~~At trial, the witness'~~
 17 ~~testimony must be taken in open court, unless otherwise provided by law.~~
 18 ~~For good cause in compelling circumstances and with appropriate~~
 19 ~~safeguards, the court may permit testimony in open court by~~
 20 ~~contemporaneous transmission from a different location~~ *Testimony by*
 21 *contemporaneous transmission from a different location may be allowed*
 22 *whenever any party requests the use of two-way electronic audio-visual*
 23 *communication by written notice at least seven days prior to the scheduled*
 24 *hearing or proceeding. Such notice shall include the name and internet*
 25 *protocol address of the witness who will testify by two-way electronic*
 26 *audio-visual communication and the date and time the witness will testify.*
 27 (b) *Scope of examination and cross-examination.* A party may
 28 examine any unwilling or hostile witness by leading questions. A party
 29 may call an adverse party or an officer, director or managing agent of a
 30 public or private corporation, a partnership or an association that is an
 31 adverse party, may examine the witness by leading questions and may
 32 contradict and impeach the witness as if the witness had been called by the
 33 adverse party. The witness may be contradicted and impeached by the
 34 adverse party, but may be cross-examined only on the subject matter of the
 35 witness' direct examination.
 36 (c) *Record of excluded evidence.* In a jury trial, if an objection to a
 37 question to a witness is sustained, the examining attorney may make a
 38 specific offer of what the examining attorney expects to prove by the
 39 witness' answer. The offer must be made out of the jury's hearing. The
 40 court may add any further statement that clearly shows the character of the
 41 evidence, the form in which it was offered, the objection made and the
 42 ruling on the objection. In nonjury trials the same procedure may be
 43 followed, except that the court on request must take and report the

The court may modify the notice period upon a showing of good cause. The supreme court may adopt rules to govern the administration of an oath to a witness who testifies by two-way electronic audio-visual communication pursuant to this subsection.

1 evidence in full unless it clearly appears that the evidence is not admissible
2 or is privileged.

3 (d) *Evidence on a motion.* When a motion relies on facts outside the
4 record, the court may hear the matter on affidavits or on declarations
5 pursuant to K.S.A. 53-601, and amendments thereto, or may hear it wholly
6 or partly on oral testimony or on depositions.

7 (e) *Interpreter.* In accordance with K.S.A. 75-4351 through 75-4355d,
8 and amendments thereto, the court may appoint an interpreter of its
9 choosing, fix reasonable compensation to be paid from funds provided by
10 law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b, and
11 amendments thereto, by one or more parties and tax the compensation as
12 costs.

13 Sec. 14. K.S.A. 12-4402, 12-4404, 12-4408, 22-2803 and 22-3205
14 and K.S.A. 2019 Supp. 12-4213, 22-2802, 22-3208, 22-3405, 38-2203, 38-
15 2343, 38-2344 and 60-243 are hereby repealed.

16 Sec. 15. This act shall take effect and be in force from and after its
17 publication in the statute book.