

SENATE BILL No. 104

By Committee on Judiciary

1-28

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 and 22-3205 and K.S.A. 2014 Supp. 12-4213, 22-2802, 22-3208, 22-
4 3405, **38-2203**, **38-2343**, **38-2344** and 60-243 and repealing the
5 existing sections.
6

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

8 Section 1. K.S.A. 2014 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 plea of not guilty may *also* be accomplished by telephone, mail
15 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. 2014 Supp. 22-2802 is hereby amended to read as
25 follows: 22-2802. (1) 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 (14) at the time required by the
34 court to answer the charge against such person and at any time thereafter
35 that the court requires. Unless the magistrate makes a specific finding
36 otherwise, if the person is being bonded out for a person felony or a person
37 misdemeanor, the bond shall be conditioned on the person being prohibited
38 from having any contact with the alleged victim of such offense for a
39 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 (a) Place the person in the custody of a designated person or
43 organization agreeing to supervise such person;

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

3 (c) 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) place the person under a house arrest program pursuant to K.S.A.
7 2014 Supp. 21-6609, and amendments thereto; or

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

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

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

38 (5) Except as provided further, the amount of the appearance bond
39 shall be the same whether executed as described in subsection (3) or
40 posted with a deposit of cash as described in subsection (4). 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 or K.S.A. 2014 Supp. 8-1025, and amendments
3 thereto, the magistrate may allow the person to deposit cash with the clerk
4 in the amount of 10% of the bond, provided the person meets at least the
5 following qualifications:

6 ~~(A)~~ (a) Is a resident of the state of Kansas;

7 ~~(B)~~ (b) has a criminal history score category of G, H or I;

8 ~~(C)~~ (c) has no prior history of failure to appear for any court
9 appearances;

10 ~~(D)~~ (d) has no detainer or hold from any other jurisdiction;

11 ~~(E)~~ (e) has not been extradited from, and is not awaiting extradition
12 to, another state; and

13 ~~(F)~~ (f) has not been detained for an alleged violation of probation.

14 (6) In the discretion of the court, a person charged with a crime may
15 be released upon the person's own recognizance by guaranteeing payment
16 of the amount of the bond for the person's failure to comply with all
17 requirements to appear in court. The release of a person charged with a
18 crime upon the person's own recognizance shall not require the deposit of
19 any cash by the person.

20 (7) The court shall not impose any administrative fee.

21 (8) In determining which conditions of release will reasonably assure
22 appearance and the public safety, the magistrate shall, on the basis of
23 available information, take into account the nature and circumstances of
24 the crime charged; the weight of the evidence against the defendant;
25 whether the defendant is lawfully present in the United States; the
26 defendant's family ties, employment, financial resources, character, mental
27 condition, length of residence in the community, record of convictions,
28 record of appearance or failure to appear at court proceedings or of flight
29 to avoid prosecution; the likelihood or propensity of the defendant to
30 commit crimes while on release, including whether the defendant will be
31 likely to threaten, harass or cause injury to the victim of the crime or any
32 witnesses thereto; and whether the defendant is on probation or parole
33 from a previous offense at the time of the alleged commission of the
34 subsequent offense.

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

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

43 (11) A magistrate ordering the release of a person on any conditions

1 specified in this section may at any time amend the order to impose
2 additional or different conditions of release. If the imposition of additional
3 or different conditions results in the detention of the person, the provisions
4 of subsection (10) shall apply.

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

9 (13) The appearance bond and any security required as a condition of
10 the defendant's release shall be deposited in the office of the magistrate or
11 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) 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 conducted
19 by two-way electronic ~~audio-video~~ *audio-visual* communication between
20 the defendant and the judge in lieu of personal presence of the defendant
21 or defendant's counsel in the courtroom ~~in the discretion of the court,~~
22 *unless good cause is shown why such audio-visual communication should*
23 *not be utilized.* The defendant may be accompanied by the defendant's
24 counsel. ~~The defendant shall be informed of the defendant's right to be~~
25 ~~personally present in the courtroom during such proceeding if the~~
26 ~~defendant so requests. Exercising the right to be present shall in no way~~
27 ~~prejudice the defendant.~~

28 (15) 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. 2014 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 to,
34 costs for treatment and evaluation under subsection (2).

35 Sec. 6. K.S.A. 22-3205 is hereby amended to read as follows: 22-
36 3205. (a) Arraignment shall be conducted in open court and shall consist of
37 reading the complaint, information or indictment to the defendant or
38 stating to the defendant the substance of the charge and calling upon the
39 defendant to plead thereto. The defendant shall be given a copy of the
40 indictment or information before the defendant is called upon to plead.
41 Except as provided in subsection (b), if the crime charged is a felony, the
42 defendant must be personally present for arraignment; if a misdemeanor,
43 with the approval of the court, the defendant may appear by counsel. The

1 court may direct any officer who has custody of the defendant to bring the
2 defendant before the court to be arraigned.

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

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

16 Sec. 7. K.S.A. 2014 Supp. 22-3208 is hereby amended to read as
17 follows: 22-3208. (1) Pleadings in criminal proceedings shall be the
18 complaint, information or indictment, the bill of particulars when ordered,
19 and the pleas of not guilty, guilty or with the consent of the court, nolo
20 contendere. All other pleas, demurrers and motions to quash are abolished
21 and defenses and objections raised before trial which heretofore could
22 have been raised by one or more of them shall be raised only by motion to
23 dismiss or to grant appropriate relief.

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

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

36 (4) The motion to dismiss shall be made at any time prior to
37 arraignment or within 21 days after the plea is entered. The period for
38 filing such motion may be enlarged by the court when it shall find that the
39 grounds therefor were not known to the defendant and could not with
40 reasonable diligence have been discovered by the defendant within the
41 period specified herein. A plea of guilty or a consent to trial upon a
42 complaint, information or indictment shall constitute a waiver of defenses
43 and objections based upon the institution of the prosecution or defects in

1 the complaint, information or indictment other than it fails to show
2 jurisdiction in the court or to charge a crime.

3 (5) A motion before trial raising defenses or objections to prosecution
4 shall be determined before trial unless the court orders that it be deferred
5 for determination at the trial.

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

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

24 Sec. 8. K.S.A. 2014 Supp. 22-3405 is hereby amended to read as
25 follows: 22-3405. (a) The defendant in a felony case shall be present at ~~the~~
26 *any arraignment in which a no contest or guilty plea is entered*, at every
27 stage of the trial including the impaneling of the jury and the return of the
28 verdict, and at the imposition of sentence, except as otherwise provided by
29 law. In prosecutions for crimes not punishable by death or life without the
30 possibility of parole, the defendant's voluntary absence after the trial has
31 been commenced in such person's presence shall not prevent continuing
32 the trial to and including the return of the verdict. A corporation may
33 appear by counsel for all purposes.

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

37 ***Sec. 9. K.S.A. 2014 Supp. 38-2203 is hereby amended to read as***
38 ***follows: 38-2203. (a) Proceedings concerning any child who may be a***
39 ***child in need of care shall be governed by this code, except in those***
40 ***instances when the court knows or has reason to know that an Indian***
41 ***child is involved in the proceeding, in which case, the Indian child***
42 ***welfare act of 1978, 25 U.S.C. § 1901 et seq., applies. The Indian child***
43 ***welfare act may apply to: The filing to initiate a child in need of care***

1 *proceeding, K.S.A. 2014 Supp. 38-2234, and amendments thereto; ex*
2 *parte custody orders, K.S.A. 2014 Supp. 38-2242, and amendments*
3 *thereto; temporary custody hearing, K.S.A. 2014 Supp. 38-2243, and*
4 *amendments thereto; adjudication, K.S.A. 2014 Supp. 38-2247, and*
5 *amendments thereto; burden of proof, K.S.A. 2014 Supp. 38-2250, and*
6 *amendments thereto; disposition, K.S.A. 2014 Supp. 38-2255, and*
7 *amendments thereto; permanency hearings, K.S.A. 2014 Supp. 38-2264,*
8 *and amendments thereto; termination of parental rights, K.S.A. 2014*
9 *Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto;*
10 *establishment of permanent custodianship, K.S.A. 2014 Supp. 38-2268*
11 *and 38-2272, and amendments thereto; the placement of a child in any*
12 *foster, pre-adoptive and adoptive home and the placement of a child in a*
13 *guardianship arrangement under article 30 of chapter 59 of the Kansas*
14 *Statutes Annotated, and amendments thereto.*

15 *(b) Subject to the uniform child custody jurisdiction and*
16 *enforcement act, K.S.A. 2014 Supp. 23-37,101 through 23-37,405, and*
17 *amendments thereto, the district court shall have original jurisdiction of*
18 *proceedings pursuant to this code.*

19 *(c) The court acquires jurisdiction over a child by the filing of a*
20 *petition pursuant to this code or upon issuance of an ex parte order*
21 *pursuant to K.S.A. 2014 Supp. 38-2242, and amendments thereto. When*
22 *the court acquires jurisdiction over a child in need of care, jurisdiction*
23 *may continue until the child has: (1) Become 18 years of age, or until*
24 *June 1 of the school year during which the child became 18 years of age*
25 *if the child is still attending high school unless there is no court*
26 *approved transition plan, in which event jurisdiction may continue until*
27 *a transition plan is approved by the court or until the child reaches the*
28 *age of 21; (2) been adopted; or (3) been discharged by the court. Any*
29 *child 18 years of age or over may request, in writing to the court, that*
30 *the jurisdiction of the court cease. The court shall give notice of the*
31 *request to all parties and interested parties and 30 days after receipt of*
32 *the request, jurisdiction will cease.*

33 *(d) When it is no longer appropriate for the court to exercise*
34 *jurisdiction over a child, the court, upon its own motion or the motion of*
35 *a party or interested party at a hearing or upon agreement of all parties*
36 *or interested parties, shall enter an order discharging the child. Except*
37 *upon request of the child pursuant to subsection (c), the court shall not*
38 *enter an order discharging a child until June 1 of the school year during*
39 *which the child becomes 18 years of age if the child is in an out-of-home*
40 *placement, is still attending high school and has not completed the*
41 *child's high school education.*

42 *(e) When a petition is filed under this code, a person who is alleged*
43 *to be under 18 years of age shall be presumed to be under that age for*

1 *the purposes of this code, unless the contrary is proved.*

2 *(f) A court's order issued in a proceeding pursuant to this code,*
3 *shall take precedence over such orders in a civil custody case, a*
4 *proceeding under article 31 of chapter 60 of the Kansas Statutes*
5 *Annotated, and amendments thereto, protection from abuse act, or a*
6 *comparable case in another jurisdiction, except as provided by K.S.A.*
7 *2014 Supp. 23-37,101 through 23-37,405, and amendments thereto,*
8 *uniform child custody jurisdiction and enforcement act.*

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

12 *Sec. 10. K.S.A. 2014 Supp. 38-2343 is hereby amended to read as*
13 *follows: 38-2343. (a) Basis for extended detention; findings and*
14 *placement. Whenever a juvenile is taken into custody, the juvenile shall*
15 *not remain in detention for more than 48 hours, excluding Saturdays,*
16 *Sundays, legal holidays, and days on which the office of the clerk of the*
17 *court is not accessible, from the time the initial detention was imposed,*
18 *unless the court determines after hearing, within the 48-hour period,*
19 *that further detention is necessary because detention is warranted in*
20 *light of all relevant factors, including, but not limited to, the criteria*
21 *listed in K.S.A. 2014 Supp. 38-2331, and amendments thereto, and the*
22 *juvenile is dangerous to self or others or is not likely to appear for*
23 *further proceedings.*

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

29 *(2) If the court finds the juvenile is dangerous to self or others, the*
30 *juvenile may be detained in a juvenile detention facility or youth*
31 *residential facility which the court shall designate.*

32 *(3) If the court finds the juvenile is not likely to appear for further*
33 *proceedings, the juvenile may be detained in a juvenile detention facility*
34 *or youth residential facility which the court shall designate or may be*
35 *released upon the giving of an appearance bond in an amount specified*
36 *by the court and on the conditions the court may impose, in accordance*
37 *with the applicable provisions of article 28 of chapter 22 of the Kansas*
38 *Statutes Annotated, and amendments thereto.*

39 *(4) In the absence of the necessary findings, the court shall order*
40 *the juvenile released or placed in temporary custody as provided in*
41 *subsection (g).*

42 *(b) Waiver of detention hearing. The detention hearing may be*
43 *waived in writing by the juvenile and the juvenile's attorney with*

1 *approval of the court. The right to a detention hearing may be reasserted*
2 *in writing by the juvenile or the juvenile's attorney or parent at anytime*
3 *not less than 48 hours prior to trial.*

4 (c) *Notice of hearing. Whenever it is determined that a detention*
5 *hearing is required the court shall immediately set the time and place for*
6 *the hearing. Except as otherwise provided by ~~subsection (e)(1) of~~ K.S.A.*
7 *2014 Supp. 38-2332(c)(1), and amendments thereto, notice of the*
8 *detention hearing shall be given at least 24 hours prior to the hearing,*
9 *unless waived.*

10 *When there is insufficient time to give written notice, oral notice may*
11 *be given and is completed upon filing a certificate of oral notice with the*
12 *clerk.*

13 (d) *Attorney for juvenile. At the time set for the detention hearing if*
14 *no retained attorney is present to represent the juvenile, the court shall*
15 *appoint an attorney, and may recess the hearing for 24 hours, excluding*
16 *Saturdays, Sundays and legal holidays, to obtain attendance of the*
17 *attorney appointed.*

18 (e) *Hearing. The detention hearing is an informal procedure to*
19 *which the ordinary rules of evidence do not apply. The court may*
20 *consider affidavits, professional reports and representations of counsel*
21 *to make the necessary findings, if the court determines that these*
22 *materials are sufficiently reliable. If probable cause to believe that the*
23 *juvenile has committed an alleged offense is contested, the court shall*
24 *allow the opportunity to present contrary evidence or information upon*
25 *request. If the court orders the juvenile to be detained in a juvenile*
26 *detention facility, the court shall record the specific findings of fact*
27 *upon which the order is based.*

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

31 (2) *Within 14 days of the detention hearing, if the juvenile had not*
32 *previously presented evidence regarding the determination of probable*
33 *cause to believe that the juvenile has committed an offense, the juvenile*
34 *may request a rehearing to contest the determination of probable cause*
35 *to believe that the juvenile has committed an offense. The rehearing*
36 *request shall identify evidence or information that the juvenile could not*
37 *reasonably produce at the detention hearing. If the court determines that*
38 *the evidence or information could not reasonably be produced at the*
39 *detention hearing, the court shall rehear the matter without unnecessary*
40 *delay.*

41 (g) *Temporary custody. If the court determines that detention is not*
42 *necessary but finds that release to the custody of a parent is not in the*
43 *best interests of the juvenile, the court may place the juvenile in the*

1 *temporary custody of some suitable person willing to accept temporary*
2 *custody or the commissioner. Such finding shall be made in accordance*
3 *with K.S.A. 2014 Supp. 38-2334 and 38-2335, and amendments thereto.*

4 *(h) ~~Audio-video~~Audio-visual communications. Detention hearings*
5 *may be conducted by two-way electronic—~~audio-video~~ audio-visual*
6 *communication between the juvenile and the judge in lieu of personal*
7 *presence of the juvenile or the juvenile's attorney in the courtroom from*
8 *any location within Kansas in the discretion of the court. The juvenile*
9 *may be accompanied by the juvenile's attorney during such proceedings*
10 *or the juvenile's attorney may be personally present in court as long as a*
11 *means of confidential communication between the juvenile and the*
12 *juvenile's attorney is available.*

13 *Sec. 11. K.S.A. 2014 Supp. 38-2344 is hereby amended to read as*
14 *follows: 38-2344. (a) When the juvenile appears without an attorney in*
15 *response to a complaint, the court shall inform the juvenile of the*
16 *following:*

- 17 *(1) The nature of the charges in the complaint;*
- 18 *(2) the right to hire an attorney of the juvenile's own choice;*
- 19 *(3) the duty of the court to appoint an attorney for the juvenile if no*
20 *attorney is hired by the juvenile or parent; and*
- 21 *(4) that the court may require the juvenile or parent to pay the*
22 *expense of a court appointed attorney.*

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

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

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

1 *the juvenile being adjudicated a juvenile offender.*

2 (c) *If the juvenile pleads guilty to the allegations contained in a*
3 *complaint or pleads nolo contendere, the court shall determine, before*
4 *accepting the plea and entering a sentence: (1) That there has been a*
5 *voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4),*
6 *(5) and (6); and (2) that there is a factual basis for the plea.*

7 (d) *If the juvenile pleads not guilty, the court shall schedule a time*
8 *and date for trial to the court.*

9 (e) *First appearance may be conducted by two-way electronic audio-*
10 *video audio-visual communication between the juvenile and the judge in*
11 *lieu of personal presence of the juvenile or the juvenile's attorney in the*
12 *courtroom from any location within Kansas in the discretion of the*
13 *court. The juvenile may be accompanied by the juvenile's attorney*
14 *during such proceedings or the juvenile's attorney may be personally*
15 *present in court as long as a means of confidential communication*
16 *between the juvenile and the juvenile's attorney is available.*

17 Sec. 9-12. K.S.A. 2014 Supp. 60-243 is hereby amended to read as
18 follows: 60-243. (a) *Form and admissibility.* ~~At trial, the witness'~~
19 ~~testimony must be taken in open court, unless otherwise provided by law.~~
20 ~~For good cause in compelling circumstances and with appropriate~~
21 ~~safeguards, the court may permit testimony in open court by~~
22 ~~contemporaneous transmission from a different location~~ *Testimony by*
23 *contemporaneous transmission from a different location may be allowed*
24 *whenever any party requests the use of two-way electronic audio-visual*
25 *communication by written notice at least seven days prior to the scheduled*
26 *hearing or proceeding. Such notice shall include the name and internet*
27 *protocol address of the witness who will testify by two-way electronic*
28 *audio-visual communication, and the date and time the witness will testify.*

29 (b) *Scope of examination and cross-examination.* A party may
30 examine any unwilling or hostile witness by leading questions. A party
31 may call an adverse party or an officer, director or managing agent of a
32 public or private corporation, a partnership or an association that is an
33 adverse party, may examine the witness by leading questions and may
34 contradict and impeach the witness as if the witness had been called by the
35 adverse party. The witness may be contradicted and impeached by the
36 adverse party, but may be cross-examined only on the subject matter of the
37 witness' direct examination.

38 (c) *Record of excluded evidence.* In a jury trial, if an objection to a
39 question to a witness is sustained, the examining attorney may make a
40 specific offer of what the examining attorney expects to prove by the
41 witness' answer. The offer must be made out of the jury's hearing. The
42 court may add any further statement that clearly shows the character of the
43 evidence, the form in which it was offered, the objection made and the

1 ruling on the objection. In nonjury trials the same procedure may be
2 followed, except that the court on request must take and report the
3 evidence in full unless it clearly appears that the evidence is not admissible
4 or is privileged.

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

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

15 ~~Sec. 10.~~ **13.** K.S.A. 12-4402, 12-4404, 12-4408 and 22-3205 and
16 K.S.A. 2014 Supp. 12-4213, 22-2802, 22-3208, 22-3405, **38-2203**, **38-**
17 **2343**, **38-2344** and 60-243 are hereby repealed.

18 ~~Sec. 11.~~ **14.** This act shall take effect and be in force from and after
19 its publication in the statute book.