

HOUSE BILL No. 2538

By Committee on Judiciary

1-25

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to preliminary hearings; modifying the time requirement in which to
3 hold a preliminary hearing; authorizing hearsay testimony to be
4 admitted; testimony through two-way electronic audio-video
5 communication device; amending K.S.A. 2021 Supp. 22-2902 and
6 repealing the existing section.

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

9 Section 1. K.S.A. 2021 Supp. 22-2902 is hereby amended to read as
10 follows: 22-2902. (1) The state and every person charged with a felony
11 shall have a right to a preliminary examination before a magistrate, unless
12 such charge has been issued as a result of an indictment by a grand jury.

13 (2) The preliminary examination shall be held before a magistrate of
14 a county in which venue for the prosecution lies within ~~14 days~~ *a*
15 *reasonable time* after the arrest or personal appearance of the defendant.
16 Continuances may be granted only for good cause shown.

17 (3) The defendant shall not enter a plea at the preliminary
18 examination. The defendant shall be personally present ~~and except for~~
19 ~~witnesses who are children less than 13 years of age, the witnesses shall be~~
20 ~~examined in the defendant's presence.~~ The defendant's voluntary absence
21 after the preliminary examination has been begun in the defendant's
22 presence shall not prevent the continuation of the examination. ~~Except for~~
23 ~~witnesses who are children less than 13 years of age,~~ The defendant shall
24 have the right to cross-examine witnesses *who appear and testify* against
25 the defendant ~~and at the preliminary examination. The defendant shall~~
26 ~~also have the right to~~ introduce evidence in the defendant's own behalf. If
27 from the evidence it appears that a felony has been committed and there is
28 probable cause to believe that a felony has been committed by the
29 defendant, the magistrate shall order the defendant bound over to the
30 district judge having jurisdiction to try the case; otherwise, the magistrate
31 shall discharge the defendant. ~~When the victim of the felony is a child less~~
32 ~~than 13 years of age, Hearsay evidence shall be admissible at a~~
33 ~~preliminary examination, and the finding of probable cause as provided in~~
34 ~~this subsection may be based upon hearsay evidence in whole or in part~~
35 ~~presented at the preliminary examination by means of statements made by~~
36 ~~a child less than 13 years of age on a videotape recording or by other~~

1 ~~means.~~ *The defendant and the state shall be permitted to present the*
2 *testimony of a witness through a two-way electronic audio-video*
3 *communication device.*

4 (4) If the defendant and the state waive preliminary examination, the
5 magistrate shall order the defendant bound over to the district judge having
6 jurisdiction to try the case.

7 (5) Any judge of the district court may conduct a preliminary
8 examination, and a district judge may preside at the trial of any defendant
9 even though such judge presided at the preliminary examination of such
10 defendant.

11 (6) The complaint or information, as filed by the prosecuting attorney
12 pursuant to K.S.A. 22-2905, and amendments thereto, shall serve as the
13 formal charging document at trial. When a defendant and prosecuting
14 attorney reach agreement on a plea of guilty or nolo contendere, the
15 defendant and the prosecuting attorney shall notify the district court of
16 such agreement and arrange for a time to plead, pursuant to K.S.A. 22-
17 3210, and amendments thereto.

18 (7) The judge of the district court, when conducting the preliminary
19 examination, shall have the discretion to conduct arraignment, subject to
20 assignment pursuant to K.S.A. 20-329, and amendments thereto, at the
21 conclusion of the preliminary examination.

22 Sec. 2. K.S.A. 2021 Supp. 22-2902 is hereby repealed.

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