

## 2021 Kansas Statutes

**22-3302. Proceedings to determine competency.** (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) (A) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) Commit the defendant to the state security hospital or any appropriate state, county, private institution or facility for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary for aging and disability services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court.

(B) If the court commits the defendant to an institution or facility for the examination, the commitment shall be for a period not to exceed 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(C) Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned no later than seven days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the seven-day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

**History:** L. 1970, ch. 129, § 22-3302; L. 1971, ch. 114, § 6; L. 1976, ch. 163, § 17; L. 1977, ch. 121, § 1; L. 1982, ch. 148, § 1; L. 1984, ch. 128, § 1; L. 1986, ch. 115, § 64; L. 1986, ch. 299, § 2; L. 1986, ch. 133, § 2; L. 1992, ch. 309, § 1; L. 2010, ch. 135, § 20; L. 2018, ch. 81, § 1; July 1.