

## 2021 Kansas Statutes

**38-2249. Rules of evidence.** (a) In all proceedings under this code, the rules of evidence of the code of civil procedure shall apply, except that no evidence relating to the condition of a child shall be excluded solely on the ground that the matter is or may be the subject of a physician-patient privilege, psychologist-client privilege or social worker-client privilege.

(b) (1) The judge presiding at all hearings under this code shall not consider or rely upon any report not properly admitted according to the rules of evidence, except as provided by K.S.A. 38-2219, and amendments thereto.

(2) In all proceedings under this code, a report concerning the results and analysis of a court-ordered test of a person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs shall be admissible in evidence if the report is prepared and attested to by the person conducting the test or an authorized employee of the facility that conducted the test. Such person shall prepare a certificate that includes an attestation as to the result and analysis of the test and sign the certificate under oath. Nothing in this section shall prevent a party from calling such person as a witness.

(c) In any proceeding in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party or interested party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party or interested party; and

(8) each party or interested party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(d) On motion of any party to a proceeding pursuant to the code in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the parties and interested parties to the proceeding if:

(A) The recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

- (C) every voice on the recording is identified; and
- (D) each party and interested party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.
- (e) At the taking of testimony under subsection (d):
  - (1) Only an attorney for each party, interested party, the guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;
  - (2) only the attorneys for the parties may question the child; and
  - (3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits such person to see and hear the child during the child's testimony, but does not permit the child to see or hear such person.
- (f) If the testimony of a child is taken as provided by subsection (d), the child shall not be compelled to testify in court during the proceeding.
- (g) (1) Any objection to a recording under subsection (d)(2) that such proceeding is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the adjudicatory hearing. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.
- (2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

**History:** L. 2006, ch. 200, § 44; L. 2007, ch. 57, § 1; L. 2017, ch. 58, § 3; July 1.