

## 2023 Kansas Statutes

**22-3302. Proceedings to determine competency.** (a) 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.

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

(c) (1) 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) Order that an evaluation be completed by an appropriate state, county or private institution or facility to be conducted in person or by use of available electronic means while the defendant is in jail, at any secure location or on pretrial release;

(B) designate an appropriate state, county or private institution or facility to conduct the examination while the defendant is in jail, at any secure location or on pretrial release; or

(C) appoint a licensed physician who is qualified through training or experience or a licensed psychologist to examine the defendant and report to the court.

(2) If the court orders the defendant committed to an institution or facility for the examination, the commitment shall be for a period not to exceed 60 days from the date of admission 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.

(3) Before the expiration of the 60-day evaluation period, the professional approved by the court to examine the defendant or, if the defendant is committed for inpatient examination, the chief medical officer or head of the appropriate institution or facility shall certify to the court whether the defendant is competent to stand trial.

(4) 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 where 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.

(d) If the defendant is found to be competent, the proceedings that 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.

(e) 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.

(f) 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.

(g) 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; L. 2022, ch. 76, § 7; July 1.