

**22-4006. Procedure to determine sanity of convict.** (a) At any time prior to execution, a convict under sentence of death, such convict's counsel or the warden of the correctional institution or sheriff having custody of such convict may request a determination of the convict's sanity by a district judge of the judicial district in which such convict was tried and sentenced. If the district judge determines that there is not sufficient reason to believe that the convict is insane, the judge shall so find and refuse to suspend the execution of such convict. If the district judge determines that there is sufficient reason to believe that the convict is insane, the judge shall suspend the execution and conduct a hearing to determine the sanity of the convict.

(b) At the hearing, the district judge shall determine the issue of the convict's sanity. The judge shall order a psychiatric or psychological examination of the convict. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the convict and report their findings in writing to the judge within 14 days after the order of examination is issued. The convict shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the convict in the course of any examination provided for by this section, whether or not the convict consents to the examination, shall be admitted in evidence against the convict in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is sane, the judge shall enter an order recording the determination. A copy of the order shall be delivered to the clerk of the supreme court and to the secretary of corrections. Upon receipt of the order, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001, and amendments thereto, to proceed to carry out the sentence of execution during the week designated by the supreme court. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court.

(d) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is insane, the judge shall suspend the execution until further order. The judge shall enter an order recording the determination. A copy of the order shall be delivered to the clerk of the supreme court and the secretary of corrections. Upon receipt of the order, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court suspending the sentence. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court. Any time thereafter when the judge has sufficient reason to believe that the convict has become sane, the judge again shall determine the sanity of the convict as provided by this section. Proceedings pursuant to this section may continue to be held at such times as the district judge orders until it is determined either that such convict is sane or incurably insane.

**History:** L. 1970, ch. 129, § 22-4006; L. 1976, ch. 145, § 108; L. 1978, ch. 349, § 3; L. 1990, ch. 309, § 25; L. 1994, ch. 252, § 17; L. 1999, ch. 164, § 23; L. 2010, ch. 135, § 34; July 1.