

**22-3414. Order of trial.** (1) The prosecuting attorney shall state the case and offer evidence in support of the prosecution. The defendant may make an opening statement prior to the prosecution's offer of evidence, or may make such statement and offer evidence in support of such statement after the prosecution rests.

(2) The parties may then respectively offer rebutting testimony only, unless the court, for good cause, permits them to offer evidence upon their original case.

(3) At the close of the evidence or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented. In cases where there is some evidence which would reasonably justify a conviction of some lesser included crime as provided in subsection (b) of K.S.A. 2016 Supp. 21-5109, and amendments thereto, the judge shall instruct the jury as to the crime charged and any such lesser included crime.

The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case.

The court reporter shall record all objections to the instructions given or refused by the court, together with modifications made, and the rulings of the court.

No party may assign as error the giving or failure to give an instruction, including a lesser included crime instruction, unless the party objects thereto before the jury retires to consider its verdict stating distinctly the matter to which the party objects and the grounds of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

(4) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the prosecuting attorney may commence and may conclude the argument. If there is more than one defendant, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.

**History:** L. 1970, ch. 129, § 22-3414; L. 1971, ch. 114, § 7; L. 1998, ch. 185, § 3; L. 2011, ch. 30, § 127; July 1.