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*As Amended by Senate Committee*

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*Session of 2004*

**SENATE BILL No. 354**

By Committee on Judiciary

1-26

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11 AN ACT concerning municipal court procedure; relating to pre-trial au-  
12 thority; amending K.S.A. 12-4203, 12-4209 and 12-4213 and repealing  
13 the existing sections.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 12-4203 is hereby amended to read as follows: 12-  
17 4203. (a) A copy of the complaint shall be served, together with a notice  
18 to appear or a warrant, by a law enforcement officer upon the accused  
19 person, and forthwith, the complaint shall be filed with the municipal  
20 court, except that a complaint may be filed initially with the municipal  
21 court, and if so filed, a copy of the complaint shall forthwith be delivered  
22 to the city attorney. ~~The city attorney shall cause a notice to appear to be~~  
23 ~~issued, unless he or she has good reason to believe that the accused person~~  
24 ~~will not appear in response to a notice to appear, in which case the city~~  
25 ~~attorney may request that a warrant be issued. Such warrant will be issued~~  
26 ~~if the complaint is positively sworn to and the municipal judge has prob-~~  
27 ~~able cause to believe that (a) there has been the commission of a violation~~  
28 ~~of a municipal ordinance, (b) the accused person committed such viola-~~  
29 ~~tion and (c) the accused person will not appear in response to a notice to~~  
30 ~~appear.~~

31 (b) If a city attorney fails either to cause a notice to appear or to  
32 request a warrant to be issued, on a complaint initially filed with the  
33 municipal court, the municipal judge may, upon affidavits filed with him  
34 or her alleging the violation of an ordinance, order the city attorney to  
35 institute proceedings against any person. Any such municipal judge shall  
36 be disqualified from sitting in any case wherein such order was entered  
37 and is further prohibited from communicating about such case with the  
38 municipal judge pro tem appointed by the municipal judge to preside  
39 therein.

40 Sec. 2. K.S.A. 12-4209 is hereby amended to read as follows: 12-  
41 4209. ~~A warrant may be issued: (a) When an accused person fails to appear~~  
42 ~~as required in a notice to appear after its service.~~

43 ~~—(b) In all other cases where a complaint has been filed and the mu-~~

1 municipal judge determines that a warrant should be issued.  
2 — No warrant shall issue unless the complaint giving rise to its issuance  
3 is supported by oath or affirmation.  
4 (a) **If The city attorney shall cause a notice to appear to be is-**  
5 **sued, except that, if requested by the city attorney, a warrant for**  
6 **the accused shall be issued if** the municipal judge finds from the com-  
7 plaint, or from an affidavit or affidavits filed with the complaint or from  
8 other evidence that there is probable cause to believe both that a crime  
9 has been committed and that the defendant has committed ~~it, a warrant~~  
10 ~~for the arrest of the defendant shall be issued, except that a notice to~~  
11 ~~appear instead of a warrant may be issued if: (1) The city attorney so~~  
12 ~~requests, or (2) the municipal judge determines that a notice to appear~~  
13 ~~should be issued~~ **such crime.**  
14 (b) More than one warrant or notice to appear may be issued on the  
15 same complaint.  
16 (c) If a defendant fails to appear in response to a notice to appear, a  
17 warrant shall be issued.  
18 (d) Affidavits or sworn testimony in support of the probable cause  
19 requirements of this section shall not be made available for examination  
20 without a written order of the municipal judge, except that such affidavits  
21 or testimony, when requested, shall be made available to the defendant  
22 or the defendant's counsel for such disposition as either may desire.  
23 (e) No warrant shall issue for an ordinance traffic infraction or an  
24 ordinance cigarette or tobacco infraction unless the person charged has  
25 received service of a notice to appear and has failed to appear for the  
26 infraction.  
27 Sec. 3. K.S.A. 12-4213 is hereby amended to read as follows: 12-  
28 4213. (a) Any person arrested by a law enforcement officer shall be taken  
29 immediately by the law enforcement officer to the police station of the  
30 city or the office in the city designated by the municipal judge. At that  
31 time, the person shall have the right to post bond for the person's ap-  
32 pearance, in accordance with K.S.A. 12-4301 and 12-4302, and amend-  
33 ments thereto, *except as hereinafter provided.* ~~However, if the law en-~~  
34 ~~forcement officer has probable cause to believe that such person may~~  
35 ~~cause injury to oneself or others, or damage to property, and there is no~~  
36 ~~responsible person or institution to which the person might be released,~~  
37 ~~the person shall remain in the protective custody of the law enforcement~~  
38 ~~officer, in a city or county jail for a period not to exceed six hours, at~~  
39 ~~which time such person shall be given an opportunity to post bond for~~  
40 ~~the persons' appearance. While so held in protective custody, the person~~  
41 ~~shall be permitted to consult with counsel or other persons on the per-~~  
42 ~~son's behalf. Any person who does not make bond for the person's ap-~~  
43 ~~pearance shall be placed in the city or county jail, to remain there until~~

1 the person makes bond for the person's appearance, or appears before  
2 the municipal court at the earliest practical time, except that the person  
3 shall be released on the person's personal recognizance to appear at a  
4 later date if the person has not made bond, has not appeared before the  
5 municipal court within 18 hours after arrest and if no warrant has been  
6 issued for the person's arrest.

7 (b) A law enforcement officer may detain a person arrested for vio-  
8 lation of a municipal ordinance in protective custody for a period not to  
9 exceed six hours, including custody in a city or county jail, if such officer  
10 has probable cause to believe that: (1) Such person may cause injury to  
11 oneself or others, or damage to property; and (2) there is no responsible  
12 person or institution to which such person might be released. Any person  
13 so held in protective custody shall be permitted to consult with counsel  
14 or other persons who may act on such person's behalf. Such person held  
15 in protective custody for six hours shall be given an opportunity to post  
16 bond for such person's appearance in the municipal court.

17 (c) Any person held in custody pursuant to the provisions of this sec-  
18 tion, and who has not made bond for such person's appearance, may be  
19 held in custody until the earliest practical time for such person's appear-  
20 ance in municipal court upon a warrant being issued by the municipal  
21 court in accordance with k.S.A. 12-4209, and amendments thereto.

22 (d) Any person who remains in custody for 48 hours pursuant to the  
23 provisions of this section after arrest, and who is awaiting a first appear-  
24 ance before a municipal judge in the absence of a warrant being issued,  
25 shall be released on the person's personal recognizance. **Bond shall be**  
26 **set within 18 hours of the person being placed in custody.**

27 Sec. 4. K.S.A. 12-4203, 12-4209 and 12-4213 are hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after its  
29 publication in the statute book.