

HOUSE BILL No. 2259

By Committee on Judiciary

2-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to preliminary hearings; hearsay; amending K.S.A. 2016 Supp. 22-2902
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 22-2902 is hereby amended to read as
7 follows: 22-2902. (1) The state and every person charged with a felony
8 shall have a right to a preliminary examination before a magistrate, unless
9 such charge has been issued as a result of an indictment by a grand jury.

10 (2) The preliminary examination shall be held before a magistrate of
11 a county in which venue for the prosecution lies within 14 days after the
12 arrest or personal appearance of the defendant. Continuances may be
13 granted only for good cause shown.

14 (3) The defendant shall not enter a plea at the preliminary
15 examination. The defendant shall be personally present and except for
16 witnesses who are children less than 13 years of age, the witnesses shall be
17 examined in the defendant's presence. The defendant's voluntary absence
18 after the preliminary examination has been begun in the defendant's
19 presence shall not prevent the continuation of the examination. Except for
20 witnesses who are children less than 13 years of age, the defendant shall
21 have the right to cross-examine witnesses against the defendant and
22 introduce evidence in the defendant's own behalf. If from the evidence it
23 appears that a felony has been committed and there is probable cause to
24 believe that a felony has been committed by the defendant, the magistrate
25 shall order the defendant bound over to the district judge having
26 jurisdiction to try the case; otherwise, the magistrate shall discharge the
27 defendant. ~~When the victim of the felony is a child less than 13 years of~~
28 ~~age, The finding of probable cause as provided in this subsection may be~~
29 ~~based upon hearsay evidence in whole or in part presented at the~~
30 ~~preliminary examination by means of statements made by a child less than~~
31 ~~13 years of age on a videotape recording or by other means.~~

32 (4) If the defendant and the state waive preliminary examination, the
33 magistrate shall order the defendant bound over to the district judge having
34 jurisdiction to try the case.

35 (5) Any judge of the district court may conduct a preliminary
36 examination, and a district judge may preside at the trial of any defendant

1 even though such judge presided at the preliminary examination of such
2 defendant.

3 (6) The complaint or information, as filed by the prosecuting attorney
4 pursuant to K.S.A. 22-2905, and amendments thereto, shall serve as the
5 formal charging document at trial. When a defendant and prosecuting
6 attorney reach agreement on a plea of guilty or nolo contendere, the
7 defendant and the prosecuting attorney shall notify the district court of
8 such agreement and arrange for a time to plead, pursuant to K.S.A. 22-
9 3210, and amendments thereto.

10 (7) The judge of the district court, when conducting the preliminary
11 examination, shall have the discretion to conduct arraignment, subject to
12 assignment pursuant to K.S.A. 20-329, and amendments thereto, at the
13 conclusion of the preliminary examination.

14 Sec. 2. K.S.A. 2016 Supp. 22-2902 is hereby repealed.

15 Sec. 3. This act shall take effect and be in force from and after its
16 publication in the statute book.