

**House Judiciary Committee**  
**February 9, 2021**  
**House Bill 2227**  
**Neutral Testimony of**  
**Kansas Association of Criminal Defense Lawyers**

Dear Chairman Patton and Members of the Committee:

Last session, the Legislature passed what became K.S.A. 20-172(b)(1), which permits the Chief Justice to authorize the use of virtual court proceedings when necessary to “[s]ecure the health and safety of court users, staff and judicial officers.” In proposed subsection (b)(2), HB 2227 would expand the authorization to permit virtual proceedings “necessary to expeditiously resolve pending cases.” Neither (b)(1) nor (b)(2) sunsets, and (b)(2) is not tied to health and safety.

We ask this Committee to consider an amendment that would apply to the existing (b)(1) and proposed (b)(2) to emphasize that audio-visual proceedings could not be used to override a statutory or constitutional right to in-person proceedings—perhaps something along the lines of this:<sup>1</sup>

(c) An order issued under subsection (b) shall not abridge or modify any right of a party to appear in person before the court, or any other statutory or constitutional right of a party, witness, or victim to an in-person hearing.

We are not suggesting that the Kansas Supreme Court’s orders purport to authorize virtual proceedings against a party’s wishes. We simply propose that language be added to make it clear that unless a party knowingly, intelligently, and voluntarily waives their statutory or constitutional right to be present in-person or have a witness appear in person, then the proceeding cannot take place via two-way audio-visual means. Thank you for your consideration.

Sincerely,  
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<sup>1</sup> See, e.g., Kan. Const. Bill of Rights, § 10 (“In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel . . . to meet the witness face to face”); Kan. Const. Art. 15, § 15(a) (“Victims of crime, as defined by law, shall be entitled to certain basic rights, including the right to be informed of and to be present at public hearings...”).

For details on Kansas statutory rights, as well as rights guaranteed by the Kansas and U.S. Constitutions, see Daniel E. Monnat and Trevor D. Riddle, “Pandemic: Protecting the Accused’s Right to In-Person Pretrial Hearings,” *Journal of the Kansas Trial Lawyers Association*, pgs. 19-24 (November 2020), available at <https://monnat.com/wp-content/uploads/2020/11/Journal-of-the-Kansas-Trial-Lawyers-Association.pdf>