

## Outline of Applicable Legal Authority

Kansas Statutes Annotated	
Cite	Description
K.S.A. 20-3105	Oaths, affirmations and acknowledgments
K.S.A. 21-6817	Departure sentencing; hearing; notice; findings of fact and conclusions of law; order; upward durational departure sentencing; procedures and jury requirements
K.S.A. 22-3001	Grand juries; summoning; petition; jury instructions; membership; quorum
K.S.A. 22-3003	Oaths of jurors
K.S.A. 22-3004	Presiding juror and deputy presiding juror
K.S.A. 22-3006	Compensation; recording methods; employees
K.S.A. 22-3008	Witnesses; immunity
K.S.A. 22-3010	Who may be present
K.S.A. 22-3012	Secrecy of (grand) jury proceedings and disclosure
K.S.A. 22-3014	Witness fees
K.S.A. 22-3403	Method of trial of felony cases
K.S.A. 22-3404	Misdemeanor; cigarette or tobacco infraction and traffic infraction case; method of trial
K.S.A. 22-3405	Presence of defendant
K.S.A. 22-3408	Trial jurors
K.S.A. 22-3410	Challenges for cause
K.S.A. 22-3411a	Felony trials; number of jurors
K.S.A. 22-3412	Jury selection: peremptory challenges; swearing of jury; alternate or additional jurors
K.S.A. 22-3420	Conduct of jury after submission
K.S.A. 22-3423	Mistrials
K.S.A. 43-155	Jury service; declaration of public policy
K.S.A. 43-156	Right to serve as a juror; qualification as elector
K.S.A. 43-158	Jury service; persons excluded from jury service
K.S.A. 43-159	Jury service; exclusions from jury service by court
K.S.A. 43-162	Jury service; preparation of jury lists
K.S.A. 43-165	Rules governing jury service, enforcement; unexcused nonattendance of juror; penalty
K.S.A. 43-166	Summoning jury panel, when; notice; return of jury list; use of first class mail in lieu of restricted delivery
K.S.A. 43-174	Jury service; disqualifying information
K.S.A. 54-101	Officers authorized to administer oaths

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Kansas Statutes Annotated	
K.S.A. 54-104	Form of commencement and conclusion of oaths
K.S.A. 60-216	Pretrial conferences; case management conference
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K.S.A. 60-238	Right of trial by jury; demand; waiver
K.S.A. 60-239	Trial by jury or by the court
K.S.A. 60-243	Testimony of witnesses; evidence
K.S.A. 60-247	number of peremptory strikes allowed in a civil case
K.S.A. 60-248	Jury Trial Procedure
K.S.A. 60-418	Oath
K.S.A. 61-3302	Jury Trial Procedure

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Case Law	
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<i>Adams v. Marshall</i> , 212 Kan. 595, 601, 512 P.2d 365, 371 (1973)	“Passing to the question of public trial, we believe it may generally be said that proceedings of a judicial nature held behind closed doors and shielded from public scrutiny have long been repugnant to our system of justice. The concept that trials and judicatory hearings be open to the public gaze is inherent in our idea of due process.”
<i>Bourne v. Atchison, T. &amp; S.F. Ry. Co.</i> , 209 Kan. 511 (1972)	Only a stipulation of the parties can provide for a jury with less than twelve jurors in a civil trial
<i>Chapman v. California</i> , 386 U.S. 18, 43, 87 S. Ct. 824 (1967)	An accused has a 6 <sup>th</sup> Amendment right to counsel, a right that is so basic to a fair trial that any impediment could never be deemed harmless.
<i>Commonwealth v. Lynch</i> , 789 N.E.2d 1052 (Mass 2003)	Witness wearing dark or tinted glasses does not create substantial likelihood of a miscarriage of justice.
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	The Sixth Amendment of the U.S. Constitution assures the right of an accused “to be confronted with the witnesses against him.” U.S. Const. amend. VI The confrontation right applies to two distinct types of statements. The first type of statements are those made out of court and are deemed testimonial in nature.
<i>Duncan v. Louisiana</i> , 391 U.S. 145, 88 S. Ct 1444 (1968)	A defendant's right to a jury of his peers is "fundamental to the American scheme of justice."
<i>Duren v. Missouri</i> , 439 U.S. 357 (1979)	Held women were a distinct or cognizable group whose exclusion from jury service created a fair cross-section violation; "In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."
<i>Gard v. Sherwood Construction Co.</i> , 194 Kan. 541, 549, 400 P.2d 995 (1965)	The right to a trial by jury is "a basic and fundamental feature of American jurisprudence."
<i>Glynos v. Jagoda</i> , 249 Kan. 473, 819 P.2d 1202 (1991)	Only a stipulation of the parties can provide for a jury with less than twelve jurors in a civil trial
<i>Hage v. U.S.</i> , 35 Fed. Cl. 737, 742 (1996)	Conferences concerning discovery and scheduling matters, typically limited in substance, are not necessarily required to be open to the public
<i>Hilburn v. Enerpipe Ltd.</i> , 309 Kan. 1127, 442 P.3d 509 (2019)	Section 5 of the Kansas Constitution Bill of Rights states that “[t]he right of trial by jury shall be inviolate.” “It is a substantial and valuable right and should never be lightly denied. The law favors trial by jury, and the right should be carefully guarded against infringements.” <i>Miller</i> , 295 Kan. at 647, 289 P.3d 1098 (quoting <i>Gard</i> , 194 Kan. at 549, 400 P.2d 995); see also <i>Miller</i> , 295 Kan. at 696, 289 P.3d 1098

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<i>Hindman v. Shepard</i> , 205 Kan. 207, 468 P.2d 103 (1970)	"The trial of all jury issues demanded should be by jury unless the court upon motion, or of its own initiative, finds that a right of trial by jury of the controlling issues does not exist under the constitution and statutes."
<i>Holt v. Frito-Lay, Inc.</i> , 217 Kan. 56, 60, 535 P.2d 450 (1975)	Only a stipulation of the parties can provide for a jury with less than twelve jurors in a civil trial
<i>Illinois v. Allen</i> , 397 U.S. 337, 90 S. Ct. 1057, 25 L.Ed.2d 353 (1970)	The right to translation services is included in a defendant's right to be informed about the proceedings so the defendant can assist in the defense. However, trial courts are permitted to proceed without the defendant's physical presence if said party is being disruptive.
<i>Karnes Enterprises, Inc. v. Quan</i> , 221 Kan. 596, 561 P.2d 825 (1977)	Outlines guidelines used by courts to determine whether a civil action requires a jury trial.
<i>Maryland v. Craig</i> , 497 U.S. 836 (1990)	"There are four elements of confrontation which serve the purposes of the Confrontation Clause by subjecting the testimony against the accused to rigorous adversarial testing: (1) the physical presence of the witness; (2) a requirement that the witness's be under oath , which both impresses upon a witness the seriousness of the proceeding and guards against false testimony by the threat of a perjury charge; (3) cross-examination of the witness by defense counsel; and (4) observation of witness demeanor by the jury which aids in the assessment of witness credibility."
<i>Matter of T.H.</i> , 23 Kan. App. 2d 471, 932 P.2d 1023 (1997)	All three types of grand jury proceedings in Kansas established under KSA 22-3001 et seq, are considered secret
<i>Miller v. Johnson</i> , 295 Kan. 636 (2012)	The right to a trial by jury "is a substantial and valuable right and should never be lightly denied. The law favors trial by jury, and the right should be carefully guarded against infringements." Miller, 295 Kan. at 647, 289 P.3d 1098 (quoting Gard, 194 Kan. at 549, 400 P.2d 995); see also Miller, 295 Kan. at 696, 289 P.3d 1098
<i>Morales v. Artuz</i> , 281 F. 3d 55 (2d Cir 2002)	Witness allowed to testify in dark sunglasses during a murder trial. After objection and a hearing outside the presence of the jury, the Court "concluded that however 'partially' the defendant's right to confrontation would be infringed was outweighed by the necessity of having her provide critical testimony in a serious case."
<i>People v. Brandon</i> , 52 Cal. Rptr. 3d 427 (Ct. App.2006)	Witness permitted to testify wearing dark sunglasses and a scarf that covered her head due to safety concerns.
<i>People v. Sammons</i> , 478 N.W.2d 901 (Mich. Ct. App. 1991)	Witness permitted to testify in a full-face mask and identifying information about the witness was prohibited. In finding the Confrontation Clause violation, the appellate court was primarily concerned with inability to observe the demeanor of the witness.
<i>People v. Smith</i> , 869 N.Y.S.D.2d 88 (App. Div. 2008)	Witness testified under a pseudonym while wearing a wig and false facial hair.
<i>Presley v. Georgia</i> , 558 U.S. 209, 213, 130 S. Ct. 721 (2010)	The right to openness in criminal trials includes jury voir dire

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<i>Press-Enterprises, Co. v. Sup. Ct. of Cal.</i> , 464 U.S. 501, 104 S. Ct. 819 (1984)	Rather than just closing some proceedings that do not meet the test, courts are required to exhaust alternatives to closure. In fact, for a court to close a proceeding, it must generally find that there is a compelling interest involved and the closure must be narrowly tailored to that interest
<i>Press-Enterprises, Co. v. Sup. Ct. of Cal.</i> , 478 U.S. 1, 106 S. Ct. 2735 (1986)	The test for determining whether a proceeding must be open to the public is: "1) The court must first consider whether there has been a historical presumption of access; 2) Next, the court evaluates whether access to the given proceeding would contribute to the self-governing function promoted by openness."; "The court must first consider whether there has been a historical presumption of access; next, the court evaluates whether access to the given proceeding would contribute to the self-governing function promoted by openness."
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555, 100 S. Ct. 2814 (1980)	"[T]he First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal"
<i>Romero v. State</i> (Romero I), 136 S.W.3d 680 (Tex. Ct. App. 2004)	Witness allowed to testify in a disguise that hid almost all of his face from view. With respect to the demeanor element, the court focused on the jury's inability to observe the witness's eyes and facial expressions. The Court of Appeals of Texas described the disguise as "leaving visible only Vasquez's ears, the tops of his cheeks, and the bridge of his nose...." While conceding that the witness's tone of voice and body language remained accessible the court described the face as the most expressive part of the body" and thus critical in assessing credibility.
<i>Rosales-Lopez v. U.S.</i> , 451 U.S. 182, 101 S. Ct. 1629, 1634 (1981)	Impaneling the jury is a critical stage of the trial process
<i>Schultz v. Kansas Gas &amp; Elec. Co.</i> , 7 Kan. App. 2d 500, 644 P.2d 484, 486 (1982)	A civil jury comprised of less than twelve people requires unanimity.
<i>State v. Bailey</i> , 251 Kan. 156	fair cross-section challenge to the use of voter registration lists for jury panels denied because people who do not choose to register to vote are not a cognizable group
<i>State v. Baker</i> , 249 Kan. 431 (1991)	Kansas Supreme Court addressed a fair cross-section challenge where the defendant claimed individuals over the age of 60 were over represented in his jury panel and younger individuals were under represented. The Court rejected this challenge because the jurors were excused from service based on their own individual situation rather than based on blanket classifications such as race, gender, age, religion, or education level. <i>Baker</i> , 249 Kan. at 441.
<i>State v. Bates</i> , 226 Kan. 277, 597 P.2d 646 (1979)	"Even when a mistrial is declared without the consent of the defendant or upon his motion, a retrial is still constitutionally permissible if the judge exercised sound discretion in determining justice required a mistrial. The test to be applied in assessing the judge's discretion in declaring a mistrial and discharging the jury from giving a verdict is whether there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated."

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<i>State v. Bernhardt</i> , 304 Kan. 460 (2016)	“The use of PIK instructions is not mandatory but is strongly recommended. The pattern instructions have been developed by a knowledgeable committee to bring accuracy, clarity, and uniformity to jury instructions. They should be the starting point in the preparation of any set of jury instructions. If the particular facts in a given case require modification of the applicable pattern instruction or the addition of some instruction not included in PIK, the district court should not hesitate to make such modification or addition. However, absent such need, PIK instructions and recommendations should be followed.”
<i>State v. Calderon</i> , 270 Kan. 241, 245, 13 P.3d 871, 875 (2000)	“Present” has been interpreted to mean physically present. In fact, the Kansas Supreme Court has interpreted it to mean more than just physical presence—instead, it requires that “a defendant will be informed about the proceedings so he or she can assist in the defense.”; (“The due process right exists to the extent that a fair and just hearing would be thwarted by the defendant's absence, and to that extent only.”
<i>State v. Cox</i> , 297 Kan. 648, 655, 304 P.3d 327 (2013)	the 6 <sup>th</sup> Amendment guarantees the right to a speedy and public trial by an impartial jury.
<i>State v. Frye</i> , 294 Kan. 364, 372, 277 P.3d 1091, 1097 (2012)	The defendant and prosecuting attorney, with the consent of the court, may submit the trial of any felony to the court. All other trials of felony cases shall be by jury.; (“[N]ot only was Frye entitled to a jury trial under the federal and state Constitutions, but, pursuant to Kansas statutory law, a bench trial required the explicit approval of all concerned: the defendant, the prosecutor, and the court.”
<i>State v. Galaviz</i> , 296 Kan. 168, 174-75, 291 P.3d 62 (2012)	A defendant’s right to counsel mandates that counsel’s representation be effective.
<i>State v. Gonzalez</i> , (Kan. Ct. App. 2016), <i>aff’d</i> 307 Kan. 575, 412 P.3d 968 (2018)	the right to a public trial has not explicitly been extended to side bars or in-chambers conferences.
<i>State v. Irving</i> , 216 Kan. 588, 589, 533 P.2d 1225, 1227 (1975)	To waive the right to trial by jury, the defendant must personally waive the right, either in writing or in open court, after being advised by the court of his or her right to trial by jury.
<i>State v. Kahler</i> , 307 Kan. 374, 386, 410 P.3d 105 (2018)	“Impaneling the jury” includes jury selection and voir dire
<i>State v. Killings</i> , 301 Kan. 214, 241, 340 P.3d 1186 (2015)	The right to be present espoused in K.S.A. 22-3405(a) is “analytically and functionally identical to the requirements under the Confrontation Clause and the Due Process Clause of the federal Constitution that a criminal defendant be present at any critical stage of the proceedings.”
<i>State v. Lamb</i> , 14 Kan. App. 2d, 664, 798 P.2d 506 (1990).	An accused has a right to face their accusers face-to-face, including the “critical right” to conduct a cross-examination.
<i>State v. Lewis</i> , 38 Kan.App.2d 91	A census tract was not a sufficiently cognizable group because, even though a predominant percentage of members of the tract were members of a minority group and of a low-income class, membership in the tract did not conclusively establish a person’s race or economic status

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<i>State v. Lopez</i> , 271 Kan. 119, 22 P.3d 1040 (2001)	Impaneling the jury is a critical stage of the trial process
<i>State v. McDaniel</i> , 306 Kan. 595, 395 P.3d 429, 438 (2017)	Aside from the trial itself, the court makes a determination of whether the defendant needs to be present at other proceedings by considering whether or not the exclusion of the defendant would interfere with his or her opportunity to test the state's evidence and whether it would affect his or her opportunity to defend against the charges.
<i>State v. Robinson</i> , 306 Kan. 431, 394 P.3d 868 (2017)	Discussing a defendant's request "to impanel a new jury that would be subject to voir dire questioning regarding" a specific issue
<i>State v. Salton</i> , 238 Kan. 835, 838, 715 P.2d 412, 415 (1986)	A trial court may proceed with a trial when the defendant freely and voluntarily waives their right to be present.
<i>State v. Sharkey</i> , 299 Kan. 87, 322 P.3d 325 (2014)	A defendant's right to counsel mandates that counsel's representation be effective.
<i>State v. Sherman</i> , 2016, 378 P.3d 1060, 305 Kan. 88	The mistrial statute creates a two-step process for the trial court to declare a mistrial based on prejudicial conduct: (1) the trial court must determine if there was some fundamental failure of the proceeding, and (2) if so, the trial court moves to the second step and assesses whether it is possible to continue without an injustice.
<i>State v. Snodgrass</i> , 267 Kan. 185, 190, 979 P.2d 664, 668 (1999)	Grand juries are creatures of statute; a grand jury's function is investigatory and accusatory and does not determine the guilt or innocence of an accused. "Unlike a jury trial or preliminary hearing, a district judge does not preside over the grand jury proceedings, nor does a defendant have a right to be present or call or cross-examine witnesses. The county attorney has a limited role in the grand jury proceedings and, contrary to the opinion of the district court, has no responsibility to make a record or ensure that the jurors are qualified."
<i>State v. White</i> , 2003, 67 P.3d 138, 275 Kan. 580	Terminating a trial and declaring a mistrial are largely within the discretion of the district court.
<i>State v. Woolverton</i> , 52 Kan. App. 2d 700, 707, 371 P.3d 941, 946 (2016)	There is no constitutional right to a jury trial in a misdemeanor case. However, a person accused of a misdemeanor has a statutory right to a jury trial if they make a demand under K.S.A. 22-3404
<i>Taylor v. Louisiana</i> , 419 U.S. 522	The fair cross section guarantee applies only to the jury pool, however, and not to the empaneled jury
<i>U.S. v. Morales</i> , 758 F.3d 1232, 1237 (10th Cir. 2014)	Discussing a court's refusal to impanel a new jury but permitting the defendant to address concerns during voir dire
<i>Waggener v. Seever Sys., Inc.</i> , 233 Kan. 517, 522-23, 664 P.2d 813 (1983)	There is no due process right to a jury trial in a state court civil action. This is true because the due process clause of the Fourteenth Amendment to the Constitution of the United States does not apply to a jury trial in a civil proceeding in a state court. A trial by jury in suits at common law in state courts is not a privilege or immunity of national citizenship which the states are forbidden by the Fourteenth Amendment to abridge."
<i>Waller v. Georgia</i> , 413 U.S. 467, 43, 104 S. Ct. 2210 (1984)	The right to openness in criminal trials includes suppression hearings