

House Judiciary Committee Meeting  
Wednesday, February 20, 1963

The House Judiciary Committee met Wednesday, February 20, 1963, in Room 523 at 8:30 A.M. with Chairman Clyde Hill presiding. Fifteen members were present. Members Arthur, Fatzer, Gastl, Van Cleave and Williams were absent. Also present for a hearing concerning proposed bills were William M. Ferguson, Attorney General; J. Richard Foth, Attorney General's office; and Logan H. Sanford, Director of the Kansas Bureau of Investigation.

Chairman Hill called the meeting to order.

Mr. Skoog stated that he has been approached on the conversion of rented property. He explained that the rental people do have a considerable problem and are in a bind. It is very hard for them to protect themselves against people who do not return things. He stated that this is an area where there is a great deal of difficulty and that perhaps someone here has some idea for a remedy.

Mr. Gardner suggested trying to put it under some type of embezzlement upon refusal or failure to return the article after a certain length of time. He stated that the difficulty arises in trying to prove the intent to keep it permanently. Mr. Crossan confirmed that this is where the problem arises.

Mr. Skoog again stated that this is a matter of quite a bit of concern for these people.

Mr. Hill stated that he thought some of these agencies were fairly well protected because of requiring certain deposits or credit identification of some type.

Mr. Liebert suggested presenting a demand. He further stated that you would still have the problem of proving intent to keep the article permanently.

Mr. Skoog said they very often present false identification, false addresses, etc. He suggested the members of the committee give this matter some thought and that perhaps someone could come up with a remedy.

Chairman Hill then introduced William M. Ferguson, Attorney General, who presented a proposed House bill, an act relating to criminal procedure, providing for the issuance of search warrants, pre-trial motions to suppress evidence and appeals therefrom, and disposition of seized property, repealing sections 21-944, 21-946, 21-947, 21-2603, 21-2604, 21-2605, 41-1005, 41-1006, 41-1007, 41-1008, 41-1009, 62-1802, 62-1804, 62-1805, 62-1807, 62-1808, 62-1809, 62-1810, 62-1811, 62-1812, and 62-1813 of the General Statutes of 1949, and repealing section 62-1803 of the General Statutes Supplement of 1961. Mr. Ferguson presented the background

concerning this particular bill, the problems it would rectify, and just why he thought it was very necessary. He stated that this bill was prepared in his office and after it had been prepared they consulted with and had a day's session with the criminal law committee of the Kansas Bar Association. They agreed upon this bill and it was reported to the president of the Bar Association that it was approved. Since that meeting, they have added in the form of the warrant, page 2. The committee was furnished with a copy of the proposed bill as it is here today and they have received no objection from the committee. All of the county attorneys were furnished with a copy of the bill and as a result, the county attorneys unanimously adopted a resolution in support of this legislation. He explained the difficulties of operating under the present statute and gave examples of two cases where the proposed bill would have provided a remedy. Mr. Ferguson then explained further just how search and seizure would work under the proposed bill. He stated that he had become acquainted with some of the Federal Bureau of Investigation agents. He sent back a copy of this bill and had their Federal Bureau of Investigation council take a look at it. The council thought it was in good order except they suggested that a provision be made relating to appeals by the state. Mr. Ferguson pointed out that the section having to do with appeals was not considered by or approved by the Bar Association. He said he would introduce J. Richard Foth of his office and that Mr. Foth would explain very briefly the bill relating to appeals. This is not a part of the original search and seizure bill.

Mr. Foth explained that this proposed House bill, an act relating to appeals by the state in criminal cases, amending Section 62-1703 of the General Statutes of 1949, and repealing said original section, isn't as vital and is a separate bill. It adds to it a fourth provision from which the state could appeal. He went on to explain in detail just how this provision works. He again pointed out that this isn't as vital as the search and seizure bill, but is important.

Mr. Liebert asked if the state can't appeal presently. Mr. Foth explained that the state can appeal only in these three instances and this adds the fourth instance. He went on to explain that they are trying to provide for a kind of bar of this statutory provision for a speedy trial.

Mr. Griffith and Mr. Gardner asked questions in regard to the mechanics. Mr. Foth again explained just how this provision works.

Mr. Skoog asked if there has been a case of speedy trial in Illinois, a state which has this provision. Mr. Foth said yes.

Mr. Liebert questioned the possibility of opening the door and inviting the trial judge to lean over in favor of the defendant. Mr. Foth said he thought the trial judge would be more inclined to lean the other way.

Mr. Crossan asked if the main thing is just a search warrant. Mr. Foth stated that they would settle for the search warrant, but think this other provision is important.

Mr. Liebert asked Mr. Foth that if in regard to this evidence of a crime, if in his understanding, there must be an arraignment for crime before you can search for evidence of a crime. Or, if you can use this to find out if a crime has been committed. Mr. Foth stated that you have to prove that there is evidence of the commission of a crime. Mr. Liebert further questioned if you have to name the person. Mr. Skoog enlarged upon this question and asked if this authorizes the use of John Doe warrants. Mr. Foth stated that you have to show to the magistrate probable cause that a crime has been committed, where you think the evidence is located and that there exists this type of evidence. Then the magistrate can issue a warrant. Mr. Liebert asked if you have to be after a certain person yet. Mr. Foth said no, but that you have a pretty good idea.

Mr. Gardner asked if you can keep evidence if it is something that you didn't expect to find. Mr. Foth stated that you can pick it up.

Mr. Liebert asked what protection the owner of the property has who wants to protest. Mr. Foth said he can appeal.

Mr. Crossan wanted to know what remedy the fellow has to being search<sup>ed</sup> week after week with no evidence being found. Mr. Foth stated that he can take action against the officers for trespassing.

Mr. Gardner stated that the magistrate will pretty well go along with you and issue the search warrant upon request.

Mr. Skoog pointed out that the problem here is sufficient that we are going to buy a little trouble and we ordinarily have a lot of trouble.

Mr. Foth pointed out that if you want to harass someone, you can find a way to do it.

Mr. Ferguson pointed out that the main search warrant statutes are being appealed by this act. They are not appealing obscene literature because there is a case pending. He called the attention

House Judiciary Committee Meeting  
Wednesday, February 20, 1963  
Page four

of the committee to section 6, which authorizes the attorney general or the assistant attorney general to obtain a search warrant to search in another county. He stated that this provision is for the purpose of obtaining a search warrant for people who seem to have a certain immunity in their own county. This can be used only by the district court.

Mr. Ferguson then gave a brief background of the Kansas Bureau of Investigation and introduced Logan Sanford, Director of the Kansas Bureau of Investigation.

Mr. Sanford stated that he is appearing before the committee with the request of an additional man for the Kansas Bureau of Investigation. He passed out copies of the Kansas Bureau of Investigation Biennial Activities Summary Report and Trend to the members of the committee. He explained the problem and just why this additional man was necessary.

Chairman Hill asked just how many men he has presently. Mr. Sanford said he has 22 men; 15 agents in the field, 2 polygraph men and the remainder here in the office in the administration.

Mr. Skoog inquired as to just how many men would be an optimum size in the bureau with their present load. Mr. Sanford stated that this is a difficult question to answer and that it would depend largely upon the qualifications of the men that are in the field, how old the sheriffs are, etc.

Chairman Hill then asked what the cost would be to put this man on and equip him. Mr. Sanford said it would cost approximately \$8,000. Chairman Hill asked if there were any further questions the members of the committee wanted to ask Mr. Sanford. There were none. Mr. Hill then thanked Mr. Sanford for appearing before the committee.

Mr. Gardner asked if the bill pertaining to search and seizure covers search for evidence of a kind or contraband of a kind violation outside of a state. Mr. Ferguson stated that they did not intend to limit this and that if an amendment would be necessary to clarify this, the amendment would be acceptable.

Mr. Ferguson explained why the wording "evidence of a crime" was used instead of just the wording "instrumentalities of a crime". He also explained that they haven't changed the concept of the search warrant law and that they have gone a long way in the protection of individual rights and are not in a position to do any harm.

House Judiciary Committee Meeting  
Wednesday, February 20, 1963  
Page five

Chairman Hill thanked the gentlemen for appearing before the committee. He then asked the members of the committee for good attendance at the next few meetings. The meeting adjourned at 9:50 A.M. to meet Thursday, February 21, 1963, at 8:30 A.M. in Room 523.

Respectfully submitted,  
Clyde Hill, Chairman

Minutes approved:

KANSAS BUREAU OF INVESTIGATION

BIENNIAL ACTIVITIES SUMMARY REPORT AND TREND

<u>INVESTIGATION DIVISION</u>	1959-1960	1961-1962	CHANGE
HOMICIDE-----	82	80	-2
RAPE -----	17	31	+14
ROBBERY-----	34	54	+20
KIDNAPPING & EXTORTION----	8	5	-3
AGGRAVATED ASSAULT-----	13	22	+9
BURGLARY-----	836	888	+52
GRAND LARCENY-----	294	306	+12
VANDALISM-----	6	10	+4
EMBEZZLEMENT & FRAUD-----	32	53	+21
FORGERY & COUNTERFEITING---	150	243	+93
OTHER CHECK OFFENSES-----	489	748	+259
SEX CRIMES-----	10	21	+11
NARCOTICS-----	12	14	+2
FUGITIVES-----	386	220	-166
MISSING PERSONS-----	84	63	-21
OTHER CRIMES-----	92	124	+32
ARRESTS-----	1162	1199	+37
POLYGRAPH TESTS-----	340	497	+157
PROPERTY RECOVERED-----	\$140,157.00	\$217,579.00	+\$77,422.00
<u>Total Activity-----</u>	<u>4,047</u>	<u>4,578</u>	<u>+531 +13%</u>

RECORDS AND IDENTIFICATION DIVISION

CRIMINAL ABSTRACTS RECEIVED	32,729	38,709	+5,980
CRIMINAL ABSTRACTS MAILED OUT		6,651	
FINGER CARDS PROCESSED-----	25,781	30,497	+4,716
LATENT FINGERPRINT ANALYSIS	152	131	-21
IDENTIFICATION CARDS MADE--	58,041	73,624	+15,583
RECORD INFORMATION-----	4,665	5,639	+974
INTERSTATE PAROLE COMPACT--	669	393	-276
FRAUDULENT CHECKS PROCESSED	869	1,336	+467
<u>Total Activity-----</u>	<u>122,906</u>	<u>156,980</u>	<u>+34,074 +27%</u>

LABORATORY DIVISION

PIECES OF EVIDENCE RECEIVED	1,043	1,590	+547
PHOTOGRAPHIC EXAMINATIONS---	14	61	+47
FIREARMS EXAMINATIONS-----	14	64	+50
MICROSCOPIC EXAMINATIONS----	152	209	+57
CHEMICAL EXAMINATIONS-----	93	58	-35
Miscellaneous Examinations--	22	77	+55
DAYS SPENT IN COURT-----		63	
HOURS LECTURE POLICE SCHOOLS		43	
LECTURES TO CIVIC GROUPS----		8	
FIELD EXAMINATIONS-----		7	
<u>Total Activity-----</u>	<u>1,338</u>	<u>2,059</u>	<u>+721 +53%</u>

HOUSE BILL NO. \_\_\_\_\_

AN ACT relating to appeals by the state in criminal cases,  
amending Section 62-1703 of the General Statutes of  
1949, and repealing said original section.

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

Section 1. Section 62-1703 of the General Statutes of 1949,  
is hereby amended to read as follows: Sec. 62-1703. Appeals to  
the supreme court may be taken by the state in the following  
cases, and no other: First, upon a judgment for the defendant  
on quashing or setting aside an indictment or information;  
second, upon an order of the court arresting the judgment; third,  
upon a question reserved by the state; fourth, from an order of  
a district court entered prior to trial granting a motion for  
the suppression of evidence on the grounds of the illegality of  
its seizure. In the event of an appeal under clause fourth of  
this section, the trial shall not be commenced until such  
appeal shall be determined, and the time such appeal is pending  
shall not be counted in determining whether the defendant is  
entitled to be discharged under sections 62-1431 or 62-1432 of  
the General Statutes of 1949, Provided that the defendant shall  
not be held in jail or to bail during the pendency of such appeal.

Sec. 2. Section 62-1703 of the General Statutes of 1949  
is hereby repealed.

Sec. 3. This act shall take effect upon its publication  
in the official state paper.

By House Judiciary Committee

AN ACT relating to criminal procedure, providing for the issuance of search warrants, pre-trial motions to suppress evidence and appeals therefrom, and disposition of seized property, repealing sections 21-944, 21-946, 21-947, 21-2603, 21-2604, 21-2605, 41-1005, 41-1006, 41-1007, 41-1008, 41-1009, 62-1802, 62-1804, 62-1805, 62-1807, 62-1808, 62-1809, 62-1810, 62-1811, 62-1812, and 62-1813 of the General Statutes of 1949, and repealing section 62-1803 of the General Statutes Supplement of 1961.

Be it enacted by the legislature of the State of Kansas:

Section 1. A search warrant authorized by this act may be issued by any magistrate or judge authorized to issue process for the apprehension of offenders against the laws of this state.

Sec. 2. A warrant may be issued under this act to search for and seize any contraband or any property which constitutes or may be considered a part of the fruits, instrumentalities, or evidence of a crime under the laws of this state. The term "fruits" as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.

Sec. 3. A warrant shall issue upon affidavit or upon oral testimony given under oath and recorded before the magistrate or judge. If the magistrate or judge is satisfied that there is probably cause for the issuance of a warrant, he shall issue such warrant describing the property to be searched for and seized and naming or describing the person, place or means of conveyance to be searched. The warrant shall be directed to any peace office of the state of Kansas, or one of its



governmental subdivisions who is authorized to enforce or assist in enforcing any law thereof. It shall state the grounds for its issuance, and shall command the officer to search the person, place, thing, or means of conveyance named for the property specified, and to seize such property and hold the same in compliance with section 11 of this act.

Sec. 4. Such warrant may be substantially in the following form, varying the terms to suit the case:

THE STATE OF KANSAS, \_\_\_\_\_ COUNTY.

The state of Kansas to any sheriff or peace officer of the state of Kansas: Having evidence under oath before me from which I find there is probable cause to believe that an offense against the laws of the state of Kansas has been committed and that certain items, to wit: (Here name or describe items to be searched for and seized), which items are contraband or are fruits, instrumentalities, or evidence of such offense, are located in or upon (Here describe the person, place, thing or means of conveyance to be searched), you are therefore commanded forthwith to search the person, place, thing or means of conveyance hereinbefore specified for such items, holding them to be dealt with according to law and make due return of this warrant within ten (10) days of the date hereof.

Issued this (here insert date) at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
JUDGE of (specify court)

of \_\_\_\_\_ County

Sec. 5. The affidavit or testimony on which a search warrant is based shall be filed with the judge or magistrate and shall not be made public in any way until the warrant is executed. Whoever discloses prior to its execution that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be imprisoned not more than six (6) months or fined not more than one thousand (\$1000) dollars or both.

Sec. 6. The judge of any district court in the state of Kansas may issue a search warrant in accordance with the provisions of this act, for execution in any county of this state other than the county where issued, but such warrant shall be issued only upon application of the attorney general or an assistant attorney general.

Sec. 7. The warrant shall be executed and returned within ten (10) days after its date. Such warrant may be executed at any time of the day or night. The officer taking property under the warrant shall give to the person from whom or from whose premises or vehicle the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place or vehicle from which the property was taken. A return shall be made promptly to the judge or magistrate issuing such warrant, and shall be accompanied by a written inventory of any property taken, which inventory shall be signed by the officer. The magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises or vehicle the

property was taken, to the applicant for the warrant, to the county attorney and the attorney general.

Sec. 8. Whenever the county attorney or attorney general shall intend to use the property obtained by search and seizure, either with or without a warrant, as evidence in a criminal action, he may endorse the name and nature of such property on complaint (in misdemeanor cases), information or indictment to be delivered to the defendant or his counsel at least ten (10) days before the action is called for trial. Such copy, when properly endorsed and delivered, shall constitute notice to the defendant that the county attorney or prosecuting official proposes to offer evidence obtained by search and seizure, and the nature of that evidence.

Sec. 9. Any defendant who is aggrieved by a search and seizure may move the court having jurisdiction of the criminal action to suppress its use as evidence upon the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or, (4) there was not probable cause for believing the existence of grounds on which the warrant was issued, or (5) the warrant was illegally executed. Such motion must name and describe the property and the grounds for suppression. The motion shall be made at least five (5) days before the action is called for trial. The court shall hear such motion and shall suppress or decline to suppress the property

for use as evidence prior to the commencement of impaneling of a jury, or the commencement of introduction of evidence in a trial to the court. Failure of the defendant to move the court to suppress use of any property or thing endorsed on the complaint, information, or indictment as evidence within the time specified above shall constitute a waiver of the right to question the admissibility of such evidence, on grounds of the illegality of its seizure, at the trial, unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, in which case the court shall entertain the motion at the trial, but out of the presence of the jury.

Sec. 10. No evidence seized under a search warrant shall be suppressed because of technical irregularities not affecting the substantial rights of the accused.

Sec. 11. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. Where seized property is no longer required as evidence in the prosecution of any indictment or information the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

Sec. 12. When property seized is no longer required as evidence, after notice to the owner or owners, if known, and a hearing at which any person claiming an interest in such property may be heard, it shall be disposed of as follows:

(1) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner. (2) Money shall be restored to the owner unless it was part of a slot machine or otherwise used in unlawful gambling or lotteries, in which case it shall be forfeited, and shall be paid into the county school fund. (3) Property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid into the county general fund. (4) Articles of contraband shall be destroyed, except that any such articles which may be capable of innocent use may in the discretion of the court be sold and the proceeds paid into the county school fund. (5) Firearms, ammunition, explosives, bombs, and like devices, which have been used in the commission of crime, may be returned to the rightful owner, destroyed or sold in the discretion of the court having jurisdiction of the property. The sale and distribution of the proceeds shall be as provided in section 21-2614 of the General Statutes Supplement of 1961, or amendments thereto. (6) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Sec. 13. Any and all provisions of this act shall be construed as supplemental to, and not in derogation of, any

other provisions of the state of Kansas regarding issuance of search warrants, procedures for suppression of evidence and return of seized property, or disposition of seized property. Nothing herein contained shall be construed as restricting or in any way affecting the right of any officer to make reasonable searches and seizures without a search warrant in any manner or way authorized or permitted to be made under the Constitution of the United States and the Constitution of the state of Kansas.

Sec. 14. If any section, subsection, paragraph, sentence, clause or part of this act is for any reason held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the constitutionality or validity of the remaining portion or portions of this act.

Sec. 15. Section 21-944, 21-946, 21-947, 21-2603, 21-2604, 21-2605, 41-1005, 41-1006, 41-1007, 41-1008, 41-1009, 62-1802, 62-1804, 62-1805, 62-1807, 62-1808, 62-1809, 62-1810, 62-1811, 62-1812, and 62-1813 of the General Statutes of 1949 and section 62-1803 of the General Statutes Supplement of 1961 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the official state paper.