Approved: UPeW 7/22/92
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at

10:05 a.m. on February 12, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Gaines who was excused.

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Donna Whiteman, Secretary of the Kansas Department of Social and REhabilitation Services
Representative Duane Goossen
James Clark, Kansas County and District Attorneys Association
Kay Farley, Child Support Coordinator of the Office of Judicial Administration
Brian Farley, Kansas Child Support Enforcement Association

Chairman Winter opened the meeting by presenting a request for introduction of a bill to establish the same rules for defendants in admittance of evidence in rape cases. (ATTACHMENT 1)

Senator Martin moved to introduce the bill as requested. Senator Feleciano seconded the motion. The motion carried.

A written request was submitted to the Committee from the Society of Professional Journalists for introduction of a bill to repeal K.S.A. 22-202 Section 2, to restore the public's access to probable cause affidavits after a suspect is arrested. (ATTACHMENT 2)

Senator Martin moved to introduce the bill as requested. Senator Parrish seconded the motion. The motion carried.

A written request from Gene Johnson, Sunflower Alcohol Safety Action Project, Inc., on behalf of Judge William Carpenter, Third Judicial District Administrative Judge, was presented to the Committee. The requested bill would amend K.S.A. 22-3609 to conform with K.S.A. 22-3400. (ATTACHMENT 3)

Senator Petty moved to introduce the bill as requested. Senator Morris seconded the motion. The motion carried.

Donna Whiteman, Secretary of the Kansas Department of Social and Rehabilitation Services, requested the Committee introduce a bill to revise the Code for Care of Children. The request is to separate the CINC Code into two areas: children in need of protection and children in need of services. (ATTACHMENT 4)

Senator Parrish moved to introduce the bill as requested by Secretary Whiteman. Senator Bond seconded the motion. The motion carried.

Chairman Winter opened the hearings for SB 536.

SB 536 - notice to SRS before placing child in need of care in secretary's custody. SRS Task Force, Re Proposal No 19.

Representative Duane Goossen testified in support of SB 536. He stated he had been the chairperson of the SRS Task Force Subcommittee that was assigned to find ways to reduce the dramatic caseload imposed on SRS personnel. SB 536 is one of the ways they suggest aiding SRS in its new three-year plan. He endorses this legislation as a step in the right direction for gaining the best care for children and keeping them in their family environment as often as possible.

Secretary Donna Whiteman, SRS, testified in support of SB 536. She stated that notice to SRS may make it possible for families to remain together without further threat to the children. (ATTACHMENT 5) The Secretary added that SB 536 is not the best of bills for handling children that enter the system through the front door; she prefers passage of HB 2700, which would increase the time limit on protective custody for children in need of care.

James Clark, Kansas County and District Attorneys Association, testified in opposition to SB 536. He stated he was sympathetic with the requirements put on SRS but felt this bill is a "sledgehammer" approach. He stated

KSA 38-1542, ex parte orders, would be harmful to the child. Additionally, for those children who fall under KSA 38-1532, endangerment, the problem inherent in the bill is that it assumes alternatives are available. That is not the case in rural areas. He concluded by responding they could probably support the legislation if the two situations cited were exempted.

Written testimony in support of SB 536 from Barbara Huff, Executive Director of Keys For Networking, Inc., was distributed to the Committee. (ATTACHMENT 6)

Written testimony regarding SB 536 from Helen Stephens, Kansas Peace Officers' Association, was presented to the Committee. (ATTACHMENT 7)

This concluded the hearing for SB 536.

Chairman Winter opened the hearing for SB 529.

SB 529 - revivor of dormant judgments for child support or maintenance. SRS Task Force, Re Proposal No 19.

Donna Whiteman, Secretary of SRS, testified in support of SB 529. (ATTACHMENT 8)

Kay Farley, Child Support Coordinator of the Office of Judicial Administration, testified in support of SB 529. (ATTACHMENT 9)

Brian Farley, Douglas County District Court, testified on behalf of the Kansas Child Support Enforcement Association in support of SB 529. He supported the comments made by Kay Farley and stressed that the changes are needed.

This concluded the hearing for SB 529.

Chairman Winter opened the floor for Committee discussion and action on bills previously heard by the Committee.

Senator Morris moved to recommend SB 529 favorable for passage. Senator Moran seconded the motion. The motion carried.

SB 521 - state lottery limited to instant, keno and lotto games.

Senator Morris moved to recommend SB 521 favorable for passage with the stipulation that his motion was not to be construed as a racist motion. Senator Bond seconded the motion.

Discussion was renewed on the constitutionality of changing the statutes and the advisability of resubmitting a constitutional amendment to the voters. A number of Committee members stated their belief that attention to the gambling question would establish public policy on the issue and also would address the issue of what was believed to have been voted into the constitution in 1986 when passage of the lottery amendment succeeded. It was noted that action on SB 521 would not be taken with any racial motives, the action would apply to EVERY Kansan whether to allow casinos or any other form of gambling not stated in the bill.

The question was called; the motion carried with seven members voting in support of the motion.

The meeting was adjourned at 11:06 a.m.

Date Feb 12, 1992

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company	Name/Company
Jim Clark - KCDAA	
Janice Corbill SRS/CSE	
Kay Farley OJA	
Brian Farley KCSEA/DGeo. D.A.	
Betty Glover Kansas Action for Children	
William Yoder Legis.	
[illegible] W/student	
Rita Taylor KDHE	
D. Smith N. Kansas Gaming Ind Corp	
Suzanne Frost / KACAD	
Dick Carter / Pete McGill & Assoc.	
Doug Bowman / Children & Youth Advisory Committee	
Keith R Landis on Public Affairs	
Whitney Damron Pete McGill & Assoc.	
Chip Wheelen, Ks Med. Soc.	
R Frey - KTLA	
C. Whitaker KQHRA	

K.S.A. 21-3525. Evidence of previous sexual conduct in prosecutions for sex offenses; motions; notice. (Proposed amendment)

In any prosecution to which this section applies, evidence of the defendant's previous sexual conduct with any person including the complaining witness shall be admissible under the following conditions: The prosecuting attorney shall make a written motion to the court concerning the previous sexual conduct of the defendant. The motion must be made at least seven days before the commencement of the trial unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the defendant is stated. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the prosecuting attorney regarding the previous sexual conduct of the defendant is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the prosecuting attorney and the nature of the questions to be permitted. The prosecuting attorney may then offer evidence and question witnesses in accordance with the order of the court.

21-3525. Evidence of previous sexual conduct in prosecutions for sex offenses; motions; notice. (1) The provisions of this section shall apply only in a prosecution for: (a) Rape, as defined by K.S.A. 21-3502 and amendments thereto; (b) indecent liberties with a child, as defined in K.S.A. 21-3503 and amendments thereto; (c) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504 and amendments thereto; (d) aggravated criminal sodomy as defined by K.S.A. 21-3506 and amendments thereto; (e) enticement of a child, as defined in K.S.A. 21-3509 and amendments thereto; (f) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511 and amendments thereto; (g) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (h) aggravated sexual battery, as defined in K.S.A. 1983 Supp. 21-3518 and amendments thereto; (i) incest, as defined in K.S.A. 21-3602 and amendments thereto; (j) aggravated incest, as defined in K.S.A. 21-3603 and amendments thereto; (k) aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto, with intent to commit any crime specified above; (l) indecent solicitation of a child, as defined in K.S.A. 21-3510 and amendments thereto; (m) sexual battery, as defined in K.S.A. 1983 Supp. 21-3517 and amendments thereto; or (n) attempt, as defined in K.S.A. 21-3301 and amendments thereto, or conspiracy, as defined in K.S.A. 21-3302 and amendments thereto, to commit any crime specified above.

(2) Except as provided in subsection (3), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in the presence of the jury, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion must be made at least seven days before the commencement of the trial unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(3) In any prosecution for a crime designated in subsection (1), the prosecuting attorney may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(4) As used in this section, "complaining witness" means the alleged victim of any crime

Senate Judiciary Committee
February 12, 1992
Attachment 1

SOCIETY OF
PROFESSIONAL
JOURNALISTS

KANSAS PROFESSIONAL CHAPTER
Box 2853 • Wichita, KS 67201

January 27, 1992

Rep. Henry Helgerson
State Capitol
Topeka, KS 66612

Dear Mr. Helgerson:

We appreciate your efforts in helping us win the repeal KSA 22-202 Sec. 2. which would restore the public's access to probable cause affidavits after a suspect is arrested.

This well-intentioned piece of legislation not only did not achieve its debatable aim, but created intolerable problems for Kansans seeking to carefully monitor our criminal justice system.

Probable cause affidavits are sworn statements, usually made by the chief investigator in a criminal case. The document relates the minimum facts necessary to prove to a judge that legitimate and sufficient grounds exist for filing a criminal charge against a suspect.

Reasons for wanting affidavits to be public include:

* Closure robbed the public of an essential check over the judicial system. Public review dissuades the filing of frivolous, slipshod or malicious charges -- important since few cases reach trial.

* Affidavits based on police reports provide Kansans with the most accurate information about a charge.

* The skimpy generalizations contained on public charging documents encompass a broad spectrum of situations. Possession of marijuana could refer to a single cigarette or 20 bales. Reporters waste the time of public servants by asking them to filter out cases of little public interest.

* Some law enforcement officers and prosecutors feel restrained by this law from discussing information, regardless of how insignificant it might be to the case or how important it might be to the public.

* The Montana Supreme Court ruled Oct. 29 that a 1991 law nearly identical to ours was unconstitutional. The chief justice wrote, ''The perception of fairness in our judicial system, the ability of the criminally accused to defend themselves, and the

Senate Judiciary Committee
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Attachment 2

public's knowledge about criminal proceedings all benefit from allowing public access to affidavits filed in support of a motion for leave to file a charge or warrant.''

* Opening affidavits would simplify complicated and expensive records-keeping systems. Presently, court clerks must maintain a second set of records under lock and key rather than just file the paperwork in one folder.

Are there dangers? No investigation, prosecution or defendant's rights have ever been jeopardized, according to nearly every judge, prosecutor or law enforcement officer we interviewed. This was true when Kansas affidavits were open prior to 1979, currently in federal courts and neighboring states where affidavits have been open for decades, and most important, in eight Kansas counties where presiding judges have gone out of their way to reopen some affidavits by court order.

Confidential informants are not named in affidavits. Also, affidavits contain only enough information to obtain the charge; they do not lay out the entire case. Therefore, judges and prosecutors believe open affidavits do not constitute sufficient pretrial publicity to hamper a prosecution.

The bill's original sponsors told us that they do not recall what prompted the legislation and no reason is stated in the law.

But we discovered that the law was proposed by then-Assistant District Attorney Paul Clark of Sedgwick County. He was concerned that the affidavit names witnesses. This intimidated a few witnesses who hoped to anonymously accuse a suspect or to keep their name from being released to the media.

But this legislation did nothing to address that concern. The defendant can obtain a copy of the affidavit. This is only proper under the commonly-accepted right of the accused to face his accuser. Witnesses referred to in the affidavit also are listed in the charging documents which are and should be public.

We sympathize with the rare skittish witness. But a witness whose courage cannot survive such a minor test will likely not have the courage to testify in court. We believe that the public's right to oversee what its judicial system is doing certainly has equal legal standing with a witness' transitory embarrassment.

This measure has broad support among the media including the Society of Professional Journalists, Kansas Press Association representing publishers and editors, Association of News Broadcasters of Kansas and the Associated Press Managing Editors association.

But it also has the support of many in the criminal justice system including police officers, judges and prosecutors such as the last two Sedgwick County District Attorneys, Nola Foulston and now-judge Clark Owens.

Paul Clark, now a district judge, told me that he will not

oppose repealing the law he proposed, that he will remain neutral.

Since 1979, we have not met anyone else who favors this law. We suspect, though, that defense attorneys will oppose any action exposing their client's actions to closer public scrutiny.

Anyone with questions should feel free to call me at 316-268-6228. We also can provide a three-page paper written in layman's language listing the benefits of the repeal and directly answering concerns.

Sincerely,

Wm. F. Hirschman
President

HOUSE BILL NO. ____

By Representative Helgerson

AN ACT concerning criminal procedure; relating to affidavits supporting an arrest warrant; amending K.S.A. 22-2302 and repealing the existing section.

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

Section 1. K.S.A. 22-2302 is hereby amended to read as follows: 22-2302. ~~(1)~~ If the magistrate finds from the complaint, or from an affidavit or affidavits filed with the complaint or from other evidence, that there is probable cause to believe both that a crime has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue, except that a summons instead of a warrant may be issued if: (a) The prosecuting attorney so requests; or (b) in the case of a complaint alleging commission of a misdemeanor, the magistrate determines that a summons should be issued. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

~~(2)--Affidavits-or-sworn-testimony-in-support-of-the-probable cause-requirement-of-this-section-shall-not-be-made-available-for examination-without-a-written-order-of--the--court,--except--that such--affidavits--or--testimony--when--requested--shall--be--made available--to--the--defendant-or-the-defendant's-counsel-for-such disposition-as-either-may-desire.~~

Sec. 2. K.S.A. 22-2302 is hereby repealed.

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

Sunflower Alcohol Safety Action Project, Inc.

Suite F, 112 S.E. 7th / Topeka, Kansas 66603 / Phone (913) 232-1415

February 10, 1992

Senator Wint Winter, Chairman
Senate Judicial Committee
Statehouse
Topeka, KS

Re: Request for Proposed Legislation
Amending KSA 22-3609

Dear Senator Winter:

In regards to our conversation of February 7, 1992 I am making a formal request on the behalf of Judge William R. Carpenter, Administrative Judge of the Third Judicial District, for your Committee to investigate the possibility of introducing legislation that would amend KSA 22-3609.

Two years ago when your Committee introduced successful legislation that provided assistance for the District Courts of the State of Kansas to provide speedy adjudication of jury cases. Since that time we have found another problem in this particular area, especially from appeals from Municipal Courts. It has been the tact of defense counsels to use this particular statute to delay the adjudication process in the District Courts.

Judge Carpenter has suggested that the language used in KSA 22-3404 which was introduced by the Committee in 1990, be amended into 22-3609 which relates to the appeals from the Municipal Courts.

Judge Carpenter has suggested the following language be inserted in KSA-22-3609

"The trial of misdemeanor and traffic offense cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested by be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a misdemeanor or traffic offense case shall consist of six members. The trial of traffic infraction cases shall be to the court."

Judge Carpenter feels that this language will help the District Courts of Kansas handle the ever increasing load of Municipal Court appeals, coming under their jurisdiction.

At this time, on the behalf of Judge Carpenter, of the Third Judicial District, I ask you to explore the possibility of introducing legislation in this session in order to provide assistance to our Judicial system in the State of Kansas.

Respectfully yours,

Gene Johnson
Project Coordinator

Senate Judiciary Committee
February 12, 1992
Attachment 3

District Court of Kansas
Third Judicial District
Shawnee County, Kansas

Chambers of
William Randolph Carpenter
Administrative Judge of the District Court
Division No. One
Shawnee County Courthouse
Topeka, Kansas 66603

Officers:
Carol A. Meggison, C.S.R.
Official Reporter
291-4351
Pamela S. Patton
Administrative Assistant
913-291-4365

It is recommended that the language in K.S.A. 22-3609(4) be substituted with the following:

The trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. The trial of traffic infraction cases shall be to the court.

Senator Winter.
Judge Carpenter made further language changes on Feb 11, 1992

Gene

20. Delays caused by defendant's filing motion for competency hearing as chargeable to defendant determined. State v. Prewett, 246 K. 39, 44, 785 P.2d 956 (1990).

Article 34.—TRIALS AND INCIDENTS THERETO

22-3401.

CASE ANNOTATIONS

19. Refusal to grant continuance proper where defendant had seven months from arraignment to prepare for trial. State v. Roberts, 13 K.A.2d 485, 487, 773 P.2d 688 (1989).

22-3402.

Law Review and Bar Journal References:
"Pretrial Proceedings," K.L.R., Criminal Procedure Edition, 9, 14, 19 (1989).

CASE ANNOTATIONS

67. Right to speedy trial in criminal cases extends to appeals from municipal court to district court. City of Elkhart v. Bollacker, 243 K. 543, 546, 757 P.2d 311 (1988)

68. When misdemeanor charges dismissed then refiled, time between dismissal and subsequent first appearance (22-3205) disregarded in computing speedy trial. City of Derby v. Lackey, 243 K. 744, 763 P.2d 614 (1988).

69. Cited; person released from custody as not subject to speedy trial provisions of 22-4303 examined. State v. Julian, 244 K. 101, 103, 765 P.2d 1104 (1988).

70. Trial within original statutory limitation plus court-allowed 30-day continuance does not violate statutory right to speedy trial. State v. Clements, 244 K. 411, 415, 770 P.2d 447 (1989).

71. Admissibility of evidence stored in court computer (particularly continuances granted), regardless of compliance with 60-2601a, determined. State v. Chapman, 244 K. 471, 769 P.2d 660 (1989).

72. Applicability examined where confinement on unrelated charges alleged as subterfuge to avoid effect of statute. State v. Goss, 245 K. 189, 191, 777 P.2d 781 (1989).

73. Delays caused by defendant's filing motion for competency hearing chargeable to defendant. State v. Prewett, 246 K. 39, 41, 785 P.2d 956 (1990).

74. Obligation on prosecution to provide speedy trial, applicability of statute to municipal court, when statute commences to run determined. City of Dodge City v. Rabe, 14 K.A.2d 468, 471, 472, 794 P.2d 301 (1990).

75. Delays in obtaining and communicating with counsel chargeable to defendant in determining speedy trial. State v. Matson, 14 K.A.2d 632, 637, 798 P.2d 488 (1990).

76. Statutory right to speedy trial compared to right protected by U.S. and Kansas Constitutions. State v. Smith, 247 K. 455, 457, 799 P.2d 497 (1990).

77. Time period to satisfy speedy trial requirement examined; "brought to trial" defined. State v. Bierman, 248 K. 80, 88, 805 P.2d 25 (1991).

22-3403.

CASE ANNOTATIONS

9. Jury instruction and jury form not requiring unanimous decision nor theory on first degree murder (21-3401) examined. State v. Hartfield, 245 K. 431, 445, 781 P.2d 1050 (1989).

22-3404. Misdemeanor and traffic offense and infraction cases; method of trial. (1) The trial of misdemeanor and traffic offense cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant.

(2) A jury in a misdemeanor or traffic offense case shall consist of six members.

(3) Trials in the municipal court of a city shall be to the court.

(4) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor and traffic offense cases.

(5) The trial of traffic infraction cases shall be to the court.

History: L. 1970, ch. 129, § 22-3404; L. 1976, ch. 163, § 19; L. 1977, ch. 112, § 8; L. 1981, ch. 154, § 1; L. 1984, ch. 39, § 40; L. 1989, ch. 100, § 1; L. 1990, ch. 109, § 1; July 1.

22-3405.

CASE ANNOTATIONS

25. Defendant's presence not required at posttrial hearing on objections to prosecution's preemptory challenges during jury selection. State v. Hood, 245 K. 367, 376, 378, 780 P.2d 160 (1989).

26. Right to confrontation not violated by ex parte hearing to set appearance bond for reluctant material witness. State v. Hamons, 248 K. 51, 61, 805 P.2d 6 (1991).

27. Time period to satisfy speedy trial requirement examined; "brought to trial" defined (22-3402). State v. Bierman, 248 K. 80, 89, 805 P.2d 25 (1991).

22-3406.

CASE ANNOTATIONS

2. Refusal to grant continuance proper where defendant had seven months from arraignment to prepare for trial. State v. Roberts, 13 K.A.2d 485, 487, 773 P.2d 688 (1989).

22-3408.

CASE ANNOTATIONS

4. Alleged improper restriction of inquiry regarding insanity defense examined. State v. Pioletti, 246 K. 49, 54, 785 P.2d 963 (1990).

22-3412.

CASE ANNOTATIONS

13. Prosecutor's explanation of peremptory challenges of members of jury panel belonging to defendant's race examined. State v. Belnavis, 246 K. 309, 311, 787 P.2d 1172 (1990).

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defendant is guilty of a crime, although improperly charged, the appellate court shall order the defendant to be held in custody, subject to the order of the court in which he or she was convicted.

History: L. 1970, ch. 129, § 22-3607; L. 1975, ch. 178, § 26; Jan. 10, 1977.

Source or prior law:

62-1717.

Judicial Council, 1969: This is a restatement of former K.S.A. 62-1717.

CASE ANNOTATIONS

1. Applied; conviction under 21-3422 reversed; parent had equal right to custody of child. State v. Al-Turck, 220 K. 557, 559, 552 P.2d 1375.

22-3608. Time for appeal to supreme court. (1) If sentence is imposed, the defendant may appeal from the judgment of the district court not later than 10 days after the expiration of the district court's power to modify the sentence. The power to revoke or modify the conditions of probation or the conditions of assignment to a community correctional services program shall not be deemed power to modify the sentence.

(2) If the imposition of sentence is suspended, the defendant may appeal from the judgment of the district court within 10 days after the order suspending imposition of sentence.

History: L. 1970, ch. 129, § 22-3608; L. 1986, ch. 123, § 23; July 1.

Source or prior law:

62-1724.

Judicial Council, 1969: The time limitations of the section are the same as those formerly found in K.S.A. 62-1724. It is suggested that the necessary procedural standards be provided by rule. Bail and other conditions of release pending appeal are covered in section 22-2804.

Cross References to Related Sections:

Time limit for modification of sentence, see 21-4603.

Law Review and Bar Journal References:

Appeal time limits discussed in "Collateral Challenges to Criminal Convictions," Keith G. Meyer and Larry W. Yackle, 21 K.L.R. 259, 264, 319 (1973).

"Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260, 271 (1977).

CASE ANNOTATIONS

1. Failure to file appeal within time prescribed by this section and 21-4603; appeal dismissed. State v. Thompson, 221 K. 165, 166, 167, 558 P.2d 93.

2. Applied; appeal from conviction of aggravated robbery not filed within statutory time. State v. Smith, 223 K. 47, 573 P.2d 985.

3. Appeal from order suspending imposition of sentence timely filed; denial of motion for acquittal proper. State v. Brady, 2 K.A.2d 382, 383, 580 P.2d 434. Syl ¶ 2 and corresponding statements in Brady opinion overruled. State v. Moses, 227 K. 400, 403, 607 P.2d 477.

4. Appeal dismissed; sentence must be imposed or imposition of sentence suspended in order to have a final appealable judgment. City of Topeka v. Martin, 3 K.A.2d 105, 590 P.2d 106.

5. Appeal dismissed; appeal not timely filed under this section and 21-4603. State v. Moses, 227 K. 400, 401, 404, 607 P.2d 477.

6. Cited; no right of appeal from denial of sentence modification motion filed more than 130 days after sentencing. State v. Henning, 3 K.A.2d 607, 608, 599 P.2d 318.

7. Jurisdiction lacking for appeal of conviction of involuntary manslaughter; sentence deferred, not suspended. State v. Lottman, 6 K.A.2d 741, 742, 633 P.2d 1178 (1981).

8. Filing of timely notice of appeal is jurisdictional; appeal not taken within time prescribed must be dismissed; exception to general rule noted. State v. Ortiz, 230 K. 733, 735, 640 P.2d 1255 (1982).

9. Trial court's jurisdiction ends when appeal docketed; modification of sentence only upon mandate of appellate court or upon remand. State v. Dedman, 230 K. 793, 796, 640 P.2d 1266 (1982).

10. Time limits set herein applicable to imposition of sentence not to modification of probation conditions. State v. Yost, 232 K. 370, 372, 654 P.2d 458 (1982).

11. Cited in deciding that prosecution's appeal time under 22-3602(b) covered by 60-2103. State v. Freeman, 236 K. 274, 276, 689 P.2d 885 (1984).

12. Limitation on appeal by criminal defendant linked to time court may modify sentence. State v. Myers, 10 K.A.2d 266, 269, 697 P.2d 879 (1985).

13. Appeal of conviction must be within time periods herein and 21-4603, regardless of probation and subsequent revocation. State v. Tripp, 237 K. 244, 246, 699 P.2d 33 (1985).

14. Cited; denial of motion allowing late filing of appeal where no indication to appeal found in record examined. State v. Cook, 12 K.A.2d 309, 310, 741 P.2d 379 (1987).

15. Cited; appeal times controlling with and without imposition of sentence (21-4603) determined. State v. Wagner, 242 K. 329, 747 P.2d 114 (1987).

Statute to amended

22-3609. Appeals from municipal courts. (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas. The appeal shall be assigned by the administrative judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept

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notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than 10 days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Hearing on the appeal shall be to the court unless a jury trial is requested in writing by the defendant not later than 48 hours prior to the trial. A jury in an appeal from a municipal court judgment shall consist of six members.

insert new language to conform w/ 22-3404

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 and amendments thereto shall be conducted only on the record of the stipulation of facts relating to the complaint.

History: L. 1970, ch. 129, § 22-3609; L. 1971, ch. 114, § 10; L. 1975, ch. 202, § 1; L. 1976, ch. 163, § 21; L. 1977, ch. 112, § 10; L. 1981, ch. 154, § 3; L. 1982, ch. 149, § 1; L. 1982, ch. 144, § 18; L. 1983, ch. 115, § 1; L. 1986, ch. 115, § 66; Jan. 12, 1987.

Source or prior law:

63-401.

Revisor's Note:

For Judicial Council commentary, see 22-3611.

Law Review and Bar Journal References:

"Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260, 270, 271 (1977).

Constitutionality of the use of lay judges in Kansas, 25 K.L.R. 275, 276 (1977).

"A Comment on Kansas' New Drunk Driving Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230, 242 (1982).

"The New Kansas Drunk Driving Law: A Closer Look," Matthew D. Keenan, 31 K.L.R. 409 (1983).

"An Additudinal Study of Kansas' Two-Tier Trial System," Michael Kaye, Fred Yaffe, 54 J.K.B.A. 212 (1985).

Attorney General's Opinions:

Double jeopardy; effect of former prosecution. 86-4.

Driving while under influence of alcohol; imposition by municipal courts of penalties for second, third and subsequent violations. 82-155.

CASE ANNOTATIONS

1. Subsection (2) construed; filing of written appeal notice in municipal court required to perfect criminal appeal. City of Overland Park v. Nikias, 209 K. 643, 644, 646, 647, 648, 498 P.2d 56.

2. Appeal taken hereunder from city court convictions for battery and disorderly conduct. State v. Parker, 213 K. 229, 230, 516 P.2d 153.

3. Subsection (2) mentioned; statute contemplates filing of a written notice of appeal. City of Kansas City v. Board of County Commissioners, 213 K. 777, 783, 518 P.2d 403.

4. Refusal by trial court to order a lineup did not amount to finding of guilt. State v. Porter, 223 K. 114, 115, 574 P.2d 187.

5. Cited; error to dismiss complaints because municipal court refused to appoint and compensate counsel for indigent defendants' appeals. City of Overland Park v. Estell & McDiffett, 225 K. 599, 601, 592 P.2d 909.

6. Failure to comply with section jurisdictional defect; not cured by filing notice of appeal in district court. City of Bonner Springs v. Clark, 3 K.A.2d 8, 9, 588 P.2d 477.

7. Cited; upon the filing of an affidavit of prejudice, transfer of the case to another judge is automatic. City of Neodesha v. Knight, 226 K. 416, 601 P.2d 669.

8. Cited; the right to a speedy trial is applicable to criminal cases appealed to district courts from municipal court convictions. City of Overland Park v. Fricke, 226 K. 496, 499, 502, 601 P.2d 1130.

9. Provisions of statute directory rather than mandatory; delay cannot infringe on right to speedy trial. City of Garnett v. Zweiner, 229 K. 507, 508, 509, 510, 625 P.2d 491.

10. Considered in construing 21-4603 as permitting court to retain jurisdiction and act on timely motion for probation or sentence reduction after 120-day period. State ex rel. Owens v. Hodge, 230 K. 804, 808, 641 P.2d 399 (1982).

11. Time for appeal hereunder jurisdictional; modification of existing sentence not new judgment creating new right of appeal. City of Wichita v. Mesler, 8 K.A. 2d 710, 714, 666 P.2d 1209 (1983).

12. Statute, being integral part of whole subject of act (L. 1982, ch. 144), not violative of Kan. Const., Art. 2, § 16. State v. Reves, 233 K. 972, 976, 980, 666 P.2d 1190 (1983).

13. Where appeal to district court does not comply hereunder, appellate court lacks jurisdiction over subject matter. City of Overland Park v. Barron, 234 K. 522, 526, 527, 672 P.2d 1100 (1983).

14. Demand for jury trial, oral or written, must be made of record to court at least 48 hours before trial. City of Overland Park v. Barnett, 10 K.A.2d 586, 591, 705 P.2d 564 (1985).

15. Generally held if constitutional rights are at issue, habeas corpus is available even though no direct appeal taken. In re Habeas Corpus Application of Gilchrist, 238 K. 202, 205, 708 P.2d 977 (1985).

22-3609a. Appeals from district magistrate judges. (1) A defendant shall have the right to appeal from any judgment of a district magistrate judge. The administrative judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Office of the General Counsel

M E M O R A N D U M

TO: Donna Whiteman DATE: February 11, 1992

FROM: Roberta Sue McKenna SUBJECT: Children in Need of Protection/ Families in Need of Services

In response to a number of concerns and in an effort to empower parents struggling to meet the needs of their children, Youth Services is recommending passage of a major revision in the Code for Care of Children.

The current code became effective in January, 1983 and has served Kansas well. It separated abused/neglected children and status offenders from juvenile offenders. The public safety issues inherent when juveniles commit acts which would be criminal behavior in adults must continue to be addressed. Just as importantly the constitutional rights of children recognized by In re Gault must continue to be protected: children who have not been charged or adjudicated for criminal behavior, should not be subject to the same penalties and stigma as those who have.

Although not obvious in reading through the Code for Care of Children, there has always been a recognition that status offenders and abused/neglected children are also distinguishable. This recognition is evidenced in K.S.A. 65-516's penalties for individuals whose children are removed from the home based on allegations of abuse or neglect. When children are removed and parental authority supplanted by the state's parens patrie power for reasons other than abuse or neglect, the parents are not barred from working, volunteering or residing in child care facilities or homes.

The code revisions being recommended after ten years experience stand for the proposition that these parents deserve more than simply being exempt from the consequences set out in K.S.A. 65-516. They deserve to be spared the stigma of child in need of care proceedings and the loss of custody. They deserve support and assistance in providing their children with a home, with limits, with care. If the parents are willing and, with some assistance, able to care for their children, the system should be structured to support them.

Therefore K.S.A. 38-1502 has been modified to distinguish children who have or are likely to be abused or neglected from children whose behavior indicates a family in need of services. For children in need of protection from abuse or neglect at the hand of those responsible for their care, court intervention, massive state intrusion into the family and the consequent curtailing of parental authority is justified and necessary. K.S.A. 38-1502(a) will define a child in need of protection as one under 18 who "has been physically, emotionally or sexually abused by a parent, custodian, or caregiver", has been placed for adoption in violation of the law, abandoned, or run twice from a court ordered or designated placement. Physical, mental/emotional abuse, sexual

Senate Judiciary Committee
February 12, 1992
Attachment 4

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

Committee on the Judiciary
Wint Winter Jr., Chairperson

February 12, 1992
Testimony in Regard to S.B. 536

AN ACT concerning the Kansas code for care of children; relating to certain custody orders thereunder.

Mr. Chairperson, Members of the Committee, I am appearing today in support of S.B. 536 which provides the Secretary an opportunity to propose an alternative to placement of a child in SRS custody prior to a court issuing such an order.

Purpose of the bill:
The purpose of the bill is to provide Kansas families with the maximum opportunity to deal with their problems as an intact family whenever consistent with the safety of family members. When situations indicate the need for the temporary separation of children from their families, an alternative plan utilizing the family and community resources will be considered before placing the custody of a child with the State.

Background:
The Kansas statutes state: "It is the policy of this state to provide for the protection of children ... [by] providing preventive and rehabilitative services where appropriate to abused and neglected children and their families so that, if possible, the families can remain together without further threat to the children" (K.S.A. 38-1521)(emphasis supplied).

The United States Congress expressed a similar concern in Public Law 96-272 which, among its provisions, requires judges to to determine whether reasonable efforts have been made to enable children to remain safely at home before they are placed in foster care. Such efforts are a required element of each state's Title IV-E state plan and is a condition of federal funding for individual foster care placements (42 U.S.C. 671(a)(15) and 672(a)(2)).

Many children come into SRS custody for reasons other than abuse and neglect. Truants, for example, may end up in SRS custody after only modest and limited attempts to deal with the problem in the community. Conflicts between children with behavioral problems and parents, schools or police can try the patience of the adults to the point where they see placing custody of the child with SRS as the only remedy. This is often injurious to the child and is much more expensive and less effective than a community-based approach to the problem.

County and district attorneys do not in all cases share the Department's commitment to family preservation and preventive services or may not be aware of alternative services. These attorneys have large caseloads, approximately 300 statutorily mandated responsibilities, little or no specialized training in juvenile law and may give children's cases low priority. If the judge does not act as an effective gatekeeper to divert such cases to family services, the children may come into SRS custody before the Department is even aware of the family's need for services.

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A supplement to this testimony has been provided which analyses the last 50 cases to come into custody in each of the 12 SRS management areas in May, 1991. These data illustrate the magnitude of the problem of children coming into our custody for reasons other than abuse and neglect and in most instances at the request of someone other than the Department.

The provisions of this bill are recommended by the SRS Family Agenda for Children and Youth and are consistent with the recommendation of the Special Committee on Children's Initiatives which called for a "Review [of] Kansas Child in Need of Care statutes, other statutes, administrative rules and regulations, and agency policies with a view towards determining whether any provisions create a bias toward the out-of-home placement of children and youth and the placement of a child in the custody of the Secretary of the Department of Social and Rehabilitation Services" (Report on Kansas Legislative Interim Studies to the 1992 Legislature, p. 57).

The Subcommittee on Prevention of the legislative Task Force on Social and Rehabilitation Services recommended "the passage of legislation to require that Social and Rehabilitation Services be given notice and opportunity for input prior to any placement of a child in need of care in the custody of the Secretary to allow the agency an opportunity to evaluate the potential for family support and preservation services as an alternative to out-of-home placement" (Report on Kansas Legislative Interim Studies to the 1992 Legislature, p. 51).

Effect of passage:
Passage of this bill would give substance to the requirement that "reasonable efforts" be made to avoid unnecessary placements of children away from their families. Under provisions of the bill, Judges will have more information and better documentation on which to make the required judicial finding that reasonable efforts have been made.

Recommendation:
For the preceding reasons the Department supports the passage of S.B. 536.

We also call your attention to a companion measure, a bill to be introduced which would accomplish the same objective in a more comprehensive manner. This bill would replace the current Child in Need of Care category with two categories: "Child in Need of Protection" would include those who have been physically, mentally, emotionally or sexually abused or neglected by a parent, custodian or caregiver; "Family in need of Services" would include families in which one or more children is truant, out-of-control, or has committed a status offense. The bill would limit children entering SRS custody to those where there is a clear-cut need for intervention to protect the best interest of the child. For all other family situations, the state and local communities would work together to insure provision of appropriate and timely services.

Donna L. Whiteman
Secretary
Department of Social and
Rehabilitation Services
(913) 296-3271

dr

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Supplement to testimony on S.B. 536

SRS Youth & Adult Services
Statewide Sample: Last 50 Children in Custody - May 1991

Area Office	Abuse, Neglect or abandoned	Not Abuse, Neglect (truant, mentally disturbed, JO)	Other (i.e., divorce, custody, commitment reason unclear)
Chanute	25	25	0
Emporia	27	34	0
Garden City	18	19	13
Hays	18	32	4
Hutchinson	31	18	0
Kansas City	20	31	0
Lawrence	32	18	0
Manhattan	21	45	0
Olathe	12	13	0
Salina	20	30	0
Topeka	14	32	4
Wichita	23	27	0
TOTAL	**261**	**324**	**21**

Area Office	Petition SRS Initiated	Petition Initiated by Others
Chanute	23	27
Emporia	18	43
Garden City	9	41
Hays	17	37
Hutchinson	15	34
Kansas City	14	37
Lawrence	32	18
Manhattan	21	45
Olathe	12	13
Salina	29	21
Topeka	11	39
Wichita	31	19
TOTAL	**232 (38%)**	**374 (62%)**

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SB 536

Senate Judiciary Committee
Testimony
By
Barbara Huff
Executive Director
of
Keys For Networking, Inc.

February 4, 1992

Mr. Chairman and Members of the committee,

Thank you for the opportunity to testify today on behalf of families who have children with serious emotional and behavioral disorders.

As you may know, our organization Keys For Networking, Inc. provides information, support, training, and advocacy to families who have children that are seriously emotionally disturbed.

We support Senate Bill No. 536. Our organization provides services to hundreds of families who are forced to relinquish custody of their child to the state in order to receive services. If in fact the secretary or her designee were to have an opportunity to review the custody order, I believe, this would provide a vehicle for recommendations for alternative services.

We would, however, add the words **on services** after the word **placement** under Section 1, therefore, allowing the secretary to recommend services that would assist in keeping the child at home when that possibility exists. We need to continue to think about services for families rather than placements for children.

Thank you for your time.

Senate Judiciary Committee
February 12, 1992
Attachment 6

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030
FAX 316-729-0655
P.O. BOX 2592 • WICHITA, KANSAS 67201

February 4, 1992
Senate Bill No. 536

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA is not opposing Senate Bill No. 536 at this time, but they do have great concerns regarding the 24 hours notice.

We have reviewed the SRS Task Force report pertaining to this and other legislation; and while KPOA supports the intent and long-range goals, we do not believe this legislation allows law enforcement to deal with present day-to-day situations that involve a juvenile.

Crime, family or neighborhood disputes are not planned 24 hours in advance.

What is law enforcement's alternative when a single parent or both parents are arrested and no family is available to take the children involved? What happens to their juvenile child or children? Law enforcement nor the courts can always give the 24 hour notice to SRS. Most Kansas law enforcement jurisdictions do not have the facilities to house a juvenile while working through this 24 hour notice.

We do not believe it is the intent of SRS nor this legislature to leave any juvenile in a 24 hour "no-where-land". Your thoughts, consideration, and/or clarification of this will be appreciated.

Thank you for the opportunity to speak to you today.

In Unity There Is Strength

Senate Judiciary Committee
February 12, 1992
Attachment 7

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

Senate Bill 529

Before the Senate Judiciary Committee
February 4, 1992

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular, adequate support payments and by enforcing past due support obligations. From that perspective, SRS favors passage of Senate Bill 529.

Each installment of support is a separate money judgment when due and unpaid. Over the years, complex rules and exceptions have developed for identifying dormant installments, which must be revived before they may be enforced. By expanding the range of actions preventing dormancy, this proposal would make it less likely for child support to become temporarily unenforceable and would reduce the administrative, legal, and judicial costs associated with dormancy.

As the law now stands, many attorneys periodically request general execution from the courts, even when no assets are known, purely to prevent older support installments from going dormant. This unproductive paperwork satisfies the technical requirements of the statute, but the expense is a burden to both the courts and SRS -- usually without the debtor even knowing that enforcement has been attempted. Continuing to allow only limited, specific actions for prevention of dormancy will do nothing to eliminate this waste.

The purpose of dormancy is to allow a debtor to clear the record of stale debts the creditor shows no intention of pursuing. Enforcement actions, such as contempt and interstate proceedings, clearly warn the debtor of the intention to collect unpaid support. Unfortunately, dormancy is not prevented by either of these well-known enforcement actions. If the support creditor initiates additional action just to prevent dormancy, the debtor gains little by way of notice and often resents what seems like overkill by the creditor.

Fiscal Impact. The complexity of the rules surrounding dormancy adds to training costs for staff, increases the time required for checking court records, and increases the risk of errors in identifying dormant installments. Passage of this bill would reduce the time SRS program and legal staff must devote to this particular technicality of the law, freeing them for more useful, productive tasks. It is estimated that passage of Senate Bill 529 would permit cost avoidance of approximately $79,092 per year ($26,891 State's share, after subtracting IV-D federal financial participation) through the more efficient use of staff.

For these reasons, SRS urges that Senate Bill 529 be recommended for passage.

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Attachment 8

Senate Bill No. 529
Senate Judiciary Committee
February 4, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Senator Winter and members of the committee:

I am pleased to be here today to discuss 1992 Senate Bill 529 with you.

This bill amends provisions of chapter 60 of the *Kansas Statutes Annotated* which pertain to judgments which become dormant and how such dormant judgments may be revived.

In 1985 these statutes were amended to include income withholding proceedings as an event which would revive a judgment in an effort to remedy the effect of *Dallas v. Dallas* 236 K. 92, a 1984 case which held that the revivor statute had no exception for child support judgments. The amendments contained in Senate Bill 529 are a similar effort to overcome the effects of *Cyr v. Cyr* 249 K. 94, a case decided in 1991. Cyr concluded that a citation for contempt of court in a child support case is not one of the proceedings enumerated in K.S.A. 60-2403 for keeping a judgment alive.

One of the problems faced by District Court Trustees in their efforts to enforce child support obligations is trying to keep child support judgments alive. Some of the cases which are the most difficult to enforce the support obligations are cases in which the obligor has moved to another state or in which contempt proceedings are the only enforcement tool available. Currently these enforcement actions can not be used to revive a support judgment.

The amendments set out in this bill are intended to broaden the events which will revive a support judgment by listing all the events normally used to enforce child support judgments.

This bill will greatly assist District Court Trustees in their support enforcement efforts. I recommend that this bill be approved.

Thank you for the opportunity to discuss this matter with you.

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February 12, 1992
Attachment 9