Approved: April 30, 2003
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 20, 2003 in Room 313-S of the Capitol.

All members were present except:
Representative Pauls Davis - Excused
Representative Tom Klein - Excused
Representative Dean Newton - Excused
Representative Michael O'Neal - Excused
Representative Rick Rehorn - Excused
Representative Dan Williams - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes

Conferees appearing before the committee:
Senator Steve Morris
Terry Maas, Hugoton
Robert Johnson, Stevens County Attorney
Martha Coffman, Individual
Ed Collister, Kansas Bar Association

The hearing on **SB 91 - law enforcement training center, qualifications & officer training requirements**, was opened.

Senator Steve Morris requested the bill on behalf of Mr. Mass who is a Canadian citizen working towards his U.S. citizenship. He works in the law enforcement field and would like to attend the Kansas Law Enforcement Training Center to become a sheriffs officer. The bill would amend the statute to make it specific to allow Mr. Mass to attend the training center. (Attachment 1)

Terry Maas, Hugoton informed the committee of the law enforcement type jobs he's held since moving to the United States. He currently works in the jail of the Stevens County Sheriff's Department and is a City Reserve Officer. To become a sheriffs officer, he would need to attend the Kansas Law Enforcement Training Center and is not allowed to do so because he is not a citizen of the United States. (Attachment 2)

Robert Johnson, Stevens County Attorney, has known Mr. Mass for a period of five years and believes that Stevens County would benefit from him becoming a sheriffs officer. He has the support of all three Stevens County Commissioners and they see the situation of hiring law enforcement officers in Stevens County differently from other areas of the state. It's had to find individuals who are willing and qualified individuals to perform the duties of an law enforcement officer. (Attachment 3)

Written testimony in support of the bill was provided by Eric Smith, Attorney (Attachment 4).

The hearing on **SB 91** was closed.

The hearing on **SB 206 - one year time limitations on writs of habeas corpus**, continued.

Martha Coffman, Individual, (Attachment 5) appeared before the committee as an opponent to the bill for the following reasons;

- the work of the courts would increase
- restricting the review of newly discovered evidence must be brought within two years after the final judgement
- placing restrictions on the use of habeas corpus violates section 8 of the Kansas Bill of Rights.

Ed Collister, Kansas Bar Association, (Attachment 6) appeared before the committee in opposition to the bill because it would add additional legal work for prosecutors, lawyers and judges, it would not stop frivolous motions and would not prevent future filings that cause victims anguish.

Written testimony in opposition of the bill was provided by Randall Hodgkinson, Attorney, Topeka (Attachment 7).

The committee meeting adjourned. The next meeting was scheduled from March 24, 2003.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Testimony for

House Judiciary Committee

Thursday, March 20, 2003

By

Senator Steve Morris

Re: SB 91

H. JUDICIARY

3-20-03

Attachment: 1

Remarks - Senator Steve Morris - House Judiciary - 3/20/03

Representative O'Neal and members of the House Judiciary Committee, thank you for the opportunity to speak to you about an outstanding young man who resides in my home town of Hugoton. Terry Maas is a Canadian citizen who has chosen to make Hugoton, Kansas his home. Terry and his wife have made an excellent addition to our community.

Terry started visiting with me a couple of years ago about his efforts to attend the Kansas Law Enforcement Training Academy so he could continue to work in law enforcement. I understood that you can only work a year before you are required to go to the Academy.

Terry and I concluded that the only way he could attend, before gaining his citizenship, would be a change in the statute, and SB 91 accomplishes that.

I respectfully request your favorable consideration of SB 91.

Senate Bill No. 91 testimony by Terrance Richard Maas

I come here today to ask for your help in gaining admittance to the Kansas Law Training Center in Hutchinson, and becoming a certified law enforcement officer.

I meet all of the requirements to become a certified law enforcement officer as outlined in the statute, K.S.A. 74-5605, with the exception of being a United States Citizen. I currently hold a United States Permanent Residency card and I am awaiting United States Citizenship, which I will be eligible for in approximately 2 ½ years. I have the opportunity to accept employment with the Stevens County Sheriff's Department as a Deputy Sheriff; however, under the current statute, and its requirement for citizenship, it prevents me from fulfilling my goal to become a certified officer. I have served under Sheriff Russ DeWitt for five years as a Corrections Officer in charge of the day to day operations of the jail. In July of 2002, I was appointed by the Hugoton City Council, with a recommendation by Chief of Police Fred Hagman, to Hugoton's new Reserve Officer Program.

As a City Reserve Officer, we are not paid a salary and serve as volunteers. We are not required to attend the KLETC, and under this statute, this allows me to hold this position. At this time, I would like to serve the citizens of Stevens County in a much larger capacity as a full time law enforcement officer.

With my five years experience with the Stevens County Sheriff's Department and my time as a reserve officer I gained considerable knowledge of law enforcement techniques. Being a Corrections Officer in Stevens County, I

H. JUDICIARY
3-20-03
Attachment: 2

have had the opportunity to study the criminal elements that law enforcement officers deal with on a regular basis. Additionally, working with the citizens of Stevens County in several capacities, I have gained the respect and trust of my peers and the citizens I serve. This is apparent by the numerous letters, phone calls, and e-mails to Senator Morris' office from the residence of Stevens County. For these reasons, I feel I am a viable candidate for the Kansas Law Enforcement Training Center.

I can't express enough the importance of this bill to the advancement of my career in law enforcement. I thank you for your time and consideration in this matter.

Respectfully,

Terrance Richard Maas

ROBERT E. JOHNSON II
STEVENS COUNTY ATTORNEY
1024 S. Trindle, P.O. Box 909
Hugoton, KS 67951-0909
(620) 544-2103, Fax: (620) 544-2403
E-mail: johnson@pld.com

March 20, 2003

TESTIMONY IN SUPPORT OF SENATE BILL 91

My name is Robert E. Johnson II. I am the Stevens County Attorney and also a partner in the law firm of Tate & Johnson L.L.C., Box 909, Hugoton, Kansas 67951.

I am here to offer testimony in support of the above-mentioned bill as well as Mr. Terry Maas. I have had the pleasure of being acquainted with Terry for approximately 5 years. I met him while he was working as a Jailer at the Stevens County Sheriff's Department.

Terry was always very professional in carrying out his duties as a Jailer and took his job very serious. All the police and sheriff officers have a great deal of respect for Terry as well as the other attorneys in Hugoton, Kansas. I have attached hereto copies of letters, which were sent by various people in support of this bill being put forth by Senator Steve Morris. Obviously, from the content of the letters and who they are from, it is obvious that Terry and his wife have a great deal of support in Stevens County, Hugoton, Kansas.

In addition to Terry serving as Stevens County Jailer he is a volunteer for the Stevens County Fire Department and the Reserve Police Officer Program for the Hugoton Police Department. He is involved in other community activities, Leadership Stevens County 2003, Fireworks Safety Awareness Talk to Grade School Students and Hospital Staff as well as coaching little league baseball in Hugoton, Kansas.

Mr. Maas and his wife are currently Canadian citizens. However, they are in the process of becoming U.S. citizens.

It is my opinion, the Stevens County Sheriff's Department would benefit by hiring Terry as a Stevens County Deputy. The only problem is that Mr. Maas is not a U. S. citizen, and that is why we are here today. The Stevens County Sheriff's Department currently has one job opening for a Deputy and a patrol car that is not being used. As evidence by the letters attached hereto, it appears that there is a willingness to hire Mr. Maas, if he is able to enter into the Kansas Law Enforcement Training Center. Mr. Maas has the full support of all three Stevens County Commissioners, Mr. Melvin

H. JUDICIARY
3-20-03
Attachment: 3

Webb, Dave Bozone and Gary Baker, who would like to see him employed by the Stevens County Sheriff's Department.

In Stevens County, Kansas, we are in a little different situation than other parts of the state. In that, finding willing and qualified individuals to perform the duties of a Sheriff's Deputy in a professional and unbiased manner, are very difficult to find.

In addition, Methamphetamine production and abuse has escalated, especially in rural areas, with the easy access to anhydrous ammonia and thus has created a new need for qualified, educated and professional people to help in the deterrence of criminal activity. Mr. Maas, in my opinion, would make a fine Deputy and has the support of many Stevens County residents, the Stevens County Sheriff and the Stevens County Commissioners.

As Stevens County Attorney, I am here today to offer my opinion as to Mr. Maas' qualification to become a Deputy and to urge you to pass this Bill to allow him to enter the Kansas Law Enforcement Training Center.

Thank you for your time.

Very truly yours,

Robert E. Johnson II

REJ:sjd

F:\SARAH\COUNTY\LETTER\BILL91.LET

RUSS DEWITT, SHERIFF

DE DE DEWITT. OFFICE DEPUTY

OFFICE PHONE 316 544 - 4386

STEVE LEWIS, UNDERSHERIFF

OFFICE OF SHERIFF

SHERIFF

STEVENS COUNTY

HUGOTON, KANSAS 67951 - 0459

April 10, 2002

Senator Steve Morris
600 Trindle Street
Hugoton, Ks 67951-2793

Dear Steve;

Terry Maas has worked for me as a jailer for approximately five (5) years. Terry has done a very good job as a jailer. Unfortunately, there is no advancement available and the pay is not sufficient.

Terry has expressed interest in becoming a law enforcement officer. One of the qualifications to enter the law enforcement academy is being a U.S. citizen. Terry is currently and has been attempting to become a citizen.

Terry's wife, Dawn, is a registered nurse working at the hospital. As you know, there is a shortage of nurses everywhere. Dawn could go nearly any place and receive more money that she earns in Hugoton, being the excellent nurse she is.

They would like to remain in our community. They like the closeness of our city and have developed many friends here. If there is any way that a waiver could be obtained for Terry to attend the law enforcement academy, it would be greatly appreciated.

Thank you,

Russ DeWitt
Stevens County Sheriff

RD/tsp

Bernard E. Nordling
Erick E. Nordling

KRAMER, NORDLING & NORDLING, LLC
ATTORNEYS - AT - LAW
209 East Sixth Street
Hugoton, Kansas 67951
(620) 544-4333
Fax (620) 544-2230

A.E. Kramer
(1901 - 1991)
Leland E. Nordling
(1924-1987)

May 29, 2002

RE: Kansas Law Enforcement Training

I am writing on behalf of Terry T. Maas. Terry desires to attend the Kansas Law Enforcement Training Center in Hutchinson, but since he is not yet a U.S. citizen it has slowed down his application process.

Terry and his wife moved to Hugoton, Kansas in August of 1996 from Nova Scotia, Canada. Terry is a member and training officer of the Stevens County Fire Department. He has been helping there since November of 1997. He has also been involved with the Emergency Preparedness Committee for Stevens County and has been a jailer at the Stevens County Jail.

Although he desires US citizenship, he will not be fully eligible for three and one-half years. He has worked hard and obtained a permanent resident status.

I've worked with Terry over the last few years. He is a good asset to the Sheriff's Department and to our community. I've enjoyed his sense of humor and think he would be good as a law enforcement officer.

If there is a way to speed up the process to allow him to attend the Law Enforcement Training Center as soon as possible and to work as a Kansas law enforcement officer, it would be great.

If you have any questions or need additional information, please let me know.

Very truly yours,

Erick E. Nordling

EEN:dsm

F:\DocsWP\Debbie\LTRS\Maas.Terry.wpd

CONCANNON LAW OFFICE
P. O. Box 1089, 120 WEST 6TH STREET
Hugoton, Kansas 67951
(316) 544-4318

DON O. CONCANNON
LIMITED PRACTICE

CHRIS O.CONCANNON
DECEASED 1953 - 1996

April 2, 2002

Senator Steve Morris
Capitol Building
Room 1205
Topeka, Kansas 66612

Re: Terry Maas

Dear Steve:

I understand that Terry Maas has requested assistance in obtaining a waiver of the five year residency requirement for admission to the KLETA Academy. I am sure that he has advised you of his background and his work-related activities, so I will not repeat the same.

He and his wife hold important jobs in our community and have been good citizens, both receiving accolades from their employers.

In order to allow Terry to improve his earning capacity and advance in his chose profession, it is necessary for him to attend the academy.

I feel that his conduct, and that of his family, merit consideration for a waiver of the residency requirement. Your assistance will be appreciated.

Very truly yours,

Don O. Concannon

DOC/sc
ccs: Terry Maas
Russ DeWitt, Sheriff

SHARP, McQUEEN, McKINLEY, DREILING & TATE, P.A.

LAWYERS

KERRY E. McQUEEN
MICHAEL P. DREILING
SHIRLA R. McQUEEN
ARTHUR B. McKINLEY
WAYNE R. TATE
ROBERT E. JOHNSON II

JAMES C. DODGE
STEPHEN C. GRIFFIS**

1024 S. TRINDLE - P.O. BOX 909
HUGOTON, KANSAS 67951-0909
TELEPHONE (620) 544-2103
FAX (620) 544-2403

*ADMITTED IN KANSAS AND OKLAHOMA
**ADMITTED IN KANSAS, OKLAHOMA AND TEXAS
ALL OTHERS ADMITTED IN KANSAS

GENE H. SHARP*
(OF COUNSEL)

CHAS VANCE
(1904-1979)

H. HOBBLE, JR.
(1909-1996)

REX A. NEUBAUER
(1918-1997)

March 25, 2002

Senator Stephen R. Morris
State Capitol, Room 462-E
Topeka, KS 66612

Representative Bill Light
State Capitol, Room 175-W
Topeka, KS 66612

Re: Terry Maas

Dear Sirs:

I am writing on behalf of Terry Maas, who is currently employed by the Stevens County Sheriff's Department as a jailer. Mr. Maas is a permanent resident of the United States; however, he has not gained his U.S. citizenship. Mr. Maas and his wife transplanted themselves to Hugoton, Kansas, from Canada sometime ago. They have been working diligently for many years to gain their citizenship and have expended many thousands of dollars doing the same. Mrs. Maas is currently employed as a nurse for the Stevens County Hospital, and as previously stated, Mr. Maas works as a jailer for the Stevens County Sheriff's Department.

Mr. Maas has discussed numerous times with me as county attorney and with the Stevens County Sheriff the fact that he would like to become a sheriff's deputy and/or patrolman, and pursue a career in law enforcement. However, the problem at this time is the Kansas Law Enforcement Training Center (KLETC) in Hutchinson, Kansas, will not allow anyone to go through their program who is not a U.S. citizen. It is my understanding from speaking to the sheriff that he can hire anyone as a sheriff's deputy, but they have to begin training at the KLETC within one (1) year of employment. Sheriff DeWitt has expressed a desire to hire Mr. Maas; however, until he is allowed to complete the KLETC program in Hutchinson, Kansas, any attempt by Sheriff Dewitt to hire Mr. Maas would be frivolous.

In my experience with Mr. Maas, he does his job as Stevens County Jailer very well. He is a self-starter, always finding things to do and has a very good disposition for the type of work that he does. The prisoners as well as the sheriff's officers and all the judges and attorneys respect the work that he does. Since Mr. Maas has expressed a desire to further his law enforcement career, I find it very appropriate and necessary that I as well as the two of you work diligently to help Mr. Maas obtain and achieve his goals. If either of you could look into this matter on behalf of the Stevens County Attorney's office, as well as Mr. Maas, I would be appreciative.

I wonder if it would be possible to gain a waiver for Mr. Maas to complete the KLETC program? I hope all is going well for the two of you, and I hope to hear from both of you soon.

Very truly yours,

Original signed by
Robert E. Johnson II

Robert E. Johnson II

REJ:jlt
pc: Mr. Terry Maas ✓
Mr. Gary Baker, Stevens County Commissioner
Mr. David Bozone, Stevens County Commissioner
Mr. Melvin Webb, Stevens County Commissioner
Sheriff Russell DeWitt
Attorney General Carla Stovall
Governor Bill Graves

F:\JOY\LTRS\STEVENS\MAAS.SEN

STEVENS COUNTY HOSPITAL
1006 S. Jackson, Box 10, Hugoton, Kansas 67951

3-19-02

To: Senator Steve Morris

From: Deryl Gulliford MHA, PhD
Chief Executive Officer
Vice-President – Pioneer Health Network
Vice-President – Kansas Hospital Assoc. SW District

Dear Senator Morris,

I am writing to support the candidacy of Terry Maas for admission to the Kansas Law Enforcement Training Center in Hutchinson. Terry and his wife Dawn have been residents of Hugoton since August of 1996. They are important members of the community, serving the public through law enforcement and nursing. Terry has taken a leadership role in countywide Emergency Preparedness and has done an excellent job in that capacity. Terry has achieved permanent residency in the US, and he meets all admission criteria for the KLETC, but he is not yet a citizen. Terry will be seeking

citizenship when eligible in four years. I would request your support for this application to enter KLETC at this time. Terry will be an excellent certified officer, and a credit to your district. Please let me know if you have any questions in this regard.

Sincerely,

Dr. Deryl Gulliford

3-10

American Law Enforcement Radar & Training

A.L.E.R.T.

This certificate is awarded to

TERRANCE R. MAAS

who has qualified as a *Certified Police Traffic Radar Operator*

knowledgeable in the proper use and theory of:

Doppler Traffic Radar

Training Instructor _____ Date 3 Oct. 2002

3-11

The University of Kansas

Kansas Law Enforcement Training Center

Hutchinson, Kansas

This is to certify that

Terrance Maas

Stevens County Sheriff's Department

has participated in

Field/Jail Training Officer Program

September 24-26, 2001

sponsored by

Kansas Law Enforcement Training Center

September 26, 2001

Date

Director of Police Training

3.12

certificate of Training

The Liberal Police Department is proud to present to

TERRY MAAS

this certificate of completion in a 8 hour course on

ASP BATON BASIC INSTRUCTION COURSE

Given in the City of Liberal, Kansas on October 5, 2002

Sergeant J. Bogart

Detective J. Ott

© GOES 746

LITHO IN U.S.A.

OFF-DUTY CONCEALED CARRY QUALIFICATION
SEPTEMBER 29, 2002

OFFICER	TIME	POINTS	HIT FACTOR	SCORE
401	31.25	80	2.56	60
402	28.56	84	2.94	69
403	28.60	78	2.72	64
404				
405	24.84	82	3.30	78
407	21.75	92	4.229885	100
420	23.34	80	3.42	81
421				
422	24.19	86	3.55	84
423	22.28	94	4.2190305	99
424	27.38	78	2.84	67
425	25.94	70	2.69	63
426	20.35	86	4.2260442	99
C.F.	25.18	84	3.33	78

Scores posted reflect highest attained, are not averaged.
All officers qualified.
407, 423, and 426 scores are carried out to full decimal value because of extreme closeness of scores. Very competitive match.
Good job, all officers did well.

Remember, identify yourself, give verbal commands, shoot on the move, use cover properly, give the suspect opportunity to surrender, and be tactically efficient.

STEVENS COUNTY COMMISSIONERS

200 E. Sixth, Courthouse
Hugoton, KS 67951
(620) 544-2534

March 19, 2003

TO WHOM IT MAY CONCERN:

We, Melvin Webb, Dave Bozone and Gary Baker are the Stevens County Commissioners, Hugoton, Kansas. We would like to let your committee know that we, both personally and as the Stevens County Commissioners support Senate Bill 91.

Terry has been a tremendous asset to the County and we greatly appreciate his work, he and his wife are also highly thought of by the Community as a whole.

We, the Stevens County Commissioners, believe Mr. Maas has the qualifications to become a very good Deputy and to urge you to pass this Bill to allow him to enter the Kansas Law Enforcement Training Center.

Thank you for your time.

BOARD OF COUNTY COMMISSIONERS OF STEVENS COUNTY, KANSAS

Gary Baker
Gary Baker

Melvin H. Webb
Melvin Webb

David Bozone
David Bozone

F:\SARAH\COUNTY\LETTER\COMM91.LET

3-14

March 12, 2003

MAR 13 P.M.

Senator Steve Morris
State Capital
Room 120-S
Topeka, KS 66612-1504

RE: Terry Maas

Dear Senator Morris:

I am writing this letter in support of Terry Maas. It was my intent to testify on behalf of Terry but I will be unable to attend the session in which this matter will be discussed. Terry moved to Hugoton Kansas in 1996 and very quickly became involved in the community. It does not surprise me that he wishes to continue his service to Southwest Kansas by attending the Law Enforcement Academy and becoming a local law enforcement officer. I have had experience working with Terry on both a personal and a professional level. During my term as Stevens County Attorney Terry was a jailer for the Stevens County Sheriff. I dealt with Terry on several occasions and found him to be both professional and courteous to the prisoners as well as the public and court system staff.

Terry is quite involved in our community as a volunteer firefighter as well as his involvement in the EMS service. Terry was a paramedic in Canada but due to regulations he was unable to function in that capacity here in the United States, nevertheless he has been willing to throw himself into the community to make it a better and safer place to live. I believe that based on Terry's past involvement in our community he would make an excellent Police Officer. I hope that consideration can be given to allow Terry the opportunity to continue to serve the Hugoton area. In these times where many people are leaving the rural areas to find other opportunities it is important to see that those who want to stay can do so. I might also mention that Terry's wife Dawn is a Registered Nurse and works at the Stevens County Hospital. It will be important to the community to see that this couple stay and continue to contribute their skills and talents.

If you have any questions or if I can help in any way please let me know.

Very truly yours,

Eric B. Smith
Attorney at Law

H. JUDICIARY
3-20-03
Attachment: 4

RAMIFICATIONS OF LIMITING K.S.A. 60-1507
Senate Bill 206
By Martha J. Coffman
March 13, 2003

I am concerned about the proposal to restrict the use of K.S.A. 60-1057. A person convicted of a crime uses this procedure to challenge a conviction or sentence after the direct criminal appeal is completed. I oppose placing a time limit on filing of 60-1507 petitions for the reasons discussed below.

Currently I am Advisory Counsel for the Kansas Corporation Commission on telecommunications issues. Today I appear as a citizen concerned about habeas corpus. Before going to the Commission, I was Director of Central Research for the Kansas Court of Appeals. In that position, I supervised attorneys who researched issues for Court of Appeals judges. The Court of Appeals caseload includes all direct criminal appeals, except those involving the death penalty, a life sentence, or off-grid crimes. The Court also handles all appeals from K.S.A. 60-1507 proceedings. Before becoming Director, I served as a research attorney for Justice Donald Allegrucci, as an Assistant Appellate Defender, as a private practitioner in Lawrence, KS, and as a federal law clerk.

Twice I served as President of the Criminal Law Section of the Kansas Bar Association. I have written two articles about habeas corpus in Kansas. The first deals with habeas corpus generally under K.S.A. 60-1501. *Habeas Corpus in Kansas: How is the Great Writ Used Today?* 64 J. Kan. Bar Assoc. 26 (1995). The second article discusses K.S.A. 60-1507 proceedings specifically. *Habeas Corpus in Kansas: The Great Writ Affords Postconviction Relief at K.S.A. 60-1507*, 67 J. Kan. Bar Assoc. 16 (1998). I appear today because I am concerned about the proposed changes to 60-1507.

The history of K.S.A. 60-1507 helps explain why these changes should be rejected. Before K.S.A. 60-1507 was enacted, all habeas petitions were filed in the jurisdiction where the person was confined under the general habeas statute, K.S.A. 60-1501. Most habeas cases were filed where the penitentiary and reformatory were located, in Leavenworth and Reno Counties. Judges in these counties had to review records of convictions from all over the state. The Legislature enacted K.S.A. 60-1507 to send these habeas petitions back to the county of conviction, which is where the trial occurred. Then a judge, often the same one who conducted the trial, would review the inmate's claims. This is a more sensible and efficient procedure.

The body of law surrounding K.S.A. 60-1507 is well settled. Supreme Court Rule 183 outlines the procedures to use. Most 60-1507 petitions are decided after a review of the trial record and without an evidentiary hearing. These petitions cannot raise issues presented in the direct appeal, cannot raise mere trial errors that should have been raised in the direct appeal, and cannot be filed in succession. Evidentiary hearings are rare in these cases. Also, petitions for writ of habeas corpus are civil proceedings. When hearings are scheduled, the petitioner, usually a confined inmate, has the burden of proof. A district judge rarely grants a 60-1507 petition.

H. JUDICIARY
3-20-03
Attachment: 5

Several problems will arise if you limit K.S.A. 60-1507. First, the work of the courts will increase. The amendment requires a trial judge to decide two additional issues: 1) has the one-year limitation been met, and 2) if not, has manifest injustice been shown. These are additional steps to address before the judge can rule on the merits and resolve the case completely. Also, the Court of Appeals will be required to evaluate addition issues in ruling on appeals of 60-1507 proceedings. If this amendment is passed, the court will need to decide whether the trial court erred in ruling on the one-year time limit and/or the issue of manifest injustice before ruling on the merits.

The work of the courts will increase because the flexibility of 60-1507 will be restricted. When the Court of Appeals faced a huge increase in appeals regarding the Kansas Sentencing Guidelines Act (KSGA), it turned to 60-1507. The KSGA did not indicate how challenges to its provisions or application of its requirements would be reviewed. The Court of Appeals took advantage of established procedures under 60-1507 and ruled that a challenge to calculations under the new act must be brought in the sentencing court using 60-1507. *Safarik v. Bruce*, 20 Kan. App. 2d 61, 67-68, *rev. denied* 256 Kan. 996 (1994). If 60-1507 had not been available, these cases likely would have ended up as habeas petitions under 60-1501, filed in the county of confinement.

After the KSGA went into effect July 1, 1993, the Kansas appellate courts saw a marked increase in appeals from 60-1507 petitions, as shown in the chart attached to this testimony. The steady increase in 60-1507 appeals from 1994 until 1997 was not from traditional 60-1507 appeals but from challenges to the sentencing guidelines. In 1998 and 1999 the number of 60-1507 appeals decreased. If the Legislature wants to slow the number of 60-1507 appeals, it should limit the changes it enacts to the sentencing guidelines and other criminal statues, not restrict the use of 60-1507.

Another problem with restricting 60-1507 involves review of newly discovered evidence. A motion for new trial based upon newly discovered evidence must be brought within two years after final judgment under K.S.A. 22-3501. If a claim for new trial based on newly discovered evidence arises after the two-year limitation of K.S.A. 22-3501, a prisoner must use 60-1507 to request that the sentence be set aside and a new trial granted. *State v. Bradley*, 245 Kan. 316, 787 P.2d 706 (1990). If a one-year limitation is imposed on K.S.A. 60-1507, presumably this proceeding will no longer be available for these cases. Another procedure will need to be created to replace the well known rules now used in 60-1507 proceedings.

What evidence can be newly discovered some time after trial? The most widely publicized is newly tested DNA evidence. It can establish the wrong person was convicted of a crime. Kansas is not immune from these claims. In fact, Kansas had one of the first cases that resulted in release of an inmate, Joe Jones, after serving 7 years for a rape he did not commit. DNA testing established the semen taken from the victim could not have been from Mr. Jones. The availability of such a remedy is particularly critical now that Kansas has inmates on death row.

Probably the most frequent claim brought under K.S.A. 60-1507 is ineffective assistance of counsel. Both the United States Supreme Court and the Kansas Supreme Court recognize a person charged with a felony offense is entitled to counsel at trial. A perfect trial is not guaranteed. To present a successful claim of ineffective assistance of counsel, a person must show counsel made errors so serious that counsel's performance was less than that guaranteed by the Sixth Amendment, and that the deficient performance prejudiced the defense by depriving defendant of a fair trial. The standard used to review this claim is highly deferential in scrutinizing counsel's performance. *State v. Rice*, 261 Kan. 567, 598-602, 982 P.2d 981 (1997). These claims are rarely successful. The attorney is presumed to provide effective assistance; the inmate must prove otherwise. Prosecuting attorneys criticize long delays before making a claim of ineffective assistance of counsel, but the question should be why did it takes so long for the claim to be heard. An inmate that knows how to use a 60-1507 proceeding will not sit in Lansing for 10 years on a valid ineffective assistance of counsel claim waiting for his attorney to die. After all, the inmate must overcome the presumption the attorney provided effective counsel. Each year of delay makes this burden more difficult to meet.

This change will not ease the workload of the appellate defender's office (ADO). ADO attorneys raise all issues possible in a direct appeal. ADO does not see a K.S.A. 60-1507 proceeding until after it has been to the trial court. By the time ADO is assigned, it is limited to raising issues preserved in the district court—if any.

Nor will the change reduce the workload of prosecuting attorneys. The number of claims will not decrease. I would be surprised if prosecutors from Leavenworth, Reno, and Butler Counties want to restrict the use of 60-1507; without its availability more cases will be filed under 60-1501 in the county of confinement. Thus, the purpose for enacting 60-1507 will be defeated. In considering the argument of prosecutors that they do not want the burden of addressing constitutional claims, you should consider the admonition of now retired Kansas Supreme Court Justice Six. Justice Six noted that a prosecutor is a servant of the law and a representative of the people of Kansas. A prosecutor represents "'a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.'" *State v. Pabst*, 268 Kan. 501, 510, 996 P.2d 321 (2000), *quoting Berger v. United States*, 295 U.S. 78, 88, 79 L.3d 1314, 55 S. Ct. 629 (1935).

Section 8 of the Kansas Bill of Rights states that "the right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion." Why did the founders of Kansas include this statement? Debates at the Wyandotte Convention in 1859 show little discussion about this section. Section 1 of our Bill of Rights assures, "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Section 6 rejects slavery, thus embracing freedom for all. By adopting section 8, the founders guaranteed a way to truly preserve these rights for all citizens, even those on the bottom rung of society's social ladder. I believe placing restrictions on the use of habeas corpus violates section 8 of the Kansas Bill of Rights.

I oppose this amendment that will limit the use of K.S.A. 60-1507. This change will increase the workload of both trial and appellate judges. It will reduce our ability to correct unconstitutional proceedings in criminal cases. The procedures for using 60-1507 are well established. Its availability was vital to resolving claims challenging the KSGA, a testament to how well it works. Why change a statute that for 40 years has worked so well to assure constitutional protections exist for all people? The limits on 60-1507 should be rejected. I urge you to vote against Senate Bill No. 206.

APPEALS FROM K.S.A. 60-1507 PROCEEDINGS[1]

Year	60-1507 Appeals
1999	117
1998	124
1997	205
1996	180
1995	99
1994	79
1993[2]	57
1992	57

[1] These numbers are based upon calendar year totals of the Kansas Court of Appeals. The Clerk of the Kansas Appellate Courts was unable to provide the number of K.S.A. 60-1507 appeals for 2000 and 2001.
[2] The Kansas Sentencing Guidelines Act became effective on July 1, 1992.

TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE
Re: Senate Bill 206

March 13, 2003

Mr. Chairman, Ladies & Gentlemen:

Thanks for giving me an opportunity to express the views of the Kansas Bar Association on Senate Bill 206, which basically establishes a one-year time limit to file a proceeding to challenge the validity of a conviction or sentence as set out in K.S.A. 60-1507.

The Kansas Bar Association has adopted a position opposing any such time limitation, a position that has not changed over the years to my knowledge. Past attempts at comparable changes have failed.

I have enclosed for your interest the testimony of one KBA representative who presented testimony in a previous hearing. John Tillotson, a past president of the KBA, who for many years was a federal magistrate and therefore came in contact with Kansas post-conviction relief cases in that capacity since there has been a requirement for years that a state prisoner exhaust state remedies before moving to the federal court. He continues to believe as expressed in his earlier letter, as I verified in a phone call several days ago, that the proposed amendment is not wise.

Please consider the following:

The ability to challenge deprivation of freedom and liberty (by criminal conviction for example) is found in the so-called Great Writ - Habeas Corpus.

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The right is so significant that those who wrote the Kansas Constitution specifically included it in the Kansas Bill of Rights to our Kansas Constitution. It is found at Section 8 of the Bill of Rights:

> "Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or of rebellion."

On its face the current bill proposes to terminate the right after a year. If that is the objective, it violates the Kansas Constitution.

Habeas corpus protection for individual citizens is of ancient derivation, having existed in English common law years before it was first enacted by the Habeas Corpus Act in England in 1679. It is the method by which any citizen can challenge the validity of any restraint, which includes imprisonment by a government.

In 1776, our forefathers, prior to establishing our constitution, published their thoughts on individual rights. They stated in part:

> "We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

To protect these rights they adopted, among other protections, Article I, Section 9 of the Federal Constitution. In that section the Habeas Corpus remedy was preserved.

The Kansas constitutional expression of the writ of habeas corpus protects liberty. While it is true that unfortunately some forfeit the right to liberty by

their conduct, our justification for declaring that forfeiture is that the rule of law was followed in a criminal case. Surely if the rule of law is not followed to obtain conviction, the forfeiture was not justly obtained. Our system for enforcing the law is not perfect. Maybe it can never be perfect. The ability to determine whether a conviction is valid or not, should not depend on a one-year time limitation. Such a limitation would only say that if one's liberty is unjustly taken, one can get relief only by meeting a one-year limitation to do so. That just minimizes into potential non-existence the great writ. Philosophically, the time limitation concept is a bad concept. It is inconsistent with centuries of tradition concerning this particular rule of law.

60-1507 motions.

A motion pursuant to K.S.A. 60-1507 was a procedural device added to make use of the habeas corpus writ ordained by the Kansas Constitution, practical and more efficient. Prior to 1963 when the motion procedure currently in legislative form was adopted, all challenges to conviction or sentence validity by the remedy of habeas corpus were made in the county where the petitioner was confined. Such was required by existing rules of substantive jurisdiction and venue. The 60-1507 motion procedure was adopted to spread the cases out to the District Courts where the sentence and confinement were imposed, and relieve the two-fold burden on Leavenworth and Reno counties to obtain records from other counties and consider all of the challenges filed subsequent to review of those records. The theory in adopting a 1507 motion procedure was that the

District Court which had imposed the sentence following a conviction would have records concerning the conviction handy and would be the more practical and efficient place to consider the merits of the argument. The process has worked well with that modernization. But, that change did not limit the constitutional right in any way. If K.S.A. 60-1507 were abolished today, the result would revert to the pre-1963 procedure. If 60-1507 proceedings were time barred, the habeas corpus remedy would still be available.

I have tried to read all the complaints about 1507s that one can find. There does not appear to be any pressing problem created by the existence of the statute in its current form. OJA records indicate 260 1507-motions were filed in fiscal 2000, 289 in fiscal 2001, and 297 in fiscal 2002. There is no indication why there is a demonstrable problem created by the existence of those 1507 motions. And, as a matter of fact, many of the motions are generated by the fact that this legislature over the years changes the substantative and procedural law resulting in challenges to the validity of existing convictions and sentences.

The process from arrest to incarceration is much more complicated today than it used to be. As I am sure the committee members are aware, in recent history representatives of the court system and representatives of the Bar Association have repeatedly pled for more money resources for the court system to handle its ever expanding work load. That money was for more judges, more nonjudicial personnel, more facilities, more technical tools to get the work done in a more expeditious fashion. The pleas were made because the ability to get

the results done and done correctly, was succumbing to the absolute press of business. Press of business can result in errors.

I can give you examples of sentences recorded in journal entries after pleas which were incorrectly recited because there was not a transcript of the sentencing proceeding at the time the journal entry was crafted, crafted by a prosecutor who did not accurately reflect the court's order, overlooked in the press of time by the overburdened defense system, and signed-off on by the judge who had 100 cases or more pass through his or her docket before the journal entry was presented. The results to clients were that they were sentenced to consecutive crimes instead of concurrent crimes according to the journal entry, but had not been so sentenced in fact. It took an appeal and/or post-conviction relief attempt to correct the situation. Or, there are examples of the Department of Corrections inaccurately computing sentences that supposedly were set by the legislature and the court, justifying the release of an inmate who served a sentence. Or, consider the fact that a significant number of persons sentenced to prison, either because of the emotional impact of the incarceration, or their intellectual ability, simply are not capable of protecting themselves without the assistance or help, perhaps from an attorney. In my experience, it is extremely difficult, even for attorneys, to communicate with inmates in prison, including clients. Sometimes it is years after the fact that discrepancies appear or new witnesses appear or old witnesses recant or transcripts finally reveal that a convicted defendant's liberty was unconstitutionally taken. Rectifying those

problems where they exist by the current system does not seem to have posed a great problem resulting in an uproar demanding a change in the law. There is simply no sufficient reason to change the law.

Last, the proposed changes give a court at least one, and perhaps two additional tasks to resolve a 1507 motion's issues. And, if the issue is considered in the light of a manifest injustice requirement, the motion must be reviewed on its merits in any event. The proposal before you would add work for the judge. More work for the courts is justifiable in today's environment only if absolutely necessary. This proposed amendment creates only more work for the courts.

Concern may be expressed that frivolous motions are filed. In the general practice of law most lawyers are of the opinion that sometimes frivolous lawsuits are filed, even by lawyers, concerning all types of issues. Most 1507s are filed by non-lawyers, some of whom are not well educated. It should not be a surprise if some were in fact frivolous. The ultimate solution to that problem is to provide qualified legal help to prospective movants. That's impractical and will not be done. The real issue is whether there is a method of dealing effectively if a frivolous motion is filed. Since the adoption of Supreme Court Rule 183, frivolous motions are handled in the pleading process, as in all other types of cases. The rule itself is designed, among other things, to weed out frivolous motions. Further, the proposed time limitation would not address any alleged problems of frivolous motions being filed.

The proposed amendment is not smart, may be unconstitutional or in the alternative merely shift work load to district courts of the institutions' location, and likely would increase judge time if adopted.

Respectfully submitted,

Ed Collister

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Testimony of

Randall L. Hodgkinson, Deputy Appellate Defender[1]

Before the House Judiciary Committee

RE: SB 206

March 20, 2003

Chairman O'Neal and Members of the Committee:

I am testifying regarding some concerns about Senate Bill 206 ("SB 206"). My name is Randall Hodgkinson and I am a Deputy Appellate Defender here in Topeka. I am not testifying in my capacity as Deputy Appellate Defender and I have no authority to speak on behalf of any organization or agency; but my experience in the criminal justice system has caused me to have some personal concerns regarding this subject.

Specifically, SB 206 aims to place a one-year time limit on motions pursuant to K.S.A. 60-1507 ("1507 actions"). In part, my concern stems from the fact that I do not believe the problems set out by some proponents of SB 206 are particularly addressed by this bill.

Specifically, some proponents of SB 206 decry the inability to defend stale claims and the burden on defense attorneys in such claims. Mr. Obermeier suggests that defense attorneys who are the object of such actions are expected to stop their practice. But under Rule 183, the court rule setting out the procedure for 60-1507 actions, the district court must review the case and file before determining whether there should even be appointment of counsel and an evidentiary hearing in the first place. My anecdotal experience leads me to believe that such a hearing occurs in a tiny fraction of 60-1507 actions– probably less than 5% and maybe less than 1%–the vast majority of 60-1507 actions are already summarily dismissed.

Secondly, proponents of SB 206 suggest that stale claims may make it difficult for the state to defend 60-1507 actions. But the Court of Appeals has held that the doctrine of laches applies to 60-1507 actions. *See Roach v. State*, 27 Kan. App. 2d 561 (2000). The doctrine of laches applies in civil cases to situations where, because of the passage of time, the defendant is prejudiced in its ability to defend. So, under the law as it stands, in situations where witnesses have died or cannot recollect necessary details of the case, the state can already plead laches and obtain relief. SB 206 only applies where the state is *not prejudiced* by the passage of time.

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[1]This testimony is not necessarily the position of the Kansas Appellate Defender Office or of the Kansas Board of Indigent Defense Services. This testimony constitutes the personal opinions and conclusions of the witness.

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It is not clear what policy proponents of this bill seek to advance. Mr. Obermeier correctly asserts that jailhouse lawyers write many frivolous motions. But this bill will not change this situation–it will simply add another level of litigation. These same jailhouse lawyers will file 60-1507 actions claiming manifest injustice, the district court will summarily dismiss them (as occurs in most 60-1507 actions now), and the prisoner will appeal. As indicated in the fiscal note, there is simply no evidence that this bill will reduce the number of motions filed under 60-1507. In fact, given the ambiguity of the term "manifest injustice," it is distinctly possible that this bill will increase the amount of litigation.

Please understand that I do not oppose reform in the process of post-conviction review in Kansas–on the contrary, I support it. But if this Legislature wants to really effect change, it must also address the reason for delays in the 60-1507 process–lack of counsel for persons filing a first 60-1507 action. As recognized by Mr. Obermeier, a 60-1507 action is the primary vehicle for review of one of the most fundamental rights guaranteed by the United States Constitution–the right to effective assistance of counsel. In case after case around the state and around the country, persons have been exonerated and when those cases are reviewed, the reasons for improper convictions result squarely from ineffective assistance of counsel. Mr. Obermeier suggests that cases on direct appeal can be remanded for determinations, but such a process is rarely used, primarily because of a lack of resources to investigate and pursue such claims. On the contrary, in *Van Cleave*, the Kansas Supreme Court directed most IAC claims to be brought by 60-1507. For *almost all prisoners*, a 60-1507 action is the only avenue of relief for ineffective assistance of counsel.

But, as the system now exists, the hurdle for prisoners to effectively make a claim under 60-1507 is practically impossible to overcome. Prisoners are mostly incarcerated without any access to their court file, without access to witnesses, without access to their trial attorney, and even without access to the police reports and other discovery provided by the state. When court decisions that require summary dismissal of a 60-1507 action unless the prisoner presents the exact evidence to which he or she has no access are combined with the fact that some prisoners are mentally ill, some prisoners are illiterate, some prisoners cannot speak, read, or write English, and that generally, prisoners are not competent to prepare pleadings and litigate, it is hardly surprising that 60-1507 claims are frequently delayed and of low quality.

If this Legislature really wants to streamline the 60-1507 process, it must provide the means for *effective* 60-1507 litigation at the earliest possible time, which requires appointment of counsel for a first claim of ineffective assistance of counsel and appropriate resources for review by that counsel. An attorney would have access to the necessary evidence to review and develop any claim of ineffective assistance of counsel. This is exactly the system that is implemented in Arizona, another state in which I briefly practiced. In Arizona, under Rule 32.4, Rule of Criminal Procedure, a defendant has *90 days* after the conviction and appeal are final to file a notice of post-conviction relief. But the rule also *mandates appointment of counsel* for persons who are indigent in a first post-conviction proceeding. In this way, Arizona guarantees that issues regarding ineffective assistance of counsel are developed quickly, effectively, and in a timely manner. Only by appointment of counsel in a first 60-1507 action can this Legislature hope to effectively reform the process.

The problems that proponents of this bill seek to address cannot be addressed by simply implementing an artificial and ambiguous time limitation, which will not reduce litigation but may actually prevent prisoners from bringing valid claims. The problem with the current 60-1507 process stems from the failure to immediately provide prisoners with counsel to assist in the 60-1507 process.

Thank you for this opportunity to provide some input in this process. If any of the Committee members would like to follow up on this information, please feel free to contact me.

TEXT

17 A.R.S. Rules Crim.Proc., Rule 32.4

RULES OF CRIMINAL PROCEDURE
VIII. APPEAL AND OTHER POST-CONVICTION RELIEF
RULE 32. OTHER POST-CONVICTION RELIEF
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Current with amendments received through 2/18/03

Rule 32.4. Commencement of Proceedings

a. Form, Filing and Service of Petition. A proceeding is commenced by timely filing a notice of post-conviction relief with the court in which the conviction occurred. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding. In all other non-capital cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. In a capital case, the clerk of the Supreme Court shall expeditiously file a notice for post-conviction relief with the trial court upon the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal. Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the county attorney, the defendant's attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies. If the conviction occurred in a court other than the Superior Court, the copy shall be sent to the office of the prosecuting attorney who represented the state at trial. The state shall notify any victim who has requested notice of post-conviction proceedings.
b. Notification of Appellate Court. If an appeal of the defendant's conviction, sentence, or both is pending, the clerk, or the court, within 5 days after the filing of the notice for post-conviction relief, shall send a copy of the notice to the appropriate appellate court, noting in the record the date and manner of sending the copies.
c. Appointment of Counsel.
(1) Capital Cases. After the Supreme Court has affirmed a defendant's conviction and sentence in a capital case, the Supreme Court, or if authorized by the Supreme Court, the presiding judge of the county from which the case originated, shall appoint counsel for the defendant pursuant to A.R.S. § 13-4041 and Rule 6.8 if the defendant is determined to be indigent. If the appointment is made by the presiding judge, a copy of the court's order appointing counsel shall be filed in the Supreme Court.
Upon the filing of a successive notice, the presiding judge shall appoint the previous post-conviction counsel of the capital defendant unless counsel is waived or good cause is shown to appoint another qualified attorney from the list described in A.R.S. § 13-4041.
On the first notice in capital cases, appointed counsel for the defendant shall have one hundred twenty days from the filing of the notice to file a petition raising claims under Rule 32.1. A capital defendant proceeding without counsel shall have one hundred twenty days from the filing of the notice to file a petition. On the filing of a successive notice, appointed counsel, or the defendant if proceeding without counsel, shall file the petition within thirty days from the filing of the notice. On a showing of good cause, a defendant in a capital case may be granted a sixty day extension in which to file the petition. Additional extensions of thirty days may be granted for good cause. If a petition for post-conviction relief is not filed within one hundred and eighty days from the date of appointment of counsel, or one hundred and eighty days from the date the notice is filed, or the date a request for counsel is denied if the defendant is proceeding without counsel, the defendant or counsel for the defendant shall file a notice in the Supreme Court, advising the court of the status of the proceedings. Thereafter, defendant or counsel for the defendant shall file monthly status reports in the Supreme Court until the post-conviction proceedings are concluded in the trial court.
(2) Rule 32 of-right and non-capital cases. Upon the filing of a timely or first notice in a Rule 32 proceeding, the presiding judge, or his or her designee, shall appoint counsel for the defendant within 15 days if requested and the defendant is determined to be indigent. Upon the filing of all other notices in non-capital cases, the appointment of counsel is within the discretion of the presiding judge. In non-capital cases appointed counsel for the defendant shall have sixty days from the date of appointment to file a petition raising claims under Rule 32.1. On a showing of good cause, a defendant in a non-capital case may be granted a thirty day extension

within which to file the petition. Additional extensions of thirty days shall be granted only upon a showing of extraordinary circumstances.
In a Rule 32 of-right proceeding, counsel shall investigate the defendant's case for any and all colorable claims. If counsel determines there are no colorable claims which can be raised on the defendant's behalf, counsel shall file a notice advising the court of this determination. Counsel's role is then limited to acting as advisory counsel until the trial court's final determination. Upon receipt of the notice, the court shall extend the time for filing a petition by the defendant in propria persona. The extension shall be 45 days from the date the notice is filed. Any extensions beyond the 45 days shall be granted only upon a showing of extraordinary circumstances.
A defendant proceeding without counsel shall have sixty days to file a petition from the date the notice is filed or from the date the request for counsel is denied.
d. Transcript Preparation. If the transcripts of the trial court proceedings have not been previously transcribed, the defendant may request on a form provided by the clerk of court that the transcripts be prepared. The court shall expeditiously review the request and order only those transcripts prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the transcripts shall be at county expense if the defendant is indigent. The time for filing of the petition shall be tolled from the time a request for transcripts is made until the transcripts are prepared or the request is denied. Transcripts shall be prepared and filed within sixty days of the order granting the request.
e. Assignment of Judge. The proceeding shall be assigned to the sentencing judge where possible. If it appears that the sentencing judge's testimony will be relevant, that judge shall transfer the case to another judge.
f. Stay of Execution of Death Sentence; Notification by Supreme Court. If the defendant has received a sentence of death and the Supreme Court has fixed the time for execution of the sentence, no stay of execution shall be granted upon the filing of a successive petition except upon separate application for a stay to the Supreme Court, setting forth with particularity those issues not precluded under Rule 32.2. The Clerk of the Supreme Court shall notify the defendant, the Attorney General, and the Director of the State Department of Corrections of the granting of a stay.

CREDIT

CREDIT(S)

1998 Main Volume

Amended Oct. 21, 1980, effective Dec. 1, 1980; Oct. 11, 1989, effective Dec. 1, 1989; June 2, 1992, effective Dec. 1, 1992. Amended nunc pro tunc Sept. 24, 1992, effective Sept. 30, 1992, adopted in final form Feb. 25, 1993; amended July 28, 1993, effective Dec. 1, 1993.

2003 Electronic Update

Amended Oct. 31, 2000, effective Dec. 1, 2000; May 31, 2002, effective June 1, 2002.
17 A. R. S. Rules Crim. Proc., Rule 32.4
AZ ST RCRP Rule 32.4
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