

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 9, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

David Haley- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Helen Pedigo, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Randall Hodgkinson, Attorney

Representative Kathe Decker

Kyle Smith, Special Agent, Kansas Bureau of Investigation

John Wheeler, Finney County Attorney

Mark Gleeson, Office of Judicial Administration

Tim Madden, Kansas Department of Corrections

Others attending:

See attached list.

Chairman Vratil opened the hearing on **HB 2304**.

HB 2304 Criminal act to ingest or inject certain controlled substances

Proponents:

Representative Kathe Decker stated that last year the House passed a bill dealing with internal possession of drugs. The bill went to an interim Judiciary committee hearing during the summer. It was suggested that the bill be simplified to add the words "ingest or inject" into law to define internal possession of a controlled substances. Representative Decker felt this would be another tool for law enforcement to have available.

(Attachment 1)

Kyle Smith, Special Agent for the Kansas Bureau of Investigation, testified in support the bill. Mr. Smith stated that in the Kansas Supreme Court decision, *State v. Flinchpaugh*, the court held that if a person ingested controlled substances, then the person no longer possessed them. Since then, the presence of controlled substances in a person's system could not be the basis for the charge of possession. This bill would reverse the *Flinchpaugh* decision by adding "ingestion" to the existing crimes involving 'possession'. (Attachment

2)

Chairman Vratil questioned whether Mr. Smith had seen the bed space impact on the bill. Ms. Patricia Biggs, Executive Director of the Kansas Sentencing Commission, stated the impact was difficult to accurately assess. Chairman Vratil stated that since these are non-violent drug offenses, they would be subject to the provisions of **SB 123**, which might blunt any significant bed space impact.

Senator Bruce questioned whether there would be situations where there may be drugs found in a person's system that are not of a significant level to prosecute. Senator Betts requested an explanation of page 2, line 13. Mr. Smith stated that if one looks first at line 6, that it states it is a Class A misdemeanor for first offense; then for a second offense, such as for marijuana, it is a severity level 4; the same sentencing structure applies to drugs as marijuana. Senator Journey questioned what minimum levels or false positives would mean in prosecuting. Mr. Smith stated that there would have to be some practical considerations in determining whether to prosecute. For example, the state has to prove beyond a reasonable doubt, so a few nanograms of a controlled substance in the blood or urine may not be pursued. Mr. Smith stated that he could see where there might be a problem with marijuana, since it lingers in the system for more than 30 days. Senator

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Journey stated that people could be claim a defense of “second hand smoke” in their system . Mr. Smith stated that normally there would be other signs, such as a DUI, a wreck, drug paraphernalia, that would substantiate a case.

Chairman Vratil closed the hearing on **HB 2304** and opened the hearing on **HB 2262**.

HB 2262 Legal holidays include holidays observed by the supreme court by order

Proponent:

Mr. Randall Hodgkinson, Deputy Appellate Defender, stated that he was testifying not in his capacity as a public defender, but just as an attorney. Mr. Hodgkinson described an experience he had in regards to filing a legal appeal. On Thursday, December 23, 2004, he received an unfavorable decision from the Court of Appeals. According to the Appellate rules, Mr. Hodgkinson had ten days to file a motion for rehearing to ask the Court of Appeals to reconsider that decision. Christmas fell on Saturday, and as a state employee, December 24, 2004, was a day off. Similarly, December 31, 2004, was a day off. The court was closed also on these days. New Year’s Day was on Saturday. The time period for appeal is 10 days or less, excluding weekends and holidays. When Mr. Hodgkinson counted the days to the deadline, he included both December 24 and December 31 because he thought they were holidays. It turned out these days were not holidays, under the interpretation of legal holidays, as given by the case in his written testimony, *City of Lawrence v. McCormick*. (Attachment 3) The Supreme Court said that the legislature has defined what the holidays are, and the legal holiday for Christmas, for example, is the date of December 25th, and it does not matter that it falls on a Saturday. If the legislature wants to have “observed” holidays be legal holidays, it is up to them to do that.

Mr. Hodgkinson stated that the bill says whenever the courthouse is closed, it should be a legal holiday. This would eliminate confusion and help clarify the days not to count when appropriately assessing statutory deadlines. Chairman Vratil questioned whether the bill should state language “or observed as a holiday by order of the Supreme Court or by the Governor”. Mr. Hodgkinson concurred but noted that the bill isn’t perfect, and that even the legislature may set its own holidays.

Chairman Vratil closed the hearing on **HB 2262** and opened the hearing on **HB 2386**.

HB 2386 Unlawful sexual relations includes court services officers and community correctional officers

Proponents:

John Wheeler, Finney County Attorney, testified in support of the bill. When K.S.A. 21-3520 was passed in 1993, it prohibited consensual sexual relations between department of corrections employees with inmates and between state parole officers and persons under their supervision. Over a period of years, it was amended to include jailers, juvenile justice officials, law enforcement officers and even teachers. Mr. Wheeler stated that the bill adds two groups that he believes are conspicuously absent from the prohibitions, and these are court service officers and community corrections officers in new Section 1 (9) and (10). (Attachment 4)

Chairman Vratil requested that Ms. Wolters provide a balloon amendment defining a law enforcement officer, a court services officer and community corrections services officer, along with a reference to a statute or a narrative definition.

Mark Gleeson, Family and Children Program Coordinator in the Office of Judicial Administration (OJA), stated that the OJA supports the bill and the message it conveys for creating and maintaining a high degree of integrity and confidence among those who supervise offenders. (Attachment 5) He questioned whether the language “under supervision of the agency,” stating there are times where not all court service officers would know who is under supervision. He would like to see that tightened and the issue addressed of when a court service officer unknowingly has a relationship with someone under supervision.

Senator Journey stated that Mr. Gleeson brought up a valid point. In small communities, everyone knows everyone; however, in larger cities, it is possible that a court service officer could meet someone, such as in a bar, and the offender doesn’t volunteer that they are being supervised. Chairman Vratil requested that Ms.

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Wolters prepare an amendment to add that it is a violation to “knowingly” have relations with a supervised offender.

Tim Madden, Kansas Department of Corrections, stated he had provided to the Committee testimony from Secretary Roger Werholtz in support of the bill. Due to the use of contract services by court services and community corrections agencies for surveillance, home and employment visits, and other supervision services, the Department believes the employees of contractors who provide “direct supervision and control” over an offender should likewise be prohibited from engaging in consensual sexual relations with that offender. Inclusion of those contract employees, as provided by the House amendment, is consistent with the provisions of K.S.A. 21-3520 currently applicable to the employees of contractors providing services on behalf of jails, the department, SRS and the Juvenile Justice Authority.
(Attachment 6)

Chairman Vratil closed the hearing on **HB 2386**.

Final Action:

SB 179 Enhancing penalties for offenses against children

Chairman Vratil called to the Committee’s attention the bed space impact prepared by the Kansas Sentencing Commission. The Chairman stated that the bill, among other things, increased the severity level for aggravated indecent solicitation of a child from a severity level six to a severity level five. The bill also takes indecent solicitation of a child from a severity level seven to a severity level six. The new bed space report was premised on the assumption that the Committee would amend indecent solicitation of a child to take the severity level back to a level seven. The bed space report indicated a significant bed space impact, with 18 prison additions in 2006, and 20 additions in 2015; bed space would be 20 additions in 2006 and 113 additional prison beds by 2015. Chairman Vratil reminded the Committee of the previously made amendments dealing with other areas of the bill.

Senator Goodwin stated that in the past two or three years she has heard that prison bed space should not be considered when trying to make laws to protect the public; however, the reality was if bills were passed that create significant bed space impact, then the Committee should also be amenable to raising taxes and to raising new revenues for prisons. She stated that the bill is two-pronged- passing a law to increase the severity levels and funding new prisons. Senator Goodwin stated that she has not seen evidence that this year’s legislature was receptive to adding any more money into the budget. Because of the prison bed impact, Senator Goodwin stated she would not be able to support the bill.

Senator Betts stated that he was concerned that if appropriations were found to build new prisons that there should be funding to help provide some development and education for offenders, to help them in the transition back to living outside prison.

Senator Schmidt stated that he shares Senator Goodwin’s view, that the legislature has to carry the responsibility to provide space with the responsibility to provide public safety. There are additional options to providing space, private prisons, an option that is being actively considered in Ways and Means Committee, so he is in favor of the bill, and it is good public safety policy. He believes that we will be able to step up this session and provide the other half of the balance in terms of space for offenders, and he will support the bill.

Senator Donovan asked if the severity level was dropped, why there was not more of a reduction in prison bed space. Patricia Biggs, Executive Director of the Kansas Sentencing Commission and guest in the meeting, stated that because the severity level drops, there is presumptive probation, so not many of those individuals are going to prison. Senator Donovan stated that with the recently passed Methamphetamine bill, he hoped that there might be fewer people involved in the drug business, and there would not be as many going to jail. He stated that the Sub-Committee and he feel that this issue is too important to not take action on it now. Senator Donovan stated he would prefer to pass the bill with all the severity levels kept where they were originally in the bill and strongly urged the Committee to take favorable action.

Chairman Vratil stated that the question before the Committee was should they reduce the severity level for

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indecent solicitation of a child, page 1, line 22, where the numeral 7 has been stricken and the numeral 6 is inserted. A motion was made to take indecent solicitation of a child from a level six to a level seven, in order to reduce bed space impact. Senator Journey moved, seconded by Senator Betts, but the motion failed.

There was a motion to recommend the bill favorably as amended out of Committee. Senator Donovan moved, seconded by Senator O'Connor, and the motion passed. Senator Goodwin requested that her vote of "no" on the motion be recorded.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 10, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-09-05

NAME	REPRESENTING
Michael White	KCDAA
John P. Palko, Jr.	FINNEY CO. ATTY.
KEVIN GRAHAM	AG
Kyla Smith	KDI
BILL MUSKELL	JJA
Patti Biggs	KSC
Julia Butler	KSC
Brenda Harmon	KSC
JEREMY S BARCLAY	KDOC
LANK WALK	OJA
Mark Gleeson	OJA
Kevin Brone	KTLA
Jessica Bangman	KGU
RANDALL HODGKINSON	N/A
Heather Cessna	N/A
Tim Maddox	KDOC
Jim CHARK	KBA

KATHE DECKER
 1415 8TH STREET
 CLAY CENTER, KANSAS 67432
 (785) 632-5989
 FAX 785-632-5989
 E-mail: decker@house.state.ks.us



TOPEKA
 HOUSE OF
 REPRESENTATIVES

CLAY, DICKINSON, GEARY,
 AND RILEY COUNTIES

STATE CAPITOL
 ROOM 303-N
 TOPEKA 66614-1504
 (785) 296-7637

COMMITTEE ASSIGNMENTS

CHAIRPERSON: EDUCATION
 SELECT COMMITTEE ON
 SCHOOL FINANCE
 MEMBER: CORRECTIONS AND JUVENILE
 JUSTICE

HB2304

Thank you Chairman Vratil for hearing HB2304 today. Last year the House passed a bill dealing with internal possession of drugs. The Senate Judiciary committee did not have time to hear the bill during session and asked for the Joint Judiciary committee to hold hearings this summer.

In the process of those hearings it was suggested to myself and the other proponents to not limit cases where internal injecting or ingesting would be considered being in possession of an illegal narcotic. The suggestion from the Joint committee was to take current law and amend the statute to give a broader definition of possession.

There will be an impact on lab cost and man power needed at the KBI as well as bed space in our correction facilities. I believe those cost are well worth the effort in the war against drugs.

Two years ago in Clay Center a young man became high on a narcotic, stripped off his clothing and ran through the neighborhood until he decided he was at his fathers home and tried to get into the property. It was not his dads but he did not care nor could the people of the residence make him understand his mistake. When authorities arrived the only course of action they had was for the owners to press trespassing charges against him or have him get his clothes and go home. He did the later. Everyone in town knew this young man was going through stress over his parents divorce but also knew he had started recently into the drug culture. If he could have been charged of possession, perhaps he could have gotten some help.

Please consider HB2304 favorable for passage from your committee. I will ask for technical questions to be directed at Klye Smith, KBI or John Eichorn, KHP.

Rep. Kathe Decker

Senate Judiciary

3-9-05

Attachment 1



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Before the Senate Judiciary Committee
In Support of HB 2304
Kyle G. Smith, Special Agent
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
March 9, 2005

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation, in support of HB 2304. It seems self-evident that if it's illegal to possess a controlled substance that it should also be illegal to use a controlled substance. And is the person driving while high on LSD less dangerous to society than the person who has it in their pocket? Is the meth user beating his wife not more of a problem than the meth user carrying it in a baggy? It would seem that society would have an real public safety interest in being able to bring users before the courts, just as much as possessors.

This strange dichotomy stems from a Kansas supreme court decision, *State v Flinchpaugh*, 232 Kan. 831, 659 P.2d 208 (1983) where the court held that if you've ingested controlled substances you no longer possess them. Ever since then, the presence of controlled substances in a persons system could not be the basis for the charge of possession.

At hearings this summer on last session's HB 2649, several procedural problems were raised concerning that bill which tried to set up a new crime and procedures for testing. It was suggested that a better approach might be to just reverse the *Flinchpaugh* decision by adding 'ingestion' to the existing crimes involving 'possession'. That is what HB 2304 does.

By making this change to existing controlled substances statutes we can take advantage of the existing procedures, safeguards and case law. I'd be surprised if there are any great number of these cases out there each year, but if it turns out that there are, the fiscal impact would be about the only concern we'd have with the bill. And I should make the committee aware that some levels showing ingestion are so small that our equipment cannot detect those levels and until replaced, we will still be unable to properly analyze those cases.

Thank you for your time and attention. I'd be happy to respond to questions.

700 Jackson, Suite 900
Topeka, KS 66603

Testimony of

Randall L. Hodgkinson, Deputy Appellate Defender¹

Before the Senate Judiciary Committee

RE: HB 2262

March 9, 2005

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear today in support of House Bill 2262. ("HB 2262") My name is Randall Hodgkinson and I am a Deputy Appellate Defender here in Topeka. I am not testifying in my capacity as a Deputy Appellate Defender, but my background is relevant to my opinions about this bill. In fact, this bill is not particular to criminal law or appellate practice, but involves computation of time limits and filing deadlines in all type of cases (and even non-court legal deadlines). My practice is certainly affected by the situations affected by this bill, but it is not particularly exclusive to my practice.

Under the current version of K.S.A. 60-206, when computing legal deadlines involving a period of time less than 11 days, and for purposes of filing deadlines "intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation." In 2003, in *City of Lawrence v. McCormick*, 275 Kan. 509, 66 P.3d 854 (2003) (attached to testimony), the Kansas Supreme Court construed this statute to not include "deemed" or "observed" holidays, but only actual holidays. For example, this last year, Christmas and New Years fell on Saturday. Pursuant to the order of the Supreme Court, the Court observed Christmas and New Years on December 24 and December 31, respectively. Similarly, when Independence Day and/or Veteran's Day falls on a weekend, the holiday is usually observed on Monday or Friday. And finally, the governor and the Supreme Court observe the day after Thanksgiving as a holiday. Although one would think that the days that the state courts are closed would be legal holidays for purposes of computing legal deadlines, *McCormick* holds to the contrary. This introduces some confusion to attempting to calculate deadlines.

HB 2262 simply does what the Court in *McCormick* said it could not do, change the statute to reflect that "observed" holidays are legal holidays for computing deadlines under K.S.A. 60-206. You should also keep in mind that K.S.A. 60-206 involves all sorts of statutory or regulatory deadlines, not just court-filing deadlines.

¹This testimony is not necessarily the position of the Kansas Appellate Defender's Office or the Board of Indigent Services. This testimony reflects the personal opinions and conclusions of the witness.

Senate Judiciary

3.9.05
Attachment 3

I hasten to acknowledge that this is not a “cure-all.” I have attached a copy of the most recent Supreme Court order regarding holidays. As you can see, it allows administrative district judges to substitute other holidays for some of the listed holidays. So in those districts (which I am told are few), some “observed” holidays would still not be counted as legal holidays. This amendment also does not deal with situations in which a courthouse is closed for reasons other than an “observed” holiday (like inclement weather or other emergency situations). But I believe that most jurisdictions within the state observe holidays consistent with the Supreme Court order. In the alternative, the Legislature could also statutorily delineate holidays and “observed” holidays more clearly in K.S.A. 60-206. But the proposed bill would solve some of the confusion that currently exists as written and, therefore, merits consideration.

H

Supreme Court of Kansas.
 CITY OF LAWRENCE, Appellee,
 v.
 Dale E. McCORMICK, Appellant.
 Nos. 88,496, 88,497, 88,498, 88,499, 88,500.

April 18, 2003.

Following his conviction in municipal court, defendant filed notices of appeal to the district court. The District Court, Douglas County, Paula B. Martin, J., dismissed as untimely. Defendant appealed. The Court of Appeals affirmed. Defendant appealed. The Supreme Court, Larson, J., held that time allowed for defendant to appeal from a municipal court to the district court did not exclude those days that were "observed holidays" by administrative order, but rather only statutorily defined legal holidays were to be excluded in such time computation.

Affirmed.

West Headnotes

[1] Criminal Law ⚡1004110k1004 Most Cited Cases

The right to appeal is entirely statutory and not a right vested in the United States or Kansas Constitutions; Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken within the time limitations and in the manner prescribed in the applicable statutes.

[2] Criminal Law ⚡1134(3)110k1134(3) Most Cited Cases

Appellate courts have unlimited review over issues that involve questions of law and statutory interpretation.

[3] Statutes ⚡174361k174 Most Cited Cases**[3] Statutes** ⚡188361k188 Most Cited Cases

In construing statutes, ordinary words are to be given their ordinary meaning, and a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it.

[4] Statutes ⚡176361k176 Most Cited Cases

Courts must not read a statute so as to add something not readily found in it.

[5] Municipal Corporations ⚡642(1)268k642(1) Most Cited Cases**[5] Time** ⚡10(9)378k10(9) Most Cited Cases

The 10-day time allowed for defendant to appeal from a municipal court to the district court did not exclude those days that were "observed holidays" by administrative order, but rather only statutorily defined legal holidays were to be excluded in such time computation. K.S.A. 35-107, 60-206.

****855 *509 Syllabus by the Court**

In this case involving computation of the allowed time for appeals from a municipal court to a district court, the applicable statutes are considered and construed. It is held: (a) legal holidays excluded in time computation include only those specific days which are statutorily designated by K.S.A. 35-107; (b) an "observed" or "deemed" holiday specified by an executive or judicial administrative order does not expand or add to those legal holidays specified by K.S.A. 35-107; (c) when Veterans Day, the 11th day in November, falls on a Saturday or a Sunday, the following Monday is not a legal holiday; and (d) the Friday following Thanksgiving Day, the fourth Thursday in November, is not a legal holiday.

Dale E. McCormick, of Lawrence, was on the brief for appellant.

Gerard E. Little, city prosecutor, was on the brief for appellee.

The opinion of the court was delivered by LARSON, J.:

In this appeal we decide if the time allowed to appeal from a municipal court to a district court excludes those days that are "observed holidays" by administrative order or whether the days to be excluded in the time computation are only those days designated "legal holidays" as statutorily defined.

The facts are not in dispute.

On Friday, November 9, 2001, Dale E. McCormick was found guilty and was sentenced in five separate cases in the Lawrence Municipal Court. He filed notices of appeal on November 27, 2001.

*510 The district court dismissed the appeals as not being timely filed. The Court of Appeals affirmed the district court. We granted McCormick's petition for review.

[1] It is our longstanding rule that "the right to appeal is entirely statutory and not a right vested in the United States or Kansas Constitutions; Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken within the time limitations and in the manner prescribed in the applicable statutes." Little Balkans Foundation, Inc. v. Kansas Racing Comm'n., 247 Kan. 180, 188, 795 P.2d 368 (1990); accord Tobin Constr. Co. v. Kemp, 239 Kan. 430, 437, 721 P.2d 278 (1986). It is equally well-settled that failure to perfect an appeal from a conviction in a municipal court to the district court by filing a timely notice of appeal as is required by K.S.A.2002 Supp. 22-3609(2) is a jurisdictional defect.

[2] The Court of Appeals has further held in City of Derby v. Haskins, 27 Kan.App.2d 250, 3 P.3d 557 (2000), that the provisions of what is now K.S.A.2002 Supp. 60-206(a) apply to appeals from municipal courts under 22-3609(2). These issues all involve questions of law and statutory interpretation over which we have unlimited review. KPERS v. Reimer & Koger Assocs., Inc., 262 Kan. 635, 643, 941 P.2d 1321 (1997).

We first set forth the wording of the various statutes

that govern this matter.

K.S.A.2002 Supp. 22-3609 relates to appeals from municipal courts and in applicable part provides:

"(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 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."

The provisions of K.S.A.2002 Supp. 60-206(a) govern the computation of time and specifically define what a legal holiday is in this manner:

"(a) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by this chapter, by the local rules of any district court, by *511 order of court, or by an applicable statute, the day of the act, event, or default from **856 which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. 'Legal holiday' includes any day designated as a holiday by the congress of the United States, or by the legislature of this state. When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply."

Legal public holidays are statutorily designated by K.S.A. 35-107, which states:

"(a) On and after January 1, 1976, the following days are declared to be legal public holidays and are to be observed as such:

"New Year's Day, January 1;
"Lincoln's Birthday, the twelfth day in February;
"Washington's Birthday, the third Monday in February;
"Memorial Day, the last Monday in May;
"Independence Day, July 4;
"Labor Day, the first Monday in September;
"Columbus Day, the second Monday in October;
"Veterans Day, the eleventh day in November;
"Thanksgiving Day, the fourth Thursday in November;
"Christmas Day, December 25.
"(b) Any reference in the laws of this state concerning observance of legal holidays shall on and after January 1, 1976, be considered as a reference to the day or days prescribed in subsection (a) hereof for the observance of such legal holiday or holidays."

Finally, we note K.S.A.2002 Supp. 60-206(a) defines a legal holiday as including any day designated as a holiday by the Congress of the United States. Rule 45 of the Federal Rules of Criminal Procedure defines "legal holiday" as including "New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day *512 appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held."

McCormick argues that in the computation of the 10-day time period within which he has to appeal we must exclude "observed" legal holidays, giving him until November 28, 2001, to file his notices of appeal. He takes the position that because some offices were closed on the day after Veterans Day (Monday, November 12, 2001), and the day after Thanksgiving (Friday, November 23, 2001), these days should not have been counted in the computation of time under K.S.A.2002 Supp. 60-206.

The City of Lawrence (City) contends that the only "legal holidays" are those which are specifically designated by the legislature under K.S.A. 35-107. The legislature has not designated the day after Veterans Day, if it falls on a Saturday or a Sunday, as a "legal

holiday," nor has it designated the Friday after Thanksgiving as a "legal holiday." The City says the statutes must be construed as written and are not to be expanded by adding "observed" to their language and that the district court and the Court of Appeals correctly decided that McCormick's time to file his appeal expired on November 26, 2001.

Although the Kansas Supreme Court by Administrative Order No. 149 followed the executive memorandum issued by Governor Bill Graves on June 15, 2001, and designated Monday, November 12, 2001, and Friday, November 23, 2001, as 2001 holidays, this act must not be considered as attempting to usurp the legislature's right to declare and define what a "legal holiday" is for purposes of our appeal statute. In order to uphold **857 McCormick's contentions, we would be forced to conclude that the Governor by administrative order or our court by administrative order has the power and authority to amend legislative enactments. Such power does not exist with either the Executive or the Judicial branch of government.

[3] As we said in GT, Kansas, L.L.C. v. Riley County Register of Deeds, 271 Kan. 311, 316, 22 P.3d 600 (2001), in construing statutes "[o]rdinary words are to be given their ordinary meaning, and a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English *513 language is in it." Kansas has chosen to specify specific dates that are "legal holidays." Kansas has not chosen to extend those holidays to the next Monday if the chosen date falls on a Saturday or a Sunday. Nor has Kansas chosen to make the Friday after Thanksgiving a "legal holiday."

[4] There is no mention in the clear statutory language of any extension of the days designated to include any day which may be an "observed" holiday. To attempt to do so is contrary to our obligation to construe statutes as they are written, and we must not "read such a statute so as to add something not readily found in it." State ex rel. Stovall v. Meneley, 271 Kan. 355, 378, 22 P.3d 124 (2001).

The statutory term "legal holiday" was defined recently in In re Marriage of Riggle, 30 Kan.App.2d ----, Syl ¶

6, 52 P.3d 360 (2002). *Riggle* differs factually from our case, but the result it reaches is consistent with our decision herein.

A similar issue involving our Kansas statutes was decided in *In re Cascade Oil Co.*, 848 F.2d 1062 (10th Cir.1988). The court dismissed the appeal after it was held the notice of appeal was not filed within the required 30-day period after entry of the judgment appealed from.

In *Cascade Oil*, the district court judgment was entered October 28, 1987. The appellant argued that since the day after Thanksgiving, November 27, 1987, was a legal holiday in Kansas, the notice of appeal was timely filed on the succeeding Monday, November 30, 1987. It was appellant's contention that because state courts were closed by administrative order, the day after Thanksgiving was a designated legal state holiday.

The *Cascade Oil* opinion looked to the federal rules and said: "We believe the term 'legal holiday' as used in Rule 6(a) includes statutory state holidays." 848 F.2d at 1064. The opinion continued:

"Of particular relevance is the inclusion of *statutory* state holidays within the term 'legal holiday.' 'Statutory state holidays' are, as the term implies, those designated by the legislature through the enactment of statutes. Obviously, courts cannot establish statutory state holidays. Consequently, the Supreme Court for the State of Kansas cannot establish a legal holiday within the meaning of Fed. R.App. P. 26(a).

"Kan. Stat. Ann § 60-206 (1983) is the Kansas statute that governs the computation of time regarding the state rules of civil procedure. This statute provides, *514 in pertinent part: "'Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state.' The Kansas state legislature has enumerated the state holidays in Kan. Stat. Ann. § 35-107 (1986). The day following Thanksgiving Day is not among them." 848 F.2d at 1064.

[5] The *Cascade Oil* reasoning is consistent with the manner in which we construe K.S.A.2002 Supp. 60-206(a). A "legal holiday" must be construed to be

defined as it is written. We will not attempt by judicial construction to add "deemed" or "observed" or any other expanded language to the statute as it is written. Monday, November 12, 2001, and Friday, November 23, 2001, were *not* legal holidays for the purposes of computing the time within which an appeal must have been filed under K.S.A.2002 Supp. 22-3609(2).

McCormick's time for appeal is computed beginning Monday, November 12, 2001. November 17 and 18 and 24 and 25 are excluded from the time calculations because they are Saturdays and Sundays. November 22 was Thanksgiving, a "legal holiday." This day *is* **858 excluded. Timely notices of appeal were due to be filed no later than Monday, November 26, 2001.

The appeals filed by McCormick on November 27, 2001, were untimely. The judgment of the Court of Appeals affirming the district court is affirmed. The district court properly dismissed the appeals and is affirmed.

ABBOTT and GERNON, JJ., not participating.

LARSON, S.J., and ALLEN, S.J., assigned. [FN1]

FN1. REPORTER'S NOTE: Judges Ed Larson and Adrian J. Allen were appointed to hear case No. 88,496 vice Justices Abbott and Gernon pursuant to the authority vested in the Supreme Court by K.S.A. 20-2616.

END OF DOCUMENT

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 187

Re: Calendar Year 2005 Holidays

Pursuant to K.S.A. 35-107, Section 9.10 of the Kansas Court Personnel Rules, and the executive memorandum issued by Governor Kathleen Sebelius on August 9, 2004, the following dates have been approved for calendar year 2005 holidays:

New Year's Day	Friday, December 31, 2004
Martin Luther King Day	Monday, January 17, 2005
Presidents Day	Monday, February 21, 2005
Memorial Day	Monday, May 30, 2005
Independence Day	Monday, July 4, 2005
Labor Day	Monday, September 5, 2005
Columbus Day	Monday, October 10, 2005
Veterans Day	Friday, November 11, 2005
Thanksgiving Day	Thursday, November 24, 2005
Christmas Day	Friday, November 25, 2005 Monday, December 26, 2005

Observance of these holidays by a district court may be deferred whenever observance of the holiday would interfere with judicial proceedings in progress.

At the discretion of the chief judge and approval of the judicial administrator, a district court may remain open on any of the above-designated holidays when the local county courthouse is open for business and observe as a substitute holiday a county designated holiday not otherwise observed by the Judicial Branch.

BY ORDER OF THE COURT this 11th day of August, 2004.


Kay McFarland
Chief Justice

RESEARCH GUIDE

L Ed Digest:

Criminal Law §§ 46.3, 46.7.

Federal Procedure L Ed:

Criminal Procedure, Fed Proc, L Ed, §§ 22:532-22:683.

Forms:

7 Federal Procedural Forms L Ed, Criminal Procedure §§ 20:25-20:74.

CASE NOTES

In view of the applicability to the state courts or the Fourteenth rather than the Sixth Amendment, Rule 44 cannot be regarded as defining, even by analogy, the minimum requirement of due process for the states under the Fourteenth Amendment. The new rule is evidence only of what this Court considers suitable in the federal courts and the states, in their discretion, may or may not follow it. The states are free to determine their own practice as to the assistance of counsel, subject to the

general limitation that such practice shall not deprive the accused of life, liberty or property without due process of law. *Bute v Illinois*, 333 US 640, 92 L Ed 986, 68 S Ct 763.

Question raised, but not decided, as to whether it is proper under Rule 44 for prosecuting attorney, rather than judge, to inquire of the accused as to his waiver of the right to counsel. *Pollard v United States*, 352 US 354, 1 L Ed 2d 393, 77 S Ct 481.

Rule 45. Time

(a) **Computation.** In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

Laws: Cases and Codes : U.S. Code : Title 5 : Section 6103

	Search	Title 5	▼
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- United States Code
 - TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
 - PART III - EMPLOYEES
 - SUBPART E - ATTENDANCE AND LEAVE
 - CHAPTER 61 - HOURS OF WORK
 - SUBCHAPTER I - GENERAL PROVISIONS

U.S. Code as of: 01/06/03

Section 6103. Holidays**Related Resources**

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for -

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 (FOOTNOTE 1) of this title. (FOOTNOTE 1) See References in Text note below.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to

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pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d) (1) For purposes of this subsection -

(A) the term "compressed schedule" has the meaning given such term by section 6121(5); and

(B) the term "adverse agency impact" has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

[Previous](#)

[\[Notes\]](#)

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**OFFICE OF THE COUNTY ATTORNEY
FINNEY COUNTY, KANSAS**

JOHN P. WHEELER, JR., COUNTY ATTORNEY
BRIAN R. SHERWOOD, ASSISTANT COUNTY ATTORNEY
TAMARA S. HICKS, ASSISTANT COUNTY ATTORNEY
LOIS K. MALIN, ASSISTANT COUNTY ATTORNEY
LARA BLAKE BORS, ASSISTANT COUNTY ATTORNEY
LINDA J. LOBMEYER, ASSISTANT COUNTY ATTORNEY
SIDNEY R. THOMAS, ASSISTANT COUNTY ATTORNEY
ELIZABETH A. YORK, VICTIM/WITNESS COORDINATOR
MARISSA RUIZ-GONZALEZ, ASSISTANT VICTIM/WITNESS COORDINATOR

409 NORTH NINTH STREET
GARDEN CITY, KANSAS 67846
TELEPHONE (620) 272-3568
FACSIMILE (620) 272-3584
E-mail: attorney@finneycounty.org

To: Senate Judiciary Committee

From: John P. Wheeler, Jr., Finney County Attorney

Re: House Bill 2386

Date: March 9, 2005

I thank the Chair for allowing me to supplement the record on House Bill 2386 with this written testimony. I am appearing here to day to testify as a proponent of this bill.

The purpose of House Bill 2386 is to correct what I believe was an oversight in K.S.A. 21-3520, Unlawful Sexual Relations. As originally passed in 1993, K.S.A. 21-3520 prohibited only consensual sexual relations between department of corrections employees with inmates and between state parole officers and persons under their supervision. Through various amendments over the years, K.S.A. 21-3520 now also prohibits forms of consensual sexual relations between law enforcement officers and jailers with inmates; between law enforcement officers or employees of juvenile detention and sanction house facilities with persons confined in those facilities; between juvenile justice authority employees and persons confined in JJA facilities; between juvenile justice authority employees and persons under supervision of JJA on conditional release or placed in the custody of JJA; between social and rehabilitation services employees with patients in SRS institutions; and between teachers or persons in authority in schools where the other party is a student at the school where the offender is employed. Persons who provide services to the agencies covered by the statute, other than contracted services for schools, are also prohibited from engaging in sexual conduct with the persons protected by the statute.

Persons conspicuously absent from the statutory prohibition are court service officers and community corrections officers. The proposed amendment by adding Section 1 (9) and (10) to include these two groups within a criminal prohibition of engaging in unlawful sexual relations with persons under their direct supervision is the specific purpose of House Bill 2386.

Senate Judiciary
3-9-05
Attachment 4

Senate Judiciary Committee

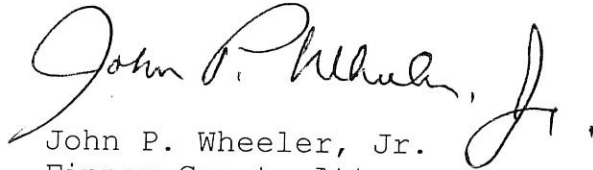
March 9, 2005

Page 2

There is no question that persons in both court services and community corrections exercise a great deal of power and authority over the persons under their supervision. They hold positions of authority that can cause a person to go to prison should they not accede to their sexual demands. I am asking you to correct this glaring omission in the statute by passing House Bill 2386 from Committee with a favorable recommendation for passage by the Senate.

I appreciate the opportunity to appear before the committee and for your time and attention in listening to my views.

Very Truly Yours,



John P. Wheeler, Jr.
Finney County Attorney
409 N. 9th Street
Garden City, KS 67846
Telephone: (620) 272-7081
Fax: (620) 272-3584
Email: ca01@finneycounty.org



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th

Topeka, Kansas 66612-1507

(785) 296-2256

Testimony in Support of House Bill 2386

Office of Judicial Administration
Presented by Mark Gleeson
Family and Children Program Coordinator

March 9, 2005

House Bill 2386 makes it unlawful for Court Services Officers to engage in consensual sex with offenders under their direct supervision. We support this bill and the message it conveys to those responsible for creating and maintaining a high degree of integrity and confidence among those who supervise offenders.

Thank you for the opportunity to testify this afternoon. Feel free to contact me at (785) 291-3224 if you have questions.

Senate Judiciary

3-9-05

Attachment 5

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Submitted
by Tim Madden

Testimony on HB 2386
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 9, 2005

House Bill 2386 amends K.S.A. 21-3520 by expanding the definition of unlawful sexual relations to include those acts committed by court services and community corrections officers. Additionally, HB 2386 as amended by the House also prohibits sexual relations by the employees of contractors of court service and community corrections agencies who provide direct supervision and control over the person under court services or community corrections supervision. The amendment by the House mirrors the provisions applicable to contractors of the department regarding persons under parole supervision. The Department of Corrections supports passage of this legislation as amended by the House.

K.S.A. 21-3520 establishes the public policy of prohibiting sexual relations between public officials and persons subject to their unique control even if the sexual relationship is consensual. Currently, K.S.A. 21-3520 prohibits sexual relations by school teachers, employees of the Department of Corrections, Juvenile Justice Authority, jail and detention facilities, facilities of the Department of Social and Rehabilitation Services, and certain employees of contractors of those agencies. HB 2386 extends that prohibition to court services and community corrections officers.

The professional responsibility and authority of court services and community corrections officers relative to offenders under their supervision is identical to that of parole officers employed by the Department of Corrections. Due to the responsibilities and authority of court services and community correction officers, those law enforcement officers should fall under the provisions of K.S.A. 21-3520 as provided by HB 2386. The public interest served by prohibiting consensual sexual relations by law enforcement officers with persons under their supervision is recognized nationally. The Center for Innovative Public Policies, Inc. reported that as of 2004, 25 states have enacted legislation prohibiting staff sexual misconduct with offenders in a community corrections setting. (Source: *Preventing and Addressing Staff Sexual Misconduct in Community Corrections: A Training Program for Agency Administrators*, March 2004).

Due to the use of contract services by court services and community corrections agencies for surveillance, home and employment visits, and other supervision services, the Department believes the employees of contractors who provide direct supervision and control over an offender should likewise be prohibited from engaging in consensual sexual relations with that offender. Inclusion of those contract employees, as provided by the House amendment, is consistent with the provisions of K.S.A. 21-3520 currently applicable to the employees of contractors providing services on behalf of jails, the department, SRS and the Juvenile Justice Authority.

HB 2386 as Amended by the House passed in the House by a vote of 123 - 0. The Department urges favorable consideration of HB 2386 as amendment.