

SENATE JUDICIARY COMMITTEE

FEBRUARY 4, 1970

ROOM 523

MEETING OF SUBCOMMITTEE ON  
SENATE BILL NO. 483

HEARING FOR COUNTY ATTORNEYS  
&  
DIRECTORS AND MEMBERS OF THE  
PARDON AND PAROLE BOARD

The subcommittee on Senate Bill No. 483 met February 4, 1970, Room No. 523 at eleven o'clock A.M. All members of the subcommittee composed of Senators Ball, Tillotson, Rogers, Healy, Storey, Herd and Winter were present. Senator Ball, chairman called the meeting to order.

County Attorneys, John C. Tillotson from Leavenworth, Don Humphreys from Great Bend and Keith Sanborn from Wichita, were present to be heard on some recommendations of county attorneys for changes in Senate Bill No. 483. A copy of their recommendations and proposed changes is attached hereto and made a part of these minutes. Much discussion followed each suggested change and Senator Rogers asked questions which were answered in part by Keith Sanborn and explained by Mr. Foth, Assistant Attorney General.

The director of the Board of Pardon and Parole, Mr. Wm. Henry, together with members, Messrs. Jones, Dempsey and Senecal, were present to suggest some changes. Mr. Henry mentioned one change on page 90 in line 4, by striking the words "and determining" and by inserting before the word "hearing" the word "and". Senator Herd moved that this subcommittee recommend to the full committee that this amendment be made; Senator Healy seconded and the motion carried.

Mr. Henry asked consideration on page 90 in lines 12, 13 and 14 of the sentence which reads: "The form of notice shall be prescribed by the board and the cost of publication thereof shall be paid by the state." Senator Ball stated that this was debated at length in the Judicial Council. Some discussion followed and Mr. Jones talked on the subject.

The number of publications was discussed at length. Next was page 90, line 19, concerning the time after referral to the board. Senators Winter and Tillotson commented on it.

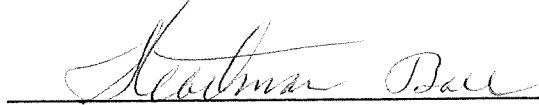
At this time the meeting was turned back to the County Attorneys and their specific changes desired. Ed Collister from the Attorney General's office explained some points and made some comments. Keith Sanborn spoke, at length, on the changes he felt ought to be made.

Glenn Cogswell of Topeka and William Staley of Kansas City, Kansas were present as interested observers.

The meeting adjourned with the subcommittee meeting February 5, Room 523, at 11 A.M. County Attorneys will again be heard and also Municipal Judges.

  
Martha P. Welch, Recording Sec.

MINUTES APPROVED:

  
Steadman Ball, Chairman

February 4, 1970

KANSAS COUNTY ATTORNEYS ASSOCIATION

RECOMMENDATIONS IN RE SENATE BILL NO. 483:

Pg. 3, line 15, 16:

After the word "crime", add the following: "a Complaint drawn in the language of the statute shall be deemed sufficient."

Pg. 3, line 27, 28: Following the words "county attorney", strike the following: "or other authorized representative of the state of Kansas. . ."

Pg. 4, line 8:

Following (d), add the following:  
(e) The clerk of any court.

Pg. 5, line 9, 10:

On line 9, following the word "magistrate," strike the following: "A copy of the complaint shall forthwith be supplied to the county attorney of the county and . . ."

Insert the following: ". . . the complaint shall be approved by the county attorney prior to its being filed and the issuance of warrant or summons, under Section 22-2302. A copy thereof shall be furnished to the defendant or his attorney upon request."

Pg. 6, line 8:

Following the word "required", delete the word "shall" and insert in its place the word, "may".

Pg. 6, line 12:

Following the word, "magistrate", delete the following:  
". . . or the clerk of his court."

Pg. 6, line 14:

Following the word "warrant", insert the following:  
". . . or summons. . ."

Pg. 6, line 15, 16:

Delete the following: "The summons may be served by any person authorized to serve a summons in a civil action."

Pg. 6, line 26:

Insert immediately following (4): "Unless personal service is required by the county attorney, . . ."

Pg. 7, line 11:

Delete the following, ". . . or other authorized person. . ."

Pg. 8, line 4:

Delete the word "view", and insert in its place the word "presence".

Pg. 8, line 15:

Following the word "crime", insert the following:  
". . . or evidence of a crime . . ."

Pg. 10, line 10:

Following the word "person", delete the following:  
". . . over the age of eighteen years . . ."

Pg. 11, line 19, 20, 21:

Following the last word on line 19, "appear", delete the rest of the paragraph as shown on lines 20 and 21, and insert the following:

". . . the court shall proceed to judgment without further process."

Pg. 11, line 31 and

Pg. 12, lines 1 through 6:

Delete Sec. 22-2502 in its entirety.

Pg. 12, line 12, 13, 14, 15, 16, 17, 18, 19:

On line 12, delete the word "search" preceeding the word "warrant", and delete the words ". . . for the seizure of the following:". and further delete all of lines 14, 15, 16, 17, 18, and 19.

Add the following after the word "warrant" on line 12:  
". . . to search for and seize any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term 'fruits' as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted."

Pg. 12, beginning at line 20:

Delete all of Sec. 22-2504 and Sec. 22-2505.

Pg. 13, lines 1 through 17:

Delete all of Sec. 22-2506, Sec. 22-2507, Sec. 22-2508.

Pg. 13, line 18:

Retain Sec. 22-2509.

For all those Sections deleted from Pg. 12 & 13, insert instead the following: K.S.A. 62-1828, 62-1830, 62-1831, 62-1832, 62-1833.

Pg. 14, line 9:

Delete the word "for" and insert the word "or", in its place.

Pg. 14, 15, 16:

Sec. 22-2514 through Sec. 22-2515, inclusive: would recommend these sections should parallel the Federal act.

Pg. 17, line 23:

Delete word "intentionally".

Pg. 17, line 27:

Following the word "who", delete the word "knowingly".

Pg. 33, lines 9 through 15:

Delete all of subsection (4).

Pg. 33, line 18, 19, 20:

Delete the following: "If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (4) shall apply."

Pg. 34:

Omit all of Sec. 22-2803.

Pg. 35, line 31: and

Pg. 36, line 1:

Delete the following: ". . . except a corporate surety which is approved as provided by law. . ."

Pg. 38, line 2:

Following the words "unnecessary delay or" insert the following: ". . . in the case of misdemeanor, and . . ."

Pg. 38, line 25:

Change "10" to "5".

Pg. 39, line 11:

Following the word "magistrate", insert the following: ". . . except a fugitive from justice . . ."

Pg. 39, line 15:

Following the word "after the" delete the word "arrest" and insert in its place the words "personal appearance".

Pg. 56, line 12:

After the words "nolo contendere" insert the following:  
". . . for good cause shown and within the discretion of  
the court . . ."

Pg. 63, line 24, 25:

Following the word "motion" on line 24, delete the remainder  
of the sentence, ". . . and the burden of proving that the  
search and seizure were lawful shall be on the prosecution."

Pg. 87, line 8, 9:

Delete the word "district" preceeding the word "judge".

Pg. 87, line 11 through 21:

Following the word "admission" on line 11, delete the remainder  
of the paragraph through line 21. Insert therein the follow-  
ing: "When a judge prior to the commencement of trial of a  
criminal action makes an order quashing a warrant or a search  
warrant, suppressing evidence or suppressing a confession or  
admission an appeal may be taken by the prosecution from such  
order if application is made to the court having jurisdiction  
of appeals within ten days after entry of the order under such  
terms and conditions as the court may fix. Further proceedings  
in the trial court shall be stayed pending determination of  
the appeal."

Pg. 87, line 22 through line 25:

Delete Sec. 22-3604 in its entirety.

Pg. 87, line 27 through 29:

On line 27, subsection (1) should be deleted in its entirety,  
and the following inserted in its place:

"(1) Whether or not a defendant shall be held in jail or  
subject to an appearance bond during the pendency of an  
appeal by the prosecution shall be in the sound discretion  
of the court."

Pg. 89, line 14:

The word "magistrate" should be changed to read "judge".



Pg. 89, line 8:

The word "magistrate" should be changed to read "judge".

PROPOSED CHANGES, CRIMINAL PROCEDURE CODE

Pg. 52, line 17:

22-3204 When two or more defendants are charged with any felony, the Court may order a separate trial for any one defendant when requested, in order to avoid prejudice to any defendant or the State by such joinder.

Adoption of Federal Rule 14 allowing severance to avoid prejudice.

Pg. 69; line 21:

22-3402 (1) If any person charged with a crime and held in jail solely by reason thereof shall not be brought to trial within ninety days after his arraignment on the charge, he shall be entitled to be discharged from further liability to be tried for the current charge, unless the delay shall happen as the result of the application or fault of the defendant, or a continuance shall be ordered by the Court.

Pg. 70; line 4:

22-3402 (3) The time for trial may be extended beyond the limitations of sub-sections (1), (2), (this section) for any of the following reasons:

(c) There is material evidence which is unavailable; that reasonable efforts have been made to procure such evidence; and that there are reasonable grounds to believe that such evidence can be obtained and trial commenced within the next succeeding ninety days. Not more than one continuance may be granted the State on this ground, unless for good cause shown.

(Suggestion in 22-3402 (1) would obviate question of speedy trial where person was incarcerated for another offense. Suggestion with regard to 22-3402 (3) c would allow the State more than one continuance for unavailable material evidence for cause.)

Pg. 85; line 16:

22-3501 (1) The Court, on its own motion, or on motion of a defendant for a new trial or for a judgment of acquittal may grant a new trial to him if required in the interests of justice.

(Suggested language would allow the Court to order a new trial instead of acquitting defendant, where a new trial is indicated without a defendant's request. This would avoid the question of double jeopardy where no request is made. For example, where motion for judgment of acquittal is made and the Court feels a new trial should be granted for incompetence of counsel, section would provide it.)

Pg. 82; line 9-10:

22-3425 (4) The Court before which any person shall be convicted of any criminal offense shall have the power, in addition to the sentence prescribed or authorized by law, to require such person to give security to keep peace, be of good behavior, abide by the conditions of probation, if any, for the term of probation or for a term not exceeding two years, or to stand committed until such security be given.

(Suggested change incorporates present Section 62-1504, with slight modification, providing for a peace bond after conviction.

22-3007 (2) (line 31, 1, &2) strike language "if the grand juryj  
deems it necessary."

22-3009 (1) Any person called to testify before a grand jury must  
be invormed that he may not be required to make ~~any~~  
any statement which will incriminate him.

(2) strike entire subparagraph

OR

Counsel for any witmess may be present while the witness  
is testifying and may interpose objections on behalf  
of the witness on the ground of self-incrimination. He  
shall not be permitted to examine or cross-examine his  
client or any other witness before the grand jury.

Pg. 46, line 29:

After the word "foreman", add the following sentence:

"No indictment may be filed unless signed by the prosecuting attorney."

Pg. 27, line 16, 17:

Delete the following sentence:

"No obligation of secrecy may be imposed upon any person except in accordance with this rule."

Insert the following:

"No member of a grand jury, attorney, interpreter, reporter, typist, or witness shall be obliged or allowed to testify or declare in what manner he or any other member voted, or what opinions were expressed in relation to any matter considered. No grand juror shall disclose any evidence given nor the name of any witness appearing before the grand jury, except when lawfully required to testify as a witness in relation thereto; and any such disclosure shall be deemed a Class B misdemeanor."

Pg. 48, line 16:

Change the word "a" immediately preceeding the word "judge" to "any" and delete the words "of the district court", found immediately following the word "judge".

Pg. 48, line 18:

Immediately following "violation of law" add the following:

". . . which application and process and hearings pursuant thereto shall remain confidential."

Pg. 49, following line 2:

Add: (3) If the attorney general, assistant attorney general or county attorney of any county is informed or has knowledge of any alleged violation of any law of this state pertaining to gambling, intoxicating liquors, organized crime, or any violation of any law where the accused is a fugitive from justice, he shall be authorized to issue subpoena for such persons as he shall have any reason to believe have any information relating thereto or knowledge thereof, to appear before him at a time and place to be designated in the subpoena and

testify concerning any such violation. For such purposes any prosecuting attorney shall be authorized to administer oaths.

The testimony of each witness shall be reduced to writing and signed by the witness, and any refusal to answer proper questions propounded by a prosecuting attorney, refusal to sign the testimony, refusal to be sworn, or refusal to obey the subpoena, shall be a Class C misdemeanor.

If the testimony so taken shall disclose the fact that an offense has been committed, such prosecuting attorney shall prosecute the person or persons committing such offense and may file such testimony, together with his complaint or information, against such person or persons in some court of competent jurisdiction, and such testimony, with the information or complaint of the prosecuting attorney, verified by him on information and belief, shall have the same effect as if such information or complaint had been verified positively; and thereupon a warrant shall be issued for the arrest of such person or persons as in other criminal cases.