SENATE JUDICIARY COMMITTEE

ROOM 523

FEBRUARY 5, 1970

SUBCOMMITTEE ON SENATE BILL NO. 483

HEARING: MUNICIPAL JUDGES AND
COUNTY ATTORNEYS

The Subcommittee on Senate Bill No. 483 of the Senate Judiciary Committee met February 5, 1970 in Room 523 at eleven o'clock A.M. All members were present. Senator Ball, the chairman, called the meeting to order.

Attorney John Tillotson, county attorney from Leavenworth was present to be further heard on some proposed changes in the bill. He presented the members with a revised copy of recommendations of the Kansas County Attorneys Association, a copy of which is attached hereto and made a part of these minutes.

Richard Foth, Assistant Attorney General, was present in an informative capacity with reference to the technicalities in the bill referred to by speakers.

Ed Collister and Glenn Cogswell were also present as observers.

Charles Elliott, Magistrate Judge of Johnson County, Kansas, Earl Jones, Magistrate Judge from Johnson County, Kansas, Dean Smith, Magistrate Judge of Wyandotte County, Kansas, Reese Robrahn, City Judge of Topeka and Robert Morrison, County Judge of Wichita, were present to be heard on the bill. Judge Morrison was chosen by the other judges to be their spokesman. A manuscript of questions, comments and recommendations developed at a meeting called for the judges of the courts exercising limited criminal jurisdiction in the four largest counties in the state was presented to members of this subcommittee.

Senator Ball announced that this subcommittee would meet from nine to twelve o'clock A.M. on Monday, February 9, 1970 in room 523 to continue studying Senate Bill No. 483.

As the committee moved into the suggestions of the judges, Judge Robert Morrison, following the manuscript, took up each item and explained each point raised by the judges in compiling their recommendations. A copy of these questions, comments and recommendations is attached hereto and made a part of the minutes of this meeting.

Richard Foth headed a discussion on the issuance of warrants before evidentiary hearings. Senators Healy, Tillotson and Judge Robrahn also were active in the discussion.

The meeting was of two hours duration and it was adjourned to meet Friday, February 6, 1970 at eleven o'clock A.M. when Professor Paul Wilson of Kansas University and others will consider some of the suggested changes and recommendations that have been made during the hearings.

Martha P. Welch

Martha P. Welch, Recording Sec.

MINUTES APPROVED:

Steadman Ball

Steadman Ball, Chairman

KANSAS COUNTY ATTORNEYS ASSOCIATION

RECOMMENDATIONS IN RE SENATE BILL NO. 483:

Pg. 3, line, 15, 16

Pg. 3, line 28: After the word "Kansas", add the following: "And drawn in the language of the statute,"

(Recommendation would comply with present law.)

Pg. 4, line 8:

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

Present law, 62-201 is Justices' of the Peace, Mayors, Police Magistrates and Municipal Judges Magisterial authority for the issuance of warrants under present 62-602. The suggested change would allow the Clerk to issue warrants in a magisterial capacity, and conforms to the practice of other states, including Alabama, Mississippi and Wisconsin. See, 22 C.J.S. Sec. 326.)

Pg. 5, lines 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 so filed shall be delivered to the prosecuting attorney for his examination prior to the issuance of a warrant or summons. A copy thereof shall be furnished to the defendant or his attorney upon request.

(Proposed section would give the prosecuting attorney an opportunity to intervene in the proceedings and direct the issuance of a summons rather than a warrant in a proper case.)

Pg. 6, line 8:

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

(Changes recommended on the ground that disclosure of the amount of bond to be required in certain cases might hamper the arrest procedure.)

Pg. 6, line 12:

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

(Suggested change would follow adoption of recommendation pg. 4, line 8.)

Pg. 6, line 14:

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

(It is felt that it is inappropriate in a criminal case to have process served by any one other than a law enforcement officer, including zoning, health and other administrative type proceedings.)

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. . .. . "

(Recommendation would allow prosecuting attorney to require personal service.)

Pg. 7, line 11:

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

(Would conform with recommended change for pg. 6, line 14,)

Pg. 8, line 4:

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

(Changes recommended to permit present practice of airplane and radar arrests not in "view".)

Pg. 8, line 15:

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

(Recommended change is believed to comport with present constitutional standards following a lawful search and would allow the taking of evidence of crime such as conspiracy, etc.)

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."

(Suggested change would conform to present 62-1104.)

Pg. 11, line 31 and
Pg. 12, lines 1 through 6:

Delete Sec. 22-2502 in its entirety.

(Paragraph recommendation is based on impracticability and on basis that an inventory may be required in interest of the rights of defendant.)

Pg. 12, lines 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."

(Conforms with present law set out in K.S.A. 62-1829.)

Pg. 12, Lines 20 to 31;
Pg. 13, lines 1 through 17

Delete recommended sections.

(In lieu of recommended sections insert present K.S.A. 62-1830, 62-1831, 62-1832 (first sentence) and add: "Whoever discloses prior to its execution that a warrant has been applied for or issued, except as necessary to its execution, shall be deemed guilty of a class b misdemeanor." Add section 62-1833.

(Recommended sections are for the reason that it is felt present law is up-to-date and entirely adequate; in addition, present 62-1829 permits seizure of fruits which may have been converted.)

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. 22-1515 inclusive

(Eavesdropping statute-See separate recommended eavesdropping provision. The county attorneys association generally feels that the eavesdropping section proposed does not permit eavesdropping for the purpose of combating organized and commercial crime, which is particularly envidious and impervious to other types of normal criminal investigative work. It is felt that the use of eavesdropping for the purpose of saving human life in unnecessary and unworkable. The association feels that the number of authorized applicants is too great and that emergency eavesdropping without the court permission is extremely likely to invade civil rights of all citizens.)

Pg. 17, lines 23, 27:

Delete words "intentionally" and "knowingly".

(Recommendation for the purpose that intent is always required and language is confusing to the jury.)

Pg. 33, lines 9 through 15:

Delete all of subsection (4).

(Recommendation made because right is already available by remedy of Habeas Corpus.)

Pg. 33, line 18, 19, 20:

Delete last sentence.

(Again right of appeal to District Court available by Habeas Corpus or by motion after under the jurisdiction of the District Court.)

Pg. 34;

Delete all of Sec. 22-2803.

(Recommendation is made for the reason it is felt the proposed section would encourage endless applications for review of bail conditions and because right of petition by Habeas Corpus is available for unconstitutional restrictions.)

Pg. 35, line 31: and
Pg. 36, line 1:

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

(Recommendation for the reason that the association cannot understand this exception. It is felt that even though a corporate surety may be approved by the insurance commissioner, assets are not necessarily available for execution.)

Pg. 38, line 2:

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

(Recommendation for the reason that it is felt that a felon should not have the right to bail in a county other than that in which the offense is charged, thereby leaving only misdemeanor defendants the privilege of making bail with the nearest available magistrate.)

Pg. 38, line 25:

Change "lo" 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. . ."

(Recommendation for the reason it is felt that present law permits withdrawal of a plea only to prevent constitutional affimity from arising upon appeal or collateral attack and recommended language would help preserve that exception.

Pg. 63, lines 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."

(Recommendationfor the reason that deletionshould remove implication that defendant need proceed on bare allegations and without going forward with the burden of producing some evidence.)

Pg. 87, line 7:

Add additional subsection (d): ". .from an order prior to or during a trial quashing a warrant or search warrant, suppressing evidence and suppressing confessions or admissions.

Pg. 87, lines 8 and 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 though line 21. Insert therein the following: "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 havingjurisdiction 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."

(Recommendation for the reason it is felt the Supreme Court or any judge may summarily determine the propriety of an appeal.)

Pg. 87, lines 22 -25:

Delete proposed Section 22-3604 in its entirety.

(Recommendation for the reason that no valid reason appears why the State should be prejudiced by an appeal permitted to be taken by the Supreme Court.)

Pg. 87, lines 27-29:

Delete subparagraph (1) and insert in its place:

"(1) Whether 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, lines 8 and 14:

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

Pg. 14, line 11;
Pg. 15
Pg. 16, lines 1 through 19

Please refer to previous written recommendations regarding eavesdropping set out herein.

(It is the recommendation of the association that eavesdropping be permitted with relation to the following crimes only: Crimes against national security, treason, sedition, criminal syndicalisn, commercial gambling, racketering, commercial bribery, sports bribery or tampering.)

Other observations of deficiencies in proposed Sections 22-2514, 22-2515 and present sections 21-4001 and 21-4002:

(a) Surreptious listening without the use of an amplifying or other illegal device would be prohibited.

(b) Consent eavesdropping, such as listening on a telephone extension would be prohibited.

(c) The court is not required to make and reduce t o writings specific findings prior to issuance generally, and special findings for eavesdropping on public facilities and privileged communications otherwise provided by law.

(d) Recommended section does not provide for periodic reports on progress of eavesdropping to the court.

(e) Recommended section does not provide for the right of appeal by the State from a denial of a eavesdropping order.

(f) Proposed section does not make the recording of eavesdropping compulsory as well as the preservation of such recordings.

(g) Proposed section does not provide for the discovery of eavesdropping recordings by persons whose communications are intercepted.

(h) The proposal does not provide for an inventory of intercepted communications to the person affected.

(i) The proposal does not provide for grounds for suppression of intercepted communications.

(j) The proposal does not provide for civil damages for illegal eavesdropping.

(k) The proposal does not provide for the central reporting of eavesdropping experience and maintenance of statistics thereon.

The association members discussing this matter are of a general feeling that a proposal following public law 90-315 of the Omnibus Crime Control Act should be enacted, so that uniformity of practice and definition could be achieved. The association additionally feels that, as a matter of policy, the eavesdropping provision should be deleted from the criminal procedure code and reproposed as a separate bill in the interest of the general public. 18 U.S.C. § 2518