

SENATE JUDICIARY COMMITTEE

FEBRUARY 17, 1970

ROOM 523

The Senate Judiciary Committee met February 17, 1970 in Room 523 with the chairman, Senator Steadman Ball, presiding. All members were present except Senators Arvin and Foster.

Senate Bill No. 483 was the first item of business. Senator Tillotson moved that the report of the subcommittee be adopted. Senator Storey seconded and the report was unanimously adopted. Senator Ball announced that the Revisor's Office personnel was writing up the report with the proper amendments and it would be ready February 18, 1970. Senator Tillotson moved that the committee report the bill back to the Senate with the recommendation that it be passed as amended. Senator Storey seconded and the motion carried. A copy of the report with amendments is hereto attached.

Senator Ball then explained the provisions contained in Senate Bill No. 484. Senator Bennett moved that the committee report the bill back to the Senate with the recommendation that it be passed. Senator Storey seconded and the motion carried.

Senator Woodard said he would do some further checking on Senate Bill No. 518.

Senator Gaar explained Senate Bill No. 509. He told the committee that the context was taken from an Illinois law. He stated that Senate Bill No. 579 was merged into Senate Bill No. 509 and moved that Senate Bill No. 509 be amended to include this change. Senator Healy seconded and the amendment was adopted. Senator Gaar moved that Senate Bill No. 509 be reported back to the Senate with the recommendation that it be passed as amended. Senator Storey seconded and the motion carried.

Senator Steineger explained Senate Bill No. 528 and moved that the bill be reported back to the Senate with the recommendation that it be passed. Senator Storey seconded and the motion carried.


Senate Bill No. 577 was taken up and C. Duane Dauner was present to ask for explanations on some of the bill; that is, lines 15 and 16. Senator Pomeroy suggested that the bill be amended on page 1, in lines 15 and 16 by deleting the words "other than" and inserting in lieu thereof the words "in addition to" and moved that the committee adopt the amendment. Senator Woodard seconded and the amendment was adopted.

Senator Ball read a letter from the Attorney General's office regarding Senate Bill No. 581.

The meeting adjourned to meet February 18, 1970 at eleven o'clock A.M. in room 523.

  
Martha P. Welch, Recording Sec.

MINUTES APPROVED:

  
Steadman Ball, Chairman

February 20, 1970

## REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Judiciary

Recommends that Senate Bill No. 483

"AN Act relating to criminal procedure; establishing a Kansas code of criminal procedure; and repealing K. S. A. 21-125, 21-126, 21-706, 21-904, 21-918, 21-919, 21-920, 21-921, 21-925, 21-926, 21-927, 21-928, 21-929, 21-941, 21-943, 21-945, 21-1006, 21-1008, 21-1009, 21-1102c, 21-1509, 62-106, 62-202 to 62-213, inclusive, 62-301, 62-302, 62-401 to 62-410, inclusive, 62-601 to 62-638, inclusive, 62-727 to 62-735, inclusive, 62-738 to 62-757, inclusive, 62-801 to 62-808, inclusive, 62-902 to 62-912, inclusive, 62-914 to 62-931, inclusive, 62-1001 to 62-1021, inclusive, 62-1025, 62-1026, 62-1101 to 62-1108, inclusive, 62-1201 to 62-1203, inclusive, 62-1205 to 62-1228, inclusive, 62-1301 to 62-1321, inclusive, 62-1323 to 62-1341, inclusive, 62-1401 to 62-1438, inclusive, 62-1440, 62-1445 to 62-1450, inclusive, 62-1501 to 62-1511, inclusive, 62-1513 to 62-1520, inclusive, 62-1535 to 62-1540, inclusive, 62-1601 to 62-1608, inclusive, 62-1701, 62-1703, 62-1705 to 62-1708, inclusive, 62-1715 to 62-1721, inclusive, 62-1723, 62-1725, 62-1726, 62-1801, 62-1806, 62-1814 to 62-1828, inclusive, 62-1830, 62-1831, 62-1835, 62-1901 to 62-1912, inclusive, 62-2109, 62-2216 to 62-2225, inclusive, 62-2228, 62-2230, 62-2232 to 62-2237, inclusive, 62-2244 to 62-2250, inclusive, 62-2252 to 62-2255, inclusive, 62-2401 to 62-2416, inclusive, 62-2501, 62-2502, 62-2503, 62-2601, 62-2701, 62-2702, 62-2703, 62-2801 to 62-2806, inclusive, 62-2901 to 62-2904, inclusive, 62-2906, 62-2907, 62-2908, 63-101, 63-201 to 63-207, inclusive, 63-301 to 63-313, inclusive, 63-403, 63-501 to 63-505, inclusive, and K. S. A. 1969 Supp. 62-201, 62-411, 62-412, 62-901, 62-901a, 62-913, 62-1531, 62-1532, 62-1534, 62-1541, 62-1722, 62-1724, 62-1829, 62-1834, 62-2229, 62-2905, 63-401 and 63-402."

Be amended:

On page 3, in line 26, by striking the word "the";

On page 6, in line 8, by striking the word "shall" and inserting in lieu thereof the word "may";

On page 8, in line 15, by inserting after the word "crime" the words "or evidence of crime";

On page 10, in line 10, by striking the following: "over the age of eighteen years"; in line 19, by striking the word "Whenever" and inserting in lieu thereof "Except as otherwise provided in subsection (6) of this section, whenever";

On page 11, following line 8, by inserting two new subsections to read as follows:

"(5) Such law enforcement officer shall file, without unnecessary delay, a complaint in the court in which a person released under subsection (4) is given notice to appear, charging the crime stated in

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said notice. If the person released fails to appear as required in the notice to appear, a warrant shall be issued for his arrest.

"(6) The procedures prescribed by this section shall not apply to the detention or arrest of any person for the violation of any law regulating traffic on the highways of this state, and the provisions of K. S. A. 1969 Supp. 8-5,127a to 8-5,127e, inclusive, and 8-5,129a, and any acts amendatory thereof, shall govern such procedures.";

also on page 11, by striking all of line 20 and inserting in lieu thereof the words "the court"; in line 21, by striking the words "trial and" and by striking all of line 31;

On page 12, by striking lines 1 to 6, inclusive; in line 7, by striking the figures "22-2503" and inserting the figures "22-2502"; in line 14, by inserting before the comma the words "a crime" also on page 12, by striking all of line 15 and inserting in lieu thereof the following: "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."; also on page 12, by inserting a new section 22-2503 to read as follows:

"Sec. 22-2503. Territorial limitations on execution of certain search warrants. Search warrants issued by courts of limited jurisdiction may be executed only within the territorial limits of the county in which the court is located. Search warrants issued by municipal or police courts may be executed only within the territorial limits of the municipality where the court is located.";

On page 13, by striking lines 25 to 31, inclusive;

On page 14, by striking lines 1 to 5, inclusive; also on page 14, line 6, by striking the figure "22-2512" and inserting the figure "22-2510"; in line 8, by striking the figures "22-2513" and inserting the figures "22-2511"; by inserting a new section 22-2512 between lines 10 and 11 to read as follows:

"Sec. 22-2512. Custody and disposition of things seized.

Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested describing each article of property being held and shall file a copy of such receipt with the magistrate before whom the person detained or arrested is taken. Where seized property is no longer required as evidence in the prosecution of any indictment or information the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court. When property seized is no longer required as evidence, it shall be disposed of as follows: (1) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner. (2) Money shall be restored to the owner unless it was part of a slot machine or otherwise used in unlawful gambling or lotteries, in which case it shall be forfeited, and shall be paid into the county school fund. (3) Property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid into the county general fund. (4) Articles of contraband shall be destroyed, except that any such articles which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (2). (5) Firearms, ammunition, explosives,

bombs, and like devices, which have been used in the commission of crime, may be returned to the rightful owner, destroyed or sold in the discretion of the court having jurisdiction of the property. The sale and distribution of the proceeds shall be as provided in K. S. A. 21-4206. (6) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.";

on page 14,  
/in line 11, by striking the figures "22-2514" and inserting the figures "22-2513";

On page 15, in line 31, by striking the figures "22-2515" and inserting the figures "22-2514";

On page 16, in line 3, by striking the figures "22-2514" and inserting the figures "22-2513"; in lines 4, 11 and 14 by striking the figures "22-2514" and inserting the figures "22-2513";

On page 17, in line 14, by inserting after the figure "(2)" the words "or more"; in line 15, by striking the words "either county" and inserting in lieu thereof the following: "any of such counties";

On page 19, in line 9, by striking the word "The" and inserting in lieu thereof the following: "In prosecution in cases of felony, the"; and by inserting between lines 30 and 31 the following: "The provisions of this section shall apply only to the prosecution of trials and shall not be applicable to preliminary proceedings.";

On page 20, line 12, by striking the word "act" and inserting in lieu thereof the word "article"; also in line 19, by inserting after the period the following: "The term 'court of record' means any court, other than a municipal or police court, presided over by a magistrate."; in line 21, by striking the word "act" and inserting in lieu thereof the word "article";

On page 30, line 18, by inserting after the word "corpus", the following: "as provided for in 22-2710";

On page 31, line 26, by striking the word "Pre-Trial" and inserting in lieu thereof the words "Conditions of";

On page 32, line 1, by striking the following: "Except as hereinafter"; and in line 2, by striking the words "provided, any" and inserting in lieu thereof "Any"; in line 6, by striking the word "unsecured"; and in line 12, by striking all of the line after the word "require"; by striking all of lines 13 and 14; and by striking the words "he shall" in line 15 and inserting in lieu thereof the following: ". The magistrate may"; by striking all of lines 22, 23, 24 and 25; in line 26, by striking the letter "(d)" and inserting in lieu thereof, the letter "(c)"; between lines 28 and 29, by inserting two new subsections to read as follows:

"(2) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of his discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

"(3) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.";

In line 29, by striking the "(2)" and inserting in lieu thereof the figure "(4)";

On page 33, in line 7, by striking the figure "(3)" and inserting in lieu thereof the figure "(5)"; in line 9, by striking the figure "(4)" and inserting in lieu thereof the figure "(6)"; in line 16, by striking the figure "(5)" and inserting in lieu thereof the figure "(7)"; in line 20, by striking the figure "(4)" and inserting/the figure "(6)"; in line 21, by striking the figure "(6)" and inserting in lieu thereof the figure "(8)"; in line 26, by striking the figure "(7)" and inserting in lieu thereof the figure "(9)";

On page 34, line 5, by striking the figure "(4)" and inserting in lieu thereof the figure "(6)"; also by striking the figure "(5)" and inserting in lieu thereof the figure "(7)";



On page 35, in line 31, by striking all of the line after the word "except";

On page 36, line 1, by striking the words "by law" and inserting in lieu thereof the following: "an insurance company authorized to transact business pursuant to subsection (d) of K. S. A. 1969 Supp. 40-1102 and acts amendatory thereof";

On page 37, line 15, by inserting after the word "court" the following: "in any county in the state";

On page 39, line 10, by inserting after the word "felony" the following: "or served with a summons charging a felony"; in line 15, by inserting after the word "arrest" the words "or personal appearance";

On page 43, by striking all of lines 14 to 22, inclusive, and inserting in lieu thereof a new section 22-3003 to read as follows:

"Sec. 22-3003. Oaths of grand jurors. An oath or affirmation shall be administered to the foreman of the grand jury, in substance as follows:

"' You, as foreman of the grand jury, shall diligently inquire, and true presentment make, of all public offenses against the laws of this state cognizable by this court, committed or triable within this county, of which you have or can obtain legal evidence. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise of hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.'

"Other members of the grand jury shall be administered the following oath:

"'The same oath or affirmation, which your foreman has taken now before you on his part, you and each of you shall well and truly observe on your part.'";

On page 50, line 20, by striking the comma after the word "plain" and inserting in lieu thereof the word "and"; and in line 21, by striking the words "and definite";

On page 51, line 23, by inserting the word "by" after the word "may";

On page 53, line 18, by inserting the word "in" after the word "month";

On page 56, line 12, by inserting before the word "may" the following: ", for good cause shown and within the discretion of the court,";

On page 59, line 6, by striking the word "of" and inserting in lieu thereof the word "or";

On page 62, line 28, by inserting before the word "trial" the words "preliminary examination or";

On page 63, line 13, by inserting before the word "trial" the words "preliminary examination or"; also in line 16, by inserting before the word "trial" the words "preliminary examination or the";

On page 64, between lines 2 and 3, by inserting a new subsection (4) to read as follows:

"(4) Motions to suppress illegally seized evidence may be used in preliminary examination in courts of limited jurisdiction, but if suppressed in such a proceeding, may not be restored to accused unless so ordered by the district court or the supreme court.";

On page 72, line 2, by striking the period and inserting in lieu thereof the following: ", and if the defendant is found guilty of an offense punishable by imprisonment he must be personally present at the time sentence is imposed.";

On page 77, line 13, by striking the word "Prisoners" and inserting the word "Prisoner";

On page 78, line 8, by striking the word "of" where it appears after the word "or" and inserting in lieu thereof the word "on";

On page 81, by striking all of lines 29 and 30;

On page 82, by striking all of lines 1 and 2; in line 3, by striking the figure "(3)" and inserting the figure "(2)"; in line 22, by inserting after the word "crime" the word "and";

On page 83, line 1, by inserting after the word "judgment" the following: "or order of commitment";

On page 87, lines 8 and 9, by striking the word "district"; in line 11, by striking the words "and such" after the word "admission"; by striking all of lines 12, 13, 14 and 15; by striking all of line 16 to and including the word "permit"; in line 17, by striking the word "to" and inserting the word "may"; in line 18, by striking the word "it" and inserting in lieu thereof the following: "the court having jurisdiction of appeals"; in line 20, by striking the word "district" and inserting thereof the word "trial"; by striking all of lines 22 to 25, inclusive; and by renumbering sections 22-3605 to 22-3612 as sections 22-3604 to 22-3611, respectively;

On page 89, line 7, by striking all of the line after the word "rendered"; by striking all of lines 8, 9, 10 and 11; and by striking all of line 12 to and including the word "him"; in line 15, by inserting the word "any" before the word "appearance";

On page 90, line 4, by inserting the word "and" before the word "hearing"; also by striking the words "and determining" after the word "hearing"; in line 13, by striking the words "and the" and inserting in lieu thereof the following: ". The"; also in line 13, by inserting before the word "publication" the word "one"; also in line 13, by striking the word "thereof" and inserting in lieu thereof the words "of the notice during a twelve-month period"; in line 14, by striking the period and inserting the following: "if more than one notice of application is published during any twelve-month period the additional cost of publication shall be paid by the applicant.";

also on page 90, line 19, by striking the word "thirty" and inserting "one hundred twenty (120)"; in line 21, by striking the word "thirty" and inserting "one hundred twenty (120)";

On page 92, between lines 11 and 12, by inserting the following:

"Members serving on the state board of probation and parole established by K. S. A. 62-2228 on the effective date of this act shall be the members of the state board of probation and parole created by this section and shall hold their respective offices until their terms expire and their respective successors are appointed and qualified or until a vacancy occurs.";

On page 93, line 5, by inserting the word "shall" before the word "notify"; in line 12, by inserting before the period the following: "or executive authority"; in line 14, by inserting after the comma after the word "report" the following: "the preparole report";

On page 115, line 6, by striking the word "act" and inserting the word "article";

line 30,

On page 121, by inserting before the figure "62-106" the following: "62-101,";

On page 122, line 12, by striking the figures "62-1330, 62-1331, 62-1333" and inserting the figures "62-1830, 62-1831, 62-1833";

In the title, line 5, by inserting before the figures "62-106" the following: "62-101,"; in lines 17 and 18 by striking the figures "62-1330, 62-1331, 62-1333," and inserting the following: "62-1830, 62-1831, 62-1833,";

And the bill be passed as amended.

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Chairman.