

**SENATE BILL No. 473**

By Committee on Judiciary

2-6

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to the Kansas code of criminal procedure; authorizing a notice to  
3 appear that meets certain requirements to serve as a lawful complaint;  
4 amending K.S.A. 22-2202 and 22-2408 and repealing the existing  
5 sections.  
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 22-2202 is hereby amended to read as follows: 22-  
9 2202. *Subject to K.S.A. 22-2201, and amendments thereto, as used in this*  
10 *code:*

11 (a) "Absconds from supervision" means knowingly avoiding  
12 supervision or knowingly making the defendant's whereabouts unknown to  
13 the defendant's supervising court services officer or community  
14 correctional services officer.

15 (b) "Appellate court" means the supreme court or court of appeals,  
16 depending on the context in which the term is used and the respective  
17 jurisdiction of those courts over appeals in criminal cases, as provided in  
18 K.S.A. 22-3601, and amendments thereto.

19 (c) "Appearance bond" means an agreement, with or without security,  
20 entered into by a person in custody by which the person is bound to  
21 comply with the conditions specified in the agreement.

22 (d) "Arraignment" means the formal act of calling the defendant  
23 before a court having jurisdiction to impose sentence for the offense  
24 charged, informing the defendant of the offense with which the defendant  
25 is charged, and asking the defendant whether the defendant is guilty or not  
26 guilty.

27 (e) "Arrest" means the taking of a person into custody in order that  
28 the person may be forthcoming to answer for the commission of a crime.  
29 The giving of a notice to appear is not an arrest.

30 (f) "Bail" means the security given for the purpose of insuring  
31 compliance with the terms of an appearance bond.

32 (g) "Bind over" means require a defendant to appear and answer  
33 before a district judge having jurisdiction to try the defendant for the  
34 felony with which the defendant is charged.

35 (h) "Charge" means a written statement presented to a court accusing  
36 a person of the commission of a crime and includes a complaint,

1 information or indictment.

2 (i) "Complaint" means a written statement under oath of the essential  
3 facts constituting a crime, except that *the following shall be deemed a*  
4 *valid complaint if signed by the law enforcement officer:*

5 (1) A citation or notice to appear issued by a law enforcement officer  
6 pursuant to and in compliance with K.S.A. 8-2106, and amendments  
7 thereto, ~~or~~;

8 (2) a citation or notice to appear issued pursuant to and in compliance  
9 with K.S.A. 32-1049, and amendments thereto, ~~shall be deemed a valid~~  
10 ~~complaint if it is signed by the law enforcement officer; or~~

11 (3) *a notice to appear issued by a law enforcement officer pursuant*  
12 *to and in compliance with K.S.A. 22-2408, and amendments thereto, for*  
13 *any unclassified misdemeanor or nonperson misdemeanor if:*

14 (A) *There is a memorandum of agreement between the law*  
15 *enforcement agency that employs such officer and the county or district*  
16 *attorney in the jurisdiction where the notice to appear is issued; and*

17 (B) *the notice to appear complies with the requirements of the*  
18 *memorandum of agreement and K.S.A. 22-3201(b), and amendments*  
19 *thereto.*

20 (j) "Custody" means the restraint of a person pursuant to an arrest or  
21 the order of a court or magistrate.

22 (k) "Detention" means the temporary restraint of a person by a law  
23 enforcement officer.

24 (l) "Indictment" means a written statement, presented by a grand jury  
25 to a court, ~~which~~ *that* charges the commission of a crime.

26 (m) "Information" means a verified written statement signed by a  
27 county attorney or other authorized representative of the state of Kansas,  
28 presented to a court, ~~which~~ *that* charges the commission of a crime. An  
29 information verified upon information and belief by the county attorney or  
30 other authorized representative of the state of Kansas shall be sufficient.

31 (n) "Law enforcement officer" means any person who by virtue of  
32 office or public employment is vested by law with a duty to maintain  
33 public order or to make arrests for violation of the laws of the state of  
34 Kansas or ordinances of any municipality thereof or with a duty to  
35 maintain or assert custody or supervision over persons accused or  
36 convicted of crime, and includes court services officers, community  
37 corrections officers, parole officers and directors, security personnel and  
38 keepers of correctional institutions, jails or other institutions for the  
39 detention of persons accused or convicted of crime, while acting within the  
40 scope of their authority.

41 (o) "Magistrate" means an officer having power to issue a warrant for  
42 the arrest of a person charged with a crime and includes justices of the  
43 supreme court, judges of the court of appeals and judges of district courts.

1 (p) "Notice to appear" means a written request, issued by a law  
2 enforcement officer, that a person appear before a designated court at a  
3 stated time and place.

4 (q) "Preliminary examination" means a hearing before a magistrate  
5 on a complaint or information to determine if a felony has been committed  
6 and if there is probable cause to believe that the person charged committed  
7 such felony.

8 (r) "Prosecuting attorney" means any attorney who is authorized by  
9 law to appear for and on behalf of the state of Kansas in a criminal case,  
10 and includes the attorney general, an assistant attorney general, the county  
11 or district attorney, an assistant county or district attorney and any special  
12 prosecutor whose appearance is approved by the court. In the case of  
13 prosecution for violation of a city ordinance, "prosecuting attorney" means  
14 the city attorney or any assistant city attorney.

15 (s) "Search warrant" means a written order made by a magistrate  
16 directed to a law enforcement officer commanding the officer to search the  
17 premises described in the search warrant and to seize property described or  
18 identified in the search warrant.

19 (t) "Summons" means a written order issued by a magistrate directing  
20 that a person appear before a designated court at a stated time and place  
21 and answer to a charge pending against the person.

22 (u) "Warrant" means a written order made by a magistrate directed to  
23 any law enforcement officer commanding the officer to arrest the person  
24 named or described in the warrant.

25 Sec. 2. K.S.A. 22-2408 is hereby amended to read as follows: 22-  
26 2408. ~~(1)~~(a) Except as otherwise provided in subsection ~~(6)~~ of this section  
27 (f), whenever a law enforcement officer detains any person without a  
28 warrant, for any act punishable as a misdemeanor, and such person is not  
29 immediately taken before a magistrate for further proceedings, the officer  
30 may serve upon such person a written notice to appear in court. Such  
31 notice to appear shall contain the name and address of the person detained,  
32 the crime charged, and the time and place when and where such person  
33 shall appear in court.

34 ~~(2)~~(b) The time specified in such notice to appear must be at least  
35 seven days after such notice is given unless the person shall demand an  
36 earlier hearing.

37 ~~(3)~~(c) The place specified in such notice to appear must be before  
38 some court within the county in which the crime is alleged to have been  
39 committed which has jurisdiction of such crime.

40 ~~(4)~~(d) The person detained, in order to secure release as provided in  
41 this section, must give his or her written promise to appear in the court by  
42 signing the written notice prepared by the officer. The original of the  
43 notice shall be retained by the officer; a copy delivered to the person

1 detained, and the officer shall forthwith release the person.

2 ~~(5)(e)~~ (1) *Except as provided in paragraph (2), such law enforcement*  
3 *officer shall cause to be filed, without unnecessary delay, a complaint in*  
4 *the court in which a person released under subsection ~~(4)~~ (d) is given*  
5 *notice to appear, charging the crime stated in ~~said~~ such notice.*

6 (2) *The provisions of paragraph (1) shall not apply if the notice to*  
7 *appear is a valid complaint pursuant to K.S.A. 22-2202, and amendments*  
8 *thereto.*

9 (3) *If the person released fails to appear as required in the notice to*  
10 *appear, a warrant shall be issued for his or her arrest.*

11 ~~(6)(f)~~ *The procedures prescribed by this section shall not apply to the*  
12 *detention or arrest of any person for the violation of any law regulating*  
13 *traffic on the highways of this state, and the provisions of K.S.A. 8-2104*  
14 *through 8-2108, and amendments thereto, and the code of procedure for*  
15 *municipal courts shall govern such procedures.*

16 Sec. 3. K.S.A. 22-2202 and 22-2408 are hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its  
18 publication in the statute book.