

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2479**

As Agreed to May 1, 2018

Brief*

HB 2479 would create and amend law related to criminal procedure, as follows.

Stay During KSA 60-1507 Proceedings

The bill would create law in the Kansas Code of Criminal Procedure providing for an automatic stay in an underlying criminal case when a district court has granted relief in a KSA 60-1507 proceeding and the prosecution files an appellate docketing statement appealing from the district court's decision. The time during the prosecution's appeal would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued. Despite the stay, the court could release the prisoner on bond, even where the prisoner has not filed a notice of appeal, pursuant to the statute governing release after conviction.

The stay could be lifted upon motion filed in the appellate court if the court finds the prisoner has made a strong showing the prisoner is entitled to relief and will be irreparably injured if the stay is not lifted. If the stay is lifted, the time during the prosecution's appeal still would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued, and the prisoner would be

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entitled to a new bond hearing in the underlying criminal case.

Juror Contact

The bill would also add provisions to the Code of Criminal Procedure concerning contact of jurors following criminal actions. Immediately following discharge of the jury, the bill would allow the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative to discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion and the discussion takes place at a reasonable time and place.

If such discussion occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative would be required to inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

The bill would require any unreasonable contact with a juror by the defendant, the defendant's attorney or representative, the prosecutor, or the prosecutor's representative without the juror's consent to be immediately reported to the trial court. Any violation would be considered a violation of a lawful court order, which the bill provides would be punished as contempt of court.

The bill would require the judge, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is

discharged, the bill would require the judge to inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

The bill would state nothing in the section would prohibit a law enforcement officer from discussing the deliberations or verdict with a member of the jury for the purpose of investigating an allegation of criminal conduct. Further, the bill would state nothing in the section would prohibit the court or a judge from discussing the deliberations or verdict with a member of the jury for any lawful purpose.

Grand Jury Procedure

The bill would amend law concerning grand juries to require all proceedings before the grand jury, including all testimony, to be recorded. The grand jury would select the method of recording and could employ a certified shorthand reporter to make a stenographic record of all proceedings. The law currently requires the grand jury to employ a certified shorthand reporter. The bill would allow the grand jury to elect to record the proceedings utilizing a digital recording system maintained by the court, if such system is available.

The bill would also amend law concerning indictments to allow the presiding juror to sign the indictment "Presiding Grand Juror" rather than signing the presiding juror's name, which is required by current law. Additionally, the bill would amend a statute concerning amendment of an indictment to replace "the people" with "the prosecuting attorney" to clarify who would be able to order the amendment.

Finally, the bill would make technical changes to statutory references.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill and agreed to further amend the section concerning juror contact to:

- Require the judge, rather than the court, to inform jurors they have an absolute right to discuss or not discuss the deliberations or verdict with anyone;
- Specify nothing in the section would prohibit law enforcement from discussing the deliberations or verdict with a member of the jury for the purpose of investigating an allegation of criminal conduct; and
- Provide nothing in the section would prohibit the court or a judge from discussing the deliberations or verdict with a member of the jury for any lawful purpose.

Background

KSA 60-1507 provides a *habeas corpus* civil proceeding by which a prisoner in custody under sentence may move the court that imposed the sentence to vacate, set aside, or correct the sentence on various grounds.

HB 2479 was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General. As introduced, the bill contained the provisions regarding stay during KSA 60-1507 proceedings.

In the House Committee hearing, a representative of the Office of the Attorney General testified in support of the bill. Written-only proponent testimony was submitted by the Shawnee County District Attorney. No opponent or neutral testimony was provided.

In the Senate Committee on Judiciary hearing, a representative of the Attorney General testified in support of the bill. No other testimony was provided.

The Senate Committee amended the bill to insert provisions from SB 409, regarding juror contact, and SB 439, regarding grand jury procedure. [Note: The Conference Committee retained these amendments.] Further background regarding SB 409 and SB 439 is provided below.

According to the fiscal note prepared by the Division of the Budget on HB 2479, the Office of Judicial Administration indicates the bill could increase litigation in the courts, which would have a fiscal effect on the court system. However, a precise fiscal effect cannot be determined, and would most likely be accommodated within the existing schedule of court cases without requiring additional resources. Any fiscal effect is not reflected in *The FY 2019 Governor's Budget Report*.

The Kansas Association of Counties (KAC) indicates any changes allowing for tolling of the prosecutorial and appellate process could lead to longer jail stays, but the KAC cannot estimate a fiscal effect.

SB 409 (Juror Contact)

SB 409 was introduced by Senator Pettey. In the Senate Committee on Judiciary hearing, staff of the Office of Revisor of Statutes explained that currently, contact with jurors is governed by Supreme Court Rule 169, which requires instruction on completion of a jury trial and before the jury is discharged that whether jurors talk to anyone is entirely their own decision; jurors may talk to attorneys but need not; and attorney contact over a juror's objections or that becomes critical of the juror's service should be reported to the court. Senator Pettey appeared as a proponent and stated she introduced the bill after hearing from a judge who expressed concerns about contact after a trial when a defendant who was convicted sent letters to jurors and the court had no

recourse. The judge offered written-only proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to distinguish requirements based upon whether the discussion occurs “immediately following the discharge of the jury,” rather than upon the passage of 24 hours from the verdict.

SB 409, as amended, would have applied to both criminal and civil trials. The language added to HB 2479 from SB 409 would apply only to criminal trials.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of SB 409 could affect the number of appeals filed and could impact district courts because jurors would have the right to any copy of a declaration filed with the court. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor’s Budget Report*.

SB 439 (Grand Jury Procedure)

SB 439 was introduced by the Senate Committee on Ways and Means at the request of Senator Schmidt on the behalf of the Shawnee County District Attorney.

In the Senate Committee on Judiciary hearing, the Shawnee County District Attorney appeared in support of the bill and explained amendments in the bill concerning recordings are needed due to difficulty in securing a certified shorthand reporter. He explained the changes concerning indictments would allow more anonymity for the presiding juror and would be more consistent with the federal grand jury system. Finally, he stated the removal of “the people,” which is not defined in statute, would clarify the intent is for the prosecutor to have the ability to amend an indictment. A representative of American Family Action appeared as a neutral conferee. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of SB 439 would have a negligible fiscal effect upon the Judicial Branch. The KAC states enactment of the bill could reduce expenditures for counties because grand jury proceedings could be recorded digitally, instead of by a stenographer.

criminal procedure; habeas corpus proceedings; juror contact; grand jury proceedings

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