

2021 Kansas Statutes

22-3613. Writ of habeas corpus relief granted; appeal by prosecution; stay of underlying criminal case. (a)

When a district court has granted relief in a proceeding under K.S.A. 60-1507, and amendments thereto, and the prosecution files a docketing statement in an appellate court seeking an appeal from the district court's decision to grant relief, the underlying criminal case shall automatically be stayed, and the time during which the prosecution's appeal is pending shall not be counted for the purpose of determining whether a defendant is entitled to discharge under K.S.A. 22-3402, and amendments thereto, until the mandate in the prosecution's appeal is issued.

(b) Notwithstanding the stay required by subsection (a), a court may release the prisoner on bond in accordance with K.S.A. 22-2804, and amendments thereto, regardless of whether the prisoner has filed a notice of appeal.

(c) The stay of the underlying criminal case in subsection (a) may be lifted upon a motion filed in appellate court if the court finds that the prisoner:

- (1) Has made a strong showing that the prisoner is entitled to relief; and
- (2) will be irreparably injured if the stay is not lifted.

(d) If the stay in subsection (a) is lifted:

- (1) The time during which the prosecution's appeal is pending shall not be counted for the purpose of determining whether a defendant is entitled to discharge under K.S.A. 22-3402, and amendments thereto, until the mandate in the prosecution's appeal is issued; and
- (2) the prisoner shall be entitled to a new bond hearing in the underlying criminal case pursuant to K.S.A. 22-2802, and amendments thereto.

(e) This section shall be a part of and supplemental to the Kansas code of criminal procedure.

History: L. 2018, ch. 105, § 1; July 1.