

HOUSE BILL No. 2479

AN ACT concerning criminal procedure; relating to stay of certain criminal cases; appeal of writ of habeas corpus relief; contact with jurors, procedures and limitations; grand juries; amending K.S.A. 2017 Supp. 22-3006, 22-3011 and 22-3015 and repealing the existing sections.

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

New Section 1. (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.

New Sec. 2. (a) On completion of a jury trial in a criminal action and before the jury is discharged, the judge shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone, except as provided in subsections (f) and (g). The judge shall also inform the jurors of the provisions set forth in subsections (b), (c), (d) and (e).

(b) Immediately following the discharge of the jury in a criminal action, the defendant, or the defendant's attorney or representative, or the prosecutor, or the prosecutor's representative, may discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion.

(c) If a discussion of the jury deliberations or verdict with a member of the jury occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury, the defendant or the defendant's attorney or representative, or the prosecutor or the prosecutor's representative, shall 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.

(d) Any unreasonable contact with a juror by the defendant, or the defendant's attorney or representative, or by the prosecutor, or the prosecutor's representative, without the juror's consent shall be immediately reported to the trial court.

(e) Any violation of this section shall be considered a violation of a lawful court order and may be punished as contempt of court.

(f) Nothing in this section shall 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.

(g) Nothing in this section shall prohibit the court or a judge from discussing the deliberations or verdict with a member of the jury for any lawful purpose.

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

Sec. 3. K.S.A. 2017 Supp. 22-3006 is hereby amended to read as follows: 22-3006. (a) Persons summoned for service as grand jurors shall be compensated for their service and expenses at the rates provided by law for the compensation of petit jurors in the district court. Such compensation shall be paid from the general fund of the county.

(b) *All proceedings before the grand jury, including all testimony, shall be recorded.* The grand jury shall *select the method of recording and may* employ a certified shorthand reporter who shall make a stenographic record of all ~~testimony and other proceedings before the grand jury.~~ The compensation of the reporter shall be fixed by the district court and paid from the general fund of the county. *The grand jury may also elect to record the proceedings utilizing a digital recording system maintained by the court, if such system is available.*

(c) The grand jury may, with the approval of the district court, employ investigators and, except in the case of grand juries impaneled pursuant to ~~subsection (b) of K.S.A. 22-3001(b),~~ and amendments thereto, employ special counsel. The grand jury may also incur other expenses for services and supplies as it and the district court may deem necessary. Compensation for such services and supplies shall be fixed by the district court and shall be paid from the general fund of the county. Any special counsel or investigator employed by the grand jury shall be selected by majority vote of such grand jury only after hearing testimony from the person filing the petition pursuant to K.S.A. 22-3001, and amendments thereto. Subject to the provisions of this section, the grand jury shall have all authority to investigate any concerns associated with such petition.

Sec. 4. K.S.A. 2017 Supp. 22-3011 is hereby amended to read as follows: 22-3011. (a) An indictment may be found only on the concurrence of 12 or more grand jurors. When an indictment is found, the presiding juror shall endorse thereon “a true bill” and shall sign the presiding juror’s name as presiding juror *or sign the indictment “Presiding Grand Juror.”*

(b) When 12 or more grand jurors do not concur in finding an indictment, the presiding juror shall certify that the indictment is “not a true bill.”

(c) Indictments found by the grand jury shall be presented by its presiding juror, in the jury’s presence, to the court and shall be filed and remain as records of the court.

(d) A grand jury impaneled pursuant to ~~subsection (c) of K.S.A. 22-3001(c),~~ and amendments thereto, may request that the attorney general prosecute the case arising from an indictment found by such grand jury if, in the opinion of the grand jury, the prosecuting attorney would not diligently prosecute such case. The court shall notify the attorney general of such request and the attorney general may prosecute such case.

Sec. 5. K.S.A. 2017 Supp. 22-3015 is hereby amended to read as follows: 22-3015. (a) *Matters of form, time, place, names.* At any time before or during trial, the court may, upon application of the ~~people prosecuting attorney~~ and with notice to the defendant and opportunity for the defendant to be heard, order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place and names of persons when such amendment does not change the substance of the charge, and does not prejudice the defendant on the merits. Upon ordering an amendment, the court, for good cause shown, may grant a continuance to provide the defendant adequate opportunity to prepare a defense.

(b) *Prohibition as to matters of substance, exception.*

(1) An indictment shall not be amended as to the substance of the offense charged, except *as provided further.*

(2) The court may, upon application of the ~~people prosecuting attorney~~ and with notice to the defendant and opportunity for the defendant to be heard, order the substance of an indictment to be amended for the limited purpose of effecting a change of plea by the defendant pursuant to a plea agreement reached between the defendant and the prosecuting attorney. The provisions of this paragraph shall apply only to an indictment found by a grand jury impaneled pursuant to ~~subsection (a) or (b) of K.S.A. 22-3001(a) or (b),~~ and amendments thereto, and shall not apply to an indictment found by a grand jury impaneled pursuant to ~~subsection (c) of K.S.A. 22-3001(c),~~ and amendments thereto.

(c) This section shall be part of and supplemental to article 30 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 6. K.S.A. 2017 Supp. 22-3006, 22-3011 and 22-3015 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.