

Stay During Habeas Corpus Proceedings, Juror Contact, and Grand Jury Procedures; HB 2479

HB 2479 creates and amends law related to criminal procedure.

Stay During KSA 60-1507 Proceedings

The bill creates 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 is not counted for purposes of the speedy trial statute until the mandate in the appeal has issued. Despite the stay, the court can 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 can 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 will not be counted for purposes of the speedy trial statute until the mandate in the appeal has been issued, and the prisoner will be entitled to a new bond hearing in the underlying criminal case.

Juror Contact

The bill also adds provisions to the Code of Criminal Procedure concerning contact of jurors following criminal actions. Immediately following discharge of the jury, the defendant, 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 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 must 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 requires 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 will be considered a violation of a lawful court order, which the bill provides is punished as contempt of court.

The bill requires 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 judge must 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 states nothing in the section prohibits 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 states nothing in the section prohibits 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 amends law concerning grand juries to require all proceedings before the grand jury, including all testimony, to be recorded. The grand jury may select the method of recording and employ a certified shorthand reporter to make a stenographic record of all proceedings. The law previously required the grand jury to employ a certified shorthand reporter. The bill allows 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 also amends law concerning indictments to allow the presiding juror to sign the indictment “Presiding Grand Juror” rather than signing the presiding juror’s name, which was required under former law. Additionally, the bill amends a statute concerning amendment of an indictment to replace “the people” with “the prosecuting attorney” to clarify who can order the amendment.