

SPEEDY TRIAL

ABA STANDARD

PART I. THE TRIAL CALENDAR

1.1 PRIORITIES IN SCHEDULING CRIMINAL CASES.

TO EFFECTUATE THE RIGHT OF THE ACCUSED TO A SPEEDY TRIAL, AND THE INTEREST OF THE PUBLIC IN PROMPT DISPOSITION OF CRIMINAL CASES, INSORFAR AS IS PRACTICABLE:

(a) THE TRIAL OF CRIMINAL CASES SHOULD BE GIVEN PREFERENCE OVER CIVIL CASES; AND

(b) THE TRIAL OF DEFENDANTS IN CUSTODY AND DEFENDANTS WHOSE PRETRIAL LIBERTY IS REASONABLY BELIEVED TO PRESENT UNUSUAL RISKS SHOULD BE GIVEN PREFERENCE OVER OTHER CRIMINAL CASES.

KANSAS CODE

All persons charged with crimes shall be tried without unnecessary delay. Continuances may be granted to either party for good cause shown. (K.S.A. 1971 Supp. 22-3401).

In all prosecutions, the accused shall be allowed...a speedy public trial... (Kan. Const. Bill of Rights, Sec. 10).

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... (U.S. Const. Am. 6).

COMMENT

Kansas law and practice conforms with the Standard. There is no statutory preference for the trial of criminal cases in Kansas. However, the Kansas Supreme Court has held that the Bill of Rights and speedy trial provisions are a directive to public officials against delay of criminal prosecutions, (State v. Goetz, 187 Kan. 117, 353 P.2d 975 (1960)), and that the speedy trial provision is an absolute right, not a privilege, which cannot be deprived by the laches of public officers. (State v. Brockelman, 173 Kan. 469, 249 P.2d 692 (1952)).

The Kansas court has clearly stated that compliance with the statutory provisions for speedy trial fulfills all of the constitutional requirements. (State v. Stanley, 179 Kan. 613, 296 P.2d 1088 (1956)).

Kansas does establish an implied preference for the trial of defendants in custody in that the pain of discharge is imposed at ninety (90) days as opposed to 180 days for defendants free on bond. No preference is given defendants deemed to be unusual risks to the public, except that which is implied by operation of the bail statute (K.S.A. 1971 Supp. 22-2802(4)).

ABA STANDARD

1.2 COURT CONTROL; PROSECUTOR'S DUTY TO REPORT.

CONTROL OVER THE TRIAL CALENDAR SHOULD BE VESTED IN THE COURT. THE PROSECUTING ATTORNEY SHOULD BE REQUIRED TO FILE AS A PUBLIC RECORD PERIODIC REPORTS WITH THE COURT SETTING FORTH THE REASONS FOR DELAY AS TO EACH CASE FOR WHICH HE HAS NOT REQUESTED TRIAL WITHIN A PRESCRIBED TIME FOLLOWING CHARGING. THE PROSECUTING ATTORNEY SHOULD ALSO ADVISE THE COURT OF FACTS RELEVANT IN DETERMINING THE ORDER OF CASES ON THE CALENDAR.

KANSAS CODE

It shall be the duty of the judicial administrator to cause clerks of district courts of this state, to submit full reports on all cases pending in each district court in this state on, or before the first day of January of each year, and the said judicial administrator shall analyze and study such reports and determine what district courts are in need of additional judges to assist the said courts, so that the litigants of this state shall receive just, speedy, and inexpensive determination of all causes pending in the respective courts throughout the state... (K.S.A. 1971 Supp. 20-318).

The judge or judges of each judicial district may make such rules as are found necessary for the administration of the affairs of the district court... (S.Ct. Rule No. 119).

COMMENT

The Kansas code does not conform with the Standard. No duty is imposed upon the prosecuting attorney to encourage the avoidance of delay. There is no provision specifying control of the criminal trial calendar, nor is there a provision imparting to the court the facts relevant to determine the order of cases on the criminal trial calendar.

ABA STANDARD

1.3 CONTINUANCES.

THE COURT SHOULD GRANT A CONTINUANCE ONLY UPON A SHOWING OF GOOD CAUSE AND ONLY FOR SO LONG AS IS NECESSARY, TAKING INTO ACCOUNT NOT ONLY THE REQUEST OR CONSENT OF THE PROSECUTION OR DEFENSE, BUT ALSO THE PUBLIC INTEREST IN PROMPT DISPOSITION OF THE CASE.

KANSAS CODE

See K.S.A. 1971 Supp. 22-3401 cited at 1.1 supra.

COMMENT

The Kansas law conforms with the Standard. See time limits at 2.1 infra. The granting or refusal of a continuance is a matter resting largely within the sound discretion of the district court and will not be disturbed on appeal in the absence of a clear abuse of that discretion. State v. McCollum, 209 Kan. 498, ____ P.2d ____ (1972).

ABA STANDARD

PART II. DETERMINING WHAT IS A SPEEDY TRIAL

2.1 SPEEDY TRIAL LIMITS.

A DEFENDANT'S RIGHT TO SPEEDY TRIAL SHOULD BE EXPRESSED BY RULE OR STATUTE IN TERMS OF DAYS OR MONTHS RUNNING FROM A SPECIFIED EVENT. CERTAIN PERIODS OF NECESSARY DELAY SHOULD BE EXCLUDED IN COMPUTING THE TIME FOR TRIAL, AND THESE SHOULD BE SPECIFICALLY IDENTIFIED BY RULE OR STATUTE INsofar AS IS PRACTICABLE.

KANSAS CODE

(1) If any person charged with a crime and held in jail solely by reason thereof shall not be brought to trial within ninety days after his arraignment on the charge, he shall be entitled to be discharged from further liability

to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).

(2) If any person charged with a crime and held to answer on an appearance bond shall not be brought to trial within 180 days after arraignment on the charge, he shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).

(3) The time for trial may be extended beyond the limitations of subsections (1) and (2) of this section for any of the following reasons:

(a) The defendant is incompetent to stand trial;

(b) A proceeding to determine the defendant's competency to stand trial is pending and a determination thereof may not be completed within the time limitations fixed for trial by this section;

(c) There is material evidence which is unavailable; that reasonable efforts have been made to procure such evidence; and that there are reasonable grounds to believe that such evidence can be obtained and trial commenced within the next succeeding ninety days. Not more than one continuance may be granted the state on this ground, unless for good cause shown, where the original continuance was for less than ninety days, and the trial is commenced within one hundred twenty days from the original trial date;

(d) Because of other cases pending for trial, the court does not have sufficient time to commence the trial of the case within the time fixed for trial by this section. Nor more than one continuance of not more than thirty days may be ordered upon this ground.

(4) In the event a mistrial is declared or a conviction is reversed on appeal to the supreme court, the time limitations provided for therein shall commence to run from the date the mistrial is declared or the date the mandate of the supreme court is filed in the district court.

(K.S.A. 1971 Supp. 22-3402).

(1) A defendant charged with a felony in an information shall appear for arraignment upon such information in the district court not later than the next required day of court which occurs ten or more days after the order of the magistrate binding the defendant to appear in the district court for trial, unless a later time is requested or consented to by the defendant and approved by the court or unless continued by order of the court.

(2) A defendant charged with a felony in an indictment shall appear for arraignment upon such indictment in the district court not later than the next required day of court which occurs ten or more days after his arrest upon a warrant issued on the indictment, unless a later time is requested or consented to by the defendant and approved by the court or unless continued by order of the court.

(3) In every judicial district, the judge or judges thereof shall provide by order for one or more required days of court each month in each county of the district, at which time a judge will be personally present at the courthouse for the purpose of conducting arraignments. (Laws of 1972, Ch. 121).

COMMENT

The Kansas law conforms with the Standard. The defendant's speedy trial right is specified as ninety days for in custody defendants and 180 days for defendants held to answer on bond. The running of such periods commences at the time of a specified event, the date of arraignment.

ABA STANDARD

2.2 WHEN TIME COMMENCES TO RUN.

THE TIME FOR TRIAL SHOULD COMMENCE RUNNING, WITHOUT DEMAND BY THE DEFENDANT, AS FOLLOWS:

KANSAS CODE

See K.S.A. 1971 Supp. 22-3402(4), cited at 2.1 supra.

COMMENT

The Kansas code conforms with the Standard. Time for trial of a defendant not incarcerated in a penal institution commences without demand by the defendant. (State v. Sanders, 209 Kan. 231, 495 P.2d 1023 (1972)).

ABA STANDARD

(a) FROM THE DATE THE CHARGE IS FILED, EXCEPT THAT IF THE DEFENDANT HAS BEEN CONTINUOUSLY HELD IN CUSTODY OR ON BAIL OR RECOGNIZANCE UNTIL THAT DATE TO ANSWER FOR THE SAME CRIME OR A CRIME BASED ON THE SAME CONDUCT OR ARISING FROM THE SAME CRIMINAL EPISODE, THEN THE TIME FOR TRIAL SHOULD COMMENCE RUNNING FROM THE DATE HE WAS HELD TO ANSWER.

KANSAS CODE

See K.S.A. 22-3402 (1) (1974) cited supra at 2.1.

COMMENT

Kansas law does not conform with the Standard. The Kansas speedy trial statute runs not from the date the charge is filed or from the date the defendant is first held to answer, but from the date of arraignment. However, K.S.A. 1974 Supp. 22-3206 (1), cited at 2.1 supra, assure that there will be no undue delay in the date of arraignment.

Although arraignment delay may cause the time of trial to be extended beyond the statutory period, if the defendant is arraigned on the next regular court day more than ten days following the preliminary examination, the speedy trial requirements will be met. (State v. Osbey, 213 Kan. 564, 517 P.2d 141 (1974)).

ABA STANDARD

(b) IF THE CHARGE WAS DISMISSED UPON MOTION OF THE DEFENDANT AND THEREAFTER THE DEFENDANT WAS HELD TO ANSWER OR CHARGED WITH AN OFFENSE, FROM THE DATE THE DEFENDANT WAS SO HELD TO ANSWER OR CHARGED, AS ABOVE; OR

KANSAS CODE

See K.S.A. 22-3402 (1) (1974) cited supra at 2.1.

COMMENT

The Kansas law is in accord with the Standard in that no lapse of time for trial would accrue to a defendant causing a delay.

ABA STANDARD

(c) IF THE DEFENDANT IS TO BE TRIED AGAIN FOLLOWING A MISTRIAL, AN ORDER FOR A NEW TRIAL, OR AN APPEAL OR COLLATERAL ATTACK, FROM THE DATE OF THE MISTRIAL, ORDER GRANTING A NEW TRIAL OR REMAND.

KANSAS CODE

See K.S.A. 1971 Supp. 22-3402 at 2.1 supra.

COMMENT

Kansas law conforms with the Standard.

ABA STANDARD

2.3 EXCLUDED PERIODS.

THE FOLLOWING PERIODS SHOULD BE EXCLUDED IN COMPUTING THE TIME FOR TRIAL:

(a) THE PERIOD OF DELAY RESULTING FROM OTHER PROCEEDINGS CONCERNING THE DEFENDANT, INCLUDING BUT NOT LIMITED TO AN EXAMINATION AND HEARING ON COMPETENCY AND THE PERIOD DURING WHICH HE IS INCOMPETENT TO STAND TRIAL, HEARINGS ON PRETRIAL MOTIONS, INTERLOCUTORY APPEALS, AND TRIAL OF OTHER CHARGES.

KANSAS CODE

See K.S.A. 1971 Supp. 22-3402(1)(3) at 2.1 supra.

COMMENT

The Kansas code substantially complies with the Standard. See the specific exceptions to the cited statute. While pretrial motions are not specified, the trial court should be able to make appropriate findings of cause for delay when the defendant's motions cause the delay.

ABA STANDARD

(b) THE PERIOD OF DELAY RESULTING FROM CONGESTION OF THE TRIAL DOCKET WHEN THE CONGESTION IS ATTRIBUTABLE TO EXCEPTIONAL CIRCUMSTANCES.

KANSAS CODE

See K.S.A. 22-3402 (3) (d) (1974) cited
supra at 2.1.

COMMENT

Kansas conforms to the Standard which recognizes the obligation of the judiciary to assure the speedy trial guarantee. At least one federal court has warned federal and state governments that adequate judicial resources must be applied to the task of affording a speedy trial. (Kind v. United States, 265 F.2d 567 (D.C. Cir. 1959) Smith v. United States, 331 F.2d 784 (D.C. Cir. 1964)). A similar situation was discussed in State v. Coover, 165 Kan. 179, 193 P.2d 209 (1948) where the court failed to provide for the attendance of a jury.

Court's trial schedule is one factor in permitting continuance beyond speedy trial period. (State v. McCollum, 211 Kan. 631, 507 P.2d 196 (1973)).

ABA STANDARD

(c) THE PERIOD OF DELAY RESULTING FROM A CONTINUANCE GRANTED AT THE REQUEST OR WITH THE CONSENT OF THE DEFENDANT OR HIS COUNSEL. A DEFENDANT WITHOUT COUNSEL SHOULD NOT BE DEEMED TO HAVE CONSENTED TO A CONTINUANCE UNLESS HE HAS BEEN ADVISED BY THE COURT OF HIS RIGHT TO A SPEEDY TRIAL AND THE EFFECT OF HIS CONSENT.

KANSAS CODE

See K.S.A. 22-3402 (1) (1974) cited at
2.1 supra.

COMMENT

The Kansas law is in accord with the Standard. A defendant's request for appointment of new counsel seems to be treated as a request for continuance or at least a cause of delay attributed to the defendant. State v. McCollum, supra. Also where the defendant's attorney requests leave to withdraw resulting in delay, that delay is chargeable to the defendant, at least where no objection to the request is made by the defendant. (State v. Welch, 212 Kan. 180, 509 P.2d 1122 (1973)).

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(d) THE PERIOD OF DELAY RESULTING FROM A CONTINUANCE GRANTED AT THE REQUEST OF THE PROSECUTING ATTORNEY, IF:

(i) THE CONTINUANCE IS GRANTED BECAUSE OF THE UNAVAILABILITY OF EVIDENCE MATERIAL TO THE STATE'S CASE, WHEN THE PROSECUTING ATTORNEY HAS EXERCISED DUE DILIGENCE TO OBTAIN SUCH EVIDENCE AND THERE ARE REASONABLE GROUNDS TO BELIEVE THAT SUCH EVIDENCE WILL BE AVAILABLE AT A LATER DATE; OR

(ii) THE CONTINUANCE IS GRANTED TO ALLOW THE PROSECUTING ATTORNEY ADDITIONAL TIME TO PREPARE THE STATE'S CASE AND ADDITIONAL TIME IS JUSTIFIED BECAUSE OF THE EXCEPTIONAL CIRCUMSTANCES OF THE CASE.

KANSAS CODE

See K.S.A. 22-3402 (3) (c) (1974) cited at 2.1 supra.

COMMENT

Kansas conforms to the Standard, although the Kansas provision has no exception for prosecution preparation. Hospitalization of state's witness is one factor justifying discretionary continuance beyond speedy trial period. (State v. Petrin, 213 Kan. 258, 515 P.2d 748 (1973)).

ABA STANDARD

(e) THE PERIOD OF DELAY RESULTING FROM THE ABSENCE OR UNAVAILABILITY OF THE DEFENDANT. A DEFENDANT SHOULD BE CONSIDERED ABSENT WHENEVER HIS WHEREABOUTS ARE UNKNOWN AND IN ADDITION HE IS ATTEMPTING TO AVOID APPREHENSION OR PROSECUTION OR HIS WHEREABOUTS CANNOT BE DETERMINED WITH DUE DILIGENCE. A DEFENDANT SHOULD BE CONSIDERED UNAVAILABLE WHENEVER HIS WHEREABOUTS ARE KNOWN BUT HIS PRESENCE FOR TRIAL CANNOT BE OBTAINED OR HE RESISTS BEING RETURNED TO THE STATE FOR TRIAL.

KANSAS CODE

See K.S.A. 22-3402 (1) (1974) cited at 2.1 supra.

COMMENT

The Kansas code and case law conform to the Standard. See State v. Hess, 180 Kan. 472, 304 P.2d 474 (1956) stating that intentional unavailability of the defendant tolls the speedy trial statute. State v. Welch, 212 Kan. 180, 509 P.2d 1122 (1973). State v. Hemminger, 210 Kan. 587, 502 P.2d 791 (1972).

ABA STANDARD

(f) IF THE CHARGE WAS DISMISSED UPON MOTION OF THE PROSECUTING ATTORNEY AND THEREAFTER A CHARGE IS FILED AGAINST THE DEFENDANT FOR THE SAME OFFENSE OR AN OFFENSE REQUIRED TO BE JOINED WITH THAT OFFENSE, THE PERIOD OF DELAY FROM THE DATE THE CHARGE WAS DISMISSED TO THE DATE THE TIME LIMITATIONS WOULD COMMENCE RUNNING AS TO THE SUBSEQUENT CHARGE HAD THERE BEEN NO PREVIOUS CHARGE.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas would appear to conform with the Standard. The exclusions provided in other situations by K.S.A. 22-3402 (1974) are reasonably strict as to the conduct of the prosecution and the courts, and it is doubtful that intentional subversion of the time limits would be permitted by mere dismissal and recharging.

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(g) A REASONABLE PERIOD OF DELAY WHEN THE DEFENDANT IS JOINED FOR TRIAL WITH A CODEFENDANT AS TO WHOM THE TIME FOR TRIAL HAS NOT RUN AND THERE IS GOOD CAUSE FOR NOT GRANTING A SEVERANCE. IN ALL OTHER CASES THE DEFENDANT SHOULD BE GRANTED A SEVERANCE SO THAT HE MAY BE TRIED WITHIN THE TIME LIMITS APPLICABLE TO HIM.

KANSAS CODE

No comparable code provision.

COMMENT

The Kansas code does not comply with the Standard and would apparently compel severance of codefendants in order to preserve the speedy trial rights of the accused.

ABA STANDARD

(h) OTHER PERIODS OF DELAY FOR GOOD CAUSE.

KANSAS CODE

No comparable code provision. See State v. Welch, 212 Kan. 180, 509 P.2d 1122 (1973).

COMMENT

The Kansas provisions are specific and include no such general exception.

ABA STANDARD

PART III. SPECIAL PROCEDURES: PERSON SERVING TERM OF IMPRISONMENT.

3.1 PROSECUTOR'S OBLIGATIONS; NOTICE TO AND AVAILABILITY OF PRISONER.

TO PROTECT THE RIGHT TO SPEEDY TRIAL OF A PERSON SERVING A TERM OF IMPRISONMENT EITHER WITHIN OR WITHOUT THE JURISDICTION, IT SHOULD BE PROVIDED BY RULE OR STATUTE AND, WHERE NECESSARY INTERSTATE COMPACT, THAT

(a) IF THE PROSECUTING ATTORNEY KNOWS THAT A PERSON CHARGED WITH A CRIMINAL OFFENSE IS SERVING A TERM OF IMPRISONMENT IN A PENAL INSTITUTION OF THAT OR ANOTHER JURISDICTION, HE MUST PROMPTLY:

(i) UNDERTAKE TO OBTAIN THE PRESENCE OF THE PRISONER FOR TRIAL; OR

(ii) CAUSE A DETAINER TO BE FILED WITH THE OFFICIAL HAVING CUSTODY OF THE PRISONER AND REQUEST HIM TO SO ADVISE THE PRISONER AND TO ADVISE THE PRISONER OF HIS RIGHT TO DEMAND TRIAL.

KANSAS CODE

See Uniform Mandatory Disposition of Detainers Act (K.S.A. 22-4301 (1974) et seq.) and Agreement on Detainers (K.S.A. 22-4401 (1974) et seq.) infra at 3.1 (b) (c).

COMMENT

Kansas substantially conforms with the Standard. The speedy trial rights of Kansas inmate defendants are protected by the Detainers Act (in-state defendants) and the Agreement on Detainers (out-of-state defendants). Kansas defendants in jurisdictions not adopting the Agreement on Detainers are protected by Smith v. Hooey, 393 U.S. 374 (1967). In Smith v. Hooey it was held that the sixth amendment right to a speedy trial extends to prisoners serving sentences. However, neither the Detainers Act nor the Agreement on Detainers place any obligation upon a prosecutor to obtain the presence of an inmate without a demand by the inmate. (State v. Brooks, 206 Kan. 418, 472 P.2d 893 (1971)). Thus, the status of the inmate differs from an accused not imprisoned who need not demand trial in order to avail himself of the statutory speedy trial guarantee. Defendant's failure to make demand for trial in Kansas as one factor muting speedy trial defense on constitutional grounds. (State v. Hemminger, 210 Kan. 587, 502 P.2d 791 (1972)). See also State v. Otero, 210 Kan. 530, 502 P.2d 763 (1972)).

ABA STANDARD

(b) IF AN OFFICIAL HAVING CUSTODY OF SUCH A PRISONER RECEIVES A DETAINER, HE MUST PROMPTLY ADVISE THE PRISONER OF THE CHARGE AND OF THE PRISONER'S RIGHT TO DEMAND TRIAL. IF AT ANY TIME THEREAFTER THE PRISONER INFORMS SUCH OFFICIAL THAT HE DOES DEMAND TRIAL, THE OFFICIAL SHALL CAUSE A CERTIFICATE TO THAT EFFECT TO BE SENT PROMPTLY TO THE PROSECUTING ATTORNEY WHO CAUSED THE DETAINER TO BE FILLED.

KANSAS CODE

The warden, superintendent or other official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information or complaint against him of which the warden, superintendent or other official has knowledge or notice, and of his right to make a request for final disposition thereof. (K.S.A. 22-4301 (b) (1974)).

The request shall be delivered to the warden, superintendent or other official having custody of the prisoner, who shall forthwith:

(1) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the state board of probation and parole relating to the prisoner; and

(2) Send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the county attorney to whom it is addressed. (K.S.A. 22-4302 (1974)).

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered mail, return and receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based. (K.S.A. 22-4401 III (b) (c) (1974)).

COMMENT

The Kansas code is in accordance with the Standard except as to Kansas defendants incarcerated in states not parties to the Agreement on Detainers. In the absence of evidence of non receipt of a request for final disposition under the Detainer's Act, the prisoner's execution of a proper request is all that is required of him and any failure by the penal or prosecutorial officials to take action thereon will not excuse failure to comply with the 180 day disposition period. (Pierson v. State, 210 Kan. 367, 502 P.2d 721 (1972)).

ABA STANDARD

(c) UPON RECEIPT OF SUCH CERTIFICATE, THE PROSECUTING ATTORNEY MUST PROMPTLY SEEK TO OBTAIN THE PRESENCE OF THE PRISONER FOR TRIAL

KANSAS CODE

Within one hundred eighty (180) days after the receipt of the request and certificate by the court and county attorney or within such additional time as the court for good cause shown in open court may grant, the prisoner or his counsel being present, the indictment, information or complaint shall be brought to trial... (K.S.A. 22-4303 (1974)).

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. (K.S.A. 22-4401 III (a) (1974)).

COMMENT

Kansas law is in substantial conformity with the Standard. As to those Kansas defendants imprisoned in jurisdictions not a party to the interstate agreement, the inmate entitled to discharge must show undue delay together with prejudice resulting therefrom. (State v. Stanphill, 206 Kan. 612, 481 P.2d 998 (1971)). Prejudice to defendant is presumed from lengthy trial delay (State v. Otero, 210 Kan. 530, 502 P.2d 763 (1972)).

ABA STANDARD

(d) WHEN THE OFFICIAL HAVING CUSTODY OF THE PRISONER RECEIVES FROM THE PROSECUTING ATTORNEY A PROPERLY SUPPORTED REQUEST FOR TEMPORARY CUSTODY OF SUCH PRISONER FOR TRIAL, THE PRISONER SHALL BE MADE AVAILABLE TO THAT PROSECUTING ATTORNEY (SUBJECT, IN CASES OF INTERJURISDICTIONAL TRANSFER, TO THE TRADITIONAL RIGHT OF THE EXECUTIVE TO REFUSE TRANSFER AND THE RIGHT OF THE PRISONER TO CONTEST THE LEGALITY OF HIS DELIVERY).

KANSAS CODE

In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had ... (K.S.A. 22-4401 V (a) (1974)).

COMMENT

Kansas code and practice conform with the Standard. No mandatory provision for making an in-state prisoner available appears in the Detainers Act, however availability is customarily obtained by the writ of habeas corpus ad prosequendum.

ABA STANDARD

3.2 COMPUTATION OF TIME.

THE TIME FOR TRIAL OF A PRISONER WHOSE PRESENCE FOR TRIAL HAS BEEN OBTAINED WHILE HE IS SERVING A TERM OF IMPRISONMENT SHOULD COMMENCE RUNNING FROM THE TIME HIS PRESENCE FOR TRIAL HAS BEEN OBTAINED, SUBJECT TO ALL EXCLUDED PERIODS LISTED IN SECTION 2.3. IF THE PROSECUTING ATTORNEY HAS UNREASONABLY DELAYED (i) CAUSING A DETAINER TO BE FILED WITH THE CUSTODIAL OFFICIAL, OR (ii) SEEKING TO OBTAIN THE PRISONER'S PRESENCE FOR TRIAL IN LIEU OF FILING A DETAINER OR UPON RECEIPT OF A CERTIFICATE OF DEMAND, SUCH PERIODS OF UNREASONABLE DELAY SHOULD ALSO BE COUNTED IN ASCERTAINING WHETHER THE TIME FOR TRIAL HAS RUN.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas practice conforms with the Standard except that the Standard contains no provision for delay by the prosecutor in filing the detainer. The time for trial is specified in the Detainer's Act and interstate Agreement at 180 days after receipt of the prisoner's demand.

ABA STANDARD

PART IV. CONSEQUENCES OF DENIAL OF SPEEDY TRIAL.

4.1 ABSOLUTE DISCHARGE.

IF A DEFENDANT IS NOT BROUGHT TO TRIAL BEFORE THE RUNNING OF THE TIME FOR TRIAL, AS EXTENDED BY EXCLUDED PERIODS, THE CONSEQUENCE SHOULD BE ABSOLUTE DISCHARGE. SUCH DISCHARGE SHOULD FOREVER BAR PROSECUTION FOR THE OFFENSE CHARGED AND FOR ANY OTHER OFFENSE REQUIRED TO BE JOINED WITH THAT OFFENSE. FAILURE OF THE DEFENDANT OR HIS COUNSEL TO MOVE FOR DISCHARGE PRIOR TO TRIAL OR ENTRY OF A PLEA OF GUILTY SHOULD CONSTITUTE WAIVER OF THE RIGHT TO SPEEDY TRIAL.

KANSAS CODE

If, after such a request, the indictment, information or complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall dismiss it with prejudice. (K.S.A. 22-4303 (1974)).

If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. (K.S.A. 22-4401 IV(e) (1974)).

COMMENT

Kansas law is in accordance with the Standard. However, although failure to comply is couched in jurisdictional terms as to in-state prisoners, it is doubtful the defense could be preserved following a plea of guilty. In Pierson v. State, cited supra at 3.1, Kansas Supreme Court held the failure to raise the speedy trial defense under the Detainer's Act at or prior to trial did not constitute a waiver thereof because it was jurisdictional under the specific terms of the statute. It is possible the language of the agreement on detainers might require the same result. See Standard on Criminal Appeals.

ABA STANDARD

4.2 RELEASE ON RECOGNIZANCE.

IF A SHORTER TIME LIMITATION IS APPLICABLE TO DEFENDANTS HELD IN CUSTODY, THE RUNNING OF THIS TIME SHOULD ONLY REQUIRE RELEASE OF SUCH A DEFENDANT ON HIS OWN RECOGNIZANCE.

KANSAS CODE

See K.S.A. 22-3402 (1) (1974) cited
at 2.1 supra.

COMMENT

The Kansas code does not conform with the Standard. The effect of the Standard is to place in-custody defendants on the same basis with persons held to answer on bond, if the shorter speedy trial limitation is allowed to pass. K.S.A. 1971 Supp. 3402(1) would require an absolute discharge after the lapse of the shorter speedy trial limitation. (State v. Sanders, cited supra at 2.2.