

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert Frey at  
Chairperson

3:30 ~~am~~/p.m. on February 1, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Justice and Miller were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes' Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Jon Josserand, Office of the Secretary of State  
Jim Clark, Kansas County and District Attorneys Association  
Gene Olander, Shawnee County District Attorney  
Nick Tomasic, Wyandotte County District Attorney  
Matt Lynch, Judicial Council  
Marjorie Van Buren, Office of Judicial Administration

HB 2749 - An act relating to divisions of district court in Reno County.

Representative Ediger, sponsor, said the reason for introduction of the bill had been resolved, and the hearing scheduled for this meeting was no longer necessary. He moved to report HB 2749 adversely, seconded by Representative Matlack. Motion carried.

Hearings were held on HB 2687 and HB 2714.

HB 2687 - An act relating to qualifications for district attorney.

The Chairman, sponsor, said the bill was the result of requests and concerns regarding filings and qualifications for the office of district attorney.

Jon Josserand, Office of the Secretary of State, said that office has no position on the bill but has an interest because it receives calls for clarification for requirements for nomination of candidates. He said a study done by his office on requirements for offices in the state indicates that statutes cover some but not others, and requirements vary from office to office. The bill shortens the time that candidates for district attorney must practice law. This accommodates law school graduates who are not sworn in until October, the same time candidates are nominated. In answer to a question, Mr. Josserand said no calls had been received in his office on this particular issue.

Jim Clark, Kansas County and District Attorneys Association, said this group's board members voted to oppose HB 2687. The Association's efforts are to upgrade the quality of prosecutors and to equalize district attorneys with district judges on qualifications and salaries. HB 2687, requiring less time to practice, would be a step backward.

Gene Olander, Shawnee County District Attorney, opposed the bill, stating it would downgrade candidates for district attorney.

Nick Tomasic, Wyandotte County District Attorney, agreed with Mr. Clark and Mr. Olander. He believed candidates should have five years of law practice experience and not five years experience from the time they were admitted to the bar.

HB 2714 - An act relating to judges of the district court.

Chairman Frey said the bill was a followup to 1983 amendments to HB 2114 and an impact study on that bill by the Judicial Council. HB 2114 amendments require district court judges to reside and have their principal office in each county. A member noted the bill seemed to read that judges must have residencies in each county in the state. The bill needed clarification that, in each county of the state, there should be at least one judge who is a resident of that county. It was noted, at present, because of magistrate judges, there is no county that does not have a judge.

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Matt Lynch, Judicial Council, pointed out concerns that the bill does not resolve. With the assumption that the bill requires that a judge reside in each county, he questioned how this could be implemented in the 15th Judicial District of Northwest Kansas. If the associate judge's position becomes vacant, Sherman County, being the only county that does not have a magistrate judge, would possibly not have a judge depending upon the residence of the person who replaces the current judge. Associate district judge residency requirements do not apply to Sherman County.

Marjorie Van Buren said the Office of Judicial Administration assumes HB 2714 is not an attempt to answer all the questions that will come up after 1987 when provisions of HB 2114 become fully implemented and associate district judges become district judges in name and responsibility. Her office has a copy of the Judicial Council report on the impact of HB 2114 and will work with the Committee if it desires to consider issues of concern in the report. She believed some of these issues will be resolved by statutory authority given the Supreme Court to assign and require a particular judge to live in a county. She did not think there presently were problems that could not be addressed by HB 2714.

HB 2310 - An act relating to jury trials in misdemeanor cases.

Discussion on the bill and amendments in Attachment No. 1 suggested by the Office of Judicial Administration was resumed from a previous meeting. It was pointed out the bill was needed because it promotes judicial efficiency in scheduling trials and attempts to eliminate two jury trials.

Motions were made, seconded, and carried that the following amendments to HB 2310 be adopted: to insert existing law in the balloon amendment on line 28, and the stricken language in lines 36 and 37 should be re-inserted to conform with the motion; the balloon, as amended, was adopted; and the amendment striking "on the record", in line 64, was adopted.

In discussion on the balloon on page 3, line 84, a member pointed out the amendment does not address the sponsor's intent which is to eliminate two jury trials. Representative Knopp moved to strike Section 3 and the pertinent parts of Section 4 which would leave magistrate trials as they are at present. Representative Schweiker seconded the motion. In discussion, a member who is experienced with magistrate trials and decisions, said he was satisfied with present law and did not know what the sponsor's problem was. Representative Schweiker made a substitute motion to report HB 2310 adversely, seconded by Representative Whiteman. A member believed Sections 1 and 2 were worthwhile and should be retained. Another member said Section 1 was unnecessary. As an attorney, she had experienced no problems with court schedules, and more jury trials would be requested under this bill. The vote on the substitute motion carried.

HB 2600 - An act relating to review of a KCC order.

Representative Patrick moved to report the bill favorably. Representative Duncan objected to the motion because he believed the administrative procedures bills would address concerns in HB 2600. There was no second to the motion. The Chairman said the KCC procedures may not be rewritten, and there should be an opportunity for discussion on HB 2600. Representative Solbach moved to amend the bill to change the 30-day time limit on rehearing requests and the time for KCC to act to 15 days, seconded by Representative Blumenthal. Representative Patrick made a substitute motion to table the bill, seconded by Representative Duncan. The substitute motion carried 10 to 7.

HB 2671 - An act relating to contributing to a child's misconduct.

Representative Patrick moved to report the bill favorably, seconded by Representative Douville. Following discussion, the motion carried.

HB 2712 - An act relating to emergency care or assistance.

Representative Patrick moved to table the bill. There was no second. The Chairman objected to tabling the bill without discussion and possible amendments. No action was taken.

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HB 2750 - An act relating to alcohol treatment facilities.

Representative Knopp moved to report the bill favorably, seconded by Representative Buehler. In discussion, Representative Wagnon opposed the motion. She described the situation in Topeka of a split in an alcohol safety action project agency resulting from passage of 1983 Substitute HB 2132. This caused a six-month certification battle that caused much dissention and unnecessary exposure of clients. She objected to removing the licensing requirement from these agencies as it was the only method for evaluating the program. She hoped the Committee would defeat or hold HB 2750. She questioned if certification should be a function of the district court.

Representative Solbach said the present statute should be left as a reasonable compromise between the two camps and to determine if the Topeka problem would occur in other places. The Chairman said the conflict in Topeka occurred because of competition for business between the two groups where one happened to be licensed and one certified, and political favoritism entered in. It had nothing to do with this bill.

Several members expressed concerns with SRS policies, noting bad experiences with SRS decisions. The Chairman said it was not the intent of the bill to chastise SRS as it has said it does not care about HB 2750. Representative Wagnon believed SRS was trying to do the least amount of damage as possible in decisions. Representative Duncan said SRS has favored but should not favor one group of any kind over another.

The vote on the motion was taken, and it carried.

The meeting was adjourned at 5:30 p.m.

HOUSE BILL No. 2310

By Representative Heinemann

2-9

017 AN ACT concerning the Kansas code of criminal procedure;  
018 relating to jury trials in misdemeanor cases; amending K.S.A.  
019 22-3404 and K.S.A. 1982 Supp. 22-3609 and 22-3609a and  
020 repealing the existing sections.

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

022 Section 1. K.S.A. 22-3404 is hereby amended to read as fol-  
023 lows: 22-3404. (1) The trial of misdemeanor cases shall be to the  
024 court unless a jury trial is requested in writing by the defendant  
025 not later than 48 hours prior to the trial 96 hours after the first  
026 appearance on the complaint.

Failure to request trial by jury within the allotted time shall be deemed a waiver of the right for the purposes of trial and all subsequent appeals.

to trial by jury

027 (2) A jury in a misdemeanor case shall consist of six members.

028 (3) ~~Trials in the municipal court of a city shall be to the court.~~

Trials in the municipal court of a city shall be to the court.

029 *A jury trial in a misdemeanor case may be tried before a district*  
030 *magistrate judge, district judge or associate district judge as*  
031 *assigned by the administrative judge. Appeals from jury trials*  
032 *before a district magistrate judge shall be taken pursuant to*  
033 *K.S.A. 22-3609a and amendments thereto. Appeals from jury*  
034 *trials before a district judge or associate district judge shall be*  
035 *taken pursuant to K.S.A. 22-3601 and amendments thereto.*

(4)

036 ~~Appeals from a jury trial in a municipal court of a city shall be~~  
037 ~~taken pursuant to K.S.A. 22-3600 and amendments thereto.~~

038 (4) Except as otherwise provided by law, the rules and pro-  
039 cedures applicable to jury trials in felony cases shall apply to jury  
040 trials in misdemeanor cases.

(5)

041 Sec. 2. K.S.A. 1982 Supp. 22-3609 is hereby amended to read  
042 follows: 22-3609. (1) The defendant shall have the right to  
043 appeal to the district court of the county from any judgment of a  
044 municipal court which adjudges the defendant guilty of a viola-  
045 tion of the ordinances of any municipality of Kansas. The appeal

Atch. 1

0046 shall be assigned by the administrative judge to a district judge  
0047 or associate district judge. The appeal shall stay all further  
0048 proceedings upon the judgment appealed from.

0049 (2) An appeal to the district court shall be taken by filing a  
0050 notice of appeal and any required appearance bond in the district  
0051 court of the county in which the municipal court is located. No  
0052 appeal shall be taken more than 10 days after the date of the  
0053 judgment appealed from.

0054 (3) The notice of appeal shall designate the judgment or part  
0055 of the judgment appealed from. The defendant shall cause notice  
0056 of the appeal to be served upon the city attorney prosecuting the  
0057 case. The judge whose judgment is appealed from or the clerk of  
0058 the court, if there is one, shall certify the complaint and warrant  
0059 to the district court of the county, but failure to do so shall not  
0060 affect the validity of the appeal.

0061 (4) Hearing on the appeal shall be to the court ~~unless a jury~~  
0062 ~~trial is requested in writing by the defendant not later than 48~~  
0063 ~~hours prior to the trial. A jury in an appeal from a municipal court~~  
0064 ~~judgment shall consist of six members on the record.~~

0065 (5) Notwithstanding the other provisions of this section, ap-  
0066 peal from a conviction rendered pursuant to subsection (b) of  
0067 K.S.A. 12-4416 and amendments thereto shall be conducted only  
0068 on the record of the stipulation of facts relating to the complaint.

0069 Sec. 3. K.S.A. 1982 Supp. 22-3609a is hereby amended to  
0070 read as follows: 22-3609a. (1) A defendant shall have the right to  
0071 appeal from any judgment of a district magistrate judge. The  
0072 administrative judge shall be responsible for assigning a district  
0073 judge or associate district judge for any such appeal. The appeal  
0074 shall stay all further proceedings upon the judgment appealed  
0075 from.

0076 (2) An appeal to a district judge or associate district judge  
0077 shall be taken by filing a notice of appeal with the clerk of the  
0078 court. No appeal shall be taken more than 10 days after the date  
0079 of the judgment appealed from.

0080 (3) The clerk of the district court shall deliver the complaint,  
0081 warrant and any appearance bond to the district judge or asso-  
0082 ciate district judge to whom such appeal is assigned. The case

unless a jury trial is requested in writing by the defendant not later than 96 hours after the appeal is taken.

0083 shall be tried ~~de novo~~ before and determined on the record by  
0084 the assigned district judge or associate district judge

0085 (4) No advance payment of a docket fee shall be required  
0086 when the appeal is taken.

0087 (5) All appeals taken by a defendant from a district magistrate  
0088 judge in misdemeanor cases shall be tried and determined on the  
0089 record by the court unless a jury trial is requested in writing by  
0090 the defendant.

0091 (6) Notwithstanding the other provisions of this section, ap-  
0092 peal from a conviction rendered pursuant to subsection (2) (c) of  
0093 K.S.A. 22-2909, and amendments thereto, shall be conducted  
0094 only on the record of the stipulation of facts relating to the  
0095 complaint.

0096 Sec. 4. K.S.A. 22-3404 and 1982 Supp. 22-3609 and 22-3609a  
0097 are hereby repealed.

0098 Sec. 5. This act shall take effect and be in force from and  
0099 after its publication in the statute book.

where a record was made of the action or proceeding otherwise the case shall be tried de novo. If the case is tried on the record, the assigned district judge or associate district judge may affirm or reverse the judgment or may grant a trial de novo.

5  
K.S.A. 20-302b

6  
Sec 4. K.S.A. 20-302b is hereby amended to read as follows:  
  
\* \* \* \* \*  
  
(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge or an associate district judge, except that in ~~civil~~ cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge or an associate district judge.