

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson

10:00 a.m./~~pm~~ on February 24, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Burke, Feleciano, Gaar, Gaines, Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Judge Dennis Reiling, Kansas Magistrate Judges  
Marjorie Van Buren, Office of the Judicial Administrator  
Jim Clark, Kansas County and District Attorneys Association  
Mike Flyzik, SRS/Alcohol and Drug Abuse Services

Senate Bill 761 - Amendments to code for care of children and juvenile offenders code.

Judge Dennis Reiling testified in support of the bill and urged the committee to expand the bill as indicated in his handout. A copy of his remarks, with three attachments, are attached (See Attachments No. 1). During committee discussion, a committee member inquired, would the judge have the discretion of whether to have a record or to not have a record? Judge Reiling replied, anyone can request a record. The committee member inquired, if the record is made, it has to be by the court's reporter? Judge Reiling replied, most all districts are equipped with special recording equipment for this type of record. In response to the type of training a magistrate judge must receive, he explained his training certification process was 18 months after taking office. The judge has to pass an examination eighteen months after taking office or vacate that office. The magistrate judges attend two conferences a year with special sessions on evidence. They have set up regional training programs throughout the state.

Marjorie Van Buren testified, although the district judges have not had a chance to review this particular bill, it is in the spirit of a bill that was in the House, and she thinks the judges would be supporting it.

Senate Bill 232 - Treatment act for drug abusers.

Mike Flyzik was recognized to explain the proposed amendments that his department presented on the bill. It was the consensus of the committee not to take further action on the bill today.

Senate Bill 690 - State's attorneys in certain judicial districts.

Jim Clark passed out copies of proposed amendments to the bill and explained them to the committee (See Attachment No. 2). He reported the maximum fiscal note would be 1.5 million dollars. Senator Hein explained these amendments deal with some of the opposition to the bill in previous years. The fiscal note will be substantially lowered. A committee member inquired, who pays the fiscal note? Senator Hein replied, the state docket fees go into the state general fund. Senator Hein moved to amend the bill conceptually, as presented by the Kansas County and District Attorneys Association and also to change the language "felony prosecutor" to "state's attorney". Senator Gaines seconded the motion, and the motion carried. Senator Gaines moved to amend the bill to provide that an election can be called in any judicial district, and the board of county commissioners are to vote to call an election. Senator Steineger seconded the motion. The motion carried. Senator Hein moved to report the bill favorably as amended; Senator Gaines seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~PM~~ on February 24, 1984

Senate Bill 573 - Small estates of disabled persons.

Senator Werts explained his proposed amendments to the bill. Following his explanation, Senator Werts moved to amend the bill by deleting lines 46 through 49 and in line 51, add the language "with the giving of the conservator of a personal bond" and strike the rest of the amendment in the bill. Senator Gaar seconded the motion and the motion carried. Senator Werts moved to report the bill favorably as amended; Senator Burke seconded the motion, and the motion carried.

Senate Bill 258 - Wrongful life or birth actions prohibited.

Senator Hein moved to report the bill favorably; Senator Werts seconded the motion, and the motion carried.

The meeting adjourned.

2-24-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Michael Fitzgerald	Topeka	SRS/ADAs
J. M. Kelly Jr.	Topeka	SRS/ADAs
Dennis Reding	Oskaloosa	Kan Magistrate Judges
Judy Culley	Lawrence	KALPCCA
Billy McCran	Wichita	Kansas Senate
Bill Weber	Lawrence	Sen. Hearing
Majorie Van Buren	Topeka	OJA
Nancy Parrish	Topeka	Senate
Melissa Moss	"	NARAH
Darlene Stearns	Topeka	Council of Churches
Bobbie Kemmit	"	H. W. P. Caucus
Yvonne Humphrey	"	Amredaccitl... of KS
John Cloney	"	K C D A A
William Sedens	"	ICTA
Pat Goodson	"	RTZ

2-24-84  
Attach. #1

February 24, 1984

To: Senator Elwaine, Pomeroy, Chairman  
Senate Judiciary Committee

From: Dennis L. Reiling  
District Magistrate Judge  
Kansas District Magistrate Judges Assn.

Re: Senate Bill No. 761

My name is Dennis L. Reiling. I am a District Magistrate Judge from Jefferson County.

We are in support of Senate Bill 761 -- especially the new language found starting on line 95 and line 106 pertaining to appeal on the record when one is made from a Magistrate Judge to a District or Associate District Judge.

Exhibit #1 is a copy of KSA 20-3026, the current statute setting out the jurisdiction, powers and duties of District Magistrate Judges.

Referring to exhibit #1, KSA 20-3026 paragraph (c), where it states appeals shall be de novo "except 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."

Now turning to Exhibit #2, KSA 38-1501, at the last sentence states that the Kansas Code for Care of Children is a civil procedure.

What did we just read?

- (1) That the Kansas Code for care of Children is a civil procedure.
- (2) That if a record is made by the Magistrate Judge in a civil case the appeal shall be tried on the record by a District Judge or Associate District Judge.

We contend the authority now exists for an appeal on the record if one is made under the Kansas Code for Care of Children, but SB 761 is needed to clarify that authority within the Kansas Code for Care of Children.

We further purpose that the committee take this clarification a step farther and look at Exhibit #3 pertaining to the Kansas Juvenile Offender Code.

On Exhibit #3, KSA 38-1601, about halfway through the paragraph I quote, "In no case shall any order, judgment or decree of the District Court, in any proceedings under the provisions of this code, be deemed or held to import a criminal act on the part of any juvenile; but all proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state."

Atch. 1

Senator Pomeroy  
Re: SB 761

- 2 -

February 24, 1984

I am only familiar with two types of actions -- criminal and civil. The offender code specifically says in no case can we deem the act criminal so it would follow it must be civil, but keeping in mind if done by an adult the same act would be criminal.

In any event we propose SB 761 should be expanded to include provisions for appeal on the record, if one made, to the District or Associate District Judge.

To accomplish that result we purpose expanding SB 761 to amend 38-1683, copy found on Exhibit #3, and at the end of part (a), under 38-1683, add "If the case is tried on the record, the assigned District or Associate District Judge may affirm, reverse the judgment or may remand for re-hearing. If the judgment is remanded, the Administrative Judge of the District shall assign a Judge to rehear the proceedings.

In conclusion, I want to again express our support to SB 761 and urge the committee, by amendment, to expand the bill to amend 38-1683 under the Offender Code as presented on Exhibit #3, to include an appeal on record when one is made.

Thank you for this opportunity to testify on behalf of the District Magistrate Judge Association.

**COURTS**

**20-302b. District magistrate judges; jurisdiction, powers and duties; appeals.** (a) A district magistrate judge shall have the jurisdiction, power and duty, in any case in which a violation of the laws of the state is charged, to conduct the trial of misdemeanor charges and the preliminary examination of felony charges. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

- (7) habeas corpus;
- (8) receiverships;
- (9) change of name;
- (10) declaratory judgments;
- (11) mandamus and quo warranto;
- (12) injunctions;
- (13) class actions;
- (14) rights of majority; and
- (15) actions pursuant to the protection from abuse act.

(1) Any action in which the amount in controversy, exclusive of interests and costs, exceeds \$5,000, except that in actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction; nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge or associate district judge, a district magistrate judge may:

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(1) Grant a restraining order, as provided in K.S.A. 60-902 and amendments thereto;

(3) actions for specific performance of contracts for real estate;

(2) appoint a receiver, as provided in K.S.A. 60-1301 and amendments thereto;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in article 23 of chapter 61 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto; and nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(3) make any order authorized by K.S.A. 60-1607 and amendments thereto; and

(4) grant any order authorized by the protection from abuse act.

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto;

(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.

**History:** L. 1976, ch. 146, § 13; L. 1977, ch. 112, § 2; L. 1979, ch. 92, § 12; L. 1979, ch. 80, § 2; L. 1983, ch. 140, § 3; July 1.

**20-311f.**

**CASE ANNOTATIONS**

4. Objection filed too late when request for assignment to judge made 56 days before. *In re Adoption of Smith*, 6 K.A.2d 575, 577, 578, 631 P.2d 255 (1981).

**JUDICIAL DEPARTMENT REFORM ACT**

(6) actions for divorce, separate maintenance or custody of minor children, except that nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas code for care of children or the Kansas juvenile offenders code;

**20-319. Powers and duties of departmental justices; reports and information.** (a) A justice assigned to each department shall:

(1) With the help and assistance of the judicial administrator, make a survey of the conditions of the dockets and business of the district courts in the justice's department and make a report and recommenda-

**Article 15.—KANSAS CODE FOR CARE  
OF CHILDREN****Revisor's Note:**

The Judicial Council published comments on a preliminary draft of this code in the June, 1981, Judicial Council Bulletin. The comments show the source of prior law for many sections in this code.

**Law Review and Bar Journal References:**

"Changes Made by the New Juvenile Codes," Sheila Reynolds, 51 J.K.B.A. 181 (1982).

"In the Best Interests of the Divided Family: An Analysis of the 1982 Amendments to the Kansas Divorce Code," Nancy G. Maxwell, 22 W.L.J. 177, 224 (1983).

**GENERAL PROVISIONS**

**38-1501.** Construction of code. K.S.A. 1982 Supp. 38-1501 through 38-1593 shall be known as and may be cited as the Kansas code for care of children and shall be liberally construed, to the end that each child within its provisions shall receive the care, custody, guidance, control and discipline, preferably in the child's own home, as will best serve the child's welfare and the best interests of the state. All proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state. Proceedings pursuant to this code shall be civil in nature.

**History:** L. 1982, ch. 182, § 1; Jan. 1, 1983.

**60-2103a.** Appeals from district magistrate judges. (a) In actions commenced in the district courts of this state all appeals from orders or final decisions of a district magistrate judge shall be heard by a district judge or associate district judge. Except as otherwise provided by law, such appeals shall be taken by notice of appeal specifying the order or decision complained of and shall be filed with the clerk of the district court within ten (10) days after the entry of such order or decision. The notice of appeal shall specify the party or parties taking the appeal; shall designate the order or decision appealed from; and shall state that such appeal is being taken from an order or decision of a district magistrate judge. The appealing party shall cause notice of the appeal to be served upon all of the parties to the action in accordance with the provisions of K.S.A. 60-205. Upon filing the notice of appeal, the appeal shall be deemed perfected.

(b) Except as otherwise provided by law or rule of the supreme court, the provisions of subsections (b) to (i) of K.S.A. 60-2103, and any amendments thereto, shall be applicable to appeals from orders and decisions of district magistrate judges.

**History:** L. 1976, ch. 251, § 31; L. 1977, ch. 112, § 25; May 14.

Cross References to Related Sections:

**Article 16.—KANSAS JUVENILE  
OFFENDERS CODE****Revisor's Note:**

The Judicial Council published comments on a preliminary draft of this code in the June, 1981, Judicial Council Bulletin. The comments show the source or prior law for many sections in this code.

**Law Review and Bar Journal References:**

"Changes Made by the New Juvenile Codes," Sheila Reynolds, 51 J.K.B.A. 181, 187 (1982).

**GENERAL PROVISIONS**

**38-1601.** Construction of code. K.S.A. 1982 Supp. 38-1601 through 38-1685 shall be known and may be cited as the Kansas juvenile offenders code and shall be liberally construed to the end that each juvenile coming within its provisions shall receive the care, custody, guidance, control and discipline, preferably in the juvenile's own home, as will best serve the juvenile's rehabilitation and the protection of society. In no case shall any order, judgment or decree of the district court, in any proceedings under the provisions of this code, be deemed or held to import a criminal act on the part of any juvenile; but all proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state.

History: L. 1982, ch. 182, § 59; Jan. 1, 1983.

**38-1683.** Appeals procedure. (a) An appeal from an order entered by a district magistrate judge shall be to a district judge or associate district judge. The appeal shall be heard *de novo* within 30 days from the date the notice of appeal was filed.

(b) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated.

History: L. 1982, ch. 182, § 114; Jan. 1, 1983.

If the case is tried on the record, the assigned district judge or associate district judge may affirm or reverse the judgment or may remand for rehearing. If the judgment is remanded, the administrative judge of the district shall assign a judge to rehear the proceeding.



OFFICERS

William T. North, President  
Daniel F. Meara, Vice-President  
Robert J. Frederick, Sec. Treasurer  
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2-24-84  
Attach. # 2

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# Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK

FEBRUARY 24, 1984

TO: SENATE JUDICIARY COMMITTEE

RE: AMENDMENTS TO SB 690

THE FOLLOWING SUGGESTED AMENDMENTS WOULD CREATE A LIMITED STATE-WIDE DISTRICT ATTORNEY SYSTEM IN WHICH THE DISTRICT ATTORNEY WOULD ASSUME RESPONSIBILITY FOR PROSECUTING FELONY CASES, WHILE THE COUNTY ATTORNEY WOULD RETAIN ALL OTHER RESPONSIBILITIES NOW HELD. THE AMENDMENTS ARE BORROWED FROM LANGUAGE IN HB 2908.

STRIKE: 1(c), 3, 4(A)(1), 4(c)(1), 4(E), 4(F), 6, 7(A) BEGINNING AT LINE 246 "THE .....DISCONTINUED, AND"; BEGINNING AT LINE 250 "AND.....DISTRICT" AT LINE 252; 7(B) BEGINNING AT LINE 255 "THE OFFICE.....AND" AT LINE 257; 8(B)(2) BEGINNING AT LINE 304 "ON.....ABOLISHED" AT LINE 306; AND 9.

ADD: LANGUAGE FROM HB 2908, (CHANGING "FELONY PROSECUTOR" TO "DISTRICT ATTORNEY" THROUGHOUT).

1(E), 1 (F), 1(G); 2; AND 3.

Atch. 2

0057 (c) The ~~felony prosecutor~~<sup>district attorney</sup> shall prosecute, on behalf of the  
0058 state, any defendant charged with a felony in the district court of # 2  
0059 the judicial district which the prosecutor is appointed to serve. If  
0060 the defendant is charged with two or more crimes to be tried  
0061 together and any one or more of the crimes charged is a felony,  
0062 the ~~felony prosecutor~~<sup>district attorney</sup> shall conduct the prosecution of all the  
0063 charges to be tried together. In conducting any prosecution  
0064 under this section, the ~~felony prosecutor~~<sup>district attorney</sup> shall have all powers  
0065 and duties of a county attorney.

0066 (f) To the extent possible, the county attorneys of the coun-  
0067 ties in a judicial district shall cooperate with and assist the ~~county~~<sup>district</sup>  
0068 ~~attorney~~<sup>attorney</sup> of the judicial district.

0069 (g) Any prosecution of a felony pending in the district court  
0070 of a judicial district on the effective date of this act shall continue  
0071 to be prosecuted by the county attorney who is the attorney of  
0072 record, with the assistance and cooperation of the ~~felony prosecu-~~<sup>district attorney may</sup>  
0073 tor of the judicial district.

0074 Sec. 2. K.S.A. 19-702 is hereby amended to read as follows:  
0075 19-702. *Except as otherwise provided by section 1*, it shall be the  
0076 duty of the county attorney to appear in the several courts of their  
0077 respective counties and prosecute or defend on behalf of the  
0078 people all suits, applications or motions, civil or criminal, arising  
0079 under the laws of this state, in which the state or their county is a  
0080 party or interested.

0081 Sec. 3. K.S.A. 19-703 is hereby amended to read as follows:  
0082 19-703. *Each* ~~Except when it is the duty of the felony prosecutor~~<sup>district attorney</sup>  
0083 *to prosecute a case under section 1*, the county attorney shall,

HB 2908

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0084 when requested by any judge of the district court of ~~his or her~~ *the*  
0085 county, appear on behalf of the state before ~~any such~~ *the* judge;  
0086 and prosecute all complaints made in behalf of the state of which  
0087 ~~such judge shall have~~ *the judge has* jurisdiction; ~~and upon the~~  
0088 ~~like request.~~ *Upon a similar request, the county attorney shall*  
0089 appear before ~~such~~ *the* judge and conduct any criminal exami-  
0090 nation ~~which may be had before~~ *such* ~~before~~ *the* judge; and shall  
0091 also prosecute all civil suits before ~~such~~ *the* judge in which the  
0092 county is a party or interested.

0093 Sec. 4. K.S.A. 19-717 is hereby amended to read as follows: