

Approved March 22, 1990  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael O'Neal at  
Chairperson

1:30 ~~xxx~~/p.m. on March 5, 1990 in room 519-S of the Capitol.

All members were present except:

Representative Peterson, who was excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

**DISCUSSION AND ACTION ON BILLS:**

**HB 3054 Additional authority of judge pro tems**

Representative Douville explained his amendment to HB 3054 would basically extend the authority of a pro tem judge to hear any action within the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b. Any party aggrieved by any order of a judge pro tem may appeal such order and such appeal shall be heard by a district judge do novo. If the appeal is a small claims action, the appeal shall be under K.S.A. 61-2709, and amendments thereto. If the appeal is an action within the jurisdiction of a district magistrate judge, the appeal shall be under K.S.A. 20-302b, et seq., and amendments thereto, see Attachment I.

Representative Douville moved and Representative Walker seconded to adopt the proposed amendments. The motion passed.

Representative Douville moved to report HB 3054, as amended, favorably for passage. The motion passed.

**HB 2880 Creating the crime of assault of a correctional employee**

Representative Jenkins explained proposed amendments to HB 2880. She said this bill, as amended, creates the crime of assault of a correctional officer or employee and the crime of battery of a correctional officer or employee. Assault of a correctional officer or employee is a class E felony. Battery of a correctional officer or employee is a class D felony, see Attachment II.

A conceptual motion was made by Representative O'Neal to strike assault of a correctional officer and employee, amend correctional officer into the definition statute of a law enforcement officer and adopt Sec. 2 and Sec. 3 of the proposed amendment changing the class D felony to a class E felony. Representative Sebelius seconded the motion. The motion passed.

Representative Jenkins moved and Representative Sebelius seconded to report HB 2880, as amended, favorably for passage. The motion passed.

**HB 3038 Child hearsay exception allowed in any proceeding**

Representative Hochhauser explained under the proposed amendment child hearsay evidence would be admissible in a divorce proceeding involving allegations of physical or sexual abuse of the parties' child or children committed by one of the parties to the divorce, see Attachment III.

Representative Hochhauser moved and Representative Everhart seconded to adopt the proposed amendment. The motion passed.

Representative Hochhauser moved and Representative Everhart seconded to report HB 3038, as amended, favorably for passage. The motion passed.

The minutes of February 13, 14, 15, 19 and 20 were approved.

The Committee meeting adjourned at 2:00 p.m.

HOUSE BILL No. 3054

By Committee on Judiciary

2-20

3/5/90  
H. Jud. Com.  
Attachment I

9 AN ACT concerning judges pro tem; amending K.S.A. 1989 Supp.  
10 20-310a and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 1989 Supp. 20-310a is hereby amended to read  
14 as follows: 20-310a. (a) Upon the application of the administrative  
15 judge of a judicial district to the departmental justice of that district,  
16 for good cause shown, or in the absence, sickness or disability of a  
17 district judge or district magistrate judge in any judicial district, a  
18 judge pro tem may be appointed whenever the departmental justice  
19 for such judicial district has not assigned a district judge from another  
20 judicial district, as provided in K.S.A. 20-319 and amendments  
21 thereto.

22 (b) Any judge pro tem appointed pursuant to this section shall  
23 be a regularly admitted member of the bar of this state. The ap-  
24 pointment of any such judge pro tem shall be made by the admin-  
25 istrative judge or, in the absence of the administrative judge, by  
26 the departmental justice for the judicial district.

27 (c) Any judge pro tem appointed pursuant to this section shall  
28 have the full power and authority of a district judge with respect to  
29 any actions or proceedings before such judge pro tem, except that  
30 any judge pro tem appointed pursuant to subsection (d) or (e) shall  
31 have only such power and authority as provided therein. A judge  
32 pro tem shall receive such compensation as is prescribed by the  
33 district court, subject to the budget limitations of such district court.

34 (d) Subject to the budget limitations of the district court, the  
35 administrative judge of any judicial district may appoint one or more  
36 judges pro tem for the limited purpose of hearing the original trials  
37 of actions filed pursuant to the small claims procedures act. Any  
38 such judge pro tem shall have only such judicial power and authority  
39 as is necessary to hear such actions ~~for other action within the ju-  
40 risdiction of a district magistrate judge as provided in K.S.A. 20-  
41 302b, and amendments thereto.~~

42 (e) Subject to the budget limitations of the district court, the  
43 administrative judge of any judicial district in which the board of

or other action within the jurisdiction of a  
district magistrate judge as provided in K.S.A.  
20-302b, and amendments thereto

Any party aggrieved by any order of a judge  
pro tem under this subsection may appeal such  
order and such appeal shall be heard by a  
district judge de novo. If the appeal is a  
small claims action, the appeal shall be under  
K.S.A. 61-2709, and amendments thereto. If  
the appeal is an action within the jurisdic-  
tion of a district magistrate judge, the  
appeal shall be under K.S.A. ~~61-2101~~, et seq.,  
and amendments thereto. 20-302b

1 county commissioners is authorized to use the code for the enforce-  
2 ment of county codes and resolutions as provided in subsection (b)  
3 of K.S.A. 19-101d and amendments thereto may appoint one or more  
4 judges pro tem for the limited purpose of hearing such cases. Such  
5 judge pro tem shall receive the salary and other compensation set  
6 by resolution of the board of county commissioners which shall be  
7 paid from the revenues of the county general fund or other fund  
8 established for the purpose of financing code enforcement.

9 (f) The administrative judge of each judicial district shall report  
10 to the judicial administrator of the courts: (1) The dates on which  
11 any judge pro tem served in such district, (2) the compensation paid  
12 to any judge pro tem, and (3) such other information as the judicial  
13 administrator may request with regard to the appointment of judges  
14 pro tem. The reports shall be submitted annually on or before Jan-  
15 uary 15 on forms provided by the judicial administrator.

16 Sec. 2. K.S.A. 1989 Supp. 20-310a is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after  
18 its publication in the statute book.

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H. Jud Com.  
Att I 2

HOUSE BILL No. 2880

By Representatives Flower, Graeber, Jenkins and Ramirez

2-7

crimes

9 AN ACT creating the ~~crime~~ of assault of a correctional officer.  
10 Be it enacted by the Legislature of the State of Kansas:

or employee and battery of a correctional officer or employee

11 Section 1. Assault of a correctional officer is an assault, as defined  
12 in K.S.A. 21-3408, and amendments thereto, committed against a  
13 correctional officer, while such officer is engaged in the performance  
14 of such officer's duty.

or employee

or employee's

15 Assault of a correctional officer is a class ~~D~~ felony.

E

16 Sec. 2. This act shall take effect and be in force from and after  
17 its publication in the statute book.

Sec. 2. Battery of a correctional officer or employee is a battery, as defined in K.S.A. 21-3412, and amendments thereto, committed against a correctional officer or employee, while such officer or employee is engaged in the performance of such officer's or employee's duty.

Battery of a correctional officer or employee is a class D felony.

Sec. 3. As used in this act:

(a) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(b) "Correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

Renumber accordingly

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H. Jud. Com.  
Attachment II

## HOUSE BILL No. 3038

By Committee on Judiciary

2-20

9 AN ACT concerning civil procedure; relating to child hearsay evi-  
10 dence; amending K.S.A. 1989 Supp. 60-460 and repealing the  
11 existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1989 Supp. 60-460 is hereby amended to read  
15 as follows: 60-460. Evidence of a statement which is made other  
16 than by a witness while testifying at the hearing, offered to prove  
17 the truth of the matter stated, is hearsay evidence and inadmissible  
18 except:

19 (a) *Previous statements of persons present.* A statement previ-  
20 ously made by a person who is present at the hearing and available  
21 for cross-examination with respect to the statement and its subject  
22 matter, provided the statement would be admissible if made by  
23 declarant while testifying as a witness.

24 (b) *Affidavits.* Affidavits, to the extent admissible by the statutes  
25 of this state.

26 (c) *Depositions and prior testimony.* Subject to the same limi-  
27 tations and objections as though the declarant were testifying in  
28 person, (1) testimony in the form of a deposition taken in compliance  
29 with the law of this state for use as testimony in the trial of the  
30 action in which offered or (2) if the judge finds that the declarant  
31 is unavailable as a witness at the hearing, testimony given as a witness  
32 in another action or in a preliminary hearing or former trial in the  
33 same action, or in a deposition taken in compliance with law for use  
34 as testimony in the trial of another action, when (A) the testimony  
35 is offered against a party who offered it in the party's own behalf  
36 on the former occasion or against the successor in interest of such  
37 party or (B) the issue is such that the adverse party on the former  
38 occasion had the right and opportunity for cross-examination with  
39 an interest and motive similar to that which the adverse party has  
40 in the action in which the testimony is offered, but the provisions  
41 of this subsection (c) shall not apply in criminal actions if it denies  
42 to the accused the right to meet the witness face to face.

43 (d) *Contemporaneous statements and statements admissible on*

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Attachment III

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Act III 2

1 of a person resident in the community at the time of the reputation,  
2 or some other similar fact of the person's family history or of the  
3 person's personal status or condition which the judge finds likely to  
4 have been the subject of a reliable reputation in that community.

5 (z) *Reputation as to character.* If a trait of a person's character  
6 at a specified time is material, evidence of the person's reputation  
7 with reference thereto at a relevant time in the community in which  
8 the person then resided or in a group with which the person then  
9 habitually associated, to prove the truth of the matter reputed.

10 (aa) *Recitals in documents affecting property.* Evidence of a state-  
11 ment relevant to a material matter, contained in a deed of conveyance  
12 or a will or other document purporting to affect an interest in prop-  
13 erty, offered as tending to prove the truth of the matter stated, if  
14 the judge finds that (1) the matter stated would be relevant upon  
15 an issue as to an interest in the property and (2) the dealings with  
16 the property since the statement was made have not been incon-  
17 sistent with the truth of the statement.

18 (bb) *Commercial lists and the like.* Evidence of statements of  
19 matters of interest to persons engaged in an occupation contained  
20 in a list, register, periodical or other published compilation, to prove  
21 the truth of any relevant matter so stated, if the judge finds that  
22 the compilation is published for use by persons engaged in that  
23 occupation and is generally used and relied upon by them.

24 (cc) *Learned treatises.* A published treatise, periodical or pam-  
25 phlet on a subject of history, science or art, to prove the truth of  
26 a matter stated therein, if the judge takes judicial notice, or a witness  
27 expert in the subject testifies, that the treatise, periodical or pam-  
28 phlet is a reliable authority in the subject.

29 (dd) *Actions involving children.* ~~In a criminal proceeding or a~~  
30 ~~proceeding pursuant to the Kansas juvenile offender's code or~~  
31 ~~in a proceeding to determine if a child is a child in need of~~  
32 ~~care under the Kansas code for care of children, any proceeding~~  
33 ~~a statement made by a child, to prove the crime or that a child~~  
34 ~~is a juvenile offender or a child in need of care, if:~~

35 (1) The child is alleged to be a victim of the crime or offense  
36 or, a child in need of care or involved in the proceedings, and

37 (2) the trial judge finds, after a hearing on the matter, that the  
38 child is disqualified or unavailable as a witness, the statement is  
39 apparently reliable and the child was not induced to make the state-  
40 ment falsely by use of threats or promises.

41 If a statement is admitted pursuant to this subsection in a trial to  
42 a jury, the trial judge shall instruct the jury that it is for the jury  
43 to determine the weight and credit to be given the statement and

In a criminal proceeding, a proceeding pursuant to the Kansas juvenile offender's code, a proceeding to determine if a child is a child in need of care under the Kansas code for care of children, or in a divorce proceeding involving allegations of physical or sexual abuse of the parties' child or children committed by one of the parties to the divorce, a statement made by a child to provide the crime, that a child is a juvenile offender or a child in need of care, or to show that the child has been physically or sexually abused by one of the parties to a divorce, if:

the

or the child of the parties to a divorce proceeding in which the allegations of physical or sexual abuse of the child have been made

proceed

2 that, in making the determination, it shall consider the age and  
3 maturity of the child, the nature of the statement, the circumstances  
4 under which the statement was made, any possible threats or prom-  
5 ises that might have been made to the child to obtain the statement  
6 and any other relevant factor.

7 (ee) *Certified motor vehicle certificate of title history.* Subject to  
8 K.S.A. 60-461, and amendments thereto, a certified motor vehicle  
9 certificate of title history prepared by the division of vehicles of the  
10 Kansas department of revenue.

11 Sec. 2. K.S.A. 1989 Supp. 60-460 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after  
its publication in the statute book.

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