

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 25, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Excused
Representative Vince Snowbarger - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Ron Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Carol Green - Clerk of Appellant Court
District Court Judge Larry McClain
Elwaine Pomeroy - Judicial Council, Criminal Law Advisory Committee

Others attending: See attached list

Hearings on **HB 2506** - amendments to the district court nomination commission, were opened.

Carol Green, Clerk of Appellant Court, appeared before the committee as a proponent of the bill. She stated that this bill would revise several statutes which govern the Judicial District Nominating Commission. Then proceeded to explain each revision, (Attachment 1)

There was concern from the Chairman that the requirement "that the commission meet promptly" left the time uncertain. What means promptly to one person may not mean the same to someone else. There was discussion that instead of using the word "promptly" it might be better if there was an ending date of 40-45 days.

District Court Judge Larry McClain, appeared before the committee with an amendment that would require that a candidate must be elected by 25% of the vote. He explained that currently people are being elected to the commission with only 12% of the votes casted, (Attachment 2). He also had some technical amendments dealing with date changes, (Attachment 3).

Hearings on **HB 2506** were closed.

Hearings on **SB 139** - effects of felony conviction on civil rights of convicted felons, were opened.

Elwaine Pomeroy, Judicial Council, Criminal Law Advisory Committee, appeared before the committee as a proponent of the bill. He stated that this bill strikes the 10 year exclusion of a convicted felon serving on a jury. This bill would address the inconsistencies between the civil rights of convicted felons compatible with the Kansas Constitution, (Attachment 4)

Hearings on **SB 139** were closed.

Representative Mays received a bill request dealing with civil liability of worthless checks. He made a motion to introduce this bill request as a committee bill. Representative Nichols seconded the motion. The motion carried.

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for January 29, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 25, 1996

NAME	REPRESENTING
Jack Jones	KS Sentencing Comm
TERRY HOWREN	KBA
Gary Haulsack	KPA
Ward F. Fisk	ACLU
David Hanson	KS Insur. Assoc.

House Bill No. 2506

Testimony of
Carol Gilliam Green, Clerk of the Supreme Court
Before the Judiciary Committee
Thursday, January 25, 1996

The Kansas Supreme Court proposes a number of revisions to the statutes which govern Judicial District Nominating Commissions. K.S.A. 20-2901, *et seq.*

Section 1 (a) is a technical change to cite the correct Supreme Court Rule. Attorney registration is governed by Rule 208 rather than Rule 201.

Section 1 (b) clarifies that nominations and ballots must be received in the Clerk's Office on or before a certain date. The current language is vague and internally inconsistent.

There is also included under subsection (b) a substantive change which deletes the requirement that a ballot must contain votes for the same number of nominees as the number of positions to be filled. Under the current system most void ballots can be attributed to failure to cast the required number of votes. Under the amendment, one can cast a ballot for *not more than* the number of positions to be filled. Three reasons are advanced for the change:

- The current requirement causes votes to be cast for persons with whom the elector is not familiar.
- If votes are cast for persons with whom the elector is not familiar, the effect is to diminish the vote for those persons whom the elector does support.
- This change is consistent with other voting procedures. See, for example, K.S.A. 25-2119 which governs the preparation of ballots for

city elections which provides:

Ballots for primary and general city elections shall be prepared in such manner that each voter is instructed to vote for the same number of candidates as the number of positions to be filled, for which the voter is qualified to vote. When the voter may vote for more than one candidate, such instructions shall also specify that the voter may vote for fewer than the total number for which the voter is qualified to vote. Failure to vote for the maximum number of candidates for positions as the voter is qualified to vote for shall not invalidate the ballot nor that portion of the ballot and votes for candidates fewer than the number directed shall be counted.

Section 2 (g). The number of members on an individual commission is keyed to the number of county commissioners in single county judicial districts, and the original statutory scheme provided a balanced rotation among members for continuity. In the early 1980's, Johnson County changed from a three member to a five member county commission, increasing the size of the district judicial nominating commission. The timing of that change, however, led to an unbalanced four and one rotation. This amendment moves Johnson County to a three and two rotation.

Section 3 (a). This amendment first replaces the requirement that the commission meet *within five days* after notice that a vacancy exists on the district court to a requirement that the commission meet *promptly*. The work of the commission begins immediately upon notice that a vacancy exists, but a notice to attorneys and to the general public must occur before the commission has reason to meet.

This amendment eliminates the prohibition against calling potential nominees "applicants." In reality all seek the position and must complete a nomination form.

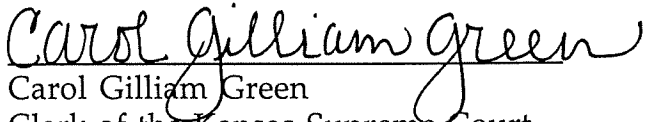
The amendment in the second paragraph of this subsection increases slightly the time in which the nominating commission has to do its work and clarifies that

the triggering event for calculation of the time is the chief justice's notification to the commission that a vacancy exists.

Section 4 (a). With regard to district magistrate judges, the five day meeting requirement is replaced with a requirement that the commission meet *promptly*, and the prohibition against calling potential nominees "applicants" is removed.

Section 5. This amendment simplifies the effective date on which a district magistrate judge's appointment becomes effective and provides some flexibility with regard to the date of appointment. Under the current statute, the appointment is effective when made if the position is open or becomes effective on the date the position becomes open. Unlike the district court nominating procedure, there is no time in which a formal background investigation can occur. Under the amendment, the Supreme Court would determine the effective date for filling vacant district magistrate positions, and background investigations could occur before appointments become effective.

I respectfully request the committee's favorable consideration of these proposed amendments.


Carol Gilliam Green
Clerk of the Kansas Supreme Court



DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

CHAMBERS OF:
LARRY McCLAIN
DISTRICT JUDGE
COURT NO. 10

SANDRA KING
ADMINISTRATIVE ASSISTANT
(913) 764-8484 x5463

February 16, 1995

Members of the House Judiciary Committee

Re: H.B. 2506

This amendment to H.B. 2506 is sponsored by the Johnson County Bar Association. The Office of Judicial Administration has proposed several changes to the existing K.S.A. 2904 et seq. and the Bar Association agrees with the changes proposed by the O.J.A. The change which is requested by the Johnson County Bar Association has the effect of requiring a run off election for the elected members of judicial nominating commissions in the event a nominee receives less than 25% of the number of votes cast for each position.

The requested change in the statute is a result of concerns expressed by members of the Johnson County Bar Association to the elected board members of that association the last few years. The following is a summary of what has happened in the past five elections in Johnson County:

Year	Positions Open	Candidates	% of Vote of Winners
1994	1	23	12%
1992	4	26	26%, 47%, 33%, 37%
1991	1	20	13%
1990	1	21	12%
1986	1	19	12%

There are seventeen judicial districts in the State of Kansas that have the nominating commission method of selecting judges. The existing method of electing members to the judicial nominating committee has worked in all the districts except Johnson and Shawnee Counties. The change which is proposed by this legislation would have caused a run off election in all five of the elections in Shawnee County since 1986 and a run off electing would House have been required in four out of the five elections occurring in Johnson County.

House Judiciary
1-25-96
Attachment 2

February 16, 1995

We believe the elected members of the judicial nominating commission hold very important positions and have a direct impact on the quality of judges elected. We further believe there is something wrong with an election process that allows a candidate to be elected with as little as 12% of the votes cast. We understand there are some additional costs involved if a subsequent election is conducted in these judicial nominating elections. The cost, however, is minimal (my estimate is \$6,000 every two years to hold the run off elections in Shawnee and Johnson County, plus staff time). We would respectfully submit the minimum expense required to conduct the run off election is a small price to bring respect to the outcome of these elections. There also could be run off elections in some of the other smaller judicial districts, however, the cost in those districts would be substantially less than either Johnson or Shawnee County and, historically, those smaller districts have not demonstrated any need for run off elections.

Kip Kubin, former President of the Johnson County Bar Association and myself have worked on this proposed change and we would invite you to contact either of us if you have additional questions regarding this issue.

Respectfully,



Larry McClain
Judge of the District Court

LMC/s

BILL DRAFT

(as amended by the Johnson County Bar proposal) DISTRICT JUDICIAL NOMINATING COMMISSION

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

Sec. 1. K.S.A. 1994 Supp. 20-2904 is hereby amended as follows: 20-2904. (a) Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the clerk of the supreme court pursuant to rule ~~201~~ 208 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district. The number of lawyer members to be elected to the district judicial nominating commission of a judicial district shall be as follows:

(1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of nonlawyer members appointed pursuant to subsection (a)(1) of K.S.A. 20-2905, and amendments thereto.

(2) In a judicial district consisting of two counties, four members shall be elected.

(3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.

(b) Between ~~December 1~~ November 1 and ~~December 15~~ November 15 of the year in which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901 and amendments thereto, the clerk of the supreme court shall send to each lawyer by ordinary first class mail a form for nominating one lawyer for election to the commission. Any such nomination petition shall be *received in the office of* ~~returned to~~ the clerk of the supreme court on or before ~~January 1~~ December 1 of the ~~following~~ year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for *not more than* the same number of nominees as the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed

and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote and certifying that the ballot was voted by such person. In any judicial district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot.

In order to insure that the election of lawyer members is by secret ballot, the clerk shall provide a separate envelope for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be placed in another envelope, also to be supplied by the clerk, together with the signed certificate, and *shall be received in the office of* ~~returned to~~ the clerk of the supreme court ~~prior to on or before February 15~~ January 15 of such year. The ballots so returned shall be canvassed within five days thereafter. The canvassers shall consist of the clerk of the supreme court and two or more person who are registered members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice. The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk. ~~Any ballot which does not contain separate votes for nominees equal in number to the number of persons to be elected shall be void and shall not be counted.~~

~~(c) After the ballots are counted and tabulated in descending order from the nominee receiving the highest number of votes the canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes.~~

(c) After the ballots are counted and tabulated in descending order, the canvassers shall declare to be elected those nominees who have received at least 25% of the electors casting votes and receive the highest number of votes and who are equal in number to the number of lawyers to be elected.

In the event a nominee(s) receives the highest number of votes for a position, but less than 25% of the electors casting votes, the clerk of the supreme court shall cause a subsequent election.

A subsequent election shall be as provided for the initial election except the nominees shall be limited to the two lawyers receiving the highest number of votes for each open position and the clerk of the supreme court shall send to each qualified elector, by ordinary first class mail, a ballot containing the names of the lawyer(s) determined by the prior election. The ballots shall be received in the

office of the clerk of the supreme court on or before February 15 of such year. The ballots shall be counted and tabulated in descending order from the nominee receiving the highest number of votes. The canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes.

(d) In the event of a tie creating more nominees to be elected than there are positions to be filled, the canvassers shall determine the person or persons to be elected by lot. In the event that less than the required number of lawyers is elected, the positions for which lawyers have not been elected shall be declared vacant and the vacancies filled in the manner prescribed by subsection (e) of K.S.A. 20-2906, and amendments thereto.

(e) The procedure provided in this section for the election of lawyers to serve as members of the first district judicial nominating commission established in a judicial district shall apply to the election of lawyers to succeed lawyer members of the commission whose terms of office expire, except that the form for submitting a nomination shall be sent between ~~December 1~~ November 1 and ~~December 15~~ November 15 of the year preceding the year in which such terms of office expire, and the dates prescribed for submission of nominations and the mailing, returning and canvassing of ballots shall apply in the year in which such terms of office expire.

Sec. 2. K.S.A. 1994 Supp. 20-2906 is hereby amended as follows: 20-2906. (a) All members of the district judicial nominating commission who are elected or appointed to full terms of office shall commence their terms of office on the first Monday in March following their election or appointment, and shall serve for terms of four years, except that lawyer members of the first nominating commission established in a judicial district shall serve for terms of office as provided in subsection (b), and nonlawyer members of the first commission shall serve for terms of office as provided in subsection (c)

No member of a district judicial nominating commission, which such member is a member, shall hold any office or official position in a political party or be eligible for nomination to the position of judge of the district court.

(b) The terms of office for lawyer members of the first nominating commission established in a judicial district shall be determined by lot at the first meeting of the commission in accordance with the following:

(1) Where there are three lawyer members of a commission, two of such members shall serve for terms of one year and one such member shall serve for a term of three years.

(2) Where there are four lawyer members on a commission, two such members shall serve for terms of one year and two such members shall serve for terms of three years.

(3) Where there are five lawyer members on a commission, three such members shall serve for terms of one year and two such members shall serve for terms of three years.

(4) Where there are six lawyer members on a commission, three such members shall serve for terms of one year and three such members shall serve for terms of three years.

(5) Where there are seven lawyer members on a commission, four such members shall serve for terms of one year and three such members shall serve for terms of three years.

(c) The terms of office for nonlawyer members of the first nominating commission established in a judicial district shall be determined by lot at the first meeting of the commission in accordance with the following:

(1) Where there are three nonlawyer members of a commission, one such member shall serve for a term of one year and two such members shall serve for terms of three years.

(2) Where there are four nonlawyer members of a commission, two such members shall serve for terms of one year and two such members shall serve for terms of three years.

(3) Where there are five nonlawyer members of a commission, two such members shall serve for terms of one year and three such members shall serve for terms of three years.

(4) Where there are six nonlawyer members of a commission, three such members shall serve for terms of one year and three such members shall serve for terms of three years.

(5) Where there are seven nonlawyer members of a commission, three such members shall serve for terms of one year and four such members shall serve for terms of three years.

bers shall serve for terms of three years.

(d) In determining terms of office of members of the first nominating commission established in a judicial district pursuant to subsections (b) and (c), the supreme court shall prescribe the method of determining the terms by lot. Any method or procedure so prescribed shall be officiated by the chairperson of the commission. Upon the expiration of the terms of office provided in subsections (b) and (c), successors shall be selected for terms of four years in the same manner as the members whose terms of office are expiring were selected.

(e) Whenever a vacancy for any reason other than the expiration of a term of office shall occur in a lawyer's position on the district judicial nominating commission, leaving an unexpired term of office of more than 90 days, the chief justice of the supreme court shall appoint a successor of like qualifications to serve until the first Monday in March that occurs more than 90 days after the date of the vacancy or until the end of the unexpired term, whichever occurs first. If such first Monday in March occurs prior to the end of the unexpired term, a lawyer of like qualifications shall be elected in the manner prescribed by subsection (d) of K.S.A. 20-2904, and amendments thereto, to serve from such Monday in March until the end of the unexpired term. If any such vacancy occurs in a lawyer's position on the nominating commission leaving an unexpired term of office of 90 days or less, there shall be no appointment or election of a successor to fill the unexpired term.

(f) Whenever a vacancy for any reason other than the expiration of a term of office shall occur in a nonlawyer's position on the district judicial nominating commission, a successor of like qualification shall be appointed in the same manner as the member whose position is vacant was appointed.

(g) At the next election of four lawyer members of the Tenth Judicial District nominating commission held after the effective date of this act, the clerk of the supreme court and the canvassing board prescribed by K.S.A. 20-2904, and amendments thereto, shall determine which of the four persons elected has received the fewest number of votes and that person shall serve a term of two years only so the current voting cycle of four lawyers members in an election followed in two years by an election for one lawyer member is changed to a cycle of an election for

three lawyer members following in two years by an election for two lawyer members. In the event of a tie for election by the fewest number of votes, the clerk and the canvassing board shall select the person to serve a term of two years by lot.

Sec. 3. K.S.A. 20-2909 is hereby amended as follows: 20-2909. (a) Whenever a vacancy occurs in the office of judge of the district court in any judicial district, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court promptly shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district. The chairperson shall call a meeting of the commission to be held *promptly* ~~within five days after receipt of such notice~~ for the purpose of nominating persons for appointment to such office. It shall be the duty of the commission to nominate not less than two or more than three person for each office which is vacant, and shall submit the names of the persons so nominated to the governor. Any person so nominated shall have the qualifications prescribed by subsection (b) of K.S.A. 20-2903 and amendments thereto, and in order to obtain the best qualified persons as nominees, the commission shall not limit its consideration of potential nominees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve. The commission may authorize one or more members of the commission to tender a nomination to any qualified person in order to ascertain the person's willingness to serve if nominated, but any such tender of nomination shall be subject to final action of the commission under the conditions prescribed by subsection (b) of K.S.A. 20-2907 and the amendments thereto. ~~Under no circumstances shall the commission refer to or describe potential nominees as applicants or otherwise suggest that such persons are seeking to be nominated.~~

In order that a vacancy in the office of the judge of the district court does not exist for an inordinate length of time, the commission shall conduct the business of selecting nominees for appointment to such office and certifying the same to the governor as a promptly and expeditiously as possible, having due regard for the importance of selecting the best possible nominees. In no event shall the commission submit its nominations to the governor more than ~~30~~ 45 days after the date *the chief justice has notified the nominating commission that a vacancy is to be filled*, unless the chief justice permits an extension of such time period.

(b) If there are not at least two attorneys deemed qualified by the district judicial nominating commission who reside in the judicial district and who are willing to accept the nomination to fill a vacancy in a district judge position, the nominating

commission need not limit its consideration of nominees to attorneys residing in the judicial district; however, in cases where there is one such attorney, such attorney shall be one of the nominees submitted to the governor. If an appointee is not a resident of the judicial district at the time of appointment to a district judge position, the appointee shall establish residence in the judicial district before taking office and thereafter shall maintain such residence while holding such office.

Sec. 4. K.S.A. 20-2914 is hereby amended as follows: 20-2914. (a) Whenever a vacancy shall occur in the office of district magistrate judge in any judicial district which has approved the proposition of nonpartisan selection of district court judges, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court promptly shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district. Said chairperson shall call a meeting of the commission to be held ~~promptly within five (5) days after receipt of such notice~~ for the purpose of selecting a person to fill such vacancy. Any person so selected shall have the qualifications prescribed by subsection ~~(e)~~ (b) of K.S.A. 20-334, and in order to obtain the best qualified person as a district magistrate judge, the commission shall not limit its consideration of potential appointees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve. The commission may authorize one ~~(1)~~ or more members of the commission to tender an appointment to any qualified person in order to ascertain his or her willingness to serve if appointed; but any such tender of appointment shall be subject to final action of the commission under the conditions prescribed by subsection (b) of K.S.A. 20-2907. ~~Under no circumstances shall the commission refer to or describe potential appointees as applicants or otherwise suggest that such persons are seeking to be appointed.~~

(b) Any appointment made pursuant to subsection (a) shall be contingent upon the acceptance of such appointment by the person so appointed and, if such person is not regularly admitted to practice law in Kansas, the appointment shall be made on a temporary basis until such person has been certified by the supreme court as qualified to hold such office, in the manner provided by K.S.A. 20-337.

Sec. 5. K.S.A. 20-2915 is here amended as follows 20-2915.. (a) ~~Whenever a vacancy in the office of district magistrate judge exists at the time the appointment to fill such vacancy is made, as provided in K.S.A. 20-2914, the appointment shall be effective at the time it is made, but where any such appointment is made to fill a vacancy which will occur at a future date, such appointment shall not take effect until said date. Appointments made by the commission shall be effective as of the~~

official appointment date set by the supreme court.

(b) Any person appointed to the office of district magistrate judge, as provided in K.S.A. 20-2914, shall commence upon the duties of the office on the date such appointment takes effect, and any person so appointed shall have all the rights, privileges, powers and duties prescribed by law for the office of district magistrate judge. Except as otherwise provided in K.S.A. 20-337, any such judge shall be eligible for retention in office in the same manner and under the same conditions prescribed by law for the retention of district judges in judicial district which have approved the proposition of nonpartisan selection of district court judges.

Sec. 6. K.S.A. 1994 Supp. 20-2904 and 20-2906, and K.S.A. 20-2909, 20-2914, and 20-2915 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Judicial Council Testimony
on
1995 SB 139
House Judiciary Committee
January 25, 1996

SB 139 contains the recommendations of the Criminal Law Advisory Committee of the Judicial Council. SB 139 is intended to make the statutes addressing the civil rights of convicted felons clearly compatible with the second sentence of article 5, section 2 of the Kansas Constitution, to remove apparent inconsistencies among such statutes and to avoid misleading discharged felons as to their rights to use and possess firearms.

The second sentence of section 2, article 5 of the Kansas Constitution states:

"No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote."

Upon review of the constitutional provision and the relevant statutes, the Criminal Law Advisory Committee recommends that, upon conviction, a felon should lose the right to hold public office, the right to vote and the right to serve as a juror and that such rights should automatically be restored upon discharge from supervision or from custody by reason of the expiration of the term of imprisonment to which the felon was sentenced. Upon discharge, convicted felons should be informed that they are not relieved from complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony.

Subsection (b) of K.S.A. 21-4603d (section 1 of SB 139, page 3) currently states that, "Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights." This is arguably inconsistent with the constitutional provision which requires a restoration of rights before a convicted felon is qualified to vote. It also appears to be inconsistent with K.S.A. 43-158 which states that persons with a felony conviction in the preceding 10 years shall be excused from jury service. K.S.A. 43-158 makes no distinction between felons who have been committed to the custody of the Secretary and those who have not. In addition, to the extent that the right to possess firearms is a civil right, K.S.A. 21-4204 contains prohibitions on possession of firearms by convicted felons even if not imprisoned. SB 139 amends 21-4603d so that subsection (b) will no longer apply for felony convictions occurring on or after July 1, 1995. (Due to the bill carrying over from the 1995 session, this should be updated to July 1, 1996.)

Section 2 of the bill amends K.S.A. 21-4611 on page 4, lines 8 through 15, to address felons who are not imprisoned.

Section 3 amends K.S.A. 21-4615 and removes the requirement of imprisonment before there is a loss of the enumerated rights. The constitutional provision that a convicted felon is not qualified to vote does not refer to imprisonment. To serve as a juror, a person must possess the qualifications of an elector (K.S.A. 43-156). A person would also have to be a qualified elector to hold a number of public offices.

Section 5 amends K.S.A. 22-3722 (page 10, lines 21 through 26). K.S.A. 22-3722 directs the Parole Board to provide an inmate with a certificate of discharge. The current certificate of discharge states, ". . . that all civil rights lost by operation of law upon commitment are hereby restored. These rights include, but are not limited to, the right to vote, the right to hold public office, and the right to serve on a jury. . . ." It would seem more appropriate for the certificate to refer to the specific rights lost under 21-4615, and the section is amended to reach this result. The section is also amended so that the certificate will inform the inmate that the inmate is not relieved from complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony. First, this informs discharged inmates that they are still subject to prohibitions concerning firearms. Second, federal law looks to state law to determine whether a person is a convicted felon and thus subject to the prohibitions in the federal firearms law. 18 U.S.C. § 921(a)(20) states, "Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." In other words, if a felon is still subject to firearms prohibitions under state law, the felon is considered a convicted felon for purposes of federal firearms prohibitions. Decisions in the Tenth Circuit and Kansas federal district court have held that the state firearms restriction does not have to be expressed in the actual certificate of discharge to be effective. However, other federal courts have viewed the subject differently.

Section 6 amends K.S.A. 43-158 concerning jury service. Currently, the section measures the prohibition on jury service from the date of conviction with no reference to imprisonment or discharge. As amended, the section will be consistent with the other statutes and the prohibition will extend until the felon is finally discharged.

The bill also contains a minor amendment to the expungement statute, K.S.A. 21-4619 (section 4, page 9, lines 1 and 2). In reviewing this area, the committee considered the relationship of the expungement statute. Apparently, certain agencies are destroying expunged records and they are not subsequently available for appropriate purposes. The amendment directs sealing and retention of such records.

Technical Amendments

Since SB 139 carried over from the 1995 Session, sections 1 and 4 should be updated to reflect 1995 amendments to K.S.A. 21-4603d and 21-4619. "July 1, 1996" should be substituted for "July 1, 1995" in section 1, p. 3, l. 19; section 2, p. 4, l. 8; and section 3, p. 5, l. 30. It appears references to "1994 Supp." should also be deleted.