

Approved: March 14, 1996  
Date

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 February 6, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Gary Merritt, Excused  
Representative Dee Yoh, Excused

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

Others attending: See attached list

**HB 2754** - juvenile justice authority will succeed to title in real property SRS holds concerning juvenile offenders

Representative Garner made a motion to report **HB 2754** favorably for passage and be placed on the consent calendar. Representative Adkins seconded the motion. The motion carried.

**HB 2608** - capitol area security patrol designated capitol police

Representative Adkins made a motion to report **HB 2608** favorably for passage and be placed on the consent calendar. Representative Goodwin seconded the motion. The motion carried.

**HB 2695** - battery against a law enforcement officer to include correctional officer/employees of the city or county

Representative Pauls made a motion to report **HB 2695** favorably for passage. Representative Howell seconded the motion. The motion carried.

**HB 2506** - amendments to the district court nominating commission statute

Representative Adkins made a motion to report **HB 2506** favorably for passage. Representative Ott seconded the motion.

Representative Adkins made a substitute motion to amend in the proposed changes, by Carol Green, regarding the word "promptly" (Attachment 1). Representative Pauls seconded the motion. The motion carried.

Representative Mays made a motion to amend in Judge Larry McClain's proposed changes, (Attachment 2). Representative Adkins seconded the motion.

Representative Pauls had a concern about amending in Judge McClain's proposal. The present system allows everyone an equal shot.

Representative Pauls made a substitute motion to incorporate Judge McClain's proposed amendments except for the section regarding the run-off election. Representative Haley seconded the motion. After further discussion, the committee noticed that all of Judge McClain's amendments, except for the runoff election section and date changes, were included in the bill. With permission of the second, Representative Pauls withdrew her motion.

The motion to amend in Judge McClain's amendments failed.

Representative Miller made a motion to report **HB 2506** as amended favorably for passage. Representative Standifer seconded the motion. The motion carried.

**HB 2659** - presumed imprisonment sentence for felony committed for the benefit of a criminal street gang

Representative Mays made a motion to report **HB 2659** favorably for passage. Representative Ott seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on February 6, 1996.

HB 2700 - if parole denied, hearing within 10 year of denial instead of 3 years

Representative Adkins made a motion to report HB 2700 favorably for passage. Representative Grant seconded the motion.

Representative Snowbarger made a substitute motion to amend in that the Parole Board may order reimbursement to the state for defense services that have been rendered to the parolee (Attachment 3). Representative Adkins seconded the motion. The motion carried.

Representative Garner made a motion to delete lines 15-22. He believes that restitution shouldn't be ordered without a due process hearing. Representative Standifer seconded the motion. The motion failed.

Representative Adkins made a motion to have the 5 year maximum pass date be set at 3 years. Representative Spangler seconded the motion. The motion carried.

Representative Garner made a motion to restore the stricken language on page 1. Representative Haley seconded the motion. The motion failed.

Representative Adkins made a motion to report HB 2700 as amended favorably for passage. Representative Miller seconded the motion. The motion carried.

Chairman O'Neal asked if any committee members would like staff to do further research regarding HB 2603. Representative Standifer requested that staff research if automobile insurance companies could drop the families policy if the underage driver receives a DUI. Representative Adkins request was whether policy holders were given a break if no DUI has been issued for a period of time.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for February 7, 1996.



**To: Paul Shelby**  
**From: Carol G. Green**  
**Re: House Bill No. 2506**  
**Date: January 29, 1996**

---

At the hearing before the House Judiciary Committee on January 25, 1996, Representative O'Neal expressed concern with the language in Section 3 (a) and Section 4 (a) of House Bill 2506 which substitutes the word "promptly" for the requirement that the judicial district nominating commission meet within five days after receipt of notice that a judicial vacancy exists. The Supreme Court proposed substitution of the word "promptly" for the five day requirement because there is no work for the full commission to do within five days of notice that a vacancy exists. I can, however, understand Representative O'Neal's desire for greater specificity.

As I mentioned during the hearing, the process does begin immediately upon notice. The departmental justice who chairs the commission contacts the commission secretary and together they work out a nomination and interview schedule subject to approval by the full commission. Notices are mailed to all attorneys in the judicial district, and press releases are sent to local papers to inform the public that a vacancy exists or soon will. This notification process takes about two weeks. Nominations are then accepted for a two to three week period after which interviews are scheduled. Individual commission members receive the nomination forms as they are filed, and those commission members begin making inquiry into the potential nominees' backgrounds. It is near the end of the six-week period that the full commission meets to conduct interviews and make their selections.

House Judiciary  
2-6-96  
Attachment 1

As I suggested at the hearing, it would be workable to put a forty-five day deadline on the meeting of the full commission; however, upon reflection, it seems to me that the intent of this sentence in the statute is to assure that the work of the commission begins in a timely fashion. It would be possible to leave the five day limitation but change the description of what is to be done within those five days. I would propose the following in Section 3 (a):

The chairperson, in consultation with members of the commission, shall ~~call a meeting of the commission to be held~~ within five days after receipt of such notice set a schedule for accepting nominations and conducting interviews for the purpose of nominating persons for appointment to such office.

The language varies slightly in Section 4 (a) to reflect that the commission actually appoints district magistrate judges rather than making a nomination for appointment:

~~Said~~ The chairperson, in consultation with members of the commission, shall ~~call a meeting of the commission to be held~~ within five days after receipt of such notice set a schedule for accepting nominations and conducting interviews for the purpose of selecting a person to fill such vacancy.

If the Committee has further questions, I would be pleased to respond.

*Carroll*

## 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 anointment 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.

STATE OF KANSAS



BOARD OF INDIGENTS' DEFENSE SERVICES

January 30, 1996

LONDON STATE OFFICE BUILDING  
900 JACKSON, ROOM 304  
TOPEKA, KANSAS 66612-1255

(913) 296-4505

Rep. Michael O'Neal, Chairman  
House Judiciary Committee  
Room 170-W  
Statehouse  
Topeka, Ks. 66612

Subject: House Bill No. 2700

Dear Rep. O'Neal:

House Bill No. 2700 amends the statutes relating to parole. On behalf of the State Board of Indigents' Defense Services, I am suggesting a further amendment to these statutes which would enable the parole board to order reimbursement to the state for defense services that have been rendered to the parolee.

Although the parole board may now be ordering this reimbursement as a condition of parole, the question has come up recently regarding the statutory authority for such an order by the parole board.

I am attaching some proposed wording, which the Revisor's Office may want to clean up prior to inclusion in the bill. The concept, however, is to allow the parole board to order reimbursement, which the agency believes will increase collections to the state general fund.

I am available to testify in your committee if you so desire. Please contact me if you have questions or comments. Thank you.

Respectfully,

A handwritten signature in cursive script that reads "Ronald E. Miles".

Ronald E. Miles  
Director

REM

cc: file

House Judiciary  
2-6-96  
Attachment 3

**Proposed Amendment to House Bill No. 2700**

*(p) If the parolee was sentenced on or after July 1, 1996, and the court did not specify at the time of sentencing that the parolee repay to the state the amount expended by the state board of indigents' defense services on behalf of the parolee, the parole board shall order as a condition of parole or postrelease supervision that the parolee reimburse the state for the amount expended by the state board of indigents' defense services on behalf of the parolee unless the board finds compelling circumstances which would render a plan of reimbursement unworkable.*