Approved: March 24, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:16 a.m. on March 23, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee: none

Others attending: see attached list

The minutes of the March 22 meeting were approved on a motion by Senator Bond and seconded by Senator Donovan; carried.

The Chair assigned **SB 286** to Senator Vratil's subcommittee.

HB 2136–concerning public officers and employees; relating to the legal representation thereof before grand juries and inquisitions

The Committee discussed **HB 2136** specifically addressing whether or not it was necessary to retain Section I (KSA 75-4360) of the bill since the substance of Section I was already covered under the Tort Claims Act. Senator Vratil explained his research on this subject stating that part of the Tort Claims Act on pg 3 line 12 provides exception to Section I. Keeping this in the bill is a matter of public policy. Following discussion there was general agreement that there was no need for Section I but, to compromise, Section I would be removed and the grand jury issue would be put into the Tort Claims Act. Senator Vratil moved to amend **HB 2136** by deleting Section I, Senator Goodwin seconded, carried. Senator Vratil moved to pass **HB 2136** out favorably as amended, Senator Goodwin seconded, carried.

SUBCOMMITTEE REPORT AND ACTION

HB 2155–concerning criminal procedure; relating to grants of immunity
HB 2184–concerning the code of civil procedure for limited actions; relating to claim for possession of property bond forms
HB 2206–concerning judges; relating to administrative judges
HB 2471–establishing a district attorney's office in Reno county

Senator Pugh reviewed the above subcommittee bills and his subcommittee's recommendations. After brief discussion, Committee took the following action: **HB 2155** - Senator Pugh moved to pass the bill out favorably, Senator Bond seconded, carried. **HB 2184** - Senator Pugh moved to pass the bill out favorably, Senator Bond seconded, carried. **HB 2206** - Senator Pugh moved to pass the bill out favorably, Senator Bond seconded, carried. **HB 2471** - Senator Pugh moved to pass the bill out favorably, Senator Bond seconded, carried. (attachment 1)

HB 2101–concerning crimes, criminal procedure and punishment; relating to sentencing; availability of presentence reports
HB 2102–concerning civil commitment; relating to sexually violent predators; jury; peremptory challenges
HB 2259–concerning courts; relating to district magistrate judges; residency requirements
SB 94–concerning courts; relating to jurisdiction of district magistrate judges; felony arraignments

Senator Vratil reviewed the above subcommittee bills and his subcommittee's recommendations. After brief discussion, Committee took the following action: **HB 2101** - Senator Vratil made a motion to pass out **HB 2101** as amended by the subcommittee with the exception of amending **SB 131** into the bill, Senator Goodwin

seconded, carried. **HB 2102** - Senator Vratil moved to pass the bill out favorably, Senator Goodwin seconded, carried. **HB 2259** - The fiscal note for this bill is approximately $61,000 to cover expenses for extra personnel. Senator Vratil made a motion to pass the bill out favorably, Senator Harrington seconded. Discussion. Senator Feleciano moved to change the effective date to the Kansas register, Senator Vratil seconded. Carried with Senator Oleen voting nay. After further discussion regarding the possibility of directing fees to the Department of Vehicles considering the large fiscal note on this bill, the bill was placed on hold for further investigation into this matter. **HB 2352 and SB 94** - Senator Vratil moved to pass out **SB 94** as amended by the subcommittee, Senator Harrington seconded, carried; Senator Vratil moved to amend **HB 2352** by amending **SB 94** into it, Senator Harrington seconded, carried; Senator Vratil moved to pass **HB 2352** out favorably as amended, Senator Harrington seconded, carried. (attachment 2)

HB 2150–an act concerning dispute resolution; relating to arbitration and mediation; confidentiality of proceedings It was determined that at the March 11 meeting the bill was amended to restore the language on pg 2 at lines 7,8,9 and pg 3 at lines 40 and 41. Following discussion Senator bond moved to pass the bill out favorably as amended, Senator Vratil seconded, carried with Senator Pugh voting nay.

HB 2276–an act enacting the Kansas revised limited liability company act
HB 2549–an act amending and supplementing the Kansas estate tax act

Senator Vratil reviewed the above subcommittee bills and the subcommitee's recommendations and after discussion, the following action was taken: **HB 2276** - Senator Vratil moved to pass the bill out favorably, Senator Pugh seconded, carried; **HB 2549** - Senator Vratil moved to pass the bill out favorably, Senator Pugh seconded, carried. (attachment 3)

The meeting adjourned at 10:57 a.m. The next scheduled meeting is March 24, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 23, 1999

NAME	REPRESENTING
Rick Scheibe	KDOR Vehicles
Ken Hanson	USD 384
Kevin A. Graham	KSC
Cindy M. Harrod	KQC
James Clark	KCDAA
Ron Smith	Ks Bar Assoc
Kathy Porter	OJA
JAKE FISHER	WHITNEY DAMRON
Barb Jones	KSC
Gene Johnson	Ks ASAP
Vicki Hebert	DOB
Mike Teeter	USD 384
Whitney Damron	KS Bar Assn.
BOB BURCH	KACCT
Nancy Lindberg	AG
Rep Tom Klein	
Andrea Robl	USD # 384
Heather Nelson	USD #384
Lana Good	USD #384

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 23, 1999

NAME	REPRESENTING
Amber Burkland	USD #384
Jon Josserand	KU
Marla Ren	KU
Paul Wilson	KAPE
Mike Amichand	KU Classified Senate
Lynn George	KU Human Resources

Senator Pugh's Judiciary Subcommittee

1. H.B. 2155 would amend the Criminal Procedure Code to allow transactional immunity and derivative use immunity for witnesses before grand juries and inquisitions. These two types of immunity could be granted by the district court judge, the Attorney General or county or district attorneys "Transactional immunity" prevents a person from being prosecuted for either any crime for which such immunity is granted or for any transactions arising from the same incident. "Derivative use immunity" allows the individual to be prosecuted for the crime, but does not allow the use of testimony against the individual if the testimony was given under the grant of such immunity.

Conferrees

Proponents of the bill included:

Judge Marla Luckert—Judicial Council

Jim Clark—Kansas County and District Attorneys Association

Opponents of the bill included: None

Subcommittee Action

The subcommittee recommends the bill be passed by the full Committee.

2. H.B. 2184 would require a judge to approve a property bond to recover personal property in a limited actions case. Currently court clerks approve these bonds.

Conferrees

Proponents of the bill included: None. In the House Judiciary meeting a conferee from the Kansas Association of District Court Clerks and Court Administrators testified in support of the bill.

Opponents of the bill included: None

Subcommittee Action

The subcommittee recommends the bill be passed by the full Committee.

Sen. Jud
3-22-99
Att 1

3. H.B. 2206 would replace the term "Administrative" with the work "Chief" in all statutory references to the head district court judge.

Conferrees

Proponents of the bill included:

Judge Paul Buchanan

Opponents of the bill included: None

Subcommittee Action

The subcommittee recommends the bill be passed by the full Committee.

4. H.B. 2471 would establish a district attorney's office for Reno County, the 27th Judicial District. The current county attorney would become the district attorney until the general election in the year 2000. The tax levied for the office of district attorney is made exempt from the tax lid.

Conferrees

Proponents of the bill included:

Tim Chambers—Reno County Attorney

Kyle Smith—Kansas Bureau of Investigation and the Attorney General's Office

Opponents of the bill included: None

Subcommittee Action

The subcommittee recommends the bill be passed by the full Committee.

3-18-99
H.B. 2155
Judge Marla Luckert

JUDICIAL COUNCIL TESTIMONY
IN SUPPORT OF
H.B. 2155

SENATE JUDICIARY SUBCOMMITTEE
March 18, 1999

On behalf of the Judicial Council, I am testifying in support of H.B. 2155. This legislation came to the Judicial Council through its Criminal Law Advisory Committee. The Committee members include judges, prosecutors, defense attorneys, law professors and counsel to law enforcement agencies. The Criminal Law Advisory Committee recommended the adoption of this legislation as did the Judicial Council.

H.B. 2155 is very similar to 1998 H.B. 2819. The committee watched that bill with interest last session. When it was not enacted, the Committee began a study of the bill, made some modifications and recommends it in the current form.

The purpose of the bill is to provide clarity and increased flexibility in the granting of immunity in criminal prosecutions. The bill allows the state to grant a witness either transactional or derivative use immunity. Section 1 relates to witnesses who appear before a grand jury, section 2 to witnesses at an inquisition, and section 3 to witnesses at other criminal proceedings.

The use of immunity grants to preclude reliance upon the self-incrimination privilege predates the United States' Constitution. Despite that, the United States Supreme Court has struggled with the interplay between the doctrines. Some of this history is important to understand why the current Kansas statute is worded in the way in which it is and why the proposed legislation results from an evolution of case law.

Generally, there are two types of immunity: transactional and use. "Transactional immunity" grants immunity for any transaction or matter about which a person is compelled to testify. "Use immunity" prohibits witness' compelled testimony from being used in any manner in connection with criminal prosecution of the witness. A subclass of "use immunity", which may also be viewed as a third type of immunity, is known as "derivative use immunity". "Derivative use immunity" prohibits the use of any fruits of a witness' testimony from being used in any manner in connection with the criminal prosecution of the witness.

In early United States Supreme Court cases, the Court struck down the use of use or derivative use testimony. Accordingly, the United States Congress adopted a statute providing for transactional immunity. Most state statutes were patterned after the federal provision. Later cases and subsequent amendments to the statutes recognized two limitations in transactional immunity. First, the witness may still be prosecuted for perjury committed in the immunized testimony. Second, immunity will not extend to a transaction noted in an answer totally unresponsive to the question

asked. Thus, the witness cannot gain immunity from prosecution for an unrelated criminal act by simply injecting a comment into the testimony.

However, in the 1960's the United States Supreme Court upheld immunity that was not as broad in scope as the traditional transactional immunity. Following the decision, the United States Congress adopted a new immunity provision. In 1972, in companion cases of *Kastigar v. United States,* 406 U.S. 441 (1972) and *Zicarelli v. New Jersey,* 406 U.S. 472 (1972), the Supreme Court upheld federal and state statutes, respectively, allowing the granting of derivative use immunity. Following *Zicarelli,* states began to amend statutes to allow derivative use immunity.

The Kansas statute was last amended in 1972, just months before the release of the *Kastigar* and *Zicarelli* decisions. In 1975, the Kansas Supreme Court held that the current version of K.S.A. 22-3415 made a grant of immunity both a transactional and use immunity. Not one or the other, but both. *In re Birdsong,* 216 Kan. 297, 304, 532 P.2d 1301 (1975). Thus, in practical effect, transactional immunity has been retained in cases.

The principal purpose of H.B. 2155, is to allow for the granting of either transactional or use and derivative use immunity. As is often the case, the fact that we have waited to reconsider the Kansas statute in light of the evolving case law has advantages. In the subsequent decades, the debate has continued as to whether use immunity of transactional immunity is better. For example, with respect to the effectiveness of the immunity in gaining truthful and complete testimony from a recalcitrant witness, each side claims advantages for the type of immunity it favors. Proponents of transactional immunity claim that a witness given use/derivative use immunity lacks confidence that the prosecutor will be prevented from making use of the witness' testimony in any subsequent prosecution. On the other hand, proponents of derivative use immunity argue that under a grant of transactional immunity a witness will say no more than he has to since a single admission gains him full immunity from prosecution. Proponents of derivative use immunity argue that the absence of an absolute protection against prosecution has value in making the immunized witness' testimony more credible to the jury and that it allows the prosecution of everyone who should be prosecuted.

Through this debate and by observing the experience of the federal system and other states we have the record of knowing that in different situations there are advantages to different forms of immunity. What may be effective in one case, may not be under a different factual pattern. Generally, the subsequent prosecution of a witness granted use immunity has been rare. However, at times the use and subsequent prosecution are important. On the other hand, as I noted, the defense counsel on our committee were also supportive of the provision, noting that the options for a defendant were also increased and that some of the confusion of current law would be removed.

The fact that the provision parallels other states gives us case law to look to with regard to the application of the statute. This is most important, perhaps, in regard to the so-called "taint" hearings which test whether the prosecutor is utilizing evidence derived from the testimony of the witness. In such a hearing, the state has the burden to prove by clear and convincing evidence that the evidence was obtained independently and from a collateral source.

This bill also provides for one other substantive change. Under current law, the statute provides that it is the judge who grants immunity to witnesses before a grand jury. The statute provides that notice shall be given to the prosecuting attorney whose recommendations shall be heard. The committee strongly believed that the better policy was to leave the decision to grant immunity in the hands of the entity who would ultimately have to try the case, either the local prosecutor or the attorney general. Thus, as amended before the House, the provision allows either the prosecutor or the judge the power to grant immunity.

In summary, we urge your support of this legislation which would bring Kansas current with the law of immunity as it has evolved; would eliminate the confusion which exists under the current statute; and would provide increased flexibility so that decisions can be made as felt most appropriate under the specific facts of a case.

HB 2206
JUDGE P.
BUCHANAN

TESTIMONY IN SUPPORT OF HB 2206 – JUDGE PAUL BUCHANAN

I want to thank the judiciary sub-committee for the opportunity to appear in support of H.B. 2206 which provides that the administrative judges of the district court will in the future be known as chief judges.

Presently the judge of the district who is appointed by the Supreme Court to the responsibility for the handling of the administrative matters of the district court known as the administrative judge. To my knowledge this term has no known history to call the chief judge the administrative judge. In addition to handling the administrative matters, the judge so appointed also has the responsibility to see that all matters are handled expeditiously. The term came into the Kansas judiciary with unification of the courts in 1977.

Traditionally, the term "chief" is used as a title for the first ranking judge or justice of a court. We have the Chief Justice of the United States, the Chief Justice of the Kansas Supreme Court, the Chief Judge of the Kansas Court of Appeals. In the Federal system, we have the Chief Judge of the Court of Appeals for the Tenth Circuit and the Chief Judge of the United States District Court for the District of Kansas.

The basic duties of the administrative judge are set out in K.S.A. 20-329, but each one of the 71 sections of H.B. 2206 set out additional duty or duties for the administrative judge.

The confusion arises when we have an administrative judge who is responsible for the operation of the district court which handles criminal cases including those providing for the death penalty, other felonies and misdemeanors, contracts, suits for damages, divorces, probate of estates, juvenile offenders, children in need of care, child custody, parentage, and all the other myriad of cases, compared to an administrative law judge who is responsible for hearing a case within the jurisdiction of a specialized agency of either the legislative or executive branch of our state government. The legislature has been dealing with the problems of administrative law judges in House Bill 2126. There you are being asked to create a separate office for administrative law judges.

A good example of the confusion is illustrated by the legislative newsletter of the Kansas Bar Association *Oyez Oyez*. The issue is dated February 5, 1999. On page 3 there is an article titled "Administrative Judges". The story

is not about district judges. It's about administrative law judges. The reason for the change is to prevent confusion.

We are judges of the judicial branch of government.

We are not a part of administrative agencies within either the legislative branch or the executive branch of government.

When I visit other people within the state and with lawyers and judges outside the state, I must explain that I am the "chief" judge of a trial court and not an administrative law judge. I am responsible for the operation of a district court with twenty-five judges and a total of 217.5 employees including 54 probation officers, court reporters and other types of employees.

I was in St. Paul Minnesota, last spring for a gathering, a lawyer there had been told I was an administrative judge. I had to explain that I was not an administrative law judge in a state agency but the administrative head of the largest court in the state.

I believe that this amendment will give recognition to those judges who are responsible for the operation of the 31 judicial districts in the state who perform these functions with only a modicum of additional compensation.

I urge the approval of H.B. 2206.

N. 247
Kyle Sm

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Testimony
Kyle G. Smith
Assistant Attorney General
Kansas Bureau of Investigation
In support of HB 2471
March 18, 1999
Judiciary Sub Committee

Chairman Pugh and Members of the Committee,

I am pleased to appear on behalf of Director Larry Welch of the KBI and Attorney General Stovall in support of HB 2471. The citizens of Kansas are poorly served by our system of part-time county prosecutors. Conflicts, rapid turnover, limited salaries and chances for advancement all combine to make prosecution the weak link in our criminal justice system. All too often the public's interests are handled by inexperienced attorneys with more interest in gaining trial experience and moving on to private practice than in making prosecution a career.

Reno County has been fortunate in having a long tradition of excellent prosecutors in their county attorney's office. I started my legal career as an intern in Reno County in 1980. Until that experience I never even thought of prosecution as a career, but the professionalism and dedication I observed then made me aware of the importance of the prosecutor in the justice system. Most assistant county attorneys have not been as fortunate as I in finding positions where they can afford to make prosecution a career. Financially the system almost forces a constant turnover, dooming the citizens to inexperienced, if enthusiastic, representation.

The citizens of Kansas deserve full time, professional representation in the courts. HB 2471 would be a good step furthering that goal. Thank you for your consideration.

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1-10

H.B. 2471
Tim Ch. ers

COUNTY ATTORNEY
Timothy J. Chambers

ASSISTANT COUNTY ATTORNEYS
Keith E. Schroeder
Stacy L. Cunning
JoAnna L. Derfelt
Linda L. Blackburn - Juvenile

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Testimony of Timothy J. Chambers
Reno County Attorney Before the Judiciary Committee
Of the Kansas Senate
March 18, 1999

Senator Pugh and members of this subcommittee:

I appreciate the opportunity to appear before this committee. I have been Reno County Attorney since 1983 and a prosecutor since 1976. I have made prosecution my chosen profession and consider it an honor to be Reno County Attorney. I have witnessed dramatic changes in the criminal justice system over the last twenty-three years. Some changes have been positive, such as the advent of victim-witness coordinators and the protection of victims.

Other changes are not positive. The introduction of cocaine and methamphetamine into our society has led to dramatic increases in crime with gangs having become a part of our everyday lives. Sentencing guidelines have changed the philosophy of our criminal justice system from rehabilitation to retribution and punishment.

As we prepare to enter the new millennium, prosecution has to adapt to our changing world. I have long endorsed the concept of a state wide District Attorney system to guarantee professional, career prosecutors. Over the last fifteen years, I have employed fourteen assistant county attorneys. Prosecution should not be a training ground for new attorneys to gain a few years of experience before moving on to the private practice of law.

Reno County is a single county judicial district. With the exception of Cowley County, Reno County is the only single county judicial district that is not a district attorney. Reno County ranks consistently at the very bottom of counties in the State of Kansas in per capita spending for prosecution.

The 1999 budget for our office is $324,248. 1999 budgets for Saline, Finney and Riley counties are respectively $527,589.00, $606,384.00 and $598,282.00 I have no doubt that Reno County ranks below at least one hundred other counties in per capita spending for prosecution in the State of Kansas.

1-11

Our caseload has risen from (400) four hundred criminal cases in 1983 to over (1,200) twelve hundred criminal cases filed in calendar year 1998. Additionally, over (1,000) one thousand juvenile cases were filed in 1998. These figures do not take into consideration traffic offenses, administrative duties and a doubling of appellate cases.

Last year the County Commission indicated that the County Attorney's budget would be cut a minimum of $27,000.00 because of the limitations of the tax lid. Indications are that unless the legislation is passed, further cuts will be forthcoming.

I feel confident in the performance of the office of Reno County Attorney. I have no hesitancy in saying that any law enforcement agency in the State of Kansas would indicate the level of performance of our office equals or excels that of any of the present District Attorney offices.

In conclusion, I am proud of the job the office of the Reno County Attorney has accomplished. I have been privileged to have dedicated assistants working for me who were and are true professionals. I am proud to have been chosen Kansas Prosecutor of the Year by the Kansas County and District Attorney's Association.

It is my belief that the people of Reno County would best be served by acknowledging the role of prosecution as a full time profession dedicated to serving the criminal justice system. By passing this proposed legislation, we can be assured that qualified professionals will seek careers in what I consider an honorable profession, prosecution.

Timothy J. Chambers
Reno County Attorney

S Jud 3-23-99 #2

Senator Vratil's Subcommittee

1. H.B. 2101 amends the criminal procedure statutes dealing with presentence reports of misdemeanor crimes. The bill would make reports part of the court record accessible to the public. Certain reports, such as drug and alcohol reports and psychological reports, would only be accessible to the parties, the sentencing judge, the Department of Corrections and the Kansas Sentencing Commission, if requested.

Conferees

Proponents of the bill included:

Jim Clark, Kansas County and District Attorney's Association

Jeanne S. Turner, Kansas Association of District Court Clerks

Kathy Porter, Office of Judicial Administration, who suggested a technical amendment (the same amendment that was added to this statute which is also included in S.B. 131 by the Senate Committee on the Whole)

Barbara Tombs, Kansas Sentencing Commission, who also endorsed the clarification amendment

Opponents of the bill included: None

Subcommittee Action

Senator Goodwin made a motion to clarify H.B. 2101 as suggested. Senator Harrington seconded the motion and it carried. Senator Vratil made a motion to amend S.B. 131, as amended by the Senate Committee of the Whole, into H.B. 2101. Senator Harrington seconded the motion and it carried. Senator Vratil moved to recommend H.B. 2101, as amended by the Subcommittee, to the full Committee for favorable consideration. Senator Harrington seconded the motion and it carried.

2. H.B. 2102 establishes a set number of 12 jurors in civil commitment sex predator cases unless there is a written agreement, with court approval, for less than 12 jurors. The bill also allows for eight preemptory challenges. If there are less than 12 jurors, the number of preemptory challenges will be proportionately reduced.

Sen Jud 3-23-99 #2

Conferees

Proponents of the bill included:

Louis Hertzen, Kansas Association of Court Clerks and Administrators, supported the bill to clarify the size of juries in sex predator Chapter 59 cases.

Opponents of the bill included: None

Subcommittee Action

Senator Vratil made a motion to recommend H.B. 2102 for favorable consideration by the full Committee. Senator Harrington seconded the motion and it carried.

3. H.B. 2259 would increase the amount of time, from 15 days to 20 days, in which a motor vehicle dealer or lender may complete and file a notice of security interest with the Division of Vehicles. Additionally, this bill would allow the vehicle owner assigning a certificate of title to file a form with the Division and thus create prima facie evidence that the title was assigned and also create a rebuttable presumption of this fact. If the assignee of the title fails to make application for registration, the owner making the assignment will not be held liable for damages resulting from operation of the vehicle.

Conferees

Proponents of the bill included:

Don McNeely, Kansas Automobile Dealers Association

Sheila Walker, Kansas Department of Revenue

Opponents of the bill included: None

Subcommittee Action

Senator Harrington made a motion to recommend the bill for favorable consideration by the full Committee. Senator Vratil seconded the motion and it carried.

4. H.B. 2352 would require a district magistrate judge to be a resident of the county for which they were elected or appointed at the time of taking office and to maintain residency while holding the office.

Conferees

Proponents of the bill included:

Representative Sharon Schwartz

Ron Smith, Kansas Bar Association

Opponents of the bill included: None

Subcommittee Action

Senator Vratil made a motion to amend S.B. 94, as amended (see below subcommittee action on S.B. 94 *i.e.* the criminal appeal to the Court of Appeal amendment), into H.B. 2352. Senator Harrington seconded the motion and the motion carried.

5. S.B. 94 allows district magistrate judges to hear felony arraignments, subject to K.S.A. 20-329 which gives administrative district judges general control over assignment of cases.

Conferees

Proponents of the bill included:

Judge Larry Montandon, Kansas District Magistrate Judges Association

Judge Marla Luckert, Kansas District Judges Association

Pat Lawless, Board of Indigents Defense Services

Opponents of the bill included:

Jim Clark, Kansas County and District Attorneys Association, opposed the bill as written and suggested an amendment be added to require both parties to agree that a district magistrate judge hear the felony arraignment.

Subcommittee Action

Senator Harrington moved to amend S.B. 94 by adding an amendment to K.S.A. 22-3602 (b) dealing with appeals taken by the prosecution. The amendment provides that the appeal be to the Court of Appeals rather than the Supreme Court. Senator Goodwin seconded the motion and it carried.

Senator Vratil moved S.B. 94, as amended, be amended into H.B. 2352 and H.B. 2352 be recommended for favorable consideration by the full Committee. Senator Harrington seconded the motion and it carried.

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House Bill No. 2101
MISDEMEANOR PRESENTENCE INVESTIGATION REPORTS
K.S.A. 21-4605

TESTIMONY
By: Jeanne S. Turner, Chief Clerk of the District Court
Fifth Judicial District

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators to discuss House Bill No. 2101.

Felony presentence investigation reports became part of the court record and accessible to the public as of July 1, 1993, per K.S.A. 21-4714, except "that the official version, defendant's version and the victim's statement, any psychological reports and drug and alcohol reports shall be accessible only to the parties, the sentencing judge, the department of corrections, and if required, the Kansas sentencing commission." K.S.A. 21-4605 refers to misdemeanor presentence investigation reports and "these reports shall be part of the record but shall be sealed and opened only on order of the court."

We are respectfully requesting K.S.A. 21-4605 which references misdemeanor presentence investigation reports parallel K.S.A. 21-4714, which would make them open records and treat them the same as felony presentence investigation reports.

The changes are contained in the copy of House Bill No. 2101 which you have. With these changes the presentence investigation reports on misdemeanors would be consistent with the law regarding presentence investigation reports in felony cases. This would allow the clerks consistency in dealing with these reports.

Thank you for allowing me the opportunity to speak to you today on this issue. I would be happy to answer any questions you might have.

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK

March 18, 1999

TO: Senator John Vratil
Subcommittee Chairperson

FROM: Jim Clark

RE: Language in **HB 2101**, access to PSI

I have concerns about language in HB 2101, which is similar to language in the original version of SB 131 relating to access of the "official" version of the PSI. Current language, and language in the bill relating to "unofficial" copies of the PSI refers to prosecutors as "attorney for the state". **SB 131**, p. 11, lines 15, 23, and 26. However, in new language regarding access to the official version of the PSI there is no mention of the attorney for the state, only "the parties".

I am sure the change is not intended to restrict access to the official version of the PSI by county and district attorneys. However, because of case law construing legislative intent, this change could result in denial of the official PSI to the prosecutor. "Whenever the legislature revises an existing law, it is presumed that the legislature intended to change the law as it existed prior to the amendment." Hughes v. Inland Container Corp., 247 Kan. 404. The fact that the county or district attorney represents the state, but is not a party may also contribute to such a result.

I would suggest that **HB 2101** be amended, as was **SB 131,** beginning on page 2, line 4, by striking "parties" and inserting "attorney for the state and counsel for the defendant". A copy of the amended **SB 131** is attached.

cc: Gordon Self

~~corrections, all reports under subsection (a)(1) shall be sent to the secretary of corrections and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.~~

~~(c) Nothing in this section shall be construed as prohibiting the attorney for the defendant from disclosing the report of the presentence investigation, or other diagnostic reports, to the defendant after receiving court approval to do so.~~

~~(d) Notwithstanding subsections (a), (b) and (c), the presentence report, any report that may be received from the Topeka correctional facility or the state security hospital and other diagnostic reports, shall be made available upon request to the Kansas sentencing commission for the purpose of data collection and evaluation.~~ *The presentence report shall become part of the court record and shall be accessible to the public, except that the official version, the defendant's version, the victim's statement, any psychological reports and any drug and alcohol reports shall be accessible only to the ~~parties~~ **[attorney for the state and the counsel for the defendant]**, the sentencing judge, the department of corrections and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220 and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.*

~~(e)~~ *(c)* ~~For felony crimes committed on or after July 1, 2000,~~ the provisions of this section are not applicable to the presentence investigation report.

~~Sec. 13. K.S.A. 21-4635 is hereby amended to read as follows: 21-4635. (a) Except as provided in K.S.A. 21-4634, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of imprisonment of 40 years *or for crimes committed on and after July 1, 1999, a mandatory term of imprisonment of 50 years* or sentenced as otherwise provided by law.~~

~~(b) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636 and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating cir-~~

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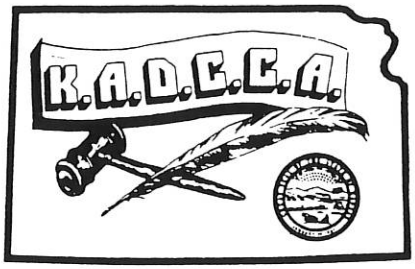

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Testimony of the Kansas Association of District Court Clerks and Administrators on 1999 House Bill 2102

Thank you Mr. Chairman, my name is Louis Hentzen. I am the Court Administrator for the 18th Judicial District in Wichita. I am here speaking on the behalf of the Kansas Association of District Court Clerks and Administrators. We appreciate the opportunity to state our views on HB2102. The requested change in the bill is to clarify the size of the jury panel for Sexual Predator cases.

These cases are filed in Chapter 59 of the Kansas Statutes Annotated (KSA 59-29a06). Chapter 59 is the Probate code and article 29 is Care and Treatment. While the Sexual Predator statutes have their own article, 29a, we believe there is still some confusion as to the jury size. The jury size for Care and Treatment cases is six. However, KSA 29a06, the Sexual Predator statute, refers to the jury size to be the same as a felony case KSA 22-3403. That size of panel is a twelve-person jury.

Therefore, we are asking for the following language to be included in KSA 29a06:

"A jury shall consist of twelve jurors, unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than twelve jurors. The person and the attorney general shall each have eight preemptory challenges, or in the case of a jury of less than twelve jurors, a proportionally equal number of preemptory challenges."

This change would clarify what size of jury panel is required and also create an opportunity for parties to agree to use a smaller jury panel in lieu of a twelve-person jury panel.

The District Court Judge Executive Board has voted to support the change.

Please take this information into consideration. It would be helpful for all to understand this statute in the same manner to avoid confusion and possible problems, i.e. appeals, if the wrong size of jury panel is used for such a jury trial.

Thank you for letting me address this issue. I will be glad to answer any questions you may have.

Thank you.

(d) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(e) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation or as a departure from the presumptive nonimprisonment grid block of either sentencing grid; and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes the six-month conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(f) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

Sec. 12. K.S.A. 21-4605 is hereby amended to read as follows: 21-4605. (a) (1) ~~Upon request of the attorney for the state or the counsel for the defendant,~~ The judge shall make available to the attorney ***[for the state]*** or counsel ***[for the defendant]*** the presentence report, any report that may be received from the Topeka correctional facility or the state security hospital and other diagnostic reports and shall allow the attorney or counsel a reasonable time to review the report before sentencing the defendant. ~~Except as otherwise provided in this section, all these reports shall be part of the record but shall be sealed and opened only on order of the court.~~

(2) The court shall permit the attorney for the state or the counsel for the defendant~~, upon request,~~ to copy and retain any of the reports under subsection (a)(1). Any reports copied and retained shall be kept in the records of the attorney for the state or the counsel for the defendant ~~and shall not be disclosed to any unauthorized person without permission of the court~~. All costs of copying such reports shall be paid by the office of the attorney for the state or the counsel for the defendant making the request.

(b) ~~If a defendant is committed to the custody of the secretary of~~

~~corrections, all reports under subsection (a)(1) shall be sent to the secretary of corrections and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.~~

~~(c) Nothing in this section shall be construed as prohibiting the attorney for the defendant from disclosing the report of the presentence investigation, or other diagnostic reports, to the defendant after receiving court approval to do so.~~

~~(d) Notwithstanding subsections (a), (b) and (c), the presentence report, any report that may be received from the Topeka correctional facility or the state security hospital and other diagnostic reports, shall be made available upon request to the Kansas sentencing commission for the purpose of data collection and evaluation.~~ *The presentence report shall become part of the court record and shall be accessible to the public, except that the official version, the defendant's version, the victim's statement, any psychological reports and any drug and alcohol reports shall be accessible only to the ~~parties~~ **[attorney for the state and the counsel for the defendant]**, the sentencing judge, the department of corrections and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220 and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.*

~~(e)~~ *(c)* For felony crimes committed on or after July 1, 1993, the provisions of this section are not applicable to the presentence investigation report.

~~Sec. 13. K.S.A. 21-4635 is hereby amended to read as follows: 21-4635. (a) Except as provided in K.S.A. 21-4634, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of imprisonment of 40 years *or for crimes committed on and after July 1, 1999, a mandatory term of imprisonment of 50 years* or sentenced as otherwise provided by law.~~

~~(b) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636 and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating cir-~~

KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 18, 1999

To: Chairman John Vratil
and the Members of the Senate Judiciary Sub-Committee

From: Don L. McNeely, KADA President

Re: House Bill 2259 – Support

Chairman Vratil and Members of the Sub-Committee:

Good Morning, my name is Don McNeely, and I serve as President of the Kansas Automobile Dealers Association. Mr. Whitney Damron, KADA's Legislative Counsel, also accompanies me this morning. I appear before you today in support of HB 2259, which amends K.S.A. 8-135 to increase the period of time which a creditor can perfect a security interest in a motor vehicle from 15 to 20 days.

In 1997, the Kansas Legislature granted KADA's request to extend this time period for which to process an application for lien perfection and have that lien noted upon the vehicle's title from 10 to 15 days. It just so happened that same year, Congress passed amendments to the Federal Bankruptcy Code extending the time period to 20 days.

House Bill 2259 simply conforms Kansas law with the 1997 revision to the Federal Bankruptcy Code. Currently, Kansas law, by operation, effectively cuts off 5 days which the bankruptcy code would essentially allow if state law did. The proposed amendment would avoid some of the bankruptcy losses which have occurred due to the lien perfection being made outside of the current 15-day period as provided by Kansas law, but within the 20-day time period allowed under federal law. The amendment would allow both the creditor, as well as the Division of Vehicles additional time in which to process the transaction and perfect the security interest upon the vehicle's title. Additionally, it only makes sense to have uniform law with respect to the bankruptcy courts, which operate in our state.

On behalf of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this morning, and I respectfully request the Committee's approval of House Bill 2259.

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STATE OF KANSAS
Graves, Governor

DEPARTMENT OF REVENUE
Karla J. Pierce, Secr

Office of the Secretary
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588

(785) 296-3041
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Office of the Secretary

TESTIMONY

TO: Senator John Vratil
Senate Judiciary Subcommittee

FROM: Sheila Walker, Special Assistant Sheila Walker

DATE: March 18, 1999

SUBJECT: House Bill 2259

Senator Vratil and members of the Senate Judiciary Subcommittee, my name is Sheila Walker, and I serve as Special Assistant to the Secretary of the Kansas Department of Revenue. I appreciate the opportunity to provide written testimony today in support of House Bill 2259.

This bill increases the amount of time from the date of sale and delivery of the vehicle within which a dealer or secured party may complete a notice of security interest. The amount of time is increased from 15 days to 20 days.

This bill would be positive for dealers and other lienholders because they would have an additional five days in which to file their notices of security interest.

According to our fiscal note, this bill would not affect State Highway Fund revenues, and there would be minimal administrative costs for the department, absorbable by existing resources.

The Kansas Division of Motor Vehicles appreciates your consideration.

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AARON SCHWARTZ
REPRESENTATIVE, 106TH DISTRICT
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2051 20TH ROAD
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STATE OF KANSAS

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HOUSE OF
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COMMITTEE ASSIGNMENTS
MEMBER: HOUSE APPROPRIATIONS
HOUSE AGRICULTURE &
NATURAL RESOURCES BUDGET
HOUSE AGRICULTURE
HOUSE ENVIRONMENT

March 18, 1999

H.B. 2352

Mr. Chairman and Senate Judiciary Committee

I appear before you in support of H. B. 2352 today. This bill is an attempt to clarify the residence requirement for magistrate judges. The question "At what point must a person live in a judicial district to fulfill the residency requirements for becoming a district magistrate judge" needs to be clarified. The relevant statue is KSA 20-334 - Subsection (a) addresses district court judges and clearly states that a district judge must "be a resident of the judicial district for which elected or appointed to serve *at the time of taking the oath of office...*" Subsection (b) pertains to district magistrate judges and only says that they "*must be a resident of the county for which elected or appointed to serve.*"

H.B. 2352 simply makes the resident requirement for a magistrate judge consistent with the resident requirement for a district judge. As commissions consider candidates for a magistrate judge, it is important that they have an qualified slate of candidates to select from and that the residency requirement is clear. There are those that feel a candidate should maintain residency for 6 months prior to serving. In many rural areas, this requirement could limit the ability for selecting a judge to meet these requirements.

I urge your support of H.B. 2352 to clarify the present law.

Points
1. Residence requirements are vague for the magistrate judge in KSA 20-334
2. Subject to interpretation of the selecting commission
3. H.B. 2352 simply makes the resident requirement for Magistrate Judge consistent with that for a District Judge, be a resident of the county at the time of taking oath and maintain while serving.

Rep. Schwartz

1882

KANSAS BAR ASSOCIATION

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Legislative Testimony

by the
Kansas Bar Association

TO: **Members, Senate Judiciary Committee**

FROM: **Ron Smith, General Counsel**
Kansas Bar Association

SUBJ: **HB 2352**

DATE: **March 17, 1999**

Mr. Chairman, and Members.

KBA supports this bill.

We have suggested this sort of residency requirement for district magistrate judges because it is the same as that required of lawyers taking district judgeships who move from out of town in order to take the job. The need to bring someone in from another county does not happen often, but the option to do it is important to proper administration of the courts and, unless one of these bills passes, not available. The Kansas Justice Initiative is recommending that magistrates be college educated. Current magistrates have to have a high school education. We think that even if the recommendation for college educated DMJs are not adopted, the residency change should be adopted.

Thank you.

March 18, 1999

Senator John Vratil
and
Senate Judiciary Subcommittee Members
Testimony in Support of SB 94

Judge Larry D. Montandon
Legislative Committee Chairman
Kansas District Magistrate Judges Association

The Kansas District Judges' Association and the Kansas District Magistrate Judges Association have worked together very diligently on Senate Bill 94 and both associations support this bill.

Presently a magistrate judge may conduct the preliminary examination and if all probable cause elements are met, the case is then bound over to the district judge for arraignment. For convenience to the district judge, and to save the state mileage expenses, the arraignment is normally set for the next scheduled motion day of the district judge, which could be from ten to thirty days down the road.

An arraignment usually takes around ten to twenty minutes, but some of our defense lawyers from the Board of Indigents' Defense Services must travel from thirty to ninety miles one way for that ten to twenty minute arraignment on motion day. If the arraignment could take place immediately following the binding over, with the magistrate judge conducting that arraignment, and the defendant and his/her attorney already present in the courtroom, there would be some cost savings for the Board of Indigents' Defense Services. Further, some defendants will enter a "no contest" or a guilty plea after a preliminary examination, which would enable the magistrate judge to order the pre-sentence investigation and anything else deemed necessary to assist the district judge in sentencing the defendant. Senate Bill 94 would be using judges of the district court efficiently and effectively to save dollars and time.

The Kansas District Judges' Association and the Kansas District Magistrate Judges Association realize that time for a speedy trial starts with the arraignment. Senate Bill 94 may not be the answer in a few judicial districts; therefore, the wording, *subject to assignment* pursuant to K.S.A. 20-329, exists throughout this bill. The administrative judge of each judicial district may or may not assign a magistrate judge to do the arraignments in their judicial district or may assign them to do arraignments only on defendants who are out of jail on bond.

Larry D. Montandon
Testimony, SB 94
March 18, 1999

The Kansas Citizens Justice Initiative has also recommended that magistrate judge jurisdiction be expanded to authorize them to conduct arraignments, take pleas and to order pre-sentence investigations in felony cases. Senate Bill 94 would accomplish this recommendation.

The two judges associations have worked closely together on Senate Bill 94 and firmly believe it will be an improvement to the judicial system and we request your support and passage of Senate Bill 94.

Thank you.

Larry D. Montandon

Larry D. Montandon
Legislative Committee Chairman
Kansas District Magistrate Judges Association

TESTIMONY OF THE
KANSAS DISTRICT JUDGES' ASSOCIATION
IN SUPPORT OF SB 94
BEFORE SENATE JUDICIARY COMMITTEE
MARCH 18, 1999

The Kansas District Judges' Association supports the enactment of Senate Bill 94. The bill proposes an amendment to K.S.A. 20-302b. The amendment would allow a magistrate to hear felony arraignments subject to assignment pursuant to K.S.A. 20-329 which is the provision giving administrative judges general control over the assignment of cases.

The purpose of the provision is to allow full flexibility in the management of cases. Various jurisdictions have differing docket procedures which would be more efficient if magistrates were allowed to take pleas in certain situations. Some jurisdictions have law trained magistrates or magistrates with sufficient experience to conduct a felony plea. Others do not. Again, the purpose is to allow magistrates to take a plea in situations where the administrative judge determines it appropriate.

In summary, the Kansas District Judges Association urges your support of S.B. 94.

EDWARDS COUNTY DISTRICT COURT

Honorable Danny J. Smith
P.O. Box 232
Kinsley, KS. 67547

Tele:(316) 659-2672
Fax: (316) 659-2998

To: Kathy Porter

Re: Senate Bill 94

Ms. Porter,

I am writing you in regard to Senate Bill 94, which is a bill introduced to extend the District Magistrate Judge's jurisdiction, to include conducting felony arraignments.

As a District Magistrate Judge, I am in full support of this bill. I feel that it will be cost saving factor, both for the Board of Indigent Defense Services, and to the local county where defendants are detained.

Defense Attorneys will not have to make an extra appearance in court, before a District Judge, to enter a plea, then wait an additional time for trial, or sentencing, in the event of a plea agreement. The arraignment can be done immediately following the Preliminary Investigation Hearing, and a trial date set at that time, or a pre-sentence investigation can be ordered, and a sentencing date set.

This will also save the local county money, by reducing the time of incarceration, for those defendants that are not released on bail. I have seen as much as 30 to 60 days from time of Preliminary Hearing, to Arraignment, then an additional 45 days for pre-sentence investigation, in the event of a plea agreement, or 60 to 90 days or longer in the event of a trial. If the defendant is incarcerated during this time, the local county is spending $20.00 to $30.00 dollars per day housing the defendant, not to mention any medical cost that may arise. Whether the defendant is sent to the Department of Corrections, or released into a Community Corrections Program, the savings to the county can be significant.

Thank you for the opportunity to express my views on this bill, and for any consideration you may give in favor of it.

Respectfully,

Danny J. Smith
24th Judicial District Magistrate Judge

REPORT OF THE ORGANIZATION OF COURTS SUBCOMMITTEE TO THE KANSAS CITIZENS JUSTICE INITIATIVE

MAGISTRATE JUDGES- JURISDICTION

Existing Law: Under existing law, magistrate judges have jurisdiction to hear:

Traffic violations; criminal misdemeanors; felony criminal matters through the preliminary hearing stage; civil actions, including small claims, landlord-tenant and forcible detainer actions that are filed under and within the $10,000.00 K.S.A. Chapter 61 jurisdictional limit; juvenile proceeding involving both child in need of care and juvenile offender cases; probate; guardian and conservatorships; and mental illness proceedings.

Generally a felony is defined as being punishable by death or imprisonment in a state correctional facility or as otherwise specifically defined as a felony by statute. A misdemeanor is generally considered as being a crime punishable by confinement in a local jail for not more than one year or by a fine or by both such a confinement and fine.

Magistrate judges do not have jurisdiction to do felony criminal arraignments or to hear felony criminal actions beyond the preliminary hearing stage. Neither do they have jurisdiction to hear habeas corpus, mandamus and quo warranto actions; injunctions; receiverships; class actions; rights of majority; protection from abuse; declaratory judgments; name changes; sexually violent predator actions, paternity actions or related issues of custody, visitation & support or any action filed pursuant to K. S.A. Chapter 60 that include: any action for money damages filed under that chapter; divorce, annulment and separate maintenance; misconduct actions against public officers; real estate actions generally, including recovery of real estate, specific performance of contracts, liens, title questions and mortgage foreclosures.

In the absence, disability or disqualification of a district judge, a magistrate judge may grant temporary restraining orders, appoint a temporary receiver and grant any protection from abuse order.

On motion made by any party, the administrative judge may assign a district judge to hear any action over which a magistrate judge has jurisdiction.

When it appears there is a question for decision under the probate code that is outside magistrate jurisdiction, the administrative judge may reassign either the question or the entire action to a district judge.

Any party may request the re-assignment to a district judge, of any petition filed in a probate action that seeks admission of a will to probate; determination of or transfer of venue; to allow any claim exceeding $500; for the sale, lease or mortgage of real estate; for conveyance of real estate under contract; for payment of a legacy or distributive share; for partial or final distribution; for an order compelling a legates or distributes to refund; and for an order to determine heirs, devisees or legatees.

Without exception, appeals from a district magistrate judge are to a district judge and not to the Court of Appeals. If no record is taken, the case is re-tried in its entirety before the district judge. If a record is taken the appeal is on the record, that is the district judge reviews the record and rules from the record.

Under the probate code, the failure of a party to appear, defend or present defenses does not prevent an appealing party from presenting defenses before a district judge on appeal.

Recommendation: Magistrate judge jurisdiction should be expanded to authorize them to conduct arraignments, take pleas and to order pre-sentence investigations in felony cases. Magistrate judge jurisdiction should not be otherwise expanded or curtailed.

Analysis: Magistrate judges are authorized to conduct arraignment type proceedings in misdemeanor cases and are generally familiar with the arraignment process. Magistrates are also authorized to conduct preliminary hearings in felony cases but they are not authorized to arraign

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a felony defendant. Customarily arraignment follows immediately after the preliminary hearing. However, because a magistrate judge cannot arraign, arraignments are often delayed because a district judge may not be readily available. The resulting delay and scheduling problems are exacerbated in multi-county districts where only one or two district judges sit.

Uncontested divorces: The KCJI Lawyers and Judges survey reflects support (76%) for permitting magistrate judges to hear uncontested divorces. However, it does not follow, merely because a matter is uncontested, that a judge should approve all matters agreed upon by the parties. Parties may for example, agree to some arrangement that would not be in their best or that is otherwise not authorized by law. If magistrate judge jurisdiction is expanded into this area, the magistrates would need to be familiar with the divorce code, the rules with respect to custody and support of children and areas of property law with which they are not otherwise familiar or authorized. Domestic issues should be left in the hands of law trained judges.

Name Change: Should magistrate judges be permitted to handle name change petitions per K.S.A. 60-1401 et seq.?

The KCJI lawyer and judges survey reflects general support (93 to 94%) for expansion of magistrate judge jurisdiction to this area

Although name change petitions are generally rather routine and not contested, there are factual scenarios where the training and expertise of a law trained judge should be brought to bear, for example, with respect to notice requirements, whether the petition serves the best interests of the parties, a minor child, etc. When there is petition to change the name of a minor child the discretion granted the court implies that the court must consider the best interests of the parents and of the minor child as in a divorce or domestic matter. Further, the statute authorizes the court to change the name of any town or city. We find that discretion in these areas is best

exercised by a law trained judge.

Mediation in Domestic Cases: What has been said above applies here also. See for example the Supreme Court Rule 901, Rules Relating to Mediation, Rule 902, Mediator and Mediator Trainer Qualifications, Rule 903, Ethical Standards for Mediators, Rule 904, Continuing Education for Mediators and the Appendix that sets out the Kansas Standards of Practice for Lawyer Mediators in Family Disputes. Magistrate judges have no training or expertise in the area of family law. Accordingly, if they are to be permitted to act as mediators in family dispute areas, then a study should be undertaken by a qualified body to specify training and standards that must be met. Absent such specialized training and certification, we oppose authorizing magistrate judges to conduct mediation in family dispute matters merely because or on the basis of their magistrate judge authority.

Appeals: We see no reason for changing the rules relating to appeal from magistrate judge decisions.

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SPECIALIZED COURTS

Analysis: K.S.A. 20-438 provides for the establishment of specialized courts "whenever the judges of the district court deem it necessary for the efficient and effective administration of justice, and with the approval of the supreme court." These specialized courts may be established for, among other purposes: probate matters, traffic cases, juvenile matters and domestic cases.

Recommendation: The subcommittee recommends no change in this statutory provision. Certainly, we recommend no statutory mandate that would require specialized courts, judges and/or non-judicial personnel in rural areas of Kansas (similar to the one judge per county mandate), which would remove the power to establish specialized courts "for the efficient and effective administration of justice" from the hands of those who would know it best--the courts of Kansas.

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK

Testimony in Opposition to

SENATE BILL NO. 94

The Kansas County and District Attorneys Association opposes Senate Bill 94 on the grounds that by allowing a magistrate judge to hold arraignments in felony cases, without accompanying authority to schedule trials before a district judge, may cause a critical delay, resulting in dismissal of the case on speedy trial grounds.

KCDAA emphasizes that it is not against magistrate judges, as most of our members, even in more urban areas, recognize their efficiency and capability in moving more cases at lower cost to the State.

K.S.A. 22-3402 requires a defendant to be brought to trial within 90 days of arraignment or be discharged from further liability. If a person is free on bond, the period is increased to 180 days. While a defendant may waive this requirement explicitly by motion for continuance, or implicitly, by his conduct, other delays are construed in favor of the defendant. For example, in State v. Roman, 240 Kan. 611, defendant filed a motion to suppress toward the end of the 180-day period, the trial court procrastinated on its ruling for another two months, and when the State became exasperated and called the matter to the attention of the administrative judge, the trial judge granted the motion to discharge. In affirming the decision, the Supreme Court stated: "Procrastination, whether it be prosecutorial or judicial, is not the fault of a defendant and should not be charged to him or her."

We have no objection in amendments to the bill that would avoid this speedy trial problem. For example, if the parties had worked out a plea agreement (hence no speedy trial problem will result), language allowing for arraignment and acceptance of a guilty plea by a magistrate if the attorneys for both sides agreed to the proceeding would be acceptable.

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TESTIMONY
BOARD OF INDIGENTS' DEFENSE SERVICES
BEFORE THE
SENATE JUDICIARY SUBCOMMITTEE

Members of the Subcommittee and Staff:

Thank you for the opportunity to address you regarding Senate Bill 94. My name is Patrick Lawless and I serve as the agency's administrative counsel.

The board supports the enactment of Senate Bill 94. The board believes the enactment of this bill will have a positive fiscal impact and will aid the board in controlling costs. In previous time studies, one procedure or hearing that was flagged as inefficient use of attorney time was felony arraignments where a district magistrate judge conducted the preliminary hearing.

Under current law, A district judge must conduct the arraignment which consists essentially of allowing the defendant to hear the complaint and read it and allowing the defendant to plead guilty or not guilty. K.S.A. 22-3205 . Because of this, arraignments do not take a considerable amount of time. (Current board policy limits the amount of in-court attorney time for an arraignment to one-half hour.) In rural areas, however, particularly in the western part of the state, attorneys have to bill for travel time which far exceeds the amount of in-court time. This is because the district magistrate judge who conducted the preliminary examination cannot go the extra step and ask the defendant how he or she pleads. Under current law another hearing must be scheduled and the attorney and often the district judge both must travel to hear the arraignment.

The board provided representation to indigent defendants in approximately 20,000 cases during FY 1998. Assuming district magistrate judges only handled 2,500 felony preliminary examinations during the same period, and assuming only an additional one-half hour was billed in each case ($25) because the magistrate could not handle the arraignment, the fiscal impact on the agency was $62,500. We believe this is a conservative estimate.

Consideration has been given to magistrate judges' ability to handle guilty pleas if they are offered at arraignment. Some attorneys have voiced concerns about magistrates' ability and training to take felony guilty pleas. However, the board believes adequate safeguards are in place to ensure that a defendant's rights are protected when a plea of guilty is taken by a magistrate. Simply put, the board feels that, if a magistrate is deemed qualified to bind a defendant over on a felony charge, that same magistrate should also be deemed qualified to take a felony guilty plea.

The board believes amending the statutes to allow district magistrate judges to handle arraignments will save money by eliminating travel time in rural areas and district judges will be free to handle other matters.

Thank you for your time and consideration on these issues.

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK

Testimony in Opposition to

SENATE BILL NO. 94

The Kansas County and District Attorneys Association opposes Senate Bill 94 on the grounds that by allowing a magistrate judge to hold arraignments in felony cases, without accompanying authority to schedule trials before a district judge, may cause a critical delay, resulting in dismissal of the case on speedy trial grounds.

KCDAA emphasizes that it is not against magistrate judges, as most of our members, even in more urban areas, recognize their efficiency and capability in moving more cases at lower cost to the State.

K.S.A. 22-3402 requires a defendant to be brought to trial within 90 days of arraignment or be discharged from further liability. If a person is free on bond, the period is increased to 180 days. While a defendant may waive this requirement explicitly by motion for continuance, or implicitly, by his conduct, other delays are construed in favor of the defendant. For example, in State v. Roman, 240 Kan. 611, defendant filed a motion to suppress toward the end of the 180-day period, the trial court procrastinated on its ruling for another two months, and when the State became exasperated and called the matter to the attention of the administrative judge, the trial judge granted the motion to discharge. In affirming the decision, the Supreme Court stated: "Procrastination, whether it be prosecutorial or judicial, is not the fault of a defendant and should not be charged to him or her."

We have no objection in amendments to the bill that would avoid this speedy trial problem. For example, if the parties had worked out a plea agreement (hence no speedy trial problem will result), language allowing for arraignment and acceptance of a guilty plea by a magistrate if the attorneys for both sides agreed to the proceeding would be acceptable.

Senator Vratil's Judiciary Subcommittee **March 18, 1999**

Amendment to SB 94

22-3602. Appeals by defendant, when; appeals by prosecution; transfers to supreme court. (a) Except as otherwise provided, an appeal to the appellate court having jurisdiction of the appeal may be taken by the defendant as a matter of right from any judgment against the defendant in the district court and upon appeal any decision of the district court or intermediate order made in the progress of the case may be reviewed. No appeal shall be taken by the defendant from a judgment of conviction before a district judge upon a plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raised by the defendant as provided in K.S.A. 60-1507 and amendments thereto.

(b) Appeals to the ~~supreme court~~ may be taken by the prosecution from cases before a district judge as a matter of right in the following cases, and no others:

Court of Appeals

(1) From an order dismissing a complaint, information or indictment;

(2) from an order arresting judgment;

(3) upon a question reserved by the prosecution; or

(4) upon an order granting a new trial in any case involving a class A or B felony or for crimes committed on or after July 1, 1993, in any case involving an off-grid crime.

(c) Appeals to a district judge may be taken by the prosecution from cases before a district magistrate judge as a matter of right in the cases enumerated in subsection (b) and from orders enumerated in K.S.A. 22-3603 and amendments thereto.

(d) Any criminal case on appeal to the court of appeals may be transferred to the supreme court as provided in K.S.A. 20-3016 and 20-3017, and amendments thereto, and any party to such case may petition the supreme court for review of any decision of the court of appeals as provided in subsection (b) of K.S.A. 20-3018 and amendments thereto, except that any such party may appeal to the supreme court as a matter of right in any case in which a question under the constitution of either the United States or the state of Kansas arises for the first time as a result of the decision of the court of appeals.

(e) For crimes committed on or after July 1, 1993, an appeal by the prosecution or the defendant relating to sentences imposed pursuant to a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 et seq. and amendments thereto, shall be as provided in K.S.A. 21-4721 and amendments thereto.

History: L. 1970, ch. 129, § 22-3602; L. 1976, ch. 167, § 1; L. 1977, ch. 112, § 9; L. 1986, ch. 115, § 65; L. 1987, ch. 117, § 1; L. 1992, ch. 239, § 263; L. 1993, ch. 291, § 196; July 1.

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Senator Vratil's Subcommittee

1. H.B. 2276 would repeal the current Limited Liability Company (LLC) Act found at K.S.A. 17-7601 *et seq*. and replace it with the Revised Limited Liability Company Act designed to update the Kansas law and make it conform more closely with the Delaware limited liability company act.

Conferees

Proponents of the bill included:

Bill Fleming, a Lawrence attorney representing the Kansas Bar Association

Opponents of the bill included: None

Subcommittee Action

The Subcommittee by consensus recommended H.B. 2276 for favorable consideration by the full Judiciary Committee.

2. H.B. 2549 clarifies Kansas law regarding estate tax necessitated by recent estate tax reform legislation in Kansas and recent changes in federal estate tax law.

Conferees

Proponents of the bill included:

Representative Tim Carmody, representing the Kansas Judicial Council's Estate Tax Advisory

Opponents of the bill included: None

Subcommittee Action

The subcommittee by consensus agreed to recommend H.B. 2549 for favorable consideration by the full Judiciary Committee.

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