

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Vice Chairperson Ward Loyd at 3:30 p.m. on January 29, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused
Representative Doug Patterson - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association
Paul Davis, Kansas Bar Association
Chief Judge Pat McAnany, 10th Judicial District
Ed Hund, Wichita Bar Association
Terry Humphrey, Kansas Trial Lawyers Association
Randy Allen, Executive Director Kansas Association of Counties
Mike Pepoon, Sedgwick County
Vern McKinzie, Lyon County Commissioner
Kathy Porter, Office of Judicial Administration
Helen Pedigo, Deputy General Counsel and Legislative Advisory to the Governor

Vice Chairperson Loyd entertained requests for bill introductions.

Kathy Olsen, Kansas Bankers Association, requested a bill that would amend K.S.A. 61-3003 relating to the service of process on garnishments by requiring one fax number or e-mail address being designated where the garnishments would be sent. (Attachment 1)

Representative Long made the motion to have the request introduced as a committee bill. Representative Crow seconded the motion. The motion carried.

Representative Long requested a bill that would close loopholes in the identity theft statute. She made the motion to have the bill introduced. Representative Swenson seconded the motion. The motion carried.

Representative Loyd received a request that would make it a crime for tampering with pipelines & theft of natural gas, crude oil, petroleum, or any anhydrous ammonia . He made the motion to have the request introduced as a committee bill. Representative DiVita seconded the motion. The motion carried.

Hearings on **HB 2085 - Increasing juror compensation to \$25 for first five days, \$50 for any days thereafter**, were opened.

Ed Hund, Wichita Bar Association, explained that the proposed legislation was a result of a three year study by the Wichita Bar Association which was based upon responses from a survey that persons summoned for jury who do not have the support of their employers suffer financial hardship when summoned to served. Most employers support four or five days on a jury panel but after that the employee has to use their own resources. While there is never a good time to increase rates, it needs to be done. Especially when one considers that with inflation jury pay should be \$44.57. (Attachment 2)

Chairman O'Neal suggested that maybe those called for jury duty could be paid \$10 for the first two days and then raise the amount they receive thereafter. Mr. Hund stated that whether one serves or not they should be paid to be at the courthouse all day and should be compensated at a higher rate for that time spent.

Paul Davis, Kansas Bar Association, agreed that there needs to be increases in jury compensation and the

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on January 29, 2002 in Room 313-S of the Capitol.

committee should look at alternative ways to do those increases as not to burden the counties. He told the committee that Federal court pay \$40 a day. (Attachment 3)

Chief Judge Pat McAnany, 10th Judicial District, stated that two thirds of their annual budget for juror fees goes to those not selected to serve on the jury panel and suggested that maybe since it's our civic duty to serve on a jury, that the first day should be served without pay. He supported increasing the juror fees and hoped that the increase could be made in a revenue-neutral manner. (Attachment 4)

Terry Humphrey, Kansas Trial Lawyers Association, commented that juries have a very extremely important job and should be compensated for it. The last increase in jurors rates was in 1971 from \$5 to \$10. (Attachment 5)

Kathy Porter provided the committee with a report from the Bureau of Justice Statistics regarding State Court Organization (Attachment 6), which shows what other states do in regard to paying jury fees and how much they pay. Colorado, Connecticut, and Massachusetts had the employer pay for the first three to five days and then the court pay for the rest.

Randy Allen, Executive Director Kansas Association of Counties, appeared before the committee to express his opposition to the bill. He is concerned about costs to the counties The increase would add to the county budgets and require possibly increases in property taxes to pay for the increase in fees. He requested that if the bill be passed that the effective date be changed to January 2003, due to the fact that counties have already set their budgets for fiscal year 2002. (Attachment 7)

Mike Pepoon, Sedgwick County, informed the committee that Sedgwick County spent \$284,327 for jury per diem last year, with 328 jurors serving more than five days and 66 serving more than 10 days. This cost included \$20 for compensation, plus Sedgwick County pays for meal and parking. He estimated that it cost around \$40,000 - \$45,000 per year for meals and parking. (Attachment 8)

Vern McKinzie, Lyon County Commissioner, appeared in opposition of the bill. In 2001 Lyon County paid approximately \$35,875 in compensation and mileage. If the proposed amounts were to become law he estimated that they would have paid \$87,500 in 2001. (Attachment 9)

Written testimony was provided by Ashley Sherard, Office of the County Manager, Johnson County, in opposition to the bill (Attachment 10)

Hearings on **HB 2085** were closed.

Hearings on **HB 2620 - Elimination of mandatory retirement for judges**, were opened.

Kathy Porter, Office of Judicial Administration, appeared before the committee in support of the proposed bill which would delete the mandatory retirement age for judges. She commented that they would also support the retirement age being set at age 75 (Attachment 11).

Chief Judge Pat McAnany, 10th Judicial District, confirmed that the Kansas District Judges Association was in support of the bill and would like no age limit set for the judges. He commented that it was highly unlikely that anyone would serve till the age of 75.

Helen Pedigo, Deputy General Counsel and Legislative Advisory to the Governor, stated that she has an understanding that the Governor is opposed to the bill and requested that the committee not take action until she checks his position on it.

Vice-Chairman Loyd announce that the hearings would remain open for the purpose of receiving the Governor's position on the bill.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for January 30, 2002.



January 29, 2002

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: Bill Introduction: Proposed Amendments to Garnishment Service of Process

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to request introduction of a bill that would amend K.S.A. 61-3003 relating to service of process on garnishments.

As you will recall, the Kansas legislature made sweeping changes to Chapter 61 Limited Actions procedures. One of the changes made was to allow garnishments to be served by telefacsimile and by e-mail. Because many garnishees have more than one fax number and e-mail address, we are requesting an amendment providing that the garnishee will designate a fax number and/or an e-mail address to which service of process should be directed.

Many of our member banks deal with a large number garnishment orders per day. In order to assure that each garnishment is dealt with in an effective manner, we would like the right to designate one place – a fax number or an e-mail address – where garnishments could be collected and properly answered each day.

In conclusion, I respectfully ask that the Committee act favorable upon this request. Thank you.

Proposed amendments to KSA 61-3003 relating to garnishments

61-3003. Methods of service of process. (a) Methods of service of process within this state, except service by publication, are described in this section. Service of process outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

(c) Service by return receipt delivery.

(1) Service of process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery.

(2) The sheriff, party or party's attorney shall cause a copy of the process and petition or other document to be placed in a sealed envelope addressed to the person to be served in accordance with K.S.A. 2000 Supp. 61-3004, and amendments thereto, with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery.

(3) Service of process shall be considered obtained under K.S.A. 2000 Supp. 61-2902, and amendments thereto, upon the delivery of the sealed envelope.

(4) After service and return of the receipt, the sheriff, party, or party's attorney shall execute a return on service stating the nature of the process, to whom delivered, the date of delivery, the address where delivered, and the person or entity effecting delivery. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery.

(5) If the sealed envelope is returned with an endorsement showing refusal to accept delivery, the sheriff, party or the party's attorney may send a copy of the process and petition or other document by first-class mail addressed to the party to be served, or may elect other methods of service. If mailed, service shall be considered obtained three days after the mailing by first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating nondelivery, and service by such mailing shall not be considered obtained. Mere failure to claim return receipt delivery is not refusal of service within the meaning of this subsection.

(d) Personal and residence service.

(1) The party may file a written request with the clerk for personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein. If service cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.

(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an "officer" as used in K.S.A. 60-706 and 60-2401, and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.

(e) Publication service. Service of process by publication may be made pursuant to the provisions of K.S.A. 60-307, and amendments thereto, which are not inconsistent or in conflict with this act.

(f) Acknowledgment or appearance. An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.

(g) The person serving process may serve a garnishment process in any of the following methods:

(1) First class mail. Process may be sent to a person by first-class mail by placing a copy of the process and petition or other document to be served in an envelope addressed to the person to be served in accordance with K.S.A. 2000 Supp. 61-3004, and amendments thereto, at such person's last known address. The envelope used for such service shall be addressed to the person in accordance with K.S.A. 2000 Supp. 61-3004, and amendments thereto, and shall contain adequate postage. Such envelope shall be sealed and placed in the United States mail. Service by first-class mail shall be complete when the envelope is placed in the mail unless returned undelivered. Service shall be considered obtained upon the mailing by first-class mail unless returned undelivered.

(2) Telefacsimile communication. Process may be sent to a person by telefacsimile communication. Garnishees shall designate a telefacsimile number to which all garnishment process shall be served. Service is complete upon receipt of a confirmation generated by the transmitting machine.

(3) Internet electronic mail. Process may be sent to a person by internet electronic mail as provided in the rules to be adopted hereunder by the supreme court. Garnishees shall designate an internet electronic mail address to which all garnishment process shall be served. Service is complete upon receipt of a reply generated by the garnishee.

History: L. 2000, ch. 161, § 21; Jan. 1, 2001.

**BRADSHAW
JOHNSON
& HUND**
ATTORNEYS AT LAW

AN ASSOCIATION OF INDIVIDUAL PRACTITIONERS

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JOHN W. JOHNSON**
EDWARD J. HUND
*ALSO ADMITTED IN MINNESOTA
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WICHITA, KANSAS 67202-3013
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TELEPHONE (316) 264-0796

JAMES R. HOWELL
KYLE J. STEADMAN
SHARI R. L. WILLIS
DOUGLAS D. PLETCHER

TO: Members of the House Judiciary Committee

FROM: Edward J. Hund, Chairman of WBA Jury Compensation Committee

RE: Jury Compensation - House Bill 2085

DATE: January 29, 2002

Representative O'Neal and members of the committee, thank you for the opportunity to express our support for HB 2085. I am Edward Hund, a practicing attorney in Wichita, Kansas and Chairman of the Wichita Bar Association Jury Compensation Committee.

The proposed legislation is the result of a more than three-year effort by the Wichita Bar Association and a study commissioned by the Wichita Bar Association with the Wichita State University, Department of Political Science, under the direction of Dr. James McKenney. The study, based upon survey responses from persons summoned for jury service, shows that jurors who do not have complete support of their employers suffer financial hardship when summoned to serve. Although employers are generally cooperative for a few days of jury service, employees tend to have to utilize their own resources, including sick leave and vacation time, if required to serve on longer trials. The Wichita State University study recommends the increases in compensation reflected in House Bill No. 2085.

Pursuant to K.S.A. § 43-171, jurors are currently compensated at a rate of \$10.00 for each day of service. Despite the years of significant, sometimes double-digit, inflation, this rate of juror compensation has maintained since 1971. Currently pending before the Judiciary Committee of the Kansas House of Representatives is House Bill No. 2085. The proposed legislation amends K.S.A. § 43-171 relating to juror compensation for service in the Kansas state district courts. The legislation would increase juror compensation from \$10.00 to \$25.00 per day for the first five days of service and \$40.00 per day for each day of service thereafter. Juror compensation is paid from the county general fund. A copy of House Bill No. 2085 is attached.

The \$10.00 daily stipend now paid to jurors is outmoded, creates financial hardship and encourages attempts to avoid jury service. Considering the effect of inflation, the proposed legislation is modest. The value of \$10.00 in 1971 dollars is \$44.57. On the other hand, \$10.00 of goods or services in the year 2002 would cost \$2.24 in 1971. Even without considering the effect of inflation, Kansas compensates jurors less than \$1.50 per hour for their service, based upon a seven-hour day. Considering the effect of inflation since 1971, Kansas compensates jurors at an hourly rate of \$0.34 (Est.).

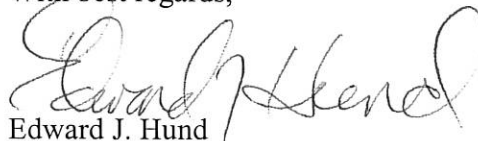
House Judiciary
Attachment 2
1-29-02

Based upon statistics compiled by the United States Department of Justice, Bureau of Justice Statistics, in its report entitled *State Court Organization 1998*, Kansas juror compensation ranks near the bottom of all states, especially when compared to those states that, like Kansas, do not mandate employers to bear part or all of an employee's salary while on jury service. A copy of the applicable table from the Bureau of Justice Statistics report is attached. Based upon the same statistics, the states bordering Kansas, with the exception of Missouri, have systems which compensate jurors at a significantly higher rate (e.g. Nebraska: \$35.00; Colorado: employers mandated to pay salary and jurors receive per diem of \$50.00 after three days' service; and, Oklahoma: \$20.00). The federal courts currently compensate jurors at a rate of \$40.00 per day and are allowed discretion to pay an additional fee of \$10.00 per day for jurors required to serve for more than thirty days. At least nine states currently utilize a graduated rate structure, dependant upon length of jury service, similar to that proposed by House Bill No. 2058. The vast majority of jury trials are concluded in less than five days.

Persons who are required to serve on juries, particularly in longer trials, should not be penalized economically. Although the proposed legislation does not go far enough to restore juror compensation to a rate consistent with the effects of post-1971 inflation, it does increase juror compensation to a rate more reflective of the current strength of the dollar. Civic responsibility mandates that Kansas join the many other states which have renewed their commitment to and respect for this critical institution of the American justice system.

Thomas Jefferson, in a 1789 letter to Thomas Paine, wrote: "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." For hundreds of years, there has been no stronger foundation of American law and government than that of the role of juries to protect citizens from the overreaches of government, to assist civil and peaceful resolution of disputes between citizens, and to determine the facts and apply the law so that justice is done. Citizens of Kansas rightly expect juries to faithfully accept and to perform the weighty duties with which juries are charged. However, the integrity of the jury system is compromised when jury service results in financial hardship.

With best regards,



Edward J. Hund
Chairman, WBA Jury Compensation Committee

EJH:ml
Enclosures



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February 16, 2001

The Honorable Michael O'Neal, Chairperson

House Committee on Judiciary

Statehouse, Room 170-W

Topeka, Kansas 66612

Dear Representative O'Neal:

SUBJECT: Fiscal Note for HB 2085 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2085 is respectfully submitted to your committee.

HB 2085 would increase the remuneration for service on a jury from \$10 per day to \$25 per day for the first five days of jury service, and \$40 for each day served beyond the first five.

Each district court's county pays jury service expenses from the county general fund. The Kansas Association of Counties states that passage of HB 2085 would have a large fiscal effect on counties. Sedgwick County estimates that it pays \$200,000 per year in jury fees. It states that this bill could increase this amount two and a half to four times. The Kansas Association of Counties does not have similar information on all Kansas counties, but states that all counties would experience increased operating expenditures.

Sincerely,

Duane A. Goossen

Director of the Budget

What is a dollar worth?

The Consumer Price Index (CPI) is a measure of the average change in prices over time in a market basket of goods and services.



[Consumer Price Index and Inflation Rates, 1913-
Consumer Price Index and Inflation Rates \(Estimate\), 1800-
Bureau of Labor Statistics](#) — regional and commodity/service group indexes
[How the CPI is used to make these calculations](#)

Directions: Enter years as 4 digits (i.e. 1913) through 2002. Enter dollar amount without commas or \$ sign in box on first line. Click Calculate button to compute dollar amount shown on second line.

If in (year) I bought goods or services for \$,
in (year) the same goods or services would cost \$

Notes:

- Limited to years from 1913 to 2002.
- Data from consumer price indexes for all major expenditure class items.
- An estimate for 2002 is based on the change in the CPI from fourth quarter 2000 to fourth quarter 2001.
- Base year is chained; 1982-1984 = 100
- The calculator does not work well in Windows 3.x or earlier Windows releases.
- JavaScript-enabled browsers only; Netscape version 2.0 or higher provides the best results.

How the CPI is used to make these calculations.

- What would an item or service purchased in 2002 be worth in 19?? dollars?

Example: The CPI is used to calculate how prices have changed over the years. Let's say you have \$7 in your pocket to purchase some goods and services today. How much money would you have needed in 1950 to buy the same amount of goods and services?

The CPI for 1950 = 24.1

The CPI for 2002 = 180.5

Use the following formula to compute the calculation:

$$1950 \text{ Price} = 2002 \text{ Price} \times (1950 \text{ CPI} / 2002 \text{ CPI})$$

$$\$0.93 = \$7.00 \times (24.1 / 180.5)$$

- What would an item or service purchased in 19?? be worth in 2002 dollars?

Example: Let's say your parents told you that in 1950 a movie cost 25 cents. How could you tell if movies have increased in price faster or slower than most goods and services? To convert that price into today's dollars, use the CPI.

The CPI for 1950 = 24.1

The CPI for 2002 = 180.5

A movie in 1950 = \$0.25

Use the following formula to compute the calculation:

2002 Price = 1950 Price x (2002 CPI / 1950 CPI)

\$1.87 = \$0.25 x (180.5 / 24.1)

A full-price movie at a Minneapolis theater costs between \$5.00 and \$7.50. Looks like movies have increased in price faster than most other goods and services.

Comments to Rob.Grunewald@mpls.frb.org

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LEGISLATIVE TESTIMONY

January 29, 2002

TO: Chairman Mike O'Neal and Members of the House
Judiciary Committee

FROM: Paul Davis, KBA Legislative Counsel

RE: House Bill 2085

My name is Paul Davis and I serve as Legislative Counsel to the Kansas Bar Association. The Kansas Bar Association is a diverse organization with 6,000 members, including judges, prosecutors, plaintiffs' attorneys, defense attorneys, estate planning attorneys, etc. We are in support of an increase in juror compensation because, although it is a citizen's obligation to serve as a juror if selected, being a juror should not affect a citizen's economic position while serving.

In a survey conducted by the Wichita Bar Association of former 18th Judicial District Court jurors concerning their attitudes about financial compensation paid for jury service, 61.5 percent of the survey respondents felt financial compensation for jury duty was too low. Despite this majority, the percentage was still significantly lower than that held by judges and attorneys who were surveyed by Fort Hays State University. In that survey, 93 percent of judges and 82 percent of attorneys agreed juror compensation is too low. In addition, 90 percent of the respondents to the Wichita Bar Association's survey believed the juror per diem ought to be increased. The most frequent figure suggested was \$50. Over a third of the respondents suggested a figure in the range of \$20 to \$50.

The current compensation for jurors is \$10 per day. With the passage of HB 2085, that figure will increase to \$25 per day for the first five days and \$40 per day thereafter. The reason for the increase after five days is that while most jurors do not serve more than three days, those that do usually stop receiving employer support after five days. When the employer does cease its support, the juror per diem will increase to compensate for the further loss of wages.

There are two further reasons that support an increase in juror compensation. One is that the current law was enacted in 1976—more than 25 years ago. According to Economic History Services, which is a chartered organization created in 1993, \$10 in 1976 is worth approximately \$31.15 in the year 2001. This calculation, which is based on a commodity price index compiled by the United States' Bureau of Labor Statistics, proves that while \$10 in 1976 may have been adequate, in 2002 it is far from being acceptable.

Secondly, the Kansas federal courts currently pay jurors \$40 per day, starting from day one. We believe that all jurors, whether they are serving our federal or state courts, should be compensated at a similar rate. Just because a case is held in federal court does not increase the importance or necessity of a juror.

This legislation is about compensating jurors at a fair rate in order to not harm them economically while they are fulfilling their civic duty. Jurors, judges, and attorneys all agree that an increase is needed. Let us follow in the federal government's footsteps and compensate our jurors at an acceptable rate—one that is adequate for 2002, not 1976. **I ask you to embrace an increase in juror compensation.**

I thank you for your consideration of this issue and welcome any questions that you have.

H.B. 2085
Statement of Patrick D. McAnany

I am the Chief Judge of the Johnson County District Court. I am here to address House Bill 2085 which proposes to increase juror fees from \$10 per day to \$25 per day for the first five days of jury service, and \$40 per day thereafter.

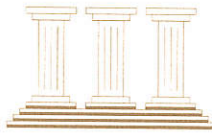
Our current annual budget for juror fees in Johnson County is \$135,000. The increase proposed by this bill would increase this expense to \$337,500: a yearly increase of \$202,500.

Witness fees have traditionally been set at the same level as juror fees. The current daily witness fee is \$10. (K.S.A. 28-125) Our current budget for witness fees in Johnson County is \$75,500. If this expense were increased to a comparable level, our budget for witness fees would be \$188,750: a yearly increase of \$113,250.

I support the notion of increasing juror fees. However, I suggest that an increase could be fashioned in a more revenue-neutral manner. Jury service is a fundamental right and responsibility of every eligible citizen. I believe that providing jury service for one day without pay is an equitable manner by which that civic duty can be fulfilled.

In Johnson County, about 200 prospective jurors appear on a typical Monday morning. (Sometimes as many as 400 to 800 are called.) In the vast majority of cases the 50 or so chosen to serve have been selected by noon. The remainder are free to leave. A minority of the jurors complete their jury service on that first day. Most will serve for 3 to 5 days.

I believe that it is more important that increased juror compensation be paid to those who serve more than a half or full day on Monday. If we eliminate the fee for the many who are called for jury service on Monday morning, we will have ample funds to provide a significant increase for the few who are chosen to serve on juries, and at the same time create a payment system that is more revenue-neutral.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Judiciary Committee

FROM: Terry Humphrey, executive director
Kansas Trial Lawyers Association

RE: 2001 HB2085

DATE: Jan. 29, 2002

Chairman O'Neal and members of the committee, thank you for the opportunity to appear before you in support of HB 2085. I am Terry Humphrey, executive director of the Kansas Trial Lawyers Association.

This year millions of American citizens will be called to serve on a jury. As a juror, they will take part in one of our oldest and most powerful democratic traditions. Thomas Jefferson described the right to "trial by juries impartially selected" as the best of all safeguards of liberty and democracy and among "the essential principles of our government."

KTLA supports raising juror compensation from the current \$10 per day to \$25 for the first five days of service and \$40 per day for each day thereafter. The proposal to increase juror compensation reflects a recommendation made in a recent study by the Wichita State University Political Science Department, commissioned by the Wichita Bar Association.

Juror compensation has not increased for 31 years. The Kansas Legislature last raised the daily rate for jurors in 1971 from \$5 to \$10 per day. At \$10 per day, citizens who have little to no financial support from their employers experience a real hardship while performing their civic duty.

We recognize that budgets are tight for counties who are responsible for compensating jurors. However, it is past time to adequately compensation jurors for their time and should be a budget priority.

Today, the privilege of serving as a juror is as valuable as it was two centuries ago when it was included in our Bill of Rights. When juries speak, America listens. That's why defectively designed cribs no longer strangle infants. Once-harmful medical devices have been redesigned. Cancer-causing asbestos no longer poisons homes, schools and workplaces. And farm machinery has safety guards.

Citizens give their time and efforts to safeguard and protect our liberty and our democracy. They should be adequately compensated for their contribution and not made to suffer financially as a result.

Thank you again for the opportunity to support HB 2085 and we urge your support.

Terry Humphrey, Executive Director

House Judiciary
Attachment 5
1-29-02



Bureau of Justice Statistics

State Court Organization 1998

Courts and judges
Judicial selection and service
Judicial branch
Appellate courts
Trial courts
The jury
The sentencing context
Court structure

Table 40. Trial Juries: Exemptions, Excusals and Fees

	Age at which may be exempt	Exemptions: Judicial Officers (JO), Public Officials (PO), Elected Legislators (EL), Physicians (DR), Attorneys (AT)	Excusals: Undue Hardship (UH), Extreme Inconvenience (EI), Public Necessity (PN), Physical or Mental Disability (PMD)	Employer Pays?	Jury fees (Per day)
Alabama	N/S	No exemptions.	UH, EI, PN	Yes	\$10
Alaska	70 and request in writing	Health exemption if expected to last more than 2 years or a JO.	UH, EI, PN, all excusals for current year only unless for disability or old age.	No	\$25
Arizona	N/S	No exemptions.	UH, PN. and where absence from employment would tend materially and adversely to affect the public safety, health, welfare and interest	No	\$12
Arkansas	N/S	No exemptions.	Excusals where state of health or that of family reasonably requires absence, or where personal and public interests materially injured by attendance	No	\$20
California	N/S	No exemptions.	Excused only for undue hardship upon themselves or the public as defined by the Judicial Council.	No	\$5 ¹
Colorado	N/S	No exemptions.	UH, EI	Yes	\$0 for 3 days, then \$50 ²
Connecticut	70	JO and EL disqualified while General Assembly in session. Specified State Officials.	PMD, UH. A person shall be capable if able to perform a sedentary job requiring close attention for six hours per day, with short breaks, for at least 3 consecutive business days.	Yes, first 5 days only	\$0 for 5 days, then \$50 ³
Delaware	N/S	No exemptions.	UH, EI, PN	No	\$20
District of Columbia	N/S	No exemptions.	UH, EI, PMD	Yes, up to 5 days	\$30 ⁴
Florida	70	JO, PO, Governor, Lieutenant Governor, cabinet officer, clerk of court.	UH, EI, PN, PMD, expectant mothers and persons responsible for care of disabled person. Also police, attorneys, physicians, the physical infirm.	No	\$15 for first 3 days, \$30 after
Georgia	70 ⁵	Permanently mentally or physically disabled.	Work necessary for the public health, safety, or good order, or other good cause ⁶ .	Yes ⁷	\$5-\$35
Hawaii	N/S	JO, PO, EL, DR, AT, police, active military, clergy, dentists, fire fighters, any person who has served as juror in Hawaii within one year preceding the time of filling out the juror qualification form.	Excused only for serious personal hardship or other good cause.	No	\$30
Idaho	70 and request in writing	No exemptions.	UH, EI, PN	No	\$10 for half day
Illinois	N/S	No exemptions.	UH on occupation, health, family situation, active duty in military, or other personal affairs.	No	\$4 - \$15.50, varies among counties
Indiana	65	JO, PO, EL and active military, dentists.	UH, EI, PN	No	\$7.50 if not selected - \$17.50 if selected

Legend: NS = None Stated, ~ = Not applicable

Table 40. Trial Juries: Exemptions, Excusals and Fees

	Age at which may be exempt	Exemptions: Judicial Officers (JO), Public Officials (PO), Elected Legislators (EL), Physicians (DR), Attorneys (AT)	Excusals: Undue Hardship (UH), Extreme Inconvenience (EI), Public Necessity (PN), Physical or Mental Disability (PMD)	Employer Pays?	Jury fees (Per day)
Iowa	N/S	No exemptions.	Automatic excuse for care of disabled person. Discretionary for UH, EI, PN or it would threaten economic, physical or emotional well being.	No	\$10
Kansas	N/S	National guard when active or in training. Kansas State Guard, observers of the Sabbath shall be exempt from Saturday Jury services.	PMD, UH, PN	No	\$10
Kentucky	None	No exemptions.	UH, EI, PN	No	\$12.50
Louisiana	N/S	No exemptions. ⁸	UH or EI	No	~ ⁹
Maine	N/S	Governor, JO, AT, physicians and dentists providing active patient care, sheriffs, active military.	UH, EI, PN, PMD	No	\$10
Maryland	70 and request in writing	No exemptions except military.	UH, EI, PN	No	\$10-20 varies among counties
Massachusetts	70	No exemptions.	PMD or care of permanently disabled person requires physician's letter. A person shall be capable if able to perform a sedentary job requiring close attention for six hours per day, with short breaks, for at least 3 consecutive business days.	Yes, first 3 days	Employer pays first 3 days, then state pays \$50/day ¹⁰
Michigan	70	No exemptions.	Material injury to public or individual interests, health of juror or family member.	No	\$15 minimum
Minnesota	70	JO and EL and EL's staff while legislature is in session.	Continuing hardship to them or members of the public, must be in writing. Ability to receive or evaluate information is so impaired they are unable to perform duties of juror	No	Rate set by Supreme Court
Mississippi	65	No exemptions.	Illness, serious financial loss, emergency. Illness requires a physician's statement.	No	\$25
Missouri	N/S	JO, AT, active military.	Absence from work would affect public health, safety, interest or welfare, extreme hardship, has served within preceding year, practicing dentist, pharmacist, physician, performing clergy, police officer.	No	\$6
Montana	N/S	No exemptions.	Chronic incapacity; UH for person or public served, must be by affidavit.	No	\$25
Nebraska	65	JO, court clerks, jailers, sheriffs, husband and wife not allowed on same panel, national guard, volunteer firefighters, and parties to a pending suit.	PMD, requires physician's certificate. UH, EI, PN.	No	\$35
Nevada	70, 65 if lives + 65 miles from court	JO, PO, county clerk, recorder, assessor, sheriff, police, locomotive operator, correctional officer, physician, optometrist or dentist, legislators and legislative employee during session, and AT.	PMD, illness or death of immediate family member, UH, EI, PN. PMD requires physician's certificate. Sickness or physical disability.	No	\$15 for first 5 days, then \$30

Table 40. Trial Juries: Exemptions, Excusals and Fees

	Age at which may be exempt	Exemptions: Judicial Officers (JO), Public Officials (PO), Elected Legislators (EL), Physicians (DR), Attorneys (AT)	Excusals: Undue Hardship (UH), Extreme Inconvenience (EI), Public Necessity (PN), Physical or Mental Disability (PMD)	Employer Pays?	Jury fees (Per day)
New Hampshire	70	JO, PO, EL while in session, AT, DR, firemen and police.	UH, EI, PN, PMD if unfit to act as juror.	No	\$10 for half day
New Jersey	75	School teachers (full-time while school is in session), hospital employees, caretakers of children (where jury services would interfere), firemen, first aid, police (excused from grand jury only).	PMD, medical inability (physician- certified), severe financial hardship, personal obligation of care for another, technical health care worker that can't be replaced, school employees while school in session, volunteer firefighters/rescue squad.	Employer pays salary minus jury fees	\$5
New Mexico	N/S	No exemptions.	May be excused at the discretion of judge upon satisfactory evidence.	No	State minimum wage
New York	N/S	No exemptions.	UH, EI to applicant or person under care or supervision, or the public, mental or physical condition incapacitating person from service.	Partial ¹¹	\$40
North Carolina	65	No exemptions.	Compelling personal hardship, contrary to public health, safety and welfare.	No	\$12 for first 5 days, then \$30
North Dakota	N/S	No exemptions.	UH, EI, PN	No	\$25
Ohio	N/S	N/S	Necessarily absent from county, material injury to interest of public or juror, physical inability, spouse or near relative ill or recently deceased.	No	Varies among counties
Oklahoma	70	JO, sheriffs, jailers, police, AT, EL.	Substantial hardship.	No	\$20
Oregon	70	No exemptions.	UH, EI to person, person's family, employer or public served.	No	\$10
Pennsylvania	N/S	No exemptions except active military.	UH, EI	No	\$9 first 3 days, then \$25
Puerto Rico	N/S	PO, JO, EL, DR, AT, military, public employees, clergy, school employees, hospital/medical employees, morticians, employees of prisons, employees of ships/shippers, carrier employees, police, news employees, public transportation employees, small business owners, US District Court jurors.	Material injury/destruction of property would result, serious illness or death of family member, housewives.	No	\$20 minimum per day
Rhode Island	N/S	EL, JO, AT, sheriffs, marshals, police, firemen, active military, P.O., parole officers.	PMD, UH, serious illness of juror/family.	No	\$15
South Carolina	65	"Any person employed within the walls of any courthouse".	Good and sufficient cause, woman with children under 7, school employees, students during school term.	No	\$2-12
South Dakota	N/S	JO, AT, clergy if conflicts with religious beliefs.	N/S	No	\$40
Tennessee	65	EL, AT, teachers, firemen, national guard, pharmacists, PO, JO, sole proprietors of businesses, nurses, certified public accountants, persons not fully possessed of sight or hearing.	Material injury to person's health, family, public. UH, care for children, grandchildren, or wards, relation to 6th degree of any party, aged 70.	No	\$10 minimum; may be supplemented by local body

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Table 40. Trial Juries: Exemptions, Excusals and Fees

	Age at which may be exempt	Exemptions: Judicial Officers (JO), Public Officials (PO), Elected Legislators (EL), Physicians (DR), Attorneys (AT)	Excusals: Undue Hardship (UH), Extreme Inconvenience (EI), Public Necessity (PN), Physical or Mental Disability (PMD)	Employer Pays?	Jury fees (Per day)
Texas	65	Officer or an employee of the senate, house of representatives, or any department commission, board, office, or other agency in the legislative branch of state government.	PMD with physician's affidavit, consanguinity or affinity within third degree, student, persons caring for children under 10, primary caretaker of invalid.	No	\$6 - \$50, varies among counties
Utah	None	No exemptions.	PMD, UH, EI, PN	No	Day 1 = \$18.50; subsequent days = \$49
Vermont	N/S	No exemptions.	UH on prospective juror or his employer.	No	\$30
Virginia	70	President and Vice President of U.S., EL, PO, AT, sheriffs, police, correctional employees.	Person whose spouse is summoned to serve on same jury; persons caring for children under 16 or invalids, mariners and sole operators of business, commercial, or agricultural enterprises.	No	\$30
Washington	N/S	No exemptions.	UH, EI, PN	No	\$10 - \$25, varies among counties
West Virginia	65	No exemptions.	UH, EI, PN, person age 65 or older must be excused upon request.	No	\$15
Wisconsin	N/S	No exemptions.	Cannot fulfill responsibilities of a juror.	No	\$16 minimum per day
Wyoming	73	EL, elected PO, police, firemen.	Material injury or destruction to property threatened, health or family sickness, care of young children.	No	\$30 for first 5 days, then \$50 at discretion of the court.
Federal Courts	N/S	Active military, firemen, police, PO, JO, EL.	Varies, District Court may formulate a plan.	No	\$40 ¹²

FOOTNOTES:

California:

¹Minimum unless county stipulates higher fee.

Colorado:

²Fees include expenses to unemployed jurors.

Connecticut:

³Employer pays full-time employed jurors regular wages for first five days.
Part-time employed jurors and unemployed jurors are reimbursed for out-of-
pocket expenses.

District of Columbia:

⁴For second day and thereafter.

Georgia:

⁵A person 70 years or older can request to have name removed from jury list.

⁶If state legislator during term of General Assembly.

⁷By opinion of the Attorney Journal.

Louisiana:

⁸All exemptions were eliminated in 1994.

⁹\$12 for civil cases, criminal cases not less than \$12, nor more than \$25, for
each day of attendance in court. Orleans Parish civil cases are \$16.

Massachusetts:

¹⁰Fees include expenses to unemployed jurors. Such expenses may be paid
from first day of service.

New York:

¹¹Employers with more than ten employees pay \$40 for the first three days;
thereafter, the state pays. If the employer pay the entire salary then state
pays nothing. Jurors who work for employers with ten or fewer employees
(who do not pay regular wages while on jury duty) or jurors who are not
employed received \$40 per day from the state.

Federal Courts:

¹²A juror required to attend for more than thirty days may be paid, at the
discretion of the trial judge, an additional fee not to exceed \$10 per day.

6-5



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning House Bill No. 2085
re. Juror Fees
House Judiciary Committee

Presented by Randy Allen, Executive Director
Kansas Association of Counties
January 29, 2001

Mr. Chairman and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express our opposition to House Bill No. 2085. The bill would amend K.S.A. 43-171 to increase compensation to jurors from the current \$10/day to \$25/day for the first five days, and then \$40/day for each day thereafter. As you know, these costs are paid from counties' general funds.

Given the fact that the per diem rate has not been adjusted since 1971, we understand the rationale for adjusting the rate. However, we have to question the timing of this proposal given the extremely grave financial situation of the State of Kansas, and the impact such crisis is and is likely to have on county governments. Already, counties have experienced reductions in demand transfers from the State which are used to finance county services. The proposed FY 2003 State budget would cut another \$4 million in demand transfers to counties. In other areas, such as a planned phase-down in community college out-district tuition paid by counties as part of the higher education system restructuring, the FY 2003 State budget retreats from the previously adopted financial strategy and leaves counties holding a relatively larger share of the cost. Both of these examples are provided to illustrate that the State and counties' financial houses are connected. As such, both the State and counties are in financial distress. As such, this is not the year to be considering an increase in juror fees that only increase county property taxes.

In the spirit of avoiding unfunded mandates on local taxpayers, we urge the committee to kill HB 2085 at this time. Thank you for this opportunity to comment on this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Topeka, KS 66615
785•272•2585
Fax 785•272•3585
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House Judiciary
Attachment 7
1-29-02



GOVERNMENT RELATIONS

Sedgwick County Courthouse
525 N. Main, Suite 365
Wichita, KS 67203
Phone: (316) 660-9378
Fax: (316) 383-7946

Michael D. Pepoon
Director

TESTIMONY
Before The House Judiciary Committee
By Michael D. Pepoon, Director of Government Relations
January 29, 2002

Honorable Chairman O'Neal and members of the Committee, thank you for allowing me the opportunity to testify in opposition to HB 2085. This bill amends K.S.A. 43-171 to change compensation to jurors from the current \$10 per day to an increase of \$25 per day for the first five days, and \$40 per day thereafter. This statute provides that such funds shall be paid out of the county general fund.

In 2000, Sedgwick County paid out a sum of \$176,690.00 in jury fee compensation at the \$10 per diem rate. Even assuming an increase to only \$25 per day per juror, this would have resulted in a total expenditure of \$441,725.00—or an increase of over \$265,000.00. Last year Sedgwick County spent \$284,327.00 for jury *per diem* and mileage. Furthermore this bill proposes an increase to \$40 per day after the first five days. In 2001, 328 jurors served more than 5 days, with 66 serving more than 10 days and 28 serving more than 15 days. So if this further enhancement beyond 5 days is allowed, then the cost to Sedgwick County is even greater. For example, the minimum cost increase for the 28 jurors mentioned above, if they each served only a total of 16 days, would have been \$11,340.00.

We are sympathetic with the fact that the *per diem* rate has not changed since 1971. But Sedgwick County is currently facing the prospect of receiving less funding from the State of Kansas while also having to address revenue shortages at the local level due to an economic downturn in South-Central Kansas. This puts the County in the unwanted position of either raising local property taxes or denying essential governmental services. This is clearly not the time for the State to pass along an unfunded mandate to Sedgwick County in an amount that could easily result in increased costs of \$300,000.00 a year.

For the above reasons Sedgwick County opposes legislation to increase the rate of compensation to jurors by amending K.S.A. 43-171 from the current rate of \$10 per day.

"...To Be The Best We Can Be."

House Judiciary
Attachment 8
1-29-02

TESTIMONY
Before the House Judiciary Committee
By Vernon McKinzie, Lyon County Commission Chairman
January 29, 2002

Mister Chairman and members of the committee, thank you for allowing me an opportunity to speak in opposition to HB 2085. My major concern is the portion of the bill amending the current \$10 per day compensation to an increase of \$25 per day for the first five days and \$40 per day thereafter. It appears to me the Bill passes the cost to the county general fund as another unfunded mandate.

In 2000 Lyon County paid approximately \$29,000 in juror compensation and in 2001 we paid \$35,875 in compensation and mileage. If we were to extrapolate by using those amounts and the proposed compensation amounts, as a conservative estimate we would have paid \$72,500 and \$87,500 respectively.

Our county budget has already been set for 2002 and if this bill becomes law this year it is likely to become effective July 1, 2002, or upon publication in the statute book, meaning our juror compensation expense will increase a minimum of two and a half times for the remainder of the year. Since the legislature and Governor have both admitted that the State budget will be very tight this year I fear you and your colleagues in the legislature may further reduce the return of the local ad valorem tax payments. Then, not only will counties be required to pay higher fees for jurors, we will be receiving lower return of money due us by existing statutes. I see it as a double "whammy" for local government.

I am a recently retired business owner and would like to point out what I observe as a common practice in the business community. Many business owners allow their employees to participate in jury duty without any loss in pay as a gesture of community service. The employer receives the fee paid to the juror as their only return. As a result of this practice, the juror is not denied their regular wages for jury duty whether the fee is \$10 per day or \$25 per day. Only the business owner will benefit, and in my opinion the business owner would rather accept the \$10 rather than experience an increase in local property taxes to cover the \$25 and \$40 dollar amounts the county would have to levy in order to pay the new fee. Some District Courts in Kansas have a local rule to allow persons over age 65 to opt out of jury duty, eliminating the need for an increase for retired persons.

Again thank you for allowing me to appear and comment and I urge you to oppose HB 2085. I would respond to any questions you may have.



Johnson County, Kansas

OFFICE OF THE COUNTY MANAGER

To: Representative Michael O'Neal, Chairman
Members, House Judiciary Committee

From: Ashley Sherard, Government Relations Manager

Date: January 29, 2002

Subject: **HB 2085 – Increase in Juror Compensation**

As you are aware, HB 2085 proposes a 150% increase in juror compensation from \$10/day to \$25/day for the first five days and \$40/day for every day thereafter. I would like to provide testimony regarding the fiscal impact of HB 2085 on Johnson County government.

Juror compensation is budgeted through the County's general fund, which is primarily funded through local property taxes. The Johnson County District Court Administrator estimates that passage of HB 2085 would increase Johnson County's juror compensation costs by nearly \$200,000, from approximately \$135,000 a year to \$330,000. Accordingly, this mandated cost increase would likely have to be recouped through higher local property taxes.

As a result, we urge the committee to conduct its own internal cost/benefit analysis and consider whether an additional \$15/day in recompense would make sufficient difference to jurors to justify a general property tax increase. Perhaps a better alternative might be to encourage employers to maintain an employee's pay throughout jury duty. Although many employers do, some do not.

We appreciate this opportunity to provide the committee with information regarding the HB 2085's impact on Johnson County. Thank you for your time and consideration.



State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

January 29, 2002

**Testimony in Support of 2002 HB 2620
House Judiciary Committee**

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear in support of 2002 HB 2620. Under current law, judges and justices must retire at the age of 70, but may finish serving the term during which the judge attains the age of 70. HB 2620 would delete that provision, and would not impose any mandatory retirement age for judges.

Under current law, judicial retirement age is somewhat of a lottery. Because the current retirement age is dependent upon the birth date and term commencement of each judge or justice, the mandatory retirement age for judges can vary from age 70 to age 74 for district judges, and from age 70 to age 76 for Supreme Court justices. The requested amendment would provide a uniform retirement age for all judges and justices.

When this issue was first addressed a few years ago, district judges and district magistrate judges were invited to send comments to the Chief Justice. Responses were overwhelmingly in favor of the bill. The comments received reflected careful consideration of the issue. While judges acknowledged the effects of the aging process that are familiar to many of us, many noted that, in general, people are living longer and are capable of a longer period of productive years in the workforce. Judges are no exception to this trend.

Retaining the experience and wisdom of seasoned judges was a consideration noted by most judges who wrote in support of the bill. Usually judges are not elected or appointed to the bench until they have achieved considerable experience in the practice of law. Many judges are at the height of their productivity at age 70. In addition to the individual comments on the bill, the Kansas District Judges Association Executive Board voted unanimously to support passage of the bill.

The mandatory retirement age imposed on judges is contrary to what appears to be the practice for the majority of public and private sector employers. Of all state retirement groups administered by the Kansas State Employees Retirement System (KPERs), judges are the only group with a fixed mandatory retirement age.

House Judiciary
Attachment 11
1-29-02

HB 2620 is similar to 1999 HB 2372, which would have amended current law to require a mandatory retirement age of 75 for all judges. During the 2000 legislative session, HB 2372 was amended by the House Judiciary Committee to apply only to appellate judges and justices. Current law would have remained in effect for judges of the district court. That bill passed the House during the 2000 Legislative Session by a vote of 121 to 2, and also was recommended favorably for passage by the Senate Judiciary Committee. The bill was above the "anticipated end of debate calendar" line on Senate General Orders during the final days of the 2000 Legislative Session. At that point, it was learned that the Governor had concerns about the bill, and the bill then moved below the line and was never considered on General Orders. Since that time, the Governor has called a meeting about the bill, including members of the Supreme Court Nominating Commission, a Supreme Court justice, and a Court of Appeals judge. After discussing the bill and whether it impacted the Supreme Court Nominating Commission process, the Governor stated that he was not opposed to the bill.

During the 2001 legislative session, SB 46 was introduced in the Senate Judiciary Committee, but was moved to the Senate Ways and Means Committee. SB 46 was recommended favorably by the Senate Ways and Means Committee, and was included as a part of its KPERS package (Senate Substitute for HB 2040) by the Senate Ways and Means Committee. That bill, however, was never considered on Senate General Orders.

During the various discussions of this issue, several legislators have questioned why any mandatory retirement age should be set. HB 2620 addresses that concern by deleting the mandatory retirement age for judges, and the Judicial Branch strongly supports the provisions of HB 2620. However, I want to assure you that a mandatory retirement age of 75 is also an acceptable alternative to current law should the Committee prefer that alternative.

Thank you for your consideration of this bill, and I would be glad to try to answer any questions that you might have.