

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on January 14, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Peggy Long-Mast- excused

Committee staff present:

Jill Wolters, Revisor of Statutes

Diana Lee, Revisor of Statutes

Jerry Ann Donaldson, Kansas Legislative Research Department

Mike Heim, Kansas Legislative Research Department

Cindy O'Neal, Secretary

Conferees appearing before the committee:

Mark Stafford, Kansas Board of Healing Arts

Randy Hearrell, Kansas Judicial Council

John Federico, Kansas Self Storage Owner's Association

Dina Fisk, Kansas Society of Land Surveyors

Judge Nancy Parish, 3rd Judicial District, Shawnee County

Chairperson O'Neal accepted bill introductions.

Mark Stafford, Kansas Board of Healing Arts, requested a bill which would allow appropriate state agencies to initiate an administrative procedure to appoint a custodian of patient records in those instances where a health care provider leaves practice without arranging for patient records being properly cared for.

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

Randy Hearrell, Kansas Judicial Council, requested four bills:

1. Amendments to the Uniform Trust Code
2. Technical amendments to the Kansas Power of Attorney Act
3. Changes to three sections of the Probate Code
4. Amendments to K.S.A. 12-405b relating to the time for filing claims against municipalities

Representative Patterson made the motion to have the requests introduced as committee bills. Representative Swenson seconded the motion. The motion carried.

John Federico, Kansas Self Storage Owner's Association, requested a bill which would amend K.S.A. 58-813-58-819 to expedite the process for obtaining a certificate of title for motor vehicles of delinquent occupants, that are sold at a lien sale, change the "notice" requirement of delinquent occupants, clarify language as to what types of "lien sales" are allowable under statute, clarify the term "no commercial value", and allow for a late fee

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

Dina Fisk, Kansas Society of Land Surveyors, requested a bill that was patterned after a Maine Statute and former HB 2539, which deals with the right of entry for professional land surveyor performing surveying services.

Representative Patterson made the motion to have the request introduced as committee bill. Representative Owens seconded the motion. The motion carried.

Judge Nancy Parish, 3rd Judicial District, Shawnee County, provided the committee with an update on the District Court. She informed the committee that while the budget will go directly to the Legislature without cuts from the Governor, the Judiciary is still underfunded. The budget is largely made up of "maintenance"



The Kansas District Judges' Association



January 14, 2004

House Judiciary Committee

State of the District Courts

Judge Nancy Parrish
3rd Judicial District, Shawnee County

Direct Submission and Other Budget Issues

One change that will impact the Judicial Branch as a whole is direct submission of the Judicial Branch budget to the Legislature. This marks the first year since 1978 in which the Judicial Branch has directly submitted its budget to the Legislature rather than first submitting it to the Director of the Budget for review and revisions. At this point, the Judicial Branch budget that is before the Legislature is basically the Judicial Branch maintenance budget, as requested by the Judicial Branch.

In recent years, the Judicial Branch had been placed in the position of requesting supplemental funding in order to avert extremely adverse personnel actions, such as furloughs, layoffs, and delaying or ceasing services important to the public. Before requesting supplemental funding, we had been forced for many years to use other difficult cost-cutting measures, such as hiring freezes, just to keep the courthouse doors open. We realize that the Legislature was also placed in the unenviable position of having to find that funding within tight budget in which all available funding had been allocated.

By FY 2002, the underfunding of the Judicial Branch budget had reached a crisis situation. Because of impending fiscal catastrophe, in March 2002 the Supreme Court exercised its inherent authority to maintain court operations and issued the emergency surcharge order. While the emergency surcharge kept the courthouse doors open in FY 2003 and FY 2004, the Judicial Branch budget for FY 2005 includes a request to fully fund the Judicial Branch's maintenance budget so that the surcharge is not necessary.

The maintenance budget is the amount the Judicial Branch needs to fund existing Judicial Branch staff and programs, nearly all of which are mandated by the Kansas Constitution or federal or state statutes. The maintenance budget does not include any new positions or enhancements.

The majority of the Judicial Branch budget is for the district courts. It is the funding that keeps the staff in place in each of your counties, provides services to your constituents, and provides funding for court services officers who supervise probationers in your counties.

Requested Enhancements

The Judicial Branch's budget request for FY 2005 includes several requests that will impact the operations of district courts across the state. Those requests are noted below.

Judicial Positions

The number of lawsuits filed continues to grow yearly, but there has not been a corresponding level of growth in judicial resources. We have included in our budget request four additional judicial positions, including one district judge and three district magistrate judges. The district judge position is requested for the Seventh Judicial District (Douglas County). This district's per judge caseload has increased so much that the Douglas County Commission is funding a full-time magistrate judge *pro tem* position. The magistrate judge handles all juvenile offender cases, all child support modification cases, all traffic cases, and also hears criminal first appearances daily. The district also has assigned to them two senior judges. Without this additional help, the district would not be able to process its case filings in a timely manner. As it is, speedy trial issues remain a concern. In addition to the district judge position, we request an administrative assistant and a court reporter as staff for the judge, which are the staff positions normally assigned to a district judge.

District magistrates are requested for the Eighth, Ninth, and 27th Judicial Districts. The Eighth Judicial District (Dickinson, Geary, Marion, and Morris Counties) currently has five district judges and two district magistrate judges. District judges are assigned to traffic and limited actions dockets and also hear approximately one-third of the district's preliminary hearings. All of these are within a district magistrate judge's jurisdiction. A third district magistrate judge would allow the district the ability to process cases in a more timely fashion to better serve the public. The new position would be stationed in Geary County, which has one of the highest limited actions dockets in the state.

The Ninth Judicial District consists of Harvey and McPherson Counties, and currently has three district judges and no district magistrate judges. This district has seen one of the largest percentage increases in case filings in the state over the last ten years. Over the last ten years, limited actions have increased 146 percent and felony filings have grown by 168 percent. Currently, there are no district magistrate judge positions in the Ninth Judicial District. The requested district magistrate judge is a cost-effective way to address the increase in filings.

The third district magistrate judge is requested for the 27th Judicial District (Reno County). The 27th Judicial District has four district court judges and a caseload that ranks near the top of caseload per judge in the state year after year. The district's case filings have steadily increased over the years, resulting in a significant backlog of cases awaiting jury trials, particularly civil cases, as criminal cases take precedence. A few minor criminal cases have had to be dismissed for failure to meet speedy trial requirements. A minimum of 24 hours each week is set aside solely for docket calls, which could be managed by the requested district magistrate judge. With a district magistrate judge handling docket calls plus other matters within a magistrate judge's jurisdiction, the current district judges would be able to focus on reducing the backlog of jury trials and ensuring the speedy trial of all criminal cases.

Nonjudicial Positions

We have included in our request twenty new nonjudicial positions in the district courts, primarily for judicial support staff and court services officers. From FY 1994 through FY 2003, felony case filings in Kansas increased by approximately 28.5 percent while no new court services officer positions were added to the Judicial Branch budget. Misdemeanor case filings increased by approximately 6.5 percent during the same period. Persons may be supervised by court services officers for periods exceeding one year, so case filings do not reflect the true growth in court services officers' caseloads. This is similar to the "stacking" effect legislators are familiar with in regard to prison beds because offenders placed on probation in one year may remain on court services officers' caseloads for several years. In fact, the adult felony supervision caseload for court services officers increased by 43.3 percent from FY 1994 to FY 2003. In addition, court services officers' duties in other areas, such as domestic cases, child in need of care cases, and juvenile cases have also greatly increased. The increase in criminal filings without a proportionate increase in staffing has resulted in extremely high caseloads for our court services officers. Supervision of convicted felons and misdemeanants who remain in our communities is a public safety issue. Additional court services officer positions are both justified and necessary to ensure meaningful supervision of offenders.

As the Legislature is well-aware, the need for additional judges and nonjudicial personnel has existed for some time and has not been addressed. The need continues. We urge your support for these new positions.

PROGRAMS INFORMATION

Following are updates on existing programs and information on new or expanded programs of the Judicial Branch. These represent the efforts of Judicial Branch personnel to better meet the needs of Kansas citizens.

The Updated Child Support Guidelines

On October 30, 2003, Chief Justice McFarland signed a Supreme Court order updating the Child Support Guidelines, which are used as the basis to establish and modify the amount of child support ordered by Kansas Judges. The new guidelines became effective January 1, 2004. I was pleased to serve as the Chairperson of the Kansas Child Support Guidelines Advisory Committee, along with Representative Ward Loyd, Representative Tim Owens, Senator Greta Goodwin, and many other members who brought differing backgrounds and viewpoints to the committee. The committee spent two years obtaining input from those who pay and those who receive child support. The committee surveyed judges and attorneys across the state, and conducted public hearings in six locations across the state in order to provide better public access to the committee. We also made a very thorough examination of the available economic data before submitting their recommendations to the Supreme Court.

During the summer of 2003, the committee conducted a second period of public comment, which resulted in 23 letters and e-mail messages with comments and suggestions.

These suggestions were reviewed by the Child Support Guidelines Advisory Committee and a final report was provided to the Court on September 3, 2003.

The new child support guidelines are available online on the Judicial Branch Website (<http://www.kscourts.org>), providing easy access to judges, attorneys, and the public.

Death Penalty Audit

The Court recently responded to Legislative Post Audit's performance audit concerning costs incurred for death penalty cases. Currently, seven cases are pending on appeal (*Kleypas, Marsh, Scott, Elms, Robinson, Carr, and Carr*). Both *Kleypas* and *Marsh* have been briefed and argued and are awaiting decision. As the Legislature is aware, death penalty cases place a tremendous burden upon the resources of the court system, both at the district court and Supreme Court level.

The Post Audit report helps to quantify the burden reinstatement of the death penalty has placed on the Kansas Judicial Branch. Although the report notes the dollars spent on death penalty cases by each of the affected entities, the Judicial Branch has had no new money added to its budget to deal with death penalty cases. Based on the hours spent on death penalty cases by Judicial Branch employees, the Post Audit report concludes that the estimated cost to the Judicial Branch of the 14 death penalty cases to date has been \$3,556,293. This figure represents approximately 25 percent of the total \$14,467,901 death penalty cost noted in the report.

The Judicial Branch will continue to deal with death penalty cases as they arise, but the overwhelming number of hours spent on these cases and the gravity and complexity of the issues take their toll on our staff, and may result in delay in other areas.

FullCourt Case Management System for District Courts

The Judicial Branch has been busily implementing a new and improved district court accounting and case management system, financed primarily through federal funding. The system will create uniformity in the collection and maintenance of court information. By mid-2004, 100 or more district courts will be using the system. Reports from courts already using the new system have been very favorable.

Alternative Dispute Resolution

Our courts have continued to expand the use of alternative dispute resolution in domestic cases, but the biggest increases have occurred in other civil cases. In 2001, the Legislature authorized judges to use alternative dispute resolution methods when appropriate. In 2002, there was a 33 percent increase in the use of dispute resolution in general civil (non-domestic) cases and a 10 percent increase in the reported cases overall. Preliminary statistics indicate that this significant increase has continued into 2003.

The Office of Judicial Administration is involved in the evaluation of two permanency mediation pilot projects currently being operated in cooperation with the Sedgwick County

District Court. These promising efforts are directed at cases in which children are recommended for removal from their homes and will hopefully increase the percentage of children who are placed with relatives, rather than with the state. Our evaluation will compare 100 cases that go through the mediation process with 100 similar cases that did not go through the mediation process. The results should be completed by February 2004. The Office of Judicial Administration is assisting with a similar permanency mediation project in the Shawnee County District Court.

We also are currently working on a manual to advise state agencies on the various dispute resolution statutes, rules, methods, and accompanying public policy issues. Last year, under the Dispute Resolution Act, the Office of Judicial Administration provided training for state and county government staff on resolving public policy and employment disputes.

The Stop Violence Against Women Grant

In October 2003, the Kansas Supreme Court applied for and received a Stop Violence Against Women Grant. The purpose of the grant is to assist victims of domestic violence in understanding and navigating the often confusing forms and court processes in domestic violence cases, which can be confusing to petitioners. Under the grant, the Office of Judicial Administration, with the help of a multi-disciplinary advisory task force, will prepare an easy-to-understand written narrative explaining the court procedures and forms in domestic violence cases. A certified translator will then translate the narrative and domestic violence forms into Spanish. The narrative and forms will then be placed on a CD, with a voice-over of the narrative in both English and Spanish, for those victims unable to read it. The CD will be distributed to Kansas courts, domestic violence shelters, and related support organizations.

The Parent Advocate Pilot Project

The 2003 Kansas Legislature enacted HB 2125, which directed the Office of Judicial Administration to establish an 18-month pilot project in one urban and one rural judicial district, through which each parent involved in Child of Need of Care cases can select up to two people to accompany them to Child in Need of Care hearings, even if another party objects. (Under current law, outside of the pilot projects, other persons may be present at a CINC hearing if the judge approves and if none of the other parties object.) A parent advocate may be the parent's friend, minister, neighbor, family member, or any other person chosen by the parent. Individuals interested in becoming parent advocates are required to participate in a parent advocate orientation program designed to educate the advocate about the child welfare system.

The Office of Judicial Administration has established sites for the pilot project and orientation program in the 18th (Sedgwick County) and 21st (Riley and Clay Counties) Judicial Districts. Each pilot site has a multidisciplinary advisory committee to help tailor the orientation programs so that they better serve the target parent population. The Office of Judicial Administration will attempt to have the pilot project evaluated by an outside party.

CONCLUSION

District judges across the state strive to deliver timely, quality justice to Kansans in an efficient and cost-effective manner. Our court system is something to be proud of. On behalf of all the members of the Judicial Branch, I thank you for your continued support and wish you a successful and productive legislative session.

**STATEWIDE
SUMMARY OF CASELOAD FILINGS AND FTE POSITIONS**

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	87 to 96 % CHANGE	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	87 to 03 % CHANGE
CIVIL CASES																			
Regular Actions	26,385	25,237	24,041	25,733	23,751	23,735	22,347	23,287	21,831	20,539	(22.2)	21,192	21,427	22,554	22,199	21,167	23,522	24,265	(8.0)
Domestic Relations	23,497	25,351	26,404	29,486	30,210	30,717	33,124	36,469	38,099	38,588	64.2	38,105	39,321	38,002	34,989	33,188	35,114	37,785	60.8
Limited Actions	54,526	57,070	62,051	68,525	77,480	84,514	80,404	90,044	99,030	104,752	92.1	115,764	121,463	124,820	125,995	120,391	149,553	155,080	184.4
TOTAL, CIVIL	104,408	107,658	112,496	123,744	131,441	138,966	135,875	149,800	158,960	163,879	57.0	175,061	182,211	185,376	183,183	174,746	208,189	217,130	108.0
CRIMINAL CASES																			
Felonies	11,500	12,188	12,631	12,197	11,436	13,412	13,229	14,423	15,267	17,150	49.1	17,832	17,653	19,007	17,234	16,876	17,437	18,527	61.1
Misdemeanors	13,369	13,234	14,171	15,362	16,919	16,986	16,386	17,762	18,850	18,523	38.6	18,395	18,553	19,977	21,259	20,947	19,854	18,914	41.5
TOTAL, CRIMINAL	24,869	25,422	26,802	27,559	28,355	30,398	29,615	32,185	34,117	35,673	43.4	36,227	36,206	38,984	38,493	37,820	37,291	37,441	50.6
TOTAL CIVIL AND CRIMINAL CASES	129,277	133,080	139,298	151,303	159,796	169,364	165,490	181,985	193,077	199,552	54.4	211,288	218,417	224,360	221,676	212,566	245,480	254,571	96.9
LESSER JURISDICTION Without Traffic	54,143	54,632	54,807	56,808	56,647	57,224	53,186	54,285	56,317	56,539	4.4	57,361	58,470	59,252	56,945	54,707	51,580	48,601	(10.2)
GRAND TOTAL WITHOUT TRAFFIC	183,420	187,712	194,105	208,111	216,443	226,588	218,676	236,270	249,394	256,091	39.6	268,649	276,887	283,612	278,621	267,273	297,060	303,172	65.3
DISTRICT COURT JUDGES (FTE)	216	216	217	218	218	218	218	218	221	225	4.2	225	225	228	233	234	234	234	8.3
DISTRICT NONJUDICIAL FTE	1,301	1,341	1,395	1,402	1,404	1,349.50	1,348.50	1,367	1,380	1,387	6.6	1,389	1,404	1,419	1,434	1,433	1,433	1,433	10.1

"87 to 96" column reflects the statistics used in the 1997 Legislative Post Audit report, "Reviewing the Kansas Court System's Allocation of Staff Resources to the District Courts."