

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 25, 2008 in Room 313-S of the Capitol.

All members were present except:

Annie Kuether - excused  
Ben Hodge - excused  
Raj Goyle - excused  
Jason Watkins - excused  
Kevin Yoder - excused  
Paul Davis - excused  
Jim Ward - excused  
Marti Crow - excused  
Delia Garcia - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Senator Phil Journey

The hearing on **SB 48 - municipal court, accused person's competency to stand trial**, was opened.

Senator Phil Journey appeared before the committee as the sponsor of the proposed bill. He explained that it would allow cases to be removed from municipal court and placed in district court for the purpose of the defendant receiving a competency evaluation. Once the evaluation is done, the case would return to municipal court. (Attachment #1)

Written testimony in support of the bill was provided by The City of Overland Park. (Attachment #2)

The hearing on **SB 48** was closed.

The committee meeting adjourned at 3:45 p.m.

**SENATOR PHILLIP B. JOURNEY**

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TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

VICECHAIR: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT), VICECHAIR  
MEMBER: HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

**Testimony in Support of Senate Bill 48  
Presented by State Senator Phillip B. Journey, 26<sup>th</sup> District  
on March 20<sup>th</sup>, 2008  
for the House Judiciary Committee  
The Honorable Michael O'Neal, Chair**

First, I would like to thank the Committee for allowing me to testify in support of Senate Bill 48. Senate Bill 48 amends K.S.A. 22-3302.

Senate Bill 48 addresses an important issue that has placed many Kansas Municipal Courts in the quandary of what to do with a criminal or serious traffic case when presented with circumstances where there is a high likelihood that the defendant is incompetent to stand trial. In many instances those defendants are dual diagnoses, both substance abuse and mental health issues. They present the most difficult set of circumstances for municipal courts to deal with.

Senate Bill 48 allows the court on its own motion or based upon the motion of either party to ask the court to remove the case from municipal court and place it with the district court in the Judicial District of the Municipal Court for a determination of competency. In many instances, municipal courts are presided over by non-attorneys who have limited experience with these difficult circumstances. In some instances, of course, the defendant is before the court on criminal charges that resulted from the defendant being off his medication and initiating irrational or criminal behavior that results directly from their mental health issues.

This legislation allows the case to be removed from municipal court and placed with the district court for evaluation similar to what occurs in criminal cases in the district court, and once competency is determined and that the defendant is determined to be competent to stand trial, the case is referred back to municipal court where it belongs for trial or further disposition. The Committee amended the bill so that it includes all crimes in district court along with the resolution of this matter for municipal court. Senate Bill 48 passed the Senate on a vote of 40 to 0.


I have dealt with many clients, particularly when I served two days a week for eight years as an appointed attorney, in the Wichita Municipal Court with individuals who were less than competent. Attorneys under our current statutory system are forced to

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violate the rules of ethics and plead their client no contest to the charges they have pending without their approval so they can get them in front of a district court judge for a determination of competency when current law does not provide for such an order.

I appreciate the Committee's time, and I hope that you can help me close this hole in Kansas Criminal Procedure.

Respectfully submitted,



Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District

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**SB 48**  
**Testimony Before the House Judiciary Committee**  
**Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court**  
**March 25, 2008**

My name is Karen Arnold-Burger, and I am submitting this testimony in support of SB 48. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

This bill allows a municipal judge to refer a defendant to a district judge for a determination of competency to stand trial. If the defendant is deemed competent, the case is sent back to the municipal court for trial. If the defendant is deemed incompetent, the district judge can commit the defendant into various treatment options. Currently, if a municipal judge believes a defendant is incompetent to stand trial, the only option is to dismiss the charge because there is not authority for the municipal judge to commit the defendant for mental health evaluation and treatment. This often results in a continuation of the problem with no real resolution. It also is very frustrating to the victims of these crimes.

As an example, a person with a long history of mental health issues is often found trespassing on private property (sometimes sleeping in a randomly selected residential front yard). In order to remove him from the situation, he is arrested and charged through municipal court with trespassing. It is clear he is incompetent to stand trial, so as soon as he comes before the judge, the judge has no other option but to dismiss the case, just to start the whole cycle again. This legislation would allow the municipal judge some other options in an effort to get the person the treatment needed.

There are not a lot of these cases, but when they do come up they are very frustrating for all involved. The Overland Park Municipal Court estimates there would probably be less than 10 a year that would be referred to such a process.

Thank you for the opportunity to address you on this topic.

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