

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on February 11, 2008, in Room 123-S of the Capitol.

All members were present except,  
Derek Schmidt arrived, 9:36 A.M.  
David Haley arrived, 9:40 A.M.

Committee staff present:  
Athena Andaya, Kansas Legislative Research Department  
Bruce Kinzie, Office of Revisor of Statutes  
Karen Clowers, Committee Assistant

Conferees appearing before the committee:  
Roger Werholtz, Secretary, Kansas Department of Corrections

Others attending:  
See attached list.

Bill Introductions

Dan Gibb, Office of the Attorney General requested introduction of a bill regarding increased penalties for assault of persons licensed or registered by the behavioral sciences regulatory board. Senator Goodwin moved, Senator Umbarger seconded to introduce the bill as a committee bill. Motion carried.

The Chairman opened the hearing on **SB 494—Retirement age for certain judges.**

Senator Bruce testified in support, as sponsor of the bill, indicating that under current law judges must retire at age 75 (Attachment 1). For publically elected judges, this could mean forced retirement during the course of their term. **SB 494** offers some relief to jurists with whom the public has voiced its trust by extending the mandatory retirement age to the end of term or upon reaching the age of 73.

Written testimony in support of **SB 494** was submitted by:  
The Kansas District Judges Association (Attachment 2)

There being no further conferees, the hearing on **SB 494** was closed.

The hearing on **SB 495—Restricting transfer of offenders to DOC with 10 or less days remaining on sentence** was opened.

Roger Werholtz appeared in support, indicating this bill would require prisoners with less than 11 days remaining on their term of imprisonment to remain incarcerated at the county jail (Attachment 3). This would save the cost of transporting to a state facility and the cost of processing and evaluating once there. The Department estimates this will affect approximately 128 prisoners per year.

There being no further conferees, the hearing on **SB 495** was closed.

Senator Vratil opened the hearing on **SB 496—District magistrate judges; vacancies; district conventions.**

Senator Bruce testified in support, as sponsor of the bill which address a discrepancy in the laws pertaining to the filling of vacancies for officials elected to the bench (Attachment 4). Senator Bruce advocates elected magistrate and district judges be required to use the same process to fill a vacancy as any other elected official.

Written testimony in opposition of **SB 496** was submitted by:  
The Kansas District Judges Association (Attachment 5)

There being no further conferees, the hearing on **SB 496** was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on February 11, 2008, in Room 123-S of the Capitol.

The Chairman called for final action **SB 476–Arrest for violating condition of probation or conditions of release**. The Chairman reviewed the bill indicating there were no proposed amendments to the bill.

Senator Donovan moved, Senator Goodwin seconded, to recommend SB 476 favorably for passage. Motion carried.

The Chairman called for final action **SB 477–Offender registration, electronic solicitation**. Senator Vratil reviewed the bill. Senator Journey proposed the need for a prospective clause.

Senator Journey moved, Senator Lynn seconded, to amend SB 477 by adding on page 3, line 17, language to the effect, “committed on or after the effective date” and give the revisor license to draft appropriate language. Motion carried.

Senator Journey moved, Senator Donovan seconded, to recommend SB 477, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 479–Post release supervision for certain offenders convicted under K.S.A. 21-4628**. The Chairman reviewed the bill and distributed a proposed balloon amendment from the parole board reflecting change in language to included as many determinate and indeterminate offenders as possible (Attachment 6).

Senator Journey moved, Senator Betts seconded to amend SB 479 in the manner reflected in the balloon with the modification of replacing the word “any” with the word “all” and changing the word “crime” to plural “crimes”. Motion carried.

Senator Bruce pointed out adoption of this bill would be inherently retroactive but felt a need to make the clarification that it is the intent of the committee to apply the legislation retroactively.

Senator Bruce moved, Senator Schmidt seconded, to amend SB 479 on page 2, line 17, following Senator Journey’s previous amendment, giving the revisor license to draft language making the bill retroactive to the effective date of the bill.

Senator Journey moved, Senator Lynn seconded, to recommend SB 479 as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:23 A.M. The next scheduled meeting is February 12, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 11, 2008

NAME	REPRESENTING
Heather Morgan	SSA
Melissa Wayemana	Sec of State
Kathy Porter	Judicial Branch
Dan Gibb	KSAB
Shamika Stamps	Kansas African Affairs Commission
Brianna Landon	Sen. Journey
RQ McGuire	Sen. Journey
Roger Wirholtz	KDOC
Tim Madden	KDOC
Jeff Bottoms	Kansas Sher. Assn
John Beverland	PINEGAR, SMITH & ASSOC.
SEAN MILLER	CAPITOL STRATEGIES

STATE OF KANSAS

TERRY BRUCE

STATE SENATOR  
34TH DISTRICT  
RENO COUNTY



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

VICE CHAIR: JUDICIARY  
MEMBER: JOINT COMMITTEE ON SPECIAL  
CLAIMS AGAINST THE STATE  
AGRICULTURE  
ASSESSMENT & TAXATION  
NATURAL RESOURCES

RE: Testimony on Senate Bill 494

Chairman Vratil and committee members,

Thank you for allowing me to address this committee on Senate Bill 494 (SB 494). Since taking office in 2004, I have been contacted on several occasions by Reno County District Court Judge Richard Rome and members of the Reno County Bar Association to address the mandatory retirement age for elected district court judges contained in K.S.A. 20-2608. After reviewing the issue, I agree the current policy is ill conceived, and along with the rest of the practicing attorneys in the Reno County legislative delegation, seek its change.

Under existing Kansas law, every district court judge that reaches the age of 75 must retire. For judges serving in judicial districts that elect their judges, it means a judge would have to retire during the course of their term. I believe this mandate is contrary to the will of the public who elected them to fill these positions.

As a publicly elected official myself, I find this requirement troubling for the above-stated reason, as well as for the fact that judges are the only public officials required to retire at a mandatory age. This bill does not go so far as to remove the cap altogether, and that issue can certainly be discussed, but SB 494 does offer some relief to jurists with whom the public has voiced its trust.

In addition to extending the retirement of elected district court judges, SB 494 extends the mandatory retirement of a Supreme Court justice at the end of the term he or she attains the age of 70 to the end of the term where he or she attains the age of 73. This was added due to the discrepancy in retirement age between elected district court judges and Supreme Court justices which would have resulted in a potential age of 79 for elected district court judges and only the age of 76 for justices.

Terry Bruce,  
Reno County State Senator

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Senate Judiciary  
Attachment 1





# The Kansas District Judges' Association



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Hon. Nancy E. Parrish, Secretary  
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Hon. Warren Wilbert, Treasurer  
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Senate Judiciary Committee  
Monday, February 11, 2008

## Written Testimony in Support of SB 494 and in Support of a Uniform Retirement Age for All Judges and Justices

The Kansas District Judges Association (KDJA) Executive Committee supports the provisions of 2008 SB 494 and supports amending the bill to extend the specified age for all judges and justices to age 75, or the end of the term in which the judge or justice attains the age of 75. Under current law, judges of the district court may serve until age 75, but must retire on or before the judge's 75<sup>th</sup> birthday. The amendment in SB 494 would allow judges of the district court to continue to serve until the end of the term in which the judge attains the age of 75.

SB 494 also would amend the age at which Supreme Court justices must retire. Under current law, justices must retire at age 70, or at the end of the term in which the justice attains the age of 70. SB 494 would allow justices to serve until age 73, or until the end of the term in which the justice attains the age of 73. The KDJA Executive Committee can find no rational basis for a distinction in retirement age between the Supreme Court (at age 73, or the end of the term in which the justice attains the age of 73) and district judges, district magistrate judges, and Court of Appeals judges (at age 75, or the end of the term in which the judge attains the age of 75).

Allowing judges to serve until the end of the term would avoid the significant disruption that can occur when a judge leaves office mid-term. In districts in which judges are elected, K.S.A. 25-312a provides that the vacancy is to be filled by appointment by the Governor. If the vacancy occurs on or after May 1 of the second year of the term, the person appointed serves for the remainder of the unexpired term. If the vacancy occurs before May 1 of the second year of the term, the person appointed serves until a successor is appointed at the next general election to serve the remainder of the unexpired term. The Governor must find someone willing to quit his or her current job or close out a law practice to serve as judge for only a brief time before running in an election in which he or she may win a term of office, or may be unseated. It is not difficult to imagine that this could significantly reduce the pool of persons interested in being appointed by the Governor to fill the vacancy.

Prior to the 2004 amendment to K.S.A. 20-2608, judges of the district court could serve until age 70, or until the end of the term in which the judge attained the age of 70. With the 2004 amendment increasing the retirement age to 75, the "end of the term" language was eliminated. At the time of the 2004 amendment increasing the retirement age, discussion centered on the fact that, in general, people

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Attachment 2



## *The Kansas District Judges' Association*



are living longer and are capable of a longer period of productive years in the workforce. Judges are no exception to this trend, and retaining the experience and wisdom of seasoned judges was a consideration noted by most judges who supported the 2004 amendment. It was also noted that 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 and that, 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.

On behalf of the Kansas District Judges Association Executive Board, thank you for your consideration of these comments and the suggested amendment.



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 495  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections  
February 11, 2008

The Department of Corrections supports SB 495. This bill would require that offenders sentenced to a term of imprisonment in the custody of the Secretary have at least 11 days remaining to be served on the prison portion of their sentence in order to be transferred to a Department of Corrections' facility. Persons with 10 or less days remaining to be served would remain in the county jail and upon the expiration of the prison portion of their sentence be released to postrelease supervision by the Department of Corrections.

SB 495 addresses the expenditure of resources by state and county officials in the transporting of offenders to a state correctional facility and the processing and evaluation of those offenders into the state correctional system merely to have those offenders returned to the county within ten or less days. During the first 6 months of calendar year 2007, the Department admitted 64 inmates who had 10 or fewer days remaining to be served on their prison sentence. Thus, over the course of a year, it would be expected that 128 such offenders would be transported to the Department's Reception and Diagnostic Unit, processed into that Unit, and provided a medical and mental health screening, only to be transferred back to the county within less than 10 days. Attached is a chart setting out the number of offenders admitted into the Department's Reception and Diagnostic Unit from January through June of 2007 with various lengths of time remaining to be served on the prison portion of their sentence.

Minnesota has enacted a statute whereby persons with less than 180 days remaining to be served on a term of imprisonment are to serve the balance of the sentence in the county jail. See Minn. Stat. §609.105.

The Department urges favorable consideration of SB 495.

# Admissions with 90 Days or Less to Serve

January - June 2007

	<u>JO</u>	<u>SG</u>	<u>WY</u>	<u>SH</u>	<u>Other</u>	<u>Total</u>
1 day	1	2	0	0	1	4
2 days	5	0	2	0	5	12
3 days	1	0	0	0	1	2
4 days	3	5	0	0	2	10
5-10 days	19	9	4	0	4	36
11-15 days	3	3	4	0	1	11
16-20 days	3	1	0	0	4	8
21-25 days	3	3	3	1	3	13
26-30 days	4	6	0	2	8	20
31-60 days	7	4	5	2	7	25
<b>Subtotal</b>	<b>49</b>	<b>33</b>	<b>18</b>	<b>5</b>	<b>36</b>	<b>141</b>
61-90 days	0	4	2	1	3	10
<b>Total</b>	<b>49</b>	<b>37</b>	<b>20</b>	<b>6</b>	<b>39</b>	<b>151</b>

23.5 Admissions per month with 60 days or less      282 per year

25.2 Admissions per month with 90 days or less      302 per year

57% Admissions from Johnson and Sedgwick Counties



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ASSESSMENT & TAXATION  
NATURAL RESOURCES

RE: Testimony on Senate Bill 496

Chairman Vratil and committee members,

Thank you for allowing me to address this committee on Senate Bill 496 (SB 496). SB 496 deals with a discrepancy in our laws pertaining to the filling of vacancies for officials elected to the bench.

In any other situation where an official is locally elected but leaves office early, the local party organization from which that official was a member, selects a successor. The successor's name is given to the governor, and the governor is obligated to fill the vacancy with that successor.

However, another process is used to fill judicial vacancies created by either elected magistrates or elected district court judges leaving office early. It is the same process by which an appointed judge is selected by a bench-bar committee, and that individual is confirmed by the governor.

This event occurred a couple of years ago in Reno County when a sitting magistrate judge ran for and was elected to a district court position while in the middle of his magistrate term. Instead of a replacement being selected through the regular party process, his replacement was selected through the appointment process, which was quite foreign to my district.

I do not want to do the foolish thing and debate the issue of appointed verses elected judges. We will never reach agreement on that matter. Besides, each judicial district has already decided which process it prefers. I am only advocating that if a particular judicial district has decided to have judges and magistrates chosen by using the political process of election, then the same process to fill all other locally elected vacancies should also apply to elected judicial vacancies. Consistency, and the will of the local people, are of the utmost importance to this bill.

Terry Bruce,  
Reno County State Senator

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Senate Judiciary  
2-11-08  
Attachment 4



# *The Kansas District Judges' Association*



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Senate Judiciary Committee  
Monday, February 11, 2008

## Written Testimony Concerning SB 496

SB 496 would provide that vacancies in the office of district judge and district magistrate judge in election districts be filled through the district convention process of K.S.A. 25-3902. Under that process, the Governor would appoint the person elected by the party committeemen and committeewomen.

Under current law, vacancies in office are filled through appointment by the Governor. Kansas District Judges Association Executive Committee members are unaware of any problems with the current system and do not believe there is a need for change.

Thank you for your consideration of these remarks.

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Attachment 5

**SENATE BILL No. 479**

By Committee on Judiciary

1-28

Senate Committee on Judiciary  
Prepared by the Revisor of Statutes  
February 11, 2008

Senate Judiciary

2-11-08  
Attachment 6

9 AN ACT relating to crimes and punishment; providing for postrelease  
10 supervision for certain offenders; amending K.S.A. 21-4608 and re-  
11 pealing the existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-4608 is hereby amended to read as follows: 21-  
15 4608. (a) When separate sentences of imprisonment for different crimes  
16 are imposed on a defendant on the same date, including sentences for  
17 crimes for which suspended sentences, probation or assignment to a com-  
18 munity correctional services program have been revoked, such sentences  
19 shall run concurrently or consecutively as the court directs. Whenever  
20 the record is silent as to the manner in which two or more sentences  
21 imposed at the same time shall be served, they shall be served concur-  
22 rently, except as provided in subsections (c), (d) and (e).

23 (b) Any person who is convicted and sentenced for a crime commit-  
24 ted while on probation, assignment to a community correctional services  
25 program, parole or conditional release for a misdemeanor shall serve the  
26 sentence concurrently with or consecutively to the term or terms under  
27 which the person was on probation, assigned to a community correctional  
28 services program or on parole or conditional release, as the court directs.

29 (c) Any person who is convicted and sentenced for a crime committed  
30 while on probation, assigned to a community correctional services pro-  
31 gram, on parole, on conditional release or on postrelease supervision for  
32 a felony shall serve the sentence consecutively to the term or terms under  
33 which the person was on probation, assigned to a community correctional  
34 services program or on parole or conditional release.

35 (d) Any person who is convicted and sentenced for a crime commit-  
36 ted while on release for a felony pursuant to article 28 of chapter 22 of  
37 the Kansas Statutes Annotated shall serve the sentence consecutively to  
38 the term or terms under which the person was released.

39 (e) (1) Any person who is convicted and sentenced for a crime com-  
40 mitted while such person is incarcerated and serving a sentence for a  
41 felony in any place of incarceration shall serve the sentence consecutively  
42 to the term or terms under which the person was incarcerated.

43 (2) If a person is sentenced to prison for a crime committed on or

6-2

1 after July 1, 1993, while the person was imprisoned for an offense com-  
 2 mitted prior to July 1, 1993, and the person is not eligible for the retro-  
 3 active application of the sentencing guidelines act, the new sentence shall  
 4 not be aggregated with the old sentence but shall begin when the person  
 5 is paroled or reaches the conditional release date on the old sentence,  
 6 whichever is earlier. If the offender was past the offender's conditional  
 7 release date at the time the new offense was committed, the new sentence  
 8 shall not be aggregated with the old sentence but shall begin when the  
 9 person is ordered released by the Kansas parole board or reaches the  
 10 maximum sentence date on the old sentence, whichever is earlier. The  
 11 new sentence shall then be served as otherwise provided by law. The  
 12 period of postrelease supervision shall be based on the new sentence,  
 13 *except that those offenders whose old sentence is a term of imprisonment*  
 14 *for life, imposed pursuant to K.S.A. 21-4628, and amendments thereto,*  
 15 *prior to its repeal, or an indeterminate sentence with a maximum term of*  
 16 *life imprisonment, for which there is no conditional release or maximum*  
 17 *sentence expiration date, shall remain on postrelease supervision for life*  
 18 *or until discharged from supervision by the Kansas parole board.*

← or the longest term of post incarceration supervision imposed  
 for any crime upon which sentence was imposed

19 (f) The provisions of this subsection relating to parole eligibility shall  
 20 be applicable to persons convicted of crimes committed prior to January  
 21 1, 1979, but shall be applicable to persons convicted of crimes committed  
 22 on or after that date only to the extent that the terms of this subsection  
 23 are not in conflict with the provisions of K.S.A. 22-3717 and amendments  
 24 thereto. In calculating the time to be served on concurrent and consec-  
 25 utive sentences, the following rules shall apply:

26 (1) When indeterminate terms run concurrently, the shorter mini-  
 27 mum terms merge in and are satisfied by serving the longest minimum  
 28 term and the shorter maximum terms merge in and are satisfied by con-  
 29 ditional release or discharge on the longest maximum term if the terms  
 30 are imposed on the same date.

31 (2) When concurrent terms are imposed on different dates, compu-  
 32 tation will be made to determine which term or terms require the longest  
 33 period of imprisonment to reach parole eligibility, conditional release and  
 34 maximum dates, and that sentence will be considered the controlling  
 35 sentence. The parole eligibility date may be computed and projected on  
 36 one sentence and the conditional release date and maximum may be com-  
 37 puted and projected from another to determine the controlling sentence.

38 (3) When indeterminate terms imposed on the same date are to be  
 39 served consecutively, the minimum terms are added to arrive at an ag-  
 40 gregate minimum to be served equal to the sum of all minimum terms  
 41 and the maximum terms are added to arrive at an aggregate maximum  
 42 equal to the sum of all maximum terms.

43 (4) When indeterminate sentences are imposed to be served consec-