

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 25, 2010, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Chief Judge Thomas E. Foster, 10th Judicial District (Johnson County)
Chief Judge Richard M. Smith, 6th Judicial District (Bourbon, Linn & Miami Counties)
Chief Judge R. Wayne Lampson, 29th Judicial District (Wyandotte County)
Chief Judge Bruce Gatterman, 24th Judicial District (Edwards, Hodgeman, Lane, Ness, Pawnee and Rush Counties)
Chief Judge Kim Cudney, 12th Judicial District (Cloud, Jewell, Lincoln, Mitchell & Republican Counties)
Retired Judge Tom Tuggle, Concordia, KS
District Magistrate Judge Blaine A. Carter, 2nd Judicial District, (Jackson, Jefferson, and Pottawatomie and Wabasunsee Counties.)
District Magistrate Judge Michael A. Freelove, 16th Judicial District (Clark, Comanche, Ford, Gray, Kiowa, and Meade Counties.)
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

Chairman Kinzer opened the meeting requesting any new bills be presented.

Representative Grange requested a bill covering crimes and criminal procedures and punishment relating to appearance bonds.

Chairman Kinzer accepted the bill without objection.

Chairman Kinzer explained since the hearing of the three bills on the agenda for today are all related to one issue, the procedure would be for each conferee to testify on all three bills at the same time instead of standing before the committee three different times.

The hearings on the following bills were opened:

HB 2417 - District judge positions converted to district magistrate judge positions if 20% or less of total district judge and district magistrate judge positions in judicial district are district magistrate judge positions.

HB 2429 - Allowing the supreme court to eliminate and reassign district magistrate judge and district judge positions based on caseloads.

HCR 5026 - Requesting the supreme court to conduct a survey and study of the Kansas court system; judicial study advisory committee.

Jill Wolters, Office of the Revisor of Statutes, presented an overview of the three bills. (Attachment 1)

She explained HB 2417 provides that when a district judge dies, resigns, retires or is removed from office or a new district judge position is created, the position of such district judge shall be eliminated and a district



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magistrate judge position shall be created if the number of district magistrate judge positions in such judicial district is less than or equal to 20% of the total number of district judge positions and the district magistrate judge positions in such judicial district. When the elimination and creation occur in judicial districts which are comprised of more than one county, the supreme court shall determine the county in such judicial district in which the district magistrate judge position shall be placed. Sections 2 and 3 of the bill are conforming amendments to clarify that the provisions of Section 1 take precedence over other statutes. Jill included a list of the judicial districts and the judges and titles of each judge in such judicial district. Also attached is a table showing which judicial districts are in compliance and which were not if this law were enacted. Both of these lists were prepared using actual data of June 30, 2009.

Jill explained **HB 2429** repeals the statute requiring a judge in each county and allows the Supreme Court to determine if a district magistrate judge position or district judge position is necessary based on factors set forth in the bill. The statute repealed is K.S.A. 20-30 1b which states "In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county."

Sections 1,2 3 and 5 of the bill are conforming amendments to the general policies adopted in this bill.

Section 4, K.S.A. 20-354 provides that the Supreme Court would determine if a district magistrate judge position is unnecessary based on the yearly average caseload of the district magistrate judge being less than 600 cases and the ability of the remaining judges in the judicial district to assume the workload of the district. A table is also attached to show the number of caseloads in fiscal year 2009 and shows that traffic violations are not included in the numbers. If the position is determined to be unnecessary, such position would be eliminated and reassigned. Current law allows the Supreme Court to make such a decision upon the death, resignation, retirement or removal of a district magistrate only if such county has two or more district magistrates or a district court judge. Venue remains in the county and a district magistrate court judge within the judicial district will be assigned to the county where the position was eliminated. If a district magistrate is assigned to more than one county, the voters in those counties will vote to retain or elect, whichever the case may be. The amendments allow counties where district magistrates are eliminated or reassigned to retain the position and pay the salary.

Section 6, K.S.A. 20-348 is amended to provide that the counties which have district magistrate position eliminated remain responsible for all expense incurred as that county's share of the operations of the district court within the judicial district, as determined by the chief Judge, even though they do not have a residential judge.

New Section 7 provides the Supreme Court with the authority to determine and implement if, in order to effectively expedite the business of the district court, a district judge position should be eliminated and that an additional position of a district magistrate judge should be created in any judicial district.

HCR 5026 was then explained by Jill as a resolution requesting the Kansas Supreme Court, with the Judicial Council, to survey and study the Kansas court system. The study and survey shall include:

- 1) Unification and restructuring of the courts.
- 2) Administrative supervision of the courts.
- 3) Selection, tenure, compensation and retirement of judges and court personnel.
- 4) Appellate review.
- 5) Financing of courts.
- 6) Other areas as assigned by the Chief Justice

The report on the study and survey shall be presented to the Judiciary and the 2011 Legislature (January 2011).

She further reported this resolution is patterned after 1973 Senate Joint Resolution 2, codified at K.S.A, 20-151 to 20-154, prior to repeal, which requested a similar judicial branch study/survey. The study/review was compiled into a 120 page document titled "Report of the Kansas Judicial Study Advisory Committee-Recommendations for Improving the Kansas Judicial System" published in the Washburn Law Journal, Volume 13, Number 2, Spring 1974. She stated this was prior to court unification and a very exhausting report. She also included a website, <http://judicial.kscourts.org.7780/stats/>, that may be used to access information of court annual reports and statistics.

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Proponents/ Opponents

Note: The following Chief Judges and District Magistrate Judges all support **HCR 5026** and asked consideration that **HB 2417** and **HB 2429** be delayed until after the study proposed in **HCR 5026** is completed.

Chief Judge Thomas E. Foster, Tenth Judicial District (Johnson County), spoke to the committee stating the pride they take in making the courts accessible to everyone, providing timely hearings and resolving cases within a reasonable amount of time and appreciation of all the dedicated clerks, probation officers and court trustees that make it possible. They also do not want Kansas courts to become like those you read about that have long backlogs and drive citizens and businesses to seek other methods of resolution. He agreed that a review of all the issues is long overdue for several issues in addition to the one judge per county and the proposed formula for the retention of magistrate and district court positions. He suggested three additional statistics be considered for the study:

- 1) Total Caseload Less Traffic and Less Limited Actions. He stated there are many of these cases that are handled by a judge in very little time but also means there is a lot of work for the clerks.
- 2) Total Caseload per Full Time Employee (FTE)
- 3) Population per judge.

Judge Foster concluded by urging a new study and their legitimate concern is access to courts due to distance and that citizens may be denied access to justice as a result of busy caseloads and backlogged court dockets (Attachment 2)

Chief Judge Richard M. Smith -Sixth Judicial District (Bourbon, Linn & Miami Counties), also spoke on behalf of the Kansas District Judge's Association as Legislative co-chair. He spoke in support of a comprehensive study of the judicial system and should be conducted prior to making piecemeal but substantial changes. At the same time he expressed concern that **HCR 5026** may be too broad and to provide a comprehensive study and survey of all the areas within the one year time frame contemplated may be too lofty a goal and respectfully suggested the scope of the resolution be narrowed to encompass the issues of primary and immediate concern of the legislature. He stated any modification may greatly affect allocation of resources, access to justice, local community concerns and for this reason any change deserves a comprehensive study by an appropriate commission. (Attachment 3)

Chief Judge R. Wayne Lampson, Twenty-ninth Judicial District (Wyandotte County) spoke in support of the survey/study of the Kansas court system and believes such a study will provide information that will prove to be invaluable in any decisions that need to be made as to a restructure of the court system. He stated that **HB 2429** would have little effect on the operation of the court in his District, however he expressed concern with the legislation in **HB 2417**. He stated Magistrate Judges are limited by statute as to the types of cases they can hear. He gave the example of one of the areas normally assigned to Magistrates has been juvenile matters, however in his courthouse, they have become some of the most serious and the Judge who presides over their Juvenile Court had nine pending first degree murder cases in his court. He does not believe that Kansans are better served by these cases being decided by Magistrates. Under current Kansas law, Magistrate Judges do not have to be lawyers or have any particular training in the law. This along with lower salary range, creates a situation where we have untrained people in these positions or lawyers who cannot make a living as lawyers going on the bench. This bill does not support the concept of quality judges at all levels. He also agrees the topics need to be narrowed if the study is to be done in a year. (Attachment 4)

Chief Judge Bruce Gatterman, Twenty-fourth Judicial District (Edwards, Hodgeman, Lane, Ness, Pawnee and Rush Counties) explained to the committee his District is made up of one District Judge for the entire Judicial District, and one district Magistrate Judge in each county of the District. Therefore, he is the opposite of Judge Lampson as **HB 2417** would not affect him but **HB 2429** is a concern for him. He stated the bill is not a cost-saving bill, but is for reallocation of judicial services, the same judicial resources created by unification following the JSAC comprehensive report. He also supports these bills would significantly and permanently alter the structure of the Kansas Court system and they should not be enacted without consideration of the impact upon individual judicial districts or the Kansas court system as a whole. He stated the allocation must be balanced with prompt access to justice and the best determination of these issues can be best made through the comprehensive study/survey as proposed by **HCR 5026**. (Attachment 5)

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Chief Judge Kim Cudney, Twelfth Judicial District (Cloud, Jewell, Lincoln, Mitchell & Republican Counties) told the committee her District is similar to Judge Gatterman's with her as the only District Judge and six magistrate judges, one in each county. Like other multi-county single district judges she carries one of the heaviest case loads in the state. She drove nearly 17,000 miles last year to attend hearings and trials. She further explained the various types of cases she hears in addition to administrative matters, research and writing decisions. She explained this, not to complain, but to point out her calendar is full and she must rely upon the magistrate judges in the district to assist in keeping the judicial system properly working and timely. Under the proposed **HB 2429**, where magistrate judge positions with an average caseload of less than 600 cases could be eliminated, as many as five of the six positions could be eliminated, leaving one District Judge and one Magistrate Judge to cover hundreds of miles and thousand of cases. She stated it is not possible for two judges to cover this much territory and provide timely hearings to the public. She gave many examples of how this would severely impact the public's ability to obtain timely access to the judicial system. She stressed the necessity of magistrate judges in the large rural judicial districts and that before this bill is to be considered at all, a full and comprehensive study be conducted with consideration given to the types of cases heard, the effect of combining county jurisdictions and with consideration given to the size of the district and distance traveled. (Attachment 6)

Retired Judge Tom Tuggle addressed the committee by asking permission to approach the Chairman to give him some documentation which consisted of a copy of his birth certificate and his driver's license to prove that he really is Retired Judge Tuggle and not Benedict Arnold. He proceeded to speak freely about the court system having many strengths, however, it also has faults that need to be corrected. He stressed the need for a weighted case load study and that it would be unfair to only focus on the magistrate judges. Based on his experience, he told how many cases only take a signature or a brief amount of time to handle and that in some areas, many of these judges sit around with nothing to do and that he has heard that complaint many times. He asked why the state government wants to have unnecessary help when you cannot afford it, especially in this day and environment.

He supports **HCR 5026**, with a provision that the group closely study the proper allocation of judicial resources, and, do a weighted case study by an outside entity, such as the National Center for State Courts, and stated the Legislature would need to fund the study. He also added that he believes some of these personnel issues could be addressed sooner instead of waiting for the study to be completed. (Attachment 7)

District Magistrate Judge Blaine A. Carter, Second Judicial District, (Jackson, Jefferson, Pottawatomie and Wabasunsee Counties.), spoke to the committee on behalf of the Kansas District Magistrate Judge's Association as 1st Vice President and Legislative Chairman. Judge Carter spoke in strong opposition of the repeal of the "one judge per county requirement or rule". He advocated the long standing KSA 20-301b delivers accessibility to Kansas Citizens all over and not just in the larger populated areas. If repealed, he said it would have a devastating effect on the statutory time frames they work under to maintain a standard of access to justice to which every Kansas citizen is entitled. In summary, he asked that **HB 2429** not be acted upon until the survey/study has been completed. (Attachment 8)

District Magistrate Judge Michael A. Frelove, Sixteenth Judicial District (Clark, Comanche, Ford, Gray, Kiowa, and Meade Counties), addressed the committee in strong opposition of **HB 2429**. He gave many examples of the adverse affects by removing the requirement of one judge per county would have on the counties in rural Kansas. He also provided much insight on the many cases and duties a magistrate judge handles and pointed out several issues with time constraints that must be met regarding juveniles and is concerned how those needs would be met. He supported not to act hastily but to do a comprehensive study before proceeding with eliminating the one judge per county statute. (Attachment 9)

Representative Kinzer asked Judge Frelove to provide a copy of an attachment that was erroneously omitted from his testimony.

Due to the lateness of the day, it was agreed that Kathy Porter, Office of Judicial Administration, would return and provide her testimony at tomorrow's meeting.

The hearing on **HB 2417**, **HB 2429** and **HCR 5026** was closed.

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Minutes of the House Judiciary Committee at 3:30 p.m. on January 25, 2010, in Room 346-S of the Capitol.

The next meeting is scheduled for January 26, 2010.

The meeting was adjourned at 6:10 p.m.

JUDICIARY COMMITTEE GUEST LIST

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NAME	REPRESENTING
Whitney Gamran	KS Bar Assn.
Kathy Porter	Judicial Branch
Kim Cudney	12 th Judicial District
Bruce Gatterman	24 th JUDICIAL DISTRICT
Blaine Carter	2 ND JUDICIAL DISTRICT
Michael R. Freckovc	16 th JUDICIAL DISTRICT
Ed Klump	KACP/KPOA/KSA
Sean Miller	CAPITOL STRATEGIES
Colleen Hill Denton	KS Assn for Justice
Joseph Molino	KS BAR ASSN.
Cindy Hough	Rep. Elaine Bowers
Wayne Langston	29 th Judicial District
Nancy Parrish	3 rd Judicial District
Doug Smith	KS. Legislative Policy Group
TERRY HOWREN	KS FARM BUREAU
Richard Summigo	Kenney Assoc.
Melissa Wenzmann	KAC
Steve Terry	Post Audit
Joe Lawhorn	Judicial Branch
Carole Walker	

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MEMORANDUM

To: House Committee on Judiciary
From: Jill Ann Wolters, Senior Assistant Revisor *JAW*
Date: 24 January, 2010
Subject: HB 2417, HB 2429 and HCR 5026

HB 2417 provides that when a district judge dies, resigns, retires or is removed from office or a new district judge position is created, the position of such district judge shall be eliminated and a district magistrate judge position shall be created if the number of district magistrate judge positions in such judicial district is less than or equal to 20% of the total number of district judge positions and district magistrate judge positions in such judicial district. When the elimination and creation occur in judicial districts which are comprised of more than one county, the supreme court shall determine the county in such judicial district in which the district magistrate judge position shall be placed.

Secs. 2 and 3 are conforming amendments to clarify that the provisions of Section 1 take precedence over other statutes.

Attached is a list of the judicial districts and the judges and titles of each judge in such judicial district. (Attachment 1) Also attached is a table showing which judicial districts are in compliance and which are not if this law were enacted. (Attachment 2)

HB 2429 repeals the statute requiring a judge in each county and allows the Supreme Court to determine if a district magistrate judge position or district judge position is necessary based factors set forth in the bill. The statute repealed is K.S.A. 20-301b which states: "In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county."

Secs. 1, 2, 3 and 5 of the bill are conforming amendments to the general policies adopted in this bill.

Sec. 4, K.S.A. 20-354 provides that the Supreme Court would determine if a district magistrate judge position is unnecessary based on the yearly average caseload of the district magistrate judge being less than 600 cases and the ability of the remaining judges in the judicial district to assume the workload of the district. [See attached list of caseload numbers in fiscal year 2009, attachment 3.] Yearly average caseload includes child in need of care cases, juvenile offender cases and probate cases, but does not include traffic violations. If the position is determined to be unnecessary, such position would be eliminated and reassigned. Current law allows the Supreme Court to make such a decision upon the death, resignation, retirement or removal of a district magistrate only if such county has two or more district magistrates

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or a district court judge. Venue remains in the county and a district magistrate judge within the judicial district will be assigned to the county where the position was eliminated. If a district magistrate is assigned to more than one county, the voters in those counties will vote to retain or elect, whichever the case may be. The amendments allows counties where district magistrates are eliminated or reassigned to retain the position and pay the salary.

Sec. 6, K.S.A. 20-348 is amended to provide that the counties which have district magistrate position eliminated remain responsible for all expense incurred as that county's share of the operations of the district court within the judicial district, as determined by the Chief Judge.

New sec. 7 provides the Supreme Court with the authority to determine and implement if, in order to effectively expedite the business of the district court, a district judge position should be eliminated and that an additional position of a district magistrate judge should be created in any judicial district.

HCR 5026 is a resolution requesting the Kansas supreme court, with the judicial council, to survey and study the Kansas court system. The study and survey shall include: (1) Unification and restructuring of the courts; (2) administrative supervision of the courts; (3) selection, tenure, compensation and retirement of judges and court personnel; (4) appellate review; (5) financing of courts; and (6) such other areas as assigned by the chief justice. The report on the study and survey shall be presented to the judiciary and the 2011 legislature.

This resolution is patterned after 1973 Senate Joint Resolution 2, codified at K.S.A. 20-151 to 20-154, prior to repeal, which requested a similar judicial branch study/survey. The study/survey was compiled into a 120 page document titled "Report of the Kansas Judicial Study Advisory Committee-Recommendations for Improving the Kansas Judicial System" published in the Washburn Law Journal, Volume 13, Number 2, Spring 1974.

For your information, court annual reports and statistics may be found at <http://judicial.kscourts.org:7780/stats/>.

1st Judicial District

(Atchison, Leavenworth)

District Judges:

- Martin J. Asher
- Robert J. Bednar
- Michael Gibbens
- David J. King, Chief
- Gunnar A. Sundby
- Dan K. Wiley

2nd Judicial District

(Jackson, Jefferson, Pottawatomie, Wabaunsee)

District Judges:

- Jeffrey R. Elder
- Michael Ireland
- Gary L. Nafziger, Chief

District Magistrate Judges:

- Blaine A. Carter
- Dennis L. Reiling
- Steven M. Roth

3rd Judicial District

(Shawnee)

District Judges:

- Richard D. Anderson
- Charles Andrews, Jr.
- Mark S. Braun
- David E. Bruns
- David B. Debenham
- Larry Hendricks
- Joseph Johnson
- Jan W. Leuenberger
- Daniel L. Mitchell
- Nancy E. Parrish, Chief
- Cheryl Rios Kingfisher
- Jean Schmidt
- Franklin R. Theis
- Evelyn Z. Wilson
- Frank Yeoman, Jr.

4th Judicial District

(Anderson, Coffey, Franklin, Osage)

District Judges:

- Phillip M. Fromme, Chief
- Eric W. Godderz
- Thomas H. Sachse

District Magistrate Judges:

- Jon Stephen Jones
- Kevin L. Kimball

5th Judicial District

(Chase, Lyon)

District Judges:

- W. Lee Fowler
- Jeffrey J. Larson
- Merlin G. Wheeler, Chief

District Magistrate Judge:

- Douglas P. Jones

6th Judicial District

(Bourbon, Linn, Miami)

District Judges:

- Amy Harth
- Steve Montgomery
- Richard M. Smith, Chief
- Mark A. Ward

District Magistrate Judge:

- Rebecca Stephan

7th Judicial District

(Douglas)

District Judges:

- Peggy Carr Kittel
- Robert W. Fairchild, Chief
- Michael J. Malone
- Paula B. Martin
- Sally Pokorny
- Jean F. Shepherd

8th Judicial District

(Dickinson, Geary, Marion, Morris)

District Judges:

- Steven L. Hornbaker
- David R. Platt
- Michael F. Powers, Chief
- Maritza Segarra
- Benjamin J. Sexton

District Magistrate Judges:

- Thomas H. Ball
- John E. Barker
- Charles Zimmerman

9th Judicial District

(Harvey, McPherson)

District Judges:

- Carl B. Anderson, Jr.
- Joe Dickinson
- Richard B. Walker, Chief

District Magistrate Judge:

- Steve Hilgers

10th Judicial District

(Johnson)

District Judges:

John P. Bennett
Thomas H. Bornholdt
Brenda Cameron
James Franklin Davis
James Charles Droege
Gerald T. Elliott
Thomas E. Foster
Neil Foth
David W. Hauber
Kevin P. Moriarty
Peter V. Ruddick
Thomas Kelly Ryan
Lawrence E. Sheppard
Allen R. Slater
Kathleen Sloan
Thomas M. Sutherland
Stephen R. Tatum, Chief
James F. Vano
Sara Welch

District Magistrate Judges:

Michael H. Farley
James E. Phelan
Linda S. Trigg
Daniel Vokins

11th Judicial District

(Cherokee, Crawford, Labette)

District Judges:

Robert J. Fleming
John C. Gariglietti, Chief
Jeff Jack
Oliver Kent Lynch
Donald R. Noland
A.J. Wachter

District Magistrate Judge:

Bill W. Lyerla

12th Judicial District

(Cloud, Jewell, Lincoln, Mitchell, Republic, Washington)

District Judge:

Kim Cudney, Chief

District Magistrate Judges:

John L. Bingham
John Eyer
Brian Grace
Paul Monty
Guy R. Steier
Bonnie J. Wilson

13th Judicial District

(Butler, Elk, Greenwood)

District Judges:

Charles M. Hart
David Ricke
John E. Sanders, Chief
Mike Ward

District Magistrate Judges:

Kristin Hutchison
Rebecca Lindamood

14th Judicial District

(Chautauqua, Montgomery)

District Judges:

F. William Cullins
Roger Gossard, Chief
Gary House

District Magistrate Judge:

David A. Casement

15th Judicial District

(Cheyenne, Logan, Rawlins, Sheridan, Sherman, Thomas, Wallace)

District Judges:

Glenn D. Schiffner, Chief
Scott Showalter

District Magistrate Judges:

John Cahoj
Pat Carroll
Richard J. Ress
Mark J. Temaat
Steve Unruh
Robert Van Allen

16th Judicial District

(Clark, Comanche, Ford, Gray, Kiowa, Meade)

District Judges:

Van Hampton
E. Leigh Hood
Daniel L. Love, Chief

District Magistrate Judges:

Loren L. Cronin
Ann L. Dixson
Joey Duncan
Michael A. Freelove
Keith Whitney

17th Judicial District

(Decatur, Graham, Norton, Osborne, Phillips, Smith)

District Judge:

William B. Elliott, Chief

District Magistrate Judges:

Deb Anderson

John E. Bremer

Michael Kirchhoff

Bonnie M. Leidig

Barbara Stites

Jacqueline E. Thornton

18th Judicial District

(Sedgwick)

District Judges:

Richard T. Ballinger

Joseph Bribiesca

Daniel T. Brooks

Bruce Brown

Ben Burgess

James L. Burgess

Eric Commer

Harold E. Flaigle

James Fleetwood, Chief

Jeff Goering

Timothy H. Henderson

Phillip Journey

David Kaufman

John Kisner, Jr.

Timothy G. Lahey

Chris Magana

Clark V. Owens, II

Tony Powell

Terry L. Pullman

Douglas R. Roth

Robb Rumsey

Jeff Syrios

Mark Vining

Gregory L. Waller

J. Patrick Walters

Warren Wilbert

William Sioux Woolley

Eric Yost

19th Judicial District

(Cowley)

District Judges:

James T. Pringle, Jr.

J. Michael Smith, Chief

Nicholas St. Peter

20th Judicial District

(Barton, Ellsworth, Rice, Russell, Stafford)

District Judges:

Mike Keeley, Chief

Hannelore Kitts

Ron Svaty

District Magistrate Judges:

Don L. Alvord

Marty K. Clark

Dale L. Urbanek

Timarie Ann Walters

21st Judicial District

(Clay, Riley)

District Judges:

Paul E. Miller, Chief

David L. Stutzman

Meryl D. Wilson

District Magistrate Judges:

Sheila P. Hochhauser

William Malcolm

22nd Judicial District

(Brown, Doniphan, Marshall, Nemaha)

District Judges:

James A. Patton, Chief

John L. Weingart

District Magistrate Judges:

Steven P. Deiter

Angela Hecke

Roy M. Roper

23rd Judicial District

(Ellis, Gove, Rooks, Trego)

District Judges:

Edward Bouker, Chief

Thomas L. Toepfer

District Magistrate Judges:

Douglas Bigge

Richard Flax

Lois Werner

24th Judicial District

(Edwards, Hodgeman, Lane, Ness, Pawnee, Rush)

District Judge:

Bruce Gatterman, Chief

District Magistrate Judges:

Julie Cowell

Kenton Gleason

James R. Kepple

Shelley Selfridge

Danny Smith

Dale Snyder

25th Judicial District

(Finney, Greeley, Hamilton, Kearny, Scott, Wichita)

District Judges:

Robert J. Frederick

Michael L. Quint

Vacant

Philip C. Vieux, Chief

District Magistrate Judges:

Donna L. J. Blake

Jim Collins

Janna DeLissa

Wade Dixon

Richard H. Hodson

Ricklin Pierce

Christopher Sanders

26th Judicial District

(Grant, Haskell, Morton, Seward, Stanton, Stevens)

District Judges:

Clint Peterson

Kim R. Schroeder

Tom R. Smith, Chief

District Magistrate Judges:

Margaret L. Alford

Vernon Butt

Paula J. Sosa

Roseanna K. Volden

Tom B. Webb

27th Judicial District

(Reno)

District Judges:

Timothy J. Chambers

Patricia Macke Dick, Chief

Joseph McCarville

Richard Rome

District Magistrate Judge:

Randall H. McEwen

28th Judicial District

(Saline, Ottawa)

District Judges:

Daniel L. Hebert, Chief

Jerome P. Hellmer

Patrick Thompson

Rene Young

District Magistrate Judge:

Mary Thrower

29th Judicial District

(Wyandotte)

District Judges:

Constance Alvey

David W. Boal

Thomas L. Boeding

J. Dexter Burdette

Robert P. Burns

Daniel Cahill

Daniel Duncan

Wesley K. Griffin

George A. Groneman

Michael Grosko

Ernest Johnson

R. Wayne Lampson, Chief

Kathleen M. Lynch

John McNally

Robert L. Serra

Jan A. Way

30th Judicial District

(Barber, Harper, Kingman, Pratt, Sumner)

District Judges:

R. Scott McQuin

William Mott

Robert J. Schmisser

Larry T. Solomon, Chief

District Magistrate Judges:

Richard Befort

Matthew Lynch

James Mathis

31st Judicial District

(Allen, Neosho, Wilson, Woodson)

District Judges:

Timothy E. Brazil, Chief

Daniel D. Creitz

David Rogers

District Magistrate Judges:

Leo Gensweider

Thomas M. Saxton, Jr.

INFORMATION FOR HB 2417

Attachment 2

(Statistics based on information from the Kansas Judicial Branch 2009 annual report dated June 30, 2009)

Judicial District	Total # of Judges	Current # of district judges (DJ) district magistrate judges (DMJ)	Requirements of HB 2417, equal to or less than 20% DMJ's	Compliance, # needed to achieve compliance
1 Atchison, Leavenworth	6	6 DJ	4 DJ 2 DMJ	No, need 2 DMJ
2 Pottawatomie, Wabaunsee, Jackson, Jefferson	6	3 DJ 3 DMJ	4 DJ 2 DMJ	Yes, need 2 DMJ and have 3 DMJ
3 Shawnee	15	15 DJ	11 DJ 4 DMJ	No, need 4 DMJ
4 Franklin, Anderson, Coffey, Osage	5	3 DJ 2 DMJ	3 DJ 2 DMJ	Yes, need 2 DMJ and have 2 DMJ
5 Chase, Lyon	4	3 DJ 1 DMJ	3 DJ 1 DMJ	Yes, need 1 DMJ have 1 DMJ
6 Miami, Linn, Bourbon	5	4 DJ 1 DMJ	3 DJ 2 DMJ	No, need 2 DMJ have 1 DMJ
7 Douglas	6	6 DJ	4 DJ 2 DMJ	No, need 2 DMJ
8 Geary, Dickinson, Marion, Morris	8	5 DJ 3 DMJ	6 DJ 2 DMJ	Yes, need 2 DMJ and have 3 DMJ
9 McPherson, Harvey	4	3 DJ 1 DMJ	3 DJ 1 DMJ	Yes, need 1 DMJ have 1 DMJ
10 Johnson	23	19 DJ 4 DMJ	18 DJ 5 DMJ	No, need 5 DMJ and have 4 DMJ

11 Crawford, Cherokee, Labette	7	6 DJ 1 DMJ	5 DJ 2 DMJ	No, need 2 DMJ and have 1 DMJ
12 Jewell, Mitchell, Lincoln, Republic, Cloud, Washington	7	1 DJ 6 DMJ	5 DJ 2 DMJ	Yes, need 2 DMJ have 6 DMJ
13 Butler, Greenwood, Elk	6	4 DJ 2 DMJ	4 DJ 2 DMJ	Yes, need 2 DMJ have 2 DMJ
14 Montgomery, Chautauqua	4	3 DJ 1 DMJ	3 DJ 1 DMJ	Yes, need 1 DMJ have 1 DMJ
15 Sherman, Thomas, Sheridan, Cheyenne, Rawlins, Wallace, Logan	8	2 DJ 6 DMJ	6 DJ 2 DMJ	Yes, need 2 DMJ and have 6 DMJ
16 Gray, Ford, Kiowa, Meade, Clark, Comanche	8	3 DJ 5 DMJ	6 DJ 2 DMJ	Yes, need 2 DMJ and have 5 DMJ
17 Decatur, Norton, Phillips, Smith, Graham, Osborne	7	1 DJ 6 DJ	5 DJ 2 DMJ	Yes, need 2 DMJ and have 6 DMJ
18 Sedgwick	28	28 DJ	22 DJ 6 DMJ	No, need 6 DMJ
19 Cowley	3	3 DJ	2 DJ 1 DMJ	No, need 1 DMJ
20 Stafford, Barton, Russell, Ellsworth, Rice	7	3 DJ 4 DMJ	5 DJ 2 DMJ	Yes, need 2 DMJ and have 4 DMJ

21 Riley, Clay	5	3 DJ 2 DMJ	3 DJ 2 DMJ	Yes, need 2 DMJ and have 2 DMJ
22 Doniphan, Brown, Nemaha, Marshall	5	2 DJ 3 DMJ	3 DJ 2 DMJ	Yes, need 2 DMJ and have 3 DMJ
23 Gove, Trego, Rooks, Ellis	5	2 DJ 3 DMJ	3 DJ 2 DMJ	Yes, need 2 DMJ and have 3 DMJ
24 Edwards, Pawnee, Rush, Hodgeman, Ness, Lane	7	1 DJ 6 DMJ	5 DJ 2 DMJ	Yes, need 2 DMJ and have 6 DMJ
25 Scott, Wichita, Greeley, Hamilton, Kearny, Finney	11	4 DJ (one position vacant) 7 DMJ	8 DJ 3 DMJ	Yes, need 3 DMJ and have 7 DMJ
26 Stanton, Grant, Haskell, Morton, Stevens, Seward	8	3 DJ 5 DMJ	6 DJ 2 DMJ	Yes, need 2 DMJ and have 5 DMJ
27 Reno	5	4 DJ 1 DMJ	3 DJ 2 DMJ	No, need 2 DMJ and have 1 DMJ
28 Saline, Ottawa	5	4 DJ 1 DMJ	3 DJ 2 DMJ	No, need 2 DMJ and have 1 DMJ
29 Wyandotte	16	16 DJ	12 DJ 4 DMJ	No, need 4 DMJ
30 Sumner, Harper, Kingman, Barber, Pratt	7	4 DJ 3 DMJ	5 DJ 2 DMJ	Yes, need 2 DMJ and have 3 DMJ
31 Allen, Neosho, Wilson, Woodson	5	3 DJ 2 DMJ	3 DJ 2 DMJ	Yes, need 2 DMJ and have 2 DMJ

(Prepared by the Office of the Revisor of Statutes)

**KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH DISTRICT JUDGES ONLY
JULY 1, 2008 -- JUNE 30, 2009**

	Number of Judges	Total Caseload		Total Less Traffic		Civil and Criminal		Chapter 60, Felony, Domestic Relations	
		per judge	rank	per judge	rank	per judge	rank	per judge	rank
District 18	28	2,626	1	1,776	2	1,577	2	673	1
District 3	15	2,601	2	2,051	1	1,907	1	400	5
District 19	3	2,478	3	1,624	3	1,378	3	372	6
District 7	6	2,234	4	1,411	6	1,208	6	421	4
District 1	6	2,054	5	1,481	4	1,227	5	546	2
District 29	16	2,021	6	1,456	5	1,311	4	453	3
Total Caseload	74	2,406		1,703		1,520		527	
Statewide Caseload	246	2,006		1,187		1,004		527	

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KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH MAGISTRATE JUDGES
JULY 1, 2008 -- JUNE 30, 2009

	Total Judges	Total Caseload		Total Less Traffic		Civil and Criminal		District Judges	Chapter 60, Felony, Domestic Relations	
		per judge	rank	per judge	rank	per judge	rank		per judge	rank
District 28	5	3,068	1	1,595	2	1,268	2	4	628	4
District 5	4	2,794	2	1,243	5	1,104	5	3	355	24
District 4	5	2,646	3	1,151	8	976	7	3	706	2
District 9	4	2,522	4	1,494	3	1,185	4	3	491	15
District 23	5	2,492	5	754	17	575	19	2	499	14
District 27	5	2,411	6	1,472	4	1,201	3	4	611	5
District 10	23	2,349	7	1,660	1	1,428	1	19	665	3
District 30	7	2,325	8	777	16	594	16	4	393	21
District 31	5	2,252	9	975	12	761	11	3	404	20
District 8	8	2,189	10	1,184	7	967	8	5	597	6
District 6	5	2,153	11	1,114	9	852	10	4	501	12
District 13	6	2,104	12	971	13	744	12	4	450	16
District 14	4	2,031	13	1,201	6	1,014	6	3	423	18
District 21	5	1,810	14	1,042	10	857	9	3	574	9
District 20	7	1,727	15	845	15	647	15	3	583	7
District 11	7	1,666	16	990	11	735	13	6	388	22
District 2	6	1,655	17	863	14	708	14	3	500	13
District 16	8	1,546	18	734	18	593	17	3	434	17
District 22	5	1,315	19	708	19	539	21	2	530	11
District 26	8	1,310	20	704	20	559	20	3	415	19
District 15	8	1,207	21	323	25	244	24	2	347	25
District 25	11	1,134	22	686	21	588	18	4	371	23
District 12	7	1,023	23	380	22	257	23	1	717	1
District 24	7	689	24	342	24	231	25	1	580	8
District 17	7	612	25	372	23	282	22	1	558	10
Total Caseload	172	1,834		965		782		93	527	
Statewide Caseload	246	2,006		1,187		1,004		167	527	

HOUSE COMMITTEE ON JUDICIARY

Hon. Lance Kinzer, Chairman
Hon. Jeff Whitham, Vice Chairman
Hon. Janice Pauls, R.M. Member

January 25, 2010
3:30 p.m.
Room 346-S

Chief Judge Thomas E. Foster
Tenth Judicial District
Olathe, Kansas 66061
913-715-3860
thomas.foster@jocogov.org

TESTIMONY IN SUPPORT OF HCR 5026 **AND IN OPPOSITION TO HB 2417 AND HB 2429**

Good afternoon. My name is Tom Foster. I am the Chief Judge for the Tenth Judicial District, a one county district (Johnson County) in which 19 District Judges and four Magistrate Judges preside. I appreciate the opportunity to speak to you this afternoon. I am proud to be a part of Kansas government and I am particularly proud to be member of the Judicial Branch of the State of Kansas. This includes dedicated clerks who process millions of pages of documents each year, skilled probation officers who help keep our communities a safe place to live, court trustees whose goal is improve the lives of our children, and my fellow judges, both magistrate and district judges, who provide our citizens and businesses the opportunity for their 'day in court' and who enforce of the 'rule of law.' We pride ourselves in making the courts accessible to everyone, providing timely hearings, and resolving cases within a reasonable amount of time. We do not want Kansas courts to become like those you read about that have long backlogs and drive citizens and businesses to seek other methods of resolution.

The proposed House Concurrent Resolution No. 5026 calls for a broad review of the Judicial Branch. The revue being called seems to be very similar to the study completed by the Kansas Justice Commission (KJC) in 1999. The KJC was authorized by order of the Supreme Court on June 3, 1977. The members were a star studded cast appointed by Chief Justice McFarland, Gov. Bill Graves and the Judiciary Committees' members (See Appendix A attached.) to inquire into the state of the justice system in Kansas and to make recommendations as to its improvement. The study was funded by grants and donations.

The KJC first met on September 29, 1997 and made recommendations on April 23, 1999. After studying the Judicial Branch House Judiciary

Date 1-25-10
Attachment # 2

the KJC made 23 specific recommendations. A number of the recommendations made have been implemented by the court or by the legislature. The Commission suggested a five year review of its recommendations. More than ten years have now passed; therefore, it would be very appropriate to again evaluate the state of the Kansas Judiciary. I would suggest that we are long overdue for a review of all of the issues previously addressed, in addition to the one judge per county question addressed in HB No. 2429 and the proposed formula for the creation of magistrate and district court positions in HB No. 2417. I believe it would be premature to make these changes and may result in unforeseen and adverse consequences.

The Supreme Court Office of Judicial Administration (OJA) publishes an Annual Report of the Courts of Kansas which is available on its website and in hardcopy. The report is packed with statistics and tables. It is a great source of information that I look forward to receiving every year. You can dig through this book and answer just about everything you want to know about caseloads. A common statistic used to assess how busy courts are is one called "Total Caseload Less Traffic." There are three statistics that I would consider in addition to those set forth in the report. They are:

1. Total Caseload Less Traffic and Less Limited Actions. There are many traffic cases filed but they need very little, if any, court time. That means they are a lot of work for the clerks and very little work for the judges. Limited Actions cases are very similar. There are very many cases which are handled by a judge in very little time. Again, this means that there is a lot of work for the clerks and not so much for the judges. The huge number of traffic cases and limited actions cases result in a skewed analysis of the judicial caseload.
2. Total Caseload per Full Time Employee (FTE). I believe such an analysis might provide some useful information since certain types of cases are staff intensive while other types are more judge intensive.
3. Population per judge. The more people and the more businesses there are, the more court cases you will have. There will certainly be some aberrations from this formula which will show up in the statistics. Varying demographics may have some effect, the location of a prison in a district, the practices and policies of a particular prosecutor in filing cases, or there may be other local differences. But generally, the more people you have the more cases there will be.

Access to justice to courts due to distance is a legitimate concern. There is also a legitimate concern that citizens may be denied access to justice as the result of busy caseloads and backlogged court dockets. There are other legitimate concerns that should be considered as well. Much has changed in the ten years since the completion of the work by KJC. I urge all concerned to reconvene the KJC, update the information gathered, and consider such suggestions and recommendations as it deems appropriate.

Respectfully Submitted,

Thomas E. Foster

APPENDIX A

Members of the Commission

Co-Chairs: Hon. Robert F. Bennett, former Governor of Kansas, Shawnee Mission
Jill Docking, businesswomen, A.G. Edwards, Wichita

Co-Reporters: Dean James M. Concannon, Washburn University School of Law, Topeka
Dean Michael J. Hoeflich, University of Kansas School of Law, Lawrence

Appointments by the Chair of the Senate Judiciary Committee:

Judy Bengtson, Educator, Junction City
Hon. Tim Emert, Kansas Senator, Independence, MO
Emerson Lynn, Jr., Editor and Publisher, *The Iola Register*, Iola
Jeffrey Russell, Office of the President of the Senate, Topeka

Appointments by the Ranking Minority Member of the Senate Judiciary Committee:

Hon. Greta Goodwin, Kansas Senator, Winfield
John A. Potucek, II, Attorney, Potucek Law Offices, Wellington
Hon. J. Michael Smith, District Judge, Cowley County, Winfield

Appointees by the Chair of the House Judiciary Committee:

Bob Boyd, Co-Publisher & Co-Editor *The Hill City Times*, Hill City
Gene Garcia, Master Trooper, Kansas Highway Patrol, Wichita
Robert "Andy" Hoffman, Investigative Journalist and Author, Olathe
Dana Hummer, former Chief of Police, Topeka

Appointments by the Ranking Minority Member of the House Judiciary Committee:

Philip J. Bernhart, Attorney, Coffeyville
John Solbach, Attorney, Lawrence
Hon. Jim Garner, Kansas Representative, Coffeyville

Appointments by Governor Bill Graves:

Bruce Buchanan, Vice President for Newspapers, Harris News Inc., Hutchinson
Jeff Burkhead, Publisher, *Southwest Daily Times*, Liberal
J. Sanford Bushman, CPA, Bushman & Associates, CPAs P.A., Leavenworth
Jane A. Devore, Program Director, Leadership Coffeyville, Coffeyville
Michael C. Helbert, Attorney, Emporia
Jerry G. Larson, Attorney, Smith, Burnett & Larson, Larned

David McElreath, Chair and Professor, Department of Criminal Justice, Washburn University,
Topeka

Robert C. Muirhead, Scott City

W. Ron Olin, Police Chief, Lawrence Police Department, Lawrence

Juanita L. Sanchez, Psychotherapist, Dodge City

Marilyn Scafe, Chair, Kansas Parole Board, Topeka

Kathleen Sloan, District Court Trustee, Olathe

Delmar A. White, Pastor, Antioch Missionary Baptist Church, Topeka

Norman D. Williams, Commander of Field Services, Wichita Police Department, Wichita

Appointments by the Kansas Supreme Court:

Hon. Barbara Ballard, Kansas State Representative, Lawrence

Arden Bradshaw, Attorney, Bradshaw, Johnson & Hund, Wichita

John Brand, Jr., Attorney, Stevens, Brand, Golden, Winter & Skepnek, Lawrence

R.A. Edwards, President, First National Bank of Hutchinson, Hutchinson

Gloria Flentje, Attorney, Foulston & Siefkin, L.L.P., Wichita

Hon. Stephen D. Hill, Administrative Judge, Miami County, Paola

John Jurcyk, Jr., Attorney, McAnany, Van Cleave & Phillips, P.A., Kansas City

Hon. Steve Leben, District Judge, Johnson County, Olathe

Ramon Murguia, Attorney, Kansas City

Robert Schmidt, President, Eagle Communications, Inc., Hays

Stan Stauffer, Stauffer Publications, Topeka

Hon. Nelson Toburen, District Judge, Crawford County, Pittsburg

Nick Tomasic, District Attorney, Kansas City

David Waxse, Attorney, Shook, Hardy & Bacon, Overland Park

HOUSE COMMITTEE ON JUDICIARY

Hon. Lance Kinzer, Chairman
Hon. Jeff Whitham, Vice Chairman
Hon. Janice Pauls, R.M. Member

January 25, 2010
3:30 p.m.
Room 346-S

Chief Judge Richard M. Smith
Sixth Judicial District
P.O. Box 350
Mound City, Kansas 66056-0350
judgeIndc@earthlink.net

**TESTIMONY ON BEHALF OF KANSAS DISTRICT
JUDGE'S ASSOCIATION IN SUPPORT OF HCR 5026
AND IN OPPOSITION TO HB 2417 AND HB 2429**

I wish to thank this honorable committee for extending the opportunity to appear and present testimony in support of HCR 5026. I am Richard M. Smith, legislative co-chair of the Kansas District Judge's Association and Chief Judge of the Sixth Judicial District.

The study of the judicial system contemplated by this House Concurrent Resolution includes issues also addressed by HB 2417 and HB 2429. Our association believes that study should occur prior to any significant changes in the structure of the Kansas Judicial System and we are therefore asking that you either take no action on HB 2417 and HB 2429 or reject them at this time.

The Kansas District Judge's Association favors the appropriate allocation of judicial resources. Concern over whether judicial resources are being appropriately allocated should always be a concern of both the legislature and House Judiciary

Date 1-25-10
Attachment # 3

during trying financial times like the present. Obviously during times of financial difficulties these issues tend to come to the forefront. It is easy to understand and appreciate the urgency some may perceive in making changes which some believe might save money. The system of justice our citizens enjoy provides consistent and prompt access. Access to justice must be a fundamental concern. Any substantial change in this structure might affect that access and have other unintended consequences which could be regrettable. For this and other reasons we believe that a comprehensive study of the judicial system is appropriate and should be conducted prior to making piecemeal but substantial changes.

HCR 5026 provides a mechanism whereby the legislature can be properly informed both as to the nature of the current system and changes which might be effective in saving revenue while still providing access to quality justice. The resolution as currently worded is rather broad. It includes a study of unification and restructuring of the courts, a review of administrative supervision of the courts, selection, tenure, compensation and retirement of judicial and non-judicial personnel, appellate review, financing of the courts, and such other areas of study as deemed appropriate by the Chief Justice. To provide a comprehensive study and survey of all of these areas within the one year time frame contemplated by the resolution might be too lofty a goal.

I would respectfully suggest that the scope of the resolution be narrowed to encompass the issues of primary, immediate concern of the legislature. As an example, compensation of non-judicial personnel has been subject to the continuing study of a commission known as the Non-Judicial Salary Initiative (NJSI). The legislature enacted a comprehensive salary initiative for the court system which was

unfortunately but understandably derailed by the current fiscal crisis. Judicial salaries were addressed by the legislature just 3 years ago.

I would respectfully suggest that the resolution be narrowed to include unification and restructuring of the courts, financing of the courts, administrative supervision and such other areas as assigned by the Chief Justice. This should allow proper study and report on the issues raised by HB 2417, HB 2429, and the related issue of financing the courts. Obviously, if these parameters aren't sufficient to address the legislature's immediate concerns any other related or appropriate topic could be added.

As to immediate consideration of HB 2417 and HB 2429 it is the official position of the KDJA that the current structure of the Kansas Judicial System, including the one judge per county rule, should not be modified unless and until an appropriate commission has conducted a thorough study similar to the study done evaluating court unification. The one judge per county rule or the imposition of an arbitrary percentage of magistrate judges without consideration of the individual characteristics of a particular judicial district greatly affects persons within and outside the judicial system. Any such modification may greatly affect allocation of resources, access to justice, local community concerns and state-wide interests. For this reason any change first deserves a comprehensive study by an appropriate commission. After receiving the final report from the commission the legislature could then consider all ramifications of any changes and make the appropriate policy decision.

Taking time to make an informed decision as to change should not be affected by the current fiscal crisis as neither 2417 nor 2429 will realize any immediate cost savings.

It is important that I emphasize one last point. It is not our design to purposefully delay and/or forever defer consideration of these important issues by effectively "pigeon-holing" them under the guise of being studied. Rather it is the expectation of the Kansas District Judge's Association that the district judges, OJA and the Supreme Court will embrace the opportunity to thoroughly and honestly study the existing system, isolate and identify any inefficiencies then present comprehensive suggestions of what changes should be put in place, taking into consideration the philosophies and policies necessary to insure an exceptional system of justice remains for our citizens.

Thank you for this opportunity to present our position.

Respectfully submitted,

Richard M. Smith
Legislative Chair, KDJA
Chief Judge, Sixth Judicial District

District Court of Kansas
29th Judicial District

Chambers of
Hon. R. Wayne Lampson
Chief Judge
Division One



Nancy E. Gilbert
Administrative Assistant
Jessica K. Belcher, C.S.R.
Official Court Reporter

Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101
(913)573-2923

To: Members of House Judiciary Committee

From: Wayne Lampson, Chief Judge 29th Judicial District

January 25, 2010

Re: House Bill 2429, 2417, and House Concurrent Resolution 5026

Committee Members:

I come before to express the position of the judges of the 29th Judicial District (Wyandotte County) as to the above-noted pieces of proposed legislation. Hopefully, I can express the position of my court community, and in the process provide to you additional information as you consider this legislation.

I first want to address the appointment of an advisory committee to make a survey and study of the court system in Kansas. The court in Wyandotte County welcomes such a study and recommends the passage of this resolution. We believe that such a study will provide information that will prove to be invaluable in any decisions that need to be made as to a restructure of the court system.

I next want to comment briefly on the proposed legislation in HB 2429. Clearly this proposal would impact the court in the rural districts more profoundly, and would have little effect on the operation of the court in Kansas City. Therefore, I will defer any additional comments on this matter to the judges from those areas that are more directly affected, and I am sure they can better express how they believe such a decision will impact their communities.

Lastly, and most importantly, at least to my court, I wanted to express some concerns for the proposed legislation in HB 2417. This legislation proposes that whenever the position of a sitting District Judge is vacated due to the death, resignation, retirement or removal of the judge, that the position is switched to a District Magistrate position, until a minimum of 20% of the judges in the district are magistrates. While the bill does contain language allowing for a magistrate position to go from a magistrate to a district judge if the Supreme Court makes certain

House Judiciary

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findings, the clear intent is to switch district judges into district magistrate judges. In evaluation of this proposal, I want to note several observations. First, while I assume this is proposed as a money savings, it would only impact a few judicial districts, primarily the urban districts. Most of the other districts with except of 2 or three non-urban courts already have 20% or more of their judges who are magistrate judges. This would seem to only give a small amount of savings to the overall cost of the courts.

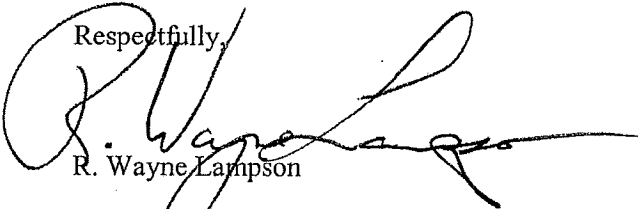
Secondly, Magistrate Judges are limited by statute as to the types of cases they can hear. This was in part done to create situations where the District Judges would be responsible for the more serious cases in the Court. This has not been the case for the Wyandotte County courts. I want to point out one example. One of the areas normally assigned to Magistrates has been juvenile matters. These cases, in my courthouse, have become some of the most serious. At one time last year Judge Wes Griffin, who presides over our Juvenile Offender Court, had nine (9) pending 1st Degree Murder cases in his court. I do not believe that Kansans are better served by these cases being decided by Magistrates.

Magistrate Judges, under current Kansas law, do not have to be lawyers, or have any particular training in the law. This coupled with the lower salary range, creates a situation where we have untrained people in these positions, or as is more likely in urban areas, lawyers who cannot make a living as lawyers going on the bench. I believe we all want quality judges at all levels, and this proposal just doesn't support that concept.

My last observation goes to concerns I have about the manner these positions would be filled. As most of you know, about ½ of the judges in Kansas are retention districts and the other ½ are elected. While it appears that through the use of selection panels most of the urban districts have appointed lawyers to fill the magistrate positions, this would not be the case in elected districts. I am concerned of the quality and character of candidates in my district, and how they might use and abuse the election process to further goals not related to the best interest of the Courts.

I thank you for the opportunity to express my thoughts and concerns to you as you consider these bills, and if I can be of further assistance in that process, please let me know.

Respectfully,



R. Wayne Lampson

Chief Judge

BRUCE T. GATTERMAN

Chief Judge
(620) 285-2247

DEBI HUNTER, C.S.R.

Official Court Reporter
(620) 285-2188



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TWENTY-FOURTH JUDICIAL DISTRICT

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LINDA ATTEBERRY

Chief Clerk
(620) 659-2217

PAULA TAMMEN

SCHEDULING
Administrative Assistant
(620) 285-2247

House Committee on Judiciary

Hon. Lance Kinzer, Chairman
Hon. Jeff Whitham, Vice Chairman
Hon. Janice Pauls, Ranking Minority Member

January 25, 2010

3:30 p.m.

Room 346-S

Chief Judge, Bruce T. Gatterman

24th Judicial District of Kansas

P.O. Box K

Larned, Kansas 67550

24thcj@pawnee.kscoxmail.com

Testimony in Opposition to HB 2429 and HB 2417, and as proponent of HCR 5026

My thanks to the House Committee on Judiciary for the opportunity to appear and present testimony on today's date.

My name is Bruce Gatterman. I am the Chief Judge of the 24th Judicial District of Kansas. The District consists of the six counties of Edwards, Hodgeman, Lane, Ness, Pawnee, and Rush. The judicial configuration is that of one District Judge for the entire judicial district, and one District Magistrate Judge in each county of the district.

House Judiciary

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Attachment # 5

The nonpartisan selection of Judges of the District Court has not been approved in the 24th Judicial District. All Judges stand for election. District Magistrate Judges are elected on a county-by-county basis, while the District Judge position is determined by the electors of all six counties.

My testimony will express support for HCR 5026, and opposition to HB 2429 and HB 2417. My remarks will, in part, incorporate perspectives of operation of the court system in rural Kansas districts.

HCR 5026

House Concurrent Resolution 5026 represents the acknowledgment of the Kansas Legislature of the value and utility of a comprehensive survey and study of the Kansas court system. Specific areas identified for study include:

- Unification and restructuring of courts
- Administrative supervision of the courts
- Issues relating to selection, compensation, and retirement of judicial and non-judicial personnel
- Financing of the judicial branch
- Other areas identified by the Chief Justice of the Kansas Supreme Court.

HCR 5026 provides a virtually identical charge to a Judicial Study Advisory Committee as contained within Senate Joint Resolution No. 2 enacted in 1973, which authorized creation of the Judicial Study Advisory Committee (JSAC). This committee and its report provided the blueprint for court unification in the late 1970's.

The JSAC report was issued 36 years ago this spring. Times have changed significantly, but the importance of a unified and efficient court system has not. The JSAC committee included, among others, legislators, attorneys in private practice and government service, judges, business persons, farmers, and members of the media.

Benefits of a survey and study from a similar committee in review of current court operations could potentially include:

- Input and opinion from a diverse representation of society

- An independent review of the court system including urban and rural courts
- Identification of issues and services that are important to the public, law enforcement officials, or the private sector
- A weighted case load study.

Information obtained from the study would be extremely important to the Kansas Legislature and Kansas Judicial Branch in determining effective allocation of judicial resources.

HB 2429

HB 2429 eliminates one judge per county. The Bill provides for re-assignment of District Magistrate Judge positions when the Kansas Supreme Court determines that a magistrate position is unnecessary based upon the following limited formula:

- A yearly average caseload of less than 600 cases, and
- The ability of the remaining judges of the judicial district to assume the entire judicial workload of the county.

The problem with this narrow determination is that it fails to consider the total caseload of a District Magistrate Judge, or all essential functions of the position, including, but not limited to:

- Cases filed under the Code of Civil Procedure for Limited Actions
- Cases filed under the Code of Crimes and Punishments which are subject to the jurisdiction of a District Magistrate Judge
- Cases filed under the Protection From Abuse or Protection From Stalking Acts which are subject to the jurisdiction of a District Magistrate Judge
- Misdemeanor traffic cases
- Issuance of search warrants
- Issues of emergency or public safety
- Public access to district patrons, and other issues of local concern.

Caseloads and essential functions identified immediately above are important components of efficient and timely operation of the court system in all Kansas judicial districts that have District Magistrate Judges.

The judicial districts with a single District Judge (Judicial Districts 12, 17 & 24) are no exception. The Kansas average caseload per District Judge comparisons reflect that the single District Judge in each of these identified rural districts handles a caseload of Chapter 60 civil, felony criminal, and domestic relations which consistently ranks within the top ten per District Judge in the State of Kansas (Source: Annual Report of the Courts of Kansas FY2009). Additionally, these District Judges travel an average of 15-20 hours per week (see attached mileage chart for the 24th Judicial District), and perform the duties of Chief Judge which can easily consume an additional average of 5 hours per week for personnel and budget issues.

HB 2429 does not involve or relate to caseloads of a District Judge. The importance of the statistical information I have included for rural districts with respect to consideration of HB 2429 is to identify the valued presence of a District Magistrate Judge in each county as an available team member to hear cases within the Magistrate Judge's jurisdiction, which in turn promotes the efficient operation of the court system.

HB 2429 is not a cost-saving Bill. It is a Bill for reallocation of judicial resources; the same judicial resources created by unification following the JSAC comprehensive report.

HB 2417

My previous testimony has been submitted substantially on the basis of my professional experience as the sole District Judge in a multi-county judicial district. HB 2417, by its definition, would not apply to the 24th Judicial District because of the 86% ratio of District Magistrate Judge positions to the combined District Judge and District Magistrate Judge positions in our District, unless a District Magistrate Judge position came open and a determination was made that an additional District Judge position should be created in its place.

Other judges testifying today are much better informed as to the advisability of HB 2417. My stated opposition to this Bill is for the same reasons I expressed previously, specifically that a study or survey has not been commissioned to determine the advisability of HB 2417.

Conclusion

Kansas courts are concerned about appropriate allocation of judicial resources. Allocation must be balanced with prompt access to justice. Informed determination of these issues can best be made through the comprehensive study and survey proposed by HCR 2056.

Actions proposed by HB 2417 and HB 2429 will significantly and permanently alter the structure of the Kansas court system. I respectfully submit my concern over enactment of these changes without consideration of the impact upon individual judicial districts, or the Kansas court system as a whole.

HB 2417 and HB 2429 should be rejected at this time pending the study envisioned by HCR 2056.

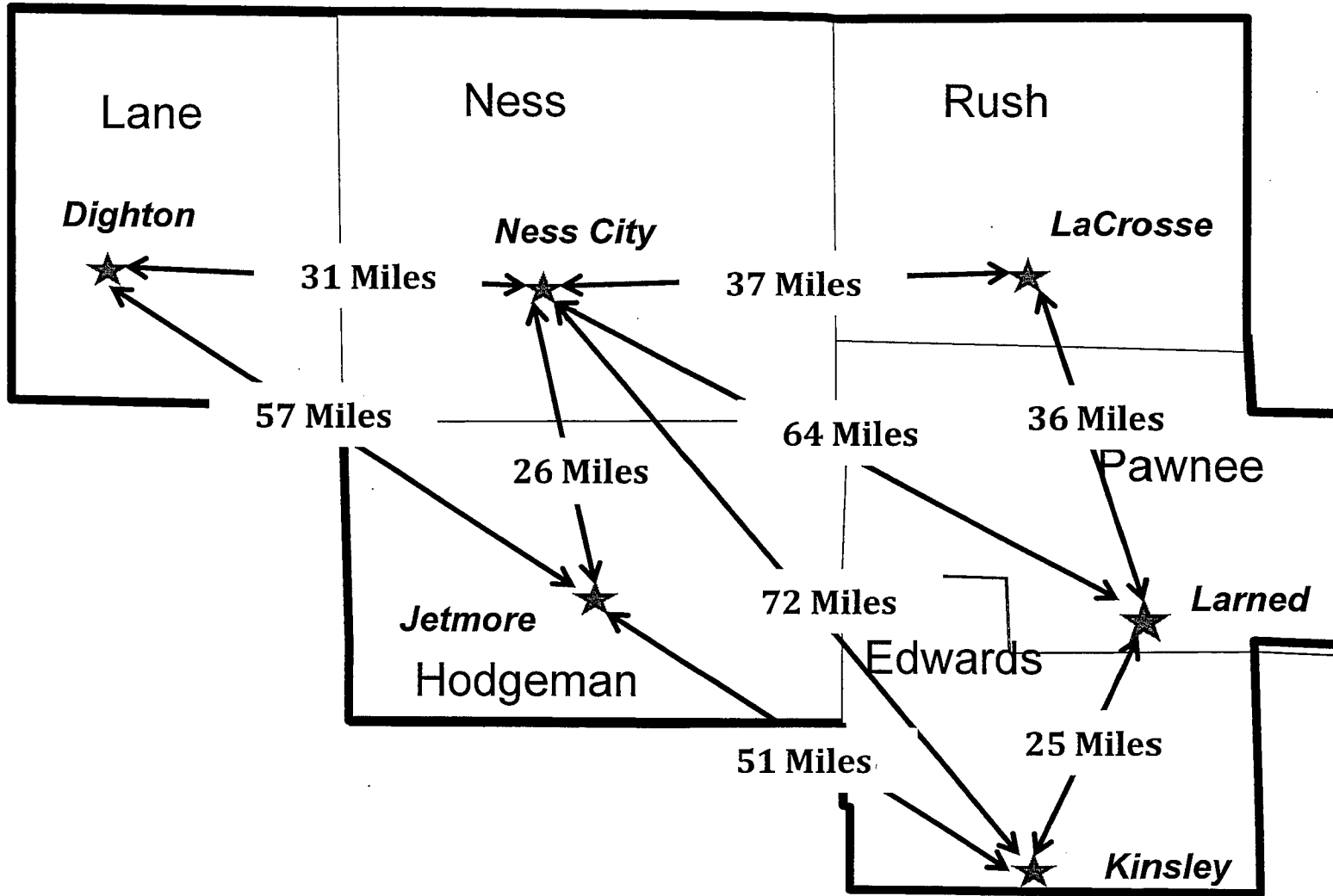
Thank you for this opportunity to present testimony to the Committee.

Respectfully submitted this 25th day of January, 2010.



Bruce T. Gatterman, Chief Judge
24th Judicial District

24th Judicial District Mileage Between County Seats*



* Mileage is noted as reported by the Kansas Department of Transportation Official Distance Chart. Due to construction and other factors, true mileage noted may vary.

TWELFTH JUDICIAL DISTRICT

Cloud, Jewell, Lincoln, Mitchell, Republic and Washington Counties

KIM W. CUDNEY
Chief Judge
(785) 325-3265
judgecudney@12jd.org

Washington County Courthouse
Post Office Box 235
Washington, Kansas 66968
Facsimile (785) 325-2655

GAYLE MONTY
Administrative Assistant
(785) 325-2332
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HOUSE JUDICIARY COMMITTEE

CHAIRMAN: Hon. LANCE KINZER
VICE-CHAIRMAN: Hon. JEFF WHITHAM

January 25, 2010

Testimony In Opposition To HB 2429 and In Support Of HCR 5026

Good afternoon: My name is Kim W. Cudney. I am the Chief Judge of the 12th Judicial District which is located in north-central Kansas and includes Washington, Republic, and Jewell counties along the northern tier of highway 36 and drops down to include Cloud, Mitchell and Lincoln counties. The largest towns include Concordia and Beloit.

As I indicated, I am the Chief Judge of the 12th Judicial District; I am also the only district judge for the six county district. However, I am fortunate because there are 6 magistrate judges in the district, one in each county. As the Chief Judge I am responsible for all administrative matters and all personnel matters in the district. I hear all of the felony cases, some misdemeanor matters, all domestic matters and all chapter 60 civil matters,

House Judiciary

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including the 60-1507 cases. In addition, I hear any appeals from the magistrate judges and all termination of parental rights cases. On occasion, I travel to a neighboring district to cover conflict cases.

Like the other multi-county, single district judges I carry one of the heaviest case loads in the state. In order to attend hearings and trials last year I drove nearly 17,000 (16,732) miles. In both June and September I traveled over 2,000 miles. There were only two months in which I traveled less than 1,000 miles. That's 6.5 work weeks sitting behind the steering wheel of my vehicle. Generally, I am on the road three to four days each week, which leaves very little time for administrative matters, research and writing decisions. I have attached a map which shows the lay out of the 12th Judicial District and the miles between courthouses.

I do not describe these facts to complain about my duties. I enjoy my work very much and appreciate the opportunity to serve in this manner. Rather, I point out these factors because I am busy, my calendar is full, and I must rely upon the magistrate judges in the district to assist in keeping the judicial system properly working and timely.

Under the proposed HB 2429 magistrate judge positions with an average caseload of less than 600 cases could be eliminated. In the 12th

Judicial District that caseload figure creates an expectation that as many as five of the six positions could be eliminated. Six counties would be left with one district judge and one magistrate judge—two judges to cover hundreds of miles and thousands of cases. It is not possible for two judges to cover this much territory and provide timely hearings to the public.

In the 12th Judicial District magistrate judges handle all matters in which they have statutory jurisdiction. They hear all criminal first appearances, preliminary hearings and misdemeanor trials. They handle all juvenile matters, child in need of care hearings, limited civil, small claims and probate matters. Magistrate judges conduct temporary custody and child support hearings along with all child support modification matters and all protection from abuse and stalking cases. All involuntary commitment hearings are conducted before magistrate judges. Many of these types of hearings are emergency hearings or come within statutory time constraints. Monday mornings, Friday afternoons or any given day of the week may be busy in several counties at the same time. How can one magistrate judge cover all these hearings in six counties? Although I do not hesitate to cover cases traditionally heard by the magistrates, there is little time on my calendar to offer assistance.

I also point out that many of the juvenile and child in need of care matters involve lengthy hearings; some take all day, others a half day. With this in mind, it seems nearly impossible for one magistrate judge to cover all of these hearing in six counties. In addition, you must factor in the travel time. The shortest time between courthouses is 30 minutes. The longest is 2 hours between Washington and Lincoln.

In addition, the magistrate judges provide coverage for one another if there is conflict or someone is gone. Several magistrate judges perform another vital service in our district. Two judges travel the district almost as much as I do and conduct settlement conferences in domestic and civil matters. This results in several benefits for the district: 1) the parties are more satisfied with the results, and, 2) successful settlement conferences reduce the number of hearings.

As the chief judge in a rural judicial district these are my concerns with the proposed bill to eliminate one judge per county. Under its current structure HB 2429 will adversely affect the public's ability to obtain timely access to the judicial system. Individuals will wait for a judge who is traveling the circuit to arrive at their location. County attorneys and law enforcement will hunt for a judge when needed for search warrants and other time restricted matters.

When crimes occur or children are taken from their homes or an individual needs immediate mental health treatment, these matters are not scheduled for a day when the judge might happen to be in their county—they occur regularly on any given day, in any given county.

For these reasons, I urge you to reconsider HB 2429. Magistrate judges are a vital necessity in large rural judicial districts. If this bill is to be considered at all, it should only be after a full and comprehensive study has been conducted with consideration given to the types of cases heard, the effect of combining county jurisdictions and with consideration given to the size of the district and distance traveled.

I respectfully request that the one judge per county rule not be modified at this time. Rather, the matter should be studied and considered so that a workable plan can be implemented which addresses the financial concerns of the State, but also ensures that individuals are not denied access to the judicial system—regardless of where they live. Modification of the one judge per county rule should be considered along with and as a part of HCR 5026 to study court unification and restructuring. The issues go hand in hand and should not be piecemealed. I urge you to adopt HCR 5026 and reject HB 2429 at this time, so that a fully studied and informed decision can be made

with regard to the structure of the Kansas judicial system.

Thank you for the opportunity to express my concerns with HB 2429.

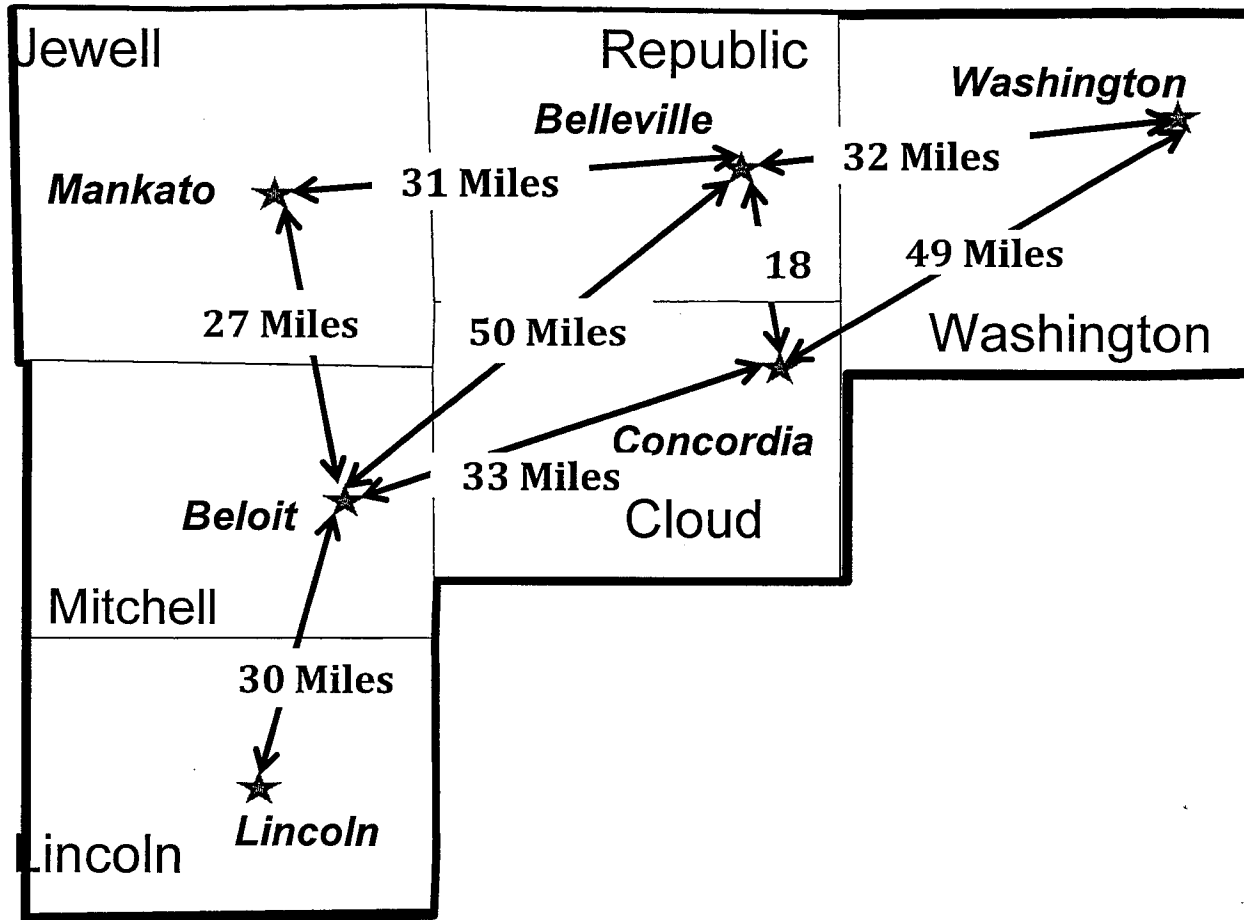
Respectfully submitted,



Kim W. Cudney,
Chief Judge Twelfth Judicial District

12th Judicial District

Mileage Between County Seats*



* Mileage is noted as reported by the Kansas Department of Transportation Official Distance Chart. Due to construction and other factors, true mileage noted may vary.

TESTIMONY BEFORE THE HOUSE JUDICIARY
COMMITTEE ON H.B. 2417, H.B.2429 AND
HOUSE CONCURRENT RESOLUTION 5026

January 25, 2010

Dear Mr. Chairman and Members of the House Judiciary Committee:

I am Thomas M. Tuggle. I served as chief judge of the Twelfth Judicial District from 1989 until my retirement in 2006. Also, I was a member of and for one year president of the Kansas' District Judges' Association. This experience has made me knowledgeable about the Kansas court system. The court system has many strengths. For example it was one of the first states to establish time lines for the hearing and disposition of cases that increased efficiency. The court system has faults that need to be corrected. H.B. 2417, H.B. 2429 AND HCR 5026 are all intended to improve the efficiency of the court system.

HCR 5026

I support HCR 5026 with suggested additions. Let me talk briefly about proper allocation of judicial resources. To say it differently, how does the court system most efficiently use its human resources (personnel) because over 97 per cent of the judicial budget is committed for pay and fringe benefits for the judicial and non-judicial personnel.

- I. Public officials should be good stewards of public funds. As a practical matter, being prudent with public funds (minimizing expenditures) often is not a priority because of the absence of a profit motive. With the profit motive missing little thought is given to improving the efficiency of the organization (branch of government). As a result public officials seldom do an objective analysis of needs, especially staffing needs. A critical look at staffing needs may show that "some of our own" are not needed, an unpleasant thought. While a needs study would be painful, it would show the public that the Supreme Court and the Legislature are committed to the prudent use of public funds.
- II. There was no evaluation of staffing needs when court personnel became state employees. As a result staffing levels were not uniform; some judicial districts were overstaffed and some understaffed. The variance between

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judicial districts has lessened with the unified court system adopted in 1977. One of the major stumbling blocks to more uniform staffing is the requirement of at least one resident judge in every county.

- III. To my knowledge the Office of Judicial Administration (OJA) has never done a comprehensive study on staffing district judge, district magistrate judge, court reporter, court administrator, clerk, deputy clerk and court services officer positions. It is not fair to single out the district magistrate judges. For example there are court reporters that do not have enough work to stay busy while others are too busy.
- IV. After 16 years on the bench as a chief judge I am convinced there are too many judges that carry light caseloads. Currently Kansas has 167 district judges and 79 district magistrate judges. (Some judicial districts have judges pro tempore whom the counties pay.) For many years until FY 2004, my predecessor, Judge Richard Wahl, and I had the highest caseload in the state. Not only did we have a heavy caseload but also we were chief judges and traveled a six county judicial district. I estimate that between 35 to 45 district judges and district magistrate judges' positions can be eliminated.
- V. OJA prepares annual caseload comparison by judicial district. The FY 2008 caseload comparisons in districts with both district judges and district magistrate judges show the caseload per judge disparity. (See attachments.) The 4th Judicial District has the highest number of cases disposed of per district judge at 733 cases. The 15th J.D. has the lowest number of cases disposed of per district judge at 305 cases. The median number of cases disposed of is 503.

From my experience serving the 12th Judicial District I am convinced the staffing level should be one district judge and two district magistrate judges. In other words the number of district magistrate judges should be reduced from the current six to two. My opinion that two district magistrate judges is sufficient is based on three things: First the 2009 Twelfth Judicial District case filings. (See attachments.)

The total case filing without traffic cases is 2944. Some case categories have cases handled by both the district judge and the district magistrate judges. In those categories, I have made estimates. The number of cases handles by district magistrate judges is approximately 2349. So two judges could and would handle approximately 1174 cases each. Second, in working with and being around the district magistrate judges and talking with clerks, I know how their work load and how busy they are. Third, the population in virtually every rural county continues to go down, meaning that caseloads will go down. (See attachment.) As to non-judicial personnel I eliminated unneeded staff positions without prompting from OJA.

- VII. I a district court where someone does not have enough to do it is not only A waste of taxpayer money; also it adversely affects the morale of others who are working hard. An example is clerks and deputy clerks complaining that the district magistrate judge has nothing to do. (And believe me I heard this complaint many times.)

SUGGESTIONS

HCR 5026 requires the Supreme Court in cooperation with the judicial council to study and survey: unification and restructuring of the courts, administrative supervision of the courts, selection, tenure, compensation and retirement of judges and court personnel, appellate review, financing of the courts and other matters agreeable to the chief justice.

I suggest the request to the Supreme Court be broadened to include a weighted caseload study by an outside entity such as the National Center for State Courts. (The legislature would need to fund the study.)

A comprehensive study to determine the best allocation of human resources (personnel), both judicial and non-judicial. A weighted caseload study is essential to achieving the idea number of district judges and district magistrate judges per judicial district.

A requirement that the Supreme Court in cooperation with the judicial council conduct a comprehensive study of proper allocation of judicial resources every ten years or more often if the chief justice so chooses.

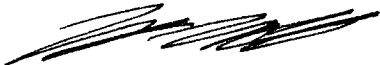
H.B. 2417

I oppose H.B. 2417 for several reasons: First, on the death, resignation, retirement or removal of a district judge, the position is converted to a district magistrate judge position if 20% or less of the judges in the judicial district are district magistrate judges. This provision is too restrictive. Second, the bill permits a position to be eliminated only if the position becomes vacant by reason of death, resignation, retirement or removal. This provision is too restrictive because at some point the caseload may not justify the position, yet the position remains filled.

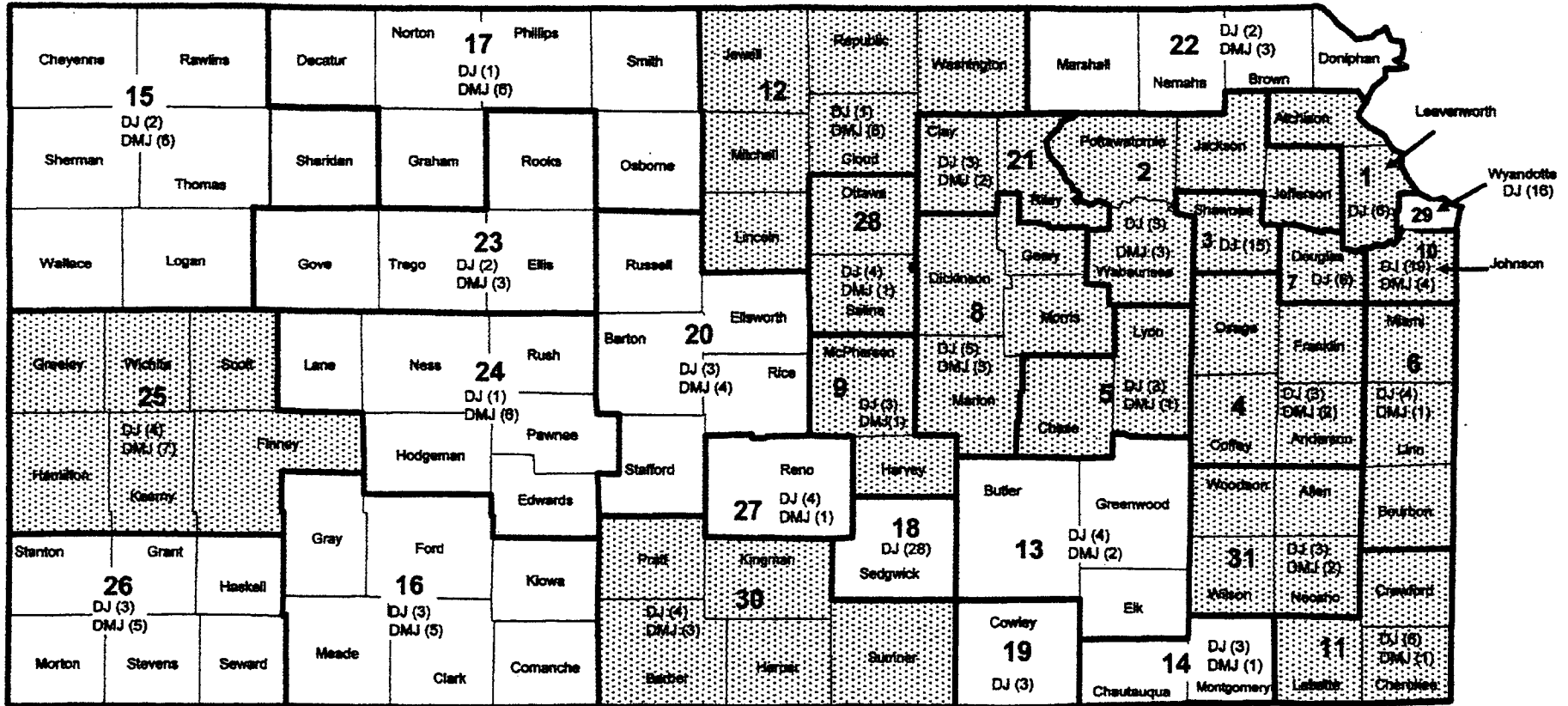
H.B. 2429

I oppose certain sections of H.B. 2429. The provisions for eliminating judicial positions only apply to district magistrate positions. These provisions also should apply to district judge positions in instances where the caseload does not justify the position. The provision that the district magistrate position be eliminated if the caseload drops below 600 not wise. First, if there is a number, it should 1000. Second, rather than a set number, a weighted caseload approach would be preferable. Rather than district magistrate judges being retained or elected by county, it would be preferable that it was by all the counties in the judicial district. Retention or election by judicial district is preferable because often in multi-county judicial district each district magistrate judge is made a judge pro tempore in all of the other counties.

Prepared by Thomas M. Tuggle,
District Judge, Retired



Kansas Judicial Districts (31)



Political Process - 14 districts or 45% (Counties = 53)
 Merit Selection Process - 17 districts or 55% (Counties = 52)

	Elected Judges	Selected Judges	TOTAL
District Judge	75	92	167
District Magistrate Judge	42	37	79
Total	117	129	246

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KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH MAGISTRATE JUDGES
JULY 1, 2007 -- JUNE 30, 2008

	Total Judges	Total Caseload		Total Less Traffic		Civil and Criminal		District Judges	Chapter 60, Felony, Domestic Relations	
		per judge	rank	per judge	rank	per judge	rank		per judge	rank
District 5	4	2,982	1	1,367	5	1,199	4	3	336	23
District 28	5	2,961	2	1,392	4	1,049	5	4	588	6
District 4	5	2,692	3	1,138	8	943	8	3	733	1
District 27	5	2,689	4	1,493	3	1,211	3	4	621	4
District 10	23	2,467	5	1,687	1	1,451	1	19	641	3
District 9	4	2,455	6	1,669	2	1,391	2	3	492	14
District 23	5	2,423	7	763	18	593	18	2	486	16
District 30	7	2,236	8	681	20	504	20	4	367	21
District 2	5	2,131	9	1,015	11	833	10	2	669	2
District 14	4	2,118	10	1,228	6	1,043	6	3	395	19
District 8	8	2,043	11	1,154	7	950	7	5	584	8
District 6	5	1,978	12	1,045	10	769	12	4	499	13
District 31	5	1,932	13	942	13	715	13	3	439	17
District 21	5	1,838	14	1,047	9	846	9	3	558	10
District 13	6	1,779	15	927	15	708	15	4	428	18
District 16	8	1,759	16	941	14	788	11	3	523	11
District 20	7	1,759	16	914	16	709	14	3	587	7
District 11	7	1,629	18	946	12	697	16	6	369	20
District 26	8	1,384	19	738	19	580	19	3	357	22
District 22	5	1,256	20	645	21	473	21	2	491	15
District 15	8	1,189	21	303	25	224	25	2	305	25
District 25	11	1,184	22	764	17	656	17	4	335	24
District 12	7	1,004	23	354	23	230	24	1	620	5
District 24	7	672	24	356	22	245	23	1	566	9
District 17	7	634	25	350	24	261	22	1	503	12
Total Caseload	171	1,852		980		792		92	516	
Statewide Caseload	243	2,023		1,202		1,009		164	525	

**KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH DISTRICT JUDGES ONLY
JULY 1, 2007 -- JUNE 30, 2008**

	Number of Judges	Total Caseload		Total Less Traffic		Civil and Criminal		Chapter 60, Felony, Domestic Relations	
		per judge	rank	per judge	rank	per judge	rank	per judge	rank
District 18	26	2,689	1	1,838	2	1,608	2	716	1
District 3	15	2,674	2	2,125	1	1,946	1	409	4
District 19	3	2,586	3	1,764	3	1,512	3	376	6
District 7	6	2,162	4	1,305	6	1,100	6	394	5
District 1	6	2,064	5	1,429	5	1,200	5	489	2
District 29	16	1,986	6	1,447	4	1,284	4	466	3
Total Caseload	72	2,429		1,729		1,526		537	
Statewide Caseload	243	2,023		1,202		1,009		525	

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12TH JUDICIAL DISTRICT
DISTRICT CASELOAD STATISTICS
2009 CASE FILINGS

	<u>CLOUD</u>	<u>JEWELL</u>	<u>LINCOLN</u>	<u>MITCHELL</u>	<u>REPUBLIC</u>	<u>WASHINGTON</u>	<u>DISTRICT TOTALS</u>
CIVIL	50 (27%)	11 (6%)	29 (16%)	50 (27%)	17 (9%)	29 (16%)	186
LTD CIVIL	270 (34%)	50 (5%)	53 (7%)	142 (18%)	135 (17%)	149 (19%)	799
DOMESTIC	109 (33%)	31 (9%)	23 (7%)	79 (24%)	54 (16%)	37 (11%)	333
SM CLAIMS	83 (31%)	15 (6%)	42 (16%)	52 (19%)	46 (17%)	29 (11%)	267
PROBATE	54 (22%)	46 (18%)	31 (12%)	51 (20%)	35 (14%)	34 (14%)	251
JV OFFENDER	59 (44%)	2 (1%)	8 (6%)	33 (24%)	22 (16%)	12 (9%)	136
JV CINC	46 (46%)	2 (2%)	11 (11%)	17 (17%)	13 (13%)	11 (11%)	100
CRIMINAL	309 (43%)	41 (6%)	54 (8%)	156 (22%)	80 (11%)	75 (10%)	715
CARE/TRMT	8 (30%)	3 (11%)	3 (11%)	7 (26%)	1 (4%)	5 (18%)	27
ADOPTION	14 (62%)	1 (4%)	1 (4%)	2 (9%)	1 (4%)	4 (17%)	23
TRAFFIC	1259 (31%)	344 (8%)	450 (11%)	168 (4%)	1639 (40%)	260 (6%)	4120
FISH & GAME	12 (11%)	66 (62%)	0 (0%)	17 (16%)	8 (7%)	4 (4%)	107
<u>TOTALS</u>	2273 (32%)	612 (9%)	705 (10%)	774 (11%)	2051 (29%)	649 (9%)	7064
<u>TOTALS W/O TRAFFIC</u>	1014 (34%)	268 (9%)	255 (9%)	606 (21%)	412 (14%)	389 (13%)	2944

Compiled by the Chief Clerk of the Twelfth Judicial District
(case filing statistics provided by individual counties)

12TH JUDICIAL DISTRICT
DISTRICT CASELOAD STATISTICS
2008 CASE FILINGS

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	<u>CLOUD</u>	<u>JEWELL</u>	<u>LINCOLN</u>	<u>MITCHELL</u>	<u>REPUBLIC</u>	<u>WASHINGTON</u>	<u>DISTRICT TOTALS</u>
CIVIL	48 (32%)	9 (6%)	22 (14%)	26 (16%)	26 (16%)	26 (16%)	157
LTD CIVIL	321 (42%)	53 (7%)	57 (8%)	148 (19%)	54 (7%)	126 (17%)	759
DOMESTIC	115 (35%)	28 (8%)	29 (9%)	72 (21%)	52 (16%)	35 (11%)	331
SM CLAIMS	85 (28%)	14 (5%)	40 (13%)	64 (21%)	59 (18%)	47 (15%)	309
PROBATE	54 (23%)	45 (19%)	23 (10%)	54 (23%)	36 (15%)	24 (10%)	236
JV OFFENDER	38 (32%)	9 (8%)	3 (3%)	34 (28%)	20 (16%)	15 (13%)	119
JV CINC	42 (38%)	4 (4%)	15 (14%)	21 (18%)	15 (14%)	14 (12%)	111
CRIMINAL	211 (35%)	43 (7%)	55 (9%)	143 (23%)	70 (12%)	82 (14%)	604
CARE/TRMT	8 (40%)	2 (10%)	1 (5%)	4 (20%)	2 (10%)	3 (15%)	20
ADOPTION	15 (56%)	1 (4%)	3 (12%)	3 (12%)	1 (4%)	3 (12%)	26
TRAFFIC	1240 (27%)	373 (8%)	488 (11%)	253 (6%)	1707 (37%)	514 (11%)	4575
FISH & GAME	5 (10%)	16 (30%)	4 (8%)	4 (8%)	8 (15%)	15 (29%)	52
<u>TOTALS</u>	2182 (31%)	597 (8%)	740 (10%)	826 (11%)	2050 (28%)	904 (12%)	7299
<u>TOTALS W/O TRAFFIC</u>	942 (35%)	224 (8%)	252 (9%)	573 (21%)	343 (13%)	390 (14%)	2724

Compiled by the Chief Clerk of the Twelfth Judicial District
(case filing statistics provided by individual counties)

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Section 15: Population

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**Population and Population Change in Kansas, by County
1980, 1990, and 2000**

County	1980	1990	2000	Percent Change 1980-2000	Percent Change 1990-2000	Increase or Decrease 1980-2000
Allen	15,654	14,638	14,385	-8.1	-1.7	-1,269
Anderson	8,749	7,803	8,110	-7.3	3.9	-639
Atchison	18,397	16,932	16,774	-8.8	-0.9	-1,623
Barber	6,548	5,874	5,307	-19.0	-9.7	-1,241
Barton	31,343	29,382	28,205	-10.0	-4.0	-3,138
Bourbon	15,969	14,966	15,379	-3.7	2.8	-590
Brown	11,955	11,128	10,724	-10.3	-3.6	-1,231
Butler	44,782	50,580	59,484	32.8	17.6	14,702
Chase	3,309	3,021	3,030	-8.4	0.3	-279
Chautauqua	5,016	4,407	4,359	-13.1	-1.1	-657
Cherokee	22,304	21,374	22,605	1.3	5.8	301
Cheyenne	3,678	3,243	3,165	-13.9	-2.4	-513
Clark	2,599	2,418	2,390	-8.0	-1.2	-209
Clay	9,802	9,158	8,822	-10.0	-3.7	-980
Cloud	12,494	11,023	10,268	-17.8	-6.8	-2,226
Coffey	9,370	8,404	8,865	-5.4	5.5	-505
Comanche	2,554	2,313	1,967	-23.0	-15.0	-587
Cowley	36,824	36,915	36,291	-1.4	-1.7	-533
Crawford	37,916	35,582	38,242	0.9	7.5	326
Decatur	4,509	4,021	3,472	-23.0	-13.7	-1,037
Dickinson	20,175	18,958	19,344	-4.1	2.0	-831
Doniphan	9,268	8,134	8,249	-11.0	1.4	-1,019
Douglas	67,640	81,798	99,962	47.8	22.2	32,322
Edwards	4,271	3,787	3,449	-19.2	-8.9	-822
Elk	3,918	3,327	3,261	-16.8	-2.0	-657
Ellis	26,098	26,004	27,507	5.4	5.8	1,409
Ellsworth	6,640	6,586	6,525	-1.7	-0.9	-115
Finney	23,825	33,070	40,523	70.1	22.5	16,698
Ford	24,315	27,463	32,458	33.5	18.2	8,143
Franklin	22,062	21,994	24,784	12.3	12.7	2,722
Geary	29,852	30,453	27,947	-6.4	-8.2	-1,905
Gove	3,726	3,231	3,068	-17.7	-5.0	-658
Graham	3,995	3,543	2,946	-26.3	-16.9	-1,049
Grant	6,977	7,159	7,909	13.4	10.5	932
Gray	5,138	5,396	5,904	14.9	9.4	766
Greeley	1,845	1,774	1,534	-16.9	-13.5	-311
Greenwood	8,764	7,847	7,673	-12.4	-2.2	-1,091
Hamilton	2,514	2,388	2,670	6.2	11.8	156
Harper	7,778	7,124	6,536	-16.0	-8.3	-1,242
Harvey	30,531	31,028	32,869	7.7	5.9	2,338
Haskell	3,814	3,886	4,307	12.9	10.8	493
Hodgeman	2,269	2,177	2,085	-8.1	-4.2	-184
Jackson	11,644	11,525	12,657	8.7	9.8	1,013
Jefferson	15,207	15,905	18,426	21.2	15.9	3,219
Jewell	5,241	4,251	3,791	-27.7	-10.8	-1,450
Johnson	270,269	355,021	451,479	67.0	27.2	181,210
Kearny	3,435	4,027	4,531	31.9	12.5	1,096
Kingman	8,960	8,292	8,673	-3.2	4.6	-287
Kiowa	4,046	3,660	3,278	-19.0	-10.4	-768
Labette	25,682	23,693	22,835	-11.1	-3.6	-2,847
Lane	2,472	2,375	2,155	-12.8	-9.3	-317
Leavenworth	54,809	64,371	68,691	25.3	6.7	13,882
Lincoln	4,145	3,653	3,578	-13.7	-2.1	-567
Linn	8,234	8,254	9,570	16.2	15.9	1,336
Logan	3,478	3,081	3,046	-12.4	-1.1	-432
Lyon	35,108	34,732	35,935	2.4	3.5	827

**Population and Population Change in Kansas, by County
1980, 1990, and 2000**

County	1980	1990	2000	Percent Change 1980-2000	Percent Change 1990-2000	Increase or Decrease 1980-2000
McPherson	26,855	27,268	29,554	10.1	8.4	2,699
Marion	13,522	12,888	13,361	-1.2	3.7	-161
Marshall	12,787	11,705	10,965	-14.2	-6.3	-1,822
Meade	4,788	4,247	4,631	-3.3	9.0	-157
Miami	21,618	23,466	28,351	31.1	20.8	6,733
Mitchell	8,117	7,203	6,932	-14.6	-3.8	-1,185
Montgomery	42,281	38,816	36,254	-14.3	-6.6	-6,027
Morris	6,419	6,198	6,104	-4.9	-1.5	-315
Morton	3,454	3,480	3,496	1.2	0.5	42
Nemaha	11,211	10,446	10,717	-4.4	2.6	-494
Neosho	18,967	17,035	16,997	-10.4	-0.2	-1,970
Ness	4,498	4,033	3,454	-23.2	-14.4	-1,044
Norton	6,689	5,947	5,953	-11.0	0.1	-736
Osage	15,319	15,248	16,712	9.1	9.6	1,393
Osborne	5,959	4,867	4,452	-25.3	-8.5	-1,507
Ottawa	5,971	5,634	6,163	3.2	9.4	192
Pawnee	8,065	7,555	7,233	-10.3	-4.3	-832
Phillips	7,406	6,590	6,001	-19.0	-8.9	-1,405
Pottawatomie	14,782	16,128	18,209	23.2	12.9	3,427
Pratt	10,275	9,702	9,647	-6.1	-0.6	-628
Rawlins	4,105	3,404	2,966	-27.7	-12.9	-1,139
Reno	64,983	62,389	64,790	-0.3	3.8	-193
Republic	7,569	6,482	5,835	-22.9	-10.0	-1,734
Rice	11,900	10,610	10,761	-9.6	1.4	-1,139
Riley	63,505	67,139	62,852	-1.0	-6.4	-653
Rooks	7,006	6,039	5,685	-18.9	-5.9	-1,321
Rush	4,516	3,842	3,551	-21.4	-7.6	-965
Russell	8,868	7,835	7,370	-16.9	-5.9	-1,498
Saline	48,905	49,301	53,597	9.6	8.7	4,692
Scott	5,782	5,289	5,120	-11.4	-3.2	-662
Sedgwick	367,088	403,662	452,869	23.4	12.2	85,781
Seward	17,071	18,743	22,510	31.9	20.1	5,439
Shawnee	154,916	160,976	169,871	9.7	5.5	14,955
Sheridan	3,544	3,043	2,813	-20.6	-7.6	-731
Sherman	7,759	6,926	6,760	-12.9	-2.4	-999
Smith	5,947	5,078	4,536	-23.7	-10.7	-1,411
Stafford	5,694	5,365	4,789	-15.9	-10.7	-905
Stanton	2,339	2,333	2,406	2.9	3.1	67
Stevens	4,736	5,048	5,463	15.4	8.2	727
Sumner	24,928	25,841	25,946	4.1	0.4	1,018
Thomas	8,451	8,258	8,180	-3.2	-0.9	-271
Trego	4,165	3,694	3,319	-20.3	-10.2	-846
Wabaunsee	6,867	6,603	6,885	0.3	4.3	18
Wallace	2,045	1,821	1,749	-14.5	-4.0	-296
Washington	8,543	7,073	6,483	-24.1	-8.3	-2,060
Wichita	3,041	2,758	2,531	-16.8	-8.2	-510
Wilson	12,128	10,289	10,332	-14.8	0.4	-1,796
Woodson	4,600	4,116	3,788	-17.7	-8.0	-812
Wyandotte	172,335	162,026	157,882	-8.4	-2.6	-14,453
Kansas	2,364,236	2,477,588	2,688,824	13.7	8.5	324,588

Source: U.S. Census Bureau, 1980 Census of Population, *Characteristics of the Population, Number of Inhabitants: Kansas* (PC80-1-A18); 1990 Census of Population, *General Population Characteristics: Kansas* (1990 CP-1-18); 2000 Census, *Profile of General Demographic Characteristics* (DP-1); CQR, <http://www.census.gov/prod/cen2000/notes/cqr-ks.pdf> (accessed December 1, 2005).

**TESTIMONY ON BEHALF OF KANSAS DISTRICT
MAGISTRATE JUDGE'S ASSOCIATION IN OPPOSITION
OF HOUSE BILL No. 2429**

JUDGE BLAINE A. CARTER
DISTRICT MAGISTRATE JUDGE
SECOND JUDICIAL DISTRICT
P.O. BOX 278
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Mr. Chairman, members of the committee thank you for giving me the opportunity to speak to you today. I am Blaine Carter, District Magistrate Judge of the Second Judicial District from Wabaunsee County, Kansas. I am here today on behalf of the Kansas District Magistrate Judge's Association as 1st Vice President and Legislative Chairman.

I stand before you, as have many of my colleagues in the past to oppose the repeal of the long-standing statute KSA 20-301b otherwise referred to as the "one judge per county requirement or rule." For more than 30-years, my association has faced a possible repeal of this statute. We understand that advocates for doing away with the one-judge-per-county rule argue that in a time of tight budgets, the Supreme Court should be able to allocate judges throughout the state based solely on the demands of caseloads. The theory of lets put judges only in the larger counties where most of the people and cases are verses the theory of a co-equal branch of government serving all of the people of this State is the true debate.

I would like to say that our association has opposed the repeal of this long-standing statute KSA 20-301b and will always continue to do so. We do so because we firmly believe in the basic philosophy of a representative system of the judiciary. The concept of accountability that this statute provides citizens and that delivers accessibility to our constituency is not broken. It is an efficient and quality driven system that has been recognized throughout the nation. What a great concept it has been to have people serving the county live in the county and be accountable and assessable to the people they serve. Local judges and local people solving local problems. It is comparable to the system you work under. The main difference is our delivery of services. We believe a Judiciary that is closest to the people is the most efficient and effective for the people. Otherwise I believe the Kansas Constitution would hold a reapportionment section in Article 3 as it does for you in

House Judiciary
Date 1-25-10
Attachment # 8

Article 10. KSA 20-301b was created during court unification in the 1970's and provides for equal access to the court in every county of this state for all taxpayers regardless of where they choose to reside. This promise of a resident judge gave all citizens of this state confidence they would have a judge in their county to provide equal and timely access in resolving disputes and acquiring justice. When KSA 20-301b was drafted and continuing today, this statute is concise and consistent in setting the minimum expectation of one judge in each county of the state. This is just a continuation of the system in place prior to unification in 1977. Before unification, every county had a judge. Even though they heard other matters the judge was called a probate or juvenile judge. To remove this statute and to remove judges from rural counties is not good for the expectation of justice. It is not good for rural areas of this state. To replace this system with a "we'll pencil you in our calendar and get to you when we can find time system" would have a devastating effect on the statutory time frames we work under and the people left dealing with the logistics of such a system. There should remain a minimum standard for access to justice to which every Kansas citizen is entitled. This statute acknowledges the rights guaranteed by the state's Constitutional Bill of Rights that "all persons are entitled to have justice administered without delay." It should not matter where you live you should know there is a state judge in your county who can dispense justice promptly. Justice must be swift and sure. You have put in place law that requires the same. Our services are not just privileges they are rights. The stated intent of this bill and the repeal of this statute would be to eliminate District Magistrate Judge positions primarily in Western Kansas. People in urban areas would not lose access to the court. They would continue to have access to judges who live among them and know their community. In Western Kansas District Judges may be required to take on more cases if remaining Magistrate Judges are unable to handle what they will be given. Without question, statutory time frames will be difficult to maintain. Emergency situations will be more difficult to manage than they are today.

Our association also knows with our economy we face a time where you are trying to find and/or save money wherever you can. If this bill is just about saving money by eliminating judicial positions we would ask that you truly consider what savings you will gain when you look at your entire budget. We hope that you will ask yourselves is the amount saved worth the drastic change to the framework of our co-equal branch of government that has served our state so well for so long.

I do believe that you can only eliminate an elected official's position after their term of office is over. Therefore, any savings from eliminating our positions will not come until one year from now. I believe there are only eighteen positions up for election next year. You would have to wait another two years after that in order to eliminate more positions.

We are in a difficult time. We understand the tasks that face you this session. This summer the Legislative Post Audit Committee had asked Legislative Research to address whether boundaries of Judicial and Prosecutorial Districts could be

redrawn to increase efficiency and reduce costs. This study, which will be submitted shortly, will certainly look at the one-judge-per-county issue. You are considering House Concurrent Resolution No. 5026 that requests a survey and study of the Kansas court system. If approved this study will certainly look at the one-judge -per-county issue.

We would ask that a repeal of KSA 20-301b not be considered until the results of these studies have been completed and/or until you study the true impact of access to justice for local communities and all costs involved with removing the framework of our system.

Thank you for giving me your time and attention.

TESTIMONY ON BEHALF OF THE KANSAS DISTRICT MAGISTRATE JUDGES
ASSOCIATION IN OPPOSITION OF HOUSE BILL 2429

Judge Michael A. Freelove
District Magistrate Judge
Clark County
16th Judicial District

Mr. Chairman, members of the committee, I want to thank you for the opportunity to appear and testify here today on House Bill 2429.

In reading the bill, as I understand it, a district magistrate judge position that has an annual case load of 600 or less could be abolished in that district and reassigned by the Supreme Court to another district. The chief judge of the district then determines which of the district magistrate judges remaining in the district will be assigned to that county. This leaves the citizens of that county with no say as to who their judge is until the next election. Unless the county commissioners elect to retain the judge's position and pay for that position from the county coffers.

In my opinion this defeats the purpose of court unification that created this position in the first place as an assurance to the citizens that they would have a resident judge.

In considering the 600 case load you have excluded traffic infractions or violations. I must admit I am a bit confused, are infractions and violations synonymous, if so why not just say infractions? If not the violations will be misdemeanors which have a must appearance in court and should be counted as part of the case load.

Looking at traffic as case load let's look at DUI cases. These are without a doubt the cases that garner the most attention. They are a serious offense and require a lot of court time. But statistics can be deceiving as far as reporting them. As an example I will give you the statistics for a county in my district.

If you will look at the case load for Ford County in 2009, attached, you will find that there are no felony traffic cases. However in checking the traffic case load for that county I find that there were 32 3rd convictions for DUI and 18 for 4th or subsequent convictions.

The main reason that they are not shown in the annual statistics is because Ford County files all DUIs as criminal cases not traffic even though they are a violation of the traffic code. This tells me that the case loads compiled by the judicial administration may not be consistent between courts and this is what we rely on for the magic number of 600.

In considering case load you should look at the broad jurisdiction that the magistrate judges have in K.S.A. 20-302b. A magistrate's jurisdiction covers 82.5% of the cases reported in the Supreme Court Annual Report for 2008. Not included in this number are the number of felony preliminary hearings, felony arraignments, PFA, PFS, child support,

child visitation or parenting time and in the absence or disqualification of a district judge, district magistrate judges may grant a restraining order as provided in K.S.A. 60-902, appoint a receiver as provided in K.S.A. 60-1301 and issue interlocutory orders as provided in K.S.A. 60-1607. These cases are credited to the district judges but many times magistrate judges spend more time on them than do the district judges. For example in felony cases the magistrate hears the first appearance, motion hearings, preliminary hearings and arraignments after which they are sent to a district judge for trial or sentencing.

For felony cases I also looked at my district where 85% of the cases result in a guilty plea. 70 % of those pleas are heard in front of a magistrate, leaving the district judges only the sentencing, thereby giving the district judge credit for the termination and rightly so because they did terminate the case but it does not give the magistrate credit for the work that they did on the case.

In the districts where the magistrates travel, some only hear criminal cases, many of which are felony cases that they do not get to count for their case load. In some of these districts the magistrate may not get credit for any of the cases that they hear.

The magistrates hear the high volume cases such as limited actions and traffic.

The appearances in limited actions cases are small initially but we eventually see them for hearing in aids or contempt citations.

Traffic is the same way. We have very few trials with the exception of DUI and the more serious charges like reckless driving and attempting to elude which more often than not go to trial. Also included in this are violations by CDL holders who are not eligible for diversions and face suspension of their driving privileges if convicted.

Juvenile cases have a tendency to consume a lot of time, especially child in need of care cases that can have multiple attorneys and can last for 4 or 5 years.

If a child is taken into protective custody a temporary custody hearing must be held within 72 hours excluding Saturday, Sunday or legal holidays. If a hearing is not held the child must be released from custody. This is one of the many time sensitive hearings in the CINC code which has to be met or face the possibility of loosing federal funds.

In juvenile offender cases if a juvenile is placed in a detention facility a detention hearing must be held within 48 hours excluding Saturdays, Sundays or legal holidays. If a hearing is not held the offender must be released by the detention facility. Again if this time line is not met we stand a chance in loosing federal funds.

What do we tell the physically or sexually abused child when we have to return them to the abuser because we did not have a judge to hold a hearing and place them in a safe environment?

What do we tell the possible victims of the offender that we had to release from custody without strict guidelines or protective measures in place? Again these hearings must be held or face the loss of federal funds.

I haven't talked about the emergency protection from abuse or stalking situations, that at times require immediate attention of the judge for the safety of the persons involved. More often than not the abused person has nothing but the clothing on their back, law enforcement may be looking for the perpetrator or waiting on an order from a judge and the victim has no taxi or bus service to rely on. Maybe a friend, if they can find one to get involved, will take them the 50 miles to the judge.

Removing the requirement of one judge per county has adverse affects on time limits especially in rural areas of our state. It means fewer judges to cover ever increasing dockets and distance between courts.

I have heard that with technology today that these hearings can be held by video conferencing. I have used video conferencing and what I have used works fine on a local level but many times if I have to do a detention hearing by video with the detention facility 50 miles away or a care and treatment with the state hospital 80 miles away it does not work. I have been told that we have the wrong system; we should be using computers via the internet. Even with all the firewalls and safety nets we have, we all know that there people out there that can and will disrupt things with the simple stroke of a key if given the opportunity. Most of the counties in rural Kansas do not have this technology.

What do we tell the judge that might be covering two or three counties when their dockets are so full that they cannot get these hearings done in a timely manner, when they have to spend more time traveling than they do performing their judicial duties?

We are back to let the parties travel. With the mobility of today's society this should not be a problem. A majority of the families that we deal with in juvenile matters are at the bottom end of the poverty scale. Cash for clunkers did not work for them. I have heard that the counties were set up for a ½ days horse back or wagon ride to the courthouse. With some of the transportation that these families have a horse or wagon would a better bet but they do not have those either.

What I am saying is the repeal of the one judge per county requirement could have an adverse affect not only on the residents of the counties in their safety, protection and access to justice but could affect the state fiscally.

If you feel that this is a vital step for our state, let's not act hastily but do a comprehensive study before proceeding.

If you have questions I will be glad to answer them to the best of my ability.

Thank you.