

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 18, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Dan Williams - Excused

Committee staff present:

Jill Wolters, Revisor of Statutes

Diana Lee, Revisor of Statutes

Jerry Ann Donaldson, Kansas Legislative Research Department

Cindy O'Neal, Secretary

Conferees appearing before the committee:

Representative Michael O'Neal

Kay McFarland, Chief Justice, Kansas Supreme Court

Valerie Peterson, Prosecutor, City of Manhattan

Karlin Price, self

Lew Ebert, Kansas Chamber of Commerce & Industry

Scott Nehrbass, Kansas Association of Defense Counsel

Jim Clark, Kansas Bar Association

Kathy Porter, Office of Judicial Administration

Pedro Irigonegary, Kansas Trial Lawyers Association

The hearing on **HB 2880 - Office of Judicial Administration/judicial branch updates**, were opened.

Staff explained which statutes are repealed and why. (Attachment 1)

- K.S.A. 20-152, 20-153 and 20-154 were originally part of the joint resolution concerning a study and survey of the court system prior to unification. Most were repealed with the court unification bill but these remain.
- K.S.A. 20-161 required the supreme court to establish a pay plan for nonjudicial personnel and be submitted to the legislature before January 15, 1978.
- K.S.A. 20-321 - 20-323 were part of the Judicial Department Reform Act of 1965, which provided that the chief justice and departmental justices adopt rules and regulations. The rules and regulations have been placed in K.S.A. 20-319(g)
- K.S.A. 20-351a requires the chief justice to report to the chairperson of the House & Senate Judiciary Committees, annually, of district judge positions created or eliminated.

Representative Michael O'Neal complemented the Legislature for legislation allowing the Judicial Branch budget to come directly to the legislature, without budget review by the Governor. At the request of the Chairman, staff was directed to look thru the statutes to see if there were any that needed repealed or updated. While research was being done, it was pointed out that there are some inconsistencies in the statutes and a need for updates. Therefore, the proposed bill was recommended by the Chairman.

Article 3, Sec. 1 of the Kansas Constitution provides that "The supreme court shall have general administrative authority over all the courts in the state." Current law provides in K.S.A. 20-101, Sec. 1 that "the supreme court and each justice thereof shall have such specific powers and duties in exercising such administrative authority as may be provided by law.."

Section 2 of the proposed bill would make clear the role of the departmental justices in developing the budgets of the various judicial districts in the state over which they have a supervisory role.

Other changes address who appoints the judicial administrator. The reporter and clerk, under current law are appointed by the court. The change in appointment of the judicial administrator is intended to make the appointing powers of the court consistent. (Attachment 2)

Kay McFarland, Chief Justice, Kansas Supreme Court, appeared before the committee in opposition to the bill because it dilutes the authority of the chief justice. Each chief justice has there own leadership style and

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it is important that they be able to work closely with the Office of Judicial Administration to carry out the policy of the court. She wasn't aware of any other state that places limits on the chief justice as this bill would. ([Attachment 3](#))

(Later, the committee was provided with a partial search of states that provide that the "supreme court, as a group, has the power to promulgate rules, regulations, and appoint an administrative director." [Attachment 4](#))

She stressed that the other justices are included in all policy decisions. She claimed they have full participation on budget and policy decisions. She was concerned that four of the seven current justices are "getting into their roll" and that it takes time to get familiar with the court and how things work and placing new duties on them would get in the way of their job. She views the bill as micro-managing and interfering with internal matters and the way the court works.

Some committee members saw the bill as simply codifying current practices of the court, where all the justices are included in budget and policy decisions. If this procedure is happening now, they simply want it to continue and do not see it as micro-managing the judiciary.

The hearing on **HB 2880** was closed.

The hearing on **HB 2789 - statistics on restitution ordered & paid by criminal offenders**, was opened.

Valerie Peterson, Prosecutor, City of Manhattan, appeared as a proponent of the bill which would allow the Office of Attorney General to collect information to see how many offenders are being let off of probation without paying their complete restitution. Some courts allow the offenders to be terminated off probation and then turn the unpaid restitution over to a collection agency. ([Attachment 5](#))

Karlin Price, self, explained that once the unpaid restitution goes to a collection agency, their fee comes off of the price to be paid for restitution. She sees this as unfair to the victim. ([Attachment 6](#))

Written testimony was provided by Gene Schmidt, Victims' Rights Coordinator for the Office of Attorney General, in support of the bill. ([Attachment 7](#))

It was pointed out that under K.S.A. 21-4603(d)(b2), the office of attorney general already has the authority to collect restitution on behalf of victims.

The hearing on **HB 2789** was closed.

The hearing on **HB 2846 - jury patriotism act**, was opened.

Lew Ebert, Kansas Chamber of Commerce & Industry, supports the proposed bill because it would help Kansans benefit from a jury of their peers. ([Attachment 8](#))

Scott Nehrbass, Kansas Association of Defense Counsel, appeared as a proponent of the bill. He explained that the proposed bill would allow for jurors to have one automatic postponement of jury service with a simple method of rescheduling service to a more convenient time. Court would defer jury duty for an employee of a small business if another employee from that business was summoned. Citizens would not spend more than one day at the courthouse unless they are selected for a jury panel. Citizens would be guaranteed that they would not be called for jury service more often than once every two years. Those summoned to jury service would not be required to use leave time in order to serve. Jurors who serve on civil trials lasting longer than five days would be eligible for supplemental compensation of up to \$100 per day if they would have otherwise been excused from jury service due to financial hardship. ([Attachment 9](#))

Jim Clark, Kansas Bar Association, appeared as an opponent of the bill. The bill only applies the \$100 to civil juries and not criminal trials. ([Attachment 10](#))

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Kathy Porter, Office of Judicial Administration, suggested that the committee might consider \$100 per day would be paid to all jurors for service over six days, otherwise they would receive the \$10 per day fee. She was opposed to having the court collect an additional \$5 to be placed in a separate fund due to the extra work it would place on the clerks. (Attachment 11)

Pedro Irigonegary, Kansas Trial Lawyers Association, agreed that jurors deserve a higher compensation and that compensation should come from a broad-based source of those who use the court system. He opposed the rest of the bill because the jury system is currently working and doesnt need to be "fixed". (Attachment 12)

The hearing on **HB 2846** was closed.

HB 2291 - district magistrate judges do not have jurisdiction over petitions to terminate parental rights, was scheduled for a hearing but was withdrawn due to the discovery it had a hearing in the 2003 Legislative Session.

The committee meeting adjourned. The next meeting was scheduled for February 19, 2004.