

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 26, 2010, in Room 346-S of the Capitol.

All members were present except:  
Representative Kevin Yoder- excused

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 Jim Fleetwood, 18th Judicial District, Sedgwick County  
Chief Judge Nancy Parrish, 3rd Judicial District, Shawnee County  
Judge Meryl Wilson, 21st Judicial District, Clay and Riley Counties  
Alice Adams, Geary County Clerk of the District Court  
Kathy Porter, Office of Judicial Administration

Others attending:  
See attached list.

Chairman Kinzer advised the committee they have each been provided a memo prepared by the Revisor's staff, as requested, regarding the State of Kansas current liability when previously discussing **HB 2418**, carbon dioxide injection wells. (Attachment 1)

Included in today's handouts is a table showing the traffic caseload filings for Districts 13, 14, 15 and 16, that was missing as an attachment to Judge Freelove's testimony yesterday regarding **HB 2417**, **HB 2429** and **HCR 5026**. (Attachment 2)



Representative Whitham requested a new bill for charitable contribution solicitation limitations.

Chairman Kinzer accepted the bill without objection.

Chairman Kinzer advised we would continue where we left off at the close of meeting yesterday and continue with the hearing on:

**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.

Kathy Porter, from the Office of Judicial Administration, spoke as a proponent in support of **HCR 5026**, a resolution requesting the survey and study, in corporation with the Judicial Council, that would provide for statutory reorganization of the Judicial Branch and its judicial staffing. She reminded the committee that all the testimony that was provided yesterday by the Judicial Branch, recognizes the complicity and strongly urged the committee to support the **HCR 5026** Resolution. She stated the reorganization and judicial staffing measures contemplated by **HB 2417** and **HB 2429** would be premature before a through study of the issues

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involved. She explained other states have gone thru reorganization and approached it in a similar way. They also support a weighted caseload approach study and that an independent, blue-ribbon study commission is the appropriate group to undertake this study and the that funding for such a study must be appropriated by Legislature. She also gave an overview and explanations of some of the attachments to her testimony.

(Attachment 3)

Kathy Porter responded to a question regarding cost of the study by stating that the State of Michigan's cost was around \$185,000 and provided an estimated figure of around \$200,000. Additional discussion followed regarding the possibility of any grant monies, other sources of funding, etc. Representative Colloton shared information with the committee, since this relates to the jurisdiction and expenses of the court, of about 2000 drug courts and 500 mental illness courts in the country that are being handled and funded by the "National Association of State Courts". Many of these cases are handled by diversion and magistrates are used by these specialty courts and also stated there may be grant monies available.

Written testimony was provided by:

District Judges, Robert Fairchild, Sally Pokorny and Michael Malone, in support of HCR 5026 and opposition to HB 2429 until study conducted. (Attachment 4)

Jack Frick, President of Kansas Legislative Policy Group in support of HCR 5026; neutral on HB 2417 and in opposition of HB 2429. (Attachment 5)

Terry Holdren, Kansas Farm Bureau, in opposition of HB 2429. (Attachment 6)

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

The hearing on HB 2226 - Allowing the attorney general or the county or district attorney to request of the district court the convening of a grand jury to investigate alleged violations of serious felonies was opened.

Chairman Kinzer reminded the committee last year there was very brief hearing on this bill, and we had only written testimony from Greg and Missy Smith as they were not able to be here in person. So today we are going to having a second hearing on this bill with Greg and Missy Smith testifying.

Jill Wolters, Office of Revisors, gave an overview of how a grand jury may be summoned in one of two ways under current law. A majority of district judges in a judicial district may order the grand jury be summoned in a county when it is determined to be in the public interest or by petition signed by the electors of a county alleging violations of law. This bill would authorize a third method by allowing the attorney general in any judicial district or the district or county attorney in such attorney's judicial district to petition the district court to order a grand jury to be summoned in the designated county in the district to investigate alleged violations of an off-grid felony, a severity level 1,2,3, 4 or 5 felony or a drug severity level 1 or 2 felony. The court then would then consider the petition and, if it is in proper form, shall order a grand jury be summoned. (Attachment 7)

Jill also answered a question by the committee confirming there is another statute that states when the word judges is used it can also mean magistrate judges, unless specified otherwise.

Missy Smith spoke to the committee in support of the bill. She introduced herself as the mother of Kelsey Smith, an 18 year old beautiful young lady who was taken from a Target Store in Overland Park, Kansas on June 2, 2007 and was brutally raped, sodomized and strangled to death by a complete stranger.

She stated they were fortunate that in Kelsey's case there was a Grand Jury seated. They were not able to attend the proceedings since they are closed. They did not have to listen in open court about the things that happened to their daughter until her killer pleaded guilty. Since the proceedings are sealed all of the evidence in her case has not been entered in open court. This allowed us to be able to give her some dignity. No one will ever be able to see the pictures of their daughter out in the woods deceased. This was very important to them especially in a case that was as public as hers. She told of sitting with Pat Hayes, the father of Keighley

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Alyea, in court as he attended the preliminary hearing of those accused of murdering his daughter; to sit there and watch a father listen to what happened to his child was excruciating; it was one of the most brutal things she has witnessed. No parent should have to witness watching pictures of their child out in a field and the things that have been done to them and if there is a Grand Jury proceeding the family would only have to sit through such an experience at a trial. She also stated it is fairer to the accused and the public did not know what had occurred until her daughter's killer pled guilty. There was no account in the press to taint the jury pool should her case have gone to trial. (Attachment 8)

Greg Smith, father of Kelsey Smith, also addressed the committee in support of the bill. Greg spoke on the importance of grand juries and that according to the National Center for State Courts, eighteen states require a grand jury indictment to begin any felony prosecution. Four states require one to begin any prosecution with a possible sentence of life imprisonment or capital punishment. He also added support that not having to or being able to sit in at the grand jury hearings was a cushioning of the blow to their emotions that would have not been possible if they had to sit through a preliminary hearing and see all the photos and hear all the horrific events that happened to their daughter. He further stated since none of the evidence was able to be sensationalized over and over on the news and newspapers, there is a benefit for the defendant as well, since our criminal system is based on the premise that a defendant is innocent until proven guilty. The facts of a case do come out at a trial later on and are covered by the media then, thus preserving the First Amendment right to freedom of the press. (Attachment 9)

Written testimony in support of the bill was provided by Keith Schroeder, District Attorney for the 27<sup>th</sup> Judicial District of Kansas. (Attachment 10).

The hearing on HB 2226 was closed.

The hearing on HB 2476 - Concerning courts and the judicial branch surcharge fund was opened.

Matt Sterling, Office of Revisor of Statutes, provided an overview of the bill for the committee. He explained that the Legislature passed SB 66 during the 2009 legislative session, which authorized an additional \$10 charge per docket fee and specified when this surcharge was to be imposed that it was authorized for the period of July 1, 2009 to June 30, 2010. HB 2476 would increase the additional charge from \$10 to \$15 per docket fee, and be applicable for the period of July 1, 2010 to June 30, 2011. Section 9 of the bill would enable the fee to be charged to complementary writs and orders throughout Chapters 60 and 61 of the Kansas Statutes Annotated. Finally, the bill would add a \$100 docket fee for the expungement of certain adult convictions and juvenile adjudications. (Attachment 11)

Chief Judge Nancy Parrish, 3rd Judicial District, Shawnee County, appeared before the committee in support of the bill and said it was essential to the judicial budget because it extends the surcharge through June 30, 2011 and adds an additional \$5.00 to the surcharge that will help fill the gap in funding. She explained several cost saving measures that were implemented due to a shortage in the funding such as a hiring freeze and curtailment of funding for temporary positions. She stated the caseloads have increased and unfilled positions due to the freeze, the clerk's office is open from 8:00 a.m. through 4:00 p.m. with the time from 4:00 to 5:00 being used for the clerks to catch up on processing court filings. (Attachment 12)

Chief Judge Jim Fleetwood, 18th Judicial District, Sedgwick County, spoke to the committee in support of the bill and also told of presently operating under increasingly significant handicap due to the hiring freeze and loss of temporary employees. He stated while the existing permanent hiring freeze has created savings sufficient to allow the court to keep the doors open, it will not be able to be sustainable without the additional funding as proposed. He also shared how loss of positions, low morale, excessive work load causing experienced personnel to leave and lessened job satisfaction has had an impact on the court operation. (Attachment 13)

Judge Meryl Wilson, 21st Judicial District, Clay and Riley Counties, presented testimony to the committee supporting the bill but stated this bill cannot alone bridge the gap between the amount appropriated and the amount necessary to operate the Kansas Judicial Branch, however, it is one measure that will help. He also

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told the committee their staff had been reduced by forty-one percent and they have had to take some dramatic steps by changing the hours the clerk's office is open to the public so the clerks can have the necessary time to process the cases that are filed. (Attachment 14)

Alice Adams, Geary County Clerk of the District Court, appeared before the committee and spoke about two issues included in the bill, (1) making the existing surcharge uniform as it applies to Chapter 60 (civil) and Chapter 61 (limited civil) post judgement proceedings, and (2) making the expungement fees and surcharge for adult convictions and juvenile adjudications as well as arrest records for both types uniform. She attached a table summarizing the uniformity and said the change would result in additional money for the surcharge and for the other funds that receive a portion of the docket fee. (Attachment 15)

Kathy Porter, Office of Judicial Administration, spoke to the committee in support of the bill. She stated the Governor's budget for FY 2011 assumes the surcharge will continue. The increase in the surcharge amount by \$5 is expected to generate an additional \$2.48 million above the current surcharge revenues. Without the additional funding, or additional State General Fund appropriations from the 2010 Legislature, the FY 2011 budget would require the same hard hiring freeze the Judicial Branch is now required to impose and that has had a damaging effect on court operations. She also requested an amendment to the bill be made so the bill would be effective upon publication in the Kansas Register. (Attachment 16)

Joseph Molina spoke on behalf of the Kansas Bar Association in support of the bill. He acknowledged the Judicial Branch's efforts to deal with the fiscal reality by implementing a hiring freeze and instituting other efficiencies throughout the judicial system. He stated an adequately funded court system is more efficacious to lawyers and litigants, however it also ensures the right of meaningful access to the courts by all citizens of Kansas. (Attachment 17)

Written testimony in support of the bill was provided by Callie Denton, on behalf of the Kansas Association for Justice. (Attachment 18)

Written testimony in opposition of the bill was provided by Douglas E. Smith, on behalf of the Kansas Credit Attorneys Association. (Attachment 19)

The next meeting is scheduled for January 27, 2010.

The meeting was adjourned at 5:20 p.m.



Office of Revisor of Statutes

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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: January 26, 2010  
Subject: State Liability for Carbon Dioxide Injection Wells and Underground Storage of  
Carbon Dioxide Under the Kansas Tort Claims Act

Under K.S.A. 2009 Supp. 55-1637, the Kansas Corporation Commission is given the authority to adopt rules and regulations for the storage, inspection, maintenance and closing of carbon dioxide injection wells and underground storage of carbon dioxide. The Carbon Dioxide Reduction Act does not give the KCC title to the land containing an injection well or underground storage and the proposed amendment in House Bill No. 2419 would clarify that the state of Kansas and the KCC do not assume liability for any abandoned injection well or underground storage. Considering that nothing in statute confers liability to the state for injection wells or underground storage that exist on private land, any liability for the state would fall under the Kansas Tort Claims Act.

Under K.S.A. 2009 Supp. 75-6103, the Kansas Tort Claims Act (Act) imposes liability on a governmental entity for damages caused by the negligent or wrongful acts of its employees while acting within the scope of their employment. Under K.S.A. 2009 Supp. 75-6102, the term "governmental entity" refers to the "state" and "state" means "the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof." The Kansas Corporation Commission, or any agent of the state, would fall under this definition and pursuant to K.S.A. 2009 Supp. 75-6103, could be liable for negligence or wrongful acts, within the scope of employment of the agent. However, there are a number of exceptions that could be applied to the Kansas Corporation Commission, or any regulatory agency that would exclude the state from liability.

Under K.S.A. 2009 Supp. 75-6104(k), the State has no liability for the failure to make an inspection, or making an inadequate or negligent inspection of any property other than the government's property, when the inspection is done to determine whether the property complies with or violates any law or regulation or contains a hazard to public health or safety. An inspection has been defined in case law as an "investigation, or examination for the purpose of determining whether any property other than property of a governmental entity complies with or

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violates any law or regulation of the governmental entity or constitutes a hazard to public health or safety.” *Siple v. City of Topeka*, 235 Kan. 167, 172 (1984).

Under the facts of *Siple v. City of Topeka*, the City of Topeka had adopted an ordinance authorizing its division of forestry, under the administration and supervision of the city forester, to inspect and remove trees that endanger the public safety. The agency received a complaint and inspected the tree, finding it to be safe. The next day, the tree fell and damaged an individual’s car. In finding no liability for the state for any negligence in the inspection, the court stated that, “Statutes, ordinances and codes requiring inspections are enacted by governmental entities to secure for the public at large the benefits of such enactments. The legislature determined inspection activities are to be encouraged rather than discouraged by the imposition of civil tort liability. Inspections under such statutes, ordinances and codes are not a private service to the owner or occupier of the property. Inspection laws do not create a duty to an individual.” (*Id.* at 173) While it is still possible that liability under the Act would exist if the inspector had found a problem with the tree and done nothing about it, the state is not liable for a negligent or inadequate inspection. Based on the exception provided in K.S.A. 2009 Supp. 75-6104(k) and the current case law, any claim against the state alleging negligent or inadequate inspection of an injection well or underground storage on the part of any regulatory agency would likely be denied.

If a claim was brought against the state, alleging a failure to adhere to rules and regulations established by the KCC pursuant to K.S.A. 2009 Supp. 55-1637(b), the state could also claim an exception from liability under K.S.A. 2009 Supp. 75-6104(c), which holds that the state has no liability for the enforcement or the failure to enforce any law, including statutes, regulations, ordinance or resolution, whether the law is valid or invalid. If a claim sought to impose state liability for failure to enforce regulations or adhere to inspection requirements, this section of the Act would block the state from liability for any such failure.

While the exceptions from liability under K.S.A. 2009 Supp. 75-6104 provide several protections from possible immunity under the Kansas Tort Claims Act, it is still possible that the state could be found liable under the Act if an agent’s negligent or intentional conduct, within the scope of the agent’s employment, was found to not fall under any of the exceptions. If this were to be the case, under K.S.A. 75-6105(a), any liability for claims arising within the Act would be limited to \$500,000 for any number of claims arising out of a single occurrence or accident. Furthermore, under K.S.A. 75-6105(c), neither the government nor the employee acting within the scope of employment would be liable for punitive or exemplary damages. However, under K.S.A. 75-6111, if the governmental entity had insurance in excess of \$500,000, the cap on the government’s liability would be the amount of insurance.

TRAFFIC CASELOAD FILINGS  
YEAR ENDING JUNE 30, 2009, BY COUNTY, BY DISTRICT

	FILINGS							
	Type of Charge				Classification			
	Felony	Misd.	Infraction	Total	Motor Veh. Violation	Ordinance Violation	Parking Violation	Other Violation
<u>District 13</u>								
Butler	57	2,356	3,509	5,922	5,906	0	3	13
Elk	2	60	129	191	191	0	0	0
Greenwood	0	204	479	683	680	0	0	3
Total	59	2,620	4,117	6,796	6,777	0	3	16
<u>District 14</u>								
Chautauqua	2	130	359	491	490	0	0	1
Montgomery	23	964	1,844	2,831	2,808	0	1	22
Total	25	1,094	2,203	3,322	3,298	0	1	23
<u>District 15</u>								
Cheyenne	0	44	89	133	130	0	0	3
Logan	0	71	412	483	479	0	0	4
Rawlins	0	17	40	57	56	0	0	1
Sheridan	0	32	79	111	104	0	0	7
Sherman	0	722	2,985	3,707	3,590	0	101	16
Thomas	0	339	2,187	2,526	2,517	0	0	9
Wallace	0	13	44	57	54	0	0	3
Total	0	1,238	5,836	7,074	6,930	0	101	43
<u>District 16</u>								
Clark	0	62	159	221	218	0	1	2
Comanche	0	40	141	181	173	0	0	8
Ford	0	818	2,056	2,872	2,832	0	2	38
Gray	0	275	901	1,176	1,170	0	0	6
Kiowa	0	281	1,327	1,608	1,600	0	5	3
Meade	1	106	331	438	429	0	0	9
Total	1	1,580	4,915	6,496	6,422	0	8	66

This attachment was missing from Judge Freelove's testimony on 1-25-10 regarding HB 2419, HB 2429 and HCR 5026.





State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
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Topeka, Kansas 66612-1507

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House Judiciary Committee

Monday, January 25, 2010

Testimony in Support of HCR 5026 and  
Testimony In Opposition to HB 2417 and HB 2429

Kathy Porter

Before you today are HCR 5026, a resolution requesting the Supreme Court, in cooperation with the Judicial Council, to undertake a survey and study of the Kansas court system, and two bills (HB 2417 and HB 2429), that would provide for statutory reorganization of the Judicial Branch of government and its judicial staffing. I request that the study contemplated by HCR 5026 be approved and that funding for such a study be appropriated. The overriding issue of how best to meet the needs of Kansas citizens for an effective judicial system must be determined before any reorganization should be considered. An independent, blue-ribbon study commission is the appropriate group to undertake this study.

The reorganization and judicial staffing measures contemplated by HB 2417 and HB 2429 are premature, at best, before a thorough study of the issues involved. Other states that have undergone study and reorganization efforts first obtained workload and weighted caseload studies from knowledgeable and experienced consultants, such as staff at the National Center for State Courts. Funding for workload and weighted caseload studies should be appropriated and the studies should be completed prior to the work of the blue-ribbon study commission, so that study results are available to assist the commission. Clearly, the commission must have this information to make reasoned and fact-based recommendations.

The language of HCR 5026 is similar to the language used in 1973 Senate Joint Resolution No. 2, which authorized the Judicial Study Advisory Committee (known as the JSAC Committee). The committee met for one year before issuing its report. The significant changes that occurred through court unification in the 1970s resulted from the work of the Judicial Study Advisory Committee, which met for approximately one year. Additional information on the JSAC Committee is provided as Attachment 4 to this testimony. Given both the need for the weighted caseload and workload studies and the study time needed by a blue-ribbon study commission, the entire study process could not be completed prior to the 2011 legislative session. However, it would appear that progress could be made by that time. Of the areas of study noted in the resolution, it would appear that unification and restructuring of the courts,

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financing of the courts, and such other areas assigned by the Chief Justice would be the most critical areas of focus.

It must be noted that the Kansas court system is not failing to deliver timely, effective, high-quality justice to the citizens of Kansas. Kansas courts are consistently recognized nationally for our case delay reduction program, effective jury management, uniform child support guidelines, and other key areas in the daily administration of justice in Kansas. The constitutional and statutory duty of the Kansas Judicial Branch is to administer justice in the most equitable manner possible, while maintaining a high degree of effectiveness and efficiency. Justice is effective when it is fairly administered without delay. This constitutional and statutory duty should be the guiding principle of any study of the Judicial Branch and any plan for reorganization.

Because HB 2417 and HB 2429 focus on judicial staffing and the one judge per county issue, following is information and some historical perspective that may be of assistance to you. The need for a thorough study should emerge as the complexity of these issues is considered.

### **One Judge per County Issue**

The Legislature has addressed whether one judge should be located in each county numerous times through the years. Attachment 1 provides a summary of the seven bills introduced since 2000. Copies were compiled and made available to staff.

In past years, legislative discussions have not included much background information regarding district magistrate judges and district court judges, where these judicial positions are located, and other facts. This testimony is intended to provide you this background.

**What Does the Phrase, "One Judge per County" Mean?** "One judge per county" paraphrases the statutory requirement in K.S.A. 20-301b, which provides: "[i]n 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."

The term, "judge of the district court" includes both district judges and district magistrate judges. The qualifications and jurisdiction of both types of judges are discussed in more detail below. Other statutory provisions also are relevant. K.S.A. 20-338 establishes the counties in which many, but not all, current district magistrate judges must be located. K.S.A. 4-202 *et seq.* sets forth the counties comprising the 31 current judicial districts, and specifies the counties in which many of the current district judge positions are to be located.

Past discussions and past legislative proposals focused on the Supreme Court's authority to either abolish or relocate district magistrate judge positions. However, many other considerations also have been discussed. A potential concern is that public safety might be

impacted in the absence of a resident judge in each county because of potential delays in the review of applications for warrants or restraining orders, and in the conducting of criminal first appearances.

Also relevant is the fact that, in recent years, many changes in technology have significantly advanced the ability to communicate and transmit images and documents over distances. To the extent possible under current funding levels, the Judicial Branch has made use of those technological advancements. There is great interest in increasing the use of technology, where appropriate, including electronic case filing, or e-filing. E-filing is viewed as crucial to future court operation for many reasons, including the fact that it is a way to address growing caseloads and demands for information in a cost-effective manner, provides convenience and efficiency for practitioners and the public, and alleviates the need to store paper documents and files.

However, funding issues make a uniform, statewide approach to technology use difficult. While the state funds district court personnel costs, funding district court operations, including technology, is a county obligation as provided in K.S.A. 20-348. If the one judge per county issue as it has been discussed in the past were to be enacted, funding for technological efficiencies needs to be provided.

**Qualifications of District Judges and District Magistrate Judges:** K.S.A. 20-334 sets the qualifications of both district judges and district magistrate judges. District judges shall:

- Be regularly admitted to practice law in Kansas;
- be a resident of the **judicial district** for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; and
- For a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school, or any combination thereof.

District magistrate judges shall:

- Be a graduate of a high school or secondary school or the equivalent thereof;
- be a resident of the **county** for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the county while holding office; and
- if not regularly admitted to practice law in Kansas, be certified by the Supreme Court, in the manner prescribed by K.S.A. 20-337 and amendments thereto, as qualified to serve as a district magistrate judge.

Please note that, although the statute specifies that district magistrate judges must reside in the county from which they are elected or appointed, they can and do travel to other counties

within the district to hear cases at the chief judge's direction. District magistrate judges may also be assigned to hear cases in other judicial districts.

All judges must meet continuing judicial education requirements to ensure they remain informed about developments in state and federal laws and maintain and increase their professional competence.

**Jurisdiction of District Judges and District Magistrate Judges:** K.S.A. 20-302b sets the jurisdiction of district magistrate judges. They have concurrent jurisdiction with district judges, with some exceptions.

A district magistrate judge does not have jurisdiction over the following actions: Any Chapter 60 (general civil) action involving more than \$10,000 (except that a district magistrate judge may hear a contract action involving an unsecured debt); actions against state officers for misconduct in office; actions involving real estate (other than those filed as limited cases or under the probate code); and actions for divorce, separate maintenance, or child custody. The statute also provides that a district magistrate judge does not have jurisdiction over petitions for habeas corpus, receiverships, change of name, declaratory judgments, mandamus and quo warranto, injunctions, class actions, rights of majority, and commitment of sexually violent predators.

Despite the limitations in statutory jurisdiction, K.S.A. 20-3026 provides that, in the absence, disability, or disqualification of a district judge, a district magistrate judge may grant a restraining order, appoint a receiver, and make temporary orders in a domestic case. The statute also provides for appeal to a district judge of rulings of a district magistrate judge and reassignment by the chief judge of actions from a district magistrate judge to a district judge upon motion of a party. Reassignment is mandatory upon request in child in need of care cases where termination of parental rights is sought, but otherwise is discretionary with the chief judge. K.S.A. 20-3026 also specifically notes some of the cases that district magistrate judges may hear, including traffic, cigarette and tobacco, and misdemeanor cases. A district magistrate judge may conduct the preliminary examination of felony charges and hear felony arraignments as assigned by the chief judge. A district magistrate judge may hear child in need of care cases and juvenile offender cases; may establish, modify, or enforce orders of support; and may enforce orders granting visitation rights or parenting time.

**Why Do Some Counties Have District Judges, Some Have District Magistrate Judges, and Some Have Both?** Some history regarding the court system and its judges may be helpful. Prior to court unification in the late 1970's, all district court operations were funded by the counties, with the exception of district judge and court reporter positions, which were funded by the state. Local districts were free to establish and fund county judge positions. The decision as to the type of judge needed was made on a local basis and could be funded on a local basis. With court unification, the state assumed the cost of all district court salaries, including those of

previously locally-funded county judges, and the Supreme Court became involved in the process of determining the need for new judge positions. At the same time, approving funding for all new judge positions became the Legislature's responsibility. The judicial positions currently in the Judicial Branch are those present at the time of court unification, plus those positions specifically added by the Legislature since unification. Prior to 1998, there was no statutory provision allowing the addition of district magistrate judge positions. In 1998, K.S.A. 20-355 was amended to provide that the Supreme Court shall examine the need for district magistrate judge positions, as well as the need for divisions of the district court.

**What is the Current Number of District Judges and District Magistrate Judges, and Where Are They Located?** There are currently 79 district magistrate judges. The map included as Attachment 2 shows the current location of all district magistrate judges, and specifies whether the judge is an attorney. The map also shows the locations of the 167 district judges.

Of the 79 district magistrate judge positions, ten were added by the Legislature since 2000 in response to caseload demands. Five district magistrate judge positions were added in 2000: three district magistrate judge positions for the 10<sup>th</sup> Judicial District (Johnson County) and two district magistrate judge positions for the 25<sup>th</sup> Judicial District (in Finney County). In 2005, three district magistrate judge positions were added, with one district magistrate judge position each provided for the 27<sup>th</sup> Judicial District (Reno County), the 9<sup>th</sup> Judicial District (in McPherson County), and the 8<sup>th</sup> Judicial District (in Geary County). In 2006, an additional district magistrate judge position was added for the 10<sup>th</sup> Judicial District (Johnson County), and in 2008 a district magistrate judge position was added for the 21<sup>st</sup> Judicial District (in Riley County).

**What Level of Funding Is Required to Support the District Magistrate Judge and District Judge Positions?** Funding has been central to past discussions of the one judge per county issue. The following table provides information on the funding needed for the 79 district magistrate judge positions and 167 district judge positions, including chief judges.

**FY 2010 Cost of District Magistrate Judge Positions\***

Number of District Magistrate Judges		Salary	Benefits	Total
1	District Magistrate Judge	\$61,746	\$25,657	\$87,403
Total 79	District Magistrate Judges	\$4,877,934	\$2,026,903	\$6,904,837

**FY 2010 Cost of District Judge Positions\***

Number of District Judges		Salary	Benefits	Total
1	District Judge	\$120,037	\$42,112	\$162,149
136	District Judges	\$16,325,032	\$5,727,313	\$22,052,345
31	Chief Judges	\$3,758,874	\$1,314,333	\$5,073,207
Total 167	District and Chief Judges	\$20,083,906	\$7,041,646	\$27,125,552

\*Please note that rounding is reflected in some totals.

*Travel Costs.* It is important to note that any savings generated by eliminating the requirement for a judge in each county would be offset, to some degree, by additional Judicial Branch travel expenditures, depending upon the legislation that might be enacted. For example, if venue in the county is required, rather than in the judicial district, as discussed in more detail below, judges would need to travel from county to county to hear cases in those counties that would not have resident judges.

**How Has the One Judge per County Issue Been Addressed in Past Legislation?**

Some proposed legislation would simply have repealed the one judge per county statute, K.S.A. 20-301b. Other proposed bills included more detail, but were silent regarding many other issues that would arise, such as venue, terms of office, elections, county financial responsibilities, and jury selection, all of which are discussed below. While 2003 HB 2307 and its substitute version did address some of those issues, additional information or discussion might be helpful.

Some past legislative approaches expressly left a great deal of discretion with the Supreme Court, which is consistent with the Kansas Constitution's placement of Judicial Branch administrative responsibility. However, even if it were expected that the Supreme Court would exercise its discretion in some areas, certain other statutory provisions could pose obstacles. For that reason, these issues should be included in any discussion of the one judge per county issue.

**Venue.** If the one judge per county requirement were repealed, should cases continue to be heard in the county in which they are filed, which would sometimes require judges to travel from one county to another, or should venue be anywhere in the judicial district, with the majority of cases being heard in the county in which the judge resides or the county that is the district's population center? 2003 HB 2307 and its substitute version addressed venue by providing that venue would be district-wide. With district-wide venue, the litigants, rather than the judge, would bear the travel burden. Although this would create efficiencies for the district courts, it would mean that the public, law enforcement officers, state agency personnel, and others would have to travel to other counties for hearings, dockets, motions, trials, and other proceedings, including those of an emergency nature, when necessary. Litigants would include petitioners for protection from abuse or protection from stalking orders, parties in child in need of care cases, and criminal defendants for whom the counties would bear the cost of transportation. Limited actions cases, the majority of which are debt collection cases filed by businesses, comprise the second-highest volume category of cases heard in the Kansas court system, and those businesses and cases would be impacted by any change in the current venue requirements.

If venue remained in the county, a judge might need to be present in each county several days per week, even in counties with smaller caseloads, to meet some time-sensitive requirements of federal and state law, as well as potential public and individual safety concerns. Requiring judges to travel imposes inefficiencies in the use of judges' time and additional costs for Judicial Branch travel expenditures.

**Terms of Office.** Whether by direct or retention election, judges of the district court are elected officials who serve four-year terms pursuant to K.S.A. 20-327. Given that, if the one judge per county requirement were repealed, could a judicial position be abolished or relocated to another county at any time, or must the judge be allowed to serve out the term? In other words, can the term of office of an elected official be shortened by eliminating or relocating that office? Should abolishing or relocating a judicial position be delayed until there is a vacancy in the office?

2003 HB 2307 addressed these questions to some extent by providing that the Supreme Court must designate any district magistrate judge positions to be abolished no later than one year prior to the end of the term for which the current district magistrate judge is serving. (Please note that perhaps this should be amended to refer to any district magistrate judge position to be abolished *or relocated*.) No previously proposed legislation allowed an individual district magistrate judge whose position was relocated to another county to transfer to that county and retain his or her office as a district magistrate judge. That district magistrate judge would have to be selected or elected in the new county to which the judicial position is relocated or in another county if that judge wished to remain a judge.

The terms of office of current district magistrate judges are shown on the map provided as Attachment 3. A total of 18 of the 79 district magistrate judges are currently serving terms that end in January 2011, and the remaining 61 district magistrate judges are currently serving terms that end in January 2013. Of the 167 district judges, 69 are currently serving terms ending in January 2011, and 98 have terms ending in January 2013.

**Elections.** Currently, those district magistrate judges who are elected run for office in the county in which they serve. If a district magistrate judge were to serve several or all counties within a judicial district, should that district magistrate judge be elected by voters in all of the counties in which the district magistrate judge serves? District magistrate judges have argued that running for election on a district-wide basis, particularly in districts in which one county has a significantly greater population than the other counties, places the district magistrate judges from the less populous counties at a distinct disadvantage. Viewed from another perspective, would the voters in a county from which district magistrate judge positions have been abolished be prohibited from voting for the district magistrate judge or judges who hear cases in their county?

**County Financial Obligations.** 2003 HB 2307 included a provision stating that counties for which district magistrate judges were abolished remain responsible for all expenses incurred as that county's share of district court operations within the judicial district, as determined by the chief judge. Either this provision or some other provision may be important so that one county would not be forced to assume expenses formerly assumed by another county.

**Jury Selection.** 2003 HB 2307 provided that venue would be based in the district, rather than in the county, and that jurors would be drawn from the district, rather than the county. If venue is district-wide, it is presumed that one county should not bear an expense previously assumed by another county, and residents of all counties should share the obligation of jury service.

**Conclusion and Supreme Court Recommendation.** Please note this information is not intended to be an exhaustive analysis. Additional legal issues will emerge, and there are other local concerns and practical considerations to be taken into account. The overriding issue is how to best meet the needs of Kansas citizens for an effective judicial system.

Because of the magnitude of the issues involved, a more comprehensive, detailed review and analysis, perhaps by an independent, "blue-ribbon" type study commission, could be beneficial. This commission should include representatives from all three branches of government, practitioners, the public, nonjudicial personnel, representatives of the business community, and others. Geographic diversity should be considered in making appointments. Funding for travel and other costs would be needed.

There are several potentially instructive precedents for this type of commission. Attachment 4 provides information about some of those precedents.



**Legislation Introduced on the One Judge per County Issue, as Required by K.S.A. 20-301b**

**K.S.A. 20-301b. Judge required in each county.** 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. **History:** L. 1983, ch. 105, § 12; L. 1984, ch. 111, § 1; July 1.

<b>Bill and Introduced By</b>	<b>Content</b>	<b>Results</b>
2000 HB 3008 - Introduced by the House Appropriations Committee	Repealed K.S.A. 20-301b	Had a hearing and died in the Appropriations Committee.
2000 SB 618 - Introduced by Sen. Salisbury in the Senate Ways and Means Committee	The major provisions of 2000 SB 618 include: The Kansas Supreme Court shall allocate all judicial resources as the court determines necessary and appropriate. The Court shall assign the number of district judge positions and district magistrate judges as currently provided by law to each judicial district as the court determines necessary. The Court shall determine where each district judge's and district magistrate judge's office is to be located and shall assign the county in which such judge shall serve and hear cases.	Died in the Senate Ways and Means Committee – no hearing.
2002 HB 2755 - Introduced by Reps. Sloan and Findley in the House Appropriations Committee	<p>The major provisions of 2002 HB 2755 that include the one judge per county issue are: The Kansas Supreme Court shall allocate all judicial resources as the court determines necessary and appropriate. The Court shall assign the number of district judge positions and district magistrate judges as currently provided by law to each judicial district as the court determines necessary. The Court shall determine where each district judge's and district magistrate judge's office is to be located and shall assign the county in which such judge shall serve and hear cases.</p> <p>The bill also established the Judicial Caseload Management Fee Fund, funded by assessments on attorneys (\$100 from attorneys licensed less than three years, \$250 from attorneys licensed more than three but less than six years, and \$600 from attorneys licensed more than six years) to fund district court nonjudicial personnel.</p> <p>The bill also included a provision to allow the Chief Justice to increase docket fees as necessary to fund the Judicial Branch.</p>	Died in the House Appropriations Committee – no hearing.
2003 HB 2307 - Introduced by the House Judiciary Committee.	The major provisions of 2003 HB 2307 include: The elimination or reassignment of district magistrate judge (DMJ) positions upon a vacancy; venue and jurisdiction; terms of office; and county financial responsibilities.	Had a hearing in the House Judiciary Committee, with 2003 Substitute for HB 2307 resulting as

	<p><b>Venue</b> for cases pursuant to the statutes amended by 2003 HB 2307 shall be in the applicable judicial district. Under the bill, the word “county” is stricken and replaced with “judicial district.”</p> <p>Section 9 amends K.S.A. 20-331 to strike the language concerning judge of the <b>district court residency requirements</b>.</p> <p>Section 10 amends K.S.A. 20-333 (Abolishment of office of judge upon death, resignation or retirement in certain cases) to add “district magistrate judge” to the statute.</p> <p>Under Section 11, each DMJ shall be elected by the electors of the judicial district where the judge’s position is located.</p> <p>Section 12 states: The terms of office of DMJs determined to be unnecessary or reassigned for district magistrate judges holding office in January of the year following the determination shall expire on the last day of the term for which the district magistrate judge is currently holding office. The Supreme Court must designate any district magistrate positions to be abolished no later than one year prior to the end of the term for which the current district magistrate judge is serving.</p> <p>In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the current district magistrate judge. Counties may elect to pay the salary of the successor district magistrate judges in accordance with the provisions of K.S.A. 20-310a (judges pro tem; power and authority; compensation; reports).</p> <p>Section 38 amends the <b>jury selection</b> process to permit a district-wide selection of jurors.</p> <p>Section 75 amends K.S.A. 20-329 to permit the chief judge to assign cases filed in the district courts to any county within the judicial district.</p> <p>Under Section 76, counties from which district magistrate judge positions have been eliminated pursuant to K.S.A. 20-333 (abolishment of office of judge upon death, resignation, or retirement in certain cases) or 20-354 (procedure for the elimination of certain district magistrate judge positions) shall remain responsible for all expenses incurred as that county’s share of the operations of the district court within the judicial district, as determined by the chief judge of the judicial district.</p>	<p>the committee’s work product.</p>
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<p>2003 Substitute for HB 2307 - This bill was recommended following the House Judiciary Committee hearing on 2003 HB 2307.</p>	<p>The major provisions of Substitute for HB 2307 include: Abolishing or reassigning district magistrate judge (DMJ) positions and district judge positions; terms of office for those district magistrate judges who are eliminated; and county financial responsibilities.</p> <p>Under Section 3, <b>election laws</b> applicable to district court judges shall govern the election of district magistrate judges (DMJs). Each DMJ shall be elected by the electors of the county or counties where the judge's position is located and assigned by the chief judge of the judicial district.</p> <p>Under Section 4, notwithstanding the provisions of K.S.A. 20-301b or 20-338 (district magistrate judge positions established), the Supreme Court may determine that the continuation of a DMJ position is unnecessary because the yearly average caseload of the DMJ is less than 600 cases and the judges in the judicial district are able to assume the workload of the county. The yearly average caseload shall not include traffic infractions or violations, but shall include CINC cases and cases pursuant to the Kansas Juvenile Justice Code and the Probate Code.</p> <p>Section 4 also provides that the <b>terms of office</b> for DMJs determined to be unnecessary and reassigned for DMJs holding office in January of the year following the determination shall expire on the last day of the term for which the DMJ is currently holding office.</p> <p>The Supreme Court shall designate any DMJ positions to be abolished no later than one year prior to the end of the term for which the current DMJ is serving. In counties where DMJ positions are eliminated, the chief judge is responsible for assigning a DMJ from another county to hear cases. If a DMJ is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, the DMJ shall be subject to retention. If a DMJ is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the DMJ shall be elected at the next general election held in November.</p> <p>Section 4 is further amended to permit counties where district magistrate judges are eliminated or reassigned to retain the position and pay the salary of the current DMJ. Counties may elect to pay the salary of the successor district magistrate judge in accordance with K.S.A. 20-310a.</p>	<p>Substitute for HB 2307 was passed by the House Judiciary Committee. Substitute for HB 2307 was considered by the House Committee of the Whole, but failed to pass on a vote of 61-62. A motion to reconsider Substitute for HB 2307 was withdrawn and the bill was killed on final action.</p>
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	<p>Section 6 would require counties where DMJ positions are eliminated to remain responsible for all expenses incurred for that county's share of the operations of the district court.</p> <p>Under Section 7, notwithstanding any other law to the contrary, if the Supreme Court determines that, in order to effectively expedite the business of the district court in any judicial district, the district judge position should be eliminated and that an additional position or positions of district magistrate judge should be created, the Supreme Court shall certify to the Secretary of State the elimination of the district judge position and the creation of the additional position or positions of district magistrate judge. If the position or positions are to be created in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, certification also shall be made to the chairperson of the district judicial nominating commission of the judicial district. When the certification has been made, the position or division shall be deemed created and the judgeship shall be deemed vacant, to be filled in the manner provided by law for filling vacancies in judgeships in the judicial district. If the position or positions are to be created in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the district magistrate judge shall be selected at the next general election held in November.</p>	
<p>2003 HB 2446 - Introduced by the House Appropriations Committee and referred to the House Judiciary Committee.</p>	<p>The major provisions of 2003 HB 2446 are the same as those found in 2003 Substitute for HB 2307.</p>	<p>Died in the House Judiciary Committee – no hearing.</p>
<p>2004 HB 2495 - Introduced by the Special Committee on Judiciary in the House Judiciary Committee.</p>	<p>The major provisions of 2004 HB 2495 include eliminating the requirement of one judge per county and permitting the Supreme Court to reassign judges based on caseload. Under Section 13, in each county there shall be at least one district court judge who is assigned to that county by the Chief Justice. The language stating that the judge be a resident of and have their principal office in such county was stricken. Section 13 <b>also provides that such judge may be assigned to one or more counties or be appointed to a full-time or part-time position as determined by the Chief Justice.</b></p> <p>Section 18 amends K.S.A. 20-354 to give the Supreme Court the ability to eliminate or reassign district magistrate judge positions if the magistrate's yearly caseload is less than 600 cases and</p>	<p>Had a hearing and died in the House Judiciary Committee.</p>

depending on the ability of the remaining judges of the judicial district to assume the entire workload of the county. The yearly average caseload shall not include traffic infractions or violations, but shall include cases filed pursuant to the CINC code, Juvenile Justice Code, and Probate Code.


If a district magistrate judge position were eliminated, the chief judge of the judicial district shall assign a magistrate from another county in the district to be the district magistrate judge for both counties. The elimination or reassignment of district magistrate judges would occur at the end of terms, with notice being given the prior year, or upon a vacancy in the office. Counties from which district magistrate judge positions are eliminated would remain responsible for all expenses incurred for that county's share of the operations of the district court within the judicial district.


If a district magistrate judge is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, the district magistrate judge shall have been subject to retention by the electors of the counties to which such district magistrate judge has been assigned. If a district magistrate judge is assigned to more than one county in a judicial district in which the proposition of nonpartisan selection of district court judges has not been approved, the district magistrate judge shall be elected at the next general election held in November by the electors of the counties to which such district magistrate judge has been assigned.

In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the current district magistrate judge. Counties may elect to pay the salary of the successor district magistrate judges in accordance with the provisions of K.S.A. 20-310a.


# Kansas

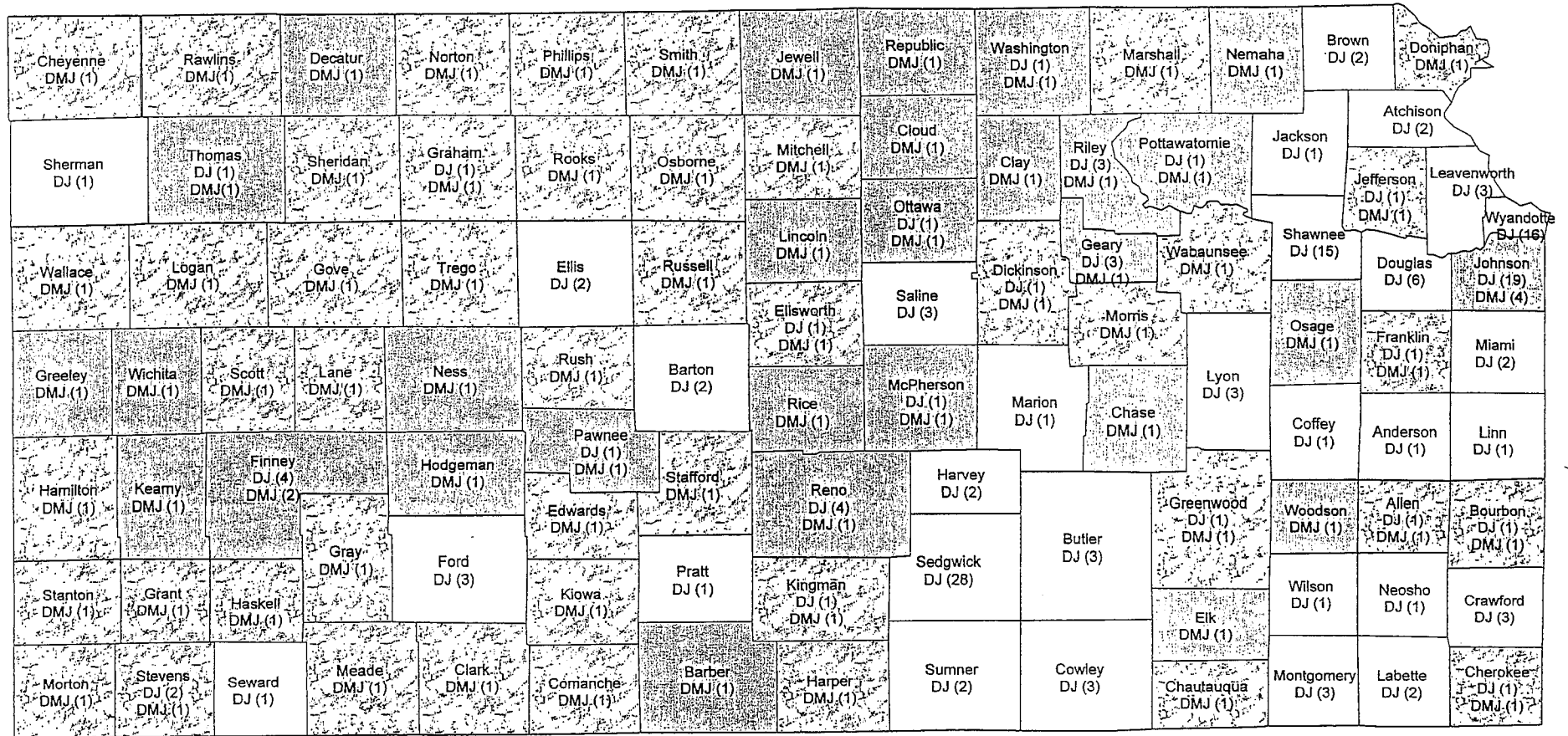
## Judges of the District Court

 = non-attorney DMJ  
- 46 counties  
- 46 DMJs

 = attorney DMJ  
- 28 counties  
- 33 DMJs

79 = Total District Magistrate Judges (DMJ)  
167 = Total District Judges (DJ)


 = no DMJ  
- 31 counties





ATTACHMENT 3

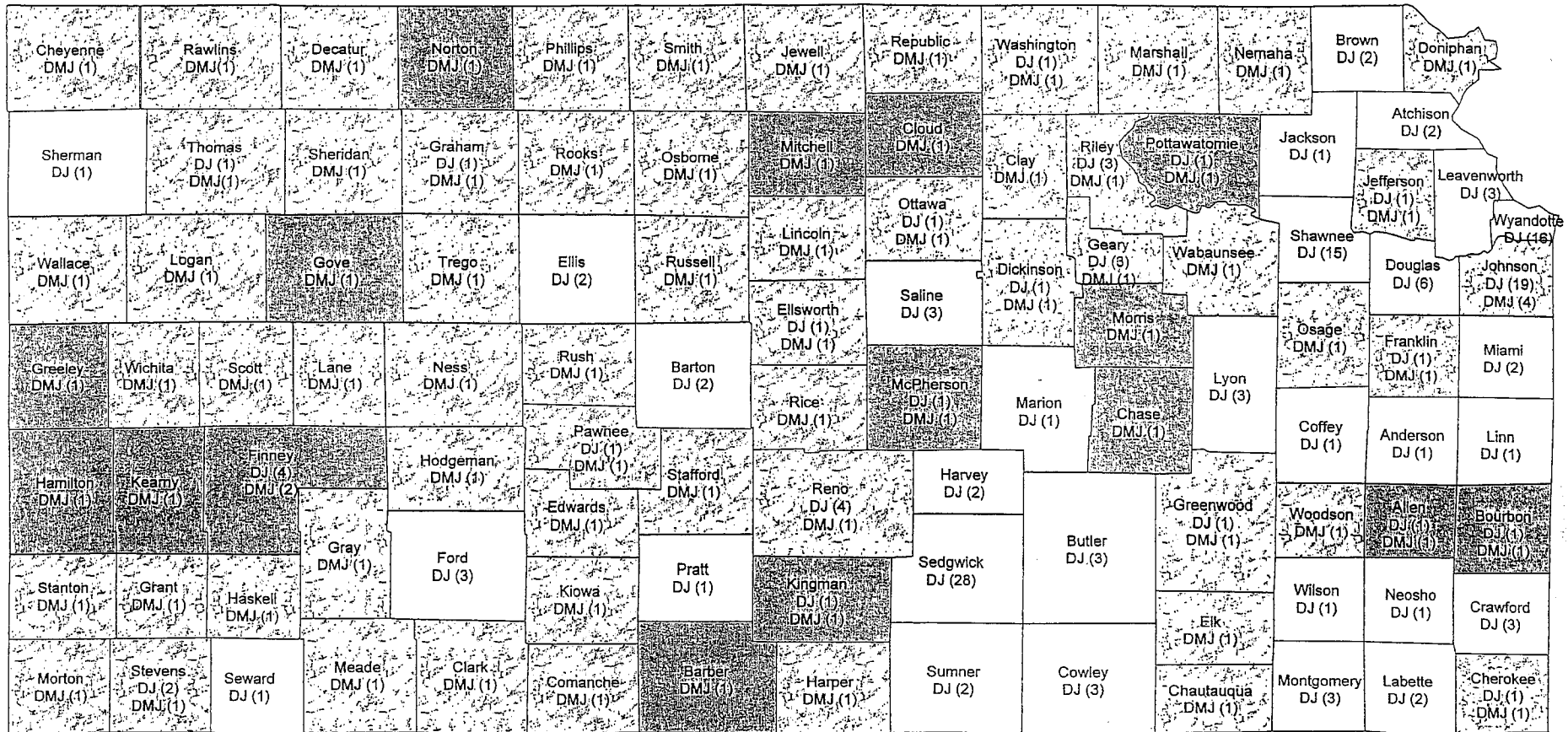
# Kansas

## District Magistrate Judge Term Expiration\*

 = 2011  
- 18 DMJs

 = 2013  
- 61 DMJs

 = no DMJ (31 counties)



\*District Judges' term expiration dates would also be split between 2011 and 2013. While the terms of 167 district judges are more difficult to illustrate in this manner, those term expiration dates are shown in the list included as attachment 3A.

\*Johnson County - 3 DMJ terms expire in 2013 and 1 DMJ term expires in 2011

\*Osage County - District magistrate judge leaves office in 2012 pursuant to K.S.A. 20-2608.

## District Judge Term Expiration

Judicial District	County	Number of District Judges with Terms that Expire in January 2011	Number of District Judges with Terms that Expire in January 2013
1	Leavenworth	2	2
1	Atchison	1	1
2	Jackson		1
2	Jefferson		1
2	Pottawatomie	1	
3	Shawnee	4	11
4	Anderson		1
4	Coffey	1	
4	Franklin		1
5	Lyon	1	2
6	Bourbon		1
6	Linn	1	
6	Miami	1	1
7	Douglas	4	2
8	Dickinson	1	
8	Geary	2	1
8	Marion		1
9	Harvey	1	1
9	McPherson		1
10	Johnson	8	11
11	Crawford		3
11	Cherokee	1	
11	Labette	1	1
12	Washington		1
13	Butler	1	2
13	Greenwood	1	
14	Montgomery	2	1
15	Sherman		1
15	Thomas		1
16	Ford	1	2
17	Graham		1
18	Sedgwick	8	20
19	Cowley	1	2
20	Barton		2
20	Ellsworth	1	
21	Riley	2	1
22	Brown	1	1
23	Ellis		2
24	Pawnee	1	
25	Finney	2	2



## District Judge Term Expiration

Judicial District	County	Number of District Judges with Terms that Expire in January 2011	Number of District Judges with Terms that Expire in January 2013
26	Seward		1
26	Stevens	2	
27	Reno	2	2
28	Saline	3	1
29	Wyandotte	8	8
30	Pratt		1
30	Kingman	1	1
30	Sumner	1	
31	Allen		1
31	Neosho		1
31	Wilson	1	
Totals		69	98

**Previous Studies of Judicial Branch Resources and Structure**

**Judicial Study Advisory Committee**

In 1973, prior to court unification, Senate Joint Resolution No. 2 authorized the Judicial Study Advisory Committee (JSAC). The committee was charged with studying (1) unification and restructuring of the courts; (2) administrative supervision of the courts; (3) selection, tenure, and compensation and retirement of judges and court personnel; (4) appellate review; (4) financing of courts; and (5) other areas assigned by the Chief Justice. The committee met for one year and issued its report in May 1974.

The Judicial Study Advisory Committee was appointed by then-Chief Justice Harold R. Fatzer, who included representatives of the Judicial Branch, the bar, the Legislature, and the general public. He also authorized the committee to employ one or more consulting groups with expertise in court studies. The committee report lists the following persons as members of the Judicial Study Advisory Committee:

Edward F. Arn, Wichita, Chairman – Attorney; Former Attorney General; Supreme Court Justice; Former Governor of Kansas  
Whitley Austin, Salina – Publisher, *The Salina Journal*  
John Carlin, Smolan – Member of the House of Representatives; Dairyman  
Carol Chalmers, Manhattan – President, League of Women Voters of Kansas  
James P. Davis, Kansas City – Attorney; Former Assistant Prosecutor Wyandotte County; former Legislator; County Commissioner  
Ray E. Dillon, Jr., Hutchinson – Businessman; President, Dillon Stores Company  
Albert B. Fletcher, Jr., Junction City – District Court Judge; Former President, Kansas District Judges Association  
Kenneth Ingham, Wichita – Municipal Court Judge  
Patricia L. Jones, Lakin – Probate Judge; Juvenile Judge; County Court Judge; Secretary, Special Court Judges Association  
Jack McGlothlin, Pittsburg – Leader, Kansas Organized Labor  
W.A. “Ernie” Mosher, Topeka – Executive Director, League of Kansas Municipalities  
Don Matlack, Clearwater – Attorney; Former State Senator; Governor’s Liaison Representative to the Legislature  
John C. Peterson, Topeka – Student, Washburn University School of Law; Member of House of Representatives  
Robert “Bob” Wells, Garden City – General Manager, Harris Radio Group; Former Member 1964 Citizens’ Conference on Modernization of Kansas Courts  
John F. Steineger, Jr., Kansas City – Attorney; Senator; Senate Minority Leader  
A.L. “Al” Swart, Oakley – Swart-Park Motors, Inc.; Farmer  
Tyler C. Lockett, Wichita – Court of Common Pleas Judge  
Ray Freman Crofoot, Cedar Point – Stockman; Farmer  
J.C. Tillotson, Norton – Senator; Attorney; Senate Judiciary Committee Chairman

## Attachment 4

Additional sources also note as a member Robert F. Bennett of Overland Park, an attorney who served as a state senator, President of the Senate, and Senate Majority Leader, and who later was elected the Governor of Kansas.

A copy of the JSAC report is available upon request. The Judicial Study Advisory Committee's recommendations provided the basis for court unification in the late 1970's. Regarding the judges of the unified district court, the Judicial Study Advisory Committee recommended that:

1. The judicial authority of the district court should be exercised by district judges, associate district judges, and district magistrate judges under the supervision of district administrative judges.
2. Each county of Kansas should have either a resident associate district or district magistrate judge.
3. The present full-time attorney judges of state courts of special or limited jurisdiction should become associate district judges.
4. The present nonlawyer judges and part-time attorney magistrates of state courts of special or limited jurisdiction should become district magistrate judges.

### **The Kansas Citizens Justice Initiative**

The Kansas Citizens Justice Initiative was authorized by order of the Supreme Court on June 3, 1997. Members were appointed by then-Chief Justice Kay McFarland, then-Governor Bill Graves, and the chairpersons and ranking minority members of the Senate and House Judiciary Committees. In all, 46 members were appointed, including co-chairs Jill Docking, of Wichita, and former Governor Robert Bennett, of Shawnee Mission. The deans of the University of Kansas School of Law and the Washburn University School of Law served as co-reporters.

The commission met for the first time on September 29, 1997. The Docking Institute at Fort Hays State University provided technical support and administered two surveys for the commission. Hearings were held at Topeka, Leavenworth, Junction City, Wellington, Wichita, Lecompton, Iola, Pittsburg, Hutchinson, Hays, Independence, Kansas City, Overland Park, and Olathe. The communities of Garden City, Dodge City, Liberal, and Pratt had public hearings together through videoconferencing technology. Nearly 600 Kansans attended one of the hearings and more than 125 individuals submitted written comments. The commission's final meeting occurred on June 11, 1999, in Wichita, and its final report was issued shortly after that meeting.

The commission made a total of 23 recommendations. Regarding the allocation of judicial resources, the commission made the following recommendations:

## Attachment 4

- (a) The Legislature should fund the court system adequately. On the issue of one judge, one county, there is no need to require one judge to reside in each county for Kansas to have a properly functioning judicial system that provides all citizens, wherever located, adequate access to the courts and delivers justice of high quality. It is sufficient to require that every county have a judge assigned to the county and that specified services be available at the courthouse. Judges may be assigned so that they serve more than one county. However, the Legislature may choose to retain the requirement of a resident judge in each county for political, social or other reasons. Such a choice should be made only if the Legislature provides funding for additional judges and non-judicial personnel.
- (b) The Kansas Supreme Court should be granted authority to allocate all judicial resources, including the location of judges and judges' offices where the one county, one judge requirement is not implicated.
- (c) The Legislature should fund a weighted caseload study as suggested by the Legislative Post-Audit Report.

A copy of this report is available upon request.

### **The Judicial Redistricting Advisory Committee**

In 1989, the House Appropriations Subcommittee on the Judicial Branch requested a study of judicial redistricting. The main focus of the study became allocation of judicial and nonjudicial personnel. This shift in focus was based on a finding of "unequal and inefficient distribution of judicial and nonjudicial personnel."

The Judicial Council agreed to accept the study of judicial redistricting and the issues comprising the request. The committee members were appointed and met seven times between July 1990 and January 1991. Members included three district judges, one district magistrate judge, one retired Supreme Court justice, two representatives of nonjudicial personnel (clerks of the district court), one person not involved in the legal system, one House member, one Senate member, and two attorneys.

The Committee described its purpose as "to study the current geographical configuration of the 31 judicial districts, consider the possible need for judicial redistricting and the allocation of judicial and nonjudicial personnel. In addition, the committee will study the 'considerable use of temporary judicial assignments' and the concept of geographical pay differential for judges."

The committee also sought to answer the following questions:

1. How can the judicial districts best be organized on a district-wide basis?
2. How can changes be made that clarify and simplify the Supreme Court's authority to administer the judicial system?

## Attachment 4

3. Should some or all of the municipal courts be brought into the state court system?
4. Should the rulemaking authority of district courts be clarified as it relates to municipal courts?
5. If there is not a judge in each county, what procedures should be implemented to handle emergency matters that may arise?
6. Should a combination clerk/judge position be created in certain areas?
7. Should judges pro tem be used more widely?
8. Should the two tiered system of district judges and district magistrate judges be continued?
9. Should district magistrate judge positions be created in urban areas?
10. If the system is changed, should district magistrate judges be elected or retained on a district-wide basis?
11. If changes are made, should counties be allowed to pay a part of the salary in order to have a full-time district magistrate judge?
12. If there is some change in the number or location of judges or nonjudicial personnel, how can these positions best be created, shifted or terminated?
13. Should each judicial district have two district judges?
14. Should there be changes in the judicial districts that have two courthouses?
15. Should the Supreme Court appoint an ongoing committee to consider assignment of judicial and nonjudicial personnel throughout the system?
16. Should productivity studies be conducted on a regular basis in each judicial district?
17. Should the present method of assigning judges outside the judicial district be maintained?
18. Are the experience and abilities of retired justices and judges being used to the full extent possible?

The Judicial Redistrict Advisory Committee made the following recommendations based on the issues and philosophies discussed above:

1. The present geographical configurations of the Judicial Districts require no change.
2. The present allocation of judges has resulted in an unequal and inefficient distribution of judicial personnel.
3. The present allocation of nonjudicial personnel has resulted in an unequal and inefficient distribution of nonjudicial personnel.
4. Long distance out-of-district assignments are not the most efficient use of judicial personnel.
5. The concept of geographical pay differentials for judges should not be implemented.
6. In order to have efficient administration of the judicial system, the Supreme Court should be given broad discretion in the areas of assignment of judicial and nonjudicial personnel and the creation and elimination of judicial and

## Attachment 4

nonjudicial positions. The specific statutes which limit such discretion are impediments to judicial efficiency and should be amended or repealed.

One issue discussed by the committee was recommending the repeal of K.S.A. 20-301b, which requires at least one resident judge in each county of the state. Questionnaires were sent to 900 persons comprising both those directly involved with the court system and those indirectly involved. In total, 68% of those responding stated they were against the repeal of the statute.

The committee originally recommended that the statute be repealed based on a finding of unequal and inefficient distribution of judicial personnel. Additionally, the committee found an imbalance in the number of judges at the time of court unification, the difficulty of the Judicial Branch in eliminating and creating judicial positions, the reluctance of the Legislature to fund additional positions, and the fact that additional positions that are funded usually lag well behind the needs for those positions. The committee believed the requirement results in inefficient use of judges and that the number of judges in a district should not be determined on a county by county basis. The committee condoned making a clerk available in every county. However, they found that judges traveled to busier counties within their district because they were not needed full-time in their present county of residence. Additionally, law-trained or better qualified persons in adjoining counties may be available for a judicial position but may not want to leave family and friends.

The committee withdrew its recommendation before the final report and stated that K.S.A. 20-301b should be amended if recommended by a suggested study by the National Center for State Courts. The National Center for State Courts study was never conducted.

Additional Redistricting Studies are also available. Those include the Report of the 1979-1981 Judicial Council Study, the Report of the 1967-1968 Judicial Council Study, the Report of the 1957-1958 Legislative Council Study, and the Report of the 1943-1944 Legislative Council Study.

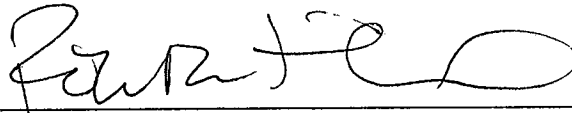
## TESTIMONY BY DISTRICT JUDGES OF 7<sup>TH</sup> JUDICIAL DISTRICT

We have been asked to testify concerning House Bill 2429. We believe that in this time of budgetary crisis a rule that requires one judge in every county may well result in a misallocation of judicial resources and create inequality in justice throughout the state. However, it is also our belief that this issue should not be dealt with in a vacuum. We support the position taken by the Kansas District Judges Association.

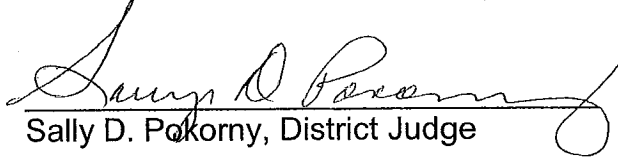
The position adopted by the KDJA is as follows:

"It shall be 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 greatly affects persons within and outside the judicial system such that any modification may greatly affect the allocation of resources, access to justice, local community and state-wide interests. For this reason any change first deserves 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."

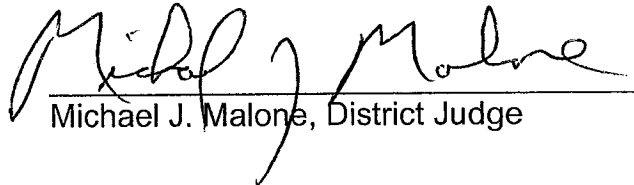
We recognize and support the valuable service provided by the fine district judges and district magistrate judges who serve the State of Kansas. Our sole concern is that all citizens of Kansas receive equal justice under the law.



Robert W. Fairchild, District Judge



Sally D. Pokorny, District Judge



Michael J. Malone, District Judge

House Judiciary

Date 1-26-10

Attachment # 4



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## **KANSAS LEGISLATIVE POLICY GROUP**

P.O. Box 555 • Topeka, Kansas 66601 • 785-235-6245 • Fax 785-235-8676

**Testimony of  
Commissioner Jack Frick  
Scott County Commissioner  
President, Kansas Legislative Policy Group**

**Before the House Committee on Judiciary**

**House Bill No. 2429, House Bill No. 2417 and House Concurrent Resolution No. 5026**

**January 25, 2010**

Dear Chairman Kinzer and Members of the Committee:

Kansas Legislative Policy Group (KLPG) is pleased to provide written testimony today. The KLPG is a bipartisan, non-profit corporation of elected commissioners from 30 western Kansas counties. We appreciate the opportunity to submit remarks on this issue, which is of great importance to our member counties.

House Bill No. 2429 seeks to reassign court resources across judicial districts. Our Commissioners fully understand the lack of State funding to meet court personnel requirements. We also make decisions daily to meet our funding obligations for the courts as well. Counties with smaller caseloads may now lose the local presence of a district judge or district magistrate within their communities. Generally, these counties also have a declining population, which likely contributes to the low caseload. Under the bill as drafted, these counties are also required by law to maintain court operations and pay all expenses with the potential of no daily judicial presence.

KLPG has long supported and continues to advocate for one judge per county. Situations and circumstances arise that will require law enforcement personnel to immediately interact with a judge to obtain a search warrant or other imperative court orders. These occurrences can occur at any time of the day or night and immediate accessibility is paramount and House Bill No. 2429 may impact to law enforcement's ability to perform their duties expeditiously. We therefore oppose the removal and reassignment of judicial positions between districts.

House Judiciary

Date 1-26-10

Attachment # 5



Some will likely suggest that the counties that lose a judicial position could possibly fund their own replacement positions. This option creates a bigger financial burden on these smaller counties, with an already shrinking tax bases, to generate such funding.

We believe in the equal sharing of resources between local governments and try to do so whenever possible. House Bill No. 2429 doesn't seem to get there. KLPG hopes that there might be a formula for a more equitable remedy We would support House Concurrent Resolution No. 5026 which establishes an advisory committee to further study these issues and report back to the legislature.

In regard to House Bill No. 2417, which seek to increase the usage of district magistrate judges, for our member counties district magistrate judges currently make up more than 40% of the positions within the judicial districts, with an overall average of 66% for the nine judicial districts.

Thank you for your consideration and the opportunity to present these written remarks.



*PUBLIC POLICY STATEMENT*

HOUSE COMMITTEE ON THE JUDICIARY

**Re: HB 2429; Reassignment of district magistrate judges.**

**January 25, 2010  
Topeka, Kansas**

**Written Testimony by:  
Terry D. Holdren  
KFB Governmental Relations**

---

Chairman Kinzer and members of the House Judiciary Committee thank you for the opportunity to share our thoughts on HB 2429 which would eliminate the statutory requirement that there be one judge of the district court in each county in the state. As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through 105 county Farm Bureau Associations. Our members farm and ranch, and make their homes in communities across the state and benefit each day from the existence of an efficient and available judiciary.

We oppose HB 2429. This measure would allow both district judges and district magistrate judges to be removed from their current assignments and reassigned to locations where caseloads are higher. We understand the need for judicial economy in these difficult economic times and are grateful for the provisions of Section 4(c) which would allow County Commissioners to fund district magistrate positions following elimination.

House Judiciary

Date 1-26-10

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Our members have adopted policy strongly supporting the requirement that there be at least one judge in each county.

Judges in less populated communities play vital roles as community leaders and provide critical and timely service to local law enforcement. Their presence ensures access to the judicial system and facilitates compliance with Kansas law requiring timely hearings for any number of legal issues. They also provide jobs and contribute to the economies of struggling rural communities.


We appreciate the opportunity to present these comments today. KFB stands ready to assist this committee to ensure that all Kansans have the opportunity to have their concerns addressed by our judicial system.

Thank you.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*

Office of the Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 24-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: House Committee on Judiciary  
From: Jill Ann Wolters, Senior Assistant Revisor   
Date: 26 January, 2010  
Subject: HB 2226

Under current law, a grand jury may be summoned in one of two ways. A majority of district judges in a judicial district may order the grand jury be summoned in a county when it is determined to be in the public interest or by petition signed by the electors of a county alleging violations of law.

HB 2226 would authorize a third method to summons a grand jury, allowing the attorney general in any judicial district or the district or county attorney in such attorney's judicial district to petition the district court to order a grand jury to be summoned in the designated county in the district to investigate alleged violations of an off-grid felony, a severity level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony. The court would then consider the petition and, if it is in proper form, shall order a grand jury to be summoned.

House Judiciary  
Date 1-26-10  
Attachment # 7

Prepared Testimony of Missey Smith  
Mother of Kelsey Smith  
for the  
Kansas House Judiciary Committee  
In Support of House Bill 2226

January 26, 2010



*In Memory of Kelsey*

My name is Missey Smith. I am the mother of Kelsey Smith the beautiful, loving young lady that was taken from a Target store in Overland Park, Kansas on June 2, 2007, and was brutally raped, sodomized and strangled to death by a complete stranger. She was only 18 years old. I am here to testify in support of House Bill 2226.

We were fortunate that in Kelsey's case there was a Grand Jury seated. We were not able to attend the proceedings since they are closed. To me this is much less traumatic to a family. We did not have to hear in open court what had happened to our daughter until her killer pled guilty. Since the proceedings are sealed all of the evidence in her case has not been entered in open court. This allowed us to be able to give her some dignity. No one will ever be able to see the pictures of our daughter out in the woods deceased. This was very important to us. Especially in a case that was as public as hers.

Last week I sat with Pat Hayes, the father of Keighley Alyea, in court as he attended the preliminary hearing of those accused of murdering his daughter. To sit there and watch a father listen to what happened to his child was excruciating. It was one of the most brutal things I have witnessed. Sitting there with him as he saw pictures of his daughter out in a field, deceased was something that I don't ever care to experience again and no parent should have to witness. If there were a Grand Jury proceeding a family would only have to sit through such an experience at the trial.

In my opinion, the proceeding is also fairer to the accused. In Kelsey's case, the public did not know what had occurred until her killer pled guilty. There was no account in the press to taint a jury pool, should her case have gone to a trial. In Keighley's case, it has been widely reported that the three accused have confessed. Which do you think would have a better chance of seating a jury that has not heard any of the evidence in a case, and would be able to have an open mind at a trial?

# Written Testimony of Greg Smith in Support of HB 2226

January 26, 2010



House Judiciary

Date 1-26-10

Attachment # 9

The Fifth Amendment to the U.S. Constitution states, "No person shall be held to answer for a capital, or otherwise infamous crime, ***unless on a presentment or indictment of a Grand Jury***, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger..." This is not a novel concept. It is constitutionally sound and is the way all federal cases go to trial, if the grand jury finds the evidence supports the charge.

All states use grand juries in some capacity. According to the National Center for State Courts, eighteen states require a grand jury indictment to begin any felony prosecution. Four states require one to begin any prosecution with a possible sentence of life imprisonment or capital punishment.

A grand jury was seated when Kelsey was murdered so my wife, children and I did not have to go through a preliminary hearing. Since the proceeding was sealed there was no media coverage of the horrific events that happened to Kelsey. We were not allowed to be in the room so we did not have to hear any of the evidence or see any of the crime scene photos. This was a cushioning of the blow to our emotions that would not have been possible at a preliminary hearing.

Additionally, none of the evidence was publicized so there was no speculation about the defendant's guilt or innocence. There was no sensationalized hashing and rehashing of the case on the evening news or in the newspaper. This was a benefit for the defendant as well. Think about it. People that will eventually be on the jury read the newspaper and/or watch the news on TV and that could, potentially, give them a preconceived notion of the defendant's innocence or guilt. The defendant could be, and usually is, judged by the news media, which could influence a potential juror's opinion. Considering our criminal justice system is based on the premise that a defendant is innocent until proven guilty, the media coverage could change that premise.

The facts of a case do come out at trial and are covered by the media then. The trial is always a public hearing so the press is not excluded from covering and reporting on it, thus preserving the First Amendment right to freedom of the press.

HB 2226 is a bill that protects victims and their families from undue emotional pain. It also protects the rights of the defendant. This is why I support HB 2226.



**DISTRICT ATTORNEY**  
Keith E. Schroeder

**DEPUTY DISTRICT ATTORNEY**  
Thomas R. Stanton

**SENIOR ASSISTANT  
DISTRICT ATTORNEY**  
Stephen D. Maxwell

**ASSISTANT DISTRICT ATTORNEYS**  
Amanda G. Voth  
Cheryl I. Allen  
Wakil O. Oyedemi

**OFFICE OF THE  
RENO COUNTY  
DISTRICT ATTORNEY**

The 27th Judicial District of Kansas  
206 West First Avenue, 5th Floor  
Hutchinson, KS 67501-5245

TELEPHONE: (620) 694-2715  
FAX: (620) 694-2711

Victim-Witness Service  
(620) 694-2773

Investigator John R. Tracy  
(620) 694-2765

TP: The Honorable Representatives of the House Judiciary Committee

FROM: Keith Schroeder  
Reno County District Attorney

RE: House Bill 2226

DATE: January 25, 2010

Chairman Kinzer and Members of the Committee:

Thank you for giving me the opportunity to submit written testimony regarding House Bill 2226. I support the purpose of the legislation, but suggest an amendment must be made to make it workable.

HB 2226 would allow a county or district attorney to convene a grand jury to return indictments on crimes falling within severity levels 1 through 4 on the non-drug grid, and levels 1 and 2 on the drug grid. This power would be limited only by the review of the district judges within the particular jurisdiction to insure the request is in "proper form."

Herein lies the issue needing clarification. The statute does not dictate the proper form of the petition. The only "form" suggested in the legislation is that for a citizen-driven petition for the empaneling of a grand jury. That form will not be sufficient for a petition presented by the county or district attorney. Without defining the form to be used by a county or district attorney, judges would have unlimited discretion to quash the request if they disagree with the district or county attorney's wishes. The bill must either define the form required for the petition, or do away with the requirement of its judicial approval.

I have long supported the idea that prosecutors should be able to use grand juries to obtain indictments in criminal cases. Grand juries are used on the federal level, and appear to operate very

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Date 1-26-10

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well. Kansas uses preliminary hearings to establish a probable cause basis for felony prosecutions. These hearings are created by statute, and are not required by constitutional law. In fact, the constitution prescribes grand juries as the vehicle to insure probable cause exists for a felony prosecution. Therefore, the use of grand juries is a valuable alternative to the use of preliminary hearings. Grand juries are also valuable investigative tools, especially in larger cases where the right to subpoena witnesses would be extremely valuable in reaching just prosecutions.

In a time of financial crisis, I believe grand juries would be an economical solution for crowded felony dockets. Grand juries could save time district court judges now use conducting preliminary hearings. District judges would be freed up to conduct more important business such suppression motions and jury trials.

Some jurisdictions may not take advantage of the use of grand juries, depending on the size of the jurisdictions and the criminal activity present. However, many of the jurisdictions in this state would, under the proper circumstances.

Respectfully submitted,



Keith Schroeder  
Reno County District Attorney

Office of Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 010-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Kinzer and member of the House Judiciary committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: January 26, 2010  
Subject: House Bill 2476

During the 2009 legislative session, the Legislature passed Senate Bill 66 that, among other changes, authorized an additional \$10 charge per docket fee. The additional charge was to be added to the fees imposed on: Persons requesting an order or writ of execution pursuant to K.S.A. 60-2401, persons requesting a hearing in aid of execution or an alias order for hearing pursuant to K.S.A. 60-2419, persons requesting an order for garnishment pursuant to article 7 of chapter 60 of the Kansas Statutes Annotated or article 35 of chapter 61 of the Kansas Statutes Annotated, persons requesting a writ or order of sale pursuant to K.S.A. 61-3602 and persons requesting a hearing in aid of execution pursuant to K.S.A. 61-3604. The additional charge of up to \$10 was authorized for the period of July 1, 2009 to June 30, 2010.

House Bill 2476 would amend many of the provisions enacted by Senate Bill 66 to increase the additional charge authorized in it from \$10 to \$15 per docket fee and would be applicable for the period of July 1, 2010 to June 30, 2011. HB 2476 would also enable the additional fee to be charged on complementary writs and orders throughout chapters 60 and 61 of the Kansas Statutes Annotated. Finally, HB 2476 would add a \$100 docket fee for the expungement of certain adult convictions and juvenile adjudications.

The changes in section 9 of the bill would enable the additional charge to be added for an alias order or writ of execution pursuant to K.S.A. 61-3602, an alias order for garnishment pursuant to article 35 of chapter 61 of the Kansas Statutes Annotated, an alias writ or order of sale pursuant to K.S.A. 61-3602, an alias order for hearing in aid of execution pursuant to K.S.A. 61-3604 and an attachment or an alias order of attachment against the property of a defendant or any one or more of several defendants, pursuant to K.S.A. 60-701 or 61-3501.

The changes in section 3 would add a \$100 docket fee for expungement of adult convictions and section 11 would add a \$100 docket fee for expungement of juvenile adjudications. Currently, K.S.A. 2009 Supp. 22-2410 provides for a \$100 docket fee for the expungement of arrest records, but there is no statutory authority for the surcharge to be applied to certain adult conviction expungements pursuant to K.S.A. 2009 Supp. 21-4619 and juvenile adjudication expungements pursuant to K.S.A. 2009 Supp. 38-2312.

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Date 1-26-10  
Attachment # 11



## KANSAS DISTRICT COURT

Chambers of  
NANCY E. PARRISH  
Chief Judge

Shawnee County Courthouse  
Division Fourteen  
Topeka, Kansas 66603-3922  
(785) 233-8200 Ext. 4067  
Fax (785) 291-4917

Officers:  
NORMA DUNNAWAY  
Administrative Assistant  
APRIL SHEPARD  
Official Court Reporter

House Committee on Judiciary  
January 26, 2010

### Testimony in Support of House Bill 2476

Chairman Kinzer and members of the House Judiciary Committee, thank you for the opportunity to appear today in support of House Bill 2476. I currently serve as Chief Judge in the Third Judicial District here in Shawnee County and as President of the Kansas District Judges Association.

House Bill 2476 is essential to the judicial budget because it extends the surcharge through June 30, 2011 and adds an additional \$5.00 to that surcharge for a total surcharge of \$15.00. I am in support of this bill because it will help fill the gap in funding in the judiciary budget for FY 2011. In FY 2010 several cost savings measures were implemented due to a shortage of funding. Those measures included a hiring freeze and curtailment of funding for temporary positions.

The Third Judicial District currently has 9.5 vacancies (4 in the district court clerk's office, 3 in Court Services, 1 court reporter position, and 1.5 law clerk positions). Fortunately we have not been as severely affected by resignations and retirements as some of the other judicial districts. However, the numbers of open positions don't reflect the full impact of our situation. In addition to the positions we cannot fill due to the hiring freeze, we have a court reporter who has had a stroke and is off indefinitely and have had 18 out of 50 employees in the clerk's office who have been on medical leave for more than a week at a time and 4 in the court service office who have been on some type of extended medical leave.

We also have seen a huge increase in case filings from 2008 to 2009. The filings increased by 5,834 cases and of those increases there were 859 additional cases in criminal (a 42% increase), 2,158 additional cases in chapter 60 civil (a 43% increase) and 2,823 additional cases in chapter 61 (limited actions) cases. For fiscal year 2009, the Third Judicial District already had the highest case load per judge if traffic cases were not included.

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Complicating the situation of unfilled positions due to the freeze is the discontinuation of state funds to hire temporary help for the clerks and court services offices. Because of the hiring freeze the Third Judicial District Clerk's office has reduced the number of hours that the clerk's office is open to the public. The clerk's office is open from 8:00 a.m. through 4:00 p.m. with the time from 4:00 to 5:00 being used for the clerks to catch up on processing court filings.

We are hopeful that the extension of the surcharge through July of 2011 and the increased surcharge amount will help fund the gap in the judicial budget and enable the court to avoid furloughs and allow open positions to be filled. If there is not adequate funding, more positions will become vacant due to retirements and resignations and the problems associated with a shortage of staff will continue to increase. In addition, the threat of furloughs will continue to affect the morale and productivity of our court staff.

We request your support of HB 2476 and we thank you for the introduction of this bill and the opportunity to present testimony in support of it. We realize the challenges facing the legislature this session are immense. We appreciate the difficulty of the choices that confront each of you. Thank you for your consideration.

Respectfully submitted,

Nancy Parrish  
Chief Judge, Third Judicial District

## HOUSE COMMITTEE ON JUDICIARY

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

January 26, 2010  
3:30 p.m.  
Room 346-S

Chief Judge James R. Fleetwood  
Eighteenth Judicial District  
525 N Main  
Wichita, Kansas 67203  
[jfleetwo@dc18.org](mailto:jfleetwo@dc18.org)

### **TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN SUPPORT OF HCR 2476**

I am James Fleetwood, Chief Judge of the Eighteenth Judicial District of the State of Kansas covering Sedgwick County, Kansas. I would like to thank this honorable committee for allowing me the opportunity to speak in favor of House Bill 2476 which addresses an increase in the surcharge presently being collected and extends the termination date of the ability to assess surcharges. I appear at the request of the Office of Judicial Administration and on behalf of my district which is the largest judicial district in the State. We, as is the entire judiciary, are presently operating under an increasingly significant handicap. Due to the hiring freeze and loss of temporary employees our workforce has been reduced by 26 people. While the existing permanent hiring freeze has created a savings sufficient to allow the court to keep the doors open, it will not be sustainable without the additional funding proposed through this surcharge

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bill. The budget supplement from surcharges has been necessary in the past and continues to be crucial to continued daily operation of the court.

Continued operation in the current year relies upon a combination of the proposed 5 million dollar supplemental appropriation, the revenue generated by this surcharge, and the increased savings arising from higher than expected attrition of court personnel. The increased attrition, which I believe is due to general reduction in morale, lessened job satisfaction and retirement has allowed the court to operate under a strict budget supplemented by surcharges. However, this increased loss of employees cannot be maintained indefinitely nor, as I just stated is it sufficient to keep the courthouse doors open without the increased surcharge requested in this bill.

The present pressure arising from one person carrying the work load of two, coupled with the constant fear of furloughs has been detrimental, resulting in the loss of trained and experienced personnel to any other job opportunity that may arise. If we can at least reduce the anxiety over potential furloughs through the supplemental funding derived from continued surcharges I am hoping that we can also reduce the bleeding of court talent to other employers.

This increasing loss has obvious limitations. Presently the 18th Judicial District has lost more total employees than any other district. This loss has affected timely court operation, scope of service, and post conviction supervision of convicted criminals. Our remaining employees are dedicated to providing quality service to the citizens of Sedgwick County. However, they are facing difficult circumstances. A Court Supervision Officer recently included the following in her letter of resignation:

“I need to finish a task once it is started and do it well. Wish me luck with that because I’ll answer four phone calls, answer two emergency emails and see three drop-in clients before I even remember what the task I was trying to finish was. My bottom line right now is quality of life (including the 8 hours I spend here.) It is time to run up the white flag.”

Two clerks have shared the following information with me.

Mary (name changed) has asked for help through Lifeline (the state employee assistance program) after feeling overcome with stress. She is the sole caregiver for an aging parent with medical issues. She has reached her “breaking point” from working in an office that is short staffed and caring for her elderly parent.

Amanda (name changed) recently confided in me that she was very worried about the impending furloughs and worrying about making ends meet. She has stated that she had no choice but to put her house up for sale. She further notes that as she is a single mother the stress this was causing her was making it hard for her to sleep at night.

As you know the judicial budget allocation from the State in any district is nearly 100% personnel. There are no maintenance projects or capital improvement projects that can be deferred from the State judicial budget if the court must continue operation with a termination of surcharges. For all intents and purposes the district court's sole method of meeting necessary budget cuts will be by reducing the cost of staff through furloughs thus fulfilling the worst fears of our employees. If the surcharges are not modified as proposed in this bill we will have to adopt these last remaining cost savings available to the court.



Last year the surcharge provided a necessary portion of our operating budget and continues to be an absolute necessity to forestall these looming furloughs. Surcharges will help remove one of the greatest present sources of job anxiety our employees face and may increase our ability to keep needed employees in the coming months.

Last year one third of the 18<sup>th</sup> Judicial District employees worked a second job to make ends meet. I know from increased requests seeking permission for supplemental income that this percentage has increased. Lessening that fear of furlough days would have a significant effect on these families. Further loss of staff will have a significant effect on the quality and timeliness of services provided to the public. It is my hope that HB 2476 can put us in a position to protect the court from further degradation of its ability to serve the community by furloughs and unnecessary employee attrition. I cannot stand here and tell you that I have made all appropriate calculations and can guarantee you that the surcharge will be the panacea that guarantees free, unencumbered operation of the court but I believe strongly that it will bring us very close to that goal. I do know that absent the surcharge as proposed today the courts will close and will lose valuable and loyal employees dedicated to the safety and well-being of this State.

In closing and with the greatest respect for this committee and the challenges you face, I would ask you to allow the continued use of surcharges as proposed in HB 2476 to benefit the ongoing work of the state court system, its employees and officers.

Thank you for your consideration.

Hon. James R. Fleetwood  
Chief Judge  
Eighteenth Judicial District  
Sedgwick County, Kansas

## HOUSE COMMITTEE ON JUDICIARY

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

January 26, 2010  
3:30 p.m.  
Room 346-S

Judge Meryl D. Wilson  
Twenty-first Judicial District  
100 Courthouse Plaza  
Manhattan, Kansas 66502  
[mwilson@rileycountyks.gov](mailto:mwilson@rileycountyks.gov)

### **TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN SUPPORT OF HB 2476**

I wish to thank this honorable committee for extending the opportunity to appear and present testimony in support of HB 2476. I am Meryl Wilson, past president of the Kansas District Judge's Association and District Judge of the Twenty-First Judicial District, which includes Riley and Clay Counties.

Since December 2008, the Office of Judicial Administration has imposed a hiring freeze in an attempt to meet budget reductions. This attempt has produced significant savings; however, this freeze has had a dramatic effect upon our judicial district and others throughout this state.

As of Monday, January 25, our current district clerk's office staffing consists of 8.5 positions out of an authorized 14.5 FTE positions. That is more than a 41 percent reduction in staff. In addition to the reduction in full-time staffing, all

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funding for temporary help has been eliminated from the Judicial Branch, which for our district meant the equivalent of another .75 FTE position.

Imagine, for a moment, what effect a forty percent reduction in staff would have upon a school district, a police department, a Dillon's, or a Hy-Vee store. It has been a struggle. To cope with this reduction we have been forced to close the Clerk of the District Court's office to the public. We now open the clerk's office to the public at 9:00 a.m. and close to the public at 4:00 p.m. on Monday, Tuesday, Thursday, and Friday. On Wednesdays we open to the public at 9:00 a.m. and close at noon. While staff of the clerk's office work from 8:00 a.m. to 5:00 p.m., we must close to the public so that the clerks can process the cases that are filed without interruptions from phone calls and counter service. This is the only way our remaining clerks can attempt to deal with all the work they are now being asked to handle. Although most attorneys and the public understand, not a day passes without some very upset citizen who arrives at the courthouse only to find the clerks office closed.

Although this bill alone cannot bridge the gap between the amount appropriated and the amount necessary to operate the Kansas Judicial Branch, it is one measure which will help.

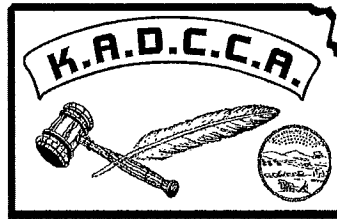
Thank you for this opportunity to present our position.

Respectfully submitted,

Meryl D. Wilson

District Judge, Twenty-First Judicial District

McNett, President  
Barber County  
118 E Washington  
Medicine Lodge, KS 67104  
620-886-5639



Kathleen Collins, President Elect  
Wyandotte County  
710 N 7<sup>th</sup> St. Mezzanine  
Kansas City, KS 66101  
913-573-2946

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House Bill 2476

TESTIMONY

Surcharge Uniformity

By Alice Adams, Clerk of the District Court  
Geary County District Court  
Eighth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators. My testimony will cover two issues in House Bill 2476: 1) making the existing surcharge uniform as it applies to Chapter 60 (civil) and Chapter 61 (limited civil) post-judgment proceedings; and 2) making the expungement fees and surcharge for adult convictions and juvenile adjudications as well as arrest records for both types uniform.

A brief review of the surcharge bill shows the legislative conference committee that worked on the provisions of 2009 SB 66 in the final days of the 2009 legislative session attempted to codify the provisions of the previous surcharge. However, the filings to which the surcharge may be added are not uniform between Chapter 60 and Chapter 61. The clerks are seeking uniformity between the two chapters to avoid the confusion that now exists for them and for attorneys and litigants in applying the 2009 surcharges. The consistency between the two will also mean that the surcharge will apply to a few more filings and will result in additional surcharge income.

The attached table shows the filings that would be affected. The bill will provide authority to apply the surcharge to Chapter 61 orders or writs of execution and alias orders for hearing. There is statutory authority currently to apply the surcharge to these orders in Chapter 60 cases but not in Chapter 61 cases. In addition, Chapter 60 writs or orders of sale would be included in the surcharge. Presently per statute, Chapter 61 writs or orders of sale fall under the surcharge, but not Chapter 60 writs or orders of sale. Finally, both Chapter 60 and 61 alias writs or orders of sale, attachment orders, alias orders of attachment, alias orders for garnishment and alias orders or writs of execution would be included in the surcharge under this bill.

The second issue in this bill addresses expungement. It would add a \$100 docket fee for adult conviction and juvenile adjudication expungements, and would provide statutory authority to assess the surcharge on juvenile adjudication expungements. At the present time the docket fee applies only to the expungement of arrest records. The surcharge applies only to the expungement of adult arrest and conviction records.

The attached table summarizes the uniformity we are seeking. This amendment would also result in additional money for the surcharge and for the other funds that receive a portion of the docket fee.

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Tiffany Gillespie, Secretary  
Trego County  
216 North Main  
WaKeeney, Ks 67672  
785-743-2148

Cecil Aska, Treasurer  
Geary County  
P O Box 1147  
Junction City, KS 66441  
785-762-5221 x 1435

Phil Fielder, Past President  
Ellis County  
P O Box 8  
Hays, Ks 67601  
785-628-9415

House Judiciary

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Attachment # 15

**PROPOSED SURCHARGE LEGISLATION**

DOCUMENT TO BE FILED	CHAPTER 60	CHAPTER 61	COMMENTS
Order or Writ of Execution (also referred to as: Special or General Execution; Writ of Assistance)	Yes	<del>No</del> Yes	Added language to include K.S.A. 61-3602.
Alias Order for Hearing	Yes	<del>No</del> Yes	Added language to include alias orders in Ch. 61.
Writ or Order of Sale	<del>No</del> Yes	Yes	Added language to include K.S.A. 60-2401.
Alias Writ or Order of Sale	<del>No</del> Yes	<del>No</del> Yes	Added language to include alias orders.
Attachment Order	<del>No</del> Yes	<del>No</del> Yes	Added language to include K.S.A. 60-701 and 61-3501.
Alias Order of Attachment	<del>No</del> Yes	<del>No</del> Yes	Added language to include alias orders.
Alias Order for Garnishment	<del>No</del> Yes	<del>No</del> Yes	Added language to include alias orders.
Alias Order or Writ of Execution	<del>No</del> Yes	<del>No</del> Yes	Added language to include alias orders and writs.

**PROPOSED EXPUNGEMENT LEGISLATION**

TYPE OF EXPUNGEMENT	DOCKET FEE	SURCHARGE	COMMENTS
Conviction Expungement (K.S.A. 21-4619)	<del>No</del> Yes	Yes	Added language to include \$100 docket fee.
Arrest Expungement (K.S.A. 22-2410)	Yes	Yes	No changes recommended.
Juvenile Expungement (K.S.A. 38-2312)	<del>No</del> Yes	<del>No</del> Yes	Added language to include \$100 docket fee and surcharge.



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

House Judiciary Committee

Tuesday, January 26, 2010

### Testimony in Support of HB 2476

Kathy Porter

Thank you for the opportunity to testify in favor of HB 2476. This bill would increase from \$10 to \$15 the surcharge currently charged on most court docket fees.

The 2009 Legislature considered the current \$10 Judicial Branch Surcharge as a way to provide funding for the Judicial Branch budget, which was significantly underfunded. 2009 SB 66 authorized the Supreme Court to impose an additional charge, not to exceed \$10, on specified docket and other fees, to fund the cost of nonjudicial personnel. 2009 SB 66 also created the Judicial Branch Surcharge Fund, into which the surcharge amounts are deposited.

HB 2476 would increase the surcharge amount by \$5, to a total of \$15, effective July 1, 2010. With that effective date, it is expected to generate an additional \$2.48 million above the current surcharge revenues. Extending the surcharge into FY 2011 is critical. The Governor's budget for FY 2011 assumes that the surcharge will continue. Moreover, without additional revenue or additional State General Fund appropriations from the 2010 Legislature, the FY 2011 budget would require the same hard hiring freeze the Judicial Branch is now required to impose and that has had a damaging effect on court operations. So that additional revenue can be generated, I am requesting that the bill be made effective upon publication in the *Kansas Register*. This would allow us to realize a full year of additional revenue in FY 2011, because there is a delay from the bill's effective date until the authorized increase is received by the State Treasurer.

In addition, as noted in the testimony from Alice Adams, the bill would provide uniformity between Chapter 60 and Chapter 61 fees to which the surcharge is added, and would provide uniformity regarding expungements by requiring a \$100 docket fee for adult conviction, adult arrest, and juvenile expungement filings. Currently, only adult arrest expungements are charged a \$100 docket fee. There is no docket fee for adult conviction expungements or juvenile expungements. The \$15 surcharge would be applied to all expungements.

The Judicial Branch Emergency Surcharge was a fee that was charged in addition to the statutory docket fee when cases were filed. The revenue generated from the Emergency

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Surcharge kept Kansas courts open and operating. The Emergency Surcharge was in effect April 1, 2002, through fiscal year 2006. At that time, the state's fiscal situation had improved and the Legislature was able to fully fund the courts. Therefore, during the 2006 legislative session SB 180 was enacted, which stated that docket fees would be set by the Legislature and no other fee would be charged. Given the current fiscal crisis the state is experiencing, the 2009 Legislature revisited the idea of a surcharge, and enacted 2009 SB 66, which contains the current surcharge. The surcharge allows the Legislature to use funds that otherwise would be appropriated to the Judicial Branch for other necessary expenditures, while helping to keep the courts open and functioning. The Court does not view the surcharge authority as permission to increase fees to fund enhancements or even operations when they choose. It is viewed as a temporary stopgap measure to react to severe underfunding. The Legislature is the appropriating body, and should remain so. The surcharge is a method through which additional fees can be generated that, for the specified time period, will take the place of State General Fund financing for the Judicial Branch.

I appreciate your consideration of amending HB 2476 to be effective upon publication in the *Kansas Register* and recommending HB 2476 favorably for passage.



**KANSAS BAR  
ASSOCIATION**

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P.O. Box 1037  
Topeka, Kansas 66601-1037  
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Website: [www.ksbar.org](http://www.ksbar.org)

TO: Lance Kinzer, Chair  
And Members of the House Judiciary Committee

FROM: Joseph N. Molina  
On Behalf of the Kansas Bar Association

Re: HB 2476 -- Increasing the judicial branch surcharge fund and docket fee.

Date: January 26, 2010

Good afternoon Chairman Kinzer and Member of the House Judiciary Committee. I am Joseph Molina and I appear on behalf of the Kansas Bar Association in support of HB 2476 which would increase the judicial branch surcharge providing needed funds to the Judiciary.

The KBA is acutely aware of the inadequate funding of most governmental agencies and institutions, and it is especially conscious of the lack of funding for the Judicial Branch. Not only is an adequately funded court system more efficacious to lawyers and litigants, it also ensures the right of meaningful access to the courts by all citizens of Kansas. Currently, the Judicial Branch is experiencing a significant budget shortfall that will require furlough of judicial branch employees. These furloughs will undoubtedly affect the practice of law and those that depend upon it. On those days that the courts are closed, the old axiom of getting thru the courthouse doors will be an impossible task.

The KBA applauds the Judicial Branch's efforts to deal with the fiscal reality by implementing a hiring freeze and instituting other efficiencies throughout the judicial system. However, there comes a time when additional measures are needed to stabilize the situation and create a measure of certainty. HB 2476 would stabilize the judicial budget and provide a level of certainty that the general public and court employees could rely upon.

On behalf of the Kansas Bar Association, I thank you for your time this afternoon and would be available to respond to questions at the appropriate time.

Respectfully,

  
Joseph N. Molina  
KBA Director of Government and Legal Affairs

*About the Kansas Bar Association:*

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students, and paralegals.

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*Your rights. Our mission.*

To: Representative Lance Kinzer, Chairman  
Members of the House Judiciary Committee

From: Callie Jill Denton JD  
Director of Public Affairs

Date: January 26, 2010

Re: HB 2476 Court Fees and Costs; Judicial Surcharge Fund

On behalf of the Kansas Association for Justice, thank you for the opportunity to submit testimony in support of HB 2476.

The Kansas Association for Justice supports access to justice and a level playing field for all parties to a dispute. KsAJ members have seen first hand the impact of hiring freezes and funding shortfalls on the courts and are concerned.

The administration of justice is a critical state function. The courts must be funded adequately so that cases can proceed smoothly and be resolved efficiently. Constitutional protections, as well as the interests of fairness, demand justice without delay.

Certainly, docket fees and court costs could become so cost prohibitive that they would discourage parties with legitimate disputes from seeking their proper resolution in the courts. KsAJ does not believe the current bill, which temporarily increases fees to support non-judicial personnel costs, would produce such a result.

KsAJ supports HB 2476 as a reasonable approach, given current budget concerns, to assure the public's access to the courts and the efficient administration of justice. KsAJ respectfully requests the Committee's support of HB 2476.

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**KANSAS CREDIT ATTORNEYS ASSOCIATION**  
**REMARKS CONCERNING HOUSE BILL NO. 2476**  
**HOUSE JUDICIARY COMMITTEE**

**January 26, 2010**

Chairman Kinzer and Members of the House Judiciary Committee:

Thank you for the opportunity to present remarks regarding House Bill No. 2476 on behalf of the Kansas Credit Attorneys Association. The Kansas Credit Attorneys Association (KCAA) is a statewide organization of attorneys, representing law firms, whose practice includes considerable collection work in Kansas.

The KCAA appears today as an opponent to House Bill No. 2476, which seeks to further increase docket fees by another \$5.00 per filing. We have recently seen a series of docket fee increases over the last few years and based on discussions with our membership we believe Kansas businesses may have reached the tipping point with the last increase in 2009.

However, the most concerning part of House Bill No. 2476 deals with fees charged on alias matters. If a matter makes it to the sheriff on time but the sheriff simply doesn't get it served for whatever reason, an alias is issued and a new charge will be incurred. Similarly, if something gets hung up at the clerk's office and doesn't make it out to service in time, a new charge is incurred. These are issues that are completely out of our members and their clients control but will be required to pay for. An alias is not a new action, it ties back to the original petition, aid or citation which was simply not served effectively for whatever reason. It is not a new document or pleading and shouldn't be treated as such or charged another fee as if it were a new action. A few years ago when the service of process fees were established in statute, aliases were specifically excluded by the legislature from the fee for similar logic and reason, service is out the requesting parties control once requested.

Like all of us, the sheriff and clerk are having to do more with less, and the surcharge and sheriff's fee is indiscriminate when it comes to the success or effectiveness of the proceeding. The Alias allows us to continue the process, and give our clients what they originally paid for - effective and timely service. This language, if passed, will have a dramatic, negative impact on post judgment actions.

Our members, who perform debt collection services and pursue legal proceedings on behalf individuals and businesses, have seen a marked decrease in court filings across Kansas. Clients are pulling back on the pursuit of legal actions to collect debts. Especially on smaller collections, less than \$1,000, where the docket fees on a percentage basis are bigger portion of the debt to be collected. People aren't willing to pay the docket fees, which have doubled in recent years, to go after debts that they may or may not collect on.

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Chapter 60 and 61 legal actions make up the largest portion of the case filings each year. When these filings decline the Court's revenue stream is greatly impacted. With the current financial and economic conditions filings have remained steady, likely due to national lenders seeking resolution to problem loans. We believe that this national activity will soon decline, and our local clients will continue to hold back on their filings as a result of increased dockets fees.

We need to find a solution that keeps dockets fees at an equitable level to encourage use of the court system, when needed, thus protecting the courts revenue stream and also allowing individuals and businesses to reasonably attempt to collect what is owed to them. The KCAA opposes the proposed docket fee increases and requests that you not pass House Bill No 2476.

Thank you for your time and consideration.

Douglas E. Smith  
For the Kansas Credit Attorneys Association