

SENATE COMMITTEE ON JUDICIARY

Hon. Jeff King, Chairman
Hon. Greg Smith, Vice Chairman
Hon. David Haley, R.M. Member

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Room 346-S

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TESTIMONY IN OPPOSITION TO SB 59 UNLESS AMENDED

Thank you, Mr. Chairman and this honorable committee for extending the opportunity to present testimony in opposition of SB 59 unless amended. Due to my Court schedule I cannot appear in person, but the KDJA is represented today by Chief Judge James Fleetwood and Chief Judge Merlin Wheeler. Both are present to testify. I am Daniel D. Creitz, Chief Judge of the Thirty-First Judicial District and a member of the Executive Board of the Kansas District Judges Association (KDJA) serving as the KDJA Legislative Co-Chair with Judge James Fleetwood, Chief Judge of the Eighteenth Judicial District. Judge Merlin Wheeler, Chief Judge of the Fifth Judicial District, is also a member of the KDJA Executive Board. The KDJA opposes SB 59 unless amended.

SB 59 seeks to clarify magistrate jurisdiction but unless amended SB 59 would confuse magistrate jurisdiction. The KDJA and the thirty-one Chief Judges agree that magistrate jurisdiction must be clarified but SB 59 as proposed is not helpful.

2014 HB 2065, now codified as K.S.A. 20-302b, was recommended by the Blue Ribbon Commission (BRC) in 2012, as a part of project Pegasus the most comprehensive review of the judicial branch in decades. HB 2065 sought to accomplish two BRC goals. First, to allow magistrates to handle uncontested and less complicated cases with the consent of the parties. Second, to require all magistrate decisions to be made on the record, abolishing de novo appeals

from law trained magistrates to the district court and having those appeals go directly to the Court of Appeals.

However, 2014 HB 2065 had inadvertent but substantive errors that have caused unnecessary and time consuming administrative problems for those judicial districts with magistrates. These errors must be corrected.

The errors are easy to explain but difficult to solve. K.S.A. 20-302b essentially vacated most magistrate jurisdiction then reinstated it in those cases with the written consent of the parties. Thus starting July 1, 2014, it became necessary for magistrate judges to obtain the consent of the parties to hear those cases. Without the written consent of all the parties, the magistrate cannot hear the case and a district judge must hear the case. Many cases have multiple parties, and in some cases it is problematic obtaining the essential consents.

SB 59 is an attempt to solve the problem. But as written it further confuses magistrate jurisdiction. The main confusion comes from Section 1. Section 1 first allows “magistrate judges jurisdiction in traffic infraction cases, wildlife and parks violations, cigarette or tobacco infractions or misdemeanors, felony first appearances, the preliminary examinations and to hear misdemeanor or felony arraignments.” Then it excepts “as otherwise specifically provided in this section, in civil cases, a district magistrate judge shall have jurisdiction” in limited actions, K.S.A. 61-2801 et seq, and “concurrent jurisdiction, powers and duties with a district judge.” But then it essentially voids the earlier grant of jurisdiction when it provides “except otherwise specifically provided in this section, in all other civil cases, a district magistrate judge shall have jurisdiction over any civil action not filed under the code of civil procedure for limited actions only with the consent of the parties.” Then it grants magistrate jurisdiction “over uncontested actions for divorce.” And then to further confuse jurisdiction SB 59 provides, “Except with consent of the parties, or as otherwise specifically provided in this section, a district magistrate judge shall not have jurisdiction or cognizance over” a list of about 13 types of cases.

There are two main solutions. First, the language in Section 1 of SB 59 could be amended so that the magistrate jurisdiction is clearly defined. Second, the attached suggested amendment could be utilized. It was drafted by the KDJA Executive Board. It was designed as a fix to last year’s bill.

Thank you for this opportunity to testify on behalf of the KDJA and as one of the thirty-one Kansas Chief Judges.

Respectfully submitted,

Daniel Dale Creitz
Chief Judge, Thirty-First Judicial District
KDJA Executive Board Member and Legislative Co-Chair

James Fleetwood
Chief Judge, Eighteenth Judicial District
KDJA Executive Board Member and Legislative Co-Chair

Merlin Wheeler
Chief Judge, Fifth Judicial District
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