

Senate Substitute for HOUSE BILL No. 2065

AN ACT concerning district magistrate judges; relating to jurisdiction; appeals; amending K.S.A. 61-3903 and K.S.A. 2013 Supp. 20-302b, 22-3602, 22-3609a, 38-2273, 38-2382, 59-2401a, 60-2102, 60-2103a and 61-3902 and repealing the existing sections.

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

Section 1. K.S.A. 2013 Supp. 20-302b is hereby amended to read as follows: 20-302b. (a) *Subject to assignment pursuant to K.S.A. 20-329, and amendments thereto*, a district magistrate judge shall have the jurisdiction and power, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, cigarette or tobacco infractions or misdemeanor charges, to conduct *felony first appearance hearings* and the preliminary examination of felony charges and to hear *misdemeanor or felony arraignments* ~~subject to assignment pursuant to K.S.A. 20-329, and amendments thereto~~. Except as otherwise provided, in civil cases, a district magistrate judge shall have jurisdiction over actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto, and concurrent jurisdiction, powers and duties with a district judge. Except as otherwise specifically provided in *this subsection and subsection (b), in all other civil cases*, a district magistrate judge shall ~~not have jurisdiction or cognizance over the following actions:~~

~~(1) Any action, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money, in which the amount in controversy, exclusive of interests and costs, exceeds \$10,000. The provisions of this subsection shall not apply to actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto. In actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code or to issue support orders as provided by paragraph (6) of this subsection;~~

~~(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;~~

~~(3) actions for specific performance of contracts for real estate;~~

~~(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established. Nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in K.S.A. 61-3801 through 61-3808, and amendments thereto. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;~~

~~(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto;~~

~~(6) actions for divorce, separate maintenance or custody of minor children. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to: (A) Except as provided in subsection (c), hear any action pursuant to the Kansas code for care of children or the revised Kansas juvenile justice code; (B) establish, modify or enforce orders of support, including, but not limited to, orders of support pursuant to the Kansas parentage act, K.S.A. 2013 Supp. 23-2201 et seq., and amendments thereto, the uniform interstate family support act, K.S.A. 2013 Supp. 23-36,101 et seq., and amendments thereto, articles 29 or 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 39-718b or 39-755 or K.S.A. 2013 Supp. 23-3101 through 23-3113, 38-2338, 38-2339 or 38-2350, and amendments thereto; or (C) enforce orders granting visitation rights or parenting time;~~

~~(7) habeas corpus;~~

~~(8) receiverships;~~

~~(9) change of name;~~

~~(10) declaratory judgments;~~

~~(11) mandamus and quo warranto;~~

~~(12) injunctions;~~

~~(13) class actions;~~

~~(14) rights of majority; and~~

~~(15) actions pursuant to K.S.A. 59-20a01 et seq., and amendments~~

~~thereto~~ have jurisdiction over any civil action not filed under the code of civil procedure for limited actions only with the consent of the parties. A district magistrate judge shall have jurisdiction over uncontested actions for divorce.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge, a district magistrate judge may:

(1) Grant a restraining order, as provided in K.S.A. 60-902, and amendments thereto;

(2) appoint a receiver, as provided in K.S.A. 60-1301, and amendments thereto; and

(3) make any order authorized by K.S.A. 23-2707, and amendments thereto.

(c) (1) *All actions or proceedings before a district magistrate judge regularly admitted to practice law in Kansas shall be on the record if such actions or proceedings would be on the record before a district judge.*

(2) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge: (A) *who is not regularly admitted to practice law in Kansas* shall be tried and determined de novo by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge; and (B) *who is regularly admitted to practice law in Kansas* shall be to the court of appeals.

(d) Except as provided in subsection (e), upon motion of a party, the chief judge may reassign an action from a district magistrate judge to a district judge.

(e) Upon motion of a party for a petition or motion filed under the Kansas code for care of children requesting termination of parental rights pursuant to K.S.A. 2013 Supp. 38-2361 through 38-2367, and amendments thereto, the chief judge shall reassign such action from a district magistrate judge to a district judge.

Sec. 2. K.S.A. 2013 Supp. 22-3602 is hereby amended to read as follows: 22-3602. (a) Except as otherwise provided, an appeal to the appellate court having jurisdiction of the appeal may be taken by the defendant as a matter of right from any judgment against the defendant in the district court and upon appeal any decision of the district court or intermediate order made in the progress of the case may be reviewed. No appeal shall be taken by the defendant from a judgment of conviction before a district judge upon a plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raised by the defendant as provided in K.S.A. 60-1507, and amendments thereto.

(b) Appeals to the court of appeals may be taken by the prosecution from cases before a district judge, *or a district magistrate judge who is regularly admitted to practice law in Kansas*, as a matter of right in the following cases, and no others:

(1) From an order dismissing a complaint, information or indictment;

(2) from an order arresting judgment;

(3) upon a question reserved by the prosecution; or

(4) upon an order granting a new trial in any case involving a class A or B felony or for crimes committed on or after July 1, 1993, in any case involving an off-grid crime.

(c) Procedures for appeals by the prosecution enumerated in subsection (b) shall be as provided in supreme court rules.

(d) Appeals to a district judge may be taken by the prosecution from cases before a district magistrate judge *who is not regularly admitted to practice law in Kansas* as a matter of right in the cases enumerated in subsection (b) and from orders enumerated in K.S.A. 22-3603, and amendments thereto.

(e) Any criminal case on appeal to the court of appeals may be transferred to the supreme court as provided in K.S.A. 20-3016 and 20-3017, and amendments thereto, and any party to such case may petition the supreme court for review of any decision of the court of appeals as provided in subsection (b) of K.S.A. 20-3018, and amendments thereto, except that any such party may appeal to the supreme court as a matter of

right in any case in which a question under the constitution of either the United States or the state of Kansas arises for the first time as a result of the decision of the court of appeals.

(f) For crimes committed on or after July 1, 1993, an appeal by the prosecution or the defendant relating to sentences imposed pursuant to a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 et seq., prior to their repeal, or the revised Kansas sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall be as provided in K.S.A. 21-4721, prior to its repeal, or K.S.A. 2013 Supp. 21-6820, and amendments thereto.

Sec. 3. K.S.A. 2013 Supp. 22-3609a is hereby amended to read as follows: 22-3609a. (1) A defendant shall have the right to appeal *to a district judge* from any judgment of a district magistrate judge *who is not regularly admitted to practice law in Kansas*. The chief judge shall be responsible for assigning a district judge for any such appeal. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to a district judge shall be taken by filing a notice of appeal with the clerk of the court. No appeal shall be filed until after the sentence has been imposed. No appeal shall be taken more than 14 days after the date the sentence is imposed.

(3) The clerk of the district court shall deliver the complaint, warrant and any appearance bond to the district judge to whom such appeal is assigned. The case shall be tried de novo before the assigned district judge.

(4) No advance payment of a docket fee shall be required when the appeal is taken.

(5) All appeals taken by a defendant ~~from a district magistrate judge~~ in misdemeanor cases *from a district magistrate judge who is not regularly admitted to practice law in Kansas* shall be tried by the court unless a jury trial is requested in writing by the defendant. All appeals taken by a defendant ~~from a district magistrate judge~~ in traffic infraction and cigarette or tobacco infraction cases *from a district magistrate judge who is not regularly admitted to practice law in Kansas* shall be to the court.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (c) of K.S.A. 22-2909, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 4. K.S.A. 2013 Supp. 38-2273 is hereby amended to read as follows: 38-2273. (a) An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.

(b) An appeal from an order entered by a district magistrate judge *who is not regularly admitted to practice law in Kansas* shall be to a district judge. The appeal shall be heard on the basis of the record within 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(d) Notwithstanding any other provision of law to the contrary, appeals under this section shall have priority over all other cases.

(e) Every notice of appeal, docketing statement and brief shall be verified by the appellant if the appellant has been personally served at any time during the proceedings. Failure to have the required verification shall result in the dismissal of the appeal.

(f) While a case is on appeal from the district court, the district court or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings.

Sec. 5. K.S.A. 2013 Supp. 38-2382 is hereby amended to read as follows: 38-2382. (a) An appeal from a district magistrate judge *who is not regularly admitted to practice law in Kansas* shall be to a district judge. The appeal shall be by trial de novo unless the parties agree to a de novo review on the record of the proceedings. The appeal shall be heard within 30 days from the date the notice of appeal was filed.

(b) Appeals from a district judge, *or a district magistrate judge who is regularly admitted to practice law in Kansas*, shall be to the court of appeals.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 6. K.S.A. 2013 Supp. 59-2401a is hereby amended to read as follows: 59-2401a. (a) An appeal by an interested party from a district magistrate judge *who is not regularly admitted to practice law in Kansas* to a district judge may be taken no later than 14 days from any final order, judgment or decree entered in any proceeding pursuant to:

- (1) The Kansas adoption and relinquishment act— ~~K.S.A. 59-2111 et seq., and amendments thereto~~;
- (2) the care and treatment act for mentally ill persons— ~~K.S.A. 59-2945 et seq., and amendments thereto~~;
- (3) the care and treatment act for persons with an alcohol or substance abuse problem— ~~K.S.A. 59-29b45 et seq., and amendments thereto~~; or
- (4) the act for obtaining a guardian or conservator, or both— ~~K.S.A. 59-3050 et seq., and amendments thereto~~.

The appeal shall be heard no later than 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo. Except as provided further, if a record was made of the proceedings, the district judge shall conduct the appeal on the record. Upon motion of any party to the proceedings, the district judge may hold a trial de novo.

(b) An appeal by an interested party from ~~the district court~~ *a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas*, to an appellate court shall be taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated, *and amendments thereto*, from any final order, judgment or decree entered in any proceeding pursuant to:

- (1) The Kansas adoption and relinquishment act— ~~K.S.A. 59-2111 et seq., and amendments thereto~~;
- (2) the care and treatment act for mentally ill persons— ~~K.S.A. 59-2945 et seq., and amendments thereto~~;
- (3) the sexually violent predator act— ~~K.S.A. 59-29a01 et seq., and amendments thereto~~;
- (4) the care and treatment act for persons with an alcohol or substance abuse problem— ~~K.S.A. 59-29b45 et seq., and amendments thereto~~; or
- (5) the act for obtaining a guardian or conservator, or both— ~~K.S.A. 59-3050 et seq., and amendments thereto~~.

Except for cases otherwise specifically provided for by law, appeals under this section shall have priority over all others.

(c) Pending the determination of an appeal pursuant to ~~section subsection~~ (a) or (b) ~~of this section~~, any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to ~~section subsection~~ (a) or (b) ~~of this section~~, the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

(e) As used in this section, “interested party” means:

- (1) The parent in a proceeding pursuant to the Kansas adoption and relinquishment act— ~~K.S.A. 59-2111 et seq., and amendments thereto~~;
- (2) the patient under the care and treatment act for mentally ill persons— ~~K.S.A. 59-2945 et seq., and amendments thereto~~;
- (3) the patient under the care and treatment act for persons with an alcohol or substance abuse problem— ~~K.S.A. 59-29b45 et seq., and amendments thereto~~;
- (4) the person adjudicated a sexually violent predator under the sexually violent predator act— ~~K.S.A. 59-29a01 et seq., and amendments thereto~~;

- (5) the ward or conservatee under the act for obtaining a guardian or conservator, or both—~~K.S.A. 59-3050 et seq., and amendments thereto~~;
  - (6) the parent of a minor person adjudicated a ward or conservatee under the act for obtaining a guardian or conservator, or both—~~K.S.A. 59-3050 et seq., and amendments thereto~~;
  - (7) the petitioner in the case on appeal; and
  - (8) any other person granted interested party status by the court from which the appeal is being taken.
- (f) This section shall be part of and supplemental to the Kansas probate code.

Sec. 7. K.S.A. 2013 Supp. 60-2102 is hereby amended to read as follows: 60-2102. (a) *Appeal to court of appeals as matter of right.* Except for any order or final decision of a district magistrate judge *who is not regularly admitted to practice law in Kansas*, the appellate jurisdiction of the court of appeals may be invoked by appeal as a matter of right from:

- (1) An order that discharges, vacates or modifies a provisional remedy.
- (2) An order that grants, continues, modifies, refuses or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto or habeas corpus.
- (3) An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.
- (4) A final decision in any action, except in an action where a direct appeal to the supreme court is required by law. In any appeal or cross appeal from a final decision, any act or ruling from the beginning of the proceedings shall be reviewable.

(b) *Appeal to supreme court as matter of right.* The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from:

- (1) A preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of Article 6 of the ~~Kansas~~ constitution *of the state of Kansas* pursuant to K.S.A. 2013 Supp. 72-64b03, and amendments thereto. Any appeal filed pursuant to this subsection (b)(1) shall be filed within 30 days of the date the preliminary or final decision is filed.
- (2) A final decision of the district court in any action challenging the constitutionality of or arising out of any provision of the Kansas expanded lottery act, any lottery gaming facility management contract or any race-track gaming facility management contract entered into pursuant to the Kansas expanded lottery act.

(c) *Other appeals.* When a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas, in making in a civil action an order not otherwise appealable under this section, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The court of appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within 14 days after the entry of the order under such terms and conditions as the supreme court fixes by rule. Application for an appeal ~~hereunder~~ pursuant to this subsection shall not stay proceedings in the district court unless the ~~district~~ judge of the district court or an appellate court or a judge thereof so orders.

Sec. 8. K.S.A. 2013 Supp. 60-2103a is hereby amended to read as follows: 60-2103a. (a) In actions commenced in the district courts of this state all appeals from orders or final decisions of a district magistrate judge *who is not regularly admitted to practice law in Kansas* shall be heard by a district judge. Except as otherwise provided by law, such appeals shall be taken by notice of appeal specifying the order or decision complained of and shall be filed with the clerk of the district court within 14 days after the entry of such order or decision. The notice of appeal shall specify the party or parties taking the appeal; shall designate the order or decision appealed from; and shall state that such appeal is being

taken from an order or decision of a district magistrate judge. The appealing party shall cause notice of the appeal to be served upon all of the parties to the action in accordance with the provisions of K.S.A. 60-205, and amendments thereto. Upon filing the notice of appeal, the appeal shall be deemed perfected.

(b) Except as otherwise provided by law or rule of the supreme court, the provisions of subsections (b) through (i) of K.S.A. 60-2103, and amendments thereto, shall be applicable to appeals from orders and decisions of district magistrate judges *who are not regularly admitted to practice law in Kansas*.

Sec. 9. K.S.A. 2013 Supp. 61-3902 is hereby amended to read as follows: 61-3902. (a) All appeals from orders, rulings, decisions or judgments of district magistrate judges *who are not regularly admitted to practice law in Kansas* under the code of civil procedure for limited actions shall be taken in the manner provided in subsection (a) of K.S.A. 60-2103a, and amendments thereto. All appeals from orders, rulings, decisions or judgments of district judges, *or district magistrate judges who are regularly admitted to practice law in Kansas*, under the code of civil procedure for limited actions shall be taken in the manner provided in subsections (a) and (b) of K.S.A. 60-2103, and amendments thereto. Notwithstanding the foregoing provisions of this subsection, if judgment has been rendered in an action for forcible detainer and the defendant desires to appeal from that portion of the judgment granting restitution of the premises, notice of appeal shall be filed within seven days after entry of judgment. The notice of appeal shall specify the party or parties taking the appeal; the order, ruling, decision or judgment appealed from; and the court to which the appeal is taken.

(b) The provisions of K.S.A. 60-2001, and amendments thereto, shall apply to appeals pursuant to this section.

(c) An appeal from an action heard by a district magistrate judge *who is not regularly admitted to practice law in Kansas* shall be taken to a district judge of the county. An appeal from an action heard by a district judge, *or a district magistrate judge who is regularly admitted to practice law in Kansas*, shall be taken to the court of appeals.

Sec. 10. K.S.A. 61-3903 is hereby amended to read as follows: 61-3903. Subject to the rules of the supreme court of this state, once an appeal is perfected, if the judge from whom such appeal is taken is a district magistrate judge *who is not regularly admitted to practice law in Kansas*, such judge shall notify the chief judge of the judicial district that the appeal has been perfected. The chief judge then shall assign the case to a district judge to hear the appeal.

Sec. 11. K.S.A. 61-3903 and K.S.A. 2013 Supp. 20-302b, 22-3602, 22-3609a, 38-2273, 38-2382, 59-2401a, 60-2102, 60-2103a and 61-3902 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*