

SENATE Substitute for HOUSE BILL No. 2352

AN ACT concerning courts; relating to the jurisdiction and salaries of district magistrate judges; relating to pre-trial authority and contempt powers of municipal courts; amending K.S.A. 12-4106, 12-4203, 12-4209, 12-4213 and 75-3120k and K.S.A. 2003 Supp. 20-302b and 22-3609 and repealing the existing sections.

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

Section 1. K.S.A. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt ~~committed in court or for failure to obey process issued by such municipal judge~~, in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

Sec. 2. K.S.A. 12-4203 is hereby amended to read as follows: 12-4203. (a) A copy of the complaint shall be served, together with a notice to appear or a warrant, by a law enforcement officer upon the accused person, and forthwith, the complaint shall be filed with the municipal court, except that a complaint may be filed initially with the municipal court, and if so filed, a copy of the complaint shall forthwith be delivered to the city attorney. ~~The city attorney shall cause a notice to appear to be issued, unless he or she has good reason to believe that the accused person will not appear in response to a notice to appear, in which case the city attorney may request that a warrant be issued. Such warrant will be issued if the complaint is positively sworn to and the municipal judge has probable cause to believe that (a) there has been the commission of a violation of a municipal ordinance, (b) the accused person committed such violation and (c) the accused person will not appear in response to a notice to appear.~~

(b) If a city attorney fails either to cause a notice to appear or to request a warrant to be issued, on a complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with him or her alleging the violation of an ordinance, order the city attorney to institute proceedings against any person. Any such municipal judge shall be disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with the municipal judge pro tem appointed by the municipal judge to preside therein.

Sec. 3. K.S.A. 12-4209 is hereby amended to read as follows: 12-4209. ~~A warrant may be issued. (a) When an accused person fails to appear as required in a notice to appear after its service.~~

~~(b) In all other cases where a complaint has been filed and the municipal judge determines that a warrant should be issued.~~

~~No warrant shall issue unless the complaint giving rise to its issuance is supported by oath or affirmation.~~

(a) *The city attorney shall cause a notice to appear to be issued,*

except that, if requested by the city attorney, a warrant for the accused shall be issued if the municipal judge finds from the complaint, or from an affidavit or affidavits filed with the complaint or from other evidence that there is probable cause to believe both that a crime has been committed and that the defendant has committed such crime.

(b) More than one warrant or notice to appear may be issued on the same complaint.

(c) If a defendant fails to appear in response to a notice to appear, a warrant shall be issued.

(d) Affidavits or sworn testimony in support of the probable cause requirements of this section shall not be made available for examination without a written order of the municipal judge, except that such affidavits or testimony, when requested, shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

(e) No warrant shall issue for an ordinance traffic infraction or an ordinance cigarette or tobacco infraction unless the person charged has received service of a notice to appear and has failed to appear for the infraction.

Sec. 4. K.S.A. 12-4213 is hereby amended to read as follows: 12-4213. *(a) Any person arrested by a law enforcement officer shall be taken immediately by the law enforcement officer to the police station of the city or the office in the city designated by the municipal judge. At that time, the person shall have the right to post bond for the person's appearance, in accordance with K.S.A. 12-4301 and 12-4302, and amendments thereto, except as hereinafter provided. However, if the law enforcement officer has probable cause to believe that such person may cause injury to oneself or others, or damage to property, and there is no responsible person or institution to which the person might be released, the person shall remain in the protective custody of the law enforcement officer, in a city or county jail for a period not to exceed six hours, at which time such person shall be given an opportunity to post bond for the person's appearance. While so held in protective custody, the person shall be permitted to consult with counsel or other persons on the person's behalf. Any person who does not make bond for the person's appearance shall be placed in the city or county jail, to remain there until the person makes bond for the person's appearance, or appears before the municipal court at the earliest practical time, except that the person shall be released on the person's personal recognizance to appear at a later date if the person has not made bond, has not appeared before the municipal court within 18 hours after arrest and if no warrant has been issued for the person's arrest.*

(b) A law enforcement officer may detain a person arrested for violation of a municipal ordinance in protective custody for a period not to exceed six hours, including custody in a city or county jail, if such officer has probable cause to believe that: (1) Such person may cause injury to oneself or others, or damage to property; and (2) there is no responsible person or institution to which such person might be released. Any person so held in protective custody shall be permitted to consult with counsel or other persons who may act on such person's behalf. Such person held in protective custody for six hours shall be given an opportunity to post bond for such person's appearance in the municipal court.

(c) Any person held in custody pursuant to the provisions of this section, and who has not made bond for such person's appearance, may be held in custody until the earliest practical time for such person's appearance in municipal court upon a warrant being issued by the municipal court in accordance with K.S.A. 12-4209, and amendments thereto.

(d) Any person who remains in custody for 48 hours pursuant to the provisions of this section after arrest, and who is awaiting a first appearance before a municipal judge in the absence of a warrant being issued, shall be released on the person's personal recognizance. Bond shall be set within 18 hours of the person being placed in custody.

Sec. 5. K.S.A. 2003 Supp. 22-3609 is hereby amended to read as follows: 22-3609. (1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be

assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than 10 days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in *contempt findings*, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

Sec. 6. K.S.A. 2003 Supp. 20-302b is hereby amended to read as follows: 20-302b. (a) 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 the preliminary examination of felony charges and to hear 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. 2003 Supp. 61-2801 *et seq.*, and amendments thereto, and concurrent jurisdiction, powers and duties with a district judge. Except as otherwise specifically provided in subsection (b), 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. 2003 Supp. 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. 2003 Supp. 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 fore-

close 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 (e)*, hear any action pursuant to the Kansas code for care of children or the 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. 23-9,101 *et seq.*, 39-718b, 39-755 or 60-1610 or K.S.A. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 38-1542, 38-1543 or 38-1563, 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. 59-29a01 *et seq.* and amendments thereto.

(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. 60-1607 and amendments thereto.

(c) 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 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.

(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. 38-1581 through 38-1587, and amendments thereto, the chief judge shall reassign such action from a district magistrate judge to a district judge.*

Sec. 7. K.S.A. 75-3120k is hereby amended to read as follows: 75-3120k. (a) The annual salary of district magistrate judges shall be paid in equal installments each payroll period in accordance with this section.

(b) Subject to the provisions of subsection (c) and except as otherwise provided in K.S.A. 75-3120l and amendments thereto, the annual salary of district magistrate judges shall be ~~\$33,660~~ \$47,416.

(c) ~~The district magistrate judge in position one of Atchison county shall receive an annual salary equal to 1/2 of the annual salary provided for in subsection (b).~~

~~(d) No~~ *Within the limits of the appropriations therefor, the county or counties comprising the judicial district may supplement the salary of, or pay any compensation to, any district magistrate judge.*

Sec. 8. K.S.A. 12-4106, 12-4203, 12-4209, 12-4213 and 75-3120k and K.S.A. 2003 Supp. 20-302b and 22-3609 are hereby repealed.

Sec. 9. 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 adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.