

SENATE BILL No. 287

By Committee on Judiciary

1-22

1 AN ACT concerning district magistrate judges; jurisdiction; appeals;
2 amending K.S.A. 2013 Supp. 20-302b, 22-3601, 22-3602, 38-2273, 38-
3 2382, 59-2401a, 60-2102 and 61-3902 and repealing the existing
4 sections; also repealing K.S.A. 61-3903 and K.S.A. 2013 Supp. 22-
5 3609a and 60-2103a.

6

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

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

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

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

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

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

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

13 ~~(6) actions for divorce, separate maintenance or custody of minor~~
14 ~~children. Nothing in this paragraph shall be construed as limiting the~~
15 ~~power of a district magistrate judge to: (A) Except as provided in~~
16 ~~subsection (c), hear any action pursuant to the Kansas code for care of~~
17 ~~children or the revised Kansas juvenile justice code; (B) establish, modify~~
18 ~~or enforce orders of support, including, but not limited to, orders of~~
19 ~~support pursuant to the Kansas parentage act, K.S.A. 2013 Supp. 23-2201~~
20 ~~et seq., and amendments thereto, the uniform interstate family support act,~~
21 ~~K.S.A. 2013 Supp. 23-36,101 et seq., and amendments thereto, articles 29~~
22 ~~or 30 of chapter 23 of the Kansas Statutes Annotated, and amendments~~
23 ~~thereto, K.S.A. 39-718b or 39-755 or K.S.A. 2013 Supp. 23-3101 through~~
24 ~~23-3113, 38-2338, 38-2339 or 38-2350, and amendments thereto; or (C)~~
25 ~~enforce orders granting visitation rights or parenting time;~~

26 ~~(7) habeas corpus;~~

27 ~~(8) receiverships;~~

28 ~~(9) change of name;~~

29 ~~(10) declaratory judgments;~~

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

31 ~~(12) injunctions;~~

32 ~~(13) class actions;~~

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

34 ~~(15) actions pursuant to K.S.A. 59-29a01 et seq., and amendments~~
35 ~~thereto have jurisdiction over any civil action not filed under the code of~~
36 ~~civil procedure for limited actions only with the consent of the parties. A~~
37 ~~district magistrate judge shall have jurisdiction over uncontested actions~~
38 ~~for divorce.~~

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

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

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

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

5 (c) *All actions or proceedings before a district magistrate judge shall*
6 *be on the record.* In accordance with the limitations and procedures
7 prescribed by law, and subject to any rules of the supreme court relating
8 thereto, any appeal permitted to be taken from an order or final decision of
9 a district magistrate judge shall be ~~tried and determined de novo by a~~
10 ~~district judge, except that in civil cases where a record was made of the~~
11 ~~action or proceeding before the district magistrate judge, the appeal shall~~
12 ~~be tried and determined on the record by a district judge to the court of~~
13 ~~appeals.~~

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

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

22 Sec. 2. K.S.A. 2013 Supp. 22-3601 is hereby amended to read as
23 follows: 22-3601. (a) Any appeal permitted to be taken from a district
24 court's final judgment in a criminal case shall be taken to the court of
25 appeals, except in those cases ~~reviewable by law in the district court or in~~
26 ~~which a direct appeal to the supreme court is required.~~ Whenever an
27 interlocutory appeal is permitted in a criminal case in the district court,
28 such appeal shall be taken to the court of appeals.

29 (b) Any appeal permitted to be taken from a district court's final
30 judgment in a criminal case shall be taken directly to the supreme court in
31 the following cases:

32 (1) Any case in which a statute of this state or of the United States
33 has been held unconstitutional;

34 (2) any case in which the defendant has been convicted of a class A
35 felony;

36 (3) any case in which a maximum sentence of life imprisonment has
37 been imposed, unless the maximum sentence has been imposed pursuant to
38 K.S.A. 21-4643, prior to its repeal, or K.S.A. 2013 Supp. 21-6627, and
39 amendments thereto; and

40 (4) except as provided further, any case in which the crime was
41 committed on or after July 1, 1993, and the defendant has been convicted
42 of an off-grid crime. The provisions of this paragraph shall not apply to
43 any case in which the off-grid crime was:

1 (A) Aggravated human trafficking, subsection (c)(2)(B) of K.S.A.
2 2013 Supp. 21-5426, and amendments thereto;

3 (B) rape, subsection (b)(2)(B) of K.S.A. 2013 Supp. 21-5503, and
4 amendments thereto;

5 (C) aggravated criminal sodomy, subsection (c)(2)(B)(ii) of K.S.A.
6 2013 Supp. 21-5504, and amendments thereto;

7 (D) aggravated indecent liberties with a child, subsection (c)(2)(C)(ii)
8 of K.S.A. 2013 Supp. 21-5506, and amendments thereto;

9 (E) sexual exploitation of a child, subsection (b)(2)(B) of K.S.A.
10 2013 Supp. 21-5510, and amendments thereto;

11 (F) commercial sexual exploitation of a child, subsection (b)(2) of
12 K.S.A. 2013 Supp. 21-6422, and amendments thereto; or

13 (G) an attempt, conspiracy or criminal solicitation, as defined in
14 K.S.A. 2013 Supp. 21-5301, 21-5302 or ~~21-3503~~ 21-5303, and
15 amendments thereto, of any such felony.

16 Sec. 3. K.S.A. 2013 Supp. 22-3602 is hereby amended to read as
17 follows: 22-3602. (a) Except as otherwise provided, an appeal to the
18 appellate court having jurisdiction of the appeal may be taken by the
19 defendant as a matter of right from any judgment against the defendant in
20 the district court and upon appeal any decision of the district court or
21 intermediate order made in the progress of the case may be reviewed. No
22 appeal shall be taken by the defendant from a judgment of conviction
23 before a district judge upon a plea of guilty or nolo contendere, except that
24 jurisdictional or other grounds going to the legality of the proceedings may
25 be raised by the defendant as provided in K.S.A. 60-1507, and
26 amendments thereto.

27 (b) Appeals to the court of appeals may be taken by the prosecution
28 from cases before a ~~district judge~~ *of the district court* as a matter of right in
29 the following cases, and no others:

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

31 (2) from an order arresting judgment;

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

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

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

38 ~~(d) Appeals to a district judge may be taken by the prosecution from~~
39 ~~cases before a district magistrate judge as a matter of right in the cases~~
40 ~~enumerated in subsection (b) and from orders enumerated in K.S.A. 22-~~
41 ~~3603, and amendments thereto.~~

42 ~~(e)~~ (d) Any criminal case on appeal to the court of appeals may be
43 transferred to the supreme court as provided in K.S.A. 20-3016 and 20-

1 3017, and amendments thereto, and any party to such case may petition the
2 supreme court for review of any decision of the court of appeals as
3 provided in subsection (b) of K.S.A. 20-3018, and amendments thereto,
4 except that any such party may appeal to the supreme court as a matter of
5 right in any case in which a question under the constitution of either the
6 United States or the state of Kansas arises for the first time as a result of
7 the decision of the court of appeals.

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

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

19 ~~(b) An appeal from an order entered by a district magistrate judge~~
20 ~~shall be to a district judge. The appeal shall be heard on the basis of the~~
21 ~~record within 30 days from the date the notice of appeal is filed. If no~~
22 ~~record was made of the proceedings, the trial shall be de novo.~~

23 ~~(e)~~ (b) Procedure on appeal shall be governed by article 21 of chapter
24 60 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

34 Sec. 5. K.S.A. 2013 Supp. 38-2382 is hereby amended to read as
35 follows: 38-2382. (a) An appeal from a ~~district magistrate judge~~ shall be to
36 a district judge. The appeal shall be by trial de novo unless the parties
37 agree to a de novo review on the record of the proceedings. The appeal
38 shall be heard within 30 days from the date the notice of appeal was filed.

39 ~~(b) Appeals from a district judge of the district court~~ shall be to the
40 court of appeals.

41 ~~(e)~~ (b) Procedure on appeal shall be governed by article 21 of chapter
42 60 of the Kansas Statutes Annotated, and amendments thereto.

43 Sec. 6. K.S.A. 2013 Supp. 59-2401a is hereby amended to read as

1 follows: 59-2401a. (a) An appeal by an interested party from a district
 2 magistrate judge to a district judge may be taken no later than 14 days
 3 from any final order, judgment or decree entered in any proceeding
 4 pursuant to:

5 (1) ~~The Kansas adoption and relinquishment act (K.S.A. 59-2111 et~~
 6 ~~seq., and amendments thereto);~~

7 (2) ~~the care and treatment act for mentally ill persons (K.S.A. 59-~~
 8 ~~2945 et seq., and amendments thereto);~~

9 (3) ~~the care and treatment act for persons with an alcohol or substance~~
 10 ~~abuse problem (K.S.A. 59-29b45 et seq., and amendments thereto); or~~

11 (4) ~~the act for obtaining a guardian or conservator, or both (K.S.A.~~
 12 ~~59-3050 et seq., and amendments thereto).~~

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

19 (b) ~~An appeal by an interested party from judge of the district court to~~
 20 ~~an appellate court shall be taken pursuant to article 21 of chapter 60 of the~~
 21 ~~Kansas Statutes Annotated, and amendments thereto, from any final order,~~
 22 ~~judgment or decree entered in any proceeding pursuant to:~~

23 (1) ~~The Kansas adoption and relinquishment act (, K.S.A. 59-2111 et~~
 24 ~~seq., and amendments thereto);~~

25 (2) ~~the care and treatment act for mentally ill persons (, K.S.A. 59-~~
 26 ~~2945 et seq., and amendments thereto);~~

27 (3) ~~the sexually violent predator act (, K.S.A. 59-29a01 et seq., and~~
 28 ~~amendments thereto);~~

29 (4) ~~the care and treatment act for persons with an alcohol or substance~~
 30 ~~abuse problem (, K.S.A. 59-29b45 et seq., and amendments thereto); or~~

31 (5) ~~the act for obtaining a guardian or conservator, or both (, K.S.A.~~
 32 ~~59-3050 et seq., and amendments thereto).~~

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

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

41 (d) (c) In an appeal taken pursuant to ~~section subsection (a) or (b) of~~
 42 ~~this section~~, the court from which the appeal is taken may require an
 43 appropriate party, other than the state of Kansas, any subdivision thereof,

1 and all cities and counties in this state, to file a bond in such sum and with
 2 such sureties as may be fixed and approved by the court to ensure that the
 3 appeal will be prosecuted without unnecessary delay and to ensure the
 4 payment of all judgments and any sums, damages and costs that may be
 5 adjudged against that party.

6 (e) (d) As used in this section, "interested party" means:

7 (1) The parent in a proceeding pursuant to the Kansas adoption and
 8 relinquishment act {, K.S.A. 59-2111 et seq., and amendments thereto};

9 (2) the patient under the care and treatment act for mentally ill
 10 persons {, K.S.A. 59-2945 et seq., and amendments thereto};

11 (3) the patient under the care and treatment act for persons with an
 12 alcohol or substance abuse problem {, K.S.A. 59-29b45 et seq., and
 13 amendments thereto};

14 (4) the person adjudicated a sexually violent predator under the
 15 sexually violent predator act {, K.S.A. 59-29a01 et seq., and amendments
 16 thereto};

17 (5) the ward or conservatee under the act for obtaining a guardian or
 18 conservator, or both {, K.S.A. 59-3050 et seq., and amendments thereto};

19 (6) the parent of a minor person adjudicated a ward or conservatee
 20 under the act for obtaining a guardian or conservator, or both {, K.S.A. 59-
 21 3050 et seq., and amendments thereto};

22 (7) the petitioner in the case on appeal; and

23 (8) any other person granted interested party status by the court from
 24 which the appeal is being taken.

25 (f) (e) This section shall be part of and supplemental to the Kansas
 26 probate code.

27 Sec. 7. K.S.A. 2013 Supp. 60-2102 is hereby amended to read as
 28 follows: 60-2102. (a) *Appeal to court of appeals as matter of right.* ~~Except~~
 29 ~~for any order or final decision of a district magistrate judge,~~ The appellate
 30 jurisdiction of the court of appeals may be invoked by appeal as a matter
 31 of right from:

32 (1) An order that discharges, vacates or modifies a provisional
 33 remedy.

34 (2) An order that grants, continues, modifies, refuses or dissolves an
 35 injunction, or an order that grants or refuses relief in the form of
 36 mandamus, quo warranto or habeas corpus.

37 (3) An order that appoints a receiver or refuses to wind up a
 38 receivership or to take steps to accomplish the purposes thereof, such as
 39 directing sales or other disposal of property, or an order involving the tax
 40 or revenue laws, the title to real estate, the constitution of this state or the
 41 constitution, laws or treaties of the United States.

42 (4) A final decision in any action, except in an action where a direct
 43 appeal to the supreme court is required by law. In any appeal or cross

1 appeal from a final decision, any act or ruling from the beginning of the
2 proceedings shall be reviewable.

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

6 (1) A preliminary or final decision in which a statute of this state has
7 been held unconstitutional as a violation of Article 6 of the Kansas
8 constitution pursuant to K.S.A. 2013 Supp. 72-64b03, and amendments
9 thereto. Any appeal filed pursuant to this subsection (b)(1) shall be filed
10 within 30 days of the date the preliminary or final decision is filed.

11 (2) A final decision of the district court in any action challenging the
12 constitutionality of or arising out of any provision of the Kansas expanded
13 lottery act, any lottery gaming facility management contract or any
14 racetrack gaming facility management contract entered into pursuant to the
15 Kansas expanded lottery act.

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

29 Sec. 8. K.S.A. 2013 Supp. 61-3902 is hereby amended to read as
30 follows: 61-3902. (a) All appeals from orders, rulings, decisions or
31 judgments of ~~district magistrate judges under the code of civil procedure~~
32 ~~for limited actions shall be taken in the manner provided in subsection (a)~~
33 ~~of K.S.A. 60-2103a, and amendments thereto. All appeals from orders,~~
34 ~~rulings, decisions or judgments of district judges of the district court~~ under
35 the code of civil procedure for limited actions shall be taken in the manner
36 provided in subsections (a) and (b) of K.S.A. 60-2103, and amendments
37 thereto. Notwithstanding the foregoing provisions of this subsection, if
38 judgment has been rendered in an action for forcible detainer and the
39 defendant desires to appeal from that portion of the judgment granting
40 restitution of the premises, notice of appeal shall be filed within seven
41 days after entry of judgment. The notice of appeal shall specify the party
42 or parties taking the appeal; *and* the order, ruling, decision or judgment
43 appealed from; ~~and the court to which the appeal is taken.~~

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

3 (c) An appeal from an action heard by a ~~district magistrate judge shall~~
4 ~~be taken to a district judge of the county. An appeal from an action heard~~
5 ~~by a district judge~~ *of the district court* shall be taken to the court of
6 appeals.

7 Sec. 9. K.S.A. 61-3903 and K.S.A. 2013 Supp. 20-302b, 22-3601, 22-
8 3602, 22-3609a, 38-2273, 38-2382, 59-2401a, 60-2102, 60-2103a and 61-
9 3902 are hereby repealed.

10 Sec. 10. This act shall take effect and be in force from and after its
11 publication in the statute book.