

**REPORT OF THE JUDICIAL COUNCIL  
CRIMINAL LAW ADVISORY COMMITTEE  
ON 2005 HB 2062 AND  
STATEWIDE DISTRICT ATTORNEY SYSTEM**

BACKGROUND

During the 2005 legislative session, the House Corrections and Juvenile Justice Committee requested that the Judicial Council study and make recommendations to the Legislature regarding the establishment of a statewide district attorney system. The request arose from hearings on HB 2062, which attempts to put in place an elective system where counties comprising a judicial district could establish a district attorney office through the mechanism of an interlocal agreement. Conferees who appeared at the hearing on HB 2062 expressed the opinion that what was proposed by the bill was not workable in a number of respects. The Committee decided to refer the matter of the establishment of a statewide district attorney system to the Kansas Judicial Council for consideration and recommendation. The Kansas Judicial Council assigned the study to the Criminal Law Advisory Committee (hereinafter “the Committee”).

COMMITTEE MEMBERSHIP

The members of the Committee are:

**Hon. Marla J. Luckert**, Chair, Kansas Supreme Court Justice, Topeka  
**James W. Clark**, Kansas Bar Association - Legislative Counsel, Lawrence  
**Edward G. Collister**, practicing attorney, Lawrence  
**Jim D. Garner**, Attorney, Kansas Secretary of Labor, Coffeyville  
**Patrick M. Lewis**, Deputy Public Defender of 10<sup>th</sup> Judicial District, Olathe  
**Hon. Michael Malone**, District Court Judge in 7<sup>th</sup> Judicial District, Lawrence  
**Joel Meinecke**, Professor at Washburn University School of Law, Topeka  
**Steven L. Opat**, Geary County Attorney/County Counselor, Junction City  
**John M. Settle**, Pawnee County Attorney, Larned  
**Ann Swegle**, Deputy District Attorney of 18<sup>th</sup> Judicial District, Wichita  
**Loren L. Taylor**, practicing attorney, Kansas City  
**Debra J. Wilson**, Capital Appellate Defender, Topeka  
**Ron Wurtz**, Assistant Federal Public Defender, Topeka

## STATUTORY AMENDMENTS PROPOSED IN 2005 HB 2062

2005 HB 2062 proposes a new statute that authorizes counties within a judicial district to enter into an interlocal cooperation agreement to establish an office of district attorney. The statute is quite detailed, including step by step guidance from the county commission resolution process and the wording of the resolution on the ballots at the general election to the number of office hours that must be maintained per month in each city that is the county seat of each county in the judicial district. The bill also proposes certain amendments to existing statutes governing district attorneys, K.S.A. 22a-105, 106 and 107. These amendments essentially provide that the existing district attorney statutes will apply to all judicial districts that have a district attorney, including those established pursuant to 2005 HB 2062. There is no difference in how the “new” district attorneys are treated under these amendments except for the amendments to K.S.A. 22a-105, which provide for a lower maximum salary for district attorneys elected in districts with interlocal agreements than for those in judicial districts 3, 7, 10, 18, 27 and 29.

## METHOD AND STUDY

The Committee met on September 30, October 28 and November 18. In addition to review of the amendments proposed in 2005 HB 2062, the Committee explored the broader issue of statewide district attorney systems in general. The Committee members brought to the discussions considerable knowledge and understanding of the issue as a result of many years of experience encompassing virtually all aspects of the Kansas criminal justice system. To further augment that base of knowledge, the Committee also reviewed the district attorney system in place in Oklahoma and requested input from the members of the Kansas County and District Attorneys Association.

## COMMITTEE'S RECOMMENDATIONS REGARDING 2005 HB 2062

After careful consideration and discussion of the bill, the Committee agreed that it does not recommend the amendments proposed by 2005 HB 2062. The Committee's reasons for its position and recommendations for how the bill should be amended are set forth below.

There was some indication from the long-term history of legislation regarding this subject that the ultimate purpose of the bill is to establish a statewide district attorney system. The Committee unanimously agreed that HB 2062 does not accomplish any measurable steps toward instituting a true statewide system. The plan set forth in HB 2062 is completely voluntary, and the requirement of obtaining the agreement of all counties within a judicial district means that, in reality, it stands little chance of being implemented beyond one or two districts at best.

Even if implementation is intended to be on a limited rather than statewide basis, the Committee recommends significant modifications to HB 2062 as listed below.

1. The legislation should not require an entire judicial district to participate. Two or more counties should be allowed to enter into interlocal agreements forming a prosecutorial district with an elected district attorney. Caseloads, demographics, geography, community culture, and other factors may make it difficult to include all counties within a judicial district. Allowing for two or more counties to participate would increase flexibility and encourage participation in interlocal agreements.
2. The legislation should not limit participation to counties within the same judicial district. Again, allowing the formation of districts by counties in different judicial districts, increases flexibility.
3. The legislation should enable participation in an interlocal agreement and also establish the elected office of a district attorney when an agreement is reached.
4. The legislation should provide for local control, allowing the specifics of the agreement to be determined by the participating counties. For example:

- a. Section 2(e), regarding time spent in each county, should be deleted. The counties participating in an interlocal agreement can determine this term, if necessary, or may leave the time allocation to the professional discretion of the elected district attorney.
  - b. Budget, funding, and similar issues should be determined at the local level by participating counties.
  - c. Salary should be left to the discretion of the local commissioners of participating counties as part of the budget process.
5. The legislation should allow participating counties the discretion to have the elected district attorney also serve as legal counsel to one or more participating counties, *i.e.*, perform the duties of county counselor.
  6. The legislation should not include section 2(g)(3). Again, local control should be recognized and encouraged.
  7. The legislation should specifically state that it does not apply to existing legislation allowing for district attorneys in specified single county districts.

Time did not allow for the drafting of legislation incorporating these concepts. However, if requested, the Committee would do so.

## CONCLUSION

The Committee does not recommend the enactment of 2005 HB 2062 as written. The majority of the Committee agreed that the basic idea of enacting legislation to authorize multi-county agreements to establish a district attorney office was a workable premise, but recommends major changes to the proposed legislation. Specifically, the Committee would recommend changes that greatly increase flexibility and afford more options to counties wishing to enter into an agreement to establish a multi-county district attorney office. Additionally, the Committee recommends significant changes that would reduce state level management and leave more control over these newly formed district attorney offices to the county commissions involved.

A majority of the Committee would not at this time support legislation for a mandatory statewide district attorney system, particularly due to lack of support from the Kansas attorneys who would be most affected by such a significant change in the criminal justice system. However, the Committee spent a considerable amount of time discussing the issue, examining the pros and cons of such a system, and creating a list of qualities or components that it felt would be crucial to a mandatory system in this state. To the extent that the Committee's work on a statewide system might be of interest or assistance, a summary of those discussions is attached as an appendix to this report.

## APPENDIX

### JUDICIAL COUNCIL CRIMINAL LAW ADVISORY COMMITTEE'S CONSIDERATION OF A STATEWIDE DISTRICT ATTORNEY SYSTEM

#### Pros

Some of the desirable consequences, include, but are not limited to the following:

1. Development of a full-time prosecutors system which allows prosecutor positions statewide.
2. Equalization of salaries which could attract experienced practitioners to areas where it is often difficult to recruit. Minimum standards for district attorney positions, such as a number of years of experience, would also help assure a high quality of prosecution statewide. An organization would provide a structure for mentoring and supervision.
3. Centralization of certain activities, such as training, budgets, payroll, grant writing and other administrative functions could allow a more efficient use of resources. A deliberate and thorough pursuit of available grant funds at the state level could result in access to resources that might not have been tapped at all, as well as the ability to distribute those resources to all districts. A further study of costs and potential savings would need to be conducted before definitive conclusions regarding efficiency could be drawn.
4. Elimination of inadequate funding of the prosecutorial function in some counties.
5. Reduction of potential ethical issues, including potential conflict of interest situations currently arising because of a part-time prosecutor's private practice.

#### Cons

Some of the undesirable consequences include, but are not limited to, the following:

1. Loss of local control over prosecutorial function in a community.
2. Shift of financing to a statewide basis which would increase competition for already limited tax dollars.
3. Lack of support for the concept. Historically, the concept has not been well received and no demonstrable need has been stated.

4. Fear on the part of smaller counties that there would be a lack of representation. There is concern that the focus in a district will be upon the more populated county (counties) within a district (*i.e.*, those counties with the most votes).
5. Difficulty in constructing prosecutorial districts which account for varying local cultures and values while obtaining maximum efficiency. Felony caseloads in some areas of the state are sufficiently low that a full time prosecutor could only be justified if covering a large geographic area, an area which is so large that efficiency is diminished. Yet, including misdemeanor and juvenile cases would further diminish local control and increase resistance to a statewide district attorney system. A concept which organizes along judicial districts does not account for differing demographics and local cultures within a district and may not provide a sufficient caseload for a full time prosecutor.

### REQUIREMENTS FOR A SUCCESSFUL DISTRICT ATTORNEY SYSTEM IN KANSAS

If the legislature were to adopt a statewide mandatory district attorney system, the Committee agreed on some basic attributes that would be essential to the success of a statewide system in Kansas.

The following are the Committee's recommendations for mandatory components in any statewide district attorney system in Kansas.

1. The system must first and foremost have a detailed plan for ensuring adequate funding. Funding of the Oklahoma system has evolved over the 40 years since it was implemented and is now a mixture of state general funds, grant money, county funding of infrastructure and other specific monies, such as funds generated from asset forfeitures. Before attempting to formulate any funding plan for Kansas, an audit must be done to ascertain how much money is currently being spent by the counties on prosecution and county counselor functions. Until that number is known, it cannot be determined how a statewide system would compare. A member of the Committee who has worked as a district attorney in Oklahoma attempted several years ago to do a financial analysis of Kansas' expenditures for prosecutorial and county counselor services. By his estimates at that time, it appeared that Kansas was spending more dollars per capita than was spent in Oklahoma under their statewide system.
2. There must be some centralized coordinating council or board to handle payroll, training, budgeting, grant writing and other administrative functions. At the same time, it is essential to design a structure that leaves at least some control at the local level. The mission of the coordinating entity should be similar to that of the Oklahoma District Attorneys Council: "To protect the citizens of [Kansas] through effective and efficient administration of justice."

3. There must be minimum standards for the district attorney positions. The Committee suggests that candidates must be licensed to practice law in Kansas and have five years of experience. The district attorneys should be selected by partisan election and serve 4 year terms.
4. There should be statutory minimum salaries for the district attorney positions, with the opportunity for counties to pay more if desired.
5. The district attorney budgets should be bottom line and not line item budgets.
6. The district attorney districts should be based on crime rates, population and reasonable logistical factors and may or may not correspond exactly with existing judicial districts.
7. Finally, consideration of modernizing Kansas' justice system by implementing a statewide system of prosecution cannot be done in a vacuum. Such consideration would have to include ensuring appropriate resources for the criminal defense system and sufficient funding and resources for the judicial branch, particularly with regard to infrastructure and buildings and non-judicial personnel services.