

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

385I0027

HOUSE BILL NO. 1055

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the authority of magistrate courts and to revise
2 certain provisions pertaining thereto.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 As used in this chapter, the term, magistrate, means a clerk magistrate or a magistrate judge
7 appointed under the authority of this chapter. Any magistrate judge appointed under the
8 authority of this chapter shall be licensed to practice law in the State of South Dakota.

9 Section 2. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Pursuant to the provisions of S.D. Const., Art. V, § 4, there is hereby established within each
12 judicial circuit a magistrate court.

13 Section 3. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any magistrate court with a magistrate judge presiding is a court of record. However, no
16 magistrate court with a clerk magistrate presiding is a court of record.



1 Section 4. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Subject to such rules as may be promulgated by the Supreme Court, the presiding circuit
4 judge in each judicial circuit shall appoint a sufficient number of magistrates as may be necessary
5 to provide adequate and qualified judicial personnel for each county and municipality in the
6 circuit.

7 Section 5. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Each magistrate shall be appointed by the presiding judge of the circuit court and serve at
10 the pleasure of the presiding judge. However, the Supreme Court may, by rule, provide that
11 magistrates may be appointed for a definite term.

12 Section 6. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The compensation of a magistrate shall be fixed by law and for such purpose the Supreme
15 Court in its annual consolidated budget for the Unified Judicial System shall make
16 recommendations relating thereto. The state shall provide from funds appropriated therefor for
17 the salaries and travel expenses of the magistrates of the circuit court.

18 Section 7. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
21 order or judgment of the magistrate court, and such appeal shall be taken in the manner
22 prescribed by law or rule for appeals to the circuit court.

23 Section 8. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
24 as follows:

1 Each county in the state shall provide suitable and adequate facilities for the magistrate court,
2 including the facilities necessary to make the space provided functional for its intended use.

3 Section 9. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Any municipality in the state shall, upon order of the presiding judge of the circuit, provide
6 suitable and adequate quarters for a magistrate court assigned principally to serve the
7 municipality, including the facilities necessary to make the space provided functional for its
8 intended use.

9 Section 10. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Filing fees in magistrate court, unless otherwise provided by law, shall be the same as the fees
12 chargeable by the clerk of courts for the filing of actions or proceedings in the circuit court,
13 including the fees prescribed pursuant to § 14-6-1 if applicable.

14 Section 11. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The number of full-time magistrate judges in the judicial circuits established by § 16-5-1.2
17 is fixed as follows:

- 18 (1) First Circuit: One full-time magistrate judge;
- 19 (2) Second Circuit: Four full-time magistrate judges;
- 20 (3) Third Circuit: One full-time magistrate judge;
- 21 (4) Fourth Circuit: One full-time magistrate judge;
- 22 (5) Fifth Circuit: One full-time magistrate judge; and
- 23 (6) Seventh Circuit: Three full-time magistrate judges.

24 Section 12. That chapter 16-12B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 If the business of a magistrate court with a magistrate judge presiding becomes congested
3 or if a magistrate judge is, for any cause, unable to act, the Chief Justice of the Supreme Court
4 may, by order, temporarily transfer to such magistrate court a magistrate judge from another
5 circuit. The magistrate judge acting in a county other than one in his or her own circuit shall have
6 all the powers and duties of a magistrate judge regularly appointed and qualified therein.

7 Section 13. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Any person appointed as a full-time magistrate judge shall be appointed for a full term of four
10 years from and after the date of the approval of the appointment by the Supreme Court and is
11 subject to removal only upon recommendation of the judicial qualifications commission and the
12 action of the Supreme Court thereon. Any person appointed as a part-time magistrate judge shall
13 be appointed by the presiding judge of the circuit court, subject to the approval of the Supreme
14 Court, and shall serve at the pleasure of the presiding judge. Upon termination of any
15 appointment, the presiding judge shall forthwith notify the state court administrator thereof.

16 Section 14. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The presiding judge of each circuit shall certify to the state court administrator the name of
19 each lawyer that the presiding judge proposes to appoint in his or her circuit. Prior to the
20 appointment of any magistrate judge, the presiding judge shall present to the state court
21 administrator a resume of the applicant's qualifications setting forth the proposed salary offered
22 and clearly defining the geographical area that the magistrate judge will serve and the anticipated
23 work load. The state court administrator shall distribute this information to all members of the
24 Supreme Court.

1 The Supreme Court may approve or disapprove the appointment with or without hearing and
2 notify the presiding judge of its decision.

3 Section 15. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Retired justices and judges, with their consent, may be authorized by the Chief Justice of the
6 Supreme Court to preside in any action or proceeding, or over any term of court, in the
7 magistrate court. If so authorized and acting, the orders, judgments, and decrees of that court
8 entered by such retired justice or judge are as effectual for all purposes as though made by a
9 regularly elected or appointed magistrate. The Supreme Court shall provide for the
10 reimbursement of their expenses.

11 Section 16. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
12 as follows:

13 A magistrate judge appointed pursuant to this chapter may solemnize marriages. The clerk
14 of courts shall collect a fee of twenty dollars for a magistrate's performance of a marriage. The
15 clerk of courts shall remit fees collected under this section to the state treasurer for deposit in
16 the state general fund.

17 Section 17. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A magistrate judge appointed pursuant to this chapter may administer oaths, take
20 acknowledgments, and depositions.

21 Section 18. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
24 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

1 Section 19. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
2 as follows:

3 No party may be deprived of the assistance of an attorney, at the party's expense, in small
4 claims or magistrate court.

5 Section 20. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
8 circuit courts to fix bond or take personal recognizance of persons charged with an offense.

9 Section 21. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
12 circuit courts:

- 13 (1) To accept defaults for petty offenses;
- 14 (2) To try contested cases involving a petty offense;
- 15 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- 16 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,
17 bylaw, or other police regulation of a political subdivision;

18 if the punishment is a fine not exceeding one thousand dollars or imprisonment for a period not
19 exceeding one year, or both such fine and imprisonment and to impose sentence upon a plea of
20 guilty or nolo contendere. Acceptance of not guilty or nolo contendere pleas shall be in
21 accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

22 Section 22. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
23 as follows:

24 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the

1 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or
2 other police regulation of a political subdivision.

3 Section 23. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
4 as follows:

5 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
6 circuit courts to act as a committing magistrate for all purposes.

7 Section 24. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
8 as follows:

9 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
10 circuit courts to try and determine all cases of misdemeanor and actions or proceedings for
11 violation of any ordinance, bylaw, or other police regulation of a political subdivision.

12 Section 25. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
15 circuit courts to try and determine all small claim proceedings.

16 Section 26. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
19 circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the
20 property involved does not exceed ten thousand dollars. Any magistrate court with a magistrate
21 judge presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value
22 of the property involved does not exceed eight thousand dollars.

23 Section 27. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A magistrate court with a magistrate judge presiding has jurisdiction, upon assignment of the
2 presiding judge of the circuit, to act in lieu of a circuit judge having jurisdiction heretofore
3 granted to county courts or district county courts or judges thereof in relation to the enforcement
4 or administration of the provisions of Titles 27A and 27B.

5 Section 28. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Except in small claims proceedings, a verbatim record of all proceedings and evidence at
8 trials before a magistrate court with a magistrate judge presiding shall be maintained either by
9 electrical devices or by stenographic means, as the magistrate may direct. However, if any party
10 to the action requests stenographic reporting of the proceedings, the reporting shall be done
11 stenographically. The requesting party in a civil matter shall pay the costs of reporting the
12 proceedings. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in
13 circuit court.

14 Section 29. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
17 order or judgment of the magistrate court with a magistrate judge presiding, and such appeal
18 shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

19 Section 30. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Any attorney who is a part-time magistrate judge may practice law under such conditions as
22 the circuit judges sitting en banc in the judicial circuit may provide, subject to Supreme Court
23 rule.

24 Section 31. That chapter 16-12B be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No magistrate judge appointed on a full-time basis may act as counsel or be associated with
3 others as counsel in any court of this state. Each magistrate judge is bound by the Code of
4 Judicial Conduct adopted by the Supreme Court.

5 Section 32. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Any duly appointed clerk or any deputy clerk who meets the qualifications of a clerk
8 magistrate may be appointed as a clerk magistrate. Any clerk or deputy clerk who has been
9 appointed a clerk magistrate may act as such in any circuit of this state if placed on temporary
10 duty assignment in another circuit.

11 Section 33. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 No person is eligible for appointment to the office of clerk magistrate unless such person is
14 a graduate of a high school or has attained the equivalent of a high school education as indicated
15 by the possession of a certificate of equivalency issued by the State Department of Education or
16 the former Department of Public Instruction or the former Division of Elementary and Secondary
17 Education based upon the record made on the general education development test.

18 Section 34. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The presiding judge of each circuit shall, immediately following the appointment of a clerk
21 magistrate, certify to the state court administrator the name and address of each appointee and
22 principal place or places that the appointee is to function. The state court administrator shall be
23 promptly notified of the termination from office of a clerk magistrate.

24 Section 35. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No clerk magistrate may take office for the first time as a magistrate until such person has
3 attended an institute on the duties and functioning of the magistrate's office to be held under the
4 supervision of the Supreme Court, unless such attendance is waived by the Supreme Court.

5 Section 36. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
6 as follows:

7 The Supreme Court shall establish the institute and shall provide that the institute be held at
8 least once every two years. It may establish an institute at such other times and for such other
9 purposes as it deems necessary and may require the attendance of any clerk magistrate.

10 Section 37. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
11 as follows:

12 A clerk magistrate appointed pursuant to this chapter may solemnize marriages. The clerk
13 of courts shall collect a fee of twenty dollars for a clerk magistrate's performance of a marriage.
14 The clerk of courts shall remit fees collected under this section to the state treasurer for deposit
15 in the state general fund.

16 Section 38. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A clerk magistrate appointed pursuant to this chapter has authority to administer oaths, take
19 acknowledgments, and depositions.

20 Section 39. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
21 as follows:

22 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
23 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

24 Section 40. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No party may be deprived of the assistance of an attorney, at the party's expense, in small
3 claims or magistrate court.

4 Section 41. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
7 circuit courts to act as a committing magistrate if voluntary and knowledgeable waiver of
8 preliminary hearing has been given before the court. The magistrate court may conduct
9 preliminary hearings as a committing magistrate unless demand is made by the defendant prior
10 to such hearing to have the hearing conducted before a magistrate judge or a circuit judge to be
11 assigned by the presiding judge.

12 Section 42. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
15 circuit courts to fix bond or take personal recognizance of persons charged with an offense in
16 accordance with the schedule adopted pursuant to subdivision 16-2-21(8).

17 Section 43. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
20 circuit courts:

- 21 (1) To accept defaults for petty offenses;
- 22 (2) To try contested cases involving a petty offense;
- 23 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- 24 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,

1 bylaw, or other police regulation of a political subdivision;
2 if the punishment is a fine not exceeding two hundred dollars or imprisonment for a period not
3 exceeding thirty days, or both such fine and imprisonment and to impose sentence upon a plea
4 of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or
5 schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not
6 covered by said schedules, the magistrate court may impose a sentence of a fine as authorized
7 by statute, ordinance, bylaw, or police regulation or two hundred dollars, whichever is less.
8 Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and
9 23A-7-8, as applicable.

10 Section 44. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
11 as follows:

12 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
13 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or
14 other police regulation of a political subdivision in accordance with schedules adopted pursuant
15 to subdivision 16-2-21(8).

16 Section 45. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
19 circuit courts, in noncontested civil actions or noncontested small claims proceedings where the
20 amount of money or damage does not exceed eight thousand dollars, to take the necessary
21 evidence and to enter a judgment.

22 Section 46. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Except in small claims proceedings, a verbatim record of all proceedings and evidence at

1 trials before a clerk magistrate shall be maintained either by electrical devices or by stenographic
2 means, as the magistrate may direct. However, if any party to the action requests stenographic
3 reporting of the proceedings, the reporting shall be done stenographically. The requesting party
4 in a civil matter shall pay the costs of reporting the proceedings. If no record is kept, the appeal,
5 if appeal is authorized by law, shall be de novo in circuit court.

6 Section 47. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
9 order or judgment of the magistrate court with a clerk magistrate presiding, and such appeal shall
10 be taken in the manner prescribed by law or rule for appeals to the circuit court.

11 Section 48. That §§ 16-12A-1 to 16-12A-31, inclusive, be repealed.