

Approved March 18, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 2, 1988 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was excused

Committee staff present:

Jerry Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Elaine Wells

James Lusk, Osage County Attorney, Lyndon

John Bork, Attorney General's Office

Hearing on H.B. 2917 - Allowing issuance of citation in D.U.I. cases

Representative Wells testified this bill is to correct a procedural problem particularly in D.U.I. traffic violations. H.B. 2917 requires certain traffic infractions be taken before a judge. A citation, signed by a police officer, is a lawful complaint when filed with a court having jurisdiction. She recommended replacing "police officer" wherever it appears in the bill with "law enforcement officer"; adding "the signature of the law enforcement officer" in line 86; and striking "notice to appear" in lines 164 and 166, (see Attachment I).

James Lusk testified H.B. 2917 will benefit both the prosecutor and the accused. He stated the bill allows the traffic ticket to be filed and serve as the complaint. He urged the passage of this bill.

John Bork testified this bill would remove in lines 67 and 68 the phrase "and is not required to be taken before a judge of the district court". He stated the amendments proposed would not adversely affect the law.

The hearing was closed on H.B. 2917.

Representative Roy moved and Representative Whiteman seconded to adopt the amendments proposed by Representative Wells with the exception of striking in lines 164 and 166, "notice to appear". The motion passed.

Representative Roy moved and Representative Whiteman seconded to report H.B. 2917, as amended, favorable for passage. The motion passed.

The Committee considered the following bills:

H.B. 2632 - Exemptions from legal process

A proposed amendment was distributed to strike part of line 44 and lines 45 and 46; lines 50 through 58; and adding in Section 1, on page 2, (e) "The provisions of this section shall apply only to life insurance policies purchased on or after July 1, 1988", (see Attachment II).

Representative Shriver moved to remove changes on lines 75 and 90 which would reduce the amounts to the present statutory limits. The motion was seconded by Representative Whiteman. The question was divided. The motion to reduce line 75 to present statutory limit failed. The motion to reduce line 90 to the present statutory limit failed.

A motion was made by Representative O'Neal and seconded by Representative Snowbarger to adopt the amendment on life insurance. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~am~~ p.m. on March 2, 19 88

Representative Snowbarger distributed proposed amendments to Section 2,(a), at the end of line 73, "provided that no works of art, electronic equipment in excess of one radio or television set, and antiques upon which a person has voluntarily granted a lien shall, to the extent of the balance due on the debt secured thereby, be subject to the provisions of this section or be exempt from forced sale under process of law, and (b) provided that, no ornaments of the debtor's person including jewelry in excess of \$1000 upon which a person has voluntarily granted a lien shall, to the extent of the balance due on the debt above \$1000, be subject to the provisions of this section or be exempt from forced sale under process of law", (see Attachment III).

Representative Snowbarger moved to adopt his proposed amendments. Representative Douville seconded and the motion passed.

A motion was made by Representative O'Neal and seconded by Representative Snowbarger to report H.B. 2632, as amended, favorably for passage. The motion passed.

Representative Crowell requested to be recorded as voting "no".

H.B. 2792 - Concerning service of process; providing for registration of and service of process by process servers.

A motion was made by Representative Fuller and seconded by Representative Whiteman to report H.B. 2792 favorably for passage. The motion passed.

H.B. 2669 - Act concerning cities; relating to the acquisition of fee title of certain realty.

Representative Vancrum moved to report H.B. 2669 favorable for passage. Representative Fuller seconded the motion. The motion passed.

H.B. 2931 - Allowing coroners access to certain information concerning patients in treatment facilities

A motion was made by Representative Jenkins and seconded by Representative Douville to report H.B. 2931 favorable for passage. The motion passed.

H.B. 2869 - Interference with parent-child communications in domestic relations cases

Representative Solbach moved and Representative Kennard seconded to report H.B. 2869 favorable for passage. The motion failed.

H.B. 2898 - Allowing house arrest, including electronic monitoring and voice identification, as conditions of sentencing, probation or suspended sentences.

Representative O'Neal distributed proposed amendments to H.B. 2898, (see Attachment IV).

Representative Walker moved to adopt the proposed amendments with the exception of a Class C felony in line 30. The motion was seconded by Representative Fuller. The motion passed.

Representative Snowbarger moved to report H.B. 2898, as amended, favorable for passage. Representative Buehler seconded and the motion passed.

The Committee meeting was adjourned at 5:15 p.m. The next meeting will be Thursday, March 3, 1988 at 3:30 p.m. in room 313-S.

ELAINE L. WELLS
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
R.R. 1, BOX 166
CARBONDALE, KANSAS 66414
(913) 665-7740



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

March 2, 1988

TESTIMONY ON H.B. 2917

Thank you Mr. Chairman for the opportunity to hear this bill.

It's intent is to correct a procedural problem particularly in a DUI traffic violation. It was recommended by the Attorney General's office this past summer following a case involving an Osage County man.

It simply requires that certain traffic infractions be taken before a judge. These are listed in line 34.

They include:

- KSA 8- 262 Driving while license cancelled, suspended or revoked.
- 8-1567 Driving under influence of alcohol or drugs.
- 8-1568 Fleeing or attempting to elude a police officer.
- 8-1602 Accident involving death or injury.
- 8-1603 Accident involving damage to vehicle or property.
- 8-1604 Duty of driver to give information and aid after accident.

There have been certain cases including the one this past summer where a traffic citation was issued which included driving while intoxicated. Because a citation was issued rather than the formal complaint, the charge was dropped.

This bill is a technical clean-up to require those certain violations to be addressed as those requiring proper prosecution. This is accomplished in lines 128 through 133 stating the citation is a lawful complaint when filed with the court for the purpose of prosecution

Attachment I

for the violation specified. It is further implemented by striking the words in line 067 and 068.

Possible amendments recommended by the District Attorney's office in Wichita included using the words law enforcement officer rather than police officer; in line 086, adding "the signature of the law enforcement officer", and striking "notice to appear" in lines 164 and 166 since it should not be considered under the definition, "complaint".

Again, thank you Mr. Chairman. I'd be happy to respond to any questions.

HOUSE BILL No. 2632

By Special Committee on Judiciary

Re Proposal No. 16

12-16

0019 AN ACT concerning civil procedure; relating to exemptions from
0020 legal process; amending K.S.A. 40-414 and K.S.A. 1987 Supp.
60-2304 and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 40-414 is hereby amended to read as fol-
0023 lows: 40-414. (a) If a life insurance company or fraternal benefit
0024 society issues any policy of insurance or beneficiary certificates
0025 upon the life of an individual and payable at the death of the
0026 insured, or in any given number of years, to any person or
0027 persons having an insurable interest in the life of the insured, the
0028 policy and its reserves, or their present value, shall inure to the
0029 sole and separate use and benefit of the beneficiaries named in
0030 the policy and shall be free from:

0031 (1) The claims of the insured or the insured's creditors and
representatives;

0033 (2) the claims of any policyholder or the policyholder's cred-
0034 itors and representatives, subject to the provisions of subsection
0035 (b);

0036 (3) all taxes, subject to the provisions of subsection (d); and

0037 (4) the claims and judgments of the creditors and represent-
0038 atives of any person named as beneficiary in the policy of
0039 insurance.

0040 (b) The nonforfeiture value of a life insurance policy shall not
0041 be exempt from:

0042 (1) Claims of the creditors of a policyholder who files a
0043 bankruptcy petition under 11 U.S.C. ~~1/2~~ 101 et seq. on or within
0044 one year after the date the policy is issued ~~if the policy was~~
0045 ~~obtained by the debtor for the purpose of defrauding one or more~~

Attachment II

~~0046 of the debtor's creditors; or~~

0047 (2) the claim of any creditor of a policyholder if execution on
0048 judgment for the claim is issued on or within one year after the
0049 date that the policy is issued ~~if the policy was obtained by the~~
~~0050 debtor for the purpose of defrauding one or more of the debtor's~~
0051 ~~creditors.~~

~~0052 (3) For the purposes of this subsection, "a policy obtained by~~
~~0053 the debtor for the purpose of defrauding one or more of the~~
~~0054 debtor's creditors" means a policy purchased by the debtor~~
0055 ~~within one year prior to-~~

~~0056 (A) Filing a bankruptcy petition under 11 U.S.C. 101 et~~
~~0057 seq., or~~

~~0058 (B) execution on judgment for the claim of the creditor.~~

0059 (c) Nothing in this section shall be construed as restricting
0060 the right of the insured to change the beneficiary if the policy
0061 reserves that right to the insured.

0062 (d) Nothing in this section shall be construed as exempting
0063 from taxation any real estate which may at any time be carried by
0064 any life insurance company as a part of its legal reserve.

0065 Sec. 2. K.S.A. 1987 Supp. 60-2304 is hereby amended to read
0066 as follows: 60-2304. Every person residing in this state shall have
0067 exempt from seizure and sale upon any attachment, execution or
0068 other process issued from any court in this state, the following
0069 articles of personal property:

0070 (a) The furnishings, equipment and supplies, including food,
0071 fuel and clothing, for the person which is in the person's present
0072 possession and is reasonably necessary at the principal residence
0073 of the person for a period of one year.

0074 (b) Ornaments of the debtor's person, including jewelry,
0075 having a value of not to exceed ~~\$500~~ \$1,000.

0076 (c) *Such person's interest, not to exceed \$15,000 in value, in*
0077 *one means of conveyance regularly used for the transportation of*
0078 *the person or for transportation to and from the person's regular*
0079 *place of work, except that the value limitation specified in this*
0080 *subsection shall not apply when the means of conveyance is a*
0081 *vehicle designed or equipped, or both, for handicapped persons,*
0082 *as defined in K.S.A. 8-1,124 and amendments thereto.*

(e) The provisions of this section shall apply only to life insurance policies purchased on or after July 1, 1988.

0083 (d) A burial plot or crypt or any cemetery lot exempt from
0084 process pursuant to K.S.A. 17-1302 and amendments thereto.

0085 (e) The books, documents, furniture, instruments, tools, im-
0086 plements and equipment, the breeding stock, seed grain or
0087 growing plants stock, or the other tangible means of production
0088 regularly and reasonably necessary in carrying on the person's
0089 profession, trade, business or occupation in an aggregate value
0090 not to exceed ~~\$5,000~~ \$7,500.

0091 (f) Any personal property exempt from process pursuant to
0092 K.S.A. 36-202, 48-245 or 84-2-326, and amendments thereto.

0093 Sec. 3. K.S.A. 40-414 and K.S.A. 1987 Supp. 60-2304 are
0094 hereby repealed.

0095 Sec. 4. This act shall take effect and be in force from and
0096 after its publication in the statute book.

0046 of the debtor's creditors; or
 0047 (2) the claim of any creditor of a policyholder if execution on
 0048 judgment for the claim is issued on or within one year after the
 0049 date that the policy is issued if the policy was obtained by the
 0050 debtor for the purpose of defrauding one or more of the debtor's
 0051 creditors.

0052 (3) *For the purposes of this subsection, "a policy obtained by*
 0053 *the debtor for the purpose of defrauding one or more of the*
 0054 *debtor's creditors" means a policy purchased by the debtor*
 0055 *within one year prior to:*

0056 (A) *Filing a bankruptcy petition under 11 U.S.C. ½ 101 et*
 0057 *seq.; or*

0058 (B) *execution on judgment for the claim of the creditor.*

0059 (c) Nothing in this section shall be construed as restricting
 0060 the right of the insured to change the beneficiary if the policy
 0061 reserves that right to the insured.

0062 (d) Nothing in this section shall be construed as exempting
 0063 from taxation any real estate which may at any time be carried by
 0064 any life insurance company as a part of its legal reserve.

0065 Sec. 2. K.S.A. 1987 Supp. 60-2304 is hereby amended to read
 0066 as follows: 60-2304. Every person residing in this state shall have
 0067 exempt from seizure and sale upon any attachment, execution or
 0068 other process issued from any court in this state, the following
 0069 articles of personal property:

0070 (a) The furnishings, equipment and supplies, including food,
 0071 fuel and clothing, for the person which is in the person's present
 0072 possession and is reasonably necessary at the principal residence
 0073 of the person for a period of one year.

0074 (b) Ornaments of the debtor's person, including jewelry,
 0075 having a value of not to exceed \$500 \$1,000.

0076 (c) *Such person's interest, not to exceed \$15,000 in value, in*
 0077 *one means of conveyance regularly used for the transportation of*
 0078 *the person or for transportation to and from the person's regular*
 0079 *place of work, except that the value limitation specified in this*
 0080 *subsection shall not apply when the means of conveyance is a*
 0081 *vehicle designed or equipped, or both, for handicapped persons,*
 0082 *as defined in K.S.A. 8-1,124 and amendments thereto.*

0083 (d) A burial plot or crypt or any cemetery lot exempt from
 0084 process pursuant to K.S.A. 17-1302 and amendments thereto.

0085 (e) The books, documents, furniture, instruments, tools, im-
 0086 plements and equipment, the breeding stock, seed grain or
 0087 growing plants stock, or the other tangible means of production
 0088 regularly and reasonably necessary in carrying on the person's
 0089 profession, trade, business or occupation in an aggregate value
 0090 not to exceed \$5,000 \$7,500.

0091 (f) Any personal property exempt from process pursuant to
 0092 K.S.A. 36-202, 48-245 or 84-2-326, and amendments thereto.

0093 Sec. 3. K.S.A. 40-414 and K.S.A. 1987 Supp. 60-2304 are
 0094 hereby repealed.

0095 Sec. 4. This act shall take effect and be in force from and
 0096 after its publication in the statute book.

provided that no works of art, electronic equipment in
excess of one radio or television set, and antiques upon
which a person has voluntarily granted a lien shall, to
the extent of the balance due on the debt secured thereby,
be subject to the provisions of this section or be exempt
from forced sale under process of law.

provided that, no
ornaments of the debtor's person including jewelry in excess
of \$1000 upon which a person has voluntarily granted a lien
shall, to the extent of the balance due on the debt above
\$1000, be subject to the provisions of this section or be
exempt from forced sale under process of law.

Attachment III

HOUSE BILL No. 2898

By Representatives O'Neal and Wunsch

2-10

0017 AN ACT concerning sentencing; relating to the conditions of
0018 sentencing, probation or suspended sentence; allowing house
0019 arrest, including electronic monitoring or voice identification
0020 as conditions thereof; amending K.S.A. 1987 Supp. 21-4603
0021 and 21-4610 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. (a) The court or the secretary of corrections
0024 may implement a house arrest program for defendants or inmates
0025 being sentenced by the court or in the custody of the secretary of
0026 corrections, except:

0027 (1) No defendant ~~or inmate~~ shall be placed under house
0028 arrest if found guilty of:

0029 (A) Any crime in article 34 or 35 of chapter 21 in the K.S.A., and
0030 amendments thereto;

0031 (B) K.S.A. 21-3603, and amendments thereto; or

0032 (C) K.S.A. 21-3609, and amendments thereto; ~~or~~

0033 (2) no inmate shall be placed under house arrest who has
0034 been denied parole by the parole board within the last 6 months,
0035 Any inmate who, while participating in the house arrest program,
0036 is denied parole by the parole board shall be allowed to remain
0037 under house arrest until the completion of the sentence or until
0038 the inmate is otherwise removed from the program.

0039 (b) House arrest is an individualized program in which the
0040 freedom of an inmate is restricted within the community, home
0041 or noninstitutional residential placement and specific sanctions
0042 are imposed and enforced. House arrest may include:

0043 (1) Electronic monitoring which requires a transmitter to be
0044 strapped to the defendant or inmate which broadcasts an en-
0045 coded signal to the receiver located in the defendant's or in-

by the court

, for which the penalty is a class A, B or C
felony

if such inmate's security status is greater than
minimum security; or

(3) no inmate shall be placed under house
arrest

Attachment IV

mate's home. The receiver is connected to a central office computer and is notified of any absence of the defendant or inmate; or

(2) voice identification-encoder which consists of an encoder worn by the defendant or inmate. A computer is programmed to randomly call the defendant or inmate and such defendant or inmate is required to provide voice identification and then insert the encoder into the verifier box, confirming identity.

(c) Prior to the placement of an inmate under house arrest, the court or secretary shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(d) House arrest sanctions shall be administered by the court and the secretary of corrections, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

Sec. 2. K.S.A. 1987 Supp. 21-4603 is hereby amended to read as follows: 21-4603. (1) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Kansas state reception and diagnostic center or by the state security hospital. If the offender is sent to the Kansas state reception and diagnostic center or the state security hospital for a presentence investigation under this section, the institution or hospital may keep the offender confined for a maximum of 120 days or until the court calls for the return of the offender. While held at the Kansas reception and diagnostic center or the state security hospital the defendant may be treated the same as any person committed to the secretary of

respectively,