Approved March 27, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Michael O'Neal
Chairperson at

3:30 ~~xxx~~/p.m. on March 19, 19 90 in room 313-S of the Capitol.

All members were present except:

Representatives Fuller, Moomaw, Peterson and Shriver, who were 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:

Senator Janis Lee
Lynn Hall, Municipal Judge of Russell and Lucas
Paul Shelby, Office of Judicial Administration
Carolyn Burns, Barton County Clerk of the District Court
Dr. Lorne A. Phillips, State Registrar, Division of Information Systems, Department of Health and Environment

HEARING ON SB 690 Probate proceedings, venue in any county where decedent owned real property

Senator Janis Lee explained SB 690 was requested by Janes L. Bush, Smith County Attorney. SB 690 amends K.S.A. 59-2203 to permit the probate of a will or the administration of an estate in any county where the decedent owned real estate at the time of the decedent's death. He suggested the language proposed in SB 690 would be made clearer by changing the language "owned real property" to "had an interest in real property" at the time of the decedent's death, see Attachment I.

In answer to a Committee question, she said there should be no problem with making the bill "effective upon publication in the Kansas Register".

There being no other conferees, the hearing on SB 690 was closed.

HEARING ON SB 717 Probate procedure, attestation, affidavit

Senator Janis Lee informed the Committee that James L. Bush, Smith County Attorney, requested SB 717 be introduced. SB 717 codifies the Kansas Supreme Court's ruling in Pelty, and makes it clear that K.S.A. 59-606 permits the use of a "self-proving affidavit" in lieu of the traditional "attestation clause", see Attachment II.

There being no other conferees, the hearing on SB 717 was closed.

HEARING ON SB 719 Allowing municipal court judges to officiate marriage ceremonies

Lynn Hall, Municipal Judge of Russell and Lucas, testified in support of SB 719. He stated municipal judges are certified as well as magistrate judges. Municipal judges have the credibility and reliability to perform marriage ceremonies. This bill allows municipal judges to perform marriage ceremonies. In many of the western counties there may be only one magistrate judge or district judge in the county to perform a civil ceremony.

There being no other conferees, the hearing on SB 719 was closed.

HEARING ON SB 721 Marriage licenses and officiant's credentials

Paul Shelby, Office of Judicial Administration, explained the bill was requested by District Court Clerks and Administrators and deals with marriage licenses and marriage credentials. The Office of Judicial Administrator supports this legislation.

Carolyn Burns, Clerk of the District Court, Barton County, testified SB 719 amends K.S.A. 23-112 to allow one copy instead of two copies of the marriage license be retained by the clerk's office; amends K.S.A. 23-107 by allowing a photocopy of the license be given the applicant in lieu of a carbon copy duplicate; repeals K.S.A. 23-113 that states a judge or clerk failing to issue or record a copy of the license shall be guilty of a misdemeanor; and repeals K.S.A. 23-104b that states minister's credentials shall be filed and recorded with the Clerk of the Court. These changes will greatly improve the effectiveness of the Clerk's office, see Attachment III.

Dr. Lorne A. Phillips, State Registrar, Division of Information Systems, Department of Health and Environment, testified in support of SB 721. He said the bill makes the marriage license process more efficient and less burdensome for the court officials. SB 721 will have no negative impact on the Office of Vital Statistics, see Attachment IV.

There being no other conferees, the hearing on SB 721 was closed.

DISCUSSION AND CONSIDERATION OF BILLS:

SB 688 Frisking a suspect

Representative Snowbarger moved and Representative Jenkins seconded to report SB 688 favorably for passage and that it be placed on the consent calendar. The motion passed.

SB 700 DUI, telephonic driver's license revocation hearings

Representative Solbach moved to report SB 700 adversely. Representative Jenkins seconded the motion.

Representative Snowbarger moved to table SB 700. Representative Douville seconded the motion. The motion passed.

SB 680 Mandating the enforcement of protection from abuse orders by law enforcement officers

Representative Solbach moved to change the word "arrest" to "take into custody". Representative Sebelius seconded the motion.

After Committee discussion, the motion was withdrawn.

A conceptual motion was made by Representative Snowbarger to state if a person enters or remains on premises in violation of an order, such violation shall constitute criminal trespass; and if a person abuses, molests or interferes with the privacy or rights of another, in violation of an order, such violation may constitute assault or battery. Representative Jenkins seconded the motion. The motion passed.

Representative Snowbarger moved and Representative Jenkins seconded to report SB 680, as amended, favorably for passage. The motion passed.

SB 527 Unenforced foreclosure judgments, cancellation and renewal affidavits

Representative Jenkins moved to report SB 527 favorably for passage. Representative Lawrence seconded the motion. The motion passed.

SB 712 Disposition of defendant pending appeal by prosecution

An amendment was distributed to the Committee. The amendment repeals K.S.A. 22-3604 and amends K.S.A. 22-3402 by deleting all of Sections 1, 2 and 3, and adding new Sections 1, 2 and 3 relating to a speedy trial, and amends new Section 3 by adding "an interlocutory appeal by the prosecution, pursuant to K.S.A. 22-3603, and amendments thereto". Attachment V.

Representative Jenkins moved to adopt the proposed amendment. Representative Hochhauser seconded the motion. The motion passed.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 19, 1990

Representative Jenkins moved and Representative Lawrence seconded to report SB 712, as amended, favorably for passage. The motion passed.

SB 717 Probate procedure, attestation, affidavit

Representative Whiteman moved to report SB 717 favorably for passage. Representative Hochhauser seconded the motion. The motion passed.

SB 719 Allowing municipal court judges to officiate marriage ceremonies

Representative Walker moved to table SB 719. The motion failed for lack of a second.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Tuesday, March 20, 1990 in room 527-S at 3:30 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/19/90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ron Smith	Topeka	KS Bar Assoc.
Paul Shelby	Topeka	OJA
Carolyn Burns	Barton Co Dist Court	Great Bend
LOLENA A. PHILLIPS	TOPEKA	KDHE
KEITH R LANDIS	"	CHRISTIAN SCIENCES COMMITTEE ON PUBLICATION FOR KANSAS
Jan Stuples	Manhatta	KAPS
[illegible]	TOPEKA	VFW
Lynn Hall	Russell, Ks	Municipal Judge
Stacie Kennon	Topeka	AG

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To	From
Sen. Janis Lee	James L. Bush
Co. State Senate	Co. Attorney - Smith Center
Dept. Sen Mike Johnston ofc	Phone # 913-282-6626
Fax # 913-296-0103	Fax # 913-282-6112

TESTIMONY
RE
SENATE BILL NO. 690

To: House Judiciary Committee

From: James L. Bush
Attorney at Law
206 S. Main
Smith Center, Kansas

HISTORICAL BACKGROUND

K.S.A. 59-2203 establishes the venue for various types of probate proceedings. The statute currently requires that proceedings for the probate of a will or for administration of a decedent's estate be had in the county of the residence of the decedent at the time of his or her death. In many parts of the state, this imposes a hardship and additional expense for the family of the deceased. It is not uncommon for elderly Kansans requiring nursing home care to move into a nursing home in a neighboring county when they are unable to get into a home in their own community. In many instances they will continue to own real estate in their "home community". Upon their deaths, the statutes require that the probate proceedings be filed in the "county of residence" at the time of death, even though all real estate and other property may be located in another county, and their only contacts with the "county of residence" may be that they were merely residing there. This requires that additional expense be incurred in filing certified copies of the proceedings in the county where the property is located after the proceedings are completed in the "county of residence". Ironically, estates of "nonresidents" may be probated in any county where the decedent left any estate to be administered. Other types of estate proceedings where administration is not required, such as Determination of Descent Proceedings, may be filed in the county where the property is located.

SUGGESTED AMENDMENT

Senate Bill No. 690 would amend K.S.A. 59-2203 to permit the probate of a will or the administration of an estate in any county where the decedent owned real estate at the time of the decedent's death. The language proposed in SB 690 could be made clearer by changing the language "owned real property" to "had an interest in real property" at the time of decedent's death;..."

Respectfully submitted:

James L. Bush
WINDSCHEFFEL & BUSH, Chartered
206 S. Main
Smith Center, KS
66967

3/19/90
H. Jud Com.

Attachment I

TESTIMONY
RE
SENATE BILL NO. 717

To: House Judiciary Committee

From: James L. Bush
Attorney at Law
206 S. Main
Smith Center, Kansas

HISTORICAL BACKGROUND

K.S.A. 59-606 sets forth the legal requirements for a valid written will. As originally enacted in 1939, the statute required that a will be signed at the end by the party making the will, in the presence of two witnesses, and then "attested" by the two witnesses, who were also to sign the will in the presence of the testator. This procedure required the inclusion of an "attestation clause" at the end of the will immediately following the signature of the testator. Although no specific language was outlined in the statutes for the "attestation clause", various forms were ultimately adopted by lawyers to meet the requirements of the statute. A sample "attestation clause" is attached hereto and identified as ATTESTATION CLAUSE. A flaw existed in this procedure in that the testimony of the subscribing witnesses was often required in order to prove that the will had been executed according to law and to admit the will to probate following the death of the decedent, which was sometimes made impossible where the witnesses could not be located or had preceded the testator in death. This sometimes jeopardized the admission of an otherwise lawfully executed will to probate. Therefore, in 1975, the statute was amended to permit the use of a "self-proving affidavit" at the conclusion of a will, thereby alleviating the necessity of having the witnesses later testify regarding the lawful execution of the will. The form and contents of the "self-proving affidavit" was included in the statute. The "self-proving affidavit" contained virtually the same language that had long been used in the "attestation clause", but went somewhat beyond the "attestation clause" in that the "self-proving affidavit" also required that the signatures of all parties be witnessed and attested to by a Notary Public. A sample "Self-proving Affidavit" is attached hereto and identified as SELF-PROVING AFFIDAVIT. Following the amendment of the statute to permit the use of a "self-proving affidavit" some lawyers interpreted the statute to permit the use of the "self-proving affidavit" in lieu of the traditional "attestation clause". Other lawyers interpreted the statute to permit the use of the "self-proving affidavit" in addition to the traditional "attestation clause". Therefore, many wills have been drafted since 1975 that include both the "attestation clause" and the "self proving affidavit", notwithstanding the fact that both forms contain virtually the same language. In 1980 the Kansas Supreme Court in the case of In re Estate of Petty, 227 Kan. 697, ruled that the use of the "self-proving affidavit" in lieu of the usual attestation clause did not destroy the validity of the will inasmuch as the use of such affidavit at the end of the will complied with the attestation statute. Nonetheless, with

3/19/90
H Jud Com

Attachment II

most lawyers being a rather cautious lot, many continue to draft wills with both clauses being included following the dispositive provisions and signature of the testator. This makes the execution of wills an even more complex procedure and further confuses the testator who legitimately questions the necessity of two clauses saying virtually the same thing.

SUGGESTED AMENDMENT

The suggested amendment codifies the Kansas Supreme Court's ruling in Petty, and makes it clear that K.S.A. 59-606 permits the use of a "self-proving affidavit" in lieu of the traditional "attestation clause".

Respectfully submitted:

James L. Bush
WINDSCHEFFEL & BUSH, Chartered
206 S. Main
Smith Center, KS
66967

3/19/90
H. Jud Com.
Att II
2

ATTESTATION CLAUSE

The foregoing instrument was subscribed, published and declared by the above-named Mary Jane Smith as her Last Will and Testament in the presence of us two, who at her request, in her presence and in the presence of one another, hereto subscribe our names as witnesses thereof, all on the date last written above; and we declare that at the time of the execution of this instrument the said testator is, in our opinion, of sound and disposing mind and memory and under no constraint.

_____
Testator

_____ residing at _____
Witness

_____ residing at _____
Witness

3/19/90
H Jud Com
Att II

3

SELF-PROVING AFFIDAVIT

STATE OF KANSAS
COUNTY OF SMITH, ss:

Before me, the undersigned authority, on this day personally appeared Mary Jane Smith, John Q. Public, and Jane Doe, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me first duly sworn, said Mary Jane Smith, testator, declared to me and to the said witnesses in my presence that said instrument is her last will and testament and that she had willingly made and executed it as her free and voluntary act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is her last will and testament, and that she executed same as such and wanted each of them to sign the same as witnesses in the presence of each other and in the presence of the testator and at her request, and that said testator at that time possessed the rights of majority, was of sound mind and under no restraint.

_____
TESTATOR

_____
WITNESS

_____
WITNESS

Subscribed, acknowledged and sworn to before me by Mary Jane Smith, testator, and John Q. Public and Jane Doe, witnesses, this 28th day of February, A.D., 1990.

_____
Notary Public

My Commission Expires:

3/19/90
H. Jud Com
Att II

SENATE BILL NO. 721
HOUSE JUDICIARY COMMITTEE

Testimony of Carolyn Burns
Clerk of the District Court, Barton County
Legislative Chairman of KADCCA

Mr. Chairman:

I appreciate the opportunity to appear today on behalf of our association, to discuss Senate Bill No. 721. This bill will amend the Marriage Licenses statutes KSA 23—112, KSA 23—107, repeal KSA 23—113 and repeal KSA 23—104b, filing of minister's credentials. We feel these changes will greatly improve the effectiveness of the Clerk's office.

KSA 23—112: The basis for this statute is, a copy of license issued and a copy of the endorsed license by the person performing the ceremony shall be retained by the clerk's office. Therefore the court is required to keep two copies of each license.

The change we are requesting is that one official copy, with the endorsement of the person performing the marriage ceremony, be retained by the clerk's office.

With the increased amount of storage problems in county courthouses over the state, reducing the amount of copies being kept and later microfilmed will be cost productive for the counties. This may seem like a small amount, but in the entire state for the year of 1988 the total number of marriages performed was 22,705.

3/19/90
H. Jud Com.

Attachment III

KSA 23—107: This statute states that the license shall contain a part in duplicate to be detached and issued to the applicant.

The change we are requesting is a photocopy be given to the applicant. This change will be a savings to the Department of Health and Environment, as that department furnishes the forms for marriage license. The duplicate form we now use is a carbon and if a change needs to be made after the license is typed the carbon copy must be corrected. Making a photocopy of the license after the applicants have completely checked the form, will result in a neater form and more expedient service for the public.

KSA 23—133: This statute, originated in 1867, we are requesting to have repealed. It states that a judge or clerk failing to issue or to record a copy of the license shall be guilty of a misdemeanor.

We, as clerk's of the court, do not refuse to process or file any documents, and if this situation would inadvertently take place, the clerk has personnel rules to follow which would handle the situation.

KSA 23—104b: Ministers credentials filed and recorded with the clerk of court.

The clerk's office has on file numerous types of credentials, we do not question if these are official or legal, our job is to file and record. Failure to file such proof shall not affect the validity of the marriage, therefore we request that the statute be repealed.

Ministers credentials cannot be destroyed, so courts have in storage all credentials that have been filed over the years, creating storage problems. Not having to file and record the credentials saves clerical staff time.

3/19/90
H. Jud Com.
Att III

State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Division of Information Systems

Stanley C. Grant, Ph.D., Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

(913) 296-1415
FAX (913) 296-6231

Testimony presented to

House Judiciary Committee

by

The Kansas Department of Health and Environment

S.B. 721

S.B. 721 is being introduced to make the marriage license process more efficient and less burdensome for the court officials. Since passage of the bill would have a positive impact on the court officials and would have no negative impact on the Office of Vital Statistics, we recommend passage.

Testimony presented by: Dr. Lorne A. Phillips
State Registrar
Division of Information Systems
March 19, 1990

3/19/90
H. Jud. Com

Attachment IV

3/19/90
H. Jud Com
Attachment V

Session of 1990

SENATE BILL No. 712

By Committee on Judiciary

2-20

AN ACT concerning the Kansas code of criminal procedure; relating to ~~disposition of defendant pending appeal by prosecution; amending K.S.A. 22-3604 and repealing the existing section~~. a speedy trial; amending K.S.A. 22-3402 and repealing the existing section; also repealing K.S.A. 22-3604

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

Section 1. K.S.A. 22-3604 is hereby amended to read as follows: 22-3604. (1) *Except as provided in subsection (3),* a defendant shall not be held in jail nor subject to an appearance bond during the pendency of an appeal by the prosecution.

(2) The time during which an appeal by the prosecution is pending shall not be counted for the purpose of determining whether a defendant is entitled to discharge under ~~section~~ K.S.A. 22-3402 ~~of this code~~ *and amendments thereto*.

(3) A defendant charged with a class A felony crime shall not be released from jail or the conditions of such person's appearance bond during the pendency of an appeal by the prosecution, and the time during which an appeal by the prosecution is pending in a class A felony case shall not be counted for the purpose of determining whether the defendant is entitled to discharge under K.S.A. 22-3402 and amendments thereto. SEE ATTACHED

Sec. 2. K.S.A. 22-3604 is hereby repealed. 22-3402 and

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book. are

Section 1. K.S.A. 22-3402 is hereby amended to read as follows: 22-3402. (1) If any person charged with a crime and held in jail solely by reason thereof shall not be brought to trial within ~~ninety-(90)~~ 90 days after such person's arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).

(2) If any person charged with a crime and held to answer on an appearance bond shall not be brought to trial within ~~one hundred-eighty-(180)~~ 180 days after arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).

(3) The time for trial may be extended beyond the limitations of subsections (1) and (2) of this section for any of the following reasons:

(a) The defendant is incompetent to stand trial;

(b) A proceeding to determine the defendant's competency to stand trial is pending and a determination thereof may not be completed within the time limitations fixed for trial by this section;

(c) There is material evidence which is unavailable; that reasonable efforts have been made to procure such evidence; and that there are reasonable grounds to believe that such evidence can be obtained and trial commenced within the next succeeding ~~ninety--(90)~~ 90 days. Not more than one continuance may be granted the state on this ground, unless for good cause shown, where the original continuance was for less than ~~ninety-(90)~~ 90 days, and the trial is commenced within ~~one-hundred-twenty--(120)~~ 120 days from the original trial date;

3/19/90
H. Jud Com
att V

(d) Because of other cases pending for trial, the court does not have sufficient time to commence the trial of the case within the time fixed for trial by this section. Not more than one continuance of not more than ~~thirty (30)~~ 30 days may be ordered upon this ground~~.~~;

(e) An interlocutory appeal by the prosecution, pursuant to K.S.A. 22-3603, and amendments thereto.

(4) In the event a mistrial is declared or a conviction is reversed on appeal to the supreme court or court of appeals, the time limitations provided for herein shall commence to run from the date the mistrial is declared or the date the mandate of the supreme court or court of appeals is filed in the district court.

3/19/90
H Jud Com
Att V
3