

Approved: 3/6/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on February 6, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Ruff (excused)
Representative Shriver (excused)
Representative Swenson (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Randy Hearrell, Judicial Council
Judge Sam Bruner--Written testimony only
Judge Marla Luckert, Chair of the Judicial Council Criminal Law
Advisory Committee
Judy Moller, Kansas Association of Counties
Randy Allen, Executive Director, Kansas Association of
Counties--Written testimony only
Joyce Coker, Johnson County Intergovernmental/Community
Relations Coordinator
John Calhoon, Atchison County Sheriff
Richard Old, Wabaunsee County Sheriff
Michael Dailey, Wyandotte County Sheriff
Jim Clark, Kansas County and District Attorneys Association
Willie Martin, Sedgwick County Commission

Others attending: See attached list

The Chair called the meeting to order at 3:35 p.m.

A motion was made by Representative Pugh and seconded by Representative Presta to approve the House Judiciary Minutes of January 27, 28, and 30 with corrections as to what members were present. The motion carries.

HB 2043: Probate code, amending the definition of a valid settlement agreement.

Randy Hearrell of the Judicial Council testified in support of **HB 2043**. Mr. Hearrell stated that the purpose of this bill is exclude those persons whose interest have been satisfied from being required to sign the settlement agreement. (Attachment 1)

Mr. Hearrell referred to written testimony of Judge Sam Bruner in support of **HB 2043**. (Attachment 2)

The conferee and Committee members discussed various situations that this bill might resolve and who would be defined as interested persons.

HB 2049: Recoupment of county defense cost as an authorized disposition.

Judge Marla Luckert, Chair of the Judicial Council Criminal Law Advisory Committee testified in support of **HB 2049**. The conferee stated that this bill amends K.S.A. 21-4603d by requiring the sentencing judge to impose a judgment of attorney fees in a misdemeanor case where an attorney has been provided at the expense of county taxpayers. The conferee stated that this legislation rather than making the judgment discretionary with the court, requires the court to initially impose a repayment obligation. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 6, 1997.

The Committee members and the conferee discussed whether this bill prioritized obligations.

HB 2008: **Criminal code; authorized dispositions and presentence investigation reports.**

The Chair stated that Judge White of Iola had to cancel his appearance before the Committee in support of **HB 2008** due to another obligation.

Judy Moller, Kansas Association of Counties testified in opposition to **HB 2008** on behalf of Randy Allen, Executive Director. The conferee stated that **HB 2008** would extend the maximum time limitation in which the court could confine a felon in a county jail from 30 days to 120. The conferee stated that the counties strongly oppose **HB 2008** because of the increase cost to county taxpayers. The conferee stated that the counties could not exempt from the tax lid, therefore, counties would need to reduce other services if this bill passes. (Attachment 4)

Joyce Coker, Johnson County Intergovernmental/Community Relations Coordinator testified in opposition to **HB 2008** on behalf of the board and of the Johnson County Sheriff's Department. The conferee stated that Johnson County jails are already overcrowded. The conferee stated that Johnson County can not afford the additional costs this bill will impose. (Attachment 5)

John Calhoun, Atchison County Sheriff testified in opposition to **HB 2008**. The conferee stated that while incarceration of deserving criminals is strongly supported, the additional burden and impact on local jurisdictions needs to be considered. (Attachment 6)

Richard Old, Sheriff of Wabaunsee County testified in opposition to **HB 2008**. The conferee stated that the Sheriffs of Pottawatomie and Morris Counties also oppose this bill. The conferee stated that the major objection to this bill is that it imposes unfunded mandates. The conferee stated that another objection was the piecemeal changing of the sentencing system. (Attachment 7)

Sheriff Michael Dailey of Wyandotte County testified in opposition to **HB 2008**, particularly the court's ability to extend jail time up to 120 days. The conferee discussed overcrowding of inmates in Wyandotte County. The conferee stated that this bill would add significant costs to the county. The conferee stated that after talking with a number of sheriffs, the Kansas Sheriffs' Association is strongly opposed to the 120 days allowed the courts. (Attachment 8)

The Committee members and the conferee discussed the current costs to the counties and the current competition for jail space among the counties.

The Chair related that Sheriff Anderson of Douglas County was not able to testify today in opposition to **HB 2008**.

Jim Clark, Kansas County and District Attorneys Association, stated that his association supports the counties in opposing **HB 2008**. The conferee stated that the Senate created a resolution requesting the Supreme Court study alternatives to state prisons. The conferee stated that several recommendations were made as a result of that study. The conferee stated that this bill was use as a method of "shock" incarceration at the front end when somebody does not carry out their probation. The conferee stated that this method had been used until the Supreme Court stated that the court did not have this authority.

Willie Martin, Sedgwick County Commission related that the sheriff of Sedgwick County wanted to be here to testify in opposition to **HB 2008**. The conferee stated that the state reimbursement does not begin to cover the actual cost.

The chair closed the hearing on **HB 2008**.

The chair opened consideration on **HB 2043**.

A motion was made by Representative Pugh and seconded by Representative Mayans to recommend **HB 2043** favorably for passage and place it on the Consent Calendar.

Substitute motion to conceptually amend to include language "removing heirs from signing whose interest are satisfied" was made by Representative Pauls and seconded by Representative Klein. Representative Klein restated Representative Pauls substitute motion. Referring to line 37, Representative Klein stated strike "interested" and insert with "a continuing interest in the settlement agreement." Motion fails with six voting in favor, and eight voting against.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 6, 1997.

The Committee members discussed issues concerning who was affected by the settlement agreement but may not be a recipient in the agreement.

Representative Garner made a substitute motion to table **HB 2043**. The motion was seconded by Representative Pauls. Motion fails with seven voting in favor and eight voting against the motion.

Representative Haley made a substitute motion to report **HB 2043** out of Committee without an recommendation. Representative Haley withdrew his substitute motion.

Representative Haley made a substitute motion to recommend **HB 2043** favorably for passage. The substitute motion was seconded by Representative Mays. The substitute motion carries.

The Chair opened discussion on **HB 2049**.

Representative Mays suggested a language change on page 2, line 25. The Chair offered language change on line 41, page 2 as lead in to the italicized portion that would make payment of restitution a priority above the payment of defense costs.

Representative Mays made a motion, seconded by Representative Presta to amend the bill by inserting language that would provide that victim restitution would have priority over reimbursement to the county for defense services. The motion to amend carries.

A motion was made by Representative Powell, seconded by Representative Pugh to recommend **HB 2049** favorably as amended. The motion carries.

The Chair related to the Committee members future Committee agendas.

The Chair adjourned the meeting at 5:05 p.m.

The next meeting is scheduled for February 10, 1997.

2-6-97 H Supt.
Guest List

Name	Representing
Sheriff Mike Dailay	Kansas Sheriff's Association & Wyandotte County

Richard Old WAB: Co. Sheriff	Ks Sheriff's Assoc Pott. Co. Sheriff Morris Co. Sheriff
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Sheriff John Calhoon Helen Stephens Helen Stephens	KANSAS SHERIFFS ASSOC. Atchison County Sheriff KPOA/KSA
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John Howard	Judicial Council
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Mark J. Luckert Jim Clark Gene M. Hall	Judicial Council KCOAA KTLA
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#1

**TESTIMONY OF THE KANSAS JUDICIAL COUNCIL
IN SUPPORT OF 1997 HOUSE BILL 2043
FEBRUARY 6, 1997**

House Bill 2043 proposes amending the definition of "valid settlement agreements" found in K.S.A. 59-102.

The changes in lines 14 and 18 were made by the Revisor of Statutes Office substituting "the Kansas Probate Code" for "the Act."

The recommendations of the Judicial Council Probate Law Advisory Committee begin in line 37 by inserting the word "interested" before the phrase "heir, devisees, legatees" and are intended to solve the problem that has come to the attention of the Committee in which an heir, devisee or legatee may have had their interest satisfied, but still refused to sign the settlement agreement. The proposal is intended to exclude those persons whose interest has been satisfied from being required to sign the settlement agreement.

In lines 38 and 39, the language "all other interested or affected persons" has been replaced with language which states "persons whose interests are affected by the settlement agreement." The reason for this change is the present phrase "all other interested or affected persons" has been interpreted to include persons whose interest has been satisfied. The proposed phrase "persons whose interests are affected by the settlement agreement" is intended to exclude those persons whose interest has been satisfied from being required to sign the settlement agreement.

House Judiciary
Attachment 1
2/6/97



DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

CHAMBERS OF:
SAM K. BRUNER
DISTRICT JUDGE
DIVISION II
(913) 764-8484 EXT. 5664

February 6, 1997

OFFICERS:
CHARLOTTE CRANE
ADMINISTRATIVE ASSISTANT
(913) 764-8484 EXT. 5648
DENISE GARDNER, C.S.R.
OFFICIAL COURT REPORTER
RITA VINLOVE, C.S.R.
OFFICIAL COURT REPORTER

Members of Kansas House of Representatives
Committee on Judiciary c/o
Representative Tim Carmody, Chairperson

Re: House Bill 2043

Dear Chairperson Carmody and Committee Members:

I note the requested changes in language at lines 37, 38 and 39 and support the recommendations. As Mr. Hearrell will note, these changes are a product of the Kansas Judicial Council review of this definition.

Without attempting to give an extensive history, which does exist, I will note the following:

- 1) the definition was first statutorily addressed in the 1985 Session;
- 2) it can and does allow families to resolve post-death differences without Court litigation and is in frequent use, (See K.S.A. 59-2249 and K.S.A. 2251 as examples of statutory recognition);
- 3) IN RE ESTATE OF WISE, 20 Kan. App. 2d 624 and a case in Division 2 of the District Court of Johnson County, (not appealed) caused questions about who was interested and therefore must enter the "agreement". The statutory changes are offered to make it easier to determine who is an essential party to the "agreement". The result should be a clearer understanding for our citizens, our Bar and the Bench as to who is an essential party and a greater utility for these "agreements" which are "favorites of the law".

I urge your favorable consideration of H.B. 2043 and do regret that I am unable to personally attend the Committee hearing.

Respectfully submitted.

Sam K. Bruner

House Judiciary
Attachment 2
2/6/97

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**Testimony Regarding House Bill No. 2049
February 6, 1997**

Presented by Marla J. Luckert
District Court Judge and
Judicial Council Member

As a representative of the Judicial Council, I am testifying in favor of House Bill No. 2049. The legislation amends K.S.A. 21-4603d which establishes the allowable dispositions when a criminal sentence is imposed. The amendment, which begins at line 41 of page 2 and continues through line 10 of page 3, requires the sentencing judge to impose a judgment of attorney fees in misdemeanor cases where an attorney has been provided at the expense of the county taxpayers.

As way of background, it might be helpful to explain that the Constitutions of the United States and of Kansas guarantee an accused the right to an attorney and, if the defendant is unable to afford an attorney and faces the genuine possibility of a sentence of imprisonment, the government has an obligation to provide that attorney. *Board of Osage County Commissioners v. Burns*, 242 Kan. 544, 548, 747 P.2d 1338 (1988). The state has provided for payment of counsel for the indigent in felony cases but not in misdemeanor cases. Thus, that expense falls upon the counties. *Id.* at 549. For violations of municipal ordinances, the city assumes the obligation to provide counsel.

The statutes relating to the Board of Indigent Defense Services, the statutes through which the state has assumed responsibility for the provision of counsel in felony cases, include a provision which allows the Court to require a defendant to reimburse the state for all or a part of the attorney fees incurred. However, until last session there was not similar language applying to attorney

House Judiciary
Attachment 3
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services or other defense costs which were provided by the city or a county.

Because such statutory authorization did not exist, the Kansas Court of Appeals, in *City of Dodge City v. Anderson*, 20 Kan. App. 2d 272, 886 P.2d 901 (1994), reversed an order of the lower court imposing attorney fees. The Court of Appeals stated:

This is a matter that needs to be addressed by the legislature. The presiding court should be able to assess attorney fees as part of the costs in this action after making the appropriate inquiry into the defendant's ability to pay. The repayment of fees should then become a condition of probation.

Id. at 275. Because the decision in *Anderson* involved an appeal from municipal court, the Court of Appeals examined the statutes relating to municipal courts and district courts for relevant statutory authority.

In legislation enacted last session, Senate Bill No. 467 (chapter 194 of the 1996 Session Laws, amending K.S.A. 12-4509), the problem was addressed as it related to expenses incurred by cities. However, a gap remained for expenditures made from county general funds for the provision of indigent attorney services.

House Bill 2049 fills the gap allowing the court to order repayment of attorney fees for attorneys provided by the county. However, the legislation goes one step further and, rather than making the judgment discretionary with the court, requires the Court to initially impose a repayment obligation. This requirement reflects a philosophy that most defendants are able to pay some amount to reimburse the county. The amount may be minimal or it may be a rough equivalent of the actual cost to the county. Often as part of probation, a defendant will be required to gain or maintain employment. Hence, while a defendant may have been truly indigent when arrested or even at the time of sentence, he or she may gain the ability to pay the costs while on probation. However, if

because of illness or other hardship a defendant is not able to pay, the provision allows the court to waive the fees upon a finding that the repayment would cause the defendant or the defendant's immediate family a manifest hardship. Such a waiver is practical, but also necessary constitutionally. *See James v. Strange*, 407 U.S. 128 (1972) (finding Kansas mandatory repayment statute unconstitutional) and *Fuller v. Oregon*, 417 U.S. 40 (1974) (finding Oregon statute constitutional where required those able to repay to do so and allowing exemptions; reimbursement requirement not an unconstitutional chilling of exercise of right of counsel).

The Judicial Council believes that the statutes should uniformly require indigent defendants to repay attorney fees when a defendant is able to do so. This statute would give the courts that power in cases of misdemeanors.

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TESTIMONY

concerning House Bill No. 2008
House Judiciary Committee
Presented by Randy Allen
Executive Director, Kansas Association of Counties
February 6, 1997

Thank you, Chairman Carmody, for the opportunity to provide comments on House Bill No. 2008 on behalf of the Kansas Association of Counties.

HB 2008 would extend the maximum time limitation in which the court could confine a felon in a county jail from 30 to 120 days.

Kansas counties strongly oppose HB 2008. The financial resources of counties are severely stretched already, and HB 2008 would add yet another cost on county taxpayers. HB 2008 would merely shift a problem of insufficient prisoner housing space at the state level to the county level. Worse yet, it would do so with no increased ability for county governments to finance these additional costs.

Our data indicate that as County commissioners set their 1995 property tax levies for 1996 budgets, only 32 counties had exempted their tax levies from the aggregate tax levy limitation (i.e. "tax lid") and an additional 5 counties had exempted costs for the operation of sheriffs departments and detention facilities from the tax lid. As such, 68 of our 105 counties still operate within the financial constraints of the tax lid. In many counties, this restriction permits commissioners to increase the tax levies by a very small fraction annually.

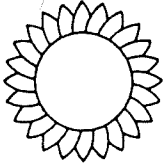
There are, by statute, several costs that are exempt from the tax lid. One exemption is juvenile detention. Adult detention costs, however, are **not exempt** from the tax lid. To assume additional costs associated with HB 2008, therefore, would require most counties to trim other basic services such as emergency medical care.

In conclusion, the member counties of our Association urge you to reject HB 2008. If you have questions, I will respond.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (913) 233-2271.

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Attachment 4
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Johnson County
Kansas

February 6, 1997

House Judiciary Committee
In opposition to HB 2008

Testimony of Joyce Coker, Johnson County Intergovernmental/ Community Relations Coordinator

Madam Chairman, members of the committee, my name is Joyce Coker, Intergovernmental and Community Relations coordinator for the Johnson County Board of Commissioners. I am appearing today on behalf of the board and on behalf of the Johnson County Sheriff's Department to oppose SB 2008.

Johnson County supports the position of the Kansas Association of Counties and the Sheriff's Association in opposition to extending court-ordered confinements in county jails from a maximum of 30 days to a maximum of 120 days. While the county applauds the state's efforts to cut costs and while the County is committed to controlling spending on the local level as well, increasing the load on already overcrowded county jails is a burden most counties can not afford to assume. Johnson County is already sending prisoners to other prisons across the state for a lack of space in our own correctional facilities, and many other counties are in the same position. Therefore, we urge you to strike from SB 2008 the provision for lengthening county jail stays to four times the current maximum stay that may be ordered by the court as a condition of probation.

House Judiciary
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#B6
ATCHISON COUNTY SHERIFF'S OFFICE

PHONE: (913) 367-0216

FAX: (913) 367-0227

**JOHN CALHOON
SHERIFF**



**518 PARALLEL
ATCHISON, KANSAS
66002**

TO: Honorable Rep Tim Carmody and Committee
FROM: Atchison County Sheriff John Calhoon
DATE: 02-06-97
RE: House Bill No. 2008

Honorable Committee:

I am here today on behalf of many of my colleagues, as well as myself, to oppose proposed House Bill No 2008.

First of all, this bill as proposed, would create a drastic burden on many local government entities due to overcrowding conditions within their local correctional facilities. Furthermore, most county jail facilities are already dealing with overcrowding problems. For example, I have to embarrassingly admit that I am currently operating a jail facility at between 200 to 230 percent recommended inmate capacity.

Secondly, I see nothing in the proposed bill that would provide any kind of funding or support to the local government entities.

In closing, I strongly support incarceration of deserving criminals. However, I strongly urge each and everyone of you to take a close look at the burden and impact it would make on your own local jurisdiction. Please take the time to visit with your local Sheriff and/or correctional facility and I strongly believe you would understand my opposition.

Respectfully submitted,

A handwritten signature in black ink that reads "John Calhoon". The signature is written in a cursive style and is enclosed within a hand-drawn oval.

John Calhoon
Atchison County Sheriff

House Judiciary
Attachment 6
2/6/97

WABAUNSEE COUNTY SHERIFF
ALMA, KANSAS

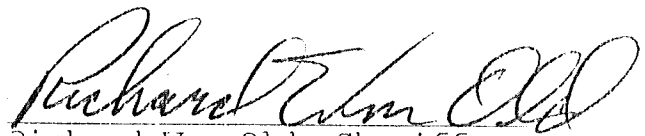
Testimony of Richard Wm. Old,
Sheriff of Wabaunsee County, Ks.
before the Special Committee on Judiciary
Kansas Legislature February 6, 1997
in opposition to HB No. 2008

I have personally consulted with the Sheriff's of
Pottawatomie and Morris Counties and they are in agreement
with me, in my opposition to HB No. 2008, as it now stands.

As Kansas Sheriffs, our principal opposition is to the
imposition of any unfunded mandates. This bill would impose
an additional financial burden on an already overcrowded
County Jail System without any compensation. By changing the
law, to allow the imposition of 120 day sentences in the
county jails, from the 30 day limit presently in effect; you
simply shift the burden of caring for felony offenders from
the state, to the counties.

On a secondary basis I oppose the idea of tinkering with the
sentencing system on a piecemeal basis. If we continue,
changing the sentencing guidelines for the benefit of every
special interest, we will eventually have no system at all,
just a conglomeration of exceptions.

Finally, I oppose the the idea because it further erodes the
definition of a felony offense. If a crime is a felony, then
it should be punishable by imprisonment for at least one
year. If it is not so punishable, then it is a misdemeanor.


Richard Wm. Old, Sheriff

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2/6/97



OFFICE of the SHERIFF
MICHAEL S. DAILEY, SHERIFF
WYANDOTTE COUNTY
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101

MICHAEL S. DAILEY
SHERIFF

Representative Tim Carmody
Judiciary Committee
Topkea, Kansas 66612

Dear Representative Carmody:

I am Sheriff Michael Dailey of Wyandotte County. I'm here to speak in opposition to House Bill 2008, especially line 29 which gives the courts latitude to place inmates in a county jail up to 120 days. This bill would place a great burden on local county sheriffs and local county budgets. Larger counties such as Sedgwick, Johnson and Wyandotte Counties would have to start programs to build new facilities in order to handle the increase population due to the 120 days allowed the courts. Sedgwick and Johnson Counties are already in the process of building new detention facilities. This is in order to handle the volume of inmates they are presently housing. Wyandotte County is adding 42 beds to its present facility in order to handle overcrowding. To deal with the problem of overcrowding we are presently experiencing we must farm out inmates to other county jails though out the state. Wyandotte County has spent over \$260,000 dollars to farm out inmates. I can only estimate that Sedgwick and Johnson Counties have spent a great deal more on farming out inmates.

Now we are asked to increase the number of inmates we must deal with by one third should the courts be allowed to sentence inmates to a local facility for 120 days. I foresee, the number of our inmates increasing by one third the present volume. In the future that number will exceed a one half or more in three to five years. Wyandotte County cannot afford the cost of this increase in inmates.

The State of Kansas has the resources to deal with the housing of inmates. We the local sheriffs' departments do not have these resources. Local Counties will not be able to afford the cost of the increase in the number of inmates. Wyandotte County now has the highest property taxes in the State, this was pointed out in a news article this morning in the Wyandotte/Leavenworth Star. In order to deal with the increase we would have to build a new or add on to our present detention facility at a high cost. Wyandotte County cannot afford this and I would venture to say the counties you represent cannot afford the budgetary increase.

I represent myself only as the Sheriff of Wyandotte County, but I have spoken with a number of other sheriffs across the State and they share my concerns about the impact of HB 2008. I know the Kansas Sheriffs' Association is strongly opposed to the 120 days allowed the courts.

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In conclusion I would like to reiterate what seems like a simple request on behalf of the courts. In order to allow for a 120 day sentence would have a great budgetary impact in Wyandotte County and in the communities you serve. I ask you to consider the impact and return the number of days presently allowed the courts to 30 days. Please protect your counties from having to bear this cost to maintain the present number of inmates that we presently handle on the 30 days allowed the courts.