

Approved: March 12, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on March 11, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Marilyn Scafe, Kansas Parole Board Chair
Randy Hearrell, Kansas Judicial Council
Judge Marla Luckert, Criminal Law Advisory Committee

Others attending: See attached list

HB 2211 - Kansas Parole Board membership reduced to four; unanimous vote required to parole inmates convicted of certain crimes.

Conferee Scafe testified as a proponent of **HB 2211** stating that the Kansas Parole Board supports the concept of the reduction of the board membership by one member beginning FY98. She explained several amendments the Board was proposing. (attachment 1) Following discussion and with no opponents of the bill present at the committee meeting, the Chair closed the hearing on **HB 2211**.

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

Conferee Hearrell testified as a proponent of **HB 2043** which proposes amending the definition of "valid settlement agreement" found in K.S.A. 59-102. Mr. Hearrell explained why the amendment was necessary and where the language in the bill needed to be changed. (attachment 2) With no opponents to testify on the bill, the Chair closed the hearing on **HB 2043**.

HB 2049 - Recoupment of county defense costs as an authorized disposition

Conferee Luckert testified as a proponent of **HB 2049** which amends K.S.A. 21-4603d by requiring the sentencing judge (during criminal sentencing) to impose a judgment of attorney fees in misdemeanor cases where an attorney has been provided at the expense of the county taxpayers. She explained that HB 2049 fills a gap for expenditures made from county general funds for the provision of indigent attorney services and stated that "the Judicial Council believes that the statutes should uniformly require indigent defendants to repay attorney fees when a defendant is able to do so." (attachment 3) Following discussion and with no opponents to the bill the Chair closed the hearing on **HB 2049**. He then called for a vote whereupon Senator Oleen made a motion to pass the bill out favorably, Senator Harrington seconded. Motion carried.

At the call of the Chair for a vote on **HB 2043**, Senator Bond moved to pass the bill out favorably, Senator Goodwin seconded. Motion carried.

The Chair called for a vote on **HB 2211**, Senator Bond moved to pass the bill out favorably, Senator Donovan seconded. Following discussion, motion carried.

Meeting adjourned at 10:34 a.m. The next scheduled meeting is Wednesday March 12, 1997.

SS. 3/11/97 act 111

MEMORANDUM

TO: Chairman and Members
Senate Judiciary

FROM: Marilyn Scafe, Chair
Kansas Parole Board

DATE: March 11, 1997

RE: HB2211

The Kansas Parole Board is in support of the concept of the reduction of the board membership by one member beginning FY98. A number of changes have been implemented to streamline the operations in order to reach this goal, and we have advised the Governor that the timing is now appropriate for a reduction. However, the Board is proposing the following amendments in addition.

1. Section 22-3709 regarding the vote required for parole of a class A or B felony or off-grid crime: Keeping the original wording of statute and simply changing the *four* to *three* would be consistent with our present way of voting for parole.
2. Section 22-3701 regarding recommendations for pardon or commutation of sentence (clemency): All references to *hearing* are deleted. The Board does not hold personal hearings with inmates making application. The procedure used is a file review and a recommendation to the Governor.
3. Section 22-3709 regarding the director position of the Kansas Parole Board: SB505, which was passed in 1996, eliminated this position with the reorganization of the support staff of the Board. Staff is now provided by the Department of Corrections and supervised by an administrator within the DOC.

Senate Judiciary
attachment,
3-11-97

4. Section 22-3717 regarding informational hearings: Previously, the Board conducted regular meetings with new inmates upon admission to the DOC to orientate them on requirements for favorable consideration by the Board at such time as they would be parole eligible. Since most new admissions are now under the new law, there will no longer be a reason for the Board to conduct these meetings. Currently, institutional staff work with the inmates in preparation for parole hearings.

5. Section 22-3717, 22-3718 regarding restitution: The Board is given the authority to order restitution in cases prior to July 1, 1986, if the court did not specify anything at the time of the sentencing. By deleting these sections, the Board wishes to clearly define that the Board is the enforcer of court orders. If restitution appears to be appropriate, it needs to be referred back to the court where there are appropriate procedures to conduct fair investigations and hearings to determine the amount owed.

6. Section 22-3712 allows the KPB to establish halfway houses in the state of Kansas. The KPB is proposing the deletion of this section. This function is currently completed through the private sector and contracted by the Kansas Department of Corrections.

7. Section 22-3717 governs the time frames allowed for parole eligibility hearings. Currently, the statute requires the KPB to conduct hearings the month before an inmate is parole eligible. The KPB proposes changing the wording of *during* to *at least* the month before... This will give the KPB more flexibility and will allow the KPB to utilize resources in a more efficient and effective manner by holding some hearings, especially hearings in remote areas of the state and/or facilities with a consistently small number of inmates who are parole eligible, two months at a time.

8. Section 22-3717 regarding requirements for parole hearings. The addition of *video-conferencing* will ensure that interactive technology will be an appropriate vehicle for parole hearings.

VOTES FOR PAROLE

Y=Yes N=No vote for parole

Current with 5 member board:

Y Y Y = Parole
Y Y N Y Y = Parole
N N = No Parole
Y Y N Y N = No Parole
Y Y N N = No Parole
(2 No Votes = No Parole)

Proposed with 4 member board:

Y Y Y = Parole
Y Y N Y = Parole
N N = No Parole
Y Y N N = No Parole
(2 No Votes
= No Parole)

3/11/97 01112

TESTIMONY OF THE KANSAS JUDICIAL COUNCIL
IN SUPPORT OF 1997 HOUSE BILL 2043
MARCH 11, 1997

House Bill 2043 proposes amending the definition of "valid settlement agreement" 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 Probate Law Advisory Committee has become aware of cases which caused questions about who was "interested" and, therefore, must enter into the "agreement." The Committee proposes amending K.S.A. 59-102(8) as follows:

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.

59-102(8) "Valid Settlement Agreement" means a written and acknowledged instrument which affects the administration or distribution of the estate and which is entered into by

~~All heirs, devisees, and legatees, and all other interested or affected persons;~~

All interested heirs, devisees, legatees, and persons whose interests are affected by the settlement agreement.

all of who must be competent or authorized to enter into such agreement."

Senate Judiciary
Attachment 2
3-11-97



DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

March 10, 1997

CHAMBERS OF:
SAM K. BRUNER
DISTRICT JUDGE
DIVISION II

(913)764-8484, Ext. 5564

OFFICERS:
CHARLOTTE CRANE
ADMINISTRATIVE ASSISTANT
(913)764-8484, Ext. 5548

DENISE GARDNER, C.S.R.
OFFICIAL COURT REPORTER

RITA VINLOVE
OFFICIAL COURT REPORTER

Members of the Kansas Senate
Senate Judiciary Committee
Senator Tim Emert

Re: House Bill 2043

Dear Senator Emert and Committee Members;

I note the requested changes in language at line 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 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 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 S.B. 2043 and do regret that I am unable to personally attend the Committee hearing.

Respectfully submitted.

Sam K. Bruner

PROBATE LAW ADVISORY COMMITTEE

Hon. Edward Larson
(Acting Chair)
301 W. 10th Street
Topeka, KS 66612
(913) 296-6146

Cheryl C. Boushka
1050/40 Corporate Woods
9401 Indian Creek Pkwy
Overland Park, KS 66210
(913) 451-5151
(913) 451-0875 FAX

Hon. Sam K. Bruner
Johnson County Courthouse
Olathe, KS 66061
(913) 764-8484 Ext. 5564
(913) 791-5258 FAX

Rep. Tim Carmody
11301 Nall Ave. #110
Leawood, KS 66211-1672
(913) 491-6332

Jack R. Euler
P.O. Box 326
137 S. Main
Troy, KS 66087
(913) 985-3561
(913) 985-2322 FAX

Gerald L. Goodell
515 S. Kansas Ave.
Topeka, KS 66603
(913) 233-0593
(913) 233-8870 FAX

John F. Kuether
Washburn Law School
Topeka, KS 66621
(913) 231-1010
(913) 232-8087 FAX

Richard L.D. Morse
2429 Lookout Drive
Manhattan, KS 66502
(913) 539-5135

Philip D. Ridenour
P.O. Box 1028
107 S. Main Street
Cimarron, KS 67835
(316) 855-7051
(316) 855-3207 FAX

Marvin E. Thompson
525 Main St.
Russell, KS 67665
(913) 483-3195

Willard Thompson
P.O. Box 997
125 N. Market, Ste. 1600
Wichita, KS 67202
(316) 267-7361
(316) 267-1754 FAX

JUDICIAL COUNCIL OF KANSAS

Kansas Judicial Center
301 W. 10th, Room 262
Topeka, KS 66612
(913) 296-2498

Hon. Tyler C. Lockett, Chair
301 W. 10th Street
Topeka, KS 66612
(913) 296-4900

J. Nick Badgerow
500/40 Corporate Woods
9401 Indian Creek Pkwy.
Overland Park, KS 66225-5407
(913) 345-8100

Hon. J. Patrick Brazil
301 W. 10th, Rm. 263
Topeka, KS 66612
(913) 296-5407

Rep. Tim Carmody
4707 College Blvd., #206
Leawood, KS 66211
(913) 491-6332

Sen. Tim Emert
3131 Terra Vista
Independence, KS 67391

Gerald L. Goodell
515 S. Kansas Ave.
Topeka, KS 66603
(913) 233-0593

Hon. Marla Luckert
Shawnee Co. Courthouse
200 S.E. 7th St.
Topeka, KS 66603
(913) 233-8200, Ext. 4130

Phillip Mellor
200 W. Douglas, Ste. 200
Wichita, KS 67202
(316) 262-4403

Marvin E. Thompson
525 Main Street
Russell, KS 67665
(913) 483-3195

Hon. Nelson E. Toburen
120 W. 4th
Pittsburg, KS 66762
(316) 231-3570

S. Ind. 3/11/97 att 3

**Testimony Regarding House Bill No. 2049
March 11, 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

*Senate Judiciary
Attachment 3
3-11-97*

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.