

Approved

Date: *February 2, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:40 a.m. on February 1, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Natalie Haag, Chief Legal Counsel, Office of the Governor
Randy Hearrell, Executive Director, Kansas Judicial Council
Peter Cotorceanu, Judicial Council, Probate Law Committee

Others attending: see attached list

Minutes of the January 30 and 31, 2001 meetings were approved on a motion by Senator Donovan, seconded by Senator O'Connor. Carried.

SB 97—concerning the signing of certain documents issued or made by the governor

Conferee Haag testified in support of **SB 97**, a bill which modifies the current statute relating to the signing, by the governor, of warrants and requisitions for the detention and transportation of fugitives across state lines. This bill would allow the governor to designate a person to execute the documents or to authorize the use of an electronic signature on these documents. (attachment 1) Discussion followed.

SB 98—concerning the publication of proclamations issued by the governor

Conferee Haag testified in support of **SB 98**, a bill which amends current law relating to the execution, by the governor, of proclamations for various special events which are to be published in the state register. Except for those required by law, the amendment would eliminate the requirement that all proclamations be published in the state register. (attachment 2)

SB 30—concerning wills, trusts and other instruments; re: invalidity of certain provisions, exceptions

Conferee Hearrell stated that the Judicial Council's Probate Law Committee is requesting the language submitted in New Section II of **SB 30** be stricken pending further work by the Committee. There was consensus to amend this portion of **SB 30**. (attachment 3)

Conferee Cotorceanu testified in support of **SB 30**, a bill which closes loopholes in current law relating to the preparation and execution of wills and makes the statute parallel the disciplinary rule in the Kansas Rules of Professional Conduct. The Conferee cited case law to describe how the language in current law has been misconstrued. He detailed other provisions in the law. (see attachment 3)

SB 26—concerning Kansas standard asset seizure and forfeiture act; re: civil remedies

The Chair reviewed **SB 26**. Several Committee members expressed concerns about this bill questioning the need for it. Following discussion, Senator Adkins moved to table the bill, Senator O'Connor seconded. Carried.

SB 27—concerning corrections; re: transfer of offenders

The Chair reviewed **SB 27**. Following discussion there was general consensus that the revisor would write a balloon amendment to the bill to make several changes recommended by the Committee.

The meeting adjourned at 10:30 a.m. The next meeting is February 2, 2001.

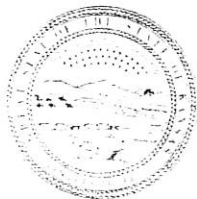
SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 1, 2001

NAME	REPRESENTING
Vivilyn Hessel	Division of Budget
J. Chubb	SOS
ROBERT JOHNSON	To. C. SHERIFF'S OFFICE
Paul Davis	KS Bar Assn.
PETER COTRCEANU	WASHBURN LAW SCHOOL
Randy M. Hearrell	Judicial Council
Natalie Haag	Governor's office
Tim Madden	KS Dept of Correction
Sub Jones	KSC
Joe Herold	KSCG
Barb Covert	KS Trial Lawyers Assoc
Fredrick Bellis	Kearney Law Office
Bill Henry	KS Gov. Consulting
Whitney Damron	KS Bar. Assn.

STATE OF KANSAS

BILL GRAVES, Governor
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OFFICE OF THE GOVERNOR

**Before the Senate Judiciary Committee
February 1, 2001
Testimony by Natalie G. Haag
Chief Legal Counsel
Director of Governmental Affairs**

Senate Bill 97

Chairman Vratil and members of the committee:

Thank you for the opportunity to testify regarding Senate Bill 97. Senate Bill 97 has been requested on behalf of Governor Graves to address concerns and issues this administration has with the execution of warrants and requisitions for the transportation of fugitives across state lines. Senate Bill 97 amends K.S.A. 75-106, which was first passed in 1879 and amended in 1923. Since 1923, this statute has existed in its current form.

As you know, the number of fugitives crossing state lines to avoid prosecution has significantly increased since 1923. During the last six years, Governor Graves has executed more than 2195 warrants and requisitions for the arrest and/or transportation of fugitives between states. Pursuant to the Uniform Extradition Act, each state has 90 days to execute the warrant and legal documents necessary for establishing the need to detain a fugitive and transport this fugitive to the requesting state. There have been several instances where another state or a county within Kansas has made a warrant or requisition request needing the Governor's signature on the last day of the statutorily authorized time period. It is critical to this administration that fugitives from justice not be released from jail because the Governor is not in the state and available to execute the warrant and/or requisition.

Our research establishes that many other states allow a computer or digital signature in lieu of the Governor's personal signature. In those instances, no specific statutory authority was cited. However in Kansas, K.S.A. 75-106 specifically precludes such an action by requiring that the executive "personally" execute the warrant or requisition.

Senate Bill 97 would modify the statute by allowing the Governor to designate a person to execute the documents for detaining and transporting fugitives or authorize the use of an electronic signature on the warrants and requisitions.

*Sn Jud
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att 1*

This change is necessary to keep pace with our mobile society and the growing number of fugitives who can disappear into another state when faced with criminal charges or probation violations.

Governor Graves respectfully requests your support for Senate Bill 97. I would be glad to answer questions regarding Senate Bill 97.

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OFFICE OF THE GOVERNOR

**Before the Senate Judiciary Committee
February 1, 2001
Testimony by Natalie G. Haag
Chief Legal Counsel
Director of Governmental Affairs**

Senate Bill 98

Chairman Vratil and members of the committee:

Thank you for the opportunity to testify in support of Senate Bill 98. As many of you know, the Governor is asked to execute proclamations for a wide variety of special events. In addition, there are a number of specific proclamations required by law. (A list of the statutorily required proclamations is attached.) Senate Bill 98 would eliminate the statutory requirement for publishing every proclamation issued by the Governor in the Kansas Register. All statutorily required proclamations will continue to be published in the Kansas Register.

Senate Bill 98 would save the Governor's office the unnecessary expense of publishing proclamations generally released to the public through media releases.

On behalf of Governor Graves, I request this committee report Senate Bill 98 favorably for passage.

*Sen Jud
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att 2*

Jud
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att 3

**KANSAS JUDICIAL COUNCIL
TESTIMONY ON 2001 SB 30
February 1, 2001**

The Judicial Council Probate Law Advisory Committee undertook a study of K.S.A. 59-605 because of a conflict between the statute and Rule 1.8(c) of the Kansas Rules of Professional Conduct. The members of the Committee are: Gerald L. Goodell, Chair, Topeka; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Tim Carmody, Overland Park; Michael L. Clutter, Topeka; Peter A. Cotorceanu, Topeka; Martin B. Dickinson, Jr., Lawrence; Jack R. Euler, Troy; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Justice Edward Larson, Topeka; Philip D. Ridenour, Cimarron; and Willard B. Thompson, Wichita.

K.S.A. 59-605 currently reads as follows:

If it shall appear that any will was written or prepared by the sole or principal beneficiary in such will, who, at the time of writing or preparing the same, was the confidential agent or legal adviser of the testator, or who occupied at the time any other position of confidence or trust to such testator, such will shall not be held to be valid unless it shall affirmatively appear that the testator had read or knew the contents of such will, and had independent advice with reference thereto.

Rule 1.8(c) of the Kansas Rules of Professional Conduct reads as follows:

A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

In addition, two appellate opinions, In Re Estate of Barclay, 215 Kan. 129 (1974), and In Re Estate of Koch, 18 Kan.App.2d 188 (1993) have both construed K.S.A. 59-605 to make the statute inapplicable unless the confidential agent or legal advisor received in excess of one-half of the estate. In essence, the words "principal beneficiary" have been construed to require a gift in excess of 50% of the estate before the statute becomes operable.

As amended, K.S.A. 59-605 is expanded to include not only the will, but also a trust. In addition, it takes the approach of not invalidating the entire will (as the current statute does), but rather of invalidating the provision that violates the statute. Such provisions are valid if the scrivener is related by blood or marriage or if the testator or grantor had independent legal advice.

The Committee is of the opinion that similar rules should apply to preparation of deeds and other instruments, but since the time the bill was requested the Committee has concluded that the language in section two should be reconsidered and requests that it be stricken pending further work by the Committee.

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att 3

RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; and
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

59-501. Definitions. As used in K.S.A. 59-502 through 59-514, inclusive:

(a) "Children" means biological children, including a posthumous child; children adopted as provided by law; and children whose parentage is or has been determined under the Kansas parentage act or prior law.

(b) "Issue" includes adopted children of deceased children or issue.

59-605. Preparation of will by principal beneficiary. If it shall appear that any will was written or prepared by the sole or principal beneficiary in such will, who, at the time of writing or preparing the same, was the confidential agent or legal adviser of the testator, or who occupied at the time any other position of confidence or trust to such testator, such will shall not be held to be valid unless it shall affirmatively appear that the testator had read or knew the contents of such will, and had independent advice with reference thereto.

Statutorily Required Proclamations

	Kansas Statutes Annotated
Mother's Day	35-202
General Pulaski's Memorial Day	35-203
Arbor Day	35-204
Flag Day	73-705
White Cane Safety Day	39-1104
Classification of City Changes	
Second class to first class	13-101
Third class to second class	14-101
Third class to second class	14-1103
Proclamation quarantine of livestock	47-611
Drainage and levees	24-472
	24-504
Vacancy in the office of U.S. Representative	25-3501
Emergency location of State Government	48-1501