

**House Judiciary Committee
January 17, 2023**

**House Bill 2027
Testimony of the Kansas State Board
of Indigents' Defense Services (BIDS) Legislative Committee
Presented by James Houston Bales
Neutral**

Dear Chairman Patton and Members of the Committee:

HB 2027 would amend the current slayer rule in the probate code to allow a District Court to effectively halt a probate proceeding where an heir has been accused of the felonious killing of the decedent. While the slayer rule serves an important purpose in deterring careless or intentional acts leading to the death of a person by which the killer may profit, the BIDS Legislative Committee would like to express some thoughts about the proposed amendment under consideration.

This amendment conceivably could create situations where a person who otherwise would have the resources to hire private counsel to contest a criminal allegation would need a court-appointed, state-funded attorney. It is not unimaginable to see a circumstance, rare though it may be, where someone accused of the death of a family member cannot rely on an asset they would be set to inherit from that estate to fund their defense against the charge. In that circumstance, this hypothetical person would have to rely on an appointed attorney from a BIDS office or panel, which would be provided at the State of Kansas's expense instead of a private attorney. Because this statute involves felonious killings, if BIDS does not have an office in the jurisdiction, the case would likely incur additional costs as an exceptional case, since qualified counsel would have to be appointed and felonious deaths are rarely simple.

While the proposed changes do allow for the Court to release the estate on a party's motion, the BIDS Legislative Committee has an additional concern with the automatic termination proposed in K.S.A. 59-513(c)(1)(C). The proposed language is unclear as to whether or not a plea agreement will trigger the automatic termination. Subsection (c)(1)(C)(iii) seems to indicate that a conviction would trigger automatic termination, but the phrase "at or following trial" obscures the exact function of subsection (iii). Many criminal cases in Kansas plead well before trial. Would a plea agreement entered into at a preliminary hearing setting qualify as a conviction to release the court's order? The language is unclear.

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The proposed language in (c)(1)(C) is also unclear as to what sort of conviction will trigger automatic termination of the Court's order. Would a conviction triggering the slayer rule already in existence terminate the order and cause a need for a second order? Would a plea agreement to an offense that does not have the death of another as an element trigger the termination? Again, the language in such situations is unclear.

Clarity is important when drafting any statute, but especially statutes that interact with criminal proceedings. Clear statutory language insulates the work of the Legislature from future questioning by the appellate courts. And for most people in such a situation, facing charges before a Kansas court will be one of the most serious circumstances they will ever face in their lives. In such a critical situation, people value clarity and certainty as to what will happen if they choose a course of action, like entering into a plea agreement. Certainty that the law provides a path to a desired result gives those accused of a crime an incentive to resolve their cases without resorting to jury trials and the maximal process they are allowed. Here, the unclear language regarding what happens with a plea agreement invites not just judicial review, but also discourages settlement of cases because the effects of a settlement before trial are unclear.

For the above reasons, we are presently neutral but would invite you to consider the interaction between the proposals in this bill and the workings of the criminal justice system. Thank you for your time.

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