

Approved: July 13, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairperson Patton at 3:30 PM Wednesday, March 14, 2012 in 346-S of the Capitol.

All members were present except:

Mitch Holmes
Dan Collins
Lance Kinzer

Committee staff present:

Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Kent Meyerhoff, Kansas Judicial Center
Professor Martin Dickinson, Kansas Judicial Center

Others in attendance:

See attached.

Vice-Chairman Patton opened the hearing **on SB 292–Revoking an ex-spouse’s inheritance rights upon divorce**. Jason Thompson provided an overview of the bill content.

Kent Meyerhoff testified in support of **SB 292** on behalf of the Kansas Judicial Council, and mentioned that the Real Estate, Probate, and Trust Section of the Kansas Bar Association also support the bill. The Judicial Council’s Real Estate, Probate, and Trust Section of the Kansas Bar Association helped to develop the language for the bill. The changes proposed by **SB 292** would ensure whether someone does their estate planning using a will, a trust, beneficiary designation, or joint tenancy, there will be consistent results in the event of a divorce, and the likely intent of the parties will be carried out without further affirmative action required on the part of the divorced spouses. (Attachment 1)

Vice Chairman Patton closed the hearing on **SB 292** and opened the hearing on **SB 297–Removing the gifts from a spouse exception from marital property in a divorce**.

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Professor Martin Dickinson testified in support of **SB 297** on behalf of the Kansas Judicial Council, but mentioned the Real Estate, Probate, and Trust Law Section of the Kansas Bar Association helped to draft the bill language. **SB 297** would amend K.S.A. 23-2601 to delete the exception for gifts received from a spouse from a list of property that shall remain the person's sole and separate property notwithstanding the marriage. The references to K.S.A. 33-101 *et seq.* and 33-201 *et seq.* incorporate the exceptions for transfers that violate the statute of frauds and Uniform Fraudulent Transfer Act. The amendment is intended to clarify a spouse's creditors cannot reach assets given to the other spouse in circumstances where no fraud on creditors was involved. This statute was originally known as the Married Women's Property Act and reversed the common law rule that a wife's property was controlled by her husband. The statute was interpreted by the Kansas Supreme Court in *Waltz v. Sheetz*, 144 Kan. 595 (1936), as requiring that any gift between spouses be treated as fraudulent, and therefore voidable, by the creditors of the transferor spouse. The Courts have not revisited the issue since that time. The Committee recommends the *Waltz* interpretation of the statute be reversed by amending the statute. (Attachment 2)

Vice-Chairman Patton acknowledged written testimony in support of **SB 297** submitted by Joseph Molina, Kansas Bar Association. (Attachment 3)

Vice-Chairman Patton closed the hearing on **SB 297**.

Vice-Chairman Patton asked the Committee to consider final action on **SB 424–Kansas law enforcement training act; Kansas commission on peace officers' standards and training.** Jason Thompson provided an overview of the bill.

Representative Pauls moved, Representative Brookens seconded to recommend SB 424 favorably for passage.

Jason Thompson stated there were two technical corrections that needed to be made, on Page one, line 17, right after the stricken type, the “of” needs to also be stricken; also, on Page five, line 31, where it says, “be of sufficient good moral character” the words are out of order and should be, “be of good moral character sufficient to warrant the public's trust”.

Representative Pauls moved, Representative Ward seconded, that the technical amendments to SB 424 proposed by revisor Jason Thompson be passed. Motion carried.

Representative Brookens moved, Representative Smith seconded that SB 424 be favorably passed as amended. Motion carried.

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Vice-Chairman Patton asked the Committee to consider final action on **HB 2741–Amending the Kansas family law code**. Jason Thompson provided an overview of the bill and identified six technical changes that needed to be made to do the necessary cleanup on the bill.

Representative Rubin moved, Representative Brookens, to recommend HB 2741 favorably for passage.

Representative Rubin moved, Representative Brookens seconded to amend HB 2741 with the technical changes recommended by the Revisor's office. Motion carried.

Representative Brookens moved, Representative Pauls seconded, to amend HB 2741 to include information that identifies the qualifications necessary to be a case manager who mediate high-conflict divorces, which Sec. 39, K.S.A. 2011 Supp. 23-3508 addresses.

Representative Brookens stated it is important the person who is managing these high conflict cases be qualified, and his amendment states the qualifications to be an appointed case manager. The proposed amendment was handed out. (Attachment 4)

Vice-Chairman Patton stated the underlying purpose for **HB 2741** is concerning the recodification of the Kansas family law code, and, other than doing technical cleanups, there are no substantive changes. He would prefer this amendment be introduced as a separate bill and that a hearing be held so interested parties could weigh in on this matter.

Representative Brookens stated the Chairman was concerned there would not be time to have a hearing on a bill this session. Representative Rubin stated he concurred with the Vice-Chairman, that the issue has not been vetted yet.

Representative Pauls has had a lot of complaints about case managers. This bill might be about the last train leaving the station. She would like to see the amendment supported.

Representative Bruchman offered he agrees that we need public input from people who deal with this on a daily basis, so he would oppose the amendment.

Representative Brookens stated were there more time, he might have pressed harder to get this in a bill and a hearing. The fact that it is on the bill that it is on because this is the bill that is available today. Brookens moved his amendment.

Representative Brookens moved, Representative Pauls seconded, to amend HB 2741 to include information that identifies the qualifications necessary to be a case manager who mediates high-conflict divorces, which Sec. 39, K.S.A. 2011 Supp. 23-3508 addresses. Motion failed 7-9.

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Representative Rubin moved, Representative Kelly seconded, to recommend **HB 2741** favorably for passage as amended. Motion carried.

Vice-Chairman Patton asked the Committee to consider final action on **SB 280–Sexually violent predator cases: evaluations and expert testimony**. Jason Thompson provided an overview on the bill content.

Representative Brookens moved, Representative Kelly seconded, to recommend **SB 280** favorably for passage. Motion carried.

Vice-Chairman Patton asked the Committee to consider final action on **Sub SB 282 by Committee on Judiciary -- Forfeiture, fleeing or eluding law enforcement**. Jason Thompson provided an overview on the bill content.

Representative Rubin moved, Representative Kelly seconded, to recommend **Sub SB 282** favorably for passage. Motion carried.

Vice-Chairman Patton asked the Committee to consider final action on **SB 304–Certified batterer intervention program act**. Jason Thompson provided an overview of the bill content. At the time of the hearing, there was a technical balloon provided that changed the effective date to January 1, 2013. (Attachment 5)

Representative Rubin moved, Representative Pauls seconded, to recommend **SB 304** favorably for passage.

Representative Ward moved, Representative Brookens seconded, amend **SB 304** to strike out all references to municipal court.

Representative Ward stated he wanted to strike out references to the municipal court. This would allow the program to be available for felony batterers. We have had a couple of years to review how it works, but this would have a huge impact on a program in Wichita that has been operating for about 20 years. You heard from the municipal court judge from Wichita at the hearing. He would defer the revisor's assistance to make sure there are no references to the municipal court.

Jason Thompson clarified to remove the municipal court references, we would remove Section 14, Page 10 completely, and Page 23, line 24, striking "or any municipal court".

Representative Ward moved, Representative Brookens seconded, to amend **SB 304** to remove any references to "municipal court" by striking Section 14, on Page 10 in its entirety, and on Page 23, line 24, strike the words "or any municipal court." Motion carried.

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Representative Ryckman stated we had testimony from the people from the Word of Life and from the counseling area, some had questions about credentialing and some would be grandfathered in, and he wanted to verify whether this was still part of the bill. Rose Matzek testified in opposition, because the certification had to be completed prior to passage, and they did a lot of this now.

Representative Brookens stated Ms. Matzek is in Wichita and her predominant emphasis probably would be with the City of Wichita, and it would be taken care of or at least it would be workable. On page six, it addresses where someone who is not licensed- and this has to do with changing the start date to give them opportunity. As far as working in Wichita with the municipal court, it is up to them with what they do, for now at least, because we have this later start date.

Vice-Chairman Patton asked if there was a motion to adopt the technical amendment to change the effective date to January 1, 2013.

Representative Rubin moved, Representative Brookens seconded, to amend SB 304 with a balloon amendment to move the grandfathering clause effective date to January 1, 2013. Motion carried.

Representative Brookens stated on Page six, we did talk about a person who is not licensed, and these continuing requirements, on Page six, line three, is the design to grandfather people in who are not licensed. Jason Thompson stated that yes, if a person is not licensed but is currently working in one of these programs prior to January 1, 2013, as long as they stay in that program, they may continue to work. If they leave, they will have to get licensed in order to work in a different program.

Representative Brookens stated he is not sure he really likes it at all if we are going to leave that in there. He would liken this to requiring continuing education in the area of domestic violence as well as in their area of study at the very least. That does not mean they are effective, just because they are doing it. Vice-Chairman Patton offered he wondered if that would be covered by the rules and regulations of the Attorney General regarding continuing education requirements. Jason Thompson stated he was looking at Page five, line 4, and these are the requirements of the BIP program, to maintain their certification: there has to be orientation and training and continuing education requirements for the program facilitators, supervisors, coordinators, and all of their employees. He thinks it would be covered by the rules and regulations.

Representative Brookens inquired in paragraph two of the same page, are we talking about every

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worker who is not licensed or are we talking about every program that is not licensed? Jason stated he is talking about individuals who are completing the assessment. The program itself is not exempt from licensure; it is the individuals who are licensed. In this case, it is individuals who are completing the assessment.

Vice-Chairman Patton requested we address Jason's other technical issue. On Page three, line 41, the word, "Master" should be "Masters," and similarly on Page five, line 43, the word "Master" should be "Masters".

Representative Brookens moved, Representative Rubin seconded, to amend SB 304 by changing on Page three, line 41, the word, "Master" to "Masters", and on Page five, line 43, changing the word "Master" to "Masters". Motion carried.

Vice-Chairman Patton advised we now have copies to handout of an e-mail from Helen Pedigo (Attachment 5). Jason Thompson described her suggested amendments, which are on Page 13, line 20, after the word "program" to add the words, "unless otherwise ordered by the court or department of corrections" and on line 33, after the word "program" add the words, "unless otherwise ordered by the court or department of corrections." The purpose of both of those would provide the sentencing judge with discretion to order specific conditions of supervision. There is similar language already in the law on Page 22 of the bill. Ms. Pedigo's e-mail comment was that Kansas district court judges are beginning to utilize risk and need assessment information in formulating conditions of supervision, and areas of risk may need to be addressed in a supervision plan. The amendment would give the court additional discretion in this area—on Page 22, line 40, strike the phrase, "and any other evaluation". Ms. Pedigo noted that deleting these words will ensure evaluations in the court file or court services file- which are subject to Supreme Court rule, state and/or federal laws- are handled appropriately. Those drug and alcohol evaluations are subject to 42 CFR part two and evaluations related to physical and mental health are subject to K.S.A. 45-221, which is the open records law and also HIPPA regulations. They are concerned that those evaluations do not end up in the court files.

Representative Brookens moved, Representative Rubin seconded, to amend SB 304 with a ball oon amendment that changes Page 13, line 20, after the word "program" to add the words, "unless otherwise ordered by the court or department of corrections" and on line 33, after the word "program" add the words, "unless otherwise ordered by the court or department of corrections." Additionally, strike on Page 22, line 40 the words, " and any other evaluation" . Motion carried.

Representative Brookens moved, Representative Colloton seconded, to amend SB 304 to include information that identifies the qualifications necessary to be a case manager who mediates high-conflict divorces, which Sec. 39, K.S.A. 2011 Supp. 23-3508 addresses.

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Representative Brookens stated that this might be a more appropriate substantive bill to consider adding his earlier proposed amendment, originally proposed for **HB 2741**, which he now proposes to offer as an amendment to **SB 304**. It would probably require in the heading of the bill to add high-conflict cases, or some such language to tie them together. This was not deemed to be as good a fit, but is substantively an excellent fit. We have been dealing with the very issue of high-conflict matters- being domestic violence- it doesn't get much more high conflict. Specifically, we are dealing with the people who would be doing the counseling and the evaluations and their qualifications are set out in detail in **SB 304**. The difference is when dealing with high-conflict divorces and hands-on client control, they are not dealing with them for a limited time and it is high conflict. It does not include Bachelors level of social workers because it is highly inappropriate according to the behavioral science folks he dealt with, folks in communities. He believes Johnson County does not use Bachelor's level but use only what you see in new section (1) (A). They may use attorneys as well, which is in new section (1) (B). Attorneys in rural Kansas in reality who do mediation may be the only people available readily out in the hinterlands, where he lives. I think this bill is a better fit for my amendment.

Representative Colloton stated she has spent a lot of time in her Juvenile Justice Committee on domestic violence. The original domestic violence bill passed through her committee, and she offered this is exactly an additional piece that we really need to make what we've worked on very hard as a statute to be complete. The Attorney General has spent a whole year trying to figure out exactly how the procedure should work, how the court should be advised. To have these, as an attorney or a licensed person as a case manager, makes it fit altogether, and she thinks this is needed.

Representative Rubin concurred he thinks this is a good fit for the amendment. He has two questions. In smaller communities, the requirement the individual has mediated 10 cases seems a little high. Representative Brookens offered to change that to 5 in subsection (b) of the amendment. Vice-Chairman Patton made note of this friendly amendment change to the proposed amendment. Representative Rubin's second question was in subsection (e) making requirements retroactive to case managers who have already been appointed, and whether that would cause more problems than that will solve. Representative Brookens stated it will solve more problems than it will create. He thinks it will ensure quality in what they do. Johnson County currently uses (1) (A). The rest of the state ought to be doing it too, and he thinks that is the gold standard and is what we ought to have. Representative Rubin asked if case managers will need to be replaced because of this. Representative Brookens stated he thinks they ought to be replaced, very much so. Representative Brookens moved his amendment.

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Representative Brookens moved, Representative Colloton seconded, to amend SB 304 to include information that identifies the qualifications necessary to be a case manager who mediates high-conflict divorces, which Sec. 39, K.S.A. 2011 Supp. 23-3508 addresses. Motion carried.

Representative Pauls moved, Representative Rubin seconded, to recommend SB 304 be favorably passed as amended.

Representative Brookens stated he probably needs an amendment where it will take effect January 1, 2013 or they will probably need to make the whole amendment take effect July 1, 2012.

Representative Brookens moved, Representative Colloton seconded, to amend SB 304 to change the effective date on the Brookens amendment language to July 1, 2012. Motion carried.

Representative Ryckman voted no on this amendment for the date of July 1, 2012.

Representative Pauls moved, Representative Kelly seconded, to recommend SB 304 favorably for passage as amended. Motion carried.

The next meeting is scheduled for Thursday, March 15, 2012.

The meeting was adjourned at 5:23 p.m.