Approved March 17, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Robert Frey at
Chairperson

12:30 ~~a~~/p.m. on March 5, 1986 in room 519-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senator Frey, Hoferer, Langworthy, Parrish, Talkington and Yost.

Committee staff present:

Mary Hack, Revisor or Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Robert Barnum, Social and Rehabilitation Services
Brenda Braden, Office of Attorney General
Mike Boyer, Kansas Bureau of Investigation
Jim Clark, Kansas County and District Attorneys Association
Clark Owens, Kansas County and District Attorneys Association
Georgia Nesselrode, Office of Johnson County District Attorney
Lieutenant Orie Wall, Topeka Police Department
Marjorie Van Buren, Office of Judicial Administrator
Ron Smith, Kansas Bar Association

Senate Bill 709 - Expungement of certain crimes.

Senate Bill 710 - Statute of limitations for certain sex offenses.

Senate Bill 711 - Admissibility of video-taped testimony by child witnesses in certain cases.

Senate Bill 712 - Missing children reports.

Senate Bill 713 - Apprehension of deliquent or runaway juveniles from another state.

Robert Barnum, Social and Rehabilitation Services, voiced support for all five of the bills. He testified his office is in support of Senate Bill 709 and they feel it can be preventive in nature. He stated their agency is pleased to endorse Senate Bill 710. Senate Bill 712 will strengthen the network necessary to deal with reports of missing children.

Brenda Braden, Office of Attorney General, testified the attorney general supports all of these bills. Concerning Senate Bill 710 she proposed extending the statute of limitations by including the language "until the child conveys that information to an adult". They are in support of Senate Bill 711. Senate Bill 712 concerns missing persons reporting time, and they are in support of this. The office definitely favors Senate Bill 713. This deals with problems with runaways from out of state.

Mike Boyer, Kansas Bureau of Investigation, appeared in support of the bills. He was a member of the Attorney General's Task Force for Missing and Exploited Children. He addressed his comments to Senate Bills 712 and 713. He presented two proposed amendments to Senate Bill 712, and explained them to the committee. He stated Senate Bill 713 is the most

Senate Bills 709 - 713 continued

problematic for his department and he explained their concerns. A copy of his testimony is attached (See Attachment I).

Jim Clark, Kansas County and District Attorneys Association, stated his association favors this legislation.

Clark Owens, Kansas County and District Attorneys Association, pointed out the association's concern for subsection (e) of Senate Bill 710. His concern is, what happens if the abuser does confide in another person. A copy of his testimony in support of Senate Bill 710 and Senate Bill 711 is attached (See Attachment II).

Georgia Nesselrode, Office of Johnson County District Attorney, testified in support of Senate Bills 704 through Senate Bill 713. She commented specifically on Senate Bill 710 which amends K.S.A. 21-3106, Statute of Limitations. She stated she strongly believes, given the circumstances in child sexual abuse cases, the victims should receive special considerations under K.S.A. 21-3106. A copy of her testimony plus a court opinion is attached (See Attachment III).

Lieutenant Orie Wall, Topeka Police Department, stated he is in charge of juvenile and missing persons bureau. He concurs with all items that have been mentioned with the exception of Senate Bill 712. He explained he is concerned with follow up forms that are voluntarily filled out and mailed back. If they delay any type of entry into NCIC, it is less effective. If they utilize procedure mentioned in the bill, and have to wait for follow up information, this would not be very satisfactory.

Marjorie Van Buren, Office of Judicial Administrator, appeared to present a proposed amendment to Senate Bill 711 by changing "deprived child" to "juvenile offender". A copy of her proposal is attached (See Attachment IV).

Ron Smith, Kansas Bar Association, pointed out the language in line 25 of Senate Bill 711 concerning admissibility of evidence.

Following committee discussion on Senate Bill 709, Senator Hoferer moved to report the bill favorably. Senator Parrish seconded the motion, and the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-5-86
12:30 PM

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John W. Smith	Topeka	Dept of Revenue
KEITH R LAUDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
[illegible]	Topeka	KBI
Arlene Miller	"	AG
Tom Kelly	"	KBI
Mary Lou McNeil	"	KBI
Dave A. Pardo	"	AG.
TERRY STEVENS	TOPEKA	TOPEKA P.D.
ORIE E HALL	"	"
Mary L. Goheen	"	private citizen
Clinton C. Goheen	"	" "
Marjorie VanBuren	"	OJA
BOB BADNUM	"	SRS
[illegible]	"	Ks Action for Children
Ron Smith	"	Ks Bar Assn
[illegible]	"	KCDAA
Brenda Braden	"	AG
[illegible]	JO. CO	JO. CO D.A.'s Off
[illegible]	JO. CO DA.	JCDA
Jim McBride	Topeka	Observer
M. Huwer	"	Cap-Journ
Ruth Graves	Topeka	KCCI
Karen Klum	Mission Hills	Ken Garcia for Atty

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need copy of the bill

Testimony before Senate Judiciary
Senate Bills 704-713
March 4-5, 1986
Michael E. Boyer, Supervisor
Missing Persons System
Kansas Bureau of Investigation

Member - Attorney General's Task Force on Missing and Exploited Children

Mr. Chairman and Members of the Committee:

As a member of the Attorney General's Task Force and supervisor of the state's Missing Persons System as defined in KSA 75-712b I wish to offer the following testimony on the Missing Persons bills under consideration by this committee. In general, all the bills are desireable to enhance the missing persons effort in Kansas. Since July 1, 1985 when KSA 75-712b became effective, Kansas has joined the very elite states in this national effort and Kansas has made the quantum leap with very little monetary expenditure and very few personnel dedicated to the effort. The one element missing from the package of bills under consideration is necessary enhancements to the clearinghouse effort. However, these bills go a long way toward addressing elements of concern and provide some "cleanup" to this desired end of all parties involved in the process working in the same direction. More may need to be done; however, this package represents a crucial step in the right direction.

On the respective bills:

SB 704- It was brought to the Task Force's attention through both testimony and personal knowledge that efforts to report suspected incidents of abuse or neglect have been thwarted by suspervisors or administrators. These situations may be most obvious in the educational or health care areas. The intent of this bill is to make the state's position very clear- reporters of suspected abuse or neglect shall not be prevented from initiating the report to the proper authorities without a need to "go through channels."

I would urge support of SB 704.

SB 705- This bill addresses a small problem in the national effort of missing persons. KSA 21-3827 currently disallows the knowledge of a warrant being issued and precludes the National Center for Missing and Exploited Children (NCMEC or the National Center) from publicizing parental abduction situations. The National Center's policy in parental abductions for inclusion in their publicity campaigns is that a warrant has been issued for the absconding parent. This change would allow simple knowledge of the warrant to be provided the National Center.

[For further detail on this issue an incident in Johnson County first brought this concern to our attention.]

I would urge support of SB 705.

SB 706- This bill addresses the issue of parental abductions and modifies the current interference statute in three (3) ways. First, the age is raised to 16. Second, interference is raised to an E felony and aggravated interference is raised to a D felony. Finally, the issue of "custody" is negated and holds responsible both parents to act fairly in dealing with the other parent. The only short-coming of this bill may be that it does not address the issue of the custodial parent secreting the child from the non-custodial parent unfairly. I understand this issue may have been

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addressed in other legislation this session; therefore, this comment is only advisory in nature.

I urge support of SB 706.

SB 707- Conceptually, this bill deserves serious consideration. Until a uniform, statewide, prosecutorial system exists in the state of Kansas, with some element of state-wide unification to aid in application and training, inconsistencies will exist in this area as well as many others. However, from a practical position this bill may have problems. In that vein, I defer all comment to my learned colleague from the Attorney General's office-Ms. Brenda Braden.

SB 708- Elevates the crime of promoting prostitution when the prostitute is under 16 to an E felony.

I urge support of this bill.

SB 709- This bill removes sex crimes from eligibility for expungement on a persons record. While this move definately indicates a serious policy shift, for the protection of the children of this state, the move is desirous.

I urge support of this bill.

SB 710- This bill modifies the statute of limitations in terms of sex offenses committed against a person under the age of 16. I defer to my colleague from the Attorney General's office-Ms. Brenda Braden and Ms. Georgia Nesslerode from the Johnson County District Attorney's office who was the primary spokesperson on this issue with the Task Force.

SB 711- This bill corrects an oversight that apparently exists in the admission of evidence in juvenile offender cases. I defer to my colleague from the Attorney General's office-Ms. Brenda Braden and Judge Robert Morrison, chairman of the Attorney General's Task Force who brought this issue to the attention of the Task Force.

We now come to the two bills that, from my perspective, need some attention.

SB 712- This bill attempts to place into the statutes the existing rule, written by the KBI, implementing KSA 75-712b. This initial draft left out one very crucial part of the existing rule and contains a phrase which I believe is confusing.

I would suggest striking the phrase in line 21 that reads: "having jurisdiction of the subject matter". As I recall the portion of the phrase "of the subject matter" is not in the rule and I really am not sure what it means. Also, there is no need for a report to be received by an agency from which a child disappears. The program, as developed, and in accordance with NCIC procedures, allows anyone, in any location, to file a missing persons report as long as they meet the critieria for reporting (lines 24-26).

Second, for the missing element, I would urge the insertion, after line 26 "The report shall be entered immediately into the missing persons system of the national crime information center and the Kansas Bureau of Investigation." At present, the bill requires the receiving of the report but does not indicate when the report should be entered. The bill is ineffective if immediacy in entry is not indicated along with the immediacy of reporting.

I urge support of SB 712 with the amendments delineated. I would also recommend to the Revisor's Office that, if passed into law, this bill be inserted as part of 75-712b.

SB 713- This bill is the most problematic for me both because of what it says and because of what is doesn't say. There is both disagreement and lack of understanding across the state as to whether or not a person from another state, in the absence of any violation in Kansas, falls under Kansas law or whether the state of Kansas functions only as an extension of the home state to recover and retain the person until returned to the home state. One of the most serious problems in the missing persons effort today is interstate cooperation. The intent of this bill is to place Kansas in the position of assisting another state in the recovery of a missing person appropriately reported in that state. Whether or not this amendment should be placed in the CINC code (KSA 38-1527 and 38-1528) needs to be addressed. Regardless of that decision, or maybe in spite of it, the new paragraph beginning on line 41 needs to be modified as follows:

Line 41- "may" should be "shall". There should be no question that Kansas will assist another state in the recovery of a missing child.

Line 43- After "believe that" insert the phrase "a verified missing person entry can be found in the national crime information center missing persons system" and strike all remaining parts of line 43-45. Rationale- The current language combines fruits and vegetables unnecessarily by including "delinquents" and "runaways." As mentioned previously, whether the bill ends up residing in KSA 38-1527 the key issue is the assistance to another state in the recovery of a missing persons. Because the definition of "missing person" includes "runaway" the reference should be kept at the higher level.

The language in lines 65-69 may be appropriate; however, the Interstate Compact may not adequately address the needs of "missing persons" and before this procedure is hardwired into law I believe a review of the Compact is required. Should the Compact not be flexible enough to deal with all types of "missing persons" (i.e., runaways, parental abductions and stranger abductions) then I would suggest further procedural clarity will be required. I defer judgement on the Compact's applicability on the issue of returning missing persons to their home state to my colleagues better verse at this time.

These are the proposed amendments on the current bill. However, there remains a serious deficiency in philosophy not addressed in this or other bills at this time. With this bill, Kansas would afford another state more protection for their children than we would afford our own! I believe this is a serious shortcoming in state policy. As a major amendment and in conjunction with SB 712 I would strongly urge that persons reported missing in Kansas be afforded the same services as those persons from another state that would result from the passage of SB 713.

Specifically, law enforcement should be directed to act upon any verified missing person report found in either the national system or the state missing person system. Currently, areas of the state refuse to act upon a verified missing person's report "unless the child is willing to accompany the officer." This does not appear to be good public policy in terms of the missing persons effort. I would urge serious attention to the issue of protecting our own citizens at the same time we move to protect another state's citizens.

Thank you for your attention and support of this package of missing persons legislation. While we may still have some distance to go, these measures definately begin the journey on the proper foot.

I will be glad to answer any questions.

ARTICLE 20 - MISSING PERSONS/UNIDENTIFIED DECEASED PERSONS

10-20-3. Procedures for reporting. (a) The local law enforcement agency having jurisdiction shall receive initial reports on missing persons from the reporting party and immediately enter at least the minimal amount of data as prescribed by the NCIC operating manual to create an active record. Within a reasonable period of time, the follow-up NCIC forms shall be delivered to the reporting party for completion and return to the local agency for entry. This subsequent data should be entered at the earliest possible time. For persons under the age of majority, a missing children information system report form shall be provided to the reporting party for completion and return directly to the KBI. The reporting party shall be advised to notify the local agency in the event the missing person returns or is located.

(b) Message structure for entries by agencies on the ASTRA network shall be in a format to allow receipt of the message by both the KBI and NCIC concurrently. For agencies not on the ASTRA network, an administrative message to the KBI shall be required until otherwise directed.

(c) Clearances shall be entered immediately so as to remove records from active status. The reporting

party shall be responsible for notifying the local agency where the initial report was filed if the person returns or is located. The local agency shall notify the reporting party immediately if the missing person is located or contacted. (Authorized and implementing K.S.A. 75-712b(d)(1); effective, T-___-_____, ___-_____.)

APPROVED
ATTORNEY GENERAL
By SLB 10/10/25 Dep.

DEPT. OF ADMINISTRATION
OCT - 6 1995
APPROVED BY

3-5-86

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
District Attorney

Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061
913-782-5000, Ext. 333

March 5, 1986

Dear Senators:

I appreciate the opportunity to appear before this committee and present testimony regarding Senate Bills 710 and 711.

1. Senate Bill 710 extends the statute of limitation for crimes involving sexual abuse or sexual solicitation of a child. In my experience, it is sometimes days, weeks, months, or even years, before a child who has been sexually abused may report this sexual abuse to another trusted adult or to authorities. Contrary to the popular belief that most child molestation is by strangers, most children probably are molested by people they love, trust and respect. They often fear punishment for themselves or the offender if they tell about the sexual abuse. Thus, the secret is hidden and may never come out within the time necessary to prosecute criminally. The Kansas Court of Appeals in State v. Bentley, #57,689, an unpublished opinion, addresses the problem with this statute. I believe it can only be corrected by the legislature. I ask committee members to support Senate Bill 710.

2. Senate Bill 711 makes K.S.A. 22-3433 and K.S.A. 60-460(d) applicable to cases filed pursuant to the Kansas Juvenile Offenders Code. I believe the original legislation inadvertently eliminated reference to juvenile offenders. I ask your support of this bill.

Very truly yours,

Dennis W. Moore

DWM/sjb

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STATE OF KANSAS
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OFFICE OF DISTRICT ATTORNEY

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913-782-5000, Ext. 333

March 5, 1986

Sentate Judiciary Committee
Kansas State Senate
Capitol Building, 519S
Topeka, Kansas 66603

Dear Members of the Senate Judiciary Committee:

Please consider this letter as written in support of Senate Bills 704 through S.B. 713. These bills were introduced as a result of the recommendations of the Attorney General's Task Force on Missing and Exploited Children.

The Task Force, of which I was a member, studied the problem of missing and exploited children in depth in 1985. The bills before you for your consideration reflect some of the remedies for the concerns that were expressed by the citizens of Kansas. These bills create new laws where needed, stiffer penalities where appropriate and more defined regulations to clarify the reporting and prosecution of child sexual abuse and missing children cases.

I would like to comment specifically on S.B. 710 which amends K.S.A. 21-3106 Statute of Limitations. I have attached to this letter page 30 of the Attorney General's Task Force's Final Report which describes the background of the current statute and the findings of our regional hearings. This report outlines the very legitimate reasons why the children do not disclose the molestation to the proper authorities within the time allowed by law. I strongly believe given the circumstances in child sexual abuse cases, the victims should receive special considerations under K.S.A. 21-3106. Also attached is a Circuit Court of Appeals decision which reversed the trial court ruling in a Sedgwick County child sexual abuse where the offense occurred two years and one day prior to the filing of the indecent liberties of child action. This case in point proves a need to amend the current Statutes of Limitations law.

Thank you for your consideration.

Very truly yours,

Georgia Nesselrode

Georgia Nesselrode
Victim/Witness Coordinator

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The penalty provisions regarding simulated controlled substances and drug paraphernalia require that for an 18-year-old to be guilty of a class E felony the material must have been provided to a 15-year-old. The Task Force heard testimony about 16 and 17-year-old pimps actively recruiting other adolescents as prostitutes. It would appear that the 16-year-old who provides a simulated controlled substance or drug paraphernalia to another minor could not be convicted of a class E felony unless the recipient was three years younger, even though that 16-year-old is already subject to prosecution as an adult due to either prior felony type juvenile offender adjudications or an earlier order of the court authorizing such.

CONCLUSION: The Task Force feels present statutes regarding controlled substances, simulated controlled substances, drug paraphernalia and intoxicants do not adequately protect the children of this state.

RECOMMENDATION: The above mentioned statutes should be amended to make it a felony offense for any person to provide a minor with a controlled substance, simulated controlled substance, drug paraphernalia, intoxicating liquor or cereal malt beverage for the purpose of sexual exploitation.

STATUTE OF LIMITATIONS

BACKGROUND: K.S.A. 21-3106, Time limitations, provides that prosecution for murder may be commenced at any time and that prosecution for any other crime must be commenced within 2 years after it is committed. Subsection (3) provides that times during which the accused (a) is absent from the state, (b) conceals himself within the state so that process cannot be served or (c) the fact of the crime is concealed may be excluded in computing the 2 years. Subsection (4) provides that the time starts to run on the day after the offense is committed and Subsection (5) provides that prosecution is commenced when a complaint or information is filed and a warrant thereon delivered to the sheriff or other officer for execution, provided the warrant is executed without unnecessary delay.

FINDINGS: Children who are sexually molested by a family member or trusted acquaintance quite frequently are subjected to multiple acts of sexual molestation which may be repeated over a long period of time. In such instances, the child often does not divulge the sexual molestation for quite some time. This may be due to fear instilled in the child by the molester or the shame which the child is experiencing as a result of the acts. It may also be due to the fact that the child does not realize that the acts of sexual molestation are something that society does not tolerate because the molester has convinced the victim that the activity is to be expected and is condoned by society. This last reason may be particularly applicable in incest cases.

CONCLUSION: The Task Force feels that the statute of limitations on criminal prosecution should not commence running until the crime has been revealed by the minor reporting such fact to an adult.

RECOMMENDATION: K.S.A. 21-3106, Time limitations, should be amended so that when the victim is a minor and the crime charged is a sex offense enumerated in Article 35, Chapter 21, K.S.A. or incest (K.S.A. 21-3602) or aggravated incest (K.S.A. 21-3603) the time during which the child victim conceals the fact of the crime should not be counted.

NOT DESIGNATED FOR PUBLICATION

No. 57,689

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

QUINTIN R. BENTLEY,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID W. KENNEDY, judge. Opinion filed January 9, 1986. Reversed.

Carl N. Kelly, of Wichita, for the appellant.

Neal B. Brady, assistant district attorney, *Clark V. Owens*, district attorney, and *Robert T. Stephan*, attorney general, for the appellee.

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Before PARKS, P.J., MEYER, J., and DONALD L. ALLEGRUCCI, District Judge, assigned.

PARKS, J.: The defendant, Quintin R. Bentley, appeals his conviction on two counts of indecent liberties with a child. K.S.A. 1983 Supp. 21-3503. The district court ruled as a matter of law that the statute of limitations had been tolled by defendant's actions and found him guilty of the two counts of indecent liberties with a child.

The child victim, who lived with her mother, testified that both incidents occurred at her father's home at 1430 South Seneca during periodic visits. The first incident occurred in the bathroom. Defendant entered the bathroom while C.B. was bathing, dropped his pants and ordered the then nine-year-old child to touch his penis. This order was given in a mean tone of voice. C.B. obeyed her uncle's command and touched him. Defendant then tried to place his penis in the child's vagina but stopped when he heard her father returning to the house. Before leaving the bathroom, defendant told his niece not to tell anyone what he had done and threatened that if she did tell, he would assault her again. He also threatened that if she told anyone, he would tell her parents that her younger brothers, contrary to family rules, had been in the bathroom while she was bathing. C.B., fearing defendant would molest her again, did not report his activity to her parents.

The second incident occurred two to three months later. While the victim's father was away from the house, defendant confronted C.B. and commanded her to touch his penis. Defendant gave this command, as he had done earlier, in a mean tone of voice. At trial, the child could not recall whether she touched her uncle during this second sexual encounter, but she did remember that he fondled her breasts. Unlike the earlier incident,

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defendant made no threats either during or after this second round of sexual activity.

C.B. could not pinpoint when the crimes occurred. She initially testified that the incidents occurred during the summer of 1982 when she was nine years old. However, her father moved out of the house at 1430 South Seneca on April 16, 1982. Since C.B. testified unequivocally that both incidents occurred at that address, it became apparent the crimes occurred before April 16, 1982.

On March 7, 1984, the State filed the information charging the defendant with the two counts of indecent liberties. The information alleged the first offense occurred during the summer of 1982 and the second occurred in September 1982.

The statute of limitations for the crime of indecent liberties with a child is two years. K.S.A. 21-3106(2). The trial court found that both acts of indecent liberties with which defendant was convicted occurred on or before March 6, 1982. Prosecution of these acts commenced on March 7, 1984, when the State filed the complaint/information in this case. K.S.A. 21-3106(5). Because the prosecution commenced more than two years after the criminal acts occurred, prosecution of the defendant was barred unless his conduct tolled the running of the statute of limitations under K.S.A. 21-3106.

The subsection of K.S.A. 21-3106 which deals with the tolling of criminal statutes of limitations is K.S.A. 21-3106(3). The part of that subsection which is applicable here is (3)(c). K.S.A. 21-3106(3)(c) provides as follows:

> "The period within which a prosecution must be commenced shall not include any period in which:

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. . . .

(c) The fact of the crime is concealed."

The trial court found the threats made by defendant to the child victim immediately after the first incident concealed the fact of the first crime until sometime after March 7, 1982. Prosecution of defendant, the trial court concluded, was timely. Defendant claims that the trial court erred in finding his threats to the victim tolled the statute of limitations. Since the victim obviously knew of defendant's sexual misconduct as it occurred, he argues that he in no way concealed the fact that the first crime had been committed. As no concealment took place, defendant contends his prosecution was barred by the statute of limitations. The question before this court is whether the court's finding was erroneous.

The statute of limitations is considered an act of grace since it limits the power of the State to act against the accused. 21 Am. Jur. 2d, Criminal Law § 223. If the statute of limitations has run on a crime, the State is barred from prosecuting an accused for that crime. Statutes of limitations are to be liberally construed in favor of the accused and exceptions to such statutes are to be strictly construed against the State. *State v. Mills*, 238 Kan. 189, 707 P.2d 1079 (1985); *Toussie v. United States*, 397 U.S. 112, 115, 25 L.Ed.2d 156, 90 S.Ct. 858 (1970).

> "To constitute concealment of the fact of a crime sufficient to toll the statute of limitations, there must be a positive act done by or on behalf of the accused calculated to prevent discovery of the fact of the crime. Mere silence, inaction or nondisclosure by the accused is not concealment of the fact of the crime as contemplated by K.S.A. 21-3106(3)(c)." *Mills*, 238 Kan. 189, Syl. ¶ 1.

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In *State v. Gainer*, 227 Kan. 670, 674, 608 P.2d 968 (1980), it was held that hiding or disposing of stolen property does not constitute concealment of the fact of the crime. The court acknowledged that to hold otherwise would be to extend the statute of limitations in nearly every theft since stolen property rarely remains unconcealed. The court concluded that concealment of the fact of the crime means concealment of the acts which are criminal.

Defendant spoke to the victim during the first incident in a mean tone of voice. After the molestation was completed, defendant threatened the victim that if she told others about his conduct, he would molest her again. However, C.B. knew that the crime had been committed as soon as it occurred. Crimes against persons, by their very nature, cannot be concealed. Other people may not know a crime has occurred and no one may know who the perpetrator was, but the victim necessarily knows that a crime has been committed.

Each of the cases in the annotations following K.S.A. 21-3106 discussing concealment under K.S.A. 21-3106 or its predecessor statutes has involved crimes against property such as embezzlement. The accused's actions in covering up the crime prevent the victim from learning of the embezzlement itself. Under such circumstances, the accused has acted in a calculated manner to prevent the discovery of the acts which are criminal. See, *e.g. State v. Grauerholz*, 232 Kan. 221, 654 P.2d 395 (1982). This constitutes concealment. Defendant in the case at bar did nothing, and could do nothing, to prevent C.B. from knowing of the crime's commission. Moreover, we cannot interpret the statute to equate a threat to a child victim with concealment.

Threats, as this case demonstrates, are a very effective way of keeping child victims from reporting sexual offenses. Not

surprisingly, they are also a commonplace occurrence in the aftermath of a sexual assault on a child. Thus, the practical result of regarding a threat to a sexually abused child as concealment would be to extend the statute of limitations beyond its stated two-year period in nearly every case of indecent liberties. In light of the fact that statutes of limitation are to be liberally construed in favor of the accused, we cannot interpret K.S.A. 21-3106(3)(c) to include threats to the child victim as concealment of the crime. See *Gainer*, 227 Kan. at 674.

The State urges that we make an exception to the usual meaning of concealment in sexual abuse cases involving children where the conduct of the accused has the effect of concealing the offense from law enforcement authorities. It argues that since children are particularly susceptible to threats, the statute of limitations should be tolled until the victim's parents or some other adult learns of the crime's commission.

We are sympathetic to the State's argument and understand that prosecution of sex offenses committed against children is made delicate and difficult by the immaturity of the victims. However, it is not the province of this court to fashion exceptions to the statute of limitations; that task is left to the legislature. Statutes of limitation are measures of public policy and are entirely subject to the will of the legislature. *Mills*, 238 Kan. 189. We, therefore, hold that the district court erred when it found that the statute of limitations had been tolled by the acts of the defendant.

The judgment of the district court is reversed and the trial court is instructed to discharge the defendant.

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ALLEGRUCCI, J., concurring. Although I agree with the majority that this case should be reversed, I would do so on other grounds.

The majority opinion acknowledges that the use of threats against child victims of sexual abuse is both a commonplace and effective means of preventing detection of the crime's occurrence. Nevertheless, it chooses to ignore reality in favor of a strict construction of "concealment." I would adopt a more flexible interpretation.

In *State v. Mills*, 238 Kan. 189, our Supreme Court did not specifically hold that threats to a child victim constitute concealment so as to toll the statute of limitations. However, in holding that unsolicited threats by a third party to the ten-year-old victim could not be attributed to the defendant to constitute concealment, the court assumed for the sake of argument that the third party threats amounted to concealment. Had the court believed, as the majority holds today, that the crime could not be concealed because the child knew about its occurrence, it would not have made this assumption or been necessary to decide the significance of the third party's involvement.

In *State v. Danielski*, 348 N.W.2d 352 (Minn. App. 1984), a similar situation existed involving defendants who were the mother and stepfather of the child victim. The court held that the defendants' acts in maintaining continuing coercive control over the child victim prevented the reporting of the act and made it a continuing offense. The child was under the coercive control of the defendants until she was sixteen years of age. Once out of the coercive control of the defendants, she promptly reported the abuse to her natural father. As long as the coercive control which caused the abuse to occur continued, the offense continued and the statute of limitations did not bar prosecution of the defendants.

I would adopt a similar rule and hold that the acts of an adult offender in maintaining coercive control over the child victim and thereby preventing the report of the offense constitute concealment. However, the element of control exerted by the adult offender over the child would be essential to finding concealment and thus, a tolling of the statute of limitations.

In the case at bar, the defendant made no additional threats, nor did he exert any control over the child following the commission of the first offense. Therefore, it is upon this absence of coercive control that I agree with the majority's ultimate conclusion that the district court erred when it found that the statute of limitations had been tolled by the acts of the defendant.

III

3-5-86
M. Van Buren

(cc) *Learned treatises.* A published treatise, periodical or pamphlet on a subject of history, science or art, to prove the truth of a matter stated therein, if the judge takes judicial notice, or a witness expert in the subject testifies, that the treatise, periodical or pamphlet is a reliable authority in the subject.

(dd) *Actions involving children.* In a criminal proceeding *or a proceeding pursuant to the Kansas juvenile offender's code* or in a proceeding to determine if a child is ~~a deprived child under the Kansas juvenile code or~~ a child in need of care under the Kansas code for care of children, a statement made by a child, to prove the crime or that ~~the~~ child is a ~~deprived child~~ or a child in need of care, if:

a. Juvenile offender

(1) The child is alleged to be a victim of the crime *or offense,* ~~a deprived child or~~ a child in need of care; and

(2) the trial judge finds, after a hearing on the matter, that the child is disqualified or unavailable as a witness, the statement is apparently reliable and the child was not induced to make the statement falsely by use of threats or promises.

If a statement is admitted pursuant to this subsection in a trial to a jury, the trial judge shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, the nature of the statement, the circumstances under which the statement was made, any possible threats or promises that might have been made to the child to obtain the statement and any other relevant factor.

Sec. 4. K.S.A. 1985 Supp. 22-3433, 22-3434 and 60-460 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

A-IV

S. Jud.
3/5/86