

Approved February 8, 1989

Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 a.m./p.m. on February 2, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Peterson and Snowbarger, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Assistant Attorney General for K.B.I.
David E. Johnson, Director, K.B.I.
Jim Clark, Kansas County and District Attorneys Association
Edwin Van Petten, Deputy Attorney General, Criminal Division

HEARING ON H.B. 2059 -- Criminal prosecution, statute of limitation, 5 years

Kyle Smith testified this bill would standardize the Statute of Limitations with the federal government which has established a five year Statute of Limitations. Currently in Kansas there is a two year Statute of Limitations, except for murder, certain specified sex offenses against children and certain securities fraud violations. He said technology has developed systems that will provide conclusive evidence of crimes committed years earlier, such as the Automated Fingerprint Identification System and DNA profiling. He also stated a change in the Statute of Limitations is needed in response to the complexity of modern thefts and embezzlements. These cases can take years to detect and collect evidence, see Attachment 1.

The Committee questioned witnesses memories after 3, 4 or 5 years in non white-collar crime.

Mr. Smith responded to a Committee question that there would not be any fiscal impact by extending the Statute of Limitations to five years.

David E. Johnson said cases that have passed the two year Statute of Limitations are worked less, however, other cases that are being worked, that have not passed the Statute of Limitations, may lead to evidence on crimes committed three or four years ago, then the cases can be closed.

Jim Clark stated the Kansas County and District Attorney Association supports H.B. 2059. He said Shawnee County District Attorney Gene Olander reported there were two instances where a case was made after the two year Statute of Limitations.

The hearing on H.B. 2059 was closed.

HEARING ON H.B. 2067 -- Criminal inquisitions

Edwin Van Petten testified this bill broadens the power of prosecuting attorneys to conduct inquisitions in the course of investigating a criminal investigation. Inquisitions are used as a method of obtaining directly unprivileged information. He said the additional benefit of the inquisition subpoena is the ability to compel the attendance of witnesses who otherwise would be reluctant to visit with an investigator. Statements can be obtained while the witness is under oath. This bill makes the process of obtaining information and the interviewing of witnesses more reasonable and less expensive, see Attachment II.

The hearing was closed on H.B. 2067.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 2, 1989

HEARING ON H.B. 2069 -- Acceptable into evidence certain forensic examiners' reports

Edwin Van Petten testified this bill would add the drug enforcement administration and the armed forces to those whose preliminary forensic examinations can be introduced into evidence without the necessity of someone coming in to testify.

David E. Johnson expressed concern about merging H.B. 2035 and H.B. 2069 since the Bethany Medical Center laboratory that would be added to K.S.A. 22-2902a in H.B. 2035 is not a law enforcement laboratory nor is it a forensic laboratory.

At the request of the Committee, Mr. Johnson said he would research the matter and report to the Committee.

The hearing on H.B. 2069 was closed.

A motion was made by Representative Jenkins and seconded by Representative Buehler to approve the minutes of January 31, 1989.

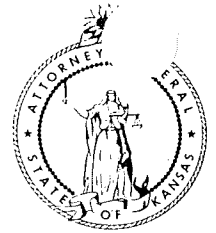
The Committee meeting was adjourned at 4:30 p.m. The next meeting will be Monday, February 6, 1989 at 3:30 p.m. in room 313-S.



DAVID E. JOHNSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY
ASSISTANT ATTORNEY GENERAL KYLE G. SMITH
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 2, 1989
RE: HOUSE BILL 2059

I am here today on behalf of Attorney General Stephan and the Kansas Bureau of Investigation supporting House Bill 2059.

This bill extends the time in which a prosecution may be commenced for a criminal offense, commonly referred to as the Statute of Limitations, from 2 years to 5 years for all criminal offenses in Kansas except murder. Murder has always been an exception to the Statute of Limitations. This bill will allow criminals who now go free to be brought to justice.

House Bill 2059 would also standardize the Statute of Limitations with the federal government which has established a 5 year Statute of Limitations.

It would also simplify and standardize Kansas law. Currently under K.S.A. 21-3106, there is a two year Statute of Limitations, except for: 1) murder; 2) in certain specified sex offenses against children and; 3) certain securities fraud violations. This bill would standardize all crimes, except murder, as having a five year Statute of Limitations.

House Bill 2059 is timely in responding to changing technology. There used to be an old police saying "that most crimes are solved in the first 48 hours or they are not solved at

House Judiciary
2/2/89
Attachment I

all". However, technology today has developed systems that will provide conclusive evidence of crimes committed years earlier. I am speaking of the Automated Fingerprint Identification System or AFIS which allows a computerized search of fingerprint records to locate a perpetrator; and what has been called DNA Profiling, which is an exciting new technology wherein each individual's unique DNA structure can be determined and hair, blood or sperm can be compared to crime scene evidence and positive identification made.

This change in the Statute of Limitations is also needed in response to the complexity of modern thefts and embezzlements; what we in law enforcement refer to as "paper cases". In these cases, a person commits theft by use of figures and documents. Law enforcement then must create what we call a "paper trail" that can provide the necessary evidence for successful prosecution.

Further, crimes such as check kiting or embezzlement by persons with a position of trust or authority may not be detected for months or years. A Statute of Limitations is tolled or stopped when an accused conceals a fact of the crime. But this exception has been, as are all criminal statutes, narrowly construed against the state so if the evidence was there but nobody thought to look for it or to distrust the perpetrator, the court will not consider that to be an act of concealment. These cases can take years to detect and may take months to investigate and collect the evidence.

I would urge you to recognize the need for this change and support House Bill 2059.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

STATEMENT OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
TO THE HOUSE COMMITTEE ON JUDICIARY
RE: H.B. 2067
FEBRUARY 2, 1989

Mr. Chairman and Members of the Committee:

Attorney General Stephan appreciates this opportunity to point out to this committee the benefits to be extended to law enforcement by passage of House Bill 2067. This bill will broaden the power of prosecuting attorneys to conduct inquisitions in the course of investigating a criminal violation.

Inquisitions are used extensively by law enforcement as a method to obtain unprivileged information, such as bank records or business journals. As the law now stands, there are a select few crimes which allow the prosecutor to subpoena the information directly. They are the "moral" crimes such as narcotics, gambling and bribery. In the other investigations, including crimes against persons and property crimes, the prosecutor must make a verified application to the court, to conduct an inquisition, and then schedule with the court, to issue subpoenas and call witnesses. The system is simply

House Judiciary
2/2/89
Attachment II

out-dated. With the burgeoning case loads and dockets of the courts combined with the surmounting case loads of all prosecutors, matters just simply do not get the immediate attention that is sometimes necessary, and requires additional court involvement which is not needed and is not cost effective.

You can well imagine that if a rape or murder suspect claims to have been at work at the time of an offense, it is imperative to obtain employment records as quickly as possible. Also, when investigating property crimes, financial records must be obtained on a daily basis. We are only asking for an avenue by which to simplify the obtaining of this evidence.

The additional benefit of the inquisition subpoena is the ability to compel the attendance of witnesses who otherwise would be reluctant to visit with an investigator, such as friends and family members of suspects. We can then obtain statements while the witness is under oath, thus subjecting the individual to perjury for false statements. The procedure in no way impinges on the witnesses fifth or sixth amendment rights, as these rights are safeguarded within the procedure.

This is not a case where government is asking for access to privileged information. We are merely asking that the process for obtaining information, and the interviewing of reluctant witnesses be streamlined to a more reasonable and less expensive procedure.