

Approved January 25, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~am~~ p.m. on January 23, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Peterson, Sebelius and Solbach, 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:

Edwin Van Petten, Deputy Attorney General, Criminal Division
Ron Smith, Kansas Bar Association
Kyle Smith, Kansas Bureau of Investigation

The Chairman announced HB 2059 and HB 2067 were heard last year and were tabled. Due to renewed interest in the legislation in these bills testimony will be received again, however, the bills will still be tabled.

Hearing on HB 2059 Criminal prosecution, statute of limitation, 5 years

Edwin A. Van Petten, Deputy Attorney General, Criminal Division, testified HB 2059 would standardize the time to prosecute all crimes, except murder, to five years, and would also make Kansas conform with the federal system. Property crimes are becoming so involved that the discovery and investigation of these complex crimes can exceed the present two-year limit. Kansas has the shortest statute of limitations of the five adjoining states. The adjoining states are considering increasing their three-year limitations, see Attachment I.

Ron Smith, Kansas Bar Association informed the Committee the Legislative Committee of the Kansas Bar Association opposes HB 2059. He said this bill addresses a relatively small number of cases, and the longer the time involved the harder the cases are to prosecute. He stated the current two-year statute for run of the mill crimes is adequate for most purposes and that by extending those generally to five years problems are created for prosecutors, defense counsel and Judges.

There being no other conferees, the hearing on HB 2059 was closed.

HEARING ON HB 2067 Criminal inquisitions

Edwin A. Van Petten, Deputy Attorney General, Criminal Division, testified HB 2067 would broaden the power of prosecuting attorneys to conduct inquisitions in the course of investigating a criminal violation. The process for obtaining information and the interviewing of reluctant witnesses would be streamlined to a more reasonable and less expensive procedure, see Attachment II.

Kyle Smith, K.B.I. testified in support of HB 2067.

There being no other conferees, the hearing was closed on HB 2067.

BILL REQUESTS:

The Chairman reported the Kansas Sentencing Commission requests the Committee introduce a bill requiring presentencing reports and other diagnostic reports from the State Rehabilitation and Diagnostic Center and the State Security Hospital be made available upon request of any authorized representative of the Kansas Sentencing Commission for the purpose of data collection and evaluation.

Representative Jenkins moved and Representative Walker seconded to introduce the legislation requested by the Kansas Sentencing Commission. The motion passed.

The Chairman also reported the Uniform Law Commission recommends that states adopt Article 4A of the Uniform Commercial Code.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S Statehouse, at 3:30 ~~xxx~~/p.m. on January 23, 1990

Representative Vancrum moved the Committee introduce a bill adopting Article 4A of the Uniform Commercial Code. Representative Lawrence seconded the motion. The motion passed.

Representative Buehler moved to approve the minutes of January 16, 17, 18 and 22. Representative Jenkins seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:15 p.m. The next meeting will be Wednesday, January 24, 1990 at 3:30 p.m. in room 313-S.



STATE OF KANSAS

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TESTIMONY

DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
OFFICE OF ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 23, 1990
RE: HOUSE BILL 2059

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Attorney General Stephan and I would like to thank you for this opportunity to address the obvious advantages of passing House Bill 2059.

Over the past few years, the legislature has examined the Statute of Limitations as it relates to a number of different crimes to decide if an extension was warranted. We have indeed extended the limit on sex crimes against children, because of the obvious problems of discovering the crime. Crimes which involve a violation of the securities laws have a five-year statute of limitations (K.S.A. 17-1267) and, as you are aware, there is no limitation on prosecution for murder.

This bill will standardize the time to prosecute all crimes, except murder, to five years, and also make Kansas conform with the federal system.

We have seen that even property crimes are becoming so involved that the discovery and investigation of these complex crimes takes us past our present two-year limit on some

1/23/90
H. Jud. Com.

Attachment I

occasions. The old adage that, "... most crimes are solved in the first 48 hours, or they are not solved at all," is just simply not true in modern law enforcement. Technology today enables us to provide conclusive evidence about crimes years after they are committed.

We are developing the Automated Fingerprint Identification System (AFIS) at the KBI which allows a computerized search of fingerprint records to locate a perpetrator; as well as, what is referred to as DNA profiling, which enables us to identify an individual's DNA structure so that evidence at the scene of a crime can be compared to known samples of blood, hair, or semen from a suspect to positively identify that person as the perpetrator or eliminate the individual from suspicion. This can be done years after the fact.

However, we do not ask for this extension merely because of law enforcement's technological advancements, but because the criminal is also advancing technologically. "Paper thefts," "check kiting," and plain old embezzlement can be committed by an enterprising thief in such a way that virtually months or years are required to sort out all of the transactions involved. While it is true that the time involved is tolled if the defendant conceals the crime, this tolling provision is narrowly construed against the State by our courts. Mere failure to discover a crime does not constitute concealment.

1/23/90
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Att I

It is time to bring Kansas into the pack with the federal government as well as our neighboring states. Kansas has the shortest statute of limitations of the five adjoining states, and those states are considering an increase in their three-year limitations.

I ask that you assist law enforcement in removing criminals from our society. If the evidence is there to prosecute, let us go forward.

1/23/90
H. Jud. Com.
Att I 2



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TESTIMONY OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 23, 1990
RE: HOUSE BILL 2067

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

1/23/90
H. Jud Com

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.

1/23/90
H. Jud. Com.
Att II 2