

Approved: Feb 16, 1998 \_\_\_\_\_  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:15 a.m. on February 12, 1998 in Room 514S of the Capitol.

All members were present except: Senator Oleen (excused)  
Senator Gilstrap (excused)

Committee Staff present: Mike Heim, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Jamie Lane, Committee Secretary

Conferees appearing before the committee: Kyle Smith, KBI  
Dave Schroeder, KBI  
Roger Hudlin, Emporia Police Department  
Dave Debenham, Deputy Attorney General  
David Haury, Kansas State Historical Society  
Ron Smith, Kansas Bar Association

Others attending: See attached list

The minutes of the February 11 meeting were approved on a motion by Sen. Donovan and a second by Sen. Pugh. Motion carried.

### **SB 582 - Covered offenses giving rise to forfeiture to include sexual exploitation of a child and computer crime.**

Conferee Kyle Smith testified as a proponent of **SB 582**. He stated that this legislation would protect our children and bring the resources of asset forfeiture against child pornographers and other persons criminally using modern information technology. **SB 582** adds child pornography and computer crime as criminal acts which would bring into play the various advantages of the SASFA (Standard Asset Seizure and Forfeiture Act). Conferee Smith indicated that this bill would first allow the courts to take away from the offender the tools of the trade; second, the knowledge that distributing child pornography or committing computer crimes can result in the loss of their computer and other equipment which should provide a deterrent and; third, forfeiture of this equipment would provide a mechanism for law enforcement to acquire the tools necessary to investigate these crimes. (attachment 1)

Conferee Schroeder testified in favor of **SB 582**. He distributed a table detailing the requests for computer related crime investigations over the past six years and the number of crimes still pending. He stated the most area frequently requested for investigation is child pornography. He feels that with today's advanced technology, it's common to find all types of equipment which makes committing this crime much easier. He strongly urges passage of this bill because it hurts the criminal financially and would provide law enforcement the means of acquiring the technology and tools necessary to investigate child pornography with little or no cost to the taxpayers. Discussion followed. (attachment 2)

### **SB 583 - Increasing penalty for lewd and lascivious behavior in the presence of a child under 16 years of age.**

Conferee Kyle Smith testified in favor of **SB 583**. The proposed bill is designed to protect our children against those individuals who would sexually assault them. He stated that this bill would enhance the penalty for what is termed "lewd and lascivious" behavior when the victim is a child under the age of 16 making it a level 9 person felony (it is currently a class B non-person misdemeanor). (attachment 3)

Conferee Hudlin testified as a proponent of **SB 583** stating that he feels the seriousness of this crime would justify the proposed changes. He discussed with the committee an investigation he became involved in and strongly urged passage of this bill. (attachment 4)

**SB 584 - Five-year statute of limitations for most criminal prosecutions.**

Conferee Debenham testified in favor of **SB 584** which would provide for a five year statute of limitations on all crimes across the board with the exceptions of murder (no limitation) and crimes in which the Kansas public employees retirement system is a victim (ten year statute of limitations). Conferee Debenham detailed several cases where the statute of limitations expired before the time a thorough investigation could be conducted into the crime. He stated this bill would provide law enforcement the necessary tools to effectively investigate not only crimes of violence, but also those crimes committed by stealth, the discovery of which can lie dormant for years. (attachment 5) Conferee Haury also testified in favor of **SB 584**. He discussed with the committee an incident that occurred at his place of employment where a former employee removed several thousands of dollars of valuable documents. The theft was discovered over a year after the employee left. The two year statute of limitations had expired, thus the clock started ticking when the theft occurred and not when the theft was discovered. He feels passage of this bill would give protection to libraries and archives by lengthening the current two-year limit in Kansas. He strongly urged passage of this bill. (attachment 6)

Conferee Schroeder testified in favor of **SB 584** explaining to the committee his experiences of investigating crimes where the current two year statute of limitations was a major issue in the investigation. He feels that by increasing the statute of limitations to five years would provide adequate length of time for the discovery, investigation and indictment of those who committed crimes in this state. (attachment 7)

Conferee Ron Smith testified as an opponent of **SB 584** stating that he opposes broad advances in the statute. He stated where a crime is cleared with an arrest by law enforcement officers, the two year statute of limitation is adequate to the needs of the criminal justice system. He also stated there are statutory exceptions to the running of the limit if the crime is concealed or the defendant is absent the jurisdiction. Conferee Smith suggests to the committee the review of the law surrounding the "tolling" of the statute to see if statutory clarity might be of some value. He feels what may be gained in prosecutorial efficiency by going to a broad-based five year statute is more than offset by further delays in court proceedings and the difficulty of keeping witnesses available for protracted criminal prosecutions that occur long after the crime. (attachment 8)

Meeting adjourned at 11:10 a.m. The next scheduled meeting is Monday, February 16.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/12/98

NAME	REPRESENTING
KAREN WITTMAN	KANS. INSURANCE DEPT.
Rebecca Baker	Washburn social work student
Sara Caylor	Washburn social work student
Stephanie White-Nester	KSNA / WU Nsg. School
Kevin Pfeiffer	Kansas Bureau of Investigation
Stephanie Pettit	Attorney General
Kevin A. Shahn	Kansas Sentencing Commission
Mary Welkerson	KSNA / Baker University
Clifford Varnes	KSNA / Washburn University
Garnie Ann Brown	KS Govt Consulting
Mary Hillin	Ch + 7m Sec of SRS
Kyle Smith	KBI / KPOA / KSA / AG
ROGER HUDLIN	KPOA / EMPORIA POLICE DEPT
LANE RYNO	KPOA / " "
Chris Browne	Sumner County Leadership
Debra Fyler	KSNA / WSU Nsg. School
Kelly Peterson	WSU School of Nursing
Jennifer Webb	WSU School of Nursing

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/12/98

NAME	REPRESENTING
Amylarde Bruinhorst	Wichita State Univ. Nsg. Student
Kristi Utterback	Wichita State Univ. Nursing student <del>KSNA</del>
Erin Thomson Bise	WSU Nursing Student - KSNA
Alisha Luchene	Wichita State Nursing Student <del>KSNA</del>
Becki Swisher	Butter County Comm. Colley No. Stud.
Donna Karben	KWU - Salina RN - Sunflower Homecare
David Hanson	Ks Assn P+C Insur.
Lynny VanCamp	Research College of Nursing Student <del>KSNA</del>
Beth Thornton	Research College of Nursing Student, <del>KSNA</del>
Selen Stephen	KPA / KSA
Jan P. Oehl	OJA
David A. Haery	Kansas State Historical Society
David DeBak	Attorney General
Nancy Lindberg	"
Ron Meaf	Senate
Carl Smith	Ks Bar Assoc



Attachment 1

## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SB 582  
FEBRUARY 12, 1998

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General at the Kansas Bureau of Investigation. I appear today on behalf of the Attorney General, Kansas Bureau of Investigation and Kansas Peace Officers' Association, in support of SB 582. This legislation is part of Attorney General Carla Stovall's efforts to protect our children and would bring the resources of asset forfeiture against child pornographers and other persons criminally using modern information technology.

For the new members of the committee, I have the privilege of serving as Chairman of the task force that wrote the Standard Asset Seizure and Forfeiture Act (SASFA), which became law in 1994. One of the advantages of a standardized format was that the procedure was set up so that additional crimes could be added as the basis for civil forfeiture if needed.

SB 582 adds child pornography and computer crime as criminal acts which would bring into play the various advantages of the SASFA. Special Agent Dave Schroeder of the KBI is also here testifying and can provide a much more detailed and graphic picture of the incredible expansion of child pornography and computer crime in recent years.

In an effort to fight this growing problem, application of the SASFA would provide three

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major areas of help in fighting these crimes.

First, asset forfeiture allows the courts to take away from the offender the tools of the trade, computers, video tapes, cameras, scanners, etc. These are now the stock and trade in child pornography and computer crime. Any equipment utilized to facilitate these crimes would be subject to forfeiture and thus make it more difficult for the perpetrator to continue the criminal activity.

Second, the knowledge that distributing child pornography or committing computer crimes can result in the loss of their beloved computer and other equipment, should provide a deterrent factor and avoid the commission of some of these crimes. While I realize that some pedophiles are going to be driven to such a degree that the threat of forfeiture will not dissuade them from committing these vile acts, I am hopeful that persons who are motivated by financial gain, or more traditional computer criminals, will be deterred.

Third, forfeiture of this equipment would provide a mechanism for law enforcement to acquire the very same tools necessary to investigate these types crimes. No law enforcement agency, to my knowledge, anywhere in the country, is up to speed with the resources, both in personnel and equipment, that are necessary to meet this massively expanding area of crime. By forfeiting computers and digital imaging equipment involved, these can now be utilized by law enforcement agencies in investigating similar type activities without any cost to the taxpayers. Like drug dealers, money launderers and gamblers, we believe it is appropriate that persons engaging in computer crime and the distribution of child pornography be deterred in any way possible from committing the crimes. It is only justice to have their equipment turned over to law enforcement to assist in future investigations.

I would be happy to stand for questions.



Attachment 2

## Kansas Bureau of Investigation

Larry Welch  
Director

Carla J. Stovall  
Attorney General

**TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
DAVID J. SCHROEDER, SPECIAL AGENT  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SENATE BILL 582  
FEBRUARY 12, 1998**

**Mr. Chairman and Members of the Committee:**

I am Dave Schroeder, Special Agent of the Kansas Bureau of Investigation (KBI) and appear today in support of SB 582. I am currently assigned to Field Investigations in the Topeka Region.

In my fourteen year career as an agent with the KBI I have had the opportunity to investigate several types of crime. In the past several years I have investigated cases involving computers, scanners, printers, modems, digital cameras, cellular phones, telecommunications equipment and other high tech equipment.

A few years ago, the Kansas Bureau of Investigation (KBI) took the initiative to begin investigating these computer related crimes. Currently the KBI relies on the efforts of two special agents assigned to field investigations. Myself and another agent, who is assigned to the Kansas City office are assigned these duties.

We continue to receive request from local, state and federal law enforcement agencies for assistance in the area of high tech crime investigation and training.

With the advancements in technology, today's society is exposed to a new frontier, the frontier of the electronic criminal.

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Attached is a table that outlines the number of request received by the KBI in the recent years, the types of crimes involved and the number of investigations still pending.

Not surprisingly, the area most frequently requested for investigation is child pornography. With today's advanced technology, it's commonplace to find in homes and businesses, personal computers, large capacity hard drives, color scanners, modems, removable storage devices, digital cameras and imaging equipment along with access to the Internet.

This advanced technology equipment when used in conjunction with the Internet, provides an almost perfect medium to display, exchange, trade, sell and produce child pornography, shrouded in a veil of secrecy and anonymity.

While several cases are still being litigated and I am unable to discuss them, let me assure this committee that child pornography is being produced and distributed in Kansas.

I support SB 582 because it allows asset forfeiture. The courts can take away the computers, color scanners, digital cameras and other equipment and tools used by these criminals in child pornography and computer crime cases.

It not only put the criminal out of business, (although it may be for only a short time before they buy new equipment), it also hurts the criminal financially. The forfeiture of this equipment would also provide law enforcement with a means of acquiring the technology and necessary tools to continue investigating child pornography and computer crime cases at little or no cost to taxpayers.

Asset forfeiture relating to child pornography and computer crime cases can also serves as a deterrent.



**If you don't want to get caught.**

**If you don't want your equipment taken away.**

**If you don't want to have to buy replacement equipment.**

**If you don't want to give your equipment to law enforcement.**

**DON'T DO THE CRIME.**

**I would be happy to stand for questions.**

**Kansas Bureau of Investigation  
Request for Computer Related Crime Investigation**

<u>CRIME</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Death Investigation	2				2	1
Child Pornography				3	11	19
Sex Crime						1
Misuse of Public Funds		1	1			
False Writing/Forgery			1	1		2
Counterfeit/Fraud/Theft		1	1	9	7	8
Dangerous Drugs				1	7	4
Terrorist/Intimidation					2	
Explosives						1
Computer Crime/Virus			1	3	3	4
Training/Technical			1	1	5	7
<hr/>						
Request for Service	2	2	5	18	37	47
Percent Completed	100%	100%	100%	78%	62%	57%
<hr/>						
Case Backlog by Year	0	0	0	2	12	19
Cumulative Backlog	0	0	0	2	14	33
Refused or Referred	0	0	0	2	2	1



Attachment 3

## Kansas Bureau of Investigation

Larry Welch  
*Director*

TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SB 583  
FEBRUARY 12, 1998

Carla J. Stovall  
*Attorney General*

Mr. Chairman and Members of the Committee:

My name is Kyle Smith, Assistant Attorney General at the Kansas Bureau of Investigation, and I appear today on behalf of the Attorney General, Kansas Bureau of Investigation and Kansas Peace Officers' Association, in support of SB 583. This bill is part of a package of legislation introduced by Attorney General Stovall designed to protect our children from those disturbed individuals who would sexually assault them. SB 583 enhances the penalty for what is termed "lewd and lascivious" behavior when the victim is a child under the age of 16, by making it a level 9 person felony.

Lewd and lascivious, K.S.A. 21-3508, is basically what is referred to as "flashing" or "public exposure". It is currently only a class B non-person misdemeanor and it is our belief that is not an appropriate penalty when the victim is a young child that can be severely traumatized by such an incident. Further, it is well established that pedophiles frequently start off with window peeping, public exposure at playgrounds and school yards, and then "progress" onto sexual battery, assaults and rape. It is our opinion that the sooner individuals that commit sexual offenses against children have a felony on their record, are hence prevented from possessing firearms, and the courts have a more adequate hammer to force treatment, and it is better for all concerned.

I would be happy to stand for questions.

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**Senate Judiciary Committee  
Senate Bill #583  
February 1998**

Dear Senators:

I would appreciate any assistance that you could give in the passing of this bill which would change the crime classification of K.S.A. #21-3508, Lewd and Lascivious Behavior, to a level 9 person felony if the victim were under the age of 16. I feel that the seriousness of this crime would justify the proposed changes.

In 1996 I became involved in the investigation of several incidents in which a 20-year-old man "exposed himself" to young girls who were walking to school. The investigation revealed that this had been ongoing for at least three months. Six victims between the ages of 10 and 13 years old were identified. It is suspected that many more victims were not identified.

In one half of the cases the man exposed his genitals and masturbated in front of the girls. The state statute that would govern this behavior is K.S.A. 21-3508, Lewd and Lascivious Behavior, a class B nonperson misdemeanor. No provision currently exists in the statute to compensate for a child victim. The maximum penalty for this crime is a \$1,000 fine and six months in jail. In the other three cases the man also asked the child to perform a sex act and was charged under K.S.A. 21-3511, Aggravated Indecent Solicitation of a Minor, a level 7 person felony.

The man was convicted of the crimes and served just more than one year in jail. He has since been released and is on probation. His victim's are still living with the effects of the crimes. I have personal knowledge that at least two of the victims of the lesser charges of lewd and lascivious behavior needed mental health counseling to help them cope with what they witnessed.

In reviewing the statutes, I found that a person could expose their genitals or even have intercourse in front of other nonconsenting people, including children and not be charged with a crime more serious than a class B misdemeanor. However, if a person were convicted of distributing obscene materials to a person under the age of 18, he would be convicted of a class A misdemeanor and on a subsequent conviction of a level 8 person felony. In other words, it is a more serious crime to show children pictures of people having sex than it is to have sex in front of them.

Most of the other Kansas statutes governing sex crimes have made provisions for varying ages of the victims and/or subsequent convictions. This bill would change the Lewd and Lascivious Behavior Statute to make it a felony if the victim were under the age of 16. This would help provide for more appropriate penalties for those people who prey on our children.

Thank you for your consideration of this bill.

Submitted by:



Roger D. Hudlin  
Kansas Peace Officer's Association  
Emporia Police Department  
Emporia, Kansas

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att-f

Attaching + 5



State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL

ATTORNEY GENERAL

STATEMENT OF

DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM

BEFORE THE SENATE JUDICIARY COMMITTEE

RE: SENATE BILL 584

FEBRUARY 12, 1998

MAIN PHONE: (785) 296-2215

FAX: 296-6296

TTY: 291-3767

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 584. This bill would amend the language of K.S.A. 21-3106 and provide for a five year statute of limitations on all crimes across the board -- with two exceptions. The exceptions would remain murder, which has no limitation and crimes in which the Kansas public employees retirement system is a victim, which has a ten year statute of limitations.

Any prosecuting attorney will tell you that the best criminal case is the case that can be investigated and brought to trial in the shortest period of time from the date of the crime. The more time that elapses between the date of the crime and the date of the trial, the more likely the prosecuting attorney is to experience problems associated with the trial of the case.

The amendments sought in this bill will not affect the manner in which the vast majority of criminal cases are investigated and charges subsequently filed by prosecuting attorneys. For crimes of violence and many property crimes the fact that a crime has occurred is immediately known. Once the crime is reported, an investigation is commenced and the matter is subsequently referred to the prosecuting attorney for review and the filing of appropriate criminal charges. All of this generally happens well within the current statutory time period.

However, white-collar crimes and embezzlements also occur within our state. Frequently these are the types of crimes that are not immediately discoverable. Once discovered, these are also the type of crimes that can take an inordinate amount of time to investigate, due to the amount of documents involved, multiple jurisdictions, the time it takes to obtain the documents, the need to have accountants review the documents and finally the time involved in interviewing witnesses.

Some of these crimes involve concealment in which the statute of limitations is tolled during the period the crime is concealed. There are other crimes in which there is no positive act of concealment by the defendant and thus the statute of limitations starts to run on the date the crime

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is committed even though the victim or law enforcement may not be aware that a crime has occurred. In these situations, once the crime is discovered, the current statute of limitations may have already expired. Just as discouraging is discovering a major embezzlement, within the current statute of limitations, only to have the statute expire before the time a thorough investigation can be conducted into the crime.

Such an incident took place recently at the Kansas State Historical Society. While employed at the Kansas State Historical Society an individual took a number of valuable Atlases, maps and books. Since these items had been in storage, the theft was not readily discovered. In fact it was not until another employee of the Kansas State Historical Society observed some of the items for sale at a local antique establishment that the theft was discovered. When the items were sold by the defendant in this case, various identifying marks which would have identified the property as belonging to the Kansas State Historical Society, were removed.

The prosecuting attorney alleged that removing the identifying marks from the items constituted concealment of the crime, which would toll the statute of limitations. However, the trial court ruled that the defendant's action did not amount to concealment of the crime from the Kansas State Historical Society. Instead, the court ruled that the defendant had only tried to dispose of the property without being caught. The court found this action was insufficient to amount to a positive act of concealment, which would have tolled the statute of limitations, and the criminal charges were dismissed because the charges were not brought within two years of the theft.

Recently, the Kansas Bureau of Investigation was involved in an investigation of violations alleged to have occurred in the summer of 1994. Although the Kansas Bureau of Investigation was promptly notified, when the Kansas Commission on Governmental Standards and Conduct became aware of the possible violations, the statute of limitations had already expired on these violations. Even though the crime remained undiscovered for over two years, since there was no active concealment of the crime, there was no tolling of the statute of limitations.

There was also a criminal case filed against the manager of a grain elevator in western Kansas. The complaint alleged the manager converted customer refund checks to his own use and altered scale tickets and sales invoices to defraud customers of the elevator.

The subsequent purchaser of the elevator was put on notice in May 1995, by a former employee, that the manager had been diverting checks from the customers to his own account. An audit determined that scale tickets had been altered from 1991 through 1995. This audit was completed in April 1996. During the subsequent investigation conducted by the Kansas Bureau of Investigation, the manager admitted in an interview conducted in February of 1997, to a history of converting chemical company checks to his own use and altering scale tickets and sales invoices to defraud customers of the grain elevator.

A criminal case was filed in March of 1997, alleging 167 criminal counts committed between

January 1994 through January 1995. It was alleged that the crimes had been concealed until May of 1995. With the current two year statute of limitations, the case was filed within two years of the discovery of the crimes. However, the case was later dismissed when the court found that there was no active concealment of the crimes by the manager.

As I indicated earlier, there are currently four different periods establishing time limits for the prosecution of criminal offenses in Kansas. These range from no limitation, 10 years and 5 years. All other crimes are subject to a two year statute of limitations.

This two year period is the shortest statute of limitations among any of the surrounding states. Rather than attempt to make another exception to the two year statute of limitations for white-collar crimes and embezzlements, it would seem to be more appropriate at this time to bring the rest of the criminal code into compliance with the five year statute of limitations.

This increase in the statute of limitations will provide law enforcement with the necessary tools to effectively investigate not only crimes of violence but also those crimes committed by stealth, the discovery of which can lie dormant for years. This bill will demonstrate your support of law enforcement, prosecutors and crime victims.

On behalf of Attorney General Stovall, I would urge your favorable consideration of Senate Bill 584.

Attaching '0

Senate Bill 584  
Senate Judiciary Committee

Thank you Senator Emert and committee members. I am David Haury, Assistant Executive Director of the Kansas State Historical Society. Our agency is very pleased to have this opportunity to endorse lengthening the statute of limitations to five years. We are motivated in part by our recent experience with a theft case, and also by a belief that libraries and archives in general would be better protected by lengthening our current two-year limit in Kansas.

A employee removed over \$50,000 of valuable documents from a locked storage area, and the theft was first discovered over a year after he had left our employment when he attempted to sell items through a local antique dealer. By the time the case was prepared and charges filed, the two year limit had expired. While the employee removed identifying markings from some of the materials before selling them, the court ruled that this action did not constitute concealment at the time of the theft. Only an act of overt concealment of the theft itself would have allowed prosecution to proceed. Thus the clock started ticking when the theft occurred, and not when the theft was discovered, and not when the thief was caught selling the stolen property. Our materials were in an infrequently visited storeroom and many items were actually in closed boxes. If the thief had not attempted to sell the materials or we had not been moving to our new facility, it could have been years before the theft was discovered. In other words, no act of overt concealment was necessary to conceal the crime.

The system makes it extremely difficult to prosecute anyone who steals items that are unlikely to be missed. The recent interpretation of what constitutes overt concealment and the relatively short two-year limit in Kansas imposes a great hardship on libraries and archival institutions, which may not discover an item is missing until another patron requests it. Even

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then, one would be unlikely to discover who had taken the item until the thief or burglar actually tried to sell it. You may recall Stephen Bloomburg and other famous cases during the past decade when individuals stole thousands of valuable books from various libraries and kept them rather than trying to sell them. Such a theft would be very difficult to prosecute under Kansas law today. A two-year limit provides an unreasonable opening for any dishonest, but **patient**, employee or burglar to steal from a library. Fortunately, most thieves generally need cash immediately and may be caught selling the property. But some do not. A five-year limit would increase the likelihood of a successful investigation and prosecution by allowing authorities adequate time for investigation and by making it less profitable for someone to hold property until they could not be prosecuted.

In conclusion, we strongly endorse increasing the time-frame of the statute of limitations from two to five years. We would also urge you to investigate the possibility of changing the language regarding overt concealment of a theft and to start the clock when the theft and thief are discovered, not when the theft occurs. The law gives too much advantage to the criminal. In the case of our agency, it is the public trust which is violated and state property which we hold in trust for the citizens of Kansas which is being stolen.



Attachment 7

## Kansas Bureau of Investigation

Larry Welch  
Director

Carla J. Stovall  
Attorney General

**TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
DAVID J. SCHROEDER, SPECIAL AGENT  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SENATE BILL 584  
FEBRUARY 12, 1998**

Mr. Chairman and Members of the Committee:

I am Dave Schroeder, Special Agent of the Kansas Bureau of Investigation (KBI) and appear today in support of SB 584. I am currently assigned to Field Investigations in the Topeka Region.

In my fourteen year career as an agent with the KBI I have had the opportunity to investigate several types of crime. In the most recent past I have investigated three or four cases where the current two year statute of limitation has become a major issue in the investigation.

These particular cases involved the theft of money and/or property and went undiscovered by the victims for several months and in some cases, they were not discovered for over a year and several months.

Financial and "white collar" crime investigation generally require the review and analysis of personal and company banking records along with related financial records which tends to be very time consuming. The records may be in another state which complicates and delays their retrieval.

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Frequently, new crimes are discovered while investigating the originally assigned investigations. These crimes generally were committed prior to the current case being investigated. For instance, upon arrest of a drug dealer, other crimes are discovered dating back years. Based on the two year statute of limitation, there may be little time, if any remaining to investigate and file charges.

Prosecutor's heavy case loads are not always conducive to being available in a timely manner to review the investigative reports and file charges.

These types of investigations are labor intensive and require adequate time to collect, analyze and review documents and evidence related to the investigations. Sometimes investigations lack sufficient evidence to bring forth charges. With additional time, further information and evidence could be developed to support prosecution. The investigation of these types of crimes are sometimes delayed. Property crimes are considered as a lower priority level than investigations of crimes against persons.

As an example, a case investigated in Shawnee County was first discovered by the victim, Kansas State Historical Society (KSHS) in March 1995. A former employee was developed as a possible suspect in the theft of atlases valued at \$46,000.00.

Documents, in the form of cancelled checks were obtained during the investigation that indicated the atlases were sold to a local book and atlas collector in the later part of 1993 and the first part of 1994. Cash payments were also made during this same time frame, but there were no documented records of these transactions.

The former employee was interviewed regarding the missing atlases. Personal banking records were subpoenaed, analyzed and reviewed regarding each documented

payment.

During the course of this investigation, the KSHS discovered additional property missing from the same archive storage area where the missing atlases had been stored. Information and evidence was collected and analyzed.

Criminal charges were filed but on July 25, 1997, 12 felony thefts and 15 misdemeanor thefts were dismissed in Shawnee County District Court. The Court ruled that the statute of limitation had expired before he was charged.

In his ruling, Judge Charles Andrews stated that the Kansas Supreme Court's ruling makes it quite clear that only acts taken to conceal the crime from the victim tolls the statute of limitations. Here, there is no allegation that the defendant tried to conceal the crime from the victim, only that he tried to dispose of the property without being caught.

A longer, five year statute of limitation in Kansas would have prevented these charges from being dismissed by the Court.

In conclusion, I would suggest that SB 584, by increasing the statute of limitations to five years would provide an adequate length of time for the discovery, investigation and indictment of those who commit crimes in the State of Kansas.

I would be happy to stand for questions.

Attaching - 8



**KANSAS BAR ASSOCIATION**

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**Memorandum**

**TO:** Members, Senate Judiciary Committee  
**FROM:** Ron Smith  
General Counsel  
**SUBJ:** SB 584  
**DATE:** February 12, 1998

The Kansas Bar Association opposes this bill, at least in its broad sweep. While government could, theoretically, remove the statute of limitation for all crimes, it would prove impractical on the administration of justice.

While the argument might be made that this simply "mirrors" federal law, that is not quite accurate. Federal law does not contain "burglary" or "breaking and entering," or other minor felony crimes. These are the sorts of crimes that states enact and enforce. The chance that burglary or other such crimes will be solved if we extend the statute of limitations are remote while any such resulting trial will make it hard for prosecutors and defense counsel to defend.

KBA has, in the past, supported expanding the statute of limitations on certain crimes where the prosecution can show that new science has made the detection of the crime more probable. When DNA testing came into being was one situation. Also fraud crimes often require a longer statute because of the nature of putting together a case against such persons or corporations.

We do not oppose specific advances in the statute. We oppose broad advances in the statute, however. Generally, however, where a crime is cleared with an arrest by law enforcement officers, the two year statute of limitation is adequate to the needs of the criminal justice system. Further, there are statutory exceptions to the running of the limit if the crime is concealed or the defendant is absent the jurisdiction. We suggest you review the law surrounding the "tolling" of the statute to see if statutory clarity might be of some value there.

What may be gained in prosecutorial efficiency by going to a broad-based five year statute is more than offset by further delays in court proceedings and the difficulty of keeping witnesses available for protracted criminal prosecutions that occur long after the crime.

Thank you.

*Senate Judiciary*  
*2-12-98*  
*att 8*