

Approved: 5/02/06

Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Lloyd at 1:30 P.M. on March 9, 2005 in Room 241-N of the Capitol.

All members were present except:
Mike Peterson- excused

Committee staff present:
Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:
Senator Goodwin
Dan Hermes, KCASAP
Kevin Graham, Attorney General
Kyle Smith, KBI
Representative Peggy Mast
Kim Clark, Kansas Bar Association
Stacey Donovan

Others attending:
See attached list.

SB 180 - Preliminary screening tests for alcohol consumption by minors; admissible into evidence

Chairman Loyd opened the hearing on **SB 180**.

Senator Goodwin, spoke in support of the bill. (Attachment 1) The bill closes a legal loophole that restricts Law Enforcement Officers from enforcing under-age drinking laws.

Chairman Loyd closed the hearing on **SB 180**.

SB 148 - Striking 5-year limitation on increase in repeat DUI penalties.

Chairman Loyd opened the hearing on **SB 148**.

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects, appeared in support of the bill. (Attachment 2) The bill was introduced at the request of the association to deal with an issue of growing concern to the members and deletes a provision in the prior DUI law which provided that only DUI convictions occurring within the last five years could be taken into account whether the offense was a first, second, or subsequent offense. The 2001 Legislature passed **SB 67** which overhauled the state's DUI laws, one of the major components was to remove the five year decay when determining the number of DUI's that an offender has for sanction purposes.

Chairman Loyd closed the hearing on **SB 148**.

SB 147 - Increasing general time limitation for actions to five years

Chairman Loyd opened the hearing on **SB 147**.

Kevin Graham, Office of the Attorney General, spoke in favor of the bill. (Attachment 3) The bill would lengthen the Kansas statute of limitations for the filing of charges in the majority of felony and

misdemeanor crimes from the current two-year limit to period of five years.

Kyle Smith, KBI, appeared in support of the bill. (Attachment 4) The bill brings Kansas law on statute of limitations out of the dark ages and into modern realities. Cases should not be prosecuted due to the passage of time and loss of evidence, but where there is compelling and probative evidence, this loophole in our criminal justice system should be fixed.

Representative Peggy Mast, spoke on behalf of the bill and the issue and discomfort of women discovering after reaching adulthood that they have victimized by sexual abuse when they were children. (Attachment 5)

Jim Clark, Kansas Bar Association, (KBA) appeared in opposition to the bill. (Attachment 6) The KBA is opposed to a blanket increase in the statute of limitation in all criminal cases, but realize that some kinds of crimes may not be discovered, or discoverable, within the two-year period that is current law. For that reason they would support an amendment allowing filing of prosecutions with two years of discovery of the crime.

Stacey Donovan, attorney, strongly opposes the bill. (Attachment 7) The supplemental note on the Bill stated that proponents of the bill believe that increasing the statute of limitations will help in the prosecution of complicated and multi-state crimes. Currently, most complicated cases already have an extended statute of limitations, from five years to indefinitely. (e.g. fraud, sexual assaults, murder) Multi-state crimes are often prosecuted at the federal level where the statute of limitation is already five years and the penalties are often much stiffer. Extended statute of limitations can hurt the prosecution, the defendant, and the victim.

Chairman Loyd closed the hearing on **SB 147**.

HB 2200 - Child in need of care code, certain persons could not be excluded from certain proceedings.

Representative Yoder made the motion to report HB 2200 favorably for passage. Representative Huntington seconded the motion.

Representative Davis moved to amend "advocate to ally" in line 26 and 28, and change the wording "parents designee to ally" in lines 42 and 43. Representative Sharp seconded the motion. The motion carried.

Representative Pauls made the motion to report HB 2200 favorably for passage, as amended. Representative Knox seconded the motion. The motion carried.

SB 30 - Exercising the state's option to provide an exemption to disqualification for public assistance to certain drug offenders.

Representative Swenson made the motion to report SB 30 favorably for passage. Representative Roth seconded the motion.

Representative Sharp moved the balloon by SRS with the revised language by the revisor on conditionally release in the fourth line. Representative Swenson seconded the motion. The motion carried.

Representative Owens moved the balloon with new section (b). (Attachment 8) Representative Roth seconded the motion. The motion carried.

Representative Owens moved to amend by reinserting lines 40 and 41. Representative Roth seconded the motion. The motion carried

Representative Davis made the motion to report SB 30 favorably for passage, as amended. Representative Faust seconded the motion. The motion carried

The meeting was adjourned at 3:20 pm. The next meeting is March 10, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 3-9-05

| NAME | REPRESENTING |
|------------------|--------------------------|
| She Mellek | SRS |
| Kris Keoby | SRS |
| J. Rogers | SRS |
| W. H. Tucker | SRS |
| Kendall Bicknuth | SRS |
| Brendan Dall | SRS |
| Brenda Hays | SRS |
| Dee Beyer | PSHTC |
| Jan C. White | Self |
| Jimmy Burns | PSHTC |
| Veet J. J. | KNI |
| Bob Lutz | SRS |
| Myra J. J. | SRS |
| Dan J. J. | SRS |
| Velda Roberts | SLV Co Leadership Class |
| Shirley J. J. | Driver Controls |
| Diane Albert | KPOR |
| Kim Vandavelde | SRS |
| Steve Sanders | SRS |
| David Koseff | Leadership Overland Park |
| Susan Bray | SLV Co Leadership |
| Debra Jennings | Leavenworth Leadership |
| Juan Adams | SLVCO Leadership |
| Richard Somers | Union & Assoc. |

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 3-9-05

| NAME | REPRESENTING |
|------------------|--------------------------|
| Jim Clark | KBA |
| Alary L. Donovan | citizen |
| Jennifer Roth | citizen |
| D. Mariani | SRS |
| Bhonda Larson | Leadership Overland Park |
| Kali Karnes | Leadership Overland Park |
| Susan Powell | Leadership Overland Park |
| Kew McCray | LEADERSHIP OVERLAND PARK |
| Stacey Hanssler | Leadership Overland Park |
| Kelly Stohs | " " " |
| Tim Madden | KDOC |
| CHRIS BORTZ | KDOT |
| JEREMY S BARCLAY | KDOC |
| Lori Webb | Leadership OSH |
| Kathy Beck | citizen |
| Susie Gummie | self |
| Jill Polk | Leadership Independence |
| Caryn Kennedy | KAS |
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GRETA H. GOODWIN
SENATOR, 32ND DISTRICT
COWLEY, SUMNER AND
PORTION SEDGWICK COUNTIES

STATE CAPITOL BUILDING
ROOM 403-N
TOPEKA, KANSAS 66612-1504
(785) 296-7381
420 E. 12TH AVE.
WINFIELD, KANSAS 67156
(620) 221-9058
e-mail: ggoodwin@ink.org



TOPEKA

SENATE CHAMBER

DECISION OF THE COURT
ARKANSAS CITY MUNICIPAL COURT
CASE #: 2003-72762
April 27, 2004

COMMITTEE ASSIGNMENTS
STANDING COMMITTEES:
JUDICIARY, RANKING MINORITY MEMBER
EDUCATION
ASSESSMENT AND TAXATION
CONFIRMATION OVERSIGHT
JOINT COMMITTEES:
CORRECTIONS AND JUVENILE JUSTICE
OVERSIGHT, RANKING MINORITY MEMBER
STATE BUILDING CONSTRUCTION
LEGISLATIVE APPOINTMENTS:
KANSAS SENTENCING COMMITTEE
SUPREME COURT APPOINTMENTS:
ADVISORY COMMITTEES:
JUDICIAL COUNCIL PROBATE LAW
JUDICIAL COUNCIL JUVENILE OFFENDER/
CHILD IN NEED OF CARE
CHILD SUPPORT GUIDELINES

K.S.A. 8-1012. If the person submits to the tests, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the test authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or part of the results of a preliminary screening test. Such result shall not be admissible in any civil or criminal action excepting to aid the Court or hearing officer in determining a challenge to the validity of the **arrest** or the validity of the **request** to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto” (emphasis added). From Kansas cases, the Court finds no help.

“As a Judge, how do I ignore a clear statutory provision stating that results of the PBT shall not be admissible in any civil or criminal action except to aid the Court or hearing officer in determining the challenge of validity of the arrest? As a Judge I cannot rewrite the Law. This job is in the hands of the Legislature.”

“I have not taken the position that K.S.A. 8-1012 is a good law but it is still the law and as a Judge I must follow it. It is not the Court’s duty to rewrite the Law, but to follow it. If the use of the PBT results at trial is as important to Law Enforcement as they believe, then an effort should be made through our elected officials in Topeka to change the law.”

I have a copy of the protocol that is used by the Arkansas City Police Department, as well as other law enforcement personnel in the use of Intoximeters.

1. There is no time requirement for the instrument to clear. Performing the Air Blank on the instrument is the best method to validate an alcohol free instrument.

While it is conjecture that alcohol dissipates quite rapidly, there is the possibility that the alcohol concentration in a room or within the environment in which a sample is being taken, can have a measurable alcohol concentration. Should an officer run a successful pre-test air blank, this argument is mute.



CITY OF ARKANSAS CITY

POLICE DEPARTMENT

DANIEL N. GIVENS
Chief of Police

SEAN E. WALLACE
Captain

March 4, 2005

House Corrections and Juvenile Justice Committee
RE: Senate Bill 180

Dear Representatives:

I have asked our good local Senator, Greta Goodwin, to draft Senate Bill 180, in hopes of tying up a legal loophole that restricts Law Enforcement Officers from enforcing under-age drinking laws. I can assure you that if this was not very important to the Arkansas City Police Department and to Law Enforcement Officers across the State, I would not take up your time and I will try to be brief in explaining why we need to make this change and how it affects Law Enforcement Officers throughout the State.

Under KSA 8-1012, your good lawmakers have drafted a law, which states that a Law Enforcement Officer may not bring into evidence a preliminary screening test device, either in Civil or Criminal actions. I know, and you know, that Kansas' lawmakers intentions on that were directed towards DUI, to which we use the PBT for probable cause, only, to make an arrest. We then use either blood or the Intoxilyzer 5000, which have been accepted by the State of Kansas. I do not want to change that in any way, shape or form. However, Kansas' lawmakers' oversight in stating that has handcuffed Law Enforcement Officers in using those important preliminary screening test devices in order to enforce your Kansas Law KSA 41-727.

Kansas drunk driving prevention winter addition, volume 6, issue 1 brings to the forefront Law Enforcement's important responsibilities enforcing underage drinking laws. It also asks law

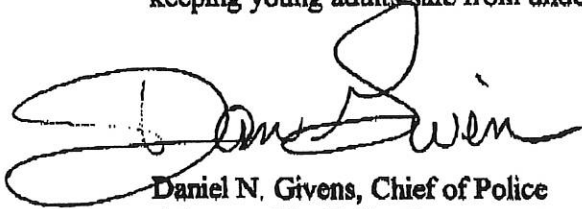
Working together we CAN make a difference!

117 W. CENTRAL AVENUE • P.O. BOX 778 • ARKANSAS CITY, KANSAS 67005-0778
PHONE (620) 441-4444 • FAX (620) 442-1410 • E-MAIL acpd@arkcity.org

makers to take seriously any efforts to close loopholes to keep underage drinking from occurring. This is exactly what we are asking you to do. I don't have to tell any of you the deadly statistics that we see in our State and in our Country from underage binge drinking and from underage drunk driving. Just the mere fact that we lose 14 teenagers every day, 7 days a week, 365 days a year, due to alcohol related accidents, should be enough to make this bill important to anybody who is addressing the issue.

This Senate Bill 180 is especially important to Law Enforcement agencies like the Arkansas City Police Department and dozens of other Law Enforcement agencies around the State of Kansas, which have community colleges and 4-year colleges in their Communities. As with other communities, the Arkansas City Police Department takes underage drinking very seriously and works hard to enforce the underage drinking laws. It's extremely disappointing to Law Enforcement Officers and Administration when attorneys compare notes and use the loophole that was, I'm sure, an oversight by good lawmakers in KSA 8-1012, to throw out enforcement of underage drinking laws under KSA 41-727. It's become a known fact in our Community, due to some good defense attorneys, that this loophole exists. Due to this loophole in KSA 8-1012, several good MIC (Minor in Consumption) citations have been overturned in Court, handicapping our efforts to enforce underage drinking laws in the State of Kansas. When asking local judges to use common sense on the bench in our Community, they simply referred me to changing the law, not asking them to divert from the law.

Please take this Senate Bill 180, as drafted by Senator Goodwin, seriously and assist us in keeping young adults safe from underage drinking.



Daniel N. Givens, Chief of Police
Arkansas City Police Department
Arkansas City, Kansas

DNG/mkh

Intoximeters

World Leader in Breath Alcohol Testing for Over Fifty Years

April 28, 2004

Chief Dan Givens
Arkansas City Police Department
117 W. Central
Arkansas City, KS 67005

Chief Givens,

I would like to respond in writing to the questions that you asked in our phone conversation this afternoon.

I believe there were three questions that were asked:

- 1) What is the allotted time required between tests to ensure that alcohol from a previous sample does not produce an artificially high result on a subsequent test when using an Alco Sensor or Alco Sensor III (Manufactured by Intoximeters, Inc.)
- 2) Is a 15 minute wait required between tests to make certain that an Alco Sensor or Alco Sensor III is not influenced by the previous test?
- 3) Can there be enough alcohol in a room or the ambient air to produce a result on the Alco Sensor or Alco Sensor III? How would this affect a result on a subject?

With regard to question #1:

There is no preset time that determines when the next test can be performed. In fact, the best method is to run a pre-test air blank to verify that the instrument, mouthpiece and air in the vicinity of the instrument are free of alcohol prior to testing. If the instrument provides an air blank result that indicates a .000 for five to ten seconds, there is no alcohol in the instrument and therefore there will be no additive affect to a subsequent sample.

In response to question #2:

As stated above, there is no time requirement for the instrument to clear. Performing the Air Blank on the instrument is the best method to validate an alcohol free instrument.

I believe that the confusion with regard to a fifteen minute wait is due to a recommendation for a 15 to 20 minute deprivation period required on subject's who have recently consumed alcohol. This time period eliminates the contention that alcohol in the subject's mouth from a recent drink could influence the quantitative accuracy of a result. The 15 to 20 minute deprivation period eliminates a contention of "Mouth Alcohol" in cases where precise concentrations of alcohol are required. However, in cases such as workplace testing or juvenile testing, where any use of alcohol is a violation, exact concentrations may not be critical. Without a 15 minute wait alcohol use can still be identified.

With regard to question 3#:

It is true that even though alcohol dissipates quite rapidly, there is the possibility that the alcohol concentration in a room or within the environment in which a sample is being taken, can have a measurable alcohol concentration.

While it is conjecture that this condition might cause elevated results on a human subject who breathes alcohol from the air, I believe in the case that you described, this argument is mute. You indicated that the officer ran a successful pre-test air blank. This procedure is recommended in our manual for several reasons. Not only does it prove that the instrument and its sensor are free of alcohol, it also shows that the mouthpiece and the ambient air in the room are free of alcohol. If alcohol concentrations were elevated in the room the instrument would have displayed a positive reading on the air blank. The .000 result on the air blank indicates that the air in the room did not have a measurable concentration of alcohol.

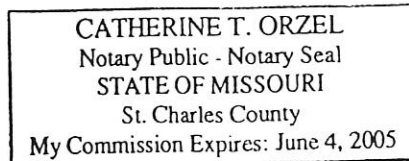
I hope this information provides you with adequate answers to your questions. If I need to elaborate or provide additional information on any of the questions, please feel free to contact me.

Sincerely,



M. Rankine Forrester
Chief Executive Officer
Intoximeters, Inc.

State of Missouri
County of St. Louis



Subscribed and sworn to before me on this 29th day of April 2004.


Notary Public

PUBLIC SOLUTIONS

DAN HERMES
2512 SW OSBORN ROAD
TOPEKA, KS 66614

MANAGEMENT CONSULTING,
ASSOCIATION MANAGEMENT AND
LOBBYING SERVICES

PHONE: 785.271.0433
CELLULAR: 785.221.7419
E-MAIL: HERMES4@MINDSPRING.COM

LEGISLATIVE TESTIMONY

TO: Chairman Ward Loyd and Members of the House Committee on Corrections and Juvenile Justice

DATE: March 9, 2005

SUBJECT: SB 148 – Changes in DUI Decay Provisions for Driver's License Purposes

Mr. Chairman and members of the Committee, my name is Dan Hermes and I represent the Kansas Coordinators of Alcohol Safety Action Projects. Members of this association are organizations around the state that are certified by the courts to conduct the required assessments on all DUI offenders.

SB 148 was introduced at the request of the association to deal with an issue of growing concern to the members. In 2001, the legislature passed SB 67, a significant overhaul of the state's DUI laws that was proposed by then Attorney General Stovall. One of the major components of this legislation was to remove the five-year decay when determining the number of DUIs that an offender has for sanction purposes. A direct quote from the KLRD summary of legislation follows:

DUI Convictions: No Decay. The bill deletes a provision in the prior DUI law which provided that only DUI convictions occurring within the last five years could be taken into account in determining whether the offense was a first, second, or subsequent offense. Note: This elimination of the decay of prior DUI convictions also impacts driver's license.

I believe this documents the clear intent of the legislature to look at an offender's lifetime of behavior when determining appropriate driver's license sanctions. Over the past several years our members have reported numerous occasions that offenders have showed up for assessment and treatment with four, five or more DUIs yet they still possess a valid driver's license. This led us to review the statutes to try to determine why this was occurring.

We found that in the definition section of the DUI statutes, a DUI occurrence for the purposes of the Division of Vehicles is still defined as a DUI occurring in the immediately preceding five years. For this reason, we have two sets of rules: one for the courts and one for the Division of Vehicles. SB 148 corrects this, making, in our view, a technical change to reflect the intent of the 2001 Legislature.

Although we believe this change is technical in nature, it has significant impact. Failure to correct what we believe was a flaw in 2001 SB 67 will result in DUI offenders with multiple charges continuing to have their licenses prematurely reinstated.

I thank the committee for its time and attention and will stand for questions.

House C & JJ
3-9-05
Attachment 2



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

March 9, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Testimony of
Kevin A. Graham
in Support of
Senate Bill No. 147

Dear Chairman Loyd and Members of the Committee:

Thank you for allowing me to appear today in support of SB 147, a bill requested by Attorney General Phill Kline and the Attorney General's Task Force on Crime and Sentencing that would lengthen the Kansas statute of limitations for the filing of charges in the majority of felony and misdemeanor crimes from the current two-year limit to a period of five years.

Under current law, at K.S.A. 2004 Supp. 21-3106, Kansas prosecutors must file charges within the two years following the commission of most crimes committed in our State or the case will be lost and even if evidence is later uncovered revealing the identity of the criminal who committed the crime, that individual can not be prosecuted for the offense. For example, if your home is burglarized and law enforcement is not able to identify the individual who committed the burglary for more than two years, that burglar can not be prosecuted for the crime. Even if three years later an eye witness comes forward with videotape of the burglary and the burglar signs a confession the burglar can not be charged and can not be convicted, because the statute of limitations on the crime has expired.

The Kansas Legislature has long recognized that the statute of limitations should be longer than two years for a number of different types of crimes. The primary example is that under current Kansas law the crime of murder has no statute of limitations. Whether charges are filed against a murder defendant the day after the murder, or 20 years later, the defendant can still be prosecuted and convicted for the murder if sufficient evidence is discovered and a jury is convinced beyond a reasonable doubt of the defendant's guilt. The rationale behind having no statute of limitations for murder is generally based on the two major arguments of the serious nature of the crime and the fact that crucial evidence of the crime often may not be discovered for years after the completion of the crime.

It should be noted and considered that a "statute of limitations" prescribing a specific length of time in which criminal charges must be filed or the case abandoned is a statutory right. The Kansas statute of limitations is not mandated by either the United States or Kansas constitutions. Statutes of limitations vary widely from state to state, and the courts have consistently held that states have the right and authority not only to establish statutes of limitations, but to change them as well. Statutes of limitations on the filing of crimes are controlled entirely by the legislative process and the lengths of particular time limitations for the filing of criminal cases can (and have) been amended on many occasions. For example, the Legislature has provided an extended statute of limitations of 10 years in cases involving fraud or theft from the Kansas Public Retirement System. Ordinarily, the crime of Theft, KSA 21-3701, would have to be charged within two years of the commission of the crime, but thanks to the provision of KSA 2004 Supp. 21-3106(3), if the victim of that Theft offense is KPERS (and only if the victim is KPERS) law enforcement and prosecutors will have up to 10 years to identify the offender and file charges. This special provision for KPERS was added to the statute out of recognition that it may take a number of years for an act of embezzlement or fraud against KPERS to be discovered, and additional time would likely be necessary for law enforcement authorities to appropriately investigate the case and identify a suspect. That same rationale is at the very heart of why SB 147 was requested by the Attorney General and why the bill should be enacted.

In the past three and a half years since the 9/11 attacks, the resources available to combat a variety of criminal enterprises have been rearranged and re-targeted at the federal level in order to address the needs of Homeland Security and or national defense. As a consequence, assistance from federal entities such as the Federal Bureau of Investigation (FBI) and the Secret Service that have been relied upon for many years to aid in the investigation and prosecution of "white-collar" crime and public corruption have been greatly reduced. For nearly 20 years the stated number one priority of the FBI was combating major white-collar crime and public corruption. However, the latest "FBI Priorities" list (see attached) now ranks white-collar crime as the FBI's number 7 priority.

Not only do state authorities now face a reduced capacity for assistance from federal agencies concerning white-collar and public corruption crimes, but federal authorities are now openly seeking assistance from the states in handling crimes that were traditionally handled exclusively by federal law enforcement agencies and prosecutors. In recent weeks representatives from the Secret Service have contacted the Kansas Attorney General's Office and state authorities across the U.S. requesting that the individual states enact statutes to criminalize the possession or passing of counterfeit U.S. currency. Counterfeiting has traditionally been a crime investigated and prosecuted almost exclusively at the federal level, but due to re-tasking of the Secret Services resources following 9/11, the agency is now actively seeking assistance from the states. [See attachment, HB 2214 introduced this year by Rep. Patricia Kilpatrick.] Similarly, the Kansas Attorney General's Office was recently contacted by the U.S. Department of Defense seeking prosecution assistance on a white-collar case involving

a federal contractor defrauding sub-contractors. One major difference between prosecuting these offenses at the federal level and trying to prosecute them at the state level in Kansas is that the federal system currently has a 5-year statute of limitations while Kansas only allows two years to have the case filed.

An important tool that the Legislature can give to Kansas prosecutors taking on these additional very complex and time consuming cases would be to pass SB 147 and provide for a longer, 5-year statute of limitations for the filing of charges. Just as is the case in crimes involving KPERS, modern white-collar crimes such as embezzlement from a business, repeated thefts from a family member or identity theft can sometimes take years to discover and a great deal of time to properly investigate before charges can be filed. While modern computer systems sometimes make it possible to back-track a criminal's illegal acts, those same computers provide a skilled criminal with the ability to cover up many financial transactions and often evade discovery of crimes for a long period of time.

An example I can point to (due to having prosecuted the case myself) was an embezzlement scheme in Smith County where a trusted employee of a more than a century old business had been stealing from the business accounts for numerous years. The offender's thefts amounted to nearly \$100,000 that was identified in just the preceding three years. Due to the two-year statute of limitations for Theft crimes, charges could only be brought for the crimes in the most recent two years. An audit of the company's records confirmed that additional thefts had taken place possibly as far back as 4 or 5 years and may have raised the total amount of losses considerably. The good news is that the State did obtain convictions in that case on 10 counts, but the victims had to accept the fact that under current law it was not possible to charge or punish the defendant for many of his crimes.

To address one concern that has been voiced about the possibility of extending the current statute of limitations, it is my opinion that any action the Legislature might take this year to extend the statute of limitations would not be retroactive. In the case of Utah v. Lusk, 37 P.3rd 1103, the Utah Supreme Court ruled that a 1996 amendment to the Utah statute of limitations extending the statute from 4 years to 8 years for some crimes could only act to extend the time period for cases where the statute of limitations had not expired at the time the change in law took effect. Thus, if the prior statute of limitations had been 4 years and a crime had taken place 3 years before the statute of limitations was extended to 8 years, then the state would have a total of 5 years remaining to file charges in that crime. However, the Utah court held that if a crime had been committed and the existing statute of limitations had expired before the law was changed (i.e. statute of limitations had been 4 years and the crime happened 6 years ago) then that crime would not become "rechargeable" by the passage of a law extending the statute of limitations to 8 years. While I could not find an opinion where the Kansas Supreme Court had addressed this specific question, the Utah court's opinion is well reasoned and provides suitable guidance on this issue.

On behalf of Attorney General Phill Kline, I encourage the committee to support SB 147 and to recommend the bill favorably for passage to the full committee.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE



Kevin A. Graham
Assistant Attorney General
Director of Governmental Affairs



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

March 10, 2005

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Additional Information Regarding
Senate Bill No. 147

Dear Chairman Loyd and Members of the Committee:

Attached please find copies of the materials I had meant to attach to the testimony submitted on March 9, 2005. [1. Print-out from the FBI website listing the current "FBI PRIORITIES"; 2. Copy of HB 2214.]

During questioning I was asked to provide information regarding the general provisions in "statutes of limitations" from other States. I have gone through my file of research related to SB 147 and found the following information regarding a number of States from across the U.S. and the time limitations they impose in most criminal cases. This information does not cover specialized laws for extending the statute of limitations for situations such as child abuse that is not understood or reported until later in life, etc. This information deals with the "general" statute of limitations such as the current "two year" statute that SB 147 seeks to amend and most of the information was gathered from the internet:

Alabama: Statutes of limitations have been eliminated for almost all criminal offenses.
Arizona: 8 years
Georgia: 4 years
Idaho: 5 years
Illinois: 3 years
Maine: 6 years
Missouri: 3 years
New York: 5 years
Oklahoma: between 5 and 9 years for most crimes
Pennsylvania: 5 years
Wisconsin: 6 years for felonies/3 years for misdemeanors
Uniform Code of Military Justice: 5 years

Respectfully,

Kevin A. Graham
Assistant Attorney General
Director of Governmental Affairs



Facts and Figures 2003

- [FBI Priorities](#)
- [About Us](#)
- [Press Room](#)
- [What We Investigate](#)
- [Counterterrorism](#)
- [Directorate of Intelligence](#)
- [Most Wanted](#)
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FBI PRIORITIES

1. Protect the United States from terrorist attack.
2. Protect the United States against foreign intelligence operations and espionage.
3. Protect the United States against cyber-based attacks and high-technology crimes.
4. Combat public corruption at all levels.
5. Protect civil rights.
6. Combat transnational and national criminal organizations and enterprises.
7. Combat major white-collar crime.
8. Combat significant violent crime.
9. Support federal, state, county, municipal, and international partners.
10. Upgrade technology to successfully perform the FBI's mission.

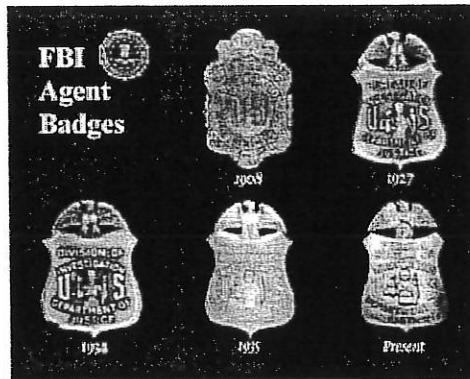
The Federal Bureau of Investigation (FBI) is the investigative arm of the US Department of Justice. The FBI's investigative authority can be found in Title 28, Section 533 of the US Code. Additionally, there are other statutes, such as the Congressional Assassination, Kidnapping, and Assault Act (Title 18, US Code, Section 351), which give the FBI responsibility to investigate specific crimes.

- [Introduction](#)
- [Short History of the FBI](#)
- [Working for the FBI](#)
- [Counterterrorism](#)
- [Counterintelligence](#)
- [Cybercrimes](#)
- [Public Corruption](#)
- [Civil Rights](#)
- [Organized Crime](#)
- [White-Collar Crime](#)
- [Fugitives](#)
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Evolution of the FBI

| | | | | |
|--|---|--|---|---|
| <p>July 26, 1908 No specific name assigned; referred to as Special Agent Force</p> | <p>March 16, 1909 Bureau of Investigation</p> | <p>July 1, 1932 U.S. Bureau of Investigation</p> | <p>August 10, 1933 Division of Investigation (The Division also included the Bureau of Prohibition)</p> | <p>July 1, 1935 Federal Bureau of Investigation</p> |
|--|---|--|---|---|



MOTTO

The FBI motto is "Fidelity, Bravery, and Integrity."

MISSION

The mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. The organization with these responsibilities has not always been called the FBI.

CORE VALUES

The FBI will strive for excellence in all aspects of its missions. In pursuing these missions and vision, the FBI and its employees will be true to, and exemplify, the following core values:

- Adherence to the rule of law and the rights conferred to all under the United States Constitution;
- Integrity through everyday ethical behavior;

HOUSE BILL No. 2214

By Representative Kilpatrick

1-28

9 AN ACT concerning crimes and punishment; relating to counterfeiting
10 United States currency.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Counterfeiting United States currency is, with the in-
14 tent to defraud:

15 (1) Manufacturing United States currency;

16 (2) counterfeiting, causing to be counterfeited or willingly aiding or
17 assisting in counterfeiting United States currency; or

18 (3) making, scanning, recording, reproducing, transmitting or having
19 in the person's control, custody or possession an analog, digital or elec-
20 tronic image of United States currency.

21 (b) As used in this section, "counterfeiting" means to forge, materially
22 alter or falsely make.

23 (c) Counterfeiting United States currency is a severity level 5, non-
24 person felony.

25 (d) This section shall be part of and supplemental to the Kansas crim-
26 inal code.

27 Sec. 2. This act shall take effect and be in force from and after its
28 publication in the statute book.



4

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

House Corrections and Juvenile Justice Committee

Testimony in Support of SB 147

Kyle G. Smith
Special Assistant Attorney General and Special Agent
Kansas Bureau of Investigation
March 9, 2005

Chairman Loyd and Members of the Committee,

I appear today on behalf of the KBI in support of SB 147, bringing the Kansas law on statute of limitations out of the dark ages and into modern realities. The two-year statute of limitations was developed under England's common law, at a time when most people couldn't read or write. Then it made sense to limit prosecutions to fairly recent occurrences where the memories would be fresh. But in this day of widespread literacy, ubiquitous video cameras, digital recorders, not to mention DNA testing, the idea that criminals should go free simply because our law still reflects the thinking of 4 centuries ago is sad.

At the KBI we frequently work complex cases involving multiple organizations in several states. Obtaining records from other states is sometimes difficult and slow. Many times some or all of the crimes discovered cannot be charged as the two-year statute of limitations has run.

Certainly there are times where cases should not be prosecuted due to the passage of time and loss of evidence. But where there is compelling and probative evidence, this loophole in our criminal justice system should be plugged.

Thank you for your consideration. I'd be happy to answer any of your questions.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

PEGGY MAST
REPRESENTATIVE, 76TH DISTRICT
765 ROAD 110
EMPORIA, KANSAS 66801
(620) 343-2465

ROOM 446-N CAPITOL BLDG.
TOPEKA, KS 66612
(785) 296-7685

COMMITTEE ASSIGNMENTS
VICE-CHAIR: HEALTH & HUMAN SERVICES
UTILITIES
SOCIAL SERVICES BUDGET

TESTIMONY ON SENATE BILL 147

It is always a pleasure to appear before your committee Mr. Chairman. I am here today to speak on behalf of Senate Bill 147. This issue is near and dear to the heart of many women who have gone through the discomfort of discovering, after reaching adulthood, that they have been victimized by sexual abuse when they were children. It is a very difficult issue for them to come to terms with after being in denial through their youth. I have met on several occasions with this group as they spoke of their desire to have a bill like this passed. Just yesterday, I discovered that this bill has made great strides this year. I just want to encourage the committee to address the needs of these victims. It often takes time to deal with this issue and they need help and intervention before they feel strong enough to pursue prosecution against someone who has robbed them of their innocence and taken away their dignity.

House C & JJ
3-9-05
Attachment 5



**KANSAS BAR
ASSOCIATION**

Testimony in Opposition to

Senate Bill No. 147

Presented to the
House Corrections and Juvenile Justice Committee
March 9, 2005

The Kansas Bar Association is a non-profit association made up of over 6000 of the 9000 attorneys registered to practice law in Kansas.

The KBA appears in opposition to SB 147 for several reasons:

- Uniformity with federal law is not always a good thing. While the United State Attorney's offices are located only in Kansas City, Topeka, and Wichita, there is a state prosecutor's office in every county. Because there are fewer prosecutors and judges in the federal system, cases take much longer than those in state courts, and in most instances, federal crimes are more complicated, with far-ranging areas of investigation.
- Although state prosecutors are more numerous than federal prosecutors, their offices are routinely overworked. Extending the statute of limitations will inevitably result in delays in filing and prosecuting cases. Such delays will result in two significant injustices: a case may be dismissed for lack of prosecution, under the due process clause of the Fifth Amendment; or the delay in prosecution will result in failing memories of witnesses, unavailability of witnesses due to relocation or death, and postponement of closure that a criminal prosecution gives to victims and witnesses. These results, while also applicable to the prosecution, may deprive the defendant of the constitutional right to defend against the charges against him or her.

For these reasons the Kansas Bar Association is opposed to a blanket increase in the statute of limitations in all criminal cases. We do realize, however, that some kinds of crimes may not be discovered, or discoverable, within the two-year period that is current law. For that reason, we would support an amendment allowing filing of prosecutions within two years of discovery of the crime.

Our proposed amendment would restore the original language stricken on page 1; restore the stricken language on page 2 at line 11; and on page 2 at line 12, strike the word "five" and insert the following:

The earlier of two years from the date of discovery of the facts constituting the violation, or two years from the date of violation.

Thank you for your consideration.

James W. Clark
KBA Litigation Counsel

7

**House Judiciary Committee
Senate Bill 147
Opponent**

March 9, 2005

The Honorable Representative Ward Loyd
House Corrections and Juvenile Justice Committee
300 SW 10th Street
TOPEKA KS 66612-1504

Dear Chairman Loyd and Members of the Corrections and Juvenile Justice Committee,

My name is Stacey Donovan and I am a Douglas County constituent, however I work in Topeka as a public defender and have done so since 1997.

I am writing to you because I am very concerned about Senate Bill 147, which would lengthen the statute of limitations for most crimes from 2 years to 5 years. The supplemental note on the Bill stated that proponents of the bill believe that increasing the statute of limitations will help in the prosecution of complicated and multi-state crimes. Currently, most complicated cases (e.g. fraud, sexual assaults, murders) already have an extended statute of limitations, from five years to indefinitely. Multi-state crimes are often prosecuted at the federal level where the statute of limitation is already five years and the penalties are often much stiffer. Unfortunately, the benefits of a longer statute of limitations are far outweighed by the damages it will cause.

Extended Statute of Limitations can hurt the Prosecution

- Discourage prompt investigation by law enforcement
- Victims may lose interest in the prosecution of their case
- Witnesses may move, die, or become unavailable or be unwilling to testify
- Extradicting defendants from other states will be very costly to local jurisdictions
- Memories of victims and witnesses fade over time which makes their testimony unreliable and thus makes a case more difficult to prosecute successfully
- Storage of physical evidence (e.g. drugs, vehicles, DNA) will be burdensome and costly
- Chain of custody may be broken because of the increased length of time before trial
- Physical integrity of the evidence must be assured, which is costly for the prosecution
- Scene of the crime more likely to change over an extended period of time
- People will not be as willing or able to become informants if the prosecution of their crime is so far removed from the time of occurrence, which is against public policy

Extended Statute of Limitations can hurt the Defendant

- Victims and witnesses' memories are not as reliable 5 years after an event as they are within 2 years
- Defendants do not have the resources that the State does to find witnesses who may have moved away, changed jobs, etc.
- Scene of the crime is more likely to change over an extended period of time
- Most importantly, the defendant needs an immediate response to their criminal actions so that prevention, intervention, and possibly incarceration may occur

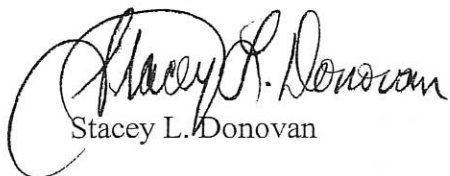
House C & JJ
3-9-05
Attachment 7

Extended Statute of Limitations can hurt the Victim

- Quality of testimony by lay witnesses, law enforcement officers, and expert witnesses will be diminished if testimony is given 5 years after an event occurs, which could lead to fewer convictions
- People who are victims of a crime need closure after an incident so delaying justice for the victim may be hurtful to them emotionally
- Victims may be harmed financially as restitution cannot be ordered until a conviction is gained

There are many real life examples I would like to share in my oral testimony. Ideally our justice system should operate in a way that the truth will be revealed and justice will be served whether that ends in a conviction, dismissal, or an acquittal. Delaying justice, as SB 147 proposes, is justice denied. It is for all of these reasons that I strongly oppose the adoption of SB 147.

Sincerely,



Stacey L. Donovan

8

SENATE BILL No. 30

By Committee on Judiciary

1-11

10 AN ACT concerning public assistance; relating to persons convicted of a
11 controlled substance related felony.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) Under the authority of subsection (d)(1)(A) of 21
15 U.S.C. §862a, the state of Kansas hereby exercises its option out of sub-
16 section (a) of 21 U.S.C. §862a, which makes any individual ineligible for
17 certain state and federal assistance if that individual has been convicted
18 under federal or state law of any offense which is classified as a felony by
19 the law of the jurisdiction and which has as an element of such offense
20 the possession, use or distribution of a controlled substance as defined
21 by subsection (6) of 21 U.S.C. §802, only if, after such conviction, such
22 individual has:

23 ~~(1)~~ (1) Been assessed by a licensed substance abuse treatment pro-
24 vider as not requiring substance abuse treatment; or

25 ~~(2)~~ (2) been assessed by a licensed substance abuse treatment pro-
26 vider and such provider recommended substance abuse treatment and
27 such individual;

28 ~~(A)~~ (A) Is participating in a licensed substance abuse treatment pro-
29 gram; or

30 ~~(B)~~ (B) has successfully completed a licensed substance abuse treat-
31 ment program.

32 ~~(b) Such individual shall submit to urinalysis, at the expense of~~
33 ~~such individual, during the application process and randomly there-~~
34 ~~after as determined by the case worker. Upon such individual's re-~~
35 ~~quest, a confirmation test of a positive result shall be performed at~~
36 ~~such individual's expense. Any state or federal assistance to such~~
37 ~~individual, permitted by this section, shall be suspended until re-~~
38 ~~ceipt of the confirmation result. A positive result shall disqualify~~
39 ~~such individual from receiving such state and federal assistance.~~
40 ~~Thereafter, such disqualified individual may reapply for assistance~~
41 ~~after 30 days.~~ ←

42 Sec. 2. This act shall take effect and be in force from and after its
43 publication in the statute book.

(b) An individual may be disqualified for any state or federal assistance permitted by this section if confirmation of illegal drug use is found as a result of testing that occurs while the individual is on probation, parole, conditional release or postrelease supervision or during required substance abuse treatment.