

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 3:00 P.M. on March 17, 2005 in Room 241-N of the Capitol.

All members were present except:

Kathe Decker- excused  
Deena Horst- excused  
Mike Peterson- absent  
Dale Swenson- 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 Roger Reitz

Others attending:

See attached list.

**SB 89- Payment of certain medical expenses of prisoners injured by a state officer or employee**

Chairman Loyd opened the hearing on **SB 89**.

Senator Reitz appeared in favor of the bill. (Attachment 1) Current law dictates that the county where the injury occurs pays medical expenses for the incident. The site of the inflicted injury should have no bearing on the responsibility for medical costs, the responsibility should be that of the whole state. This bill places the financial burden for such admittedly rare events to be borne by the state if no other source of payment can be found.

Chairman Loyd closed the hearing on **SB 89**.

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

Representative Kelsey made the motion to report SB 148 favorably for passage. Representataive Sharp seconded the motion. The motion carried.

**SB 82 - Previous sexual conduct of complaining witness in sex offense prosecutions not admissible in any court proceeding.**

Representative Owens made the motion to report SB 82 favorably for passage. Representataive Ward seconded the motion.

An amendment was presented by the revisor. (Attachment 2)

Representative Crow moved to have the revisor clarify language on page one, line 40. Representative Pauls seconded the motion. The motion carried.

Representative Owens made a motion to adopt the amendment in the form presented by the revisor. Representative Pauls seconded the motion. The motion carried.

Representative Owens made a motion to recommend SB 82 favorably for passage as amended. Representative Faust-Goudeau seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Corrections & Juvenile Justice Committee at 3:00 P.M. on March 17, 2005 in Room 241-N of the Capitol.

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

Representative Yoder made the motion to report SB 147 favorably for passage. Representative Roth seconded the motion.

Representative Owens provided a technical amendment dated March 15, 2004 that strikes line 2 and 3 page 2 and covers language in KSA 21-3105, on unlawful sexual relations. (Attachment 3)

Representative Owens made a motion to adopt the balloon in the form presented by the revisor. Representative Sharp seconded the motion. The motion carried.

Representative Kelsey made a motion to recommend SB 147 favorably for passage as amended. Representative Yoder seconded the motion. The motion carried.

The meeting was adjourned at 3:27 pm. The next meeting is March 21, 2005.



Good morning:

Senate Bill 89 has to do with responsibility of the state for performance of it's employees. At the present time the county in which an altercation develops between a state law enforcement officer and a suspected miscreant pays for any medical bills resulting from injury inflicted on the latter. The officer acting in the line of duty should be totally supported by his or her employer. Current law dictates that the county where the injury occurs pays medical expenses for the incident. The site of the inflicted injury should have no bearing on the responsibility of the whole state.

Three years ago on I-70 in Riley County a Kansas highway patrolman stopped a vehicle carrying two men. As he approached the car the driver made a move as to produce a weapon and the patrolman shot him. The injury was severe and the trooper was not harmed.

The victim was transported to a Manhattan hospital with severe injuries and a long operation ensued, which was successful. A three week convalesce followed in the hospital with a total bill of around \$110,000. This was submitted to Riley County. With a budget of 27 million dollars the county was able to pay the bill but not all Kansas counties could do this and the bill could have been much larger. Chautauqua or Elk County would likely not be able to assimilate such a bill into their budgets.

This bill places the financial burden for such admittedly rare events to be borne by the state if no other source of payment can be found.

*Rod. Reitz*  
Senator Dist # 22.

Senator Roger Reitz

March 17, 2005  
proposed  
balloon  
amendment

SENATE BILL No. 82

By Committee on Judiciary

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AN ACT concerning sex offense prosecutions: relating to the complain-  
ing witness; admissibility of prior sexual conduct; amending K.S.A. 21-  
3525 and repealing the existing section.

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

Section 1. K.S.A. 21-3525 is hereby amended to read as follows: 21-  
3525. (a) The provisions of this section shall apply only in a prosecution  
for: (1) Rape, as defined by K.S.A. 21-3502, and amendments thereto;  
(2) indecent liberties with a child, as defined in K.S.A. 21-3503, and  
amendments thereto; (3) aggravated indecent liberties with a child, as  
defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy,  
as defined in subsections (a)(2) and (a)(3) of K.S.A. 21-3505 and amend-  
ments thereto; (5) aggravated criminal sodomy as defined by K.S.A. 21-  
3506, and amendments thereto; (6) aggravated indecent solicitation of a  
child, as defined in K.S.A. 21-3511, and amendments thereto; (7) sexual  
exploitation of a child as defined in K.S.A. 21-3516, and amendments  
thereto; (8) aggravated sexual battery, as defined in K.S.A. 21-3518, and  
amendments thereto; (9) incest, as defined in K.S.A. 21-3602, and amend-  
ments thereto; (10) aggravated incest, as defined in K.S.A. 21-3603, and  
amendments thereto; (11) indecent solicitation of a child, as defined in  
K.S.A. 21-3510 and amendments thereto; (12) aggravated assault, as def-  
ined in K.S.A. 21-3410, and amendments thereto, with intent to commit  
any crime specified above; (13) sexual battery, as defined in K.S.A. 21-  
3517, and amendments thereto; ~~or (14) attempt, as defined in K.S.A. 21-~~  
~~3301, and amendments thereto, or conspiracy, as defined in K.S.A. 21-~~  
~~3302, and amendments thereto, to commit any crime specified above.~~

**(14) Unlawful voluntary  
sexual relations, as  
defined in K.S.A 21-  
3522, and amendments  
thereto;**

**(15)**

(b) Except as provided in subsection (c), in any prosecution to which  
this section applies, evidence of the complaining witness' previous sexual  
conduct with any person including the defendant shall not be admissible,  
and no reference shall be made thereto ~~in the presence of the jury in any~~  
*proceeding before the court*, except under the following conditions: The  
defendant shall make a written motion to the court to admit evidence or  
testimony concerning the previous sexual conduct of the complaining wit-  
ness. The motion must be made at least seven days before the com-  
mencement of the ~~trial~~ *proceeding* unless that requirement is waived by

1 the court. The motion shall state the nature of such evidence or testimony  
2 and its relevancy and shall be accompanied by an affidavit in which an  
3 offer of proof of the previous sexual conduct of the complaining witness  
4 is stated. The motion, affidavits and any supporting or responding docu-  
5 ments of the motion shall not be made available for examination without  
6 a written order of the court except that such motion, affidavits and sup-  
7 porting and responding documents or testimony when requested shall be  
8 made available to the defendant or the defendant's counsel and to the  
9 prosecutor. The defendant, defendant's counsel and prosecutor shall be  
10 prohibited from disclosing any matters relating to the motion, affidavits  
11 and any supporting or responding documents of the motion. The court  
12 shall conduct a hearing on the motion in camera. At the conclusion of the  
13 hearing, if the court finds that evidence proposed to be offered by the  
14 defendant regarding the previous sexual conduct of the complaining wit-  
15 ness is relevant and is not otherwise inadmissible as evidence, the court  
16 may make an order stating what evidence may be introduced by the de-  
17 fendant and the nature of the questions to be permitted. The defendant  
18 may then offer evidence and question witnesses in accordance with the  
19 order of the court.

20 (c) In any prosecution for a crime designated in subsection (a), the  
21 prosecuting attorney may introduce evidence concerning any previous  
22 sexual conduct of the complaining witness, and the complaining witness  
23 may testify as to any such previous sexual conduct. If such evidence or  
24 testimony is introduced, the defendant may cross-examine the witness  
25 who gives such testimony and offer relevant evidence limited specifically  
26 to the rebuttal of such evidence or testimony introduced by the prose-  
27 cutor or given by the complaining witness.

28 (d) As used in this section, "complaining witness" means the alleged  
29 victim of any crime designated in subsection (a), the prosecution of which  
30 is subject to this section.

31 ~~(e) Intentional and knowing violation of the provisions in this section~~  
32 ~~that limit the disclosure of any matters relating to the motion, affidavits~~  
33 ~~and any supporting or responding documents of the motion shall be pun-~~  
34 ~~ishable as a misdemeanor.~~

35 Sec. 2. K.S.A. 21-3525 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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SENATE BILL No. 147

By Committee on Judiciary

1-31

10 AN ACT concerning the limitation of actions; relating to increasing gen-  
11 eral time limitation; amending K.S.A. 2004 Supp. 21-3106 and re-  
12 pealing the existing section.

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

15 Section 1. K.S.A. 2004 Supp. 21-3106 is hereby amended to read as  
16 follows: 21-3106. (1) A prosecution for murder may be commenced at  
17 any time.

18 (2) Except as provided by subsections (7) and (9), a prosecution for  
19 any of the following crimes must be commenced within five years after  
20 its commission if the victim is less than 16 years of age: (a) Indecent  
21 liberties with a child as defined in K.S.A. 21-3503 and amendments  
22 thereto; (b) aggravated indecent liberties with a child as defined in K.S.A.  
23 21-3504 and amendments thereto; (c) enticement of a child as defined in  
24 K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a  
25 child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggra-  
26 vated indecent solicitation of a child as defined in K.S.A. 21-3511 and  
27 amendments thereto; (f) sexual exploitation of a child as defined in K.S.A.  
28 21-3516 and amendments thereto; or (g) aggravated incest as defined in  
29 K.S.A. 21-3603 and amendments thereto.

30 —(3) Except as provided in subsection (9) <sup>(6)</sup> a prosecution for any  
31 crime must be commenced within 10 years after its commission if the  
32 victim is the Kansas public employees retirement system.

33 (4) Except as provided by subsections (7) and (9), a prosecution for  
34 rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggra-  
35 vated criminal sodomy, as defined in K.S.A. 21-3506 and amendments  
36 thereto, must be commenced within five years after its commission.

37 —(5) Except as provided in subsection (9), a prosecution for any crime  
38 found in the Kansas medicaid fraud control act must be commenced  
39 within five years after its commission.

40 —(6) Except as provided by subsection (9), a prosecution for the crime  
41 of arson, as defined in K.S.A. 21-3718 and amendments thereto, or ag-  
42 gravated arson, as defined in K.S.A. 21-3719 and amendments thereto,  
43 must be commenced within five years after its commission.



(6)

*9 per Owens*

1 ~~(7) (3)~~ (a) Except as provided in subsection ~~(9) (5)~~, a prosecution for  
2 any offense provided in subsection ~~(2)~~ enticement of a child as defined  
3 in K.S.A. 21-3509, and amendments thereto, or a sexually violent of-  
4 fense as defined in K.S.A. 22-3717, and amendments thereto, must be  
5 commenced within the limitation of time provided by the law pertaining  
6 to such offense or one year from the date on which the identity of the  
7 suspect is conclusively established by DNA testing, whichever is later.

8 (b) For purposes of this section, "DNA" means deoxyribonucleic  
9 acid.

**felony, as defined in  
K.S.A. 21-3105, and  
amendments thereto,**

10 ~~(8) (4)~~ Except as provided by subsection ~~(9) (5)~~, a prosecution for any  
11 ~~crime~~ not governed by subsections (1), (2), or (3), (4), (5), (6) and (7)  
12 must be commenced within ~~two~~ *five* years after it is committed.

13 ~~(9) (5)~~ The period within which a prosecution must be commenced  
14 shall not include any period in which:

**Except as provided in  
subsection (6), a  
prosecution for any  
misdemeanor, as defined  
in K.S.A. 21-3105, and  
amendments thereto, not  
governed by subsections  
(1), (2) or (3) must be  
commenced within two  
years after it is  
committed.**

- 15 (a) The accused is absent from the state;
- 16 (b) the accused is concealed within the state so that process cannot  
17 be served upon the accused;
- 18 (c) the fact of the crime is concealed;
- 19 (d) a prosecution is pending against the defendant for the same con-  
20 duct, even if the indictment or information which commences the pros-  
21 ecution is quashed or the proceedings thereon are set aside, or are re-  
22 versed on appeal;
- 23 (e) an administrative agency is restrained by court order from inves-  
24 tigating or otherwise proceeding on a matter before it as to any criminal  
25 conduct defined as a violation of any of the provisions of article 41 of  
26 chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated  
27 which may be discovered as a result thereof regardless of who obtains  
28 the order of restraint; or
- 29 (f) whether or not the fact of the crime is concealed by the active act  
30 or conduct of the accused, there is substantially competent evidence to  
31 believe two or more of the following factors are present: (i) The victim  
32 was a child under 15 years of age at the time of the crime; (ii) the victim  
33 was of such age or intelligence that the victim was unable to determine  
34 that the acts constituted a crime; (iii) the victim was prevented by a parent  
35 or other legal authority from making known to law enforcement author-  
36 ities the fact of the crime whether or not the parent or other legal au-  
37 thority is the accused; and (iv) there is substantially competent expert  
38 testimony indicating the victim psychologically repressed such witness'  
39 memory of the fact of the crime, and in the expert's professional opinion  
40 the recall of such memory is accurate and free of undue manipulation,  
41 and substantial corroborating evidence can be produced in support of the  
42 allegations contained in the complaint or information but in no event may  
43 a prosecution be commenced as provided in this section later than the



1 date the victim turns 28 years of age. Corroborating evidence may in-  
2 clude, but is not limited to, evidence the defendant committed similar  
3 acts against other persons or evidence of contemporaneous physical man-  
4 ifestations of the crime. "Parent or other legal authority" shall include  
5 but not be limited to natural and stepparents, grandparents, aunts, uncles  
6 or siblings. (7)

7 ~~(10)(6)~~ An offense is committed either when every element occurs,  
8 or, if a legislative purpose to prohibit a continuing offense plainly appears,  
9 at the time when the course of conduct or the defendant's complicity  
10 therein is terminated. Time starts to run on the day after the offense is  
11 committed. (8)

12 ~~(11)(7)~~ A prosecution is commenced when a complaint or informa-  
13 tion is filed, or an indictment returned, and a warrant thereon is delivered  
14 to the sheriff or other officer for execution. No such prosecution shall be  
15 deemed to have been commenced if the warrant so issued is not executed  
16 without unreasonable delay.

17 Sec. 2. K.S.A. 2004 Supp. 21-3106 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after its  
19 publication in the statute book.