

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 5, 2008, in Room 123-S of the Capitol.

All members were present except:

Greta Goodwin- excused

David Haley- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department

Bruce Kinzie, Office of Revisor of Statutes

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Senator Pat Apple

Dorothy Stucky Halley, Victim Services Director, Office of Attorney General

Tom Bartee, Kansas Association of Criminal Defense Lawyers

Justin Edwards, Sedgwick County District Attorney Office

Scott Martinson, Attorney, Blackwell Sanders Law Firm, Kansas City

Whitney Damron, Kansas Bar Association

Caryl Craft, Kansas Bankers Association, Trust Division

Others attending:

See attached list.

Senator Pat Apple requested introduction of a bill regarding child care health coverage. Senator Donovan moved, Senator Journey seconded, to introduce the bill. Motion carried.

Senator Vratil requested introduction of a bill regarding oil and gas surface damages. Senator Umbarger moved, Senator Donovan seconded, to introduce the bill. Motion carried.

Senator Bruce requested introduction of a bill regarding background checks of temporary employees of the Kansas State Fair. Senator Bruce moved, Senator Donovan seconded, to introduce the bill. Motion carried.

The Chairman opened the hearing on **SB 427—No statute of limitations for certain sex offenses.**

Senator Pat Apple testified in support, indicating in recent years the Kansas Legislature has increased penalties for serious sex crimes such as the passage of “Jessica’s Law” (Attachment 1). There is no statute of limitations for murder, this not the case with serious sex crimes that carry severe penalties. Senator Apple feels it is time to bring the statute of limitations in line with other serious crimes.

Dorothy Stucky Halley appeared in support, indicating **SB 427** allows prosecutors to use their discretion to file cases where evidence of a sex crime exists even after many years (Attachment 2). Such action has the potential of improving judicial response for crimes that have been committed and would be a powerful tool to prevent additional sex crimes.

Tom Bartee spoke in opposition, stating the statute of limitations serve as important functions against overly stale accusations, prompt investigation of accusations, and reduces the likelihood of blackmail (Attachment 3). **SB 427** may require a person to defend themselves against allegations of actions so old that exculpatory evidence has been lost and create an indefensible anomaly. Mr. Bartee feels the bill is unnecessary K.S.A. 21-3106(3)(a) establishes a special limitations period for violent sex offenses resolved by DNA technology.

Written testimony in support of **SB 427** was submitted by:

Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 4)

Barry Wilkerson, Riley County Attorney (Attachment 5)

Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence (Attachment 6)

There being no further conferees, the hearing on **SB 427** was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on February 5, 2008, in Room 123-S of the Capitol.

The hearing on **SB 477–Offender registration, electronic** solicitation was opened.

Justin Edwards testified as a proponent, stating **SB 477** will add electronic solicitation of a minor to the list of sexually violent crimes requiring convicted offenders to register with the KBI as a sex offender (**Attachment 7**). Enactment will help protect the children of Kansas.

Written testimony in support of **SB 477** was submitted by:

Ed Klumpp, Kansas Association of Chiefs of Police (**Attachment 8**)

There being no further conferees, the hearing on **SB 477** was closed.

Chairman Vratil opened the hearing on **SB 478–Trusts, discretionary acceleration of remainder interest.**

Scott Martinson appeared in support, stating **SB 478** will provide flexibility to the trustees of Kansas trusts to deal with circumstances that are substantially different now from those that existed when the trusts were created (**Attachment 9**). The proposed legislation would allow a trustee to apply the holding of the Supreme Court of Kansas in *Estate of Somers* to trusts that meet the criteria set forth in the statute without the expense and delay of court proceedings.

Whitney Damron appeared in opposition, indicating several concerns of the Executive Committee of the Kansas Bar Association with the proposed legislation (**Attachment 10**). Although the committee is still in the process of analyzing **SB 478**, several objections have been identified including ambiguous and flawed language. The bill appears to create a singular exception to the normal procedure and is not good public policy. Mr. Damron also noted that any changes to the Uniform Trust Code should not be made without the approval of the Probate Advisory Committee to the Judicial Council.

Daryl Craft testified in opposition, stating two concerns with **SB 478** (**Attachment 11**). The first being that the circumstances of this bill are so uncommon that a change to the Uniform Trust statute is not warranted. The second concern is that the bill would grant the Trustee the sole authority to make a change to the remainder interest. Most trusts in Kansas are administered by non-professionals and the ramifications of changing the remainder interest of a trust could be substantial.

There being no further conferees, the hearing on **SB 478** was closed.

The Chairman called for final action on **SB 432–Uniform transfer on death security registration act; security accounts.** Senator Vratil reviewed the bill.

Senator Schmidt moved, Senator Donovan seconded, to recommend SB 432 favorably for passage. Motion carried.

The Chairman called for final action on **SB 431–Probate, small estates, increasing allowances for spouses and minor children.** Senator Vratil reviewed the bill.

Senator Bruce moved, Senator Lynn seconded, to recommend SB 431 favorably for passage. Motion carried.

The Chairman called for final action on **SB 430–Aggravated criminal threat, penalty.** Senator Vratil reviewed the bill.

Senator Schmidt moved, Senator Lynn seconded, to recommend SB 430 favorably for passage. Motion carried.

The meeting was adjourned at 10:30 A.M. The next scheduled meeting is February 6, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 5, 2008

NAME	REPRESENTING
Tom Cochran	Blackwell Sanders
Scott Martinson	Blackwell Sanders
Dorothy Stucky Halley	Office of Attorney General
Julienne Masler	Governor's Office
Coyce Green	KCSOV
Justin Meyer	Pinger, Smith
Daryl Gode	KS Bankers Assn
Kathryn Olsen	KS Bankers Assn
Sean Milicec	CAPITOL STRATEGIES
John A. Donley	KS Livestock Ass'n
Tom Law	Kansas Assoc Crim Defense Lawyers
Koula Werth	KSAS
Richard Smarigo	Kenney & Assoc.
Justin Edwards	Office of DA - 18th Jud. Dist
Whitney Damm	KS Bank Assn

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

PAT APPLE
SENATOR, TWELFTH DISTRICT
PO BOX 1
LOUISBURG, KANSAS 66053
(913) 837-5285
Office: STATE CAPITOL BUILDING—242-E
TOPEKA, KANSAS 66612
(785) 296-7380
1-800-432-3924

COUNTIES
ANDERSON, FRANKLIN,
LINN & MIAMI

COMMITTEE ASSIGNMENTS

VICE CHAIR: UTILITIES
MEMBER: ASSESSMENT AND TAXATION
EDUCATION
TRANSPORTATION
JOINT COMMITTEE ON STATE
BUILDING CONSTRUCTION

email:pat.apple@patapple.org
apple@senate.state.ks.us

February 5, 2008

RE: Testimony in support of Senate Bill 427.

Honorable Chairman Vratil and members of the Senate Judiciary Committee,

Thank you for the opportunity to express my support for Senate Bill 427. Senate Bill 427 eliminates the statute of limitations for the serious sex crimes of rape, aggravated indecent liberties with a child, indecent liberties with a child, aggravated sodomy and sodomy.

In recent years the Kansas Legislature has increased penalties for serious sex crimes with the passage of laws such as "Jessica's Law". With the passage of these measures the penalty for serious sex crimes is as severe as murder where there is not a statute of limitations. If the seriousness of a crime and resulting penalty for that crime are basically the same, then it stands to reason the statute of limitations should be the same.

Most people agree that a person committing these types of crimes, usually has a history of behavior that is predatory. In other words it is usually not a one time act. It is hard to understand the current statute of limitations where some past crimes cannot be prosecuted.

The Legislature has recognized the seriousness of these sex crimes and the harmful effect on our society and the victims of these crimes. It is time to bring the statute of limitations in line with other serious crimes.

Thank you for your consideration of Senate Bill 427,

Sincerely,

Senator Pat Apple

Senate Judiciary

2-5-08

Attachment 1

HEATHER R. JONES
COUNTY ATTORNEY
FRANKLIN COUNTY, KANSAS
301 S. Main Street
OTTAWA, KS. 66067
Telephone (785) 229-8970
Fax (785) 229-8971

February 1, 2008

Re: Support for SB 427

Dear Senator Apple and other Members of the Kansas Legislature:

I am writing to express my support for Senate Bill No. 427. I feel very strongly about this proposed legislation. I believe that amending the statute to include rape, aggravated indecent liberties with a child, indecent liberties with a child, aggravated sodomy and sodomy to the list of crimes that do not have a statute of limitations is extremely important.

As a prosecutor, I deal with numerous cases every year involving sexual assaults on both adults and children. Cases involving allegations of sexual assault are extremely difficult to prosecute, even under the best of circumstances. Many times, these cases carry penalties just as severe, if not more severe, than homicide cases. These cases also include unique circumstances in which victims, for a variety of reasons, cannot and/or do not report the crime for a lengthy period of time. In many cases the victims are too scared, embarrassed or traumatized to report the assault soon after it occurs. As a result of the delayed reporting, the prosecutor can be faced with a situation that, but for the running of the statute of limitations, the crime could be successfully prosecuted. This should never happen but it unfortunately does under the current law.

Senate Bill No. 427 would do away with this very serious flaw in the criminal justice system and would better enable prosecutors to hold an offender responsible for perpetrating such a horrible crime upon another. Please feel free to contact me if you need any further information.

Very Truly Yours,



Heather R. Jones
Franklin County Attorney

Kansas Sheriffs Association

OFFICERS

President
Sheriff John Fletcher
Russell Co.

First Vice President
Sheriff Tracy Platts
Ellsworth Co.

Second Vice President
Vernon China
Pratt Co.

Secretary/Treasurer
Sheriff Ken McGovern
Douglas Co.

Set-at-Arms
Sheriff Buck Causey
Barton Co.

BOARD OF DIRECTORS

District #1
Sheriff Larry Lowmense
Alternate
Sheriff Mike Baughin

District #2
Sheriff Curtis Nimer
Alternate
Sheriff Ward Conrath

District #3
Sheriff Jim Jensen
Alternate
Sheriff Russ Black

District #4
Sheriff Laurie Dunn
Alternate
Sheriff David Zaslauer

District #5
Sheriff Lance Babcock
Alternate
Sheriff Ed Beyona

District #6
Sheriff Ron Ridley
Alternate
Sheriff Tommy Tomson

District #7
Sheriff Randy Henderson
Alternate
Sheriff Brad Moore

District #8
Sheriff Jim Keach
Alternate
Sheriff Dan Rath

Directors at Large
Director Ed Pavey
Director Larry Welch (Ret)

P.O. Box 1853
Salina, Kansas 67402-1853

785-827-2222
Fax 785-827-5215
ksa@ks-sheriff.org

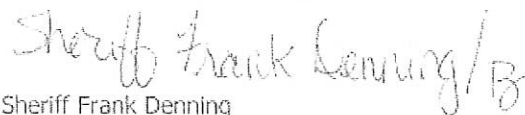
February 4, 2008

To: Senate Judiciary Committee
From: Kansas Sheriff's Association
Reference: Senate Bill 427

Chairman Vratil, Vice-Chairperson Bruce, distinguished members of the committee,

The Kansas Sheriff's Association strongly supports the proposed language changes contained in Senate bill 427. The severe nature of the crimes necessitates that law enforcement identify, and hold accountable, individuals that pose a continuous significant threat to public safety.

Those that prey upon women and children threaten and intimidate to commit their crimes and conceal the activity from law enforcement. It is not unusual for law enforcement to learn of past crimes only after the victims have sought treatment for emotional scars left as a result of the crimes. Removing the statute of limitations for serious sex crimes will allow perpetrators to be identified, brought to justice, and added to the offender registration system.



Sheriff Frank Denning
Legislative Chairperson
Kansas Sheriff's Association

Executive Director: Darrell Wilson Office Manager: Carol Wilson Legal Counsel: Bob Stephens

Home Page: ks-sheriff.org

State	Rape Statute	Statute of Limitations*	DNA Exception
Alabama	§13A-6-61 – Rape 1 st degree is a Class A felony. §13A-6-62 – Rape 2 nd degree is a Class B felony	There is no period of limitations for the offense of rape. Kirby v. State, 500 So. 2d 79 (1986).	
Alaska	Alaska Stat. § 11.41.410 Sexual assault in the first degree is an unclassified felony. Sec. 11.41.420. Sexual assault in the second degree is a Class B felony. Sec. 11.41.425. Sexual assault in the third degree is a Class C felony.	§12.10.010 – W/in 10 yrs. after the commission of the offense. §12.10.020 – Offenses committed against someone under 18 may be commenced at any time.	
Arizona	§ 13-1406 - Sexual assault is a Class 2 felony. §13-1406.01 – A first offense sexual assault of a spouse is a Class 6 felony.	§13-107 – For a Class 2-6 felony seven yrs.	
Arkansas	§5-14-103 – Rape is a Class Y felony.	§5-1-109 – Class Y felonies; within 6 yrs. after the commission of the offense.	2001 AR H.B. 1423 – amends Arkansas code §5-1-109 to read that the time limit for class Y felonies is within 6 years after the commission of the offense EXCEPT rape for which the period of limitation may be extended to 15 years during which time a prosecution can be commenced if based on forensic DNA testing or other tests which may become available through advances in technology. LAST ACTION: Signed by governor on 3/19/01.

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

1-4

State	Rape Statute	Statute of Limitations*	DNA Exception
California	<p>Cal Pen Code § 261 (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:</p> <p>(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.</p> <p>(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.</p> <p>(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.</p> <p>(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:</p> <p>(A) Was unconscious or asleep. (B) Was not aware, knowing, perceiving, or cognizant that the act occurred. (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.</p> <p>(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.</p> <p>(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.</p> <p>(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.</p> <p>Aggravated rape – punishable for life.</p>	<p>§ 264. Punishment for rape; (a) Rape, as defined in Section 261, is punishable by imprisonment in the state prison for three, six, or eight years.</p> <ul style="list-style-type: none"> • §799 -Offenses punishable by death or life imprisonment w/out parole may be commenced at any time. • §800 - Offenses punishable by imprisonment for 8 or more years may be commenced within 6 years after the commission of the offense. • §801 - Offenses punishable by imprisonment in state prison may be commenced within 3 years after the commission of the offense. 	<p>Cal. Pen Code §803 (2001); Permits the prosecution of certain sex offenses within one year of the date on which the identity of the suspect is conclusively established by DNA testing or within 10 years of the offense, whichever is longer. The following conditions must be met:</p> <p>(A) For an offense committed prior to Jan. 1, 2001 – biological evidence collected in connection with the offense is analyzed for DNA type no later than Jan. 1, 2004.</p> <p>(B) For an offense committed on or after Jan. 1, 2001, biological evidence is analyzed no later than two years from the date of the offense.</p>
Colorado	§18-3-402 –	§16-5-401 (8)(a) The period	2001 CO H.B. 1344-

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child. 2

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>Sexual assault in the 1st degree is a Class 3 felony.</p> <p>Sexual assault in the 1st degree is a Class 2 felony if: in the commission of the assault, the actor is aided or abetted by one or more persons; or the victim suffers serious bodily injury; or if the actor is armed & uses a deadly weapon.</p> <p>Sexual assault in the 2nd degree is a Class 4 felony.</p>	<p>of time during which a person may be prosecuted shall be 10 years after the commission of the offense.</p>	<p>Amends §16-5-401 to read: In any case in which the identity of the defendant is determined in whole or part by patterned chemical structure of genetic information and in which the offense has been reported to a law enforcement agency...within ten years after the commission of the offense, there shall be no limit on the period of time during which a person may prosecuted after the commission of the offense as to any offense charged. LAST ACTION: 6/15/01 – signed by governor</p>
<p>Connecticut</p>	<p>Sec. 53a-70. Sexual assault in the first degree: Class B felony.</p> <p>Sec. 53a-70a. Aggravated sexual assault in the first degree: Class B felony.</p> <p>Sec. 53a-70b. Sexual assault in spousal or cohabiting relationship: Class B felony.</p> <p>Sec. 53a-71. Sexual assault in the second degree: Class C felony.</p> <p>Sec. 53a-72a. Sexual assault in the third degree: Class D felony.</p> <p>3rd degree sexual assault (Class D felony).</p> <p>Sec. 53a-72b. Sexual assault in third degree with a firearm: Class C felony.</p> <p>Sec. 53a-73a. Sexual assault in fourth degree: Class A misdemeanor.</p>	<p>§54-193 – Capital felonies and Class A felonies – no limit.</p> <p>(b) If punishment is imprisonment of over one year – must be prosecuted within five years.</p> <p>(c) Any other offense – within one year.</p>	<p>§54-193b. Limitation of prosecution for sexual assault offenses when DNA evidence is available.</p> <p>Person can be prosecuted no later than twenty years from the commission of offense provided (1) the victim notified any police officer or state's attorney acting in their official capacities of the commission of the offense not later than five years after the commission of the offense, and (2) the identity of the person who allegedly committed the offense has been established through a DNA profile comparison using evidence collected at the time of the commission of the offense.</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
Delaware	<p>§773 – Rape in the 1st degree is a Class A felony.</p> <p>§772 – Rape in the 2nd degree is a Class B felony.</p> <p>§771 – Rape in the 3rd degree is a Class B felony.</p> <p>§770 – Rape in the 4th degree is a Class C felony.</p>	<p>11 Del. C. §205(a) – Prosecution of a class A felony may be commenced at any time.</p> <p>Prosecution for any other felony -- within 5 yrs.</p>	<p>11 Del. C. §205(i) – if period prescribed in other sections has expired, a prosecution for any offense in this title may be commenced within 10 years after it is committed if based on forensic DNA testing.</p>
District of Columbia	<p>D.C. Code § 22-4102. First degree sexual abuse –</p> <ol style="list-style-type: none"> (1) By using force against that other person; (2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping; (3) After rendering that other person unconscious; or (4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct. <p>§ 22-4103. Second degree sexual abuse -- if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:</p> <ol style="list-style-type: none"> (1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or (2) Where the person knows or has reason to know that the other person is: 	<p>D.C. Code § 23-113 - Prosecution for a felony other than murder is barred if not commenced within six (6) years after it is committed.</p> <p>Prosecution for any other criminal offense is barred if not commenced within three (3) years after it is committed.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>(A) Incapable of appraising the nature of the conduct;</p> <p>(B) Incapable of declining participation in that sexual act; or</p> <p>(C) Incapable of communicating unwillingness to engage in that sexual act.</p>		
Florida	<p>Fla. Stat. 794.011 –</p> <p>A person over 18 or over who commits sexual battery upon a person less than 12 yrs. – <i>Capital felony.</i></p> <p>A person less than 18 who commits sexual battery upon a person less than 12 yrs. – <i>Life Felony.</i></p> <p>A person who commits sexual battery upon a person 12 or over, and uses a deadly weapon – <i>Life felony.</i></p> <p>A person who commits sexual battery upon a person 12 or over, commits a <i>1st degree felony</i> when:</p> <p>The victim is physically helpless to resist;</p> <p>When the offender coerces with threats to use force or violence, or retaliate;</p> <p>When the offender administers an intoxicating substance that incapacitates the victim; etc.</p>	<p>§775.15 (1)(a) – Prosecution for a capital or life felony may be commenced at any time.</p> <p>(2)(a) – Prosecution for a felony of the 1st degree -- within 4 yrs.</p>	
Georgia	<p>O.C.G.A. §16-6-1 – Rape</p> <p>(a) A person commits the offense of rape when he has carnal knowledge of:</p> <p>(1) A female forcibly and against her will; or</p> <p>(2) A female who is less than 10.</p> <p>A person convicted of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or for not less than 10 years nor more than 20.</p>	<p>O.C.G.A. §17-3-1 –</p> <p>Prosecution for forcible rape – within 15 yrs.</p> <p>Prosecution for crimes punishable by death or life imprisonment – within 7 yrs.</p> <p>All other felonies – within 4 yrs.</p>	
Hawaii	<p>H.R.S. §707-730</p> <p>Sexual assault in the 1st degree is a Class A felony.</p> <ul style="list-style-type: none"> • A person commits the offense of sexual assault in the first degree if: <ul style="list-style-type: none"> (a) The person knowingly subjects another person to an act of sexual penetration by 	<p>HRS §701-108 –</p> <p>Prosecution for a Class A felony – within 6yrs.</p> <p>All other felonies – within 3 yrs.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>strong compulsion; (b) The person knowingly subjects to sexual penetration another person who is less than fourteen years old.</p> <p>§ 707-731. Sexual assault in the second degree is a Class B felony. A person commits the offense of sexual assault in the second degree if the person knowingly subjects another person: (a) to an act of sexual penetration by compulsion; (b) who is mentally defective, mentally incapacitated, or physically helpless; (c) to sexual penetration an imprisoned person, a person confined to a detention facility, while employed in a state correctional facility or while employed as a law enforcement officer.</p> <p>§707-732. Sexual assault in the third degree is a Class C felony. A person commits the offense of sexual assault in the third degree if: (a) The person recklessly subjects another person to an act of sexual penetration by compulsion; (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old; (c) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless; (d) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person.</p>		
Idaho	<p>Idaho Code §18-6101 Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under either of the following circumstances:</p> <ol style="list-style-type: none"> 1. Where the female is under the age of eighteen (18) years. 2. Where she is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent. 3. Where she resists but her resistance is overcome by force or violence. 4. Where she is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anesthetic substance administered by or with the privity of the accused. 5. Where she is at the time unconscious of the nature of the act, and this is known to the accused. 6. Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief. 7. Where she submits under the belief, instilled by the actor, that she does not 	<p>§ 19-402. (1) Prosecution for any felony other than murder --within five (5) years after its commission.</p> <p>NOTE: 2001 IDH.B. 290 proposes to change the statute of limitations for rape to no limitation of time. This was signed by the governor on 3/23/01.</p>	<p>2001 IDH.B. 248 – Amends §19-402 – prosecutions under §18-6101 must be commenced within one year from the establishment of the identity of the suspect through DNA testing or within the time prescribed in subsection (1) whichever is later.</p> <p>LAST ACTION: 6/15/01 – House Regular Session Adjourned with no carryover.</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State

Rape Statute

Statute of
Limitations*

DNA Exception

	submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against her, or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule.		
Illinois	<p>§720 ILCS 5/12-13 – <i>Criminal sexual assault</i> is a Class 1 felony. (a) The accused commits criminal sexual assault if he or she: (1) commits an act of sexual penetration by the use of force or threat of force; or (2) commits an act of sexual penetration and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent; or (3) commits an act of sexual penetration with a victim who was under 18 when the act was committed and the accused was a family member; or (4) commits an act of sexual penetration with a victim who was at least 13 but under 18 when the act was committed and the accused was 17 and held a position of trust, authority or supervision in relation to the victim.</p> <p>§720 ILCS 5/14 – <i>Aggravated criminal sexual assault</i> is a Class X felony. Aggravated Criminal Sexual Assault. (a) The accused commits aggravated criminal sexual assault if he or she commits criminal sexual assault and any of the following aggravating circumstances existed during, or for the purposes of paragraph (7) of this subsection (a) as part of the same course of conduct as, the commission of the offense: (1) the accused displayed, threatened to use, or used a dangerous weapon, other than a firearm, or any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon; or (2) the accused caused bodily harm, except as provided in subsection (a)(10), to the victim; or (3) the accused acted in such a manner as to threaten or endanger the life of the victim or any other person; or (4) the criminal sexual assault was perpetrated during the course of the commission or attempted commission of any other felony by the accused; or (5) the victim was 60 or over when the offense was committed; or (6) the victim was a physically handicapped person; or (7) the accused delivered to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance; or (8) the accused was armed with a firearm; or (9) the accused personally discharged a</p>	<p>§720 ILCS 5/3-5 - Prosecution w/in 3 yrs.</p> <p>Exception - §720 ILCS 5/3-6(i) - Prosecution for criminal sexual assault, aggravated criminal sexual assault may be commenced within 10 yrs. of the commission of the offense if the victim reported the offense to law enforcement authorities within 2 yrs. after the commission of the offense.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>firearm during the commission of the offense; or (10) the accused, during the commission of the offense, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person. (b) The accused commits aggravated criminal sexual assault if the accused was under 17 and (i) commits an act of sexual penetration with a victim who was under 9 when the act was committed; or (ii) commits an act of sexual penetration with a victim who was at least 9 years of age but under 13 when the act was committed and the accused used force or threat of force to commit the act. (c) The accused commits aggravated criminal sexual assault if he or she commits an act of sexual penetration with a victim who was an institutionalized severely or profoundly mentally retarded person at the time the act was committed.</p>		
Indiana	<p>§ 35-42-4-1 – <i>Rape is a Class A felony if:</i> (1) it is committed by using or threatening the use of deadly force; (2) it is committed while armed with a deadly weapon; (3) it results in serious bodily injury to a; or (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug.</p> <p><i>Rape is a Class B felony if:</i> (1) compelled by force or imminent threat of force; (2) victim is unaware that the sexual intercourse is occurring; or (3) victim is so mentally disabled or deficient that consent to sexual intercourse cannot be given.</p>	<p>§ 35-41-4-2 Prosecution for a Class A felony may be commenced at any time. Prosecution for a Class B, Class C, or Class D felony – within 5yrs.</p>	<p>2001 IN S.B. 80 Amends §53-42-4-2 to allow that a prosecution for a class B or class C felony that would otherwise be barred under that section to commence within one year after the earlier of the date on which the state (1) first discovers the identity of the offender with DNA evidence or (2) could have discovered the identity of the offender with DNA evidence by the exercise of due diligence.</p> <p>LAST ACTION: 5/01/01 – signed by the governor. Effective 7/01/01.</p>
Iowa	<p>Iowa Code § 709.2 A person commits sexual abuse in the 1st degree when in the course of committing sexual abuse the person causes another serious injury. <i>Sexual abuse in the first degree is a class "A" felony.</i></p> <p>709.3 A person commits sexual abuse in the 2nd degree when the person commits sexual abuse under any of the</p>	<p>1999 Ia. HB 2420 – Prosecution for sexual abuse in the first, second, or third degree must commence within 10 yrs. after its commission.</p> <p>Signed by governor – 3/30/00.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State

Rape Statute

Statute of
Limitations*

DNA Exception

	<p>following circumstances:</p> <ol style="list-style-type: none"> 1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person. 2. The other participant is under 12. 3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other participant. <p><i>Sexual abuse in the second degree is a class "B" felony.</i></p> <p>709.4</p> <p>A person commits sexual abuse in the 3rd degree when the person performs a sex act under any of the following circumstances:</p> <ol style="list-style-type: none"> 1. The act is done by force or against the will of the other participant, whether or not the other participant is the person's spouse or is cohabiting with the person. 2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true: <ol style="list-style-type: none"> a. The other participant is suffering from a mental defect or incapacity which precludes giving consent. b. The other participant is 12 or 13 years of age. c. The other participant is 14 or 15 years of age and any of the following are true: <ol style="list-style-type: none"> (1) The person is a member of the same household as the other participant. (2) The person is related to the other participant by blood or affinity to the fourth degree. (3) The person is in a position of authority over the other participant and uses that authority to coerce the other participant to submit. (4) The person is five or more years older than the other participant. 3. The act is performed while the other participant is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true: <ol style="list-style-type: none"> a. the controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from 		
--	--	--	--

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>consenting to the act. b. the person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam. 4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless. <i>Sexual abuse in the third degree is a class "C" felony.</i></p>		
Kansas	<p>K.S.A. § 21-3502 - (a) Rape is – (1) Sexual intercourse with a person who does not consent to the sexual intercourse, under any of the following circumstances: (A) When the victim is overcome by force or fear; (B) when the victim is unconscious or physically powerless; or (C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; (2) sexual intercourse with a child who is under 14 years of age; (3) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or (4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.</p>	<p>K.S.A. § 21-3106. Prosecution may commence within five years after its commission.</p>	<p>2001 KS S.B. 303 – amends §21-3106 – a prosecution for a sexually violent offense where the limitations period has not expired as of July 1, 2001, or the offense was committed on or after July 1, 2001, shall be ten years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later. Biological evidence for an offense committed before Jan. 1, 2001 must be analyzed no later than Jan. 1, 2004 and for an offense committed on or after Jan. 1, 2001, biological evidence collected in connection with the offense s analyzed for DNA type no later than two years from the date of the offense.</p>
Kentucky	<p>§ 510.040 - Rape in the first degree is a Class B felony unless the victim is under</p>	<p>§ 500.050 - Prosecution of a felony is not subject to a</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child. 10

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.</p> <p>§ 510.050 - Rape in the second degree is a Class C felony.</p> <p>§ 510.06 - Rape in the third degree is a Class D felony.</p>	<p>felony is not subject to a period of limitation and may be commenced at any time.</p>	
<p>Louisiana</p>	<p>La. R.S. 14:42. <i>Aggravated rape</i> - whoever commits the crime of aggravated rape, shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.</p> <p>La. R.S. 14:42.1. <i>Forcible rape</i> - whoever commits the crime of forcible rape, shall be imprisoned at hard labor.</p> <p>La. R.S. 14:43. <i>Simple rape</i> -- whoever commits the crime of simple rape, shall be imprisoned, with or without hard labor.</p>	<p>Art. 571 - There is no time limitation upon the institution of prosecution for any crime for which the punishment may be death or life imprisonment.</p> <p>Art. 571.1 - <i>The time within which to institute prosecution of the following sex offenses:</i> forcible rape (R.S. 14:42.1), sexual battery (R.S. 14:43.1), aggravated sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), aggravated oral sexual battery (R.S. 14:43.4 <i>which involves a victim under 17, shall be ten years.</i> This ten-year period begins to run when the victim attains the age of eighteen.</p> <p>Art. 572 - Limitation of prosecution of non-capital offenses</p> <ol style="list-style-type: none"> (1) Six years, for a felony necessarily punishable by imprisonment at hard labor; (2) Four years, for a felony not necessarily punishable by imprisonment at hard labor. 	
<p>Maine</p>	<p>17-A M.R.S. §253 –</p> <p>1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>(A) the other person submits as a result of compulsion; or the other person, not the actor’s spouse, is less than 14 yrs. (Class A crime)</p> <p>2. A person is guilty of gross</p>	<p>17-A M.R.S. §8</p> <p>Prosecutions for gross sexual assault and subject to the following period of limitation:</p> <ul style="list-style-type: none"> • prosecution for a Class A, Class B or Class C crime must be commenced 	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child. 11

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>sexual assault if that person engages in a sexual act with another person and:</p> <p>(A) the actor has substantially impaired the other person's power or control by administering drug or intoxicants;</p> <p>(B) the actor compels or induces the person by any threat;</p> <p>(C) the other person suffers from mental disability that is reasonably apparent or known to the actor;</p> <p>(D) the other person is unconscious</p> <p>(E) the actor is in official custody and the actor has supervisory authority over the person;</p> <p>(F) the other person is less than 18 and is a student enrolled in a private or public elementary, secondary or special education school or facility and the actor is a teacher, employee or official having instructional, supervisory or disciplinary authority over the student;</p> <p>(G) the other person is less than 18 yrs. and is a resident in or attending a children's home, day care, camp or similar school, and the actor is a teacher or employee having instructional, supervisory or disciplinary authority over the other person;</p> <p>(H) the other person is less than 18 and is a student enrolled in a private or public elementary, secondary, or special education school and the actor is a teacher, employee or toher official;</p> <p>(I) the other person is less than 18 yrs. And the actor is a parent, stepparent, foster parent, etc. of that other person.</p> <p>(J) the actor owns, operates or is an employee of an organization; program or residence that is operated by the Dept. of Mental Health, Mental Retardation and Substance Abuse Services or the Dept. of Human Services and the other person receives services from the program as a person with mental retardation.</p>	<p>within 6 years after it is committed.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

1-15

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>2 (A), (B), (C), (D), (E), (H) – Class B crimes.</p> <p>2 (F), (G), (I), (J) - Class C crimes.</p>		
Maryland	<p>Md. Ann. Code art. 27, § 462 -- First degree rape</p> <p>Md. Ann. Code art. 27, § 463 - Second degree rape</p>	May commence at any time.	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
Massachusetts	Mass. Ann. Laws ch. 265, § 22 – Rape (a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise.	Mass. Ann. Laws ch. 277 §63 Prosecution for rape must commence within 15 yrs. after the commission of the offense.	2001 MA S. B. 910 – amending ch. 277 §63 An indictment for rape may be found and filed 15 years from the date of the commission of the offense, or where the period of limitations has not expired as of Jan. 1, 2002, or for any offense committed on or after Jan. 1, 2002, one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later. LAST ACTION: 7/11/01 – Study order from Joint Committee on Judiciary.
Michigan	MCLS §750.520(b) Criminal sexual conduct in the 1 st degree. §750.520(c) Criminal sexual conduct in 2 nd degree. (Felony) §750.520(d) Criminal sexual conduct in the 3 rd degree. (Felony) §750.520(e) Criminal sexual conduct in the 4 th degree. (Misdemeanor)	MCLS §767.24 – Prosecutions for criminal sexual conduct must be commenced within 6 years after the commission of the offense. If the victim is under 18 at the time of the offense, an indictment may be filed within 6 years or by the alleged victim’s 21 st birthday, whichever is later. Note: MI Senate Bill has been proposed to extend the statute of limitations to 10 years or by the victim’s 21st birthday, whichever is later. (2000 Mi. ALS 6).	2001 MI S.B. 1 – If evidence of that violation is obtained and that evidence contains DNA that is determined to be from an unidentified individual, an indictment may be found and filed at any time after the offense is committed. However, after the individual is identified, the indictment shall be found and filed within 10 years after the individual is identified or by the alleged victim’s 21 st , birthday, whichever is later. LAST ACTION – 5/1/01 Approved by the governor.

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

1-17

State	Rape Statute	Statute of Limitations*	DNA Exception
Minnesota	<p>Min. Stat. 609.342 Criminal sexual conduct in the first degree</p> <p>609.343 Criminal sexual conduct in the second degree</p> <p>609.344 Criminal sexual conduct in the third degree</p>	<p>Min. Stat. 628.26(d) - Indictments or complaints for violations of sections 609-342 – 609.344 (criminal sexual assault in the 1st – 3rd degree) if the victim was under the age of 18 years old at the time the offense was committed, shall be made within nine years after the commission of the offense, or if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.</p>	<p>Min. Stat. 628.26(e) – Indictments may be found or filed at any time after the commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine years after the commission of the offense.</p>
Mississippi	<p>Miss. Code Ann. § 97-3-71 - § 97-3-71. Rape; assault with intent to ravish</p> <p>Every person who shall be convicted of an assault with intent to forcibly ravish any female of previous chaste character shall be punished by imprisonment in the penitentiary for life, or for such shorter time as may be fixed by the jury, or by the court upon the entry of a plea of guilty.</p> <p>§ 97-3-95. Sexual battery</p> <p>(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:</p> <p>(a) Another person without his or her consent;</p> <p>(b) A mentally defective, mentally incapacitated or physically helpless person;</p> <p>(c) A child at least 14 but under 16, if the person is 36 or more months older than the child; or</p> <p>(d) A child under the age of</p>	<p>Miss. Code Ann. §99-1-5</p> <p>May commence at any time for rape.</p> <p>For Sexual battery – within two years except if the child is between 14 and 16 – then at any time.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>fourteen 14, if the person is twenty-four (24) or more months older than the child.</p> <p>(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of 18 years if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</p>		
Missouri	<p>§ 566.030 R.S.Mo. (2001) A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent, which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse. Forcible rape is a felony.</p> <p>§ 566.040 - Sexual assault A person commits the crime of sexual assault if he has sexual intercourse with another person knowing that he does so without that person's consent. Sexual assault is a class C felony.</p>	<p>§ 556.036 R.S.Mo. A prosecution for a Class A felony may be commenced at any time. For any other felony, three years.</p>	
Montana	<p>Mont. Code Anno., § 45-5-503 -- Sexual intercourse without consent A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse.</p>	<p>Mont. Code Anno., § 45-1-205 A prosecution for a felony must be commenced within 5 years after it is committed.</p> <p>Prosecution may be commenced within 5 years after the victim reaches the age of 18 if victim was under 18 at the time the offense occurred.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
-------	--------------	-------------------------	---------------

Nebraska	<p>R.R.S. Neb. § 28-319 - Sexual assault; first degree Any person who subjects another person to sexual penetration (a) without consent of the victim, or (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is 19 or older and the victim is less than 16 is guilty of sexual assault in the 1st degree.</p> <p>Sexual assault in the first degree is a Class II felony</p> <p>§ 28-320. Sexual assault; second or third degree Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.</p> <p>Sexual assault in the 2nd degree is a Class III felony if the actor caused serious personal injury to the victim.</p> <p>Sexual assault in the 3rd degree is a Class I misdemeanor if the actor did not cause serious personal injury to the victim.</p>	<p>R.S. Neb. § 29-110 (2) - An indictment has to be found by the grand jury within 7 years after the offense has been committed or within 7 years after the victim's 16th birthday, whichever is later or unless a complaint has been filed before the magistrate within 7 years of 7 years after the victim's 16th birthday, whichever is later.</p>	
Nevada	<p>Nev. Rev. Stat. Ann. § 200.366 - Sexual assault A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.</p>	<p>§ 171.085 – Within 4 years after the commission of the offense.</p> <p>Nev. Rev. Stat. Ann. § 171.083 - No limitation for sexual assault if a written report is filed with law enforcement officer during period of limitation.</p>	
New Hampshire	<p>RSA 632-A: 2 Aggravated Felonious Sexual Assault § 632-A:3 Felonious Sexual Assault</p>	<p>§ 625:8 – within 6 yrs.</p>	
New Jersey	<p>N.J. Stat. § 2C:14-2 - <i>Sexual assault</i> (a) An actor is guilty of <i>aggravated sexual assault</i> if he commits an act of</p>	<p>§ 2C:1-6 – Prosecution for sexual assault & aggravated</p>	<p>2001 NJ A.B. 2658 – amending the statute of</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State

Rape Statute

Statute of
Limitations*

DNA Exception

	<p>sexual penetration with another person under any one of the following circumstances:</p> <ul style="list-style-type: none"> (1) The victim is less than 13; (2) The victim is at least 13 but less than 16; and (a) The actor is related to the victim by blood or affinity to the 3rd degree, or (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or (c) The actor is a foster parent, a guardian, or stands in loco parentis within the household; (3) The act is committed during/attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape; (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object; (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion; (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim; (7) The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated. <p>b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.</p> <p>c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:</p> <ul style="list-style-type: none"> (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury; (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status; (3) The victim is at least 16 but less than 18 years old and: <ul style="list-style-type: none"> (a) The actor is related to the victim by blood or affinity to the third degree; or (b) The actor has supervisory or disciplinary power over the victim of any nature or in any capacity; or 	<p>sexual assault may be commenced at any time.</p> <p>A prosecution for aggravated sexual conduct must commenced within five years after it is committed.</p>	<p>limitations regarding DNA evidence:</p> <p>If the identity of the person who commits a crime is unknown when the crime is committed and physical evidence is collected which can be tested for its DNA characteristics and used to identify the person who committed the crime, a prosecution can be commenced at any time.</p> <p>LAST ACTION: 6/29/00 – To Assembly committee on Judiciary.</p>
--	---	--	---

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>(c) The actor is a foster parent, a guardian, or stands in loco parentis within the household; (4) The victim is at least 13 but less than 16 years old and the actor is at least 4 yrs. older than the victim.</p> <p>N.J. Stat. § 2C:14-3 - <i>Aggravated criminal sexual contact; criminal sexual contact</i> An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2a. (2) through(7).</p> <p>An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c. (1) through(4).</p>		
New Mexico	<p>N.M. Stat. Ann. § 30-9-11 Criminal Sexual Penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent with any object, of the genital or anal openings of another, whether or not there is any emission. C. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:</p> <ul style="list-style-type: none"> (1) on a child under 13 or (2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim <p>This is a first degree felony.</p> <p>D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:</p> <ul style="list-style-type: none"> (1) on a child 13 to 18 when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit; (2) on an inmate confined in a correctional facility or jail where the perpetrator is in a position of 	<p>§ 30-1-8 Prosecution may commence at any time after the occurrence of a capital felony or a first degree violent felony;</p> <p>Second degree felony, within six years from the time the crime was committed;</p> <p>Third or fourth degree felony, within five years from the time the crime was committed.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>authority over the inmate;</p> <p>(3) by the use of force or coercion that results in personal injury to the victim;</p> <p>(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;</p> <p>(5) in the commission of any other felony; or</p> <p>(6) when the perpetrator is armed with a deadly weapon.</p> <p>This is a second degree felony.</p> <p>E. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion. (Third degree felony).</p> <p>F. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:</p> <p>(1) not defined in (C) through (E) of this section perpetrated on a child 13 to 16 when the perpetrator is at least 18 and is at least four years older than the child and not the spouse of that child;</p> <p>(2) perpetrated on a child 13 to 18 when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least 18 and is at least four years older than the child and not the spouse of the</p>		

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	child, learns while performing services in or for a school that the child is a student in a school. (4 th degree felony).		
New York	<p>NY CLS Penal § 130.35 A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:</p> <ol style="list-style-type: none"> 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically helpless; or 3. Who is less than eleven years old. <p>Rape in the first degree is a class B felony.</p> <p>§ 130.30. Rape in the second degree A person is guilty of rape in the second degree when, being eighteen years old or more, he or she engages in sexual intercourse with another person to whom the actor is not married less than fourteen years old. Rape in the second degree is a class D felony.</p>	NY CLS CPL § 30.10 Prosecution for rape must commence within five years.	<p>1999 Bill Tracking NY S.B. 974 Extends the statute of limitations for prosecution of the class B felony of rape in the first degree from five years to ten years after the commission thereof when based upon forensic DNA testing.</p> <p>LAST ACTION – 6/14/00; To Senate Committee on Rules.</p>
North Carolina	<p>N.C. Gen. Stat. § 14-27.2 – 1ST degree rape N.C. Gen. Stat. § 14-27.3 - 2nd degree rape</p>	May commence at any time.	
North Dakota	<p>N.D. Cent. Code, § 12.1-20-07 – Sexual Assault § 12.1-20-03 - Gross sexual imposition § 12.1-20-04. Sexual imposition</p>	N.D. Cent. Code, § 29-04-02 Prosecution for any felony other than murder must be commenced within three years after its commission.	
Ohio	<p>ORC Ann. § 2907.02 Rape § 2907.03 Sexual battery. [On or After 7-1-96]</p>	§ 2901.13 Prosecution for a felony other than murder must be commenced within 6 years after the commission of the offense.	
Oklahoma	<p>21 Okl. St. § 1114. Rape in first degree A. Rape in the first degree shall include:</p> <ol style="list-style-type: none"> 1. rape committed by a person over 18 years of age upon a person under 14 years of age; or 2. rape committed upon a 	22 Okl. St. § 152 Prosecutions for rape shall be commenced within seven (7) years after the discovery of the crime.	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>2. rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or</p> <p>3. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or</p> <p>4. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or</p> <p>5. rape by instrumentation committed upon a person under 14 years of age.</p> <p>In all other cases, rape or rape by instrumentation is rape in the second degree.</p>		
Oregon	<p>ORS § 163.375 -- Rape in the first degree.</p> <p>(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:</p> <p>(a) The victim is subjected to forcible compulsion by the person;</p> <p>(b) The victim is under 12 ;</p> <p>(c) The victim is under 16 & is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or</p> <p>(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.</p> <p>163.365. Rape in the second degree.</p> <p>(1) A person who has sexual intercourse with another person commits the crime of rape in the 2nd degree if the other person is under 14.</p> <p>163.355. Rape in the third degree.</p> <p>(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.</p>	<p>ORS § 131.125</p> <p>Prosecution for rape in the 1st – 3rd degree may be commenced within six years after the commission of the crime.</p>	<p>2001 OR H.B. 2359 – Proposal to amend §131.25</p> <p>A prosecution for any felony may be commenced at any time after the commission of the offense if:</p> <p>(A) a human biological specimen is obtained at the crime scene or from the victim within 30 days after the commission of the offense, and</p> <p>(B) the specimen is retained and kept under custody and control of the law enforcement agency investigating the offense for the purpose of extracting and analyzing DNA to determine a genetic profile or identity.</p> <p>LAST ACTION:</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child. 22

State	Rape Statute	Statute of Limitations*	DNA Exception
<p>Pennsylvania</p>	<p>18 Pa.C.S. § 3121- Rape A person commits a felony of the first degree when he or she engages in sexual intercourse with a complainant: (1) By forcible compulsion. (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution. (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. (5) Who suffers from a mental disability which renders the complainant incapable of consent. (6) Who is less than 13 years of age.</p> <p>§ 3123. Involuntary deviate sexual intercourse <i>same as above; or</i> who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.</p> <p>§ 3124.1 - Sexual assault Except as provided in §3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the 2nd degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.</p>	<p>42 Pa.C.S. § 5552 Prosecution for the following offenses must be commenced within five years after it is committed:</p> <p>Section 3121 (relating to rape).</p> <p>Section 3123 (relating to involuntary deviate sexual intercourse).</p> <p>Section 3124.1 (relating to sexual assault).</p>	<p>1/18/01 – Introduced to House Judiciary Committee.</p>
<p>Rhode Island</p>	<p>R.I. Gen. Laws § 11-37-2 First degree sexual assault – A person engages in sexual penetration with another person, and if any of the following circumstances exist: (1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless. (2) The accused uses force or coercion. (3) The accused, through concealment or by the element of surprise, is able to overcome the victim. (4) The accused engages in the medical treatment or examination of the victim for the purpose of</p>	<p>R.I. Gen. Laws § 12-12-17 No statute of limitations for first degree sexual assault.</p> <p>The statute of limitations for 2nd degree sexual assault shall be three (3) years.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>sexual arousal, gratification, or stimulation.</p> <p>§ 11-37-4 A person is guilty of a second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:</p> <p>(1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless.</p> <p>(2) The accused uses force or coercion.</p> <p>(3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.</p>		
<p>South Carolina</p>	<p>S.C. Code Ann. § 16-3-652 (1999)</p> <p>(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:</p> <p>(a) The actor uses aggravated force to accomplish sexual battery.</p> <p>(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act.</p> <p>(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance or gamma hydroxy butyrate.</p> <p>§ 16-3-653. <i>Criminal sexual conduct in the second degree.</i></p> <p>(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.</p>	<p>None found</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>§ 16-3-654. Criminal sexual conduct in the third degree.</p> <p>(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:</p> <p>(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.</p> <p>(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.</p>		

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
South Dakota	<p>S.D. Codified Laws § 22-22-1 Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:</p> <p>(1) If the victim is less than 10; or</p> <p>(2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or</p> <p>(3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or</p> <p>(4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or</p> <p>(5) If the victim is 10, but less than 16, and the perpetrator is at least 3 years older than the victim; or</p> <p>(6) If persons who are not legally married and who are within degrees of consanguinity within which marriages are by the laws of this state declared void pursuant to § 25-1-6, which is also defined as incest; or</p> <p>(7) If the victim is 10, but less than 18 and is the child of a spouse or former spouse of the perpetrator.</p> <ul style="list-style-type: none"> • A violation of subdivision (1) of this section is a Class 1 felony. • A violation of subdivision (2), (3), or (4) of this section is a Class 2 felony. • A violation of subdivision (5), (6), or (7) of this section is a Class 3 felony. 	<p>S.D. Codified Laws § 23A-42-1 There is no limitation on the time within which a prosecution for Class A, Class B or Class 1 felony must be commenced.</p> <p>S.D. Codified Laws § 23A-42-2 -- Seven-year limitation for a Class 2 & 3 felony.</p>	
Tennessee	<p>Tenn. Code Ann. § 39-13-502 (a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;</p> <p>(2) The defendant causes bodily injury to the victim;</p> <p>(3) The defendant is aided or abetted by one (1) or more other persons; and</p> <p>(A) Force or coercion is used to</p>	<p>Tenn. Code Ann. § 40-2-101 Prosecution for a felony offense shall begin within:</p> <p>(1) 15 years for a Class A felony;</p> <p>(2) 8 years for a Class B felony;</p> <p>(3) 4 years for a Class C or Class D felony; and</p> <p>(4) 2 years for a Class E felony.</p>	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>(A) Force or coercion is used to accomplish the act; or</p> <p>(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.</p> <ul style="list-style-type: none"> Aggravated rape is a Class A felony. <p>§ 39-13-503</p> <p>(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act;</p> <p>(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;</p> <p>(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(4) The sexual penetration is accomplished by fraud.</p> <ul style="list-style-type: none"> Rape is a Class B felony. <p>Tenn. Code Ann. § 39-13-505</p> <p>(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act;</p> <p>(2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;</p> <p>(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(4) The sexual contact is accomplished by fraud.</p> <ul style="list-style-type: none"> Sexual battery is a Class E felony. 		
Texas	<p>Tex. Penal Code § 22.011 -- Sexual Assault</p> <p>Tex. Penal Code § 22.021 -- Aggravated Sexual Assault</p>	<p>Tex. Code Crim. Proc. art. 12.01 – Prosecution shall be commenced within seven years after the commission of the offense.</p> <p>Note: 2001 TX H.B 656 – proposes to amend the limitation for sexual assault to ten years.</p>	<p>2001 TX H.B. 656 – amends art. 12.01</p> <p>No limit:</p> <p>(b) Sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

1-30

State	Rape Statute	Statute of Limitations*	DNA Exception
			readily ascertained. LAST ACTION: 4/20/01 – Approved by the governor.
Utah	Utah Code Ann. § 76-5-402 (1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent. (2) This section applies whether or not the actor is married to the victim. <i>Rape is a felony of the first degree.</i>	§ 76-1-302 – Prosecution for rape shall be commenced within four years after it is committed.	
Vermont	13 V.S.A. § 3252 - Sexual assault (a) A person who engages in a sexual act with another person and (1) Compels the other person to participate in a sexual act: (A) Without the consent of the other person; or (B) By threatening or coercing the other person; or (C) By placing the other person in fear that any person will suffer imminent bodily injury; or (2) Has impaired substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person; or (3) The other person is under the age of 16, except where the persons are married to each other and the sexual act is consensual; or (4) The other person is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child or step-child; (b) A person who engages in a sexual act with another person under the age of 16 and (1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child or step-child; or (2) the actor is at least 18 years of age, resides in the victim's household and serves in a parental role with respect to the victim. § 3253. Aggravated sexual assault (a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:	13 V.S.A. § 4501 Prosecution for <i>aggravated sexual assault</i> may be commenced <i>at any time</i> after the commission of the offense. Prosecutions for sexual assault shall be commenced within six years after the commission of the offense.	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.</p> <p>(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.</p> <p>(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.</p> <p>(4) The actor has previously been convicted in this state of sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subdivision 3252(a)(1) or (2) or aggravated sexual assault if committed in this state.</p> <p>(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.</p> <p>(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.</p> <p>(7) At the time of the sexual assault, the actor applies deadly force to the victim.</p> <p>(8) The victim is under the age of 10 and the actor is at least 18 years of age.</p> <p>(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the actor's common scheme and plan.</p>		
Virginia	Va. Code Ann. § 18.2-61 -- Rape	May commence at any time.	
Washington	<p>Rev. Code Wash. (ARCW) § 9A.44.040 - Rape in the first degree – Class A felony.</p> <p>Rev. Code Wash. (ARCW) § 9A.44.050 - Rape in the second degree</p>	<p>Rev. Code Wash. (ARCW) § 9A.04.080</p> <p>A person may be prosecuted for rape ten years after it was committed if the rape is reported to a law enforcement agency within one year of its commission</p> <p>CAVEAT -- If it is not reported within one year, the rape may not be prosecuted: (A) three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday if the violation was committed against a victim under fourteen years of age.</p>	<p>1999 WA H.B. 2933 - Provides that if the time limitations have expired, the state has evidence consisting of fingerprints or DNA profile of a person who committed a crime against persons but comparisons of evidence to fingerprints or DNA profiles of known persons that were made before the time limitations expired did not result in the probable identification of the person, a prosecution for the violation may be commenced within 1 year if evidence results in probable identification.</p> <p>LAST ACTION– 1/24/00; To House Committee on Judiciary</p>
West Virginia	W. Va. Code Section 61-8B-3. Sexual	§ 61-11-9 – Prosecution for	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child. 29

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>assault in the 1st degree. (Felony)</p> <p>(a) A person is guilty of sexual assault in the first degree when:</p> <p>(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:</p> <p>(i) Inflicts serious bodily injury upon anyone; or</p> <p>(ii) Employs a deadly weapon in the commission of the act; or</p> <p>(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is eleven years old or less and is not married to that person.</p> <p>§ 61-8B-4. Sexual assault in the 2nd degree</p> <p>(a) A person is guilty of sexual assault in the second degree when:</p> <p>(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or</p> <p>(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.</p> <p>Section 61-8B-5. Sexual assault in the 3rd degree.</p> <p>(a) A person is guilty of sexual assault in the third degree when:</p> <p>(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or</p> <p>(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.</p>	<p>misdemeanors must be commenced within one year.</p>	
Wisconsin	<p>Wis. Stat. §940.225 – 1st Degree Sexual Assault. Whoever does any of the following is guilty of a Class B felony:</p> <p>(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.</p> <p>(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.</p> <p>(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person</p>	<p>Wis. Stat. §939.74 Prosecution for a felony must be commenced within 6 years.</p>	<p>2001 WI A.B. 291 – amends 939.74 Creates an exception to the time limits for prosecuting sexual assault crimes if the state has DNA evidence related to the crime. If the state collects and analyzes DNA evidence related to the crime before the time limit for prosecution expires and does not link the DNA to an identified person until after the time limit expires, the state may initiate</p>

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>without consent of that person by use or threat of force or violence.</p> <p>(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:</p> <p>(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.</p> <p>(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.</p> <p>(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the persons conduct, and the defendant knows of such condition.</p> <p>defendant knows of such condition.</p> <p>(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the persons conduct, and the defendant knows of such condition.</p> <p>(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.</p> <p>(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.</p> <p>(g) Is an employee of a facility or program under §940.295 (2) (b) (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.</p>		<p>prosecution for the crime within one year of matching the DNA evidence to a known person.</p> <p>LAST ACTION – 6/14/01 Sent to Senate committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.</p>
Wyoming	<p>Wyo. Stat. § 6-2-302 (2000) § 6-2-302. Sexual assault in the first degree</p> <p>(a) Any actor who inflicts sexual</p>	None found	

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>intrusion on a victim commits a sexual assault in the first degree if:</p> <p>(i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;</p> <p>(ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;</p> <p>(iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or</p> <p>(iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.</p> <p>§ 6-2-303. Sexual assault in the second degree</p> <p>(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:</p> <p>(i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat. "To retaliate" includes threats of kidnapping, death, serious bodily injury or extreme physical pain;</p> <p>(ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;</p> <p>(iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;</p> <p>(iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;</p> <p>(v) At the time of the commission of the act the victim is less than twelve (12) years of age and the actor is at least four (4) years older than the victim;</p> <p>(vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit; or</p> <p>(vii) The actor inflicts sexual intrusion in treatment or examination</p>		

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.

State	Rape Statute	Statute of Limitations*	DNA Exception
	<p>of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.</p> <p>(b) A person is guilty of sexual assault in the second degree if he subjects another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S. 6-2-302(a)(i) through (iv) or paragraphs (a)(i) through (vi) of this section.</p> <p>Wyo. Stat. § 6-2-304 (2000) § 6-2-304. Sexual assault in the third degree</p> <p>(a) An actor commits sexual assault in the third degree if, under circumstances not constituting sexual assault in the first or second degree:</p> <p>(i) The actor is at least four (4) years older than the victim and inflicts sexual intrusion on a victim under the age of sixteen (16) years; or</p> <p>(ii) The actor is an adult and subjects a victim under the age of fourteen (14) years to sexual contact without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim;</p> <p>(iii) The actor subjects a victim to sexual contact under any of the circumstances of W.S. 6-2-302(a)(i) through (iv) or 6-2-303(a)(i) through (vi) without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim.</p>		

*The following research was conducted focusing on adult sexual assault victims. The statute of limitations pertaining to sexual assault victims who are minors was not included. Note, the majority of jurisdictions have exceptions to their statute of limitations when the victim is a child.



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

STEPHEN N. SIX
ATTORNEY GENERAL

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

Senate Judiciary Committee

SB 427
Victim Services Director Dorthy Stucky Halley
Office of Attorney General Stephen N. Six
February 5, 2007

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify on behalf of the Office of Attorney General in support of Senate Bill 427. SB 427 would eliminate the statute of limitations for certain sex offenses. Under current law, even if the evidence is present and a good case is possible, the statute of limitations will have run in some cases that could have been prosecuted. SB 427 allows prosecutors to use their discretion and file those cases where evidence exists, even after many years. Such action not only has the potential of improving the judicial response for crimes that have been committed, it can be a powerful tool to prevent additional sex crimes from occurring.

Thank you for your time and I look forward to answering any questions.

Senate Judiciary

2-5-08

Attachment 2

Senate Judiciary Committee
February 4, 2008

Testimony in Opposition to
Senate Bill No. 427

Tom Bartee
Kansas Association of Criminal Defense Lawyers (KACDL)

Our current criminal statute of limitations generally requires that a prosecution be commenced within five years after the commission of a crime. This statute currently allows three crimes -- murder, terrorism, and illegal use of weapons of mass destruction -- to be prosecuted at any time. Senate Bill No. 427 would add to this list all rape and aggravated criminal sodomy offenses, and three sex offenses involving minors. This amendment is both unfair and unnecessary. The Kansas Association of Criminal Defense Lawyers opposes SB427.

The amendment is unfair. Statutes of limitations serve important functions, including protecting against overly stale accusations, encouraging law enforcement to promptly investigate accusations, and reducing the likelihood of blackmail. Under SB 427, anyone may be required to defend himself or herself against allegations of actions so long ago that any exculpatory evidence has long been lost -- memories have faded, physical evidence has been destroyed, and critical events cannot be reconstructed. Unlike murder and terrorism, the crimes at issue here are usually claimed to have been committed in secret, without any witnesses, and without any physical evidence to prove that a crime even occurred. A typical charging document might allege that the accused committed a crime or several crimes at any time during, e.g., a three-year time span, which makes the defense of sex crimes especially difficult. Furthermore, under "Jessica's Law," the offenses at issue here can, under some circumstances, carry the most onerous non-death penalties allowed under Kansas law -- up to life imprisonment without the possibility of parole. Even if later acquitted, the life of a person charged with such a serious crime will never be the same. And the amendment is extreme, not just lengthening the limitations period, but abolishing *any* limitations period for the designated crimes.

In considering the fairness of the proposed amendment, the Committee should bear in mind that the under K.S.A. 60-523, which is the civil statute of limitations counterpart to the criminal statute of limitations,

(a) No action for recovery of damages suffered as a result of childhood sexual abuse shall be commenced more than three years after the date the person attains 18 years of age or more than three years from the date the person discovers or

reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later.

If SB 427 becomes law, it would create an indefensible anomaly: a civil defendant could not be forced to even face the possibility of paying mere money damages for allegedly committing a sex offense years ago, yet a criminal defendant could face prosecution and the possibility of life imprisonment for a sex crime allegedly committed many years or even decades ago.

The amendment is unnecessary. The current statute of limitations includes tolling provisions and other exceptions that adequately address the concerns that apparently motivate the proponents of this amendment. For example, K.S.A. 21-3106(3)(a) establishes a special limitations period for violent sex offenses that have been solved by DNA technology:

Except as provided in subsection (5), a prosecution for a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense *or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.*

[Emphasis added]. Subsection (f) establishes a special limitations period for offenses committed against children or other psychologically vulnerable victims. This provision allows for prosecution of crimes against children until the victim reaches the age of 28, so long as two or more factors are present justifying a longer limitations period. Such factors include:

- that the victim was under 15 years of age at the time the crime was committed;
- that the victim's age or intelligence prevented the victim from understanding that he or she has been subjected to a criminal act;
- that the victim was prevented by a parent or other authority figure from reporting the crime; and
- that expert testimony shows that the victim has psychologically repressed his or her memory of the crime (this factor requires that the prosecution be supported by

corroborating evidence)

Furthermore, the current statute of limitations contains provisions tolling the running of the limitations period while the accused is not in Kansas, while the accused is hidden within the State, or while the fact of the crime remains concealed.

These tolling provisions and exceptions to the general five-year statute of limitations provide all the flexibility needed to meet any unusual circumstances occasionally found in sex offense cases. The Committee should reject the extreme position reflected in SB 427.



OFFICERS

Bob Sage
President
Rose Hill Police Dept.

Jay Reyes
Vice President
Derby Police Dept.

Todd Ackerman
Sergeant at Arms
Marysville Police Dept.

Mike Keller
Treasurer
Andover Police Dept.

Janet Thiessen
Recording Secretary
Olathe Police Dept.

James Hill
SACOP Representative
Salina Police Dept.

William "Mike" Watson
Immediate Past President
Riley County Police Dept.-Ret

Doyle King
Executive Director
KACP

REGIONAL REPRESENTATIVES

Gus Ramirez
Region I
Johnson Co Comm. College

Sam Budreau
Region II
Chanute Police Dept.

Ronnie Grice
Region III
KSU Public Safety Dept.

Jim Daily
Region IV
Newton Police Dept.

Frank Gent
Region V
Beloit Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 427 Presented by Ed Klumpp

February 5, 2008

This testimony is in support of SB 427. The extension of the statute of limitations for the listed sex crimes will result in defendants being brought to justice who otherwise will escape trial. Most importantly, it will offer the victims the opportunity to further heal by seeing their attackers brought to justice.

With the advent of DNA evidence and the advancement in that science, it is more common to have DNA evidence than not in the types of sex crimes this bill addresses. That kind of evidence can lead to the apprehension of the offender, but many times it is years later before a suspect is identified and comparisons can be made.

The sex crimes subject to the changes proposed in this bill are some of the most damaging crimes to the well being of the victims. The manner in which most suspects will be identified will be subsequent to a later arrest. In such cases, the suspect is clearly continuing to prey on additional victims.

Although we understand the balance that must be struck between the application of justice and the ability of the defendant to offer a defense, these crimes are serious enough to warrant a much longer statute of limitations than other crimes. The prosecutors and courts will have the opportunity to weigh the totality of the evidence and the validity of prosecutions past the normal time period of other offenses.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Legislative Committee Chair
Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net
Phone: (785) 235-5619
Cell: (785) 640-1102

Senate Judiciary

2-5-08



COUNTY ATTORNEY'S OFFICE

Barry R. Wilkerson
Riley County Attorney

Carnegie Building
105 Courthouse Plaza
Manhattan, Kansas 66502-0106
Phone: 785-537-6390
Upstairs Fax: 785-537-6334
Downstairs Fax: 785-565-6896

RE: Senate Bill 427

Testimony of Barry Wilkerson, Riley County Attorney


I express my support in favor of Senate Bill 427, which would modify the Statute of Limitations for the crimes of Rape, Aggravated Criminal Sodomy and Aggravated Indecent Liberties.

With the ever increasing technology in the forensic fields, DNA being only one example, crimes which may not have been prosecuted within a 5 year statute of limitations may at some point be solved and prosecutable. For example in Riley County we have a serial rapist who has not yet been apprehended. Some of the offenses are already outside the current Statute of Limitations. It will be an injustice, when the responsible offender is eventually indentified and apprehended, that he will be able to avoid accountability for some of the rapes he has committed.

A person who has committed and or continues to commit sexual offenses should not be allowed to rest. Every offender should know that at some point, if identified as a culprit, he or she will not avoid justice because a period of time has passed. While there are currently exceptions in K.S.A. 21-3106(3) for the identification of a suspect through DNA, what new scientific breakthrough awaits us in the future cannot be known at this time. Additionally there can be several other avenues to identify a person as the suspect in a sexual assault besides DNA. A person who has committed the crimes of rape, aggravated indecent liberties with a child, aggravated criminal sodomy and sodomy should not at some point be free because a period of time has elapsed.

Additional changes to K.S.A. 21-3106 should be made to include manslaughter and involuntary manslaughter to the list of crimes of which there is no statute of limitations. Currently there is no statute of limitations for murder but that provision of K.S.A. 21-3106 does not include the other potential felony homicides of Voluntary and Involuntary Manslaughter. In domestic violence, the crimes of Voluntary and Involuntary Manslaughter are as likely to occur as First or Second Degree Murder. A simple change in K.S.A. 21-3106(a) from "Murder" to "any felony homicide" would be appropriate.

Submitted:


Barry Wilkerson
Riley County Attorney

Senate Judiciary

2-5-08

Attachment 5

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

February 5, 2008

Senate Bill 427
Supporting

Senator Vratil and Members of the Senate Judiciary Committee;

The Kansas Coalition Against Sexual and Domestic Violence (KSCDV) supports Senate Bill 427 as presented by Senator Pat Apple. Although we recognize it may have limited application to those cases where a DNA evidence match is made after many years, it will still be helpful to some victims.

Rape and other forms of sexual violence are crimes that have an impact on victims throughout their lives. The impact of the violence does not end when the statute of limitations runs. When the statute of limitations does expire, victims and the State lose an opportunity for justice. Cases such as the one Senator Apple has reported from Miami County where the perpetrator confesses and seemingly brags about the commission of the crimes many years before, doing so with the belief that he cannot be prosecuted, are particularly unjust. And, this is doubly so when the statute of limitations has actually expired.

Numerous credible research studies indicate that sex offenders commit many crimes over a period of time, sometimes hundreds of them, before being reported or apprehended. For a variety of reasons, few of these serial perpetrators are ever prosecuted and convicted. SB 427 simply seeks to prevent the additional barrier of time from hindering the prosecution of a sex crime when the defendant has confessed or when other credible evidence exists to try a compelling case.

KCSDV urges members of the Senate Judiciary Committee to carefully consider and recommend SB 427 for passage.

Sandra Barnett
Executive Director



Tuesday, February 5, 2008

**TESTIMONY IN SUPPORT OF SB 477
SUBMITTED BY JUSTIN EDWARDS, ASSISTANT DISTRICT ATTORNEY
ON BEHALF OF NOLA TEDESCO FOULSTON, DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT
AND
ON BEHALF OF THE KANSAS COUNTY AND DISTRICT
ATTORNEYS ASSOCIATION**

Honorable Chairman Vratil and Members of the Senate Committee on Judiciary:

Senate Bill 477 seeks to amend a statute, K.S.A. 22-4902, related to offenders required to register with the Kansas Bureau of Investigation. Senate Bill 477 would amend the statute to add electronic solicitation to the list of "sexually violent crimes".

Prior to July 2006, persons who traveled to meet what they believed to be minor children for the purpose of engaging in sexual intercourse or other sexual acts were charged with attempted rape and/or attempted aggravated indecent liberties.

In 2006, House Bill 2576 created the new crime of electronic solicitation. This crime is now listed in K.S.A. 21-3523.

In Sedgwick County, a very dedicated group of law enforcement officers from multiple agencies comprise the Exploited Missing Child Unit (EMCU). Within the EMCU is the specialized Internet Crimes Against Children (ICAC) Task Force. The goal of ICAC is to proactively and reactively investigate internet crimes against children. To this end, ICAC detectives routinely engage in undercover internet operations designed to catch internet predators before they find real children.

Senate Judiciary

2-5-08
Attachment 7

Since 2006, 31 proactive investigations have been opened by ICAC, which has resulted in 11 defendants being charged with electronic solicitation, attempted rape or attempted aggravated indecent liberties in the Eighteenth Judicial District of Kansas.

K.S.A. 22-4902 requires persons convicted of several crimes, including rape and aggravated indecent liberties with a child (or any attempt thereof) to register as a sex offender.

When the crime of electronic solicitation was created, it was not included in the list of "sexually violent crimes" set forth in K.S.A. 22-4902(c).

Currently, over 70 million children under the age of 18 access the internet each year. According to some studies, 1 in 5 teenagers report having received an unwanted sexual solicitation via the internet. One in 33 reported having received an aggressive sexual solicitation via the internet in the year preceding the survey. Finally, approximately 34% of children report having been exposed to unwanted sexual material on the internet

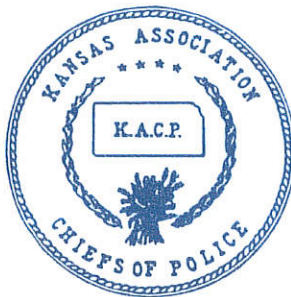
Perhaps most shockingly, according to a study conducted by Cox Communications and the National Center for Missing and Exploited Children (NCMEC), 14% of teens surveyed indicated they had met face-to-face with a person with whom they had only previously spoken via the internet.

It is critical the people of the State of Kansas be provided with registry information which includes offenders convicted of electronic solicitation.

We urge you to adopt Senate Bill 477 to add the crime of electronic solicitation to the list of "sexually violent crimes" in K.S.A. 22-4902(c).

Respectfully submitted,

Justin R. Edwards
Assistant District Attorney
Eighteenth Judicial District



OFFICERS

Bob Sage
President
Rose Hill Police Dept.

Jay Reyes
Vice President
Derby Police Dept.

Todd Ackerman
Sergeant at Arms
Marysville Police Dept.

Mike Keller
Treasurer
Andover Police Dept.

Janet Thiessen
Recording Secretary
Olathe Police Dept.

James Hill
SACOP Representative
Salina Police Dept.

William "Mike" Watson
Immediate Past President
Riley County Police Dept.-Ret

Doyle King
Executive Director
KACP

REGIONAL REPRESENTATIVES

Gus Ramirez
Region I
Johnson Co Comm. College

Sam Budreau
Region II
Chanute Police Dept.

Ronnie Grice
Region III
KSU Public Safety Dept.

Jim Daily
Region IV
Newton Police Dept.

Frank Gent
Region V
Beloit Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 477 Presented by Ed Klumpp

February 5, 2008

This testimony is in support of SB 477. The offense of electronic solicitation continues to plague our youth. The solicitation is a tool and a symptom of a deeper issue involving the perpetrator's uncontrolled desire to take sexual advantage of children.

We are cautiously supportive of this measure. We say cautiously because we know we can't continue to add more and more crimes to the registry without watering down its effectiveness. We also know there are other measures coming before the legislature to address other registry issues. Some of those changes are required by federal law. But we must remember that sex crimes and the protection of our citizens from sexual predators was the reason the registry was started. This proposal fits with the original intent of the registry and fulfills a current need in society.

The offense of electronic solicitation only includes child victims. The seriousness placed on these crimes is clearly reflected in the severity level assigned to the violation of this statute: Level 3 or level 1 persons felony.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Legislative Committee Chair
Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net
Phone: (785) 235-5619
Cell: (785) 640-1102

Senate Judiciary

2-5-08

Testimony of Scott Martinsen
In support of Senate Bill 478
Regarding Accelerating Benefits of certain Irrevocable Trusts
Submitted to the Senate Judiciary Committee
Tuesday, February 5, 2008

Thank you Chairman Vratil for this opportunity to appear in support of Senate Bill 478, a proposal to amend the Kansas Trust Law. I am Scott Martinsen of Blackwell Sanders law firm in Kansas City. Our firm has several clients who would benefit from the flexibility that would be afforded by this very narrow amendment to current Kansas law.

Senate Bill 478 would add a new section to the Uniform Trust Code that would allow the trustee of an irrevocable trust to distribute income or principal of the trust early to a potential remainder beneficiary of the trust if: (1) no other distributions of principal or income have been made to any beneficiary for at least 10 years, (2) the trustee retains sufficient assets in the trust to meet its obligations to the current beneficiaries of the trust, (3) the early distributions do not violate a material purpose of the trust, and (4) no adverse federal tax consequences arise from the application of the statute to the trust.

The proposed statute will provide more flexibility to the trustees of Kansas trusts to deal with circumstances that are substantially different now from those that existed when the trusts were created. There are many older trusts that provide for a settlor's child during the child's lifetime and the child's descendants after the child's death. In some cases, the value of the trust assets and the net worth of the child have increased dramatically over the years due to increases in the stock market and other investments. If the trustee does not have the authority to distribute trust assets to the child's descendants during the child's lifetime, the trustee may not make any distributions from the trust because the child does not need the distributions and any distributions to the child will increase the amount of Federal estate tax that will be due when the child dies. Meanwhile, the child's descendants must wait for the child to die before they receive any distributions from the trust even though the descendants would be better served if distributions were made to them during the child's lifetime rather than at the child's death.

The proposed new provision is based on the rationale of the decision of the Kansas Supreme Court in Shriners Hospitals for Children v. Firststar Bank, N.A. (Estate of Somers), 89 P.3rd 898 (Kan. 2004). In that case, the Court ruled that a remainder interest may be partially accelerated under certain circumstances. The trust at issue in that case provided for the payment of \$100 per month to each of the settlor's two grandchildren during their lifetimes. Upon the death of the survivor of the two grandchildren, the remaining trust assets were to be distributed to the Shriners Hospitals for Crippled Children. Between the time of the decedent's death in 1956 and January of 2001, the trust assets had increased from approximately \$120,000 to \$3,500,000.

The Kansas Supreme Court affirmed the District Court's order requiring the trustee to make an immediate, partial distribution of approximately \$3,000,000 from the trust to the Shriners based on its conclusion that the "dramatic growth" in the trust principal justified the partial distribution.

The proposed new section allows a trustee to apply the holding of the Supreme Court of Kansas in Estate of Somers to trusts that meet the criteria set forth in the statute without the expense and delay of court proceedings. It also allows the current beneficiary of the trust to avoid Federal gift taxes that might be imposed by the IRS if the beneficiary consented to the modification of the trust to allow the trustee to make the early distributions to the remainder beneficiaries.

Ron Gaches has previously distributed copies of our proposal to the Kansas Bankers Association, Kansas Bar Association, Kansas Farm Bureau and Kansas Livestock Association for their consideration, and I expect some of them may have comments for you about the bill. We look forward to discussing any concerns they may have and reaching consensus that will allow codification of the modest changes to current law contained in the bill. Thank you very much for your attention and I will try to answer any questions you might have.



TESTIMONY

TO: The Honorable John Vratil
And Members of the Senate Committee on Judiciary

FROM: Whitney Damron
On behalf of the
Kansas Bar Association

RE: SB 478 – Trusts; Discretionary Acceleration of Remainder Interests

DATE: February 5, 2008

Good morning Chairman Vratil and Members of the Senate Committee on Judiciary.

Attached to my cover page are remarks prepared by Mr. Tim O'Sullivan with the Foulston Siefkin law firm and Mr. Robert Hughes with the Bever Dye law firm, both from Wichita, expressing their concerns with SB 478 as proposed to the Committee on behalf of the Real Estate, Probate and Trust Section of the Kansas Bar Association.

Yesterday both of these individuals engaged the sponsor of this legislation in a conference call to better understand the motivations behind SB 478.

Trust law is a highly complex area of law and one that the practitioners seem to have all to themselves. Unfortunately, neither Mr. O'Sullivan nor Mr. Hughes is able to be here today. However, I will attempt to summarize some of their concerns as expressed to me.

Also, yesterday I spoke with Mr. Randy Hearrell of the Judicial Council. He indicated there was a Judicial Council Probate meeting scheduled for Friday, February 15 and this piece of legislation would be referred to that meeting for consideration. He also indicated that he would communicate with the Uniform Laws Commission as to their opinion on the bill.

On behalf of the Kansas Bar Association Real Estate, Probate and Trust Section, we would respectfully request this Committee delay action until these entities can evaluate the appropriateness of this proposed change to the trust laws of Kansas.

Thank you.

Whitney Damron

COMMENTS TO SENATE JUDICIARY COMMITTEE RE: SB478

To: John Vratil, Chairperson

From: President of the Executive Committee of the Kansas Bar Association Real Property, Probate & Trust Section

Date: February 5, 2008

Introduction

It is the understanding of the Executive Committee that SB 478 (the Bill) was introduced at the behest of a Kansas City area law firm for the purpose of addressing and redressing a specific trust situation faced by a client of the firm. The Bill only recently came to the attention of the Executive Committee this past Thursday when it was forwarded to a member of the Executive Committee, Tim O'Sullivan, for comment. Although the intervening time has proven insufficient for a full analysis of the Bill by the Executive Committee, the preliminary opinion of all six Executive Committee members who have responded it has been negative towards its passage. There are several reasons for the objections of those who have responded. Many of the Bill's provisions appear to be either ambiguous or flawed. Moreover, the passage of the Bill would create a singular exception to the normal procedure for modifying trusts applicable only to the particular situation being addressed. This exception does not appear at this time to be warranted on its own merits and the Bill's passage clearly would contravene fundamental basic public policy tenets embodied in Kansas' version of the Uniform Trust Code. The negative responses and concerns of Executive Committee members are more fully articulated below.

Current UTC Provisions Permit Requested Judicial Modification

Existing Kansas Uniform Trust Code (UTC) provisions, more specifically K.S.A. 58a-410, et seq., permit trust provisions to be modified in appropriate circumstances where such modification would not violate a material purpose of the trust. These provisions were well conceived not only by the Uniform Commissioners, but also by many members of the Executive Committee, which after a thorough study suggested Kansas modifications thereto which were enacted by the legislature when Kansas adopted the UTC.

The proponents of the Bill are likely to argue that the Bill is consistent with current Kansas law regarding modification of trusts, save that it relieves the trustee of having to procure the approval of the Court. Executive Committee members do not believe that is the case. If the Bill was consistent with existing provisions of the UTC and Kansas law, with the singular exception that it avoids the trustee having to seek judicial approval, it would appear doubtful that such law firm would have gone to the considerable time and expense of going this uncertain alternative legislative route and hired a lobbyist to further its position. Instead, current UTC statutory provisions and more particularly a related Kansas appellate decision (In re Estate of Somers, 277 Kan. 761, 89 P.3d 898 (2004)) in which a spendthrift clause included in an instrument was deemed to constitute a material purpose of the trust, may have been a significant

and substantial “hang up” to a judicial modification in their particular situation(s), as the Bill reverses the current UTC presumption in that regard. In any event, if the particular situation the law firm is addressing would permit judicial modification consistent with current Kansas law, the response of the Executive Committee members is that the firm’s sole redress should be to seek judicial approval in circumstances where judicial approval is statutorily required, not legislative intervention, in the same manner as do all other Kansas attorneys.

“Ten Year Provision” is Arbitrary

The requirement that a trust have made “no distributions within a ten year period” as a condition precedent to making distributions to a qualified remainder beneficiary appears to be totally arbitrary. There are obviously good reasons why trust distributions are not being made to a current beneficiary. The trust could be a “supplemental needs” trust in which the government is currently satisfying resource needs. Should such not be the case at a later time, the testator’s or settlor’s intent would be that the trust assets be available in such later event. If the current beneficiary is a minor, the beneficiary’s needs may be being provided during minority by a parent who owes a support obligation. The trust may only provide for emergency needs for a young adult until reaching a specified age. The trust may specify that the trustee is to consider other resources of the beneficiary prior to making distributions (a typical asset protection trust) and such resources were sufficient for an extended period of time.

In short, the failure to make distributions to a beneficiary during a preceding ten year period does not ineluctably lead to the conclusion that trust resources will not be needed by the beneficiary at a later time, let alone that the settlor or testator’s intent was that the qualified remainder beneficiary should suddenly become entitled to trust distributions in that circumstance. Moreover, how would a trustee objectively determine that it would not violate the settlor’s intent as to a material purpose of the trust for the trustee to make a distribution to a remainder beneficiary in that situation? Would the trustee come to that conclusion based solely on whether there are sufficient remaining trust assets after the distribution to a remainder beneficiary to provide for the current beneficiaries over the entire term of the subject trust? Or should there be an additional determination as to whether the settlor or testator desired for the remainder beneficiaries to receive any distributions prior to the expiration of the term of the subject trust? If so, the testator’s or settlor’s intent is not likely to be gleaned in the provisions of the trust. This is why the current UTC provisions require judicial approval of a trust modification in such instance in order that such factors are both fully considered and adjudicated, and further, that all interested beneficiaries are afforded an opportunity to object to such modification in a judicial proceeding. The Bill would appear to make it far too easy for a trustee to make such determination and then place the burden on the beneficiary to institute a judicial proceeding if the beneficiary does not concur.

As noted above, the Bill permits a trustee to abjure having to seek judicial approval in this singular circumstance by making the sole determination that trust distributions to remainder beneficiaries would not violate a material purpose of the trust. At the same time, trustees in all other situations, however indistinguishable from a public policy perspective, would have to seek judicial approval prior to making any distributions to remainder beneficiaries, e.g., in situations where there were minimal distributions over an extended period during the trust term or,

irrespective of the amount of distributions during the trust term, distributions to remainder beneficiaries would still leave sufficient trust assets to provide for the current beneficiaries over the remaining term of the trust. In sum, the Bill would basically allow the trustee to modify the trust in the limited trust situation addressed both without seeking judicial approval and without any authority in the trust instrument to do so, merely due to the pure happenstance that there have been no distributions for an extended period of time to a current beneficiary.

Not Good Public Policy

The preliminary Executive Committee consensus is that the Bill is not good legislative policy and the creation of a bad precedent to permit state trust statutes to be “clogged up” with provisions doing an “end around” general statutory policy solely for the purpose of addressing an isolated situation, let alone a situation that does not merit a departure. One would expect that such Bills are often introduced in the hope they will not incur significant opposition due to their limited scope. If this limited situation was granted an exception from normal and appropriate statutory restrictions, it would be expected that many other disaffected trust beneficiaries similarly situated in indistinguishable circumstances who could not obtain judicial relief would look to their legislators for statutory intervention.

Bill Should Be Given Broader Application If It Constitutes Good Public Policy

The corollary to the “bad public policy” objection is if the requested digression from current law constituted good public policy, it should be made applicable to all other trusts not situated in a distinguishable circumstance so as to be subject to a separate public policy. This Bill only addresses trusts which have not made a distribution within ten years (even though it states that mandatory distribution trusts are included) and it appears to contemplate a singular remainder beneficiary.

If it was good public policy for a trustee to be able to unilaterally determine it appropriate to make a distribution of income or principal to remainder beneficiaries if the trustee concluded it would not violate a material purpose of the trust, why should such digression apply only in this specific circumstance where there have been no trust distributions within a ten year period? Why not to all trusts for which there are more than sufficient assets to provide for the current beneficiaries for the remainder of the term of the trust? Why not also to trusts having multiple remainder beneficiaries? If the Bill was meant to apply to more than one remainder beneficiary, it is ambiguous in this regard and as discussed below, having multiple eligible “qualified remainder beneficiaries” poses significant administrative problems due to other provisions of the Bill.

Bill Contravenes Current UTC Public Policy Objectives

As noted above, the Bill reverses on an arbitrary “ad hoc” basis the public policy presumption of a spendthrift clause constituting a material purpose of a trust. Moreover, the Bill would also create a singular departure from the public policy objective decided upon by the legislature when it responded to widespread criticism of the UTC that it placed too much power in the hands of trust beneficiaries and circumvented judicial checks and balances on trust

modifications which could otherwise be in derogation of the settlor's intent. To militate against the possible abuse of the discretion of a trustee in derogation of the testator's or settlor's intent in making fundamental modifications to the trust provisions, these changes to UTC provisions require that any modification of irrevocable trust provisions need judicial approval unless the trust was a non-charitable trust and the settlor of the non-charitable trust and all qualified beneficiaries have consented to the modification.

Trustee Discretion Could Vitiating Settlor or Testator's Intent Regarding Remainder Distributions

In the defined trust circumstance, the Bill permits the trustee to make distributions of income or principal to a qualified remainder beneficiary for health, education, maintenance and support purposes according to the beneficiary's accustomed manner of living, apparently even if this was in derogation of the standard of distribution that the settlor or testator has provided in the trust instrument for such qualified remainder beneficiary upon termination of the subject trust. Moreover, as noted above, the Bill is unclear as to whether it contemplates more than one "qualified remainder beneficiary." If so, there is no requirement of equalization between or among multiple remainder beneficiaries or any other requirement that the trustee make distributions to remainder beneficiaries consistent with the proportions the testator or settlor has provided regarding such beneficiaries upon the termination of the subject trust. Indeed, it would be hard to construe that the Bill's provisions require any such equality of distribution, as the distribution standard is one tied solely to the HEMS needs of such beneficiaries. Obviously, it would be unlikely that multiple remainder beneficiaries would have equal needs in such regard.

Potential Disqualification of Medicaid or SSI Benefits for Remainder Beneficiary

The authority to make current distributions to a qualified remainder beneficiary would appear to have the potential for disqualifying a qualified remainder beneficiary who is receiving Medicaid or SSI benefits from continued eligibility for such benefits. There is no qualifying language in the statute consistent with that in trusts which is normally desirable, if not necessary, in order to avoid this adverse consequence. More specifically, there is no "supplemental to Medicaid and other governmental resource benefits" or other language having a similar import in the Bill governing distributions to a qualified remainder beneficiary. In the absence of such authority, the remainder beneficiary would be assured of continued qualification until termination of the subject trust.

Could Void or Partially Void Current Beneficiary's Power of Appointment

If a trust being modified under the Bill reposed a power of appointment in the current beneficiary, distributing trust assets to a remainder beneficiary during the term of the trust would, in effect, void or partially void the authority given to a current beneficiary by a settlor or testator to make such determination through the exercise of the power. It is unclear whether such distribution would be deemed to violate a material purpose of the trust and therefore precluded, let alone that the trustee would so conclude. The Bill seems to at least imply that it is only the material purpose of the current trust that need be considered, not any trust purposes that might apply following its termination.

At Least One Condition Precedent is Too Vague

The language in the Bill permitting the trustee to exercise discretion in making distributions to a qualified remainder beneficiary if the trustee can still “meet its obligations” to the current distributees appears to be much too vague. In conjunction with the separate provision exonerating the trustee from liability for good faith decisions in making the modification decision, it leaves far too much room for trustee abuse, particularly due to the fact judicial approval is not required for its exercise. The Bill simply fails to make clear that the trustee in making such determination must not only take into account the current needs of the current beneficiary or beneficiaries, but also their reasonably anticipated future needs for the entire remaining term of the trust.

Bill Would Open Up Trustee to Remainder Beneficiary Pressure

Should this Bill pass, it would be expected that trustees would become pressured to make distributions to them in numerous trust situations in which the remainder beneficiaries are similarly situated. For example, a trust created for a surviving spouse who was a step-parent to the remainder beneficiaries who were descendants of the predeceased spouse could become pressured to accelerate their inheritance. Such trusts are often created to be “supplemental” to all other assets of the surviving spouse and thus may have not made distributions to the surviving spouse due to the availability of the surviving spouse’s own resources.

Bill in Need of Full Consideration by Probate Advisory Committee and Executive Committee

Finally, the Executive Committee does not believe any material changes should be made to the UTC without such changes being thoroughly vetted by the Probate Advisory Committee to the Judicial Council, which has been entrusted with the responsibility of reviewing proposed changes to all uniform laws, as well as all Executive Committee members. It is the Executive Committee’s understanding that such consideration has not been afforded the Probate Advisory Committee to date. Consequently, particularly in view of the aforesaid public policy and substantive objections of Executive Committee members the Senate Judiciary Committee was otherwise disposed to recommend passage of the Bill, the Executive Committee respectfully submits that it not do so until it has received a report from the Probate Advisory Committee on the Bill and a final report of the Executive Committee after all Executive Committee members have had sufficient time and opportunity to fully consider its implications.

Robert M. Hughes, President of the Executive Committee

Timothy P. O’Sullivan, Member of the Executive Committee and Comments Author



An Independent Trust Company

Daryl V. Craft, President
security@gtrust.com

February 4, 2008

TESTIMONY BEFORE SENATE JUDICIAL COMMITTEE
SB 478
FEBRUARY 5, 2008

Dear ladies and gentlemen. Thank you for allowing me to speak before you today. I am here on behalf of the Kansas Bankers Association Trust Division to testify on Senate Bill 478, which you have before you today.

This Bill would amend the Kansas Uniform Trust Code to provide for acceleration of remainder interests in trusts. In non-Trustee terms this means if a trust is created so that one person receives all income or payments of income from the trust, and another person is entitled to receive whatever is left after the first person dies, then we could, under certain circumstances, pay out early part of the remaining trust assets before the income beneficiaries dies. This is a bit of an oversimplification but I believe it makes the point.

The KBA Trust Division is opposed to this proposed change for two reasons. First, it is our judgment that the circumstances put forth by the proponents of this Bill are so uncommon that a change to the Uniform statute is not warranted. This is a rare occurrence. The courts have dealt with it appropriately in the few cases of report, and they can continue to do so if additional cases come to light. The Uniform Trust Code was not meant to be amended each time a party comes across an unusual set of circumstances, and they need a resolution. That is what the courts are for.

Our second concern is that the Bill would grant the Trustee the sole authority to make a change to the remainder interest. I am proud to represent the professional, corporate trustees in Kansas, but we should note that most trusts in Kansas are administered by a non professional, non corporate trustee. The ramifications of changing the remainder interest of a trust could be substantial. Most individual trustees do not have the proper trust education and legal background to contemplate such a change. And they do not have the insurance or capital necessary to make a trust whole should their decision subsequently be successfully challenged.

For these reasons we ask that you not advance this Bill from the Committee. Thank you for the opportunity to testify before you today.

1129 SW Wanamaker Rd
P.O. Box 2127 – Topeka, Kansas 66601
785.273.9993 – FAX 785.273.7221

www.gtrust.com

AL: Senate Judiciary
Overland F Le 2-5-08
Attachment 11