Approved: May 22, 2009
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:30 a.m. on March 11, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:
Christine Ladner, Chief Deputy District Attorney (Shawnee) and on behalf of Kansas County & District Attorneys Association
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence
Chief Judge Stephen Tatum, 10th Judicial District (Johnson)
Elisabeth Gillespie, Director, Johnson County Department of Corrections
Steve McAllister, Solicitor General

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2096 - Electronic solicitation, child 14 to 16 years of age.**

Christine Ladner appeared in support stating the bill is intended to correct a loophole in current law regarding the severity level crime for children 14 to 16 years of age. Enactment of this bill will make the severity levels commensurate with the age ranges in other sex crime statutes. (Attachment 1)

There being no other conferees, the hearing on **HB 2096** was closed.

The Chairman opened the hearing on **HB 2098 - Kansas rape shield law, adding aggravated trafficking and electronic solicitation.**

Christine Ladner appeared as a proponent and provided a review of the bill which adds aggravated trafficking and electronic solicitation to the list of sex crimes protected by the "Rape Shield" statute. The addition of these offenses will allow continued protection of victims. (Attachment 2)

Sandy Barnett spoke in support stating **HB 2098** will help protect victims of sex crimes from harassment and humiliation by defense strategies. (Attachment 3)

There being no further conferees, the hearing on **HB 2098** was closed.

The Chairman opened the hearing on **HB 2207 - Criminal procedure, costs associated with supervision of the conditions of release of the appearance bond.**

Chief Judge Stephen Tatum spoke in favor of **HB 2207** which allows the court to order a defendant to pay up to $15 per week for the cost of bond supervision. Bond supervision is a vital tool for judges when determining bond for criminal offenders especially with current budget constraints and increasingly crowded jails. (Attachment 4)

There being no further conferees, the hearing on **HB 2207** was closed.

The Chairman opened the hearing on **HB 2232 - Authorizing increased membership for corrections advisory boards.**

Elizabeth Gillespie appeared in support stating the bill would allow the Board of County Commissioners or a cooperating group of Board of County Commissions the option to add an additional three members.

Minutes of the Senate Judiciary Committee at 9:30 a.m. on March 11, 2009, in Room 545-N of the Capitol.

Johnson County has determined that additional appointments would benefit the discussions and decisions made by the Board. (Attachment 5)

There being no further conferees, the hearing on **HB 2232** was closed.

The Chairman opened the hearing on **HB 2233 - Criminal procedure; withdrawal of guilty plea, time limitation; alternate or additional juror selection; tolling speedy trial time during appeal by the prosecution.**

Steve McAllister appeared in favor stating the bill will amend current law by defining "an appeal by the prosecution" to include appeals, interlocutory appeals and appeals that seek discretionary review in the Kansas Supreme Court or the United States Supreme Court. Appeals would be considered pending until the court that handles the final appeal issues a resolution. (Attachment 6)

The Chairman called for final action on **HB 2098 - Kansas rape shield law, adding aggravated trafficking and electronic solicitation.**

Senator Schmidt moved, Senator Kelly seconded, to amend **HB 2060** by adding the contents of **HB 2096 - Electronic solicitation, child 14 to 16 years of age** and recommended it as amended, favorably for passage.

Jason Thompson, staff revisor, indicated there was a technical correction needed on one of the bills. Senator Schmidt withdrew his motion.

Senator Schmidt moved, Senator Kelly seconded, to amend **HB 2060** by adding the contents of **HB 2096 - Electronic solicitation, child 14 to 16 years of age** and authorize the revisor to make any technical changes as deemed needed and recommended it as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2096 - Electronic solicitation, child 14 to 16 years**.

Senator Schmidt moved, Senator Schodorf seconded, to amend **HB 2096** be deleting the existing language and inserting the contents of **SB 278** and recommend it favorably for passage. Motion carried.

The Chairman called for final action on **HB 2233 - Criminal procedure, tolling speedy trial time during appeal by the prosecution.**

Senator Schmidt moved to amend **HB 2233** by retaining the existing contents and adding the contents of **HB 2207, HB 2099 and HB 2097.** Senator Schmidt withdrew the motion.

Senator Schmidt moved, Senator Donovan seconded, to amend **HB 2233** by retaining the existing contents and adding the contents of **HB 2099** and **HB 2097**. Motion carried.

Senator Schmidt moved, Senator Schodorf seconded, to recommend HB 2233 as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2207 - Criminal procedure, costs associated with supervision of the conditions of release of the appearance bond**.

Senator Schmidt moved, Senator Kelly seconded, to recommend **HB 2207** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2232 - Authorizing increased membership for corrections advisory boards**.

Senator Schmidt moved, Senator Vratil seconded, to recommend **HB 2232** favorably for passage. Motion carried.

Minutes of the Senate Judiciary Committee at 9:30 a.m. on March 11, 2009, in Room 545-N of the Capitol.

The Chairman called for final action on **HB 2060 - Violation of battery against a law enforcement officer causing bodily harm, sentence is presumed imprisonment.**

Senator Schmidt moved, Senator Kelly seconded to amend HB 2060 by retaining the contents of the bill and inserting the contents of **SB 26**. Motion carried. Senator Haley voted no and requested his vote be recorded.

Senator Schmidt moved, Senator Schodorf seconded, to amend **HB 2060** by inserting the contents of **SB 238** as passed by the full Senate. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to recommend **HB 2060** as amended, favorably for passage. Motion carried. Senator Haley voted no and requested his vote be recorded.

The next meeting is scheduled for March 12, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-11-09

NAME	REPRESENTING
Christine Ladner	KCDAA
Richard Samaniego	Kearney & Assoc.
Rise Hakeberg	Johnson Co. GOVT.
Eugene Gillespie	Sponsor County Dept. of Corrections
Steve Tatum	Johnson Co. District Court
Stuart Little	Johnson County
Andrew Holmes	Senator Bruce
Nancy Zogleman	Polsinelli
KRIS AILSLIEGER	KSAG
Clay Britton	KSAG
Kevin Barone	KPBBA
Sandy Barnett	KCSDV
JEREMY S BARCLAY	KDOC
Lani Wells	Jud. Branch
SEAN MILLER	CAPITAL STRATEGIES

OFFICE OF THE DISTRICT ATTORNEY
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Chadwick J. Taylor, District Attorney

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March 10, 2009

Testimony Regarding HB 2096
Submitted by Christine Ladner, Chief Deputy District Attorney
On Behalf of Chadwick J. Taylor, District Attorney, Third Judicial District
And the Kansas County and District Attorneys Association

Honorable Chairman Owens and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2098.

In the age of the Internet, the solicitation of children for sexual purposes has grown and bloomed. The television show "Dateline – To Catch a Predator" illustrates how frequently offenders use the computer to solicit children for sex acts. Kansas has a statute in place that targets this criminal behavior, but the age ranges in the statute should be clarified to impose a higher severity level crime for children under 14 years of age.

Our electronic solicitation statute as currently written, applies the same severity level for enticing or soliciting person under 14 as for persons under 16 to commit or submit to an unlawful sexual act. Other age ranges in our sex crimes statutory scheme apply higher penalties for crimes committed against children under 14. It is the public policy of our state to punish offenders more severely for taking advantage of those who are the most vulnerable.

K.S.A. 21-3523 should specify a Severity Level 3 person felony for children 14 or more years of age but less than 16 years of age. The statue should specify a Severity Level 1 person felony for children under 14 years of age.

HB 2096 corrects the age range problem in electronic solicitation and makes the severity levels commensurate with the age ranges in our other sex crimes statues such as rape, aggravated indecent liberties, indecent liberties, aggravated criminal sodomy and criminal sodomy.

On behalf of the Kansas County and District Attorneys Association, I respectfully urge the committee to recommend HB 2096 favorable for passage.

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3-11-09
Attachment 1

OFFICE OF THE DISTRICT ATTORNEY
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March 10, 2009

Testimony Regarding HB 2098
Submitted by Christine Ladner, Chief Deputy District Attorney
On Behalf of Chadwick J. Taylor, District Attorney, Third Judicial District
And the Kansas County and District Attorneys Association

Honorable Chairman Owens and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2098.

It is difficult for any victim to navigate his or her way through the criminal justice system. For victims of sex crimes, it is a particularly tortuous experience. In many cases, the defense attacks the credibility of the victim by trying to discredit her. In addition to having to testify to the details of the sexual experience of the crime charged, victims often want to know, "What else are they going to bring up about me?"

K.S.A. 21-3525, commonly known as our "Rape Shield" statute, was intended to offer victims of sex crimes protection from the introduction of evidence of their sexual past. It provides that such prior sexual conduct shall not be admissible, unless the defense provides notice by written motion. The motion must be accompanied by a proffer of the evidence in affidavit form, filed under seal, so that it is not a part of the court file available to public view.

House Bill 2098 adds two crimes to the list of sex crimes protected by Rape Shield: aggravated trafficking and electronic solicitation. Electronic solicitation is a sex offense classified under Chapter 35, and so should clearly be protected by Rape Shield. Aggravated trafficking is classified as a crime against persons in Chapter 34, not readily an apparent sex offense. However, the subsections of aggravated trafficking added in the proposed amendment refer specifically to the "sexual gratification of the defendant or another."

The sexually motivated provision of aggravated trafficking is recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary

servitude ***committed in whole or in part for the sexual gratification of the defendant or another.*** Where a victim under 18 is involved, it doesn't matter whether the act is done with or without force, fraud, threat or coercion. The point is that the act is done "in whole or in part for sexual gratification of the defendant or another."

If a defendant recruits a child in Kansas to prostitute for him in another location, even another state, our Rape Shield statute should protect her. If such a victim has been a prostitute in the past or has a My Space or Facebook page with provocative postings that might make her look promiscuous, the defense should follow the provisions of K.S.A. 21-3525 before he or she can mention these things to a jury.

If a child under 16 is solicited over the Internet to perform an unlawful sex act, and she has been provocative with someone online previously, she should be protected by our Rape Shield statute. The fact that she used promiscuous language online with someone before should likewise be brought up under the advance notice and proffer under seal requirements of our Rape Shield statute.

Any previous sexual conduct of victims of these two crimes is precisely what the Rape Shield statute contemplated. The age of the Internet requires us to consider electronic solicitation for protection under Rape Shield. The advent of human trafficking, specifically the sexual gratification aspects of human trafficking, requires us to consider adding this offense as well to the list of crimes protected by K.S.A. 21-3525.

I respectfully urge the committee to recommend HB 2098 favorable for passage.

Kansas Coalition Against Sexual and Domestic Violence

UNITED AGAINST VIOLENCE

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

Senate Judiciary Committee
House Bill 2098
March 10, 2009
Proponent

Chairman Owens and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is a statewide non-profit organization whose membership is the 30 sexual and domestic violence programs serving victims across Kansas.

The Kansas rape shield Law, K.S.A. 21-3525, prohibits evidence of previous sexual conduct from being disclosed in any proceeding before the court except under specific circumstances that are detailed in the statute. The Rape Shield law applies to 15 specific crimes and HB 2098 seeks to expand this prohibition to include two recently enacted crimes: aggravated trafficking and electronic solicitation.

The purpose of the Kansas rape shield law is to prevent the defendant from focusing on the previous sexual conduct of the victim in an effort to play on the bias of the judge or jury. Kansas courts have described the purpose of the rape shield law as being "...aimed at eliminating a common defense strategy of trying complaining witnesses rather than the defendant. The result of the strategy was harassment, and further humiliation of the victim as well as discouraging victims of rape from reporting the crimes to law enforcement authorities." *State v. Williams*, 224 Kan. 468, 470, 580 P.2d 1341 (1978). A brief history and commonly asked questions about the Kansas rape shield law is attached. Although the rape shield law cannot fully protect a rape victim, it can, and does, provide some measure of protection and can make all the difference in a victim's willingness to report the crime or participate in criminal proceedings.

HB 2098 will help protect victims of two recently enacted sex crimes from the same defense strategies covered by the current rape shield law. KCSDV fully supports these additions to those crimes covered by K.S.A. 21-3525 and strongly urges the Senate Judiciary Committee to pass HB 2098 favorably.

Respectfully Submitted,
Sandy Barnett
Executive Director

Historical Background

Rape shield laws were passed in almost every state beginning in the 1970's. The purpose of these laws was to protect victims of rape by attempting to change the thinking about chastity and rape, i.e., a woman who was sexually active and who was raped was neither promiscuous, asking for it, consented to it or otherwise contributed to her own victimization. In those rape cases that went to trial before the rape shield laws were passed, defendants could focus on the previous sexual conduct of the victim in an effort to play on the biases, prejudices, and sexism of the judges and jurors. Kansas courts have described the purpose of the rape shield law this way: "[It] is aimed at eliminating a common defense strategy of trying the complaining witness rather than the defendant. The result of the strategy was harassment and further humiliation of the victim as well as discouraging victims of rape from reporting the crimes to law enforcement authorities." *State v. Williams*, 224 Kan. 468, 470, 580 P.2d 1341 (1978).

The Kansas Law

K.S.A. 21-3525 is known as the Kansas Rape Shield law. In Kansas, the rape shield law only applies to prosecutions for the following crimes: Rape, Indecent liberties with a child, Aggravated indecent liberties with a child, Criminal sodomy, Aggravated criminal sodomy, Aggravated indecent solicitation of a child, Sexual exploitation of a child, Aggravated sexual battery, Incest, Aggravated incest, Indecent solicitation of a child, Aggravated assault with intent to commit any of the crimes above, Sexual battery, Attempt or conspiracy to commit any of the crimes above.

The Rule: The rape shield law prohibits admission of any evidence of the complaining witness' (victim's) previous sexual conduct with any person including the defendant. It also prohibits any mention of this conduct in the presence of the jury.

The Exceptions: Here is how this type of evidence might come in: The defendant would submit a written motion at least 7 days before trial (unless the court waives this time requirement), requesting that the court admit evidence or testimony concerning the previous sexual conduct of the victim. The motion must state the nature of the evidence and its relevancy to the case, and must have an affidavit attached offering proof of this previous sexual conduct by the victim. The court would then hold a hearing in chambers. If the court decides the evidence is relevant and not otherwise inadmissible, the court may allow the evidence to be introduced. The court's order will detail what proposed evidence is admissible and the nature of the questions permitted.

Apart from this procedure, the statute also provides that the prosecutor may introduce evidence concerning the victim's previous sexual conduct and the victim may testify about her previous sexual conduct. If this evidence is introduced by the prosecutor or victim, the defendant may cross-examine the witness who gave the testimony and may offer relevant rebuttal evidence.

It is important to note that the rape shield law applies only to the victim's previous sexual conduct. There may be other evidence concerning the victim that could be introduced

concerning her reputation for truthfulness or lack thereof, her credibility, her character, her spontaneous statements, her mental health, and a continuing course of conduct between the parties, to name a few . The admissibility of these other types of evidence would be considered under separate rules of evidence.

Many people believe that rape shield laws act as a sieve rather than a shield. Evidence that may be just as destructive to the victim could be allowed into the trial on one of these other grounds. Additionally, the court could determine that certain previous sexual conduct is admissible due to its relevance. For example, the judge may determine that the prior sexual act with the defendant or someone else was so identical to the defendant's version of how the current rape occurred that it becomes relevant and the victim can be questioned about it. Recently, the statute was amended to make these rules applicable to pre-trial hearings as well as the trial.

Some frequently asked questions:

What can a judge do if the defense violates the court's order concerning this evidence?
The judge can impose sanctions. Some options the court might have: Declare a mistrial based on defense misconduct and start over (double jeopardy would not attach); find the defense attorney in contempt and fine him or her; tell the jurors that they should ignore this information and should not consider it when they deliberate. The problem often is this: Once the cat is out of the bag or the insinuation is made, it is nearly impossible to put it back or take it out of the minds of the jurors. If the insinuation has been made, it may hang there throughout the trial and carry over into the deliberations.

Do rape shield laws really protect victims?
In some cases, yes. However, each case is decided individually on its facts and on the arguments of the parties. As noted above, the exceptions may swallow the rule, making it very difficult for the next victim to believe her privacy will be protected. Additionally, every time a rape victim is vilified and questioned publicly and unfairly, it potentially causes many, many victims to decide they will never come forward.

Does the Kansas rape shield law keep the victim's name from being disclosed at trial?
No. The rape shield statute is an evidentiary law and only addresses the admissibility of evidence of the victim's previous sexual conduct. It says nothing about the privacy of the victim's name or address. However, the prosecutor's office may have a policy of only referring to the victim by initials. Additionally, when a case is appealed, Kansas Supreme Court rules require that sexual assault victims be referred to by initials only.

Does the rape shield law prohibit the media from printing or otherwise announcing the victim's name?
No. Keeping the victim's name out of the newspaper and other news reports is voluntary on the part of the media. Each media outlet decides what its policy will be on this point. There are no sanctions in Kansas for releasing the name of the victim. The victim's name

and address are in the public record at the court house. If it's in the public record, it can be printed by the media.

Does the rape shield law require that rape trials be closed to the public or the media?
No. Public trials are guaranteed by the U.S. Constitution. Occasionally, a judge will impose a "gag order" on the parties to keep the jury pool from becoming tainted by news reports. Additionally, it is not uncommon for witnesses to be barred from the trial until after they have testified in order to keep them from being tainted by the other testimony they might hear. And, a court may disallow cameras in the court room as disruptive. Finally, a judge may prohibit photographs being taken of the victim or other witnesses or may require that sketches of the victim not reveal her identity. In making these decisions, the court has to weigh the constitutional right to freedom of the press and public trials with the rights of the victim and the defendant.

Is the Kansas rape shield law the same as the rape shield laws in other states?
Not necessarily. Each state's rape shield law is different. What is happening in a case in another state will be based on that state's statute and the case law that has interpreted it. While there may be some common characteristics between states' laws, one has to look at the statute in each state to see how it applies to a set of facts.

Prepared by
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Testimony Regarding HB 2207, Bond Supervision Fee Increase

Senate Judiciary Committee
Wednesday, March 11, 2009

Stephen Tatum, Chief Judge, 10th Judicial District (Johnson County)

In 2001, the Kansas Legislature enacted KSA 22-2802, which specifically allows the court to order a defendant to pay $5 per week for the cost of bond supervision. Since that time, the Kansas Legislature approved an increase of up to $10 per week for the cost of bond supervision.

In the 10th Judicial District, bond supervision was originally used most frequently in domestic violence cases. However, in November of 2004, the criminal judges approved more extensive use of bond supervision for other criminal cases. Currently, the Johnson County bond supervision caseload is at 496, of which 341 are criminal cases and 155 are domestic violence cases. The caseload has averaged 500 in the past year. These cases are supervised by a staff comprised of one half-time Domestic Violence Special Fees funded position for the domestic violence caseload, two part-time on-call staff who work 30 hours a week, and one full-time officer funded through bond supervision fees. The staff are paid on the county scale of $14.76 an hour. With an average bond supervision caseload of 125 offenders, we have identified a need to increase our staffing level, and this need cannot be met by the current $10 per week fee allowed by statute.

HB 2207 would allow an increase in the supervision fee, to provide for a fee of up to $15 per week. Our history of bond supervision indicates that offenders are supervised for an average of six months, for a total cost to the offender of $240. Thus, an increase to $15.00 per week would, on average, cost most offenders a total of $360. This is a more realistic fee to assist us in meeting the actual costs of the program. In most cases in which bond supervision is ordered, either a PR bond or a lower cash or surety bond is set. The defendant, who is likely to post a bond anyway, is placed on bond supervision which requires compliance with certain conditions. The money that would have been spent on a higher bond, in turn, goes to the cost of funding bond supervision officers.

The court is finding success in this program. Specifically, the additional supervision while on bond places requirements on the offender that are not typically enforced by traditional bonds. For example, a defendant who is placed on bond supervision for a DUI charge would have a condition prohibiting consumption of alcohol and requiring random testing for the presence of alcohol. Requirements for employment and reporting would be in place. In Domestic Violence cases, a defendant may have a condition requiring no contact with the victim. Conditions are tailored to the specific issues presented by the defendant. The defendant then is required to report to the assigned court services officer to insure compliance with those conditions. The defendant may also be referred to counseling programs and be on the road to completing many probation requirements before probation is ordered.

I believe that bond supervision is a vital tool for judges when determining bond for criminal offenders. Also, given that our jail is facing serious over-crowding issues, bond supervision allows the court to consider release of low risk defendants, knowing that they will be supervised during the pendency of the case. Your support of this legislation will assist the courts in providing a higher level of community protection while offenders are released on bond.

Thank you for your consideration of HB 2207.

Stephen R. Tatum
Chief Judge, 10th Judicial District

Johnson County Department of Corrections

206 West Loula Street • Olathe, KS 66061
Elizabeth Gillespie, Director of Corrections
(913) 715-4500 Fax (913) 829-0107

DATE: March 11, 2009

TO: Honorable Members
Senate Judiciary Committee

FROM: Elizabeth Gillespie, Director
Johnson County Department of Corrections

SUBJECT: **House Bill No. 2232**

On behalf of Johnson County, I am testifying today in **support** of **House Bill Number 2232.** Johnson County requested this bill based upon the recommendation of its Community Corrections Advisory Board. The changes to the statute simply allow each Board of County Commissioners or a cooperating group of Boards of County Commissioners the **option** to add an additional three (3) members to the Board, as appointed by the County Commission. No county or group of counties will be required to add additional members.

The current statute provides very detailed specifications for the appointment of Community Corrections Advisory Board members through representatives of specific agencies and disciplines. The appointments also include members as appointed by the three cities of the first class within the county. There is also a requirement that each board be represented by ethnic minorities and that no more than two-thirds of the members be the same sex.

Johnson County has determined that through the specific appointment requirements within the statute and with the appointments by the cities within the county that we have sometimes been unable to include representatives from disciplines that we believe should be included. Currently, Johnson County would like to appoint the Executive Director of United Community Services and the Executive Director of the Johnson County Mental Health Department as members of the Board. We believe that these people can bring

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much benefit to the discussions and to decisions made by the Board. The current statute restricts our membership to 12 and thus does not allow us to add these members.

We believe that the overall purpose for the Community Corrections Advisory Board is to actively engage community members in the development of community correctional services within the county. The Johnson County Board is actively engaged and wants to include more representatives in the decisions. I have personally discussed the proposed change with other Community Corrections programs in the state and have heard no opposition to the bill. Since the wording is "optional" not "mandatory" for other programs, the bill does not negatively affect any of them.

Thank you for your time, and I will appreciate your favorable consideration of this bill.

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

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Senate Judiciary Committee
House Bill 2233
Solicitor General Steve McAllister
March 11, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony in support of House Bill 2233. I am the Solictor General of Kansas, and am responsible for some of the appellate case work in the office of Attorney General Steve Six.

A problem that we encountered in several recent appeals, such as in Kansas v. Ventris, Kansas v. Smith, and Kansas v. Morton, is that if the State chooses to appeal an adverse decision by our state supreme court in a criminal case to the Supreme Court of the United States, it may not be clear whether the time for the running of the speedy trial clock under the Kansas Speedy Trial Act is tolled while Kansas pursues such an appeal. Similarly, it may not be clear if the time is tolled when the Attorney General pursues a petition for review in the Kansas Supreme Court, seeking review of a decision of the Kansas Court of Appeals. HB 2233 would make clear that the filing of a petition for review in our state supreme court or a petition for a writ of certiorari in the Supreme Court of the United States tolls the running of the speedy trial clock until the relevant court has finally resolved the case, either by (1) denying review or (2) granting review and then hearing and deciding the case on the merits.

Without automatic tolling, when the state files a petition in the Supreme Court of the United States, there may be undesirable consequences. First, if the mandate issues from the Kansas Supreme Court, the speedy trial clock (90 days) starts running and we either have to persuade the trial court to which the case is returned to stop the clock, or we have to ask the Supreme Court of the United States to stop the clock while our petition is pending. Either way, the State and the courts are forced to act on a case-by-case basis, and the State's ability to appeal will not be certain. A second consequence is that whenever the State may even consider filing a petition in the Supreme Court of the United States, we may have to go ask the Kansas Supreme Court to stay its mandate in order that we may challenge that court's own decision, an awkward situation at best because we are informing the Kansas Supreme Court that the Attorney General believes that court's decision is wrong and wants to appeal it. That, in fact, is what we have done in some recent cases, largely for lack of any better alternative. Such a procedure, however, is far from optimal or efficient for all parties involved.

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So long as uncertainty remains regarding whether the State's filing of a petition seeking review in either the Supreme Court of the United States or the Kansas Supreme Court automatically tolls the speedy trial act clock, the State is left with only ad hoc options for protecting its right to appeal erroneous decisions. The situation would be extremely problematic if a particular trial judge chose not to stay the proceedings and toll the running of the clock, or the Kansas Supreme Court refused to stay its own mandate when the Attorney General wants to seek review in the Supreme Court of the United States.

Further, even if the State can persuade trial judges to toll the clock in particular cases, the State has no assurance — without a Kansas Supreme Court decision on point in our favor or clarity in K.S.A. 22-3604 — that the Kansas Supreme Court ultimately would conclude that such an action tolled the running of the speedy trial act clock. In other words, a trial judge might conclude that the speedy trial clock was tolled, but the Kansas Supreme Court could later decide that K.S.A. 22-3604 actually does not toll the clock, which would bar the State from then continuing that particular prosecution, as well as any others similarly situated. It would be far better, easier, and more clear to everyone involved (including defendants and trial judges) if the filing of a petition for a writ of certiorari in the Supreme Court of the United States (or a petition for review in our state supreme court) automatically tolled the running of the speedy trial clock.

HB 2233 would cover everything already provided for by statute as tolling the speedy trial clock (the references to K.S.A. 22-3602(b) and 22-3603) as well as any efforts to obtain discretionary review of an adverse ruling, whether petitioning for review to our own supreme court or filing a petition for a writ of certiorari in the Supreme Court of the U.S.

As the chief prosecutorial agency responsible for appeals in the state of Kansas, the Attorney General's office strongly supports HB 2233 and believes that it is necessary because it is not clear whether the time for the running of the speedy trial clock under the Kansas Speedy Trial Act is tolled while Kansas pursues a petition for a writ of certiorari in the Supreme Court of the United States.

Thank you for your consideration. I would be happy to answer any questions.