



Kansas County & District Attorneys Association

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TO: Hon. Chairman King
FROM: Mark Frame, President, KCDA
DATE: February 20, 2012
RE: Written Testimony in support of SB 167

Chairman King and members of the committee:

Thank you for the opportunity to present testimony on Senate Bill 167.

As a prosecutor of 16 years I can say that K.S.A. 21-5107 isn't used daily. Most crimes and their prosecution fall within the Statute of Limitations. However, when the facts are such and the case comes about that 21-5107 does apply, it is a terrible situation having to tell the victim of rape that I am barred from prosecuting.

The addition of rape to the list of crimes wherein there is no limitation on action is reasonable and long overdue. However, the addition of Aggravated Criminal Sodomy to this list is needed. The pertinent parts of both statutes are:

21-5503. Rape.

(a) Rape is:

- (1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:
 - (A) When the victim is overcome by force or fear; or
 - (B) when the victim is unconscious or physically powerless;
- (2) Knowingly engaging in sexual intercourse with a victim 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;
- (3) sexual intercourse with a child who is under 14 years of age;
- (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 medically or therapeutically necessary procedure; or
- (5) 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.

21-5504. Criminal sodomy; aggravated criminal sodomy.

.....(b) Aggravated criminal sodomy is:

- (1) Sodomy with a child who is under 14 years of age;
- (2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
- (3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal 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, or was reasonably apparent to, the offender.

The pertinent part of 21-5501 is:

.....a) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse.

..... (b) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal.

Simply put, it shouldn't matter if this violent crime were perpetrated on a male or female. There should be no limitation of action for either. Therefore, the KCDAA ask that when the committee takes up work on this bill, it considers adding aggravated criminal sodomy to the list of crimes that have no statute of limitations.

Thank you for your consideration of this very important bill.

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