

**House Judiciary Committee**  
**March 15, 2021**

**Senate Bill 60**  
**Testimony of Kansas Association of Criminal Defense Lawyers**  
**Opponent**

Dear Chairman Patton and Members of the Committee:

SB 60 is the Office of the Attorney General’s proposal in response to a Wyandotte County criminal case: *State v. Rozell*, Wyandotte County Case No. 18 CR 653, 58 Kan. App. 2d 570 (Kansas Court of Appeals, August 7, 2020), *review granted* November 20, 2020. As we explain below, KACDL opposes SB 60 because it is unnecessary and overbroad. It is also premature, given that *Rozell* is still working its way through the appellate process.

**What K.S.A. 21-5106 currently does**

The issue in *Rozell* is with K.S.A. 21-5106, which sets out the circumstances that need to be present in order for a person to be subject to criminal prosecution in Kansas. One circumstance is when a person commits a crime “partly within this state.” K.S.A. 21-5106(b) defines “partly within this state” as: 1) the accused does an “act [in Kansas] which is a constituent and material element of the offense”; 2) the accused does an “act [in Kansas] which is a substantial and integral part of an overall continuing criminal plan”; or 3) “the proximate result of such act, occurs within [Kansas].”

Notably, the substance of our jurisdiction statute has not changed much since its passage in 1969. See K.S.A. 21-3104 (effective before 7/1/11); K.S.A. 21-5106 (effective on and after 7/1/11). *For over 50 years, this statute has not defined “proximate result,” which is what SB 60 proposes to do.*

**What *Rozell* is about**

*Rozell*, who lived in Missouri, was in a car accident in Missouri. While it’s unclear where the driver of the other car—who was at fault in the accident—lived, the driver’s father lived in Wyandotte County, and he carried the car insurance policy. *Rozell* made a claim against the insured’s policy, submitting a Missouri hospital bill to a claims agent in Tennessee. The Tennessee claims agent thought the bill looked suspicious so referred it to a different claims specialist, who lived in Sedgwick County. That person concluded *Rozell* altered the date on the hospital bill so that insurance would pay it as part of the Missouri car accident claim.

Rozell was charged in Wyandotte County with two crimes: making a false information (K.S.A. 21-5824) and a fraudulent insurance act (K.S.A. 40-2,118). The complaint charged that the insurance company was the victim. Rozell argued that the Wyandotte County court did not have jurisdiction because, if he did commit a crime, he did so in either Missouri or Tennessee.

The prosecution argued, both in the district court and on appeal, that K.S.A. 21-5106(b) means Kansas may prosecute any person who attempts to defraud any insurance policy issued to a Kansas resident because the “proximate result” happens in Kansas (i.e. a possible policy rate increase may be spread out among Kansas insurance policyholders). *Rozell*, 58 Kan. App. 2d at 573-74. The district court and Court of Appeals both disagreed with the prosecution’s reading of K.S.A. 21-5106. The case is pending in the Kansas Supreme Court after that Court granted the proponent’s petition for review.

### **What SB 60 would do**

Rather than adding language to substantive criminal statutes (i.e. the statutes setting out elements of crimes) about proximate results occurring within Kansas due to a person’s out-of-state criminal acts, *SB 60 would cover all criminal offenses, without limitation. This has broad implications far outside the realm of insurance fraud.*

**SB 60 is unnecessary.** The proponent said in his written testimony dated February 3 that, because of *Rozell*, out-of-state actors would “evad[e] prosecution” and be able to commit fraud “without criminal repercussions.” This is not entirely correct. There are other jurisdictions where Rozell could have been charged. Just because he could not be charged in Wyandotte County does not mean he could not be criminally charged and held accountable in Missouri, for instance. The same would be true in other cases. (Incidentally, regarding the proponent’s example in his written testimony of a Missouri “fraudster” “initiat[ing] a car accident” in Kansas: I am not sure how he/she would be able to attempt to get insurance money if he/she was the one at fault.)

**SB 60 is overbroad.** Given what *Rozell* is about, and that SB 60 was originally introduced in the Insurance Committee, and the examples the proponent used in his February 3 written testimony, it appears the interest is in being able to charge people with insurance fraud for acts committed outside of Kansas. If the Committee feels it needs to broaden the definition of proximate cause for insurance fraud, we would urge the Committee to amend K.S.A. 40-2,118 rather than placing this definition in the general criminal jurisdiction statute.

**SB 60 would result in unintended consequences.** We have been unable to find another state with jurisdictional language as broad as that in SB 60, so it's difficult to comprehend the full scope SB 60 would have if passed as proposed. But we can foresee some consequences. For example, it would authorize Kansas prosecutors to charge any offense where everyone involved in a case lives in another state, except for one non-victim party. For instance, this language would authorize a murder prosecution in Kansas if the person who pays the victim's funeral expenses (which are a "proximate result" of murder) lives in Kansas, but everything took place in Hawaii.

Because SB 60 is too far-reaching, unnecessary, and premature, we urge this Committee to reject SB 60 in its current form.

Sincerely,

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