



## Kansas Bureau of Investigation

Kirk Thompson  
*Director*

Derek Schmidt  
*Attorney General*

### Senate Judiciary Committee

Testimony of Kyle Smith, Assistant Attorney General  
Deputy Director, Kansas Bureau of Investigation  
**In Support of HB 2494**  
March 5, 2012

Chairman Owens and Members of the Committee,

I appear today on behalf of Attorney General Derek Schmidt in support of HB 2494 which addresses a major problem in our efforts to protect children. Given that children have limited ability to act independently or grasp the criminal nature or process when they are victimized, the current restrictions on bringing charges leaves many children unprotected and offenders free.

While there are numerous examples of defendants slipping through this gap, this bill was requested by Attorney General based on a case brought to us by Detective Vicki Fogarty of Bonner Springs P.D. It is an excellent example of why this legislation is needed as many of these offenders have long histories of molestation.

In 2010, while interviewing a 6 year old molestation victim in 2010, the victim disclosed that she knew of another relative that had been molested by the offender. That victim, then 18 years of age, was interviewed and confirmed her own rape when she was 6-7. While her parents never left her alone with him after that, it was not reported. When interviewed, the defendant admitted both crimes, and more. The following is from the prosecution summary:

*(Redacted Name)* admitted he has been fondling children since he was around 16 yoa and estimates he has molested between 10-20 children. *(Redacted Name)* gave me the first name of four other children he has molested but would not give me the last names. The names are Kenny, Lisa, Jennifer and Thomasiana. *(Redacted Name)* said he loves children. When asked if he could be trusted to be alone with kids *(Redacted Name)* said, "Well, no,no. I wouldn't want to try that one. I don't trust myself. I mean, I, I like to think that I can in some situations, I can for a period for a period of time, but eventually something would happen. I know it would probably happen. And not intentionally planning on it, but..."

Despite the confession, the defendant was charged with only the one case due to our current statute of limitations statute. Statutes of limitations were developed at common law when most people could not read or write and memories were the only evidence. Times have changed and modern technology has undermined the need for such strict limits with written reports, DNA and photographs.

Current law, K.S.A.21-5107 (e)(6)(C), allows staying the statute of limitations for children victims if

“ the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused.”

However the courts are bound by the rules of statutory construction to interpret criminal statutes against the state and in favor of the accused. So Kansas case law has developed an interpretation of the current language to require the state prove that the parents or guardians deliberately and intentionally coerced the child and merely threatening the child is not enough to toll the running of the statute.

Expecting a child to come forward on their own in such a situation is unrealistic, unjust and unfair. HB 2494 would leave the statute of limitations as it currently stands, but would start the limitation running when the child reaches majority, i.e., on their 18<sup>th</sup> birthday. While not all children are out from parental supervision or fully mature at 18, the additional 5 years should provide a chance for them to report it, and if evidence is sufficient, for charges to be brought.

Old cases are always a challenge with stale memories and limited forensic evidence so not too many of these cases will be filed as prosecutors realize that they have to be proven beyond a reasonable doubt. However, there are cases, like Detective Fogarty's, where there is evidence, recent new offenses with forensic evidence and even confessions, where this legislation would make all the difference in whether a person who rapes or molests a child goes free or goes to prison.

On behalf of Attorney General Schmidt, and the child victims of Kansas, we would ask your support of HB 2494. Thank you.

I would be happy to stand for questions.