

Members of the House Corrections and Juvenile Justice Committee,

I realized Friday that this bill would be addressed tomorrow and wanted to at least put something in writing via email before the hearing as I am unable to attend. I write in my capacity as the District Attorney in Sedgwick County rather than as the past president of the KCDA.

Because you have a great deal to read each day I'll keep this to a quick synopsis. I am more than willing to provide a detailed assessment with citations to case law later this week before the bill is worked by the committee.

Generally speaking there are four reasons the state may want to make the suggested changes:

1. First, case law dating back 43 yrs (Wilkins) dictates that any witness in a criminal case can be asked questions not only about convictions for crimes of dishonesty that they earned as an adult, they can also be asked questions about adjudications for crimes of dishonesty committed when they were a juvenile.

Kansas is not alone in its treatment of juvenile adjudications but the rest of the states are hardly of one mind on this subject. If you are interested in a plenary review, the ALR article, 63 A.L.R.3d 1112 (Originally published in 1975) American Law Reports ALR3d The ALR databases are made current by the weekly addition of relevant new cases. Daniel E. Feld, J.D., "Use of judgment in prior juvenile court proceeding to impeach credibility of witness," goes into great detail on the subject.

Bottom line, Kansas would not be the only state that has decided -- as a matter of public policy -- that certain juvenile adjudications are not material or relevant for cross examination into adulthood.

2. Second, Since 1974, we now know a great deal more about the development of the juvenile/ adolescent brain. One could argue that the position the legislature took last year with respect to juvenile justice reform in SB 367, is indicative of an inclination on the part of the state to re-assess what lasting impact we as a state want to saddle a person with as a result of a misdemeanor juvenile adjudication.

3. The third and final point I would make is that by redirecting the public policy of the state, more young adults with minor indiscretions in their past may we'll have opportunities to enter the workforce as law enforcement officers which has the potential to open the door to more diversity -- a laudible goal in and of itself.

Without getting too in the weeds on this subject here, suffice to say, if a law enforcement officer has a prior for a crime of dishonesty, prosecutors must tell the defense. State v Lumley, and for a detailed analysis, see State v. Warrior, 294 Kan. 484, 505-506 (2012).

Case law suggests that many types of indiscretions in a personell file may be handled with an in camera review. But under KSA 60-421, convictions and adjudications for crimes of dishonesty are simply admissible.

The Kansas Supreme Court didn't exactly mince words in State v. Wilkins, 215 Kan. 145, 148-49 (1974) when it observed, ". . . *the state's policy interest in protecting the confidentiality of a juvenile offender's record . . . must yield to the constitutional right of effective cross-examination to test the credibility of a witness.*" As such, there remains the possibility that even the suggested change to KSA 60-421 will have no effect on the court. But there is an amendment that I understand may be added to clarify that a witness cannot be questioned about the prior after 5 years or possibly when after they turn 21. I prefer the former (5 yrs after the fact) because it is defensible and rational to conclude that as a matter of public policy juvenile adjudications for misdemeanor offenses are no longer material 5 yrs later.

Bottom line, any defendant whose case rests on pointing out the prior misdemeanor shoplift of the arresting officer when the officer was 16 -- doesn't have much of a defense. As such, the added 5 yrs (or 21st birthday) would only further attenuate any claim of a constitutional issue. A forgery, robbery or residential burglary (all felonies for adults and juveniles) would, of course be a different matter.

I hope this helps. Again, I'm sorry I couldn't be there Monday. I'll be happy to provide additional details.

Marc Bennett