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Testimony in support of Senate Bill 60

**Presented to the Senate Committee on the Judiciary
By Deputy Solicitor General Kristafer Ailslieger
February 3, 2021**

Chair Warren and Members of the Committee:

The Attorney General urges passage of Senate Bill 60 in order to prevent out-of-state actors whose criminal acts have detrimental effects within Kansas from evading prosecution.

Although K.S.A. 21-6106(b)(3) authorizes the State to exercise criminal jurisdiction over someone who commits criminal acts outside of Kansas when the “proximate result” of those acts is felt in Kansas, a recent Kansas Court of Appeals ruling has severely limited the scope that statutory authorization.

In *State v. Rozell*, 58 Kan.App.2d 570 (2020), the Court of Appeals held that “When determining proximate result jurisdiction, Kansas courts may consider the negative consequences of a person’s out-of-state acts within Kansas *only* if the statutory language of that person’s charged crime considered such negative consequences.” In *Rozell*, the defendant was involved in an auto accident with a Kansas resident in the Kansas City area on the Missouri side of the border. He subsequently submitted false medical claims against the Kansas-held insurance policy, but he did so from outside of the territorial borders of Kansas. He was then charged in Kansas with creating a false writing and insurance fraud. The Court of Appeals held that he could not be prosecuted in Kansas because the crimes for which he was charged did not, within their statutory language, “consider” the negative effects of the defendant’s criminal acts. The State submits that the negative effects of such fraudulent acts could be varied and far reaching, and it would be impossible for a statute to list every possible negative effect in order to meet the Court of Appeals’ standard.

Moreover, outside of the Court of Appeals’ ruling, there is no such legal requirement. As far back as 1911, the United States Supreme Court said in *Strassheim v. Daily*, 221 U.S. 280, 285 (1911), that “Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if [the defendant] had been present at the effect.” The Supreme Court did not put any time additional caveats on the exercise of such “proximate result” jurisdiction as the Kansas Court of Appeals did in *Rozell*. Under the *Rozell* ruling, insurance fraud against Kansas insurance policyholders and insurance companies can occur without criminal repercussions so long as the fraudster conducts all of his

acts outside of Kansas. So, for example, in a place like the Kansas City metropolitan area, a fraudster on the Missouri side of the border could look for cars with Kansas license plates, initiate a car accident, and then engage in the same type of fraudulent activities as Rozell did without fear of any type of criminal prosecution in the State of Kansas. This is an absurd result and as a matter of public policy, should be avoided. The proposed statutory amendment in this bill will prevent such an absurd result.

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