

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

HOUSE BILL 2655

REP. JOHN RUBIN

CHAIRMAN OWENS AND MEMBERS OF THE COMMITTEE:

Thank you for this opportunity to testify before you today on HB 2655.

I introduced this bill in the House Judiciary Committee, of which I am a member. It strengthens our current obstruction of justice laws, known as interference with judicial process in our criminal code, by clearly defining and adequately penalizing obstruction actions involving destruction or falsification of documents subpoenaed or required to be produced as evidence in criminal proceedings or investigations.

Last year, the Johnson County District Attorney's office was compelled to dismiss most criminal charges then being prosecuted against Planned Parenthood because documents required to establish the charged crimes had been shredded. The Kansas Attorney General has initiated an investigation of this matter. However, in its aftermath, I looked into our obstruction laws, and found them to be wholly inadequate to address this particular type of interference with judicial process. Those being investigated or charged and prosecuted for crimes in Kansas ought not be able to escape the consequences of their criminal conduct by destroying or altering the very evidence that establishes the crimes alleged against them. District Attorney Howe testified before the House Judiciary Committee in general terms -- without disclosing information about ongoing investigations or prosecutions -- about cases in his experience where this has occurred.

As a long-time federal attorney, I first looked at federal obstruction of justice provisions prohibiting destruction or falsification of records to prevent their use in criminal investigations or proceeding for guidance in rectifying this oversight in our criminal code. The original subsection (a)(5) of Section 1 of HB 2655, which you have before you, incorporated these provisions. After further review and consultation, including with DA Howe, I amended the bill by replacing the adapted federal statutory provisions with language more directly applicable to our state criminal prosecutions, language adapted from that used by another state, Indiana, to proscribe obstruction of justice involving the destruction or falsification of potential evidence. It is contained in the revised subsection(a)(5) of Section 1. The recommended amendatory language makes any of the following a crime:

Knowingly or intentionally in an official criminal proceeding or investigation:

(A) inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;

(B) withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;

(C) altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or

(D) making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such official criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer."

Penalties for committing these new interference with judicial process crimes are: a severity level 8, nonperson felony if the criminal proceeding or investigation involves a felony, or a class A nonperson misdemeanor if the criminal proceeding or investigation involves a misdemeanor.

I urge your support for this legislation which will greatly strengthen our criminal code and aid prosecutors in their pursuit of lawbreakers statewide, a conclusion concurred in by Johnson County DA Howe.

Thank you. I am happy to stand for questions.