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**Testimony in Support of Senate Bill 327  
Allowing Hearsay at Preliminary Hearings**

**Presented to the Senate Judiciary Committee  
By Assistant Attorney General Steven A. Karrer**

**January 21, 2016**

Chairman King and Members of the Committee:

Thank you for this opportunity to submit testimony on behalf of Attorney General Derek Schmidt in support of SB 327, which would allow for the presentation of hearsay evidence at preliminary hearings. This bill would both benefit victims of felony crimes, and would lessen the financial burden on counties.

Under the current version of K.S.A. 22-2902, hearsay is only permitted in whole or in part as it relates to a victim's statements when the victim of a felony is less than 13 years of age. This means that victims of any felony crime age 13 or older must testify at preliminary hearing. For example, a 14-year-old who is violently raped would have to testify at preliminary hearing, even though the child has previously given recorded statements to law enforcement and will be available for cross-examination at trial.

Under SB 327, at the discretion of the prosecution, crime victims mentioned above would not have to testify in person. Rather, their statements would be able to come into court through the police officer or forensic interviewer with whom they spoke.

SB 327 would also benefit victims of property crime, such as vehicle burglaries. Often, the victim has no information regarding who committed the crime. This information usually comes from other individuals, such as officers, forensic scientists, eyewitnesses, etc. Yet, under current law, the victim is still required to testify at the preliminary hearing that he or she did not give permission to have his or her vehicle broken into, and to the value of the property stolen or damaged. Under SB 327, this particular testimony could be presented by another witness, such as a law enforcement officer who took a statement from the victim, negating the need for the victim to be inconvenienced for a district court's determination of probable cause.

SB 327 would also reduce the financial burden on counties as it relates to preliminary hearings. Counties are required to cover most expenses related to testimony of witnesses. These expenses include mileage, witness fees, transcript costs and even lodging, when necessary. For out-of-county or out-of-state witnesses, these costs can be significant. In many cases, witnesses are subpoenaed to preliminary hearings, only to have the defendant waive the hearing at the last minute through no fault of the prosecutor or defense attorney. This still leaves the county on the hook for the witness expenses already incurred.

SB 327 changes nothing other than the hearsay rule as it relates to preliminary hearings. This means the evidence would still be required to be relevant and the witnesses determined to be credible. Prosecutors would still have the discretion to call any victims or witnesses they choose. The defendant would still have an opportunity to hear the evidence against him or her as it relates to the charges, and cross-examine those witnesses who do testify. The district court would still be required to find probable cause for the defendant to be bound over for trial.

Attorney General Schmidt believes these changes will further the interests of victims of felony crimes, lessen the financial burden of counties and continue to maintain due process rights of the accused and the public at large. Thank you for your consideration.

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