

SENATOR KRISTENSEN: Okay. What would the effect be then if some of these events are outside the statute of limitations? For example, I take it from Senator Wehrbein, Senator Beutler, and Senator Hartnett, and the first two are within the statute of limitations, within three years, but the one was without the statute of limitations. Must I aggregate?

SENATOR WICKERSHAM: The...if you remember the distinction that our court has made in the past, the penalty provisions do not speak to the crime itself. The penalty...the penalty provisions are simply a classification scheme, and so I don't think the statute of limitations are a problem when you're just talking about the classification.

SENATOR KRISTENSEN: And if there are...and your amendment says they shall be aggregated...

SENATOR WICKERSHAM: That's correct.

SENATOR KRISTENSEN: That means even though cases that may not be proven up, or cases that may not, for one reason or another, be able to be proven, you would still use those amounts for aggregation, is that right?

SENATOR WICKERSHAM: I...you would have to prove that the events occurred or that are part of the crime, otherwise they couldn't be included in the classification scheme.

SENATOR KRISTENSEN: But that may not be evidence enough for beyond reasonable doubt of conviction. They may be uncharged crimes.

SENATOR WICKERSHAM: I would think that you would be in the position that you will only be able to classify the crime in accordance with the elements of the scheme that were proven.

SENATOR KRISTENSEN: Okay, and what I want to make sure I get into the record here is this course or dealing is a matter of factual evidence, that there is no definition of what scheme is, or what course of conduct may be, and that it's a continuation crime. In other words, once the crime has begun that you continue it on, and that there is some case law in the federal system that allows for a continuation or course and scheme of crimes, and that would be your intent, to do that here as well.