

Approved  
Date: March 1, 2001

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:42 a.m. on February 28, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)  
Senator Pugh (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Senator Barbara Allen  
Senator Greta Goodwin  
Senator David Adkins  
Jane Nohr, Assistant Attorney General  
Sandy Barnett, Kansas Coalition Against Sexual and Domestic violence (KCSDV)  
Bill Lucero, Murder Victims Families for Reconciliation

Others attending: see attached list

Minutes of the February 27<sup>th</sup> meeting were approved on a motion by Senator O'Connor, seconded by Senator Adkins. Carried.

### **SB 291—creating the crime of causing harm to another person by motor vehicle and prescribing penalties therefor**

Conferee Senator Allen testified in support of **SB 291**. She stated that the bill would close a gap in Kansas law making it a crime to cause harm to another person with a motor vehicle, if the harm is caused by an unattended child under the age of seven. Penalties for causing bodily harm to another person would be a class B misdemeanor while causing death would be a class A misdemeanor. (attachment 1) She referenced written testimony from victim, Michele Struttman, regarding this issue and discussed the problems this bill seeks to remedy. (attachment 2)

The Chair stated that further written testimony on **HB 2084**, which was heard at yesterday's meeting, had been distributed and he closed the hearing on the bill. Written testimony was submitted by James L. Germer, Kansas Advocacy & Protective Services, Inc. It contains Committee requested information on the Individual Justice Plan concept he mentioned in his oral testimony on February 27<sup>th</sup>. (attachment 3)

### **SB 263—re: collection of DNA specimens**

Conferee Senator Goodwin testified in support of **SB 263**. She stated that the bill calls for an expansion of the collection of certain specimens from all persons convicted of person felonies, as well as the additional crimes set out in the Offender Registration Act, for the purpose of DNA identification analysis. She briefly discussed the merits of the bill and cited similar legislation being drafted in other states. (attachment 4)

Conferee Senator Adkins testified in support of **SB 263**. He briefly reviewed the purpose and merits of this bill stating it will cost effectively help prevent and/or solve more crimes and may exonerate innocent people in some cases. (attachment 5) He referenced a number of newspaper articles which reveal how expanding DNA databases have been shown to enhance public safety. (Milwaukee Journal Sentinel, Dec. 6, 2000 p. B-1; The Roanoke Times, Nov. 14, 2000; USA Today, Jy 28, 2000, 17-A; USA Today, Jy 10, 2000; New York Law Journal, May 1, 2000, p. 52; St. Petersburg Times, Mar. 13, 2000, Sec. B; and The Atlanta Journal-Constitution, Mar. 17, 2000, D1)

Conferee Nohr testified in support of **SB 263**. She discussed the role of the KBI in administering the DNA Databank and reviewed its merits in solving crimes. She offered two amendments to the bill one of which would allow for post conviction testing for murder and rape only and the other which would expand the statute of limitations from 5 years to 10 years or to one year after a match. (attachment 6) Lengthy discussion followed.

Conferee Barnett testified in support of **SB 263**. She discussed the merits of DNA testing in identifying rapists and explained how this bill would be a deterrent to repeat rape offenders. (attachment 7)

Conferee Lucero testified in support of **SB 263** briefly stating that his organization endorses the bill. (no attachment)

There was consensus between Committee members and KBI representatives regarding an amendment proposed by Senator Oleen which would assess the cost of a DNA test to the convicted criminal.

#### **SB 128—concerning election crimes**

Following a review of **SB 128** by the Chair and discussion of balloon amendments offered by the Secretary of State (attachment 8), Senator Adkins made a motion to adopt the balloon amendments and recommend the bill favorably for passage as amended, the date effective upon publication in the Kansas Register, Senator Donovan seconded. Carried.

#### **SB 205—re: appearance bonds**

#### **SB 341—re: domestic violence; assessment of certain fees**

The Chair reviewed the bill and there was discussion about amending **SB 341** into the bill. The Chair recommended Committee review **SB 341** and stated he would revisit **SB 205**.

The meeting adjourned at 10:33 a.m. The next meeting is March 1, 2001.



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TOPEKA  
SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
CHAIR: ELECTIONS AND LOCAL GOVERNMENT  
MEMBER: ASSESSMENT AND TAXATION  
EARLY CHILDHOOD DEVELOPMENT SERVICES  
FINANCIAL INSTITUTIONS AND INSURANCE  
REAPPORTIONMENT

February 28, 2001

Mr. Chairman, Members of the Committee:

I'm here to testify in favor of **S.B. 291**, which would make it a crime to cause the death or bodily harm to another person by motor vehicle, if the harm is caused by an unattended child age seven or younger.

It is my understanding that if a person leaves a child unattended in a motor vehicle, and that child is injured or dies, the parent or guardian's negligent action is covered by our current criminal laws. That person can be prosecuted under Kansas "endangering a child" statutes.

However, it is also my understanding there is a gap in Kansas law if a person leaves a child unattended in a motor vehicle, and that child causes the death or bodily harm to another person by causing an accident involving another motor vehicle or pedestrian. Thus, the reason for introducing **S.B. 291**.

This idea was brought to me by Michele Struttmann, whose 2-year-old son was killed when a motor vehicle occupied by two toddlers hit she and her son from behind while they were sitting on a park bench. The toddlers were left unattended in the vehicle. Michelle had intended to tell you personally about the tragedy she and her family have endured, but they were forced to turn around on the interstate last night because of the snowstorm traveling from St. Louis. One of the consequences of her experience is that she has begun a campaign to bring awareness to this gap in many states' laws.

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I have attached a copy of the Missouri law that was passed last year. In drafting this bill, we set the penalties so that causing harm to another person by motor vehicle when such child causes the death of another person is a Class A person misdemeanor. This level of penalty was chosen for two reasons: first, it would not impact Sentencing Guidelines in terms of bed space, and second, it is equivalent to the punishment for vehicular homicide.

Last year, this Legislature passed a law called "Jake's Law", named for Jake Robel, a 6-year-old who was left unattended in a motor vehicle, and who was dragged to death during a carjacking. The man charged with first-degree murder in the case had just been released from jail, and had an outstanding warrant for his arrest. The State of Kansas now has a statutory duty to research the criminal history of persons in custody before releasing them in our communities.

I believe **S.B. 291** addresses just as serious and significant an issue that is not covered under Kansas law today. That is, when a parent or guardian leaves a child unattended in a motor vehicle, and that child causes the death or bodily harm to another person by causing an accident involving another motor vehicle or pedestrian, it should be a prosecutable crime.

Thank you for your consideration of **S.B. 291**. I ask that you vote it favorably out of committee.

the court finds that the probative value of such evidence is outweighed by the prejudicial effect.

SECTION 566.067 - A person commits the crime of child molestation in the first degree if he subjects a child less than 14 years of age to sexual contact. The penalty for child molestation in the first degree, currently a Class C felony, is increased to a Class B felony. If the actor is a repeat offender, inflicts serious physical injury, displays a weapon or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, the penalty, currently a Class B felony, is increased to a Class A felony.

SECTION 566.068 - A person commits the crime of child molestation in the second degree if he subjects a person less than 17 years of age to sexual contact. The penalty for child molestation in the second degree is a Class A misdemeanor. If the actor is a repeat offender, inflicts serious injury, displays a weapon, or commits the offense as part of a ritual or ceremony, the penalty is a Class D felony.

MO Law

\* SECTION 568.052 - Creates the crime of leaving a child unattended in a motor vehicle. The crime is a Class A misdemeanor if an unattended child 10 years of age or less causes the motor vehicle to injure another person, and a C felony if the injury is fatal. This portion of the act is identical to HB 1146.

SECTION 568.065 - Creates the Class B felony of genital mutilation. Belief that the mutilation is required as matter of custom or standard practice, or consent of the child's parent, shall not be an affirmative defense. Performance for medical purposes, by a person licensed to practice medicine, is an affirmative defense. This portion of the act is identical to HB 1234.

SECTION 568.110 - Currently any film or photographic print professional who observes images depicting a child less than 17 engaged in sexual conduct had a duty to report to law enforcement; failure to do so is Class B misdemeanor. The act extends this duty to any computer provider, installer or repair person, or Internet service provider, and changes the age of the child involved to any child less than 18. Nothing in this section shall require a provider to monitor users or customers.

SECTION 573.010 - Defines "child" as any person less than 14, for the purposes of Chapter 573. Updates other definitions to include references to computer use.

SECTION 573.020 - Adds a provision to allow prosecution for Class D felony of promoting obscenity in the first degree, for using a computer to distribute pornographic material to minors if the defendant had knowledge that the person to which information was supplied was a minor.

SECTION 573.024 - Creates the crime of sexual exploitation of a minor, for creating child pornography or obscene material with a minor. The penalty is a Class B felony unless the minor is a child, in which case it is a Class A felony.

SECTION 573.025 - Revises crime of promoting child pornography in the first degree to include reference to computer use. The crime is a Class B felony unless the person knowingly promotes such material to a minor, in which case it is a Class A felony.

SECTION 573.030 - Revises crime of promoting pornography for minors or obscenity in the second degree to include reference to computer use.

SECTION 573.035 - Revises crime of promoting child pornography in the second degree to include



# KIDS 'N CARS™

A c a r i s N O T a t o y

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To: Senator Allen/Nancy Kirkwood

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Comments: Please call me if you have any questions. Again, I am sorry for any inconvenience this causes.

Sr Jud  
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Hello my name is Michele Struttman and this is a picture of our two-year-old son Harrison. Harrison was born February 20, 1996, our third wedding anniversary. What better present than a healthy, beautiful, baby boy? Everyone was in love with Harrison. He was the center of our universe. He loved playing with Hot Wheels, Barney, Arthur, basketball and anything to do with boats. Since Harrison loved anything involved with boats we took almost daily walks to a park that overlooked the Missouri River. That park would be the place where Harrison would lose his life.

I brought Harrison and our three nieces to Harrison's favorite park to watch boats on the Missouri River in Washington, Missouri. We thought May 30, 1998 would be no different from the literally hundred of times before, when we went to watch the boats. We were sitting on a park bench and heard a loud crash behind us. I turned, screamed for my nieces to run and lunged for Harrison. There wasn't enough time. The van grazed two of my nieces but hit Harrison and myself head on. As my arms stretched out to grab Harrison, I saw only the grill of the van.

I lost consciousness as the van drug me down a rock embankment. The van stopped when it struck a fire department boat preventing the van from plunging into the swift Missouri River. Moments later, surrounded by blood, I regained consciousness and saw my leg tangled in the tire. At that moment my life changed forever.

People frantically ran to help me. I prayed that somehow Harrison and my nieces escaped injury. I asked about Harrison but was only told he was being taken care of. I

knew I had to remain calm. I told the firemen how to contact my husband, sister and brother-in-law. From beneath the van, I counted the number of ambulances and listened for a helicopter. When I heard the helicopter, I knew the situation was critical. I was very cold from the loss of blood and had difficulty breathing.

The firemen hurriedly thought of ways to free my leg and decided to use airbags to raise the van. It was a horrifying experience but the worst pain was in not knowing the fate of our son. I repeatedly asked about Harrison but received only vague answers. After 45 minutes they freed my leg and transported me by helicopter to a hospital in St. Louis. I was told Harrison was transported to the hospital in Washington. I still had hope.

Upon arriving at the hospital I continued to ask about Harrison. A chaplain finally told me he was flown to Cardinal Glennon Children's Hospital, in St. Louis and my husband was on his way to be with him. I finally let go and cried. I knew in my heart that if Harrison was flown to Cardinal Glennon his life was in danger.

I lost a lot of blood from the multiple cuts. Severe burns seared my crushed leg. My arm was broken in several places. My doctor later told me I looked like Humpty Dumpty and he didn't know where to start to put me back together again.

After surgery I asked my husband about Harrison. He cried and couldn't tell me what happened. He kept shaking his head no. My mother had to tell me Harrison died. No



one told me earlier for fear I wouldn't fight through surgery. I kept fading in and out, reliving the nightmarish horror.

Two days later, I begged the doctors to let me go to Harrison's funeral but it was impossible. I wanted to tell him how much I loved him, how much joy he gave me and hold him one last time. I wanted to tell him how sorry I was for not protecting him from that van. As a mother I always tried to protect our son from dangerous situations. Being hit by a van in the middle of the park never entered my mind.

Slowly the shocking details unfolded. Two children (ages 2 and 3) were left unattended inside a van with the motor running while their parents stood behind the van talking to relatives. One of the children playing behind the wheel shifted the van into gear. The idle on the van, set higher than normal, caused the van to jump a curb stop and race through the park.

Weeks before Harrison's death a local storeowner had warned that mother not to leave her toddlers unattended inside a van that was running. She disregarded the advice and now we suffer the consequences.

I was initially in the hospital for three weeks. I have since undergone twelve surgeries; more surgery will be necessary. My physical loss is irreparable, but fails in comparison to the loss of Harrison. No one can understand the day-to-day emptiness of losing a child, unless it has happened to you.

The parents of the toddlers responsible for Harrison's death did not receive one citation, not even child endangerment charges for their own children. Their children would have perished in the run-away van as it headed toward the Missouri River, had it not been for a boat, bringing it to a screeching halt.

(Long pause) It is unbelievable that a person can throw a piece of trash out the car window and get a \$1000 fine and/or up to a year in jail. Someone killed our son and they didn't receive one citation.

At the time of our tragedy, Missouri did not have a law that specifically prohibited leaving children unattended in vehicles. I testified in Missouri on a bill that that would make it illegal to leave children unattended in vehicles. This bill became effective on August 28, 2000.

Currently, ten states have laws that restrict leaving children unattended in vehicles. Our mission is that each state has a law specific to the problem of leaving children unattended in vehicles.

Since our tragedy I have found hundreds of incidents where children shifted a vehicle into motion. Most of the time the car hits a lifeless object. Those people are lucky and sustain only monetary damages. We wish we were that fortunate. The ultimate nightmare has happened to us.

Punishments must be implemented. This is not about writing tickets, but about saving lives. Stop and think about the consequences.

This type of irresponsible behavior should not be tolerated. Even if a car engine is off, or the child is properly restrained it is still unsafe to leave children unattended in or around vehicles. Children are not only in danger of engaging the vehicle, but subject to abduction, carjacking, or heat exhaustion. In 2000, at least 45 children died because they were left unattended in vehicles.

Most people would not think twice to call the highway patrol if they suspected an intoxicated driver. With increased awareness and education people will understand that leaving children in or around a vehicle is just as dangerous as a drunk driver on the road. When adults leave children unattended in vehicles they are not only endangering that children but innocent people as well. Unfortunately, Harrison is a perfect example of an innocent child being killed because of another parents' negligence.

The Missouri Highway Patrol reports from 1994-1998 there were 103 injuries and 3 deaths of children under the age of six injured or killed by a driverless vehicle or driver under the age of six. Harrison is NOT included in those three deaths, because the incident took place in a park not on a roadway. The National Pediatric Trauma Registry which consists of 85 pediatric trauma hospitals across the country reports 76 incidents over the

past 10 years of children being injured because a child was left unattended in a vehicle. This report does not include deaths and should be considered a lower boundary of the actual number of incidents.

The University of California at Irvine monitored 10 hospital emergency rooms in one county in California for 24 months. They reported 9 incidents of children being injured or killed because they were left unattended in vehicles. One tragic incident is very similar to ours- A little boy age 2 was playing with his family around a campfire at a state park. Another two-year-old was in his car seat but left unattended in vehicle that was running. This little boy climbed out of his car seat and shifted the vehicle into drive. The little boy who was playing with his family around the campfire died and two adults were also injured. Two conclusions from the study were to never leave a child alone in a vehicle, under any circumstances and for product redesign.

The automotive industry also needs to take some of blame for these senseless deaths. Car manufactures need to implement safety campaigns advising consumers that they should never leave children unattended in vehicles. They advise people not place small children in the front seat if the vehicle has an airbag, but they do not warn parents about leaving children unsupervised in vehicles. Until auto manufactures modify design features that lead to injury and deaths we must warn everyone that children must NEVER be left unsupervised in vehicles.

I have uncovered over 1000 children being injured, abducted or killed because they were left unattended in vehicles. What does it take for people to wake up and understand that leaving children alone in or around a vehicle is a tragedy waiting to happen?

People leave their children unattended for various reasons...to save time, to run quick errands but **always** for their convenience. After all they will be only gone for a minute. How deadly a minute can be. Automobiles can be as lethal as a loaded weapon in the hands of a child. While most parents are cautious not to leave valuables, such as handbags or cell phones, in a vehicle, they often leave a behind something that is priceless...their child.

One death or injury because children are left unattended in or around vehicles is too many. Unfortunately, nothing can bring Harrison back, but we can make a difference for other children. **Harrison's death wasn't fate, but a preventable tragedy.** Every child has a right to be protected against being left unattended in a vehicle. How many more tragedies must occur before we protect these children?





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February 28, 2001

To: Senate Judiciary Committee  
From: James L. Germer, Executive Director  
Kansas Advocacy and Protective Services, Inc. (KAPS)  
Re: House Bill 2084 regarding competency to stand trial


I provided testimony on February 27, 2001 to this subcommittee, which requested that I provide information on the Individual Justice Plan concept that was mentioned in my testimony. You will find attached a yellow brochure which briefly describes the Individual Justice Plan or IJP. More in-depth information is also included. Essentially, an IJP is a way for the human services field and criminal justice fields to join forces to assure for the services, support, supervision and oversight an offender who has disabilities needs in order to not re-offend.

KAPS provides information and technical assistance on IJP's; presently we do not have the capacity to do them ourselves. KAPS has given advice to numerous social service agencies, including many Community Developmental Disability Organizations (CDDO's), regarding the use of justice plans as a more effective way to keep people with disabilities out of the corrections system. We could provide more specific information on their use in various areas if you wish. A future trend may well be their greater use in situations involving children in schools who are in contact with the Juvenile Justice Authority (JJA) or Courts.

An IJP which KAPS wrote in 1999 involved a teenager with mental retardation who was charged with sexual assault. KAPS worked with the CDDO, the defense attorney, the court services officer, the mental health center and the high school to develop an IJP to divert the student from the JJA. The plan wrapped services around the student that would address needs for education, employment, therapy, sex education and supervision. This plan was approved by the court and was successful in keeping the student from being incarcerated (at a high cost) as well as kept him and the community safe. With these services, this student has remained in school, held a summer job, stayed out of trouble and will graduate this May.

During testimony on February 27<sup>th</sup>, we noted that actual incidence rates needed to be studied regarding individuals without mental illness who have been found not competent to stand trial. We were made aware of three, possibly 4 such cases statewide. However, what was not touched upon and remains a critical consideration is how many of those four individuals re-offended.

Please advise if there are any questions or if any further information is needed.

  
James L. Germer, J.D.  
Executive Director

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## THE INDIVIDUAL JUSTICE PLAN

The Individual Justice Plan (IJP) is an inter-agency approach to issues that arise when an individual with mental retardation or mental illness has contact with the criminal justice system. See KAPS' *The Criminal Justice Process* brochure for information about criminal procedure. The IJP is analogous to Individual Education Plans (IEPs) used at primary and secondary schools and to Individual Program, Habilitation or Service Plans (IPPs, IHPs, ISPs) used at community developmental disabilities organizations (CDDO) and their affiliates, except that along with habilitation, avoidance of incarceration is also a goal.

This team planning approach to working with offenders with disabilities has been adopted in different localities across the United States. A Vida Publishing<sup>1</sup> set of videos thoroughly reviews this subject. Another source of information about IJPs is a book edited by Ronald W. Conley, et al.<sup>2</sup> Some essentials follow:

**Needs Assessment** In deciding what services the offender needs, the inter-agency team should address all appropriate areas, including residence, vocational, educational, social/recreational, financial, family, medical, psychological, psychiatric, advocacy, transportation and restitution. See the attached Needs Assessment

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<sup>1</sup>Finn, John W. *The Developmentally Disabled Offender: Interfacing the Criminal Justice and Human Services Systems*. Vida Publishing, 1993. {telephone (717) 786-8000}.

<sup>2</sup>*The Criminal Justice System and Mental Retardation, Defendants and Victims*. Edited by Ronald W. Conley, Ruth Luckasson, and George N. Bouthilet. Baltimore, Md.: Paul H. Brookes Publishing Company, 1992.

Summary adapted from the Lincoln, Nebraska *IJP Training Manual*. The offender must understand the plan's content and understand that he or she has the choice of whether or not the team carries out the plan.

**Division of Responsibilities between Criminal Justice and Human Services** The New York Office of Mental Retardation and Developmental Disabilities, has developed a division of responsibility for developing and carrying out an IJP. Generally, the lower the offender's functioning level and the lower the risk, the more likely that the human services system will have the primary responsibility; the higher the offender's functioning level and the higher the risk, the more likely that the criminal justice system will have primary responsibility. For many offenders who pose an intermediate risk, the criminal justice and human services system may have equal responsibility. The IJP is most appropriate where public safety does not require incarceration.

**Inter-agency coordination** In situations involving offenders with disabilities, the agencies that could be involved in the offender's rehabilitation may include the CDDO or an affiliate, Vocational Rehabilitation Services, the center for independent living, the community mental health center, Adult Protective Services, Income Support and Medical Services, Court Services, and the Probation and Parole Office. The inter-agency team should incorporate the offender's employer, clergy, family, friends and other natural supports into the IJPs where appropriate.

**Always cover the specifics and write them down** The inter-agency team must decide who will do each task, when the tasks



will be completed, and how to accomplish each task. The team should not assume anything. For example, saying that the offender will contact an agency on a certain date can cause problems for someone who does not have transportation or a telephone. Team members must specify how the offender will make contacts with the agencies. Some offenders may not have developed good scheduling habits, so the team cannot assume the offender has this trait and the team must consider contingency planning. Covering specifics, writing them down, and sending a copy of the plan to each agency or service provider also helps prevent intentional or unintentional manipulation of service providers by the offender. Everybody knows the plan's components.

All agencies involved in an IJP should work together. Agencies need to clarify philosophical differences. For example, a primary goal of the criminal justice system is to ensure that the individual does not commit more crimes; a primary goal in the human services system is to increase the individual's independence. The agencies must be aware of and discuss philosophical differences to avoid misunderstandings or working at cross-purposes.

**If problems arise** Problems should be coordinated through the probation or parole officer. For example, if the offender misses appointments or may not be fully complying with part of the plan, an inter-agency team member should contact the probation or parole officer. The probation or parole officer can deal with the issue before the offender's actions jeopardize the probation or parole.

**Client Profile** Often individuals with mental retardation or mental illness who have criminal problems are unknown to the

social services system and may appear to function at a more independent level than is the case. Offenders with mental retardation are usually male and often have mild mental retardation. Younger or higher functioning persons whose approval they seek may have influenced them. For individuals with mental illness, criminal behavior may be a product of their mental disorder, and sometimes, hallucinations or delusions may influence their actions. Individual Justice Plans work best for nonviolent offenders and those capable of changing their behavior with appropriate services; IJPs best suit offenders who are or can become motivated to change their criminal behavior.

For more information on IJPs, contact KAPS.

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INDIVIDUAL JUSTICE PLAN



## NEEDS ASSESSMENT SUMMARY

The following categories could be considered in assessing the needs of offenders with disabilities. Remember that an Individual Justice Plan (IJP) is most effective when the offender supports the plan. Therefore, helping the offender determine his or her own needs is an essential part of the process. Also remember, each offender is a unique individual and that all aspects of his or her life should be considered while developing an IJP.

Criminal History - Does the individual have any prior parole/probation periods? If so, how many and has a court terminated any of these by revocation? If so, why? Are there any prior felony or misdemeanor convictions? Are there any prior juvenile offenses? What is the present offense and were there any accomplices? Were the victims physically or financially harmed?

Residence - Is the individual living in a residential setting that meets his or her needs and is the setting appropriate for the behaviors the individual is exhibiting? Does the individual need to live in a residential facility or in his/her own house or apartment? Does the individual want to live alone or with a roommate? If the individual lives independently, is the shelter properly heated and cooled? Are the utilities hooked up? Is the shelter safe? Does the individual have necessary furnishings, such as a bed, a dresser, curtains, bed linens, furniture, appliances, etc.? Is the residence near needed services?

Vocational - Is the individual employed? What type of work has the individual done in the past and what type of work would the

individual like to be doing? Does the individual need to work part time or full time? Is the individual a candidate for vocational rehabilitation? Is work training appropriate?

Education - What level of education does the individual have? Does the individual want to continue his/her education? If the individual does not have a GED does he/she want to get one? If the individual has a high school education does he/she want to go to college? Does the individual have special study needs, such as tutoring, a structured scholastic setting, flexibility in obtaining deadlines, etc.?

Finances/Money Management - What type of income does the individual have? Does the individual receive or is the individual eligible for SSI, SSDI, HUD/AA, Food stamps, or General Assistance? Does the individual receive any income through employment? Can the individual manage finances, pay bills, and maintain a checking account? If no, what type of money management program could the team develop to help the individual? Does the individual have a guardian, conservator, or a representative payee and if not, does the individual need one? What are the individual's debts and monthly expenditures? Does the individual have any preexisting debts such as outstanding telephone or utility bills, installment debt, restitution, etc.?

Medical - Are there unaddressed medical problems or inappropriately addressed medical issues? If so, is the problem chronic or terminal? What are the diagnosis and prognosis? Is the situation likely to improve? Is the medical problem being treated and if so, how and by whom? Is there any neurological dysfunctioning? Is the individual taking any medication for physical/medical needs? If so, what is the medication and the

prescribed dosage? Are there any side effects? Should someone monitor the medication? Has a physician recently changed the medication? Does the individual have optometric needs, e.g., does the person wear glasses, contacts, etc.? Does the individual have any specific dental needs?

Psychological/Psychiatric/Counseling - Was the individual hospitalized in an inpatient psychiatric treatment facility? If so, where and when? Did the individual's psychological or psychiatric disability onset before 22 years of age? What are the diagnosis and prognosis? Who was the treating physician? Has the individual ever received out patient or any other counseling services for mental health? Is there any reason to believe that the diagnosis may be faulty or that the individual should get a second opinion? Does the individual participate in a community mental health center program? Is the individual presently on any medication for psychiatric reasons? If so, what is the medication and the prescribed dosage? How does the individual feel about taking the medication currently and in the future? Are there any side effects such as drowsiness, shakiness, etc. and does the individual take any medication to counter the side effects? Does the individual need supervision with respect to taking the medication? Is the individual on Clozaril or any other medication that needs close monitoring? Has a physician recently changed the medication and how long has the individual been taking the current medication? If the individual has received treatment or counseling for mental health, has the individual established a good, trusting relationship with a particular service provider?

Substance Abuse - Was the individual ever in an inpatient treatment facility for substance abuse? If so, where and when?

What was the individual treated for specifically? Is the individual using drugs or alcohol presently? Has the individual ever received outpatient or any other counseling services for substance abuse including AA and NA groups? Was the individual using drugs or alcohol before or at the time he or she committed the offense? Does the individual believe he/she had a substance abuse problem in the past? Currently? Has the individual's functioning ever been disrupted due to drugs or alcohol?

Cognitive and Communication Skills - Does the individual have any cognitive deficits? Does the individual have memory impairment? Is the individual able to understand, remember and follow rules? Can the individual do simple arithmetic? Does the individual have a mental retardation diagnosis? Can the individual speak in a way that other people easily understand? Can the individual read or write? How does the individual relate to others? Is the individual able to express his/her own needs to others? Is he/she able to get along with peers?

Functional Skills - What are the individual's self help and daily living skills, strengths and weaknesses? Can the individual take care of personal hygiene and cleaning/housework? Is the individual able to dress without help and does the individual possess adequate clothing for different weather conditions? Does the individual have problems sleeping through the night? Can the individual maintain a proper diet, purchase and prepare foods, and are there any specific nutritional needs? Has the individual ever received help from any agencies to do these functional skills?

Social/Recreational - Does the individual have appropriate social and recreational activities in his/her life? If not, what activities

would not only be of interest and benefit to the individual, but also address behavioral needs? Is the individual associated with any religion or church? Are there any groups or activities that would allow the individual access to friends, peers and other support? What type of hobbies does the individual have, both indoor and outdoor? Does the individual like the fine arts such as art, music, dance, etc.? Does the individual enjoy exercise, and if so, what physical activities does the individual like such as swimming, biking, basketball, etc.? Are there certain times of the day when the individual has more energy to engage in activities?

Family/Friends - If the individual has a family with whom he or she is in contact, is the interaction appropriate, and can the family aid in the development of appropriate behavior in any way? Does the individual have friends? If so, are they a good or bad influence in the individual's life? Does the individual have a guardian or advocate?

Transportation - Does the individual have problems getting transportation? Does lack of transportation interfere with the individual's services? Does the individual have a personal vehicle or access to one? Can the individual ride a bus? If so, is public transportation available where he/she lives? Does the individual have a bike or any other means of transportation? Does the individual have a driver's license and auto insurance? Would a more structured transportation program help the individual keep appointments?

Restitution - If the individual is found guilty of a crime that involves damage to property or monetary loss to the victim, the



inter-agency team should consider whether the individual should make some type of restitution to the victim, or perhaps do some type of community service. The court may require restitution.

Other Considerations - Other factors to consider when assessing an individual's needs would include asking the individual what his/her perspective on life is? What are his/her short-term and long-term goals? Also, the inter-agency team should determine whether the individual has ever received services from other agencies. If the individual has received services in the past, get the name of each agency and the names of persons with whom he/she had contact. Another consideration may be recent stressors such as a death in the family or of a close friend.

## List of Headings

Criminal History -

Residence -

Vocational -

Education -

Finances/Money Management -

Medical -

Psychological/Psychiatric/Counseling -

Substance Abuse -

Cognitive and Communication Skills -

Functional Skills -

Social/Recreational -

Family/Friends -

Transportation -

Restitution -

Other Considerations -

INDIVIDUAL JUSTICE PLAN

SERVICES SUMMARY

Name of Offender:

Home Address:

Telephone Number:

Work Address:

Telephone:

- Name of Employer/supervisor:

Name of Field Services Officer:

(Probation, Parole, Community Corrections)

Address:

Telephone Number:

Does the person have a (check all applicable):

\_\_\_\_\_ Guardian

\_\_\_\_\_ Conservator

\_\_\_\_\_ Representative Payee

Name:

Address:

Telephone Number:

Home:

Work:

Interested family members, friends, and advocates:

Name:

Address:

Telephone Number:

Home:

Work:

Name:

Address:

Telephone Number:

Home:

Work:

Services/Support Providers:

Agency Name:

Contact Person:

Address:

Telephone Number:

Reason for referral:

Services to be provided:

Anticipated outcome:

Agency Name:

Contact Person:

Address:

Telephone Number:

Reason for Referral:

Services to be provided:

Anticipated outcome:



Agency Name:  
Contact Person:  
Address:  
Telephone Number:  
Reason for Referral:

Services to be provided: -

Anticipated outcome:

Agency Name:  
Contact Person:  
Address:  
Telephone Number:  
Reason for Referral:

Services to be provided: —

Anticipated outcome:

Agency Name:

Contact Person:

Address:

Telephone Number:

Reason for Referral:

Services to be provided:

Anticipated outcome:

Informal Supports (e.g., Church, Associations, etc.)

Name:

Contact Person

Address:

Telephone Number:

Name:

Contact Person

Address:

Telephone Number:

Name:

Contact Person

Address:

Telephone Number:

Name:

Contact Person

Address:

Telephone Number:

Name:

Contact Person

Address:

Telephone Number:

Name:

Contact Person

Address:

Telephone Number:

SHAWNEE COUNTY DEPARTMENT OF CORRECTIONS  
COMMUNITY CORRECTIONS DIVISION

712 KANSAS AVENUE, SUITE 3E  
TOPEKA, KANSAS 66603

Authorization for release of information on \_\_\_\_\_.

The undersigned client authorizes \_\_\_\_\_  
to release clinical, educational, employment, military and medical  
information concerning him/her to the Shawnee County Department of  
Corrections according to the following specifications:

1. Specific information to be released:

Medical History & Exam(s) Date \_\_\_\_\_ Treatment/Supervision Data \_\_\_\_\_

Psychological/Mental Health \_\_\_\_\_ Other (Specify) \_\_\_\_\_

Diagnostic Date including Psychological Assessment \_\_\_\_\_

2. The information pertains to:

Ongoing supervision of client placed on probation \_\_\_\_\_

Other (Specify) \_\_\_\_\_

Referral of the client to Community Corrections \_\_\_\_\_

3. The information may be communicated to the Department of  
Corrections and Affiliates in the following manner:

Oral \_\_\_\_\_ Written \_\_\_\_\_ Other \_\_\_\_\_

4. This consent to disclosure may be revoked by me at any time except to

the extent that action has been taken to comply with it (as per Sub. Part C-2.31 (G) Chapter 1 C.F.R.)

This consent (unless expressly revoked earlier) expires \_\_\_\_\_

(Specify date, event, or condition which it will expire.)

Signature of Client

Date

Typed Name

Address

Signature of Guardian (if necessary)

Witness

Date



GRETA H. GOODWIN  
 SENATOR, 32ND DISTRICT  
 COWLEY AND SUMNER COUNTIES

STATE CAPITOL BUILDING  
 ROOM 403-N  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7381  
 420 E. 12TH AVE  
 WINFIELD, KANSAS 67156  
 (316) 221-9058  
 e-mail: ggoodwin@ink.org



TOPEKA

SENATE CHAMBER

53  
2-28-01  
att 4

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER:  
 JUDICIARY  
 CORRECTIONS/JUVENILE JUSTICE  
 STATE BUILDING CONSTRUCTION

MEMBER: ASSESSMENT AND TAXATION  
 TRANSPORTATION  
 KANSAS SENTENCING COMMISSION  
 STATE CAPITOL RESTORATION  
 HEALTH CARE STABILIZATION FUND  
 LEGISLATIVE OVERSIGHT  
 JUDICIAL COUNCIL JUVENILE OFFENDER/  
 CHILD IN NEED OF CARE ADVISORY  
 JUDICIAL COUNCIL PROBATE LAW  
 ADVISORY

**SENATE JUDICIARY COMMITTEE**  
**TESTIMONY SUPPORTING SENATE BILL 263**  
**February 28, 2001**

Chairman Vratil and Members of the Committee:

I offer the following in support of the passage of Senate Bill 263, which calls for an expansion of the collections to be taken from all persons convicted of person felonies, as well as the additional crimes set out in the Offender Registration Act. Kansas law currently has limited provisions for the collections of specimens of fingerprints, blood and saliva from certain persons (K.S.A. 21-2511).

To expand the current pool of convicted offenders who must have a blood sample drawn for purposes of DNA identification analysis is handing a much needed tool to our Criminal Justice and Corrections System. Creating an expanded DNA data bank bears a rational relationship to the public's interest in enabling law enforcement to better identify convicted violent and sex offenders who are involved in unsolved crimes, who escape to reoffend, and who reoffend after release.

Weekly we are seeing additional states introducing new bills to expand the DNA collection issue to more efficiently provide justice in their courts. As of last week, there have been 73 offender DNA database expansion bills introduced in 30 states for the 2001 legislative session. Of those bills, 37 were introduced in 20 states to expand DNA testing to include all felons. This past week Minnesota, Rhode Island and Washington introduced new bills which would expand their state databases which would require DNA samples from all convicted felons. Arkansas, Missouri, Oklahoma and Rhode Island introduced bills to expand their databases by a more limited number of offenders. Wisconsin officials are beginning to collect DNA samples from all incarcerated felons. "Cold" cases in Pennsylvania and Indiana were solved recently through the use of new DNA testing. Men in Alabama and Massachusetts have been exonerated as rape suspects after DNA tests prove they could not have been the perpetrators. A DNA sample has identified a murder suspect in Florida. Florida, Texas, Ohio, Texas and Utah have introduced or passed Post Conviction bills. I believe with the passage of SB 263, perpetrators of crime in our state will more likely be prosecuted and convicted.

The credibility and integrity of criminal justice systems are under scrutiny in many states. I believe the expansion of the DNA database as called for in SB 263 will help crack unsolved crimes, identify serial offenders and convict the guilty, as well as help wrongful convictions from occurring by the adoption of the proposed amendment. I urge the passage of Senate Bill 263, as amended.

*In Jud*  
2-28-01  
att 4

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(913) 226-9612  
SenatorAdkins@aol.com



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TOPEKA, KANSAS 66612  
(785) 296-7369  
adkins@senate.state.ks.us

SENATOR DAVID ADKINS

**Testimony before the Senate Committee on Judiciary  
Senate Bill 263  
Wednesday, February 28, 2001**

Chairman Vratil and Fellow Committee Members:

I appreciate this opportunity to appear before you in support of Senate Bill 263 which I believe, if enacted, would significantly enhance public safety in Kansas. The bill expands the types of offenses for which those convicted would be required to submit a DNA sample. The technological advances in crime investigation and the ability to positively identify a suspect as a result of DNA evidence provide us with a significant new tool for law enforcement. Kansas should take full advantage of this valuable asset in fighting crime.

With the passage of SB 263 Kansas would join many other states that have chosen to expand their DNA databases to include samples from those convicted of a wide spectrum of crimes. The bill as currently written would require individuals convicted of a person felony or a crime for which they would be required to register in the offender registry to submit a saliva or blood sample to a DNA database. The expense of building this database will be offset largely as a result of federal funding that is now available.

I believe enacting SB 263 will cost effectively help prevent more crimes, solve more crimes and in some instances help to exonerate more innocent people than current law. These are all important public policy outcomes that we should embrace with the support and enactment of SB 263.

Attached to my testimony I am providing you with a number of items that have appeared in the press which I hope will provide you with more information on how expanding DNA databases has been shown to enhance public safety.

I appreciate your willingness to conduct a public hearing on this bill and I urge your favorable consideration of SB 263.

Respectfully submitted,

*David Adkins*

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# Benefits of Expanding Criminal DNA Databases

Most states have enacted legislation requiring the collection of DNA samples from violent criminals. Once a sample has been collected, it is profiled and entered into secure state and federal databases. These databases are an irreplaceable investigation tool for law enforcement. When law enforcement obtains DNA from a crime scene, the DNA is compared against the state and federal databases. If the crime scene DNA matches a profile in the DNA database, then law enforcement has a suspect.

Recently, state legislators throughout the country have questioned why the DNA databases of violent offenders are not being expanded to include all convicted offenders. This comes as some U.S. states and foreign countries have discovered that expanding DNA databases beyond violent criminals could double the chances of matching a suspect against the state and federal databases.

Expanding the state databases to include all convicted offenders would have several benefits: First, more crimes would be solved; second, more crimes would be prevented; third, more innocent people would be exonerated; and lastly, society would realize greater cost-efficiencies:

1. **Solve crimes** – DNA collection from all convicted felons, rather than just sex offenders and serious violent crimes, would result in a monumental amount of violent crimes being solved. Statistics show that as many as half of the criminals that commit violent crimes have non-violent criminal histories (see Virginia and Great Britain study). Therefore, offenders who are required to submit DNA when convicted of non-violent felonies will be identified as they leave DNA behind at a rape and murder scenes. *If a state takes DNA from violent offenders only, the likelihood of solving a particular rape or murder are reduced by 50%.*
2. **Prevent crimes** - Solving a crime -- and solving it quickly -- has a direct effect on preventing additional crimes by the same perpetrator. An offender who is not apprehended in a timely manner remains free to commit more crimes. For example, according to a study completed by the National Institute of Justice (US Department of Justice) the average rapist commits 8-12 sexual assaults. If law enforcement could immediately apprehend the rapist after the first sexual offense, *then a minimum of 7 rapes would be prevented per offender.* When considering that *as many as half* of all violent criminals have a prior conviction for a non-violent crime, it becomes evident that expanding DNA database requirements to all convicted felons would significantly impact the number and frequency of rapes and other repeat violent crimes in this country.
3. **Exonerate the innocent** - Increasing the DNA database to those convicted of non-violent offenses would reduce the occurrence of innocent people who are wrongly suspected, arrested and convicted of crimes they did not commit. Two common scenarios exemplify how a larger DNA database protects such innocent people:
  - *The guilty party is in the database* – Imagine that strong circumstantial evidence leads law enforcement to suspect an innocent person of a crime. An analysis of DNA evidence from the crime scene identifies someone else as the true perpetrator when it is matched against profiles in the state's database. The innocent person is dismissed as a suspect and the true perpetrator is arrested.
  - *The innocent party is in the database* – Imagine a situation where law enforcement has DNA from a crime scene that they know belongs to the true perpetrator. Now imagine that law enforcement has identified a probable suspect, but does not have enough cause to obtain a warrant for a DNA sample from the suspect. If this suspect's profile was already in the database due to a previous non-violent conviction, law enforcement could automatically check the database and subsequently eliminate the person as a suspect. This would reduce an immeasurable amount of needless embarrassment and stress brought upon innocent persons wrongly suspected of committing horrible crimes.
4. **Cost Efficiencies** – According to a study completed by the National Institute of Justice (U.S. Department of Justice) rape is the costliest crime in America with victim costs totaling \$127 billion. The study estimated that when all factors are considered (including medical and mental health care, lost productivity and decreases in the quality of life) the estimated cost of rape *per victim* is \$87,000. If the average rapist commits 8 rapes, but a DNA databank stops the offender half way through his spree, then 4 rapes are prevented at a savings of \$348,000. We know that the federal DNA database system has matched crime scene evidence to a database profile on at least 100 sexual assault cases. If we assume that just 25% of these offenders would have committed only one more rape each, a minimum of \$2.17 million in savings would be realized.

***virginia produces 20 "cold hits" from its DNA database in the first two months of 2000.***

*The Plain Dealer, February 29, 2000.*

***HEADLINE: "Criminals can't hide from DNA." New York City police believe DNA database will help them catch scores of violent criminals, who have a recidivism rate of 40% to 50%.***

*Daily News (New York, February 17, 2000.*

***Florida gets cold hit on an unsolved murder from offender in the DNA database for a lewd behavior conviction.***

*Sun-Sentinel (Ft. Lauderdale), March 5, 2000*

***Two separate rapists are trapped by DNA when old evidence is compared against the state's DNA database.***

*Sun-Sentinel (Ft. Lauderdale), March 5, 2000*

***HEADLINE: "DNA Bust Gives Hope to Officials." Inmate at Sing Sing is nabbed for a 1979 murder through a "cold hit" in the DNA database.***

*Daily News (New York), March 14, 2000.*

***Unsolved rape from 1993 is put to rest when Georgia's DNA database matches crime scene evidence to an offender in jail for five other rapes.***

*The Atlanta Journal and Constitution, March 17, 2000.*

***Arkansas gets "cold hit" from a hair sample recovered from the scene of a burglary. DNA extracted from the hair matched a sample from an offender registered in the state's DNA database.***

*The Arkansas Democrat-Gazette, April 8, 2000.*

***The FBI's CODIS makes a "cold hit" linking a Florida resident to a 1995 murder in Iowa.***

*The Associated Press State & Local Wire, April 25, 2000.*

***California's DNA database leads to arrests when three "cold hits" are made on previously unidentified rapists and murderers.***

*The Los Angeles Times*



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## Kansas Bureau of Investigation

Larry Welch  
*Director*

TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
JANE E. NOHR, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SB 263  
FEBRUARY 28, 2001

Carla J. Stovall  
*Attorney General*

Mr. Chairman and Members of the Committee:

I am Jane Nohr, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI), and appear today with Sindy Schueler, Director of our DNA laboratory division in support of SB 263.

The KBI administers the DNA Databank which is an invaluable tool to law enforcement in investigating murders, rapes and other serious violent offenses. DNA is sometimes referred to as genetic fingerprinting. While there are problems with that comparison, I think it is a useful illustration when considering today's bill. We are all familiar through movies and television of the use of fingerprints, a characteristic unique to each individual. By recovering fingerprints at a crime scene, perpetrators are frequently identified and brought to justice.

DNA found in blood, seminal fluid, hair and even saliva is also found at crimes, frequently violent crime scenes. Just like having the fingerprints on file for comparison, having the DNA on file for comparison of a person previously convicted can quickly identify a perpetrator and lead to their arrest before more murders and rapes may occur. Matches made among profiles can link crime scenes together that otherwise appear to be totally independent offenses. It is particularly useful in cases of serial offenders such as rapists and murderers.

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SB 263 substantially enhances the DNA Databank by expanding its coverage to include all persons convicted of person felonies and those additional crimes contained in the Offender Registration Act. Fingerprints are obviously collected on all cases, felony and misdemeanor, and at the arrest stage. The DNA exemplars are only collected after conviction.

Six states have expanded their DNA database laws to include all convicted felonies, which would be even broader than SB 263. Given national statistics showing a 63% recidivist rate for offenders, one can understand why having such a database can be very useful to law enforcement in identifying perpetrators of new offenses. By passage of SB 263, the citizens of Kansas, and especially the victims, will know that there will be a greater chance of the perpetrators being brought to justice.

The provisions of SB 263, by expanding the coverage to all person felonies would increase the collection of samples by approximately 2,500 individuals each year. Besides the good news of increased effectiveness of the databank and the ability of law enforcement to catch criminals, the really good news is that there is federal grant money available to pay for the entire cost of collecting and analyzing these samples. We have been in contact with the National Institute of Justice and feel that we would qualify for the grant if this legislation were passed.

On behalf of Director Larry Welch of the KBI, and indeed, both law enforcement and victims in the state of Kansas, we urge passage of SB 263.

We would like to take this opportunity to bring up two possible amendments. First, as set out in Attachment A, Director Welch believes that the powerful tool of forensic DNA should be used to seek justice. That includes freeing the innocent as well as convicting the guilty. There has been considerable media coverage on a few cases around the country where persons were wrongfully convicted of offenses before DNA technology was available and the evolution of that



technology has resulted in their freedom. While those of you involved in the appropriations process realize how limited our resources are in the laboratory, we would like to recommend the adoption of the amendment described in Attachment A, which will provide for a mechanism that persons convicted for the most serious offenses, i.e. murder and rape, could petition the court for post-conviction analysis to be conducted by the KBI. If the defendant is indigent, the state of Kansas would bear the cost of the analysis. We believe that every safeguard is currently employed to assure the validity of the conviction, that if we have the wrong person in prison, we believe it is incumbent on all of us to take what steps we can to assure that justice is done.

The second amendment we would like the committee to consider addresses another problem that is arising across the country, that being where typically a rapist is identified through the use of the DNA database, however the hit made by the DNA match occurs long after the crime has occurred and prosecution is banned by the statute of limitations. The statute of limitations was a creature of common law in the Middle Ages when few people could write and cases needed to be brought while memories were still fresh. Given the scientific reliability of DNA testing, not to mention the use of video tape depositions, etc., it seems unjust that a person having committed a violent rape should go free merely due to the passage of time.

Some states such as Florida, have responded to this problem by repealing the statute of limitations for sex offenses. In California, due to the campaigning of a victim whose offender went free due to this anomaly, they set up a specific statute of limitations for cases where there is DNA evidence. Attachment B is an adoption by the Kansas Revisor's Office of that California statute, which essentially provides that sexually violent offenses may be brought within ten years of the commission of the offense or one year from the date on which the identity of the suspect is

conclusively established by DNA testing, whichever is later. There are restrictions compelling the timely examination of DNA samples being collected which are based on California backlogs.

If everything goes according to plan through federal grants, we should not have any DNA backlog in Kansas after July of this year. While not every case may still brought years later due to the death of witnesses or victims, or the lapses of memory or lost evidence, passage of this amendment would allow prosecutors in the appropriate case to punish those persons who have clearly committed some of the most violent offenses against another human being.

Again, as in our First Amendment, it is justice that the innocent be freed and the guilty incarcerated. Thank you for your consideration. Sindy Schueler and I would be happy to answer any of your questions.

Attachment A

New Sec. 3. (a) Notwithstanding any other provision of law, a person in state custody, at any time after conviction for murder as defined by K.S.A. 21-3401 and 21-3402; or rape as defined by K.S.A. 21-3502; may petition the court that entered the judgement for forensic DNA testing (deoxyribonucleic acid testing ) of any biological material that:

- (1) Is related to the investigation or prosecution that resulted in the conviction;
- (2) is in the actual or constructive possession of the state; and
- (3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(b) (1) The court shall notify the prosecuting attorney of a petition made under subsection (a) and shall afford the prosecuting attorney an opportunity to respond.

(2) Upon receiving notice of a petition made under subsection (a), the prosecuting attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

(c) The court shall order DNA testing pursuant to a petition made under subsection (a) upon a determination that testing may produce non-cumulative, exculpatory evidence relevant to the claim of the petitioner that the petitioner was wrongfully convicted or sentenced.

(d) The cost of DNA testing ordered under subsection (c) shall be borne by the state or the petitioner, as the court may order in the interests of justice, if it is shown that the petitioner is not indigent and possessed the means to pay.

(e) The court may at any time appoint counsel for an indigent applicant under this section.

(f) (1) If the results of DNA testing conducted under this section are unfavorable to the petitioner, the court:

(A) Shall dismiss the petition; and

(B) in the case of a petitioner who is not indigent, may assess the petitioner for the cost of such testing.

(2) If the results of DNA testing conducted under this section are favorable to the petitioner, the court shall:

(A) order a hearing, notwithstanding any provision of law that would bar such a hearing; and

(B) enter any order that serves the interests of justice, including, but not limited to, an order;

(i) Vacating and setting aside the judgment;

(ii) discharging the petitioner if the petitioner is in custody;

(iii) resentencing the petitioner; or

(iv) granting a new trial.

(g) Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other postconviction relief under any other provision of law.

Sec. 4 K.S.A. 2000 Supp. 21-2511 and 21-3106 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Attachment B

Sec. 2. K.S.A. 2000 Supp. 21-3106 is hereby amended to read as follows: 21-3106. (1) A prosecution for murder may be commenced at any time.

(2) Except as provided by ~~subsection~~ *subsections (7) and (8)*, a prosecution for any of the following crimes must be commenced within five years after its commission if the victim is less than 16 years of age: (a) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (b) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-3516; and amendments thereto; or (g) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto.

(3) Except as provided in subsection (8), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(4) Except as provided by subsection (8), a prosecution for rape as defined in K.S.A. 21-3502 and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must be commenced within five years after its commission.

(5) Except as provided in subsection (8), a prosecution for any crime found in the Kansas medicaid fraud control act must be commenced within five years after its commission.

(6) Except as provided by subsection (8), a prosecution for the crime of arson, as defined in K.S.A. 21-3718 and amendments thereto, or aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto, must be commenced within five years after its commission.

(7) *(a) Except as provided in subsection (8), and notwithstanding any other limitation of time provided by law, a prosecution for any offense provided in subsection (2) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, where the limitations period has not expired as of July 1, 2001, or the offense is committed on or after July 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later. The one-year period from the establishment of the identity of the suspect shall only apply when either of the following conditions is met:*

*(i) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004; and*

*(ii) for an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.*

*(b) In the event the conditions set forth in subsection (7)(a)(i) or (7)(a)(ii) are not met, a prosecution for any offense provided in subsection (2) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, where the limitations period provided in this section has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.*

*(c) For purposes of this section, "DNA" means deoxyribonucleic acid.*

(8) Except as provided by subsection (8), a prosecution for any crime not governed by subsections (1), (2), (3), (4), (5) ~~and~~, (6) *and* (7) must be commenced within two years after it is committed.

~~(8)~~ (9) The period within which a prosecution must be commenced shall not include any period in which:

- (a) The accused is absent from the state;
- (b) the accused is concealed within the state so that process cannot be served upon the accused;
- (c) the fact of the crime is concealed;
- (d) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;
- (e) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or
- (f) whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. "Parent or other legal authority" shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

~~(9)~~(10) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

~~(10)~~ (11) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.



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UNITED AGAINST VIOLENCE

**KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE**

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

Senate Judiciary Committee Hearing  
**Senate Bill 263**  
February 28, 2001

Chairman Vratil and Members of the Committee:

The Kansas coalition Against Sexual and Domestic Violence supports SB 263.

Less than 40% of sexual assaults and rapes are reported each year. Some studies have suggested that only 10% of these crimes are reported to law enforcement. Significantly fewer are ever prosecuted and even fewer result in convictions. Successful prosecution of rape cases requires that the perpetrator be clearly identified and strong forensic evidence is available.

We have made large strides forward in forensic evidence collection. Uniform rape kits have been available in Kansas for many years, three years ago the Kansas Sexual Assault Network, a project of the Wichita Area Sexual Assault Center, began a statewide training project to help communities develop Sexual Assault Nurse Examiner and Sexual Assault Response Teams. The goal of these projects is to assist medical facilities collect the best forensic evidence possible while supporting victims through the criminal justice system and their healing process, which enhances the outcome of prosecution.

What has not changed is the trauma a victim must endure after her rape when she allows evidence to be collected. A victim may not shower or urinate, she must undress in a room while others are present, she must undergo a detailed and intimate examination -- even taking pubic hair samples. It is sometimes many hours before a victim is able to shower.

*All the progress we have made in forensic evidence collection and the extreme trauma of the victim is for naught if the perpetrator cannot be identified.*

Rapists have more often than not engaged in other criminal activities. SB 263 would allow DNA collection for person crime offences, providing a readily available data-bank of identifiers to compare evidence collected from rape crimes. Although I don't believe that SB 263 will result in hundreds of rapists being identified and successfully prosecuted each year, it may be the only way a rapist is identified in some cases. Since we know that rapists repeat these crimes (an old Kansas survey of convicted rapists suggested as many of sixty-seven times before being caught), the result could still be significant.

Therefore, KCSDV strongly supports SB 263.

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RON THORNBURGH  
Secretary of State



First Floor, Memorial Hall  
120 SW 10th Ave.  
Topeka, KS 66612-1594  
(785) 296-4564

## STATE OF KANSAS

TO: Sen. Vratil  
FROM: Brad Bryant, Elections Division  
DATE: February 16, 2001  
RE: SB 128--election crimes bill

During the Feb. 12 Senate Judiciary Committee hearing on SB 128, the Secretary of State's election crimes bill, committee members asked: (1) if the definition of "advance voting site" could be clarified in the bill, and (2) whether the bill could be amended to allow bumper stickers on cars temporarily parked at voting sites.

We drafted some language and gave it to Gordon Self. He used it to produce the attached balloon.

Please note:

1. The amended language in Sec. 4 on page 1 merely restructures the sentence. It has the same effect as the original language, in our opinion.
2. The first balloon on page 2 makes an exception for bumper stickers.
3. The second balloon on page 2 clarifies the term "advance voting site" by referring to K.S.A. 25-1122(c), which is the advance voting statute that defines it. This should address Sen. Adkins' concern that the bill might apply to someone's kitchen table when they're voting an advance ballot received by mail.

We hope this new language will resolve committee members' concerns and that you will give SB 128 further consideration in your committee.

Our legal counsel, Melissa Wangemann, is out of the office for a few days. I may be reached at 296-4559.

Thank you.

*Sen. Vratil*  
*2-28-01*  
*att 8*

# SENATE BILL No. 128

By Committee on Elections and Local Government

1-25

9 AN ACT concerning election crimes; amending K.S.A. 25-2415 and 25-  
10 2430 and repealing the existing sections.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) Voter registration suppression is knowingly: (1)  
14 Destroying any application for voter registration signed by a person pur-  
15 suant to K.S.A. 25-2309, and amendments thereto, (2) obstructing the  
16 delivery of any such signed application to the county election officer or  
17 the chief state election official, or (3) failing to deliver any such application  
18 to the appropriate county election officer or the chief state election official  
19 as required by law.

20 (b) Voter registration suppression is a severity level 10, nonperson  
21 felony.

22 New Sec. 2. (a) Vote trading is exchanging or offering to exchange a  
23 vote with the intent to affect the fair expression of the popular will at any  
24 election. Vote trading occurs when a person agrees to vote for or against  
25 a candidate or question in return for another voter agreeing to vote for  
26 or against a different candidate or question.

27 (b) Vote trading is a severity level 7, nonperson felony.

28 Sec. 3. K.S.A. 25-2415 is hereby amended to read as follows: 25-  
29 2415. (a) Intimidation of voters is: (1) intimidating, threatening, coercing  
30 or attempting to intimidate, threaten, or coerce any person for the pur-  
31 pose of interfering with the right of such person to vote or to vote as he  
32 may choose, or of causing such person to vote for, or not to vote for, any  
33 candidate for any office or question submitted at any election; or

34 (2) mailing, publishing, broadcasting, telephoning or transmitting by  
35 any means false information intended to keep one or more voters from  
36 casting a ballot or applying for or returning an advance voting ballot.

37 (b) Intimidation of voters is a class A misdemeanor or severity level 7,  
38 nonperson felony.

39 Sec. 4. K.S.A. 25-2430 is hereby amended to read as follows: 25-  
40 2430. (a) Electioneering at polling places is ~~No person shall~~ knowingly  
41 perform any act of electioneering on election day within any polling place,  
42 or advance voting site during the time period allowed by law for casting  
43 a ballot by advance voting or within a radius of two hundred fifty (250)

Electioneering is  
attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicate support or opposition to a question submitted election  
on election day

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8-3

1 250 feet from the entrance thereof. As used in this section, electioneering  
 2 means an attempt to persuade or influence by any means, eligible voters,  
 3 to vote for or against a particular candidate, party or question submitted.  
 4 *The actions prohibited by this section shall include, but not be limited to,*  
 5 *distributing, wearing or in any way exhibiting signs, posters, stickers,*  
 6 *labels and other materials that clearly identify a candidate in the election*  
 7 *or clearly indicate support or opposition to a question submitted.*

8 (b) Electioneering at polling places is a class C misdemeanor.

9 Sec. 5. K.S.A. 25-2415 and 25-2430 are hereby repealed.

10 Sec. 6. This act shall take effect and be in force from and after its  
 11 publication in the statute book.

Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting

As used in this section, advance voting site means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto.

(c)