

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 31, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Representative Pat Colloton
Kyle Smith, Kansas Bureau of Investigation
Sheriff Mike Keating, Hamilton County
Sheriff Frank Denning, Johnson County
Gary Howell, Johnson County Laboratory Director
Representative Judy Morrison
Eric Rucker, Office of Attorney General
Kyle Smith, Kansas Bureau of Investigations
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence

Representative Yoder requested a bill that would extend the sunset provision on immunity for civil liability for anhydrous ammonia by 3 years. He made the motion to have his request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Chairman O'Neal opened the hearing on **HB 2554 - collection of DNA specimens for persons arrested of person felony or drug severity level 1-2.**

Representative Pat Colloton appeared as the sponsor of the proposed bill which would provide for the taking of DNA at the time of booking for those arrested for violent crimes and felonies. The results would be entered into a statewide DNA database maintained by the Kansas Bureau of Investigation (KBI). Currently, there are five other states that provide for the collection of DNA at the time of an arrest. She noted that the fiscal note was rather large but has understood that the KBI had requested a federal grant that would help the database be in place by 2007. (Attachment 1)

She requested a balloon amendment which would:

- strike "an oral sample" on page 1, line 32 and replace with "or an oral or other biological sample authorized by the KBI
- if the court determines that there was not probable cause for the arrest, they shall send a copy of the determination to the KBI and the KBI shall remove the specimen or sample from their database.
- the KBI shall also provide all specimen vials, mailing tubes, labels and instructions for collecting oral or other biological samples

Sheriff Frank Denning, Johnson County, appeared as a proponent to the bill. A DNA database would provide a powerful tool to identify perpetrators of crimes and hold them accountable for their actions. (Attachment 2)

Gary Howell, Johnson County Laboratory Director, cited that studies show the chance of lifting identifiable latent prints from a handgun is less than 10% while the chance of getting enough DNA from a swabbing of the trigger and hammer are over 30% . (Attachment 3)

Sheriff Mike Keating, Hamilton County, supported the proposed bill because it would organize and increase in the capturing of offenders. DNA is a persons signature, more so than fingerprints. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 31, 2006 in Room 313-S of the Capitol.

Kyle Smith, Kansas Bureau of Investigation, suggested that the bill would move identification into the next generation and that it is easier to collect DNA than it is to get a good set of fingerprints. The DNA program has mostly been funded by Federal grants and the State has only contributed a small amount. He was concerned that the federal resources would not be available in the future and stressed the need for the state to start picking up more financial responsibility. He also stressed that the KBI is short of office space and would need to acquire additional space if the proposed bill passed. ([Attachment 5](#))

While he supported Representative Colloton's balloon he requested two additional amendments:

- change the effective date to July 1, 2007
- amend page 4, line 25 so that in the event a person's DNA sample is lost or not adequate, the person shall provide another sample for analysis

Committee discussion centered on whether the DNA results would be expunged if the individual was found not guilty. It was pointed out that the state currently does not expunge fingerprints and wasn't sure what the difference was since both are ways to identify a person.

The hearing on **HB 2554** was closed.

The hearing on **HB 2626 - missing persons and unidentified persons and human remains, reporting and investigation of,** was opened.

Representative Judy Morrison appeared as the sponsor of the bill, which was based on the President's DNA initiatives. ([Attachment 6](#))

Eric Rucker, Office of Attorney General, commented that according to the National Crime Information Center there were at least 5,639 unidentified deceased persons last year.

Gary Howell, Johnson County Laboratory Director, stated that the bill would assist law enforcement with investigations of crimes and hopefully close many cases. ([Attachment 7](#))

Kyle Smith, Kansas Bureau of Investigations, explained that all states provide missing and unidentified persons information to NCIC. The addition of DNA analysis and comparison between missing and unidentified persons would improve the matching of those individuals. In Kansas, as of January 2006, 537 persons were listed in KBI's repository as missing. The majority of these are children under the age of 18. ([Attachment 8](#))

Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence, was concerned with law enforcement providing the abuser information where the missing person resides and requested the bill be clarified that the only information an abuser can receive is that the missing person was found, not where they are residing. ([Attachment 9](#))

The hearing on **HB 2626** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on February 1, 2006 in room 313-S.

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PAT COLLOTON
28TH DISTRICT

Hon. Mike O'Neal
Chairman, House Judiciary Committee
State Capitol
Topeka, KS66212

Re: House Bill 2554

Dear Chairman O'Neal and distinguished members of the Judiciary Committee:

I am going to present an overview of this bill. Johnson County Sheriff Frank Denning and Gary Howell, Crime Lab Director of Johnson County, and Sheriff Mike Keating of Hamilton County are going to speak about the importance of this bill to law enforcement. The Deputy Director of the KBI, Kyle Smith, is going to take us through the changes to the current DNA statute that are incorporated in this bill.

Under current law DNA is taken from convicted felons in Kansas and put into a database maintained by the KBI. All 50 states take DNA and the procedures for taking, storing and recording DNA have been coordinated by the federal government through the CODIS system (Combined DNA Index System) since 1990. It is very important to understand that what is extracted, identified and recorded from the DNA molecule is simply 13 neutral points on the molecule. They show nothing about the person's gender, race, medical conditions or anything else. They do however make identification absolutely certain. The constitutionality of taking DNA for identification has been tried in the courts. The federal Circuit Courts of Appeal have upheld it (including the 10th Circuit – ours) and the Kansas Supreme Court has twice upheld it in Kansas v. Martinez, 276 Kan. 527 (2003) and State v. Maass, 275 Kan. 328 (2003). The way we now take and record DNA from convicted felons is constitutional and the same procedures will be followed under this bill.

House Bill 2554 provides for taking DNA at the time of booking for those arrested for violent crimes and other felonies and entering this into the statewide DNA database maintained by the Kansas Bureau of Investigation. The DNA will be collected by an oral cheek swab and the effective date of the legislation is Jan. 1, 2007 which is when the KBI will have installed the equipment to record this data. During Phase 1 of the legislation, Jan 2007 through July 2008, DNA will be taken only from those arrested for violent crimes, person felonies, and level 1 and 2 narcotic violations. During Phase 2,

House Judiciary

Date 1-31-06

Attachment # 1

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after July 2008, DNA will be taken for all felony arrests except those for DUI which are excluded from the statute. There are five states that currently provide for collection of DNA at the time of arrest. Other states are considering it and there is a bill in Congress to provide for it at the federal level. This is probably the most important law we can pass to prevent all kinds of violent crime and to save our citizens from the harm done by sexual predators.

The best way I can illustrate the importance of this bill and what this bill is intended to do is with two hypothetical examples. The first shows what happens under current law and the second under the proposed legislation.

Let's assume that an individual here in Kansas commits a violent sex crime today- he rapes and batters a young girl. We know from law enforcement authorities that there is a high probability that the perpetrator will leave DNA evidence at the crime scene. Under the current laws in Kansas, if this individual has previously been convicted of a felony, then his DNA will be in our database. If, however, he has been charged but pleaded to a lesser offense or is awaiting prosecution, then his DNA is not in our database and we must rely on routine police work to catch him when he commits further crimes. We can only hope that someday, through other means, he is arrested, charged and convicted of a felony. Then, probably a year or a number of years later, we will take his DNA sample and connect him to today's crime. But, think about what might happen in the meantime? How many crimes, particularly other sexual assaults against women, has he committed?

Now let's see what might happen under our proposal. Let's assume that this same individual is arrested the next month for a felony narcotics crime or a battery to women crime or a robbery. We know that there is a correlation between crimes of this nature and sexual assaults. Under our bill, the police, at time of arrest, would use a swab to take a simple swipe of the inside of the individual's mouth. This DNA sample would go into our database and the resulting match will lead to an immediate charge for today's crime. The key to our bill is not just solving crimes but, perhaps of even more importance, getting sexual predators and other violent criminals off the streets before they can commit other similar crimes and harm innocent Kansans. How many Kansas women will be spared the horror of a sexual assault by simply using a swab to take a quick DNA sample at the time of arrest? This bill is as much about prevention of crime as it is the timely and efficient prosecution of past and future crimes.

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Although the primary purpose of this bill to provide for DNA at the time of arrest for violent criminals, it also has several provisions relating to the current law on taking DNA from convicted felons. It provides for improved technology, makes some additions requested by the KBI, and follows the model DNA statute developed by the FBI in providing a funding mechanism for the DNA database that will partially offset the cost of the taking this DNA.

The fiscal note for Phase 1 is \$518,000 which includes start up costs of \$310,000 and thereafter it will cost \$208,000 per year. For Phase 2, after July1, 2008, the fiscal note includes \$220,000 of start-up costs and thereafter it will cost \$650,000 per year. The database fee could generate as much as \$272,000 per year in Phase I and \$729,300 per year in Phase II but, particularly for Phase 1, it will likely generate a small percentage of this amount. Nevertheless it will be an offset for these costs.

We believe that the cost of taking DNA at the time of arrest will be offset by the reduced cost of routine police work made unnecessary because DNA evidence will be available. Also, the federal government is providing additional grant money for states who expand DNA to include arrest. However, prevention of harm to Kansans is the most important savings of all.

Respectfully submitted,

Pat Colloton

State Representative Pat Colloton



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Kevin Cavanaugh
Undersheriff

To: Chairperson O'Neal, Vice-chairperson Kinzer, and distinguished members of the House Judiciary Committee.

From: Frank P. Denning, Sheriff

Date: January 31, 2006

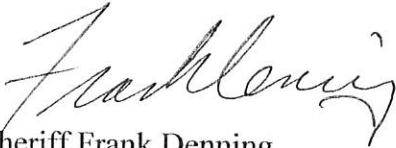
Chairperson O'Neal and Committee Members,

My name is Frank Denning and I am the Sheriff of Johnson County Kansas. I appear before you today in support of House Bill No. 2554. Thank you for allowing me the opportunity to offer testimony on this important bill.

The advancements in DNA analysis have yielded a powerful tool that the criminal justice system uses to identify perpetrators of crimes, and hold them accountable for their criminal conduct. Most of us have read about or heard of crimes being solved through the proper collection of DNA evidence left at the scene of a crime. Having the ability to compare that DNA evidence against a large database of known offenders increases the likelihood of a successful investigation.

Criminals re-offend. As much as we would like to think otherwise, few criminals stop their illegal activities after their convictions and confinements are over. Felons have chosen to commit the most serious offenses in our society, and law enforcement has a duty and obligation to protect our communities from these individuals. House Bill No. 2554 enhances our ability to identify felons by enlarging the DNA database that currently exists.

I encourage you to support this important piece of legislation, and provide adequate financial support to the Kansas Bureau of Investigation to ensure an effective implementation. I am confident that as a result of this legislation, law enforcement will solve more crimes and make our communities safer as a result. I am happy to stand for any questions that you may have regarding my testimony.


Sheriff Frank Denning

House Judiciary

Date 1-31-06
Attachment # 2



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To: Chairperson O'Neal, Vice-chairperson Kinzer, and distinguished members of the House Judiciary Committee.

From: Gary R. Howell, Johnson County Criminalistics Laboratory Director


Date: January 31, 2006

Ref: HB 2554 - DNA

Chairperson O'Neal and Committee Members,

DNA technology has become the most important crime fighting tool ever developed. Criminal justice agencies are just starting to see the potential. The FBI has developed the technology that is being standardized around the world. This technology is based upon typing "hyper variable" regions from 14 separate chromosomes. These markers were all selected from non coding segments of human DNA. One can gain no personal information about an individual from any of these markers. Protecting individual privacy was an essential quality in the selection of these markers. The combination of these markers from the 14 chromosomes is millions of times more than enough to identify an individual.

DNA technology has also been developed so that very small quantities can be amplified and identified. This has made the technology very powerful on crime scene samples especially on violent crimes where there is an excellent chance that there is a transfer of biological materials. DNA can be amplified from blood, semen, saliva, vaginal fluids, hair, tissue, and perspiration. Because of incredible power of the technology to amplify and identify DNA it is being utilized more and more at crime scenes. Studies show that the chance of lifting an identifiable latent print from a handgun at a crime scene is less than 10%. Recent studies have shown the chances of getting enough identifiable DNA from a swabbing of the trigger and hammer of a handgun are over 30%. Getting DNA from the crime scene is half the problem. There has to be an adequate database so the perpetrator can be identified.


Gary R. Howell
Director

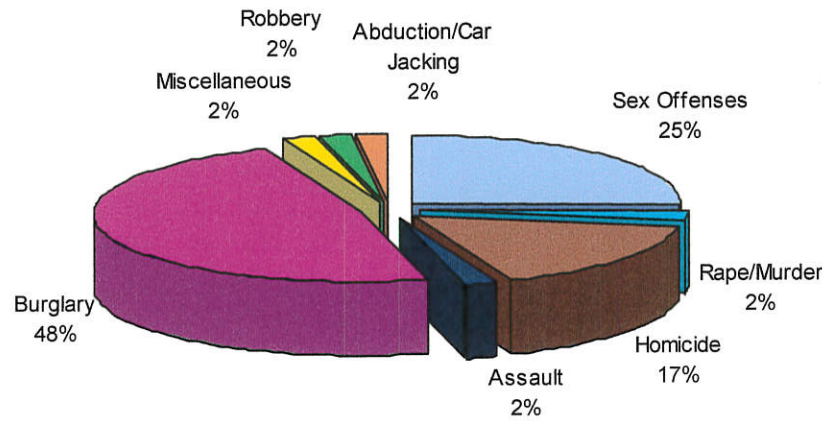
House Judiciary

Date 1-31-06

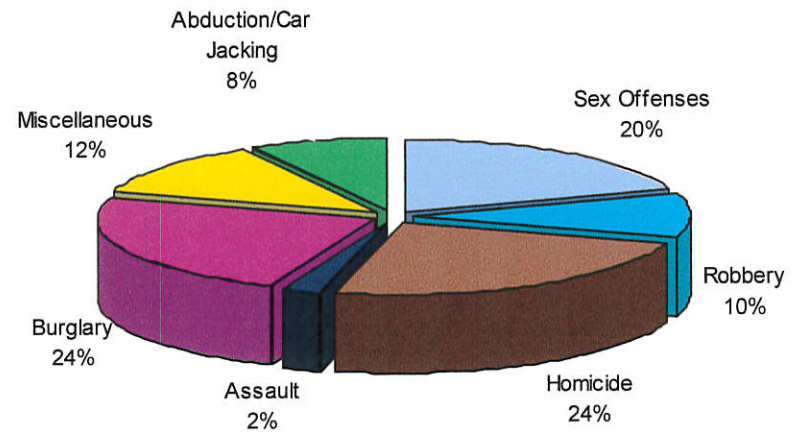
Attachment # 3

Virginia's "Cold Hits" on the DNA Database

Forgery to Type of Crime Solved



All Drug Offenders to Type of Crime Solved



Testimony of:

Sheriff Mike Keating
Hamilton County Sheriff's Office
Syracuse, Kansas

Chairman O'Neal, Members of the Judiciary Committee

My name is Mike Keating and I am the Sheriff of Hamilton County. I am appearing in support of House Bill #2554. By amending the existing statute, the DNA database of known offenders would be expanded, and increase the probability of solving felony persons and drug crimes.

I believe it is important to amend Kansas Law to include the oral sample in these cases. First, DNA is similar to a fingerprint. No two people have the same DNA signature. Secondly, persons who commit crimes that include: Criminal Sodomy, Lewd and Lascivious Behavior, and Sexual Battery pose a serious risk of re-offending. In many cases where a fingerprint is not obtained, DNA samples are more easily available to the investigator. Thirdly, a well maintained database greatly assists law enforcement in matters of more rapidly being able to bring suspects into custody as well as assists with providing prosecutors with firm evidence in prosecuting defendants.

DNA collection is no more intrusive than the obtaining of fingerprints and photographs because it is left by human beings everywhere they go. It can be found in discarded cigarette filters, pillow cases, sheets, and the like. There is no privacy issue when the material is easily obtained just by living life. The bill provides for the proper obtaining and custody of the samples, the protection of the privacy of the persons from whom the samples are obtained, and allows law enforcement to utilize the samples as a tool to assist in the development of probable cause for future criminal acts.

On behalf of the people I serve, I request the Judiciary Committee support House Bill #2554 in its attempt to protect the public from these types of criminals. I would be happy to answer any questions you might have.

Sheriff Mike Keating
Hamilton County Sheriff's Office
Syracuse, Kansas

House Judiciary

Date 1-31-06

Attachment # 4



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
Before the House Judiciary Committee
In Support of HB 2554
Kyle Smith, Deputy Director
Kansas Bureau of Investigation
January 31, 2006

Chairman O'Neal and Members of the Committee:

I am pleased to appear on behalf of Director Larry Welch and the Kansas Bureau of Investigation (KBI) in support of HB 2554. This bill moves fingerprinting into the 21st Century. As you have heard, essentially this legislation would require the collection of an oral swab whenever a person is convicted of a pre-requisite crime. The swab would be used to collect DNA identifiers on that individual and then be placed into the CODIS Data Bank. As in the case of fingerprints, which are also taken when a person is booked into jail, the oral swabs would provide a precise means of identification and, like fingerprints, be compared to known fingerprints in an effort to identify the person to other cases and other crimes.

The bottom line is that by not waiting for conviction, these identifiers can be run at an earlier stage of the proceedings, thus possibly identifying a suspect sooner. The main benefit is that we would catch criminal sooner, resulting in their arrest, and thus preventing the tragedy of criminal victimization - as normally when we are talking DNA evidence, the suspect is involved in serious crimes such as sexual assault and murder.

The KBI is obviously supportive of this legislation. The KBI is also keenly aware that DNA is a high profile forensic science and one growing in demand. That demand has rapidly outstripped our capabilities to timely provide DNA evidence to the law enforcement community. As such, we are supportive of the legislation, but that support is conditioned upon sufficient resources being dedicated so that the KBI can promptly and properly carry out our current duties and the current demand, and also produce results on these new cases in a timely manner.

With regard to the legislation itself, a quick review of the provisions might be helpful:

Section 1 is a rewrite of K.S.A. 21-2511, existing law dealing with the DNA Data Bank. The first change you will note on page 1 and on page 2 down to line 28, is that we are broadening the language from specimens of blood and saliva to include other biological samples or specimens as authorized by the KBI. You may be aware that DNA can be obtained from skin cells, hair follicles, and, as this science continues to develop, it wouldn't surprise me that we will soon be able to collect DNA from the very fingerprints themselves. As such, the statute should be amended to broaden and authorize biological samples other than traditional blood and saliva.

House Judiciary

On page 2, line 33 to the end, is the main thrust of the bill, sub-paragraph (e)(1) requires the collection of biological specimens or samples at the time a person is booked, for any person felony or drug severity level I or II felony. The balloon amendment offered by Representative Colloton starts this process on January 1, 2007. For reasons I will go in to shortly, we were asking the committee to consider delaying the implementation of this legislation to July 1, 2007, an additional 6 months.

Sub-paragraph (e)(2) would be the second phase of this legislation which would expand the collection of DNA booked into all felonies as of July 1, 2008, with the exception of felony DUI's.

On page 3, the top paragraph explains that the collection of DNA samples would only be required if the person was not already in our database.

Representative Colloton's amendment on page 3, replacing sub-paragraph (4) at line 9, creates a process whereby, if a court later determines there was not probable cause for the arrest, a copy of that court determination would be forwarded to the KBI and we would be mandated to "forthwith" remove such specimen and sample from the investigative records.

Sub-paragraph (g) in the balloon would make it clear that the instructions, vials and mailing would be at the expense of the Kansas Bureau of Investigation. This is, of course, subject to appropriations.

At the bottom of page 3, again starts new language that the DNA records obtained can *only* be used for law enforcement purposes or in the case of identification of human remains or missing persons. Sub-paragraph (b) on page 4, line 9, provides for expungement in case of a dismissal or acquittal. Sub-paragraph (j) authorizes the KBI to contract for third party laboratories to assist in this process. However, any such third party contractors would be subject to the same restrictions and requirements.

After some discussion we also decided to remove section (k) on the use of improper entries on page 4 as unnecessary and merely restating current law. If a person's DNA were to match him to 2 rapes and a murder, that information could still be used as the basis for the new investigation, as this is not a 4th amendment seizure, but merely an administrative procedure for identification.

The final part of Section 1 would be to make it a Class A non-person misdemeanor for the person who is required to provide a DNA specimen to knowingly refuse to do so. I might add that we have had inmates in prison respectfully decline to provide samples under the current law, and, while we appreciate their exercise of freewill, we have gone ahead and taken those samples anyway. Using the swab technique of this bill would make that a lot easier and safer.

New Section 2 establishes a DNA data base fee fund. The purpose is to require a \$100 fee to be collected from anyone *convicted*, whose DNA samples are required to be taken under Section 1 of the bill. As a practical matter, particularly during the first phase of this legislation where we are dealing with person felonies and level I and II drug offenses, the vast majority of those individuals are going to be incarcerated and as such unlikely to pay the \$100 fee.

When the legislation evolves into all felons, the vast majority of felons do get, in fact, probation, and we expect a collection rate of 15%-30%, based on our experience with the laboratory fee fund.

As to the fiscal note, a modification, downwards, has been made to the original fiscal note as we have gotten better figures as to the number of arrestees who would be subject to this law. Our original fiscal note was based on the total number of arrests, but we failed to take into account that a certain percentage of those individuals would already be in the DNA Data Bank and would not be required to be tested again. Also, our conviction rate was unrealistically small, approximately 10%, based on what records in the KBI system had been automated. The disparity occurred because KBI records are not automated until a request is made by a law enforcement agency for a record. As such, any journal entry or conviction is not entered until that time.

As mentioned above, our concern is the DNA program has been almost entirely operated on federal grants, that source of funding cannot be relied upon in the future. The last several federal budgets have severely limited federal grants. We expect that trend to continue. The need for state general funds to operate this key portion of the criminal justice system is substantial and growing. With the addition of the responsibilities in HB 2554, that need would be even greater.

As most of you are aware, the KBI is critically short of space. We did request and receive one additional DNA scientist in our budget request. However, the only reason we requested just one is that we could only squeeze one more scientist into our existing space. We need more but there is no room. Without additional room, it is going to be very difficult for us to implement the provisions of HB 2554. We will do our best but without additional room, there may well be increased delays and backlogs. If HB 2554 passes with no additional space, we will do our best to carry it out, but since we have no place left to put any more scientists (or agents or registered offender technicians or anyone else), it will be extremely difficult to carry out this provision without increasing a backlog somewhere else in the DNA system.

The KBI is working with the Building and the Appropriations Committees to resolve this chronic space issue and either through renovation of the second floor of the Great Bend Lab or another a possibility that has recently come to our attention. So there is hope that we will finally have a solution to offer to the legislation this year.

We would request two amendments. First, in order to give us time to possibly deal with these space issues and the conversion to swabs instead of blood, we are requesting that on page 2, line 33, the provisions of this act not be effective until **July 1, 2007**. This will give us time to explore these other space options and make whatever renovations are necessary so the DNA program can be operated on the basis that the law enforcement and public deserve.

Second, other states utilizing swabs have found it necessary to sometimes retake samples due to insufficient cells being collected or lost samples. Therefore we would like to add the following language at page 4, line 25 at the beginning of what would be the new subsection (k): ***In the event that a person's DNA sample is lost or not adequate for any reason, the person shall provide another sample for analysis.***

Thank you for your time and attention. I would be happy to answer any questions.

JUDY MORRISON
 REPRESENTATIVE, 23RD DISTRICT
 REPRESENTING MERRIAM
 AND PART OF SHAWNEE
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TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE-CHAIR: TOURISM & PARKS
 MEMBER: FEDERAL & STATE AFFAIRS
 UTILITIES

January 31, 2006

To: The Honorable Representative Michael O'Neil, Chairman
 Member of the House Judiciary Committee

Mr. Chairman and Members of the Committee:

My name is Representative Judy Morrison of the 23rd District. I am here today to request your favorable consideration of **House Bill 2626**.

As President Bush stated, "The events of September 11, 2001, demonstrated on a national scale the potential for anguish when the remains of a missing person go unidentified."

After the World Trade Center fell more than four years ago, rescue workers spent months searching for and identifying remains of the victims. The importance and necessity of DNA collection and cataloging became all too evident.

As legislators we stand committed to serving our constituents; this includes identifying policies and practices that will allow law enforcement agencies, like our own Kansas Bureau of Investigation (KBI), to use every available tool—including DNA—in solving missing persons' cases.

While terrorist attacks may not happen every day in our country, kidnaping, abductions, murders, and natural disasters, like Hurricane Katrina or the unpredictable tornadoes that hit close to home, do. They happen in every state, in many communities; they happen in Kansas. If your child had been missing for three months and you suddenly received a phone call saying a body had been found and it might be your daughter, how long would you be willing to wait for a positive identification to be made?

It is time that we empower our agencies and law enforcement officials with all of the resources they need to share information so that we can bring some sense of closure to those families who have had loved ones taken from them. We must improve the ability of law enforcement to locate and return the remains of missing persons, identify persons and inform and notify family members of missing persons in a timely manner.

It is so important that we implement legislation that allows our law enforcement agencies to foster and enable collaboration across geographic jurisdictions and individual fields of expertise. Please help our law enforcement officials do a better job by supporting this critical legislation before you today.

House Judiciary

Date 1-31-06
 Attachment # 6



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Kevin Cavanaugh
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To: Chairperson O'Neal, Vice-chairperson Kinzer, and distinguished members of the House Judiciary Committee.

From: Gary R. Howell, Johnson County Criminalistics Laboratory Director

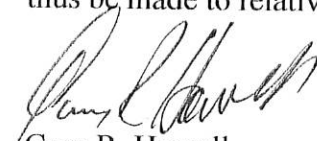
Date: January 31, 2006

Ref: HB – 2626

Chairperson O'Neal and Committee Members,

We support HB2626. This bill will assist law enforcement with their investigation of many crimes against persons. This legislation closes some serious loopholes and oversights concerning the responsibility, timing, and reporting of important investigative information.

The bill also assures that new powerful DNA technology is utilized. This technology can provide position identification information on even the smallest fragments of a skeleton. The DNA can be searched against known standards of relatives and can be entered into the huge national DNA database Combined DNA Index System (CODIS). Linkages can thus be made to relatives or skeletal remains in other states.


Gary R. Howell
Director

House Judiciary

Date 1-31-06

Attachment # 7



Kansas Bureau of Investigation

Larry Welch
Director

House Judiciary Committee

Phill Kline
Attorney General

Testimony in Support of HB 2626

Kyle G. Smith, Deputy Director and
Vicky Harris, Missing Persons Clearinghouse Manager
Kansas Bureau of Investigation
January 31, 2006

Chairman O'Neal and Members of the Committee,

We appreciate the chance to address you today in support of HB 2626, a needed revision of our missing person statutes. Rep. Morrison approached the KBI with the concerns that the department of homeland security had raised regarding the adequacy of the various states' legislation in identifying human remains. The department of justice had prepared some model legislation, which we looked at but then decided that we could incorporate the issues within the existing framework of the Kansas missing persons provisions. HB 2626 is the result of our collaboration.

Current Kansas statutes requires law enforcement officials in the state to immediately enter information on individuals reported missing, as well as information on located unidentified deceased persons, into NCIC, a national database maintained by the Federal Bureau of Investigation (FBI). This information is also electronically captured and maintained at the Kansas Bureau of Investigation (KBI), which serves as the state's central repository for missing and unidentified persons. Additional follow-up information such as dental characteristics, scars, marks, tattoos, jewelry, is expected to be entered in the NCIC database at the earliest possible time by law enforcement. In the near future, law enforcement officials will attempt to obtain additional comparison data, such as DNA samples from family members and/or from the missing person. The DNA samples will be submitted to the KBI for analysis, and information relevant to the FBI's Violent Criminal Apprehension Program (VICAP) will soon be entered into that database by the KBI.

All states currently provide missing and unidentified person information to NCIC. Each night, the FBI's system electronically compares the missing person files to the unidentified files. By comparing similar fields, such as height, weight, age, dental characteristics, etc., the FBI system generates possible matches and electronically notifies both law enforcement agencies that entered the missing person and the unidentified person, that there is a possible match between the two records, and additional communication between the two agencies may be warranted. While dental information

House Judiciary

is very helpful, too few law enforcement agencies enter this information into the NCIC routinely. The addition of DNA analysis and comparison between missing persons and unidentified will greatly improve the matching of unidentified persons and individuals reported as missing.

As of January 26, 2006, there were 537 persons listed in NCIC/KBI's central repository as missing in Kansas. The majority of these, 426, are children under the age of 18, vulnerable and at a high risk of being harmed and exploited. Fifty of those 537 missing individuals, have been reported missing five years or longer. Kansas authorities have also located 21 unidentified deceased persons and entered their information into NCIC, dating as far back as 1973. Efforts to identify these individuals through cross matching of the NCIC missing person file have, to date, been unsuccessful. It is very possible that some of those individuals reported missing have been entered into NCIC as an unidentified person, however, there is not enough information to definitely identify the individual.

HB 2626 addresses these issues in several ways. Section one expands the mission of that KBI missing person system to clearly include unidentified persons and human remains. Section 2 updates the statute to remove references to this just being for missing kids so it would apply to all missing persons. It also sets out the duties of the law enforcement agencies, the KBI and sets out time frames to get the initial report, follow up reports and data entry done to ensure prompt handling of these cases. New section three is taken from the model act and creates a legal obligation on all legal guardians and custodians to report a missing person within 2 hours, and if located, let law enforcement know that within 24 hours. There are no sanctions to this obligation. Section 4 is also new and mandates the reception and entering of reports regarding unidentified persons or human remains. It also sets out the procedure and duties for handling remains and when (If not identified, after 30 days) DNA testing will be obtained and submitted. Again this is to clarify duties and procedures for tying together the missing and the unidentified. Section 5 broadens the KBI's duties in running the missing persons clearinghouse by including missing persons (not just children) and unidentified human remains.

HB 2626 is not a pleasant topic, but it could be an important one. This bill will aid in the timely collection and sharing of relevant information on missing and unidentified persons. We'd appreciate your serious consideration.

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House Bill 2626
January 31, 2006

Chairman O'Neal and Members of the House Judiciary Committee;

After reviewing HB 2626, KCSDV is concerned about victims of domestic violence and sexual assault who may be fleeing for their safety. Abusers are extremely adept at figuring out how to get the system to help them locate their victims. Even twenty-five years ago when I first became an advocate on behalf of victims at a domestic violence shelter we received calls from the law enforcement agency looking for someone who an abuser had reported as missing. We had an arrangement with law enforcement that we would notify them if there were no longer any need to look for the reported person because we could verify they were safe. The law enforcement agency would report to the abuser only that they had reason to believe the missing person was safe but their location was unknown. HB 2626 would compromise these arrangements between community sexual assault and domestic violence programs and their local law enforcement agencies. KCSDV believes the amendment below will not alter the intent of HB 2626, but will allow an exception to information sharing when it is in the safety interests of victims.

Insert on page 2, line 40

(c) The law enforcement agency investigating the report shall not give information to the reporting party if the law enforcement agency has reason to believe the missing person is an adult or an emancipated minor and is staying at or has made contact with a domestic violence or sexual assault program or the missing person is an adult or emancipated minor and does not expressly consent to the release of this information.

Submitted by,

Sandy Barnett
Executive Director