

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on March 7, 2006, in Room 123-S of the Capitol.

All members were present,

Barbara Allen arrived, 9:40 a.m.
Les Donovan arrived, 9:42 a.m.
Terry Bruce arrived, 9:45 a.m.
Donald Betts arrived, 9:49 a.m.
David Haley arrived, 9:56 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Charles Branson, Douglas County District Attorney
Representative Virgil Peck, Jr.
Jared S. Maag, Deputy Attorney General, Criminal Litigation Division
Lt. Ron Rooks, Detective, Montgomery County Sheriff's Office
Representative Pat Colloton
Frank Denning, Sheriff, Johnson County
Gary R. Howell, Criminalistics Laboratory Director, Johnson County
Mike Keating, Sheriff, Hamilton County
Jane Nohr, General Counsel & Assistant Attorney General, Kansas Bureau of Investigation
James W. Clark, Legislative Counsel, Kansas Bar Association

Others attending:

See attached list.

The hearing on **HB 2701--Definition of drug paraphernalia** was opened.

Charles Branson appeared as a proponent and provided background on the bill (Attachment 1). Mr. Branson indicated the focus would be on retailers to stop distribution of paraphernalia packaged to circumvent current law.

There being no further conferees, the hearing on **HB 2701** was closed.

The hearing on **HB 2414--Penalties for battery against a law enforcement officer and aggravated battery against a law enforcement officer** was opened.

Representative Peck appeared in support providing background on **HB 2414** which would change penalties regarding battery against a law enforcement officer (Attachment 2).

Jared Maag spoke as a proponent indicating that the Attorney General favors legal consequences to reflect the nature of the act committed (Attachment 3).

Lt. Ron Rooks appeared as a proponent stating that the wrong message is sent when criminals are allowed to disrespect the law or its enforcers with minor repercussions (Attachment 4). Lt. Rooks also voiced concern that continuation of allowing abuse of law enforcement will reflect on the ability to recruit adequate personnel.

There being no further conferees, the hearing on **HB 2414** was closed.

The hearing on **HB 2554--Effective through June 30, 2008, DNA specimens collected if arrested for person felony or drug severity level 1 or 2; after July 1, 2008, DNA collected for all felonies; probable cause for arrest; destroyed if acquitted** was opened.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 7, 2006, in Room 123-S of the Capitol.

Representative Pat Colloton appeared in support providing an overview of the bill ([Attachment 5](#)).

Frank Denning spoke in support indicating enactment of **HB 2554** will provide an additional tool to the criminal justice system to identify perpetrators of crimes ([Attachment 6](#)).

Gary Howell presented testimony in support of the bill providing an explanation of DNA technology as used by law enforcement agencies ([Attachment 7](#)). Mr. Howell also presented information on Virginia's success with DNA testing.

Mike Keating appeared in support and relayed details of a crime in which DNA would have been the only evidence had the victim not survived ([Attachment 8](#)). He indicated that the creation of a DNA database would increase the probability of solving felony and drug crimes and that sexual offenders pose a serious risk of re-offending.

Jane Nohr spoke in support stating that establishment of the DNA database will be an invaluable tool for law enforcement ([Attachment 9](#)). Ms. Nohr requested three amendments. The first would add the word "database" to Section 4, page 3, line 26 to read "Kansas bureau of investigation database records". The second would add a new subsection at the end of Section 1, page 5, line 19, to read: "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". The third is represented in Representative Colloton's balloon which removed Section 5.

Jim Clark appeared in opposition indicating concern regarding DNA collection prior to a judicial determination of probable cause. Mr. Clark also voiced concern that collection should not be made where an arrest is made without a warrant ([Attachment 10](#)).

Written testimony in support of **HB 2554** was submitted by:
William C. Blundell, Sheriff, Labette County ([Attachment 11](#))

There being no further conferees, the hearing on **HB 2554** was closed.

The Chairman indicated that **HB 2554** would be worked on Monday, March 13.

The meeting adjourned at 10:33 a.m. The next scheduled meeting is March 8, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 7 MARCH 2005

NAME	REPRESENTING
JARED MAAG	ATTY GEN.
Charles Brown	Dy Co. D.A.
LANN WILSON	OTJA
Erin Donnan	Rep. Paul Davis
Ron Rooks	REP PECK
DIANE DURKAT	REP PECK
Bob Keller	JCSO
KEVIN CAVANAUGH	JOHNSON COUNTY S.O.
Natalie Aikson	Kansas Sentencing Comm
Brenda Herman	" " "
Patricia Buggs	" " "
Jimmy Dickson	Class Ltd
Shirley Douglas	Hein Law Firm
Jenny Alderson	Break Through Club
Jeff Bottenbore	Kansas Sheriff's Assn
KEVIN GRAHAM	A.G.
Kyle Kersh	STCS
Lynne Bodle	interested civilian

Testimony in support of House Bill No. 2701

By Charles Branson, Douglas County District Attorney

Committee on Judiciary

March 7, 2006

Mister and Madame Senator:

Several convenience stores in our State are currently selling novelty items on their checkout shelves that are used for the ingestion of illegal substances. These items are in the form of glass tubes in various shapes that contain a small fabric rose on a wire. By the simple act of removing the fabric rose, the glass container is transformed in to a smoking pipe for crack cocaine or methamphetamine.

The purpose of this amendment is to add to the factors that can be considered in making a determination if an item is drug paraphernalia. K.S.A. 65-4151 provides factors to consider when determining whether an item is drug paraphernalia. Those factors currently include the following:

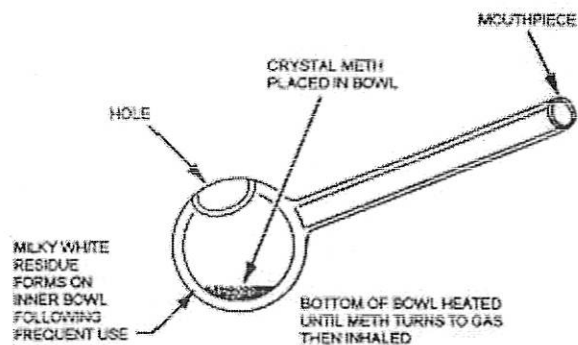
- (a) Statements by an owner or person in control of the object concerning its use.
- (b) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.
- (c) The proximity of the object, in time and space, to a direct violation of the uniform controlled substances act.
- (d) The proximity of the object to controlled substances.
- (e) The existence of any residue of controlled substances on the object.
- (f) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of the uniform controlled substances act.

The innocence of an owner or person in control of the object as to a direct violation of the uniform controlled substances act shall not prevent a finding that the object is intended for use as drug paraphernalia.

- (g) Oral or written instructions provided with the object concerning its use.
- (h) Descriptive materials accompanying the object which explain or depict its use.
- (i) National and local advertising concerning the object's use.
- (j) The manner in which the object is displayed for sale.
- (k) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products.
- (l) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (m) The existence and scope of legitimate uses for the object in the community.
- (n) Expert testimony concerning the object's use.

The additional language under this proposed amendment is designed to make illegal items that are packaged in such a way that the packaging, but for the product contained to be sold inside, would be illegal to possess otherwise.

Currently, the argument is that if the product has some 'legitimate purpose' then it cannot be considered paraphernalia. The current statute does not have the ability to look beyond the ruse of 'legitimate purpose' to determine if the packing of the product serves any purpose other than to house the product for sale. An example 'rose' container is shown below.



STATE OF KANSAS

VIRGIL PECK, JR.

REPRESENTATIVE, DISTRICT 11
Box 251
TYRO, KANSAS 67364



STATE CAPITOL - RM 427-S
TOPEKA, KANSAS 66612-1504
(785) 296-7655
peck@house.state.ks.us

HOUSE OF REPRESENTATIVES

Testimony Regarding HB 2414
March 7, 2006

Mr. Chairman and Committee members, I'm privileged to stand before you this morning, and thank you for the opportunity.

I was approached in December 2004 by Sergeant Stephen Shook of the Cherryvale Police Department regarding an incident he had while performing his duties as a police officer.

While responding to a call of a domestic dispute, Sergeant Shook was attacked/battered by one of the parties involved in the dispute. After the arrest was made, Sergeant Shook charged the suspect with four counts of battery, but the maximum penalty under current statute is a misdemeanor. Sergeant Shook felt that a misdemeanor charge for this incident was only a "slap of the wrist," when it actually called for a much harsher charge.

Under current statute, it is a felony when battery is committed against a state correctional officer, juvenile correctional officer, juvenile detention facility officer, city or county correctional officer and even a university or campus police officer. Meanwhile, battery committed against a uniformed or properly identified state, county or city law enforcement officer is a class A person misdemeanor. These officers are the guys out on the street, the first line of defense between law abiding citizens and the criminal element. Those, who in my opinion, are most at risk of battery.

I fear we are sending the wrong message to our officers on the street, since we don't provide the same penalty when they are battered, as we do when other law enforcement officers are battered. For this reason, I sponsored the bill.

At my request, the House Judiciary Committee amended HB 2414 so that battery, defined as intentionally causing physical contact with another person when done in a rude, insulting or angry manner against a law enforcement officer, would remain a class A person misdemeanor. I requested this because when I had the bill drafted, I was not aware of the broad definition of battery.

Battery defined as intentionally or recklessly causing bodily harm to a properly identified law enforcement officer would become a severity level 5 person felony. Aggravated battery against a law enforcement officer would be raised from a severity level 6 person felony to a severity level 4 person felony.

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Attachment 2

I realize making battery of all law enforcement officers a felony possibly creates a need for additional bed space. But, I feel it is important for us to do what we can to give Law Enforcement Officers a tool to help reduce the likelihood of being battered by those who refuse to show them the proper respect.

Thank you for your consideration and I will be happy to stand for questions at the appropriate time.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

March 7, 2006

TESTIMONY

BEFORE THE SENATE JUDICIARY COMMITTEE

JARED S. MAAG, DEPUTY ATTORNEY GENERAL

CRIMINAL LITIGATION DIVISION

OFFICE OF THE KANSAS ATTORNEY GENERAL, PHILL KLINE

CONCERNING HOUSE BILL No. 2414

Chairman Vratil and Members of the Committee:

On behalf of Attorney General Phill Kline, I appreciate the opportunity to present testimony to the committee in reference to HB 2414.

As the committee is aware, HB 2414 is drafted to strengthen penalties against those who would seek to do harm to Kansas law enforcement officers as well as simplify the language defining those officers which are subject to the statute.

Supplemental Note on HB 2414 more than aptly describes the amendments in this matter and I will add only that the amendments provide for a more well-defined statute.

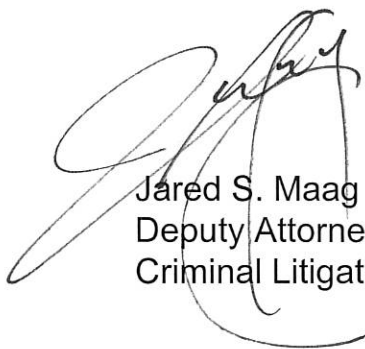
From a policy standpoint, it is important that all legal consequences reflect the nature of the act committed, which is particularly true here. An individual's decision to harm a readily identifiable law enforcement officer must bear a serious result. HB 2414 amends the law to establish a proper punishment for what has to be considered one of the most serious crimes under Kansas law.

The men and women who put aside their own self-interests and dawn the badge to protect and serve the citizens of this State deserve the respect of the law in the event that they are attacked. This bill takes an important step in strengthening that respect.

On behalf of the Attorney General, I urge the committee pass favorably upon this bill.

Respectfully,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

A handwritten signature in black ink, appearing to read 'Jared S. Maag', is written over the typed name and title.

Jared S. Maag
Deputy Attorney General
Criminal Litigation Division

Detective Lt. Ron Rooks
Montgomery County Sheriff's Office
300 East Main
Independence, Kansas 67301

Mr. Chairman and Committee Members:

Good morning, and thank you for allowing me the time to express my support for House Bill No. 2414.

My Name is Ron Rooks, Detective Lt. from the Montgomery County Sheriff's Office. My Law Enforcement career spans 24 years as of March of this year. My responsibilities have included duties associated with positions from Street Officer to Chief of Police of two cities leading me to my present position of Detective Lt. of my agency.

My concern today is that if we continue to allow criminals to disrespect the Law Enforcement Officer and the Lawmakers by sending the message that disrespecting the law and it's enforcers only carries minor repercussions, we will convey the message that brutality is only a minor concern of us all. I have learned during my career that respect earns respect and if those of us in the capacity to protect and serve individuals in our communities are not given the support to promote non-violent interventions to solve community conflict we will in-fact be promoting violent behaviors.

Another concern I have at this time is that if we allow criminals to abuse the Law Enforcement personnel, it will eventually be difficult for our profession to attract responsible and respected individuals who will dedicate themselves to upholding and enforcing the laws of the land made by our distinguished lawmakers.

I have read the amended Bill as it reads now. I wish to thank those members of the House for their efforts in addressing this matter and feel they have reached an appropriate compromise. It is encouraging to those of us in Law Enforcement to be supported by government at a time when violence and violent crimes are on the rise.

We as enforcers of the law and you as lawmakers can make a difference to individuals and communities by passing House Bill No. 2414.

I again thank you for allowing me your time to express my support of House Bill No. 2414.

Sincerely,

Detective Lt. Ron Rooks

Senate Judiciary

3-7-06

Attachment 4

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

DOCKING STATE OFFICE BUILDING
7TH FLOOR
TOPEKA, KS 66612
(785) 296-7631
colloton@house.state.ks.us



2513 W. 118TH STREET
LEAWOOD, KANSAS 66211
(913) 339-9246
pat@patcolloton.com

PAT COLLOTON
28TH DISTRICT

Senator John Vratil
Chairman, Senate Judiciary Committee
Room 281, State Capitol
Topeka, Kansas 66612

Re: House Bill 2554

Dear Senator Vratil and distinguished members of the Senate Judiciary Committee:

I am going to present an over view of this bill, Johnson County Sheriff Frank Denning and Gary Howell, Crime Lab Director of Johnson County, Sheriff Mike Keating of Hamilton County and Sheriff William Blundell of Labette County are going to speak about the importance of this bill to law enforcement. Then the Legal Council of the KBI, Jane Nohr, is going to wrap up our presentation.

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 has 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 sex, gender, medical condition 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 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 1 through July 2008, DNA will be taken only from those arrested for violent crimes, person felonies, and Level 1 and 2

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Attachment 5

narcotic violations. In Phase 2, after July 2008, DNA will be taken for all felony arrests. There are five states who currently provide for collection of DNA at the time of arrest and booking. 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 and booking, would use a swab to take a simple swipe 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 Kansans will be spared the horror of a sexual assault by simply using a swab to take a quick DNA sample at the time of booking. This bill is as much about prevention of crimes as it is the timely and efficient prosecution for past and future crimes.

Although the primary purpose of this bill to provide for DNA at the time of arrest and booking 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 July 1, 2008, the fiscal note includes \$200,000 of start-up costs and thereafter it will cost \$650,000. The database fee could generate as much as \$272,000 per year in Phase 1 and \$729,300 per year in Phase II but 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 and booking will be offset by the reduced cost of routing police work made unnecessary because DNA evidence will be available. Also, the federal government is providing additional grant money for states who expand their DNA database to include arrests. However, prevention of harm to Kansans is the most important savings of all.

Respectfully submitted,

Pat Colloton

State Representative Pat Colloton



OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

Frank Denning
Sheriff

Telephone
913-791-5800

Fax
913-791-5806

David Burger
Undersheriff

Kevin Cavanaugh
Undersheriff

To: Chairperson Vratil, Vice-chairperson Bruce, and distinguished members of the Senate Judiciary Committee.

From: Frank P. Denning, Sheriff

Date: March 07, 2006

Chairperson Vratil 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

Senate Judiciary

3-7-06

Attachment 6



OFFICE OF THE
Johnson County Sheriff

Courthouse
125 N. Cherry
Olathe, Kansas 66061

Frank Denning
Sheriff

Telephone
913-791-5800

Fax
913-791-5806

David Burger
Undersheriff

Kevin Cavanaugh
Undersheriff

To: Chairperson Vratil, Vice-chairperson Bruce, and distinguished members of the Senate Judiciary Committee.

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

Date: March 07, 2006

Ref: HB 2554 - DNA

Chairperson Vratil 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

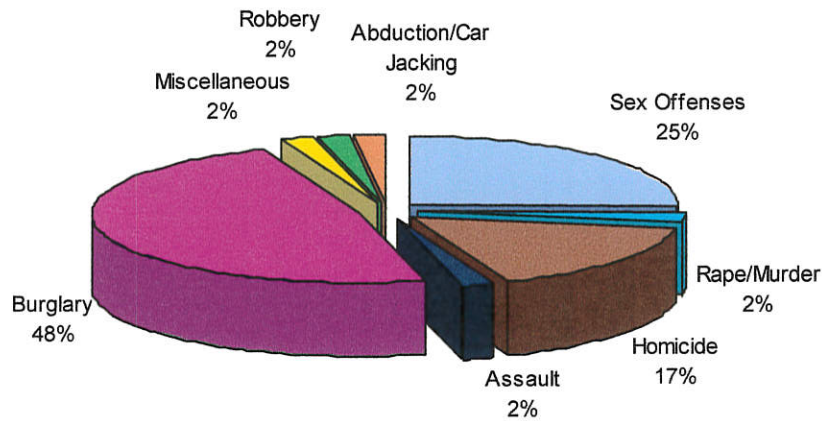
Senate Judiciary

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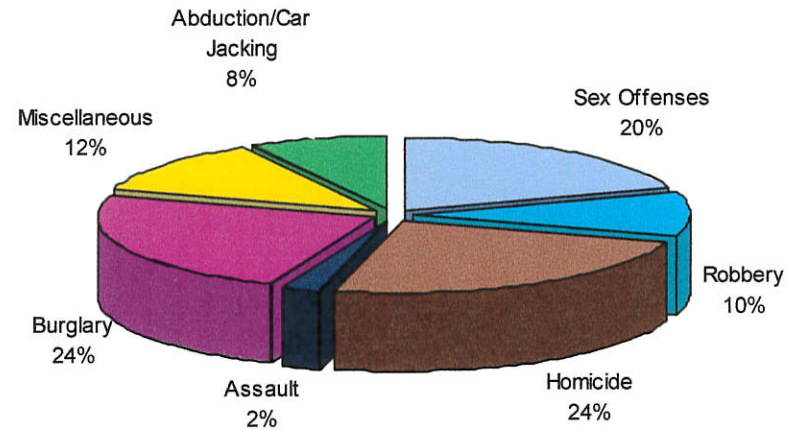
Attachment 7

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 Vratil, 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



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
Before the Senate Judiciary Committee
In Support of HB 2554
Jane Nohr, General Counsel &
Assistant Attorney General
Kansas Bureau of Investigation
March 7, 2006

Chairman Vratil and Members of the Committee:

I am pleased to appear on behalf of Attorney General Phill Kline and Director Larry Welch of 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. So far the committees dealing with budget and building space have been very receptive to our needs.

We would like to propose the following amendments for your consideration:

First, we would like to recommend one clarification to house amendment on page 3, section 4, line 26 to add the word "database" so the language would read "***Kansas bureau of investigation database records.***" This is necessary to avoid confusion with our central repository criminal history records.

Secondly, 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 the end of section one, on page 5, line 19 at the beginning of what would be the new subsection (l): ***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.***

Finally, we have concerns with the house amendment on page 3, section 5, that seems to run contrary to the purpose of the bill and is not found in any other state's law that takes DNA upon arrest. The amendment adds additional burdens on the court to notify the KBI of all final dispositions of criminal proceedings and then requires the KBI to remove the DNA specimen from the databank if the case is dismissed or the person is not convicted. This is a substantial change compared with current law which provides expungement procedures for the defendant to follow under the same circumstances. The state of Virginia, whose law this was modeled after, has similar language requiring the defendant to request an expungement if the conviction has been reversed or the case dismissed. We are not aware of any states that require automatic removal or expungement to the degree required in section 5 of this bill.

In addition, federal law and NDIS (National DNA Index System) procedures have recently changed to put the burden on the defendant to request an expungement for this purpose and not on the court or law enforcement agencies. Under NDIS procedures the defendant provides a certified copy of the final court order establishing that either the charge was dismissed, resulted in acquittal or not charge was filed. We have been told from FBI CODIS Legal Counsel that they recognize that automatic notification would create a huge burden on administrative resources in addition to a waste of resources if the sample is analyzed and subsequently had to be removed. Section 5 would put a huge burden on the KBI forensic staff and would not yield the positive results this bill hopes to achieve. Therefore, we would recommend striking the language in section 5 and reinstating current statutory language in new section j to leave current expungement procedures unchanged.

I would like to also add that federal law has also changed where states can now upload arrestee samples to CODIS instead of only convicted offender samples. This change is occurring on a national basis as more states are looking towards requiring DNA specimens from arrestees.

After some discussion we also decided to remove on page 5, what was section (k) on the use of improper entries as unnecessary and merely restating current law. If a person's DNA were to match 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.

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, more space and people 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 through renovation of the second floor of the Great Bend Lab and another possibility of the purchase of the IMA insurance building adjacent to the KBI headquarters in Topeka. So there is hope that we will finally have a solution to offer to the legislation this year. So the DNA program can be operated on the basis that the law enforcement and public deserve.

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

HOUSE BILL No. 2554

By Representatives Colloton, Mays, Huntington and Wolf and Beamer,
Goico, Hill, Horst, Hutchins, E. Johnson, Kelsey, Kiegerl, Light, Mast,
McLeland, O'Malley, Oharah, Otto, Pottorff, Roth, Schwab, S. Sharp,
Sloan and Yoder

12-21

9-4
Proposed amendment
Representative Colloton
March 6, 2006

13 AN ACT concerning criminal procedure; relating to the collection of
14 DNA specimens; creating the DNA database fund; amending K.S.A.
15 2005 Supp. 21-2511 and repealing the existing section.
16

17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2005 Supp. 21-2511 is hereby amended to read as
19 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as
20 a juvenile offender because of the commission of any felony; a violation
21 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a
22 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-
23 ments thereto when the victim is less than 18 years of age; a violation of
24 K.S.A. 21-3507, and amendments thereto, when one of the parties in-
25 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.
26 21-3513, and amendments thereto, when one of the parties involved is
27 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments
28 thereto, when one of the parties involved is less than 18 years of age; or
29 a violation of K.S.A. 21-3517, and amendments thereto; including an at-
30 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,
31 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-
32 vided in this subsection regardless of the sentence imposed, shall be re-
33 quired to submit specimens of blood ~~and saliva~~ **an oral sample or an oral**
34 **or other biological sample authorized by the Kansas bureau of in-**
35 **vestigation** to the Kansas bureau of investigation in accordance with the
36 provisions of this act, if such person is:

37 (1) Convicted as an adult or adjudicated as a juvenile offender be-
38 cause of the commission of a crime specified in subsection (a) on or after
39 the effective date of this act;

40 (2) ordered institutionalized as a result of being convicted as an adult
41 or adjudicated as a juvenile offender because of the commission of a crime
42 specified in subsection (a) on or after the effective date of this act; or

43 (3) convicted as an adult or adjudicated as a juvenile offender because

1 of the commission of a crime specified in this subsection before the ef-
 2 ffective date of this act and is presently confined as a result of such con-
 3 viction or adjudication in any state correctional facility or county jail or is
 4 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
 5 38-1663, and amendments thereto.

6 (b) Notwithstanding any other provision of law, the Kansas bureau of
 7 investigation is authorized to obtain fingerprints and other identifiers for
 8 all persons, whether juveniles or adults, covered by this act.

9 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide
 10 ~~specimens of blood and saliva *an oral* such specimen or sample~~ shall be
 11 ordered by the court to have ~~specimens of blood and saliva *an oral* such~~
 12 **specimen or sample** collected within 10 days after sentencing or
 13 adjudication:

14 (1) If placed directly on probation, that person must provide ~~speci-~~
 15 ~~mens of blood and saliva *an oral* such specimen or sample~~, at a collection
 16 site designated by the Kansas bureau of investigation. Collection of spec-
 17 imens shall be conducted by qualified volunteers, contractual personnel
 18 or employees designated by the Kansas bureau of investigation. Failure
 19 to cooperate with the collection of the specimens and any deliberate act
 20 by that person intended to impede, delay or stop the collection of the
 21 specimens shall be punishable as contempt of court and constitute
 22 grounds to revoke probation;

23 (2) if sentenced to the secretary of corrections, ~~the specimens of~~
 24 ~~blood and saliva *an oral* such specimen or sample~~ will be obtained as
 25 soon as practical upon arrival at the correctional facility; or

26 (3) if a juvenile offender is placed in the custody of the commissioner
 27 of juvenile justice, in a youth residential facility or in a juvenile correc-
 28 tional facility, ~~the specimens of blood and saliva *an oral* such specimen~~
 29 **or sample** will be obtained as soon as practical upon arrival.

30 (d) Any person required by paragraph (a)(3) to provide ~~specimens of~~
 31 ~~blood and saliva *an oral* such specimen or sample~~ shall be required to
 32 provide such samples prior to final discharge or conditional release at a
 33 collection site designated by the Kansas bureau of investigation. Collec-
 34 tion of specimens shall be conducted by qualified volunteers, contractual
 35 personnel or employees designated by the Kansas bureau of investigation.

36 (e) (1) ~~On and after July 1, 2006~~ **January 1, 2007 through June 30,**
 37 **2008, any adult arrested or charged or juvenile placed in custody for or**
 38 **charged with the commission or attempted commission of any person**
 39 **felony or drug severity level 1 or 2 felony shall be required to submit ~~an~~**
 40 **oral sample such specimen or sample at the same time such person is**
 41 **fingerprinted pursuant to the booking procedure.**

42 (2) **On and after July 1, 2008, except as provided further, any adult**
 43 **arrested or charged or juvenile placed in custody for or charged with**

1 the commission or attempted commission of any felony shall be required
2 to submit ~~an oral sample~~ **such specimen or sample** at the same time
3 such person is fingerprinted pursuant to the booking procedure. ~~The pro-~~
4 ~~visions of this paragraph shall not apply to the violations of the felony~~
5 ~~provisions of K.S.A. 8-1567, and amendments thereto.~~

6 (3) Prior to taking such samples, the arresting, **charging** or custodial
7 law enforcement agency shall search the Kansas criminal history files
8 through the Kansas criminal justice information system to determine if
9 such person's sample is currently ~~in the database on file with the Kansas~~
10 **bureau of investigation**. In the event that it cannot reasonably be es-
11 tablished that a DNA sample for such person is on file at the ~~bureau~~
12 **Kansas bureau of investigation**, the arresting, **charging** or custodial
13 law enforcement agency shall cause a sample to be collected. If such per-
14 son's sample is ~~in the database on file with the Kansas bureau of in-~~
15 **vestigation**, the law enforcement agency is not required to take the
16 sample.

17 (4) ~~After a determination by the court that probable cause exists for~~
18 ~~the arrest or placement in custody, the samples shall be submitted to the~~
19 ~~Kansas bureau of investigation for placement in the DNA database. The~~
20 ~~court shall ensure, upon the person's first appearance, that the person has~~
21 ~~submitted such samples.~~ **If a court later determines that there was**
22 **not probable cause for the arrest, charge or placement in custody,**
23 **the court shall send a copy of such determination to the Kansas**
24 **bureau of investigation. The Kansas bureau of investigation shall**
25 **forthwith remove such specimen or sample from the Kansas bu-**
26 **reau of investigation records.**

27 (5) **The clerk of the district court shall notify the Kansas bureau**
28 **of investigation of final disposition of the criminal proceedings. If**
29 **the charge for which the specimen was taken is dismissed or the**
30 **defendant is acquitted at trial, the Kansas bureau of investigation**
31 **shall destroy the specimen and all records thereof, provided there**
32 **is no other pending qualifying warrant for an arrest, charges or**
33 **other conviction that would otherwise require the specimen re-**
34 **main in the database.**

35 (f) The Kansas bureau of investigation shall provide all speci-
36 men vials, mailing tubes, labels and instructions necessary for the
37 collection of oral or other biological samples. No person author-
38 ized by this section to collect oral or other biological samples, and
39 no person assisting in the collection of these samples shall be liable
40 in any civil or criminal action when the act is performed in a rea-
41 sonable manner according to rules and regulations promulgated
42 by the Kansas bureau of investigation. The samples shall thereafter
43 be forwarded to the Kansas bureau of investigation. The bureau

1 shall analyze the samples to the extent allowed by funding avail-
2 able for this purpose.

3 ~~(e)~~ ~~(f)~~ (g) The Kansas bureau of investigation shall provide all spec-
4 imen vials, mailing tubes, labels and instructions necessary for the collec-
5 tion of blood and saliva ~~oral~~ samples. The collection of samples shall be
6 performed in a medically approved manner. No person authorized by this
7 section to withdraw blood and collect saliva ~~an oral sample~~, and no person
8 assisting in the collection of these samples shall be liable in any civil or
9 criminal action when the act is performed in a reasonable manner ac-
10 cording to generally accepted medical practices. The withdrawal of blood
11 for purposes of this act may be performed only by: (1) A person licensed
12 to practice medicine and surgery or a person acting under the supervision
13 of any such licensed person; (2) a registered nurse or a licensed practical
14 nurse; or (3) any qualified medical technician including, but not limited
15 to, an emergency medical technician-intermediate or mobile intensive
16 care technician, as those terms are defined in K.S.A. 65-6112, and amend-
17 ments thereto, or a phlebotomist. The samples shall thereafter be for-
18 forwarded to the Kansas bureau of investigation. The bureau shall analyze
19 the samples to the extent allowed by funding available for this purpose.

20 ~~(f)~~ ~~(g)~~ (h) The DNA (deoxyribonucleic acid) records and DNA sam-
21 ples shall be maintained by the Kansas bureau of investigation. The Kan-
22 sas bureau of investigation shall establish, implement and maintain a
23 statewide automated DNA databank and DNA database capable of, but
24 not limited to, searching, matching and storing DNA records. The DNA
25 database as established by this act shall be compatible with the procedures
26 specified by the federal bureau of investigation's combined DNA index
27 system (CODIS). The Kansas bureau of investigation shall participate in
28 the CODIS program by sharing data and utilizing compatible test pro-
29 cedures, laboratory equipment, supplies and computer software.

30 ~~(g)~~ ~~(h)~~ (i) The DNA records obtained pursuant to this act shall be
31 confidential and shall be released only to authorized criminal justice agen-
32 cies. *The DNA records shall be used only for law enforcement identifi-*
33 *cation purposes or to assist in the recovery or identification of human*
34 *remains from disasters or for other humanitarian identification purposes,*
35 *including identification of missing persons.*

36 ~~(h)~~ ~~(i)~~ (j) (1) The Kansas bureau of investigation shall be the state
37 central repository for all DNA records and DNA samples obtained pur-
38 suant to this act. The Kansas bureau of investigation shall promulgate
39 rules and regulations for: ~~(A) The form and manner of the collection;~~
40 ~~and, maintenance and expungement and expungement~~ of DNA
41 samples;

: (A)

and

42 ~~(B) a procedure which allows the defendant to request the DNA sam-~~
43 ~~ples be expunged and destroyed in the event of a dismissal of charges or~~

1 ~~acquittal at trial, and~~

2 ~~(C) other procedures for the operation of this act.~~

3 (2) These rules and regulations also shall require compliance with
4 national quality assurance standards to ensure that the DNA records sat-
5 isfy standards of acceptance of such records into the national DNA iden-
6 tification index.

7 (3) The provisions of the Kansas administrative procedure act shall
8 apply to all actions taken under the rules and regulations so promulgated.

9 ~~(j) (k) The Kansas bureau of investigation is authorized to contract~~
10 ~~with third parties for the purposes of implementing this section. Any other~~
11 ~~party contracting to carry out the functions of this section shall be subject~~
12 ~~to the same restrictions and requirements of this section, insofar as ap-~~
13 ~~plicable, as the bureau, as well as any additional restrictions imposed by~~
14 ~~the bureau.~~

15 ~~(k) (l) The detention, arrest or conviction of a person based upon a~~
16 ~~database match or database information is not invalidated if it is deter-~~
17 ~~mined that the specimen was obtain or placed in the database by mistake~~
18 ~~or not removed from the database as required by law.~~

19 ~~(t) Any person who is subject to the requirements of this section, and~~
20 ~~who, after receiving notification of the requirement to provide a DNA~~
21 ~~specimen, knowingly refuses to provide such DNA specimen, shall be~~
22 ~~guilty of a class A nonperson misdemeanor.~~

23 New Sec. 2. (a) Any person required to submit a sample upon arrest,
24 **the charging** or being taken into custody pursuant to section 1, and
25 amendments thereto, upon conviction shall pay a separate court cost of
26 \$100 as a Kansas bureau of investigation DNA database fee.

27 (b) Such fees shall be in addition to and not in substitution for any
28 and all fines and penalties otherwise provided for by law for such offense.

29 (c) Disbursements from the Kansas bureau of investigation DNA da-
30 tabase fee deposited into the DNA database fee fund of the Kansas bu-
31 reau of investigation shall be made for the following:

32 (1) Providing DNA laboratory services;

33 (2) the purchase and maintenance of equipment for use by the lab-
34 oratory in performing DNA analysis; and

35 (3) education, training and scientific development of Kansas bureau
36 of investigation personnel regarding DNA analysis.

37 (d) Expenditures from the DNA database fund shall be made upon
38 warrants of the director of accounts and reports issued pursuant to vouch-
39 ers approved by the attorney general or by a person or persons designated
40 by the attorney general.

41 (e) All fees shall be remitted to the state treasurer in accordance with
42 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
43 of each such remittance, the state treasurer shall deposit the entire

;
(B) a procedure which allows the defendant to request the DNA samples be
expunged and destroyed in the event of a dismissal of charges or acquittal at trial; and
(C)

1 amount in the state treasury to the credit of the DNA database fund,
2 which is hereby established in the state treasury.

3 (f) Fees received into this fund shall be supplemental to regular ap-
4 propriations to the Kansas bureau of investigation.

5 Sec. 3. K.S.A. 2005 Supp. 21-2511 is hereby repealed.

6 Sec. 4. This act shall take effect and be in force from and after its
7 publication in the statute book.



KANSAS BAR
ASSOCIATION

Testimony in Opposition to

HOUSE BILL NO. 2554

Presented to the Senate Judiciary Committee on March 7, 2006
James W. Clark, KBA Legislative Counsel

House Bill 2554 is a laudable effort to combat crime through the enhancement of collection of DNA evidence, not only because such evidence has been instrumental in helping to solve otherwise unsolvable cases, but also in exonerating those who have been wrongfully convicted.

However, the Kansas Bar Association appears in opposition to those portions of **HB 2554** that permit the collection of samples for DNA testing from individuals prior to a judicial determination of probable cause.

Our concerns are twofold. First, because DNA evidence is so accurate and information gained from it is so pervasive and easily communicated, the mere fact of its collection raises concerns for innocent persons being secure in their own persons, as is required by the Fourth Amendment.

Second, because the collection of such evidence is so important and so likely to affect the outcome of a case, it should not be collected on those occasions where an arrest is made without a warrant. Any bodily intrusion should not be made without the intervening review of an impartial magistrate. Those portions of the bill allowing for such collection upon arrest should at least be amended to delay the collection until after a determination of probable cause, either in connection with the issuance of an arrest warrant, or as is required before a person arrested without a warrant is to be released from custody.

* * *

Senate Judiciary

3-7-06
Attachment 10

Office of Sheriff
Labette County
718 5th Street
Oswego, Kansas 67356



William C. Blundell
Sheriff

Phones: Oswego (620)795-2565 Parsons (620)421-1400 Toll Free (800)247-4024 FAX (620)795-4664

To: Chairperson Vratil, Vice-chairperson Bruce, and distinguished members of the Senate Judiciary Committee.

From: William C. Blundell

Date: March 07, 2006

Chairperson Vratil and Committee Members,

My name is William C. Blundell and I am the Sheriff of Labette County Kansas. Prior commitments prevent me from appearing before you this morning in support of HB2554, so I send this letter of support. Thank you for allowing me the opportunity to testify on this matter before you.

DNA evidence has emerged as one the most important types of physical evidence that law enforcement officers can recover from crime scenes and victims. Collecting DNA samples from individuals arrested for person's crimes and serious drug offenses increases the size of the DNA database currently in place. A larger DNA database will improve the probability of identifying felons who pose a genuine risk to our communities.

As Sheriff, I have the ultimately responsibility for the safety of all those that live, work, or visit Labette County. I am confident that HB2554 will benefit not only those that I serve, but the entire state as well. I encourage you to support this legislation, and I would be happy to respond to any questions.

William C. Blundell
Sheriff