

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 13, 2008 in Room 313-S of the Capitol.

All members were present except:  
Marti Crow- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:  
Erica Haas, Governor's Grants Program  
Rick Guinn, Office of Attorney General  
Sandy Barnett, Kansas Coalition of Sexual & Domestic Violence  
Kyla Forte, Wichita Area Sexual Assault Center  
Jill Jointer, Metropolitan Organization to Counter Sexual Assault  
Robert Blecha, Director of Kansas Bureau of Investigation

The hearing on **HB 2726 - polygraph examinations prohibited for certain alleged victims**, was opened.

Erica Haas, Governor's Grants Program, explained that the proposed bill is a federal requirement for all states to receive federal funding. (Attachment #1)

Rick Guinn, Office of Attorney General, explained that funding from the federal government is heavily relied upon for sexual assault programs. The Attorney General's Office does not have a problem with the polygraph provisions in the bill. (Attachment #2)

Sandy Barnett, Kansas Coalition of Sexual & Domestic Violence, appeared in support of the bill and stated that polygraphs are not necessarily perfect. There are many circumstances which cause individuals to fail a polygraph test. (Attachment #3)

Kyla Forte, Wichita Area Sexual Assault Center, supported the proposed bill because survivors would not have to prove that she was raped. Victims from other types of crimes are not required to take polygraphs before an investigation happens and therefore the same standards should apply for those who are raped. (Attachment #4)

Jill Jointer, Metropolitan Organization to Counter Sexual Assault, relayed her story about being raped. (Attachment #5)

Written testimony, in support of the bill, was provided by the Kansas Association of Chiefs of Police and Kansas Peace Officer's Association. (Attachments #6 & 7)

The hearing on **HB 2726** was closed.

The hearing on **HB 2727 - sexual assault, evidence**, was opened.

Erica Haas, Governor's Grants Program, explained that the proposed bill does two things:

- amends current statute to provide guidance to medical facilities when a victim of sexual assault chooses not to report the incident to law enforcement at the time of the forensic examination
- ensures that the refusal of a victim to report the crime to law enforcement does not prevent the victim from obtaining a forensic medical exam

She requested an amendment that would allow the KBI to store the sealed sexual assault kits for a period of

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 14, 2008 in Room 313-S of the Capitol.

180 days and then be destroyed. (Attachment #8)

Sandy Barnett, Kansas Coalition of Sexual & Domestic Violence, supported the proposed bill but requested three amendments:

1. Require that a hospital or medical facility not notify law enforcement, without the victims consent, that a rape has occurred
2. The cost of the examination of the victim shall not be charged to the victim or their insurance carrier.
3. The rape kit shall not be preformed on a minor 16 years or older without their consent. (Attachment #9)

Robert Blecha, Director of KBI, informed the committee that they do have room in evidence facility to hold the these rape kits even though no crime has been reported.

Kyla Forte, Wichita Area Sexual Assault Center, appeared as a proponent of the proposed bill. There are many victims who have been assaulted and want the kit done but are not emotionally ready to report the crime to law enforcement. (Attachment #10)

Jill Jointer, Metropolitan Organization to Counter Sexual Assault, appeared as a proponent of the proposed bill. She supported allowing an approved facility to hold a sealed evidence kit for 180 days before destroying it to see if the victim decides to report the crime or not. (Attachment #11)

Written testimony, in support of the bill, was provided by the Office of Attorney General, Kansas Association of Chiefs of Police, Kansas Peace Officer's Association. (Attachments #12-14)

The hearing on HB 2727 was closed.

**HB 2642 - commission on judicial performance; access to court records; immunity from liability**

Representative Pauls made the motion to report HB 2642 favorably for passage. Representative Colloton seconded the motion.

Representative Goyle made the substitute motion to limit access of court records to appropriate persons and addresses. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to adopt the Judicial Council's proposed amendment which strikes on page one, lines 19 through 22 and replace with "Conduct surveys of such persons as the Commission determines to be appropriate who have had sufficient experience with a judge or justice to form an opinion about the performance of the judge or justice, such as attorneys, litigants, jurors, witnesses, court staff and others". Representative Colloton seconded the motion. The motion carried.

The committee discussed Judge Wheeler's concern about providing immunity to contracting party. Representative Watkins made the motion to strike on line two, page two "or agent" and add a separate provision providing that the agent shall have no liability unless the agent is negligence of an intentional act. Representative Pauls seconded. The motion carried.

Representative Pauls made the motion to add the Kansas Judicial Council as having immunity. Representative Colloton seconded the motion. The motion carried.

Representative Pauls made the motion to report HB 2642 favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for February 14, 2008.



OFFICE OF THE GOVERNOR

Kathleen Sebelius, Governor

www.governor.ks.gov

Testimony of  
Erica D. Haas, Attorney  
Governor's Grants Program  
Before the House Judiciary Committee  
House Bill 2726  
February 13, 2008

Dear Chair O'Neal and Members of the House Judiciary:

Thank you for the opportunity to appear before you today on behalf of the Governor's Grants Program. The Governor's Grants Program administers the S. T. O. P. Violence Against Women Act (VAWA) grant program for Kansas. In 2005 the Violence Against Women Act, Public Law 109-162, was reauthorized and with the reauthorization came new state certification requirements. All states receiving VAWA funding must meet the certification requirements or risk the loss of funding. Last year, Kansas received approximately \$1.3 million in VAWA funding. These grant funds provide assistance to law enforcement agencies, prosecutor offices, courts and victim service organizations, in developing and enhancing programs that address and strengthen the criminal justice system's response to domestic violence, sexual assault and stalking crimes.

The language in House Bill 2726 patterns the language that Kansas is required to certify in order to maintain VAWA funding. This certification language is codified at 42 U.S.C 3796gg-8.

SEC. 2013. POLYGRAPH TESTING PROHIBITION.

“(a) IN GENERAL.—In order to be eligible for grants under this part, a State, Indian tribal government, territorial government, or unit of local government shall certify that, not later than 3 years after the date of enactment of this section, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, State, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.”

House Bill 2726 prohibits law enforcement, governmental officials and prosecutors from either requesting or requiring any alleged victim of a sexual assault crime to submit to a polygraph examination or other similar truth telling device as a method or condition for proceeding with an investigation, or charging, or prosecuting such offense.

Thank you for your favorable consideration of the bill.

GOVERNOR'S GRANTS PROGRAM  
(785) 291-3205 • Fax: (785) 291-3204

House Judiciary  
Date 2-13-08  
Attachment # 1



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

STEPHEN N. SIX  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
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House Judiciary Committee  
HB 2726  
Deputy Attorney General Rick Guinn  
Office of Attorney General Stephen N. Six  
February 13, 2008

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

House Bill 2726 would restrict the use of polygraph examinations by prosecutors on alleged victims of sex crimes. Passage of this legislation would bring the State of Kansas into compliance with the 2005 Federal Violence Against Women Act (VAWA). Kansas currently receives 1.3 million dollars of VAWA funds from the federal government which would be eliminated if this legislation were not passed into law.

I am the deputy attorney general responsible for overseeing the criminal division of the Attorney General's Office. I have been a prosecutor in the State of Kansas for almost my entire professional career. I have had numerous occasions to weigh and assess the significance of polygraph examinations in determining whether to go forward with the prosecution of a case. It is important to note that my testimony today relates strictly to my experiences with polygraph examinations as a prosecutor.

Polygraph examinations are inadmissible in Kansas courts as well as throughout the country due to their unreliability. Individuals who have committed crimes have been known to pass polygraph examinations. Innocent victims of crimes have been known to fail polygraph examinations. For these reasons, decisions regarding whether to prosecute a case were rarely, if ever, based on the results of a polygraph examination.

Thank you for your time and I look forward to answering any questions.

House Judiciary  
Date 2-15-08  
Attachment # 2

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House Judiciary Committee  
February 13, 2008

HB 2726

Chairman O'Neal and Members of the Committee;

The practice of using polygraph examinations on victims reporting sexual assaults occurs with some frequency across Kansas. Often the request is made during the early stages of investigation and is meant to short cut other investigative practices. At best, such a practice is intended to preserve investigative and prosecutorial resources.

Nonetheless, because the science surrounding polygraphs is so imperfect, the decision to proceed with an investigation and prosecution of a crime as serious as sexual assault and rape should never be made based on the results of a polygraph test. In addition to the "scientific" questions, the flaws are heightened, I believe, because of the circumstances that often surround crimes of sexual violence.

Factors known to influence the validity of a polygraph include:  
(Reid, J.E. & Inbau, 1977)<sup>1</sup>

- Extreme emotional tension or stress
- Over anxiety
- Anger
- Concern over neglect of duty or responsibility that makes possible the commission of the offense by someone else
- Involvement in other similar acts or offenses
- Physical discomfort during the exam
- Adrenal exhaustion
- Psychological abnormalities

Many of these factors will exist for a victim of sexual assault.

- Self-blame and guilt by the victim tends to increase when the perpetrator is known to or a close acquaintance of the victim. Often that self-blame is expressed in statements such as "I shouldn't have gone out that night; I had other things I was supposed to do," or "I told my parents I was in place x, but I went to ..."

- Many victims of sexual assault remain in emotional crisis over a prolonged period of time. Their normal coping skills and mechanisms simply do not work for this traumatic and life-altering event. This emotional crisis may also be related to, the result of, or exacerbated by adrenal exhaustion.
- Anxiety and anger come and go over a long period of time for victims of sexual assault.

So, you can see the parallels between Reid's factors and the realities of being a victim of sexual violence.

Even if we suppose the best intent in administering a polygraph examination, the results are likely to be so inaccurate that rather than saving investigative or prosecutorial resources, officers may in fact be overlooking or minimizing an incident of sexual violence that will leave the victim and the community in further danger.

It is a travesty that we would ever tacitly and silently approve the use of such a method to determine the truthfulness of a claim of sexual violence. Study after study indicates that false reporting of sex crimes occurs at rates similar to that of any other crime (approximately 5%) – there is no valid reason to use polygraph examinations to determine if an investigation or prosecution is warranted.

Joanne Archambault (2006), a retired law enforcement officer and national trainer on the investigation of sex crimes, states:

*"It is therefore recommended that polygraph should never be used with victims of sexual assault during the course of an investigation – even when the victim requests it. A competent evidence-based investigation will most likely reveal the truth much more effectively than these interrogation tactics."*

It can only be assumed that Congress was so appalled by this practice that they required states to certify that there is a prohibition of this practice when they passed the Violence Against Women Act, 2005.

KCSDV urges this committee to pass out HB 2627.

Respectfully Submitted,

Sandy Barnett  
Executive Director

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<sup>1</sup> Reid, J.E. & Inbau, F.E (1977). Truth and Deception: The Polygraph ("Lie Detector") Technique. Baltimore, MD: Williams & Wilkins Co. As cited in the Sexual Assault Training Institute e-News; January 2006

Testimony on House Bill 2726

Kyla Fort, Court Advocate  
Wichita Area Sexual Assault Center  
355 N. Waco, Suite 100  
Wichita, KS 67202  
(316) 263-0185

Chairman O'Neal and Member of the Committee.

Using a polygraph on a victim/survivor has happened for far too long. House Bill 2726 will prohibit the use of a polygraph for a victim/survivor for the purposes of proceeding with an investigation, charging or prosecuting.

A polygraph is not a reliable tool to determine the veracity of statements. Consider for a moment how a survivor of rape may feel in the days following the rape. It is not unusual for a person to have a heightened response to any sudden moves or noises; anxiety; fear; uncomfortable around people that she or he does not know; and trouble concentrating or focusing on a task. Now add to that the guilt that she may carry because we know survivors of this crime are often blamed for who she was with and what she was doing. Then consider that you have already shared with two law enforcement officers the information of humiliating acts that have been committed against you. It seems fair to assume that this level of stress would skew responses by a polygraph or other truth telling devices.

In effect, the survivor is being asked to **prove** that she is not guilty of anything before efforts will be made to investigate the accused. This is not holding the accused accountable for anything and placing responsibility on the survivor. Law enforcement and prosecutors do not ask or require "victim/witnesses" of other crimes to submit to a polygraph before an investigation is underway.

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Attachment # 4

Law enforcement officers and courts from large and small communities rely on a polygraph instead of investigation skills and techniques. Staff at the Wichita Area Sexual Assault Center have worked with people recently who have been asked/required to undergo a polygraph. This is another barrier to reporting. Why should a survivor report if he or she has to prove by polygraph that they are being truthful? It is making an assumption that the survivor is lying.



# MOCSA

Metropolitan Organization to Counter Sexual Assault

February 13, 2008

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Representative Mike O'Neal, Chairman  
House Judiciary Committee  
Kansas House of Representatives  
State Capitol  
Topeka, KS

Re: H.B. 2726 (MOCSA is a proponent of this legislation)

Chairmen O'Neal and Members of the Committee,

I am Jill Joiner, Volunteer Community Educator for the Metropolitan Organization to Counter Sexual Assault (MOCSA) in Kansas City and Corporate Trainer for Garmin International, located in Olathe. I have been a MOCSA Volunteer for eight years. I am here today with Palle Rilinger, the Executive Director of MOCSA and Alison Jones-Lockwood, the Coordinator of Advocacy & Outreach of MOCSA. For the last 33 years, MOCSA has served as the Rape Crisis Center and the key agency providing comprehensive services to victims of sexual violence in the bi-state greater Kansas City metropolitan area, including Johnson, Miami, and Wyandotte Counties in Kansas. Our mission is to lessen the ill effects of sexual assault and abuse through prevention, education, intervention, treatment, and advocacy. In 2007, we served over 48,000 individuals, and roughly 40% of those were Kansas Residents.

We are seeking your support for H.B. 2726, which would prohibit the use of polygraph as a method or condition for proceeding with an investigation, charging, or prosecuting such an offense. It is essential that victims be allowed to tell their story in an environment where they are believed and supported. It is also important that sound and thorough investigation methods be used which are known to be most effective in dealing with these difficult crimes.

The devastating effects of the crime of sexual assault and rape are life changing and the complexities of navigating the criminal justice system in order to achieve justice are difficult at best. Victims are often fearful of not being believed and the use of a polygraph to determine their honesty reinforces that fear. Post-assault, many victims are unable to comprehend what has just happened to them, let alone describe those very details. The prospect of the use of a polygraph is overwhelming to them, which in turn will only increase their anxiety even more. That increased anxiety may in fact skew the validity of the polygraph, or hinder their ability to come forward and report the assault.

**Executive Director**

Palle M. Rilinger, LCSW

3100 Broadway • Suite 400 • Kansas City, Missouri 64111-2591 • 816-931-47  
24-Hour Crisis Line: 816-531-0233 • 913-642-0233

MOCSA Outreach Sites:

Independence • Northland • Liberty • Lee's Summit • Prairie Village  
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www.mocsa.org

House Judiciary

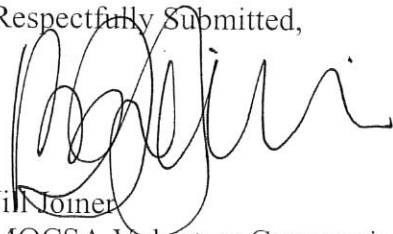
Date 2-13-08

Attachment # 5

Everyday at MOCSA we see the re-victimization of those who have endured this crime as they deal with a society that simply does not understand this devastating crime and often blames the victim. We would hope that as we look to strengthen our ability to hold perpetrators of these heinous and invasive crimes accountable that we also provide every possible assurance to protect victims.

We urge that the House Judiciary Committee fully support House Bill 2726.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jill Noiner". The signature is fluid and cursive, with the first name being more prominent.

Jill Noiner  
MOCSA Volunteer Community Educator

A handwritten signature in black ink, appearing to read "Palle M. Rilinger". The signature is fluid and cursive, with the first name being more prominent.

Palle M. Rilinger  
Executive Director



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Region VI  
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**TESTIMONY TO THE HOUSE JUDICIARY  
COMMITTEE  
IN SUPPORT OF HB2726  
Presented by Ed Klumpp  
On behalf of the  
Kansas Association of Chiefs of Police**

February 13, 2008

The Kansas Association of Chiefs of Police supports this bill. This bill causes us to carefully balance our sincere desire to provide quality victim services with federally mandated limitations on valid investigative techniques. In this case, it is clear the ability to fund victim services programs in Kansas is more important than the mandated limitations.

Without this bill, Kansas victim services programs will not be eligible for federal grant money under the VAWA 05 grant programs. The funding by the federal government has already been greatly reduced for these grant programs making competition across the country intense. The mandate under the VAWA 05 grant program requires the applicants to certify the state has a law or policy in place forbidding law enforcement or prosecutors to ask or require a victim of certain sex crimes to submit to a polygraph or other truth detection test to determine if the investigation or prosecution will continue.

Our dilemma is a choice between losing grant funding or yielding to a federal mandate that we don't entirely agree with. Certainly requesting a polygraph of any crime victim should not be taken lightly. However, law enforcement has the responsibility to the truth during an investigation. Most of the time victims are truthful with law enforcement. But on some occasions they are not for various reasons. Law enforcement has a responsibility to seek the truth not just for the victim, but also for those suspected of committing a crime. The polygraph is a tool to lead to the truth. It is not used as an absolute determining factor of the truth. When properly used, a polygraph can assist a good interviewer in reaching the truth. This is not accomplished just from polygraph results, but from the interview surrounding those results. Any tool can be overused. The use of polygraph testing with any crime victim is applied very judiciously in criminal investigations. It should always be the exception applied only when the investigation brings the accuracy of the victim's accusations into question and all other attempts to resolve that question are exhausted. But saying never is not the best case scenario.

House Judiciary

Date 2-13-08

Attachment # 6

However, at the end of the day, our commitment to the victims must be firm. It is clear in this case it is in the best interest of Kansas crime victims to accept this federal mandate and support this bill. The victims deserve nothing less than our strongest support to help them heal from these most tragic, repulsive, and emotionally damaging crimes.

Since we only support this bill due to the grant. And since that is probably the only reason the bill exists. We recommend consideration of some type of sunset provision which will require revisiting the matter if the grant requirements change or if the grant is no longer funded by the federal government.

We encourage you to recommend this bill favorably to pass.



Ed Klumpp  
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair  
E-mail: eklumpp@cox.net  
Phone: (785) 235-5619  
Cell: (785) 640-1102

BRUCE MELLOR, *President*  
Kansas Bureau of Investigation  
Great Bend, KS 67530

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Topeka, KS 66612

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DELBERT HAWEL  
KS Bureau of Investigation  
Hays, KS 67601

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Kansas Highway Patrol  
Garden City, KS 67846

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Garden City Police Dept.  
Garden City, KS 67846

#### DISTRICT 6

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STEVE BILLINGER  
Kansas Highway Patrol  
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VERNON "SONNY" RALSTON  
St. John Police Dept.  
St. John, KS 67576

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Cowley County Sheriff's Office  
Winfield, KS 67156

BILL EDWARDS  
Park City Police Dept.  
Park City, KS 67219

DAVE FALLETTI  
KS Bureau of Investigation  
Winfield, KS 67156

#### DISTRICT 8

SANDY HORTON  
Crawford County Sheriff's Office  
Girard, KS 66743

STEVE BERRY  
Caney Police Dept.  
Caney, KS 67333

KEITH RATHER  
KS Dept. of Wildlife & Parks  
Chanute, KS 66720

# Kansas Peace Officers' Association

INCORPORATED

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## TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB 2726

Presented by Ed Klumpp

February 13, 2008

This bill is more about supporting statewide victim assistance programs than about whether the use of a polygraph should be forbidden in certain cases. The Kansas Peace Officers' Association strongly supports providing services to the crime victims of Kansas. The Association also supports treating victims with great respect. However, law enforcement has a responsibility to both the accuser and the accused. That responsibility is to find the truth and to do so in a manner consistent with the laws while respecting the dignity of the parties.

While the polygraph can be used as a valuable investigative tool there are other methods to pursue the truth. And this bill would not prohibit providing a polygraph to a victim who initiates the request for testing.

The provisions of this bill are simply necessary to continue to be eligible for the federal VAWA05 grant funds. These funds are a significant source of funding for many victim assistance programs across our state. In supporting these victim oriented programs we find ourselves at odds with federal mandates associated with the funding.

As we look at the larger picture, the limited use of the polygraph for persons reporting these crimes is not as important as the funding to provide these critical services. Therefore, we support this bill and encourage you to recommend it to pass.

Handwritten signature of Ed Klumpp in black ink.

Ed Klumpp  
Legislative Committee Chair  
Home: (785)235-5619  
Cell: (785)640-1102  
E-mail: eklumpp@cox.net

House Judiciary

Date 2-13-08

Attachment # 7

*In Unity There Is Strength*



OFFICE OF THE GOVERNOR

*Kathleen Sebelius, Governor*

www.governor.ks.gov

Testimony of  
Erica D. Haas, Attorney  
Governor's Grants Program  
Before the House Judiciary Committee  
House Bill 2727  
February 13, 2008

Dear Chair O'Neal and Members of the House Judiciary:

Thank you for the opportunity to appear before you today on behalf of the Governor's Grants Program. This request is needed as a requirement of the 2005 Violence Against Women Act (VAWA) reauthorized by Public Law 109-162 and for the state to continue to receive funding from the S. T. O. P. Violence Against Women grant program.

In August 2007, a committee was formed to discuss the changes needed to meet the VAWA provision regarding sexual assault forensic examinations. Members of the committee included representatives from the Kansas Bureau of Investigation, Kansas Attorney General's Office, Via Christi Regional Medical Center, Kansas City metro area sexual assault center, Wichita Area Sexual Assault Center, Lawrence sexual assault center, Sedgwick County Regional Forensic Science Center and the Kansas Coalition Against Sexual and Domestic Violence. The committee assisted in the drafting of this bill and the proposed provisions. House Bill 2727 clarifies language required of the VAWA provision and it also amends the statute to address issues and challenges that the members of the committee thought necessary.

House Bill 2727 amends K.S.A. 65-448. The goal of the bill is two fold. First the bill amends the statute to provide guidance to medical facilities when a victim of sexual assault chooses not to report to law enforcement at the time of the forensic examination. Secondly, the bill ensures that the refusal of a victim to report to law enforcement does not prevent the victim from obtaining a forensic medical exam and does not prevent the appropriate county from paying the cost of the exam. This is necessary to solidify the VAWA certification requirement for the state to receive federal funding.

Currently K.S.A. 65-448 provides that upon the request of any law enforcement officer and written consent of the reported victim, qualified persons at a medical care facility shall perform an examination using a sexual assault evidence collection kit on persons who may be victims of sexual offenses, as defined by Kansas statutes. House Bill 2727 allows a victim to make the request on his or her own behalf.

House Judiciary

Date 2-13-08

Attachment # 8

Next, the bill provides direction to facilities for handling sexual assault kits that are not released to law enforcement. The bill requires that those kits be sealed and kept for 180 days and then destroyed.

We propose a change to the bill on page 2 line 1 through line 4, "...law enforcement shall be sealed by either the sexual assault nurse examiner program or the facility that provided the examination and kept for 180 days in the evidence storage facilities of the Kansas Bureau of Investigation. After 180 days, such kits shall be destroyed by the Kansas Bureau of Investigation." We believe having the KBI store and destroy these kits provides a better process than asking the medical facilities to keep evidence and develop procedures for its destruction.

Finally, the bill requires the county to pay for the sexual assault evidence collection examination regardless of whether the victim chooses to report to law enforcement. The fee for conducting the examination shall be established by the Department of Health and Environment. The Attorney General's Office has requested on page 2 line 7 "...in consultation with the attorney" be deleted. The Attorney General believes the fee should be determined solely by KDHE.

Attached is the proposed balloon for the bill.

VAWA 2005 reauthorization, 42 U.S.C 3796gg-4, requires states to certify that they are not requiring sexual assault victims to participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic exam and that victims are not charged for such exam.

In addition to meeting the VAWA certification requirements needed to maintain VAWA funding for Kansas, this bill ensures that sexual assault victims are allowed to obtain a forensic medical exam and make their own choices about whether to report to law enforcement. It allows victims to request an examination on their own behalf and not feel pressured to report the crime or feel pressured to report in order for the county to pay for the sexual assault evidence collection.

We appreciate the Committee's favorable consideration of House Bill 2727.

Session of 2008  
**HOUSE BILL No. 2727**  
By Committee on Judiciary  
1-31

9 AN ACT concerning sexual assault; relating to evidence; amending  
10 K.S.A. 65-448 and repealing the existing section.

11

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

13 Section 1. K.S.A. 65-448 is hereby amended to read as follows: 65-  
14 448. (a) Upon the request of any law enforcement officer and with the  
15 written consent of the reported victim, *or upon the request of the victim*,  
16 any physician, a licensed physician assistant, who has been specially  
17 trained in performing sexual assault evidence collection, or a registered  
18 professional nurse, who has been specially trained in performing sexual  
19 assault evidence collection, on call or on duty at a medical care facility of  
20 this state, as defined by subsection (h) of K.S.A. 65-425, and amendments  
21 thereto, shall examine persons who may be victims of sexual offenses  
22 cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505,  
23 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas  
24 bureau of investigation sexual assault evidence collection kits or similar  
25 kits approved by the Kansas bureau of investigation, for the purposes of  
26 gathering evidence of any such crime. If the physician, licensed physician  
27 assistant or registered professional nurse refuses to perform such physical  
28 examination the prosecuting attorney is hereby empowered to seek a  
29 mandatory injunction against such physician, licensed physician assistant  
30 or registered professional nurse to enforce the provisions of this act. Any  
31 refusal by a physician, licensed physician assistant or registered professional  
32 nurse to perform an examination which has been requested pursuant  
33 to this section shall be reported by the county or district attorney  
34 to the state board of healing arts or the board of nursing, whichever is  
35 applicable, for appropriate disciplinary action. The department of health  
36 and environment, in cooperation with the Kansas bureau of investigation,  
37 shall establish procedures for gathering evidence pursuant to this section.  
38 A minor may consent to examination under this section. Such consent is  
39 not subject to disaffirmance because of minority, and consent of parent  
40 or guardian of the minor is not required for such examination. The hospital  
41 or medical facility shall give written notice to the parent or guardian  
42 of a minor that such an examination has taken place.

43 (b) ~~Cests of All sexual assault kits collected that are not released to~~



1 *law enforcement shall be sealed and kept for 180 days by either the sexual*  
 2 *assault nurse examiner program or the facility that provided the examination.*  
 3 *After 180 days, such kits shall be destroyed by ~~or at the direction~~*  
 4 *of the facility where stored.*

and kept for 180 days  
 in the evidence storage  
 facilities of the Kansas  
 Bureau of  
 Investigation.

5 (c) *The fee chargeable for conducting an examination of a victim as*  
 6 *herein provided shall be established by the department of health and*  
 7 *environment, ~~in consultation with the attorney general.~~ Such fee, including*  
 8 *the ~~costs~~ cost of the sexual assault evidence collection kits ~~kit~~ shall be*  
 9 *charged to and paid by the county where the alleged offense was committed,*  
 10 *and refusal of the victim to report the alleged offense to law enforcement*  
 11 *shall not excuse or exempt the county from paying such fee.*

the Kansas Bureau  
 of Investigation.

12 Such county may charge the defendant for the costs paid herein as court  
 13 costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments  
 14 thereto.

Delete

15 Sec. 2. K.S.A. 65-448 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its  
 17 publication in the statute book.

634 SW Harrison Topeka, Kansas 66603  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

House Judiciary Committee  
February 13, 2008

HB 2727

Chairman O'Neal and Members of the Committee;

The Kansas Coalition Against Sexual and Domestic Violence and its member programs urge you to act favorably on HB 2727. Commonly known as "rape kits" or "sexual assault kits," the forensic evidence collection procedures discussed in K.S.A. 65-448, often occur in a hospital emergency room or other emergency medical facility and can set the stage for how a victim begins to heal emotionally and physically from the trauma of the assault. The details of the exam can be invasive and extremely difficult, which makes laws around its administration even more critical. I have included a set of instructions taken from the current Kansas sexual assault evidence collection kit.

Forensic evidence collection after a sexual assault or rape can be the cornerstone of a successful prosecution. Not only can this forensic evidence identify a perpetrator with some certainty, it may also corroborate other facts reported by the victim. The evidence and information gained from the completion of these kits can be critical in cases that come down to accepting the victim's word and voracity over that of the perpetrator. In fact, Kansas long ago recognized the importance of uniform forensic sexual assault evidence collection when it developed the sexual assault forensic evidence collection kit (rape kit) years before most other states did. Although Kansas has had such a kit for more than 20 years, there are still some states that have not adopted a statewide uniform kit. We applaud Kansas for this forward thinking.

But, no matter how useful forensic evidence is to the criminal case, it is only helpful when it is collected in a timely manner. Many rape victims do not report the assault immediately, or ever, to law enforcement officials. This number of non-reports may be as high as 90%. Victims tend to follow one of three paths when deciding to report: 1) an immediate and unquestioning report to law enforcement; 2) a delayed report; and 3) no report, ever. Victims who report at a later date, often after receiving support from advocates or others, are frequently too late in the process for legally defensible forensic evidence to be collected. There are many reasons for the reporting delay, including but

not limited to some of the following: fear of the perpetrator, public exposure, or the criminal justice system; guilt; shame and humiliation; or lack of information about the law---they simply don't know that what occurred was criminal.

The main focus of HB 2727 is to allow victims to request collection of forensic evidence without having to decide at the same time whether they will make a report to law enforcement officials. Thus, the evidence can be collected and safely stored at a time when its integrity can be assured. The victim can then make the decision to report, or not, at a time when she has support, information, and a bit more clarity about how such a report will impact her life. We believe this empowerment of the victim could ultimately increase prosecution and certainly could increase successful prosecution.

Another reason that this topic comes before the Legislature at this time is that in order to prevent a loss of Violence Against Women Act (VAWA) funds into Kansas, the state must certify that it provides for forensic evidence collection without law enforcement involvement and that the cost of collecting that evidence will be paid by an entity who is not the victim. KCSO DV supports these provisions.

KCSO DV is also requesting that the Legislature address additional issues while it is examining this statute. KCSO DV and its member programs believe that strengthening this statute will improve and encourage prosecution of rape and sexual assault in Kansas. For these reasons, KCSO DV suggests the following additions to HB 2727:

- 1) Some hospitals conducting sexual assault forensic examinations have a long-held practice of calling law enforcement immediately when a rape victim presents in the emergency room. This is done regardless of whether they have a duty to do so under any mandatory reporting laws. We ask that the following language be added to Page 1, Line 26:

"If an examination has taken place solely upon the request of the victim, the hospital or medical facility shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law."

- 2) Although it has been the law for a long time that the cost of collecting the forensic evidence is to be paid by the County in which the crime occurred, this does not always happen. We are aware of hospitals that charge victims directly or through their health insurance carrier when counties dispute the charges or are slow to pay. This practice is particularly troublesome when the victim wishes to keep the information private but it is then disclosed on statements or claims-paid notices received from insurance carriers. We suggest adding the following language to Page 2, Line 11 to further clarify the intent that victims should not, nor should their insurance carrier, be charged for the collection of forensic evidence.

"The fee for conducting an examination of a victim as herein provided shall not be charged or billed to the victim or to the victim's insurance carrier."

- 3) The last amendment we are requesting is raised by the disturbing practice of some parents who present their child to the emergency room asking for a "rape kit" to be done; not because they believe that a crime has occurred but because they want to make sure their child is not sexually active. This is sometimes commonly referred to as the "virginity test." Although we think it a good idea to discourage this practice on its face, some have raised concerns that when HB 2727 passes it may actually encourage this practice because law enforcement will not have to be involved. As you know, in Kansas, sixteen and seventeen year old minors can lawfully engage in consensual sexual activity.

K.S.A. 65-448 currently allows a minor to consent to a sexual assault forensic evidence collection procedure without parental consent, but it does not require the minor's consent if a parent requests the collection. We propose that the health care facility be required to gain the express consent of a minor who is sixteen and seventeen years old prior to the sexual assault evidence collection process by adding the following language at Page 1, the beginning of Line 38:

"A sexual assault evidence collection kit shall not be performed on a minor 16 years of age or older without that minor's express consent."

In conclusion, I can not emphasize enough how important the procedures are around this very important piece of the criminal justice process. A rape victim who presents at the emergency room has no way of knowing what awaits her as she reaches out for help. With good strong laws that mandate consistent procedures, it will be less likely that a rape victim will leave the emergency room feeling re-victimized, more confused, and completely disillusioned by the process of reaching out for help.

KCSDV urges the Committee to pass out HB 2727 with these three amendments.

Respectfully Submitted,

Sandy Barnett  
Executive Director

# KANSAS BUREAU OF INVESTIGATION

## SEXUAL ASSAULT EVIDENCE COLLECTION KIT INSTRUCTIONS

This kit is designed to assist the examining physician and nurse in the collection of evidentiary specimens for analysis by the Kansas Bureau of Investigation Forensic Laboratory. The hospital is not requested or encouraged to analyze any of the specimens/evidence collected in this kit. Any specimens required by the hospital are to be collected with hospital supplies.

### STEP 1 AUTHORIZATION FOR COLLECTION AND RELEASE OF EVIDENCE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FORM

Fill out all information requested and have victim and witness sign where indicated.

### STEP 2 VICTIM INFORMATION AND SEXUAL ASSAULT HISTORY FORM

Fill out all information requested on the form.

### STEP 3 OUTER CLOTHING, UNDERWEAR AND FOREIGN MATERIAL COLLECTION

#### NOTES:

- If additional bags are required, use only clean paper bags (NOT PLASTIC).
- If victim is not wearing the clothing worn at the time of the alleged assault, collect ONLY the items that are in DIRECT CONTACT with victim's genital area.
- If victim has changed clothing after assault, inform officer in charge so that the clothing worn at the time of the assault may be collected by the police.
- DO NOT cut through any existing holes, rips or stains in the clothing.
- DO NOT shake out clothing or microscopic evidence will be lost.

Unfold and place a clean bed sheet on floor. Remove paper from FOREIGN MATERIAL bag, unfold and place over bed sheet. Instruct victim to stand at center of paper sheet and carefully disrobe. Collect each item as removed and place in separate CLOTHING bag. Collect victim's underwear and place in UNDERWEAR bag. Refold paper sheet victim stood on in manner to retain any foreign material present and return to FOREIGN MATERIAL bag. Seal All Bags shut and fill out all information requested on the bag labels. Return bed sheet to hospital laundry.

### STEP 4 DEBRIS COLLECTION

Remove folded paper from DEBRIS COLLECTION envelope. Unfold and place on flat surface. Collect any foreign material found on victim's body (leaves, fibers, hair, etc.) and place in center of paper. Refold paper to retain debris, seal and return paper to DEBRIS COLLECTION envelope. If dried biological material is noted, swab area with MOISTENED swabs. Allow swabs to air dry at room temperature, then place swabs in swab box and identify location of swabbing on swab box. Return swab box to DEBRIS COLLECTION envelope, seal envelope and fill out all information requested on the bag labels.

### STEP 5 PUBIC HAIR COMBINGS

Remove paper towel and comb provided in PUBIC HAIR COMBINGS envelope. Place towel under victim's buttocks. Using comb provided, comb pubic hair in downward strokes so that any loose hairs and/or debris will fall on paper towel. Fold towel in manner to retain both comb and any evidence present. Return to PUBIC HAIR COMBINGS envelope. Seal and fill out all information on envelope.

### STEP 6 PUBIC HAIR STANDARDS (25 to 50 hairs required)

NOTE: DO NOT cut hairs. DO NOT use forceps for pulling. Pull 2 to 3 hairs at a time with thumb and forefingers.

Pull, do not cut, 25 to 50 full-length pubic hairs from various locations and place in PUBIC HAIR STANDARDS envelope. Seal and fill out all information requested on envelope.

### STEP 7 VAGINAL SWABS AND SMEARS

NOTE: DO NOT chemical fix smears. DO NOT moisten swabs prior to sample collection.

Using one swab, carefully swab the vaginal walls, then prepare two smears. Using the three remaining swabs, swab the vaginal walls. All both smears (2) and swabs (4) to air dry at room temperature. Return smears to slide mailer and seal mailer. Place the four swabs in the swab boxes. Return slide mailer and swab boxes to VAGINAL SWABS AND SMEARS envelope. Seal and fill out all information requested on envelope.

EXCEPTIONS: Male Victim: moisten swabs with water and swab penis and scrotum.

Child Victim: also thoroughly swab outside genital area.

**STEP 8 RECTAL SWABS**

NOTE: DO NOT moisten swabs prior to sample collection. Swab only the rectal canal. DO NOT swab surrounding area.

Using the two swabs provided, carefully swab the rectal canal. Allow swabs to air dry at room temperature and place in swab box. Return swab box to RECTAL SWABS envelope. Seal and fill out all information requested on envelope.

EXCEPTION: Child Victim: Also swab outside area of rectum.

**STEP 9 ORAL SWABS**

NOTE: DO NOT moisten swabs prior to sample collection.

Using the two swabs provided, carefully swab the oral cavity, being certain to swab the recessed areas especially at the juncture of the teeth and gums. Allow swabs to air dry at room temperature and place in swab box. Return swab box to ORAL SWABS envelope. Seal and fill out all information requested on envelope.

**STEP 10 HEAD HAIR STANDARDS (25 to 30 hairs required)**

NOTE: DO NOT cut hairs. DO NOT use forceps for pulling. Pull 2 to 3 hairs at a time with thumb and forefingers.

Pull, do not cut, 5 to 6 full-length hairs from each of the following scalp locations: center, front, back, left side and right side. Place in envelope, seal and fill out all information requested on envelope.

**STEP 11 KNOWN BLOOD SAMPLE**

NOTE: Use both "purple top" and "gray top" collection tubes.

Using normal hospital procedures and the blood collection tubes provided, draw to a maximum volume from victim. Properly identify tubes with initials, date and victim's name. Return filled blood tubes to plastic bag. Place plastic bag in envelope, seal and fill out all information requested on envelope.

**STEP 12 FINGERNAIL SCRAPINGS**

LEFT HAND: Unfold paper and place on flat surface. Holding victim's left hand over paper, thoroughly scrape under all five fingernails, allowing any debris present to fall onto paper. Place scraper used in center of paper. Refold paper to retain debris and scraper, then seal. Write "Left Hand" on paper.

RIGHT HAND: Follow same procedure as above, writing "Right Hand" on paper.

Seal both papers and return to envelope. Seal and fill out all information requested on envelope.

**STEP 13 ANATOMICAL DRAWINGS FORM**

Fill out all information requested; then sign and date where indicated.

**FINAL INSTRUCTIONS**

1. Make sure all information requested on all sample envelopes and bag labels has been filled out.
2. Separate all forms and retain white copies for hospital records; return yellow copies to kit box, and hand pink copies to investigating officer.
3. Return all evidence envelopes/bags, used or unused, to kit box EXCEPT used clothing/underwear bags.
4. Initial and affix red police evidence seals on box top.
5. Fill out all information requested on kit box top.
6. Hand the sealed kit and sealed bags to investigating officer.

NOTE: If officer is not present at this time, place sealed kit and sealed bags in secure and refrigerated area, and hold for pick up by investigating officer.

9-5

**HOUSE BILL No. 2727**

By Committee on Judiciary

1-31

9 AN ACT concerning sexual assault; relating to evidence; amending  
10 K.S.A. 65-448 and repealing the existing section.  
11

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

13 Section 1. K.S.A. 65-448 is hereby amended to read as follows: 65-  
14 448. (a) Upon the request of any law enforcement officer and with the  
15 written consent of the reported victim, *or upon the request of the victim,*  
16 any physician, a licensed physician assistant, who has been specially  
17 trained in performing sexual assault evidence collection, or a registered  
18 professional nurse, who has been specially trained in performing sexual  
19 assault evidence collection, on call or on duty at a medical care facility of  
20 this state, as defined by subsection (h) of K.S.A. 65-425, and amendments  
21 thereto, shall examine persons who may be victims of sexual offenses  
22 cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505,  
23 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas  
24 bureau of investigation sexual assault evidence collection kits or similar  
25 kits approved by the Kansas bureau of investigation, for the purposes of  
26 gathering evidence of any such crime. ~~If the physician, licensed physician~~  
27 ~~assistant or registered professional nurse refuses to perform such physical~~  
28 ~~examination the prosecuting attorney is hereby empowered to seek a~~  
29 ~~mandatory injunction against such physician, licensed physician assistant~~  
30 ~~or registered professional nurse to enforce the provisions of this act. Any~~  
31 ~~refusal by a physician, licensed physician assistant or registered profes-~~  
32 ~~sional nurse to perform an examination which has been requested pur-~~  
33 ~~suant to this section shall be reported by the county or district attorney~~  
34 ~~to the state board of healing arts or the board of nursing, whichever is~~  
35 ~~applicable, for appropriate disciplinary action. The department of health~~  
36 ~~and environment, in cooperation with the Kansas bureau of investigation,~~  
37 ~~shall establish procedures for gathering evidence pursuant to this section.~~

38 A minor may consent to examination under this section. Such consent is  
39 not subject to disaffirmance because of minority, and consent of parent  
40 or guardian of the minor is not required for such examination. The hos-  
41 pital or medical facility shall give written notice to the parent or guardian  
42 of a minor that such an examination has taken place.

43 (b) ~~Costs of All sexual assault kits collected that are not released to~~

A sexual assault evidence collection kit shall not be performed on a minor 16 years of age or older without that minor's express consent.

If an examination has taken place solely upon the request of the victim, the hospital or medical facility shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law.

1 law enforcement shall be sealed and kept for 180 days by either the sexual  
2 assault nurse examiner program or the facility that provided the exami-  
3 nation. After 180 days, such kits shall be destroyed by or at the direction  
4 of the facility where stored.

5 (c) The fee chargeable for conducting an examination of a victim as  
6 herein provided shall be established by the department of health and  
7 environment, in consultation with the attorney general. Such fee, includ-  
8 ing the ~~costs~~ cost of the sexual assault evidence collection kits kit shall be  
9 charged to and paid by the county where the alleged offense was com-  
10 mitted, and refusal of the victim to report the alleged offense to law en-  
11 forcement shall not excuse or exempt the county from paying such fee.  
12 Such county may charge the defendant for the costs paid herein as court  
13 costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments  
14 thereto.

15 Sec. 2. K.S.A. 65-448 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its  
17 publication in the statute book.

The fee for conducting an examination of a victim as herein provided shall not be charged or billed to the victim or to the victim's insurance carrier.



Testimony on House Bills 2726 and 2727

Kyla Fort, Court Advocate  
Wichita Area Sexual Assault Center  
355 N. Waco, Suite 100  
Wichita, KS 67202  
(316) 263-0185

Chairman O'Neal and Member of the Committee. :

I appreciate your time and attention to these bills. Many of you are concerned about sexual violence and how it impacts our state. I am sure you have heard many times that rape and other crimes of sexual violence are highly underreported. There are many reasons that rape and other crimes of sexual violence are not reported. Let's face it; we do not make it easy for victim/survivors to report these crimes.

First, let us consider the case of a young college woman. She is out of her parents' home for the first time in her life. She is dependent financially on her parents for tuition, books, health and car insurance. She works part-time to pay other expenses. She is out with her friends one night and before the evening is over, someone she knows rapes her.

She does not know what to do. If she goes to the hospital, her parents will find out. Her parents will find out because she will have to give her insurance card and her parents will receive the statement from the insurance company stating the reason their daughter was seen at the hospital for sexual assault evidence collection. She imagines the worry and panic her parents will experience. She is concerned that she somehow let them down.

Instead of reporting and receiving resources that will support her, she does not tell anyone. Her grades suffer, she cannot sleep and she blames herself for what happened.

I will ask you to consider another situation. A woman is raped by a relative of her husband. She wants to make a report. Her husband is out of town. She feels that she cannot face his family without his support. She certainly does not want to call him and say what has happened because he will be upset. She does not want him driving home while he is upset and concerned. She does not make a report. If she had the option for the evidence collection to have occurred and making a report at a later time, then she may have reported.

In a final situation for your consideration, a woman wants to make a report two weeks after she was raped. She was not ready to face the police. She was afraid. She talked to an advocate and seemed willing to go to the hospital, but was not ready to make a report. In talking with the advocate, she decides that she will report. She is told that the case probably will not go anywhere because she did not have evidence collected.

House Bill No. 2727 would address both of these cases to support the survivor and reducing these two barriers to reporting.

# MOCSA

Metropolitan Organization to Counter Sexual Assault

February 13, 2008

**2008  
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Representative Mike O'Neal, Chairman  
House Judiciary Committee  
Kansas House of Representatives  
State Capitol  
Topeka, KS

Re: H.B. 2727 (MOCSA is a proponent of this legislation)

Honorable Chairman O'Neal and Member of the Committee:

**2008  
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**Executive Director**

Palle M. Rilinger, LCSW

I am Jill Joiner, Volunteer Community Educator for the Metropolitan Organization to Counter Sexual Assault (MOCSA) in Kansas City and Corporate Trainer for Garmin International, located in Olathe. I have been a MOCSA Volunteer for eight years. I am here today with Palle Rilinger, the Executive Director of MOCSA and Alison Jones-Lockwood, the Coordinator of Advocacy & Outreach of MOCSA. For the last 33 years, MOCSA has served as the Rape Crisis Center and the key agency providing comprehensive services to victims of sexual violence in the bi-state greater Kansas City metropolitan area, including Johnson, Miami, and Wyandotte Counties in Kansas. Our mission is to lessen the ill effects of sexual assault and abuse through prevention, education, intervention, treatment, and advocacy. In 2007, we served over 48,000 individuals, and roughly 40% of those were Kansas Residents.

We are seeking your support for H.B. 2727, which would allow victims of sexual assault to request their own forensic exam, and require the facility that provided the exam to hold their sealed evidence collection kit for 180 days. Currently, victims may only have evidence collected when law enforcement is involved. This puts a heavy burden on victims to decide within a matter of hours or days whether they would like to participate in the often difficult and sometimes overwhelming criminal justice process. And, this is at a time which they are dealing with what is very likely the most traumatic experience of their lives.

Victims of rape and sexual assault face many struggles after their victimization, the first being the decision of whether or not to report the crime, and the decision of seeking medical attention. Many of the victims we speak with on the crisis line share concerns of reporting the assault, due to fear of not being believed, fear of retaliation from the perpetrator, and fear of the system. Many victims are simply unable to make this important decision within hours after their assault, and often decide not to participate after filing an initial police report.

3100 Broadway • Suite 400 • Kansas City, Missouri 64111-2591 • 816-931-4527 • Fax: 816-931-4500  
24-Hour Crisis Line: 816-531-0233 • 913-642-0233

MOCSA Outreach Sites:

Independence • Northland • Liberty • Lee's Summit • Prairie Village  
Overland Park • Louisburg • Paola • Kansas City, KS • Central Kansas

www.mocsa.org

House Judiciary

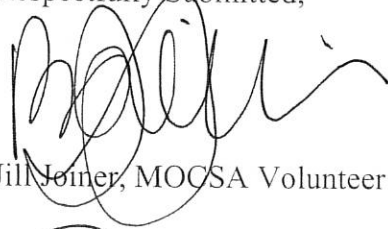
Date 2-13-08

Attachment # 11

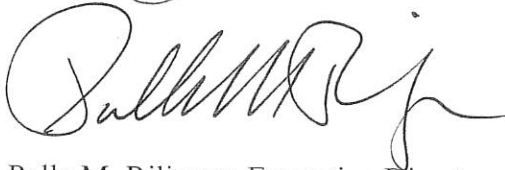
With this proposed legislation, victims will be able to have evidence collected at their own discretion, and be given 180 days to make a thorough, well-informed decision of what to do next. At MOCSA, we see the devastation victims experience everyday. Victims who never told or reported are often asked, why not? For many of them, it was simply too late.

We urge that the House Judiciary Committee fully support House Bill 2727.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jill Joiner". The signature is fluid and cursive, with the first name being more prominent.

Jill Joiner, MOCSA Volunteer

A handwritten signature in black ink, appearing to read "Palle M. Rilinger". The signature is fluid and cursive, with the first name being more prominent.

Palle M. Rilinger, Executive Director



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

STEPHEN N. SIX  
ATTORNEY GENERAL

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

**House Judiciary Committee**

HB 2727

Victims Services Director Dorthy Stucky Halley

Office of Attorney General Stephen N. Six

February 13, 2008

Mr. Chairman and members of the committee, thank you for allowing me to submit this written testimony in support of House Bill 2727.

House Bill 2727 would require that all sexual assault kits collected and not released to law enforcement be sealed and kept for 180 days by either the sexual assault nurse examiner program or the facility that provided the examination. Additionally, this bill would create consistency in the fee charged for conducting the examination of the victim. Passage of this legislation would bring the State of Kansas into compliance with the 2005 Federal Violence Against Women Act (VAWA). Kansas currently receives 1.3 million dollars of VAWA funds from the federal government which would be eliminated if this legislation were not passed into law. Specific to the Victim Services Division of the Attorney General's Office, the Domestic Violence Unit Coordinator position is funded through these federal dollars. This position is responsible for training law enforcement and prosecutors across the state, as well as prosecuting domestic violence cases. The trainings provided have been well received throughout the state.

The Attorney General's office supports the amendment proposed by Juliene Maska with the Office of the Governor, which would eliminate the provision requiring the Attorney General's office to assist the Kansas Department of Health and Environment in determining the fee that would be charged for conducting a sexual assault evidence collection and examination.

Thank you for your time and I look forward to your questions.

House Judiciary  
Date 2-13-08  
Attachment # 12



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Rose Hill Police Dept.

Jay Reyes  
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Beloit Police Dept.

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St. John Police Dept.

## TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB2727 Presented by Ed Klumpp On behalf of the Kansas Association of Chiefs of Police

February 13, 2008

The Kansas Association of Chiefs of Police supports this bill. This bill will allow sexual assault victims to obtain professional medical and emotional attention, and allow for the collection of critical evidence of the crime without making an immediate decision regarding engaging law enforcement or pursuing criminal prosecution of the suspect.

The most pressing need for the victim of a violent sex crime is to seek medical care and treatment. The second most pressing need is for the collection of evidence necessary to properly investigate the crime if the victim later chooses to report and pursue the matter with law enforcement.

The trade off in public safety is any delay in reporting delays investigation. And any delay in investigation not only can make the investigation more challenging, but also means the perpetrator is free to victimize again. But a victim who never reports also creates the perpetrator identification issues. And delayed reporting eliminates critical evidence in the case. So again, law enforcement finds ourselves balancing between diverse factors facing the victim, the public, and law enforcement.

Many times victims are reluctant to make decisions regarding both medical treatment and engaging law enforcement immediately following the trauma they have endured. Many times they are not in a good mental state to make that decision. From a law enforcement perspective we want victims to report all crimes to us as soon after the event as possible. But in reality, many of these victims choose not to report these crimes to us for a variety of reasons. Then, some of those victims will come to us days or weeks later after consulting with family and friends and after time has provided the opportunity for them to think through the situation. Sometimes it is driven simply by the rational thought process. Sometimes it is because of a continuing threat from the suspect. But regardless of the reason, when that decision is made, the chances of the law enforcement investigation reaching a

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successful conclusion is greatly enhanced by the collection of the evidence at the earliest possible time.

In addition to the law enforcement need, the victims will begin their recovery more quickly the sooner they can receive the physical and emotional assistance from medical professionals. That is of a higher priority than the investigation and prosecution of the case.

Without this bill, Kansas victim services programs will not be eligible for federal grant money under the VAWA 05 grant programs. The funding by the federal government has already been greatly reduced for these grant programs making competition across the country intense. The mandate under the VAWA 05 grant program requires the victims of these crimes to have the opportunity for the medical treatment and evidence collection without immediately notifying law enforcement. This bill provides that for the victims ages 16 and over.

It is clear in this case Kansas crime victims will be better served with under the provisions of this bill. The victims deserve nothing less than our strongest support to first help them heal from these most tragic, repulsive, and emotionally damaging crimes; and second to see the perpetrator of these crimes successfully prosecuted regardless of reasonable delay in making the decision to seek law enforcement involvement..

We are concerned whether or not procedures at the medical facility for the collection and storage of evidence will hold up to court scrutiny. If not, the evidence will have no value in prosecution. The bill is void of language to address this issue. This procedure will either require the medical facility to have a way to secure these packages of evidence following evidentiary guidelines or a manner in which the evidence can be transferred to law enforcement with an identifier that does not reveal the identity of the victim but can later be tied back to the particular victim if they choose to report. To go a step further, the testing and DNA analysis from the evidence, even without the identity of the victim, could help law enforcement identify a suspect in other sex crimes in cases where a multiple offender or serial rapist was at work. These are all serious considerations in regards to the logistics of these changes. We must apply the best processes to best serve not only this victim but other victims or potential victims of the same suspect and the criminal justice system.

We encourage you to recommend this bill favorably to pass.



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## TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB 2727

Presented by Ed Klumpp

February 13, 2008

This bill will allow sexual assault victims to seek medical treatment and sexual assault evidence collection at a medical facility without engaging law enforcement. The premise of this approach has merit. Some victims really don't know what to do immediately following sexual assault, and some are not prepared to request law enforcement assistance. As law enforcement officers we want victims to report crimes to us quickly, especially when they are victims to violent crime. But we also recognize that some victims simply won't take that step as they are trying to cope with the trauma they have just endured.

Many times these victims later decide to report the crime to law enforcement who must then investigate. Unfortunately, such delayed reporting frequently means we do not have the physical evidence we could have obtained immediately following the crime. Victims have varying needs and varying responses to the trauma they have suffered. We must be prepared to optimize our opportunities to successfully investigate the crime. The provisions of this bill will not hinder the cases where a victim reports the crime later. And there will be some victims who will not immediately seek medical treatment or law enforcement assistance. This bill will not make any difference in those cases. However, for those that choose to seek medical treatment but only if they can do so without involving the police, this bill will increase the opportunity to have key critical evidence.

There are two concerns with the bill: 1) Will the medical facility maintain the evidence in a manner to withstand legal scrutiny? And 2) Will the law create a situation discouraging cooperation with law enforcement in cases of serial crimes, thus endangering additional victims.

This bill is tied to federal VAWA05 grant funding which supports victim assistance programs. That funding is vital in our quest to help victims to return their lives to some sense of normalcy and to make every effort to identify and prosecute criminals.

We support this bill and encourage you to recommend it favorably to pass.

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*In Unity There Is Strength*