Approved: April 4, 2008
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:32 A.M. on March 12, 2008, in Room 123-S of the Capitol.

All members were present except:
Terry Bruce arrived, 9:35 A.M.
Barbara Allen- excused
David Haley- excused
Julia Lynn arrived, 9:36 A.M.
Derek Schmidt arrived, 9:36 A.M.

Committee staff present:
Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Erica Haas, Attorney, Governor's Grants Program
Sandy Barnett, Exec. Director, Kansas Coalition Against Sexual & Domestic Violence
Alison Jones-Lockwood, Metropolitan Organization to Counter Sexual Assault
Deborah Stern, Kansas Hospital Association
Paula Taylor, Newman Regional Health, Emporia
Randy Hearrell, Kansas Commission on Judicial Performance
Chief Judge Merlin Wheeler, 5th Judicial District (Chase and Lyon Counties)
Lt. Mike Life, Kansas Narcotics Officers Association
Jeff Brandau, Special Agent, Kansas Bureau of Investigation
Laura Green, Drug Policy Forum of Kansas

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2727–Sexual assault, evidence**.

Erica Haas testified in support, stating the Governor's Grants Program administers the Violence Against Women Act grant program for Kansas (Attachment 1). The Act was re-authorized in 2005 by the federal government and requires new state certification requirements. **HB 2727** will amend current Kansas statutes to conform with the new requirements. Ms. Haas stated support of amendments made by the House Judiciary Committee.

Sandy Barnett spoke in favor, indicating forensic evidence collected after a sexual assault can be the cornerstone of a successful prosecution (Attachment 2). Often victims are not emotionally prepared to make decisions regarding their assaults at the time of the attack. **HB 2727** will ensure the evidence is available if and when it is needed. Ms. Barnett feels consistent procedures will benefit both the victim and law enforcement.

Alison Jones-Lockwood appeared in support, stating often victims are traumatized and are not in the best position to make the difficult decision to participate in a criminal justice process (Attachment 3). The proposed legislation will provide victims the time needed to make a thorough, well informed decision concerning their attack.

Deborah Stern provided neutral testimony voicing concern that the bill does not address instances when a health care provider, based on professional judgement, accepted standards of practice and specialized training, refuses to conduct an examination or refers the victim to another facility (Attachment 4). Ms. Stern provided a balloon amendment addressing her concerns.

Paula Taylor provided neutral testimony and proposed amendments to the bill (Attachment 5). The first amendment would allow a health care provider to refer a victim to a facility with staff specially trained in forensic evidence collection or refuse to treat the victim when deemed inconsistent with accepted forensic

principles. The second amendment addressed preparation and transportation of evidence when law enforcement is not involved.

Written testimony in support of **HB 2727** was submitted by:
Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 6)
Ed Klumpp, Kansas Peace Officers Association (Attachment 7)
Dorthy Stucky Halley, Victims Services Director, Office of the Attorney General (Attachment 8)

There being no further conferees, the hearing on **HB 2727** was closed.

The Chairman opened the hearing on **HB 2642–Commission on judicial performance; access to court records; immunity from liability**.

Randy Hearrell spoke in support, stating the proposed legislation would allow the Kansas Commission on Judicial Performance access to court records for the purpose of obtaining individual addresses (Attachment 9). Currently, if a record is closed that information is not available to them. The bill also provides immunity from liability for any civil action related to any act, error, or omission occurring within the scope of their official duties related to the Commission. It was the opinion of the Judicial Performance Committee that immunity
should be statutory and not by court rule since the Commission was created by statute.

Judge Merlin Wheeler appeared in opposition, stating he supported fair, comprehensive, judicial evaluations but had concerns with some sections of the bill (Attachment 10). Judge Wheeler was deeply concerned regarding the granting of immunity to agents of the Commission and that the collection of information be scientifically valid. Judge Wheeler also suggested returning Section 1 back to the original language.

There being no further conferees, the hearing on **HB 2642** was closed.

The Chairman opened the hearing on **HB 2545–Controlled substances, ecstacy**.

Lt. Mike Life testified in support, stating often teenagers take ecstacy because the penalties are not as severe as with some other types of drugs (Attachment 11). Ecstasy causes significant physical and mental changes and is not a harmless drug and according to KBI statistics its use has increased 85% between 2005 and 2006. The proposed bill would make the use of ecastacy a felony.

Jeff Bandeau appeared in support, indicating ecstacy is considered a "club drug" and many young people are not aware of the substantial physical and neurological harm it can cause (Attachment 12). An increase of the penalty will make a statement to potential users to consider these types of drugs as dangerous.

Laura Green spoke in opposition, stating increased penalties will not deter the use of ecstacy or reduce drug abuse in Kansas (Attachment 13). Ms. Green voiced concern that students convicted of drug abuse in state or federal courts will lose or be denied federal financial aid for college educations.

Written testimony in support of **HB 2545** was submitted by:
Ed Klumpp, Kansas Peace Officers Association (Attachment 14)
Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 15)

There being no further conferees, the hearing on **HB 2545** was closed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 13, 2008.

**PLEASE CONTINUE TO ROUTE TO NEXT GUEST**

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 12, 2008

| NAME | REPRESENTING |
|---|---|
| Richard Sommerlad | KCDAA |
| Jeff Bradley | KBI |
| Kathy Porter | Judicial Branch |
| Merlin Wheeler | District Judge |
| Mark Gleeson | Judicial Branch |
| Helen Pedigo | KSC |
| Brenda Harness | KSC |
| Dan Pfeifenmaier | JC SHH |
| Courtney Hallenbeck | Junction City |
| Edward Lazear | Junction City |
| Bob Story | Junction City Police Dept. |
| Michael Life | Junction City Police Dept. |
| Karla Wurtz | KSHJ |
| Ed Klumpp | KACP & KPOA |
| LARRY BERG | KACCT |
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KANSAS
OFFICE OF THE GOVERNOR

Kathleen Sebelius, Governor

www.governor.ks.gov

Testimony of
Erica D. Haas, Attorney
Governor's Grants Program
Before the Senate Judiciary Committee
House Bill 2727
March 12, 2008

Dear Chair Vratil and Members of the Senate 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.

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 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

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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.

Several amendments were made to the bill by the House Judiciary and passed by the House. The first amendment clarifies language that if the request for an examination was made solely by the victim the medical facility cannot notify any law enforcement agency without written consent of the victim unless otherwise required by law.

The second amendment requires the kits, not released to local law enforcement, to be kept for five years, instead of 180 days, in the evidence storage facilities of the Kansas Bureau of Investigation (KBI) after such time the kits are destroyed by the KBI.

The third amendment removes the Attorney General's Office from consulting with the Kansas Department of Health and Environment (KDHE) in determining the cost of the examination. The Attorney General requested this change as he believes the fee should be determined solely by KDHE.

The fourth amendment clarifies that neither the victim nor the victim's insurance carrier shall be charged or billed for the examination fee. The fifth amendment limits the liability of the medical care facilities. And the final amendment allows the KBI to adopt rules or regulations as warranted to implement the provisions of section 1.

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 as passed by the House.

Kansas Coalition Against Sexual and Domestic Violence

UNITED AGAINST VIOLENCE

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

Senate Judiciary Committee
March 12, 2008

HB 2727

Chairman Vratil 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 veracity 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



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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. KCSDV supports these provisions.

KCSDV also requested that the House address two additional issues while it is examining this statute. KCSDV and its member programs believe that strengthening this statute will improve and encourage prosecution of rape and sexual assault in Kansas. For these reasons, KCSDV suggested 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 asked that the following language be added to Page 1, Line 26: it was accepted by the House Judiciary Committee and is contained in HB 2727 as passed by the House.

   "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 suggested 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."

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 as passed by the House.

Respectfully Submitted,

Sandy Barnett
Executive Director

# MOCSA

Metropolitan Organization to Counter Sexual Assault



March 12, 2008

Senator John Vratil, Chairman
Senate Judiciary Committee
Kansas Senate
State Capitol
Topeka, KS

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

Honorable Chairman Vratil and Member of the Committee:

I am Alison Jones-Lockwood, the Coordinator of Advocacy & Outreach of the Metropolitan Organization to Counter Sexual Assault (MOCSA) in Kansas City. 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. 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 regarding seeking medical attention. Many of the victims we speak with on the crisis line share concerns about 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 □ 816/931-4527 □ Fax 816/931-4532
24-Hour Crisis Line: 816/531-0233 or 913/642-0233
MOCSA Outreach Sites:
Independence □ Northland □ Liberty □ Lee's Summit □ Prairie Village □ Olathe □ Overlan
Paola □ Kansas City, Kansas □ Kansas City, Missouri
www.mocsa.org

With this proposed legislation, victims will be able to have evidence collected at their own discretion, and be given the time needed to make a thorough, well-informed decision of what to do next. Many victims either delay in reporting, or never report at all. We know sexual assault is the most underreported violent crime, with generally 10-20% of victims reporting the crime. We believe this legislation will empower victims to report, knowing they don't have to make a major life decision in a matter of hours. This legislation will also guarantee victims that they or their insurance will not be charged for the forensic evidence collection. There are times when the cost prohibits victims from having evidence collected. These two components, as well as others, within House Bill 2727 ensure the victim is at the center of the process happening to and around them.

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 Senate Judiciary Committee fully support House Bill 2727.

Respectfully Submitted,

Alison Jones-Lockwood, Coordinator of Advocacy & Outreach Services

KANSAS HOSPITAL ASSOCIATION

Thomas L. Bell
President

TO: Senate Judiciary Committee

FROM: Deborah Stern, Vice President Clinical Services/Legal Counsel

DATE: March 12, 2008

RE: House Bill 2727

The Kansas Hospital Association (KHA) thanks the Committee for the opportunity to present testimony on HB 2727 which deals with sexual assault testing and evidence collection. My name is Deborah Stern and I am a registered nurse and vice president of clinical services and legal counsel for the Kansas Hospital Association.

KHA is concerned about the unintended burden this proposed legislation places on health care providers. HB 2727 states that any refusal by a health care professional to perform an examination shall be reported to the regulatory agency which licenses that individual. What this bill fails to address are those instances when a health care provider, based on their professional judgment, accepted standards of practice and specialized training, refuses to conduct an examination or chooses to refer the victim to another health care facility which has staff with training in forensic evidence collection.

For these reasons, KHA is proposing an amendment to HB 2727 which permits a health care provider to 1) refer a victim to another health care facility with staff specially trained in forensic evidence collection or 2) refuse to perform an examination when deemed inappropriate or inconsistent with accepted forensic principles.

Thank you for your consideration of our proposed amendment to this bill.



Kansas Hospital Association
215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • www.kha-

**As Amended by House Committee**

*Session of 2008*

# HOUSE BILL No. 2727

By Committee on Judiciary

1-31

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

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

Section 1. K.S.A. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, *or upon the request of the victim,* any physician, a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection, on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. **If an examination has taken place solely upon the request of the victim, the medical care facility shall not notify any law enforcement agency without the written consent of the victim, unless otherwise required by law.** If the physician, licensed physician assistant or registered professional nurse refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of this act. ~~Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action.~~ The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of mi-

Any physician, licensed physician assistant or registered professional nurse refusing to perform an examination which is appropriate and consistent with forensic principles shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action. Any physician, licensed physician assistant, registered professional nurse or health care facility may refer a victim to another health care facility which has staff specially trained in forensic evidence collection.

4-2

nority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) ~~Costs of~~ *All sexual assault kits collected that are not released to law enforcement shall be sealed ~~and kept for 180 days~~ by either the sexual assault nurse examiner program or the facility that provided the examination* **and kept for five years in the evidence storage facilities of the Kansas bureau of investigation.** *After ~~180 days~~* **five years**, *such kits shall be destroyed by ~~or at the direction of the facility where stored~~* **the Kansas bureau of investigation.**

*(c) The fee chargeable for* conducting an examination of a victim as herein provided *shall be established by the department of health and environment, ~~in consultation with the attorney general~~. Such fee,* including the ~~costs~~ *cost* of the sexual assault evidence collection ~~kits~~ *kit* shall be charged to and paid by the county where the alleged offense was committed, *and refusal of the victim to report the alleged offense to law enforcement shall not excuse or exempt the county from paying such fee.* **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.** Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.

**(d) No medical care facility shall incur any civil, administrative or criminal liability as a result of notifying or failing to notify any law enforcement agency if an examination has taken place solely upon the request of the victim and such notification is not otherwise required by law.**

**(e) The Kansas bureau of investigation may adopt rules and regulations as deemed necessary to implement the provisions of this section.**

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

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

Newman
REGIONAL HEALTH
*For your whole life™*

To: Senate Judiciary Committee
From: Paula Taylor, R.N., PhD
Date: March 10, 2008
RE: House Bill 2727

I appreciate the opportunity to speak in reference to House Bill 2727. I an currently, and have been for 21 years, the Chief Nursing Officer for Newman Regional Health. My background is in emergency care, first in the field as a Paramedic and for the past 32 years as a Registered Nurse. I have cared for the victims of crime for many years and officially became a Sexual Assault Nurse Examiner in 2001. I hold a national certification as a forensic Sexual Assault Nurse Examiner (S.A.N.E.).

Concerns pertaining to this portion of the Bill:

- The proposed legislation does not allow for use of forensic evidence principles and professional judgment in directing and individualizing the care and evidence collection process. For this reason we are proposing amendments which permit a health care provider to 1) refer a victim to another health care facility with staff specially trained in forensic evidence collection or 2) refuse to perform an examination when deemed inconsistent with accepted forensic principles without fear of penalty.

- A second concern involves preparation and transportation of evidence when local law enforcement is not involved due to victim preference. Healthcare facilities that collect this forensic evidence are accustomed to releasing evidence to law enforcement for specialized preparation (such as drying of wet or bloody cloths). Law enforcement has historically transported evidence to the KBI for storage and processing. In general healthcare agencies do not have a facility to provide specialized preparation of evidence while respecting chain of custody nor a transportation process outside of law enforcement.

The care of the sexual assault victim is holistic in nature and involves a head-to-toe examination, sexually transmitted infection (STI) evaluation and prophylaxis, pregnancy prophylaxis and general medical care for any injuries inflicted as a result of the assault. What this Bill appears to imply is the "county" is financially responsible for all associated medical expenses. There is a percentage of this population served that have mental health issues and/or utilize the service for the healthcare component (STI and pregnancy prophylaxis). Without the accountability to law enforcement and with no financial responsibility this appears to invite abuse of the system.

Thank you for your consideration of our comments.



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Attachment 5

# TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HB2727

**Presented by Ed Klumpp**

March 12, 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 the investigation. And any delay in the investigation not only can make the investigation more challenging, but also means the perpetrator remains free to victimize again. 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 successful conclusion is greatly enhanced by the collection of the evidence at the earliest possible time. The provisions of this bill, as amended, should offer law enforcement an improved opportunity to have significant and critical evidence in such cases.

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Attachment 6

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 then 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..

Our concerns with the original bill were taken care of by the House committee amendments.

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

# Kansas Peace Officers' Association

INCORPORATED
TELEPHONE 316-722-8433 • FAX 316-722-1988
WEB & EMAIL KPOA.org
P.O. BOX 2592 • WICHITA, KANSAS 67201

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

**Presented by Ed Klumpp**

March 12, 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. Some victims will not immediately seek medical treatment or law enforcement assistance. However, for those that will choose to seek medical treatment only if they can do so without involving the police, this bill will increase the opportunity to have key critical evidence. The provisions of this bill will enhance the opportunity to have physical evidence in cases where a victim reports the crime later.

Our concerns with the original bill were addressed by the House committee amendments.

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.

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

*In Unity There Is Strength*

Senate Judiciary
3-12-08
Attachment 7

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEPHEN N. SIX
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
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**Senate Judiciary Committee**
HB 2727
Victims Services Director Dorthy Stucky Halley
Office of Attorney General Stephen N. Six
March 12, 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 local law enforcement be sealed and kept for five years in the storage facilities of the Kansas Bureau of Investigation. 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 elimination of the requirement of the Attorney General's office to provide consultation to 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 consideration of House Bill 2727.

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3-12-08
Attachment 8

# KANSAS COMMISSION ON JUDICIAL PERFORMANCE



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RANDY M. HEARRELL
Executive Director

**MEMORANDUM**

**TO:** **Senate Judiciary Committee**
**FROM:** **Randy M. Hearrell**
**DATE:** **March 5, 2008**
**RE:** **2008 HB 2642**

BACKGROUND

The 2006 Legislature created the Kansas Commission on Judicial Performance (Commission). Shortly after the effective date of the legislation on July 1, 2006, the Commission was appointed and it has met regularly since that time to perform its statutory duties. The Commission is working hard to provide the composite results from high quality judicial performance evaluations to voters to assist in their decision whether or not to retain the justices and judges subject to retention elections and also to provide the evaluations to elected judges for self-improvement.

In order to prepare the evaluations, it is necessary to survey persons who have observed the judge performing his or her judicial duties or had some other professional interaction with the judge on which to base an opinion. All states that perform judicial performance evaluations utilize surveys or questionnaires for this purpose, as does Kansas.

Because of the number of judges being evaluated, and the large number of persons being surveyed, the names and addresses of persons to be surveyed must be gathered electronically from court records. The Commission has encountered a number of challenges in performing this task and passage of 2008 House Bill No. 2642 will assist in this task by opening information from a number of court records that are not now available to the Commission. HB 2642 also contains amendments relating to liability, the application of K.S.A. 25-4169a and a technical amendment to the Commission's statutes.

In addition to the amendments sought in the original bill, the House Judiciary amended K.S.A. 20-3204 at the request of the Commission to give it more flexibility with respect to persons surveyed. The House Judiciary Committee further amended language sought by the Commission

in section 3(b), and as a result that language now needs further clarification. I will address the issue later in my testimony.

The House Committee of the Whole amended HB 2642 to provide for judicial performance evaluations of senior judges.

EVALUATING SENIOR JUDGES (Section 1 and 3(d))

The amendments contained in section 1 and section 3(d) were added by the House Committee of the Whole. The language expands the definition of "judge" to include senior judges who were previously district judges or judges of the Court of Appeals and requires that evaluations of such judges be made public and be used by the Supreme Court in awarding the senior judge contracts.

This amendment was not sought by the Commission. The senior judge contracts are awarded for two years and are generally awarded in the summer months. Because the survey period for the November 2008 elections has nearly ended, it is likely that the first evaluations of senior judges will be in 2009.

WHO IS SURVEYED (Section 2(a)(1))

At the request of the Commission, the House Judiciary Committee amended section 2(a)(1) of HB 2642 as follows:

> (1) ~~Create surveys of court users who have directly observed the judge's or justice's performance or interacted with the judge or justice, including attorneys, litigants, jurors and other persons the Commission deems appropriate.~~ 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.

While the proposed change may not appear to be significant, it gives the Commission more flexibility. The Commission has heard from some judges that if the evaluations are not conducted precisely as the statute contemplates, they could be subject to challenge. Examples of how the amended language will be helpful:

- The Commission plans to survey court employees about trial court and appellate judges and plans to survey all district judges about appellate judges. The change avoids the question of whether these persons, who have interacted with the judge professionally, have "directly observed" the judge.

- Current statutory language seems to require surveys of all litigants (including appellate litigants). The Commission has discovered that few appellate litigants attend oral arguments and the addresses of appellate litigants are not in the appellate

court records (all dealings are through counsel unless the litigant is *pro se*). Because the litigants do not sit at the counsel table it is difficult to know who they are if they do attend.

IMMUNITY FROM LIABILITY (Section 2 (b) & (c))

A new subsection 2(b) provides that the Commission, its staff, the Supreme Court and the Judicial Council will be immune from suit and liability in any civil action related to any act, error, or omission occurring within the scope of their official duties related to the Commission. New subsection (2)(c) provides limited immunity for agents under contract to the Commission. There are examples of immunity in the Supreme Court Rules. Supreme Court Rule No. 206 provides immunity for the Commission on Judicial Qualifications for conduct in the course of its official duties and Supreme Court Rule 196(h) provides immunity for the Judicial Branch and its employees for unintentional disclosure of confidential information.

Because the Commission on Judicial Performance was created by statute, it is the opinion of the Commission that immunity should be statutory and not by court rule.

ACCESS TO COURT RECORDS

(Section 3(b))

The amendment to section 3(b) was intended to be a catch-all provision that would allow the Commission access to any court records that were overlooked by the amendments to sections 6 through 11. The House Committee was aware that the Commission needs names and addresses of persons who have interacted with the judge to conduct the surveys. In an effort to allow the Commission the access it needs, but not open court records any more than necessary, the House Committee added the phrase "the names and addresses of appropriate persons named in" on page 3, in lines 13 and 14 of HB 2642.

Initially, I was not overly concerned about the amendment to section 3, because section 3 was intended to be a catch-all provision in case any sections that should have been amended were missed. However, when I saw the supplemental note that described the amendment as follows:

> "Restrict access of the Commission to include only names and addresses of appropriate individuals in court records;"

I was concerned that this interpretation would apply to sections 6 through 11 and believed further amendment to be necessary.

The names and addresses of persons to whom we send surveys are essential. However, to conduct the surveys, especially for those who have been in more than one judge's courtroom, to clean the data of duplicates and to survey a variety of persons with different roles who have had contact with the judge, the Commission needs as much of the following information as is available:

> The judge's name; the type of judge; district; court location; case number; case type; date case closed; event type (such as motion, sentencing, trial, etc.); event date; whether jury trial; respondent's title; respondent's first name, middle name or initial, last name, suffix (such as Jr., III, etc), address, phone number, last four digits of SSN (pursuant to agreement we have an algorithm that automatically converts to another non-reversible code), date of birth and sex; party type (such as attorney, law enforcement, victim, etc); party role (such as prosecutor, arresting officer); Supreme Court number, badge ID, jurisdiction and any other unique identifying number for the respondent.

Our current "extraction disc" downloads this information (which is then encrypted) and is then sent to our contractor who destroys it after it is used. The soon to be developed software will perform the same function.

For this reason, we propose that subsection 3(b) be further amended in line 14, by inserting after the word "records," the phrase "and other information necessary." A balloon of the proposed amendment is attached at page 7 of this memorandum. If the Committee is not comfortable with the amendment, subsection 3(b) could be stricken in its entirety.

(Sections 6 - 11)

Currently, the court records in some court cases are closed, and in some court cases that are otherwise open, the records relating to certain parties are closed. This prevents the Commission from obtaining addresses of persons who have had contact with the judges. In its discussions with the Supreme Court asking the Court to change the rules to allow the Commission bulk electronic access to court records, the Supreme Court expressed its support for the Commission to obtain this information. However, the Court was clear that, until the statutes were changed, the Commission could not have access to such records.

The reason access is important is that in urban districts, all or a substantial part of some judges' dockets are made up of cases that are considered confidential. In smaller districts, especially rural districts, the judges' caseload may be small enough that without inclusion of these cases that are now considered confidential, there may be too few cases to properly evaluate some judges.

The amendments to sections 6 through 11 of the bill speak to Commission access to the following sections:

- Section 6 of the bill amends K.S.A. 38-2211 of the Kansas Code for Care of Children to allow the Commission access to the official file to obtain the address of persons who have had contact with the judges.

- Section 7 of the bill amends K.S.A. 38-2309 of the Kansas Juvenile Justice Code to allow the Commission access to the official file.

- Section 8 of the bill amends K.S.A. 59-2122 which is the section of the Probate Code relating to files and records in adoption. This will allow the Commission access to information.

- Section 9 of the bill amends K.S.A. 59-2979 of the Care and Treatment Code to allow the Commission access to information.

- Section 10 of the bill amends K.S.A. 60-3104 of the Protection from Abuse Act to allow the Commission access to information.

- Section 11 of the bill amends K.S.A. 60-31a04 of the Protection from Stalking Act to allow the Commission access to information.

TECHNICAL AMENDMENT (Section 4)

The amendment in Section 4 is a technical amendment that strikes the word "adopt" and inserts the word "approve" in reference to the approval of the rules of the Commission by the Supreme Court. This change makes the language in K.S.A. 20-3206 (Section 3) consistent with the language in K.S.A. 20-3204(f).

APPLICATION OF K.S.A. 25-4169a (Section 5)

Section 5 of HB 2642 amends a part of the campaign finance law relating to use of public funds to expressly advocate the nomination, election or defeat of a clearly identified candidate to state or local office. The amendment exempts the Commission from the application of the section when it is performing its statutory duties.

EFFECTIVE DATE

The effective date of HB 2642 is upon publication in the Kansas Register. The original reason for requesting this effective date was so the Commission could begin utilizing information that is currently considered confidential. However, there is now another reason.

Since the Commission began its work, it has had to physically go to each courthouse to run the extraction disc to access the court records. The Commission has been waiting for preparation of software by Justice Systems, Inc., the owner of the FullCourt case management system Kansas licenses that will allow remote access to the court records. The software was originally to have been completed in December of 2007 and has now been promised at the end of the first quarter of 2008.

When HB 2642 passes, we will again have to get in line to have software written to make the changes to collect the newly authorized information. If there is another software writing delay and HB 2642 has a reasonably speedy trip through the legislative process, perhaps there is a chance to have the changes HB 2642 makes included when the software is written.

Thank you for your consideration. I respectfully request that you favorably report HB 2642, with the requested amendment.

**provided by the state within the scope of their contractual duties. Any such agent shall not be indemnified or held harmless by the state in any cause of action arising out of such agent's intentional or negligent acts.**

Sec. ~~2.~~ **[3.]** K.S.A. 20-3205 is hereby amended to read as follows: 20-3205. ~~On and after July 1, 2006,~~ *(a)* The surveys of court users, survey results and judicial performance evaluation results are confidential and shall not be disclosed except **[as provided in subsection (d) or]** in accordance with the rules of the commission or the Kansas supreme court.

*(b) Any statute or rule that restricts public access to certain types of court records or certain types of information contained in court records shall not prohibit the commission or agents of the commission from having access to* **the names and addresses of appropriate persons named in** *such records in the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto. No confidential information found in such court records shall be revealed to any other person by the commission or agents of the commission.*

Strike
and other information necessary for

*(c)* The evaluation of judges subject to political elections shall be used solely for self-improvement. A judge subject to political elections shall not reveal data from any portion of the survey or the results of the survey.

**[(d) Judicial performance evaluation results of a retirant serving as a judge under written agreement with the Kansas supreme court pursuant to K.S.A. 20-2622, and amendments thereto, shall be public and shall be used by the Kansas supreme court for the determination of a continuing agreement pursuant to K.S.A. 20-2622, and amendments thereto.]**

Sec. ~~3.~~ **[4.]** K.S.A. 20-3206 is hereby amended to read as follows: 20-3206. ~~On and after July 1, 2006,~~ Upon certification by the commission to the judicial council that: (a) Funding is not adequate to support a judicial evaluation program of high quality; (b) the Kansas supreme court has failed to ~~adopt~~ *approve* appropriate rules as set forth in this act; or (c) in the opinion of the commission the program is no longer of appropriate value, then the program may be reduced in scope or discontinued as determined by the judicial council.

Sec. ~~4.~~ **[5.]** K.S.A. 25-4169a is hereby amended to read as follows: 25-4169a. (a) No officer or employee of the state of Kansas, any county, any unified school district having 35,000 or more pupils regularly enrolled, any city of the first class or the board of public utilities of the city of Kansas City, Kansas, shall use or authorize the use of public funds or public vehicles, machinery, equipment or supplies of any such governmental agency or the time of any officer or employee of any such governmental agency, for which the officer or employee is compensated by

# Fifth Judicial District Court
## State of Kansas

MERLIN G. WHEELER
CHIEF JUDGE

430 COMMERCIAL
EMPORIA, KS 66801
(620) 341-3296 OFFICE
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March 12, 2008

Members of the Senate Judiciary Committee

Re: Supplemental Testimony concerning HB 2642 (Commission on Judicial Performance)

Members of the Committee:

Subsequent to the preparation of testimony given to you regarding HB 2642, I have received an up-dated version of the bill containing the amendments made by the House Judiciary Committee and as passed by the House of Representatives. My comments need to be updated in light of those amendments.

The first concern I have always raised about this legislation is the grant of immunity to various persons or groups. In the original bill Section 1 (b) granted immunity to agents of the Commission and the definition of agent was broad enough to encompass non-employee contractors. Apparently members of the House agreed it would be inappropriate to grant immunity to an outside contractor and changes in what is now Section 2 (b) were made to so reflect.

However, new Section 2 (c) was added that provides indemnification to an agent under contract and it is this provision that I believe remains inappropriate. You should be aware that the primary contract issued by this Commission (#10196) has already been issued. It is my position that there is simply no reason for the state of Kansas to grant any indemnity provision which has not already been provided for under the contract. The Commission has not indicated any inability to obtain contract services without statutory indemnification authority and the obvious question is why it should now be added if it was not necessary at the time of issuance of the contract? Making an indemnification grant of this type is a significant departure from existing standards under which state contracts are let and would create a new standard solely for this agency.

I also wish to comment on changes to the bill regarding the groups who may be surveyed by the Commission. Section 1 (a) of the prior version of the bill required surveys of various court user groups and "other persons the commission deems appropriate". This language allowed the commission to add user categories, but did not allow the Commission to disregard those groups specifically referred to in old Section 1 (a). The amended language (now in Section 2 (1)) now requires surveys of "such persons as the commission determines to be appropriate". While at first glance, the change appears to be semantic in nature, the net effect is to the contrary. Under the new

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version the Commission may disregard or not survey any or all of the listed user groups (attorneys, litigants and jurors) rather than being required to survey these groups.

This subject matter was not addressed in the hearing before the House Judiciary Committee at which testimony was taken and therefore the rationale for the change is unknown to me. It would appear, however, to subject the survey process to uncontrolled discretion and potentially allow for survey results to be predicted based upon an easily made change in survey groups. I do not mean to suggest that the Commission or its members intend to manipulate the survey results in this manner, but the prospect of criticism for this reason should be addressed now, rather than later. I would suggest, in the absence of any supporting rationale for the change, that the legislation include the mandatory user groups with the authority to expand (as in the previous version of the bill) rather than allowing the basic user groups to be easily eliminated at the pleasure of the Commission.

My third comment regarding this bill is a reminder that, even in its current form, it still does not address the constitutional infirmities pointed out in Attorney General Opinion number 2007-27. I have previously addressed this issue in written form, but would like to point out that this problem can be easily addressed by making the publication or non-publication of survey results applicable to all judges regardless of the method by which the judge was selected.

Finally, I believe there is no reason for the direction given in new Section 3. (d) that the results of surveys regarding judges serving under contract with the Supreme Court pursuant to K.S.A. 20-2622 "shall be used by the Kansas Supreme Court for the determination of a continuing agreement...." Such a requirement appears to me to be an unconstitutional violation of the separation of powers doctrine.

**WRITTEN TESTIMONY TO THE SENATE JUDICIARY COMMITTEE**

**IN SUPPORT OF HB 2545**

**Presented by Lt. Michael D. Life**
**On behalf of the**
**Kansas Narcotics Officers Association**

March 5, 2008

Senate Judiciary Committee
Senator John Vratil, Chairman

Mr. Chairman and Committee Members,

This testimony is in support of HB 2545

Mr. Chairman and Members of the Committee, I am Lt. Mike Life with the Junction City Police Department. I have been a police officer for 22 years. For 14 of those years I have been working narcotics investigations exclusively. I am the supervisor of a county wide drug task force and am the current president of the Kansas Narcotics Officers Association. I am here on behalf of the Kansas Narcotics Officers Association. We are a proponent of HB 2545.

HB 2545 addresses and fixes a deficiency currently in Kansas statute 65-4162. The problem is that the current statute does not address the seriousness of Ecstasy abuse, and does not increase penalties for repeat offenders except with marijuana.

3,4, methylenedioxymethamphetamine, which is frequently referred to by the acronym MDMA or the street name of Ecstasy, is a dangerous drug. There is substantial scientific evidence that proves it has numerous risks associated with its use. For some people, Ecstasy can be addictive. In one survey of Ecstasy users, 43% met the accepted diagnostic criteria for dependence.

Ecstasy can also interfere with the body's ability to regulate temperature, sometimes leading to a sharp increase in body temperature (hyperthermia), resulting in liver, kidney and cardiovascular system failure, and death.

Research in animals links Ecstasy exposure to long-term damage to neurons that are involved in mood, thinking, and judgment. A study in nonhuman primates showed that exposure to Ecstasy for only 4 days caused damage to serotonin nerve terminals that was evident 6 to 7 years later.

For the purposes of brevity in this testimony, I will not quote the research and data individually but will list sources for this data at the bottom of my written testimony. The

bottom line is Ecstasy is a dangerous drug, it causes brain damage, and people can die from it.

State wide Ecstasy use is on the rise. According to Kansas Bureau of Investigations statistics, from 2005 through 2006 total arrests in Kansas under 65-4162 were down 15%. Most of these were for marijuana. Now in that same time period, if you just look at arrests for Ecstasy and the related designer drugs under the same statute, you will see an increase of 84%.[1] In my own jurisdiction, 5 years ago you never saw Ecstasy but now it's readily available.

For most Ecstasy users, this drug is thought of as harmless and with no risks. This way of thinking is only validated by its current misdemeanor status under current Kansas law. No matter how many times you are caught with Ecstasy it always remains a misdemeanor, unless you have a prior marijuana conviction. The current statute, in reality, is inconsistent. A second time conviction for marijuana is currently a felony under 65-4162 and the change proposed by HB2545 is to make repeat offenses for Ecstasy a felony also. This will make the statute more consistent and addresses the seriousness of Ecstasy use. It also assures that people arrested for repeat Ecstasy offenses will be placed on monitored probation to receive the attention and help they need. This change will have minimal impact on prison populations.

I think that I can speak for most Law Enforcement when I say that MDMA or Ecstasy should be a felony from the start, just like Methamphetamine or Cocaine. Many other states have already taken this approach. But the changes proposed by HB2545 are a needed step in the right direction and should be supported.

In conclusion, on behalf of the Kansas Narcotics Officers Association, we support HB 2545 and the changes to 65-4162 which are proposed by it. I want to thank you for your time and attention.

Respectfully submitted,
Michael D. Life
President, Kansas Narcotics Officers Association
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Lieutenant, Junction City Police Department
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785-238-8556 office
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*Sources of Information*

a. National Institute on Drug Abuse, InfoFacts: MDMA, May 2006, located at: http://www.drugabuse.gov/infofacts/ecstasy.html

[1] Kansas Bureau of Investigation statistics do not include Kansas City, Topeka, or most of Johnson County.

b. National Institute on Drug Abuse, Research Report: MDMA (Ecstasy) Abuse, March 2006, located at: http://www.nida.nih.gov/ResearchReports/MDMA/

c. National Institute on Drug Abuse, Study Suggests Cognitive Deficits in MDMA-Only Drug Abusers, 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol19N5/Study.html

d. National Drug Intelligence Center, Fast Facts: MDMA (Ecstasy), 2003, located at http://www.usdoj.gov/ndic/pubs3/3494/index.htm

e. Testimony Before the Subcommittee on Criminal Justice, Drug Policy and human Resources, Committee on Government Reform, Untied States House of Representatives-Research on MDMA, Glen R. Hanson, D.D.S., Ph.D., September 19, 2002, located at http://www.drugabuse.gov/Testimony/9-19-02Testimony.html

f. Office of National Drug Control Policy, Club Drugs, February 2007, located at http://www.whitehousedrugpolicy.gov/drugfact/club/index.html

g. National Drug Intelligence Center, NIDA Conference Highlights Scientific Findings on MDMA/Ecstasy, December 2001, located at http://www.drugabuse.gov/NIDA_Notes/NNVol16N5/Conference.html

h. National Drug Intelligence Center, MDMA May Reduce Gray Matter in Key Brain Regions, January 2005, located at http://www.drugabuse.gov/NIDA_notes/NNvol19N5/MDMA/html

i. National Drug Intelligence Center, NIDA's Latest Research Report Focuses on MDMA (Ecstasy) Abuse, January 2005, located at http://drugabuse.gov/NIDA_notes/NNvol19N5/tearoff.html

# Kansas Bureau of Investigation

Robert E. Blecha
*Director*

Stephen N. Six
*Attorney General*

Testimony in Support of HB 2545
Before the Senate Judiciary Committee
Jeffery Brandau, Special Agent in Charge
Kansas Bureau of Investigation
March 12, 2008

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in strong support of HB 2545, raising the penalty for simple possession of MDMA, more commonly known as the club drug "ecstasy".

3,4 Methylenedioxymethamphetamine, a.k.a. MDMA or Ecstasy is the most common 'club drug' used in Kansas. A combination of stimulant and hallucinogen, the feeling of euphoria and reduction in restraints make it a natural for people, especially young adults, out to 'party'. But the risks are similar to using other stimulants such as cocaine and methamphetamine – up to and including death.

The use of 'club drugs' is a threat to our citizens, but in particular our young adults, whom are most likely to use "club drugs. Use of these "club drugs" by our young people is a threat not only because of the short term physical effects but in the long term from "neurotoxicity." Studies have shown that exposure to MDMA for only 4 days causes damage to serotonin nerve terminals in the brain, that can be evident 6 to 7 years later. Serotonin in the central nervous system, is believed to play an important role as a neurotransmitter, in the inhibition of anger, aggression, body temperature, mood, sleep, sexuality, and appetite.

MDMA is most often sold in the form of a tablet or pill. This gives the purchaser the illusion of being manufactured by a pharmaceutical company. This is not the case, many different binders and chemicals can be combined to produce a pill that is marketed as MDMA. The hidden problem being users may get a combination of drugs, including methamphetamine, and not just the MDMA they thought they purchased. This unknowing and unexpected drug usage can lead to even more serious toxicity.

In Kansas, there seems to be a growing trend of use of MDMA and its various permutations, based upon cases submitted to the KBI's forensic laboratory:

Calendar Year 2004: 48 cases
Calendar Year 2005: 78 cases
Calendar Year 2006: 143 cases
Calendar Year 2007: 122 cases

MDMA continues nationally to be a significant threat. Canada has become the primary supplier of MDMA available in the United States. Currently the Royal Canadian Mounted Police estimate that over 2,000,000 tablets a week are being produced for consumption in the United States. Seizures along the northern border in 2006 were 5,500,000 tablets or just over 2 weeks of production. Much of the MDMA produced in Canada contains methamphetamine as an ingredient. The threat from Canada is expected to remain high for the remainder of this year, as long as the substantial production rates in Canada continues.

HB 2545 increases the penalty for possession of MDMA and its sister creations to a level 4 drug felony, the same as for cocaine or methamphetamine possession. The State of Kansas needs to make a statement to potential users of "club drugs" that we do not condone the use or possession and that the State considers possession of these dangerous drugs a felony. The non-prison sanctions under SB 123 will still apply to these cases; this gives the magistrate the ability to provide the user with treatment. It also sends the clear message that the use of these club drugs is a dangerous and illegal activity.

If we punish the use or possession of these drugs as a misdemeanor, the same as marijuana, then young people reason it is no more dangerous than marijuana. Instead, since it is as dangerous as methamphetamine or cocaine, we should punish it like methamphetamine or cocaine.

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

Testimony before Senate Judiciary Committee
**HB 2545**
Concerning felony possession of MDMA

Laura A. Green
Executive Director
Drug Policy Forum of Kansas
www.dpfks.org

Members of the committee:

The Drug Policy Forum of Kansas is a non-profit organzation representing over 2,000 adults in Kansas. The forum promots debate and education on alternatives to the criminal justice approach to drug control policy in Kansas.

We are opposed to this bill because; it will not reduce drug abuse in Kansas, it will not deter our youth from using illegal drugs, it will increase costs to the taxpayer by over $1 million dollars this year alone, and it will ban some of our young people from getting an education in our colleges and universitys.

As you are aware, the drug MDMA or ecstasy is used primarily by young people, typically of college age, for its ability to produce feelings of overwhelming euphoria, intimacy, and connectedness with others, and is commonly associated with the rave culture and its related genres of music.

> See: The Journal of Drug Education (Issue: Volume 33, Number 1 / 2003 Pages: 61 – 69)
>
> CORRELATES OF ECSTASY USE AMONG STUDENTS SURVEYED THROUGH THE 1997 COLLEGE ALCOHOL STUDY, GEORGE S. YACOUBIAN, Jr., PH.D., University of Maryland, College Park
>
> Abstract:
>
> Anecdotal reports have suggested that the use of 3,4-methylenedioxymeth-amphetamine (MDMA or "ecstasy") is a growing problem across the United States, primarily among college students and rave attendees. To assess this contention, the drug-using behaviors of 14,520 college students were examined with data collected through the 1997 College Alcohol Study (CAS). Prevalence estimates of ecstasy use were generated and associations between ecstasy use, demographic characteristics, and alcohol and other drug (AOD) use were explored. Six percent of the sample reported lifetime ecstasy use, 3 percent reported use within the past 12 months, and 1 percent reported use within the past 30 days. Compared to non-users, 12-month **ecstasy users were significantly more likely to be white, to be a member of a fraternity/ sorority,** and to have used all other drugs of abuse during the past 12 months. Implications for these findings are discussed.

According to KBI records, some of the arrests for possession of MDMA in 2006 were in the following counties:

| | | | |
|---|---|---|---|
| Cowley | 3; | Douglas | 2 |
| Ellis | 1; | Finney | 1 |
| Geary | 3; | Johnson | 2 |
| Leavenworth | 1; | Montgomery | 7 |
| Pratt | 1; | Saline | 3 |
| Scott | 1; | Sedgwick (Wichita PD) | 24 |

Topeka PD, Kansas City PD, Overland Park PD and many other large agencies do not report drug arrests by drug type.

Testimony before Senate Judiciary Committee
**HB 2545**
Concerning felony possession of MDMA

Laura A. Green
Executive Director
Drug Policy Forum of Kansas
www.dpfks.org

## Federal Higher Education Act – Drug Provision

The Higher Education Act (HEA) Aid Elimination Penalty is federal law passed in 1998 that denies financial aid to students with past drug convictions. Since taking effect in 2000, more than 200,000 would-be students have lost their financial aid because of past drug convictions, many of them for very minor offenses for which the law allows no judicial discretion.

The Aid Elimination Penalty only applies to offenses which are heard in a state or federal court, and not in a municipal court.

## Text of the Provision

The following provision was contained in subsection (r) of section 484 of the Higher Education Act of 1998 (see 20 U.S.C. 1091(r)).
(r) Suspension of eligibility for drug related offenses.- (1) IN GENERAL- A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of an offense involving:

The possession of a controlled substance: Ineligibility Period

First Offense - 1 year
Second Offense - 2 years
Third Offense - Indefinite

## Consequences

Persons convicted in district court for a first-time drug offense while receiving student financial aid lose eligibility for their loan, grant, or work-study for one year from the data of conviction. In effect, their student loan becomes due, their grant must be repaid, and/or they lose their job and are forced to drop out of school.

These are otherwise well performing students. No other type of criminal conviction results in the loss of student financial aid!

As you are aware, many cities in Kansas have passed municipal ordinances on first-time marijuana possession and Wichita has an ordinance which makes possession of LSD a city offense.

These city ordinances keep students from loosing access to financial aid because the case is heard in a city, rather than state court.

## Conclusion

Is it necessary to pass a law to make second possession of MDMA a felony? What is the benefit to society for such a law? It would be far better to spend one million dollars on effective drug education on our college and university campuses; such as the successful *Safety First* program (see booklet attached).



13-2

# Kansas Peace Officers' Association

INCORPORATED
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## Testimony to the Senate Judiciary Committee
## In Support of HB2545

**CORRECTED** March 5, 2008

The Kansas Peace Officers Association supports the proposed changes to the law dealing with MDMA, also known as ecstasy. HB2545, as amended in the House, will be a step forward in controlling the increased use of this drug.

MDMA continues to be a problem in many areas of Kansas. Metropolitan areas as well as more rural areas all report the use of MDMA by our high school age youth and young adults. It is important the statutes evolve to recognize the drugs being abused in Kansas and to make a statement of the significance of the resulting dangers.

Many times our youth are exposed to MDMA at parties where it is introduced by adults. The proposals in this bill will add teeth to the law enforcement efforts to stop this flow while in the possession of those bringing it to the parties, hopefully in some cases prior to the distribution to our youth.

In its current form, this bill will treat possession of MDMA the same as possession of marijuana. The first conviction will be a misdemeanor while the second and subsequent conviction will be a felony.

We encourage you to recommend this bill to pass.

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*In Unity There Is Strength*

Senate Judiciary
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# WRITTEN TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF HB 2545

## Presented by Ed Klumpp

**CORRECTED**

March 5, 2008

This testimony is in support of HB 2545 which enhances the penalties for possession of certain drugs, primarily party drugs including MDMA, also commonly known as ecstasy. Recognizing the current concern for the sentencing structure of drug violations, we closely looked at the necessity of this bill and the indicators for the magnitude of this drug problem.

The 2007 Kansas Communities That Care Survey shows an increase in the number of 10th, and 12th graders using MDMA every year for the last three years. One might assume this is another big city problem. But it is not just in the big cities of Kansas. The survey shows the top seven counties in percentage of youth responding "1 to 2 times" when asked how often they had used MDMA in the past 30 days are: Morton, Marion, Osborn, Scott, Meade, Grant, and Rooks. Several counties tie for 8th place including Atchison, Ford, Harper, Kingman, and Pratt. Johnson, Shawnee and Sedgwick counties are lower, but not by much. This is clearly a statewide problem impacting the rural as well as the urban communities.

MDMA is a drug commonly seen at RAVES and party settings. It is a drug whose users are often our youth who see the drug as a relatively "safe" drug. This misconception about the risks is supported by the current state statute status of a misdemeanor. Ecstasy is a stimulant resulting in extended periods of high activity beyond normal physical capacity. Medical research has shown there are serious health effects to the brain with extended use of ecstasy. Risks also include stroke, heart attack and cardiovascular system failure.

This bill was amended in the House changing it from the original proposal of making the possession of MDMA a felony in all cases to handling it the same as possession of marijuana, with the first conviction a misdemeanor and the second and subsequent convictions will be a felony. This is clearly a step in the right direction and we support the bill as amended. Passage of this bill will clearly establish a public policy recognizing the hazards of this abused drug and send a message to our youth that it is not a safe recreational drug.

We urge you to recommend HB 2545 favorably for passage.

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