

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 3, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Ed Klump, Kansas Association of Chiefs of Police and the Kansas Peace Officers' Association
Gary Howell, Kansas Sheriffs' Association
Don Moeler, Executive Director, League of Kansas Municipalities
Kyle Smith, Topeka Police Department

Others attending:

Ed Klump, Kansas Association of Chiefs of Police and the Kansas Peace Officers' Association
Gary Howell, Kansas Sheriffs' Association
Don Moeler, Executive Director, League of Kansas Municipalities
Kyle Smith, Topeka Police Department

See attached list.

SB 458 - Providing for the use of interactive video testimony in hearings or trials where there is a report concerning a forensic examination

Chairperson Colloton called the meeting to order and opened the hearing on **SB 458**. The Chair introduced Ed Klump, Kansas Assoc. Of Chiefs and the Kansas Peace Officers' Association, to give his testimony as a proponent of the bill. Mr. Klump presented written copy of his testimony. (Attachment 1) Mr. Klump stated the bill will offer one step of many that are necessary to reverse the trend of the declining efficiency of support to local law enforcement by the KBI. The KBI continues to seek solutions to backlogs in their laboratory operations. The ability for forensic scientists to provide interactive video conference testimony will save the state in several ways. The bill will increase the KBI ability to address local law enforcement's forensic investigation needs and save the state money directly and indirectly.

A question and answer session followed with Mr. Klump and the Committee. There was some concern regarding security issues.

Chairperson Colloton introduced Gary Howell, representing the Kansas Sheriff's Association, to give his testimony as a proponent of **HB 458**. Mr. Howell presented written copy of his testimony. (Attachment 2) He stated there is a huge demand for DNA typing, digital forensics, and crime scene reconstruction. Forensic science is playing an ever increasing role in courtroom presentations where our scientists provide important testimony. The bill would permit the scientists in the crime labs to testify from their place of work directly to the courtroom. In closing, he urged the Committee to pass the bill.

The Committee had a few questions for Mr. Howell and upon the conclusion; Chairperson Colloton introduced Don Moeler, Executive Director, League of Kansas Municipalities to give his testimony as a proponent of the bill. Mr. Moeler presented written copy of his testimony. (Attachment 3) He stated the bill makes sense on many levels as it will make the court system more efficient and at the same time save the taxpayers money. The rights of the accused will be protected as they will have every opportunity to hear the testimony of the forensic expert, and to cross examine them at the appropriate time. In closing, he urged the the Committee to pass the bill.

Chairperson Colloton introduced Carl Anderson, Laboratory Quality Assurance Manager, KBI, to give his testimony as a proponent for **HB 458**. Mr. Anderson presented written copy of his testimony. (Attachment

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 3, 2010, in Room 144-S of the Capitol.

4) Mr. Anderson stated that during 2009, the KBI scientists cumulatively logged over 1200 hours of travel and wait time for less than 150 hours of testimony. Having the option of testimony via video conference some of the trips to court would be eliminated. He stated that based on information from other state systems with an active video testimony program, use of the system is generally limited to simple, uncontested single item cases such as simple drug possession or DUI. These types of testimonies account for approximately 50% of all appearances for the KBI investigation Forensic Laboratory. In closing, he stated the KBI supports the bill.

Questions and answers followed.

Chairperson Colloton asked if there was anyone else wishing to testify on **HB 458**. She recognized Kyle Smith, Kansas Peace Officers' Association, and he stated he would like to give his testimony as a proponent of the bill. Mr. Smith presented written copy of his testimony. (Attachment 5) Mr. Smith stated justice in Kansas is in crisis. Forensic science has provided incredibly accurate and reliable evidence and become the standard for proving criminal cases beyond a reasonable doubt for prosecution and defense. The demand for these services is growing at an unbelievable rate. The KBI forensic labs are currently unable to meet the demand and have a backlog. With this legislation they would be able to testify by video conferencing in the lab saving on time out of the lab traveling to testify.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of State Senator Derek Schmidt. (Attachment 6)

A short discussion followed.

Chairperson Colloton called for any others to testify on **SB 458**; being none, she closed the hearing and adjourned the meeting at 2:40 p.m. with the next meeting scheduled for March 4, 2010 at 1:30 p.m. in room 144-S.



Kansas Association of Chiefs of Police

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TESTIMONY IN SUPPORT OF SB458 VIDEO PRESENTATION OF FORENSIC EVIDENCE TO THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

March 3, 2010

Madam Chair and Committee Members,

The Kansas Association of Chiefs of Police and the Kansas Peace Officers' Association support the provisions of SB458. In determining our 2010 legislative priorities, it became very clear a major concern of our membership is the declining efficiency of support to local law enforcement by the KBI. This bill will offer one step of many that are necessary to reverse this trend and help the other crime labs in the state at the same time. We recognize the fiscal dilemma currently challenging the state. Our local governments are also facing those challenges.

The KBI continues to seek solutions to backlogs in their laboratory operations. Local agencies frequently have to wait months for critical forensic examination of evidence, particularly in the area of DNA analysis. In today's highly technical world, delays in forensic examinations means suspects remain unidentified, unapprehended, and free to produce more victims of crime while we wait for scientific test results. In some cases, local agencies have begun using other labs to get the evidence they need to proceed with their cases.

With the continued fiscal challenges we must look for other ways to maximize efficiency of the operations we can afford. This bill offers a contribution to that end. But it will not solve the problem by itself.

The ability for forensic scientists to provide interactive video conference testimony will save the state in several ways. First, it will directly reduce travel expenses whenever such testimony can be accomplished. Second, it will increase efficiency by allowing the scientists to spend more time in the lab and less time out of the lab travelling to and from court.

The urgency of this bill is increased given the decision in the US Supreme Court's 5-4 decision in *Melendez-Diaz v. Massachusetts* last year ruling the Massachusetts law permitting certified forensic reports in court as unconstitutional. The US Supreme Court will soon decide another case, *Briscoe vs. Virginia*, reviewing the Virginia law on the same matter.

We understand there may be technology availability issues in some jurisdictions initially and that video testimony may not be acceptable in every case. But every case where it can be used will increase the KBI ability to address local law enforcement's forensic investigation needs and will save the state money directly and indirectly.

We strongly encourage the committee to recommend SB458 favorable to pass.

Ed Klumpp
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Corrections and Juvenile Justice

Date: 3-3-10

Attachment # 1



Kansas Sheriffs Association

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Testimony in Support of SB 458
Forensics Testimony by Video
Presented by Gary R. Howell
Director, Johnson County Sheriff's Criminalistics Laboratory
To the House Corrections and Juvenile Justice Committee
March 3, 2010

Madam Chair and committee members,

As everyone knows there has been an unprecedented emphasis placed on the forensic sciences in the past few years. There is a huge demand for DNA typing, digital forensics, crime scene reconstruction, etc. Forensic science is playing an ever increasing role in courtroom presentations where our scientists provide important testimony. We are called upon to respond to this demand in an atmosphere of constricted budgets.

This legislation would permit the scientists in the crime labs to testify from their place of work directly to the courtroom. This will save precious time spent away from the lab in driving and waiting in witness rooms. By making the system more efficient the scientists can spend their time working more cases and reducing case backlogs.

We encourage you to recommend SB458 favorably for passage.

Corrections and Juvenile Justice
Date: 3-3-10
Attachment # 2



To: House Corrections and Juvenile Justice Committee

From: Don Moler, Executive Director

Re: Support for SB 458

Date: March 3, 2010

First I would like to thank the Committee for allowing the League to testify today in support of SB 458. This bill provides for the use of interactive video testimony in hearings or trials, at both the state and local level, where there is a report concerning forensics examination. The bill makes sense on many levels as it will make the court system more efficient and at the same time save the taxpayers money. It allows for experts, who have provided written expert testimony, to testify concerning this testimony via an interactive video hook up. This saves time and money as it does not require the forensic expert to travel from distant places and spend an entire day, or perhaps multiple days, waiting in a court room for the opportunity to testify.

We believe this is a common sense idea whose time has come as a result of the availability, and efficiency now afforded us through video technology. The rights of the accused will be protected as they will have every opportunity to hear the testimony of the forensic expert, and to cross examine them at the appropriate time. For the above reasons we would urge the committee to favorably pass SB 458 and help to further improve the court system of both the State of Kansas and the cities of Kansas. I will be happy to answer any questions the Committee may have at the appropriate time.

Corrections and Juvenile Justice
Date: 3-3-10
Attachment # 3



Kansas Bureau of Investigation

Robert E. Blecha
Director

Steve Six
Attorney General

**TESTIMONY
BEFORE THE HOUSE CORRECTIONS
AND JUVENILE JUSTICE COMMITTEE
IN SUPPORT OF SB 458
O. CARL ANDERSON
LABORATORY QUALITY ASSURANCE MANAGER
KANSAS BUREAU OF INVESTIGATION
March 3, 2010**

Chairperson Colloton and Members of the Committee,

I appear today on behalf of the KBI to speak regarding SB 458 which amends K.S.A. 2009 Supp. 22-3437 to allow interactive video testimony in limited instances.

I serve as the Quality Assurance Manager for the KBI Forensic Laboratory. My duties include activities that help assure the Forensic Laboratory remains in compliance with legal and accreditation requirements. Additionally I serve as a system administrator for the laboratory's state-wide Laboratory Information Management System.

The option of being able to present testimony via a video conference connection is, on the surface, appealing. Our examiners frequently drive to various courts across the state, spend time waiting to appear, only to be advised their testimony is no longer required. These "wasted" trips are expensive not only in travel costs, but also contribute to the backlog of samples waiting testing in the laboratory.

During 2009 our scientists cumulatively logged over 1200 hours of travel and wait time for less than 150 hours of testimony.

With the option of testimony via video conference SOME of the trips to court would have been potentially eliminated. However, based on information from another state system with an active video testimony program, use of the system is generally limited to simple, uncontested, single item cases, such as simple drug possession or DUI. These types of testimonies account for approximately 50% of all appearances for the Kansas Bureau of Investigation Forensic Laboratory.

Additional limitations on the overall impact of the system would include the availability of suitable hardware and telecommunications capabilities in the many courtrooms throughout the state, as well as the acceptance of the court and participating attorneys.

As written, the KBI supports SB 458.

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

Corrections and Juvenile Justice
Date: 3-3-10
Attachment # 4

Kansas Peace Officers' Association



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House Corrections and Juvenile Justice Committee

Testimony of Kyle Smith

In Support of SB 458

March 3, 2010

Chairman Colloton and Members of the Committee,

On behalf of the Kansas Peace Officers Association, I appear today in support of SB 458. Justice in Kansas is in crisis. Forensic science has provided incredibly accurate and reliable evidence and become the standard for proving criminal cases beyond a reasonable doubt. And not just for the prosecution, but also for defense, as evidenced by exonerations by DNA evidence in the headlines. We are blest to be living in this day where so much certainty can be introduced before the courts.

But forensic science is expensive, not only for the scientific instruments but also the training and salaries of the scientists. Both the scientists and instruments must be of the highest quality as they are not only doing important, sometimes life and death, work, but the work is constantly challenged and subject to cross examination by hired experts.

And the demand for these services is growing at an almost unbelievable rate. Success breeds success, and jurors, prosecutors, judges and the public expect and demand that the miracles seem on 'CSI' each week be used in every case in the farthest corner of Kansas.

Not surprisingly, we have fallen far behind in meeting this demand. The KBI forensic laboratories are currently unable to begin to respond to the need. They are "bleeding brains" as their scientists are hired away – I think they are currently down 20% of their authorized scientist positions. The backlog is ridiculous and denying victims and defendants justice. Local law enforcement is frustrated. For just one example, I spoke last week with the Sheriff in Crawford County and he had one rape case that was over 18 months old. When he had a murder happen he didn't even call the KBI, but begged a favor from the Johnson county lab to do the DNA. Here in Topeka, my police department is actually paying the salary of one of the KBI scientists that would otherwise have been let go, in order to get our cases worked.

Corrections and Juvenile Justice

Date: 3-3-10

Attachment # 5

The KBI desperately needs a new laboratory, more people, better pay and more equipment. And do you see the budget situation allowing the legislature to be addressing these fiscal needs in any adequate way?

When scientists are travel to court, all across Kansas, they are not 'on the bench' turning out cases and reducing the back log. Prosecutors and judges are frustrated in trying to set hearings, and meet speedy trial requirements, do to scientists having prior subpoenas in other counties. Even more frustrating, frequently when the scientist does go to court, the case does not go to trial but is then plead out as the defense's only hope was that the KBI scientist would be unable to show. A not unreasonable hope given the number of subpoenas each scientist gets each day.

I note in the KBI's testimony that in 2009 there were over 1,200 hours in travel and wait time for only 150 hours of actual testimony. That is a lot of expensive man-hours that could be better spent in the lab.

And the situation could become exponentially worse. The KBI and other forensic laboratories rely on the use of Certified Laboratory Reports pursuant to K.S.A. 22-3437 in a large number of cases. Last June the U.S. Supreme court ruled in *Melendez-Diaz v Massachusetts* 129 S.Ct. 2527 (2009), that crime lab reports are inadmissible as not meeting the defendant's right to confront and cross examine the witness. While our statute provides more protection to the defendant and so might be distinguishable from the Massachusetts statute it is possible that the use of the Certified Laboratory Reports will be curtailed or banned by the Kansas appellate courts. If that happens, and KBI scientists have to travel and testify on every DUI and marijuana possession case, not to mention the major cases, a system already in crisis will grind to a halt. It is almost impossible to overstate the scope of this problem. With statutory and constitutional speedy trial requirements, we will have more guilty criminals going free.

SB 458 is a creative and constitutional way to address at least some of these problems. While a defendant has the constitutional right to confront the witnesses against the defendant, this is not an absolute right. The right is to effectively confront the witnesses, but that does not mean that the witness has to appear in person, as opposed to by video conferencing. Where there are other significant public policy issues at stake, these can justify live video testimony. The United States Supreme Court held that live testimony via one-way closed-circuit television is permissible under the Federal Constitution, provided there is an individualized determination that denial of "physical, face-to-face confrontation" is "necessary to further an important public policy" and "the reliability of the testimony is otherwise assured" *Maryland v. Craig*, 497 U.S. 836, 850 [1990]). And this legislation is even friendlier to defendants as it involves two-way video testimony. See also *State v. Bejarano*, Kansas Court of Appeals, No. 98,237 (Feb. 20, 2009) where another statutory authorization for video testimony (child sexual assault victims) was held constitutional. Other courts across the country have allowed live video testimony when adults are not able or available to travel and testify. See *People v. Wrotten*, 2009 WL 4782864 (N.Y.) and *Acevedo v Texas*, Ct. Appeals No. 05-08-00839-CER, 2009.

In short, if there is good public policy need, and the defendant is still able to see, be seen and cross examine a witness, video testimony has been held to be constitutional and proper. Clearly there are a very important public policy interests in allowing the use of live video testimony.

And it should be noted that the nature of this testimony is somewhat different than that of victims or other witnesses. Forensic scientific testimony is based on scientific examinations done in a laboratory set up to document and record all features of the examination. The defense is given the scientific documentation long before trial to exam or have it reviewed by their own scientific experts. This is unlike the witness testifying from memory of a traumatic incident and so the issues that might argue for face to face confrontation, such personal animosity between defendant and witness or the importance of personalities - where nuances seen live might be important - are basically immaterial.

Finally I would note that while there is some fiscal impact for implementing this legislation, it is likely to be minimal. Most courts are set up already to play video depositions and so additional technology for a live link is all that would be needed and, as one county attorney pointed out, he couldn't think of a better thing for him to spend his forfeiture funds on. The KBI is in desperate need of space and that is a problem, but the costs and space will be offset by the savings in salaries from not having scientists drive all over the state, particularly if *Melendez-Diaz* is followed in Kansas.

On behalf of public safety and the peace officers of Kansas who risk their lives catching these criminals, we would urge passage of this crucial legislation that will help convict the guilty and free the innocent.

I would be happy to answer any questions.

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Senator Derek Schmidt
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Testimony in Support of Senate Bill 458
Presented to the House Corrections and Juvenile Justice Committee
by Senator Derek Schmidt

March 3, 2010

Chairwoman Colloton, members of the committee, thank you for considering this legislation today.

Senate Bill 458 is aimed at saving costs and resources for our forensic scientists. The bill would allow forensic scientists to testify in regards to their forensic reports by interactive video rather than having to appear in person in court. It is permissive, not mandatory.

The reality is that a considerable amount of time and resources of our forensic scientists are consumed by the need to travel to courtrooms, wait for the docket to be called, and then testify. In many cases, the only item to which they must testify is verifying the written forensic report that they previously prepared. Indeed, it is rather common that defense counsel will stipulate to admit the report once the scientist actually shows up and clearly will be available to testify.

This bill will save that travel time and will allow our forensic scientists to devote more of their time to analyzing samples and less to traveling the state to appear in court. The bill is narrowly tailored to apply only in cases where the testimony relates to admissibility of a written forensic report, and it is structured to allow for examination and cross-examination in order to protect the defendant's constitutional right to confront the witnesses against him.

Modern, off-the-shelf technology makes this bill timely and possible. Interactive, Internet-based videoconferencing is now readily available and affordable. The technology that many college students now use to keep in touch with friends and family can also be put to work to save make our courts more efficient, save costs, and ease the strain on our forensic laboratories and scientists.

I encourage the committee to recommend this measure favorably.

Corrections and Juvenile Justice

Date: 3-3-10

Attachment # 6