



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

March 10, 2015

Senate Judiciary Committee
Attention: Jeff King, Chairman
State Capitol, Room 346-S
Topeka, Kansas 66612

Re: House Bill 2048

Dear Chairman King,

Thank you for the opportunity to submit our written response in support of HB 2048. The KCDA would also propose the enclosed balloon amendment for the reasons cited below.

On June 6, 2014, the Kansas Supreme Court issued its decision in *State v. Powell*, 325 P.3d 1162, 1173 (Kan. 2014). That decision dealt with a number of search and seizure issues. During the investigation, officers requested a search warrant to obtain the defendant's "blood, hair, fingerprints, or cheek cells."

Powell argued that K.S.A. 22-2502 does not authorize a search warrant for blood, hair, fingerprints, or cheek cells. K.S.A. 22-2502(a)(1) provides in pertinent part that a search warrant may be issued for the search or seizure of "[a]ny things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States."

In the *Powell* decision, the court made the following statement:

Although *Powell's* statutory argument raises an issue of first impression for this Court, we will not reach it because we have reversed on other grounds and express no opinion on the panel's conclusion that the statute implicitly authorizes court-ordered seizures of blood, hair, fingerprints, or cheek cells. **Nevertheless, the legislature may wish to consider whether the statute's plain language appropriately addresses legislative intent.** *State v. Powell*, 325 P.3d at 1173 (emphasis added).

This statement concerned prosecutors and law enforcement across the State. Instead of waiting for a problem to happen, our goal is head off a legal problem and provide clarity to law enforcement, prosecutors, and the Courts on this very important statute.

Many of you watch the T.V. shows like *CSI*, which depicts the use of this type of evidence. This type of request by law enforcement and prosecutors happens hundreds of times a year in the State of Kansas. D.N.A., fingerprints and other trace evidence are gathered at a crime scene. When a potential suspect is developed during the investigation, officers will ask a judge for a search warrant to obtain D.N.A., fingerprints, hair and other trace evidence to compare to that found at the crime scene. This evidence is then used to build a circumstantial case against criminal(s). This evidence is relied upon by law enforcement and prosecutors to obtain convictions that would not otherwise be obtained. The Court in *Powell* calls into question whether this type of request is covered within the scope of the current search warrant statute.

We have all found through experience that clarity in constructing legislation reduces the likelihood of returning to the Legislature for further amendments. We would respectfully request that this committee pass this bill out of committee to insure that law enforcement and prosecutors can use existing and future capabilities in the forensic science field.

I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Howe", written in a cursive style.

Stephen M. Howe
Johnson County District Attorney
KCDA Board Member
P.O. Box 728
Olathe, KS 66051