



Kansas Bureau of Investigation

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**Testimony in Opposition to Senate Bill 86
Before the House Standing Committee on Federal and State Affairs
Kirk D. Thompson, Director
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Chairman Barker and Members of the Committee:

My name is Kirk Thompson and I serve as the Director of the Kansas Bureau of Investigation. Thank you for the opportunity to submit written testimony in opposition to Senate Bill 86. I have no position on the underlying bill. My opposition is specific to the amendment adopted by the Senate Committee of the Whole to include the contents of SB 200 into SB 86. SB 200 would exempt criminal investigation records related to certain missing persons investigations from protections afforded by the Kansas Open Records Act. The contents of that bill are now found in various parts of Sections 2, 3, and 5 of SB 86.

I have had the opportunity to review and contemplate many of the possible law enforcement and public safety related implications that could result from passage of this measure. My opposition stems from several overarching areas of concern.

My primary concern is the impact that disclosure of these records would have on the investigative process. Criminal investigations, by nature, generally include detailed and very personal information about persons known or related to a crime victim. It is not uncommon for people to disclose sensitive information to investigators; sometimes this information consists of a false allegation, or provides a lead that, ultimately, is pursued to a dead end. Potentially embarrassing or personal information regarding victims, witnesses or suspects may be gathered in the course of the investigation. Release of this information would be detrimental not only to the disclosing or affected persons individually, but also to the investigative process. These records may contain information, substantiated or not, that would be damaging to a person's reputation. Knowledge that information shared privately and in confidence with an investigator could later be disclosed to the media or general public would have a chilling effect on the cooperation of both victims and witnesses, therefore inhibiting successful resolution of criminal cases.

While some investigations produce information that allows for prompt identification of a suspect, others require detailed exploration of many individuals who may be considered persons of interest or suspects. Even the most thorough and diligent investigations do not always provide clarity to a person's involvement in a case. Because Section 2 of SB 86 effectively bifurcates records included in a missing persons investigation – whereas records collected more than 15 years ago are subject to disclosure but those more recent are not – records suggesting someone was a person of interest could be disclosed and subsequent records clearing that person of any involvement may not. More profoundly, if a case remains unsolved after 15 years, **disclosure of information regarding persons of interest and/or suspects could significantly compromise any potential for a future prosecution** and limit the ability of the criminal justice system to hold accountable those persons whom further investigation would determine committed major violent crimes. I am gravely concerned about the public safety implications associated with this bill.

Another significant concern is that Section 5 of SB 86 would **exempt criminal investigation records related to certain missing persons investigations from a current process that ensures the Court is the gatekeeper** of all criminal investigation records. The result of this would be a complete loss of discretion in protecting sensitive files. In prolonged missing persons investigations, it is not uncommon for the investigation to include records related to unidentified human remains. As an example, a prolonged missing person investigation may include photographs documenting the recovery of human remains and subsequent autopsy photographs and pathology reports. In some cases, it is only after exhaustive investigation that these are determined to be unrelated to the missing person case at issue. Disclosure of these records would not only be disrespectful to the person whose remains were found and his or her family, but may also jeopardize successful resolution of any investigation related to that separate case.

It is important to note that criminal investigation records often include various other types of protected records, such as medical records, personally identifiable information, and criminal history record information. Passage of SB 86 would create confusion regarding which protection or exemption would prevail in the event of a conflict.

While I do not intend to engage in a public discussion about the specifics of the open investigation which proponents of SB 200 will reference, I do think it is important to address certain points that were raised during discussion and debate on the Senate floor. Some of that conversation focused on the KBI's response to an open records request from a media outlet.

We received an extensive open records request from a media outlet and, pursuant to K.S.A. 45-218(f), provided an estimate based on approximately how much time it would take us to determine what records, if any, would be subject to disclosure. **The estimate provided was for our time to review the file, not a price tag for purchasing the case file.** It is a blatant mischaracterization of the situation to allege that we were negotiating with a media outlet to sell the file while refusing to communicate with the family.

I have compassion for and sympathize with this family, as I do the families of all crime victims. Even prior to the Senate Committee's hearing on SB 200, we have been and will continue to work with the family to answer their questions. In December of 2014, I, Sheriff Dedeke, and members of our investigative staff went to the family's home to try and answer their questions. The bottom line, as unfortunate as it is, is this: we do not know what happened to their son. **Releasing investigative records pursuant to the provisions of SB 86 will not answer that question for them.** It will, however, have a negative impact on the criminal investigative process in Kansas.

While there is no doubt that the situation giving rise to this bill has resulted in decades of emotional despair for the family, I urge you to carefully consider the significant effects that passage of SB 86 As Amended will have on the future of the criminal investigative process in Kansas. This is a pivotal public policy decision; its many potential unintended consequences would jeopardize criminal investigations and have negative public safety implications.

Thank you for your time and consideration.

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