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**TESTIMONY OF
TRICIA BUSHNELL, EXECUTIVE DIRECTOR, MIDWEST INNOCENCE PROJECT &
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**BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SB 102**

FEBRUARY 19, 2019

On behalf of the Midwest Innocence Project and the Innocence Project, thank you for allowing us to testify today before the Kansas Senate Judiciary Committee.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 364 people who had been wrongly convicted of serious crimes. Roughly, another 2,000 individuals have been exonerated based on other types of evidence, according to the National Registry of Exonerations. Mirroring racial disparities in the justice system as a whole, more than 70% percent of the individuals exonerated by DNA evidence are African American or Latino men. These men and women have spent an average of almost 14 years in prison for crimes committed by someone else, with some serving as many as 40 years. With the certainty of innocence that DNA provides, we can also be certain that something(s) went wrong in the process which led fact finders to believe beyond a reasonable doubt that the exonerated person was, in fact, guilty of the crime.

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. The Midwest Innocence Project was started in at the University of Missouri-Kansas City in 2001 and works to exonerate innocent people with both DNA and non-DNA evidence. We regard each exoneration as an opportunity to review where the system fell short and identify factually-supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. The recommendations that we make are grounded in robust social science findings and practitioner experience, all aimed at improving the reliability of the criminal justice system.

Over the last twenty years, as the number of documented wrongful convictions has grown, what had been a series of rare but glaring and tragic anomalies has become a problem in need of a solution. Together these exonerations demonstrate beyond doubt that our criminal justice system can and does make serious mistakes—sending innocent people to prison. They

also reveal the danger to public safety when the wrong person is convicted—the person who committed the crime remains free to commit additional crimes. Indeed, in half of these DNA exonerations, the DNA testing identified the actual perpetrator. Those perpetrators went on to commit approximately 80 rapes and 35 murders, and countless other violent crimes because the wrong person was in prison.

With the exception of the actual perpetrator, no one wins when an innocent person is convicted. The consequences are substantial. The lives of the innocent and their families are destroyed. Crime victims are robbed of justice and closure. Substantial police and other criminal justice resources are wasted on investigating, prosecuting, and imprisoning the wrong person. And there is another harm. People lose faith. As the number of exonerated people has grown so has the public's awareness of these tragedies. Increasingly the media has begun to cover the stories of innocent people caught up at other stages—but freed before conviction.

One little known reform to our criminal justice system that would benefit all corners of the criminal justice community is the establishment of protocols related to “hits to closed cases.” Law enforcement agencies routinely submit biological evidence to forensic laboratories for DNA testing, prompting laboratories to report back to submitting law enforcement agencies the results of the requested testing and any match made to the Combined DNA Index System (CODIS).

It has been revealed, through a number of cases, however, that CODIS hits can occur in cases in which someone else—not the person to whom the DNA match was made—has already been convicted, which raises questions about whether the proper person was convicted and whether the match is in fact an important lead to the real perpetrator of the crime who eluded detection. CODIS hits to closed cases, when accompanied by proper reinvestigations, can lead to the revelation of wrongful convictions. CODIS is also powerful tool for solving decades-old crimes and identifying repeat offenders by establishing links between closed cases and ongoing investigations.

SB 102 is a thoughtful piece of legislation, sponsored by Senator Haley, that would simply establish a task force in Kansas, comprised of membership from all corners of the criminal justice community, to create and implement a plan to achieve uniform protocols for law enforcement agencies, forensic laboratories and prosecutors' offices for the handling of CODIS hits reported out to submitting law enforcement agencies by forensic laboratories to ensure that all CODIS hits are reported to appropriate parties, accounted for and, where appropriate, investigated.

Passage of this law would represent a win-win for Kansans: the possible revelation of wrongful convictions and the detection of the people who actually committed these crimes. The Midwest Innocence Project and the Innocence Project wholeheartedly support this thoughtful piece of legislation and would be happy to answer any questions the committee may have.