

MINUTES

ALVIN SYKES COLD CASE DNA TASK FORCE

September 15, 2021
Room 582-N—Statehouse

Members Present

Senator Kellie Warren, Co-chairperson
Representative Fred Patton, Co-chairperson
Senator David Haley
Representative John Carmichael
Alice Craig
Audrey Cress
Darrin Devinney
Justin Edwards
Jeff Hahn
Brian Hill
Reid Nelson
Cory Sheedy
Robert Jacobs, designee for Kirk Thompson

Members Absent

Robert Lee
Jacquelyn Rokusek

Staff Present

Natalie Nelson, Kansas Legislative Research Department (KLRD)
Robert Gallimore, KLRD
Gabrielle Hull, KLRD
Aaron Klaassen, KLRD
Natalie Scott, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Connie Burns, Committee Assistant

AFTERNOON SESSION

Welcome

Co-chairperson Patton called the meeting to order at 2:04 p.m. and welcomed everyone to the meeting.

Approval of August 19, 2021, Meeting Minutes

Co-chairperson Patton called for a motion on the August 19, 2021, minutes.

Representative John Carmichael moved the minutes for August 19, 2021, be approved as written. Justin Edwards seconded the motion. The motion carried.

Review of Recommendations

Co-chairperson Patton stated there was a small informal group of Task Force members that worked on recommendations in the fall of 2020. The Task Force reviewed those recommendations at the last meeting, and concluded there were concerns in a couple of areas and wanted the small group to continue looking at these issues. Co-chairperson Patton stated the recommendations were emailed out this afternoon and the updated memo will be presented today.

Professor Alice Craig stated the group met quite a few times over the last couple of weeks. The small group felt one of the concerns the Task Force had at the last meeting was that more than education is necessary when hits to the Combined DNA Index System (CODIS) database come in, and would prefer some sort of protocol or system in place ([Attachment 1](#)). They also discussed what information the Kansas Bureau of Investigation (KBI) would need to respond to any hits that came in. The small group determined protocols would best be implemented by the prosecuting agency, whether that be a county or district attorney or the Attorney General, and the appropriate investigating agencies.

Professor Craig stated attorneys are not as familiar with the Laboratory Information Management System (LIMS) as law enforcement is, so education is needed to make sure that a CODIS hit is not missed. She stated KBI could do ongoing education with both prosecuting attorneys and defense counsel. She stated the small group has added a section to the proposal regarding protocol. When KBI receives a CODIS hit, a LIMS report is created and it goes back to the law enforcement agency that submitted the original sample. She said a protocol needs to be implemented so that prosecutors are notified by law enforcement agencies when those reports come in.

Justin Edwards stated the main goal of these reports is that the information is turned over to defense counsel in a timely manner.

Darrin Devinney stated this is an effective strategy for prosecutors to maintain professional standards and ethical obligations and that the proposed recommendations are not unduly cumbersome. He stated the key to this proposal is the education component.

Discussion and Possible Action

Implementation Plan for Protocol Relating to Hits to Closed Cases

Co-chairperson Patton asked the Task Force for any questions. Members discussed the following questions:

- Whether a specific time frame for notification is needed, or is too difficult to require given the differences in each case;
- Who should be notified on behalf of the defendant if defense counsel of record on the case is no longer available, and whether a court should appoint counsel or notify the defendant directly in such a case;
- Whether legislation is needed to help implement the Task Force recommendations, or if implementation should be left to development of agency protocols and best practices by the Kansas County and District Attorneys Association; and
- What ethical duties prosecutors have to provide CODIS result information to defendants.

Mr. Edwards stated his recommendation would be to develop best practices, and he does not feel legislation is necessary at this time.

Cory Sheedy asked about the Task Force's charge and a copy was provided ([Attachment 2](#)). Jason Thompson, Office of Revisor of Statutes, stated the charge of the Task Force as stated in 2021 HB 2077 is to complete a plan for implementation of a protocol relating to hits to closed cases by October 1, 2021, including a mechanism to ensure uniform compliance at the local law enforcement agency level, and that the report submitted must contain articulated benchmarks to facilitate and measure adoption of the implementation plan.

Mr. Edwards stated it is a prosecutor's ethical responsibility to investigate in a reasonable time frame. The Task Force agreed to include language regarding the Kansas County and District Attorneys Association developing best practices for prosecutors in investigating CODIS hits.

The Task Force agreed the district court should appoint counsel if defense counsel of record is not available to review a CODIS hit.

Co-chairperson Patton asked members if they felt the need to propose legislation. The consensus of the Task Force was to make recommendations rather than propose legislation. A minority of members voiced a need to propose legislation. Staff stated a draft report would be written and sent out to members for their review. Co-chairperson Patton asked staff about the requirements for implementations of the protocols.

Mr. Thompson stated the charge to the Task Force is to decide what kind of protocol should be adopted and to monitor progress of the protocol, so the Task Force could add a

recommendation that the Legislature continue to monitor the implementation of the protocol recommended by the Task Force.

Co-chairperson Warren and Co-chairperson Patton thanked members and staff for their work.

Adjourn

The meeting was adjourned at 4:05 p.m.

Prepared by Connie Burns

Edited by Natalie Nelson

Approved by the Committee on:

December 3, 2021

(Date)