



## Kansas Bureau of Investigation

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### Senate Judiciary

Written Testimony of Kyle Smith  
Deputy Director and Assistant Attorney General  
Kansas Bureau of Investigation

### DUI Issue Update - Saliva Testing

March 14, 2012

Chairman Owens and members of the committee,

The purpose of this written testimony is to advise the legislature of a problem in one of the provisions in last year's House Substitute for Senate Bill 6. Section 2 of that bill set forth a requirement that the KBI adopt rules and regulations establishing criteria for preliminary screening devices for the testing of saliva for law enforcement purposes, as well as a list of approved devices, based on "health and performance considerations". Such rules and regulations were to be adopted on or before July 1, 2012.

The KBI will not be able to comply with this statutory requirement as we are unable to verify the reliability of the devices on the market. This is a new and rapidly growing industry and unlike traditional alcohol testing, there is not a lot of published research available on the use of saliva to establish reasonable scientific certainty, i.e., sufficient to meet the "Frye test" that the techniques and principles used are generally accepted within the toxicology scientific community.

Further the manufacturers have declined to provide their proprietary validation studies for their screening devices. As a result, the KBI is reluctant to promulgate rules and regulations approving of specific screening devices when it has no means of confirming the scientific validity of these devices.

As soon as our forensic scientists believe there is sufficient research and evidence available to validate these devices the KBI will promulgate the required rules and regulations as well as a list of approved devices.