



**Kansas Association of
Chiefs of Police**

PO Box 780603
Wichita, KS 67278
(316)733-7301



**Kansas Sheriffs
Association**

PO Box 1122
Pittsburg, KS 66762
(620)230-0864



**Kansas Peace Officers
Association**

PO Box 2592
Wichita, KS 67201
(316)722-8433

**Testimony to the House Federal and State Affairs Committee
Opposing SB86 – Opening Certain Missing Persons Reports
April 6, 2017**

Chairman Barker and Committee Members,

This testimony is in opposition to the provisions in SB86 added in a Senate floor amendment concerning opening all missing person case reports after 25 years. The specific provisions from this amendment are section 2 of the bill (specifically the new language on page 2 lines 9 and 15-18); section 3 of the bill subsection (d)(2) on page 4 lines 12-17; and section 5 of the bill (specifically the new provision on page 7 lines 34-35). We are not opining on the remainder of the bill. Our associations must oppose SB200 based on that amendment.

We recognize the difficulties families face with unresolved cases, especially those of missing or deceased relatives. These are not easy cases to determine when it is appropriate to make more information available from the investigation or exactly what information should be released. This testimony should not be taken as testimony on the single case leading to the bill nor should any of the potential problematic information we will discuss be taken to indicate it exists in that case. We are not authorized nor do we possess the overall case information necessary to speak to the specific case, but we do possess enough information to be convinced that even if this bill were to pass it is doubtful the case would meet the criteria of the bill to require release. We do want to take the committee past a single case and discuss the unintended consequences in many other cases that may occur if this bill is passed in its current form.

It is risky to go down the path of opening all records of missing persons or any other investigation based simply on the age of the case. There are many other factors that must be considered or we may unintentionally jeopardize a criminal investigation. As forensic science develops and new processes come into use, we are finding more and more cold cases solvable. While we do not know if that would be true in the case in question, we know we are clearing cases today that were long ago thought unsolvable.

Many of you have heard me talk about the importance of balance in legislation and in criminal justice activities. This is one of those times. We ask you to balance the benefits to the family in this case with how the provisions of the amendment could negatively affect many other families in existing and future missing person cases. Our opposition is not an effort to shield agencies or officers. It is based on our knowledge of these cases and how many times they become criminal cases. Our aim is to protect the integrity of the case for future prosecution if that becomes a reality, to protect those that have provided information during the investigation, and to protect others from information provided during the investigation that might be harmful to them if publicly released.

There are several factors that we are concerned about. These are not based on the Leavenworth case, but on missing person cases collectively. These include:

1. Ability to corroborate new information: Certain details of any investigation of this nature are preserved from public disclosure to help us sort out the validity of information later received. For example, if a person came forward with information that another person has told them about wrong doing involving the disappearance, we can use that information to corroborate details that only the person involved would know. But once that information is released we can no longer be as certain it is not information gleaned from other sources. This helps us to protect the innocent from false accusations and to help identify false confessions.

2. Identity of persons providing accusatory information: Many investigations contain information we receive that is accusatory towards a named individual. Sometimes we never can completely rule out that person's involvement but we can't show any validity of the information either. Sometimes we later prove the accusation is not accurate. In many cases, due to the chronological recording of the information in our reports, the information clearing the person is far removed in the report from the accusatory information. A lay person reading these reports can easily focus on the accusation and never see the clearing information.
3. Information damaging to the victim: Many investigations of missing persons or homicide victims reveal very personal information about the victim and even about their families. This information can involve alcohol use, drug activity, financial issues, gang activity, sexual activity, allegations of family abuse, criminal activity, and other negative factors.
4. Family involvement: It is not uncommon for some member of the family to have been involved in misconduct relative to these cases. You don't have to look far to find news accounts of missing person cases that years later reveal a family member is responsible. Releasing case information not only provides the offender in those cases with key information known to the investigators, but also investigative information that can tear families apart whether the information proves to be true or not.

Compounding Issues With the Amendment

There are points in the amendment we believe compound the concerns listed above. Here are the main ones:

1. No judicial review: The amendment completely removes any opportunity for judicial review. (See page 7 lines 34-35), Judicial review can be a factor to holding the public agency and officers accountable for the investigation without recklessly releasing what may become critical or damaging information. It also allows an in-camera review of the materials with an opportunity to identify information that should continue to be protected or to determine if the case is truly a criminal case and not a missing person case.
2. Extremely limited ability to redact: The amendment only allows redaction of undercover officers and confidential informants, nothing else. In missing persons cases, we do not believe it would be unreasonable to redact names of persons providing information or names of people being accused of involvement and not charged with a crime. Likewise, critical information used to corroborate direct or third party confessions or other new information could be redacted. It might be wise to redact other information as well, such as, accusations made which have been proven inaccurate, information that could be damaging to friends or relatives of the victim, and others.
3. Copies versus visual review: While we do not support even a visual review of the reports, releasing copies is even more problematic. Copies of reports can be further distributed or released in part which could result in damaging information being released that is recorded as not true in other parts of the report. Even visual review will require the laborious task of redaction.

Again, I want to emphasize we are not saying that any of the conditions above apply to the case leading to this bill. They may or they may not.

We hope this information will be helpful as you carefully balance the long-term effects of this amendment on nearly every unsolved missing person case with the desires of the family requesting this bill. We know you can only make the best decision if you are provided adequate information. That is the goal of this information.

While we understand it would be easy to conclude passing this bill would be the right thing to do for one family, **in our opinion, far more Kansans could be harmed by this bill as written than the one family it is designed to help.**

We close by pointing out the existing law, which you can see starting on page 7 lines 10 through 33, allowing for release of these reports upon a judicial review if certain criteria are met.

We strongly encourage you to not move this bill forward.

Ed Klumpp
Legislative Liaison