



Kansas Bureau of Investigation

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**Testimony in Opposition to Senate Bill 200
Before the Senate Standing Committee on Federal and State Affairs
Kirk D. Thompson, Director
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Chairman LaTurner 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 200, which would exempt criminal investigation records related to certain missing persons investigations from protections afforded by the Kansas Open Records Act.

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 to SB 200 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 SB 200 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 allowing serious violent criminal offenders to go free.

Another significant concern is that passage of SB 200 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. If SB 200 were to pass, this would lend confusion regarding which protection or exemption would prevail in the event of a conflict.

Finally, as written, SB 200 creates a conflict definition with current language in the Kansas Open Records Act. SB 200 refers to criminal investigative records whereas currently the act defines criminal investigation records.

The KBI is strongly opposed to passage of SB 200. I ask the Committee to carefully consider this pivotal public policy decision and its many potential unintended consequences that would jeopardize criminal investigations and have negative public safety implications.

Thank you for your time and consideration.

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