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Chairman Patton and House Judiciary Committee members:

This information is in response to the discussion and questions as the result of testimony to the House Judiciary Committee during the hearing on HB2228 on Monday. We understand that over the past year it has become popular to lay the majority of blame for shortfalls in the criminal justice system on law enforcement. It is important to understand how the untested sexual assault kit problem developed and recognize the advancement we have made over the past several years.

Untested Sexual Assault Kits (SAK) were not just a Kansas issue. It was nationwide issue. A March 9, 2014, report by the US Department of Justice estimated there were over 400,000 untested sexual assault kits in the US<sup>1</sup>. As of June 2020, a newer report shows over 130,000 untested SAKs had been identified across the country.<sup>2</sup> While the number of untested SAKs we found in Kansas at the beginning of the work of the Kansas Sexual Assault Kit Initiative (SAKI) in 2016 was alarming, you should be aware that the number of untested SAKs in Kansas were small compared to many other states. There were large cities across the country that had many times the number of untested SAKs as the entire state of Kansas.

Kansas Law Enforcement responded to the national reports of untested sexual assault kits when the KBI formed the Kansas Sexual Assault Kit Initiative (SAKI). The KBI effort included prosecutors, forensic laboratories, and law enforcement associations along with non-criminal justice experts in the field.

Our association, along with other law enforcement associations, worked diligently to help identify how many untested SAKs were being held by law enforcement agencies across the state. We also assisted in finding a cross section of agencies that could produce a representative sample of untested kits for evaluation of what we might find with those kits. We also worked to assure all untested SAKs were submitted to the labs for testing. All this was done voluntarily by our local agencies, without any legislation. We recognized it needed fixed and we set out to fix it.

In July 2017, SAKI published a report on the contributing factors to the backlog in Kansas.<sup>3</sup> One of the early contributors to the problem was not identified in the survey but was recognized in

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<sup>1</sup> <https://newrepublic.com/article/116945/rape-kits-backlog-joe-biden-announces-35-million-reopen-cases>

<sup>2</sup> <https://sakitta.org/>

<sup>3</sup> The Kansas Sexual Assault Kit Initiative: Underlying Factors Contributing to the Accumulation of Unsubmitted Sexual Assault Kits in Kansas

the report. That was the lack of forensics laboratories capacity to handle the rapidly exploding demand for DNA testing in all types of evidence, including sexual assault kits.

“A lack of forensic scientists to analyze the evidence has increased backlogs and turnaround times. As a result, law enforcement and prosecutors must exercise discretion in their utilization of forensic laboratory services. Specifically, law enforcement has reported that they are keenly aware of the lack of laboratory capacity and have made decisions regarding kit submission judiciously. Cases involving non-stranger rapes, issues of consent, and a lack of victim participation in the criminal justice system were often not submitted for analysis. The lack of forensic laboratory resources has contributed to the accumulation of unsubmitted SAKs in Kansas.” [Emphasis added]

“Prosecutors similarly recognize the lack of laboratory resources and often do not recommend that law enforcement submit SAKs for analysis, particularly in cases involving non-stranger rapes, issues of consent, and a lack of victim participation in the criminal justice system. A lack of prosecutors and those specifically trained in reviewing and charging sexual assault cases has contributed to the accumulation of unsubmitted SAKs in Kansas.” [Emphasis added]

That situation with a lack of capacity was not the fault of the labs or any of the agencies operating the labs. It was the result of not enough funding and not enough lab scientists for the workload. This was directly the result of a rapidly growing demand for DNA testing that caused law enforcement agencies and prosecutors to have to prioritize which cases they submitted evidence for analysis. This meant some evidence we wanted to have analyzed we were unable to submit. In some cases, local agencies were paying private forensic labs to process evidence on key cases the three law enforcement labs could not handle. It was not uncommon for the KBI lab to request we not submit some evidence because the backlog was so large they could not process it in a timely manner. These issues were brought to the legislature numerous times by the KBI. The KBI lab was operating in an inferior building with inadequate space to expand capacity even if given the funding. This crisis was finely resolved with the new lab building built in conjunction with Washburn University and funding to hire more scientists.

On May 3, 2018, the results of a survey of law enforcement agencies were published by the KBI.<sup>4</sup> This survey did not include all law enforcement agencies but targeted 12 local law enforcement agencies identified to submit a portion of their inventory for DNA testing to help the group better understand the circumstances leading to the kit not being submitted and potential outcomes from testing the unsubmitted kits. Those results yielded a variety of case factors used to prioritize the submission of the SAKs to the labs.

For the several years Kansas law enforcement along with other groups have been improving the response to sexual assaults and the handling of sexual assault kits. The alarm at the magnitude of

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<http://www.kansas.gov/kbi/news/docs/Underlying%20Factors%20Contributing%20to%20the%20Accumulation%20of%20Unsubmitted%20SAKs.pdf>

<sup>4</sup> Executive Summary The Kansas Sexual Assault Kit Initiative: Law Enforcement Survey Analysis of the Cross-Sectional Sample.

<http://www.kansas.gov/kbi/docs/media%20releases/KS%20SAKI%20Exec%20Summary%205%20-%20Law%20Enformcent%20Survey%20Not%20Submitting%20Kits.pdf>

the problem we saw at the committee hearing was the same response we had in response to the data that we saw when in the early stages of the Kansas Sexual Assault Kit Initiative. The same data that was being reported to the committee on Monday. We know we have come a long way in changing the practices around these investigations. We know there is more work to be done.

We believe some of the information presented was possibly misinterpreted by the committee members. The following issues were not clarified with additional information of “how we got there” even when the question was asked. It was disappointing to us that it turned into such an attack on the integrity of the local law enforcement officers of Kansas.

For example:

- It was pointed out in testimony the initiative uncovered approximately 2200 untested kits. Those kits were from a large number of years, probably dating back to the inception of DNA testing for the SAKs. All of which was the result of having to prioritize what SAKs the labs could accept.
- Other testimony stated the untested kits resulted in “907 suspects were identified with a trackable history.” What was not stated was that nearly all of these suspects had already been identified in the law enforcement investigations and law enforcement was already aware of their criminal history. To be clear, there were a very small number of untested SAKs that identified an unknown suspect in a case, but it was not anywhere near the “907 suspects identified with a trackable history.”

There has been a great deal of good resulting from the SAKI project beyond getting all the untested SAKs examined and getting the DNA into the CODIS database. We developed model policy covering all aspects of sexual assault investigations, we have created enhanced training on sexual assault investigations using a victim centered approach. And much more. This has been accomplished due to countless hours of meetings and work by our association and our members. We were proud of our part in those accomplishments. Then on Monday that turned to an assault on all of Kansas law enforcement labeling us as not caring about sexual assault victims, of recklessly denying victims justice, and even the thought that the agency head of any agency who didn't submit a SAK for testing should lose their law enforcement certification.

We hope the information we have provided will give the “rest of the story” that was not shared with the committee on Monday.

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