



PERFORMANCE AUDIT REPORT

Reviewing Backlogs in the KBI Laboratory

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
April 1999**

Legislative Post Audit Committee

Legislative Division of Post Audit

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To: Members, Legislative Post Audit Committee

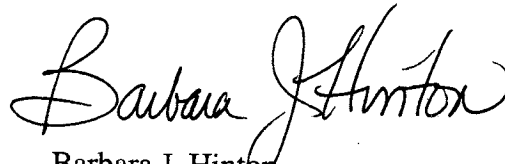
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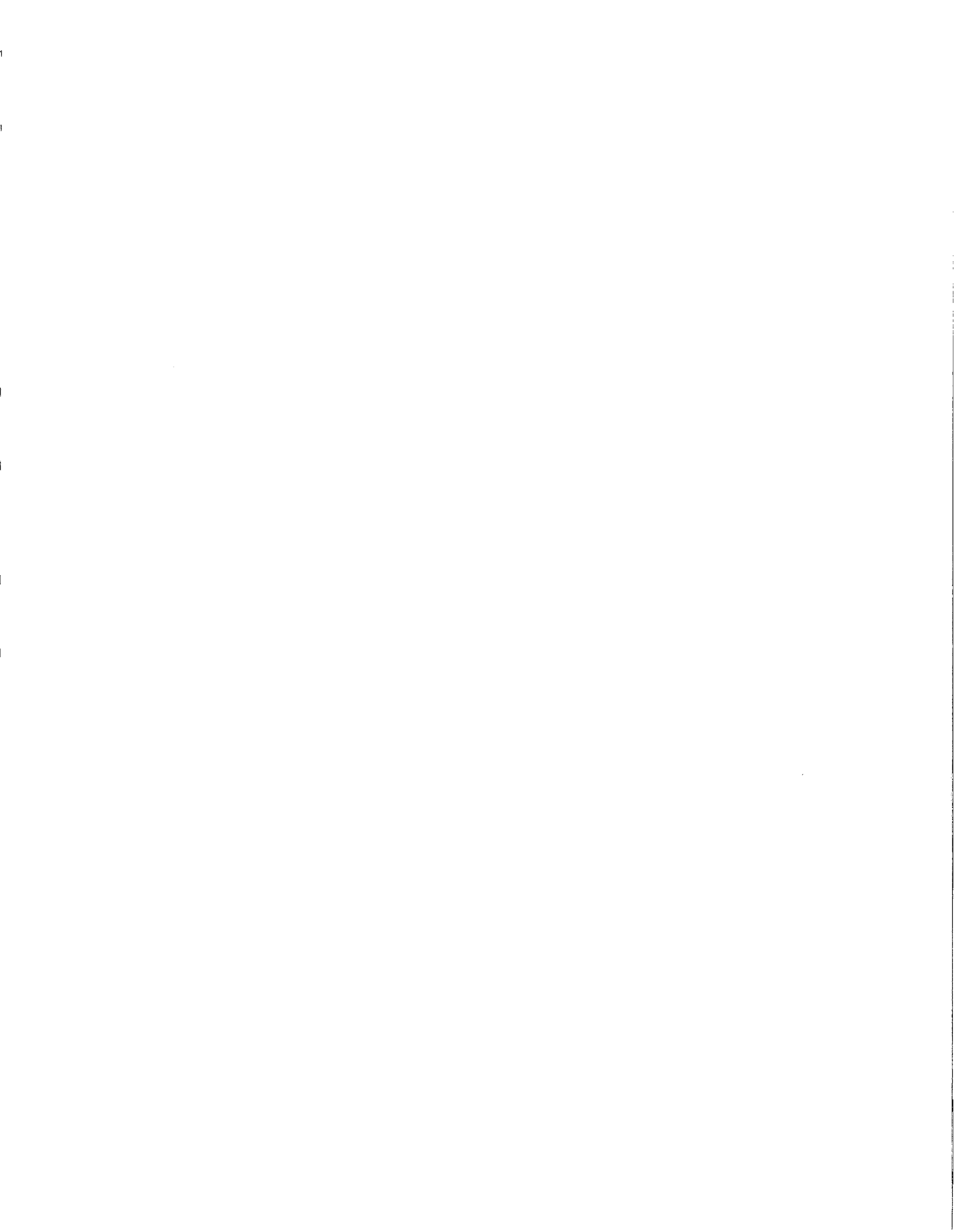
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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Reviewing Backlogs in the KBI Laboratory*.

The report contains an appendix which shows that the number of cases submitted to the lab grew by 32% between calendar years 1993 and 1998, while the number of cases closed by the lab grew by only 12% during the same period. Appendix B is the agency response and the Bureau's response includes the results of a recently completed salary survey conducted by the Division of Personnel Services.

The report includes several recommendations for addressing personnel issues facing the lab. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.


Barbara J. Hinton
Legislative Post Auditor



EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

**Question 1: How Long Have Local Law Enforcement Agencies
Had to Wait for Lab Work to Be Processed by the Bureau, Why,
And What Has Been the Impact of Any Delays?**

On average, local law enforcement agencies have had to wait from two weeks to five months for lab test results. page 5
For the period we reviewed, the three lab sections that took the longest were Firearms, Biology, and Latent Prints. These sections averaged more than five months to complete their examinations, and each has a backlog of nearly a year's worth of unprocessed work. Conversely, the Toxicology, Chemistry, and Documents Sections processed their work within an average of 2-10 weeks, and their backlogs represent a maximum of about 100 days work.

One of the main reasons for these processing delays is that the Bureau's lab is operating with almost one of every four authorized positions vacant. page 8
Some delays in completing lab tests are unavoidable because evidence sometimes must be tested by one section before it can be tested by another, and because some tests simply take a long time to perform. However, as of February 1999, the Bureau's lab had 12 of its 53 full-time-equivalent positions vacant. The three sections with the longest delays in testing evidence have some of the biggest problems with vacant positions.

Bureau staff said the vacancies are occurring in part because it's difficult to retain staff at current wages, and in part because it's difficult to attract qualified people for certain positions. Salary surveys conducted by the Bureau and the Division of Personnel Services show that the salary ranges for Bureau forensic scientist positions are below those of many other governmental entities. Other factors cited by Bureau staff that contribute to delays include lab staff must take time to testify in court about the results of the tests they've performed, and the lack of sufficient space.

Local law enforcement officials told us that having to wait for test results caused several problems, including delayed court proceedings and the release of arrested suspects. page 10
To assess the impact lab delays were having, we surveyed 13 officials: 11 county prosecutors, one county sheriff, and a member of the Kansas Highway Patrol. These officials most often cited two lab sections that they'd experienced delays with: the Biology Section, which examines evidence for the presence of body fluids in cases of sexual assault, homicide, assault, and burglary, and the Chemistry Section, which conducts tests to identify specific chemical substances, including illegal drugs

*All 13 officials told us the lab's delays caused delays in court proceedings. Some said that, in some cases, these delays prevented or hindered the prosecution of the suspect. Delayed lab results can **prevent** the*

*prosecution of a suspect if the applicable statute of limitations runs out while the lab work is in process, or if the delayed lab work keeps a defendant from getting a constitutionally guaranteed speedy trial. Delayed lab results can **hinder** the prosecution of a suspect if other evidence gets old while the lab work is in process, or if there's not enough evidence without the lab results to hold or prosecute the suspect.*

The Bureau's lab is far behind in entering the results of DNA samples and firearms tests into their computerized databases. page 12
Legislation passed in 1991 requires people who are convicted of certain violent crimes to submit blood and saliva samples to the Bureau to be processed into DNA profiles. The law also requires the Bureau to develop and maintain an automated Statewide database of these criminals' DNA profiles. Since 1991, about 6,500 samples have been collected, but fewer than 10% of them have been processed and entered into the DNA database. This represents a backlog of several years worth of work.

In 1996, the Bureau also began voluntarily participating with 13 midwestern states in a firearms database called DRUGFIRE. The purpose of this database is to help solve crimes by linking incidents where the same gun was used. The Firearms Section is nearly a year behind in entering data about firearms into the DRUGFIRE database.

Bureau officials told us a lack of staff was the primary reason why these databases haven't been kept current.

Conclusion: page 14

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Appendix A: Bureau Lab Cases Submitted and Closed page 17
Calendar Years 1993 to 1996

Appendix B: Agency Response page 19

This audit was conducted by Joe Lawhon and Anthony Perez. Randy Tongier was the audit manager. If you need any additional information about the audit's findings, please contact Mr. Lawhon at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call (785) 296-3792, or contact us via the Internet at: LPA@mail.ksleg.state.ks.us.

Reviewing Backlogs in the KBI Laboratory

The Kansas Bureau of Investigation's laboratory, as the State's crime lab, provides laboratory services for Kansas law enforcement agencies. Recently, law enforcement officials have complained that it sometimes takes too long to get results back from the Bureau's lab. Legislators have expressed concerns that extreme delays in processing lab work are seriously hindering the work of law enforcement agencies across the State. To address these concerns, the Legislative Post Audit Committee approved an audit that would answer the following questions:

- 1. How long have local law enforcement agencies had to wait for lab work to be processed by the Kansas Bureau of Investigation, and why?**
- 2. What has been the impact of the delays experienced by law enforcement agencies?**

To answer these questions, we reviewed applicable sections of Kansas law and administrative regulations. We also interviewed the Bureau's laboratory employees and a sample of local law enforcement officials—primarily staff from county and district attorney offices. We obtained and analyzed certain information from the Bureau's computer system about the number of cases submitted to the lab and the amount of time taken to process a sample of cases. We also analyzed data about the turnover of lab employees. For reporting purposes we've combined the two questions into one.

In conducting this audit, we followed all applicable government auditing standards set forth by the U. S. General Accounting Office, except that we didn't conduct tests of the lab's computerized data. The dates that lab staff complete examinations are self-reported, but based on our review of the lab's procedures for ensuring the accuracy of data entered into its computer system, we determined that the risk of having inaccurate data in the computer system was low. Because of this, and because of time constraints for this audit, we decided not to conduct tests of the lab's computerized data.

In addition, we relied on Bureau staff to write computer programs to retrieve certain information for us from the computer system. Before we used the information generated by these programs, we had lab staff review that information for reasonableness. Based on their knowledge of the data, they said the results appeared to be reasonable. However, because these data are crucial to the findings of this audit, any material errors in data reliability or the way the programs counted and sorted the data could affect the findings of this audit.

Our findings begin on page 5, after a brief overview of the Bureau and its laboratory operations.

Overview of the Kansas Bureau of Investigation's Laboratory

The Kansas Bureau of Investigation operates under the supervision of the Attorney General's Office, and the Director of the Bureau is appointed by the Attorney General. The Bureau has two principal duties: to conduct investigations at the direction of the Attorney General, and to establish and maintain criminal history records for use by criminal justice agencies, such as local police departments, district attorneys, and other organizations. The Bureau also operates a laboratory services program.

As the State Crime Lab, the Bureau's Lab Provides Services To Help Solve Crimes and Prosecute Criminals

The Bureau's lab uses scientists and sophisticated equipment to identify suspects, provide leads, substantiate evidence, and prove or disprove the involvement of individuals in specific crimes for most Kansas law enforcement agencies. (According to Bureau staff, Johnson and Sedgwick Counties have their own labs, which provide many services to law enforcement agencies within their counties. In addition, other counties sometimes may use private labs as well.)

Local prosecutors and lab staff told us that laboratory analyses are becoming increasingly more important, because some prosecutors are demanding substantiated evidence even before taking a case to court.

The lab's operation is divided into six sections, plus an administrative unit. The six sections that examine evidence are briefly described below:

- ***Biology Section:*** This section examines evidence for the presence of body fluids in cases of sexual assault, homicide, assault, and burglary. Through scientific analysis procedures, staff in this section attempt to include or exclude individuals who may have been involved in a crime. They also are responsible for maintaining a database of convicted violent offender data as required by Kansas law.
- ***Chemistry Section:*** This section conducts tests to identify specific chemical substances, including illegal drugs. Staff in this section have several responsibilities involving clandestine laboratory sites, including the examination of evidence. They also conduct arson, alcoholic beverage, paint, glass, and headlight examinations.
- ***Toxicology Section:*** This section examines human body fluids and tissues to determine the presence of foreign substances, such as drugs, alcohol, and poisons.

- Firearms Section: This section examines guns, bullets, cartridge cases, and related ammunition components to determine whether a bullet or cartridge case was fired by a particular firearm. Staff in this section also are responsible for entering bullet and cartridge case information into the DRUGFIRE database.
- Latent Prints Section: Staff in this section examine evidence to detect fingerprints, and then compare those fingerprints to known fingerprints contained in the Bureau's Automated Fingerprint Identification System (AFIS). They also examine evidence for the presence of footwear or tire tracks, and compare any tracks detected to known footwear or tires.
- Documents Section: Staff in this section examine documentary evidence to determine authorship, origin, or authenticity. In the past, the section has worked with the Kansas Lottery to ensure that game tickets are secure, but that involvement is being reduced.

In August 1998, the Bureau's laboratory was accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board. With this accreditation, the Bureau's lab becomes one of only 22 state labs to achieve this national recognition.

The Bureau's main lab is located in Topeka and smaller labs are located in Pittsburg and Great Bend. As of the writing of this report, the House Appropriations Committee had endorsed a proposal to move the Topeka lab to the grounds of the former Topeka State Hospital.

Salaries have accounted for 65%-70% of the total cost of operating the Bureau's laboratory. The following table summarizes the lab's expenditures for the past three fiscal years.

<u>Fiscal Year</u>	<u>Salaries</u>	<u>% of Total</u>	<u>Operating Costs</u>	<u>% of Total</u>	<u>Total</u>
1996	\$1.8 million (45 FTE)	65%	\$1.0 million	35%	\$2.8 million
1997	2.0 million (47 FTE)	70%	.8 million	30%	2.8 million
1998	2.2 million (52 FTE)	67%	1.1 million	33%	3.3 million

Source: Bureau fiscal records

As the table shows, the number of authorized full-time-equivalent positions has increased slightly each year. These figures include 2 unclassified temporary positions for fiscal year 1997, and 7 such positions for fiscal year 1998.

How Long Have Local Law Enforcement Agencies Had To Wait for Lab Work To Be Processed by the Bureau, Why, And What Has Been the Impact of Any Delays?

On average, local law enforcement agencies have had to wait from two weeks to five months to receive test results back from the Bureau's lab, depending on the type of test. In the last half of calendar year 1998, examinations by the Bureau's Biology, Firearms, and Latent Prints Sections generally weren't completed until about 150 days after the evidence had been submitted. Many factors can contribute to these delays, but two stood out during our review. First, the Bureau hasn't been able to keep up with the number of new cases submitted for testing, despite an increase of eight authorized positions (18%) over the past three years. Second, the Bureau's lab is operating with almost one of every four authorized positions vacant. Bureau staff told us that, when vacancies have occurred, low wages have made it difficult for the them to fill those positions.

Local law enforcement agencies we contacted told us that delays in getting test results back on a timely basis have held up court proceedings and have caused other problems, such as the release of arrested suspects. In addition, the Bureau's lab is far behind in entering the results of DNA samples and firearms tests into their computerized databases. The information in such databases can offer critical links to solving unsolved or seemingly unrelated crimes. These and other findings are discussed in more detail in the sections that follow.

On Average, Local Law Enforcement Agencies Have Had To Wait From Two Weeks to Five Months for Lab Test Results

Local law enforcement agencies submit all types of evidence (guns, chemicals, clothing, tires, and documents, to name just a few) to the Bureau's lab for analysis. Once this evidence is receipted and logged in, it's placed in the evidence storage room and is available for examination by lab staff. Depending on the availability of staff and the priority of the case, the evidence may be pulled by lab staff for examination the next day, or it may remain in the evidence room, unexamined, for weeks or months. In addition, some evidence may need to be examined by more than one of the lab's sections.

To determine how long local law enforcement agencies have had to wait for lab results, the Bureau's computer staff worked with us to develop information from the Bureau's computerized database about how long it took from the date evidence was submitted to the date each section finished its test or examinations of that evidence. The information we analyzed covered examinations completed during the last six months of calendar year 1998. We then shared that information with the chief of each section. All of them agreed it was a fair and reasonable presentation of the work accomplished by his or her section. The results of our reviews and analyses are summarized in the following table.

**Examinations Completed by Lab Units
July 1, 1998 through December 31, 1998**

<u>Unit</u>	<u>Number of Examinations Completed Within This Many Days</u>			<u>Total</u>	<u>Avg. # of Days to Complete</u>
	<u>1 to 30</u>	<u>31 to 90</u>	<u>90 or more</u>		
Toxicology	1,905 88%	231 11%	26 1%	2,162 100%	16
Chemistry	1,541 43%	1,455 41%	595 17%	3,591 100%	54
Documents	27 23%	52 45%	36 31%	115 100%	70
Firearms	31 22%	17 12%	92 66%	140 100%	153
Biology	105 28%	82 22%	182 49%	369 100%	155
Latent prints	155 29%	115 22%	258 49%	528 100%	161
Total	3,764 55%	1,952 28%	1,189 17%	6,905 100%	

Source: Developed from lab case data

As the table above shows, the results of tests for toxic and chemical substances—the two sections performing the most examinations—were available to law enforcement agencies within an average of 2-8 weeks, respectively. However, on average it took about 5 months for lab staff to complete their test work on evidence related to bodily fluids, fingerprints, and firearms. These sections are shown in bold-face type in the rest of the tables provided in this report. (Each section has established a priority system for determining which examinations to perform first. In general, those with the closest court date get top priority. Other influencing factors include crime severity and crimes against persons.)

Based on our reviews and interviews with the chiefs of each lab section, we identified several major factors that have contributed to these delays: unavoidable delays caused by testing “sequences” or timetables, a backlog of case evidence that needs to be examined, and staff vacancies. These and other factors are described in the sections that follow.

Some delays in completing lab tests are unavoidable because evidence must be tested by one section before it can be tested by another, and because some tests simply take a long time to perform. For example, the Chemistry Section might examine a gun for chemical traces, then the Latent Prints Section may examine that gun for fingerprints, and finally the Firearms Sections may run tests to determine whether that gun fired a certain bullet. In these instances, one lab section can't begin its examination of the gun until another section has completed its tests.

The chief of the Biology Section also told us that, for complex cases with a lot of evidence, examinations can take months. Further, any DNA analysis would take at least one month to complete, and DNA analyses aren't started until traditional biology examinations of evidence are completed. (In contrast, the chief of the Firearms Section told us most tests of firearms can be completed within three days after they are started.)

The three lab sections with the greatest delays have nearly a year's backlog of case evidence that needs to be examined. In 1993, the Bureau's lab received evidence for about 9,000 cases from law enforcement officials; by 1998, that number had grown to about 12,000 cases. Although the lab's staffing levels increased from 45 to 52 between fiscal years 1996 and 1999, those staff haven't been able to keep up with this increase in new cases—the number of open cases has grown from about 1,600 cases at the end of 1993 to about 3,400 cases at the end of 1998. (This information is summarized in more detail in Appendix A. In addition, many of the Bureau staff and local law enforcement officials we interviewed during this audit cited an increase in methamphetamine labs in Kansas as contributing to delays. We didn't look specifically at this increase, but the profile box above provides some information about those illegal labs.)

To get an estimate of how much work is backlogged in each lab section, the Bureau's computer staff wrote a computer program to identify how many examinations for each section were pending at the end of February 1999. In all, nearly 4,200 examinations were pending. Using the number of examinations completed in the last six

**Methamphetamine Labs
Are on the Increase in Kansas**

Bureau officials told us that methamphetamine crimes are the fastest growing crimes in the State. They said the "national experts" place Kansas in the top 5 states in the manufacture of methamphetamine, and in the top 10 states in methamphetamine smuggling.

Bureau statistics shows that the number of illegal methamphetamine labs seized has increased dramatically since 1994, as shown in the table below.

<u>Year</u>	<u>Number Meth Labs Seized</u>
1994	4
1995	7
1996	71
1997	99
1998	>180

months of 1998 as the measure of what each lab section could continue to accomplish, we estimated the backlogs for each section as follows:

**Estimate of Examinations Pending (Backlog)
As of February 28, 1999**

<u>Section</u>	<u>Examinations Pending</u>	<u>Estimated Days To Complete Pending Examinations (a)</u>
Biology	681	332
Latent Prints	950	324
Firearms	235	302
Documents	64	100
Chemistry	1,975	99
Toxicology	151	13
Unassigned	<u>128</u>	n/a
Total pending	4,184	

(a) Assumes that each section's productivity will remain the same as it was for the last six months of 1998.

Source: Developed from Bureau computerized examination records.

As the table shows, the Biology, Latent Prints, and Firearms Sections have nearly a year's worth of backlogs of unprocessed work. Not surprisingly, these are the same three sections with the longest delays.

The Bureau's lab is operating with almost one of every four authorized positions vacant, in part because it's difficult to retain staff at current wages, and in part because it's difficult to attract qualified people for certain positions. The following table shows that, as of February 1999, the Bureau's lab had 53 full-time-equivalent positions (including eight unclassified temporary positions), but only 41 were filled.

**KBI Lab Positions Authorized and Filled
As of February 1999**

<u>Section</u>	<u># of Authorized Positions</u>	<u># of Positions Not Filled</u>	<u>% of Authorized Positions Not Filled</u>
Firearms	2	1	50%
Biology	14	6.5	46%
Toxicology	4	1	25%
Latent Prints	8	1.5	19%
Administration	12	2	17%
Chemistry	11	0	0%
Documents	<u>2</u>	<u>0</u>	0%
Total	53	12	23%

Source: Bureau fiscal records

As the table shows, the three sections with the largest delays in testing evidence (shown in bold) have some of the biggest problems with vacancies. And these vacancies aren't necessarily recent. As of March 1, 1999, none of the six employees who left the lab in 1998 had been replaced. Five of these six employees had been in the Biology Section.

Having unfilled positions also places greater stress on the employees that remain because the section's workload must be shared between fewer employees. For example, the Firearms Section currently has only one employee, who must perform all tests, do all court testifying, and the like. He told us he just goes from one rush job to the next, and can't possibly get caught up. Staff in the Biology Section expressed similar concerns.

Bureau staff told us that at least five of the 16 employees who left the lab since 1996 left for higher-paying jobs. They also said they're having difficulty getting qualified people to apply for certain vacant positions because the wages offered aren't competitive in the marketplace. A salary survey the Bureau conducted as of January 1999 showed that Kansas ranked 6th of 8 for starting pay for a Forensic Scientist II position, and about the same for maximum pay. The table below summarizes those salary comparisons.

Salary Comparison for Bureau Forensic Scientist II Position (As of January 1999)		
<u>Agency</u>	<u>Starting Salary</u>	<u>Maximum Salary</u>
Colorado Bureau of Investigation	\$ 48,240	\$ 69,960
Johnson County Crime Lab	44,907	64,230
Colorado Springs Police Dept.	43,000	51,000
Iowa Division of Criminal Invest	39,062	53,206
Oklahoma State Bureau of Investigation	37,250	varies
Kansas Bureau of Investigation	32,868	46,236
Nebraska State Patrol	29,319	41,046
Missouri State Highway Patrol	27,744	42,732

Source: KBI Survey

In addition, the Division of Personnel Services recently completed a comprehensive salary survey for lab positions. The results of that survey are shown in the Bureau's response, beginning on page 22.

Finally, in four of its last five budget requests (fiscal years 1996 through 2000), the Bureau has requested funding for at least seven new permanent positions for the lab. Bureau fiscal staff told us that none of the positions have been included in the Governor's Budget.

Lab staff must take time to testify in court about the results of the tests they've performed. Lab staff told us they often are asked to testify because prosecutors believe that judges and jurors prefer to see and hear a witness in person, as opposed to having a written report be read into the record. Because lab staff must appear in courts located throughout the State, this causes lots of travel time, which takes away from scientific analysis time. In addition, one prosecutor we interviewed told us it was difficult to get lab analysts to come to court to testify because they often are needed in other courts as well.

Bureau staff told us they thought the lack of sufficient space had contributed to delays in testing evidence. We didn't review space needs in this audit, but the 1999 Legislature is considering relocating the lab to new space at the former Topeka State Hospital.

Local Law Enforcement Officials Told Us That Having to Wait for Test Results Caused Several Problems, Including Delayed Court Proceedings and the Release of Arrested Suspects

During this audit, we surveyed 13 officials: 11 county prosecutors, one county sheriff, and a member of the Kansas Highway Patrol. All 13 told us they'd experienced some delays in getting the results of tests being performed by the Bureau's lab. We asked each respondent to name all the sections with which he or she had experienced delays. Their responses were as follows:

Section	Number of Times Cited	Percent
Chemistry	11	85%
Biology	7	54%
Toxicology	5	38%
Latent Prints	5	38%
Documents	3	23%
Firearms	2	15%

As this table shows, delays in the Chemistry and Biology Sections were cited most often. In our analyses we found that the Chemistry Section actually had among the quickest test turnaround times of any of the six lab sections (an average of 54 days). Most of the exams performed in this section involve illegal drugs. It may be that local law enforcement officials are more sensitive to delays caused by this section because the exam results are the primary evidence that a crime has been committed.

We also asked these 13 officials about the impacts lab processing delays were having on their work. All 13 told us the lab's delays caused delays in court proceedings. Some respondents said the lab's delays caused additional problems, but two respondents said the delays didn't have a detrimental impact on the final disposition of the case.

The table below lists the problems cited by survey respondents and indicates the number of times each problem was cited.

<u>Type of Problem</u>	<u># of Times Cited</u>	<u>Percent</u>
Delays in court proceedings	13	100%
Release of arrested suspect	8	62%
Other evidence languishes	6	46%
Dismissal of case	5	38%
Other problems (such as frustrated judges)	5	38%
Speedy trial	3	23%
Statute of limitations	1	7%

These problems can be grouped into two categories: preventing the prosecution of the suspect, and hindering the prosecution of the suspect. These categories are briefly described below.

Preventing the Prosecution of the Suspect

- (a) **Statute of Limitations:** State law gives prosecutors a certain amount of time to file charges against defendants. When that statutory time period expires, charges for that crime can no longer be filed. Because some prosecutors might wait to file charges against a defendant until they have a lab report, it's possible that lab delays could result in a defendant never being prosecuted for a particular crime.
- (b) **Speedy Trial Issues:** Defendants have a constitutional right to a speedy trial. The statutorily prescribed time frame to begin a trial is 90 days after arraignment if the defendant is in custody, 180 days if the defendant is out on bond. If lab reports aren't available in the designated time frame, the court could grant a continuance or the suspect could be released from being tried for that crime.

Hindering the Prosecution of the Suspect

- (c) **Other Evidence Languishes:** As prosecutors wait for lab reports to be completed, other evidence can get old and less valuable. Examples include witnesses leaving the jurisdiction, memories fading, and the like. This may detract from the strength of the prosecution's case.

Examples of the Types of Problems That Lab Delays Have Caused Local Prosecutors

During our telephone survey of county prosecutors, a county sheriff, and a highway patrolman, we asked people if they could provide specific examples of the types of problems that lab delays have caused them. A few respondents provided specific examples, as follows:

Example 1: delay of proceedings and release of suspect / dismissal of case. A defendant was charged with four felonies stemming from possession of drugs with the intent to sell. Charges were filed and the preliminary hearing date was set. The preliminary hearing was continued because the lab report analyzing the drugs in the defendant's possession hadn't been received. About a month later, when the preliminary hearing was scheduled to occur, the lab report still wasn't available. At that time, the judge dismissed the case and the suspect was released from custody. If the lab report identifies illegal drugs when it is received the suspect will have to be rearrested if the prosecutor re-files charges.

Example 2: release of suspect. The Douglas County prosecutor mentioned a newspaper article published in *The Lawrence Journal World*. The article reported that Lawrence police

had arrested a man three times in one week. Each time the man was arrested he was released because prosecutors were waiting for lab reports before filing charges. The third time the man was arrested, he reportedly possessed three types of illegal drugs. The arrest happened across the street from the Douglas County Judicial and Law Enforcement Center soon after the man was released for the second time.

Example 3: delay of proceedings and release of suspect. A defendant was arrested and charged with theft and possession of marijuana. The defendant was released from custody on bond, and didn't appear for the first court date. The judge issued a bench warrant for the defendant's arrest. The defendant was arrested and placed in custody until the court took up the matter again. At that hearing, the lab report for the possession of marijuana charge hadn't been received, and the judge released the defendant from custody. Later, the prosecutor received the lab report which confirmed the possession of marijuana. Another trial date was set. The defendant didn't appear and the judge issued another bench warrant. This means the defendant will have to be arrested for a third time to be brought to trial.

- (d) *Release of Arrested Suspect / Dismissal of Case:* Lab reports provide evidence that a suspect has committed a crime. Without that evidence, sometimes there isn't enough other evidence to charge, incarcerate, or prosecute a suspect. This can be a major problem because when suspects are released, they could leave the area or commit another crime. Prosecutors told us judges had dismissed some cases because a lab report wasn't available. They added, however, that they typically re-filed the case as soon as the lab report became available.

The profile box above summarizes three situations prosecutors told us about to illustrate their concerns.

The Bureau's Lab Is Far Behind in Entering the Results of DNA Samples and Firearms Tests Into Their Computerized Databases

These databases give law enforcement officials in Kansas and other states powerful law enforcement tools that can help them solve unsolved or seemingly unrelated crimes.

The Biology Section hasn't entered any DNA profile information into the database since August 1995, and Section staff estimate it could take up to 10 years to process the current backlog of unentered data. The 1991 Legislature enacted K.S.A. 21-2511 to require people who are convicted of certain violent crimes to submit blood and saliva samples to the Bureau for processing into DNA profiles. (A DNA profile uses DNA traits to uniquely identify an individual, much like a fingerprint.) The law requires the Bureau to develop and maintain an automated Statewide database of these criminals' DNA profiles.

The Bureau developed a computer database using software and a format that are compatible with those of the Federal Bureau of Investigation and other states. That way, when DNA evidence is available for a crime committed in Kansas, a computerized search can be made that compares the crime scene DNA to all DNA profiles in the database nationwide. Biology section staff said the database can be especially useful in rape cases because rapists are often repeat offenders.

Biology Section staff told us that, of the 6,500 samples of convicted violent offender samples collected since 1991, only about 600 (less than 10%) have been processed and entered into the DNA database. They said they weren't processing or entering these DNA samples anymore because the Section has a staff shortage, and other work has been given a higher priority.

They also estimated that, depending on the technology used to process the DNA samples, it would take one full-time scientist between 2½ and 10 years to process the current backlog of samples for convicted violent offenders. In addition, the stockpile of samples continues to grow because new samples are submitted to the Bureau regularly.

The Firearms Section is nearly a year behind in entering data about firearms used in drug-related crimes into the DRUGFIRE database. In 1996, the Bureau began voluntarily participating with 13 Midwestern states in a firearms database called DRUGFIRE. The purpose of this database is to help solve crimes by linking incidents where the same gun was used. For example, Bureau officials told us they'd used the database to develop leads on two separate drive-by shooting cases in Kansas involving the same gun.

The DRUGFIRE database contains detailed information about specific firearms and images of fired ammunition that make it possible to determine whether cartridge cases or bullets recovered from different crime scenes were fired from the same gun. When a new firearm record is entered into the database, it's automatically compared to all other records in the database.

Bureau officials told us that, at present, they are entering data only from a few homicide cases. They estimate they are about 100 cases behind, and it would take 11

months to enter the data on these cases. Again, they cited a lack of staff as the primary reason why they haven't been able to keep this database current. Even when the Firearms Section is fully staffed, they said, they won't be able to keep up. They also said they'd made unsuccessful requests in the past for an additional technician to work on the project.

Conclusion

Our review showed it's not uncommon for local law enforcement agencies to have to wait months to get test results back from the Bureau's lab. Staffing vacancies and increases in the number of cases being submitted for testing seem to have contributed the most to these delays. Bureau staff have asked for more positions to handle this workload, but in the short-term the Bureau could help address this problem by filling the vacant lab positions it currently has. Bureau officials indicate they're having trouble filling some of those positions because salaries are too low. They've also indicated that low salaries were the reason why some staff have left. In addition, there's a risk that the employees who remain will get "burnt out" because of the increased work expected of them.

The Bureau's lab work is important to the State's law enforcement agencies and to the judicial process as a whole. Delays and backlogs can cause setbacks in court proceeding dates, and such other problems as the release of arrested suspects. To address this situation, both now and over the long-term, Bureau officials, the Governor, and the Legislature will need to identify and support the resources the Bureau needs to adequately fulfill its mission.

Recommendations

To reduce delays in testing and processing criminal evidence, address the increasing number of open cases, and allow the statutorily required DNA database and the DRUGFIRE database to be kept current, the Kansas Bureau of Investigation should do the following:

- a. Work with the Division of Personnel Services to complete the ongoing study of salary levels as soon as possible. Based on the results of that survey, the Bureau should work with the Division to

seek changes in salary levels, position reclassifications, or whatever actions appear to be appropriate.

- b. Develop a staffing plan that considers the number of positions needed to limit the growth in the number of open (unworked) cases on hand, and to allow the Biology and Firearms Sections to keep their databases current.
- c. Work with the Governor's Office and the appropriate legislative committees to seek funding for any additional salary costs expected to be incurred as a result of increased salary levels or increased positions.

APPENDIX A

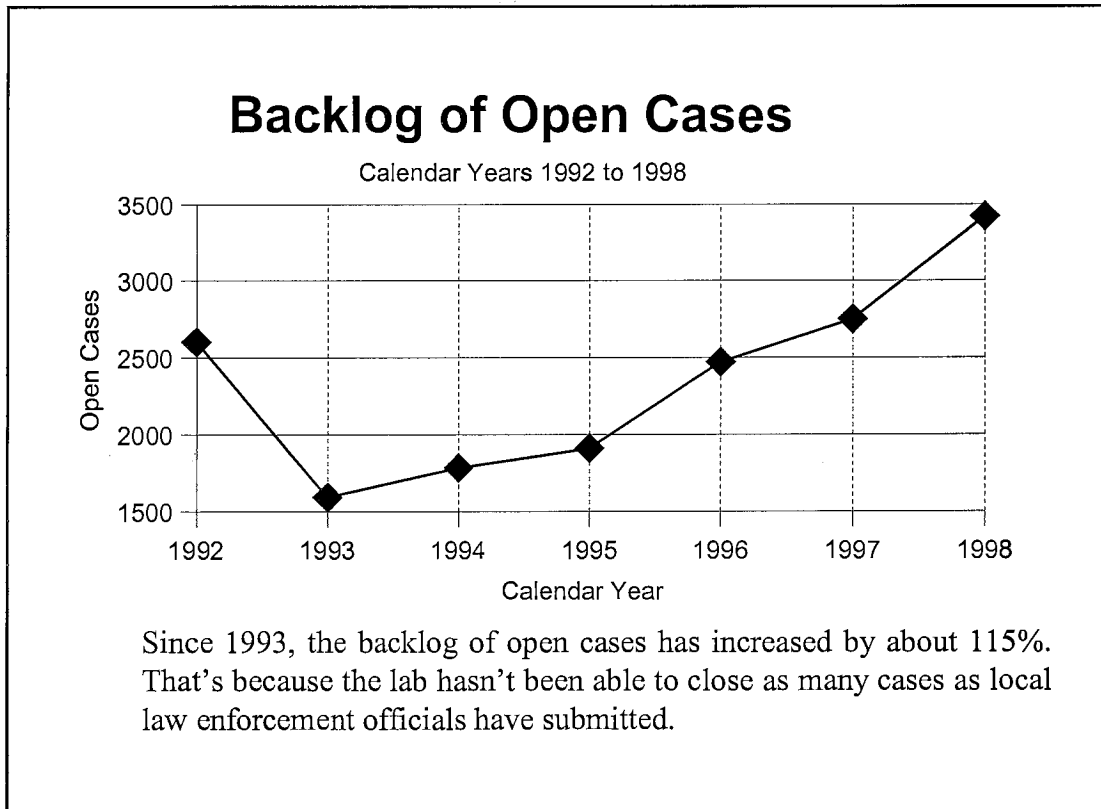
Bureau Lab Cases Submitted and Closed Calendar Years 1993 to 1998

The Bureau provided computer generated information that showed the number of cases submitted and the number of cases closed for calendar years 1993 through 1998. The table and graph on the next page show that during that time period the number of cases submitted to the lab grew by 32%, while the number of cases closed grew by 12%. Overall, the number of open cases at year end grew by 115% during the period.

**Bureau Lab Cases Submitted and Closed
Calendar Years 1993 to 1998**

<u>Description</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>% Increase 93 to 98</u>
Beginning Balance at January 1	2,601	1,593	1,783	1,911	2,471	2,750	6%
Cases Submitted	9,086	9,503	9,971	10,095	11,237	12,010	32%
Cases Closed	10,094	9,313	9,843	9,535	10,958	11,339	12%
Net Increase / Decrease for Year	(1,008)	190	128	560	279	671	na
Ending Balance at December 31	1,593	1,783	1,911	2,471	2,750	3,421	115%

Source: Developed from KBI lab case data



APPENDIX B

Agency Response

On March 19, 1999, we provided copies of the draft report to the Kansas Bureau of Investigation. The Bureau's response is included as this appendix. After carefully reviewing the response, we made some minor clarifications to the draft audit that did not affect any of our findings or conclusions. In addition, the Bureau provided a copy of a comparative study of forensic scientist salaries that was recently completed by the Division of Personnel Services. A copy of the salary survey results is included following the agency response.



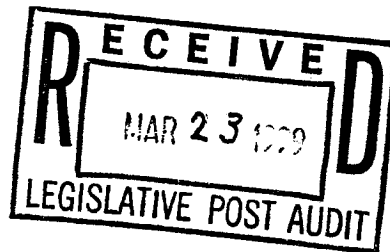
Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

March 23, 1999

Barbara J. Hinton
Legislative Post Auditor
Legislative Division of Post Audit
Mercantile Bank Tower
800 S.W. Jackson St., Suite 1200
Topeka, Kansas 66612-2212



Dear Ms. Hinton:

Reference your letter of March 19 inviting my response to your completed performance audit entitled, "Reviewing Backlogs in the KBI Laboratory."

My immediate, short response is Amen! I agree wholeheartedly with your audit's analysis, conclusion and recommendations.

My fuller, more considered response must start with our thanks to you and your staff, in particular Joe Lawhon, for the professional, considerate, yet probing and ambitious manner in which this review was conducted.

Regarding Recommendation (a), page 14, requesting that we work closely with the Division of Personnel Services to complete our requested salary survey, please find enclosed a letter dated March 19 from Mr. Ken Otte of DPS reflecting the completion of the salary survey.

I invite your attention to the third paragraph of page two of Mr. Otte's letter. "Based on the results of this survey, the current pay grade assignments for the forensic scientist classes could result in recruitment difficulties." Encouraged by this validation of our long-held claim, we will certainly follow your audit's recommendation to work closely with DPS to remedy the KBI forensic scientist salary deficiency.

Regarding Recommendation (b), page 15, we have conducted continuing studies the past four years determining the number of additional forensic positions actually needed to meet the needs of the Kansas law enforcement community. This year, on several occasions, to different legislative committees, I identified that current number as

nine. Due to space limitations, however, I actually requested only four additional laboratory employees, to be assigned to the Great Bend KBI facility, where space is available.

We will, I pledge, continue those studies and will strive to improve the status of our Biology and Firearms databases.

Regarding Recommendation (c), page 15, I will continue our persistent efforts of the past four years to persuade the Governor's Office and the Kansas Legislature that we need to increase the number of forensic positions and that we need to increase pertinent salary levels in our laboratory to retain our scientists, instead of providing excellent, well-trained scientists for other laboratories. Your audit will, hopefully, be of great assistance in that endeavor.

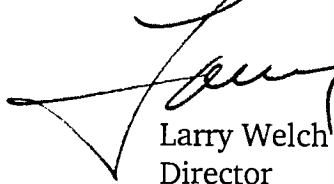
In summary, we understand and appreciate all your recommendations and will strive to implement all those not already implemented.

And, in conclusion, I'd like to respond to an informal recommendation implied within your "Conclusion" on page 14, "... but in the short-term the Bureau could help address this problem by filling the vacant lab positions it currently has."

Once again, your audit is absolutely correct, and, as I dictate this letter, we are conducting interviews to fill all vacant forensic positions at Great Bend and Topeka, and one at Pittsburg. Our selection process has been delayed somewhat by the absence of a laboratory director and the absence of a human resource manager. A third, somewhat mitigating factor, is that, as a practical matter, training of newly-hired scientists could not commence at KBIHQ until June 1.

Again, my thanks to you and your staff for the intense, but well-considered review of our laboratory division. I am confident that implementation of the audit's recommendations will improve the status of our men and women of the KBI Laboratory and enhance our abilities to better serve the citizens of our state, lest criminals continue to go free and backlogs and delays continue to grow because of our lack of resources, especially space and scientists.

Sincerely,



Larry Welch
Director

LW/pja



BILL GRAVES
Governor

DAN STANLEY
Secretary of Administration

**WILLIAM B.
McGLASSON**
*Director of Personnel
Services*
900 S.W. Jackson, Room
951-S
Landon State Office

DEPARTMENT OF ADMINISTRATION
Division of Personnel Services

Topeka, KS 66612-1251
(785) 296-4278
FAX (785) 296-6793

March 19, 1999

Terry Knowles
Kansas Bureau of Investigation
1620 SW Tyler
Topeka, KS 66612-1837

Dear Mr. Knowles:

The compensation survey for forensic scientists has been completed. I would like to apologize for the delay in completing the survey but the design of the survey and follow-up required in clarifying the survey responses required considerable time. A survey for forensic scientists would usually be conducted on the basis of different levels of performance, e.g. new hires, full performance level, specialist level, etc. Due to the concern that forensic science work consists of both different specialties, e.g. firearms, toxicology, trace, etc and differing levels of performance within each specialty, the survey was designed to identify both criteria.

Unfortunately, employers included in the survey were often unable to provide such detailed information. Most employers differentiate forensic work on the basis of level of work rather than by specialty area. This is also how the forensic scientist classes are differentiated in the KBI. The survey results were analyzed on the basis of level of performance.

The survey was sent to state governments which are members of the Central States Compensation Association and selected law enforcement organizations in large metropolitan employers within those states. These employers were mutually identified by Anne Brunt and myself and are listed in the attachment.

A number of employers reported that some of their forensic scientist employees are sworn law enforcement officers. Through follow-up conversations with these employers it was discovered that the majority of employees who are sworn law enforcement officers do not actually perform law

Terry Knowles
March 19, 1999
Page two

enforcement work or the time spent in law enforcement work is very rare and represents an insignificant portion of their duties. Pay data for these employees was included in the survey analysis.

Forensic scientist employees with Johnson County do not represent job matches with KBI forensic scientists. Forensic science employees with Johnson County perform forensic science work and also spend a significant portion of their time serving as law enforcement officers. KBI forensic employees are not commissioned law enforcement officers nor do they perform law enforcement work. Pay data for Johnson County is listed separately in the attachments.

Based on the results of this survey, the current pay grade assignments for the forensic scientist classes could result in recruitment difficulties. A comparison of the results of the survey and the current rates for forensic scientist classes is presented in the attachment.

I look forward to discussing the results of this survey with you after you have had an opportunity to review the data. You can reach me at 296-4383.

Sincerely,



Ken Otte

attachments

cc: Joe Lawhon
Bob Cockrell

Forensic Scientists: Employers Surveyed

<u>Employer</u>	<u>Comment</u>
Kansas City Kansas Police Department	A
Kansas City Missouri Police Department	A
Topeka Police Department	B
Denver Police Department	B
Oklahoma City Police Department	B
Little Rock Police Department	B
St. Louis Police Department	A
Albuquerque Police Department	A
Des Moines Police Department	B
Omaha Police Department	A
Dallas Police Department	B
Memphis Police Department	B
Spring Field, Illinois Police Department	B
Colorado Springs Police Department	B
Sedgewick County Regional Forensic Science Center	A
Johnson County Sheriff's Office	C
Tulsa Police Department	A
State of Arizona	B
State of Arkansas	B
State of Colorado	A
State of Idaho	B
State of Illinois	B
State of Iowa	A
State of Indiana	A
State of Louisiana	A
State of Michigan	A
State of Minnesota	B
State of Missouri	A
State of Montana	A
State of Nebraska	A
State of Nevada	B
State of New Mexico	A
State of North Dakota	B
State of Oklahoma	A
State of Oregon	A
State of South Dakota	A
State of Texas	A
State of Utah	A
State of Wisconsin	B
State of Wyoming	B

Legend:

- A = Job matches
- B = No response
- C = Discussed individually in the letter

Forensic Scientists: Current Rates vs. Survey Results

Forensic Scientist I: (Pay Grade 23)

Forensic Scientist I	Grade Minimum	Grade Maximum	Survey Avg. vs. step 5
Survey Average	\$28,541	\$42,581	\$33,408
Current Grade 23 Rate	\$27,040	\$38,043	\$29,806
Grade 23 as a % of Survey	94.7%	89.3%	89.2%

Johnson County	No such level	No such level	No such level
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Forensic Scientist II: (Pay Grade 27)

Forensic Scientist II	Grade Minimum	Grade Maximum	Survey Avg. vs. step 5
Survey Average	\$35,541	\$49,032	\$42,201
Current Pay Grade 27	\$32,864	\$46,238	\$36,213
Grade 27 as a % of Survey	92.5%	94.3%	85.8%

Johnson County	\$43,181	\$61,755	\$,56,856
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Forensic Scientist III: (Pay Grade 28)

Forensic Scientist III	Grade Minimum	Grade Maximum	Survey Avg. vs. step 5
Survey Average	\$39,137	\$53,897	\$48,263
Current Pay Grade 28	\$34,507	\$48,568	\$38,43
Grade 28 as a % of Survey	88.2%	90.1%	78.8%

Johnson County	No such level	No such level	No such level
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Forensic Scientist IV: (Pay Grade 30)

Forensic Scientist IV	Grade Minimum	Grade Maximum	Survey Avg. vs. step 5
Survey Average	\$40,967	\$60,557	\$51,002
Current Pay Grade 30	\$38,043	\$53,539	\$41,954
Grade 30 as a % of Survey	92.9%	88.4%	82.0%

Johnson County	\$48,547	\$72,987	\$72,987
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