

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 21, 2002 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Larry Campbell
Kyle Smith, Kansas Bureau of Investigation
Kathy Olsen, Kansas Bankers Association
Don McNeely, Kansas Automobile Dealers Association
Professor David Ryan, Chairman Administrative Procedure Advisory Committee, Kansas Judicial Council
Cindy Lash, Division of Legislative Post Audit
Randy Hearrell, Kansas Judicial Council
Richard Cram, Kansas Department of Revenue
Carol Foreman, Office of Administrative Hearings

Hearings on **HB 2880 - collection on DNA specimens from persons convicted of felonies**, were opened.

Representative Larry Campbell appeared as the sponsor of the proposed bill. He informed the members that the bill would allow DNA samples to be taken from those who are convicted of felonies and be analyzed and placed in a data base. The costs would be less than \$40.00 per offender and would be covered by a federal grant. (Attachment 1)

Kyle Smith, Kansas Bureau of Investigation, appeared in support of the bill. He was concerned that the grant would not cover the costs of personnel. He proposed that the committee use alternative language to keep the act consistent with the offender registration law. (Attachment 2)

Hearings on **HB 2880** were closed.

Hearings on **HB 2979 - lien of vehicle storage fees, notice**, were opened.

Kathy Olsen, Kansas Bankers Association, appeared before the committee as the sponsor of the bill. She provided the committee with substitute language (Attachment 3) which would provide that whenever anyone has storage fees that have gone unpaid for 30 days, that person shall notify the owner and lienholder that they are in possession of the vehicle.

Don McNeely, Kansas Automobile Dealers Association, appeared before the committee as a proponent of the bill. He believes that it would address the situations where one abandons their vehicle at a motor repair shop but has no intent of paying for the repairs. (Attachment 4)

Hearings on **HB 2979** were closed.

Hearings on **HB 2488 - Phasing in the use of the office of administrative hearings over five years**, were opened.

Professor David Ryan, Chairman Administrative Procedure Advisory Committee, Kansas Judicial Council, explained the phase in of the Office of Administrative Hearings. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 21, 2002 in Room 313-S of the Capitol.

Cindy Lash, Division of Legislative Post Audit, concluded that there is a nationwide trend toward centralizing administrative hearings. The value of an independent review of citizens' disputes with an agency has been recognized. While the Division of Legislative Post Audit did not look to see if conflicts of interest actually impacted the hearing officers' decisions, it is clear that the conflict of interest is simply inherent in the system. The State could benefit in a number of ways by centralizing its administrative hearings, including gaining a consistent application of administrative procedures and a professional staff of hearing officers.

The Legislative Post Audit report recommended that the Legislature need to centralize administrative hearings in Kansas. At a minimum, the Legislature should consider including the following elements in a centralized administrative hearing function:

- ▶ restricting the scope of review of agency heads to policy issues, rather than all finding, including findings of facts
- ▶ strengthening the independent decision-making for administrative hearings by requiring agency, rather than agency heads to sit as a hearing officer
- ▶ inclusion of hearings that aren't under the Kansas Administrative Procedure Act, unless there is a legitimate reason why it would be impracticable to have those hearings handled by a centralized administrative hearing agency
- ▶ require hearing officers to abide by a code of ethics to maintain hearing officers' professionalism and accountability
- ▶ fund through the State General fund to the extent that federal moneys are not jeopardized

Randy Hearrell, Kansas Judicial Council, proposed an amendment which would provide that if an agency head is going to hear a matter, the agency head may designate another person to determine procedural matters and hold a pre-hearing conference. (Attachment 6)

Richard Cram, Kansas Department of Revenue, appeared in opposition to the proposed bill, due to the following concerns:

- ▶ it defeats the purpose for having an administrative appeals process
- ▶ it's unclear whether this legislation would encompass the Department's Division of Alcoholic Beverage Control
- ▶ Section 2 could be construed as removing from the agency all presiding officers and support staff for administrative hearings (Attachment 7)

Carol Foreman, Office of Administrative Hearings, appeared before the committee with concerns regarding the cost of expanding the scope of the Office of Administrative Hearings. (Attachment 8)

The committee meeting adjourned. The next meeting was scheduled for February 25, 2002.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

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LARRY L. CAMPBELL
STATE REPRESENTATIVE 26TH DISTRICT
JOHNSON COUNTY
P. O. BOX 3391
OLATHE, KANSAS 66063-3391
(913) 829-5756

STATE CAPITOL—155-E
TOPEKA, KANSAS 66612-1504
(785) 296-7653
(785) 296-8430 TTY
800-432-2924 (HOT LINE)

February 21, 2002

TO: House Judiciary Committee

FROM: Rep. Larry Campbell

I am pleased to support HB 2880 and appreciate the Judiciary Committee's consideration.

Attached is information helpful in the deliberations on this bill. Thank you.

Smith Alling Lane

A Professional Services Corporation

Attorneys at Law

1102 Broadway Plaza, #403
Tacoma, Washington 98402
Tacoma: (253) 627-1091
Seattle: (425) 251-5938
Facsimile: (253) 627-0123

Douglas V. Alling
Grant B. Anderson
Joseph R. Cicero (1957-2001)
Barbara A. Henderson
Edward G. Hudson
Edward M. Lane
Linda Nelson Lysne, CPA
Robert E. Mack
Robert L. Michaels
Timothy M. Schellberg
Daniel C. Smith (Ret.)

Michael E. McAleenan

February 14, 2002

The Honorable Larry Campbell
State Capitol
300 SW 10th Ave. Rm 155-E
Topeka, KS 66612-1504

Dear Representative Campbell:

You recently introduced legislation to require every convicted felon to submit a DNA sample into the convicted offender DNA database. By introducing this legislation, you have joined a rapidly growing list of state legislators that have introduced the all felons legislation. In fact, there are already 14 states that have passed the all felons legislation. Furthermore, it is likely that over 25 additional states will be introducing the all felons legislation in 2002.

Your legislation will likely receive broad support from law enforcement, prosecutors, and victim groups. These entities understand that collecting DNA from all convicted felons will dramatically increase your state's ability to solve and prevent serious crimes.

With most of the state legislatures attempting to expand their convicted offender DNA databases this year, there will likely be information developing in other states that could be helpful in your state. Therefore, we intend to track this information and share it with other legislators. To facilitate the exchange of information, we are establishing a group email, which will include every state legislator that introduced the all felons legislation. You are being added to this list.

We will send you information as it develops. In the meantime, there is some information regarding costs that I would like to describe at this time:

1. **Cost Per Offender** -- Legislators should be aware that it costs less than \$40.00 to complete the DNA analysis of each offender. In addition, if buccal (mouth) swabs are used to collect the DNA, as opposed to blood, the collection costs are reduced to under \$2 per offender. As described below, the \$40 for analysis can be paid for by federal grants.
2. **Collect now, analyze latter – Using the federal grants to bring the fiscal note close to zero** -- Last year, many states considered all-felons DNA legislation with a money-saving clause that reduced the fiscal note to nearly zero. The clause stated that DNA would be collected from all felons immediately and then stored.

February 14, 2002

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The clause further stated that the analysis of the new DNA samples would be implemented upon receipt of future federal or state funds.

By purposefully authorizing the collection the additional DNA samples but delaying the analysis, your state will better position itself to receive federal funding. In 2000, Congress enacted the DNA Backlog Elimination Act, which authorizes \$170 million to in grants to states for DNA analysis. However, as the bill title implies, the grant program is solely for the purpose of backlog elimination. States must have a backlog of convicted offender DNA samples in order to be eligible to apply for funding. Only by passing the-all felons legislation, and thereby increasing your state's backlog of convicted offender DNA samples, will your state become entitled to receive a portion of the available federal money.

If you would like to verify our estimates on the cost of DNA analysis, or the federal DNA grant processes, you should contact the DNA Grant Office at the National Institute of Justice, a division of the United States Department of Justice, (202) 307-0650.

Smith Alling Lane has been extensively involved in tracking criminal DNA issues. Please feel free to utilize us as an information resource. We can also help identify people in your state to testify in support of your bill.

Increasing your state's convicted offender DNA database will have a significant impact on solving and preventing crime in your state. Once your legislative colleagues and the general public understand the power of an expanded DNA database, you will likely experience overwhelming support for your legislation.

Sincerely,



Tim Schellberg

TMS:cjs
Enclosure

From: "Tim Schellberg" <TimS@pdc.smithallinglane.com>
To: <DNAREports@aol.com>
Date: Sat, Feb 16, 2002 12:59 PM
Subject: February 16 update to DNA Legislation Sponsors

This e-mail is being sent to the many state legislators that have introduced the criminal DNA database expansion legislation during the 2002 legislative session. The information is designed to help you pass your legislation.

Good news for your DNA expansion legislation! The National Institute of Justice (NIJ) has indicated that there will be \$26 million available this summer to fund the many DNA database expansion bills being passed this year. This money will pay for the analysis of the new samples caused by your legislation. This amount of money can be confirmed by calling the NIJ DNA Grant Office at (202) 307-0650. This information should help pass your legislation. You have been saying to your colleagues that the federal money will be there. Now you can point directly to the source.

Many of the all felon DNA bills are positioning to pass. Congratulations to Senator Hargrove and Representative Miloscia of Washington State. Their all felons bills passed in each Houses with all 147 state legislators voting yes. With the exception of Virginia, Washington State will now have the strongest DNA database law in the country. In addition to collecting from all felons that go to prison or jail, Washington State will collect from all felons that do their time in community corrections. This is a large % of the felons. It will have a significant impact on the success of the database.

Tim Schellberg
Smith Alling Lane
253-627-1091 (phone)
253-627-0123 (fax)



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Testimony in support of HB 2880
Before the House Judiciary Committee
Kyle G. Smith
Kansas Bureau of Investigation
February 21, 2002

Chairman O'Neal and members of the Committee,

I am pleased to be here in support of this bill – this bill would prevent murders and rapes. HB 2880 would literally save lives, not to mention the pain and trauma victims would not have to endure. However, I must also advise the committee that there simply is no way the bill can be implemented without additional funds – a pretty high hurdle this year.

DNA testing and the use of the CODIS databank is the most effective new tool in our efforts against violent crime. I want to first distinguish between DNA testing on current investigations and the DNA databank. Our first priority is solving current cases. This involves conducting tests on biological samples taken at crime scenes and comparing them to suspects. The databank is also important as it can solve crimes and literally prevent rapes and murders, but we have to prioritize our resources.

Last year the KBI solved their first 'cold case' in Kansas. An new inmate was required to give a genetic sample and a run through the databank matched him to two other serious crimes: murder and rapes. Solving those crimes and getting such serial rapist off the streets is what DNA databank is all about. As you can see by the attached newsletter, other states are solving hundreds of such crimes each year. That effectiveness is why there is such intense interest in expanding DNA collection. The fact that there are federal grants available to cover almost all the costs is also a factor.

However, even though there are federal grants available for analyzing backlogs of such samples, but not for the personnel to do the collection. With the budget cuts the KBI is faced with, we can not even collect, let alone analyze, the samples for the crimes currently covered by this statute. As much as we'd love to expand the DNA databank law to all felonies, and as much as we all hate the thought that there will be rapes and murders that would otherwise be prevented, the KBI regretfully reports that such expansion does not appear to be fiscally possible at this time.

So what are the options?

1. Pass the law as written and fund the two tech positions. Even if there is not enough money to do all the tests, samples could at least be drawn and frozen, awaiting future grants.
2. Pass the bill as written w/o the two techs and the KBI will have the authority to take and analyze samples, if and when money is ever available.
3. Limit the scope to prospective application, i.e., to new crimes occurring after the effective date. This would remove the \$1.5 million part of the price tag that exceeds the available federal grant funds but reduce the effectiveness of the act. We still would need state funding for the two techs, however.
4. Like some other states, implement a fee to be charged to the offender to cover the costs involved.

There are several amendments to the bill that we would like for the committee to consider. See balloon.

1. We would suggest the alternative language to keep this act consistent with the offender registration law and still get the crimes of concern.
2. With the computerized robotics we now have, the issue of prioritization may not be of major concern as there really is no backlog.
3. The remaining changes are just updates on the language and terminology that has developed in this field.

Thank you for your attention and interest. I'd be happy to answer any questions.

DNA LEGISLATION & NEWS

**Smith
Alling
Lane**

*A Professional Services Corporation
Governmental Affairs
Attorneys At Law*

1025 Connecticut Ave. # 1012
Washington, D. C. 20036
202-258-2301

1102 Broadway Plaza # 403
Tacoma, WA 98402
253-627-1091

Tim Schellberg tims@smithallinglane.com and Lisa Hurst lhurst@smithallinglane.com of Smith Alling Lane, P.S. provide nationwide governmental affair services to Applied Biosystems. As part of the firm's representation weekly reports are generated which identify recent state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports available to anyone that requests them through this web site.

The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.

The February 15, 2002 DNA legislative and media report is listed below.

These reports are prepared by Tim Schellberg and Lisa Hurst of Smith Alling Lane (253) 627-1091, on behalf of Applied Biosystems. Text of legislation can be obtained by following the appropriate state-link at this site: <http://www.ncsl.org/public/sitesleg.htm>. Please see the appropriate media website for the newspaper articles.

COMMENTS

A Virginia bill to require DNA samples from all violent felony arrestees has passed both chambers of the legislature. New all-felons DNA database expansion bills have been introduced in Illinois and West Virginia. Expansion bills have passed the House of Representatives in Kentucky, Iowa, and Illinois. A bill to make the Colorado all-felons law retroactive is moving ahead. The California database is becoming more successful, but still faces many obstacles.

A new bill in Illinois would remove the statute of limitations for certain crimes if DNA is available. A man who was initially charged with a based on his DNA profile has been found guilty. Another county in New York has filed "John Doe" charges based on a perpetrator's DNA profile.

A post conviction DNA bill has been introduced in Rhode Island. In Chicago, DNA testing has exonerated four men of a 1986 murder and subsequently identified two new suspects. A post conviction DNA testing exoneration in Pennsylvania is being highlighted as a reason for that state to change its laws.

Funding for crime labs in Georgia and Pennsylvania are in jeopardy due to state budget cuts.

In Australia, police are debating the merits of requiring DNA samples from police for "elimination" purposes. Forensic work in Ireland is considerably backlogged and could be getting worse. A cold case solved from New Zealand's DNA database is praised by prosecutors. India may be establishing a forensics network which could include a DNA database.

STATE LEGISLATION

1. Illinois HB 5578 – Removes the statute of limitations for the prosecution of certain crimes if DNA evidence is available.
2. Illinois SB 1769 -- "Illinois Independent Forensic Science Act." Establishes an independent commission responsible for overseeing the performance of forensic science laboratories and maintaining the independence of laboratories from both the prosecution and the defense.
3. Illinois SB 2024 – Expands offender DNA database to include all convicted felons.
4. Rhode Island SB 2721 -- Provide for DNA testing as a remedy for post conviction relief.
5. West Virginia SB 524 – Expands offender DNA database to include all convicted felons.

HOUSE BILL No. 2880

By Committee on Appropriations

2-13

AN ACT concerning crimes, punishment and criminal procedure; relating to specimen collection; amending K.S.A. 2001 Supp. 21-2511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 et seq., any off-grid felony, any nondrug severity level 1 through 6 felony, or: a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508, 21-3602, 21-3715; a violation of K.S.A. 21-4310, subsections (c)(2), (c)(3) and (c)(4) of K.S.A. 65-4142 or K.S.A. 65-4159, and amendments thereto; a violation of K.S.A. 21-3424, and amendments thereto; a violation of K.S.A. 21-3507, and amendments thereto, when the victim is less than 18 years of age; a violation of K.S.A. 21-3513, and amendments thereto, when the victim is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when the victim is less than 18 years of age; a violation of K.S.A. 21-3520, and amendments thereto, when the victim is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto, including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

- (1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;
(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or
(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the ef-

A violation of K.S.A. 21-3424, and amendments thereto, when the victim is less than 18 years of age; or a violation of K.S.A. 21-3507, and amendments thereto, a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, or a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517 and amendments thereto;

fective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas bureau of investigation and by personnel. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained immediately upon arrival at the Topeka correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, the specimens of blood and saliva will be obtained immediately upon arrival.

(d) Any person required by paragraph (a)(3) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation and by personnel.

(e) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of blood and saliva samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas

1 bureau of investigation for analysis and categorizing. The bureau shall
 2 analyze and categorize the samples into genetic marker groupings to the
 3 extent allowed by funding available for this purpose. Priority shall be
 4 given to samples given by persons convicted or adjudicated because of the
 5 commission of any offense which requires such person to register as an
 6 offender pursuant to the Kansas offender registration act, K.S.A. 22-4901
 7 et seq., any off grid felony, any nondrug severity level 1 through 6 felony,
 8 or a violation of subsection (a)(1) of K.S.A. 21-3505, 21-3506, 21-3602,
 9 21-3715, 21-4310, subsections (e)(2), (e)(3) and (e)(4) of K.S.A. 65-4142
 10 or K.S.A. 65-4159, and amendments thereto, including an attempt, con-
 11 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or
 12 21-3303 and amendments thereto.

13 (f) The genetic marker groupings shall be maintained by the Kansas
 14 bureau of investigation. The Kansas bureau of investigation shall establish,
 15 implement and maintain a statewide automated, personal identification
 16 system capable of, but not limited to, classifying, matching and storing
 17 analysis of DNA (deoxyribonucleic acid) and other biological molecules.
 18 The genetic marker grouping analysis information and identification sys-
 19 tem as established by this act shall be compatible with the procedures
 20 specified by the federal bureau of investigation's combined DNA index
 21 system (CODIS). The Kansas bureau of investigation may participate in
 22 the CODIS program by sharing data and utilizing compatible test pro-
 23 cedures, laboratory equipment, supplies and computer software.

24 (g) The genetic marker grouping analysis information obtained pur-
 25 suant to this act shall be confidential and shall be released only to law
 26 enforcement officers of the United States, of other states or territories,
 27 of the insular possessions of the United States, or foreign countries duly
 28 authorized to receive the same, to all law enforcement officers of the state
 29 of Kansas and to all prosecutor's agencies.

30 (h) The Kansas bureau of investigation shall be the state central re-
 31 pository for all genetic marker grouping analysis information obtained
 32 pursuant to this act. The Kansas bureau of investigation may promulgate
 33 rules and regulations for the form and manner of the collection of blood
 34 and saliva samples and other procedures for the operation of this act. The
 35 provisions of the Kansas administrative procedure act shall apply to all
 36 actions taken under the rules and regulations so promulgated.

37 Sec. 2. K.S.A. 2001 Supp. 21-2511 is hereby repealed.
 38 Sec. 3. This act shall take effect and be in force from and after its
 39 publication in the statute book.
 40
 41
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 43

DNA (deoxyribonucleic acid) records and
 DNA samples
 DNA databank and DNA database
 searching
 records.
 DNA database

shall

DNA records
 authorized criminal justice agencies.

DNA records and DNA samples
 shall
 , maintenance and expungement of DNA
 samples

These rules and regulations also require
 compliance with national quality assurance
 standards to ensure that the DNA records
 satisfy standards of acceptance of such
 records into the national DNA
 identification index.



February 21, 2002

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2979: Providing Notice of Storage Fees

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of the concept behind what is now HB 2979. With the help of the Kansas Automobile Dealers Association, we made an attempt at responding to a problem experienced by some vehicle lenders. Since the draft of this bill, we have both agreed there is a better way to resolve the problem and we have attached substitute language.

This issue was brought to our attention by a member bank who had made a loan secured by a vehicle. The vehicle had been taken to a vehicle dealer for repairs, but the customer failed to pick the vehicle up once the repairs were made. The dealer put the vehicle in storage. The owner of the vehicle not only failed to pick up the vehicle, but also discontinued payment on the loan. The bank called the note, but was unable to locate the vehicle. Four months later, the bank discovered the location of the vehicle and the over \$1,700 in storage fees that had been earned.

HB 2979 as represented by the substitute language would provide that whenever anyone has storage fees that have gone unpaid for 30 days, that person shall provide notice to the owner of the vehicle and any lienholders that are either known to the person in possession of the vehicle or that are identified by verification with the Division of Vehicles. The notice will be sent by certified mail. There is an exception to the notice requirement for those owners or lienholders who have prior notice or actual knowledge that storage fees could be charged or are being charged.

The penalty for not providing such notice is that the person in possession of the vehicle would be precluded from charging storage fees until the notice is sent.

We believe that notification to the lienholder is that a vehicle has been left unattended benefits all parties involved. The chances that the repairs and storage fees on the vehicle will be paid increase tremendously the sooner the lienholder is notified as the lienholder knows that the vehicle's value steadily decreases as time passes and the costs of obtaining the vehicle increase.

We respectfully request that the Committee act favorably on our substitute language, incorporating it as a substitute bill for HB 2979.

Vehicle Storage Notice Provisions

(a) Whenever any person, while lawfully in possession of a vehicle renders any service or otherwise charges a fee for the protection, storage or safekeeping of such vehicle and such storage fees remain unpaid for 30 days, that person shall provide notice to the owner and the lienholder of such vehicle if:

- (3) The name and address of the owner and lienholder are known to the person in possession of such vehicle; or
- (4) The person in possession of such vehicle can easily ascertain, by verification from the division of vehicles the name and address of the owner and any lienholders.

Notice shall be mailed by certified mail to the owner and any such lienholder identified. Failure to give such notice shall stop the imposition of storage fees until the notice provisions described in this section are complied with. Provided, however, such notice shall not be given if such owner or lienholder has prior notice or actual knowledge by agreement or otherwise that such fees could be charged or imposed or were in fact being charged or imposed.

(b)The provisions of this section shall not apply to storage fees governed by KSA 8-1103 and amendments thereto.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable Ward Loyd, Vice Chairman
And Members of The House Judiciary Committee

FROM: Mr. Don McNeely, President
Kansas Automobile Dealers Association

RE: HB 2979 – An Act Related to Liens; Concerning Storage Fees
on Vehicles; Requiring Notice to Lienholders.

DATE: February 21, 2002

Good Afternoon, Vice Chairman Loyd and Members of the House Judiciary Committee. My name is Don McNeely and I am President of the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas, as well as the franchised new motorcycle and recreational vehicle dealers. On behalf of KADA, I am pleased to present this testimony in support of HB 2979, and the proposed amendment offered by the Kansas Bankers Association.

KADA has appreciated the opportunity to work with KBA over the last several months on this matter, which impacts both our industries. It is our belief that HB 2979 adequately addresses both of our concerns as they relate to the situation where an entity essentially abandons their motor vehicle in the care and custody of our members after completion of approved or contracted repair of the motor motor, with no intention of satisfying the debt incurred for such repair.

On behalf of the Kansas Automobile Dealers Association, I thank you for your consideration of our comments in support of HB 2979 and the Kansas Bankers Association's proposed amendments.

**JUDICIAL COUNCIL TESTIMONY
ON 2001 HB 2488
HOUSE JUDICIARY COMMITTEE
FEBRUARY 21, 2002**

2001 HB No. 2488 expands the Office of Administrative Hearings within the Department of Administration. The Office will provide "presiding officers" (hearing officers) to conduct administrative hearings for state agencies subject to the Kansas Administrative Procedures Act.

Bills creating such a central hearing office have been passed by the House of Representatives in 1995 (HB 2213) and in 1999 (HB 2126). In addition, such legislation has received favorable recommendations from the Legislative interim committees in 1997 and 2001, and a favorable report from Legislative Post Audit in March 2001. The previous Judicial Council recommendation immediately created the Central Office of Administrative Hearings and transferred hearings of KAPA agencies to the new Office. Since that time, the bill has been redrafted to phase-in the transfer of the responsibility for such hearings over a five-year period.

Most, but not all, adjudicated proceedings of state agencies are conducted in accordance with the Kansas Administrative Procedures Act (KAPA). Often, the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. Typically, such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis.

If the presiding officer is not the agency head, the presiding officer renders an initial order. An initial order is subject to review by the agency head on the agency head's motion or upon petition by any party. The basic concept of the bill is that full-time attorney hearing officers from affected agencies would be transferred to the Office of Administrative Hearings within the Department of Administration. These state agencies would be required to use hearing officers from the central office to preside as hearing officers for their administrative hearings under KAPA.

THE ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

The Administrative Procedure Advisory Committee of the Judicial Council is comprised of state agency lawyers and private attorneys who regularly represent private parties before state agencies. The advisory committee was largely responsible for the drafting of the Kansas Administrative Procedures Act (KAPA; K.S.A. 77-501 *et seq.*) and the Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA; K.S.A. 77-601 *et seq.*). These acts were adopted by the Legislature in 1984 and have proved to work well, both for the public and state agencies. KAPA and KJRA generally follow the Uniform Law Commissioners 1981 model state administrative procedure act with a number of modifications appropriate for Kansas. A feature of the model act

which was not adopted in 1984 related to an Office of Administrative Hearings. Although a majority of the members of the advisory committee have long favored creation of an Office of Administrative Hearings, the issue was not submitted to the 1984 legislature due to the concern that the debate over a central office might impede adoption of the KAPA and KJRA. The proposed bill generally follows the relevant provision in the 1981 model state act.

REASONS FOR STATE CENTRAL OFFICE

The basic purpose of a Central Office of Administrative Hearings is to give administrative hearing officers a certain amount of independence from agencies over which proceedings they preside. Such independence should promote fairness in the hearing process and a perception of greater fairness on the part of the parties in state agency proceedings. A central office should also reduce concerns of improper ex parte communications.

Over 20 states have adopted some form of a Central Office of Administrative Hearing Officers. Their experience indicates a central office can achieve certain cost efficiencies by sharing of resources and a more even distribution of the workload, which can fluctuate within a given agency. A central office can result in better evaluation of administrative hearing officer performance and enhance such performance in such matters as cross training and peer consultation. There is also potential that use of independent hearing officers will cause agencies to more closely evaluate cases, thus promoting settlement and possibly reducing the number of hearings. A central office would likely promote consistency among agency proceedings and a coherent level of policy on a number of issues in common to state agencies.

In summary, change to a central independent hearing office will promote fairness and a perception of fairness in execution of the many powers of state government over its people. A central office needs a sufficient caseload to achieve the benefits it offers in terms of management and efficiency.

Some agencies have expressed concern that a central office will result in a loss of agency "expertise." To the extent this concern relates to the inability to reflect expertise through policy implementation, it is reduced by the recommended authority of the agency head to review orders rendered by administrative hearing officers. To the extent the concern relates to loss of expertise of the hearing officer, the personnel transferred to the central office will bring along with them the special knowledge of each agency's type of cases, regulations and statutes, and a central office offers the opportunity to impart that specialized knowledge to other administrative hearing officers through cross training.

In the opinion of the advisory committee, it is not unfair to place some burden on the agency to make known to the administrative hearing officer, and indeed all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. Concerns with expertise of the administrative hearing officer should be balanced against concerns with the impartiality of the administrative hearing officer. Under the bill, the Office of Administrative

Hearings will provide for presiding officers to conduct administrative hearings in KAPA hearings. Presiding officers under the current setup, and all support personnel involved with KAPA hearings, will be transferred to the Office of Administrative Hearings over a period of five years. All property and records will also transfer. In addition, all funds under the current system will transfer to the Office of Administrative Hearings. These funds can only be used for the original purpose for which they were appropriated.

The current Office of Administrative Hearings was established July 1, 1998, by the provisions of K.S.A. 75-37,121. The office is charged with the responsibility of conducting all adjudicative hearings for SRS. The Office of Administrative Hearings may also conduct adjudicative hearings for other governmental entities. The office was initially staffed by transferring all of the staff of SRS Administrative Hearings Section to the Office of Administrative Hearings. That staff consists of ten employees, the director, four attorneys functioning as administrative law judges and five support staff. The physical location of the current office is 601 SW 10th, Topeka, Kansas. In addition to meeting the responsibility mandated by statute, the Office of Administrative of Hearings has been retained by the Kansas Insurance Department, the Department of Aging, the Animal Health Department, the Board of Behavioral Sciences, the Department of Commerce and Housing, KPERS, the Board of Cosmetology, the Board of Veterinary Examiners, the Department of Agriculture, and the Dental Board to provide administrative law judge services.

EXPANSION PLAN UNDER HB 2488

An incremental expansion of the responsibilities of the Office of Hearing examiners is contained in the bill. The expansion would take place over a period of five years. Each year, one or two cabinet level agencies would be added to the office. This allows for manageable expansion. In addition to the cabinet level agency, a group of small boards and commissions would be added each year.

The boards and commissions would be grouped together according to similar subjects (i.e., agriculture, labor, health care, finance). This would allow for the Office of Administrative Hearings to develop an expertise in a particular subject matter.

Year One

The two cabinet level agencies who currently use the services of the Office of Administrative Hearings or have expressed interest in using the Office of Administrative Hearings would be added, the Department of Aging and Juvenile Justice Authority. The small licensing boards related to health care issues would also be added (except for the Board of Healing Arts).

Year Two

The Department of Wildlife and Parks and the Department of Revenue would be added since they have small amounts of KAPA hearings. The rest of the small licensing boards would be added

in this year.

Year Three

The Department of Health and Environment and the Board of Healing Arts would be the two large agencies that would be added to the Office of Administrative Hearings. Then a number of small agencies or commissions, all dealing with financial type issues would be added, i.e., the Lottery, the Kansas Racing Commission, the Banking Commission, etc. All staff from the Department of Health and Environment related to conducting the KAPA hearings would be transferred to the Office of Administrative Hearings in this year.

Year Four

The Department of Agriculture and the Department of Human Resources would be the two large agencies added to the Office of Administrative Hearings. In addition to those agencies, there would be miscellaneous agencies related to the issues of labor and agriculture. The Kansas Corporation Commission would also be added.

Year Five

All remaining agencies, boards or commissions would be added, which includes the Department of Administration, the Secretary of State's Office, the Insurance Department, and other miscellaneous boards.

It should be noted that HB 2488 was amended as though it would be passed during the 2001 session. The bill would require amendments to move the effective date back at least one year.

2001 HB 2488
(Proposed Amendments)

Earlier this year the Attorney General's office asked if the Judicial Council would consider two amendments to HB 2488. The Attorney General's office worked through the Judicial Council because they were aware the bill was drafted by a Judicial Council committee. The amendments were approved by the Judicial Council and are attached to this testimony.

The amendments provide that if an agency head is going to hear a matter, the agency head may designate another person to determine procedural matters and hold a prehearing conference. Most regulatory board members have no expertise or desire to handle all of the procedural matters that must be decided before a hearing on the merits. In this instance, the board usually appoints its general counsel (often an assistant attorney general assigned to the agency) to handle these matters. The amendments to HB 2488 clarify that this practice may continue.

It is proposed that section 39, beginning at page 41 of HB 2488, be amended by adding a new section (h) to read as follows:

"(h) Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing on the merits, including but not limited to conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517 and amendments thereto."

It is also proposed that section 43, beginning at page 43 of HB 2488, be amended by relettering existing subsection (c) as (d) and inserting a new subsection (c) to read as follows:

"(c) Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing on the merits, including but not limited to conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517 and amendments thereto."

Randy M. Hearrell

STATE OF KANSAS

Bill Graves, Governor

Office of Policy & Research
Richard L. Cram, Director
915 SW Harrison St.
Topeka, KS 66625



DEPARTMENT OF REVENUE

Stephen S. Richards, Secretary

(785) 296-3081
FAX (785) 296-7928
Hearing Impaired TTY (785) 296-6461
Internet Address: www.ksrevenue.org

Office of Policy & Research

February 21, 2002

To: Representative Ward Loyd, Vice-Chair
House Judiciary Committee

From: Richard Cram

Re: Department of Revenue Testimony in Opposition to House Bill 2488

House Bill 2488 proposes to create an Office of Administrative Hearings independent of the Department of Administration effective July 1, 2005. This bill raises several administrative problems and concerns, listed below:

- 1) The bill's concept defeats the primary purposes for having an administrative appeals process. First, an administrative appeal serves a "quality control" function by allowing experts at the agency to review an issue before the agency decision is finalized. This is one of the major premises behind the rationale for judicial deference to administrative decisions. Moving administrative review to an outside group of generic hearing officers ("HOs") defeats this. Second, an agency considers and sets policy through the administrative review process. Moving this process out of the agency removes a significant policy-making tool from the agency head, giving it to a non-expert outside HO.
- 2) It is unclear whether this legislation would encompass the Department's Division of Alcoholic Beverage Control. The ABC Director presides as a hearing officer for numerous ABC-related hearings. If ABC hearings are to become the responsibility of the Office of Administrative Hearings and if the Department would then be required, under Section 34, page 36, lines 39 through 41, to pay for such services provided by that office, then the Department would require additional funding to cover those costs. The Department has no way of estimating these costs.
- 3) The Department has great concern with Section 2. The first sentence in that section states:

Except as otherwise provided in this act, on July 1, 2005, any presiding officer in the administrative hearings section of all agencies which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 [this reference should probably be K.S.A. 77-551, which refers to the presiding officer in hearings held by SRS], and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings established under this act.

House Judiciary
Attachment 7
2-21-02

This arguably could be construed as removing from the agency all presiding officers and support staff for administrative hearings sections, including those that do not administer hearings held pursuant to KAPA, if the agency conducts some hearings pursuant to KAPA. The phrase "which conduct hearings pursuant to the Kansas administrative procedure act" appears to modify "agencies" rather than "any presiding officer." If construed that way, tax appeals currently subject to the informal conference process set forth in K.S.A. 79-3226 (which is non-KAPA) would apparently be moved to the new Office of Administrative Hearings.

Will the field investigators, working for the Dealer Licensing Section of Titles & Registrations and supporting the hearing process for the Division of Motor Vehicles, be transferred to the office of administrative hearings? If so, how will the Dealer Licensing Bureau conduct initial inspections for new dealer license applications? If the field investigators are not transferred, how will they be informed of hearing dates or if they will be called upon to testify? The field investigators will also need to be informed of the results of all hearings.

Section 2 raises the question of how many of the employees of the Dealer Licensing Bureau fit within the meaning of "support personnel" to be transferred. The bureau performs the initial investigation and maintains the records that result in the scheduling of a hearing. Would only the field investigators or the whole bureau be transferred? Who will implement the rulings of the office of administrative hearings?

This section also provides that all property and records used for or pertaining to performance of powers, duties and functions, are to be transferred to the office of administrative hearings. The records used for conducting dealer licensing hearings are maintained on the bureau's imaging system. How will these records will be shared and maintained, if they are transferred out of the bureau? In addition, the results of all hearings will need to be reported to the Dealer Licensing Bureau so that records for the dealership being reviewed can be updated to reflect the results of the hearings.

Conclusion

It is difficult, if not impossible, to see how House Bill 2488 would increase the qualify or efficiency of the administrative review process, as it relates to alcohol beverage control or dealer licensing matters subject to KAPA arising at the Department of Revenue. If House Bill 2488 also encompasses non-KAPA tax administrative appeals as well, the inefficiencies will be multiplied several times over. For these reasons, the Department opposes this legislation.

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE**

**By
Carol Foreman, Director
Office of Administrative Hearings
Department of Administration
Regarding HB 2488**

February 21, 2002

I am appearing today on behalf of the Department of Administration regarding HB 2488.

For a number of years, this Committee has considered bills that, in various forms, would create or expand the scope of a centralized hearing office. The Department of Administration has consistently expressed concerns about the effects of such proposals with respect to both their cost and the increased complexity of managing administrative hearings that would result. The Department continues to have concerns regarding the cost of expanding the scope of the Office of Administrative Hearings.

With the passage of K.S.A. 75-37,121, the Department of Social and Rehabilitation Services (SRS) administrative hearings office was transferred on July 1, 1998, to a newly created Office of Administrative Hearings within the Department of Administration. HB 2488 would expand the scope of responsibilities for the Office of Administrative Hearings beyond SRS administrative hearings. After a five-year phase-in period, the presiding officer used by state agencies for all hearings that are subject to KAPA would be limited to the agency head, one or more members of the agency head (if the agency head is a board or commission), or a presiding officer assigned by the Office of Administrative Hearings. Therefore, the Office of Administrative Hearings would become responsible for conducting all hearings held under KAPA in which the agency head or one or more of its members did not personally act as presiding officer. In addition, the Office would be required to provide a presiding officer for non-KAPA hearings upon the request of any state agency. As agencies are brought under the law over a five-year period, "personnel in the administrative hearings section" of the affected agencies and "support personnel for such presiding officers" would be transferred to the Office of Administrative Hearings. In the fifth year of the phase-in period, the Office of Administrative Hearings would be converted into an independent, freestanding agency.

Implementation Issues

Number of Affected Agencies. The transition of the SRS hearing section to the Department of Administration has been very successful. However, preparation for the transfer of the SRS hearing section to the Department of Administration involved numerous issues and discussions throughout the year between enactment of the legislation and its effective date. Significant amounts of planning and coordination were required even though the transfer was a straightforward shift of one organizational unit as a whole and did not involve any physical relocation of staff or integration of presiding officers and support staff from other state agencies.

The scope of the work performed by the SRS hearings section and the size of its caseload did not change when the hearing section transferred; therefore, there were no uncertainties about the size of the staff needed. Moreover, there was no need to develop new funding sources and billing systems since the Office is funded through an interagency agreement with SRS.

In contrast, implementation of HB 2488 would present complex factors that were not issues in the creation of the Office of Administrative Hearings. The first year of the phase-in and each fiscal year thereafter for five years, HB 2488 would dramatically and rapidly expand the responsibilities of the Office of Administrative Hearings to include all of the approximately 40 state agencies that conduct KAPA hearings. At the end of that time, the Office would become a freestanding, independent state agency, responsible for all of the administrative support functions currently provided by the Department of Administration. Consequently, implementation of HB 2488 would be complex, complicated, and time-consuming. Numerous issues would need to be identified and resolved relating to staffing, physical location, expanded facilities including hearing rooms and video conferencing, funding, billing, docketing and prioritizing cases, developing and preserving the presiding officers' subject expertise, and staffing an expanded office. At this time, there is virtually no information about the resources currently required to handle hearings in other agencies, which hinders the Department's ability to develop reasonable assumptions about caseloads, staffing, needed facilities, and costs.

Ambiguities in Personnel Language. HB 2488 states that "personnel in the *administrative hearings section* of all agencies and support personnel for such presiding officer" would be transferred to the Office of Administrative Hearings (emphasis added). However, almost all of the state agencies responsible for one or more types of KAPA hearings do not have an "administrative hearings section". Therefore, it appears that the vast majority of agencies that hold KAPA hearings will not have any staff transferred to the Office of Administrative Hearings under HB 2488. Even if the bill was amended to provide for the transfer of all full-time presiding officers and their support personnel, there are many instances in which presiding officers are handling multiple functions within their agencies and, therefore, would not transfer under HB 2488. Therefore, the Office of Administrative Hearings would clearly need to hire new staff in addition to those transferred, and the number of FTE devoted to administrative hearings statewide would rise.

Office Consolidation. HB 2488 creates an immediate need to establish a consolidated office, relocates the transferred staff, and makes provisions for new positions. This consolidation would entail many new expenses, including moving costs; additional space rental charges; higher space rental rates; development of a compatible, unified information system, including new software and hardware; development of video conferencing capabilities to handle hearings that are currently assigned to contract attorneys or state agency presiding officers in the locale of the parties; and purchase of equipment or services currently shared with other programs in the transferring agencies. (HB 2488 does not address funding or the transfer of equipment and supplies.) However, the large number of affected agencies, as well as uncertainty about staffing requirements and the number of positions that would actually be transferred under HB 2488 would complicate planning or creation of a single, unified office.

Billing and Funding. Because an entire organizational unit of SRS transferred to the Department of Administration at the beginning of FY 1999, the budgeting and funding for transfer of the SRS administrative hearings section was relatively straightforward. A budget for the administrative hearings unit was already developed, and virtually all hearings conducted by the office during FY 1999 are on behalf of SRS. However, under HB 2488 it would be necessary to develop a new system of funding and billing for presiding officers' services that takes into account such issues as complexity and length of hearings; the degree of expertise and specialized knowledge required of the presiding officer; the location of the parties; appropriate billing for cases that are dismissed, withdrawn, or settled prior to a formal hearing; projected caseloads; indirect costs; and cash flow requirements. This task is even more complex because state agencies can still hold their own KAPA hearings if the state agency head (or a board member) acts as the presiding officer. Consequently, the number of cases or hearings actually assigned to the Office of Administrative Hearings depends upon decisions made by the 40 agencies affected.

Thank you for this opportunity to testify regarding HB 2488. I would be happy to stand for questions.