

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Vice Chairperson Senator Pugh at 9:40 a.m. on March 21, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Adkins (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Representative Larry Campbell  
Kyle Smith, Kansas Bureau of Investigation (KBI)  
Kathy Porter, Office of Judicial Administration (OJA)

Others attending: see attached list

**HB 2880—re: specimen collection**

Conferee Smith testified in support of **HB 2880**, a bill which would require all convicted felons and persons convicted on certain misdemeanors to submit a DNA sample for analysis and categorization by the KBI who would enter the data in a convicted offender DNA database, CODIS. The Conferee illustrated the effectiveness of the database as a tool in fighting crime. He also reviewed two “minor” balloon amendments attached to his testimony. (attachment 1) Lengthy discussion followed.

Conferee Campbell testified in support of **HB 2880**. He briefly discussed the intent of the bill and affirmed that it is not his intention that funding for the bill will come from state funds. He briefly discussed the cost of DNA analysis and reviewed the federal DNA grant process stating that there is “grant money available” for DNA database expansion. (attachment 2)

Chairperson Vratil arrived and assumed the Chair at 10:04 a.m.

Conferee Porter testified on **HB 2880** as “not entirely opposed to the content of the bill” but stated she had concerns about the workload and other problems it placed on court services officers. She discussed these as well as the fiscal effect of the bill. (attachment 3) She stated she planned to prepare a fiscal note and requested an amendment. The Chair instructed her to prepare the amendment in balloon form.

Final action:

**HB 2230—proposed substitute bill concerning school truancy**

Following a review of **HB 2230** by the Chair and discussion by Committee, Senator Goodwin moved to amend the bill by deleting Section 1(b), Senator Gilstrap seconded. During discussion it was the consensus of the Committee that the minutes reflect that removal of Section 1(b) is not intended to have any impact on home schooling. Carried. Following further discussion, Senator Oleen moved to amend the bill to increase the maximum limit on fines to \$500, Senator Schmidt seconded. Carried. Senator Schmidt moved to amend the bill to delete the language in the bill referring to secure care facility so that it reads only “secure facility.”, Senator Umbarger seconded. Carried. Senator Schmidt moved to pass out favorably, **HB 2230** as amended in the form of **Senate Sub for HB 2230**, Senator Umbarger seconded. Carried.

**HB 2771—requires garnishee to furnish a fax and email number for service of process**

Following review of **HB 2771** by the Chair, Senator Schmidt moved to amend the bill to replace “shall” to “may” wherever appropriate in subsections 2 and 3 of the bill, Senator Donovan seconded. Carried. Following discussion, Senator Schmidt moved to amend the bill by striking language in this bill, and any other conforming amendments to the law, to eliminate service of process by electronic mail, Senator O’Connor seconded. Discussion followed. Motion failed 5-3. Senator Oleen moved to pass the bill out favorably as amended, Senator O’Connor seconded. Carried.

The meeting adjourned at 10:37. The next scheduled meeting is March 22, 2002.





## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

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

Chairman Vratil and members of the Committee,

I am pleased to be here in support of this bill – legislation that will literally prevent murders and rapes. HB 2880 would literally save lives, not to mention the pain and trauma victims would not have to endure. DNA testing and the use of the CODIS databank is the most effective new tool in our efforts against violent crime.

To illustrate how the databank should work, last year the KBI solved the first Kansas 'cold case'. A 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. Other states are solving hundreds of such crimes each year utilizing DNA databanks. 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. That is why yesterday's vote amending HB 2772, increasing the forensic laboratory fee, was so crucial. With that increase, Kansas can obtain an additional \$500,000 federal grant to pay for the analysis and make DNA the effective weapon that it is in other states. Without the additional funds, or if they are taken to pay for the budget deficit, our system will continue to fail and violent crimes that might have been prevented, will occur.

I do have two minor amendments to clarify the collection process in the attached balloon. Thank you for your attention and interest. I'd be happy to answer any questions.

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1 specified in subsection (a) on or after the effective date of this act; or  
2 (3) convicted as an adult or adjudicated as a juvenile offender because  
3 of the commission of a crime specified in this subsection before the ef-  
4 fective date of this act and is presently confined as a result of such con-  
5 viction or adjudication in any state correctional facility or county jail or is  
6 presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663,  
7 and amendments thereto.

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

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

15 (1) If placed directly on probation, that person must provide speci-  
16 mens of blood and saliva, at a collection site ~~and by personnel~~ desig-  
17 nated by the Kansas bureau of investigation. ~~Failure to cooperate with~~  
18 the collection of the specimens and any deliberate act by that person  
19 intended to impede, delay or stop the collection of the specimens shall  
20 be punishable as contempt of court and constitute grounds to revoke  
21 probation;

Collection of specimens will be  
conducted by qualified volunteers,  
contractual personnel or employees  
designated by the Kansas bureau of  
investigation.

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

as soon as practical

25 (3) if a juvenile offender is placed in the custody of the commissioner  
26 of juvenile justice, in a youth residential facility or in a juvenile correc-  
27 tional facility, the specimens of blood and saliva will be obtained ~~imme-~~  
28 ~~diately~~ upon arrival.

as soon as practical

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

Collection of specimens will be  
conducted by qualified volunteers,  
contractual personnel or employees  
designated by the Kansas bureau of  
investigation.

33 (e) The Kansas bureau of investigation shall provide all specimen vi-  
34 als, mailing tubes, labels and instructions necessary for the collection of  
35 blood and saliva samples. The collection of samples shall be performed  
36 in a medically approved manner. No person authorized by this section to  
37 withdraw blood and collect saliva, and no person assisting in the collection  
38 of these samples shall be liable in any civil or criminal action when the  
39 act is performed in a reasonable manner according to generally accepted  
40 medical practices. The withdrawal of blood for purposes of this act may  
41 be performed only by: (1) A person licensed to practice medicine and  
42 surgery or a person acting under the supervision of any such licensed  
43 person; (2) a registered nurse or a licensed practical nurse; or (3) any

STATE OF KANSAS

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



COMMITTEE ASSIGNMENTS  
VICE-CHAIR: LOCAL GOVERNMENT  
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STATE CAPITOL—155-E  
TOPEKA, KANSAS 66612-1504  
(785) 296-7653  
(785) 296-8430 TTY  
800-432-2924 (HOT LINE)

TOPEKA  
HOUSE OF  
REPRESENTATIVES

March 21, 2002

TO: Senate Judiciary Committee

FROM: Rep. Larry Campbell

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

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

*for info  
3-21-02  
att*

# 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 10<sup>th</sup> 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.

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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)





State of Kansas

## Office of Judicial Administration

Kansas Judicial Center

301 SW 10<sup>th</sup>

Topeka, Kansas 66612-1507

(785) 296-2256

### Senate Judiciary Committee

Thursday, March 21, 2002

Testimony on HB 2880

Kathy Porter

Thank you for the opportunity to testify on HB 2880. The Office of Judicial Administration is not opposed to the contents of the bill, but does want to provide some insight into the workload impact of this bill and to request an amendment.

When DNA sample collection provisions were expanded during the 2001 legislative session, Judicial Branch court services officers were concerned about the workload impact for several reasons. The bill's retroactive provisions required court services officers to spend a great deal of time identifying and delivering for sample collection those additional offenders noted in the bill. In addition, although the law does not require court services officers to accompany the offender for the sample collection procedure and to remain with the offender during the process, that was the procedure they were using for sex offenders previously required to submit to sample collection. This was considered a "best practice," both so that there would be no concerns as to the identity of the person submitting the specimen, and for safety concerns at the testing site, which is often the county health department but can also include hospitals or private laboratories. Moreover, while the burden is on the offender to submit for sample collection, failure to do so would be considered a violation of the conditions of probation, yet there are no specific consequences for that violation.

What was thought to be a "best practice" has become a necessity. Many health departments and other testing sites will not perform the sample collection unless the offender is accompanied by a court services officer.

Although the testimony last year included statements that the KBI had received federal funding to assist with these efforts, the funding has done nothing to help with the demands on court services officer time. While the Office of Judicial Administration worked with the KBI to arrange test sites and procedures for the large pool of testing on offenders impacted by the retroactive provisions of the 2001 legislation, nothing has been done to accommodate the ongoing new offenders, despite requests to arrange periodic testing sites and dates to save court services officer time. While court services offices may attempt to do this on their own, time is consumed working to make these arrangements.

*Sen Jud  
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This situation is complicated by the fact that the KBI is currently out of its supply of DNA collection kits, and expects the supply to not be replenished for four to six weeks. This situation will create a pool of offenders to be tested when the kits are again available. This is not a small task. Statewide, court services officers are assigned 516 new felony cases each month. A sampling of four districts, both urban and rural, show the four-month average of new felony case assignments to court services officers:

18 <sup>th</sup> Judicial District (Sedgwick County)	103 new cases per month
10 <sup>th</sup> Judicial District (Johnson County)	71 new cases per month
11 <sup>th</sup> Judicial District (Cherokee, Crawford, and Labette Counties)	20 new cases per month
23 <sup>rd</sup> Judicial District (Ellis, Gove, Rooks, and Trego Counties)	7 new cases per month

At a minimum, the Office of Judicial Administration requests an amendment on page 2, line 13 of the bill, to replace “within ten days” with “as soon as practical” or similar language. This will bring this section in line with other amendments requested by the KBI, and will at least allow for situations such as the unavailability of DNA collection kits.

The Division of the Budget did not request the Office of Judicial Administration to submit a fiscal note on HB 2880. However, the office is working now to compile such a note. Considering only adult felons, of which the most recent five year average is 17,720, and estimating that it would take only one hour to make all the necessary arrangements and accompany the offender to the sample collection site, approximately nine new court services officer positions would need to be added, and this number will grow when juvenile offenders and certain misdemeanants are added. This amount of work cannot simply be absorbed given the existing workloads of court services officers.

The fiscal impact of bills that have either been enacted or that are likely to be enacted is considered by the Senate Ways and Means Committee and the House Appropriations Committee during the Omnibus session. I would request support from this committee for consideration of the fiscal impact of this bill by those committees.