

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

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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.