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**Testimony to the House Judiciary Committee  
On HB2289, DUI Administrative Hearings  
January 14, 2016**

Chairman Barker and Committee Members,

Our associations are opposed to HB2289 in its original form. I have attached the testimony we prepared for this committee on this bill scheduled for a hearing on February 23, 2015.

At the end of the 2015 session, this bill was referred to the Judicial Council for study. During the interim, the Judicial Council Criminal Law Committee studied the bill extensively and received input from several groups involved in this process. As a result, the Judicial Council has issued a recommendation which our associations support.

That recommendation would provide access to the police reports for any person appearing for a DUI related administrative hearing. It also preserves the issue of reasonable suspicion for the stop to be determined by a court in the appeal process, not in the administrative hearing process. This is a critical distinction for several reasons. For example, administrative hearings generally do not result in constitutionality rulings. Also, administrative hearings do not have legal representation for both sides. By preserving the issue for the court hearing the appeal, attorneys will be present representing both the state and the driver.

The bill also provides a change in the officer's affidavit to include a statement there was reasonable suspicion for the contact leading to the test refusal or failure. While we are not necessarily opposed to this provision, it does create a significant cost to the state to reprint the form and appears to have limited value to the hearing or to the court proceedings. The court's determination must be made on more information than a statement of the officer's opinion. Those details can be lengthy and should be in the police report and would require testimony and availability of cross examination in the appeal case. We believe removing these declarations on the form does not harm the driver's rights to challenge the legality of the contact and will result in a cost savings to the state.

In short, we remain opposed to the original bill but support the Judicial Council recommendation.

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**House Judiciary Committee**  
**Testimony in Opposition to HB2289**  
**February 23, 2015**

Chairman Barker and Committee Members,

Our associations are in solid opposition to this bill. Our opposition is centered on the amendments on page 1, lines 26-30, on page 2, lines 5-9, and numerous other places later in the bill. These amendments would 1) eliminate effective use of DUI check lanes; 2) eliminate any administrative sanctions for refusing the test or failing the test in cases where the person is passed out behind the wheel or otherwise already stopped; 3) opens up the administrative hearing to arguing the reasonable suspicion of the stop.

Clearly item 1 above effectively eliminates the use of DUI check lanes, a deterrent and enforcement tool that unquestionably works, is well accepted across the country, and is supported by case law. While this doesn't forbid using the check lane, it would eliminate any administrative sanctions, independent of the criminal case, for the refusal or failure of the chemical test. The result would be the drunk drivers simply refusing the test making prosecution more difficult. This by itself would be a huge step back in DUI enforcement and highway safety in Kansas.

Item 2 above would eliminate any administrative sanction, separate from the criminal action, when a person is contacted by police whose vehicle is already stopped prior to the contact. This occurs when people are passed out behind the wheel, drove off the roadway without causing damage, and numerous other circumstances.

Item 3 is also problematic in the process. The amendments, particularly those on page 5, lines 41-43, and on pages 6 and 7, would make the reasonable suspicion for the stop a part of the administrative hearing. This would reverse years of case law saying this is constitutionally not required in the administrative hearing process. From the practical side, this will return us to an era of years ago when the administrative hearings became a lengthy quasi preliminary hearing for the DUI court case. The hearings were very one sided since the facts of reasonable suspicion would often be argued on legal terms where one side, the driver, is represented by legal council, and the other side only represented by the arresting officer with no legal expertise to argue case law or other lawyerly points in the process. Back in those days it was not uncommon for the defense lawyers to bring in court reporters and for hearings to last hours. **If this change is made, the process should also be amended to provide for legal council to present the case on behalf of the state at the hearing. It is unreasonable and ineffective to expect the law enforcement officer to argue legal points of reasonable suspicion in front of the hearing officer. But even then, the law is simply overturning years of case law.**

For all these reasons, it is our opinion this is simply a bad bill that would weaken the efforts to reduce drunk driving in Kansas, to hold drunk drivers responsible for their actions, and to reduce injuries and fatalities at the hand of the drunk driver. This bill is not fixable with amendments and simply needs to die quietly in this committee without moving forward.

Ed Klumpp