



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

To: Hon. John Barker, Chair, House Judiciary Committee
From: Brock Abbey, Assistant Saline County Attorney
Date: March 10th, 2016

Re: Support SB 362

Hon. Chairman Barker and members of the House Judiciary Committee:

Thank you for the opportunity to provide testimony in support of SB362. My name is Brock Abbey and I am an Assistant Saline County Attorney. I am appearing on behalf of the Kansas County and District Attorney's Association in support of SB 362.

SB 362 would amend K.S.A. 2015 Supp. 22-4701, 22-4705, 60-460, and 60-465. The purpose of amending these statutes is to allow records obtain from the KCJIS system to be admissible in the courts of this state. By changing these statutes, prosecutors would be allowed to admit records of prior DUI convictions that are found by searching KCJIS. The changes to K.S.A. 22-4701 and 4705 create the electronic database necessary for the search and allow the Kansas Bureau of Investigation (KBI) to contract with state agencies for participation in the database and how records are transmitted to the database. The changes to K.S.A. 60-460 and 465 make the records received from a KCJIS search an exception to hearsay, and also allows those same records to be authenticated for purposes admission in a court of law.

The records in the KCJIS system will make it significantly easier to prosecute repeat DUI offenders. K.S.A. 2015 Supp. 8-1567(g) requires prosecutors to obtain a driving record from the Department of Revenue and criminal history information from the KBI prior to filing a DUI complaint for purposes of determining the number of prior convictions. The number of prior convictions determines the possible penalties upon convictions. Additionally, because a DUI can be a misdemeanor or a felony depending on prior convictions, the number of prior convictions also determines the procedure for pre-trial and trial matter. A criminal defendant is entitled to a jury trial of 6 jurors if the case is a misdemeanor, and a jury trial of 12 jurors if the case involves a felony. Additionally, if a felony DUI is alleged, the defendant is entitled to a preliminary examination under K.S.A. 2015 Supp. 22-2902.

Traditionally, records of prior convictions are requested by individual prosecutors by sending a written or electronic request to the city, county, or state agency having custody of the records. Prosecutors make these request to municipal and district courts across Kansas and other states when a KBI or Interstate Identification Index

criminal history check indicates an arrest for a DUI offense anywhere in the country. A prosecutor may issue one or more requests depending on the criminal history report. The timeliness of a response to a records request frequently depends on the quality of the records kept by any agency, the duration such records are kept, and the workload of the people that have to receive, search and copy records, and then respond to the requests. The KCJIS records and SB 362 would simplify these records searches for Kansas agencies by allowing prosecutors to search one database to get the records for all agencies. Additionally, with the changes to K.S.A. 60-460 and 60-465, the prosecutor will print a copy of the records generated from the RAPID system with an authentication attached, which all would be admissible in the courts. Without the changes to K.S.A. 40-460 and 40-465, prosecutors would not be able to admit the records received from the RAPID system and would have to continue the time consuming and often laborious task of tracking down records. Additionally, if the hearsay and authentication statutes are not amended to make these records admissible, prosecutors may likely have to issue subpoenas duces tecum to individual agencies to have each record authenticated by affidavit, or to have an agency representative subpoenaed to court to authenticate the records. The State has spent approximately \$3 million to create the database of records that the KCJIS search will obtain for prosecutors, and SB 362 is the legislative step in the process of ensuring the records system created with that money is useful to prosecutors and admissible in court. SB 362 will make DUI prosecutions easier and more efficient by allowing Kansas state and local official documents and business records to be found using one search.

Thank you for the opportunity to appear and testify in support of SB 362.

I respectfully request that the committee report SB 362 favorably for passage.

I am available for questions at the appropriate time.

Respectfully submitted,

Brock Abbey

Assistant Saline County Attorney on behalf of the Kansas County and District
Attorney's Association