

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 14, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Karen DiVita- Johnson - Excused
Representative Judy Morrison - Excused
Representative Doug Patterson - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused

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:

Senator James Barnett
John Eichkorn, Kansas Highway Patrol
Margi Grimwood, Coordinator of Safe & Drug Free School
Sgt. Lane Ryno, Emporia Police Department
Jim Murphy, Kansas Department of Health & Environment
Dr. Duane Boline, Lab Director, Kansas Department of Health & Environment
Tim Madden, Chief Legal Counsel, Kansas Department of Corrections
Ami Hyten, Office of Judicial Administration

Announcement of Protection From Abuse/Stalking subcommittee:

Representative Long - Chair
Representative Patterson
Representative Morrison
Representative Pauls
Representative Crow

SB 392 - Habitual violator, definition

Representative Loyd made the motion to amend in the Department of Motor Vehicle balloon. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to amend in provisions regarding the reinstatement of a license effect that suspension or revocation will remain in effect until it is determined that the other party to an accident cannot be located. (Attachment 1) Representative Dillmore seconded the motion. The motion carried.

Representative Loyd made the motion to report **SB 392** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

Hearing on **SB 208 - driving under the influence of an inhalant**, was opened.

Senator James Barnett appeared as the sponsor of the proposed bill. Huffing is not uncommon in today's society. Many use this method to get high and then drive under the influence and could kill many people. (Attachment 2)

John Eichkorn, Kansas Highway Patrol, supported the bill and proposed an amendment which would strike subsection (r) and replace it with "for purposes of this section, drug includes any inhalant or other substance, which, when taken into the human body, can impair the ability of the person to operate a vehicle safely." The propose amendment would define "drug" more effectively for the purpose of using it with DUI statutes. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 14, 2002 in Room 313-S of the Capitol.

Margi Grimwood, Coordinator of Safe & Drug Free School, was concerned with the increasing usage of inhalants in the Emporia area. Statistics show that 13% of 10th graders have use inhalants. (Attachment 4)

Sgt. Lane Ryno, Emporia Police Department, appeared as a proponent of the bill. These types of vapors effect the brain the same as alcohol & drugs. Therefore, it should be treated as a "drug" under the DUI statute. (Attachment 5)

Hearing on **SB 208** was closed.

Hearing on **SB 416 - expenditures from the driving under the influence equipment fund**, was opened.

Jim Murphy, Danas Department of Health & Environment, informed the committee that many of the funds from the Driving while under the Influence Equipment Fund could be used to pay travel expenses, supplies, instrument services and repairs for equipment.

Dr. Duane Boline, Lab Director, Kansas Department of Health & Environment, appeared in support of the bill. Currently, these funds are used to purchase breath alcohol testing equipment. (Attachment 6)

Hearing on **SB 416** was closed.

Hearing on **SB 433 - motor vehicle; DUI notice to Kansas Secretary of Corrections; inpatient or outpatient treatment**, was opened.

Tim Madden, Chief Legal Counsel, Kansas Department of Corrections, appeared on behalf of Secretary Charles Simmons. He explained that the ability to require a substance abuse treatment program selected by the Department to occur during the post-release supervision period. (Attachment 7)

Ami Hyten, Office of Judicial Administration, appeared as a proponent of the bill because it allows the clerk of the district court to deliver the journal entry and/or judgement form together with the order of commitment of the officer having charge of the offender. (Attachment 8)

Hearing on **SB 433** was closed.

Hearing on **SB 434 - expanded the definition of unlawful sexual relations to include contracted employees**, was opened.

Tim Madden, Chief Legal Counsel, Kansas Department of Corrections, appeared before the committee in support of the bill, which treats contractors the same as parole officers with regards to unlawful sexual relations with an inmate. (Attachment 9)

Hearing on **SB 434** was closed.

Hearing on **SB 443 - personal property of inmates; abandonment; disposition**, was opened.

Tim Madden, Chief Legal Counsel, Kansas Department of Corrections, appeared as a proponent of the bill which clarifies that an inmate's property shall be considered abandoned if not claimed within 90 days of the inmate's death. (Attachment 10)

Hearing on **SB 443** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 18, 2002.

Sec. 1. K.S.A. 40-3104 is hereby amended to read as follows:
40-3104. (a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in subsection (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(d) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall attach a copy of the insurance verification form prescribed by the secretary of revenue to the copy of the citation forwarded to the court.

No citation shall be issued to any person for failure to

provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Upon the production in court of evidence of financial security, the court shall record the information displayed thereon on the insurance verification form prescribed by the secretary of revenue, immediately forward such form to the department of revenue, and stay any further proceedings on the matter pending a request from the prosecuting attorney that the matter be set for trial. Upon

receipt of such form the department shall mail the form to the named insurance company for verification that insurance was in force on the date indicated on the form. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date specified. Upon return of any form to the department indicating that insurance was not in force on such date, the department shall immediately forward a copy of such form to the office of the prosecuting attorney or the city clerk of the municipality in which such prosecution is pending when the prosecuting attorney is not ascertainable. Receipt of any completed form indicating that insurance was not in effect on the date specified shall be prima facie evidence of failure to provide proof of financial security and violation of this section. A request that the matter be set for trial shall be made immediately following the receipt by the prosecuting attorney of a copy of the form from the department of revenue indicating that insurance was not in force. Any charge of violating subsection (b), (c) or (d) shall be dismissed if no request for a trial setting has been made within 60 days of the date evidence of financial security was produced in court.

(f) Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessee. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any liability imposed by law against such person arising out of the ownership, operation, maintenance or use of any motor vehicle

described in this subsection. A self-insurer shall provide liability coverage subject to the provisions of subsection (e) of K.S.A. 40-3107, and amendments thereto, arising out of the ownership, operation, maintenance or use of a self-insured motor vehicle in those instances where the lessee or the rental driver, if not the lessee, does not have a motor vehicle liability insurance policy or insurance coverage pursuant to a motor vehicle liability insurance policy or certificate of insurance or such insurance policy for such leased or rented vehicle. Such liability coverage shall be provided to any person operating a self-insured motor vehicle with the expressed or implied consent of the self-insurer.

Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to provide liability coverage or personal injury protection benefits required by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any liability imposed by law arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, or to otherwise comply with the requirements of this subsection shall constitute reasonable grounds for the cancellation of a certificate of self-insurance. Reasonable grounds shall not exist unless such objectionable activity occurs with such frequency as to indicate a general business practice.

Self-insureds shall investigate claims in a reasonably prompt manner, handle such claims in a reasonable manner based on available information and effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.

As used in this subsection, "liability imposed by law" means the stated limits of liability as provided under subsection (e) of K.S.A. 40-3107, and amendments thereto.

Nothing in this subsection shall preclude a self-insurer from

pursuing all rights of subrogation against another person or persons.

(g) (1) Any person violating any provision of this section shall be guilty of a class B misdemeanor and shall be subject to a fine of not less than \$300 nor more than \$1,000 or confinement in the county jail for a term of not more than six months, or both such fine and confinement.

(2) Any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor and shall be subject to a fine of not less than \$800 nor more than \$2,500.

(h) In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (d) of this section, shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto:

(1) Suspend:

(A) The license of each driver in any manner involved in the accident;

(B) the license of the owner of each motor vehicle involved in such accident, unless the vehicle was stolen at the time of the accident, proof of which must be established by the owner of the motor vehicle. Theft by a member of the vehicle owner's immediate family under the age of 18 years shall not constitute a stolen vehicle for the purposes of this section;

(C) if the driver is a nonresident, the privilege of operating a motor vehicle within this state; or

(D) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner; and

(2) revoke the registration of all vehicles owned by the

owner of each motor vehicle involved in such accident.

(i) The suspension or revocation requirements in subsection (h) shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy as required by K.S.A. 40-3107, and amendments thereto, with respect to the vehicle involved in the accident;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy with respect to such driver's driving of vehicles not owned by such driver;

(3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103, and amendments thereto;

(4) to the driver or owner of any vehicle involved in the accident which was exempt from the provisions of this act pursuant to K.S.A. 40-3105, and amendments thereto;

(5) to the owner of a vehicle described in subsection (a)(2).

(j) For the purposes of provisions (1) and (2) of subsection (i) of this section, the director may require verification by an owner's or driver's insurance company or agent thereof that there was in effect at the time of the accident an automobile liability policy as required in this act.

Any suspension or revocation effected hereunder shall remain in effect until:

(1) Satisfactory proof of financial security has been filed with the director as required by subsection (d) of K.S.A. 40-3118, and amendments thereto; ~~and;~~

(2) has^{been} paid the reinstatement fee herein prescribed; and

(3) such person:

(A) Has been released from liability or is a party to an action to determine liability pursuant to which the court temporarily stays such suspension pending final disposition of such action;

(B) has entered into an agreement for the payment of damages, ~~or~~;

(C) has been finally adjudicated not to be liable in respect to such accident and evidence of any such fact has been filed with the director ~~and--has--paid--the--reinstatement--fee--herein prescribed; or~~

(D) the other party to the accident cannot be located as evidenced by providing the original or copy of a returned certified, receipt requested card that had been sent through the United States post office to the last known address as shown on the accident report or otherwise provided and such card has not been returned marked refused, to the division.

~~Such~~ The reinstatement fee shall be \$100 except that if the registration of a motor vehicle of any owner is revoked within one year following a prior revocation of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be \$300.

(k) The provisions of this section shall not apply to motor carriers of property or passengers regulated by the corporation commission of the state of Kansas.

(l) The provisions of subsection (d) shall not apply to vehicle dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being offered for sale by such dealers.

JAMES A. BARNETT
SENATOR, 17TH DISTRICT
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SENATE CHAMBER

COUNTIES
CHASE, COFFEY, GEARY,
LYON, MARION, MORRIS,
OSAGE AND WABAUNSEE

COMMITTEE ASSIGNMENTS
VICE CHAIR: PUBLIC HEALTH AND WELFARE
MEMBER: FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND
INSURANCE

Testimony for SB 208

Driving Under the Influence of Inhalants

Chairman O'Neal and distinguished members of the House Judiciary committee, thank you for the opportunity to come before you today to testify in support of SB 208.

Chief of Police Mike Heffron, Sergeant Lane Ryno, and other members of the Emporia Police Department have requested assistance with this issue, having experienced difficulty with prosecution of drivers operating vehicles under the influence of inhalants.

In researching this issue, I learned that the problem actually hits very close to home. A 15-year-old girl is buried across the street from where I reside in Emporia. She was killed by a driver under the influence of inhalants. Her mother, who now resides in Georgia, was moved to promote legislation in her state. Georgia now includes inhalants in their statutes, along with other state in our nation. Today, I ask that you consider adding Kansas to that growing list.

Unfortunately, huffing is not uncommon. Difficulty arises in identification. Fortunately, law enforcement officers are aware of this concern and are adept at identifying signs of intoxication. Telltale signs such as paint or glue on the fingernails may be evident. With the availability of proper training and equipment, Tox Traps may now be used to obtain additional evidence for prosecution.

I have spoken with Susan Wilson Tucker, mother of the teenager killed by the driver under the influence of inhalants. Her support for this issue is present in me today.

Thank you for your time and consideration. I respectfully ask for your support of this legislation.

Signed:

A handwritten signature in black ink, appearing to be 'Jim Barnett', written in a cursive style.

Senator Jim Barnett

JAB/gkp

KANSAS HIGHWAY PATROL

Service—Courtesy—Protection

Bill Graves
Governor



Col. Donald W. Brownlee
Superintendent

Summary of Testimony on SB 208 House Judiciary Committee

Presented by
Second Lieutenant John Eichkorn
March 14, 2001

Good afternoon, Mr. Chairman and members of the committee. My name is Second Lieutenant John Eichkorn, and I appear before you on behalf of Colonel Don Brownlee and the Kansas Highway Patrol to comment on Senate Bill 208.

SB 208 is a relatively simple bill clarifying terms. The provisions set forth attempt to amend Kansas' current law (K.S.A. 8-1567) regarding driving under the influence or DUI.

Presently, our DUI law makes it illegal to operate or attempt to operate any vehicle within this state while under the influence of alcohol and or drugs to a degree that renders the person incapable of doing so safely. Because the word "drug" is not defined for use in this statute, courts in Kansas have interpreted the definition in different ways. In some instances, cases have been dismissed because the court did not view an intoxicating substance as a drug. For example, if a driver is arrested for driving under the influence of paint fumes, the court may or may not view this intoxicant as a drug. Consequently, the driver can be relinquished of his or her legal obligations associated with a DUI arrest if the fumes are not viewed as a drug.

SB 208 adds a subsection to the current DUI law that for the purposes of this law, defines a drug to include inhalants or other substances containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication. The Patrol agrees with the intent of this proposal but has some concerns with its delivery. Ultimately, this addition may leave other substances out.

The Patrol would like to offer an amendment to SB 208, which would strike the language in subsection (r) and replace it with the following:

- (r) *For purposes of this section, drug includes any inhalant or other substance, which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.*

With this simple amendment, "drug" would be defined more effectively for the purposes of our current DUI law. If this change were accepted, the Kansas Highway Patrol would strongly urge this Committee to give SB 208 a favorable report.

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House Judiciary
Attachment 3
3-14-02

Testimony in Support of
Senate Bill No. 208
March 14, 2002
Submitted by Margi Grimwood
Safe and Drug Free Schools Coordinator
U.S.D. 253, 315 S. Market
Emporia, KS 66801

Thank you for the opportunity to testify in support of Senate Bill No. 208. I have been the Safe and Drug Free Schools Coordinator in the Emporia School District for the past 12 years. Inhalant use has caused increasing concern in Emporia, both for those students under the legal driving age, but also for those students who are of legal age to drive. Our local statistics show that among 10th graders, 13% have used inhalants, and among 12th graders, 11% have used. Inhalants are commonly labeled as a “starter drug” or a “gateway drug”, and the perception is that they are only used by younger students who do not have access to alcohol or illicit drugs. However, this tells only part of the story. High school students and adults who are of legal driving age are also using inhalants to get “high”. Inhalants are known in the treatment field as the “poor man’s drug”, because they are easily accessible household products, and if one can’t afford to buy alcohol or illegal drugs, one can always get “high” on inhalants. Someone with addiction problems will get “high” on anything they can get their hands on, and if they can’t afford the more expensive drugs, they will turn to inhalants, or sometimes use this in combination with other drugs.

A driver who is “under the influence” is a danger to all of us on Kansas roads, whether this person be under the influence of alcohol, illegal drugs, prescription drugs, or inhalants. Inhalants will alter a driver’s ability to operate a vehicle just as much as alcohol or illegal drugs. Currently, law enforcement cannot arrest a driver under the influence of inhalants because of a loophole in the law. Please allow me to give a personal example of this:

Several years ago, I was out for a walk with my dog, and passed by a car that was parked on the side of the road. In the car were two teenage boys sitting in the driver and passenger seats. I wasn’t really paying attention to them, but after I went by them, a friend who was also out walking and had also passed this same vehicle, shouted back at me, “Hey, Margi, did you see what those guys were doing? They’re sitting in that car huffing paint!” So I walked back to the car and looked, and she was right. Between the two boys was a can of spray paint and an empty plastic grocery bag with paint sprayed into it. When the boys saw me approaching the car, they tried to hide the paint and bag, but they were so impaired, that their reactions were slow. I asked them what they were doing, and they of course replied “nothing”. I kept talking to them, and realized they acted just like they were drunk, although I saw no signs of alcohol in the car. Their

speech was slurred, their eyes were red, there was redness around their mouths from holding the bag up to it, they had trouble holding their heads up, and it took them several attempts to open up the glove compartment to get something out. I finally said, "I know you boys have been "huffing" and you shouldn't be driving. Please give me the car keys." They wouldn't hand over the keys, and denied that they had been inhaling the spray paint. When I asked for their names, they gave me false names. But later I found out that the driver was indeed 16. As I left the car and started to go to a home in the neighborhood to get some help, they sped off. So I got their license number and called the police. I was shocked to learn that law enforcement's hands were tied. If they located the vehicle, they could not charge them with anything, because driving under the influence of inhalants was not against Kansas law. At that point, all I could do was call the parents and tell them what had happened.

Kansas has been known for its "cutting edge" philosophy in the area of substance abuse prevention, treatment, and laws. If legislators will vote in support of Senate Bill No. 208, we have the opportunity to be a leader and set a precedence for other states. I urge you to close the loophole, and have similar consequences for driving under the influence of inhalants as we have for DUI.

Thank you.



Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

March 12, 2002

SENATE JUDICIARY COMMITTEE

Reference S.B. 208

The Kansas Peace Officer's Association, and the Emporia Police Department would support the passage of Senate Bill 208.

This bill in essence would change the wording of K.S.A. 8-1567.

The reason for this change is to close what we believe to be a "loop hole" in the current statute. At the current time there is no provision to prohibit people from driving under the influence of certain chemicals besides alcohol and those substances defined as drugs. These chemicals could include paint vapors, vapors from certain fuels, or other substances that would render a person incapable of safely driving a vehicle.

At the present time it is not a violation for an individual commonly referred to as a "Huffer" to operate a vehicle, and sniff paint fumes in an effort to reach a "high". As we all know, breathing the vapors of this type of substance effects the brain as does alcohol and certain drugs. This results in slower reaction time, and at times the reality of existing situations is impaired. Further, it is our contention any substance consumed by a person which makes them incapable of safely operating a vehicle, should be a violation of the statute. After all what difference does it make what the substance is; if it makes a person incapable of safely operating a vehicle.

The Emporia Police Department did have a specific instance in which an individual was arrested for DUI. The subject was originally stopped for speeding. He met the criteria for one who was under the influence. His speech was slurred, his performance of the field sobriety test were indicative of one who was under the influence, and his balance appeared to have been effected. During the arrest procedure a small vial of liquid was found in his vehicle. A subsequent analysis of the liquid by the K.B.I. Laboratory showed it to be Isopropyl Nitrite. I was later advised this

substance is used as a fuel. I was also later advised the subject had told the court he had been "sniffing" the substance, and there was no law against doing that. Since the substance was not alcohol and was not considered to be a drug or other controlled substance, the court agreed with him and the DUI charge was dismissed.

We would certainly appreciate any consideration you would give in the passage of SB 208.

Sincerely,

A handwritten signature in cursive script that reads "Lane Ryno". The signature is written in black ink and is positioned above the printed name.

Lane K. Ryno
Sergeant

A handwritten signature in cursive script that reads "Michael J. Heffron". The signature is written in black ink and is positioned above the printed name.

Michael J. Heffron
Chief of Police

rg



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony on Breath Alcohol Program Fund Utilization
to
House Judiciary Committee
Presented by Dr. Duane Boline, Laboratory Director

March 14, 2002

Representative O'Neal and members of the Judiciary Committee, I am pleased to appear before you today to discuss the utilization of the Department of Health and Environment's Breath Alcohol Program fund.

Chapter 75, Article 56, section (b) states: "Moneys in the driving under the influence equipment fund shall be used by the department of health and environment only for the purpose of purchasing blood or breath alcohol concentration testing equipment and maintaining drivers' safety programs."

This initiative seeks clarification of the intent of the phrase "maintaining drivers' safety programs." The statute clearly authorizes the use of these funds for the purchase of breath alcohol testing equipment. There are currently 211 instruments in service located at 130 law enforcement agencies in the state of Kansas. A replacement program for these instruments is scheduled to begin in fiscal year 2003. Statute 65-1,107 requires the KDHE to provide training for law enforcement personnel and certification of this training. This statute also requires periodic inspection of the testing equipment. The performance of the testing equipment is validated and certified annually. KDHE personnel are frequently subject to subpoena for providing testimony in DUI cases where breath alcohol testing issues related to certification of instruments and personnel are presented. The revisions to DUI legislation that became effective July 1, 2001, have resulted in an increased number of subpoenas for testimony by KDHE personnel.

The expenses incurred for travel, supplies, instrument service, and repair are a part of the driver safety program as supported by the KDHE. The agency needs to relocate the laboratory to the first floor in building 740 Forbes to enhance efficiency, provide convenient access for law enforcement personnel, and improve security for the laboratories providing testing related to bio-terrorism events. This relocation will enable the support person assigned to this laboratory to provide services for other sections of the Laboratory Improvement Office and improve operational efficiency for the office. The development of a computerized database is planned to provide a more efficient means for scheduling, tracking, and documentation of the services provided. These enhancements will enable the laboratory to provide the services required to support the breath alcohol program in a cost effective manner.

This revision provides for the use of moneys from this fund for these expenses. Utilization of these moneys will minimize the need for additional state general funds for support of this program. However, these funds are dependent upon factors outside the control of KDHE and should be used only as a supplement to the state general funds.

I would like to recommend that the wording in Chapter 75, Article 56, section (b) state: Moneys in the driving under the influence equipment fund shall be used by the department of health and environment only for the purposes of purchasing breath alcohol concentration testing equipment, including but not limited to, laboratory enhancement and for purposes relating to presentation of evidence in prosecution in cases involving driving under the influence, or establishing and maintaining drivers' safety programs.

I thank you for the opportunity to appear before the Judiciary Committee and will gladly stand for questions the committee may have on this topic.



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
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Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: March 14, 2002

TO: House Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 433 As Amended by the Senate

SB 433 as amended by the Senate, passed the Senate by a vote of 40-0. As introduced into the Senate Judiciary Committee, SB 433 addressed the department's concerns regarding the ambiguous nature of the supervision of 4th and subsequent DUI offenders by the department during the "treatment phase" of the offender's supervision and the department's need to become aware of the sentencing disposition of those offenders while those offenders are still incarcerated in local jails.

SB 433 as amended by the Senate, addresses those concerns of the department as well as the issues of the department receiving sentencing orders prior to the physical arrival of the offender at a correctional facility for all other crimes in which a sentence to the department has been imposed. Thus, SB 433 as amended by the Senate, addresses and resolves the same issues involved in SB 27 currently pending before this Committee.

SB 433 as amended by the Senate amends K.S.A. 8-1567 and 75-5218. SB 433 amends K.S.A. 8-1567 by:

- incorporating the intermediate period of substance abuse treatment into the postrelease supervision period. During the period of postrelease supervision, the offender is required to participate in either inpatient or outpatient substance

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SB 433

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abuse treatment with an approved aftercare or mental health program as directed by the Secretary as well as any postrelease supervision conditions imposed by the Parole Board.

- Requiring sheriffs to provide to the Department of Corrections a copy of the sentencing order within three business days of receipt from the Clerk of the Court, and
- providing that the transfer of the custody of the offender by the local law enforcement agency to the department occur at a location designated by the department.

SB 433 as amended by the Senate also amends K.S.A. 75-5218. K.S.A. 75-5218 is amended to provide that sheriffs likewise forward to the department, journal entries ordering confinement by the department in the same manner as provided for fourth or subsequent DUI offenders.

K.S.A. 8-1567 (driving under the influence of alcohol or drugs) provides a sentencing disposition for fourth and subsequent convictions consisting of three distinct components. Offenders convicted of DUI four or more times are sentenced to a term of confinement in a county jail. After the term of imprisonment, the offender is placed in the custody of the Department of Corrections in order to participate in either inpatient or outpatient substance abuse treatment as directed by the department. Finally, upon completion of the treatment program, the offender is to begin a one year period of postrelease supervision that is also supervised by the department.

The introduction of SB 433 was requested by the department to address the department's concerns pertaining to the intermediate treatment period that follows the offender's release from imprisonment but prior to the commencement of the one year period of postrelease supervision; and the mechanics of the transfer of the custody of the offender from local officials to the department.

The department's concerns regarding the status of the offender during the intermediate treatment period involve both the sanctions that can be imposed against the offender during that period as well as its indefinite length of time. SB 433 addresses both of these concerns. SB 433 provides that the required participation in a substance abuse treatment program selected by the department occur during the postrelease supervision period. Thus, pursuant to SB 433, the department would have leverage with offenders who fail or refuse to participate in an inpatient or outpatient substance abuse treatment program since the offenders would unambiguously be subject to the possibility of

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having their postrelease supervision revoked for such refusal. Additionally, SB 433 provides a definite time period during which the offender is in the custody of the department.

The department's concern regarding the ambiguous status of the offender during the treatment phase set out in K.S.A. 8-1567 is due to that statute's clear language that while violations of supervision conditions imposed during the offender's postrelease supervision subject the offender to the revocation of his or her postrelease supervision or other sanctions, the period of postrelease supervision does not commence until after completion of the required treatment program. Therefore, there is no provision in current law that would enable to Department of Corrections, in conjunction with the Kansas Parole Board, to sanction an offender through the revocation of his or her release during the treatment phase. Thus, if an offender fails or refuses to participate in the prescribed treatment program, the recourse available to the department would be to commence the offender's postrelease supervision with a condition of treatment and sanction the refusal through revocation or other consequences if the refusal continues. This has the unintended consequence of an offender being able to advance the commencement of his or her postrelease supervision period through unacceptable behavior during the treatment phase.

SB 433, by providing that all of the supervision exerted over the offender once he or she is released from imprisonment is by virtue of the offender's postrelease supervision obligation, also serves to clearly extend the Parole Board's broad authority regarding the imposition of postrelease supervision conditions applicable to all other offenses to these offenders.

SB 433 also provides for the efficient transfer of the custody of the offender from local officials to the department for both 4th time DUI offenders as well as all other offenders sentenced to the department's custody. SB 433 as amended by the Senate, provides that sheriffs are to forward sentencing documents to the department within three business days of their receipt of the documents from the Clerk of the District Court. This notification would enable timely development of substance abuse treatment plans for offenders and otherwise permit the tracking of the offender's status necessary in the execution of DUI postrelease supervision by the department immediately upon the expiration of the offender's incarceration by local authorities. SB 433 as amended by the Senate also amends K.S.A. 75-5218 to require sheriffs to likewise forward the sentencing orders to the department for any other crime wherein the court has imposed a sentence to be executed by the department.

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Efficiency in the transfer of the offender's custody is further provided by SB 433 relative to the location where the transfer is to take place. SB 433 provides that custody of the offender convicted of a fourth or subsequent DUI be transferred at a location designated by the department once the local law enforcement agency has executed the term of imprisonment imposed upon the offender.

Since the fourth or subsequent DUI offenders will have already fully served the term of confinement imposed by the court when their custody is transferred to the department, there is no authority to confine that individual in a department facility for the sole purpose of processing that person immediately back into the community. Additionally, since offenders sentenced for the commission of a fourth or subsequent DUI offense may participate in a local work release program while confined by a county, neither the public nor the offender is benefited by the disruption of that employment or the cost imposed upon sheriffs if transportation of the offender to the department's Reception and Diagnostic facility is required. The department anticipates that local law enforcement officials will accommodate the department in providing any photographs, fingerprints and other information necessary to transfer custody in order to avoid travel to the department's reception and diagnostic facility. The department is interested not only in aiding local officials in avoiding unnecessary expenses but also in conserving its limited correctional facility resources. To do so the department would strive to accept custody locally, either at a jail or a parole office.

The department urges favorable consideration of SB 433 as amended by the Senate.

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House Judiciary Committee

Thursday, March 14, 2002

Testimony on SB 433
Ami Hyten

Following the enactment of 2001 Senate Bill 67, a new group of criminal defendants were brought into the custody of the Secretary of Corrections under circumstances that had not previously existed. Under these new conditions, the courts were required to identify a sub-category of DUI defendants (fourth and subsequent offenders) and notify the Secretary of Corrections of their remand to his custody. However, the Kansas Sentencing Guidelines Journal Entry of Judgment in use at that time identified the offense only as "felony DUI," offering no way for the clerks of the district court to identify those journal entries for fourth and subsequent DUIs to send to the Secretary of Corrections. At the Judicial Branch's request, the Kansas Sentencing Commission reviewed the standard Journal Entry of Judgment forms promulgated by that agency, and revised them to identify those cases where a fourth or subsequent DUI conviction occurs. Therefore, the clerks have a clear indication of those cases in which they need to prepare a packet for submission to the Department of Corrections. In this sense, portions of SB 433 largely reflect the procedure for notifying the Department of Corrections of felony DUI convictions that the courts and the Department of Corrections agreed upon as a temporary solution.

As a practical matter, notifying the Department of Corrections of any felon's remand to the department's custody has become the responsibility of, and is actually performed by, law enforcement officers, primarily sheriffs' officers. The clerks of the district court prepare the commitment packet and provide it to the officer having custody of the offender, and the officer then transmits the required information to the Department of Corrections. The officer and the Department of Corrections are in communication about the arrangements and the assignment of the offender. In an effort to bring the "best practices" employed by courts and officers across the state with statutory directives, the Judicial Branch requested the introduction of 2002 SB 494.

The provisions of 2002 SB 494 have been incorporated into SB 433. Amendments found on page 3, lines 13 through 24, and page 6, lines 17 through 40 provide that the clerk of the district court is to deliver the journal entry or judgment form together with the order of commitment to the officer having charge of the offender. The officer having charge of the offender is then to forward copies of the documents to the Secretary of Corrections within three business days. These amendments will ensure that the Department of Corrections receives the advance notice it requires before prisoners are transported by sheriffs' officers to Department of Corrections facilities.

Thank you for considering these provision of the bill, and I would be happy to respond to any questions.



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Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: March 14, 2002

TO: House Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 434

SB 434 passed the Senate by a vote of 40-0. SB 434 amends K.S.A. 21-3520 to prohibit sexual relations between an employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and a person who is under the direct supervision and control of the contract employee. Additionally, SB 434 amends K.S.A. 21-3520 to clarify the prohibition against sexual relations between contract employees and incarcerated inmates.

K.S.A. 21-3520 currently prohibits employees of contractors providing services in correctional facilities from engaging in consensual sexual activities with inmates. SB 434 extends that prohibition to employees of contractors providing supervision services for offenders on parole, conditional release or postrelease supervision. SB 434 addresses and prohibits sexual relationships between contract staff operating day reporting centers or community-based residential facilities and offenders under their supervision.

SB 434 also clarifies the prohibition against consensual sexual relations between contract employees and inmates. K.S.A. 21-3520 currently defines the scope of contract employees prohibited from engaging in consensual sexual relations with inmates as employees of contractors providing services at a correctional facility. SB 434 clarifies that the scope of the prohibition against contract employees engaging in unlawful sexual

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relations includes employees of contractors providing a service for a correctional facility even if the service provided pursuant to the contract is not performed at the facility. This distinction is illustrated in situations in which another governmental entity contracts with the Department for use of an inmate work crew at a site that is not on facility grounds.

Personnel in all of the categories above exercise control over an offender. It is important that they not abuse their authority. Engaging in sexual activity with an offender is such an abuse and should be prohibited.

The Department urges favorable consideration of SB 434.

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Charles E. Simmons
Secretary

Memorandum

DATE: March 14, 2002

TO: House Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 443

SB 443 passed the Senate by a vote of 36-4. SB 443 amends KSA 75-52,135, and is technical and clarifying in nature. KSA 75-52,135 provides for determination of abandoned inmate property, and further provides for notice to the State Treasurer's office and disposition of such property under the unclaimed property law administered by that office.

The department requested introduction of SB 443 after discovering that the unclaimed property statute citations in KSA 75-52,135 are inaccurate. The bill makes two corrections to statutory references in this statute—KSA 58-3912 is replaced by 58-3950 and KSA 58-3918 is replaced by 58-3904 et seq.

The bill also clarifies that an inmate's property shall be considered abandoned if not claimed by an authorized representative within 90 days of the inmate's death. Current law specifically addresses unclaimed property determinations following an inmate's escape or release, but not death.

The bill is consistent with existing KDOC practice and we anticipate no change in our current procedures for referrals to the State Treasurer's Office under the unclaimed property law.

We respectfully request that the committee report SB 443 favorably.

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