

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on February 22, 2005 in Room 241-N of the Capitol.

All members were present except:
Mike Peterson- excused

Committee staff present:
Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Others attending:
See attached list.

HB 2385 - Admission of photographs of wrongfully taken property.

Representative Davis made the motion to report HB 2385 favorably for passage. Representative Kelsey seconded the motion.

Representative Pauls made a motion to amend in the language page 1 line 19 after the period in the form presented by the revisor. Representative Owens seconded the motion. The motion carried.

Representative Owens made a motion to recommend HB 2385 favorably for passage as amended. Representative Crow seconded the motion. The motion carried.

HB 2261 - Search incident to lawful arrest includes evidence of any crime.

Representative Pauls made the motion to amend HB 2261 by adopting the substitute language to repeal the current statute. Representative Sharp seconded the motion. The motion carried.(Attachment 1)

Representative Pauls made the motion to move Substitute for HB 2261 favorably. Representative Huntington seconded the motion. The motion carried.

HB 2004 - Crimes of trafficking in the first degree and trafficking in the second degree

Representative Decker made the motion to pass over the bill. Representative Huntington seconded the motion. The motion did not carry.

Representative Sharp made the motion to amend the balloon language provided by Representative Morrison. Representative Owens seconded the motion.(Attachment 2) The motion carried.

Representative Ward made the motion to amend Section 1 (a) (2) add: knowingly after from and changing participation to participating. Representative Sharp seconded the motion. The motion carried

Representative Pauls made the motion to amend language with the revisor adopting the substitute language in new section 2. Representative Owens seconded the motion. The motion carried

Representative Pauls made a motion to move Substitute for HB 2004 favorably for passage. Representative Kelsey seconded the motion. The motion carried.

HB 2128 - Expansion of SRS access to criminal history records

CONTINUATION SHEET

MINUTES OF THE House Corrections & Juvenile Justice Committee at 1:30 P.M. on February 22, 2005 in Room 241-N of the Capitol.

Representative Owens made the motion to remove **HB 2128** from the table. Representative Swenson seconded the motion. The motion carried

The revisor reviewed the committee's action taken on the bill prior to being tabled.

Representative Hungtionton made the motion to amend **HB 2128** by adopting the substitute language in sub section A. Representative Owens seconded the motion. The motion carried (Attachment 3)

Representative Davis made a motion to recommend **HB 2128** favorably for passage as amended. Representative Owens seconded the motion. The motion carried.

The meeting was adjourned at 2:45 pm. The next meeting is March 3, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-22-05

NAME	REPRESENTING
KEVIN GRAHAM	AG
JOYCE GROVER	KCSOV
Richard Samuels	Kumby & Assoc.
Patti Biggs	KSC
Julia Butler	KSC
Brenda Harmon	KSO
Kyle Kessler	STIS
Dustin Kwopie	Wkrn
J BUTLER	KSE
Kyle Smith	KBI

Substitute for HOUSE BILL NO. 2261

By Committee on Corrections and Juvenile Justice

AN ACT concerning crimes, punishment and criminal procedure; relating to searches without a search warrant; amending K.S.A. 8-1001 and repealing the existing section; also repealing K.S.A. 22-2501.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing

administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of

urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) Before a test or tests are administered under this section, the person shall be given oral and written notice that:

(A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(B) the opportunity to consent to or refuse a test is not a constitutional right;

(C) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent offense;

(E) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence, one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent offense;

(F) if the person is less than 21 years of age at the time

of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended up to one year;

(G) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

(H) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

(I) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians.

(g) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(h) After giving the foregoing information, a law enforcement officer shall request the person to submit to

testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of or serious injury to another person. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(i) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(j) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(k) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made

pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, ~~or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.~~

(l) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(m) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(n) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(o) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(p) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(q) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

Sec. 2. K.S.A. 8-1001 and 22-2501 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Section 1. (a) Trafficking is:

(1) Recruiting, harboring, transporting, providing or obtaining, by any means, another person knowing that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude; or

(2) benefitting, financially or by receiving anything of value, from ^{knowingly} participation in a venture that has engaged in acts set forth in subsection (a)(1).

(b) Trafficking is a severity level 2, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 2. (a) Aggravated trafficking is trafficking, as defined in section 1, and amendments thereto:

(1) Involving the commission or the attempted commission of kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;

(2) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(3) resulting in a death.

(b) Aggravated trafficking is a severity level 1, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SUGGESTED MODIFICATION (SUBSTITUTE) FOR HB. 2128

4 The secretary of social and rehabilitation services shall upon request receive from the KBI, ~~without charge~~, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualification for employment or for participation in any program administered by the secretary for the placement, safety, protection or treatment of vulnerable children or adults.

Substitute
for
sub section
a

Based upon any such criminal history record report, the secretary shall have access for purposes of inspection and copying any court orders or adjudications of any court of record, any records of such orders, adjudications, arrests, nonconvictions, convictions, expungements, juvenile records, diversions and any other such record information in the possession of the Kansas bureau of investigation.

If, based upon any such criminal history record information, the secretary determines it is necessary to conduct a nationwide criminal records information search, the secretary shall submit to the Kansas bureau of investigation the fingerprints of the person for whom such record information is requested.

Any such criminal history record information request shall be conducted in accordance with and subject to the Kansas criminal history record information act, K.S.A. 22-4701, *et seq.*, and rules and regulations adopted pursuant thereto.