

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 22, 2008 in Room 313-S of the Capitol.

All members were present except:

Kevin Yoder- excused
Kay Wolf - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Representative Annie Tietze
Dale Goter, City of Wichita
Representative Jason Watkins
Representative Kenny Wilk
Kenneth & Denise Bixbey, Citizens
Matthew Shelton, Legal Assistance Office, Ft. Riley
Ed Klumpp, Kansas Association of Chiefs of Police & Kansas Peace Officers Association

Representative Annie Tietze appeared before the committee with a request for a bill introduction regarding the approval of cemeteries to sell excess land. Representative Patton made the motion to have the request introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

The hearing on **HB 2617 - mandatory implied consent for serious & fatality accidents**, was opened.

Jerry Donaldson, Legislative Research Department, provided the committee with a brief overview of the recommendations from the Special Committee on Judiciary. They proposed a bill be introduced regarding the implied consent law to allow for the collection of samples in cases where there has been a fatality or an injury. **HB 2617** is the result of that interim study.

Representative Kenny Wilk spoke about a tragic car accident that happened in his district in February of 2007 and the need for changes in the vehicular homicide statutes.

Dennis & Denise Bixbey, parents of the deceased Amanda Bixby, told about their experience with the current vehicular homicide law. They spoke about how their daughter was killed in an automobile accident and that the driver of the other car, probably had drugs in his system, but was not tested. In today society, when drugs and alcohol usage are so prevalent, testing should always be done when there is an accident. (Attachments 1 & 2)

Ed Klumpp, Kansas Association of Chiefs of Police & Kansas Peace Officers Association, appeared in support of the bill but expressed concerns and proposed amendments. (Attachments 3 & 4)

Written testimony, with a proposed amendment, was provided by the Kansas Department of Transportation. The amendment would strike "to another person" on page 1, line 41 so testing could be done in a one-vehicle accident. (Attachment 5)

The hearing on **HB 2617** was closed.

The hearing on **SB 366 - traffic citations; methods of giving notice of failure to comply**, was opened.

Dale Goter, City of Wichita, explained that the bill would simply allow the City of Wichita to charge an additional \$5.00 fee to cover the mailing of the driver's license suspension notice. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 22, 2008 in Room 313-S of the Capitol.

Representative Jason Watkins also expressed his support of the compromise bill. (Attachment 7)

The hearing on **SB 366** was closed.

The committee meeting adjourned at 4:50 p.m. The next meeting is scheduled for January 23, 2008.

Legislative Testimony

HB2617

January 22, 2008

This afternoon I would like to speak to you about making changes in the current law pertaining to driving a car under the influence of drugs or alcohol and the testing when a crash occurs. Unfortunately an event has occurred in my life that has compelled me to move from being only a voter to now speaking to this committee. The event was a car crash that killed my only child on Valentine's Day last year. Amanda was on her way home from work when a man ran a stop sign at a high rate of speed, hit another vehicle and then hit Amanda's car killing her instantly. When horrific things like this happen, we search for explanations. Why was this man traveling at such a high rate of speed? Why didn't he stop before trying to cross traffic? How could someone familiar with the area forget the intersection? Why was he trying to avoid the sobriety check point on a more direct route?

None of these questions have answers. Current Kansas law requires only alcohol testing be administered when car crashes occur. But what about other types of impairment such as illegal or prescription drugs? In our case, a drug test could have answered several of our questions. The man who was responsible for the crash that killed Amanda tested clean for alcohol. But was he under the influence of other things that impaired his judgment? We will never know. This information could have been gathered at the crash scene by an EMT or at a local hospital. Current law leaves drug testing up to the patrol officer investigating the scene of the crash. We have found if the scene of the crash that killed Amanda had been investigated by the Kansas Highway Patrol, there would have been drug and alcohol testing done as standard procedure. But because the county sheriff's department was the first on the scene, officer discretion is procedure when making the call to drug test. Investigating a crash scene would be very hard. The confusion, noise, EMT's assisting victims, rerouting traffic all make for a busy scene. The potential for valuable evidence to escape is great. Making changes

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Attachment # 1

to current Kansas law by taking the discretion out of drug testing at crash scenes and making it mandatory would insure this valuable piece of information was collected.

There will always be many unanswered questions when a loved one is killed. Emotion and shock overtake you to the point of being unable to think. So it is necessary for families to depend on the law to bring whatever justice is possible. Making drug testing mandatory just like alcohol testing is one way to allow usage of current law in potentially charging individuals with driving under the influence.

Today I come to ask your support for HB2617. The changes in the law are necessary and overdue in keeping Kansans safe and potentially giving families judicial recourse when serious injury or death occurs.

Denise Bixby
704 East St.
Tonganoxie, KS 66086

Amanda's Law



**Kansas House of Representatives
Judiciary Committee**

HB 2617

**Mandatory Drug Testing
following
Injury and Fatality Vehicle Accidents**

January 22, 2008

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Date 1-22-08

Attachment # 2

Amanda Kate Bixby was born April 17, 1987 in Topeka. The only child of Denise & Dennis Bixby, she had done volunteer work in nursing homes and churches since age 5. A gifted soprano, she earned top honors and toured with the Continental Singers. February 14, 2007, she called to say she was on her way home at 9 pm. At 9:15 pm, she died at the scene of a 3 vehicle accident. She was 19.

Ricardo Flores caused the accident when he ran a stop sign at a high rate of speed, hit another SUV (injuring 4 people) and then hit our daughter's Ford Taurus and killing her. He is an illegal alien with no driver's license or formal driver's training. I believe that Flores was on drugs but we will never know as he was only tested for alcohol. Drug testing has to take place within 2 hours or the results cannot be used in court. Flores was never tested because the officer never made the call. Evidence for or against this young man was lost forever. Flores was fined \$ 170 + court costs and released.

Mandatory Drug Testing – is essential towards getting convictions. Illicit drug use has exploded in the last 50 years. Despite the “War on Drugs”, they have never been cheaper or easier to get. You can not get a job these days without being drug tested.

Although a lot of research exists about drunk driving, very little has been done to examine **DRUGGED DRIVING!** The National Highway Transportation Safety Administration (NHTSA) reports 39% of all motor vehicle crash (MVC) victims test positive for alcohol. BAC testing is easy and common place and the statistics are well documented. Did you ever wonder what causes the other 61%?

The Walsh Group of Bethesda, Maryland is a public policy consulting firm dealing with substance abuse research. A 2004 study of an emergency room trauma center tested for both alcohol and also for marijuana, cocaine, opium, methamphetamines, and amphetamines. During the 6 month study, 322 MVC victims had their blood and urine tested. Toxicology results indicated that 59.3% tested positive for commonly abused drugs or alcohol. 33.5% tested positive for drug use only while only 15.8% tested positive for alcohol only. 9.9% tested positive for both drugs and alcohol. Only 45.2% of the drug users would have been detected using traditional alcohol tests. The fact is in Kansas we do not know what the statistics are because we do not ask hospitals to keep track.

A PRIDE 9th annual survey questioned 12th grade students. The findings were astonishing. Teens who admitted smoking marijuana in a car equaled 20%, drinking a beer in a car 16.3%, hard liquor in a car 12.5%. With privilege and freedom comes responsibility.

The Solution The Kansas Highway Patrol has joined 41 other states in training veteran officers to be Drug Recognition Experts (DRE). LAPD and the NHTSA worked to develop tested standards and procedural recommendations called Drug Evaluation and Classification. The techniques developed have withstood many court challenges. Currently in Kansas, only the KHP and Johnson County law enforcement routinely runs drug testing as part of serious or fatality accidents as a matter of policy.

However under current Kansas law, drug testing is generally left up to the county or police department to set the policy. Amanda Bixby was drug tested as part of the autopsy. Kaitlyn Witt and Dawn Nichols who was also involved in the accident, was drug tested as part of their treatment. All test results came back clean.

According to MADD Mo-Kan chapter director Max Sutherland, there are 3 reasons why drug testing is NOT done after a crash;

1. Ignorance
2. Politics
3. Corruption

Ignorance – It is not that police are stupid, quite the contrary. They receive countless hours of training but do sometimes lack knowledge of when to demand that tests be performed. Because they see people at their very worst, their focus is on preserving evidence for criminal matters rather than civil. Crash victims often face many months of rehabilitation and a mountain of medical bills. A civil suit is many times the only opportunity to made whole. Evidence has to be collected so that the court knows definitively whether or not defendants are was on drugs.

Education and indemnification is also needed for hospitals & EMTs who are fearful of lawsuits. They are fearful of nuisance suits of malpractice of drawing blood samples, employees being physically harmed by suspects, and the release of sensitive medical info. EMT's and sometimes hospitals are reluctant to run the test for fear of being sued later. False claims of HIV, hepatitis or AIDS, fear of disclosing medical records and fear of medical personnel being injured while working with suspects.

Politics – Unlike the governing body that I face today, I am talking about the cheap and disgusting part of petty personal politics that money and power can get you everywhere in life. As you know there are countless creative ways to attempt to manipulate you and gain your favor and get what they want.

Avoidance of evidence collection due to influential drivers applying undue influence is a common temptation. Department or County pressures for funding, resources, time etc. weigh heavy in the day to day operations in law enforcement. While MDT can take extra time and money, it often simplifies the effort of law enforcement. If the law is made mandatory, roadside or jailhouse debates do not need to take place. The officer does not have to be hassled or make excuses for anything...if it is the law.

Corruption- While extremely rare, police are under huge pressures from both sides. The hours are long and often a non-traditional to an 8-5 routine. The pay is minimal compared to the risks involved. High divorce rate among cops & broken families add to financial pressures on officers. They are human beings asked to do a difficult job.

Millions of dollars can be made in the illicit drug sales. Roadside opportunities of bribery and other temptations is great. The confusion, the large sums of cash which often accompany drugs and the cover of darkness can offer many situations too attractive to pass up to someone in charge of our public safety. Even the appearance of improper conduct needs to be avoided.

Mandatory Drug Testing is the answer.

1. It takes the politics and temptation out of the evidence collection.
2. Fine costs and license reinstatement fees to pay for the cost of testing.
3. Losses in human productivity are reduced
4. Roads become safer

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TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB 2617 Presented by Ed Klumpp

January 22, 2008

The Kansas Peace Officers' Association supports the provisions of HB2617. This is an area of DUI enforcement that has needed enhancing for some time. Current law places restrictions on law enforcement officers requesting a testing sample to have "reason to believe" the person was the driver and that the person was under the influence prior to requesting submission to testing, even when an accident is involved and serious injury or death has occurred. When the suspected driver is injured, it is often difficult for the officer to have enough contact to build the reason to believe required in the current KSA 8-1001(b). And of course it becomes even more problematic in some cases to overcome the higher probable cause standard in KSA 8-1001(k). This bill addresses at least part of those concerns.

But another common challenge law enforcement encounters in these cases is the resistance of the medical professionals to collect the sample when directed by law enforcement. Further amendments to clarify the duties of the medical professionals in collecting the sample are critical to our success in meeting the goals the legislature sets for us with this bill, as well as with current law.

It is also critical for the law to define the term "serious injury" since the actions of the officer and medical professional hinges on that determination. That definition must use factors a law enforcement officer can readily observe and determine even while the person is being treated by medical personnel.

Passage of this bill will add a long overdue tool for the officers to successfully and accurately investigate these serious accidents. Victims will be better served by an increased thoroughness of the investigation leading to accountability of those responsible. Prosecutors will be better informed and armed with better evidence as they make their prosecutorial decisions.

We strongly urge you to recommend HB2617 to pass and consider amendments in the areas we have indicated.

Ed Klumpp
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Attachment # 3

In Unity There Is Strength



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TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB2617 Presented by Ed Klumpp On behalf of the Kansas Association of Chiefs of Police

January 22, 2008

This testimony is in support of the provisions of HB2617 changing the requirements for collecting samples for DUI testing in cases involving motor vehicle collisions resulting in serious or fatal injuries. I have attached a proposed amendment for consideration. This proposed amendment has not been worked by the Revisor's Office and I am sure, if accepted by the Committee, it will need fine tuned by them. I will explain the amendments in my later testimony.

This bill is the result of the Interim Joint Judiciary Committee hearing from victims of accidents in which no test for DUI was taken and later evidence supported strong indications of an intoxicated driver being involved. The current law sets law enforcement up for those results. It is our opinion the proposed bill corrects that by allowing for, in fact mandating, testing in serious injury accidents without the current restrictions on law enforcement. Many times in serious accidents, seriously injured driver(s) are being tended to by medical first responders and other EMS crews when the officer arrives. This provides a very limited opportunity for law enforcement contact with those drivers, thus a very limited opportunity to build the "reasonable grounds to believe" required for DUI testing in the existing statute. Many times by the time law enforcement gets to the hospital, medical treatment prevents or inhibits significant law enforcement contact. In many cases, medical personnel will not provide information to law enforcement due to physician-patient privilege and HIPAA laws. All of this makes it inevitable that in some alcohol or drug related accidents the tests for alcohol or drugs is not completed.

The proposals contained in this bill go a long way toward remedying those challenges faced by law enforcement to provide the answers victims and their families deserve and the information prosecutors need to determine the correct accountability and legal course of action. But we believe there are additional amendments needed. The most important aspect not addressed in current bill language is the difficulties law enforcement officers frequently face when trying to get medical staff to draw the samples needed for testing.

We have attached a balloon amendment with the following provisions:

1. On page 1, line 41; replace the words "was driving" with "has been involved" which is on line 39 and in existing law.

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2. On page 1, lines 42 and 43; strike "to another person." We believe these provisions should apply even if it is only the intoxicated driver who is seriously injured.
3. On page 2, lines 12-18 we recommend replacing the deleted language to clarify law enforcement can make the request in the conditions we frequently meet and to clearly direct the listed medical personnel to withdraw the sample. The current law merely states the blood "may" be withdrawn and the medical personnel "may" rely on the officer's statement to draw blood. You will note we recommend some language to cover medical needs as the priority.
4. The insertion of the language on page 2, line 19 is partially at the suggestion of medical professionals. We added the documentation language.
5. A review of our proposal by a person in the medical field resulted in our recommendation on page 2, line 27 regarding the exclusion from breach of physician-patient privilege.
6. On page 2 lines 28-30 we recommend replacing the stricken language to allow for the collection of urine samples for drug testing using the same provisions this bill places in section (b) for the blood testing.
7. On page 2, line 38 we recommend adding the language to allow for drug testing in the accidents with serious injuries or death with the same provisions as provided in section (c) used for blood sample collection.
8. On page 4, lines 16-19 we recommend changing the language to coincide with the changes on page 1.
9. We recommend striking the language on page 4, line 40 through page 5, line 3 because this is covered in our amendments on page 2 lines 12-18.
10. One of the concerns we have is that "serious injury" is not defined anywhere. We recommend a definition be placed after line 19 on page 5. We have supplied a recommended definition, but are open to refinements of that definition. We only ask that you keep in mind the definition has to be things a person without medical training, i.e. a law enforcement officer, can determine from their own observations and by the observations of witnesses immediately after a collision while medical diagnosis and treatment is still in progress. For that reason we chose not to recommend the definition as contained in KSA 40-3117 for tort claims. Also note our remarks at the bottom of page 5 in regards to an alternative definition approach offered by a prosecutor.

It is our belief that the amendments we propose will further refine the law to allow law enforcement to fulfill the intent of this legislation and to clarify for medical staff their role in successfully collecting the evidence needed to provide prosecutors with accurate information to determine if the DUI laws were violated in these difficult cases.

We urge you to include our proposed amendments and recommend the bill to pass.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

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HOUSE BILL No. 2617

By Special Committee on Judiciary

1-10

9 AN ACT concerning motor vehicles; relating to driving under the influ-
10 ence of alcohol or drugs; amending K.S.A. 2007 Supp. 8-1001 and
11 repealing the existing section.
12

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

14 Section 1. K.S.A. 2007 Supp. 8-1001 is hereby amended to read as
15 follows: 8-1001. (a) Any person who operates or attempts to operate a
16 vehicle within this state is deemed to have given consent, subject to the
17 provisions of this act, to submit to one or more tests of the person's blood,
18 breath, urine or other bodily substance to determine the presence of
19 alcohol or drugs. The testing deemed consented to herein shall include
20 all quantitative and qualitative tests for alcohol and drugs. A person who
21 is dead or unconscious shall be deemed not to have withdrawn the per-
22 son's consent to such test or tests, which shall be administered in the
23 manner provided by this section.

24 (b) A law enforcement officer shall request a person to submit to a
25 test or tests deemed consented to under subsection (a): (1) If the officer
26 has reasonable grounds to believe the person was operating or attempting
27 to operate a vehicle while under the influence of alcohol or drugs, or
28 both, or to believe that the person was driving a commercial motor ve-
29 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having
30 alcohol or other drugs in such person's system, or was under the age of
31 21 years while having alcohol or other drugs in such person's system; and
32 one of the following conditions exists: ~~(1)~~ (A) The person has been ar-
33 rested or otherwise taken into custody for any offense involving operation
34 or attempted operation of a vehicle while under the influence of alcohol
35 or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments
36 thereto, or involving driving a commercial motor vehicle, as defined in
37 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
38 drugs in such person's system, in violation of a state statute or a city
39 ordinance; or ~~(2)~~ (B) the person has been involved in a vehicle accident
40 or collision resulting in property damage; ~~or personal injury or death~~ other
41 than serious injury; or (2) if the person ~~was driving a vehicle involved in~~
42 ~~an accident or collision resulting in serious injury or death to another~~
43 ~~person.~~ The law enforcement officer directing administration of the test

has been involved in

Strike "to another person" on lines 42 and 43.

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

4 (c) If a law enforcement officer requests a person to submit to a test
5 of blood under this section, the withdrawal of blood at the direction of
6 the officer may be performed only by: (1) A person licensed to practice
7 medicine and surgery or a person acting under the supervision of any
8 such licensed person; (2) a registered nurse or a licensed practical nurse;
9 or (3) any qualified medical technician, including, but not limited to, an
10 emergency medical technician-intermediate or mobile intensive care
11 technician, as those terms are defined in K.S.A. 65-6112, and amend-
12 ments thereto, or a phlebotomist. ~~When presented with a written state-~~
13 ~~ment by a law enforcement officer directing blood to be withdrawn from~~
14 ~~a person who has tentatively agreed to allow the withdrawal of blood~~
15 ~~under this section, the person authorized herein to withdraw blood and~~
16 ~~the medical care facility where blood is withdrawn may rely on such a~~
17 ~~statement as evidence that the person has consented to the medical pro-~~
18 ~~cedure used and shall not require the person to sign any additional con-~~
19 ~~sent or waiver form. In such a case, the person authorized to withdraw~~
20 blood and the medical care facility shall not be liable in any action alleging
21 lack of consent or lack of informed consent. No person authorized by this
22 subsection to withdraw blood, nor any person assisting in the performance
23 of a blood test nor any medical care facility where blood is withdrawn or
24 tested that has been directed by any law enforcement officer to withdraw
25 or test blood, shall be liable in any civil or criminal action when the act
26 is performed in a reasonable manner according to generally accepted
27 medical practices in the community where performed.

28 ~~(d) If there are reasonable grounds to believe that there is impair-~~
29 ~~ment by a drug which is not subject to detection by the blood or breath~~
30 ~~test used, a urine test may be required. If a law enforcement officer~~
31 requests a person to submit to a test of urine under this section, the
32 collection of the urine sample shall be supervised by persons of the same
33 sex as the person being tested and shall be conducted out of the view of
34 any person other than the persons supervising the collection of the sample
35 and the person being tested, unless the right to privacy is waived by the
36 person being tested. The results of qualitative testing for drug presence
37 shall be admissible in evidence and questions of accuracy or reliability
38 shall go to the weight rather than the admissibility of the evidence.

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

42 (f) Before a test or tests are administered under this section, the
43 person shall be given oral and written notice that: (1) Kansas law requires

If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in section (c) shall apply to the collection of a urine sample.

A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person upon meeting the requirements of section (b)(1) if the person has given consent to such; or (b)(2) if the person has consented to the test, is medically unable to consent, is a person as described in section (h), or the officer is acting under the authority of KSA 22-2501 or KSA 22-2502. When so directed by a law enforcement officer it shall be the duty of the medical professional to withdraw the sample and deliver the sample to the law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life or medical treatment. The person authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith the law enforcement officer has met the criteria for directing the withdrawing of the blood

A law enforcement officer may request a urine sample upon meeting the requirements of section (b)(1) and shall request a urine sample upon meeting the requirements of section (b)(2).

Such sample(s) shall be an independant sample and not be a portion of a sample collected for medical purposes. The person collecting a blood sample shall use a provided speciman tube and complete the collection portion of the included state collection document.

The collection and delivery of the sample to the law enforcement officer shall not be considered a breach of physician-patient privilegede.

- 1 the person to submit to and complete one or more tests of breath, blood
2 or urine to determine if the person is under the influence of alcohol or
3 drugs, or both;
- 4 (2) the opportunity to consent to or refuse a test is not a constitutional
5 right;
- 6 (3) there is no constitutional right to consult with an attorney regard-
7 ing whether to submit to testing;
- 8 (4) if the person refuses to submit to and complete any test of breath,
9 blood or urine hereafter requested by a law enforcement officer, the
10 person's driving privileges will be suspended for one year for the first
11 occurrence, two years for the second occurrence, three years for the third
12 occurrence, 10 years for the fourth occurrence and permanently revoked
13 for a fifth or subsequent occurrence;
- 14 (5) if the person submits to and completes the test or tests and the
15 test results show for the first occurrence:
- 16 (A) An alcohol concentration of .08 or greater, the person's driving
17 privileges will be suspended for 30 days for the first occurrence; or
- 18 (B) an alcohol concentration of .15 or greater, the person's driving
19 privileges will be suspended for one year;
- 20 (6) if the person submits to and completes the test or tests and the
21 test results show an alcohol concentration of .08 or greater, the person's
22 driving privileges will be suspended for one year for the second, third or
23 fourth occurrence and permanently revoked for a fifth or subsequent
24 occurrence;
- 25 (7) if the person is less than 21 years of age at the time of the test
26 request and submits to and completes the tests and the test results show
27 an alcohol concentration of .08 or greater, the person's driving privileges
28 will be suspended for one year except the person's driving privileges will
29 be permanently revoked for a fifth or subsequent occurrence;
- 30 (8) refusal to submit to testing may be used against the person at any
31 trial on a charge arising out of the operation or attempted operation of a
32 vehicle while under the influence of alcohol or drugs, or both;
- 33 (9) the results of the testing may be used against the person at any
34 trial on a charge arising out of the operation or attempted operation of a
35 vehicle while under the influence of alcohol or drugs, or both; and
- 36 (10) after the completion of the testing, the person has the right to
37 consult with an attorney and may secure additional testing, which, if de-
38 sired, should be done as soon as possible and is customarily available from
39 medical care facilities and physicians.
- 40 (g) If a law enforcement officer has reasonable grounds to believe
41 that the person has been driving a commercial motor vehicle, as defined
42 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
43 drugs in such person's system, the person shall also be provided the oral

1 and written notice pursuant to K.S.A. 8-2,145 and amendments thereto.
 2 Any failure to give the notices required by K.S.A. 8-2,145 and amend-
 3 ments thereto shall not invalidate any action taken as a result of the
 4 requirements of this section. If a law enforcement officer has reasonable
 5 grounds to believe that the person has been driving or attempting to drive
 6 a vehicle while having alcohol or other drugs in such person's system and
 7 such person was under 21 years of age, the person also shall be given the
 8 notices required by K.S.A. 8-1567a, and amendments thereto. Any failure
 9 to give the notices required by K.S.A. 8-1567a, and amendments thereto,
 10 shall not invalidate any action taken as a result of the requirements of
 11 this section.

12 (h) After giving the foregoing information, a law enforcement officer
 13 shall request the person to submit to testing. The selection of the test or
 14 tests shall be made by the officer. If the person refuses to submit to and
 15 complete a test as requested pursuant to this section, additional testing
 16 shall not be given unless ~~the certifying officer has probable cause to be-~~
 17 ~~lieve that the person, while under the influence of alcohol or drugs, or~~
 18 ~~both, has operated a vehicle in such a manner as to have caused the death~~
 19 ~~of or serious injury to another person.~~ If the test results show a blood or
 20 breath alcohol concentration of .08 or greater, the person's driving priv-
 21 ileges shall be subject to suspension, or suspension and restriction, as
 22 provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

the person has been involved in an
 accident or collision resulting in
 serious injury or death.

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

27 (j) If a law enforcement officer had reasonable grounds to believe the
 28 person had been driving a commercial motor vehicle, as defined in K.S.A.
 29 8-2,128, and amendments thereto, and the test results show a blood or
 30 breath alcohol concentration of .04 or greater, the person shall be dis-
 31 qualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-
 32 2,142, and amendments thereto. If a law enforcement officer had rea-
 33 sonable grounds to believe the person had been driving a commercial
 34 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
 35 and the test results show a blood or breath alcohol concentration of .08
 36 or greater, or the person refuses a test, the person's driving privileges
 37 shall be subject to suspension, or suspension and restriction, pursuant to
 38 this section, in addition to being disqualified from driving a commercial
 39 motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

Strike section (k).

1 ~~or tests may be made pursuant to a search warrant issued under the~~
2 ~~authority of K.S.A. 22-2502, and amendments thereto, or without a search~~
3 ~~warrant under the authority of K.S.A. 22-2501, and amendments thereto.~~

4 (l) Failure of a person to provide an adequate breath sample or sam-
5 ples as directed shall constitute a refusal unless the person shows that the
6 failure was due to physical inability caused by a medical condition unre-
7 lated to any ingested alcohol or drugs.

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

10 (n) No test results shall be suppressed because of technical irregu-
11 larities in the consent or notice required pursuant to this act.

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

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

18 (q) This act is remedial law and shall be liberally construed to pro-
19 mote public health, safety and welfare.

20 Sec. 2. K.S.A. 2007 Supp. 8-1001 is hereby repealed.

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

NOTE: A suggestion was made by a prosecutor to replace all references in the statute to "serious injury" with "great bodily harm" a term used frequently in criminal law. Then in the proposed section (r) use the definition from State v Whitaker of "more than trivial or minor harm."

Our concern with this is whether or not such an open definition could be appropriately applied by law enforcement officers in the conditions where this section is used. In criminal cases, that determination can almost always be made by prosecutors at a later time and there are few actions the officer will take based on an immediate determination by the officer. In the application of this DUI law, the determination by the officer delineates paths of action with substantial differences in the level of intrusion authorized to obtain a sample. We prefer something more definitive. In our example of (r) items 1-4 can clearly be answered with a yes or no without much, if any, subjective judgment applied. Our item 5 allows for a more subjective judgment but is much narrower than the case law definitions for "great bodily harm."

While we prefer something more defined, we felt compelled to share this suggestion with the Committee for due consideration.

(r) As used in this statute, serious injury means a physical injury to a person which has the effect prior to the request for testing of 1) disabling a person from the physical capacity to remove themselves from the scene; or 2) renders a person unconscious; or 3) the immediate loss of or absence of the normal use of at least one limb; or 4) an injury determined by a physician to require surgery, or 5) otherwise indicates the person may die or be permanently disabled by the injury.

**TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE**

**REGARDING HOUSE BILL 2617
Related to driving under the influence**

January 22, 2008

Mr. Chairman and Committee Members:

The Kansas Department of Transportation (KDOT) is providing written testimony regarding House Bill 2617, allowing testing of drivers involved in crashes to determine if alcohol or drugs are present.

KDOT supports the concept of providing law enforcement personnel the increased ability to test drivers involved in crashes when an injury or fatality has occurred. This would provide Kansas better information as to the involvement of alcohol in fatal and injury accidents.

However, as currently written, officers would still need reasonable grounds to conduct the test if the crash involved a single vehicle with only the driver being seriously injured or killed. This restriction could reduce the accuracy of the data in those cases. KDOT would support modifying the language by omitting the words "to another person" on page 1, lines 41 through 43. The new language would then read as follows: "*or (2) if the person was driving a vehicle involved in an accident or collision resulting in serious injury or death*".

If there are any questions, please contact Pete Bodyk, Chief of the Bureau of Traffic Safety at 785-296-3756.



TESTIMONY

City of Wichita

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Dale Goter

Government Relations Manager

Kansas House Judiciary Committee

Jan. 22, 2008

SB366 Driver's License Suspension Notice

SB366 was introduced in 2007, amended on the floor of the Kansas Senate and passed unanimously by the Kansas Senate on March 22, 2007.

The original bill, introduced as requested by the Wichita City Council, would have allowed the driver's license suspension notice to be distributed by the ticketing officer at the time of the violation, replacing the statutory requirement for a mailed notice. The intent was to provide a cost savings to municipal and district courts, and still maintain adequate notice.

The Kansas Senate amended the bill to preserve the mailed notice requirement, but also to allow the assessment of a \$5 fee to cover those mailing costs. Personal distribution of the notice to the violator at the time of the court appearance is also allowed by the amended legislation.

The Wichita City Council has reviewed and endorsed the amended version.

Definitions and additional statistical information are on the following page.

House Judiciary

Date 1-22-08

Attachment # U

Definitions:

Thirty-day Non- Compliance Notice to Violator from the Court - Advises the violator they have not complied with the moving citation and they have 30 days in which to take care of the matter. The notice advises the violator if they do not comply, the court will send a suspension notice to the State.

Suspension Notice - If the violator does not comply before the end of the 30 day period, the Court sends a suspension notice to the State to suspend their driver's license.

Suspension Notice from the State to the Violator - The State sends a notice to the violator advising their driver's license will be suspended on _____ (day).

Reinstatement Notice - If the violator comes in and pays the citation in full, including the reinstatement fee (State fee - \$50 per violation), the Court sends a driver's license reinstatement notice to the State advising of compliance. The State, in turn, reinstates the driver's license.

Statistics

Thirty Day Non-Compliance Notice sent to the Violator.

Year 2004 - 13,552 x \$.37 = \$5,015 postage
Year 2005 - 20,831 x \$.37 = \$7,708 postage
Year 2006 - 22,229 x \$.37 = \$8,225 postage

Suspension Notice from the Court to the State - electronically sent to the state - no postage required

Year 2004 - 5,517
Year 2005 - 9,199
Year 2006 - 10,591

Reinstatement Notice from the Court to the State - electronically sent to the state - no postage required

Year 2004 - 876
Year 2005 - 1,544
Year 2006 - 1,970

Number of moving citations issued per year:

Year 2004 - 71,806
Year 2005 - 72,047
Year 2006 - 68,188

STATE OF KANSAS

JASON P. WATKINS

REPRESENTATIVE, 105TH DISTRICT

6525 NORTHWIND

WICHITA, KANSAS 67205

(316) 260-6809

STATE CAPITOL

300 SW 10TH AVENUE

TOPEKA, KANSAS 66612

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE AND NATURAL RESOURCES
APPROPRIATIONS
JUDICIARY

January 22, 2008

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to offer testimony in support of SB 366.

SB 366 as passed by the Senate would allow Municipal and District Courts to charge an additional \$5.00 when a person fails to pay their ticket or appear in court.

Current law requires that a notice be sent for failure to appear prior to the suspension of a driver's license. This notice is important and necessary, but it does increase costs to the courts responsible for the notification.

It seems fair to allocate this cost to the offender who is receiving notice.

Therefore, I respectfully request that you report SB 366 favorable for passage.

Thank you,

A handwritten signature in black ink that reads "Jason P. Watkins". The signature is written in a cursive, flowing style.

Jason P. Watkins

House Judiciary

Date 1-22-08

Attachment # 7