

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 31, 2008 in Room 313-S of the Capitol.

All members were present except:  
Annie Kuether- 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

Tim Madden, Kansas Department of Corrections, appeared before the committee to request the introduction of a committee bill regarding the aiding escape, theft and prima facie evidence of intent to permanently deprive. Representative Owens made the motion to have the request introduced as a committee bill. Representative Colloton seconded the motion. The motion carried.

**HB 2617 - mandatory implied consent for serious & fatality accidents**

Chairman O'Neal announced that he intends to work the proposed bill. However, the issue became complicated with a proposed balloon amendment on the procedures of blood draws that law enforcement and the hospital association provided. (Attachment #1)

Chairman O'Neal stated he had concern that the blood draw is broader than what the proposed bill suggests. The proper place to put the proposed blood draw language is in Chapter 65, which has other parts of law involving blood draw, health care and other types of facility.

Committee members commented that the balloon seems to suggest that there is not implied consent for the blood draw which is the primary reason for the bill.

Chairman announced he would not work the bill today. He encouraged the individuals working on the balloon to involve Jill Wolters, the revisor, and any other committee members.

The committee meeting adjourned at 4:15p.m. The next meeting was scheduled for February 4, 2008.

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

The testing and method of testing consented to herein shall not be considered done for any medical care or treatment purpose and the results of such tests, the person's name whose bodily substance is drawn or tested, the location of the test or procedure, the names of all health personnel who participated in the procedure or test, and the date and time of the test or procedure shall not be considered any type of protected health information and is not subject to the Health Insurance Portability and Accountability Act of 1996, Privacy Regulations, 45 C.F.R. 164.501 et seq. and amendments thereto or any other Kansas law to the contrary. No parental or legal guardian consent for any person under the age of 18 shall be required for any procedure under this statute. Any and all costs associated with any procedure or test authorized by this statute shall be initially paid by the requesting law enforcement agency but such total cost shall be part of the court costs associated with any prosecution of any person so tested or part of any costs associated with any diversion of any person so tested. The cost assessed under this statute shall be the then current Medicaid rate for any such procedure and/or test.

has been

in a vehicular

House Judiciary  
Date 1-31-08  
Attachment # 1

1-2

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.

Regardless of jurisdiction or assignment, if any Kansas

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.~~

, or licensed as a physician's assistant,

direction

A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person upon the law enforcement officer meeting the requirements of paragraph (b)(1) if the person has given consent to such; or (b)(2) if the person has consented to the test, if medically unable to consent, is a person as described in paragraph (h), or the officer is acting under the authority of K.S.A. 22-2501 or K.S.A. 22-2502. When so directed by a law enforcement officer through a written statement the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The person authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the law enforcement officer has met the criteria for directing the withdrawing of blood once presented with the written statement provided for under this section

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.

Such sample(s) shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall use a specimen tube provided by law enforcement and complete the collection portion of the included state collection document. Notwithstanding any other law to the contrary, the collection and delivery of the sample and required information to the law enforcement officer shall not be subject to the physician-patient privilege or any other law that prohibits the transfer, release, or disclosure of the sample or of this information.

If a person must be restrained to collect the sample pursuant to this statute, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the subject in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

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.

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).

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.

When possible, the supervising person should be a law enforcement officer.

1-3

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

willing to conduct such testing.

1-1

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~~

5-1

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.

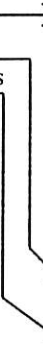
18 (q) This act is remedial law and shall be liberally construed to pro-  
19 mote public health, safety and welfare.

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.

Section 2. No person authorized by this statute to perform any procedure or test of blood, breath, urine or other bodily substance, nor any person assisting in the performance of any such procedure or test nor any medical care facility where any such procedure or test is performed that has been directed by any law, enforcement officer to perform or test any such bodily substance, shall be liable in any civil, administrative, or criminal action.

Section 3. 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.



4.

5.