

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 7, 2008 in Room 313-S of the Capitol.

All members were present except:

Annie Kuether- excused
Marti Crow- excused
Paul Davis - excused
Ben Hodge - excused
Tim Owens- 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

Representative Watkins requested a bill introduction relating to timelines and collection of bonds. Representative Whitham seconded the motion. The motion carried.

Representative Yoder requested a bill introduction to increase court docket fees by 15% to pay for court employee salaries. Representative Watkins seconded the motion. The motion carried.

HB 2621 - child custody & parenting time; service members provisions; military deployment, mobilization or temporary duty

Representative Watkins made the motion to report HB 2621 favorably for passage. Representative Goyle seconded the motion.

An amendment was discussed regarding the parental preference doctrine being tied to this type of situation. The committee expressed that this is such a huge change that it would need to be considered in depth.

Representative Pauls made the motion to amend on page 2, line 2, so that any custody order that changes because of deployment expires 10 days after the person serving in the military person returns back from deployment. Representative Garcia seconded the motion. The motion carried.

Representative Ward made the motion to amend on page 2, line 17, by striking "family" and inserting "member or members of the service members family..." Representative O'Neal seconded the motion. The motion carried.

Representative O'Neal pointed out that the courts retaining jurisdiction is consistent to the Uniform Child Custody Act.

Representative O'Neal made the motion to have the bill become effective upon publication on the Kansas Register. Anyone who has a current order can file a motion and trigger the tools of the bill. Also, delete lines 29 & 30 in section (h). Representative Colloton seconded the motion. The motion carried.

It was pointed out that the same child custody issues would apply for individuals who have Permanent Change in Station (PCS) as those who are deployed. It was suggested that a floor amendment would be acceptable so more research can be done as to who the bill would actually need to be apply to.

Representative Watkins made the motion to report HB 2621 favorably for passage as amended. Pauls seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 7, 2008 in Room 313-S of the Capitol.

HB 2701 - laboratory fees for criminal procedures; heart of America regional computer forensics laboratory

Representative Colloton made the motion to report HB 2701 favorably for passage and placed on the consent calendar. Representative Watkins seconded the motion. The motion carried.

HB 2617 - mandatory implied consent for serious & fatality accidents

A balloon was provided by staff (Attachment #1)

Committee still had concerns with sub section (d) because it undoes what is done on page 1, mandatory consent.

Ed Klumpp stated that the only way law enforcement can draw blood is if there is probable cause. However, if an individual refuses or withdraws their consent there is currently a penalty for that. The proposed bill would be tied to the test refusal.

The committee amended the balloon page 1, lines 42 & 43 striking the words "to another person" because testing should be done even if it was the operator who was seriously injured.

Representative Kinzer made the motion to adopt the balloon including the above change. Representative Colloton seconded the motion. The motion carried.

Representative Pauls made a motion to add the following language on line 43 after "death"... "except when a law enforcement officer determines prior to the testing that operator actions did not contribute to the action or collision". Representative Garcia.. Committee members commented they had concerns about using the officers opinion in civil actions. Proposed that it might be able to be linked to someone receiving a citation. With permission of the second the motion was withdrawn.

Under current law there are forced blood draws when there is a serious injury or death. This does not happen very often, most will end up giving consent. Law enforcement has to do the restraining, not medical personal.

Representative Watkins made the motion to table HB 2617. Representative Roth seconded. The motion failed.

Representative Pauls made the motion to amend on pg 1, line 43, after "person" add "except when a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision." Representative Garcia seconded the motion. The motion carried.

Representative Kinzer made the motion to report HB 2617 favorably for passage, as amended. Representative Watkins seconded the motion. The motion carried.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for February 11, 2008.

HOUSE BILL No. 2617

Proposed amendment
February 5, 2008

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
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

operating or attempting to operate a vehicle and such vehicle has been

House Judiciary
Date 2-7-08
Attachment # 1

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

, licensed as a physician's assistant,

direction

(d) A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person:

- (1) If the person has given consent and meets the requirements of subsection (b);
- (2) if medically unable to consent, if the person has operated or attempted to operate a vehicle in such a manner as to have caused death or serious injury to another person;
- (3) if the person refuses to submit to and complete a test, if 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.

(e) 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 medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form.

(f) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(g) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person 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.

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

(i)

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

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 subsections (d) and (e) shall apply to the collection of a urine sample.

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.

willing to conduct such testing

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.

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

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.

(v) As used in this section, "serious injury" means a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:
(1) Disabling a person from the physical capacity to remove themselves from the scene;
(2) renders a person unconscious;
(3) the immediate loss of or absence of the normal use of at least one limb;
(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.

Renumber remaining sections accordingly.

New Sec 2. (a) The testing and method of testing consented to under K.S.A. 8-1001, and amendments thereto, shall not be considered to have been conducted for any medical care or treatment purpose. The results of such test, the person's name whose bodily substance is drawn or tested, the location of the test or procedure, the names of all health care providers and 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 therefor it is not individually identifiable health information as such term is used in the health insurance portability and accountability act of 1996, privacy regulations, 45 C.F.R. 164.501 et seq., and amendments thereto.
(b) All costs of conducting any procedure or test authorized by K.S.A. 8-1001, and amendments thereto, including the costs of the evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.
(c) The cost assessed under K.S.A. 8-1001, and amendments thereto, shall be the then current medicaid rate for any such procedure or test, or both.
(d) Notwithstanding any other law to the contrary, the collection and delivery of the sample and required information to the law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, 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 the required information.

√ Sec. 3. No medical care facility, clinical laboratory, medical clinic, other medical institution, person licensed to practice medicine or surgery, person acting under the direction of any such licensed person, licensed physician assistant, registered nurse, licensed practical nurse, medical technician, emergency medical technician, phlebotomist, health care provider or person who participates in good faith in the obtaining, withdrawal, collection or testing of blood, breath, urine or other bodily substance at the direction of a law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, shall incur any civil, administrative or criminal liability as a result of such participation, regardless of whether or not the patient resisted or objected to the administration of the procedure or test.