

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:30 a.m. on February 24, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator David Haley- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Dayln Schmitt, Regional Alcohol and Drug Assessment Center

Megan Endrees

Harold Casey, Substance Abuse Center of Kansas, Wichita

Win Smith, Addiction Specialist of Kansas, Wichita

Mary Ann Khoury, DUI Victim Center of Kansas, Wichita

Others attending:

See attached list.

The Chairman opened the hearing on **SB 278 - Creating the Kansas highway safety commission; penalties for driving under the influence; district magistrate judge jurisdiction for DUI cases.**

Senator Owens indicated there has been substantial feedback since **SB 278** has been introduced and a substitute bill has been drafted. Jason Thompson, staff revisor, presented an overview of the substitute bill highlighting key points between the original and the draft substitute. (Attachments 1 & 2)

Dayln Schmitt appeared in support stating enactment of **SB 278** will ensure all Kansans will benefit from a well coordinated, cost effective, DUI system. The DUI Commission will provide recommendations for a system of coordinated documentation of offenses and successful treatment systems providing a level of safety the public deserves. (Attachment 3)

Senator Schodorf spoke in favor and provided the committee with her assessment of current inconsistencies across the state with regard to the DUI laws. This bill will address inconsistencies in the system and relieves the frustration felt by both the public and the judicial system. (Attachment 4)

Megan Endrees spoke in support providing her personal experience with a DUI fatality and professional knowledge of the inadequacy of the current DUI system in Kansas. Ms. Endress stressed the need for a strong system of accountability coupled with a rehabilitative component. (Attachment 5)

Harold Casey appeared in support indicating that fair, consistent, and immediate consequences are all important ingredients for successful intervention toward impacting impaired drivers. Treatment works, saves lives, and effectively reduces cost, supports self-sufficiency, and provides hope to individuals and their families. (Attachment 6)

Win Smith testified in support stating it is important to remember addictions are a medical issue that affects both the offender and the public. A centralized database that will track offenders past records will stop offenders from putting themselves and others at risk while ensuring they follow through with treatment recommendations. Mr. Smith encouraged the Commission consider the ignition interlock device as a way of dealing with offenders. (Attachment 7)

Mary Ann Khoury spoke in support stating a large number of serious accidents result from an individual who has had multiple drunken driving offenses. The system in Kansas is broken and the citizens of Kansas are demanding it be fixed. Driving while impaired is a serious crime that requires harsh consequences and **SB 278** addresses some the measures needed to bring about this much needed change. (Attachment 8)

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on February 24, 2009, in Room 545-N of the Capitol.

The Chairman indicated the Committee was out of time and **SB 278** will be continued tomorrow.

The next meeting is scheduled for February 25, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: TUES, FEB 24, 2009

NAME	REPRESENTING
Siobhán O'Riordan	Lawrence Journal-World
Helen Regan	Severing Commission
Herman	KDOR DMV
Keegan Bogan	KDOR DMV
Marcy Balsh	KDOR
CARMELO ALDRITT	KDOR
Stuart Little	Ks Assoc. of Addiction Professionals
Jennifer Roth	KACDL
RUAN EAGLESON	CANTOR LOBBY GROUP, LLC
Jess McHenry	None
Michele McHenry	"
Deie L. Miller	"
Neil + Joan Barnum	"
Megan Toal	Gen. Community
Chris Bartlett	SRS
Chris Meeker	OJA - Sub Abuse Policy Board member
Kelley Hart	Judicial Branch
JEREMY S BARCLAY	KDOC

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: TUES FEB 24, 2009

NAME	REPRESENTING
Tracy Khounsavanh	Gov's Grants Program
Julienne Maslu	Gov office
Garry Winget	KANSAS for Addictive Prevention
Nancy Zogelman	Polsinelli
Callie Hattie	Ks Assn for Justice
Derck Hahn	Web for Am
SEAN MILLER	CAPITOL STRATEGIES
ERIK SARTORIUS	City of Overland Park
Spencer Duncan	Capitol Connection KS
MARK ST. JOHN	HEARTLAND RADAC
Megan Endres	Heartland RADAC
Thomas D. Holtgrewe	Chautauqua Counseling Center
DARIAN P. DEANOVICH	KHP
KAREN WITTMAN	TRAFFIC SAFETY Resource Pros./AB's
Richard Smarkepp	KCSAA
Ed Klump	KACP + KPOA
Pete Bodysic	KDOT
Thuy Lan Khong	DUI Victim Center of KS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: June 2-24-09

NAME	REPRESENTING
Wentworth Smith	KAAP / ASK Inc.
Harold W Casey	KAAP / Substance Abuse Center of KS
Terry Heidner	KDOT

**Comparison Chart - SB 278 and Proposed Substitute Bill (RS - JThompson - 02/24-09)**

SB 278

New Section 1

- (a) Kansas highway safety commission
- (b) Duties
- (c) Membership - 23 members

Section 2 (K.S.A. 8-1567) Effective July 1, 2009

- (a) - (e) current law
- (f) 4<sup>th</sup> and subsequent current law becomes 3<sup>rd</sup>
- (g) 4<sup>th</sup> and subsequent new penalties
- (h) - (l) current law
- (m) Law enforcement reporting
- (n) Prosecutor records check from division
- (o) Court reporting to division
- (p) Current law (n)
- (q) Current law (o)
- (r) Current law (p)
- Strikes language regarding municipal court concurrent jurisdiction over felony violations
- (s) Current law (q)
- (t) Current law (r)
- (u) Current 4<sup>th</sup> becomes 3<sup>rd</sup>
- (v) Current law (t)
- (w) Current law (u)
- (x) Current law (v)

Section 3 (K.S.A. 20-302b): Adds K.S.A. 8-1567 to magistrate judge jurisdiction

Section 4 (K.S.A. 20-329): Requires chief judge to assign K.S.A. 8-1567 cases to magistrate judges

Proposed Substitute

New Section 1

- (a) Kansas DUI commission
- (b) Same
- (c) Membership - 21 members
  - 5 eliminated: 1 ranking minority legislator; 1 prosecutor; 1 victim advocate; 1 municipal law enforcement officer; and 1 defense attorney
  - 3 added: chief of the bureau of traffic safety from KDOT; chairperson of the Kansas sentencing commission; and director of the Kansas bureau of investigation

Section 2 (K.S.A. 8-1567) Effective July 1, 2010

- (a) - (e) current law
- (f) Same
- (g) Same
- (h) - (l) current law
- SB 278 (m) deleted
- (m) Prosecutor records check from division and KBI central repository
- (n) Court reporting to division
- (o) Current law (n)
- (p) Current law (o)
- (q) Current law (p), no strike
- (r) New: city attorney records check from division and KBI central repository; required to refer felony violations to county/district attorney
- (s) Same
- (t) Same
- (u) Same
- (v) Same
- (w) Same
- (x) Same

Section 3 (K.S.A. 12-4106): Municipal court judges required to ensure arrested or charged information forwarded to KBI central repository

Section 4 (K.S.A. 12-4517): Municipal court judge required to ensure arrested or charged get fingerprinted and processed at booking

Proposed Substitute for SENATE BILL No. 278

By (Senator Owens)

AN ACT concerning driving under the influence; creating the Kansas DUI commission; relating to penalties for driving under the influence of alcohol or drugs; information sent to the Kansas bureau of investigation central repository; amending K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-1567 and 12-4106 and repealing the existing sections.

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

New Section 1. (a) There is hereby created the Kansas DUI commission.

(b) The commission shall:

(1) Review past and current driving under the influence statutes in Kansas;

(2) review driving under the influence statutes in other states;

(3) review what is effective in changing the behavior of driving under the influence offenders by examining evaluation, treatment and supervision practices;

(4) develop a balanced and comprehensive legislative proposal that centralizes record keeping so that offenders are held accountable, assures highway safety by changing the behavior of driving under the influence offenders at the earliest possible time and provides for significant restriction on personal liberty at some level of frequency and quantity of offenses; and

(5) assess and gather information on all groups and committees working on issues related to driving under the influence and determine if any results or conclusions have been found to address the issues.

(c) The commission shall be made up of the following members:

(1) The chairperson of the standing committee on judiciary of the senate;

(2) the chairperson of the standing committee on judiciary of the house of representatives;

(3) one member of the house of representatives from the minority party who is an attorney, appointed by the house minority leader;

(4) a district judge, a district magistrate judge and a municipal court judge who exercise regular jurisdiction in driving under the influence cases, each appointed by the chief justice of the supreme court;

(5) the attorney general, or the attorney general's designee;

(6) one prosecuting attorney who regularly prosecutes driving under the influence cases, appointed by the Kansas county and district attorneys association;

(7) one defense attorney who regularly represents defendants in driving under the influence cases, appointed by the Kansas bar association;

(8) one victim advocate, appointed by the governor;

(9) two persons appointed by the Kansas association of substance abuse professionals;

(10) the secretary of corrections;

(11) the secretary of social and rehabilitation services;

(12) the chief of the bureau of traffic safety from the department of transportation;

(13) the chairperson of the Kansas sentencing commission, or the chairperson's designee;

(14) the superintendent of the Kansas highway patrol, or the superintendent's designee;



(15) the director of the Kansas bureau of investigation, or the director's designee;

(16) one sheriff, appointed by the governor who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas sheriffs' association;

(17) one court services officer, appointed by the chief justice of the supreme court; and

(18) one parole officer, appointed by the secretary of corrections.

(d) The members of the commission shall elect officers from among its members necessary to discharge its duties.

(e) Each member of the commission shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the commission shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on commission activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees, except that the legislative members shall receive compensation as provided in K.S.A. 75-3212, and amendments thereto.

(f) The commission shall prepare and submit a report and recommendations on or before the first day of the 2010 legislative session and submit a final report and recommendations on or before the first day of the 2011 legislative session.

(g) The staff of the legislative research department shall provide such assistance as may be requested by the commission and to the extent authorized by the legislative coordinating council.

(h) The provisions of this section shall expire on July 1, 2011.

Sec. 2. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive

hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

~~(f) (1) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500.~~

~~The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.~~

~~(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the~~

~~person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.~~

~~The court shall also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto.~~

(g) (f)(1) On ~~the fourth or subsequent~~ a third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the

person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall

not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto, and as otherwise provided by law.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 180 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 180 days' imprisonment. The 180 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 144 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced

penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.



(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(1)(1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

(2) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to

or during the period of such impoundment or immobilization.

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(m) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~(m)~~ (n) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

~~(m)~~ (o) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

~~(o)~~ (p) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

~~(p)(1)~~ (q)(1)(A) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or

resolution shall not exceed the maximum penalty prescribed for the same violation.

(B) On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

(C) Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member

of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(r)(1) Prior to filing a complaint alleging a violation of a city ordinance prohibiting the acts prohibited by this section, a city attorney shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(2) Prior to filing a complaint alleging a violation of a city ordinance prohibiting the acts prohibited by this section, a city attorney shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(3) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

~~(q)~~ (s) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits

the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

~~(r)~~ (t) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

~~(s)~~ (u) Upon a ~~fourth~~ third or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

~~(t)~~ (v) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

~~(u)~~ (w) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of

K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

~~(v)~~ (x) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court.

Sec. 3. K.S.A. 2008 Supp. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense,

the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case.

(d) The municipal judge shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

(e) The municipal judge shall ensure that information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for class A and B misdemeanors under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.

(f) The municipal court judge shall ensure that information concerning persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, is forwarded to the Kansas bureau of investigation central repository.

Sec. 4. K.S.A. 12-4517 is hereby amended to read as follows: 12-4517. (a) (1) The municipal court judge shall ensure that all persons convicted of violating municipal ordinance provisions that prohibit conduct comparable to a class A or B misdemeanor or assault as defined in K.S.A. 21-3408 and amendments thereto under a Kansas criminal statute are fingerprinted and processed.

(2) The municipal court judge shall ensure that all persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, are fingerprinted and processed at the time of booking.



(b) The municipal court judge shall order the individual to be fingerprinted at an appropriate location as determined by the municipal court judge. Failure of the person to be fingerprinted after court order issued by the municipal judge shall constitute contempt of court. To reimburse the city or other entity for costs associated with fingerprinting, the municipal court judge may assess reasonable court costs, in addition to other court costs imposed by the state or municipality.

Sec. 5. K.S.A. 12-4517 and K.S.A. 2008 Supp. 12-4106 are hereby repealed.

Sec. 6. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567 is hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

February 24, 2009

Chairman Owens and Honorable Members of the Senate Judiciary Committee

Thank you for the opportunity to provide testimony today in support of Senate Bill 278. As a citizen of Kansas, a parent, a licensed professional, and educator I believe the intent of this Bill will ensure all Kansans achieve the public safety they deserve by a well coordinated, cost effective, DUI system.

I testified last year against a DUI bill in the House (HB 2879) because the problem of drunk driving was not adequately addressed. Since that time, a Substance Abuse Policy Board (SAPB) was formed, and further problems within this system were documented. I believe the findings of the SAPB confirm what citizens and professionals in Kansas have known to be true for years - that there are significant inconsistencies and an overall lack of accountability in the execution and enforcement of DUI laws in the State of Kansas.

I support Senate Bill 278 for the following reasons:

1. It allows for the formation of a Commission charged with moving the SAPB recommendations forward to implementation—this Commission will bring key stakeholders to the table to further provide the details needed to ensure a well coordinated public safety and clinical treatment system outcome from this legislation.
2. It recommends a central depository for reporting of DUI offenses. Technology today allows us to do this in an efficient, cost effective way. I encourage you to fund this piece adequately, as this is a *key* missing component in the existing system. This factor alone has allowed for loopholes and inconsistencies of existing laws to go unnoticed.
3. It moves the current SB 67 model of legal accountability and substance abuse treatment from 4<sup>th</sup> time DUI conviction down to the 3<sup>rd</sup> conviction. I think this is an excellent plan, and I anticipate that by passing this legislation, we will see a younger population receiving adequate treatment and monitoring services earlier in the progression of DUI offenses.

While I strongly support the SB 67 model, I cannot overly stress the importance of sufficient planning through the proposed Commission; without this component—there will be inherent problems and unintended consequences. Let's use this as an opportunity to take the needed time to implement a well thought-out system. Especially because there are many strengths in the existing 4<sup>th</sup> Time DUI Monitoring model from which to draw as it is moved to the 3<sup>rd</sup> conviction.

**Current 4<sup>th</sup> Time DUI (SB 67) Information and Data**

SB 67 passed in the 2001 legislative session. It offers a nationally recognized, multi-disciplinary service approach for 4<sup>th</sup> time DUI offenders in Kansas. This model incorporates a strategy that provides an additional layer of communication and accountability between offender, designated care coordinator, treatment provider and parole officer. Offenders must comply with all aspects of post release supervision or face

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returning to prison for noncompliance. In order to successfully complete the 4<sup>th</sup> time DUI program, offenders must participate in a full year of recovery based, alcohol and drug treatment services specifically tailored to their treatment need. It is because of clear communication and accountability between multiple systems and individualized treatment plans that makes this program so successful with this challenging population. By putting this same structure in place for an individual's 3<sup>rd</sup> DUI instead of waiting for a 4<sup>th</sup> DUI, it will require the individual to receive this model of monitored treatment earlier in the cycle of their addiction/behavior and allow the system to be even more successful under the proposed legislation.

SRS/Addiction and Prevention Services (AAPS) indicates, to date, (July 2002-February 2009) 3,279 persons entered the SB 67 Care Coordination program, of those:

- 90% are male
- 87% receive outpatient substance abuse treatment
- 80% of individuals in this monitoring program are 35 years of age and older.
- 71% were fully employed at the time when they completed supervision and were discharged from treatment (an additional 5% were employed part time).
- 72% successfully completed treatment while on post release supervision

**Closing**

In closing, I strongly suggest that adequate funding be made available to support this legislation. This is a cost effective strategy: according to SRS/AAPS, the average costs per offender in the 4<sup>th</sup> time DUI program is approximately \$3,500. According to the Kansas Department of Corrections, the average cost of incarceration in 2009 is \$25,570. If the funding is not in place for the infrastructure needed to successfully implement adequate changes as the SAPB has suggested these efforts will fail to reduce drunk driving and the goal of increased public safety will not be met.

Respectfully,

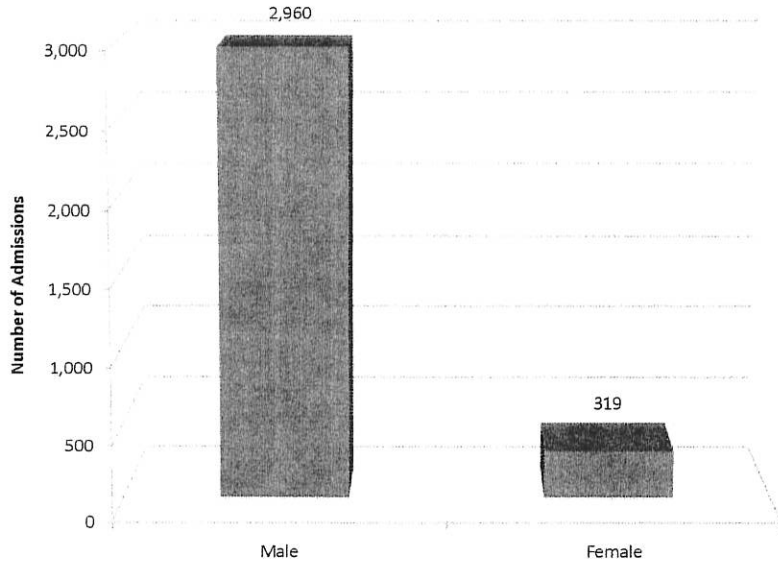


Dalyn Schmitt, LMSW, CADDC II  
913.488.9640 (cell)

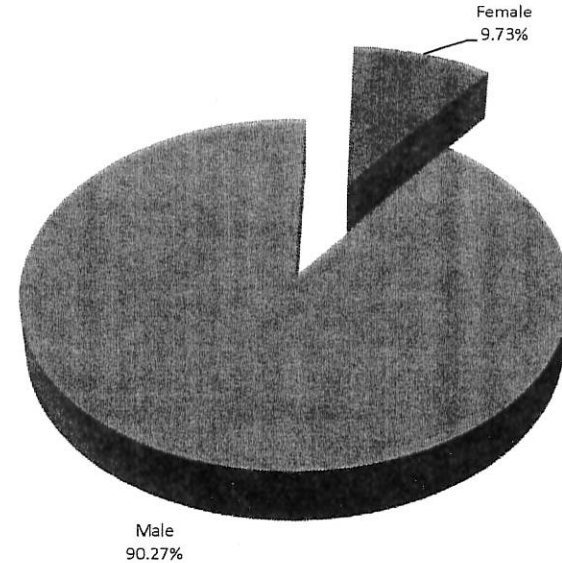
# Department of Correction's 4th Time DUI Clients Admitted or Assessed

3-3

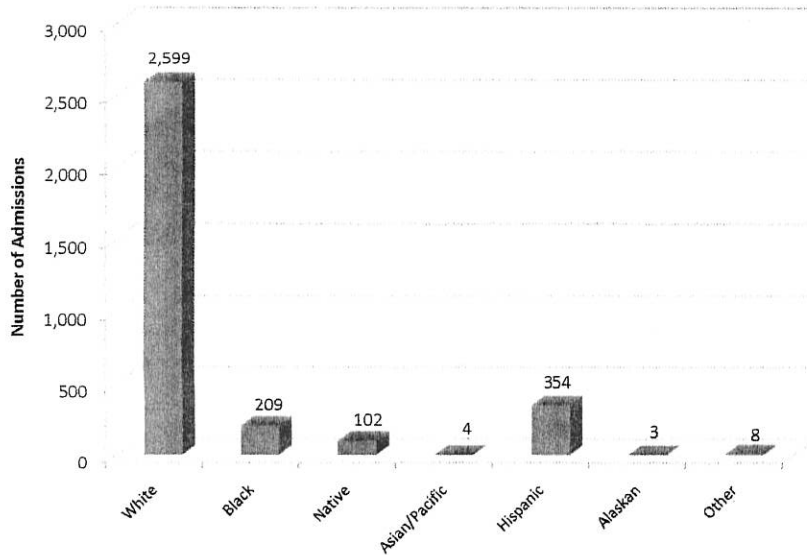
By Gender



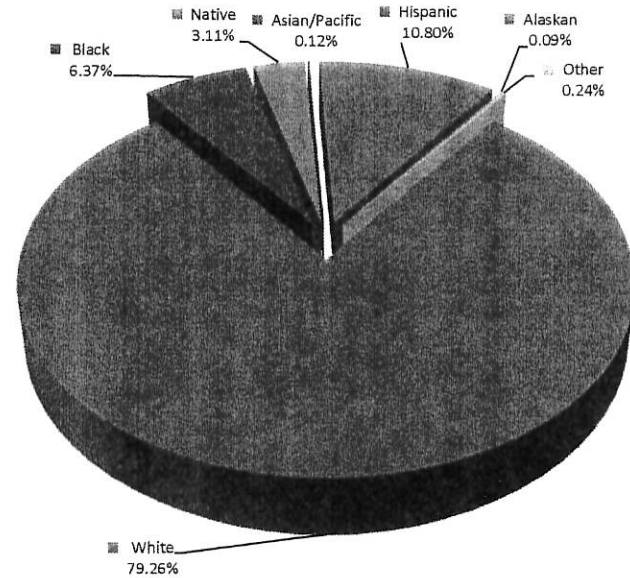
Percent by Gender



By Race/Ethnicity



Percent by Race/Ethnicity

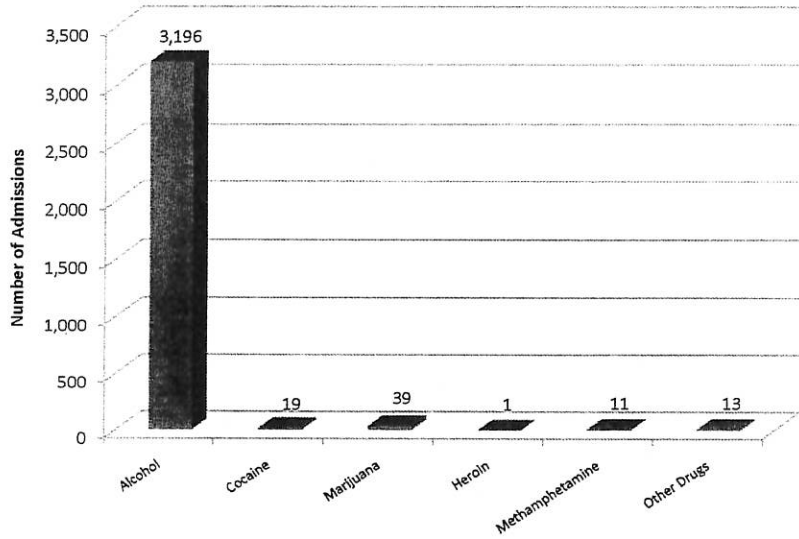


Data Source: KCPC  
Available data between: July 1, 2002 through February 16, 2009

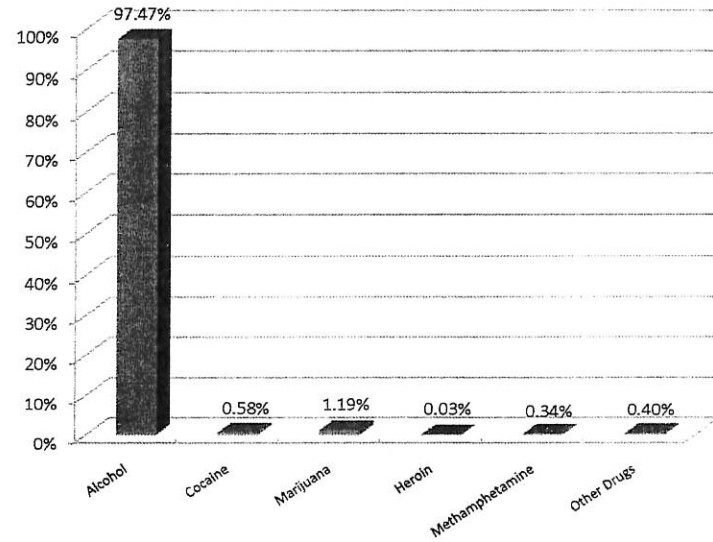
# Department of Correction's 4th Time DUI Clients Admitted or Assessed

3-4

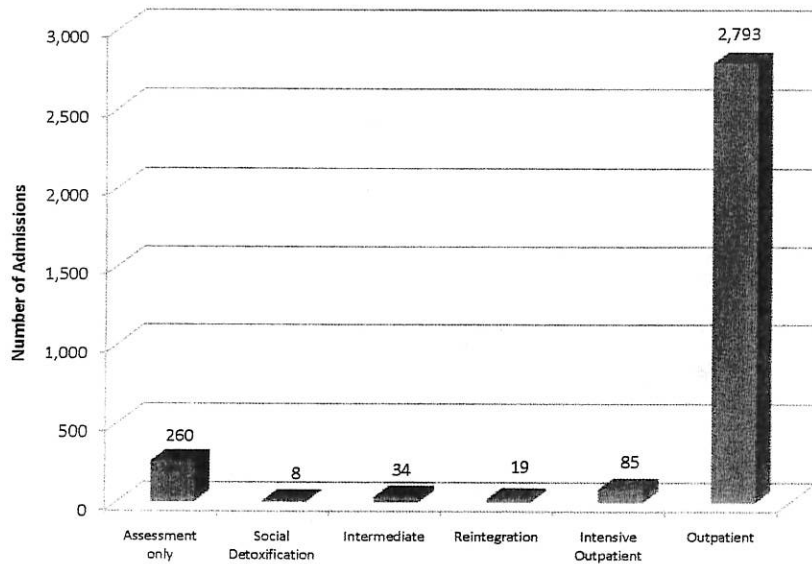
By Primary Problem



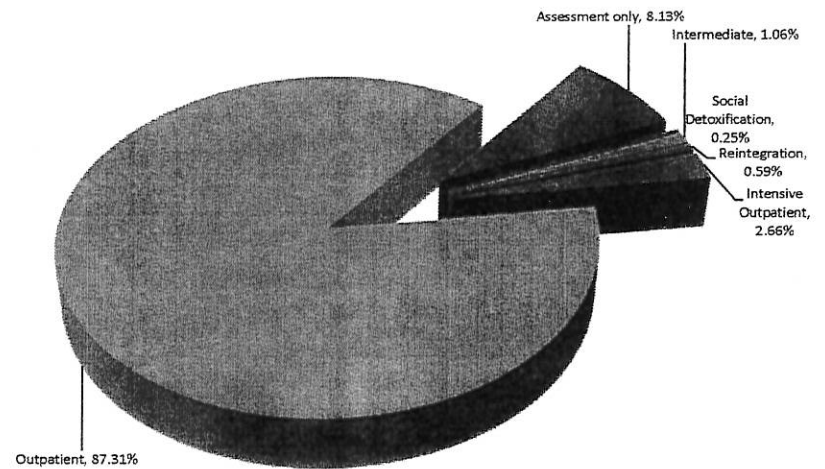
Percent by Primary Problem



By Admission Modality



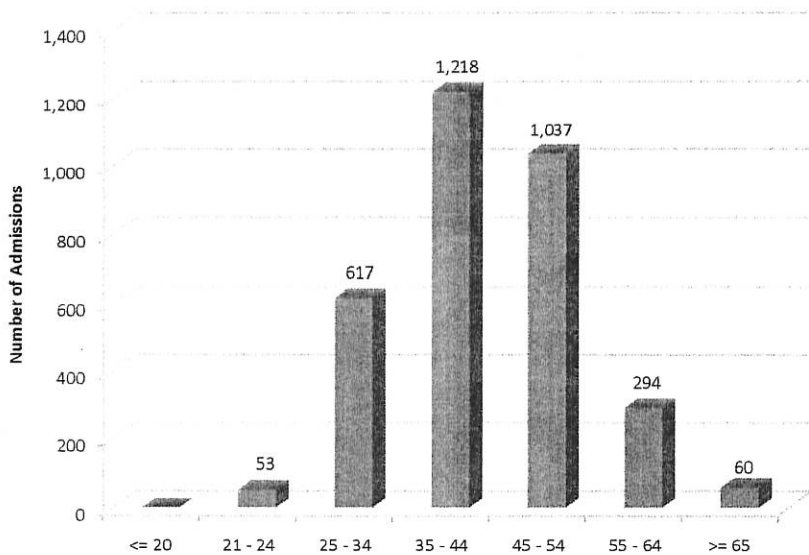
Percent by Admission Modality



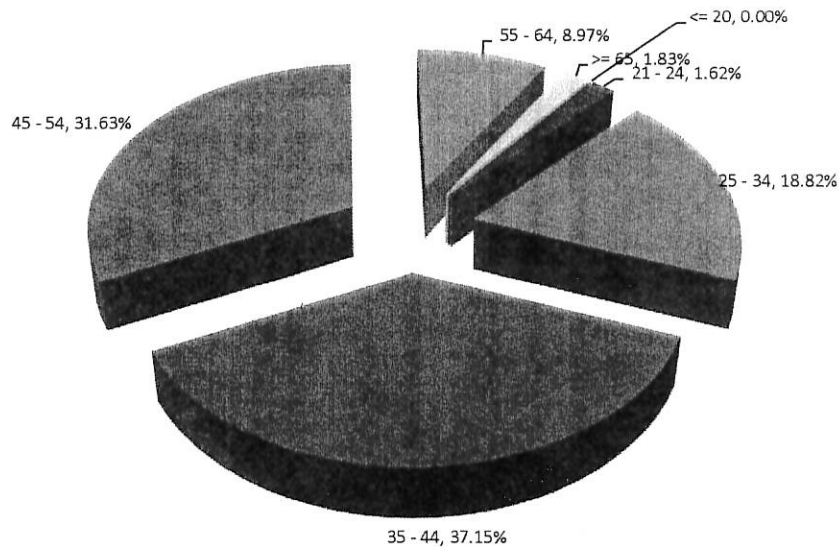
# Department of Correction's 4th Time DUI Clients Admitted or Assessed

3-5

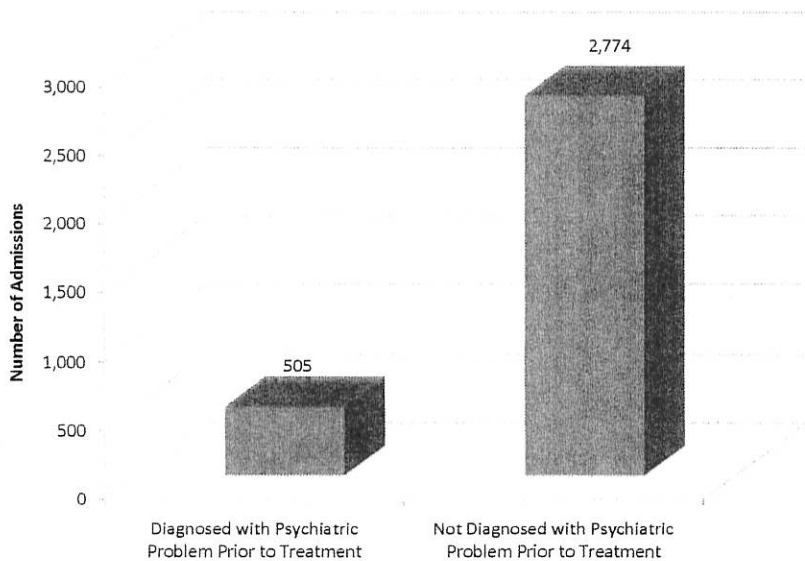
By Age



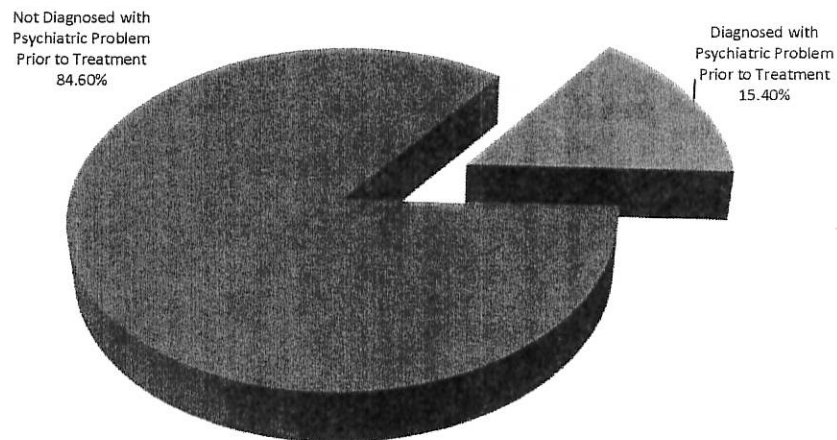
Percent by Age



Number by Clients Diagnosed with a Psychiatric Problem Prior to Treatment

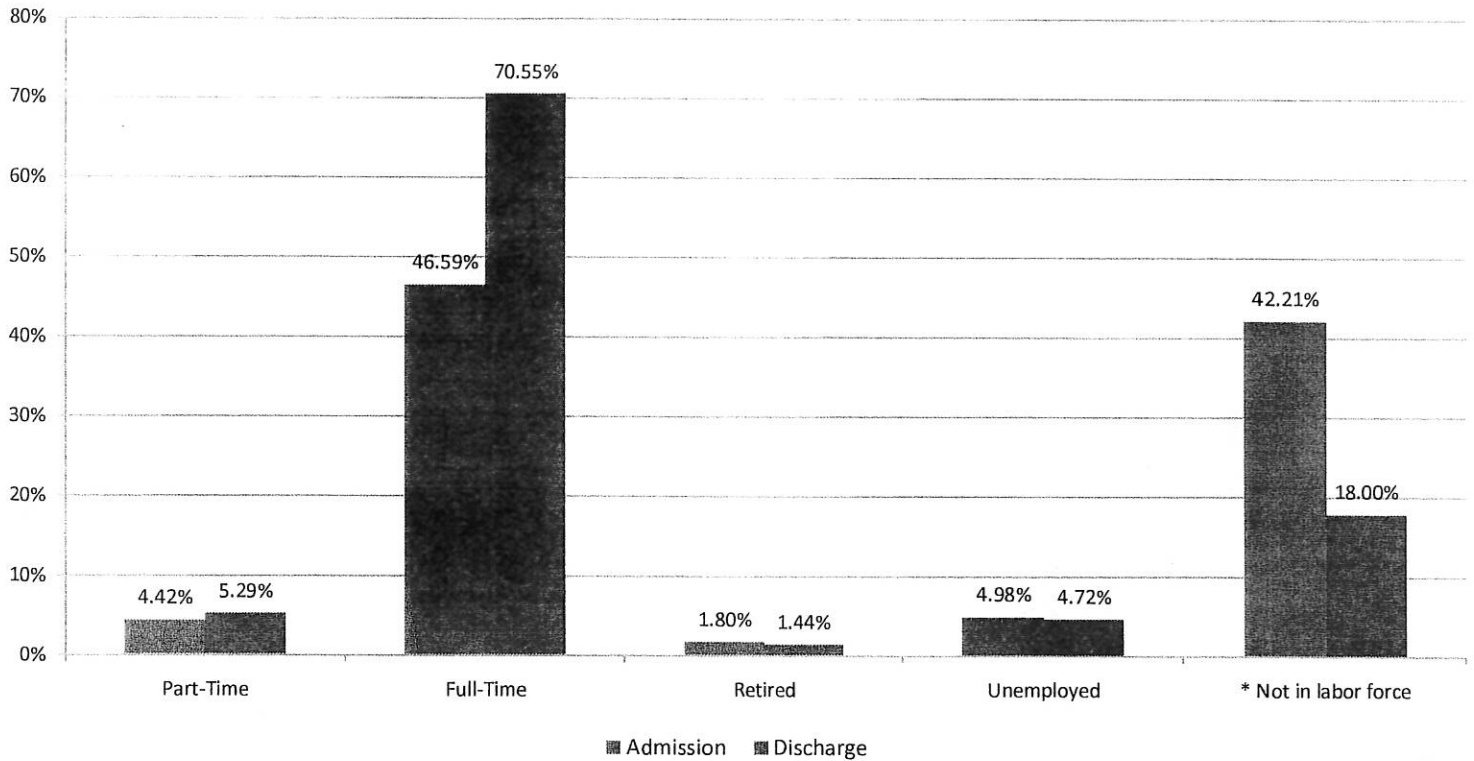


Percent of Clients Diagnosed with a Psychiatric Problem Prior to Treatment



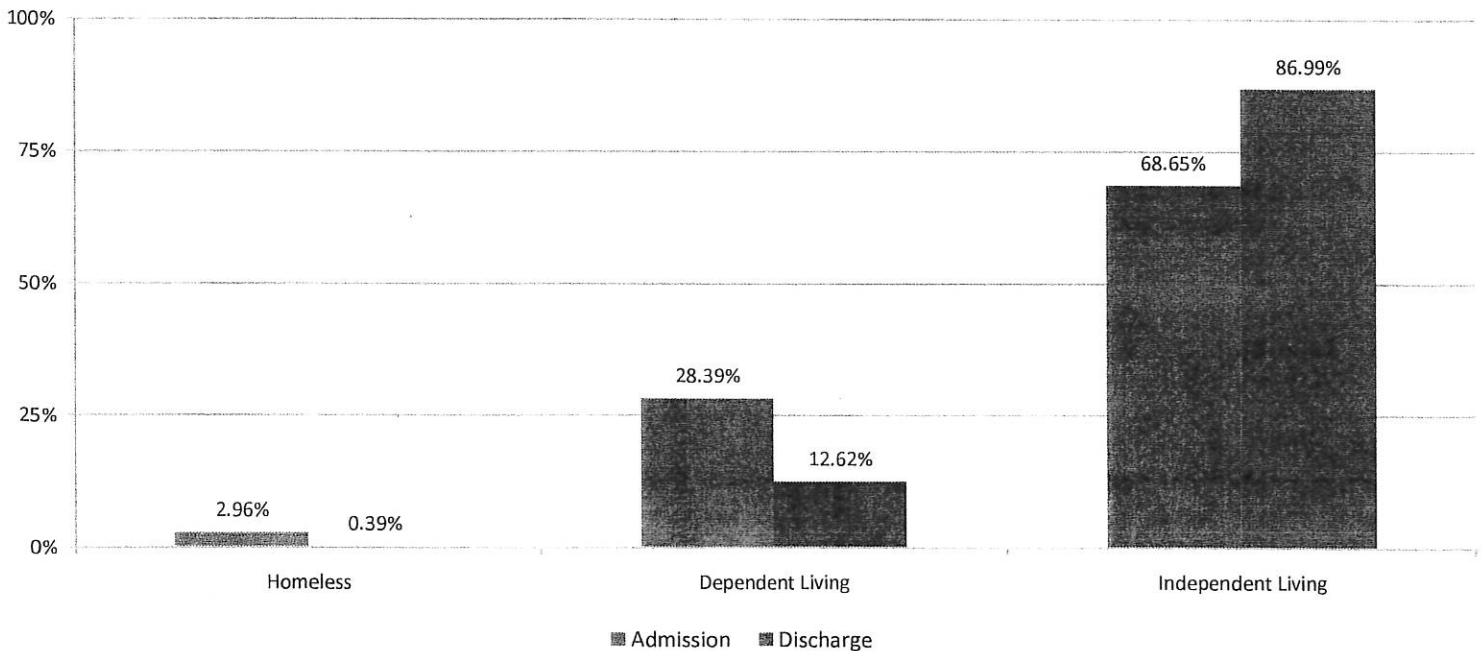
# Department of Correction's 4th Time DUI Clients

## Comparison Between Admission and Discharge by Employment Status



\* Not in labor force: Includes Homemaker, Student, not looking for work in the past 30 days, or an inmate of an institution.

## Comparison Between Admission and Discharge by Living Arrangement 4th Time DUI Clients

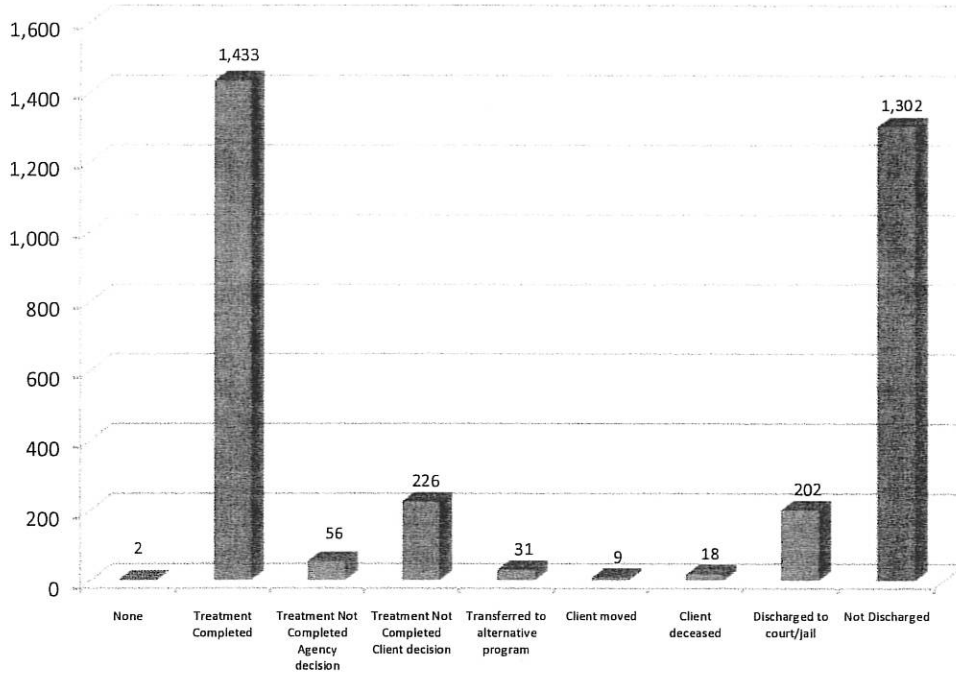


Data Source: KCPC

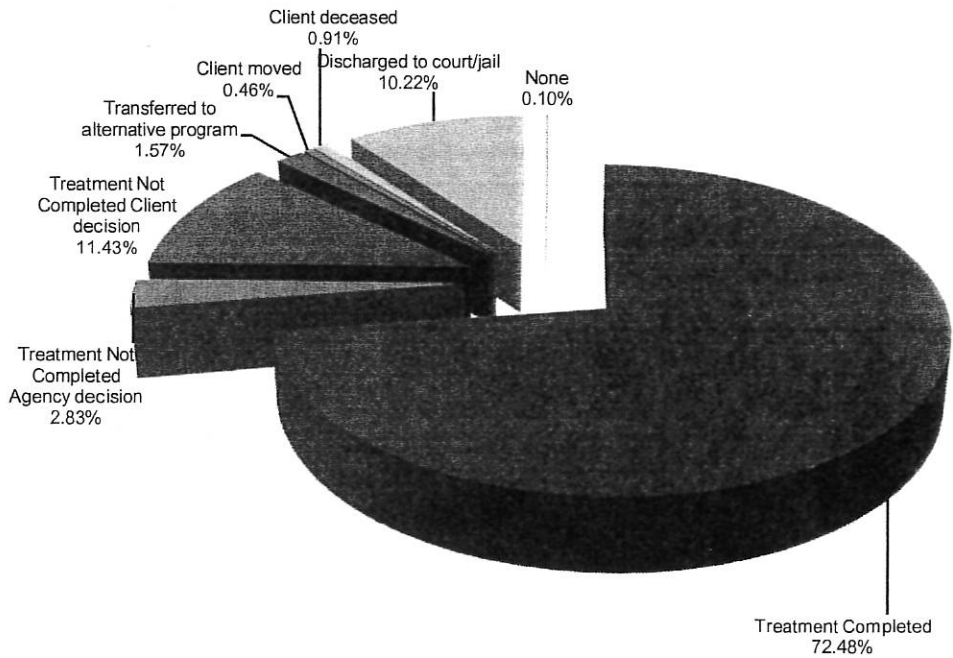
Available data between: July 1, 2002 through February 16, 2009

## Department of Correction's DUI Clients Admitted to Addiction and Prevention Service's Programs

### Discharge Reason



### Discharge Reason



Data Source: KCPC

Available data between: July 1, 2002 through February 16, 2009



STATE OF KANSAS

JEAN KURTIS SCHODORF

SENATOR, 25TH DISTRICT  
3039 BENJAMIN CT.  
WICHITA, KS 67204  
316-831-0229, CELL 316-259-0912

DURING SESSION

STATE CAPITOL—241-E  
TOPEKA, KANSAS 66612-1504  
HOT LINE 1-800-432-3924  
TTY 1-785-296-8430  
FAX: 785-368-6365



TOPEKA

SENATE CHAMBER

ASSISTANT MAJORITY LEADER/WHIP

COMMITTEE ASSIGNMENTS

CHAIR: EDUCATION  
JOINT COMMITTEE ON ARTS AND  
CULTURAL RESOURCES  
MEMBER: WAYS AND MEANS  
COMMERCE  
JUDICIARY  
CONFIRMATION OVERSIGHT

HOME: jschodorf@gmail.com  
CAPITOL: jean.schodorf@senate.ks.gov

Chairman Owens and Members of the Committee:

On Oct. 1, 2008, a drunk driver hit and killed a mother and daughter in front of Gardner Elementary School as they were walking to pre-school class in Wichita. The driver had been drinking in the morning and noon and had four DUI convictions and still had his driver's license. He also had other convictions which were not reported because he had gotten those prior to 1996. He pleaded guilty yesterday.

This case and other horrific cases led me to research the DUI laws, which I thought were tough. They can be very tough, but they are administered inconsistently and there can be lots of holes in the system. A recent report from the Kansas Substance Abuse Policy Board concluded that the system needs "a major overhaul".

The public is frustrated and the Judicial System is frustrated. That is why I asked the Chair of the Judiciary Committee if we could review the DUI laws in committee. As it turns out, he has an interest in this area, also, and was kind enough to schedule hearings and introduce a bill.

I hope we can pass SB 278 to establish a commission to rewrite the DUI laws and also to require courts to report all DUI violations, including those prior to 1996.

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February 24, 2009

Chairman Owens and Honorable Members of the Senate Judiciary Committee,

My name is Megan Endres and I am a native of Delphos, KS in Ottawa County. Thank you for the opportunity to testify in favor of Senate Bill 278. Senate Bill 278 recognizes the inadequacy of our current DUI system in Kansas and seeks to remedy it by establishing a commission that will examine best practice solutions for our state. This is necessary for us to take a comprehensive look at what is effective in creating a safer Kansas.

Additionally, this bill's petition to drop the 4<sup>th</sup> time DUI felony status to the third conviction and require the one year post release supervision and treatment recognizes that these individuals are struggling with an addiction and need rehabilitation sooner than later.

Finally, this bill's recommendation to track DUI convictions through one data tracking source is the answer to overcoming the current failing system. No more third time DUIs recognized as a first or second! In doing my own personal research, I came to the same conclusion that the Substance Abuse Policy Board found: the current DUI tracking system is very fragmented and inconsistent.

Senate Bill 278 is particularly important to my family and me on a personal level. In 2002 my 21-year-old brother Mason and his friend Nicole were struck and killed by a drunk driver in a head-on car collision North of Salina, KS.

Months later, my family and I sat in a courtroom listening to the unpleasant details of the accident. Pictures and testimony from that night were almost unbearable, but it was the criminal record of the driver who walked away without injury that was the hardest to stomach: 3 prior DUI convictions and a suspended driver's license.

Seven years later, I now find myself in a position as a substance abuse case manager working to build recovery plans for addicts and alcoholics. Strengthened by the power of forgiveness, I now am working with individuals who have 3, 4 and even 5 or more DUI convictions, some of whom report that they have never participated in any substance abuse treatment mandated or otherwise. They are now asking for help on their own accord and my eyes are opened to the disease of addiction.

I understand that there is other legislation being proposed this session that also addresses the issue of multiple DUI offenses. My understanding of House Bill 2263 is that it proposes primarily a law enforcement solution to this issue. As someone who has both a personal story and now professional experience with this issue, I understand the need for strong systems of accountability, but also believe this must be coupled with a rehabilitative component. I stand here today, optimistic that Senate Bill 278 is the continued work and the next chapter to reduce DUI arrests and the drunk driving mortality rate in Kansas. My hope is that you will remember my brother Mason and vote "Yes" on Senate Bill 278.

Most sincerely,  
  
Megan Endres  
(p) 913-826-7439  
megane@hradac.com

Senate Judiciary

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Attachment 5



# Substance Abuse Center of Kansas, Inc..

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TO: The Senate Judiciary Committee

02-24-09

SUBJECT: Senate Bill 278

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Dear Senator Owens and Senate Judiciary Committee Members:

Please allow me to begin by thanking you for your time and consideration on behalf of my staff, our consumers, and community stakeholders. I am the Director of the Substance Abuse Center of Kansas, providing services to SRS, DOC, affiliated contractors, and other community stakeholders throughout eighteen counties in South-Central Kansas. I am currently the Post President of the Kansas Association of Addiction Professionals (KAAP) and as such represent KAAP interests as a member of the Substance Abuse Policy Board.

I am here today as a KAAP representative to support SB-278. I have over 27 years of experience working with alcoholics and addicts in a recovery environment.

Members of KAAP, both counselors and directors within the association, agree that fair, consistent, and immediate consequences are all important ingredients for successful intervention towards impacting impaired drivers. Although there are concerns regarding SB-278, KAAP members in general find that this bill in particular, through the development of the Kansas Highway Safety Commission, allows for the time and careful collaboration needed to address most of our concerns.

The following is a list of our specific concerns:

1. In regards to treatment in prison(s) our experience with SB-67 has shown that primary substance abuse treatment services combined with intensive case management is most effective in producing outcomes of 72% of successful discharges.
2. The necessary funding to support community based substance abuse treatment services needs to be addressed in order to ensure that moving the SB-67 4<sup>th</sup> time DUI and/or subsequent DUI process, to a 3<sup>rd</sup> DUI, continues to be as beneficial and effective.
3. Consequences should be immediate and progressive. KAAP members support imprisonment in the form of revocation after treatment has failed. We support sentencing that is progressive and based upon non compliance and/or additional DUI convictions.

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**ADDICTION  
SPECIALISTS OF  
KANSAS, INC.**

February 23, 2009

**From: Winthrop B. Smith  
Program Director  
Addiction Specialists of Kansas, Inc.  
650 Carriage Parkway, Suite 135  
Wichita, Kansas 67208**

**To: Senate Judiciary Committee: Senate Bill 278, DUI  
Treatment Bill Hearing: February 24, 2009**

To Whom It May Concern:

First, I would like to introduce myself. I have been working in the addictions field for the past twenty-nine years, working with both inpatient and outpatient programs. I have been in private practice with Dr. Timothy Scanlan for the past eleven years. I have served on the K.A.A.P. Board for the past three years but have also been served in previous years. I am both a concerned citizen and a concerned professional. I am writing to support Senate Bill 278 and would also like to share some thoughts that I would like you to consider for this Bill.

I think it is very important to remember we are dealing with a medical issue that affects the offender's judgment, in turn, creating legal issues for the public. It is an illness that allows the client to believe that they do not have a problem and gives them a compulsion to use when they do not want to. This is understood much better today than in years past. And with this said, it is important for anyone with an addiction to be responsible for their illness. For many, the first time they will be forced to look at this issue is when they receive a DUI. I have administered training at the police academy in Wichita for the past 20 years and I ensure the police officers that I support them giving the driver the DUI because this will force the offender to look at the effects of their use. I have had many offenders over the years say that they would have never obtained recovery if they had not received the DUI.

I support the idea of having a good database put in place that will track the offenders past record. I know clients that have been charged with two DUI's but wind up being treated as though they only have one. It is clear when the offender continues to use that they are a danger to themselves and others.

I would like to see the Committee take into consideration when an offender enters treatment prior to a court order and follows through with the recommendations of the treatment center. Many offenders do not enter treatment because they are waiting until the court refers them, which can take up to a year following the time they are charged. During this time, they continue to use, putting themselves and others at risk. I think it would be important that the programs used be Senate Bill 67 certified. It is also important to look at the fact that there are insurance

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2-24-09

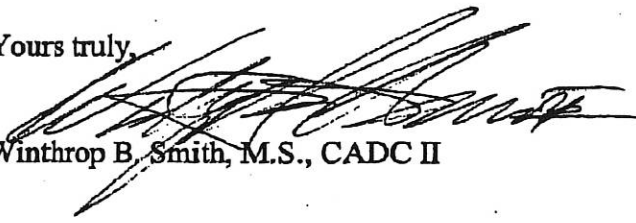
Attachment 7

companies not willing to pay for treatment once they are court ordered to attend treatment. I think this would help reduce the cost of treatment for both the state and the client.

I would like you to consider the ignition interlock device as a way of dealing with offenders that have more than four DUI convictions. I would recommend, in some cases, it be considered for lifetime. Many of the clients I have seen over the years continue to drive because they don't feel there is much more you can do to them. The truth of the matter is that there will be some clients that can do time without much concern. I have had clients tell me that every time they start their car with the ignition interlock device, it is a reminder of what they need to do to stay clean and sober.

I would like to thank you for taking the time to review my thoughts on this Bill.

Yours truly,



Winthrop B. Smith, M.S., CADDC II



February 22, 2009

**TO:** Senator Tim Owens, Chairperson  
Judiciary Committee

**RE:** SB 278-DUI Legislation

Dear Senator Owens and Members of the Judiciary Committee,

The **DUI Victim Center of Kansas** was founded in Wichita in 1987 resulting from a DUI crash that killed a local woman (mother of 2 other children) and her unborn child that same year. Our mission is to reduce the traumatic effects a DUI Crime has on victims and their families and to increase the awareness of the human consequences of drunk and impaired driving. Since beginning nearly 22 years ago, there are those in Kansas and even in Wichita who say they have never heard of this agency. However, more than 500 DUI crash victims and their families throughout Kansas are receiving services each year from our many volunteers and small staff of 6. Even though you may hear that DUI crashes are decreasing, the number of victims we have served annually has not changed for many years. Also, in Kansas DUI crash numbers are not seeing much reduction. Our DUI Victim Panels receive more than 4,500 court ordered referrals each year for offender attendance as required by judges/CEOs. This program is increasingly being requested and is expected to become a basis for growth statewide.

As Founder, President/CEO of the **DUI Victim Center of Kansas**, I testify to you that a large number of our more serious crashes – fatality and life altering injury – result from an individual who has had multiple drunken driving offenses. Most recent, is the tragic loss of a child and her mother who were killed in a school yard in Wichita by a repeat offender driving at a high rate of speed at a school zone with a legal driver's license. The details of this tragedy are more than the citizens of Kansas have been able to comprehend or accept. One week before this crash, it was made known that in Reno County there was a man who was being charged with his 11<sup>th</sup> DUI offense and had never been in prison. When Claudia Mijhares and her daughter, Gisel were killed, calls from media and especially local citizens overwhelmed our telephone lines. The constant inquiry was:

- "What can we do?"
- "How is it that this man had a driver's license after so many offenses?"
- "How does he only show 4 DUI offenses when media has found more than 6 offenses."

The Wichita community was angry – and finally wanted to declare this to the entire state. I had never seen people so outraged. The **DUI Victim Center of Kansas** and Wichita State University sponsored a "Town Hall Meeting" to address the issues with drunk driving in our state and to let people be heard.

**MISSION**

*"Provides services to victims and their families and increases awareness of the traumatic human consequences of drunk driving."*

**Board of Directors**

**Gary Nye**  
Chairperson

**Sue Dondlinger**  
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**Tim Scanlan**  
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**Wanda Stewart**  
**Velma Thompson**

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(316) 262-3548 (Fax)  
1-800-873-6957 Helpline  
[staff@duivictimcenter.com](mailto:staff@duivictimcenter.com)  
[www.duivictimcenter.com](http://www.duivictimcenter.com)

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There was a short notice to the community but more than 100 people attended and listened to our panel addressing what changes should be made over the next several years. Those changes recommended by this agency were as follows:

- Lifetime loss of Driver's License on the 3<sup>rd</sup> DUI offense - felony
- Develop DUI jails/prisons
- Boot and/or forfeiture of vehicle for repeat offenders
- Research treatment options for offenders
- Establish DUI and Night Court – Statewide
- Register felony offenders
- Increase sanctions on 1<sup>st</sup> time offenders

We also presented “Formula for Change” that would be sought by this agency:

- Develop Statewide DUI Task Force in various sections of Kansas (Mid-Kansas, Northwest Kansas, Southwest Kansas, Northeast Kansas, Northwest Kansas, etc)
- Research out of state legislation and how it compares to Kansas
- Draft a petition to Kansas legislators in favor of upcoming changes
- Increase Court Watchers to monitor judges and report outcomes
- Research problems with DUI conviction records and plea bargaining.

A recent report from the Substance Abuse Policy Board states findings on DUI in Kansas that the entire system is broken. Over the past 22 years, I have seen many changes but also experienced every one of the instances this document reported as the reality of the ways DUIs are handled in Kansas. Whether you are a law enforcement officer, a CSO, a prosecutor, a defense attorney, a judge, an offender – or a victim, the system is broken. The one constant in 22 years is the broken families and the excuses given for offenders. There is no other crime that is given so many chances or privileges to the offender who kills and destroys the lives of so many. In some other states, a multiple offender who kills and injuries more than once will face life in prison. I have also seen that a person with numerous DUI offenses is often a person with other numerous crimes to his/her credit. It is also a known that many will have to experience treatment programs more than one time – chemo does not work the first and only time on cancer. But do not give up on the treatment. Treatment may not work the first and only time on a person addicted to alcohol and/or other drugs. There is no change without consequences. The excuses to not forfeit the vehicle of a multiple offender because it may cause harm to the family is just that – an excuse. The family is already suffering great harm and it will continue for everyone if the consequence is not harsh enough. Boot it! Take it! Sell it to fund programs for treatment, the family, etc! But do something with it. Drunk driving is a serious crime and it is time Kansas recognizes that it will never change without harsh consequences. Determine what these consequences must be and make it happen.

Senate Bill 278 addresses some of the measures that will bring change. Since founding the **DUI Victim Center of Kansas** in 1987, I have seen numerous legislation placed before our legislators only to be turned back to the local community or not passed at all. Since 1987, I have seen thousands of individuals and families destroyed by people who drink and drive – continually. It is not the person who makes a mistake and learns from the Criminal Justice Process that is being placed on notice. In 1987 a young mother and her unborn child were killed. In 2008, a young mother and her young child were killed. Where is the change? Over 22 years and various legislation within a broken system – nothing has changed. Even though I do not agree with everything in SB278, it is progress and it begins to put into place the harsh consequences necessary to produce change in the drunk and impaired driving issues in our state.

I strongly encourage the passing of SB278 for the citizens of Kansas. It is time to fix the broken system and listen to the voices of the many people who are saying – “Mothers and their children should not be killed.” The **DUI Victim Center of Kansas** will actively participate in the process to assist your efforts in bringing changes in DUI crimes to our state.

Thank you so much for your time in consideration of my testimony and the time you have given me to state the issues in support of SB278.

Sincerely,  
**DUI Victim Center of Kansas, Inc.**

Mary Ann Khoury,  
President/CEO