

MINUTES

KANSAS DUI COMMISSION

October 8, 2010
Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Representative Lance Kinzer
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Debra Stitham substituted for Don Jordan, Secretary, Kansas Department of Social
and Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, KAAP
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Members Absent

Mary Ann Khoury, DUI Victim Center of Kansas
Jeremy Thomas, Parole Officer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes

Sean Ostrow, Office of the Revisor of Statutes
Karen Clowers, Commission Assistant

Others Attending

See attached list.

Morning Session

The meeting was called to order by Chairperson Owens at 9:05 a.m.

Representative Pauls moved, Chris Mechler seconded, to approve the Commission minutes of August 23, 2010. Motion carried.

Jason Thompson, staff revisor, distributed and reviewed a bill draft containing recommendations of the Commission (Attachment 1).

During the review suggestions were made regarding clarification and intent of the Commission's recommendations.

It was recommended the revisor update the draft to include restrictions for drivers under the age of 21.

Section 1 of the draft addressed KSA 2010 Supp. 8-1014. During the review, *Doug Wells moved, Greg Benefiel seconded to amend page 6 of the draft Section 2(a), to add court or court ordered supervisions to the list of permitted purposes. Motion carried.* Ed Klumpp voted no and requested his vote be recorded.

Following discussion of Sec. 2(d) on page 7, *Representative Pauls suggested a provision indicating restrictions must comply with Kansas Department of Revenue (KDOR) regulations. Representative Pauls moved, Ed Klumpp seconded, for the revisor to write a provision that KDOR will establish regulations to require drivers with a restricted license to carry certain documentation stating the restrictions, to carry certain documents to show that they are driving under an allowed event, and make it a rebuttable presumption if not carrying the documentation that the offenders are in violation. Motion carried.*

Following discussion of Section 3(d)(2), it was recommended the revisor incorporate specific treatment language changing the presumption that there is a specific intervention needed based on the number of DUIs to completion of treatment based upon the recommendation in the evaluation.

Greg Benefiel moved, Representative Kinzer seconded to amend page 9, Section 3 (d) (1) so that penalties for a first offense be a minimum of 30 days imprisonment, with probation after 48 hours or 100 hours of community service. Motion carried.

Following discussion of Section 3(f)(1) regarding provisions for third-time offenses, Doug Benefiel moved to modify the misdemeanor provision to mandatory 90 days imprisonment with release on probation after ten days with intensive supervised probation and alcohol monitoring to work release or house arrest. There was no second, due to information provided by Judge Jones

indicating a possible conflict due to a recent ruling by the Kansas Court of Appeals indicating work release does not apply to the sentence. It was recommended the revisor review the options for the next meeting.

Greg Benefiel moved, Karen Wittman seconded, on third-time felony cases, house arrest would not be allowed. Motion carried.

Following discussion regarding looking back to previous offenses, *Karen Wittman moved, Ed Klumpp seconded, to allow the courts to take into consideration all prior convictions the offender has received in their lifetime. Motion carried.*

The Commission recessed for lunch at 12:00 p.m.

Afternoon Session

The Commission reconvened at 1:00 p.m.

Jason Thompson, staff revisor, continued with the draft bill review indicating that language contained in Section 4(i)(4) (page 23) contains the provision allowing the courts to retain jurisdiction to modify sentence on third-time felony offenses.

The Commission discussed the possibility of repealing existing law and submitting to the Legislature a completely "new" act. Mr. Thompson indicated this would be equivalent to a recodification and it would be difficult to accomplish in time for the legislative session in January, 2011. Following further discussion it was determined to proceed with the draft bill.

Mr. Thompson indicated there is currently no reference to the use of the Kansas Criminal Justice Information System (KCJIS) and recordkeeping. He does not see the need for the inclusion in this draft, there was previous discussion about a separate bill to incorporate the Commission recommendations. Ed Klumpp indicated there may be an issue using KCJIS regarding the sharing information electronically with various agencies because of the Federal Bureau of Investigation link with the national criminal database.

Mr. Thompson also addressed problems regarding jurisdiction. If the bill contains criteria allowing only some cities jurisdiction, it will create a non-uniform law and home rule will allow any municipality to do as it pleases, regardless of the state statute.

After the discussion of the bill draft, the Commission turned its attention to Secretary Roger Werholtz, who presented the final recommendations from the Criminal Justice Subcommittee (Attachment 2).

Secretary Werholtz prefaced his remarks that all recommendations are based on the assumption that a complete and accurate criminal history is available.

It is the recommendation of the subcommittee that a first offense DUI conviction or diversion is not automatically disabling for anyone licensed, registered, or certified in the State of Kansas except for a holder of a commercial driver's license. *Doug Benefiel moved, Representative Pauls seconded, the governing body shall have a due process hearing, if requested, to determine what impact the offense will have, which may include alternative corrective measures in lieu of termination of licensure, registration, or certification. Motion carried.*

The subcommittee recommended for second-time offenders to change the incarceration requirement specified in KSA 8-1567(v)(2). Specifically, 48 hours of incarceration would be followed by either three days incarceration, six days work release, or ten days house arrest with no credit for time served on house arrest. *Greg Benefiel moved, Representative Pauls seconded, to incorporate the recommendation stated by Secretary Werholtz. Following discussion, Representative Pauls withdrew her second. Greg Benefiel moved, Judge Ruddick seconded, to make the penalty five full days. Motion failed.*

Greg Benefiel moved, Judge Jones seconded, to recommend the penalty proposed by the subcommittee of 48 hours incarceration followed by either three days incarceration, six days work release, or ten days house arrest with no credit for time served on house arrest. Motion carried.

The subcommittee also recommended offenders using ignition interlock systems should be on probation with more systemic feedback on performance provided to probation officers, courts, and treatment providers.

Secretary Werholtz moved, Les Sperling seconded, to recommend the supervising court imposing ignition interlock require the provider report violations to the court or the court designee, which could be the supervising officer or treatment provider, within 48 hours. Motion carried.

Additional recommendations were:

- Treatment imposed by the courts shall be based on meaningful evaluations which include verified criminal history and treatment history, and is responsive to the individual offender's treatment needs; and
- Verification independent of offender self reporting shall be made of both the criminal history and treatment history.

Les Sperling moved, Helen Pedigo seconded, to include the additional recommendations in the Commission report. Motion carried.

Secretary Werholtz indicated the subcommittee recommends third-time offenders should be handled at the district court level.

Greg Benefiel moved, Judge Jones seconded, that only district courts have jurisdiction of third-time DUI offenders. Motion carried. Ed Klumpp voted no and requested his vote be recorded.

Other recommendations were:

- Treatment now targeted toward third-time DUIs remain available;
- Supervision of third-time DUIs shifts to Community Corrections ;
- Revocation time is served in county jails; and
- Require a minimum 12-month probation period.

Chris Mechler moved, Greg Benefiel seconded, at the presentence investigation stage of the third DUI offense, to change supervision of third-time DUI to either Community Corrections or Court Services, depending on the assessment results. Following discussion, the Chairperson deferred the vote on this motion until the next meeting in order to collect further information.

Secretary Werholtz stated the subcommittee would like included in the report fourth and subsequent DUI offenders incarcerated in the state corrections system may be offered treatment based on available resources but will not take priority over other prisoners in the corrections system.

Secretary Werholtz reviewed recommendations already approved by the Commission regarding sentencing of fourth time offenders.

Greg Benefiel moved, Karen Wittman seconded, to make the special sentencing rules already adopted not subject to duration or dispositional departure. Motion carried. Doug Wells voted no and requested his vote be recorded.

Secretary Werholtz reported the subcommittee recommends the refusal of a request for blood or urine be a violation of the DUI statute.

Following discussion, Greg Benefiel moved, Karen Wittman seconded, upon arrest for DUI and the individual refuses an evidentiary blood or urine test will be a violation of the DUI statute. Doug Wells made a substitute motion, Roger Werholtz seconded, to create a standalone bill addressing refusals. Motion failed.

Back on the original motion, Greg Benefiel withdrew his motion, Karen Wittman agreed.

Greg Benefiel moved, Karen Wittman seconded, to adopt a law similar to the one used in Nebraska. The Chairperson recommended the motion be written in detail and have it available for review at the next meeting.

Secretary Werholtz reported the subcommittee recommendation to modify the expungement statute to permit expungement after five years of completion of probation if the offense was a misdemeanor, or seven years if the offense was a felony.

Representative Pauls moved, Doug Wells seconded, to modify the expungement statute to permit expungement after five years of completion of probation if the offense was a misdemeanor or 7 years if the offense was a felony. Motion carried.

Greg Benefiel moved, Karen Wittman seconded, to change the time limit to ten years for all offenses. Motion carried.

Secretary Werholtz moved, Dalyn Schmitt seconded, to require any court hearing DUI cases that result in conviction to utilize a standardized risk assessment approved by the Sentencing Commission, utilize a standardized substance abuse assessment approved by the Kansas Department of Social Rehabilitation Services, utilize the results of those evaluations in determining dispositions, and require the offender to be supervised according to the results of those assessments and to report all transactions to KCJIS. Motion carried.

Secretary Werholtz moved, Karen Wittman seconded, that each judicial district should be encouraged, but not mandated, to establish at least one DUI court docket within the district and those courts follow the ten principles of effective problem-solving courts, using evidence-based practices, and maintain fidelity to the model in order to achieve successful outcomes being included in the DUI Commission Report. Motion carried.

Secretary Werholtz indicated the subcommittee recommends that officers of the court shall share criminal history information with the substance abuse professional preparing the substance abuse evaluation, and the substance abuse professional shall request that information from the appropriate entity designated by the court.

Secretary Werholtz moved, Dalyn Schmitt seconded, to approve the recommendation as stated. Representative Pauls requested the insertion of the language "as allowed by state and federal law." Secretary Werholtz and Ms. Schmitt agreed to the modification, so the motion reads: Officers of the court shall share criminal history information as allowed by state and federal law with the substance abuse professional preparing the substance abuse evaluation, and the substance abuse professional shall request that information from the appropriate entity designated by the court. Motion carried.

The subcommittee recommends a change in criminal procedure should be drafted to authorize and codify that procedures consistent with principles of therapeutic or problem-solving courts should be included in the report.

This concluded the Criminal Justice Subcommittee recommendations. The meeting adjourned at 5:02 p.m.

The next scheduled meeting is October 29, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

October 29, 2010

(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: Oct 8, 2010

NAME	REPRESENTING
Bill Brody	Capitol Strategies
Sarah Hansen	KS Assn. of Admiz. Professionals
Kevin Berone	KIDA
Melissa Wayman	KAC
Shannon Bell	LGR
MIKE LINDBLAD	GUARDIAN INTERLOCK
Patrick Vajeksberg	Kearney and Assoc.
Spencer Duncan	Capitol Connection
Corey F. Kenney	City of Lenexa
DARIAN DERWENTH	KHD
Larrie Ann Brown	Wine Institute

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DUI COMMISSION DRAFT #1 - 10/08/10

Section 1. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(2) on the person's second occurrence, suspend the person's driving privileges for [~~two years~~] one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(3) on the person's third occurrence, suspend the person's driving privileges for [~~three years~~] one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;

(4) on the person's fourth occurrence, suspend the person's driving privileges for [~~10 years~~] one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(5) on the person's fifth or subsequent occurrence, revoke the person's driving privileges permanently.

(b) (1) Except as provided by subsections (c) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(A) On the person's first occurrence, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by subsection (b) of K.S.A. 8-1015, and amendments thereto, for an additional [~~330 days~~] one year;

(B) on the person's second[~~, third or fourth~~] occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device; [~~and~~]

(C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device; and

[~~(E)~~] (E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

(2) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state and the person's blood or breath alcohol concentration is .15 or greater, the division shall:

(A) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(B) on the person's second occurrence, suspend the person's driving privileges for one year and at the end of the suspension,

restrict the person's driving privileges for two years to driving only a motor vehicle equipped with an ignition interlock device;

(C) on the person's third occurrence, suspend the person's driving privileges for one year and at the end of the suspension restrict the person's driving privileges for three years to driving only a motor vehicle equipped with an ignition interlock device;

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

~~[(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.]~~

~~(4) Whenever a person's driving privileges have been suspended for one year on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b) (1), after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional~~

~~year, in addition to any term of restriction as provided in subsection (b)(1).]~~

(c) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction in this state, the division shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year. If the person's blood or breath alcohol concentration is .15 or greater, the division shall at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

(2) on the person's second and subsequent occurrences, penalties shall be imposed pursuant to subsection (b).

(d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program.

(e) (1) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a), (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for

which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

(2) If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.

(f) If the division has taken action under subsection (a) for a test refusal or under subsection (b) or (c) for a test failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to K.S.A. 8-1020, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) or (c) for an alcohol or drug-related conviction.

(g) Upon restricting a person's driving privileges pursuant to this section, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.

~~[(h) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year period on the second occurrence of an alcohol or~~

~~drug-related conviction in this state as provided in subsection (b)(1).]~~

Sec. 2. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as follows: 8-1015. [~~(a) When subsection (b)(1) of K.S.A. 8-1014, and amendments thereto, requires or authorizes the division to place restrictions on a person's driving privileges, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto.~~

~~(b) In lieu of the restrictions set out in subsection (a), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense. Prior to issuing such restricted license, the division shall receive proof of the installation of such device.]~~

(a) Whenever a person's driving privileges have been suspended for one year as provided in subsection (a) or (b) of K.S.A. 8-1014, and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of restriction as provided in subsection (a) or (b) of K.S.A. 8-1014, and amendments thereto.

(b) When a person has completed the suspension pursuant to subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of restriction as provided in subsection (b) (1) (A) of K.S.A. 8-1014, and amendments thereto.

(c) Except as provided in subsection (b), when a person has completed the suspension pursuant to subsection (a) or (b) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (a) or (b) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device [~~approved by the division and maintained at the person's expense. Proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated~~].

(d) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the division and maintained at the person's expense. Proof of the installation of such ignition interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated.

(e) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition

interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year suspension period as provided in subsection (a).

~~(d)~~ (f) Upon expiration of the period of time for which restrictions are imposed pursuant to this section, the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

Sec. 3. K.S.A. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, 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) (1) 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.

(2) 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) (1) 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.

(2) 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) Except as provided further, on the third conviction of a violation of this section, a person who, within the preceding 10 years, has not been convicted of a violation of this section, 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 \$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.

~~[(1)]~~ (2) On the third conviction of a violation of this section, a person who, within the preceding 10 years, has been convicted of a violation of this section, 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+] (3) The court may order that the term of imprisonment imposed pursuant to paragraph (1) or (2) 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] severity level 7, nonperson felony.~~

~~[(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.]~~

(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.

(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.

(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]~~ only convictions occurring on or after July 1, 1996, shall be taken into account when determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section;

(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;

(6) "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(7) "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;

(8) "drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

(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.

(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) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, 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) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, 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.

(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.

(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.

(u) Upon a 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.

~~[(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. 2010 Supp. 21-36a12, and amendments thereto.]~~

~~(w)~~ (v) 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.

~~(x)~~ (w) 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 presentence evaluation shall be made available, and shall be considered by the sentencing court.

Section 4. Section 285 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows:

<This is the recodified sentencing grid statute, 21-4704>

<current law (a)-(h) will appear here>

(i) (1) The sentence for the violation of the felony provision of subsection (f)(2) of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,

shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

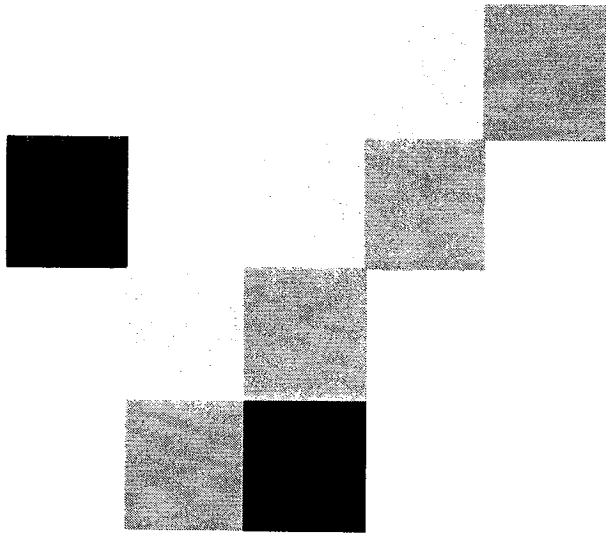
(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of subsection (f)(2) of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for [~~felony~~] violations of subsection (f)(2) of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(4) Notwithstanding the provisions of any other section, the sentencing court shall retain jurisdiction to modify the sentence

imposed for the violation of subsection (f) (2) of K.S.A. 8-1567, and amendments thereto.

<current law (j)-(r) will appear here>

(s) Notwithstanding the provisions of any other section, an offense under subsection (q) of K.S.A. 8-1567, and amendments thereto, shall be classified in grid block 7-G, except when, because of the offender's criminal history classification, the offense is classified in grid block 7-A, 7-B, 7-C, 7-D, 7-E or 7-F.



Kansas DUI Commission

Criminal Justice
Subcommittee

Charge

- Study current DUI statutes
- Are penalties adequate?
 - Is the sanction appropriate?
 - Will penalties help reduce reoffending?
- What are the issues with the organizational structures for how DUI cases are handled?
- Which courts should have jurisdiction over DUI's?

Findings & Recommendations

- All recommendations are based on the assumption that a complete and accurate criminal history is available.
- Penalties for first time offenders are adequate.
- Treatment imposed by the courts shall be based on meaningful evaluations which include verified criminal history, treatment history, and is responsive to the individual offender's treatment needs, and shall be imposed even on a first offense.

Findings & Recommendations

- A first offense DUI conviction or diversion is not automatically disabling for anyone who is licensed, registered or certified in the state with the exception of a Commercial Driver's License (CDL).
 - The governing body shall have a due process hearing, if requested, to determine what impact the offense will have, which may include alternative corrective measures in lieu of termination of licensure, registration or certification.

Findings & Recommendations

- The full commission voted to recommend on first offenses:
 - Test results of .08 BAC to less than .15 BAC: 30 day suspension and mandatory use of an ignition interlock device for one year and to be restricted to driving to and from work or treatment
 - Test results of .14 BAC and greater: 45 day suspension and mandatory use of an ignition interlock device for two years and to be restricted to driving to and from work and treatment during the first year and no restriction during the second year.
 - Test refusals: 45 day suspension and mandatory use of an ignition interlock device for two years and to be restricted to driving to and from work and treatment during the first year and no restriction during the second year.

Findings & Recommendations

- Penalties for second time offenders are adequate with these stipulations:
 - The incarceration requirement specified in KSA 8-1567 v.2 is followed. This means jail or some other housing arrangement that serves to confine the offender and restrict their contact anyone other than staff and other program participants during the period of confinement
 - Weekend Intervention Programs (WIPs) would satisfy this if approved by the court
 - 2 days jail (per clarification above) followed by:
 - 3 days jail, or
 - 6 days work release, or
 - 10 days house arrest with no credit for time served on house arrest
- Offenders using ignition interlock systems should be on probation with more systemic feedback on performance provided to probation officers, courts, and treatment providers.

Findings & Recommendations

- Treatment imposed by the courts shall be based on meaningful evaluations which include verified criminal history, treatment history, and is responsive to the individual offender's treatment needs.
- Verification independent of offender self reporting shall be made of both the criminal history and treatment history.

Findings & Recommendations

- The full commission voted to recommend on second and subsequent convictions:
 - Test results of .08 BAC to less than .15 BAC: 30 day suspension and mandatory use of an ignition interlock device for two years and to be restricted to driving to and from work or treatment.
 - Test results of .14 BAC and greater and refusals: 45 day suspension and mandatory use of an ignition interlock device for three years and to be restricted to driving to and from work and treatment during the first year and no restriction during the remaining years. 8

Findings & Recommendations

- The full commission voted to limit the “look back” period for criminal history to July 1, 1996.
- The full commission voted to recommend, following a second offense, if a clean ten year record has been maintained, the third offense will be charged as a misdemeanor.

Findings & Recommendations

- Third time DUI offenses should be a misdemeanor with the same penalties currently attached to a third time conviction.
 - The full DUI Commission voted to retain the third DUI conviction as a felony and to allow the courts to retain jurisdiction over the case post sentence.
- Third time DUI offenses should be handled at the district court level.

Findings & Recommendations

- Assumes that treatment now being targeted toward third time DUI's remains available.
- Supervision of third time DUI's shifts to Community Corrections.
- Revocation time is served in county jails.
- Requires at least a 12 month probation period.

Findings & Recommendations

- Fourth and subsequent DUI convictions are felonies with substantial sentences with incapacitation as the predominant strategy.
 - Treatment may be offered to DUI offenders incarcerated in the state corrections system based on available resources, but DUI offenders will not take priority over other prisoners in the corrections system.

Findings & Recommendations

- The full commission voted to recommend that fourth and subsequent DUI's be placed on the Kansas Sentencing Guidelines Grid as a severity level 7 felony with two methods of scoring criminal history.
 - Regular method
 - Special rule – ND level 7 G
 - Whichever penalty is greater shall apply
 - Two years post release supervision
 - Offender may be immediately released from prison portion of sentence upon satisfactory completion of treatment as determined by the Kansas Parole Board₃

Findings & Recommendations

- Refusal of a request for blood or urine would be a violation of the DUI statute. If the suspect refuses to comply with the request, the officer will request the evidentiary breath or blood test. The person being charged will be given a reasonable opportunity to confer with an attorney.
 - Within 1 hr. of request for blood test if 3 hr. window or 30 minutes if 2 hr. window.

Findings & Recommendations

- Expungement – modify the expungement statute to permit expungement after 5 years of completion of probation if a misdemeanor or 7 years if a felony.
 - Does not have an impact on how people are charged.

Findings & Recommendations

- Municipal courts wanting jurisdiction over DUI cases shall be approved the Supreme Court in accordance with rules promulgated by the Court. Those rules should include requirements that:
 - a standardized risk assessment instrument approve by the Kansas Sentencing Commission be used.
 - a standardized substance abuse evaluation approved by the Department of Social and Rehabilitation Services be used.
 - the court utilize the results of that risk assessment and evaluation in determining dispositions.
 - the court have the capacity to supervise the offender accordingly.

Findings & Recommendations

- Any court hearing DUI cases that result in conviction shall order the standardized risk assessment approved by the Sentencing Commission and the standardized substance abuse evaluation approved by SRS.
- Any court hearing DUI cases shall have the ability to report those transactions electronically to KCJIS

Findings & Recommendations

- Each judicial district should be encouraged, but not mandated, to establish at least one DUI court within the district. Any such court should:
 - Follow the 10 principles of effective problem solving courts
 - Conform to evidence based practices
 - Maintain fidelity to the model in order to achieve successful outcomes.

2-19

Findings & Recommendations

- Officers of the court shall share criminal history information with the substance abuse professional preparing the substance abuse evaluation, and the substance abuse professional shall request that information from the appropriate entity designated by the court.

2-20

Findings & Recommendations

- Recommend that treatment capacity be established within KDOC for offenders convicted of 4th and subsequent DUI's.
- It is our preference that treatment be offered during each incarceration, but the prioritization for placement and impact on parole eligibility should diminish with each subsequent conviction.

Other Considerations

- Regarding DUI or Drug Courts:
 - There should be statutory authorization for the change in the nature of the relationship between the court and defendant (ex parte communication)
 - A change in criminal procedure should be drafted to authorize and codify procedures consistent with principles of therapeutic or problem solving courts.