

MINUTES

KANSAS DUI COMMISSION

October 29, 2010
Room 346-S—Statehouse

Members Present

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

Members Absent

Representative Lance Kinzer
Honorable Jennifer Jones
Roger Werholtz, Secretary, Kansas Department of Corrections
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, Committee Assistant

Others Attending

See attached list.

The meeting was called to order by Chairperson Owens at 9:10 a.m.

The minutes of October 8, 2010 were reviewed and corrections made to clarify the wording on Representative Paul's motion on page two, Karen Wittman's motion on page three, and spelling corrections. *Representative Pauls moved, Ed Klumpp seconded, to approve the Commission minutes of October 8, 2010, as corrected. Motion carried.*

Karen Wittman reported the findings of the subcommittee on Law Enforcement and Record Keeping (Attachment 1).

The Commission previously had agreed that the Kansas Criminal Justice Information System (KCJIS) is the appropriate entity for the records; the Subcommittee provided a list of recommendations pertaining to records. Ed Klumpp provided a summary addressing concerns raised during the last meeting regarding possible conflicts with the reporting system. Mr. Klumpp indicated his concerns are in areas that do not impact the DUI arrest and disposition reporting (Attachment 2).

Ms. Wittman reviewed the subcommittee recommendations regarding *per se* violations. *Following discussion Ed Klumpp moved, Greg Benefiel seconded, to change the two hour time frame for per se violations to three hours with the required changes to Chapter 8 of the Kansas Statutes Annotated.*

Doug Wells made a substitute motion to a crime with a rebuttal presumption. Motion died due to lack of a second.

Back on the original motion, motion carried.

Ms. Wittman reviewed recommendations regarding DUI aggravated battery.

Karen Wittman moved, Greg Benefiel seconded, to accept the subcommittee recommendation to allow for a DUI which causes bodily harm or great bodily harm similar to DUI manslaughter and make a special sentencing rule similar to DUI manslaughter special rule. Motion carried. Doug Wells voted no and requested his vote be recorded.

Senator Owens requested clarification on the third offense section of the report. Ms. Wittman indicated the Commission addressed the issue at the previous meeting during the review of recommendations of the Criminal Justice Subcommittee.

Ms. Wittman reviewed the recommendations regarding a change in definition of prior convictions to include commercial vehicles and military DUI convictions. Ms. Moore indicated that military records cannot be included on the KCJIS report but that information will be found on federal Interstate Identification Index (Triple I) reports. The question also was raised regarding Native American reservations which are under federal jurisdiction.

Greg Benefiel moved, Chris Mechler seconded, to amend the definition of previous DUI convictions to include commercial, military, and boating convictions. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman reviewed recommendations regarding amending municipal appeals. Senator Owens indicated this is a problem the public wants addressed.

Judge Pete Ruddick moved, Greg Benefiel seconded, to allow for amendment of charge in a municipal appeal. Motion carried.

Ms. Wittman reviewed recommendations regarding delays in driving suspensions until a person is released from prison. It is recommended that suspensions would begin on the date of release from a Kansas Department of Corrections (KDOC) facility which would require the KDOC report to the Kansas Department of Revenue, Division of Motor Vehicles (KDOR) the release date of the prisoner.

Karen Wittman moved, Ken McGovern seconded, to delay suspension until an offender is released from prison.

Greg Benefiel made a substitute motion that driving suspensions for DUI related offenses be stayed during incarceration in a KDOC facility and the KDOC will notify the Division of Motor Vehicles of the release date. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman reviewed recommendations regarding ignition interlock devices.

Karen Wittman moved, Greg Benefiel seconded, to recommend the Legislature require the Kansas Department of Health and Environment (KDHE) draft rules and regulations to approve ignition interlock devices, and set standards for ignition interlock devices. Motion carried.

Karen Wittman moved, Chris Mechler seconded, to require ignition interlock devices for all DUI convictions. It was noted the Commission already had adopted this recommendation. The motion was withdrawn.

Karen moved to change the statutes to reflect a special form for ignition interlock device providers to use in determination of indigent status. Motion died for lack of a second.

Ed Klumpp moved, Doug Wells seconded, to amend KSA 8-1016(5) by striking the language following the word "indigent" and inserting "by the court" and give the revisor latitude to draft language as needed. Following discussion, Doug Wells withdrew his second, followed by Ed Klumpp withdrawing his motion.

Greg Benefiel moved, Ken McGovern seconded, that KDHE ensure that ignition interlock device providers, as a requirement of doing business in Kansas, provide notice to offenders of what the definition of indigence is, notification that funds are available and how to apply for assistance, and that KDHE will ensure that all providers adhere to uniform charges throughout the state. Motion carried.

The Commission recessed for lunch at 12:00 p.m. and reconvened at 12:40 p.m.

Karen Wittman moved, Greg Benefiel seconded, to remove the word "leased" from the ignition interlock device requirement. Motion carried. Doug Wells voted no and requested his vote be recorded.

Karen Wittman moved, Greg Benefiel seconded, to require ignition interlock devices be equipped to capture a photographic image of the person providing the breath sample. Motion carried.

Karen Wittman moved, Doug Wells seconded, an affidavit explaining ignition interlock device violations be included in the application for ignition interlock device use. Motion carried.

Karen Wittman moved, Doug Wells seconded, to recommend if the ignition interlock device is installed and in use within 90 days of the offense date and have no violations during any suspension period or restriction (i.e., Driving outside restriction, DUI, Driving while suspended (DWS), violations of the device) the licensee will get 25 percent credit for every day he had the device installed and in use. Motion failed.

Ms. Wittman indicated there is no punishment for violations of the misuse of the device.

Karen Wittman moved, Pete Bodyk seconded, to amend KSA 8-1017 regarding circumvention of ignition interlock devices by extending the driving restriction an additional 90 days and upon a second conviction for violation of this section, the Division shall begin the original suspension period over. Motion carried.

Ms. Wittman reviewed a proposed new section to the bill regarding administrative ignition interlock devices violations (page 15 of Attachment 1).

Karen Wittman moved, Greg Benefiel seconded, to adopt the proposed new section with a change on (b) striking the language "...KDHE of the violations. KDHE upon review may submit to the..."; changing the reference KDHE to Division of Motor Vehicles (DMV) and giving the revisor latitude to insert corrective language. Motion failed.

Ms. Wittman indicated KSA 8-1567 is confusing by allowing DMV to suspend a person for a period of time due to testing, lack of testing, or non-payment of tickets.

Greg Benefiel moved, Honorable Pete Ruddick seconded, to strike the language in KSA 8-1567(l)(1) which states, "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". Motion carried. The Chairperson recommended the Commission grant the revisor latitude to draft language as needed to comply with federal requirements. The Commission agreed.

The Commission discussed the proposed recommendations on KSA 8-292, court imposition of driving privilege restrictions; duration; procedure; violation; penalty. Following discussion, the Commission decided no action needed to be taken regarding this section.

Ms. Wittman indicated KSA 8-254 (mandatory revocation of driver's license by division of vehicles; exceptions for court imposed restriction) lists violations in the mandatory suspension list that are no longer violations of the law. Ed Klumpp indicated the section needs specificity. The Committee discussed KSA 8-1014, suspension and restriction of driving privileges for test refusal, test failure or alcohol or drug-related conviction; increased penalties for blood or breath alcohol concentration of .15 or greater; ignition interlock device.

Following the discussion, *Greg Benefiel moved, Doug Wells seconded, to add specificity to KSA 8-1014 by including but not limited to DUI manslaughter and DUI aggravated battery to ensure offenses are reported to DMV for appropriate action. Motion carried.*

Ms. Wittman reviewed a proposed section (page 16, Attachment 1) addressing recommendations on bond conditions prior to release. Specifically, she discussed that except as otherwise provided, the court having jurisdiction over violations of this section shall adopt the following mandatory bond conditions while the case remains pending:

- For a first DUI offense, the person shall not drive without a valid license and insurance and the person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court.
- For a second and subsequent offenses, the person shall not drive without a valid license and insurance; the person shall not operate a motor vehicle without first showing the court proof of installation of an approved ignition interlock device, with reports sent to the court for monitoring; the person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court; and the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided for in this act.
- The court may order a continuous transdermal alcohol monitoring device and/ or an in home alcohol monitoring device for any severity level DUI offense.

Karen Wittman moved, Greg Benefiel seconded, to adopt the proposal but not make mandatory. Additionally, they moved to amend the section (b) striking the word "treatment" and inserting the word "evaluation", Finally, they moved to remove the delineation in number of offenses. Motion carried.

The Commission discussed the issue of criminalizing breath test refusals deferred from the October 8 meeting. Greg Benefiel distributed and reviewed a proposed draft based on Nebraska's test refusal law (Attachment 3).

Following discussion, *Greg Benefiel moved, Karen Wittman seconded, to amend the proposed draft on page 2, section (c)(1) changing five days to 10 days; adding house arrest using a special rule for DUI, and no plea bargain except to the DUI and adopt the proposed draft, as amended. Motion carried. Doug Wells voted no and requested his vote be recorded.*

Greg Benefiel moved, Ed Klumpp seconded, implied consent adds warning that refusal is a separate crime. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ed Klumpp moved, Ken McGovern seconded, to have the revisor either draft a standalone statute to mirror KSA 8-1012 or include in existing statutes, to allow preliminary drug screening test using saliva, with the device approved by the Kansas Bureau of Investigation (KBI). Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman brought to Commissions attention additional considerations not discussed by the Subcommittee on Law Enforcement and Recordkeeping (Attachment 4).

The Commission discussed changing the language defining who may be authorized to collect blood and urine samples. *Greg Benefiel moved, Ed Klumpp seconded, to amend KSA 8-1001 by adding "or other qualified medical personnel." Motion failed.*

Ms Wittman reviewed recommendations regarding wage assignment of persons given the ability to work while incarcerated. Currently, many do not make payments to the court as they should.

Karen Wittman moved to amend KSA 8-1567(l) to include as a condition of granting work release, requiring offenders sign and submit to the court a wage assignment authorizing the employer to deduct and forward to the clerk of the court a portion of each paycheck in an amount the court deems reasonable as payment of any restitution, fine, court costs, or court appointed attorney fees assessed by the court. Motion died due to lack of a second.

Ms. Wittman reviewed recommendations that driver's license hearings should remain with the DMV, a fee should be assessed for a request for a hearing, and protocols should be established for the hearing.

Karen Wittman moved, Ken McGovern seconded, to assess a filing fee for driver's license hearings. Motion carried.

Greg Benefiel advised the Commission there is no administrative sanction for failing a urine test. Greg Benefiel moved, to recommend a change to the existing statutes by mirroring the language on page 5 of Attachment 3, section (j) of the Nebraska refusal law distributed earlier.

Following discussion, *Greg Benefiel amended his motion to include the following changes: Section (j) strike "supervised by" and re-insert "supervised by" at the beginning of (j)(1) and insert the word "By" at the beginning of (j)(2), and (j)(3). Karen Wittman seconded.*

Doug Wells made a substitute motion to amend the sentence following (j)(3) beginning with "The results of qualitative testing....." by striking "the weight rather than." Senator Owens seconded for the sake of discussion. Motion failed.

Back on the original motion, Ed Klumpp requested the stricken line "When possible, the supervising person shall be a law enforcement officer" be re-inserted. It was agreed. Motion carried. Following the vote, staff indicated the change requested by Mr. Klumpp was in conflict with the changes of the original motion. It was agreed to go back to approve the original motion. Motion carried.

This concluded the Law Enforcement and Record Keeping Subcommittee recommendations.

Les Sperling reviewed the recommendations from the Evaluation and Treatment Subcommittee (Attachment 5).

Recommendations include:

- Require all providers of DUI evaluation and alcohol and drug Information schools to be licensed by Social and Rehabilitation Services-Addiction and Prevention Services in DUI services;

- Licensed DUI specialty providers comprise the DUI evaluation and education network available to all judicial districts and municipal courts;
- Require all DUI substance use evaluations to be completed in a standardized electronic format;
- SRS DUI specialty licensing standards should be revised to reflect best practices;
- Educational and treatment interventions should match the individual offender's clinical profile;
- Eliminate reference to "offender monitoring" from existing statutes;
- Encourage DUI specialty providers to implement best practices; and
- DUI evaluation and alcohol and drug information fees should be paid directly to DUI specialty providers at the time of service.

It was noted that a significant number of the recommendations will require additional effort and resources from the Kansas Department of Social and Rehabilitation Services. It is recommended that sufficient resources be provided to complete the tasks.

The Chairperson thanked the Commission and staff for the work done. The meeting will be used to review the final draft of the proposed bill.

The meeting adjourned at 4:50 p.m.

The next scheduled meeting is November 15, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

November 15, 2010

(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: Oct 29, 2010

NAME	REPRESENTING
Larry R Bazz	LKM
Melissa Wapemann	KAC
Michelle Butler	Capitol Strateges
Steve Wilde	Smith Audio Visual
SARAH HANSEN	KAAP
Kevin Berene	KIID
Patrick Vogelberg	Kearney and Assoc.
Corey Kenney	City of Lenexa
DARION DERNOWSKI	KHP
Mike Finkbeiner	KIIA
Ted Smith	KDOR
C. Noble	ASAP

DUI COMMISSION
Karen Wittman
Chairperson of the Law Enforcement/Recordkeeping Subcommittee
Kansas Traffic Safety Resource Prosecutor
Kansas Attorney General's Designee
October 8, 2010

Δ RECORDS

1. KCJIS is the appropriate entity for the records.
2. KCJIS would be able to generate a report that would be certified to use in court (change to K.S.A. 60-456)
3. Subscription and notify program to be used to alert prosecutors, court officials, probation offices of activity of an individual pertaining to current law enforcement contact on a daily basis.
4. Include a mandatory reporting policy for courts hearing DUIs and an auditing system with sanctions for not reporting.
5. A set of standards set forth by the Kansas Supreme Court to determine if a court is "qualified" to hear DUIs. Ie. Reporting requirements, supervision etc.

Δ TIME FRAME FOR PER SE VIOLATION

1. Change the 2 hour per se violation to a 3 hour per se violation.
 - a. Changes to all DUI, commercial vehicles-DUI, Boating-DUI and the definitional section, K.S.A. 8-1013(f) and K.S.A. 32-1130

Δ PRIOR DUIs

1. At the present time look back to determine prior DUIs is a person's lifetime.
 - a. Look back for determining DUI begins July 1, 1996 (criminal justice committee and record keeping committee-preliminarily voted for this)—this is for charging purposes but the judge would be abl

into consideration ALL DUIs in a person's lifetime to sentence.

b. OR do we wish to keep it lifetime?

Δ 3RD OFFENSE A FELONY OR MISDEMEANOR

1. Should we leave it the way it is at the present time-keeping 3rds a felony.
 - a. If we do that-it has been discussed to allow the judge to retain jurisdiction.-State v. Anthony 274 Kan. 998 (2002) : The district court has no jurisdiction to modify a sentence once it has been legally imposed under the felony provisions of the DUI statute, K.S.A. 8-1567(f).
 - b. Will require at the very least a change to K.S.A. 21-4704(i)
2. IF we change it to a 3rd to a misdemeanor—will not require any changes to Sentencing Guidelines.

Δ DUI AGGRAVATED BATTERY

1. This proposal allows for a DUI which causes bodily harm or great bodily harm. This proposal is similar to DUI manslaughter.
2. If this is approved a request to make a special sentencing rule again similar to DUI manslaughter special rule.

Δ CHANGE THE DEFINITION OF PRIOR CONVICTION

1. Allow "convictions" to include commercial vehicles and military DUIs.
 - a. Example: If a person gets a regular DUI and later gets a Commercial DUI they will both be considered First offenses. (Brought to my attention by County Attorney)

b. Example: A soldier received 3 DUIs in Fort Riley under the Uniform Code of Military Justice—then receives a DUI in Junction City—it would be considered a First offense. (brought to my attention by a Major who prosecutes under the UCMJ-and requests this change-states he will obey any requirements for reporting to DMV or KCJIS)

2. A change to K.S.A. 8-1567(l)(1) and K.S.A. 8-2,144 will be required.

Δ ALLOW FOR AMENDMENT OF CHARGE IN A MUNICIPAL APPEAL

1. District Judges have interpreted City of Wichita v. Marlett 31 Kan.App.2d 360 (2003): to prohibit city prosecutors on an appeal to amend the severity level.

a. Example: Defendant is charged in city court and found guilty of DUI 1st offense. Defendant appeals. While the appeal is pending the defendant commits another DUI and is sentenced as a 1st offense. The city prosecutor moves to amend the pending DUI severity level to a 2nd offense but judge denies this.

b. Need to amend K.S.A. 22-1610 "hearing on appeal".

Δ DELAY SUSPENSION UNTIL PERSON IS RELEASED FROM PRISON

1. Chief Klump noted a person that goes to prison for killing someone while driving is released from prison with the suspension for their driver's license over because the suspension was completed while they were in prison.

2. The suspension would begin on the date of the release of the defendant. This would require the DOC to report the release date of the prisoner to the Dept of Motor Vehicle for the suspension to then commence.

Δ IGNITION INTERLOCK

1. KDHE to craft rules and regs
 - a. Approve devices
 - b. Set standards
 - c. Review violations for submission to DMV
2. IID for **ALL DUI** offenders.
3. Change how we determine if a person is indigent to get a device.
 - a. Currently K.S.A. 8-1016(5) states:

The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program.
 - b. New York has devised a financial disclosure form that takes into account the discretionary income ie. Cell phone bills, cable, lottery etc. of a defendant and allows for "free" devices for those that qualify.
4. "Owned, operated or leased"
5. PHOTO technology required so we know who is producing the sample.
6. Short suspension then ignition interlocks for all DUI offenders if they qualify.
7. Offender will have to "apply" for approval of the device and until the application is received and approved-they are suspended. (wish to discuss fixing an unpaid ticket)
8. The application will be an "affidavit" explaining IID and what happens if they have violations of use.
9. The sooner the person gets the device the sooner they can get off the device (as long as no violations such as a new DUI, driving without restrictions, DWS-or violations of the use of the device)

10. Persons getting the device while waiting for their request hearing will get "credit" for that time.
11. For violations of the use of the device (ie. Not getting it serviced in a timely manner, failing to take rolling retest etc.) will get extension of the required time for use of the device.
12. Time frames for Ignition interlock—also makes REFUSAL worse punishment:

If you **REFUSE** the test:

First occurrence-2 year suspension & 3 year IID

Second occurrence 3_year suspension & 4 year IID

Third occurrence 4 year suspension & 5 year IID

Fourth occurrence 5 year suspension & 6 year IID

If you **fail the test** and are **ABOVE 0.15**:

First occurrence-1 year suspension & 2 year IID

Second occurrence 2_year suspension & 3 year IID

Third occurrence 3 year suspension & 4 year IID

Fourth occurrence 4 year suspension & 5 year IID

If you **fail the test** and are **over 0.08 and below 0.15**

First occurrence-45 days suspension & 1 year IID

Second occurrence 90 days suspension & 1 year IID

Third occurrence 1 year suspension & 2 year IID

Fourth Offense 2 year suspension & 3 year IID

OVERALL RULES FOR ANY TEST/REFUSAL

- a. After you receive a DUI and served with DC-27, after 45 days you can request IID.
 - b. During 'suspension' time with the device -you can only drive on restricted (ie. To and from work, school etc.).
 - c. After suspension period (with or without interlock) with no violations...can go to IID use UNLIMITED...can drive anywhere. Example: 2nd occurrence and you took the test and were over 0.15... get IID after 45 days...it is restricted to only drive certain places for (2 years) and during "restriction" (3 years) can drive anywhere.
 - d. If however person never gets IID and gets violations such as driving without restrict/Driving while suspended. The entire suspension process starts over.
 - i. Example: I am a second occurrence (over 0.15)—I never get IID or anything ...it is beginning my "third" year allowing for IID and I get a driving without IID restriction—The suspension period starts over with waiting 45 days and then requesting for up to the 5 years all over again.
 - e. If the person does not have a vehicle a continuous transdermal device or an in home alcohol monitoring device can be substituted.
13. Fifth or more (no matter take the test or NOT)
- Lifetime suspended—however Lifetime ignition interlock (after 45 days)- can get off of this if proof of the device and use for 12 year without violations ...can get full license.

14. The sooner you request the device the sooner you will be able to get off it off.

If device is installed and in use within 90 days of the offense date and have no violations during any suspension period/restriction (ie. driving outside restriction, DUI, DWS, violations of the device)-- The licensee will get 25% credit for every day he had the device installed and in use.

15. RESTRICTION –should include medical emergencies and going to probation, parole, and court. (don't know how that will effect federal funding.)

Δ Look at K.S.A. 8-292 Court imposition of Restrictions

Would like to include ignition interlock within the restrictions the court could impose on any traffic violation listed in K.S.A. 8-254.

Δ Review K.S.A. 8-254

There are a few violations listed in the mandatory suspension list that are no longer violations of the law. Do we wish to add to them.

Δ BOND CONDITIONS PRIOR TO RELEASE

This would be a new statute:

(a)(1) Except as otherwise provided, the court having jurisdiction over violations of this section shall adopt the following mandatory bond conditions while the case remains pending:

(a) For a First DUI Offense;

(1) The person shall not drive without a valid license and insurance;

(2) The person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court.

(b) For Second and subsequent Offenses;

(1) The person shall not drive without a valid license and insurance;

The person shall not operate a motor vehicle without first showing the court proof of installation of an approved ignition interlock device, with reports sent to the court for monitoring;

(3) The person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court;

(4) The person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided for in this act.

(c) The court may order a continuous transdermal alcohol monitoring device and/ or an in home alcohol monitoring device for any severity level DUI offense.

(b) Nothing in this section shall prevent a court from imposing additional bond conditions deemed necessary and otherwise provided by law.

Δ REFUSALS

1. Criminalize
2. Make a per se violation
 - a. This will be addressed by the Criminal Justice Subcommittee I believe.

Δ DRIVER'S LICENSE HEARINGS

1. Hearings should be kept with DMV.
2. Fee should be assessed to request a hearing-fee different for "face to face" hearing or "telephone" conference.
3. Establish a protocol or the hearing.
 - a. Hearing officer to receive special training.
 - b. Time frames for things to be done eg. Taking things under advisement, continuances-possibly getting more hearing officers
 - c. Look to K.S.A. 8-1020(k) to determine if all this is necessary for review.

To: DUI Commission Chairman Senator Tim Owens

From: Karen Wittman, Asst. Atty. General, Attorney General Steve Six, Designee and all person of the Record Keeping Subcommittee: Pete Bodyk, Major Marc Bruce, Wiley Kerr, Chief Ed Klumpp, Sheriff Ken McGovern, Marcy Ralson

Date: October 8, 2010

RE: Legislative Changes Requests

RECORDS

1. KCJIS is the appropriate entity to collect and furnish data to agencies in need of information concerning DUI criminal history. This information provided would allow one inquiry that would check all records on an individual such as: Department of Motor Vehicle (DMV) records, arrest history, conviction data.
2. Inquiry to KCJIS would produce a "certified" record of information held by the State of Kansas concerning an individual identified.
 - a. A report could be generated that would provide an "evidentiary" report which would be offered in court as the "official record".
 - b. A possible legislative change would be required to include this in K.S.A. 60-465 (Authentication of Copies of Records)
3. A "subscription and notify" program could be created to generate information to alert prosecutors, court officials, and probation officers of any activity of an individual pertaining to any current law enforcement contact on a daily basis.
4. Do we also wish to allow for auditing of reporting agencies and sanctions for not reporting---See Interim Committee report page

TIME FRAME FOR PER SE VIOLATION

1. At the current time a test within 2 hours of operating or attempting to operate an automobile can be used to prove a per se violation under K.S.A.2007 Supp. 8-1567(a)(2).
2. In some rural areas this is somewhat problematic especially dealing with fatal or near fatal crashes. Time clearly is of the essence for law enforcement. The appellate courts indicate tests should be administered as near in time to the arrest as practicable however due to manpower limitations or severity of the crash sometimes this is not possible.
 - a. After review of case law there really is no indication where this 2 hour limit came from except from what seemed "reasonable".
 - b. This subcommittee has reviewed other states 'per se' time limits. They range from 4 hours to "a reasonable time" without a numerical limit. We have

concluded what would be more practicable for everyone is a 3 hour time limit to prove a 'per se' violation.

3. This would require the following changes:

a. K.S.A. 8-2,144 (Commercial vehicle DUI)

(2) the alcohol concentration in the person's blood or breath, as measured within ~~two~~**three** hours of the time of driving a commercial motor vehicle, is .04 or more; or

b. K.S.A. 8-1567 (Regular DUI)

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

c. K.S.A. 8-1013 (Regular DUI-definitional section)

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken ~~two~~**three** hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

d. K.S.A. 32-1130 (Boating under the influence)

(b) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken ~~two~~**three** hours or more after the operation or attempted operation of a vessel; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

e. K.S.A. 32-1131 (Boating under the influence)

(a) No person shall operate or attempt to operate any vessel within this state while:

(1) The alcohol concentration in the person's blood or breath, at the time or within ~~two~~**three** hours after the person operated or attempted to operate the vessel, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, at the time or within ~~two~~**three** hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;

DUI-AGGRAVATED BATTERY

AGGRAVATED BATTERY WHILE DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS

(a) Aggravated Battery while driving under the influence of alcohol and/or drugs is:

(1)(A)unintentionally causing great bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto.

(1)(B) unintentionally causing bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto.

(2) Aggravated Battery while driving under the influence of alcohol and/or drugs as described in subsection (a)(1)(A) is a severity level 5, person felony. Aggravated battery while under the influence of alcohol and/or drugs as described in subsections (a)(1)(B) is a severity level 8, person felony

SPECIAL RULE on DUI AGG BATT

K.S.A. 21-4711

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of an act described in K.S.A. 21-3442, and amendments thereto **or Aggravated Battery-DUI**, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

THINGS TO CONSIDER---do we want to make this more egregious if it is a law enforcement officer while he is performing his official duties is struck and hurt by a drunk driver... or a KDOT worker

WHAT IS A CONVICTION??

Proposal to expand the definition of "conviction"

DUI (COMMERCIAL VEHICLE) AND DUI

If a person is convicted of a DUI in a non-commercial vehicle it is considered his first offense. If after a time the same individual gets a DUI in a commercial vehicle it is considered his first offense. He cannot receive punishment for a second offense because the elements of the crimes are "different".

MILITARY DUIS

Currently, if the soldier receives a DUI on Fort Riley, the DUI is generally prosecuted under the Uniform Code of Military Justice ("UCMJ"). Under the UCMJ, the following dispositions would be possible: "Article 15" (administrative, nonjudicial punishment imposed by the chain of command- could include a fine, extra work, and loss of rank; proof must be beyond a reasonable doubt but rules of evidence don't apply); "Summary Court-Martial" (pseudo-trial, proof beyond a reasonable doubt, rules of evidence apply, there is no military judge); "Special

Court-Martial or General Court-Martial" (the most judicial type of court-martial, as the case is presided over by a military judge). A soldier receiving a first time DUI will most likely receive an Article 15, which is in some ways analogous to a diversion. For any of the UCMJ means of disposition, the soldier is given the right to counsel without charge. A soldier also has the right to turn down an Article 15 and demand a higher level of disposition.

Our concern is that for purposes of determining sentence, the statute currently does not address prior UCMJ disposition. For example, if a soldier received 3 DUIs on Fort Riley and then is charged with DUI in Junction City for a subsequent incident, the Junction City case would only be a first for purposes of the Kansas statute. I would certainly be willing to provide any other information that you think would be helpful.

Here is some proposed language.

8-1567(l)(1):

"Conviction" includes being convicted of a violation of this section, entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section, convicted under K.S.A. 8-2,144, or receiving punishment under the Uniform Code of Military Justice for committing the acts that this section prohibits;

8-1567(l)(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; entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution; or receiving punishment under the Uniform Code of Military Justice in another state for committing the acts that this section prohibits;

Under the commercial driving statute also K.S.A. 8-2,144

ALLOW FOR AMENDMENT OF CHARGE IN A MUNICIPAL APPEAL

K.S.A. 22-3610(a) says municipal appeals are tried on the original complaint, unless found defective. There is a case, **City of Wichita v. Marlett**, 31 KA 2d 360 (2003) saying failure to allege a severity level doesn't make a complaint defective, and it wasn't an abuse of discretion to deny Wichita's motion to amend the severity level on appeal. The court seemed concerned with Wichita's practice of allowing defendants to walk in and plead at a docket where the city wasn't even represented. In any event, district judges read that as saying cities can't amend to the correct severity level on appeal.

Defendant was charge and found guilty of with DUI 1st offense. The defendant appealed this municipal case. While the appeal was pending, the defendant committed and pled to an intervening DUI. The defendant was just sentenced on it at the end of October as a 1st offense. The municipal prosecutor moved to amend to a 2d in the pending appeal, but the judge denied it. Why can't city prosecutors amend just as DA's can?

The Suggested Proposal:

22-3610. Hearing on appeal; exception

(a) When a case is appealed to the district court, such court shall hear and determine the cause on the original complaint, unless the complaint shall be found defective, in which case the court may order a new complaint to be filed and the case shall proceed as if the original complaint had not been set aside. The case shall be tried *de novo* in the district court.

(b) Notwithstanding subsection (a), appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 shall be conducted only on the record of the stipulation of facts relating to the complaint.

(c) Notwithstanding subsection (a), if the defendant is charged with an offense for which the number of prior convictions is required to be reflected in the charging document and the prosecutor can establish to the court's satisfaction that the defendant has obtained additional convictions since the case was charged in municipal court, the prosecutor shall be allowed to amend the complaint to reflect that proper number of prior convictions.

PERSONS IN PRISON DON'T GET THERE LICENSE BACK AUTOMATICALLY

A person in prison for killing someone for driving comes out with a "clean" record and is allowed to immediately get his/her license back. This amendment would allow for the suspension or revocation to be delayed until released from prison. I did not include individuals that would be incarcerated in a county facility because I thought it would be cumbersome for county jails—it could be included if needed however.

Commencement of period of suspension or revocation for incarcerated offenders

(1)When the court orders the defendant to serve a term of incarceration or imprisonment pursuant to the (sentencing grid) and the offense also suspends or revokes the defendant's driver's license as a result of the offense, the period of suspension or revocation shall commence upon the defendant's release from incarceration. For the purposes of calculating the defendant's eligibility for reinstatement of his or her driver's license or driving privilege under this section, the date of the defendant's release from incarceration shall be deemed the date the suspension or revocation period was imposed.

(2)The Department of Corrections shall notify the Department of Motor Vehicles of the date of the defendant's release from prison or other state correctional facility. The notification of a defendant's release from incarceration shall be on a form approved by the Department of Motor Vehicles. This subsection applies only to those defendants who have had their driver's license or driving privilege suspended or revoked as a result of the offense from which they are incarcerated or imprisoned in a state facility.

IGNITION INTERLOCK

1. KDHE seems the more logical agency to construct rules and regulations regarding ignition interlock devices.
 - a. K.S.A. 8-1016 would have to be changed.
 - b. KDHE shall adopt by rules and regulations concerning type of standards used to calibrate these devices, inspect facilities on an annual basis to insure record keeping and calibration requirements are being met, and training of providers.

- c. The device shall be equipped to capture a photographic image of the person providing the sample. IE. Photo technology
- d. Persons that are suspended or revoked for DUI could APPLY to the Division to determine if they are eligible for the ignition interlock. The application shall be in affidavit form (a form created by the DIVISION) A fee would be associated with this application –not to exceed \$25
- e. Once the device is placed on any car owned leased or **operated** by the person it shall be monitored for violations...these violations are set out in statute:

NEW SECTION:

(a) A person whose driving privilege or driver's license has been suspended or revoked pursuant to K.S.A. 8-1567 or K.S.A. 8-1001 may apply for an ignition interlock license from the division if they are eligible to request an ignition interlock.

(b) An applicant for an ignition interlock license shall:

(1) sign an affidavit on an approved form of the division acknowledging that:

- (a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to criminal and civil penalties;**
- (b) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the applicant to further civil penalties;**
- (c) applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.**
- (d) Shall refrain from any of the following activity, which may subject the applicant to further civil penalties:**
 - (1) Have 3 rolling re-test violations, with no subsequent sample less than 0.04 within 5 minutes, within monitoring period**
 - (2) Provide a breath sample 3 times within monitoring period that is at or exceeds 0.04.**
 - (3) Have a lockout event occur.**
 - (4) Report of tampering or circumventing or attempts to tamper or circumvent without a conviction.**

(2) pay a fee to the division not to exceed \$25 dollars and

(3) provide any further information as needed by the Division.

(c) The Division will notify the person if they are eligible or not eligible and the reasons therefore.

(d) If approved and upon notification from the provider the ignition interlock has been installed, 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.

8-1017. Same; circumvention of ignition interlock device; penalty

(a) No person shall:

(1) Tamper with, **or allow another to tamper with**, an ignition interlock device ~~for the purpose of circumventing it or rendering it inaccurate or inoperative;~~

(2) request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;

(3) blow into or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or

(4) operate a vehicle not equipped with an ignition interlock device during the restricted period.

(b) Violation of this section is a class A, nonperson misdemeanor.

(c) In addition to any other penalties provided by law, upon receipt of a **first** conviction for a violation of this section, the division shall ~~suspend the person's driving privileges for a period of two years.~~ **extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days.**

(d) Upon a second conviction for violation of this section, the division shall begin the original suspension period over

NEW SECTION

(a) **No person shall:**

- (5) **Have 3 rolling re-test violations, with no subsequent sample less than 0.04 within 5 minutes, within monitoring period**
- (6) **Provide a breath sample 3 times within monitoring period that is at or exceeds 0.04.**
- (7) **Have a lockout event occur.**
- (8) **Report of tampering or circumventing or attempts to tamper or circumvent without a conviction.**

Lockout shall be defined by the Kansas Department of Health Environment.

(b) **The provider shall notify the KDHE of the violations. KDHE upon review may submit to the Division the violation.**

(c) **Upon receipt from KDHE of a violation of section (a) the Division shall**

- (1) **Upon notification of a first violation of this section, the division shall notify the licensee of the violation and explain further punishment if any of the violations listed in section (a) occur again.**

(2) Upon notification a second violation, the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days.

(3) Upon notification of a third violation the division shall start the suspension period time over again

2. Have a report generated of the persons required by DMV to have interlock in their vehicle and compare that to the reports generated and submitted to KDHE from interlock providers.
 - a. Notification to those individuals required to have interlock that do not that further sanctions may be imposed.
 - b. Some type of sanction to those individuals not having interlock in their vehicle.
 - c. Possible impoundment of vehicle or extension of requirement of interlock or both.
3. Stiffer sanctions of those individuals who have violated their interlock obligations ie. Received violations during its' operation.
 - a. This may require a legislative change to K.S.A. 8-1017.
 - b. This may also require changes to the Kansas Regulations concerning ignition interlock.
4. Currently the statute is confusing...DMV may suspend a person for a period of time due to the persons testing or lack thereof or they are suspended for not paying tickets yet:

K.S.A. 8-1567 stated the court SHALL impose a sanction of ignition interlock...confusing

(l) (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~~, **lease or operated**, 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. No order is required if the.....

5. Require KDHE to prepare rules and regs to ensure the device meets NHTSA standards for precision and accuracy.

LOOK AT K.S.A. 8-292 Court imposition of Restrictions

8-292. Court imposition of driving privilege restrictions; duration; procedure; violation; penalty. (a) Except as otherwise provided by law, whenever a statute authorizes the court to place restrictions on a person's driving privileges or whenever a municipal ordinance which prohibits the acts prohibited by such a statute so provides, a district or municipal court may enter an order restricting the person's driving privileges to driving only under the following circumstances: (1) In going to or returning from the person's place of

employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; **(4) court proceedings** ~~(4) (5)~~ in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008, and amendments thereto; **(6) with an ignition interlock as provided in K.S.A. 8-1015 (5) (7)** at such times of the day as may be specified by the order; and ~~(6) (7)~~ to such places as may be specified by the order.

(b) Restrictions imposed pursuant to this section shall be for a period of not less than 90 days nor more than one year, as specified by the court order.

(c) Upon entering an order restricting a person's driving privileges under this section, the court shall require that the person surrender to the court any driver's license in the person's possession. The court shall transmit any such license to the division of vehicles of the department of revenue, together with a copy of the order. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and that a certified copy of the order imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the court shall transmit a copy of the order to the division. The division shall forward a copy of the order to the motor vehicle administrator of the person's state of residence. The judge shall furnish to any person whose driver's license is surrendered under this section a copy of the order, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this section.

(d) 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.

(e) Violation of restrictions imposed under this section is a misdemeanor subject to punishment and suspension of driving privileges as provided by K.S.A. 8-291, and amendments thereto and K.S.A. 8-1017 and **NEW SECTION (need to include the violations of restrictions on ignition interlock)** and amendments thereto.

REVIEW K.S.A. 8-254

8-254. Mandatory revocation of driver's license by division of vehicles; exceptions for court imposed restrictions. (a) Subject to the provisions of subsection (b), the division shall revoke a person's driving privileges upon receiving a record of the person's conviction of any of the following offenses, including municipal violations, when the conviction has become final, or upon receiving a record of a person's adjudication as a juvenile offender for commission of an act which, if committed by a person 18 or more years of age, would constitute any of the following offenses when the adjudication has become final:

~~(1) Aggravated vehicular homicide, as defined by K.S.A. 21-3405a, and amendments thereto, if the crime is committed while committing a violation of K.S.A. 8-1566 or 8-1568, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any acts prohibited by those statutes;~~

(2) vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto;

~~(3) vehicular battery, as defined by K.S.A. 21-3405b, and amendments thereto, if the crime is committed while committing a violation of K.S.A. 8-1566 or 8-1568, and~~

~~amendments thereto, or the ordinance of a city or resolution of a county which prohibits the acts prohibited by these statutes;~~

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) conviction, or forfeiture of bail not vacated, upon a charge of reckless driving;

(6) conviction, or forfeiture of bail not vacated of any felony in the commission of which a motor vehicle is used; or

(7) fleeing or attempting to elude a police officer as provided in K.S.A. 8-1568, and amendments thereto, or conviction of violation of an ordinance of any city or a law of another state which is in substantial conformity with such statute.

(b) In lieu of revoking a person's driving privileges as provided by subsection (a), the court in which the person is convicted or adjudicated may place restrictions on the person's driving privileges as provided by K.S.A. 8-292, and amendments thereto, unless the violation was committed while operating a commercial motor vehicle, as defined in K.S.A. 8-2,128.

Driving privileges are to be automatically revoked if the violation which leads to the subsequent conviction occurs in a commercial motor vehicle, as defined in K.S.A. 8-2,128.

BOND CONDITIONS PRIOR TO RELEASE

(a)(1) Except as otherwise provided, the court having jurisdiction over violations of this section shall adopt the following mandatory bond conditions while the case remains pending:

(a) For a First DUI Offense;

(1) The person shall not drive without a valid license and insurance;

(2) The person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court.

(b) For Second and subsequent Offenses;

(1) The person shall not drive without a valid license and insurance;

(2) The person shall not operate a motor vehicle without first showing the court proof of installation of an approved ignition interlock device, with reports sent to the court for monitoring;

(3) The person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court;

(4) The person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided for in this act.

(c) The court may order a continuous transdermal alcohol monitoring device and/ or an in home alcohol monitoring device for any severity level DUI offense.

(b) Nothing in this section shall prevent a court from imposing additional bond conditions deemed necessary and otherwise provided by law.

REFUSALS

1. At the present time the fact someone refuses to take the test can be used against them in court on a charge of DUI.
2. Statistically, the refusal rate is about one-third of the population requested to take a breath test.
3. It is well known, repeat offenders are more apt to refuse making it harder to prosecute.
4. In an attempt to dissuade a person from refusing there has been a number of attempts to toughen penalties for refusing ie. License suspensions The problem however is the person refusing usually does not have a license and a threat of suspension is usually not a motivating factor.
5. There has been a suggestion to either make it a criminal offense to refuse, make it a per se violation of DUI if they refuse, or attempt to craft a rebuttable presumption the person is in fact DUI.
 - a. Criminalize a refusal seems to be what the Criminal Justice sub-committee has suggested. Our subcommittee has not discussed this in detail however we like this idea. We would defer to the Criminal Justice Sub-Committee for their suggestions but would ask to discuss this further.

WAGE ASSIGNMENT

It seems persons that are given the ability to work while incarcerated, either thru house arrest or work release, do not make payments as they should to the court. A District Court Trustee submitted this to the commission as a fix for the court's "grace" to an individual.

UNDER K.S.A. 8-1567(i)

The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. **Before granting work release from incarceration or house arrest imposed pursuant to this section, the Court shall require the offender to sign and submit to the Court a wage assignment authorizing the employer to deduct and forward to the clerk of court a portion of each paycheck, in an amount the court deems, reasonable, as payment of any restitution, fine, court cots or court-appointed attorney fees assessed by the court.** 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.

WAGE ASSIGNMENT

I, _____, hereby authorize my employer, _____, to deduct, effective immediately, \$_____ from my net pay every _____, (week/two weeks/month) and mail the deducted amount, payable to _____, to:

(address of court)

To satisfy my obligations in _____ Case # _____

This wage assignment is ordered by the _____ Court.

DATE

SIGNATURE

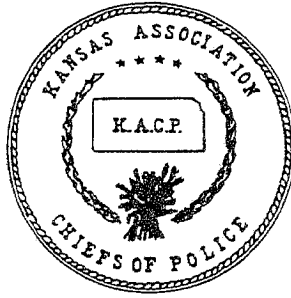
SSN _____
DOB _____
Address _____

EMPLOYER'S PAYROLL ADDRESS _____

EMPLOYER'S PAYROLL PHONE () _____

DRIVER'S LICENSE HEARINGS (DL hearings)

1. DL hearings should remain with the KS DMV.
2. A fee should be assessed for a request for hearing. The fee assessed would be different depending on whether a "face to face" hearing is requested or a "phone" hearing.
3. Establish a protocol for the hearing.
 - a. Require hearing officers to receive special training.
 - b. Look to a statutory change to identify specifically the scope of the hearing. At the present time, under K.S.A. 2009 Supp. 8-1020 (h)(2) the scope of an administrative hearing is limited to eight specific issues-which currently are not specifically adhered to.
 - c. Time frames for things to be done eg. Taking things under advisement, continuances-possibly getting more hearing officers.



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President
Newton Police Dept.

Mike Keller
Vice President
Andover Police Dept.

Sean Wallace
Sergeant at Arms
Ark City Police Dept.

Bob Sage
Treasurer
Rose Hill Police Dept.

James Hill
SACOP Representative
Salina Police Dept.

Todd Ackerman
Immediate Past President
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KSU Public Safety Dept.

John Daily
Region IV
Bel Aire Police Dept.

James Braun
Region V
Hays Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

DATE: October 29, 2010

TO: Sen. Owens, DUI Commissioner Chairperson

FROM: Ed Klumpp, KACP Representative

SUBJECT: KCJIS as DUI arrest and conviction data repository

As I indicated at our last meeting, there have been issues brought up about the KCJIS reporting system that caused me concern. I have met with representatives of the KBI and KCJIS and, in my opinion, the KCJIS system operated by the KBI is still the best place to store DUI arrest and conviction data. I found my biggest concerns are in areas that do not impact the DUI arrest and disposition reporting.

The KCJIS database already exists and is operational. It is the only criminal history database in the state. Any place we store pre-conviction data will become a criminal history database. This is not appropriate for the DMV system which only stores conviction data, and therefore is not a criminal history information database. The pathways for reporting DUI (and all other) arrests and convictions to KCJIS already exists. In fact, DUI arrests and dispositions are already reported to this system.

Some of what we are asking KCJIS to do is not currently collected in the KCJIS system and will require some additional software work by the KBI. For example, designing a DUI "rap sheet" requires gathering the DUI related information from multiple KCJIS agency databases. There will need to be a technical project, complete with KITO reporting, requirements and design phase, and development. This will of course have a cost which will have to be estimated once they know exactly what we are going to require of them.

I have listed the potential issues below. They are more procedural than a function of the software or system capabilities.

1. For the purposes of a rap sheet, arrests are reported by the submission of the fingerprint card.
 - a. Arrests for all felonies, all A and B misdemeanors, and one C misdemeanor must be reported on fingerprint cards. See KSA 21-2501. About half are reported immediately through electronic transmission. The remainder are still submitted on paper. The KBI enters the paper submissions the same day they receive them. This includes DUI arrests.

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- b. Law enforcement must report arrests to the KBI within 60 days of the arrest. See KAR 10-10-2. This can and probably should be shortened. This has not been changed since at least 1981. In most cases arresting agencies are probably submitting the fingerprints much more quickly than that.
2. Disposition reporting is also not all done electronically. Again, this can cause a time delay in getting the information into the system.
 - a. Court dispositions received by the KBI on paper are 95.2% entered. This is for all dispositions since 1999. This is for all criminal violations, not just DUI.
 - b. Currently, the system will indicate the KBI is in possession of the disposition report on the day the report is received even when the data is not entered. Upon request for a rap sheet with a disposition not yet entered, they pull the report and enter it. This makes the rap sheet up to date with everything that has been sent to the KBI.
 - c. There is a delay between the actual sentencing and the completion of the disposition report. I don't understand why this is or if it is possible to reduce this time.
 - d. About 40 prosecutors are using the state prosecutors software package. These are primarily the mid-size counties. Electronic disposition reporting is currently being tested in two jurisdictions and should be rolled out to other jurisdictions using the system in the near future. Some of the jurisdictions using other software are already submitting dispositions electronically.
3. Municipal court dispositions are generally reported on paper. Only Topeka is submitting electronically.
4. Dispositions of both district court and municipal court cases have not always been submitted. The solution to this is creating audits and requiring agencies to respond to requests for disposition data.
 - a. It is estimated that only slightly more than half of the dispositions that should be in the system have been submitted. This is over the entire time span of the system and is for all crimes not just DUI. Many of these are old dispositions. Newer cases tend to be reported at a higher rate.
 - b. I am told at least one district court considers a KBI request for an old disposition an open records request and demands payment from the KBI for the information. The KBI has solicited assistance from the prosecutor in that county and are receiving the dispositions through the prosecutor's office without being billed.
 - c. Dispositions must be reported to the KBI within 60 days of sentencing. See KAR 10-10-2.
5. Reducing the data entry backlog could be fixed by any combination of the following: More data entry staff, prioritizing entry of DUI dispositions, and/or reducing data entry workload by having more agencies reporting electronically.

RECOMMENDATIONS

1. Use the KCJIS repository as the DUI arrest and conviction repository.
2. Request the KBI to review the timelines in their regulations to see if they should be amended.
3. Determine a method to ensure compliance with arrest and disposition reporting.

8-1001.

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a):

(1) If the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists:

(A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or

(B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) No person shall refuse to submit to or complete a test or tests deemed consented to under subsection (a).

(1) Upon a first conviction 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 \$ 500 nor more than \$2,500. 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 section may be served in a work release program only after such person has served at least 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.

(2) Upon a second conviction of this section a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 180 days nor more than one year's

imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted must serve at least ten 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 section may be served in a work release program only after such person has served at least 96 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.

(3) On the third or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 7, nonperson felony.

~~[(e)]~~ (d) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:

(1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(2) a registered nurse or a licensed practical nurse;

(3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or

(4) a phlebotomist.

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

- (1) If the person has given consent and meets the requirements of subsection (b);
- (2) if medically unable to consent, if the person meets the requirements of paragraph (2) of subsection (b); or
- (3) if the person refuses to submit to and complete a test, if the person meets the requirements of paragraph (2) of subsection (b).

~~(e)~~ (f) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

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

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

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

[~~(i)~~] (j) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by [~~persons~~]

(1) A law enforcement officer of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. [~~When possible, the supervising person shall be a law enforcement officer.~~]

(2) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; or

(3) a registered nurse or a licensed practical nurse.

The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the

person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections [~~(d)~~] (e) and [~~(e)~~] (f) shall apply to the collection of a urine sample.

[~~(j)~~] (k) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

[~~(k)~~] (l) Before a test or tests are administered under this section, the person shall be given oral and written notice that:

(1) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(2) the opportunity to consent to or refuse a test is not a constitutional right;

(3) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person may be charged with a separate crime of refusing to submit to chemical testing;

[~~(4)~~] (5) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

[~~(5)~~] (6) if the person submits to and completes the test or tests and the test results show

for the first occurrence:

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence; or

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year;

~~[(6)]~~ (7) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

~~[(7)]~~ (8) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year except the person's driving privileges will be permanently revoked for a fifth or subsequent occurrence;

~~[(8)]~~ (9) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

~~[(9)]~~ (10) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

~~[(10)]~~ (11) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

~~(f)~~ (m) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

~~(m)~~ (n) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

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

(p) In any trial for a violation of this section or a violation of K.S.A. 8-1567, the court shall instruct the jury that

(1) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to one or more tests of blood, breath, urine or other bodily substance to determine the presence of alcohol and/or drugs.

(2) The opportunity to consent to or refuse a test is not a constitutional right.

(3) There is no constitutional right to consult with an attorney regarding whether to submit to testing.

(4) Refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(5) The results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(6) After the completion of testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

~~(p)~~ (q) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person

had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

~~[(p)]~~ (r) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to a person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

~~[(q)]~~ (s) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

~~[(r)]~~ (t) It shall not be a defense that the person did not understand the written or oral notice required by this section.

~~[(s)]~~ (u) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

~~[(t)]~~ (v) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

~~[(u)]~~ (w) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

~~[(v)]~~ (x) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

~~[(w)]~~ (y) As used in this section, "serious injury" means a physical injury to a person, as determined by law enforcement, which has the effect of, prior to the request for testing:

- (1) Disabling a person from the physical capacity to remove themselves from the scene;
- (2) renders a person unconscious;
- (3) the immediate loss of or absence of the normal use of at least one limb;
- (4) an injury determined by a physician to require surgery; or
- (5) otherwise indicates the person may die or be permanently disabled by the injury.

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TO: The Kansas DUI Commission
FROM: Karen Wittman
DATE: October 29, 2010
RE: Additional Considerations

Add language that would allow any medical personnel to draw blood or get urine...including the ones listed.....

K.S.A. 8-1001 ©) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or (4) a phlebotomist **or other qualified medical personnel.**

ALSO--sometimes it is a nurse who is not of the same sex but the person has a catheter.....and the officer who may be the same sex does not collect it...

(l) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested **or qualified medical personnel** and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (d) and (e) shall apply to the collection of a urine sample.

I do not know if anyone is aware of this statute--this does not take into account if the person is 1, 2 or 3rd..there is a conflict of whether the person is sentenced under the dui law or this controls...

K.S.A. 8-2117 Prosecution of juvenile traffic offenders; disposition. (a) Subject to the provisions of this section, a court of competent jurisdiction may hear prosecutions of traffic offenses involving any child 14 or more years of age but less than 18 years of age. The court hearing the prosecution may impose any fine authorized by law for a traffic offense, including a violation of K.S.A. 8-1567 and amendments thereto, and may order that the child be placed in a juvenile detention facility, as defined by K.S.A. 2009 Supp. 38-2302, and amendments thereto, for not more than 10 days. If the child is less than 18 years of age, the child shall not be incarcerated in a jail as defined by K.S.A. 2009 Supp. 38-2302, and amendments thereto.

this statute does allow for house arrest: ©) Instead of the penalties provided in subsections (a) and

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(b), the court may place the child under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, and sentence the child to the same sentence as an adult traffic offender under K.S.A. 8-2116, and amendments thereto.

this is dealing with kids drinking that ties into driving at times....and is causing headaches thru-out the state:

41-727. Purchase or consumption of alcoholic beverage by minor; penalty; exceptions; tests. (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

In this statute it does not define consumption or give guidance on jurisdiction and judges all over find if the person who is standing in Merriam, Kansas and has consumed alcohol...all they do is come to court and say I did not do it in Merriam...I did it in Missouri, or I did it in Lenexa...and the courts are finding no jurisdiction because the person did not CONSUME the alcohol in their jurisdiction...I don't think this is what the legislature envisioned....I can explain further to the commission but usual there is a car stop...the officer smells alcohol and gets the minor out of the car..the minor is not impaired but blows maybe a .04 on the pbt.. and the minor tells the officer ...I did not drink it here....the officer knows his judge will not find him guilty of the offense...and has to allow him to drive home without getting any ticket NOT GOOD...usually there is no action on the minors license either as envisioned by K.S.A. 8-1567a

I would suggest including in the statute:

"it shall not be a defense that the alcohol or cereal malt beverage was consumed in a jurisdiction other than the jurisdiction where the citation for underage drinking was issued."

Kansas DUI Commission
Evaluation and Treatment Subcommittee
Recommendations
September 27, 2010

Committee Members:

Don Jordan- Secretary Kansas Department Social and Rehabilitation Services
Deborah Stidham - Kansas Department of Social and Rehabilitation Services
Chris Mechler – Office of Judicial Administration
Dalyn Schmitt – Kansas Association of Addiction Professionals
Les Sperling – Kansas Association of Addiction Professionals
Jeremy Thomas – Kansas Department of Corrections

Effective substance use evaluation, education, and treatment play a vital role in the continuum of interventions targeted to reduce the incidence of DUI in the State of Kansas. The following recommendations are respectfully submitted in an effort to enhance the quality and scope of treatment services in Kansas and to reduce the impact of DUI.

Require all providers of DUI evaluation and Alcohol and Drug Information Schools to be licensed by Social and Rehabilitation Services-Addiction and Prevention Services in DUI services

The Kansas Department of Social and Rehabilitation Services (SRS) currently has licensing standards for DUI providers that include standards for evaluation and Alcohol and Drug Information School curriculum. However, providers are not required to obtain this important license and are not subject to annual licensing visits that ensure compliance with the minimum standards of competency defined in the state standards.

Licensed DUI specialty providers comprise the DUI evaluation and education network available to all Judicial Districts and Municipal Courts

Each Judicial District currently selects DUI providers. While Judicial Districts strive to select providers in a manner consistent with current statutes, testimony provided to the Kansas Substance Abuse Policy Board and Kansas DUI Commission reveals that selection criteria currently utilized are not consistent. Municipal Courts may also select DUI providers. While most Municipal Courts utilize the provider list generated by their District Court, they are not required to do so and there are instances where District and Municipal Court provider lists differ. This can be confusing to all stakeholders and in some cases limit access to services. If DUI providers were licensed by SRS, SRS could provide all stakeholders with a complete listing of eligible providers.

Require all DUI substance use evaluations to be completed in a standardized electronic format.

Testimony submitted indicates that DUI substance use evaluations prepared for the court vary widely in quality and scope. It is recommended that the American Society of Addiction Medicine Patient Placement Criteria 2 (ASAMPPC2) be utilized as the foundation of the standardized evaluation. This criteria has been widely accepted as the most comprehensive information and decision making tool with which to assess the severity of alcohol/drug problems and recommend the appropriate intensity and level of treatment intervention. Collecting this information in an electronic format is crucial and will provide an efficient method for treatment histories and outcome measures to be included in the larger DUI data system. Adequate resources for the implementation of the standardized evaluation should be made available to SRS.

SRS DUI Specialty licensing standards should be revised to reflect best practices.

While SRS currently has ADSAP standards, revisions are necessary to ensure that identified best practices are included in the minimum standards.

Educational and Treatment Interventions should match the individual offender's clinical profile.

DUI interventions should be based upon the severity of the alcohol/drug problem, not the number of convictions. Too often, it is assumed that a first DUI conviction only requires a brief educational intervention and that treatment intensity and duration should increase with each offense. Efforts to decrease DUI recidivism will be aided by matching the offender with appropriate treatment at the appropriate time.

Eliminate reference to "offender monitoring" from existing statutes

ADSAP providers supply Court Services with attendance, completion, and progress in treatment reports on a regular basis. DUI statutes describe an expanded monitoring role that in current practice is being completed by Court Services personnel. Clarification of these two roles in statute is recommended.

Encourage DUI Specialty providers to implement best practices

The State of Kansas developed an effective strategy to address 4th time DUI offenders. This program utilized best practices that included utilization of wrap around team planning meetings, care coordination, proven DUI clinical practices, data collection, and outcome measurement. Development of future services for this population should incorporate the core principles of this successful strategy.

DUI evaluation and Alcohol and Drug Information fees should be paid directly to DUI Specialty providers at time of service.

Collection and disbursement of ADSAP evaluation fees are not completed consistently across the state. Some Judicial Districts and Municipal Courts require offenders to pay the provider and some require payment to the court, with the court retaining up to 10% of the fee. Payment of ADSAP fees to the provider at time of service would simplify this process and save administrative costs throughout the system.

Items requiring further investigation

DUI Specialty Courts

Outcome data suggest that DUI courts are an effective tool to reduce DUI recidivism. It is recommended that additional research and investigation into these courts be conducted pending review of the feasibility study initiated by the Kansas Supreme Court and the National Center for State Courts. It is also recommended that a compilation of successful programs in other states be completed and utilized to guide future planning activities.

Maintain current 4th time DUI treatment infrastructure and deliver this program upon conviction of 3rd DUI.

The current 4th DUI program that utilizes a multi-disciplinary team approach with the Regional Alcohol and Drug Assessment Centers, Kansas State Parole, and DUI Specialty providers has produced excellent outcomes. The committee recommends that these services be moved to the 3rd DUI and that the infrastructure currently in place remain the same.

SPECIAL NOTE

A significant number of the recommendations included in this report will require additional effort and resources from the Kansas Department of Social and Rehabilitation Services. As the licensing authority for substance abuse programs in the state, their responsibility for monitoring the quality and scope of DUI treatment services is critical to success. It is recommended that sufficient resources be provided to SRS in order to complete these tasks.