

SESSION OF 2009

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR SENATE BILL NO. 278**

As Recommended by Senate Committee on  
Judiciary

**Brief\***

Sub. for SB 278 would create the Kansas DUI Commission, amend current law on driving under the influence of alcohol or drugs (DUI) and DUI penalties, amend the duties of the municipal court, and create statewide driver improvement clinics.

**Kansas DUI Commission**

The Kansas DUI Commission would be required to review Kansas DUI statutes as well as DUI statutes in other states; review evaluation, treatment, and supervision practices, enforcement strategies, and penalty structure to determine what is effective in changing behavior of DUI offenders; develop a legislative proposal for centralized recordkeeping; and gather and assess information on all groups and committees working on DUI issues.

The Commission would be required to submit a report of its findings by the first day of the 2010 Legislative Session and a final report by the first day of the 2011 Legislative Session. The Commission would have the assistance of the staff of the Office of the Revisor of Statutes and the Kansas Legislative Research Department.

The Commission would have a total membership of 23 individuals who would be entitled to receive *per diem* compensation, except the public members of the Commission

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

who would be entitled to receive compensation commensurate with compensation a Legislator would receive. Members of the Commission would include:

- Three legislators;
- Three judges;
- The Attorney General or designee;
- One prosecutor;
- One defense attorney;
- One victim advocate;
- Two addiction professionals;
- The Secretary of Corrections;
- The Secretary of Social and Rehabilitation Services;
- The Secretary of Revenue or designee;
- The Secretary of Transportation or designee;
- The Chairperson of the Kansas Sentencing Commission or designee;
- The Superintendent of the Kansas Highway Patrol or designee;
- The Director of the Kansas Bureau of Investigation or designee;
- One sheriff;
- One municipal law enforcement officer;
- One court services officer; and
- One parole officer.

The provisions of this section would be in effect on July 1, 2009 and would expire on July 1, 2011.

### **DUI Law**

The bill would amend the DUI law by adding a new provision that would require district or county attorneys to request and receive the DUI offender's driving record from the Division of Vehicles and the DUI offender's criminal history record from the Kansas Bureau of Investigation, prior to filing a complaint to initiate prosecution. A similar provision would require a city attorney to request and receive the same records

upon the filing of a complaint, citation, or notice to appear, or prior to a conviction. The bill would require a city attorney to refer a felony DUI to the appropriate district or county attorney for prosecution.

The provisions of this section would be in effect on July 1, 2009.

### **DUI Penalties**

The bill would amend the law regarding penalties for third convictions of DUI to make the penalty the same as a fourth or subsequent conviction of DUI under current law. The penalty for a fourth and subsequent conviction of DUI would be a new penalty. The provisions of this section would be in effect on July 1, 2010.

Specifically, the bill would require the penalty for a third conviction of DUI to be:

- A nonperson felony requiring a minimum sentence of 90 days, but not more than one year imprisonment in the county jail, and a minimum fine of \$1,500, but not more than \$2,500. After serving 48 consecutive hours of imprisonment, the remainder of the mandatory minimum sentence may be served in a work release program or on house arrest; and
- The court would have the discretion to order the term of imprisonment be served in a state facility designated by the Secretary of Corrections for the provision of substance abuse treatment. Upon completion of the substance abuse treatment program, the person would be returned to the custody of the sheriff to serve the balance of the term of imprisonment.
  - The person also would be returned to the custody of the sheriff if:

- There are no resources or capacity for treatment in a facility designated by the Secretary of Corrections;
  - The person fails to meaningfully participate in treatment;
  - The person is disruptive to the security or operation of the designated facility; or
  - The medical or mental health of the person makes the person unsuitable for confinement at the designated facility.
- After the term of imprisonment, the person would be placed in the custody of the Secretary of Corrections for a mandatory one-year period of postrelease supervision and would be required to participate in an inpatient or outpatient program for alcohol and drug abuse.

The bill would require the penalty for a fourth or subsequent conviction of DUI to be:

- A nonperson felony requiring a minimum sentence of 180 days, but not more than one year imprisonment in the county jail, and a fine of \$2,500. After serving 144 consecutive hours of imprisonment, the remainder of the mandatory minimum sentence may be served in a work release program; and
- The court would have the discretion to order the term of imprisonment be served in a state facility designated by the Secretary of Corrections for the provision of substance abuse treatment. Upon completion of the substance abuse treatment program, the person would be returned to the custody of the sheriff to serve the balance of the term of imprisonment.
  - The person also would be returned to the custody of the sheriff if:

- There are no resources or capacity for treatment in a facility designated by the Secretary of Corrections;
  - The person fails to meaningfully participate in treatment;
  - The person is disruptive to the security or operation of the designated facility; or
  - The medical or mental health of the person makes the person unsuitable for confinement at the designated facility.
- There is no provision for postrelease supervision for a fourth or subsequent conviction of DUI.

### **Municipal Court Duties**

The bill would require a municipal court judge to forward the arrest and charging information of a DUI to the Kansas Bureau of Investigation central repository. Furthermore, a municipal court judge would be required to ensure the person arrested or charged with a municipal DUI is fingerprinted and processed at the time of booking.

This provision would be in effect on July 1, 2009.

### **Driver Improvement Clinics**

The bill would amend current law to authorize the Department of Revenue, Division of Vehicles, to establish driver improvement clinics throughout the state or contract with private individuals or companies to provide such services. The Division would be authorized to allow a person whose driving privileges are subject to suspension because the person has been convicted of three or more moving traffic violations within a 12-month period to retain his or her driving privileges by attending a driver improvement clinic. The Division is not authorized to allow a person issued a commercial driver's license this option. The individual subject to suspension would be required to make

application and pay the required fee to the Division to attend the clinic.

The bill would require the Secretary of Revenue to adopt rules and regulations to establish a driver's improvement clinic fee which would not exceed \$500. Half of the fees collected would be credited to the Division of Vehicles Operating Fund and the other half would be credited to the Correctional Services Special Revenue Fund created in the bill. The Kansas Department of Corrections would be authorized to use the Correctional Services Special Revenue Fund for the sole purpose of providing substance abuse treatment in a Kansas Department of Corrections facility.

The provisions in this section would be in effect on January 1, 2010.

## **Background**

The 2008 Legislature passed HB 2707 to create the Substance Abuse Policy Board under the auspices of the Kansas Criminal Justice Coordinating Council. The Board was created to consult and advise the Council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation, and supervision of substance abuse offenders and to analyze and study driving under the influence. The Board's recommendations on requiring prosecutors to obtain driving and criminal history records prior to filing a complaint and the creation of a multi-disciplinary state commission are included in the bill.

Conferees did not have the copy of the substitute bill to prepare their testimony for the hearing in the Senate Committee. Therefore, testimony that was submitted to the Senate Committee on the bill, as introduced, may or may not be relevant to Sub. for SB 278. Additionally, the provisions of the driver improvement clinics inserted into Sub. for SB 278 were modified from the language of 2009 SB 157, as introduced.

The proponents of the bill, as introduced, who presented testimony at the Senate Committee hearing were Dalyn Schmitt, Heartland Assessment Center; Megan Endres, Private Citizen; Harold Casey, Substance Abuse Center of Kansas, Inc.; Win Smith, Addiction Specialist of Kansas; Mary Ann Khoury, DUI Victim Center of Kansas; Richard Samaniego, Kansas County and District Attorneys Association; Ed Klumpp on behalf of the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association; Stuart Little, Kansas Association of Addiction Professionals; and Roger Werholtz, Secretary, Kansas Department of Corrections. Revised written testimony was provided by Ed Klumpp and was directed at the changes in the substitute bill.

The opponents of the bill, as introduced, who presented testimony at the Senate Committee hearing were Jennifer Roth, Kansas Association of Criminal Defense lawyers; and Michael Stover, Undersheriff of Sedgwick County, Kansas.

Pete Bodyk, Kansas Department of Transportation provided the Senate Committee neutral testimony on the bill, as introduced, and on the substitute bill.

The following conferees decided not to testify because the substitute bill addressed the concerns they would have raised on the bill as introduced: Helen Pedigo, Executive Director, Kansas Sentencing Commission; and Kathy Porter, Office of Judicial Administration.

The fiscal note was prepared on the bill as it was introduced, therefore, it may not accurately reflect the fiscal impact of the substitute bill.