



TESTIMONY IN SUPPORT OF SENATE BILL NO. 7

To: The Honorable Tim Owens, Chairperson
Members of the Senate Judiciary Committee

From: Corey F. Kenney, City Prosecutor – City of Lenexa

Date: January 26, 2011

Reference: Senate Bill 7 – Driving Under the Influence

Thank you for the opportunity to appear before you today and to present testimony in support of Senate Bill No. 7.

I had the privilege to attend all but two of the DUI Commission meetings and so I know firsthand the substantial amount of work that the committee members invested in this process and in developing the recommendations contained within SB 7.

The City of Lenexa encourages your support of the following initiatives found in SB 7:

- **Criminalization of test refusal** – This is found in Section 2 of the bill, and will be a major step in holding DUI offenders accountable. Kansas law already provides for implied consent to this testing for all drivers. Criminalizing refusals has proven effective in other states including Minnesota and Nebraska. As a prosecutor, I have seen many people escape the criminal consequences of their behaviors by refusing to submit to testing.
- **Increased Sentences for Repeat Offenders** – This change will hold repeat offenders accountable and will recognize the seriousness of repeated violations. The increase in minimum penalties for misdemeanor level offenses coupled with the potential for a prison sentence for felony offenses, a clear message is sent to DUI offenders that repeated violations will receive increasing levels of punishment.
- **Creation of Central Repository** – The addition of this useful tool will allow the system to act upon reliable information regarding an individual's prior record. Currently, multiple databases need to be accessed in order to perform a thorough background check for prior offenses. Consolidating to a central repository will provide in faster results and more accurate and reliable information regarding prior convictions.
- **Increased use of Ignition Interlock** – The change to allow for increased use of ignition interlock in lieu of straight license suspensions will provide DUI offenders with the ability to continue working allowing them to satisfy their obligations to the court system while providing a measure of safety for the public.

There is however, a concern regarding a few provisions in the bill that will have a negative impact on the accountability of repeat offenders and will complicate DUI prosecutions.

Consequently, the City of Lenexa urges you to closely examine and modify the following provisions:

- **Eliminating lifetime lookback:** This change is a step backwards in regards to holding repeat offenders accountable. The penalty scheme for DUI offenses relies upon graduated penalties based upon all prior convictions of the offender. We have been operating under a lifetime lookback for DUI offenders for nearly 10 years. This part of the system is not broken. The recommended change in lookback to July 1, 1996 is driven by the record keeping of KDOR; however, we have managed to make this work for the past 10 years. Reducing the period of time that prior DUI offenses can be considered will result in the following:
 - o Converting current and would-be felony DUI offenders to misdemeanor DUI offenders;
 - o Treating offenders convicted under this scheme differently than similarly situated offenders convicted under the previous scheme;
 - o Increased litigation regarding counting prior offenses – specifically questions regarding validity of pre-1996 prior convictions relied upon during the lifetime look back period
 - o Inconsistent application compared with similar offenses, i.e. Lifetime look back for violations of the new crime of test refusal, Commercial Vehicle DUI, Boating under the Influence

- **Expungement**– The proposed bill allows for the expungement of DUIs (after 10 years) and test refusal offenses (after three years). Current law provides that DUIs are not expungeable, which was a step in the right direction for building accurate, complete, offender histories. Changing the expungement conditions will significantly impair DUI offender criminal history records, and will only serve to further complicate DUI prosecutions for repeat offenders. Arguably, there will now be three categories regarding DUI expungement eligibility -- DUI convictions and diversions occurring prior to 2006 and after 2011 would be eligible for expungement, while convictions and diversions occurring between 2006 and 2011 would not be eligible for expungement. This will undoubtedly result in inconsistencies, in addition to the confusion from having two different time periods for expunging DUIs and criminal test refusals.

The City of Lenexa asks for your support of SB 7 and for your consideration in removing or modifying the provisions regarding lifetime look back and expungement. Thank you for your consideration.