

March 9, 2012

The Honorable Tim Owens, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 559-S  
Topeka, Kansas 66612

Dear Senator Owens:

**SUBJECT:** Fiscal Note for SB 453 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 453 is respectfully submitted to your committee.

SB 453 would amend several administrative penalties for driving under the influence (DUI) and commercial DUI violations. Under current law, offenders who have been convicted of a fourth violation of driving under the influence and who wish to have their driver's license reinstated must pay a reinstatement fee of \$400. Current law also requires offenders who have been convicted for a fourth violation as a result of a test refusal must pay a reinstatement fee of \$1,000. SB 453 would require the same reinstatement fees for fourth or subsequent DUI violations.

The bill would also adjust the range of fines for DUI and commercial DUI violations for the following violations. The minimum number of hours of confinement would be increased from 240 hours to 2,160 hours for offenders who have been placed in a work release program or under house arrest as a result of a third or subsequent commercial DUI conviction or a third, or fourth or subsequent DUI conviction. The bill would also eliminate the \$250 from each fine that is remitted by district court clerks to the State Treasurer and credited to the Department of Corrections Community Corrections Supervision Fund.

Current law requires that any person convicted of a DUI or commercial DUI receive an alcohol and drug evaluation prior to sentencing and the cost of the evaluation, which must not exceed \$150, paid by the offender. Under SB 453, if the court determines that the person is indigent, courts would be required to pay the costs of the evaluations. The cost of the evaluations, whether paid by the person or the court, cannot be less than \$150.

The bill would increase the number of years a person who has refused DUI testing would be restricted to driving only motor vehicles equipped with ignition interlock devices. The restriction for a first occurrence of test refusal would be increased from one year to two years; a

second occurrence would be increased from two years to three years; a third occurrence would be increased from three years to four years; and a fourth occurrence would be increased from four years to five years. Also, offenders who have had their driver's licenses suspended for one year for a first occurrence of a test refusal may, after 90 days, apply to the Department of Revenue Division of Vehicles to have driving privileges modified for the purposes of getting to and from work, performing duties at work, medical emergencies, going to and returning from probation, parole, or drug and alcohol meetings. Offenders who have had driver's licenses suspended for one year because of a second occurrence of test refusal may also petition the Department to have driving privileges modified for the purposes of getting to and from work, school, alcohol treatment centers, and ignition interlock device providers for maintenance and data downloading.

Offenders who have failed DUI tests or have DUI convictions for which the offender's blood or breath alcohol concentration was .15 or greater would be able to apply to the Department after 45 days to have privileges restricted to driving only for the purposes of getting to and from work, school, alcohol treatment centers, and ignition interlock device providers for maintenance and data downloading. All applications to modify driver's license suspensions would require a \$100 fee.

When modifying any penalties an offender may request to have applied retroactively, the Department of Revenue Division of Vehicles would be required to credit any suspension or revocation time in excess of one year toward the required ignition interlock restriction period provided that the person's driving record indicates no driving during the period and the person completes a form attesting to not having driven during the period.

The Office of Judicial Administration estimates that courts could incur additional annual costs of approximately \$267,750 from the provision in the bill requiring courts to pay at least \$150 for each alcohol and drug evaluation for cases involving indigent persons. In FY 2011, there were 1,785 defendants who were determined to be indigent and this figure is used to calculate the potential costs (\$150/evaluation x 1,785 indigent defendants). The Office states that this cost could be decreased in the event certain DUI offenders receive diversions, which would prevent courts from having the opportunity to order payment of the evaluations. The Office also indicates that the cost could increase because, according to the bill, the evaluation shall not be less than \$150. It is possible that some evaluation providers could charge more than \$150 per evaluation. In any case, the Office notes that the estimated annual costs would be the responsibility of counties, which are accountable for all non-salary expenses incurred by the courts. A request for fiscal information has been sent to the Kansas Association of Counties; however, a response had not been received at the time that this note was prepared.

The Department of Revenue indicates that \$13,016 for FY 2012 would be required for additional hours of programming of Department information databases. The Department estimates that 160 hours of in-house programming would cost \$4,800 (\$30/hour x 160 hours) and 52 hours of vendor programming would cost \$8,216 (\$158/hour x 52 hours). It is expected that

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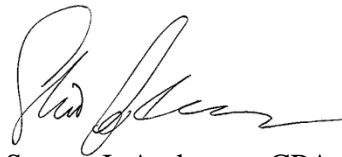
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the in-house costs would be paid from the Vehicle Operating Fund and the vendor costs would be paid from the DMV Modernization Fund.

Requests for information have been sent to the Kansas Association of Counties and the Department of Corrections; however, neither agency had provided responses at the time this note was prepared. A revised note will be submitted upon reception of relevant fiscal effect data. Presumably, the Department of Corrections would receive less revenue from the provision in the bill that eliminates directing portions of DUI fines to the Community Corrections Supervision Fund. However, a precise estimate of the revenue decrease cannot be determined at this time. According to the state accounting system, a balance of \$228,712 is currently in the fund. Any fiscal effect associated with SB 453 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA  
Director of the Budget

cc: Steve Neske, Revenue  
Mary Rinehart, Judiciary  
Pat Scalia, Indigents Defense  
Melissa Wangemann, Kansas Association of Counties  
Scott Schultz, Sentencing Commission  
Jeremy Barclay, Corrections