

SESSION OF 2011

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 7**

As Recommended by Senate Committee on
Judiciary

Brief*

Sub. for SB 7 would create or amend various administrative and criminal statutes related to driving under the influence (DUI).

Professional Licensing

The bill would create a statutory provision prohibiting a professional licensing body from suspending, denying, terminating, or failing to renew a professional license solely because the licensee was convicted of, pled guilty or *nolo contendere* to, or entered into a diversion regarding a first-time DUI. The provision clarifies that the licensing body, after proper procedures, may take alternative corrective measures regarding such violation, and the provision does not limit the authority of the Division of Vehicles of the Department of Revenue to restrict, revoke, suspend or deny a driver's license or commercial driver's license.

Early Release and Treatment Provision

The bill would create a statutory provision requiring the Secretary of Corrections to enter into a written agreement with any inmate committed to the Secretary's custody for a conviction of DUI or commercial DUI specifying treatment and other programs which, upon satisfactory completion, will prepare the inmate for early release. The Secretary is

*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>

required to report satisfactory completion of the agreed programs to the Kansas Parole Board.

The Parole Board would be allowed to release an inmate who completed the agreed programs, if the Board believes the inmate is able and willing to fulfill the obligations of a law-abiding citizen and there is a reasonable probability the inmate can be released without detriment to the community or the inmate. The Board would be required to hold a hearing and, if it decides not to release the inmate, would have to state in writing the reasons for the decision. If the inmate is released, the inmate would be subject to a mandatory period of postrelease supervision.

Saliva Testing

The bill would create a statutory provision requiring the Kansas Bureau of Investigation (KBI) to adopt rules and regulations allowing saliva testing for law enforcement purposes and listing approved saliva testing devices. The implied consent statute would be amended to add saliva testing.

Commercial DUI

The commercial DUI statute, KSA 2010 Supp. 8-2,144, would be amended as follows:

- A first conviction would be increased from a class B to a class A, nonperson misdemeanor. Imprisonment would be increased from 48 hours-6 months to 90 days-1 year. The fine range would increase from \$500-\$1,000 to \$1,000-\$1,500. The person convicted would have to serve at least five consecutive days' imprisonment before being granted probation, suspension or reduction of sentence or parole or being otherwise released. The mandatory imprisonment requirement could be satisfied by serving 48 consecutive hours' imprisonment followed by six days in a work release program, or by serving 48

consecutive hours' imprisonment followed by ten days of house arrest.

- A second conviction would remain a class A, nonperson misdemeanor, as under current law. The fine would be increased from \$1,000-\$1,500 to \$2,500. Ten consecutive days' imprisonment would be required, which could be satisfied by 96 consecutive hours' imprisonment followed by either 12 days in a work release program or 20 days of house arrest.
- A third or subsequent conviction would be increased from a nonperson felony to a severity level 7, nonperson felony.
- Prior to sentencing for a first or second conviction, the court would be required to order the defendant to participate in an alcohol and drug evaluation conducted by a licensed provider and follow any recommendations made by the provider.
- The sentence for any conviction for commercial DUI when one or more children under 14 years of age are in the vehicle at the time of the offense would be enhanced by one month, which the judge would be allowed to order served on house arrest, work release, or other conditional release.
- Legal use of drugs would not be a defense to commercial DUI of drugs.
- In lieu of payment of a fine under this section, the court would be allowed to order the defendant to perform community service. The defendant would receive credit on the fine of \$5 per hour of community service, and the community service would be required to be performed within one year after imposition of the fine or earlier if so ordered.
- Before filing a complaint alleging commercial DUI, a prosecutor would be required to obtain criminal history

and motor vehicle violations records from the Division of Vehicles and KBI.

- The court would be required to electronically report every conviction or diversion agreement for commercial DUI and obtain criminal history information from the KBI before sentencing.
- Upon conviction, the Division of Vehicles would be required to suspend, restrict, or suspend and restrict the offender's driving privileges under KSA 8-1014.
- No plea bargaining which permits a person charged with commercial DUI to avoid the mandatory penalties established by the section would be allowed.
- The following items would constitute a conviction or factor in determining whether a conviction is a first, second, third or subsequent conviction of this section:
 - A test refusal while the offender was 18 years of age or older;
 - Convictions or diversions for DUI under KSA 8-1567, occurring on or after July 1, 2001;
 - Lifetime convictions or diversions for commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide while DUI, or vehicular battery while DUI;
 - Conviction under any ordinances, resolutions, or other state's laws, or code of military justice, which would constitute any of the above crimes;
 - Convictions, diversions, or adjudications for acts committed when the offender was under the age of 18 would be excluded from this determination.

References to the commercial DUI statute would be added to a variety of other statutory provisions to ensure consistency with references to DUI under KSA 8-1567.

Urine Samples

The bill would amend the implied consent provision for collection of a urine sample to require supervision by a person licensed to practice medicine and surgery, licensed as physician's assistant, or acting under the direction of such licensed person; a registered nurse or licensed practical nurse; or a law enforcement officer of the same sex as the person being tested.

Restructuring of Alcohol and Drug Evaluations and Treatment

The bill would remove many of the current provisions in KSA 8-1008 regarding evaluation and supervision of DUI offenders under the alcohol and drug safety action program (ADSAP). To replace ADSAP, the bill would require the Department of Social and Rehabilitation Services (SRS) to develop a standardized substance abuse evaluation. Evaluation and treatment would be provided by a "licensed provider," which would be defined as "a professional licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders at the independent level, or a professional licensed by the behavioral sciences regulatory board under the supervision of a professional licensed to diagnose and treat mental disorders at the independent level, who can demonstrate an expertise in the field of addictions through addictions licensure, professional credential or continuing education."

Definitions

The definitions of "alcohol or drug-related conviction," "other competent evidence," and "test refusal" in KSA 2010 Supp. 8-1013 would be updated to reflect the statutory changes made elsewhere in the bill.

Administrative Penalties

The administrative penalties for test refusal would be amended as follows:

- For a second test refusal, driving privileges would be suspended for one year, followed by a two-year ignition interlock restriction. The current penalty is a two-year suspension.
- For a third test refusal, driving privileges would be suspended for one year, followed by a three-year ignition interlock restriction. The current penalty is a three-year suspension.
- For a fourth test refusal, driving privileges would be suspended for one year, followed by a four-year ignition interlock restriction. The current penalty is a ten-year suspension.

The administrative penalties for test failure would be amended as follows:

- For a third test failure, driving privileges would be suspended for one year, followed by a two-year ignition interlock restriction. The current penalty is a one-year suspension and one-year ignition interlock restriction.
- For a fourth test failure, driving privileges would be suspended for one year, followed by a three-year ignition interlock restriction. The current penalty is a one-year suspension and one-year ignition interlock restriction.

A person subject to administrative penalties under the current version of this section would be allowed to apply to have the new penalties applied retroactively. There would be a \$59 fee for such application.

Any period of suspension or restriction pursuant to this section would not be counted while a person was incarcerated.

A person whose driving privileges have been suspended for one year would be allowed to, after 45 days of such suspension, apply to the Division of Vehicles for an ignition interlock restriction for the remainder of the suspension period for the purposes of getting to and from work, school, an alcohol treatment program, and the ignition interlock provider for maintenance purposes. A violation of the restrictions would add an additional year's suspension.

A person under an ignition interlock restriction would be permitted to operate an employer's vehicle without an ignition interlock device during normal business activities, as long as the person does not own or control the vehicle or business. This provision would not apply to an interlock ignition restriction granted for the remainder of a one-year suspension period.

Ignition Interlock Devices

The Division of Vehicles would be required to adopt rules and regulations regarding photographic capabilities, calibration, maintenance, credit for indigents, and notice requirements related to ignition interlock devices. The Division would be responsible for approving such devices, and the devices would be maintained at the expense of the person subject to the interlock restriction.

Administrative penalties for tampering with or requesting another to blow into an ignition interlock device would be amended from the current penalty of a two-year suspension to the following:

- On a first conviction, the ignition interlock restriction would be extended 90 days; and

- On a second or subsequent conviction, the original interlock restriction period would be restarted.

The administrative penalty for blowing into an ignition interlock device on behalf of a person with restricted driving privileges would be changed from a two-year suspension to a two-year ignition interlock restriction for the purposes of getting to and from work, school, an alcohol treatment program, the ignition interlock provider for maintenance purposes, or court or court-ordered supervision.

The administrative penalty for operating a vehicle not equipped with an ignition interlock device would be changed from a two-year suspension to a restart of the original interlock restriction period.

Administrative Hearing Fee

The bill would amend the DUI administrative hearing statute to add a \$50 hearing fee to cover administrative costs of the hearing. The fee would be required regardless of whether the hearing was in person or by telephone.

DUI

The DUI statute, KSA 2010 Supp. 8-1567, would be amended as follows:

- A first conviction would be increased from a class B to a class A, nonperson misdemeanor. Imprisonment would be increased from 48 hours-six months to 30 days-one year. The fine range would increase from \$500-\$1,000 to \$500-\$2,500.
- A second conviction would remain a class A, nonperson misdemeanor, as under current law. The fine range would be increased from \$1,000-\$1,500 to \$1,000-\$2,500. The person convicted would have to serve at least five consecutive days' imprisonment before being granted probation, suspension or reduction of sentence

or parole or being otherwise released. The mandatory imprisonment requirement could be satisfied by serving 48 consecutive hours' imprisonment followed by six days in a work release program, or by serving 48 consecutive hours' imprisonment followed by ten days of house arrest.

- A third conviction with no prior conviction within ten years would be a class A, nonperson misdemeanor, with imprisonment of 90 days to one year and a fine of \$2,500. The person convicted would have to serve at least ten consecutive days' imprisonment before being granted probation, suspension or reduction of sentence or parole or being otherwise released. The mandatory imprisonment requirement could be satisfied by serving 96 consecutive hours' imprisonment followed by 12 days in a work release program, or by serving 96 consecutive hours' imprisonment followed by 20 days of house arrest.
- A third conviction with a prior conviction within ten years would be a nonperson felony. The sentencing requirements would be the same as for a third conviction with no prior conviction.
- A fourth or subsequent conviction would be a nonperson felony, with imprisonment of 180 days to one year and a fine of \$2,500. The person convicted would have to serve at least 20 consecutive days' imprisonment before being granted probation, suspension or reduction of sentence or parole or being otherwise released. The mandatory imprisonment requirement could be satisfied by serving 192 consecutive hours' imprisonment followed by 24 days in a work release program, or by serving 192 consecutive hours' imprisonment followed by 40 days of house arrest.
- A fourth or subsequent conviction where the offender has previously participated in assessment and treatment

as described below would constitute a severity level 7, nonperson felony.

- Upon expiration of a term of imprisonment, the offender would be placed in the custody of the community correctional services program for a mandatory one-year period of supervision, during which time the offender would be required to participate in a multidisciplinary model of services for substance use disorders facilitated by an SRS-designated care coordination agency, to include assessment and, if appropriate, treatment.
- Legal use of drugs would not be a defense to DUI of drugs.
- Prior to sentencing for a first or second conviction or third conviction with no prior convictions within ten years, the court would be required to order the offender to participate in an alcohol and drug evaluation conducted by a licensed provider, and to follow any recommendations by such provider after evaluation, unless otherwise ordered by the court.
- The court would be able to order that any motor vehicle owned or operated, or both, by the convicted person be impounded or immobilized for up to two years.
- Diversion would not be available for any offender with a previous conviction of DUI or any DUI-related violation, as defined in the bill.
- Any offender considered for or eligible for diversion would be required to participate in an alcohol and drug evaluation conducted by a licensed provider, and the diversion agreement would have to require the offender to follow any recommendations, unless otherwise ordered by the court.
- The following items would constitute a conviction or factor in determining whether a conviction is a first,

second, third, fourth or subsequent conviction of this section:

- A test refusal while the offender was 18 years of age or older;
 - Convictions or diversion under this section, occurring on or after July 1, 2001;
 - Lifetime convictions or diversions for commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide while DUI, or vehicular battery while DUI;
 - Conviction under any ordinances, resolutions, or other state's laws, or code of military justice, which would constitute any of the above crimes;
 - Convictions, diversions, or adjudications for acts committed when the offender was under the age of 18 would be excluded from this determination.
- Definitions for "alcohol concentration," "imprisonment," and "drug" would be added to the section.

Expungement

The bill would allow a petition for expungement of a DUI (under KSA 8-1567 or municipal equivalent) after ten years. Expungement for such offenses currently is not allowed.

Pretrial Release

The bill would amend the pretrial release statute to allow a magistrate to impose the following as conditions of release for a person charged with commercial DUI or DUI:

- Not operate or attempt to operate a vehicle without a valid driver's license and insurance;
- Not operate or attempt to operate a vehicle without first providing the court with proof of installation of an ignition interlock device, with monitoring reports sent to the court;

- Abstain from using alcohol and illegal drugs;
- Agree to submit to alcohol or drug testing when directed by the court; or
- Use an alcohol monitoring device.

KBI Central Repository

The bill would require the KBI director to adopt rules and regulations on or before July 1, 2012, requiring district courts to report to the central repository the filing of all cases alleging a DUI or commercial DUI. The director would be required to adopt rules and regulations on or before July 1, 2013, requiring such reporting to be electronic.

The bill would create in the state treasury the KBI Central Repository Fund to upgrade and administer the KBI central repository.

Liquor Enforcement Tax

To finance the necessary upgrades to the KBI central repository, the bill would increase the liquor enforcement tax rate found in KSA 79-4101 from 8 percent to 9 percent in FY 2012, FY 2013, and FY 2014. The bill would amend KSA 2010 Supp. 79-4108 to direct that the additional funds generated, up to \$3 million, be credited to the KBI Central Repository Fund, with the remainder credited to the State General Fund.

Sentencing and Criminal History Provisions

The nondrug sentencing guidelines law would be amended to:

- Allow a sentencing court to retain jurisdiction to modify the sentence imposed for a third DUI conviction with a prior conviction within ten years.

- Create a special sentencing rule for a third and subsequent commercial DUI, providing for a presumptive imprisonment sentence and setting the following minimum grid block classifications: 3rd conviction, 7-H; 4th conviction, 7-G; 5th conviction, 7-F; 6th conviction, 7-E; 7th conviction, 7-D; 8th conviction, 7-C; and 9th or subsequent conviction, 7-B.
- Create a special sentencing rule for a fourth and subsequent DUI, providing for a presumptive imprisonment sentence and setting the following minimum grid block classifications: 4th conviction, 7-H; 5th conviction, 7-G; 6th conviction, 7-F; 7th conviction, 7-E; 8th conviction, 7-D; 9th conviction, 7-C; and 10th or subsequent conviction, 7-B.

The bill would prohibit downward dispositional or downward durational departure sentences for a third or subsequent commercial DUI or severity level 7, nonperson felony DUI.

In determining criminal history for a conviction of involuntary manslaughter while DUI, each prior adult conviction, diversion, or juvenile adjudication for the following crimes would count as one person felony: commercial DUI, DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI.

Persons convicted of DUI or commercial DUI would be subject to serving 24 months, plus any amount of good time and program credit earned and retained, on postrelease supervision. Persons released early by the Parole Board under the agreed treatment program provision would be subject to serving 24 months, plus the remainder of their sentence and any good time and program credit earned and retained, on postrelease supervision.

Municipal Courts and DUI Prosecution

Throughout the bill, there are provisions related to prosecution of DUI and commercial DUI in municipal courts. These include:

- Any city ordinance or county resolution prohibiting DUI or commercial DUI would be required to have penalties within the range provided for the crimes under the state DUI code and authorize restitution.
- No city would be allowed to pass a DUI or commercial DUI ordinance unless the city's law enforcement reports arrests to the KBI; the city's municipal court utilizes a standardized risk assessment instrument approved by the Kansas Sentencing Commission, utilizes a standardized substance abuse evaluation approved by SRS, uses the results of these assessments and evaluations in determining disposition, can supervise the offender, and reports the case disposition to the KBI central repository; after July 1, 2012, the city's municipal court reports the case disposition electronically.
- Any DUI or commercial DUI ordinance in any city that did not meet these requirements would be declared null and void on and after July 1, 2011.
- Upon filing a DUI or commercial DUI complaint, and before conviction, a city attorney would be required to obtain records of prior motor vehicle violations and criminal history information from the Division of Vehicles and the KBI central repository.
- The city attorney would be required to refer any violation that would constitute a felony commercial DUI or a third or subsequent DUI to the appropriate county or district attorney, and the county or district attorney would be required to pursue a disposition of the violation.

- After July 1, 2011, the district court would have exclusive jurisdiction over any violation that would constitute a third DUI, and cities would be prohibited from enacting an ordinance granting a municipal court jurisdiction over such offenses.
- In DUI or commercial DUI cases, a municipal court would be required to ensure that it utilizes a standardized risk assessment instrument approved by the Kansas Sentencing Commission, utilizes a standardized substance abuse evaluation approved by SRS, uses the results of these assessments and evaluations in determining disposition, can supervise the offender, and reports the case filing and disposition to the KBI central repository. On and after July 1, 2012, the municipal court would be required to report the case disposition electronically. On and after July 1, 2013, the municipal court would be required to report the filing of such case electronically.
- A city attorney would be prohibited from entering into a diversion agreement on a complaint alleging an alcohol related offense if the defendant had a previous conviction of or diversion for DUI or any DUI-related violation. A person receiving a diversion would be required to participate in an alcohol and drug evaluation by a licensed provider and to follow any recommendations made by the provider.
- Municipal DUI or commercial DUI convictions or diversions would be equivalent to convictions or diversions under the state DUI code for the purposes of determining prior convictions and enforcing various administrative and sentencing provisions.

Technical Changes

Throughout the statute, various references and other language are revised to ensure statutory consistency and reflect current law.

Background

In response to public concerns regarding repeat DUI offenders, the 2008 Legislature created the Substance Abuse Policy Board (SAPB) to consult and advise the Kansas Criminal Justice Coordinating Council concerning issues and policies pertaining to the treatment, sentencing, rehabilitation and supervision of substance abuse offenders. In a January 2009 report, the SAPB recommended the Legislature create a commission to conduct a comprehensive review of DUI statutes, review effective means of changing DUI offender behavior, and develop a legislative proposal to assure highway safety by changing DUI offender behavior.

The 2009 Legislature accordingly created the Kansas DUI Commission through KSA 21-4802 (2009 Senate Sub. for HB 2096). The Commission was charged with reviewing DUI statutes in Kansas and other states, DUI-related proposals introduced in the 2009 Legislative Session, other DUI-related subjects as referred to the Commission, effective strategies in changing the behavior of DUI offenders, and other information related to DUI to determine if results or conclusions have been found to address the issues. The Commission also was directed to develop a balanced and comprehensive legislative proposal that would centralize recordkeeping to ensure accountability, assure highway safety by changing behavior by DUI offenders as early as possible, and provide significant restrictions on personal liberty at some level of frequency and quantity of offenses. The Commission was directed to submit its report and recommendations to the Legislature on or before the first day of the 2011 Session.

The Commission split into four subcommittees: Substance Abuse Evaluation and Treatment, Criminal Justice, Law Enforcement and Recordkeeping, and Legislative. The Commission and its subcommittees met 19 times in 2009 and 2010 to work through the issues assigned to the Commission and to craft proposed legislation incorporating its recommendations. The resulting legislation was introduced by

the Senate Committee on Judiciary as SB 7. Additionally, the Commission included in its report several recommendations that were either did not require Legislative action or else were not included in the proposed legislation.

The Senate Committee on Judiciary held a hearing on SB 7 over four days. The Chairperson of the Committee, Senator Tim Owens, served as the Chairperson of the DUI Commission, and presented the DUI Commission report to the Committee while explaining the Commission's background, process, and findings.

Proponents of the bill who testified before the Senate Committee included representatives of the Kansas Association of Chiefs of Police, Kansas Association of Addiction Professionals, and Mothers Against Drunk Driving; the Lenexa city prosecutor; and a private citizen. Written testimony supporting the bill was submitted by the Kansas Department of Transportation, the Kansas Bureau of Investigation, a criminal defense attorney, the Leavenworth County Attorney, the Pacific Institute for Research and Evaluation, the Kansas Highway Patrol, the Kansas Ignition Interlock Association, SRS Deputy Secretary Ray Dalton, and a private citizen.

Opponents of the bill who testified before the Senate Committee included a criminal defense attorney who served on the DUI Commission and representatives of the Kansas Association of Criminal Defense Lawyers, National Association of Social Workers (Kansas Chapter), Kansas Licensed Beverage Association, and American Beverage Institute. Written testimony opposing the bill was submitted by Sedgwick County Commissioner Karl Peterjohn, speaking for himself.

The following parties provided neutral testimony: representatives of Secretary of Corrections Ray Roberts, Kansas Association of Counties, and Kansas Real Estate Commission. Written neutral testimony was submitted by the City of Wichita and a private citizen.

In an effort to reduce the fiscal impact of SB 7, Senator Owens introduced a substitute bill for SB 7 during final action in the Senate Committee. The substitute bill: eliminated provisions contained in the original bill that would have created new crimes of “refusing to submit to a test to determine the presence of alcohol or drugs” and “aggravated battery while DUI”; adjusted the severity level of a third DUI with prior conviction within ten years; left ignition interlock duties with the Division of Vehicles rather than transferring them to the Kansas Department of Health and Environment; and added an alcohol gallonage tax.

The Senate modified the substitute bill by: changing the approved assessment and treatment providers from providers authorized by the SRS to providers licensed by the Behavioral Sciences Regulatory Board to diagnose and treat mental disorders; changing the lookback period for prior DUI convictions or diversions from 1996 to 2001; making a test refusal by a person over 18 years of age a factor to be considered in determining the number of prior convictions; reducing the grid block classifications for the special sentencing rules by one letter; eliminating lookback for any conviction or adjudication for an act or crime committed when a person was under the age of 18; eliminating ignition interlock requirements for a first-time offender; and changing the gallonage tax to a liquor enforcement tax. The Senate Committee recommended Sub. for SB 7 be passed.

The fiscal note on the bill, as introduced, indicated the following fiscal impact (any fiscal effect associated with SB 7 is not reflected in *The FY 2012 Governor's Budget Report*):

Prison Bed Costs

The Kansas Sentencing Commission estimated that SB 7 would require an increase of 775 to 1,257 adult prison beds in FY 2012 and an increase of 1,456 to 2,210 adult prison beds by FY 2021.

The current number of male inmates exceeds the available bed capacity of 8,259, and based on Kansas Sentencing Commission projections, it is estimated that at the end of FY 2011 and FY 2012, the number of male inmates will exceed available capacity by 235 beds and 394 beds, respectively. The Governor's recommended FY 2012 budget includes \$2.5 million for contract prison beds to address these issues. If facility construction is necessary, the Department of Corrections has identified two capacity expansion projects: two high medium security housing units at El Dorado Correctional Facility that would provide 512 beds with a construction cost of \$22,687,232 (\$44,311 per bed X 512) and operating costs of \$9,339,904 (\$18,242 per bed X 512); and one minimum security housing unit at Ellsworth Correctional Facility that would provide 100 beds with a construction cost of \$5,935,000 (\$59,350 per bed X 100) and operating costs of \$1,832,000 (\$18,320 per bed X 100).

Any capacity needed beyond these options would require additional contract or construction costs. Actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied.

Department of Corrections

The Department of Corrections estimated the bill would require adding 46.00 parole officer FTE positions with salary and wages costs of \$2,192,000 and \$270,000 for 15 vehicles. \$182,597 would be required for 4.00 FTE positions for processing journal entries, parole forms, and DUI sentencing computations. \$411,865 would be required for programming and ongoing operating costs. Total: \$3,056,463.

Office of Judicial Administration

OJA projects at least 4,832 new cases to district courts, representing 3,337 cases from an estimate assuming only cities of the first class would be able to adhere to the bill's requirements for prosecuting DUI cases, 818 cases resulting from the provision requiring felony DUI cases to be filed in district courts, and 677 cases from the new crimes created in the bill. OJA also projects approximately 5,000 expungement petitions. The increased caseload would require the following expenditures: \$517,105 for 14.90 trial clerk FTE positions (14.90 positions X \$34,705 cost per position); \$994,458 for 6.00 judge FTE positions (6.00 positions X \$165,743 cost per position); \$342,606 for 6.00 court reporter FTE positions (6.00 positions X \$57,101 per position); \$244,650 for 6.00 administrative assistant FTE positions (6.00 positions X 40,775 per position); and \$1,784,053 for 35.50 court services officer FTE positions (35.50 X \$50,255 per position). Total: \$3,882,872.

Board of Indigent Defense Services

BIDS estimated \$877,500 in State General Fund dollars in FY 2012 would be needed to hire 13.50 attorney FTE positions (13.50 positions X \$65,000 cost per position). \$328,950 would be needed for drug and alcohol evaluations as required by the bill (2,193 X \$150 per evaluation). Total: \$1,206,450.

Kansas Bureau of Investigation

KBI estimated it would need State General Fund funding in FY 2012 to upgrade the central repository and data exchanges in the following amounts: \$175,000 to develop detailed system requirements and designs; \$300,000 to develop a DUI portal; \$325,000 to build the required interfaces; \$650,000 to expand the central repository; \$375,000 to develop notification and management functions; \$375,000 to link to document imaging systems; \$450,000 for project management, testing, documentation, and training; and \$225,000 for hardware and software. Total: \$2,875,000.

Social and Rehabilitation Services

SRS estimated 225 individuals would require treatment under the bill, costing \$176,045 from the State General Fund in FY 2012. DUI specialty provider licensing would require \$190,946 for salary, wages, administration, IT, travel, and training expenses. Total: \$366,991.

Department of Revenue

The Department of Revenue estimated the new application and hearing fees would generate \$713,000 in revenue for the Vehicle Operating Fund. There would be costs of \$20,000 to create and provide new forms and \$10,800 to modify the driver's license system. Total: + \$692,200.

Kansas Department of Health and Environment

KDHE estimated \$40,500 from the State General Fund would be required to approve ignition interlock devices, which includes salary and wages for a .50 Laboratory Improvement Specialist FTE position and \$10,500 for travel, equipment, training, and database revision expenses. Total: \$40,500.

Cities and Counties

County jails could see savings because of provisions requiring incarceration in state correctional facilities for 4+ DUI convictions. However, any savings would be offset by additional costs from offenders sentenced to county jails for new crimes under the bill. The Kansas Association of Counties is unable to estimate the precise savings or costs under the bill.

Some municipalities could see court cost reductions due to decreased DUI caseloads as more cases are filed in district court under the bill. However, revenue from filing fees and fines would also be eliminated. The League of Kansas Municipalities is unable to determine a precise fiscal effect for cities.

Effect of Substitute Bill

There is no fiscal note available for Sub. for SB 7. A revised bed impact statement from the Kansas Sentencing Commission indicates Sub. for SB 7 would require an increase of 73 to 80 prison beds in FY 2012 and 968 to 1227 prison beds by FY 2021.

Sub. for SB 7 was designed to reduce the fiscal impact from SB 7, as introduced. The substitute bill is intended to reduce the projected costs to the KDOC, OJA, and BIDS by eliminating the new crimes of test refusal and aggravated battery while DUI from the bill language and making some of the sentencing provisions less severe. The substitute bill is intended to eliminate the projected cost to KDHE by leaving ignition interlock responsibility in the Department of Revenue. Finally, the 1 percent increase in the liquor enforcement tax proposed in the substitute bill is projected to generate a three-year total of \$19.12 million (\$6.25 million in FY 2012, \$6.38 million in FY 2013, \$6.49 million in FY 2014). The revenues of this tax would first be directed to cover the cost to the KBI of upgrading the central repository, with the remainder of the revenues deposited in the state general fund.