



Kansas Bureau of Investigation

Kirk Thompson
Director

Derek Schmidt
Attorney General

Testimony of Kyle Smith,
Assistant Attorney General/Deputy Director
Kansas Bureau of Investigation
In support of HB 2218
Before the Senate Judiciary Committee
March 12, 2013

Chairman King and Members of the Committee,

On behalf of Attorney General Derek Schmidt I appear today in support of HB 2218 correcting a misapplication of English and the law arising out of a recent Kansas Supreme Court decision which lets drunk drivers escape consequences of their dangerous behavior.

Essentially the issue here is whether an officer can determine that a driver arrested for some other offense, was also under the influence and so request the driver to submit to a blood alcohol test. That had been the interpretation of the statute in question by the Kansas Court of Appeals in *State v. Counseller*, 22 Kan. App. 2d 155, 912 P.2d 757, *rev. denied* 260 Kan. 997 (1996). However the current Kansas Supreme Court reversed that decision two months ago and suppressed the driver's refusal because it interpreted that statutory language as essentially requiring a double arrest, if that is even possible. *State v Shrader*, Kansas Supreme Court, No. 103,176, Dec. 14, 2012.

The Kansas Supreme Court in their interpretation of the Kansas Implied Consent law, K.S.A. 8-1001 has severely hindered law enforcement's ability to investigate a suspected impaired driver. HB 2218 clarifies the statutory language to the previous interpretation.

In *Shrader*, an Oberlin Kansas police officer saw a car make an illegal turn at about 1:30 in the morning. He also recognized the driver as someone he knew to have a suspended drivers license. Once stopped, the person was obviously intoxicated but since he had been formally arrested for driving while suspended, the Kansas Supreme Court ultimately ruled that Shrader's refusal to submit to a blood alcohol test was inadmissible.

Do we really want drunk drivers escaping justice because they first commit some other crime or crimes? HB 2218 restores a simpler and effective process for fighting drunk driving. On behalf of Attorney General Derek Schmidt, I urge your support.

I would be happy to stand for questions.