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Testimony Regarding HB 2218
Submitted by Tom Weilert, Assistant District Attorney
On Behalf of Marc Bennett, District Attorney
Eighteenth Judicial District
And the Kansas County and District Attorneys Association

Honorable Chairman King and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2218. On behalf of Marc Bennett, District Attorney, Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I offer my support of this bill and its amendments to K.S.A. 8-1001, commonly referred to as the "Implied Consent" statute.

HB 2218 clarifies law enforcement's long-standing authority to request a sample of an arrestee's blood, breath, or urine if an officer has reasonable grounds at the time of the request to believe the individual has been operating or attempting to operate a motor vehicle (1) under the influence of alcohol or drugs or (2) with alcohol or drugs in such person's system while driving a commercial vehicle or under the age of 21.

In Shrader v. Kansas Dept. of Revenue, 290 P.3d 549, (Dec. 14, 2012), the Supreme Court held that in order for an officer to request a sample of an arrestee's blood, breath, or urine per K.S.A. 8-1001, the officer must have arrested the individual for an alcohol-related offense, such as DUI or Minor in Possession (MIP). This holding reversed State v. Counseller, 22 Kan.App.2d 155, 912 P.2d 757 (1996), which interpreted K.S.A. 8-1001 to allow such testing to be requested when (1) a person has been arrested (2) for any violation of the law (3) when an officer has reasonable grounds (i.e. probable cause) at the time of the request to believe the person had been driving under the influence.

The Court of Appeals recognized in Counseller an individual may be initially arrested for any number of traffic or other offenses while operating a motor vehicle, but that an officer may not become aware of evidence of intoxication until after the person has been arrested, placed in the confined space of a patrol car, or transported to jail. If during such period of time a person makes statements or exhibits symptoms revealing probable cause of alcohol or drug use or impairment, it is abundantly reasonable to expect law enforcement to request such person to submit to testing that would have been authorized if the person's impairment would have been more immediately apparent. HB 2218 not only addresses the difficulties caused by the Shrader case's limiting testing to those arrested for alcohol-related offense, but it also clarifies that an officer needs reasonable grounds of substance use or impairment *at the time of the request*. The

addition of this language resolves some confusion by courts as to when an officer has to have probable cause of use or impairment in order to request a test. It is not uncommon for individuals to drive while their privileges are suspended. Doing so offers no indication of impairment. However, during the post-arrest process, an officer may develop probable cause that would warrant a request for blood, breath, or urine samples. On the converse, an officer may initially have probable cause that would warrant a test request but later determine an alternative explanation for the symptoms of impairment, removing the need to make such a request.

HB 2218 appropriately connects an officer's need for probable cause of use or impairment to the moment the request is made after a person is already in lawful custody or otherwise subject to testing pursuant to K.S.A. 8-1001.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Tom Weilert
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