

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 3:30 pm on Thursday, January 28, 2016, 112-N of the Capitol.

All members were present except:

Representative Annie Kuether – Excused
Representative Mark Kahrs – Excused

Committee staff present:

Robert Gallimore, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Jenna Seematter, Office of Revisor of Statutes
Lauren Douglass, Legislative Research Department
Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

Steve Leben

Others in attendance:

[See Attached List](#)

Vice-Chairperson Charles Macheers called the meeting to order. He advised the committee that Chairperson Barker was in a meeting and would be late so they will go ahead and start the meeting.

Bill introductions

Vice-Chairperson Macheers opened the floor for bill introductions. There were none.

Hearing on: SB58 — Kansas judicial review act; venue.

Vice-Chairperson Macheers opened the hearing on **SB58**. Jason Thompson, Revisor, gave an overview of the bill. Representative John Whitmer had a question concerning the fiscal note.

There were no proponents appearing to testify.

Vice-Chairperson Macheers recognized Steve Leben who testified as an opponent to **SB58** ([Attachment 1](#)). Questions were asked of Judge Leben by Representatives Jan Pauls, John Carmichael, John Rubin, and Dennis Highberger.

Chairperson Barker entered the room at 3:37 p.m. Representative John Rubin asked why there were no proponents. Chairperson Barker said he was advised earlier that the proponents were not going to appear or push this bill, but he went ahead with the hearing because he may have another use for this bill later.

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Chairperson Barker closed the hearing on **SB58**.

Possible action on bills previously heard

Chairperson Barker asked the committee to open their folders on **HB2289 - DUI test refusal or failure; administrative hearing procedure**. He asked the committee what their pleasure was.

*Vice-Chairperson Charles Macheers moved to recommend **HB2289** favorably for passage, seconded by Representative Erin Davis.*

Chairperson Barker asked if there was any discussion. Representative John Carmichael stated that he has a proposed **Substitute for HB2289** that he would offer by way of amendment ([Attachment 2](#)).

*Representative John Carmichael moved that the Committee amend **HB2289** by adopting the proposed **Substitute for HB2289**, seconded by Representative Dennis Highberger.*

Representative John Carmichael explained that the **Substitute for HB2289** was prepared in accordance with the recommendations of the Judicial Council but with the modification that the words "police reports" have been changed to "law enforcement reports."

Chairperson Barker further clarified that the **Substitute for HB2289** recommended by the Judicial Council requires that the law enforcement reports be made available to the licensee or his counsel prior to the administrative hearing.

Representative John Carmichael closed on his motion.

*A vote was taken, and **Substitute for HB2289** was adopted.*

Representative John Rubin requested a short recess, which was granted by Chairperson Barker.

Chairperson John Barker reopened the discussion on **Substitute for HB2289**.

Representative John Rubin advised that he has a balloon amendment to offer ([Attachment 3](#)). The amendment was distributed to the committee. Representative Rubin explained that language has been added to make it clear that constitutional issues will not be decided at the administrative hearing. The second amendment in the balloon requires the district court, upon judicial review, the right to determine constitutional issues if they are raised by the petitioner.

*Representative John Rubin moved that the committee adopt the balloon amendment to **Substitute for HB2289**, seconded by Representative Jan Pauls.*

There was discussion by Representatives James Todd, Erin Davis, John Carmichael, Chairperson

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Barker, Representatives Craig McPherson, John Rubin, and Jason Thompson, Revisor.

Representative Blaine Finch is concerned that the balloon amendment removes the procedural safeguard that the substitute bill had relating to the district court being able to rule on any constitutional issues by placing the burden on the licensee to raise the constitutional issues at the district court level. He is concerned that pro se litigants would not know if there were any constitutional issues related to the traffic stop and, therefore, would not know to raise them if they appealed their case to the district court. Chairperson Barker asked Jason Thompson, Revisor, to respond. Mr. Thompson stated there is some discrepancy between "the court shall consider" and the burden being on the licensee. He's not sure if the district court would consider any constitutional issues if they are not raised by the licensee.

Representative John Rubin disagrees that the balloon takes away a right that currently exists. From what he heard at the Judicial Council Criminal Law Committee meetings, currently constitutional issues are never raised at administrative hearings and, if raised, they are not considered. This balloon allows constitutional issues to be raised, but not at the administrative hearing level.

Representative John Carmichael stated that the court has jurisdiction to consider constitutional issues on judicial review. However, as in any proceeding, the defendant has the obligation to raise the constitutional issues.

Representative Jim Ward entered the room.

Representative Jan Pauls stated she supports the amendment.

Representative John Rubin closed on his motion to amend **Substitute for HB2289**. A vote was taken, and the amendment was adopted.

Representative John Whitmer reminded the committee that the original bill was opposed by Mothers Against Drunk Driving for some very good reasons.

Vice-Chairperson Charles Macheers moved to recommend the amended **Substitute for HB2289** favorably for passage, seconded by Representative John Rubin. A vote was taken, and Chairperson Barker noted that **Substitute for HB2289** passed favorably.

Representative John Whitmer requested that his nay vote be recorded. Representative John Rubin asked that his aye vote be recorded.

The discussion and action on **Substitute for HB2289** was closed.

SB133 - Possession or consumption of alcoholic beverage by minor; immunity from criminal prosecution for minor seeking medical assistance.

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Chairperson Barker requested the committee open their folders on **SB133**. Jason Thompson, Revisor, provided an overview of the bill. A nearly identical bill was heard in the House Judiciary Committee, **HB2198**. The Senate passed **SB133**, and it went to conference committee. A conference committee report containing **SB133** and other items was rejected on the floor. This bill, as amended by the Senate, has very minor differences from **HB2198, as amended by the House Committee on Judiciary**.

*Representative James Todd moved that the committee recommend **SB133** favorably for passage, seconded by Representative John Carmichael.*

*Representative James Todd moved to amend **SB133**, seconded by Representative Jim Ward.*

Representative James Todd stated that the amendment ([Attachment 4](#)) clarifies the scope of the cooperation with emergency medical services personnel and law enforcement officers by adding the words "in providing such medical assistance."

*Representative James Todd closed on the amendment to **SB133**. A vote was taken, and the amendment to **SB133** was adopted.*

*Representative John Carmichael moved that the technical amendment to **SB133** be adopted, seconded by Representative James Todd.*

Representative Carmichael stated that the amendment ([Attachment 5](#)) simply changes the year from 2014 to 2015. Chairperson Barker called for discussion. There was none.

*A vote was taken, and the technical amendment to **SB133** was adopted.*

Chairperson Barker asked if there was further discussion. Representative John Whitmer stated that this bill still does not deal with multiple offenders, underage drinking, or binge drinking. This bill actually weakens the standards that most universities already have. He would encourage the committee to oppose this bill.

*Representative James Todd moved that **SB133, as amended**, be passed favorably, seconded by Representative John Carmichael. A vote was taken, and the Chair was in question. Chairperson Barker called for a show of hands. There were eleven votes in favor of **SB133, as amended**, and nine votes in opposition. **SB133, as amended**, was favorably passed.*

The following Representatives asked that their nay votes be recorded: Representatives John Whitmer, John Rubin, Becky Hutchins, and Randy Powell.

The discussion and action on **SB133, as amended**, was closed.

Chairperson Barker stated that there will be a staff briefing on **HB2147** on Tuesday. On Wednesday

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someone from the Attorney General's Office may give a briefing on the recent U.S. Supreme Court decisions in the Carr and Gleason cases. There will not be a hearing on **HCR5013** next Wednesday.

There being no further business, the meeting was adjourned at 4:40 p.m.