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To: House Judiciary Committee

From: Jay Norton

Date: January 11, 2016

Subject: H.B. 2289 – Regarding Administrative Driver's License Hearings

Chairman Barker and Members of the Committee:

I am writing in support of House Bill 2289 which would amend K.S.A. 8-1002 and K.S.A. 8-1020 to require that law enforcement officers certify that there were reasonable grounds under the law to justify the seizure of a person operating a motor vehicle and to require the production of police reports to a driver or his or her counsel upon request prior to an administrative hearing.

I have handled DUI cases in Kansas for over 20 years and am the State Delegate to the National College for DUI Defense for the state of Kansas, although my testimony today is on my own behalf as a Kansas attorney.

I. The Legality of Seizures

The decision in Martin v. Kansas Department of Revenue, 285 Kan. 625 (2008), which resulted in a finding that the Exclusionary Rule should not apply in civil administrative hearings, was an enormous enlargement of the power of the government over the people and a crippling blow to the Fourth Amendment of the US Constitution and its Kansas Constitution counterpart. In fact, not only did Martin sanction suspicionless stops of citizens for any reason (or no reason, at all), the finding that the Exclusionary Rule was not applicable to a clear violation of the Constitution in an administrative hearing means that violations of the 5th Amendment, 6th Amendment, or any other provision of the Constitution or Bill of Rights will also be overlooked in an administrative hearing. I believe that the decision is not consistent with American values or the values of most Kansans who believe that the Constitution should be applicable to all legal proceedings and that the government should always have to follow the

Constitution.

H.B. 2289 is an opportunity to restore the Constitution and rule of law to the Kansas administrative hearing procedure. It will simply allow a hearing officer or district court judge to determine whether the seizure of a citizen in a motor vehicle was lawful under the Fourth Amendment. The presumption will be that it was, and the burden to show otherwise will be on the driver. Nothing in the bill would prevent law enforcement officers from conducting DUI checklanes, which are not considered unreasonable seizures according to the United States Supreme Court in Sitz v. Michigan, 496 US 444 (1988).

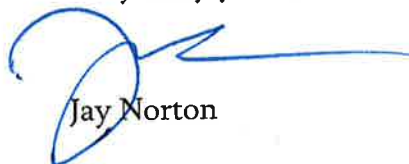
II. Providing Police Reports

H.B. 2289 would also require that, before an administrative hearing was conducted, that the driver or his or her attorney be provided copies of police reports if requested and paid for. Currently, KSA 8-1020 requires that audio and video recordings be provided, but not the other documents concerning the arrest. It makes no sense that video recordings are required prior to a hearing but not the reports. There are many instances in which a criminal charge has not been filed against a driver who is subject to an administrative hearing. Thus, the driver has not had any opportunity to view the evidence against him or her by the time of the hearing. The statute of limitations for filing a DUI charge is 5 years. Many jurisdictions wait months before filing a charge, including Douglas and Leavenworth Counties where I routinely handle cases.

It is important to remember that the individual driver has the burden of proof at an administrative hearing. Further, a driver can only file a petition for review of the administrative hearing decision to the district court based on issues raised at the administrative hearing. It is fundamentally unfair to require the driver to bear the burden of proof, and restrict him or her on appeal to issues raised at the administrative hearing, but not let the driver see the evidence against him or her prior to the hearing. Requiring the production of police reports upon request and proper payment will be no burden on law enforcement agencies.

I appreciate the Committee giving me a chance to address these issues and I urge you to pass H.B. 2289.

Very truly yours,



Jay Norton