



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.AG.KS.GOV

**Testimony in Support of Senate Bill 374  
Concerning driving under the influence**

**Presented to the Senate Judiciary Committee  
By Assistant Solicitor General Natalie Chalmers**

**February 12, 2018**

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to submit written testimony on behalf of Attorney General Derek Schmidt in support of Senate Bill 374. The Office of the Kansas Attorney General supports this bill because it fixes the limbo driving under the influence convictions have been in since the Kansas Supreme Court found the current advisories required in K.S.A. 8-1001 were unlawfully coercive.

Recent appellate cases have subjected DUI convictions to uncertainty because they found portions of current DUI law unconstitutional. In *State v. Ryce*, 303 Kan. 899 (2016), *adhered to on reh'g*, 306 Kan. 682 (2017), and *State v. Nece*, 303 Kan. 888 (2016), *adhered to on reh'g*, 306 Kan. 679 (2017), the Kansas Supreme Court held that the K.S.A. 8-1025, the criminal refusal statute, was unconstitutional and that the DC-70 warnings which required law enforcement to advise drivers that a refusal to submit to a breath, blood, or urine test could subject them to being prosecuted were unlawfully coercive. Because this advisory is required by K.S.A. 8-1001(k), every driver who submitted to a test then had the opportunity to challenge their conviction by alleging the evidence from the test should be suppressed. This has resulted in numerous appellate cases challenging DUI convictions. Although the challenges have largely been unsuccessful in the Court of Appeals, the Kansas Supreme Court has not yet ruled on whether the good faith exception, along with other possible defenses, protects those convictions from reversal on appeal.

Though, at first blush, the opinions may seem to only require removing language regarding criminal refusal from the advisories, challenges are being made to other portions of the advisories. If successful, those challenges would place DUI convictions in the same limbo they are currently in. This bill removes language being challenged to protect future DUI convictions, and hopefully temper the large amount of litigation resulting from the required advisories.

Further, after these opinions were initially released, the Office of the Attorney General released a revised DC-70 removing the language found to be coercive by the Kansas Supreme Court. However, there have been a number of challenges to whether the amended DC-70 violates K.S.A. 8-1001 during the period of time when *Ryce* and *Nece* were not yet final. Thus, in case any other future challenges arise and are successful, this bill also allows for modification to the advisories in response to such litigation by the Office of the Attorney General and the Kansas Department of Revenue. This will enable a quick response to limit the number of convictions and prosecutions endangered by any potential successful challenge to the advisories.

The inability to successfully prosecute DUIs is a serious public safety issue. Because this bill addresses the current risks to DUIs to protect the safety of the public, the Office of the Attorney General would respectfully request this committee's favorable consideration of this bill. Thank you for your time.