

To: House Judiciary Committee

From: John Goodyear, Law Clerk

Date: February 5, 2019

RE: Support for HB 2104

I want to thank Chairman Patton and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide testimony in support of HB 2104.

The League of Kansas Municipalities supports HB 2104 in its amendments to K.S.A. 8-1012 as these amendments appear to cure a constitutional defect. In *State v. Robinson*¹ the Court of Appeals held that imposing a traffic infraction for the refusal to submit to preliminary screening tests was, on its face, unconstitutional. In reaching this decision, the Court of Appeals relied on *State v. Ryce*,² a decision of the Kansas Supreme Court invalidating a similar provision in K.S.A. 8-1025. As it appears on the books right now, K.S.A. 8-1012 criminalizes the withdrawal of consent to a warrantless search in violation of the Due Process Clause of the Constitution. HB 2014 addresses this problem. The League of Kansas Municipalities supports this bill because it cures the constitutional issue and provides a proper roadmap with a permissible path of action for local law enforcement officers to follow when making the efforts to administer a preliminary screening test of a driver's breath or oral fluid.

Additionally, the changes that this bill makes to K.S.A. 8-1001 address the penalty that can be imposed when an individual refuses to submit to evidentiary tests or fails that test. Because driving is a privilege and not a fundamental right, the suspension of a driver's license or their driving privileges does not constitute a criminal penalty and does not violate the Constitution. These changes address one of the primary concerns of the State in the *Robinson* case; that without criminal sanction, there was no penalty that could be imposed for refusing the test. In response to this concern, the Court states, "It appears that if the Legislature chose to take such action, it would be free to impose a civil penalty such as a driver's license suspension for a driver who refuses consent to a PBT without violating the driver's constitutional right."³ That's what this bill does.

We support these amendments and respectfully ask this Committee to pass HB 2104 to the full House for consideration.

¹ *State v. Robinson*, 55 Kan. App. 2d 209 (2017).

² *State v. Ryce*, 303 Kan. 899, 963-964. 368 P.3d. 342, 380-381 (2016).

³ *Robinson*, at 222.