

**House Judiciary Committee
February 16, 2021**

**House Bills 2377
Neutral Testimony
Kansas Association of Criminal Defense Lawyers**

Dear Chairperson Fred Patton and Members of the Committee:

House Bill 2387 updates the crime of operating an aircraft under the influence. Given the relationship of this bill to HB2377, I think the two bills will largely be considered together and should contain similar language, specifically relating to sentencing provisions. Because I believe the language of the bill should be clarified to reflect the goals and language of current DUI law, I offer neutral testimony.

Section 1.(b)(1) states that operating an aircraft under the influence is a class A nonperson misdemeanor except as provided in subsection (b)(2). However, it then provides differing sentencing provisions for a first and second conviction, allowing only up to a six-month sentence for a first conviction and a year-long sentence for a second conviction. Based on this proposed sentencing language, and to reflect DUI law, a first conviction should be classified as a class B misdemeanor and a second conviction as a class A misdemeanor.

HB2387 proposes to not specifically provide any opportunity for probation for a first conviction, while specifically indicating probation for a second or subsequent conviction. This may lead to circumstances where courts may not believe they have the discretion to give a person with a first conviction an opportunity to serve a term of probation and only allow a court to impose jail time or community service.

HB2387 states that a person convicted of operating an aircraft under the influence if they did not have a valid pilot license would be sentenced as a severity level six offense on the KSGA. However, the bill maintains traditional DUI sentencing language regarding mandatory minimum term of imprisonment and the required hours, etc. for house arrest and work release that are currently included in K.S.A. 8-1567. This current language of the bill lacks clarity on whether the offense should be sentenced under the KSGA or as part of an independent sentencing scheme in its own statute.

If the sentencing should remain independent, this offense is best classified as a nonperson felony. The sentencing language should also be amended to mirror the efforts of the language in HB2377 to provide greater flexibility on how any mandatory minimum sentence may be served and how time spent on house arrest or work release should be calculated and credited toward time served. I would adopt language similar to that

included in Section 4 and Section 7 of HB2377 amending K.S.A. 2,144(b)(1)(B) and K.S.A. 8-1567(b)(1)(B), respectfully.

Thank you for the opportunity to provide testimony on HB2387.

Sincerely,

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