

Testimony on House Substitute Senate Bill 6

Good afternoon members of the Senate Judiciary and Corrections Committees. My name is Chris Noble, Director of the Sunflower Alcohol Safety Action Project, Inc.

2010 Supp 8-1008 provided the authority for community based alcohol and drug safety action programs. The functions of those community based programs were to provide pre-sentence alcohol/drug evaluations to the courts, and to provide supervision and monitoring of offenders convicted of DUI.

The statute outlined the basic contents of the pre-sentence evaluation and the duties of those who prepare the evaluations. It also directed the sentencing court to assess the cost of the pre-sentence evaluation against the offender, along with court costs, fines, probation/parole fees, and other associated costs.

The statute also provided for the authority of the Chief Judge in a jurisdiction to certify a program to provide those services within its jurisdiction, and gave authority to set the qualifications and requirements of its program to include: supervision and monitoring of offenders, fee reimbursement procedures, delivery of services to indigent offenders, conflicts of interest, and appearances at revocation hearings.

The Sunflower Alcohol Safety Action Project, Inc (ASAP) of Shawnee County provides excellent service to the Third Judicial District and should be allowed to continue its' work.

SB6 changed KSA 8-1008 beginning July 1, 2011, striking all language related to alcohol drug safety action programs (ADSAP), pre-sentence evaluation, monitoring and supervision, fee reimbursement, ecetera.

Based on assumptions by the Substance Abuse Policy Board and later, the DUI Commission, All alcohol and drug safety action programs (ADSAP) were determined to be not working (ineffective), and needed overhaul. All ADSAPs were found to be inconsistent in evaluating offenders for alcoholism/drug dependency, and inconsistent in their reporting and supervision of the offender. Interestingly, no representative from any ADSAP was asked to speak to either of those boards.

The ADSAPs main function was blurred, even though its function had been clearly defined by KSA 8-1008 for about 20 years. ADSAPs were to provide an analysis of the offender to the court so the court could effectively sentence them.

Since its' inception in 1984, Sunflower ASAP has provided some 15,821 DUI evaluations or presentence investigations to the Courts.

2,453 pre-sentence evaluations/investigations were provided from years 2005 to 2010.

1,766 post sentence treatment or educational referrals were made. The remaining offenders had already completed an educational or treatment program prior to sentencing.

The evaluation, or pre-sentence investigation consisting of 5-10 pages, is an in-depth analysis of the individual being sentenced in a DUI case. Every offender was treated similarly in the process of the evaluation. The evaluation covered ALL aspects of the offender. It contains:

- a. Drinking/drug history-including assessment tools to determine use/abuse.
- b. A COMPLETE driving history of the offender, includes all years of offenses and all States the offender is or was licensed in.
- c. Events of the arrest. (both the offender's version and the arresting officer's report.)
- d. Family and work history.
- e. Criminal History (including out of state records/DUIs)
- f. Summary of the report with a recommendation for the Court for incarceration/treatment of the offender.

Supervision was provided by Sunflower ASAP on all misdemeanor DUI offenders.

- a. Offenders/probationers were monitored for compliance of probation terms.
- b. Offenders/probationers were tested periodically for alcohol/drug use (breath and urine).
- c. Court and District Attorney were alerted when offenders/probationers were not meeting their obligations of probation/parole.

- d. The DMV was notified per KSA 8-1014 (e), suspending driving privileges when an offender failed to complete a mandated treatment or educational program.
- e. Payment of fees/costs/fines were monitored closely. A payment monitor was developed by the Third District Court and Sunflower ASAP to ensure offenders were meeting their financial obligations to the State.

If members of the DUI Commission wished to find consistency, they could have focused their efforts on a system that was working in Shawnee County. Instead, all ADSAPs were painted with the same broad brush stroke, the slate was wiped clean, and we are left attempting to figure out what to do now.

Clearly there are some glaring defects with the system that has been legislated although it has not technically gone into effect yet.

Some of the problems:

1. In light of the recent Attorney General's Opinion (2011-22) claiming defendant, indigent or not, must pay the "provider" for the evaluation at the time of service. The fee is no longer assessed at time of sentencing and paid into the court over the course of probation. Additionally, the sentencing court no longer has the ability to waive any or all of the evaluation cost.
2. How does the Court obtain an evaluation for DUI when the offender is confined to jail? What treatment facility/provider would be summoned to expend time from their business to venture to a county jail to do an evaluation in which the offender has no means of support to pay for those services? Shawnee County and Sunflower ASAP had always been able to accommodate incarcerated persons.
3. Evaluations on DUI offenses after July 1, 2011 will not include a complete driving history of the offender or a complete criminal history of the offender. These 2 critical pieces of information won't be received by a sentencing Court/Judge until the offender has committed and is convicted of a Felony 3rd offense of DUI.

The Shawnee County Sunflower Alcohol Safety Action Project, Inc, should be able to continue providing the gold standard service in which the Third Judicial District has come to expect.

Respectfully,

Chris Noble
Project Director
Sunflower Alcohol Safety Action Project, Inc.