

STATE OF KANSAS  
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY  
STEPHEN M. HOWE, DISTRICT ATTORNEY

February 12, 2018

Senate Judiciary Committee  
Attention: Rick Wilborn, Chairman

**RE: Senate Bill No. 297**

Chairman Wilborn and Committee Members:

Thank you for the opportunity to write in opposition to Senate Bill 297. I join my colleague, Aaron Breitenbach, chair of the Kansas County and District Attorneys Association's DUI Legislative group, in urging this committee to set aside this bill in favor of the comprehensive changes and additions proposed in Section 6 of SB 374.

Subsequent to the holdings in *Ryce*, *Nece* and *Birchfield*, implied consent is both unconstitutional and impractical. Yet, this bill continues to use the implied consent language, "deemed consented to."

It fails to address the unconstitutional issue of warrantless blood draw without probable cause in accidents and on dead or unresponsive people.

*Birchfield* states search incident to arrest is sufficient to support requesting alcohol testing from someone suspected of impaired driving. However, the oral and written notice proposed by this bill appears to combine the unconstitutional implied consent with the lawful search incident to arrest. The combination of the unconstitutional implied consent with the lawful search incident to arrest will only compound and continue the barrage of suppression of alcohol testing by the courts who have ruled the state cannot rely on the search incident to arrest exception because of reliance on implied consent. Without the admission of testing, we are thwarted in our ability to properly prosecute impaired drivers.

Unlike SB374, the bill fails to set forth separate oral and written notices for breath or other bodily substances testing vs. blood or urine testing though the recent court rulings delineate a clear line between breath and blood testing.

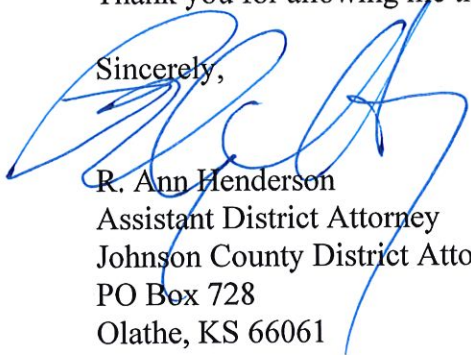
The advisory in this bill includes telling a person they have a constitutional right to refuse a blood or urine test. In cases where a search warrant has been obtained, that is simply not true.

In short, this bill creates rights and protections that are not required by our constitution or by recent rulings by the US Supreme Court.

Failure to make the necessary changes and additions to comply with the mandates the courts have handed down, will hamstring the investigation and effective prosecution in every judicial district across this state. I urge you to look carefully at the changes proposed and those left untouched by this bill and set it aside in favor of SB 374.

Thank you for allowing me the opportunity to provide testimony on this important topic.

Sincerely,



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