

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

September 20, 2006
Room 514-S—Statehouse

Members Present

Representative Lance Kinzer, Chairperson
Senator Terry Bruce
Senator Greta Goodwin
Senator Vicki Schmidt
Senator Ruth Teichman
Senator John Vratil
Representative Harold Lane
Representative Charlie Roth
Representative Jason Watkins
Representative Kevin Yoder

Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Jill Wolters, Kansas Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees

Karen Wittman, Shawnee County District Attorney's Office
Richard Howard, Kansas Department of Health and Environment
Lieutenant David Weed, Kansas Highway Patrol, Drug and Alcohol Unit
Major Mark Goodloe, Kansas Highway Patrol
Terry Roberts, Kansas State Nurses Association
James Keller, Kansas Department of Revenue
Mike Clarke, Attorney
Debra Billingsley, Kansas Crime Stoppers Association
Kevin Graham, Kansas Attorney General's Office
Kyle Smith, Kansas Bureau of Investigation

Morning Session

Topic No. 7– Enhanced Penalties for Driving Under the Influence of Alcohol or Drugs as Proposed in SB 341

Jerry Ann Donaldson, Kansas Legislative Research Department, provided an overview of existing policy, procedure, and law with respect to DUIs in Kansas ([Attachment 1](#)). She provided a current copy of the DUI statute ([Attachment 2](#)), a bed impact statement from the Kansas Sentencing Commission ([Attachment 3](#)), and the Sentencing Crime/Drug grid ([Attachment 4](#)).

Ms. Donaldson proceeded to explain the DUI bills which passed during the 2006 Legislative Session:

SB 431 – Clarifies that an officer must have a reasonable “suspicion” rather than “grounds” to believe a person has been operating a motor vehicle under the influence of alcohol or drugs before requiring a person to submit to a preliminary breath-screening test.

HB 2916 – Changes the time for suspension of a person’s driver’s license on a second, third, or fourth occurrence of a DUI to not less than one year. There also must be proof of installation of an ignition interlock device for one full year of the restricted period. Proof must be provided to the Division of Motor Vehicles before a person’s driving privileges can be reinstated.

Miscellaneous DUI provisions the Legislature passed included: amending the commercial driving licenses law; increasing the fines and penalties for those who unlawfully host minors consuming alcohol; adding implied consent provisions to the law dealing with preliminary testing for the presence of alcohol and drugs in a person; requesting persons under the age of 21 to submit to a preliminary screening breath test if a law enforcement officer has reasonable grounds to believe the person has alcohol in their body.

There were several proposed DUI bills during the 2006 Legislative Session that did not pass:

SB 341 – would have created a new crime of “aggravated involuntary manslaughter while driving under the influence of alcohol or drugs.” The crime would be defined as the unintentional killing of a human resulting from a motor vehicle accident when the driver’s blood or breath alcohol concentration is 0.16 or more.

The bill also would have created new penalties for a DUI if the person has a blood or breath alcohol concentration of 0.16 or more. If the individual failed the test or had alcohol levels at or above 0.16 the Division of Motor Vehicles would have had several sanctions to apply to that individual.

HB 2586 – would have amended the law if a person refused to take the breath test on the first occurrence of driving under the influence by suspending the person’s driving privileges for 30 days and then having a restricted license for 330 days.

HB 2605 – would have created prison sanctions consisting of a drug and alcohol abuse treatment program for offenders who had met certain criteria.

In 2005, no DUI bill passed the Legislature and there was only one that did so in 2004, namely **HB 2603** which clarified that a violation of an act under KSA 21-3442 would count as a person felony for criminal history purposes. In 2003, **SB 33** passed that added impoundment of a person's motor vehicle to the list of potential penalties for the conviction of DUI. The bill also created a new crime of unlawfully allowing a person to drive a vehicle when it is known that person has had a license suspended or revoked.

In 2002, the Legislature added toxic vapors in the definition of drugs and, in addition, made procedural changes relating to offenders convicted of fourth and subsequent offenses.

SB 67 was passed in 2001 which made many changes to the DUI statute, such as increasing criminal penalties, including jail or prison time and fines; increased driver's license length of suspension and increased the reinstatement fees; provided for lifetime driver's license revocations; restricted and revamped procedures regarding driver's license suspension and revocation administrative hearings; amended the zero tolerance law regarding driver's license suspension; and amended the underage drinking and possession statute to require a driver's license suspension of 30 days for violation.

Chairman Kinzer announced that Representative Tim Owens had planned on providing oral testimony but was not able to attend the meeting. Representative Owens' interest was with third-time and subsequent DUI offenders. Representative Owens mentioned that current sentences have no impact on reducing the incidents of DUI's; therefore, it would appear, that if Kansas is serious about stopping drunk drivers it would need to enhance penalties (Attachment 5). Representative Owens' written testimony proposed the following enhancements:

- Incarcerate all third time or subsequent offenders who fail to complete the SB 123 program after two tries;
- Incarcerate for a period of 18 months with the only way to shorten that time to be if the incident resulted in no injuries or fatalities associated with it;
- Determine the costs that would need to be determined due to the Sentencing Commission's projections that the Department of Corrections would need between 1,000 and 4,000 beds;
- Decide on policy measures regarding whether to enhance the penalties for DUI convictions for third or subsequent offenses and for drug program failures, as well as the implementation of the policy.

Karen Wittman, Shawnee County District Attorney's Office, explained that under SB 341 individuals who are convicted of a DUI prior to the event of killing a person would result in a person felony on the sentencing grid, but that one who committed aggravated involuntary manslaughter and had a higher blood alcohol content could receive less time in prison. She suggested amending it to include aggravated involuntary manslaughter (Attachment 6).

Ms. Wittman addressed SB 341, saying she was not sure how the bill would address stopping individuals from driving while drunk. The conferee proposed enhancing the penalties for those who

refuse to voluntarily take the breath alcohol test and add a mandatory 30-day enhancement for each child that is under the age of 14 who is in the vehicle at the time the vehicle is stopped. In addition, she recommended that individuals who are convicted of a second offense be required to receive counseling.

Richard Howard, Kansas Department of Health and Environment (KDHE), testified in support of SB 341 ([Attachment 7](#)). KDHE provides support for Kansas Law Enforcement agencies through the Division of Health and Environment Laboratories. The Department supports law enforcement efforts and recommends breath alcohol instruments, calibration of the standards, and providing performance checks for the instruments. The Department also provides training for officers to ensure testing is performed accurately.

Mr. Howard indicated that KDHE would need a budget increase of \$75,000 to \$100,000 to handle the additional impact on the Department. This money is due to the increase in penalties, the possible desire to avoid conviction for a DUI offense, and increase in court cases which would cause a great demand for court testimony from the Department.

Mr. Howard said that Mothers Against Drunk Driving (MADD) has information to suggest most vehicle accidents where DUI was a factor are tested at 0.15 or greater.

Lieutenant Dave Weed, KHP, Drug and Alcohol Unit, trains officers in the standardized field sobriety testing procedures. Lt. Weed indicated that he would provide pertinent information about the different BAC alcohol levels.

Major Mark Goodloe, KHP, spoke in support of the bill but was concerned that the proposed penalties may be less for offenders who refuse to take an evidentiary test showing an actual blood alcohol content (BAC) ([Attachment 8](#)). Offenders refusing to submit to testing would make prosecution more difficult, other offenders would take the evidentiary test and if the results are greater than 0.16 would possibly encourage litigation. This would cause an increase in court time of law enforcement officers. From 40-50 percent of individuals actually refuse to take a BAC test, especially if they have previous DUI violations.

Terry Roberts, KSNA, provided the Committee with two charts ([Attachment 9](#)) that show the level of consumption it takes to reach 0.15 BAC.

Chart 1 – shows that an adult male weighing 200 pounds would have to consume 8 drinks (10 oz. liquor, 8 cans beer, 5 glasses of wine) in a one hour period of time to reach 0.15.

Chart 2 – shows that an adult female weighing 140 pounds would have to consume 5 drinks in one hour to reach 0.16.

Ms. Roberts went on to explain a pie chart ([Attachment 10](#)), which illustrates that over the last three years, about 50 percent of fatalities are caused by those drivers on the road who have 0.15 or higher BAC.

After a review of several studies, according to Ms. Roberts, the common denominator for enhanced penalties is that the BAC for these penalties is 0.15. According to the conferee, there needs to be careful consideration on changes being made so that the policy changes are done correctly and everyone can support it ([Attachment 11](#)).

James Keller, Kansas Department of Revenue, testified before the Committee with concerns on the proposed bill (Attachment 12). The conferee emphasized the following concerns with SB 341:

- Lack of amendments to KSA 8-1014 to require alternative actions for test results over 0.16 BAC;
- Lack of adequate notice provisions in KSA 8-1001(f);
- Lack of incentives for refusing to take the breath test for individuals with prior offenses;
- Lack of clear indication regarding offenses that would have a negative impact for drivers under the age of 21;
- Lack of changes to several forms used by the Division of Motor Vehicles which would be required;
- Lack of provisions regarding conviction records which will need to include alcohol levels and whether test results greater than 0.16 will require a separate finding by the Court; and
- Lack of provisions to deal with increased costs to administer the Kansas Implied Consent Law.

Mr. Keller was not sure how much more of an increase KDR would need in their budget to handle the extra work.

Mike Clarke, attorney, has as a substantial portion of his practice defended those individuals who have been charged with a DUI. Mr. Clarke testified in opposition to proposed SB 341. The conferee stated people do not make a conscious effort to only drink 0.08 of alcohol. According to Mr. Clarke, his clients are more concerned with being able to drive than the cost of fines and time in jail. According to Mr. Clarke, a mandatory requirement of installing an ignition interlock would be a good penalty for individuals because they can continue to drive but could do so safely.

Written testimony was provided by Judge Stephen Tatum to address concerns that judges might have (Attachment 13) as follows:

- Enhanced penalties would probably result in more intoxilizer refusals;
- Bright line standards would be needed to gauge impairment;
- Everyone responds differently to levels of alcohol consumption; and
- Consideration of established factors that a judge could use in sentencing a person convicted of a DUI.

Judge Tatum also provided a clarifying amendment to KSA 8-1567 pertaining to penalties for fourth and subsequent convictions for DUI's. Language needs to clarify that upon a person's fourth or subsequent conviction the individual would be required to serve their entire sentence, and then

also would have to go through twelve months of post-release and substance abuse counseling and treatment before they could be released (Attachment 14).

The Kansas Sheriff's Association also provided written testimony. Members of the Association are concerned with the requirement of having those convicted of DUI serve their time in county jails rather than prison (Attachment 15). Such a development would result in jail overcrowding.

The Committee broke for lunch at noon and reconvened at 1:30 p.m.

Afternoon Session

Chairperson Kinzer called the meeting to order and suggested that the Committee discuss and make preliminary recommendations on Topic No. 7.

The Committee requested that information which was asked for be sent prior to the next meeting so the Committee can review it before it makes its final recommendations. The information should include providing the percentages of those who re-offend, what alcohol and substance abuse treatment programs are located across the state, and whether any other states test for drugs at the time the individual is stopped. There also was some discussion on the decay factor for DUI and it was requested that staff look to see if that provision was amended into a Conference Committee report or what happened to it during the 2006 Legislative Session.

A Committee member received information from a district attorney who was concerned that people are not paying their fines in full and that the Kansas Department of Corrections is not filing the paperwork to revoke their parole. Therefore, the district attorney does not see increasing fines as an option for increased penalties for DUI because a majority are not ever paid in full. The district attorney also was concerned that the Department of Motor Vehicle has a 12-month moratorium on hearing suspended licenses. The Committee would like to have information to address the above situations.

The Committee suggested that all groups who have an interest in the subject of DUI's get together and establish agreed to amendments to the proposed bill and be ready to present to the Committee at the November 16 meeting.

The Committee made the following preliminary recommendations:

- The suspended license provisions should not be deleted in exchange for ignition interlock. The ignition interlock devices could be enhanced but that would not be the solution for DUIs.
- Enhanced penalties for those DUI offenses with a child in the vehicle should be enacted under the Endangering a Child statute, KSA 21-3608, and the Aggravated Endangering a Child statute, KSA (2004 Supp.) 21-3608a. Kansas' current age for endangerment of a child is under 18 years of age, whereas other states have the age set at 16. It was suggested that, for DUI penalty purposes, for each additional child in the vehicle, charges would be enhanced.
- Aggravated involuntary manslaughter should be added to the bill.

- Certain clarifications to SB 341 should be made so that an individual could stay in a county jail for a period of two years, whereas, under current law sentences of one year in county jail are the maximum sentence. Concern was expressed about the costs to the counties. The Committee report could suggest alternatives to the two years in county jail.
- The Committee considered Judge Tatum's recommendations regarding factors that judges should be able to consider when sentencing a person convicted of a DUI such as level of alcohol consumption, whether the DUI resulted in an accident, how many DUI convictions the person has had in the past three years, the number of individuals in the car at the time, and how many children were in the vehicle. The Committee believe that these factors should already be taken into consideration, but with sentencing guidelines, the prior convictions are what determines the sentence.

Topic No 6 – Establishment of the Crime Stoppers Council

Kevin Graham, Kansas Attorney General's Office, explained 2006 HB 2992 (Attachment 16). The proposed bill would create a State of Kansas Crime Stoppers Council and provide funding to cover both the costs of the Council and funding for local Crime Stoppers programs across the state.

The Kansas Crime Stoppers Council and local funding would be raised through the assessment of a \$35 fee to every individual sentenced to supervision by a Community Corrections program or who enters into a diversion agreement in lieu of further criminal proceedings. Currently, Crime Stoppers programs are funded through donations and grants.

Mr. Graham reminded the Committee that many local Crime Stoppers Programs have proven themselves to be a valuable resource for communities and local law enforcement.

Kyle Smith, Kansas Bureau of Investigation, who has served as a voluntary legal counsel to the Kansas State Crime Stoppers Board for 14 years, stated there are 38 Crime Stopper Programs throughout Kansas. There are 71 counties that do not have a program operating. Most of these programs work very well. Mr. Smith provided the Committee with a Kansas Crime Stoppers estimated budget which would cost \$201,306 (Attachment 17).

Debra Billingsley, Kansas Crime Stoppers Association, explained that the first crime stoppers began in Albuquerque, New Mexico in 1976. It was developed to have the community, media, and law enforcement combat crime and keep streets safe.

Currently, the Crime Stoppers Programs operate as a not-for-profit charity and are managed by a volunteer Board of Directors, who are responsible for fundraising efforts, and paying rewards to individuals who have helped solve crimes (Attachment 18). Ms. Billingsley informed the members that Great Bend is one of a few Crime Stoppers Programs that presently receives money from the court system. Ms. Billingsley assumes that there is some type of agreement with the court regarding the amount the program receives.

Chairperson Kinzer turned the Committee's attention to discussion and recommendations on Topic No. 6.

The Committee had concerns about accountability of the spending of the funds going to the Kansas Crime Stoppers program and docket fees going to programs that do not usually show up during the appropriations process to request they continue to receive funding.

Chairperson Kinzer adjourned the meeting. The next meeting was scheduled for November 15 and 16, 2006.

Prepared by Cindy O'Neal
Edited by Jerry Donaldson

Approved by Committee on:

November 16, 2006
(date)