

MINUTES

KANSAS DUI COMMISSION

December 7, 2009
Room 143-N—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Judge Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Mary Ann Khoury, Victim advocate
Deb Stithem substituted for Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, KAAP
Jeremy Thomas, Parole Officer
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Members Absent

Representative Lance Kinzer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes

Sean Ostrow, Office of the Revisor of Statutes
Karen Clowers, Committee Assistant

Others Attending

See attached list.

Monday, December 7 Morning Session

The meeting was called to order by Chairperson Owens at 10:12 a.m.

The Commission reviewed the minutes of November 4-5.

Roger Werholtz moved, Ed Klumpp seconded, to approve the minutes of November 5-6, 2009. Motion carried.

Spencer Duncan appeared on behalf of the Kansas Wine and Spirits Wholesalers Association, providing a perspective on current industry efforts to reduce DUI's (Attachment 1). Mr. Duncan indicated the organization's dedication in promoting responsible alcoholic beverage consumption in Kansas and reviewed several programs designed to encourage responsible drinking. Programs include server training, which educates servers on the proper ways to serve and sell alcohol. Individuals receiving this training are less likely to serve alcohol to minors or to intoxicated persons. Mr. Duncan reviewed several "Smart Alcohol Practices" that have proven to reduce drunk driving and underage drinking. These include:

- Public education campaigns on the dangers of driving under the influence (DUI), underage access, and the penalties associated with them;
- Support laws providing the prompt administrative suspension or revocation of driver's license for refusal or failure of a blood alcohol content (BAC) test;
- Graduated penalties for repeat offenders;
- Ignition interlock devices;
- Increased sanctions for DUI offenders with blood alcohol concentration levels above .15;
- Increased penalties for driving while suspended;
- Increased penalties for those who commit bodily injury or death while driving while under the influence;
- Mandatory assessment prior to conviction or sentencing to determine the potential for alcohol dependency or abuse and make appropriated treatment referrals;
- Support programs that promote the use of sober designated drivers and safe rides;

- Increased penalties for the use and manufacture of fake IDs;
- Mandatory alcohol education for college freshmen and college offenders;
- Support bans on Alcohol Without Liquid (AWOL) machines (Kansas has banned this device); and
- Support hotline that motorists can use to report drivers suspected to be driving while under the influence.

Whitney Damron appeared on behalf of the Distilled Spirits Council of the United States (DISCUS) which has a long history of supporting efforts to prevent drunk driving and underage drinking ([Attachment 2](#)). Mr. Damron indicated in 1991 a number of spirits manufacturers created The Century Council to coordinate efforts at reducing underage drinking and drunk driving. The Century Council has hosted events in Kansas that bring together parents, youth, educators, law enforcement officials, and traffic safety professionals to reduce underage drinking and driving. The Council's efforts at educating youth begin in middle school and continue through college.

The Council supports legislation to enact comprehensive and effective solutions to the hardcore drunk driving problem. Hardcore drunk drivers are those who repeatedly drive with a high blood alcohol concentration over .15, have more than one drunk driving arrest, and are highly resistant to changing their behavior despite previous sanctions, treatment, and education efforts. These offenders account for the majority of alcohol-impaired fatalities and the Council created the National Hardcore Drunk Driver Project to serve as a comprehensive resource to assist state legislators, as well as highway safety officials, law enforcement officers, judges, prosecutors, community activists, and treatment officials in developing programs to reduce hardcore drunk driving.

A written statement on industry efforts to reduce DUIs was provided by Jeff Becker, President, Beer Institute ([Attachment 3](#)).

Linda Chezem, Purdue University, provided the Commission a review of the issues pertaining to roadside/on-site drug testing ([Attachment 4](#)). Professor Chezem indicated effective drugged driving prevention is one of the best ways to improve highway safety, reduce illegal drug use, and get abusers into addiction treatment. She reviewed the various issues that need to be addressed in forming legislation to address drugged driving. These include:

- Science of detection;
- Various types of tests;
- The need for adequate resources;
- Sound policies;
- Legal issues;
- Justice system issues; and
- Cost considerations.

Professor Chezem indicated that statutes should be realistic, clear, and with coherent use of evidence-based science, provide adequate support for the justice system.

A written statement on Roadside/On-site Drug Testing was provided by John A. Enrici, Medical Dimension Group ([Attachment 5](#)).

The Commission broke into subcommittees for a working lunch to review the interim report to the Legislature.

Afternoon Session

The Commission reconvened at 1:22 p.m.

Karen Wittman reviewed recommendations to date from the Subcommittee on Law Enforcement/Record Keeping (Attachment 6). The Subcommittee requested the inclusion of a recommendation of a study on roadside preliminary testing and the tests and devices available to be conducted by the KBI.

Les Sperling reported the Substance Abuse Subcommittee had no changes to the recommendations to date (Attachment 7). He indicated some of the recommendations may be implemented by rules and regulations, as opposed to drafting legislation. The Subcommittee also indicated that when offenders are incarcerated for multiple offenses, mandatory treatment services should be included.

Roger Werholtz indicated the Criminal Justice Subcommittee made several clarifications to their preliminary subcommittee report (Attachment 8). These include:

- Under second time DUI convictions, jail time should indicate actual jail time;
- On third time DUIs, probation supervision by community corrections should be an option of the court;
- Third time DUIs should be *initially* referred to community corrections programs for evaluation; and
- Include the intent that municipal courts wanting jurisdiction over DUI cases only include first and second offenses.

Senator Haley moved, Greg Benefiel seconded, to accept the additional recommendations described by the subcommittees to the subcommittee interim reports. Motion carried.

Ed Klumpp moved, Representative Pauls seconded, to incorporate the subcommittee reports as the Commission's Interim Report to the Legislature, including the recommendation to delay implementation of HB 2096 and the licensing of treatment counselors. The reports will be e-mailed to Commission members and considered approved after ten days if no corrections or changes are requested. Motion carried.

The meeting adjourned at 2:30 p.m.

The Commission will meet in May 2010, dates to be determined.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

December 21, 2009

(Date)