

MINUTES

KANSAS DUI COMMISSION

May 17-18, 2010
Room 346-S—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 Jennifer Jones
Leslie Moore substituted for 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 Phil Journey substituted for Honorable Peter V. Ruddick, 10th Judicial
District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, Kansas Association of Addiction Professionals
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

Member Absent

Representative Lance Kinzer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jennifer Horchem, 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, Commission Assistant

Others Attending

See attached list.

Monday, May 17

The meeting was called to order by Chairperson Owens at 10:00 a.m. The Chairperson welcomed the Commission members back and updated the members on actions taken by the Legislature during the 2010 Session. A letter of thanks from Chief Justice Robert E. Davis was distributed to the Commission ([Attachment 1](#)).

Jason Thompson, Office of the Revisor of Statutes, reviewed the changes to the DUI laws reflected in SB 368: amending the effective date of the criminal penalty provisions regarding third and fourth or subsequent convictions for driving under the influence (DUI) that were enacted with the passage of 2009 HB 2096 from July 1, 2010, to July 1, 2011; and amending the administrative penalty provisions for a second alcohol or drug-related conviction to require a one-year suspension of the person's driving privileges, which may be modified after a 45-day hard suspension and application to the Kansas Division of Motor Vehicles. A person's driving privileges would be restricted for the remainder of one year to driving only a motor vehicle equipped with an ignition interlock device. The person's driving privileges would be restricted further for an additional year to driving only a motor vehicle equipped with an ignition interlock device.

The Commission broke into subcommittees.

The Commission, as a whole, reconvened at 3:00 p.m.

The subcommittees gave brief reports on their progress.

Karen Wittman reported the Law Enforcement/Recordkeeping Subcommittee discussed the use of ignition interlock as a penalty, various options that might be used to make the system fair and equitable, time limits, and penalties to be incorporated for misuse or tampering of the devices. The group also discussed the option of including all offenses in the database such as drug DUI offenses and the limitation of which courts may have jurisdiction over DUI cases.

Roger Werholtz reported the Criminal Justice Subcommittee reviewed previous items the group had considered and recommendations made. It was agreed the term "jail means jail" be defined as satisfying the terms in KSA 8-1567(v)2 and there was discussion regarding the counting of time spent in treatment as it applies to the "5 consecutive days" jail time. On second offenses, the subcommittee wants to revise its recommendation to two days consecutive jail, followed by any of the following options: three additional days jail, ten days house arrest, or six days work release with no credit for house arrest. The Subcommittee recommended making breath test refusals a *per se* violation and also addressed limiting DUI cases to district courts or large municipal courts.

Les Sperling reported the Subcommittee on Substance Abuse Evaluation and Treatment agrees on eliminating the terminology "Alcohol and Drug Safety Action Programs" and "ADSAP"

since it is misleading. This would include the term "ADSAP evaluation," as well. The Subcommittee recommends development of suitable language in place of ADSAP and its incorporation into statutes and rules and regulations. The Subcommittee recommends the Department of Social and Rehabilitation Services (SRS) license professionals providing or treating DUI offenders. The Subcommittee also discussed supervision of offenders during the treatment program.

The Commission recessed at 3:30 p.m. and will reconvene into subcommittees on Tuesday, May 18, 2010.

Tuesday, May 18

The Commission met as subcommittees at 9:00 a.m. to continue discussions from the previous day.

The Commission, as a whole, reconvened at 12:30 p.m.

The Commission discussed possible dates for future meetings due to extensive conflicts with the currently scheduled dates. The Commission will next meet on June 30, 2010.

Les Sperling reported on the Substance Abuse Evaluation and Treatment Subcommittee. Several points have been agreed to, including:

- ADSAP not be eliminated, but fundamentally changed and redefined, so uniform standards can be applied;
- The access of data be accurate, timely, easily available, and evaluations be accepted by all courts statewide;
- Fees for evaluations be paid directly to the provider;
- Collection of assessment data be in electronic format; and
- Identification of a specific curriculum for use within the system.

Karen Wittman reported on the Law Enforcement/Recordkeeping Subcommittee. Items identified by the Subcommittee include:

- The Kansas Criminal Justice Information Systems (KCJIS) records will need an exception to the hearsay rule;
- Records obtained through KCJIS should be certified;
- Allow prosecutors to look at any records available, rather than just Division of Motor Vehicles (DMV) records,
- The regulations dealing with ignition interlock are dated and not specific enough. Recommends Kansas Department of Health and Environment (KDHE), since it now tests breathalyzers, and more, create good regulatory standards based on several good examples from other states; and

- Specific penalties for violations of the ignition interlock device be changed to include other violations be listed, defined, and penalties be set at:
 - 1st violation – warning;
 - 2nd violation increase required use by 90 days;
 - 3rd violation increase required use by six months; and
 - 4th violation increase required use by one year.

Roger Werholtz reported on the Criminal Justice Subcommittee. Topics discussed included:

- The impact of a DUI on an offender's professional license, certification, and more, is not automatically canceled. Ensure there is a due process hearing in place;
- Stationary Shelter Defense – when a person is intoxicated in a vehicle, but it is not in motion. Should that be considered a defense? Are there mitigating circumstances? Would like to check other states;
- Fourth and subsequent offenses be on-grid with two methods of scoring criminal history;
- Score by regular method;
- Score by special rule fourth DUI a G severity, Level 7, and progress higher with each offense. Two-year post-release supervision, with immediate availability for probation upon completion of treatment, to be determined by the Parole Board.

Other items the Subcommittee are considering are rules for the third DUI, implied consent, DMV administrative hearings, re-entry programs, exceptions on drivers' licenses, and possible mandates for videos for law enforcement subject to funding.

The meeting adjourned at 2:00 p.m. The next scheduled meeting is June 30, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

August 23, 2010
(Date)