

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:37 A.M. on January 19, 2011, in Room 548-S of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Others attending:

See attached list.

The Chairman opened the hearings on **SB 7 - Driving under the influence**.

The Chairman recognized members of the DUI Commission who were present in the audience. The Chairman brought the committee's attention to the Report of the DUI Commission to the 2011 Legislature and to the 2009 Report of the Kansas Substance Abuse Policy Board. The Chairman expressed his thanks for all of the work contributed to the Commission by Athena Andaya, formerly with the Kansas Legislative Research Department and Jason Thompson, Office of Revisor of Statutes.

Jason Thompson, Staff Revisor, provided an extensive briefing of the substantive amendments contained in **SB 7** and distributed a copy of a memorandum describing the amendments on a section-by-section basis (Attachment 1).

The Chairman announced that the hearings on **SB 7** would be continued on at a later date.

Meeting adjourned at 10:30 A.M. The next meeting is scheduled for January 24, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: JAN 19, 2011

| NAME               | REPRESENTING            |
|--------------------|-------------------------|
| Claire Crawford    | Intern - senator Kelly  |
| David Clark        | Intern - Senator Vratil |
| Lydia Buster       | Federico Consulting     |
| Melissa Wangemann  | KAC                     |
| Sandy Faynot       | LKM                     |
| Tim Madden         | KDOR                    |
| Brenda Harmon      | KSC                     |
| Jennifer Roth      | KACDL                   |
| Patrick Vogelsberg | KCDAA                   |
| Kelly Belletto     | KDOR                    |
| Mary Balster       | KDOR                    |
| William Schmitt    | Newland RADAR           |
| Deb Stidham        | SRS                     |
| Chris Meehan       | DIA                     |
| Heleen Rodigo      | Courts                  |
| DEREK HEIN         | HEIN LAW FIRM           |
| MARK ENGHOLM       | KHP                     |
| ROBERT BAKER       | KHP                     |

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 19, 2011

| NAME              | REPRESENTING                         |
|-------------------|--------------------------------------|
| Joe Miller        |                                      |
| Patti Biggs       | Ks Par Assn.                         |
| Patti Biggs       | Parole Bd                            |
| Sarah Fertig      | JTA                                  |
| SEAN MILLER       | CAPITOL STRATEGIES                   |
| Alan Tucker       | Intern Sen Hailer                    |
| Susan Allen       | Senator Husky's office               |
| John Bottenby     | Miller Coors                         |
| George Ann Brown  | Wine Institute                       |
| Mike              | KITA                                 |
| Lara May          | KDOT                                 |
| Marla Rhoden      | KDHE                                 |
| Stuart Little     | Ks Assoc. of Addiction Professionals |
| Sarah Hansen      | Ks Assoc. of Addiction Professionals |
| Christopher Noble |                                      |
| Pete Boduk        | KDOT                                 |
| KAREN WITTMAN     | AG's office                          |
| ERIK SARTORIUS    | City of Overland Park                |
| Nika Reecht       | Gaches Braden                        |



## MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee  
From: Jason Thompson, Senior Assistant Revisor  
Date: January 19, 2011  
Subject: Senate Bill No. 7 – Driving under the influence

**New Section 1.** (page 1) No automatic professional license consequence solely because of a first DUI conviction or diversion; person may request a hearing conducted in accordance with the Kansas administrative procedure act.

**New Sec. 2.** (p. 2) Creating the crime of “refusing to submit to a test to determine the presence of alcohol or drugs”; recodified criminal code format, language consistent with revised K.S.A. 8-2,144 and 8-1567 contained in the bill; prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria; only one diversion for any of the related crimes in the person's lifetime.

**New Sec. 3.** (p. 6) Provides a mechanism for early release from prison if person convicted of section 2, 8-2,144 or 8-1567 completes treatment programs and other items specified by the secretary of corrections (used K.S.A. 75-5210a as a model); companion amendment in K.S.A. 22-3717, see below, to require parole board decision on release.

**New Sec. 4.** (p. 7) KBI authority to approve saliva testing device (used K.S.A. 65-5,107 as a model); companion amendment in K.S.A. 8-1012, see below, for use of the approved device.

**Sec. 5.** (p. 7) K.S.A. 8-235, driver's licenses; no class C license for violators of K.S.A. 8-1567 in current law, adds K.S.A. 8-2,144 and section 2.

**Sec. 6.** (p. 8) K.S.A. 8-241, license examinations; K.S.A. 8-1567 reference, adds section 2.

**Sec. 7.** (p. 10) K.S.A. 8-262, driving while license canceled, suspended or revoked; K.S.A. 8-1567 references, adds K.S.A. 8-2,144 and section 2, other cleanup.

**Sec. 8.** (p. 11-12) K.S.A. 8-285, habitual violator; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 9.** (p. 13) K.S.A. 8-2,142, disqualification from driving commercial vehicle; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 10.** (p. 16) K.S.A. 8-2,144, "Driving a commercial motor vehicle under the influence"; recodified criminal code format, language consistent with revised section 2 and K.S.A. 8-1567 contained in the bill; prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria.

**Sec. 11.** (p. 22) K.S.A. 8-1001, implied consent; revised subsection (i) on urine collection; revised advisory in subsection (k) to reflect section 2 and the administrative penalty changes in K.S.A. 8-1014; revised subsection (n) to reflect section 2.

**Sec. 12.** (p. 28) K.S.A. 8-1008, alcohol and drug evaluations; removes statutory structure for community-based alcohol and drug safety action programs (ADSAP); evaluations by licensed providers with a DUI specialty, licensed by SRS; evaluations prior to diversion or sentencing for violators of section 2 and K.S.A. 8-2,144 and 8-1567.

**Sec. 13.** (p. 32) K.S.A. 8-1009, determination by prosecuting attorney of whether diversion agreement to be allowed; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 14.** (p. 33) K.S.A. 8-1012, preliminary testing; adds provisions for test of saliva using device approved by KBI (see section 4).

**Sec. 15.** (p. 34) K.S.A. 8-1013, definitions for article 10 of chapter 8; "alcohol or drug-related conviction" definition revised to be consistent with definition in section 2 and K.S.A. 8-2,144 and 8-1567; "department" definition added to reflect new KDHE responsibilities in K.S.A. 8-1016.

**Sec. 16.** (p. 36) K.S.A. 8-1014, administrative penalties for test refusal, test failure or conviction; revised penalties use shorter suspension period, with option for restricted privileges after 45 days (see K.S.A. 8-1015), then increasing ignition interlock restriction periods; any period of suspension or restriction is stayed during incarceration with the department of corrections, credit given for any time before incarceration.

**Sec. 17.** (p. 39) K.S.A. 8-1015, details on driving privilege suspension and revocation; subsection (a) authorizes restricted driving privileges during suspension period, in accordance with federal law; remaining subsections deal with ignition interlock details, reinstatement of driving privileges, retroactive application if requested.

**Sec. 18.** (p. 42) K.S.A. 8-1016, rules and regulations on ignition interlock devices; places rule and regulation responsibility for approval of devices with KDHE, rather than division of vehicles, but keeps rules and regulations on maintenance and reporting requirements with the division.

**Sec. 19.** (p. 44) K.S.A. 8-1017, ignition interlock violations; violations get extended interlock, rather than license suspension.

**Sec. 20.** (p. 45) K.S.A. 8-1020, administrative hearings; \$50 fee for hearings, no difference for in-person or telephone hearings, with the funds going to the division of vehicles operating fund.

**Sec. 21.** (p. 50) K.S.A. 8-1021, impoundment of motor vehicle; K.S.A. 8-1567 reference, adds section 2.

**Sec. 22.** (p. 51) K.S.A. 8-1022, permitting driving in violation of 8-1014; correct cross-reference to subsection (g) of K.S.A. 8-1567.

**Sec. 23.** (p. 51) K.S.A. 8-1102, abandoned motor vehicles; K.S.A. 8-1567 reference, adds section 2.

**Sec. 24.** (p. 53) K.S.A. 8-1501, application of sections in article 15; adds reference to section 2.

**Sec. 25.** (p. 54) K.S.A. 8-1567, "driving under the influence"; recodified criminal code format, language consistent with section 2 and K.S.A. 8-2,144; revised penalties, prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria; only one diversion for any of the related crimes in the person's lifetime.

**Sec. 26.** (p. 66) K.S.A. 12-4104, municipal court jurisdiction; removes concurrent jurisdiction for DUI violations when they would be punished as a felony if charged in district court.

**Sec. 27.** (p. 67) K.S.A. 12-4106, municipal judge powers and duties; subsection (f) adds responsibilities for municipal judge in ordinance violations of K.S.A. 8-2,144 or 8-1567 or section 2, including electronic reporting of dispositions to KBI by July 1, 2012.

**Sec. 28.** (p. 68) K.S.A. 12-4413, municipal court diversion, definitions; K.S.A. 8-1567 reference, adds section 2.

**Sec. 29.** (p. 68) K.S.A. 12-4414, municipal court diversion, policies; exception for K.S.A. 8-1567 and section 2.

**Sec. 30.** (p. 69) K.S.A. 12-4415, municipal court diversion, considerations and prohibitions; only one diversion for any DUI-related crimes in the person's lifetime.

**Sec. 31.** (p. 70) K.S.A. 12-4416, municipal court diversion, provisions; K.S.A. 8-1567 reference, adds section 2; cleanup for changes to K.S.A. 8-1008.

**Sec. 32.** (p. 72) K.S.A. 12-4516, expungement, municipal offenses; 10 year rule for expungement of violation of a DUI ordinance, current law allows no expungement.

**Sec. 33.** (p. 77) K.S.A. 12-4517, municipal conviction, fingerprinting and processing; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 34.** (p. 77) K.S.A. 22-2802, release prior to trial, bond; adds special bond provisions for violations of K.S.A. 8-2,144 or 8-1567 or section 2, not mandatory.

**Sec. 35.** (p. 80) K.S.A. 22-2908, diversions, considerations and prohibitions; only one diversion for any DUI or refusal crimes in the person's lifetime.

NOTE: subsection (b)(2), technical cleanup – already law, but shows as new.

**Sec. 36.** (p. 82) K.S.A. 22-2909, diversions, provisions; K.S.A. 8-1567 reference, adds section 2; cleanup for changes to K.S.A. 8-1008.

NOTE: subsection (d), technical cleanup – already law, but shows as new.

**Sec. 37.** (p. 85) K.S.A. 22-2910, conditioning diversion on plea prohibited, inadmissibility of agreement; K.S.A. 8-1567 reference, adds section 2.

**Sec. 38.** (p. 85) K.S.A. 22-3610, appeals from municipal court; new subsection (c) to allow amendment of complaint in district court.

**Sec. 39.** (p. 86) K.S.A. 22-3717, parole and postrelease; subsection (d)(1)(H) adds requirement of 24 months postrelease supervision for a violation of K.S.A. 8-2,144



or 8-1567 or section 2; subsection (w) adds parole board review for early release pursuant to section 3.

**Sec. 40.** (p. 97) K.S.A. 22-4704, central repository, rules and regulations; subsection (f) requires director of KBI to adopt rules and regulations requiring district courts to report case filings for violations of K.S.A. 8-2,144 or 8-1567 or section 2.

**Sec. 41.** (p. 98) K.S.A. 22-4705, central repository, reporting; adds specific reference to "filing of a charge" as a reportable vent.

**Sec. 42.** (p. 99) K.S.A. 28-176, laboratory analysis fee charged as separate court costs in certain cases; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144.

**Sec. 43.** (p. 100) K.S.A. 60-427, physician-patient privilege; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 44.** (p. 102) K.S.A. 74-2012, division of vehicles, records; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 45.** (p. 105) K.S.A. 74-7301, definitions, crime victims compensation; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144, other cleanup.

**Sec. 46.** (p. 107) Section 14 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, culpability; adds new crime of test refusal (section 2) to allow guilt without culpable mental state (note that 8-1567 is listed here currently).

**Sec. 47.** (p. 108) Section 48 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, battery; subsection (g) creates new crime of aggravated battery while DUI.

**Sec. 48.** (p. 111) Section 254 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, expungement; 10 year rule for expungement of DUIs, current law allows no expungement.

**Sec. 49.** (p. 118) Section 285 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, non-drug sentencing grid; special rule in subsection (i)(4) to retain jurisdiction in 3<sup>rd</sup> DUI cases; new subsection (u), special sentencing rule for 3<sup>rd</sup> and subsequent test refusal (section 2) or commercial DUI (8-2,144); new subsection (v), special sentencing rule for 4<sup>th</sup> and subsequent DUI (8-1567).

NOTE: subsections (s) and (t), technical cleanup – already law, but show as new.

**Sec. 50.** (p. 127) Section 292 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, criminal history classification; new subsection (c)(3) criminal history provision for involuntary manslaughter while DUI and aggravated battery while DUI.

**Sec. 51.** (p. 129) Section 299 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, departure sentences; prohibits dispositional or durational departure for 3<sup>rd</sup> or subsequent test refusal (section 2) or commercial DUI (8-2,144), and 4<sup>th</sup> or subsequent DUI (8-1567).

**Sec. 52.** (p. 130) Repealer section.

**Sec. 53.** (p. 130) Effective date ("publication in the statute book" = July 1, 2011).