

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on January 26, 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

Conferees appearing before the committee:

Ed Klumpp, KS Assn. of Chiefs of Police, KS Sheriffs Assn., KS Peace Officers Assn.
Sarah M. Hansen, Executive Director Kansas Association of Addiction Professionals
Frank Harris, MADD
Christopher Mann, MADD
Corey F. Kenny, City of Lenexa, KS, Prosecutor

Others attending:

See attached list.

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

The Chairman announced that the fiscal note for **SB 7** was not yet available and that he did not intend to work the bill until after it becomes available.

Ed Klumpp testified in support of **SB 7 (Attachment 1)**. He stated that:

- The high incidence of recidivism by DUI offenders clearly indicates a great need to strengthen the DUI laws
- The increased use of ignition interlock devices has proven to reduce DUI related accidents in several states
- Criminalizing the refusal to take a DUI test acts as a deterrent to such test refusals
- There is a need for funding for the KBI for costs attributable to record-keeping and the central computer system
- There is a need for funding for the Department of Corrections for any prison bed impact

Mr. Klumpp expressed concern relating to the availability of local jail space and for the cost associated with housing additional DUI offenders.

Senator King asked whether criminalizing the refusal to take a test raises a 5th Amendment issue?

Mr. Klumpp responded that the language in **SB 7** is modeled after the Nebraska statute which has not been overturned.

Senator King stated that the issue of limited jail space is not limited to the five counties with the highest population. He asked if a centralized drug and substance abuse center would alleviate the jail space issue? Mr. Klumpp stated he was not qualified to answer the question.

Senator Bruce asked what the current law is relating to interlock devices?

Mr. Klumpp was not sure, but noted that other states have shorter periods of suspension of driving privileges tied with mandatory use of ignition interlock devices.

Sarah M. Hansen testified in support of **SB 7 (Attachment 2)**. The key provisions of the bill she requested the committee to support are:

- The requirement for participation in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty
- The use of a standardized substance abuse evaluation approved by the secretary of Social and Rehabilitation Services

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on January 26, 2011, in Room 548-S of the Capitol.

- The direct payment of evaluation to the provider at the time of service.

Frank Harris testified in support of **SB 7**. He stated that the ignition interlock device is the most effective way to stop drunk driving. Mr. Harris included information from the Pacific Institute for Research and Evaluation (PIRE) supporting the use of ignition interlock devices in his testimony ([Attachment 3](#)).

Christopher Mann testified in support of **SB 7**. He stated that the penalty provisions in the bill are not too tough on the first-time offender; the bill is a sound and necessary start to the strengthening of Kansas DUI laws ([Attachment 4](#)).

Corey F. Kenny testified in support of **SB 7** ([Attachment 5](#)). He urged the committee to support the following provisions of the bill:

- The criminalization of test refusals as a major step in holding DUI offenders accountable
- Increased sentences for repeat offenders
- The central repository which provides an additional tool that allows the prosecution system to act upon reliable information regarding an offender's prior record
- Increased use of the ignition interlock device

Mr. Kenny expressed concern with the provisions of **SB 7** which would eliminate the life-time look-back provision and which allow for the expungement of DUIs and test refusal offenses.

Jason Thompson, Staff Revisor, distributed information showing the current law and the changes proposed in **SB 7** relating to administrative penalties for DUI test refusals and DUI test failures ([Attachment 6](#)).

Written testimony in support of **SB 7** was submitted by:

- Pete Bodyk, Kansas Department of Transportation ([Attachment 7](#))
- Steve Montgomery, Kansas Bureau of Investigation ([Attachment 8](#))
- Patrick Lewis, Criminal Defense Attorney ([Attachment 9](#))
- Todd Thompson, Leavenworth County Attorney ([Attachment 10](#))
- Paul R. Marques, Pacific Institute for Research and Evaluation (PIRE) ([Attachment 11](#))
- Major Mark Bruce, Kansas Highway Patrol ([Attachment 12](#))
- Matt Strausz, Kansas Ignition Interlock Association ([Attachment 13](#))

The Chairman called the committee's attention to the Prison Bed Impact Statement for **SB 7**.

The Chairman announced that the hearings on **SB 7** would be continued until January 27th.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for January 27, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Wed Jan. 26

NAME	REPRESENTING
<i>Mam Thompson</i>	
<i>Marge Thompson</i>	
<i>Ken Cannon</i>	
<i>Connie Cannon</i>	
<i>Lucille Cannon</i>	
<i>RAY THIENE</i>	
<i>KAREN WITTMAN</i>	<i>Ag's office/KDOT</i>
<i>Melissa Wagemann</i>	<i>KAC</i>
<i>MARY BILSON</i>	<i>KDOR</i>
<i>Kelly Bellett</i>	<i>KDOR</i>
<i>Sandy Jacquot</i>	<i>LKM</i>
<i>Ken Benson</i>	<i>KFIA</i>
<i>MATT STANIST</i>	<i>KIFA</i>
<i>TED HENRIK</i>	<i>CS</i>
<i>Steve Montgomery</i>	<i>KBI</i>
<i>Pete Bodysk</i>	<i>KDOT</i>
<i>Deb Stidham</i>	<i>SR5</i>
<i>LES SPERUNT</i>	<i>CKF</i>

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: WEDNESDAY, JANUARY 26

NAME	REPRESENTING
Sarah Hansen	KARP
of Home	KARP
JEREMY S BARCLAY	KDOC
TIM MADDEN	KDOC
Karen Smart	Kansas MADD
Scott A. Grandon	Ks MADD
Robert Lewis	KS MADD
Leann Briggs Lewis	KS-MO MADD
Frank Harris	MADD
Jennifer Roth	KACOL
LamieAnn Brown	Wine Institute
Phil Bradley	KLBA - KUFWA - KCBG
DEREK HEIN	HGIN LAW FIRM
Jeff Bottsley	Polson & Shydel
ERIK SARTORIUS	City of Overland Park
Mayla Rhoden	KDHE
Jim McCoil	KHP
Tonya Pearson	KHP

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/26/11

[illegible]



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Chiefs of Police**
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(316)733-7301



**Kansas Sheriffs
Association**
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**Testimony to Senate Judiciary Committee
In Support of SB7 Amending the DUI Statutes**
January 19, 2011

Chairperson Senator Owens and Committee Members,

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association and the Kansas Peace Officers Association stand in support of SB7. The continued carnage on our highways and the high incidence of recidivism by DUI offenders clearly indicate a great need to strengthen these laws. This bill, as proposed by the Kansas DUI Commission, was constructed with a great deal of study and thought on this complex and critical issue. This bill is by its nature complex addressing many facets of the DUI problem. Due to this complexity we feel certain there will be some well thought out amendments in the legislative process. But as a whole, this bill represents a path to decreasing the DUI recidivism and increasing highway safety in Kansas.

The increased use of ignition interlock devices has proven to reduce DUI related accidents in several states. Kansas should follow suit. But in the process of adjusting the sanctions from lengthy license suspension to a mix of short to moderate suspensions followed by a required use of interlock devices, we must be mindful of the unintended consequences that could have on the incentive to submit to testing. Kansas currently has a significant rate of test refusals for persons arrested for DUI. Such refusals enable a DUI suspect to evade successful prosecution resulting in no addiction evaluation, no treatment, no punishment, and no deterrence from recommitting the offense. Some other states have criminalized the test refusals resulting in dramatic reductions in refusals. This reduction leads to more offenders getting into treatment programs and fewer DUI related accidents. This bill contains such a provision fashioned after a law of a state neighboring Kansas. A method that has stood up to appeals and found to be constitutional in these other jurisdictions. We believe this is one of several key elements to successfully addressing the DUI problem.

Research has also shown driving under the influence of drugs is prevalent. This bill proposes a method to improve the ability of Kansas law enforcement to address this problem. The bill provides an avenue for approving new technology allowing roadside testing for the presence of illegal drugs in a person's system.

The change in sentencing structure is well justified. However, we must be careful how this impacts the local jail overcrowding problem. Some of the new sentencing provisions will result in more people going to the county jail or some people staying longer. However, other provisions will

shorten the stay at the county jail and divert some repeat offenders to the state Department of Corrections for treatment. The proposal also allows the local jails to utilize work release and re-entry programs to assist DUI offenders to return to society in a manner encouraging decreased recidivism. **But we are concerned about the impact of these changes on local jail populations.** This concern is not yet fully analyzed because it is a complex process to estimate how the proposed changes will change DUI jail populations. We are not yet clear on whether the data is available to even make an accurate assessment of that impact. So this may be an area of future discussion as the bill progresses through the legislative process. It is clear that without the funding for DOC to create a meaningful DUI treatment program for those multiple offenders sentenced as felons the impact of this bill on local jails will be alarming. Such funding has to accompany these proposals or one of the drive wheels will fall off this bill.

One of the many problems with current law is determining whether an offender can be prosecuted as a 2nd, 3rd, 4th or subsequent DUI offender. A current problem is the lack of consistent information available to the prosecutors to make this determination. As a result the bill provides for the KBI operated KCJIS databases to be enhanced to better provide this information accurately and timely. This includes better reporting of DUI arrests, prosecution activity, and dispositions along with additional tools to monitor for additional DUI activity by an accused in other jurisdictions. This will require some level of funding for the KBI to improve the systems abilities in these key areas. Approval of the associated funding is critical for this important component of the DUI process.

Evaluation, treatment, and monitoring are the keystones to successful deterrence of re-offending along with the previously discussed appropriate punishment and sanctions. The bill proposes improvements in standardization of evaluations, assurance of proper qualifications of evaluators and treatment providers, and meaningful post release monitoring. None of those can take place absent successful prosecution. Yet we need to remember successful evaluation, treatment and monitoring can and will result in many of these offenders changing their lifestyle. Those making such changes deserve the opportunity to get their lives back on track to being successful contributors to society. This bill has the provisions to make these things possible while providing mechanisms to place those repeat offenders who refuse or fail to respond to such treatment and monitoring where they cannot harm the innocent.

Our associations stand ready to work with the legislature and other groups as this bill moves forward to assure an end result that will reduce the DUI problem in Kansas. Only through a well balanced process utilizing evaluation, treatment, punishment, sanctions and monitoring can this be achieved. It is also vital the needs of law enforcement and prosecutors to achieve accurate, timely, and successful prosecution of people committing these violations is well balanced with the rights of the defendants facing these serious charges. We believe those balances are contained in this bill.

We urge your careful consideration to support this bill.

Ed Klumpp

Kansas Association of Chiefs of Police, Legislative Committee Chair

Kansas Sheriffs Association, Legislative Liaison

Kansas Peace Officers Association, Legislative Liaison

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Kansas Association of Addiction Professionals

Kansas Association of Addiction Professionals

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Topeka, KS 66603
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Senate Judiciary Committee

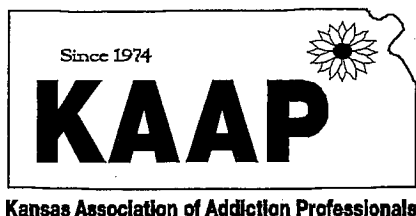
January 19, 2011

Senate Bill 7: Driving Under the Influence (DUI) Bill

Sarah M. Hansen, Executive Director

Kansas Association of Addiction Professionals

For Additional Information Contact: Stuart Little, Association Lobbyist, Little Government Relations, LLC, 800 SW Jackson St, Ste 914,
Topeka KS 66612, (785) 845-7265 or Sarah Hansen, Association Executive Director, (785) 235-2400.



Kansas Association of Addiction Professionals

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January 19, 2011

Senate Judiciary Committee

Senate Bill 7: DUI Bill

Chairman Owens and committee members:

I thank you for the opportunity to provide testimony today related to the proposed DUI bill. My name is Sarah Hansen and I am here today representing the Kansas Association of Addiction Professionals. Our association is comprised of nearly 500 addiction treatment and prevention professionals across the state of Kansas. We appear today to issue our support of the public safety elements presented in the bill.

The association was pleased to be represented on the Kansas DUI Commission. The association, through our two members, was able to provide insight and feedback related to the assessment and treatment of individuals convicted of a DUI. We appreciate the time and energy invested in this legislation by all the parties. We are happy to provide our perspective on key elements we hope the committee and public will support.

- This bill calls for persons to participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty. This is a long needed change in which both the court and the individual being assessed will now have the assurance of obtaining a DUI assessor who has demonstrated compliance to state standards and will be routinely monitored by the Department of Social and Rehabilitation Services. This provision also aids judicial districts as they will be provided a list of licensed providers with a DUI specialty license who may conduct evaluations.
- This bill calls for the use of a standardized substance abuse evaluation approved by the secretary of Social and Rehabilitation Services. Currently, there is no state wide evaluation required causing inconsistencies throughout the state.
- The bill calls for the direct payment of evaluation to the provider at the time of service. Again, this is a long awaited change as many providers never receive payment for services or, receive payment months or years after the service has been rendered. While we appreciate the attempt to set a standard fee, a fee range may be better suited as costs in service provisions increase over time.

Again, thank you for the opportunity to provide testimony. I will stand for questions at the appropriate time.



**CAMPAIGN TO
ELIMINATE
DRUNK DRIVING**

**Frank Harris
State Legislative Affairs Manager
Mothers Against Drunk Driving
Before the Senate Judiciary Committee
Testimony in Support of Senate Bill 7
26 January 2011**

Chairman Owens and members of the committee, thank you for the opportunity to submit written testimony today in support of Senate Bill 7. My name is Frank Harris, State Legislative Affairs Manager for Mothers Against Drunk Driving.

Drunk driving is a violent crime. It is a 100 percent preventable crime. It is a vicious crime. Kansas has seen an increase in drunk driving fatalities while nationally drunk driving deaths have decreased. In 2008, 138 people were killed in drunk driving crashes in Kansas. In 2009, those preventable deaths in Kansas rose to 154.

With SB 7, this Committee and the Legislature has the opportunity to send this message: violate the public trust and drive drunk, you will receive an ignition interlock on the vehicle you operate. Drunk drivers drive drunk because they can. MADD, the National Highway Traffic Safety Administration, and other top safety groups have found that requiring ignition interlock devices for all convicted DUI offenders is the most effective way to stop drunk driving. SB 7 would have a major impact in reducing drunk driving fatalities and injuries.

In November 2006, MADD launched the Campaign to Eliminate Drunk Driving. The Campaign is moving forward throughout the United States. Prior to the Campaign launching in 2006, only one state, New Mexico, had a law requiring ignition interlocks for all first time convicted drunk drivers. Now, twelve states and pilot program in California have laws requiring interlock usage by all first time convicted DUI offenders.¹ Currently 84 million Americans are protected from repeat drunk drivers through the technology of the ignition interlock device. Sadly, this doesn't apply to over 2.8 million people living in Kansas.

MADD's support of ignition interlocks for all convicted drunk drivers is simple—it is about saving lives. MADD believes that by enacting SB 7, Kansas can become a leader in the fight against drunk driving.

Some may argue that requiring ignition interlocks for first time offenders is too harsh. This is not the case. We know first time offenders have driven drunk before—one particular study showed an average of 87 times before the first arrest.ⁱⁱ Perhaps more importantly, we know it is not enough to simply revoke the license of a convicted drunk driver. Studies show that 50 to 75 percent of convicted drunk drivers continue to drive even while their license is suspended. This is the reason that interlocks are so critical to protecting the public.

SB 7 will protect your constituents and all Kansas residents by requiring convicted drunk drivers to drive sober. The interlock acts as a virtual probation officer riding in the front seat. Interlocks deter those who would drive drunk in the first place because these drivers know the consequences. If you drive drunk, you get an interlock. It should be noted that the convicted drunk driver pays for the device so that the taxpayer is not further burdened with subsidizing drunk drivers.

You will hear some speak of the need for judicial discretion. And on any given day, people in the United States share the roadways with more than 2 million drunk drivers who have had three or more prior convictions. Law enforcement is catching them, but for one reason or another they end up behind the wheel again and again only to hurt our families. This legislation will help prevent future incidences of drunk driving and also send a clear cut message of deterrence: only through compliance based removal should an offender be free of the interlock requirement.

You will also hear talk about punishing those one sip over the illegal limit. The illegal limit in Kansas is a .08 blood alcohol concentration. The National Institute on Alcohol Abuse and Alcoholism notes that to get to a .08 BAC, men must typically consume 5 or more drinks, and women must typically consume 4 or more drinks, in about 2 hours.

One sip over the illegal limit means you are legally drunk and that you should not be driving a car. We all know that drunk drivers kill, so why are some arguing this case? It could be that a select few are putting profits ahead of safety. The fact is that interlocks don't prohibit someone from going to the bar or restaurant, they prevent them from driving home drunk.

In 2008, over 1.4 million drivers were arrested for impaired driving.ⁱⁱⁱ That's less than one percent of the 159 million self-reported episodes of alcohol-impaired driving among U.S. adults each year.^{iv} What this means is that there is not enough law enforcement to catch all of the drunk drivers on the roadways. Law enforcement catch one percent of all drunk drivers on the roadways. With SB 7, a message is sent to the other 99 percent of drunk drivers—violate the public trust and receive an interlock.

There is a great subsidy that taxpayers are providing to drunk drivers. In 2008, the economic cost the Kansas Department of Transportation listed of drunk driving crashes was \$649 million.

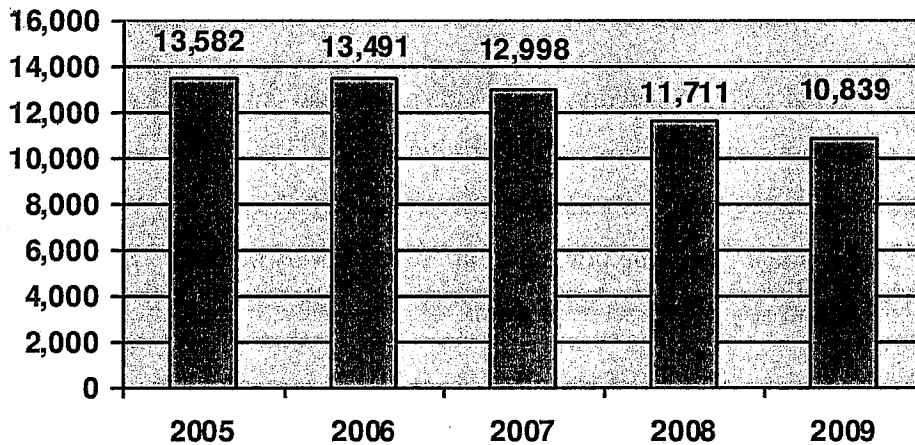
SB 7 is an economically sound public safety measure. A study of New Mexico's interlock program found the cost of an interlock was \$2.25 a day for the offender but for every dollar invested on first offender interlock laws the public saves three dollars.^v

Interlocks work for both society and for the offender—it allows convicted offenders a mobility they would not have with a license suspension or jail time, while keeping the public safe. Drunk drivers will continue to drive drunk and endanger the public unless we stop them. SB 7 will change the status quo and help to eliminate drunk driving. Again, MADD's support of this bill is simple—it is about saving lives. MADD urges this committee to support SB 7.

Enclosed in the testimony is information from the Pacific Institute for Research and Evaluation (PIRE) supporting interlocks.

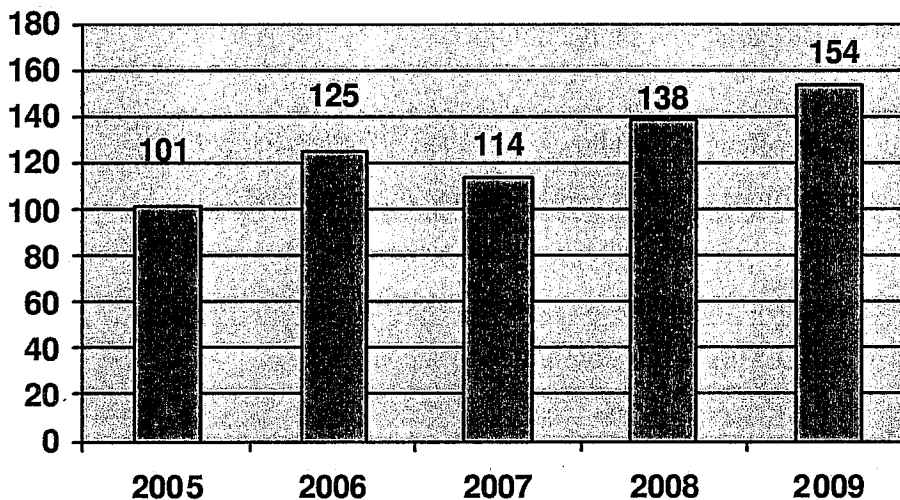
Thank you.

Drunk Driving Fatalities in the United States



In the United States, drunk driving fatalities decreased by 20 percent since 2005

Drunk Driving Fatalities in Kansas



In Kansas, drunk driving fatalities increased from 101 in 2005 to 154 in 2009

Source: National Highway Traffic Safety Administration (www.nhtsa.gov)

ⁱ New Mexico, Arizona, Louisiana, Illinois, Washington, Nebraska, Alaska, Colorado, Arkansas, Utah, Hawaii, New York, Oregon

ⁱⁱ Zador, Paul, Sheila Krawchuk, and B. Moore (1997) "Drinking and Driving Trips, Stops by Police, and Arrests: Analysis of the 1995 National Survey of Drinking and Driving Attitudes and Behavior," Rockville, MD: ESTAT, Inc. 1997.

ⁱⁱⁱ Department of Justice (US), Federal Bureau of Investigation (FBI). Crime in the United States 2008: Uniform Crime Reports. Washington (DC): FBI; 2009 [cited 2009 Nov 5]. Available at URL: http://www.fbi.gov/ucr/cius2008/data/table_29.html

^{iv} Quinlan KP, Brewer RD, Siegel P, Sleet DA, Mokdad AH, Shults RA, Flowers N. Alcohol-impaired driving among U.S. adults, 1993-2002. American Journal of Preventive Medicine 2005;28(4):346-350.)

^v Roth, Richard, Voas, Robert and Marques, Paul (2007) 'Interlocks for First Offenders: Effective?', Traffic Injury Prevention, 8:4, 346 – 352 URL: <http://dx.doi.org/10.1080/15389580701598559>

Senate Standing Committee on Judiciary

SB 7 Driving Under the Influence

Thank you Senator Owens and members of the Committee for allowing me to testify today. My name is Christopher Mann and I am in a unique position to speak about the benefits of the proposed DUI legislation presented in SB 7. As a police officer, I arrested countless drunk drivers. As a police officer, I was also the victim of a drunk driver. Since then I have both defended and prosecuted drunk drivers in my short time as a licensed attorney in the state of Kansas. I don't think you will find anyone else with more extensive real world, practical experience than I have on this topic. That is what I am going to give you today, not statistics, not rhetoric, I am going to give you the real world examples of how this new law will work to keep our citizens safe.

I proudly served the citizens of Lawrence, Kansas as a police officer for six years. During this time, I arrested countless drunk drivers. I arrested people ranging from college students making stupid decisions to hard core alcoholics with extensive histories. The only difference being, the more seasoned offenders often told me that their attorneys instructed them to refuse every test. This essentially turned our legal system into a game. One suspect in particular, probably one of the most intoxicated people I have ever encountered successfully used this tactic to avoid a conviction despite my attempts to the contrary. She drove on the wrong side of the road for over 1 mile, while I followed with lights and sirens blaring, through the city of Lawrence before coming to a stop. That would have been her 5th DUI. But, there was not enough evidence. This new law would close the loophole that allows less than ethical attorneys to help their clients circumvent the law. That is the real world.

Even as a police officer, had you asked me nine years ago what I thought of toughening laws for first-time offenders, I cannot honestly tell you what I would have said. But, I stand here before you with a very personal, very painful perspective. Despite some of the rhetoric you have certainly heard from opponents of this law, it is not just the hard core offenders that cause injuries and loss for their victims. While on duty as a police officer in Lawrence, Kansas I was personally the victim of a first-time offender.

With most of the city asleep and the bars long closed, I was on patrol on the east side of town. I had just cleared from a radio call when I saw a SUV turn in front of me and drive away without any taillights. My partner and I turned on our lights and sirens and stopped the car. It was while I was standing outside of the car that I was hit. I was slammed like a rag doll against the SUV we had stopped and landed nearly 30 feet to the side of the road, narrowly missing a fire hydrant. Pieces of my uniform were strewn throughout the road. When the shock wore off, the pain was intense.

It is truly a miracle that I am here to talk to you today. After leaving the hospital, I spent several days in bed, unable to walk. The trauma had caused serious long-term internal injuries to my right leg and back. After extensive physical therapy, I made several attempts to come back to work, leading to more physical therapy, painful steroid injections, and medications. The last time I ever put on my uniform, I was found in the police station bathroom vomiting from the pain, trying to get back to the job that I loved.

The actions of this first-time offender took away the career that I loved; he took away my identity, even my very courage to go on. This was the lowest time in my life, retired at the age of 27, in constant pain,

with little hope of recovery. I am better today, but my wife will attest that not every day is a picnic. I have lived with this pain for nine years, still unable to get out of bed some days. This is the real world.

So, I ask you, is this new law too tough on first time offenders? Is one extra year of blowing into a tube to make sure they don't hurt anyone else too much for them to bear? Ladies and gentlemen, this is the very least we should do. I considered asking if you would enact this law if there was a chance that it would keep you or someone you loved from feeling the pain that I or other victims have felt, but it is difficult to truly feel someone else's pain. To know their struggles. So, I ask you to trust me, I have been there, I am the unfortunate recipient of this real world experience for you. If you knew this kind of pain you would enact this law. That is the real world.

I went back to law school with an eye towards prosecution, but I know that to be a truly good practitioner you must know your opponent. So I have personally defended drunk drivers while working with a small defense law firm. I have seen the real life impact of lengthy suspensions on first-time offenders. The interlock devices are an ingenious method to provide the safety the public needs without overburdening the legal system with numerous driving while suspended convictions from those who live in a community without public transportation. I have seen several clients who have no other option, but to risk driving and there is nothing to stop them from doing it while intoxicated. The interlock devices combined with a short suspension and lengthy restriction period not only helps to make sure the drivers are sober, but it allows to travel to work so they might earn the funds necessary to make proper restitution to victims and other legal payments to our cash strapped system. I have no sympathy for these defendants, but that is the real world.

I also have interned in a prosecutor's office where I was personally involved in cases with repeat offenders. After someone has become a repeat offender, we can safely assume that what our laws are doing are not deterring these people from reoffending. I have personally seen them walk out of the courtroom on one charge only to reoffend the same day. This is the real world.

Lengthy prison sentences and license revocation is a start to keeping the public safe. Without physically keeping these people off of the roads, it is just a matter of time before they reoffend, with possible dire consequences for the public. While my personal sympathy for these offenders is non-existent, I know that we must also spend the money to provide these people with extensive counseling and therapy to help keep them and the public safe. That is the goal of these laws. And trust me, you want to keep yourself and others from the pain of being one of their victims.

Ladies and gentlemen, you will hear statistics and rhetoric, ideology and exaggeration about this law, probably coming from both sides. I can tell you that as someone who has personally made the arrest, felt the pain of the victim, defended and prosecuted the accused, this law is a sound and necessary start to the strengthening of Kansas DUI laws. I ask you to cast aside the rhetoric, listen to the real world. Thank you.

Christopher D. Mann
Chrismann9808@gmail.com
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TESTIMONY IN SUPPORT OF SENATE BILL NO. 7

To: The Honorable Tim Owens, Chairperson
Members of the Senate Judiciary Committee

From: Corey F. Kenney, City Prosecutor – City of Lenexa

Date: January 26, 2011

Reference: Senate Bill 7 – Driving Under the Influence

Thank you for the opportunity to appear before you today and to present testimony in support of Senate Bill No. 7.

I had the privilege to attend all but two of the DUI Commission meetings and so I know firsthand the substantial amount of work that the committee members invested in this process and in developing the recommendations contained within SB 7.

The City of Lenexa encourages your support of the following initiatives found in SB 7:

- **Criminalization of test refusal** – This is found in Section 2 of the bill, and will be a major step in holding DUI offenders accountable. Kansas law already provides for implied consent to this testing for all drivers. Criminalizing refusals has proven effective in other states including Minnesota and Nebraska. As a prosecutor, I have seen many people escape the criminal consequences of their behaviors by refusing to submit to testing.
- **Increased Sentences for Repeat Offenders** – This change will hold repeat offenders accountable and will recognize the seriousness of repeated violations. The increase in minimum penalties for misdemeanor level offenses coupled with the potential for a prison sentence for felony offenses, a clear message is sent to DUI offenders that repeated violations will receive increasing levels of punishment.
- **Creation of Central Repository** – The addition of this useful tool will allow the system to act upon reliable information regarding an individual's prior record. Currently, multiple databases need to be accessed in order to perform a thorough background check for prior offenses. Consolidating to a central repository will provide in faster results and more accurate and reliable information regarding prior convictions.
- **Increased use of Ignition Interlock** – The change to allow for increased use of ignition interlock in lieu of straight license suspensions will provide DUI offenders with the ability to continue working allowing them to satisfy their obligations to the court system while providing a measure of safety for the public.

There is however, a concern regarding a few provisions in the bill that will have a negative impact on the accountability of repeat offenders and will complicate DUI prosecutions.

Consequently, the City of Lenexa urges you to closely examine and modify the following provisions:

- **Eliminating lifetime lookback:** This change is a step backwards in regards to holding repeat offenders accountable. The penalty scheme for DUI offenses relies upon graduated penalties based upon all prior convictions of the offender. We have been operating under a lifetime lookback for DUI offenders for nearly 10 years. This part of the system is not broken. The recommended change in lookback to July 1, 1996 is driven by the record keeping of KDOR; however, we have managed to make this work for the past 10 years. Reducing the period of time that prior DUI offenses can be considered will result in the following:
 - o Converting current and would-be felony DUI offenders to misdemeanor DUI offenders;
 - o Treating offenders convicted under this scheme differently than similarly situated offenders convicted under the previous scheme;
 - o Increased litigation regarding counting prior offenses – specifically questions regarding validity of pre-1996 prior convictions relied upon during the lifetime look back period
 - o Inconsistent application compared with similar offenses, i.e. Lifetime look back for violations of the new crime of test refusal, Commercial Vehicle DUI, Boating under the Influence
- **Expungement–** The proposed bill allows for the expungement of DUIs (after 10 years) and test refusal offenses (after three years). Current law provides that DUIs are not expungeable, which was a step in the right direction for building accurate, complete, offender histories. Changing the expungement conditions will significantly impair DUI offender criminal history records, and will only serve to further complicate DUI prosecutions for repeat offenders. Arguably, there will now be three categories regarding DUI expungement eligibility -- DUI convictions and diversions occurring prior to 2006 and after 2011 would be eligible for expungement, while convictions and diversions occurring between 2006 and 2011 would not be eligible for expungement. This will undoubtedly result in inconsistencies, in addition to the confusion from having two different time periods for expunging DUIs and criminal test refusals.

The City of Lenexa asks for your support of SB 7 and for your consideration in removing or modifying the provisions regarding lifetime look back and expungement. Thank you for your consideration.

Current K.S.A. 8-1014, administrative driving privilege penalties for test refusal, test failure or alcohol or drug-related conviction. (NOTE: High BAC = .15 or higher)

	REFUSAL		FAILURE		FAILURE - High BAC	
	Suspend	Restrict	Suspend	Restrict	Suspend	Restrict
first	1 year	1 year	30 days	330 days	1 year	1 year
second	2 years	0	1 year	1 year	1 year	2 years
third	3 years	0	1 year	1 year	1 year	3 years
fourth	10 years	0	1 year	1 year	1 year	4 years
fifth +	permanent	n/a	permanent	n/a	permanent	n/a

Amendments to K.S.A. 8-1014, administrative driving privilege penalties for test refusal, test failure or alcohol or drug-related conviction. (NOTE: High BAC = .15 or higher)

	REFUSAL		FAILURE		FAILURE - High BAC	
	Suspend	Restrict	Suspend	Restrict	Suspend	Restrict
First	1 year	1 year	30 days	1 year	1 year	1 year
Second	1 year	2 years	1 year	1 year	1 year	2 years
Third	1 year	3 years	1 year	2 years	1 year	3 years
Fourth	1 year	4 years	1 year	3 years	1 year	4 years
Fifth +	permanent	n/a	permanent	n/a	permanent	n/a

Prepared by Jason Thompson, Senior Assistant Revisor

Senate Judiciary
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 Attachment 6



Deb Miller, Secretary

Kansas Department of Transportation

Sam Brownback, Governor

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 7
RELATING TO DRIVING UNDER THE INFLUENCE**

January 19, 2011

Mr. Chairman and Committee Members:

The Kansas Department of Transportation (KDOT) appreciates the opportunity to submit written testimony in support of Senate Bill 7, related to changes in the DUI statutes.

While overall crashes and fatalities in Kansas have been declining in recent years, it is important to note that the number of alcohol-related crashes and fatalities have been increasing. KDOT feels that it is imperative that we address the issue of drunk driving in order to protect Kansas drivers.

KDOT receives federal grants to fund programs designed to try to reduce the incidence of drunk driving in Kansas and the devastating effects of alcohol-related crashes. We pride ourselves in using these funds to have the greatest impact on reducing the number of Kansans that choose to drink and drive.

Legislation was passed in 2009 that created the Kansas DUI Commission to study DUI issues in Kansas. The Commission included representation from numerous disciplines which included KDOT. We fully support strengthening DUI laws and programs in Kansas in an attempt to reduce drunk driving.

The best ways to reduce death and injury related to drunk driving is to have strong laws that discourage drunk driving coupled with severe penalties for those that do choose to drive drunk. Kansas must also have effective programs that provide opportunities for assessing and treating those who do not want to repeat the mistake of driving drunk in order to have the most profound impact on reducing the number of drunk drivers on Kansas roads.

While no legislation can completely eradicate driving while intoxicated, we believe this bill is an essential step in the right direction for Kansas. If enacted, this legislation will provide the necessary punishment to those who continue to break the law and drive drunk.



Kansas Bureau of Investigation

Robert E. Blecha
Director

Derek Schmidt
Attorney General

TESTIMONY
Before the Senate Judiciary Committee
Regarding 2011 Senate Bill 7 (DUI)
Steve Montgomery, CIO
Kansas Bureau of Investigation
January 19, 2011

Senator Tim Owens, Chairman, and Members of the Committee:

The KBI maintains the state's central criminal history repository. SB 7 requires all courts to report dispositions for DUI cases electronically to the central repository.

The KBI is fully supportive of the bill and the electronic reporting requirement. Electronic disposition reporting built specifically for DUI cases can be leveraged for all disposition reporting, thereby dramatically improving the currency and quality of Kansas criminal history information and producing a windfall advantage to criminal justice agencies not only in Kansas but quite literally nationwide.

The timing of the electronic reporting requirement is concerning however. Electronic disposition reporting of the scale envisioned by the bill must be built not only at the central repository, but also with the district and municipal courts. Presumably funding for KBI to develop the capability at the central repository would be available July 1, 2011, at which time a project could be initiated. But district and municipal courts will be able to do little until KBI can deliver an interface specification for the electronic reporting system. The time required to engage and onboard a vendor partner, develop an appropriate project plan, gather requirements, and design the electronic interface will leave an inordinately brief period of time for KBI and the courts to implement the specification and comply with the electronic reporting requirement.

KBI respectfully recommends a July 1, 2013 date would be more appropriate for mandated electronic reporting. Such a timeframe should afford the KBI opportunity to develop the specification and build a robust, well tested electronic gateway, and should provide the courts ample time to integrate the electronic specification into their existing processes and systems.

Thank you for the opportunity to provide this information.

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January 26, 2011

Senator Thomas Owens
Chairman, Senate Judiciary Committee
Kansas Statehouse
300 SW 10th Street, Room 559-S
Topeka, Kansas 66612

Re: S.B. 7 (DUI bill)
Proponent of Sections 32 and 48 (expungement provisions)

Dear Mr. Chairman and Committee:

I wish to focus on the expungement provisions found in Sections 32 and 48. The proposed amendment to current law is an excellent idea. My fellow defense attorneys and I are firmly in favor of such a change. I suspect the vast majority of the public also favors this change.

I practice criminal defense, including a good deal of DUI defense in the Kansas City and surrounding areas. I took to private practice after nearly 20 years as a state employee with the Board of Indigents Defense Services. I have represented people charged with DUI, or with felonies who also had unrelated DUI charges, for over twenty years. I serve as the Executive Director of the Kansas Association of Criminal Defense Lawyers. I also serve on the Criminal Advisory Committee to the Kansas Judicial Council, as well as the Johnson County Bar Association's Criminal Bench-Bar Committee and Municipal Bench-Bar Committee.

Sections 32 and 48 provide a mechanism for people to finally close a past chapter of their lives. Expungement has long been the method for people to move on with their lives after they have paid the price for their criminal conduct and then subsequently proven their commitment to a respectable lifestyle and actual change of heart by a period of law abiding behavior. The only way other than an expungement to clear one's criminal history is by Executive Pardon. That method is simply not a viable option for all but a very select few.

It is important to note that Kansas law already provides for expungement of almost all crimes. Only a few crimes are not subject to expungement: rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy with a child between 14 and 16, aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated incest, child endangerment, aggravated child endangerment, child abuse, capital murder, first degree murder, second degree murder, voluntary manslaughter, involuntary manslaughter, sexual battery, aggravated sexual battery and driving a commercial vehicle under the influence. These are very serious, violent and dangerous crimes. There are obvious reasons a society might say that these crimes should not be erased from a person's criminal record. Most of them involve the death of a person, the violent sexual assault of a person or the sexual or physical abuse of a child. **DUI is simply not in the same class of crime.** The average citizen would not consider a person who picks up a DUI to be the same as a person convicted of murder, rape or child molestation. They should not be treated the same way.

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Lest anyone think the proposed amendment treats DUI too leniently, we should look at the other provisions of expungement under Kansas law. Traffic infractions, tobacco infractions, misdemeanors (other than sexual battery), pre-1993 felonies ranked "D" or "E" (the lowest levels), post-1993 felonies ranked "6 – 10" inclusive on the non-drug grid, and "4" on the drug grid are all expungable *three* years after the person has completed his obligations to the State of Kansas. Felonies this statute covers include burglary, forgery, some aggravated batteries, fraud, theft and arson. Other crimes require the person to wait *five* years after completing their obligations to apply for diversion. These include pre-1993 felonies ranked "A", "B", or "D" (the highest levels), post-1993 felonies ranked "1 – 5" inclusive on the non-drug grid, and "1 – 3" inclusive on the drug grid. Examples of felonies in this class are aggravated kidnapping, aggravated robbery, serious life-threatening aggravated batteries, sales of narcotics and methamphetamine manufacture. **The proposed amendment would allow DUI to be expunged only after ten years have elapsed since the person finished his sentence or probation, which is twice as long as the time requirements for expunging serious felonies.**

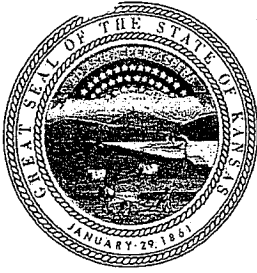
One must remember that the statute does not provide for automatic expungement – it merely provides a way for the person who has waited a decade to request that a court review his situation to determine whether or not to close the file. The prosecuting and arresting authorities will be notified and have the opportunity to oppose the petition if they think it appropriate. The "circumstances and behavior of the petitioner must warrant the expungement" and the expungement must be "consistent with public welfare." If the petitioner cannot convince the judge of his worthiness the expungement will not be granted.

Lastly, expungement is not a free pass to the petitioner to commit more crimes without consequence. If a person commits another crime, the record for the expunged case is ready and available. Prosecutors and courts still have access to the conviction. **It is still treated as a prior conviction for purposes of sentencing.** It can still be used as evidence if it otherwise meets the requirements of K.S.A. 60-455. **Expunged cases are available to governmental agencies as provided by the statute.** Expungement does not hide a conviction for purposes of a concealed handgun permit or application to become a law enforcement officer. The expunged case is still taken into account when applying for admission to the bar, to work as a private detective, to take certain positions with the Kansas lottery and gaming commission and many other situations.

Expungement used to be available to those convicted of DUI and who had adjusted their behavior to a safe and law abiding manner. **It should again be available to those who made a mistake but have taken responsibility for their actions and are upstanding members of our society.**

Thank you,

Patrick M. Lewis
Attorney at Law
142 North Cherry Street
Olathe, Kansas 66061
plewis@morganpilate.com



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TODD G. THOMPSON

COUNTY ATTORNEY

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MICHAEL G. JONES
ASSISTANT COUNTY ATTORNEY

RAE L. ANDERSON
ASSISTANT COUNTY ATTORNEY

ALICE L. WALKER
ASSISTANT COUNTY ATTORNEY

Thursday, January 20, 2011

Senator Tim Owens
300 SW 10th Avenue, # 559S
Topeka, Kansas 66612-1519

RE: DUI Commission Bill

To Whom It May Concern:

I would like to have testified today, but I have a hearing in front of the Kansas Supreme Court and with the size of our staff we are unable to send another person. As proponents of the proposed DUI Commission Bill, we would like to express our support for the proposed legislative changes and our county's experience with DUI prosecution under the current legislation. Recently, we have had a number of serious DUI offenses including both offenders with significant criminal histories and traffic collisions involving serious injury or death. While we have prosecuted these cases to our fullest capabilities, the current statutory guidelines have severely limited our ability to gain meaningful convictions and punishments.

On July 6, 2009, a 66 year old Leavenworth man, Edsel Hess, committed his 11th DUI offense in our community. Mr. Hess' BAC was .171 grams of alcohol per 210 liters of breath approximately an hour after striking the car of a young female and leaving the scene of the accident. Mr. Hess had 10 prior DUI convictions occurring between 1980 and 2002, all but two occurring in Leavenworth. Even with Mr. Hess' significant history of drinking and driving, the current law only provided a maximum sentence of one year. Mr. Hess was sentenced in December to 10 months in jail.

On September 22, 2010, a 27 year old man, David Matthews, committed his 7th DUI on I-70 in Leavenworth County. Mr. Matthews was stopped by Highway Patrol for traveling 117 miles per hour on the highway. All of Mr. Matthews' DUIs occurred within nine years, with the most recent three offenses occurring within a seven month period. Mr. Matthews plead to the offense, however once again the Court was limited by the current statute and Mr. Matthews was only sentenced to 1 year in custody.

Leavenworth County has also faced multiple DUI collisions resulting in serious injuries or fatalities. While we are diligently pursuing prosecution of the involved parties, we are limited by the current statute. The Leavenworth County Attorney's Office would like to see an increase in penalties for those with multiple prior DUI convictions, as outlined in the DUI Commission Bill. The current statute simply doesn't provide sufficient sentences for offenders with multiple priors. The current one year sentence does little to ensure community safety, prevent further offenses, and properly punish offenders.

Senate Judiciary

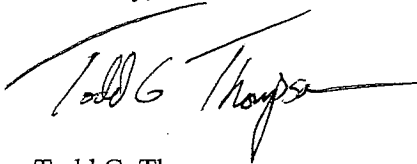
1-26-11

Attachment 10

Additionally, the increased time from two to three hours for a per se violation, as outlined in the Bill under Sec 21. K.S.A. 8-1567(a)(2) would provide sufficient time for law enforcement to obtain necessary testing on major collisions. The current two hour limit for per se violations often poses the most problems for prosecution in cases with serious traffic collisions where additional steps must be taken by law enforcement. The extension of time, while minimal, would better serve prosecution on our most serious DUI cases.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd G. Thompson", with a long horizontal flourish extending to the right.

Todd G. Thompson
County Attorney
Leavenworth, Kansas



January 20, 2011

Dear Members of the Kansas Legislature:

I have been asked to comment on your deliberations about the .08 interlock bill that proposes the extension of the Kansas Ignition Interlock Program to all DUI offenders, including first time offenders with BAC at .08% or greater. I believe I can comment on this with some authority, and with no conflicts of interest.

I have conducted original research on ignition interlocks beginning in 1989 and I currently serve as the Chair of the Interlock Working Group of the International Council of Alcohol Drugs and Traffic Safety. We have a research and program group here at the Impaired Driving Center (and Alcohol Policy Research Center) of PIRE with 10 senior researchers who focus on impaired driving research along with about 35 other staff.

Our parent institute is PIRE (www.pire.org). PIRE has approximately 300 employees spread around the USA in 8 Centers; our mission is to conduct research and development in areas of public health and safety. PIRE is a publicly-funded, not for profit, research institute with no financial ties to either the interlock or alcohol industries.

My colleague, Robert Voas and I drafted the original Breath Alcohol Ignition Interlock Model Specifications for NHTSA of the US Department of Transportation, published in the Federal Register in 1992. The 1992 Model Specs are now in the revision process and we hold the contract to summarize public input on the new revision. Voas, now at age 82, is perhaps the most eminent alcohol traffic safety research scientist in the USA. Voas and I have published approximately 50 or more research papers on various aspects of ignition interlocks and much of that work can be found easily on the Internet. I have held the Ph.D. degree and conducted research since 1973, Voas since the 1950s.

Senate Judiciary

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Attachment 11

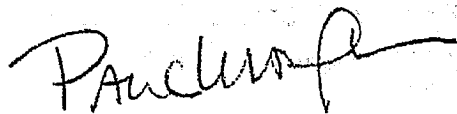
11720 Beltsville Drive, Suite 900 | Beltsville, MD 20705-3111 | Tel: 301-755-2700 | Fa

Our 1992 Model Specifications Report was NHTSA's first effort to organize the growing States' interest in interlock devices. At the time of the 1992 document there was not enough information to make recommendations on how the actual interlock programs (as distinct from the devices) should be structured to maximize public safety, simply because there was no base of real evidence. In the intervening years between the 1992 Model Specifications and today, the installed base of interlocks in the USA has grown from 1,000 to 212,000.

Today the interlock program picture is much clearer, and today our ability to make evidence-based recommendations is on much firmer foundation. For example, we here at PIRE conducted literature reviews, surveys of experts in about 20 interlock states, and convened an expert panel meeting in 2007. The report on that work "Key Features of Ignition Interlock Programs", available at (http://www.nhtsa.gov/staticfiles/nti/impaired_driving/pdf/811262.pdf) was published by NHTSA in March of 2010. In the Report we make clear that the evidence for first offender interlock program effectiveness is quite strong and that the public risk posed by first offenders is not only far from insignificant, it is not a whole lot less than the risk posed by second offenders. One of our research papers dealt explicitly with first offenders interlocks (Roth et al., 2007). Another first time DUI offender risk paper was published last year by a group at Westat (Rauch et al., 2009). Our comprehensive report on the New Mexico Ignition Interlock program was also published in 2010 by NHTSA and it can be found at the following link...(<http://www.nhtsa.gov/staticfiles/nti/pdf/811410.pdf>).

In the pages that follow, I have assembled some of the evidence regarding first offender risk that you might find worthwhile. Please let me know if I can help in your deliberations.

Respectfully submitted,



Paul R. Marques, Ph.D
Senior Research Scientist

First Offender vs. Repeat Offenders: Are They Very Different?

The earliest interlock programs in the US and Canada were restricted to repeat DUI offenders. By the late 1990s, the earliest controlled interlock effectiveness evidence showed they strongly reduced recidivism. But it soon became clear that because about two-thirds of DUI offenders are first time offenders, interlock programs would not make much contribution to safety as long as interlock laws applied only to repeat offenders. Slowly that has begun to change. The argument for first offender interlocks is straightforward since the public risk posed by first offender alcohol use is very significant and it is much more so than the risk posed by non-offenders. First time offenders are very rarely first time drinking drivers. Estimates suggest that there are between 200 to 1000 episodes of alcohol impaired driving for each arrest. The chance of arrest is smaller than we would like.

Two studies, one in New Mexico and one in Maryland provide evidence that addresses first offender risk. Figure 1 (left panel) shows that the 2006 DUI arrest (or re-arrest) rate (vertical axis) of first time offenders in New Mexico based on their DUI status in 2003 (horizontal axis). It shows that the rate of first offender re-arrest is 5 times higher than the likelihood of non-offenders being arrested. In fact, the first offender re-arrest rate is only about 25% less than that of second time offenders' re-arrest rate.

In the right side panel, evidence from Maryland based on 31 years of driver records in which offenders were classified as having 0 to 3 or more prior violations for alcohol among 21 million drivers in the state record system. For those with any alcohol violations (even if not logged as a conviction), the average annual rate of additional violations for those with one violation is 7 times higher than for those with no violations. Similar to the New Mexico data, those with one violation have fewer, but not many fewer than those with 2 violations. By the time someone receives a first DUI arrest or conviction there may have been prior plea-downs or various forms of judicial leniency, such as probation before judgment. A first DUI offender is rarely a first time drinking-driver. And evidence such as this helps to demonstrate this risk.

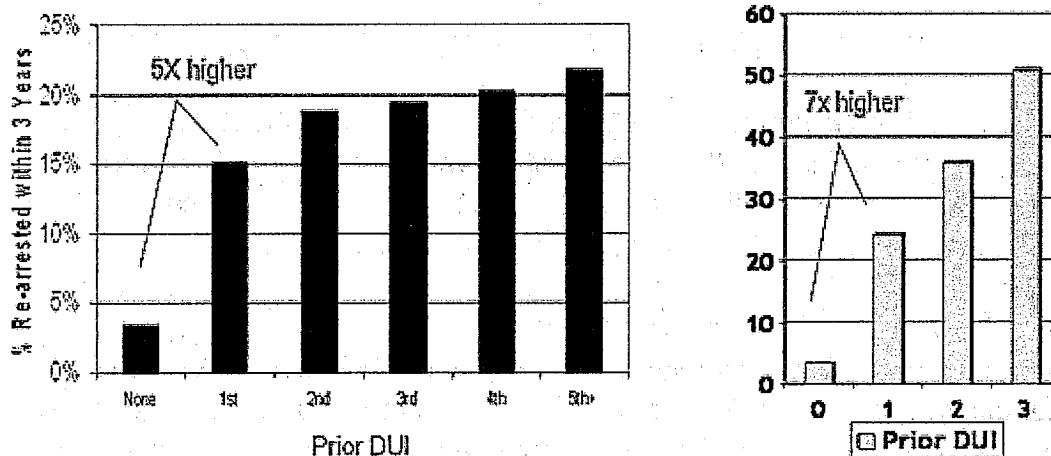
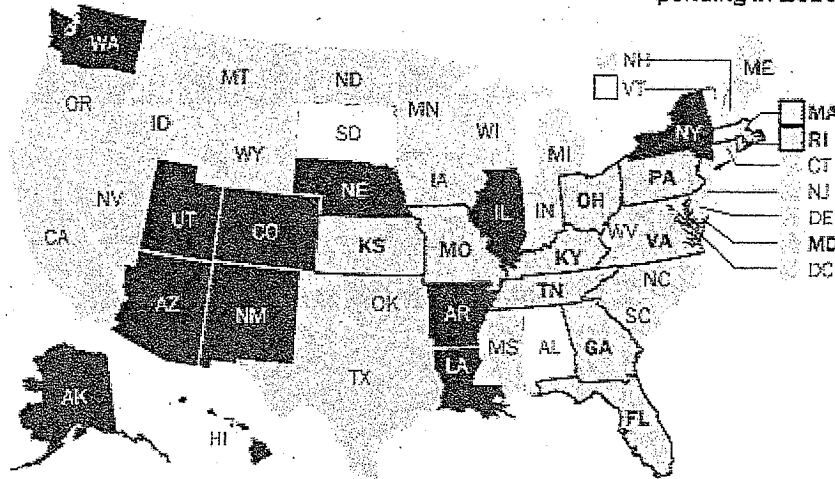


Figure 1: First Offender Alcohol Risk. Left panel shows 2006 DUI arrest data based on the number of convictions in 2003 (New Mexico: Marques, Voas, Roth, Tippetts; 2010). Right panel reflects alcohol violations on the Maryland driver record by past DUI convictions (Maryland: Rauch, Zador, Ahlin, Howard, Frissell, Duncan; 2009).

As you likely know, Kansas logged 386 road fatalities in 2009; 154 or 40% involved a driver with a BAC at or above .08%. In addition to deaths, which are easier to count, there are thousands life transforming injuries due to alcohol impaired drivers in every State. If the Kansas legislature should decide to pass the mandatory DUI legislation covering all offenders, the state will not be alone. Far from it; many States have been debating similar legislation that would extend interlocks as a mandatory sanction for all DUI offenders. As part of the public information surrounding this issue in the jurisdictions near the District of Columbia, a graphic summarizing the status of ignition interlock laws in general, and first offender laws specifically, was published in the Washington Post by staff writer (Ashley Halsey III) on March 2, 2010. It is a nice summary and I have no reason to believe it is not accurate (but we do not track laws here). The chart is shown below. At the time of the publication, States with current first offender interlock laws are in dark fill. Those, including Kansas, considering first offender interlock laws are shown in red outline. The graphic makes it evident that first offender interlock laws, and the states with laws under consideration, do not break down in conventional liberal, moderate, or conservative lines. The first law that was mandatory for all offenders was passed in 2005 by New Mexico. Since 2005, 11 additional states (dark fill) have already passed laws that mandate interlocks for all convictions and 11 more (red outline) appear to have considered similar bills.

Mandatory for all convictions
 Discretionary
 No interlock law
 First-time offender interlock bills pending in 2010



If first-time drunken driving offenders in Colorado don't install an ignition breathalyzer, their license suspension is longer. In California, the ignition breathalyzer is mandatory for all convictions in Alameda, Los Angeles, Tulare and Sacramento counties. Mandatory for high blood alcohol content conviction in Florida, New Hampshire, Kansas and Virginia; mandatory for two offenses or higher in Massachusetts; mandatory for repeat conviction in Missouri; mandatory upon reinstatement in Oregon; mandatory for repeat convictions or first-time offenders with a blood alcohol content at or above 0.15 in New Jersey; mandatory for a repeat conviction in South Carolina and Texas; mandatory for 0.15 or higher blood alcohol content conviction in West Virginia; judicial discretion on third or subsequent offense in Rhode Island. The mandatory law in Hawaii is expected to be effective in 2011.

References

- NHTSA (1992). Model specifications for breath alcohol ignition interlock devices (BAIIDs). *The Federal Register*, 57(67), 11772–11787. (Drafted by Voas, R. B., & Marques, P. R.)
- Marques, P.R. & Voas, R.B. (2010) Final Report: Key Features for Ignition Interlock Programs. *National Highway Traffic Safety Administration*. DOT HS 811 262.
- Marques, P.R., Voas, R.B., Roth, R., Tippetts, A.S. (2010) Final Report: Evaluation of the New Mexico Ignition Interlock Program. *National Highway Traffic Safety Administration*. DOT HS 811 410.
- Roth, R., Voas, R.B., Marques, P.R. (2007). Interlocks for first offenders: Effective? *Traffic Injury Prevention*, 8: 346–352.
- Rauch, W.J., Zador, P. L., Ahlin, E.M., Howard, J.M., Frissell, K.C., Duncan, G.D. (2009) Risk of alcohol-impaired driving recidivism among first offenders and multiple offenders. *American Journal of Public Health*. Online Print ahead of publication.



**Written Testimony on Senate Bill 7
Senate Judiciary Committee**

**Prepared by
Major Mark Bruce
Kansas Highway Patrol**

January 26, 2011

The Kansas Highway Patrol (KHP) appreciates the opportunity to provide written testimony regarding Senate Bill 7. The provisions of this bill substantially modify and enhance the state's impaired driving laws and incorporate recommendations made by the legislatively created DUI Commission.

The KHP supports this committee's efforts to improve the state's law enforcement, criminal justice system and substance abuse evaluation/treatment capabilities as they relate to DUI. Senate Bill 7 undoubtedly contains improvements to existing laws that will have a positive effect on the reduction of drunk and drugged driving in Kansas.

The KHP supports the bill's contents in its entirety. Any amendment that substantively modifies or excludes any of its provisions brings with it the risk of undermining Senate Bill 7's overall potential for success.

The KHP is particularly encouraged by the following components of the bill that we believe will absolutely reduce the incidence of drunk and drugged driving in Kansas:

- *Ignition interlock device required for first time offenders.* The obvious goal of this requirement is to prevent a convicted drunk driver from operating a vehicle. Too often, first time offenders are arrested a second, then third time and so on. This device will impede the driver of a vehicle so-equipped from starting it if they have consumed alcohol and could quite possibly prevent the first time offender from becoming a multiple offender.
- *Criminalizing refusals.* It is a known fact that drunk drivers, especially repeat offenders, refuse field sobriety and evidentiary tests as a tactic to avoid arrest and prosecution. The absence of this physical evidence makes it nearly impossible for a prosecutor to prove the merits of a drunken driving case to a judge or jury. Passage of this measure has drastically reduced refusals in other states and will undoubtedly improve the state's capability to prosecute those who choose to put themselves and others at risk by drinking and driving.

- *Saliva preliminary testing device.* It is not uncommon for a driver to display the driving and physical characteristics of a drunk driver, but, not be under the influence of alcohol. Oftentimes, these individuals are under the influence of drugs. Unfortunately, because of the extensive training required to be a Drug Recognition Expert, law enforcement's ability to assess and arrest the drugged driver is limited. A preliminary saliva test capable of identifying drugs will improve our ability to identify, apprehend and pursue prosecution of a category of impaired drivers that currently presents a significant challenge for law enforcement officers.

Again, the Kansas Highway Patrol appreciates the opportunity to provide its written input regarding the life-saving provisions of this bill. We applaud the committee's efforts to promote and improve the safety of the motoring public.

###

KANSAS IGNITION INTERLOCK ASSN.

Date: 19 January, 2011

To: Chairman Owens and Members of the Senate Judiciary Committee

From: Matt Strausz, President Kansas Ignition Interlock Association

RE: Support of SB 7

Thank you, Chairman and members of the committee for the opportunity to provide written testimony in support of SB7. SB7 as proposed strengthens Kansas DUI laws.

As an association for the Ignition Interlock industry we support the language in SB7 as it pertains to the ignition interlock requirements. As data from other states has shown, requiring ignition interlock on all DUI offenses saves lives. Ignition Interlock for all offenses has been credited with reducing alcohol related fatalities up to 37% in other states. If enacted, we feel this language will show similar results in Kansas.

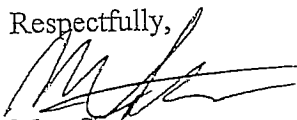
Members of our association have locations statewide. There is currently no area of the state where service is not available within a reasonable distance. There are currently over 100 service centers throughout the state to install and service ignition interlock devices. Service is currently available to all residents of the state.

Ignition Interlock technology has evolved incredibly over the past few years. Interlock devices are currently able to accurate accounting of its use, provide picture verification of who is taking the test, communicate results wirelessly relating to violations, set curfew limits and prevent the vehicle from starting for any period after an alcohol related test. Most Ignition Interlock devices are alcohol specific, fuel cell devices. This technology is the same technology, and accuracy, being used in breath testing equipment by our law enforcement. This allows for evidentiary quality testing, with photo identification to back it up.

Ignition Interlock devices can be installed on any year, make and model of vehicle. Gas, Hybrid and Electric vehicles can all be installed on safely. There is no vehicle that we have run into as an industry that we have not been able to properly install upon. While cost of the Ignition Interlock devices is quite low, at just over \$2.00/day, this bill also addresses the indigent funding. The ignition interlock indigent fund has been in place for many years, and we feel that increasing the knowledge of the program as prescribed will benefit all in need.

Thank you for the opportunity to present this testimony to your committee. I will be happy to stand for any questions, at the appropriate time.

Respectfully,



Matt Strausz

President Kansas Ignition Interlock Association

Senate Judiciary

1-26-11

Attachment 13