

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on January 28, 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:

Sarah Longwell, American Beverage Institute (ABI)
Tim Madden, Kansas Department of Corrections (KDOC)
Melissa Wangamann, Kan Assn of Counties, Gen. Counsel, Director Legislative Services
Sherry Diehl, Executive Director Kansas Real Estate Commission
Ken Cannon

Others attending:

See attached list.

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

Sarah Longwell testified in opposition to **SB 7 (Attachment 1)**. She stated that the ABI opposes any legislation requiring ignition interlock devices for all DUI offenders and especially in the case of first-time offenders. She stated similar legislation was proposed in 18 states last year; none were enacted mainly because of the costs. She stated that SB 7 denies judicial discretion.

Senator Owens asked Ms. Longwell to clarify ABI's issue or concern with the ignition interlock device. Ms. Longwell stated that ABI is concerned that mandating the use of the ignition interlock device is the first step off a slippery slope; that the federal government may push to place blood alcohol content (BAC) sensors in all cars as standard equipment and that the sensors would prevent the car from starting if it senses any alcohol, in the person's blood.

Senator Kelly asked, "What is the average BAC of a DUI offender?"

Ms. Longwell stated, "The average was .19 in fatality accidents."

Tim Madden testified as a neutral party to **SB 7 (Attachment 2)**. He stated that the KDOC had three concerns with the bill relating to:

- The supervision of offenders released from jail
- Information regarding the time offenders spend incarcerated relative to tolling the suspended driver's license
- The extension of the post-release supervision obligation due to prison good time or early release

Proposed balloon amendments to address the Department's concerns were included in Mr. Madden's testimony.

Melissa Wangamann testified as a neutral party to **SB 7 (Attachment 3)**. She stated that the KAC has no opposition to the public policy contained in SB 7. KAC is concerned about the cost that will be incurred by counties and county jails.

Sherry Diehl testified as a neutral party to **SB 7 (Attachment 4)**. She raised a concern with the unintended consequences that would result from the wording of Section 1 of the bill:

- The bill would prohibit the Commission from restricting a licensee (who is a first-time DUI offender) to conduct real estate activities under the supervision of the licensee's supervising broker.
- It is not clear whether the bill requires a hearing before the Commission could impose reasonable

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on January 28, 2011, in Room 548-S of the Capitol.

conditions on a license

- Section 1(b) applies to licensees; it appears reasonable conditions could not be imposed on a DUI offender who is a new applicant for licensure
- If a hearing is mandatory, the Commission does not have the funding to hold all the hearings that would be necessary

Senator Vratil raised concerns with the substance abuse treatment program and the need for more funding to bed space and counseling services under the program.

Keven Pellam, Kansas Department of Social and Rehabilitation Services, stated that there would be 40 slots for male offenders and 24 slots for female offender in the substance abuse treatment program at a cost of more \$7 million.

The Chairman returned to the proponents for testimony.

Ken Cannon testified in favor of **SB 7** (Attachment 5). He stated that he wanted to bring a personal point of view to the hearings. He told the committee that both of his parents had been killed an accident caused by a driver who was DUI. He urged the committee to ensure that the emotional and financial costs of the extended family of the victims of DUI offenders should be taken into consideration.

Written testimony in support of **SB 7** was submitted by Leann Briggs (Attachment 6). Written neutral testimony on **SB 7** was submitted by: Ray Dalton, Deputy Secretary of the Kansas Department of Social and Rehabilitation Services (Attachment 7), Dale Goter, City of Wichita, Kansas (Attachment 8) and John Peterson (Attachment 9).

Meeting adjourned at 11:25 A.M. The next meeting is scheduled for January 31, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Friday, 28, 2011

NAME	REPRESENTING
Ken Cannon	
Connie Cannon	
Kelli Kell	
JOHN BOTTEMBERG	Miller/Boors
Mehris Wangemann	KAC
Pete Bodyk	KDOT
KAREN WITTMAN	AGs office/KDOT
Frank Harris	MADD
Phil Bradley	KLBA
Carrie Ann Brown	Wine Institute
John Peterson	Capital Strategies/self
ERIK SARTORIUS	City of Overland Park
Robert Baker	RHP
Marla Rhoden	KDHE
Stuart Little	Ks Assoc. Addiction Professionals
Sarah Hansen	Ks Assoc. of Addic. Prof.
Patrick Kuehberg	KCDAA
Doug Welt	self

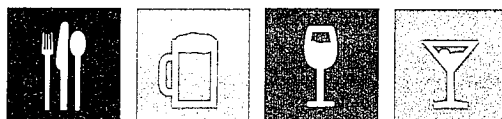
PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: _____

[illegible]

RE: Testimony on S.B. 7



American Beverage Institute

Good morning Mr. Chairman and distinguished members of the Judiciary Committee. Thank you for the opportunity to submit testimony today. My name is Sarah Longwell and I am the Managing Director of the American Beverage Institute, a restaurant trade association representing more than 8,000 restaurants nationwide and over 100 in Kansas.

The American Beverage Institute opposes legislation requiring ignition interlocks for all drunk driving offenders. We believe that bills like S.B. 7 deny judicial discretion and ignore proportional response by mandating ignition interlock devices for marginal, first-time offenders.

This bill mandates that even drivers only one sip over the legal limit receive a punishment typically reserved for hardcore offenders who cause the vast majority of alcohol-impaired fatalities in Kansas.

A 120 pound woman who has consumed two 6-oz glasses of wine over a two hour period can reach a blood alcohol concentration (BAC) level of .08. Under S.B. 7, if this woman drives she will be subject to the same punishment as a chronic alcohol abuser who has had ten drinks prior to driving. While both of these people are guilty of a crime, they are two very different kinds of criminals. The court should recognize the difference between them and judges should have the discretion to punish them in proportion to their violation.

I would liken it to other traffic infractions. Speeding is one of the most deadly causes of traffic fatalities, yet we punish someone who drives 5 miles per hour over the speed limit differently from someone who drives 25 miles per hour over. Why? Because we recognize that the person driving 25 miles per hour over the speed limit poses a far greater threat to others' safety on the highway than the person driving 5 miles over the limit.

In fact, numerous studies have shown that a person is less impaired driving with a blood alcohol concentration of 0.08 than driving while talking on a hands free cell phone. Yet this is the impairment level at which S.B. 7 would mandate the installation of an ignition interlock.

The average BAC of a drunk driver involved in a fatal accident is .19%—that's more than twice Kansas's legal limit of .08%. It is these high-BAC drunk drivers, along with repeat offenders, that this drunk driving legislation should focus on, not marginal first-time offenders.

Pro-interlock activists will claim that this measure is budget-neutral for Kansas because the offenders pay for installation and maintenance of the device. However, this mandate will cost Kansas **over \$5 million per year to enforce**. This cost is based on a conservative estimate made by the American Probation and Parole Association (APPA) of \$3 per day to monitor each offender.

Additionally, there is no reason to believe that simply mandating increased use of interlocks without providing the necessary infrastructure will be effective. In a letter to Congress about interlocks, the APPA explained that "simply ordering offenders to have an interlock system installed is no guarantee that they will comply. Compliance has been a problem in nearly every

Senate Judiciary

1-28-11

Attachment 1

state where the technology has been introduced. A workforce of probation officers is needed to ensure compliance with court-ordered ignition interlocks." As such, "states and localities will bear the burden of the cost of an adequate workforce to ensure compliance."

New Mexico was the first state to institute a policy requiring interlocks for all offenders and currently boasts the highest interlock compliance rate in the country which is a paltry 32 percent.

The APPA also pointed out that "No state - including New Mexico which requires the use of ignition interlocks for all DWI offenders - has the infrastructure in place or the resources currently (or in the foreseeable future) to implement such a far-reaching requirement."

The cost to the offender is also of concern. According to California's Assembly Appropriations Committee the cost for each offender prescribed an interlock "can exceed \$6,000." You can imagine the cost to a family whose father who was arrested one sip over the limit and now must install interlocks in any car with his name on the title or that he sometimes drives—his car, his wife's car, his teenagers' cars, his work truck, etc.

In addition, the APPA points out that "Not all offenders will have the ability to pay for ignition interlocks and the cost will have to be borne by either state or local government entities for those that do not have the means to pay." Most states with interlock laws have had to create an indigent fund to supplement these offenders.

That's why the APPA says, "further burdening OWI offenders with additional financial burdens related to ignition interlocks should be reserved for the most serious offenders or hardcore drunk drivers."

We agree wholeheartedly. The American Beverage Institute and its members encourage the use of ignition interlocks to punish high-BAC drunk drivers (0.15 BAC and above) and repeat-offenders. This population constitutes the "hard core" drunk drivers who don't benefit from alcohol treatment and probationary programs the same way most low-BAC, first-time DUI offenders do.

For those who choose to drive while extremely intoxicated and those who repeatedly flout the law, ignition interlock technology is an effective and proper law enforcement response. But we shouldn't punish someone one sip over the limit the same way we punish hard-core alcohol abusers.

In conclusion, I would like to point out that while my organization is the voice for restaurants, the hospitality industry as a whole shares our position on this bill.

I thank you for the opportunity to submit testimony, and look forward to working with the Committee on this very important issue.



Testimony on SB 7
to
The Senate Judiciary Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
January 27, 2011

The Department of Corrections appreciates the opportunity to bring to the committee's attention three areas of SB 7 which it believes the committee may wish to consider. While SB 7 would entail a significant increase in the KDOC prison population irrespective of whether the areas identified by the department are modified or not, the department believes the areas identified by the department would enhance the implementation of SB 7 resulting in a more streamline operation and a more cost effective achievement of public safety.

The areas in which the department believes the committee may wish to consider are: supervision for offenders released from jails, information regarding the time offenders spend incarcerated relative to tolling the suspended driver's license and the extension of the postrelease supervision obligation due to prison good time or early release.

Release Supervision

SB 7 would modify current law by providing for KDOC prison incarceration for 4th and subsequent DUI felons, 3rd and subsequent refusals to submit to a blood/alcohol test, and a 3rd and subsequent conviction for a commercial license DUI. Those offenders upon release from KDOC imprisonment would be obligated to be under KDOC postrelease supervision. Additionally, SB 7 provides for the same KDOC postrelease supervision for those offenders who were imprisoned in a local jail. The category of offenders which the department would like to bring to the committee's attention regarding their release supervision is those offenders who are imprisoned in a jail for their term of imprisonment but who pursuant to SB 7, would be supervised by KDOC for a period of postrelease supervision.

The department believes that for those offenders whose incarceration is in a local jail, a more efficient and effective method of achieving a measured response to public safety would be for those offenders to be supervised upon their release from the jail by court services or community corrections rather than state parole officers. The rational for having release supervision for locally incarcerated offenders conducted by court services or community corrections entities is:

- Public safety is best achieved by addressing both the imposition of adverse consequences to suppress criminal behavior as well as the retention or reinforcement of the offender's positive social behavior.

SB 7, as well as current law, recognizes the benefit of seeking to impose a penalty for criminal behavior while attempting to retain the positive social attributes of the offender relative to aspects of his or her incarceration. This is achieved by both SB 7 and current law through a mandatory minimum period of local incarceration before the offender is eligible for work release. The length of the mandatory period of consecutive local imprisonment before the offender is eligible for work release is sufficiently long to serve as a penalty but is short enough so that the offender's current housing and employment is not automatically lost. However, the measured response attributable to local incarceration would be lost with the provisions of SB 7 which provide for local imprisonment but state (KDOC) release supervision.

Pursuant to SB 7, while 3rd time DUI offenses, either as a misdemeanor (due to the offender not having a prior DUI offense within 10 years) or as a felony (due to the offender having a prior DUI within the proceeding 10 years) will serve their term of imprisonment in the local jail, their release supervision is to be conducted by KDOC. SB 7's use of KDOC postrelease supervision for offenders who were incarcerated locally with work release opportunities would be inconsistent with the goal of retaining any positive social behavior of the offender and not serve the public safety.

Since these offenders would have the meaningful opportunity to remain employed during imprisonment, release supervision by KDOC would not be the most effective or efficient method of release supervision.

- Local courts can hold revocation hearings more quickly than the Kansas Parole Board. Additionally, the Department of Corrections must provide the offender with a preliminary revocation hearing pending a final hearing before the KPB.
- Incarceration for supervision violations would be locally rather than at a state correctional facility thus allowing the offender to engage in work release with his or her current employer.
- Current law allows for jail incarceration for up to sixty days per probation violation. In contrast, incarceration for postrelease supervision violations is for 180 days with up to 90 days of good time.
- Inappropriate incarceration with state correctional facilities may increase an inmate's risk to reoffend.
- Some of the DUI 3rd time offenses under SB 7 are classified as misdemeanors yet would be subject to KDOC postrelease supervision as well as incarceration in KDOC facilities for supervision violations.

SB 7 is recommended to be amended to provide for the release supervision of those offender's who were incarcerated in local jails to be conducted by court services or community corrections as determined by the court based upon the offender's risks and needs. The recommended amendments would be to page 57 of the bill.

Information Regarding Time Spent Incarcerated

SB 7 provides for the suspension of the offender's driving license. Additionally, SB 7 provides that the time that the offender is incarcerated with the department for a drug or alcohol related crime does not count towards service of the period of suspension. SB 7 provides at page 37 section 16 (g)(2) that the Secretary of Corrections is to report to the division of vehicles the dates of incarceration of all persons incarcerated for an alcohol or drug-related offense. The department believes the tolling of the period of

suspension of the driver's license while the offender is incarcerated in a state prison for certain offenses would not significantly enhance public safety and that tracking of the tolling period would entail a significant record keeping and processing burden to both the department and the Division of Motor Vehicles. In other words, if a person's driver's license is suspended for a year, the period of suspension would continually run irrespective of whether the former driver was in the community utilizing public transportation, or was incarcerated with the department for a drug offense or a property crime. The department therefore recommends that subsection (g) be deleted. At page 39, line 18 after "(g)" to line 30 after "(h)".

Extension of the Postrelease Supervision Obligation due to Prison Good Time or Early Release.

SB 7 provides that offenders sentenced to KDOC for imprisonment may be released early by the Kansas Parole Board. However, any reduction in the time of imprisonment resulting from an early release or by the award of good time is to be added to the offender's post release supervision obligation. This has the effect of rewarding good behavior by penalizing the offender with a longer period of release supervision. SB 7 will increase both the prison bed impact to the department and the number of offenders under release supervision. The department wishes to raise the issue of whether the post release supervision obligation for offenders who have evidenced a low risk to reoffend should be targeted for a longer period of release supervision due to an early release or the award of good time as provide by SB 7 or whether the period of postrelease supervision should not be extended due to an early release or the award of prison good time. The amendments that would implement this recommendation would be to pages 89 and 90 of the bill.

Proposed balloon amendments that would implement the department's recommendations are attached. The department appreciates the committee's consideration of these issues.

1 restrictions which is required to be carried by the person at any time the
2 person is operating a motor vehicle on the highways of this state.

3 ~~(h) Except as provided further, any person whose license is restricted~~
4 ~~to operating only a motor vehicle with an ignition interlock device~~
5 ~~installed may operate an employer's vehicle without an ignition interlock~~
6 ~~device installed during normal business activities, provided that the~~
7 ~~person does not partly or entirely own or control the employer's vehicle~~
8 ~~or business. The provisions of this subsection shall not apply to any~~
9 ~~person whose driving privileges have been restricted for the remainder of~~
10 ~~the one-year period on the second occurrence of an alcohol or drug-~~
11 ~~related conviction in this state as provided in subsection (b)(1).~~

12 ~~(f) The provisions of subsections (a), (b) and (c), as amended by this~~
13 ~~act, may be applied retroactively only if requested by a person who has~~
14 ~~had such person's driving privileges suspended or restricted pursuant to~~
15 ~~subsection (a), (b) or (c) prior to such amendment. Such person may~~
16 ~~apply to the division to have the penalties applied retroactively, as~~
17 ~~provided under subsection (h) of K.S.A. 8-1015, and amendments thereto.~~

18 ~~(g) (1) If a person's driving privileges are suspended or restricted~~
19 ~~pursuant to this section and such person is incarcerated with the~~
20 ~~department of corrections for an alcohol or drug-related conviction, any~~
21 ~~period of incarceration shall not count toward the person's suspension or~~
22 ~~restriction period. Any period of time the person's driving privileges are~~
23 ~~suspended or restricted before incarceration begins shall be counted. For~~
24 ~~the purpose of this section, the date of release from incarceration shall be~~
25 ~~deemed the date the suspension or restriction period resumes.~~

26 ~~(2) The secretary of corrections shall notify the division of the date~~
27 ~~when incarceration began and the date of release from incarceration for~~
28 ~~any person incarcerated for an alcohol or drug-related conviction. The~~
29 ~~notification shall be in a format approved by the division.~~

30 ~~(f) As used in this section, "suspension" includes any period of~~
31 ~~suspension and any period of restriction as provided in subsection (a) of~~
32 ~~K.S.A. 8-1015, and amendments thereto.~~

33 Sec. 17. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as
34 follows: 8-1015. (a) When subsection (b)(1) of K.S.A. 8-1014, and
35 amendments thereto, requires or authorizes the division to place
36 restrictions on a person's driving privileges, the division shall restrict the
37 person's driving privileges to driving only under the circumstances
38 provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and
39 amendments thereto.

40 ~~(b) In lieu of the restrictions set out in subsection (a), the division,~~
41 ~~upon request of the person whose driving privileges are to be restricted,~~
42 ~~may restrict the person's driving privileges to driving only a motor~~
43 ~~vehicle equipped with an ignition interlock device, approved by the~~

Delete

1 of the 2010 Session Laws of Kansas, and amendments thereto. The person
 2 shall remain imprisoned at the state facility only while participating in the
 3 substance abuse treatment program designated by the secretary and shall
 4 be returned to the custody of the sheriff for execution of the balance of
 5 the term of imprisonment upon completion of or the person's discharge
 6 from the substance abuse treatment program. Custody of the person shall
 7 be returned to the sheriff for execution of the sentence imposed in the
 8 event the secretary of corrections determines: (A) (i) That substance
 9 abuse treatment resources or the capacity of the facility designated by the
 10 secretary for the incarceration and treatment of the person is not
 11 available; (B) (ii) the person fails to meaningfully participate in the
 12 treatment program of the designated facility; (C) (iii) the person is
 13 disruptive to the security or operation of the designated facility; or (D)
 14 (iv) the medical or mental health condition of the person renders the
 15 person unsuitable for confinement at the designated facility. The
 16 determination by the secretary that the person either is not to be admitted
 17 into the designated facility or is to be transferred from the designated
 18 facility is not subject to review. The sheriff shall be responsible for all
 19 transportation expenses to and from the state correctional facility.

20 At the time of the filing of the judgment form or journal entry as
 21 required by K.S.A. 21-4620 or 22-3426 or section 280 of chapter 136 of
 22 the 2010 Session Laws of Kansas, and amendments thereto, the court
 23 shall cause a certified copy to be sent to the officer having the offender in
 24 charge. The law enforcement agency maintaining custody and control of a
 25 defendant for imprisonment shall cause a certified copy of the judgment
 26 form or journal entry to be sent to the secretary of corrections within
 27 three business days of receipt of the judgment form or journal entry from
 28 the court and notify the secretary of corrections when the term of
 29 imprisonment expires and upon expiration of the term of imprisonment
 30 shall deliver the defendant to a location designated by the secretary. After
 31 the term of imprisonment imposed by the court, the person shall be
 32 placed in the custody of the secretary of corrections for a mandatory one-
 33 year period of postrelease supervision, which such period of postrelease
 34 supervision shall not be reduced. During such postrelease supervision, the
 35 person shall be required to participate in an inpatient or outpatient
 36 program for alcohol and drug abuse, including, but not limited to, an
 37 approved aftercare plan or mental health counseling, as determined by the
 38 secretary and satisfy conditions imposed by the Kansas parole board as
 39 provided by K.S.A. 22-3717, and amendments thereto. Any violation of
 40 the conditions of such postrelease supervision may subject such person to
 41 revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq.,
 42 and amendments thereto and as otherwise provided by law.

43 (g) (1) On the fourth or subsequent conviction of a violation of this

The court shall determine whether the offender upon release from imprisonment shall be supervised by community correctional services or court services based upon the risk and needs of the offender.

supervision office designated by the court

that officer

community correctional services or court services as determined by the court

release

the supervision office designated by the court

supervision officer or court.

release

and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the release supervision period, or any combination or portion thereof.

1 that court ordered sex offender treatment be carried out.

2 (v) In carrying out the provisions of subparagraph (d)(1)(D), the
3 court shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of*
4 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
5 thereto.

6 (vi) Upon petition, the parole board may provide for early discharge
7 from the postrelease supervision period upon completion of court ordered
8 programs and completion of the presumptive postrelease supervision
9 period, as determined by the crime of conviction, pursuant to
10 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
11 postrelease supervision is at the discretion of the parole board.

12 (vii) Persons convicted of crimes deemed sexually violent or
13 sexually motivated; shall be registered according to the offender
14 registration act, K.S.A. 22-4901 through 22-4910, and amendments
15 thereto.

16 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*
17 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,
18 and amendments thereto, shall be required to participate in a treatment
19 program for sex offenders during the postrelease supervision period.

20 (E) The period of postrelease supervision provided in subparagraphs
21 (A) and (B) may be reduced by up to 12 months and the period of
22 postrelease supervision provided in subparagraph (C) may be reduced by
23 up to six months based on the offender's compliance with conditions of
24 supervision and overall performance while on postrelease supervision.
25 The reduction in the supervision period shall be on an earned basis
26 pursuant to rules and regulations adopted by the secretary of corrections.

27 (F) In cases where sentences for crimes from more than one severity
28 level have been imposed, the offender shall serve the longest period of
29 postrelease supervision as provided by this section available for any
30 crime upon which sentence was imposed irrespective of the severity level
31 of the crime. Supervision periods will not aggregate.

32 (G) Except as provided in subsection (u), persons convicted of a
33 sexually violent crime committed on or after July 1, 2006, and who are
34 released from prison, shall be released to a mandatory period of
35 postrelease supervision for the duration of the person's natural life.

36 (H) ~~Notwithstanding any other provision of law, persons convicted~~
37 ~~of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments~~
38 ~~thereto, committed on or after July 1, 2011, shall serve 24 months, plus~~
39 ~~the amount of good time and program credit earned and retained~~
40 ~~pursuant to section 302 of chapter 136 of the 2010 Session Laws of~~
41 ~~Kansas, and amendments thereto, on postrelease supervision. Such~~
42 ~~persons released by the parole board pursuant to subsection (w) shall~~
43 ~~serve 24 months, plus the remainder of their sentence, plus the amount of~~

Delete

1 ~~good time and program credit earned and retained pursuant to section~~
2 ~~302 of chapter 136 of the 2010 Session Laws of Kansas, and amendments~~
3 ~~thereto, on postrelease supervision.~~

Delete

4 (2) As used in this section, "sexually violent crime" means:

5 (A) Rape, K.S.A. 21-3502, prior to its repeal, or section 67 of
6 chapter 136 of the 2010 Session Laws of Kansas, and amendments
7 thereto;

8 (B) indecent liberties with a child, K.S.A. 21-3503, prior to its
9 repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session
10 Laws of Kansas, and amendments thereto;

11 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior
12 to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010
13 Session Laws of Kansas, and amendments thereto;

14 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-
15 3505, prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of
16 chapter 136 of the 2010 Session Laws of Kansas, and amendments
17 thereto;

18 (E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal,
19 or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws
20 of Kansas, and amendments thereto;

21 (F) indecent solicitation of a child, K.S.A. 21-3510, prior to its
22 repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session
23 Laws of Kansas, and amendments thereto;

24 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511,
25 prior to its repeal, or subsection (b) of section 72 of chapter 136 of the
26 2010 Session Laws of Kansas, and amendments thereto;

27 (H) sexual exploitation of a child, K.S.A. 21-3516, prior to its
28 repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,
29 and amendments thereto;

30 (I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or
31 subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of
32 Kansas, and amendments thereto;

33 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or
34 subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of
35 Kansas, and amendments thereto; or

36 (K) an attempt, conspiracy or criminal solicitation, as defined in
37 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or sections
38 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and
39 amendments thereto, of a sexually violent crime as defined in this section.

40 "Sexually motivated" means that one of the purposes for which the
41 defendant committed the crime was for the purpose of the defendant's
42 sexual gratification.

43 (e) If an inmate is sentenced to imprisonment for a crime committed



TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
ON SB 7
JANUARY 27, 2011

Chairman Owens and Members of the Committee:

I appreciate the opportunity to offer testimony on SB 7.

The Kansas Association of Counties recognizes the tremendous work of the DUI Commission and their development of new legislation to curb DUIs. We applaud their efforts to move Kansas to the forefront on alternative methods to address DUIs.

However, Kansas counties must go on record with concerns about the impact of the legislation on county jails and county funds. We have no concerns with the public policies created in the legislation; our concern is limited to fiscal effects.

We monitored the legislation while it developed within the Commission, and have reviewed the contents of the bill. Nevertheless, we are still unsure of the ultimate effects on county jail populations.

Provisions that might increase county jail populations include a new crime of refusing to submit to a breath test. Individuals convicted of this new crime will go to county jails. Judges can no longer depart on sentences; thus, we believe individuals will spend more time in jails under this legislation. Diversions are limited, thus, we believe more individuals will go to jail.

However, while DUIs of first, second and third convictions will go to county jails, fourth DUIs no longer will. Fourth DUIs obviously serve the longest sentence when incarcerated in county jails, and we will gladly give up this responsibility.

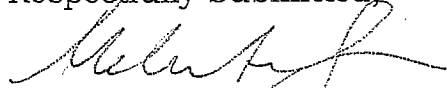
In short, we cannot anticipate the net effect on county jails. There are Kansas counties now that are struggling with overcrowded jails and must ship out inmates and pay rent to other facilities to house them. Aside from jail overcrowding, counties are financially strapped, just as the state is.

Kansas counties are generally concerned about the influx of felons to county jails, when historically felons were placed with the State Department of Corrections. While this issue is not

specific to SB 7, SB 7 continues the trend of placing 3rd DUI felons in county jails.

In conclusion, KAC cannot support SB 7 at this time, given the unknown costs to counties. We will continue studying the effects of SB 7 and continue the dialogue with the Kansas legislature in hopes that we can resolve any concerns.

Respectfully Submitted,



Melissa A. Wangemann

General Counsel and Director of Legislative Services



Sherry C. Diel, Director

Sam Brownback, Governor

To: Senate Judiciary Committee
From: Sherry C. Diel, Executive Director
Date: January 27, 2011
RE: **SB 7**—Concerns regarding certain provisions of Section 1 of the Driving Under the Influence Legislation

Chairman Owens and members of the Judiciary Committee, the Kansas Real Estate Commission only wishes to provide neutral testimony to ensure that the Committee is made aware of a few concerns that the Commission has with the wording of Section 1 of the bill. The Commission believes that the current wording may have unintended consequences.

Agency Background

The Kansas Real Estate Commission is a state agency that licenses real estate salespersons and brokers. The agency's mission is to provide services to real estate licensees, police the industry, and protect the public. The agency is 100% fee funded, which means that real estate licensees pay fees to support all operations of the agency including the functions of issuing licensure orders for denials, restrictions and conditions and all orders for disciplinary action taken by the agency. Twenty percent of the fees paid by the licensees up to a cap of \$200,000 per year are transferred to the State General Fund.

Real Estate Applicants and Licensees Commonly Receive Restricted and Conditioned Licenses for Pending Misdemeanor Cases

As part of the services provided to a client or customer, a real estate salesperson or broker will often drive members of the public to view available properties. The Commission considers an applicant or a licensee that has a pending misdemeanor alcohol related case as a potential danger to the public. Consequently, if a misdemeanor alcohol related offense is pending or the sentence, diversion or suspended imposition of sentence has not been completed at the time the original or renewal application is filed, the Commission may restrict the applicant or licensee to conduct real estate activities under the supervision of the proposed supervising broker and may condition the license to: (1) require satisfactory completion of the sentence, diversion or suspended imposition of sentence; (2) provide the Commission proof of completion of the sentence, diversion, suspended imposition of sentence or dismissal of the charges; and (3) impose quarterly reporting requirements if proof is not provided that the sentence, diversion, suspended imposition of sentence or dismissal of the charges in the criminal case was timely completed.

A restriction to a supervising broker merely means that the licensee cannot change supervising brokers without the Commission's express authorization. Otherwise, the licensee fills out a form, pays a fee and the transfer is processed. A restriction allows the Commission to ensure that if the licensee transfers his or her license, the supervising broker of the new brokerage is aware of the pending alcohol or drug related case so that the new supervising broker can impose any safeguards he or she may deem necessary.

The bottom line is the applicant or licensee is allowed to go to work, with appropriate precautions put in place to protect the supervising broker and members of the public. To impose

reasonable restrictions and conditions on an applicant or licensee, due process does not require that a hearing actually be held. Due process only requires that the applicant or licensee be given the opportunity to request a hearing. It would be an extremely rare instance that a salesperson or broker applicant or licensee requests a hearing or will not sign a consent agreement when the restriction and conditions described above are proposed by the Commission for a pending misdemeanor alcohol related case.

**Section 1 Prohibits Restrictions and Appears to Require
a Hearing to Impose Conditions on a License for First Time Offenders**

Section 1 of the bill (Page 1, lines 22-34) prohibits a professional licensing body, such as the Kansas Real Estate Commission, from restricting a license solely because a person has been convicted of a first violation of K.S.A. 8-1567 (driving under the influence of alcohol or drugs) or a first time violation of refusing to submit to a test to determine the presence of alcohol or drugs.

Based upon Section 1(a) of the bill, whenever an applicant has a first time driving under the influence offense or first time offense for refusal to submit to an alcohol or drug test, the Commission could no longer restrict a licensee to conduct real estate activities under the supervision of the licensee's supervising broker. This essentially would prevent the Commission from taking the necessary precautions to ensure that the next supervising broker where the licensee decides to transfer his or her license will be advised of the existence of the pending misdemeanor case.

It is unclear, due to the wording of Section 1(b) of the bill, whether the Commission must hold a hearing in order to impose reasonable conditions on a license. On page 2, lines 2-5, it appears that a hearing may only be required if requested by the licensee to determine how the first time driving under the influence or first time refusal to submit to an alcohol or drug test will affect the licensee's professional license. However, lines 5-9 state that *after holding such hearing*, the licensing body may take any action authorized by law including, but not limited to, alternative corrective measures in lieu of suspension, restriction, denial, termination, or failure to renew the license. The latter sentence appears to require a hearing.

It appears that Section 1(b) [Page 2, lines 2-9] applies only to licensees, so the Commission apparently has no means of imposing reasonable conditions on original applicants even if a hearing was requested and held.

If the intention of Section 1 (b) is to mandate that a hearing must be held before an applicant's or licensee's license can be conditioned for first time alcohol or drug related offenses, the Commission simply does not have the funding to hold hearings for the significant number of applications involved. This would appear to be an unnecessary waste of agency staffing and budgetary resources when due process only requires that the applicant or licensee be given the opportunity to request a hearing before measures such as conditions can be imposed.

The Commission also believes that an agency should not be prohibited from restricting a license as long as the restrictions imposed are reasonable and the applicant or licensee has the opportunity to request a hearing to object to the restriction being imposed.

Thank you for your consideration. I will be happy to answer questions.

I was recently one of the four candidates who ran for the position of governor for the state of Kansas. Prior to that, I was a 36 year educator, coach, principal, and dean of education. During my campaign, my father and mother were involved in a head on collision with a drunk driver. It was actually a double head on collision and the drunk driver's intoxication level was nearly twice the legal limit. This accident occurred on July 3, 2010. There have presently been no charges filed against the individual who hit my parents.

I do believe that the interlock system could make a difference. I also believe that the system should be placed in the vehicles of the first time offender. In addition, I firmly believe that in the case of injury or death, the responsible party should be liable for all personal injury costs as well as all material possessions lost in the accident. It is also my belief that the offender should be monetarily responsible to the offended party for the remainder of his/her life. The harsher the penalty may make it more likely that other individuals would be increasingly reluctant to get behind the steering wheel and drive after drinking.

The impact upon the extended family of the victim or victims should also be taken into consideration. My family was with my parents from July 3, 2010, through September of 2010. My sister and her family also essentially put their lives on hold so that we could be with my father while he was hospitalized. We battled insurance companies; we incurred medical expenses well over one million dollars; my mother lost her husband of 61 years all due to the irresponsible actions of a 23 year old who was driving home drunk at 5:50 a.m. It has now become the purpose of our family to make sure that the current laws regarding DUI's are changed and are much more stringent. Until a person has been through a tragedy such as the one my parents were in, it is impossible to understand the hurt, the frustration, and the dismay that we feel at the present time. I find it a travesty that the state of Kansas ranks 45th in the nation when it comes to penalizing the drunk driver.

When the issue of jail space arose on Wednesday, I believe that a solution would be in-home incarceration. In other words, make the offender wear an ankle bracelet so that he/she cannot leave his/her house. That approach at least limits the social drinker who may become a problem drinker from getting out on the road. The pain and injuries that my father incurred were beyond imagination. As is usually the case, the drunk driver in this specific incident suffered minor injuries compared to those of my father.

I want to emphasize that our family simply wants justice. If a person's life is taken or forever changed through the negligent actions of another, there should be a heavy, heavy penalty to pay for that negligence. The decisions that you make could very well save the life of a member of your own family. I would ask each of you to put yourselves in our place. The drunk driver who hit my parents affected my entire family and many others emotionally, financially, and personally. It is imperative that our elected officials send a clear message to those who choose

to drink and drive that no other families will have to suffer like our family has suffered. This is your opportunity to make a difference in the lives of those Kansans who do follow the law. When a drunk driver can be financially impacted for the remainder of his lifetime, he/she may think twice about driving under the influence. For the sake of our family and for my father, Bud Cannon, I would implore you to seize the opportunity to lead our state in a different direction when it comes to dealing with drunk drivers.

Thank you for allowing me to speak to you today.

Respectfully,

A handwritten signature in black ink, appearing to read "Ken Cannon", with a stylized, sweeping flourish at the end.

Ken Cannon

On the evening of September 11, 2008 I was at home cooking dinner, talking to my Dad on the phone. He said had been to the sale barn that day. Dad went faithfully every Thursday to watch the cow sale and loved visiting with the other farmers there.

Several hours later, I got a call in the middle of the night. It was my cousin Rob and he said Dad had been in a terrible accident, it was serious and I needed to get to the hospital right away. As my husband drove us to the hospital I just kept praying that my dad would be okay. When we got to the hospital my cousin Rob was waiting for us outside and when I got out of the car and looked at him, he just shook his head no. At that point I knew that my Dad didn't make it.

My Dad and his friend Tutty and my cousin Rob and his wife had went out that evening. My Dad loved to play craps and would jump at the opportunity to go to the boat. As they were returning home, My cousin Rob and his wife were following behind the vehicle my Dad was in. When Dad and Tutty went over a hill there was another car traveling in the wrong direction coming straight at them, in their lane. Tutty tried to avoid the accident but it was impossible the other car collided with them hitting them headon. The crash occurred just a couple of miles from my Dad's home.

My Dad, Melvin Briggs, at the age of 77 was killed by a drunk driver. The drunk driver was a female in her early thirties. This crash was her third DUI offense. She did not have valid drivers license. as 11 months prior to the crash she had received her 2nd DUI conviction, in Olathe Kansas. She was currently on probation in Kansas and had just been released from house arrest 2 weeks prior to the crash.

My Dad was a long time resident of Kansas but was in Missouri when the crash occurred. The drunk driver was charged and convicted in Missouri with Second Degree Felony Murder because of her prior DUI's convictions. She was sentenced to 15 years in prison, and has to serve a minimum of 85 % of that sentence.

My Dad was an awesome Dad. He was 54 years when he had me and 57 when my younger brother Mark was born. Dad was born in 1931, he attended school until the 8th grade and then he had to stop school to help provide for his family. He served in the army for two years during the Korean War. When he returned from the army he started a sod business. Dad served as the President of the Kansas City Turf Association and also had a nursery business and a cattle operation.

My Dad had overcome so many obstacles in his life. He survived Quintuple bypass heart Surgery and had made a full recovery. He had also had a few strokes, but was lucky that his only major complication was losing sight in one eye. He was able to overcome his complication and learned how to drive again, But soon after that he was killed. Dad was a remarkable individual. He started his own business at a very young age and built a successful business from nothing and with little education. He did not deserve this.

There are not words to fully describe how ones life is affected when something like this happens. There is not a way to describe your hurt, sorrow, loss, or frustration.

Every aspect of my life has been affected by this tragedy. My Dad will never see my younger brother Mark get married. He will never meet our future children. We will never share another hug.

I wish that I didn't have this personal story to tell you.

I have already lost my Dad, so I am here to protect all of the other Dad's that are out there. I am here to protect my family and community from drunk drivers.

I feel the only thing worse then this happening is this happening again.

I wish that the drunk driver that killed my Dad would have had an ignition interlock device on her vehicle, that could have saved my Dad's life.

I come to you as a Kansas Resident, a drunk driving victim, and as my Dad's daughter to ask you to please support Senate Bill 7, drunk driving is 100 percent preventable.

Rob Siedlecki, Acting Secretary
Department of Social And Rehabilitation
Services

Senate Judiciary Committee
January 27, 2011

SRS in Support of SB 7
Amending the DUI Statutes

Disability & Behavioral Health Services
Ray Dalton, Deputy Secretary

For Additional Information Contact:
Gary Haulmark, Director of Legislative Affairs
Docking State Office Building, 6th Floor North
(785) 296-3271

Senate Judiciary

1-28-11
Attachment 7

SRS in Support of SB 7 Amending the DUI Statutes

Senate Judiciary Committee
January 27, 2011

Dear Chairman Owens and Committee Members:

The Kansas Department of Social and Rehabilitation Services (SRS) supports the efforts of the Kansas DUI commission that has put forth SB 7 to significantly enhance the current DUI laws in Kansas. This bill will reduce the prevalence of driving under the influence rates and enhance public safety while continuing to provide opportunities for DUI offenders to receive the treatment they need along with sanctions and supervision to become law abiding citizens of Kansas.

Unlike other drug offenders, DUI offenders tend to be employed. Because of their generally more stable family situations, they can often access emotional and financial resources. But perhaps the most significant difference between the two offenders is that DUI offenders usually believe, that because alcohol is legal, they do not have a substance abuse problem.* As a result, proper and timely intervention through accurate evaluation, appropriate treatment, and ongoing monitoring has been shown to be essential interventions to successful deterrence of re-offending for this population.

The current treatment approach for the 4th time and subsequent DUI offenders in Kansas was first established in 2001 through a Memorandum of Understanding (MOU) between the Department of Corrections and SRS. This MOU outlines a comprehensive multi-disciplinary model of services which meets the requirements of the law and protects public safety while assisting the offender with developing a sustainable recovery from their substance use disorder. In order to successfully complete the 4th time DUI program, offenders must participate in a full year of recovery services. Current outcomes data show that 80 % of 4th time and subsequent DUI offenders in the program successfully complete the program. SB 7 will change the delivery of this model to 3rd time offenders. This will allow this population to benefit from these services sooner and provide the needed intervention to reduce reoffending.

Because of the gaps in our current system, many 4th time DUI offenders in the program today have not had the benefit of prior treatment despite their numerous convictions.

SB 7 bill also establishes a data reporting system for accurate determination and recording of the number of the DUI convictions. This reporting system will allow for a more accurate offender evaluation in which to determine recommended sanctions.

SB 7 also directs SRS to license DUI specialty providers and require that providers conduct all DUI assessments in a standardized, electronic format. This oversight will assure that those administering these assessments possess proper qualifications and that the interventions recommended are evidenced based. In addition, the requirement that all assessments be conducted electronically will enable SRS to analyze the data on all DUI offenders to determine the effectiveness of this new delivery system on this population. Adequate funding is necessary to ensure that the licensing and monitoring process can be implemented and sustained. SRS is confident that through oversight of the assessment and subsequent delivery of services of DUI specialty providers, the number of incidents and reoccurrence of DUIs will be reduced.

*(National Drug Court Institute 1999)



Dale Goter
Government Relations Manager

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Senate Judiciary Committee

Hearing on SB 7

Thursday, Jan. 26, 9:30 a.m. Room 548S

Chairman Owens and members of the Senate Judiciary Committee:

Thank you for this opportunity to comment on SB7 dealing with the prosecution of citizens arrested for driving while under the influence (DUI).

The City of Wichita is supportive of the efforts of the DUI Commission to improve public safety by enacting effective reforms. However, as you consider the various aspects of SB7, please take into consideration the following points that will impact prosecution of DUI offenses in Municipal Court.

- 1) SB7 creates another DUI violation with mandatory jail time for refusal to take a breathalyzer test. Additional DUI violations carry a fiscal impact on the City of Wichita because of jail fees assessed against local municipalities by Sedgwick County.
- 2) SB7 will require Municipal Courts to adopt different assessment tools and processes. Significant cost and implementation time will result from the requirement that probation officers be licensed to perform in-house assessments. Compliance with this change by the July 1, 2011, deadline will be extremely difficult.
- 3) The bill effectively eliminates ADSAP funding for the City of Wichita. Annually, the City collects approximately \$150,000 – \$175,000 in ADSAP funding. This funding pays for three Municipal Court positions (probation officer, docket clerk, clerk III) and training. Even if an evaluation fee is assessed, it would not be sufficient to support the three positions and the current level of evaluations. Elimination of these positions would negatively impact probation case management and potentially result in increased DUI filings.
- 4) Because of the financial and administrative outcomes of SB7, it may be difficult for Municipal Courts to continue to prosecute DUI offenses under this proposed legislation. If all DUI offenses become the responsibility of District Courts, consideration should be given to the necessary resources required to allow for prosecution of all offenses. Community safety would not be well served if DUI offenses are not prosecuted because of lack of judicial resources.

TESTIMONY OF JOHN C. PETERSON
SENATE JUDICIARY COMMITTEE
2011 SB 7
NEUTRAL – PROPOSED AMENDMENT
January 27, 2011

Mr. Chairman, members of the Committee.

The Commission recognized the need for and included in SB 7 a “decay” or “look back” provision. That provision sets a specific date after which offenses are counted as prior offenses.

Page 65, Section 25, line 33:

(u) When determining whether a conviction is a first, second, third, fourth, or subsequent conviction of a violation in this section: (1) convictions for violations . . . or entering into a diversion agreement . . . shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person’s lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender(sic);

Prior to that time records either were not kept or were inconsistently maintained. Also that date was 5 years prior to July 1, 2001, and until July 1, 2001, the law had a 5 year rolling decay period (i.e., offenses were considered a prior offense only if they occurred in the preceding 5 years).

However, I would suggest that the date for the look back should be changed to 2001.

That is the effective date of the major enactment, then SB 67, in which DUI related penalties were significantly increased. Notably in that bill, instead of a 5 year rolling decay of convictions or diversions, the look back was for life.

So prior to July 1, 2001, an individual if they pled guilty or took a diversion, did so under a set of rules whereby after a 5-year period it would no longer be considered a prior offense. After July 1, 2001—all were on notice that the rules had changed and that any offenses would never decay. With these increased penalties, fundamental fairness would dictate the date for the beginning of the “look back” provisions would be July 1st of 2001.

I would therefore suggest an amendment by striking “1996” and inserting “2001” on page 65, section 25, subsection (u)(1) and of striking the sentence immediately following that as being inconsistent with the decay language immediately above.

shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(u) (s) Upon a third or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(v) ~~For the purpose of this section: (1) "Alcohol concentration"~~ means the number of grains of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) ~~"Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.~~

(3) ~~"Drug" includes toxic vapors as such term is defined in K.S.A. 2009 Supp. 21-36a12, and amendments thereto.~~

(w) (t) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

(x) ~~Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court.~~

(u) When determining whether a conviction is a first, second, third, fourth or subsequent conviction of a violation of this section:

(1) ~~Convictions for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third~~

"2001"

Delete

~~or subsequent offender.~~

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;