



Jim Howell
Chair Pro Tem

Commissioner – Fifth District
Board of County Commissioners
Sedgwick County, Kansas

DATE 02/13/2023

RE: Proponent Testimony for SB2

Chair Warren and members of the Senate Judiciary Committee:

The number of suspended driver's licenses in Sedgwick County is extremely disproportionate to the State's population. When checking with KDOR, we see the number of suspended licenses in SgCo hovers between 65,000 to 100,000 which is 1/2 to 1/3 of the total for the entire state.

How it happens most of the time: if a person gets a moving violation and does not pay the fine for some reason (inability to pay), the moving violation converts to a suspension. Then if the person is caught driving while suspended (DWS), then the penalties snowball quickly and the person finds it next to impossible to effectively solve this issue. Unfortunately, most people in this situation will choose to drive anyway (most of the time without insurance) because they must get to work or take care of their kids for example.

If the person gets THREE DWS in their lifetime, then the penalties are incredibly harsh.

City of Wichita Approach to Drive While Suspended Charges

- In general, there is not an ability for a defendant charged with driving while suspended ("DWS") to enter a plea to a lesser charge.
- City ordinances' sentencing, including time in custody, fines, and court costs are then applicable to the DWS conviction. provisions

A Better Way: Compliance-based Approach to Drive While Suspended Charges

- In certain circumstances, if the defendant has managed to get their driver's license reinstated within a few months of their initial court appearance, they may be able to plea to a lesser charge which does not carry the same weighty driver's record and driver's license consequences as a DWS conviction.
- Part of the thought process behind this approach is that the defendant has now come into compliance with the law that they violated.

- Typical limitations on eligibility for this approach include car accidents, cases where other significant crimes are charged, extensive criminal history, and other considerations deemed relevant by the prosecuting attorney.
- Different versions of this approach are utilized by Kansas prosecutors in other jurisdictions.

ISSUES THAT MUST BE ADDRESSED:

- The City of Wichita needs to evaluate its approach to DWS cases. Instead of the City's bright-line prosecutorial approach, Wichita should consider utilizing reasonable leniency for a compliance-based approach like other Kansas prosecutors have utilized.
- As currently applied, the Wichita's approach to DWS cases disproportionately affects the poorest residents the most.
 - Wichita's current approach leads to especially punitive consequences (fines, court costs, reinstatement fees, and house arrest fees) that can result in insurmountable debt and lengthy waiting timeframes for drive/s license reinstatement.
 - Meanwhile, not driving and lacking a valid driver's license can have significant economic impacts. The person may not be able to travel to and from work-a situation that can be especially dire in a community that lacks a robust public transportation system. The person also may be unable to keep or gain employment specifically because they lack a driver's license, which is required within many jobs.
 - Current DWS laws, the Wichita's approach on DWS cases, and economic realities many Sedgwick County residents face all mesh together and function to disproportionately penalize our poorest citizens and deny them vital opportunities.
- The compliance-based approach utilized by other jurisdictions provides a path forward for a person charged with DWS by allowing them to reach attainable compliance within a matter of months. This acts as a realistic incentive for individuals to take the steps to correct course and be eligible for a reduced, proportional penalty in certain circumstances.
- DWS charges, in and of themselves, are victimless crimes. In many circumstances, a 3rd conviction of DWS carries a mandatory minimum of 90 days in custody. By way of comparison, the City's ordinances establish a mandatory minimum of 5 days in custody for a 2nd conviction of domestic violence battery.
- All of this raises the question: Why has the City of Wichita maintained its current approach on DWS charges, as opposed to utilizing some version of the compliance-based model? What are the policy-based reasons for this approach?
- As a County Commissioner with more than 100,000 constituents who may be affected-and in many cases already are affected-by the City's approach on DWS cases, I feel compelled to voice my concerns.
- Also, if the City has not already done so, it could consider incorporating a recent change in DWS statutes into the City's ordinances. Within SB 127, passed during the 2021 Kansas Legislative Session, a person assessed a fine or court costs for a traffic citation may petition the court at any time to waive payment of the fine or costs. SB 127 leaves this up to the discretion of the court and indicates that doing so is permissible if the court believes that amount due will impose manifest hardship on the person or the person's immediate family. Perhaps the City of Wichita judges could be afforded this type of discretion, too.

- Looking forward, I also believe that reasonable legislative changes to State of Kansas DWS statutes may be in order. Some examples of possible changes I have an interest in include the following:
 - Currently, state law has a lifelong lookback timeframe for DWS charges. Perhaps a limited lookback timeframe of 10 years would be more appropriate.
 - Less stringent mandatory minimum in-custody sentences (e.g., the mandatory minimum 90-day sentences) could also be established in place of the current DWS sentencing provisions.

The following is a list of current State and Local penalties relating to DWS:

KSA 8-262 - Driving while suspended:

1st conviction - Class B misdemeanor

Minimum: 5 days' imprisonment & \$100 fine

Maximum: 6 months' imprisonment & \$1,000 fine

2nd conviction - Class A misdemeanor

Minimum: 5 days' imprisonment & \$100 fine

Maximum: 12 months' imprisonment & \$2,500 fine

3rd conviction - Class A misdemeanor

Minimum 90 days' imprisonment & \$1500 fine if suspension due to:

1) refusal to submit to blood/breath/urine test (pursuant to 8-1012)

2) conviction for failure to provide liability insurance

3) conviction for vehicular homicide, involuntary manslaughter while DUI or any other murder/manslaughter resulting from operation of a motor vehicle, or

4) habitual violator conviction

90 days imprisonment may be served in work release or on house arrest after 48 hours in jail

Maximum: 12 months' imprisonment & \$2,500 fine

Other penalties:

- If a suspension was due to DUI & defendant has been convicted of DUI, then must serve 90 days' imprisonment before any suspension of sentence, probation or parole regardless of whether 1st, 2nd, or 3rd + conviction.
- Additional 90-day suspension added onto current suspension period for a conviction of DWS unless reason for suspension is due to violating 8-2110 (failure to comply with a traffic ticket)

Wichita Municipal Code 11.42.030 - Driving while suspended:

1st conviction - misdemeanor

Minimum: 5 days' imprisonment & \$100 fine

Maximum: 6 months' imprisonment & \$1,000 fine

2nd conviction - misdemeanor

Minimum: 5 days' imprisonment & \$250 fine

Maximum: 12 months' imprisonment & \$2,500 fine

3rd + conviction - misdemeanor

Min 90 days' imprisonment & \$1500 fine if suspension due to:

- 1) refusal to submit to blood/breath/urine test {pursuant to 8-1012}
- 2) conviction for failure to provide liability insurance
- 3) conviction for vehicular homicide, involuntary manslaughter while DUI or any other murder/manslaughter resulting from operation of a motor vehicle, or
- 4) habitual violator conviction

90 days imprisonment may be served in work release or on house arrest after 48 hours in jail

Maximum: 12 months' imprisonment & \$2,500 fine

- Other penalties:

If suspension was due to DUI & defendant has been convicted of DUI, then must serve 90 days' imprisonment before any suspension of sentence, probation or parole regardless of whether 1st, 2nd, 3rd + conviction

Consider: 1st offense DUI only require a minimum of 48 hours in jail (LESS THAN 1st Offense DWS).

IN CONCLUSION, SB2, as amended by Senate Transportation is a good bill right now but to make it even more effective, please amend into SB2, the contents of SB192 (which is very similar to SB100 that nearly passed in 2021).

Please amend the Kansas DWS Laws to keep Kansans at work and to help them take care of their family. Please reconsider the lifelong lookback for DWS and amend in the contents of SB192 into SB2.

Thank you for your consideration in this existing problem that unnecessarily overwhelms many thousands in the state.



Jim Howell, Sedgwick Commissioner District 5.