

Approved: May 08, 2012

(Date)

**MINUTES OF THE JOINT DUI INFORMATIONAL HEARING WITH THE SENATE
JUDICIARY COMMITTEE AND THE HOUSE CORRECTIONS AND JUVENILE
JUSTICE COMMITTEE**

The meeting was called to order by Chairman Tim Owens at 11:30 AM on Wednesday, January 25, 2012 in 159-S of the Capitol.

All members for the House Corrections and Juvenile Justice Committee were present except:
Tom Moxley

Committee staff for the House Corrections and Juvenile Justice present:

Jackie Lunn, Committee Assistant
Lauren Douglass, Legislative Research
Robert Allison Gallimore, Legislative Research
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Joint Committee:

Steve Howe, Johnson County District Attorney
Judge Phil Journey, Sedgwick County
Gene Johnson, Sunflower Alcohol Safety Action Project, Inc.
Chris Noble, Sunflower Alcohol Safety Action Project, Inc.
Stuart Little, Kansas Community Corrections Association
Doug Wells, DUI Commission
Greg Benefil, Assistant District Attorney, Douglas County
Judge Nancy Parrish, Shawnee County
Judge Margaret Alford, 26th Judicial District, Grant County

Chairman Owens opened the meeting and welcomed everyone and turned the meeting over for the co-chair, Representative Pat Colloton and she explained they were trying to gather information and concerns on how to improve the DUI statutes.

Chairman Owens introduced Steve Howe, Johnson County District Attorney to give his testimony regarding DUI. Mr. Howe provided written copies of his testimony for the committee and staff, (Attachment 1) He stated prosecutors throughout the state are facing a large volume of DUI offenders who refuse to perform field sobriety and breath test. Criminalizing the refusal to take a breath test would hold the professional drunks accountable for their actions while creating a safer environment for Kansans. He went on to say he would like to suggest that the legislature examine the recommendations of strengthening the penalties for repeat offenders. In closing he stated a case by case determination would allow the courts to determine which alternative are in the best interest of public safety and hold the offenders accountable for their behavior.

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CONTINUATION SHEET

Minutes of the JOINT DUI INFORMATIONAL HEARING WITH THE SENATE JUDICIARY COMMITTEE and THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE at 11:30 AM on Wednesday, January 25, in 159-S of the Capitol.

Chairman Owens introduced the Honorable Judge Phil Journey, Sedgwick County, to give his testimony on DUI. Judge Journey provided written copies of his testimony for the committee and staff, ([Attachment 2](#)). He stated he has several concerns regarding the present law on DUI. He reviewed those concerns which are listed below:

- Not all fines were increased by \$250.00. While not every fine was increased does that mean not every case will have proceeds go to the Kansas Department of Corrections?
- The minimum penalty for the 3rd and subsequent offense has caused a lot of consternation. Is it really 10 days on house arrest or 90 days in jail?
- There is a need to get the treatment prisons up and running.
- There are postrelease issues that need to be resolved.
- The impoundment process for vehicles needs to be clarified.
- There is a need to provide for the indigent to get the evaluation needed to hold their sentencing hearing and assess the cost of the evaluation as costs of the case.
- Providing the driver's license record or abstract is not really needed.
- How do you enforce revoking the license plate?

Chairman Owens introduced the Honorable Judge Nancy Parrish, Third Judicial District, Shawnee County, to give her testimony on DUI. Judge Parrish provided written copies of her testimony for the committee and staff, ([Attachment 3](#)). She stated there are two major issues for the judges that are in her district. The first issue related to the drug/alcohol evaluation required. Before sentencing, the court must order a defendant to obtain an evaluation and pay the cost of the evaluation to the provider. They are wondering what will happen if the defendant can't pay the fee. She went on to say their second issue of concern is the heavily litigated issue regarding whether the legislature intended that the new look back provision would apply to offenses which occurred prior to July 2, 2011, or only to those offenses that occurred after July 1, 2011.

Chairman Owens introduced the Stuart Little, Kansas Community Corrections Association, (KCCA), to give his testimony. Mr. Little provided written copies of his testimony for the committee and staff, ([Attachment 4](#)). He stated they have an issue with the present DUI law. There is an approved FY 2012 budget for the Kansas Department of Corrections of \$1.5 million State General Fund for community corrections. Additionally, there was approved estimated \$1.1 million in increased fines and fees. One section established a fine increase of \$250 for DUI offenses to be deposited in the community corrections supervision fund and also created fees from those seeking modifications of their current DUI status which would deposit revenues in excess of \$100,000 into the community corrections supervision fund. He went on to say the Kansas Department of Corrections FY 2012 and FY 2013 budgets submitted to the Governor's

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Office included the \$1.5 million in SGF, but they have not included expenditures from the \$1.1 million created in the new community corrections supervision fund. That means there is \$1.1 million the Legislature approved for FY 2013 that is not included in their budget submission. He stated there have been meetings and communication with the Department of Corrections. In closing, he requested the legislature to address this subject and encourage some legislative guidance to encourage the Kansas Department of Corrections to spend some of the enhanced fee funds in the current year and not wait for the next fiscal year.

Chairman Owens introduced Gene Johnson, Sunflower Alcohol Safety Action Project, Inc. to give his testimony on DUI. Mr. Johnson provided written copies of his testimony for the committee and staff, ([Attachment 5](#)). He stated they have a couple of issues with the present DUI laws. The law requires an evaluation of alcohol/drug problems but nothing further, and insures that the only information the evaluator has available is that provided by the defendant. They are also concerned with the language not to exceed \$150 for the evaluation. They feel that that invites the defendant to shop for the cheapest evaluation possible. He went on to say that the Sunflower Alcohol Safety Action Project, Inc., also has another concern. They would be certified as provided by the old statute to perform those duties with the approval of the administrative judge and all judges in that district for four years. Those employed as evaluators for presentence investigation would continue to be licensed by the Board of Behavioral Sciences. In closing, they request the legislature to take action on this proposal and restore the language in K.S.A. 8-1008 prior to July, 2012 for the Third Judicial District.

Chairman Owens introduced the Chris Noble, Project Director, Sunflower Alcohol Safety Action Project, Inc. to give his testimony on DUI. Mr. Noble provided written copies of his testimony for the committee and staff, ([Attachment 6](#)). Mr. Noble expressed the same concerns as Mr. Johnson in .greater detail.

Co-Chair Colloton referred the committee members to the “written only” testimony from the Honorable Judge Alford, 26th Judicial District, Grant County, ([Attachment 7](#)) She gave a brief review of Judge Alford’s testimony stating the Judge feels there are several issues with the present Dui statutes. The way it is written, the habitual violator of driving while intoxicated is the ones that benefit the most. The public are the only ones that have the most to lose. She told of a case in Grant County that backed up her concerns. She also stated that the interlock device that is ordered by the statute has loop holes. She went on to say there are no facilities licensed for inpatient treatment with the new law that requires master level licensing. She also has concerns with the defendant to be allowed to spend 5 days of a jail sentence of 90 and then the

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remainder of the 85 days on electronic monitoring have been known to consume more alcohol the 85 day stint than if they had not been sentenced to house arrest. In closing, she stated the problem of people drinking and driving will not get any better until we make the penalties much more lasting and severe.

Chairman Owens referred the committee members to the “written only” testimony from Joe McGehee, a private citizen with an interlock device installed in his car. (Attachment 8) In Mr. McGehee’s written testimony he told of his work related and some personal issues with the interlock device restrictions where you can drive. He stated he had contacted several officials to see if he could drive his personal vehicle for company business and was told no. When he called the interlock company they told him he could drive anywhere job related. He feels that the interlock restrictions need to be addressed and could be changed to be two years of interlock and you could drive any where you needed to.

The conferees address the questions of the committee during their testimonies..

Chairman Owens opened the floor for others to speak on DUI and recognized State Representative Collins who told of an issue with the interlock in his district and stated the present law should be clarified.

Chairman Owens recognized Doug Wells a defense attorney to give his thoughts on DUI. Mr. Wells stated he feels the interlock portion of the statutes need to be revised.

Chairman recognized Jeremy Barclay, assistant to Secretary Roberts, Kansas Department of Correction. Mr. Barclay called the committee’s attention to a handout from the Secretary for their review. (Attachment 9)

A short discussion followed with the joint committee and the conferees.

Chairman Owens thanked everyone for participating and closed the informational hearing on DUI at 1:00 PM.

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