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Testimony to the House Corrections and Juvenile Justice Committee
In Support of HB2218
February 13, 2013

Chairman Rubin and Committee Members,

Our associations support HB2218 which will amend the DUI law in response to the Shrader case decided by the Kansas Supreme Court late last year. This case overturned a driver's license sanction for a person who refused the evidentiary test for DUI. In this case, as happens with some frequency, Mr. Shrader was arrested for a crime other than DUI. He was later asked to submit to an evidentiary breath test. While he was clearly under arrest, the officer had placed him under arrest for driving while suspended but he was not told he was under arrest for DUI. After several observations noted in the case, the officer had reason to believe Mr. Shrader had been operating a vehicle under the influence. However the current statute requires the driver to be placed under arrest specifically for the DUI prior to requesting the test.

We believe the proposed amendments in this bill will provide a more sound operational platform for our officers. It will still require the person to be arrested and still requires the officer to have reason to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol, drugs, or both. But it clarifies the point at which the officer must have reason to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol, drugs, or both is when the request to take the test is made.

It is not infrequent that officers will arrest a person for a non-DUI charge and after having longer contact with the person develop the reason to believe they are under the influence. In the Shrader case, the defendant was non-compliant with the officers and had to be stopped from walking away when his vehicle was stopped by the officer. Mr. Shrader refused field tests and refused the preliminary breath test.

Clearly a drunk driver should not escape being held accountable simply because the circumstances of the initial arrest did not yield as much information as is collected during the subsequent contact with the person. Establishing whether the person was operating the vehicle while under the influence should be the ultimate goal of the statute, even if that information is gathered after a lawful arrest for another charge.

In comparison, if we were to arrest a person for a crime and during the course of our contact we learn of or find evidence to support an arrest for another crime, we would not be precluded from gathering that evidence and charging the new crime. For example, consider a person arrested for criminal trespass in your back yard. If subsequent to being placed under arrest for that charge the officer learns the suspect had stolen property from your yard and hid it in the alley for later retrieval, we would still be able to collect that evidence and charge for the theft. Why should DUI be different?

The problem identified by the court is the specific language in the existing statute which this bill addresses. We strongly urge you to recommend HB2218 favorable for passage.

Ed Klumpp
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