

To: Senate Judiciary Committee

From: Amanda L. Stanley, General Counsel

Date: February 12, 2018

RE: Testimony in Support of SB 374

I want to thank Chairman Wilborn and the Committee members for allowing the League of Kansas Municipalities the opportunity to provide testimony in support of SB 374.

SB 374 is a comprehensive review of the Driving Under the Influence (DUI) laws in Kansas. While the League supports the entirety of the bill, the following sections are of particular interest to our members.

New Section 1 fixes an issue that has arisen out of the Wichita DUI ordinance. Kansas courts have held that municipal court convictions under Wichita's ordinance could not be counted as prior DUI convictions because the Wichita Ordinance is broader than the state statute in defining the term vehicle in violation of the constitutional principles enunciated in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and applied in *State v. Dickey*, 301 Kan. 1018, 350 P.3d 1054 (2015). The Wichita ordinance defines vehicle without an exception for devices operated by human power alone. This new section makes it clear that violations of Wichita's ordinance are to be counted in determining whether a conviction is a first, second, third, fourth, or subsequent conviction in sentencing under K.S.A. 8-2,144 or K.S.A. 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments thereto. This change is an important clarification for our cities who wish to impose stricter DUI ordinances than the state statute.

Section 6 fixes an important Constitution issue with the State's current informed consent law. Implied consent, as established in [K.S.A. 8-1001\(a\)](#), means individuals who drive a vehicle in Kansas agree they will submit to testing, whether by breath, blood, urine or other bodily substance, to detect whether drugs or alcohol are in their system. In 2012, the Kansas

Legislature amended [K.S.A. 8-1001](#) and K.S.A. 8-1025 to allow the state to impose criminal charges on individuals who refuse to submit to blood alcohol testing. Prior to 2012, those who refused faced civil penalties which included fines and suspension of driver's licenses. Criminal charges were added when legislators were provided testimony indicating the risk of fines and suspension was not proving to be enough of an incentive to get drivers' full cooperation¹. The Kansas Supreme Court has opined that K.S.A. 8-1025 violates the Fourteenth Amendment's due process clause by criminalizing the act of withdrawing consent of a search.² The court held consent is revocable and that charging an individual with criminal penalties for revoking his consent violated both the Kansas and United States Constitutions.³ This bill cures the constitutional defects in the current statute.

Section 8 and Section 12 address a similar constitutional concern regarding the preliminary breath test raised by recent Kansas Court of Appeals decision, *State v. Robinson*, 408 P.3d 1003 (Kan. Ct. App. 2018).

The language proposed in SB 374 will address necessary constitutional issues in the current DUI statute and provide much needed clarity for municipalities. We respectfully ask this Committee forward SB 374 to the full Senate for its consideration.

¹ Minutes of Senate Judiciary Committee, January 26, 2011.

² *State v. Ryce*, 303 Kan. 899, 957, 964. 368 P.3d 342, 376 (2016).

³ *Id.* at 963-964, 380-381.