

MINUTES

KANSAS DUI COMMISSION

October 8, 2010
Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Representative Lance Kinzer
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Debra Stitham substituted for Don Jordan, Secretary, Kansas Department of Social
and Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, KAAP
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Members Absent

Mary Ann Khoury, DUI Victim Center of Kansas
Jeremy Thomas, Parole Officer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes

Karen Clowers, Commission Assistant

Others Attending

See attached list.

Morning Session

The meeting was called to order by Chairperson Owens at 9:05 a.m.

Representative Pauls moved, Chris Mechler seconded, to approve the Commission minutes of August 23, 2010. Motion carried.

Jason Thompson, staff revisor, distributed and reviewed a bill draft containing recommendations of the Commission (Attachment 1).

During the review suggestions were made regarding clarification and intent of the Commission's recommendations.

It was recommended the revisor update the draft to include restrictions for drivers under the age of 21.

Section 1 of the draft addressed KSA 2010 Supp. 8-1014. During the review, *Doug Wells moved, Greg Benefiel seconded to amend page 6 of the draft Section 2(a), to add court or court ordered supervisions to the list of permitted purposes. Motion carried.* Ed Klumpp voted no and requested his vote be recorded.

Following discussion of Sec. 2(d) on page 7, *Representative Pauls suggested a provision indicating restrictions must comply with Kansas Department of Revenue (KDOR) regulations. Representative Pauls moved, Ed Klumpp seconded, for the revisor to write a provision that KDOR will establish regulations to require drivers with a restricted license to carry certain documentation stating the restrictions, to carry certain documents to show that they are driving under an allowed event, and make it a rebuttable presumption if not carrying the documentation that the offenders are in violation. Motion carried.*

Following discussion of Section 3(d)(2), it was recommended the revisor incorporate specific treatment language changing the presumption that there is a specific intervention needed based on the number of DUIs to completion of treatment based upon the recommendation in the evaluation.

Greg Benefiel moved, Representative Kinzer seconded to amend page 9, Section 3 (d) (1) so that penalties for a first offense be a minimum of 30 days imprisonment, with probation after 48 hours or 100 hours of community service. Motion carried.

Following discussion of Section 3(f)(1) regarding provisions for third-time offenses, Doug Benefiel moved to modify the misdemeanor provision to mandatory 90 days imprisonment with release on probation after ten days with intensive supervised probation and alcohol monitoring to work release or house arrest. There was no second, due to information provided by Judge Jones indicating a possible conflict due to a recent ruling by the Kansas Court of Appeals indicating work

release does not apply to the sentence. It was recommended the revisor review the options for the next meeting.

Greg Benefiel moved, Karen Wittman seconded, on third-time felony cases, house arrest would not be allowed. Motion carried.

Following discussion regarding looking back to previous offenses, *Karen Wittman moved, Ed Klumpp seconded, to allow the courts to take into consideration all prior convictions the offender has received in their lifetime. Motion carried.*

The Commission recessed for lunch at 12:00 p.m.

Afternoon Session

The Commission reconvened at 1:00 p.m.

Jason Thompson, staff revisor, continued with the draft bill review indicating that language contained in Section 4(i)(4) (page 23) contains the provision allowing the courts to retain jurisdiction to modify sentence on third-time felony offenses.

The Commission discussed the possibility of repealing existing law and submitting to the Legislature a completely "new" act. Mr. Thompson indicated this would be equivalent to a recodification and it would be difficult to accomplish in time for the legislative session in January, 2011. Following further discussion it was determined to proceed with the draft bill.

Mr. Thompson indicated there is currently no reference to the use of the Kansas Criminal Justice Information System (KCJIS) and recordkeeping. He does not see the need for the inclusion in this draft, there was previous discussion about a separate bill to incorporate the Commission recommendations. Ed Klumpp indicated there may be an issue using KCJIS regarding the sharing information electronically with various agencies because of the Federal Bureau of Investigation link with the national criminal database.

Mr. Thompson also addressed problems regarding jurisdiction. If the bill contains criteria allowing only some cities jurisdiction, it will create a non-uniform law and home rule will allow any municipality to do as it pleases, regardless of the state statute.

After the discussion of the bill draft, the Commission turned its attention to Secretary Roger Werholtz, who presented the final recommendations from the Criminal Justice Subcommittee (Attachment 2).

Secretary Werholtz prefaced his remarks that all recommendations are based on the assumption that a complete and accurate criminal history is available.

It is the recommendation of the subcommittee that a first offense DUI conviction or diversion is not automatically disabling for anyone licensed, registered, or certified in the State of Kansas except for a holder of a commercial driver's license. *Doug Benefiel moved, Representative Pauls seconded, the governing body shall have a due process hearing, if requested, to determine what impact the offense will have, which may include alternative corrective measures in lieu of termination of licensure, registration, or certification. Motion carried.*

The subcommittee recommended for second-time offenders to change the incarceration requirement specified in KSA 8-1567(v)(2). Specifically, 48 hours of incarceration would be followed by either three days incarceration, six days work release, or ten days house arrest with no credit for time served on house arrest. *Greg Benefiel moved, Representative Pauls seconded, to incorporate the recommendation stated by Secretary Werholtz. Following discussion, Representative Pauls withdrew her second. Greg Benefiel moved, Judge Ruddick seconded, to make the penalty five full days. Motion failed.*

Greg Benefiel moved, Judge Jones seconded, to recommend the penalty proposed by the subcommittee of 48 hours incarceration followed by either three days incarceration, six days work release, or ten days house arrest with no credit for time served on house arrest. Motion carried.

The subcommittee also recommended offenders using ignition interlock systems should be on probation with more systemic feedback on performance provided to probation officers, courts, and treatment providers.

Secretary Werholtz moved, Les Sperling seconded, to recommend the supervising court imposing ignition interlock require the provider report violations to the court or the court designee, which could be the supervising officer or treatment provider, within 48 hours. Motion carried.

Additional recommendations were:

- Treatment imposed by the courts shall be based on meaningful evaluations which include verified criminal history and treatment history, and is responsive to the individual offender's treatment needs; and
- Verification independent of offender self reporting shall be made of both the criminal history and treatment history.

Les Sperling moved, Helen Pedigo seconded, to include the additional recommendations in the Commission report. Motion carried.

Secretary Werholtz indicated the subcommittee recommends third-time offenders should be handled at the district court level.

Greg Benefiel moved, Judge Jones seconded, that only district courts have jurisdiction of third-time DUI offenders. Motion carried. Ed Klumpp voted no and requested his vote be recorded.

Other recommendations were:

- Treatment now targeted toward third-time DUIs remain available;
- Supervision of third-time DUIs shifts to Community Corrections ;
- Revocation time is served in county jails; and
- Require a minimum 12-month probation period.

Chris Mechler moved, Greg Benefiel seconded, at the presentence investigation stage of the third DUI offense, to change supervision of third-time DUI to either Community Corrections or Court Services, depending on the assessment results. Following discussion, the Chairperson deferred the vote on this motion until the next meeting in order to collect further information.

Secretary Werholtz stated the subcommittee would like included in the report fourth and subsequent DUI offenders incarcerated in the state corrections system may be offered treatment based on available resources but will not take priority over other prisoners in the corrections system.

Secretary Werholtz reviewed recommendations already approved by the Commission regarding sentencing of fourth time offenders.

Greg Benefiel moved, Karen Wittman seconded, to make the special sentencing rules already adopted not subject to duration or dispositional departure. Motion carried. Doug Wells voted no and requested his vote be recorded.

Secretary Werholtz reported the subcommittee recommends the refusal of a request for blood or urine be a violation of the DUI statute.

Following discussion, Greg Benefiel moved, Karen Wittman seconded, upon arrest for DUI and the individual refuses an evidentiary blood or urine test will be a violation of the DUI statute. Doug Wells made a substitute motion, Roger Werholtz seconded, to create a standalone bill addressing refusals. Motion failed.

Back on the original motion, Greg Benefiel withdrew his motion, Karen Wittman agreed.

Greg Benefiel moved, Karen Wittman seconded, to adopt a law similar to the one used in Nebraska. The Chairperson recommended the motion be written in detail and have it available for review at the next meeting.

Secretary Werholtz reported the subcommittee recommendation to modify the expungement statute to permit expungement after five years of completion of probation if the offense was a misdemeanor, or seven years if the offense was a felony.

Representative Pauls moved, Doug Wells seconded, to modify the expungement statute to permit expungement after five years of completion of probation if the offense was a misdemeanor or 7 years if the offense was a felony. Motion carried.

Greg Benefiel moved, Karen Wittman seconded, to change the time limit to ten years for all offenses. Motion carried.

Secretary Werholtz moved, Dalyn Schmitt seconded, to require any court hearing DUI cases that result in conviction to utilize a standardized risk assessment approved by the Sentencing Commission, utilize a standardized substance abuse assessment approved by the Kansas Department of Social Rehabilitation Services, utilize the results of those evaluations in determining dispositions, and require the offender to be supervised according to the results of those assessments and to report all transactions to KCJIS. Motion carried.

Secretary Werholtz moved, Karen Wittman seconded, that each judicial district should be encouraged, but not mandated, to establish at least one DUI court docket within the district and those courts follow the ten principles of effective problem-solving courts, using evidence-based practices, and maintain fidelity to the model in order to achieve successful outcomes being included in the DUI Commission Report. Motion carried.

Secretary Werholtz indicated the subcommittee recommends that officers of the court shall share criminal history information with the substance abuse professional preparing the substance abuse evaluation, and the substance abuse professional shall request that information from the appropriate entity designated by the court.

Secretary Werholtz moved, Dalyn Schmitt seconded, to approve the recommendation as stated. Representative Pauls requested the insertion of the language "as allowed by state and federal law." Secretary Werholtz and Ms. Schmitt agreed to the modification, so the motion reads: Officers of the court shall share criminal history information as allowed by state and federal law with the substance abuse professional preparing the substance abuse evaluation, and the substance abuse professional shall request that information from the appropriate entity designated by the court. Motion carried.

The subcommittee recommends a change in criminal procedure should be drafted to authorize and codify that procedures consistent with principles of therapeutic or problem-solving courts should be included in the report.

This concluded the Criminal Justice Subcommittee recommendations. The meeting adjourned at 5:02 p.m.

The next scheduled meeting is October 29, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

October 29, 2010

(Date)