

MINUTES

KANSAS DUI COMMISSION

August 23, 2010

Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Representative Lance Kinzer
Nicole Romine substituted for Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Jennifer Jones, Wichita Municipal Court
Wiley Kerr, Kansas Bureau of Investigation
Mary Ann Khoury, DUI Victim Center of Kansas
Ray Dalton substituted for Don Jordan, Secretary, 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, Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Les Sperling, President, Kansas Association of Addiction Professionals
Jeremy Thomas, Parole Officer
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jennifer Horchem, 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

Member Absent

Dalyn Schmitt, Substance Abuse Professional

Others Attending

See attached list.

The meeting was called to order by Chairperson Owens at 9:10 a.m.

Doug Wells moved and Representative Pauls seconded the motion to approve the Commission minutes of May 17-18, 2010. Motion carried.

Secretary Werholtz moved, Representative Pauls seconded, to approve the Commission minutes of June 30, 2010. Motion carried.

Representative Pat George addressed the Commission on the Tele-Health Approach for Driving Under the Influence. The program uses electronic and online technology to improve access to services for offenders, both in-state and out-of-state. Screening and assessment are completed in-person at the treatment facility. Program requirements are customized to individual needs including educational sessions, online therapy, phone contacts, and monitoring. The program has been successful, especially for individuals in remote areas, out-of-state, or who have physical challenges that make in-person attendance problematic, which prevents required attendance to DUI programs (Attachment 1).

Frank Harris, State Legislative Affairs Manager, Mothers Against Drunk Driving (MADD), addressed the Commission supporting the use of ignition interlock devices (Attachment 2).

The Commission began discussion on a recommendation regarding a central repository for DUI convictions which would encompass records from arrest to conviction and be correlated with records from the Kansas Department of Motor Vehicles and the National Crime Information Center. The Commission agreed to recommend the Kansas Criminal Justice Information System (KCJIS) as the central repository. It was noted that a matter of concern is that there be accurate and timely reporting of data and adequate funding. The Commission also agreed to recommend the reporting of information and auditing of compliance be placed in a separate piece of legislation. The Commission agreed without objection.

The Commission began discussion on a recommendation regarding the jurisdiction of municipal courts. Following discussion, *Secretary Werholtz moved, Mary Ann Khoury seconded, that municipal courts that wish to have jurisdiction over DUI cases must meet the standards set by the Supreme Court. The standards would utilize a standardized risk assessment and evaluation, require compliance with the recommendations of the risk assessment and evaluation, ensure the offender is appropriately supervised based upon the risk of reoffense, and have the ability to report the data electronically to the central repository.* The Supreme Court would be given resources to ensure compliance with the rules it promulgates for municipal courts to have jurisdiction over DUIs. *Representative Pauls amended the motion, to add municipal courts wanting jurisdiction over first- and second-time DUI cases must be approved by the Supreme Court and that municipalities not meeting the criteria will not be authorized to have an ordinance relating to DUI and would be required to refer DUI cases to the district court. Motion carried.*

The Commission began discussion regarding whether a third offense DUI should be classified as a misdemeanor or a felony. Following discussion, *Representative Kinzer moved, Karen Wittman seconded, to retain third offense DUIs as a felony and change existing statutes to allow the courts to retain jurisdiction over the case post sentence. Motion carried.*

Roger Werholtz moved and Representative Pauls seconded the motion to recommend fourth and subsequent offense DUIs be placed on the Kansas Sentencing Guidelines Grid as a severity level 7 felony, with two methods of scoring criminal history, whichever is higher. Either score by regular method, or score by special rule where a fourth DUI is a category G, severity level 7, and progress higher with each offense. The sentence would include a two-year post-release supervision, with immediate availability for probation upon completion of treatment to be determined by the Parole Board. Motion carried.

The Commission discussed recommendations regarding implementation of a decay factor on DUI convictions. *Doug Wells moved, Ken McGovern seconded, to implement a decay factor on a DUI conviction after ten years providing a clean record has been maintained. Any conviction within the ten-year period will reset the ten-year cycle.*

Following further discussion, Doug Wells amended the motion to implement a decay/lookback on DUI convictions to ten years provided there has been no prior occurrence which encompasses a diversion, conviction, test failure, or test refusal. Ken McGovern agreed to the amended motion.

Ed Klumpp made a substitute motion to limit lookback to July 1, 1996. Karen Wittman seconded the motion. Motion carried.

Representative Pauls moved, Doug Wells seconded, to recommend following a second offense, if a clean ten-year record has been maintained, the third offense will be charged as a misdemeanor. Motion carried.

The Commission discussed the issue of administrative hearings and test refusals. Following discussion, both questions were referred to the next meeting to allow for compilation of additional information.

The Commission discussed recommendations regarding ignition interlock devices. Doug Wells suggested allowing the use of an ignition interlock device in place of any suspension or restriction and prohibiting the operation of any vehicle without an interlock device for offenders convicted of a DUI. Karen Wittman reviewed the recommendations made by the Law Enforcement/Recordkeeping Subcommittee.

Mary Ann Khoury moved to enhance the current ignition interlock device statutes to include KDOT recommendations. There was no second.

Representative Kinzer moved and Jeremy Thomas seconded the motion to recommend on first offense convictions or refusals:

- *Tests results of .08 BAC to less than .15 BAC: A 30-day suspension and mandatory use of an ignition interlock device for one year and to be restricted to driving to and from work or treatment;*
- *Test results of .15 BAC and greater: A 45-day suspension and mandatory use of an ignition interlock device for two years and to be restricted to driving to and from work or treatment during the first year and no restriction for the second year; and*

- *Test refusals: A 45-day suspension and mandatory use of an ignition interlock device for two years and to be restricted to driving to and from work or treatment during the first year and no restriction for the second year.*

The motion provided for good-time credit to be awarded for compliance. The motion granted the revisor latitude to include compliance with federal law.

Doug Wells made a substitute motion to change Representative Kinzer's motion by changing the test refusal sentencing to that of a first offense where the test result is less than .15. There was no second.

Representative Kinzer's motion carried.

The Commission discussed its recommendation on ignition interlock devices on second and subsequent convictions of DUI. *Representative Kinzer moved, Representative Pauls seconded, to recommend on second and subsequent convictions, to follow the Commission's recommendation on a first offense or refusal, but to extend the requirement for an ignition interlock device by one additional year. Therefore, for tests results of .08 BAC to less than .15 BAC: A 30-day suspension and mandatory use of an ignition interlock device for two years, rather than one year, and to be restricted to driving to and from work or treatment. For test results of .15 BAC and greater, or a test refusal: A 45-day suspension and mandatory use of an ignition interlock device for three years, rather than two years, and to be restricted to driving to and from work or treatment during the first year and no restriction for the remaining years. Motion carried.*

The meeting adjourned at 5:02 p.m. The next scheduled meeting is September 27, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by the Commission on:

October 8, 2010

(Date)