

## MINUTES

### KANSAS DUI COMMISSION

September 14-15, 2009  
Room 143-N—Statehouse

#### Members Present

Senator Tim Owens, Chairperson  
Representative Janice Pauls, Vice-Chairperson  
Senator David Haley  
Representative Lance Kinzer  
Gregory Benefiel  
Pete Bodyk  
Mark Bruce  
Honorable Jennifer Jones  
Secretary Don Jordan  
Wiley Kerr  
Mary Ann Khoury  
Ken McGovern  
Chris Mechler  
Helen Pedigo  
Marcy Ralston  
Honorable Peter Ruddick  
Dalyn Schmitt  
Les Sperling  
Ed Klumpp substituted for Police Chief Bob Story  
Jeremy Thomas  
Douglas Wells  
Secretary Roger Werholtz  
Karen Wittman

#### Staff Present

Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jason Thompson, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Karen Clowers, Committee Assistant

#### Others Attending

See attached list.

## Monday, September 14 Morning Session

The meeting was called to order by Chairperson Thomas C. "Tim" Owens at 10:02 a.m.

Ed Klumpp requested a correction to the minutes of August 6-7 indicating he substituted for Police Chief Bob Story on August 7. Chris Mechler requested a spelling correction. *Helen Pedigo moved, Chris Mechler seconded, to approve the minutes of August 6-7, 2009 as corrected. Motion carried.*

The Commission heard presentations on Electronic Submission of DUI Records and Information Sharing.

Wiley Kerr and Steve Montgomery of the Kansas Bureau of Investigation provided the Commission with an overview on the current KBI database. Information included the current capabilities regarding record keeping and information sharing. Mr. Montgomery described the types of information provided to the agency and what information currently is available to law enforcement. Discussion followed addressing how the specific needs of prosecutors regarding previous convictions could be provided in a prompt and concise fashion. Several points made during the discussion included:

- Convictions in Kansas versus out-of-state convictions will continue to be a problem;
- Municipal courts cover two-thirds of DUI cases and reporting standards differ widely. Large municipalities use electronic reporting, whereas small jurisdictions do not have that capability;
- The need for a good exchange model and State mandated guidelines regarding the transfer of data to ensure consistency throughout the State; and
- Problems regarding records before 1996, between 1996 and 2001, and the need for consistency across the State at all levels do exist.

The discussion then proceeded to address the lifetime look back regarding DUI convictions and possible decay rates. The laws have changed considerably over the years, and records that would have been expunged or decayed are now back on an individual's record.

Kelly O'Brien, Office of Judicial Administration, provided the Commission with a review of the FullCourt Case Management software system used to manage court cases ([Attachment 1](#)). This software is used in 103 counties across the State and is a client-server based system. The court data is stored at the client's server (*i.e.*, in each county) and can provide court information to state agencies as provided by statute. There is no statewide repository of court data in Kansas. Mr. O'Brien then described how and what information is sent from FullCourt to Driver Control in the Department of Revenue.

Marcy Ralston addressed the Commission on information received by the Division of Motor Vehicles. Ms. Ralston stated the Division receives data from hundreds of courts and estimates approximately 86 percent of municipal courts submit data electronically. Electronic submission is still voluntary. Ms. Ralston described the process followed when information is sent to Driver Control. She indicated much of the information is still entered manually which provides opportunity for errors.

Currently, there is a new system in development which will address these issues. The new system also will allow police and prosecutors access to the information. Ms. Ralston indicated that convictions prior to 1996 were routinely purged at the end of the required five-year limit until the law was changed in 2001.

The Commission recessed for lunch.

### **Afternoon Session**

The meeting reconvened at 1:00 p.m

The Commission heard presentations on DUI from a Court Clerk's Perspective.

Bettina Jamerson, Clerk of the Municipal Court, Prairie Village, Kansas addressed the Commission on the process used on DUI cases in the City of Prairie Village (Attachment 2). Ms. Jamerson described in detail the process that must be followed and the various steps taken in a DUI prosecution.

Alice Adams, District Court Clerk, Geary County, Kansas, presented to the Commission the procedural steps taken by county clerks on DUI cases (Attachment 3). Ms. Adams also stressed the importance of entering information accurately; errors could cause devastating effects.

The Commission heard presentations on DUI from a municipal prosecutor's perspective.

Beth Boldt, City Prosecutor, Merriam, Kansas, addressed the Commission on the challenge's she faces when prosecuting a DUI case. Merriam, Kansas consists of four square miles in Johnson County with a population of 11,000 people, but approximately 100,000 individuals pass through the city limits each day due to interstate highways and "major artery" streets. Ms. Boldt has trained with police and works closely with police to protect the residents of Merriam. She suggested simplifying the laws to make it easier for every person along the process to do their job. She indicated that "practiced" drunks know how to get around the system and strongly recommended addressing penalties for refusing breath tests. It is extremely difficult to prosecute a DUI without a breath test. Ms. Boldt indicted HGN (horizontal gaze nystagmus) test is a useful, reliable test to distinguish when someone is under the influence of alcohol. The tests are admissible in several states and the Commission should recommend their use in Kansas.

Hillary Boye, Assistant City Attorney, Hiawatha, Kansas, presented the Commission with a small city perspective on DUI prosecution (Attachment 4). Ms. Boye indicated it is difficult to keep up with the ever changing laws regarding DUI and she feels there has been a lack of consistency in the last three years. Her most difficult issue is obtaining a complete driving record for the same reasons stated throughout these meetings. There is no easy way to obtain previous conviction histories. In addition, Hiawatha is very close to the Nebraska border, and often offenders are from out-of-state. Other states treat DUI's differently, and records can be difficult to read and costly to obtain. Ms. Boye stated she has found the second conviction treatment requirements usually are unsuccessful when forced. It is difficult to find treatment, especially affordable treatment in rural areas, and requires transportation to treatment. This usually involves driving while on a suspended license. Ms. Boye recommends use of the ignition interlock device rather than implementing a suspended license and increased penalties for breath test refusals.

John Knoll, Senior Assistant City Attorney, Overland Park, Kansas, provided a large city prosecutor's perspective of DUI (Attachment 5). Mr. Knoll indicated several challenges regarding the prosecution of a DUI including:

- The search for prior convictions is difficult and tedious requiring a mailed letter rather than a phone call and causes substantial delays;
- Blood tests do not get processed quickly enough; and
- Not all Kansas Disposition Reports are reported.

Mr. Knoll stated it would be extremely helpful to have "one-stop" shopping for journal entries for prior and pending cases and suggested enforcement of reporting laws would result with a more accurate accounting of prior cases.

Sarah Riley-Hansen addressed the Commission regarding licensing of professional service providers for all DUI offenders (Attachment 6). The case was made for the importance of licensing which would provide consumer safety, oversight and accountability, to clients while providing screening and assessment, treatments, and documentation of progress.

Secretary Don Jordan indicated that SRS supports licensing of addiction counselors and recommended that the Behavioral Sciences Regulatory Board would be the appropriate agency to monitor such licensing.

*Chris Mechler moved, Roger Werholtz seconded, to endorse licensing and recommend licensing to the Legislature.* Following discussion, Chairperson Owens delayed vote on the motion to the October meeting so members may consider the subject.

The meeting was adjourned at 4:15 p.m.

## **Tuesday, September 15 Morning Session**

The meeting was called to order by Chairperson Owens at 9:07 a.m.

Jason Thompson, Revisor of Statutes Office, provided the Commission with a review of the ignition interlock legislation in New Mexico, the first state to require ignition interlock devices (Attachment 7).

Following the presentation, the Commission discussed and questioned various points of the New Mexico law. Max Strauss, Kansas Ignition Interlock Association, answered additional information and technical questions on interlock devices. He indicated historically, it has been found that indigent cases need to have some fiscal input on the devices. Nebraska had 100 percent coverage which resulted in an enormous amount of damaged units and since will provide assistance but not the full cost.

The Commission broke into subcommittees for discussion on their assigned topics.

The Commission reconvened at 1:00 p.m.

Kevin Barone of Kansas Ignition Interlock addressed the Commission regarding a CD to be provided to the Commission with information regarding the New Mexico study results on ignition interlock.

Roger Werholtz provided a summary of discussions from the Subcommittee on Corrections. Their overall goal is to keep people from driving while intoxicated and/or from committing additional offenses and recommendations are based on from the assumption that the mechanics required will mesh with the system. Initial recommendations concerning convictions are:

- The current penalties for a first conviction is sufficient but there is a need to criminalize refusals to submit to breath tests;
- The current second offense penalty is adequate;
  - The range of options available to the courts is generally adequate but the majority of members felt that jail time should really mean jail time;
  - Offenders using the ignition interlock system should be on probation with a more systemic feedback on performance provided to probation, courts, and treatment providers;
  - There is a need to have treatment imposed by the Courts be based on meaningful evaluations which includes verified criminal history, treatment history, and is responsive to the individual's treatment needs; and
  - Independent verification of client self-reporting;
- Third-time DUI offenses should be a misdemeanor with the same penalties currently attached to third-time convictions.
  - Should be handled at the district court level;
  - Assumes that the treatment now being targeted towards third DUI's as a felony remains available;
  - Supervision shifts to community corrections;
  - Revocation time is served in county jails; and
  - Requires at least 12-month probation period.

The subcommittee will revisit details of third DUI penalties; they are concerned with the perception of "moving backwards."

Fourth and subsequent DUI convictions are felonies with substantial sentences and incapacitation becomes the predominant strategy.

Secretary Werholtz stressed that all of the recommendations are based on the assumption of an accurate criminal history.

Karen Wittman presented results from the Law Enforcement subcommittee on the issues regarding arrests, processing, and record keeping, resulting in several recommendations.

- KCJIS appears to be the most suitable source for comprehensive reporting.
  - Reports will need a certification statement to overcome hearsay rule; and
  - Reports will need to contain specific data including arrest information, prosecution information and conviction information.
- Legislation will be needed to address counties charging in State government agencies for information they failed to report initially (usually disposition data);
- Initiate an auditing factor to enforce compliance in reporting;
- Sanctions imposed for prosecutors amending DUI charges to lesser charges;
- Fees imposed for a driver license hearing with a reduced charge for phone hearings; and
- Simplify the process for obtaining a search warrant for blood or urine tests and requested information on the time limits used in other states.

Les Sperling addressed the Commission on discussion results of the Substance Abuse and Treatment Subcommittee.

- Recommends a SSA (single state authority) to license ADSAP (Alcohol and Drug Safety Action Program) and provide information to the Courts;
- The SSA will produce a licensing standard for ADSAP agencies;
- Development of a standardized assessment tool to provide Courts with appropriate clinical information;
- SSA develop a standard for clinical best practice (education, outcomes);
- Recommends the use of the use of the American Society of Addiction Medicine (ASAM) criteria as an information tool and make recommendations based upon the severity of the problem;
- SSA adjust the rules to agencies administering ASAM criteria to provide consistency across the state;
- Monitoring is not working as anticipated and recommends that language be eliminated and that responsibility not be attached to the ASAM license or designation; and
- The subcommittee recommends moving the fourth time DUI program to the third offense due to the high success rate.

Dalyn Schmitt provided an update on the fourth DUI program which lost its funding September 1, essentially ending the program. Fourth offenders now have less accountability and with the current statute of moving fourth DUI sanctions to the third offense the program will need to be funded, enforced, and measurable.

Jeremy Thomas indicated the fourth offense treatment program was very effective.

Les Sperling indicated data shows that any engagement in treatment is beneficial and the more offenders who can be monitored and supervised, the better the results. From a clinical perspective only, speciality courts may provide better results and he would like for the Commission to investigate this subject further.

The meeting adjourned at 1:55 p.m.

The next scheduled meeting is October 1, 2009.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Commission on:

October 1, 2009  
(Date)