

## MINUTES

### KANSAS DUI COMMISSION

November 15, 2010  
Room 346-S—Statehouse

#### Members Present

Senator Thomas C. (Tim) Owens, Chairperson  
Representative Janice Pauls, Vice-chairperson  
Representative Lance Kinzer  
Greg Benefiel, Assistant District Attorney, Douglas County  
Pete Bodyk, Kansas Department of Transportation  
Major Mark Bruce, Kansas Highway Patrol  
Leslie Moore substituted for Wiley Kerr, Kansas Bureau of Investigation  
Honorable Jennifer Jones  
Deborah Stidham substituted for Don Jordan, Secretary, Kansas Department of Social  
and Rehabilitation Services  
Retired Police Chief Ed Klumpp  
Mary Ann Khoury, DUI Victim Center of Kansas  
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 Professionals  
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  
C. W. Klebe substituted for Karen Wittman, Attorney General's Office  
Sheriff Ken McGovern, Douglas County

#### Member Absent

Senator David Haley

#### 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, Committee Assistant

## Others Attending

See attached list.

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

The minutes of October 28, 2010, were reviewed and corrections made to clarify the wording on Greg Benefiel's amended motion on page six, Greg Benefiel's motion on page five, and spelling corrections. *Greg Benefiel moved and Judge Ruddick seconded to approve the Commission minutes of October 28, 2010, as corrected. Motion carried.*

The Chairperson called on Jason Thompson, staff revisor, to review the proposed draft bill entitled DUI Commission Draft #3 (Attachment 1).

New Section 1 includes language ensuring that there are no automatic professional license consequences due to a first DUI conviction or diversion.

Mr. Thompson requested the Commission's decision regarding whether the hearings are required to be conducted in accordance with the Kansas Administrative Procedure Act. It was the consensus of the Commission to include this language.

New Section 2 contains language creating the crime of refusing to submit to a test to determine the presence of alcohol or drugs. The majority of the discussion was based on subsection (l), which defines what is a conviction and which convictions are taken into account when determining whether a conviction is a first, second, third, or subsequent conviction for sentencing.

*Doug Wells moved, Senator Owens seconded, to reconsider the issue of criminalization of test refusals. Motion failed.*

*Greg Benefiel moved, Ed Klumpp seconded, to limit to one diversion only for alcohol-related offenses listed in New Section 2, subsection (l) of the bill draft and clarify that no diversion would be allowed if the person has any prior conviction for an offense listed in subsection (l). Motion carried. Doug Wells voted no and requested his vote be recorded.*

It was recommended to change page 6, subsection (i)(3) of the bill draft to limit the look back to July 1, 1996, on diversions under subsection (i)(1). There was no objection.

*Doug Wells moved, Les Sperling seconded, to limit the look back to July 1, 2011, for prior convictions for test refusals for purposes of sentencing enhancements. Motion failed.*

*Doug Wells moved, Judge Ruddick seconded, to establish an enhancement date of July 1, 2011, for subsections (i)(1), (i)(2), and (i)(3). Motion failed.*

Ed Klumpp noted the need to clarify the five-consecutive-day imprisonment language in the new crime for refusing to submit to a test to determine the presence of alcohol or drugs [subsection (b)(1) and other similar references throughout the bill]. It was the consensus of the Commission to include the language.

Doug Wells requested the inclusion of house arrest on page 2, (b)(1). It was the consensus of the Commission to include the language.

Section 3 includes changes regarding DUI involving commercial vehicles and licenses.

*Greg Benefiel moved, Ken McGovern seconded, to incorporate the provisions of DUI (KSA 8-1567), such as record checks, to make the penalties match the penalties in New Section 2, and make the crime subject to the special sentencing rules (7-G for a third conviction and no durational or dispositional departure). Motion carried.*

Section 4 covers the implied consent recommendations.

It was recommended to change the advisory found on page 15, (k)(4) by rewording the last part of the sentence to read “. . . drugs, which carries criminal penalties that are equal to or greater than the criminal penalties for the crime of driving under the influence.” It was the consensus of the Commission to change the language.

Mr. Thompson recommended the inclusion of test refusal to (n) on page 17 for consistency. It was the consensus of the Commission to include the language.

Section 5 addresses alcohol and drug evaluations.

Judge Jones questioned the funding issue, particularly, the Alcohol and Drug Safety Action Program (ADSAP) funds going directly to the provider and not to the courts. Despite the fact that the percentage of the fee retained by the court is small, Judge Jones advised it would have a huge impact on her court. She requested her opposition to this proposal be recorded.

*Ed Klumpp moved, Ken McGovern seconded, to include evaluations for violations of commercial DUI and section 2 (test refusal). Motion carried.*

*Doug Wells moved, Jeremy Thomas seconded, on page 23, (d) to include distribution of the alcohol and drug evaluation report to the defense counsel. Motion carried.*

*Judge Ruddick moved, Chris Mechler seconded, to eliminate the required evaluation of fourth DUI. Judge Ruddick amended the motion to eliminate alcohol and drug evaluations for any defendant serving his or her sentence without revocation. The second agreed. Motion carried.*

Section 6 is not drafted yet but will contain the provisions approved by the Commission at the October 28 meeting for preliminary drug testing using a device approved by the Kansas Bureau of Investigation.

Section 7 expands the definition of “alcohol or drug-related conviction” in KSA 8-1013 to include the language used in New Section 2 on prior convictions.

Section 8 addresses the administrative penalties for test refusals, failures, or convictions.

Page 35, (2) contains new language recommended so the Kansas Department of Corrections (KDOC) notifies the Division of Motor Vehicles (DMV) of the date of release. It was recommended to add “with the KDOC” following incarceration. Marcy Ralston requested the language be changed to read the “notification shall be in a format approved by the Division of Motor Vehicles.” The changes were approved by consensus.

Ed Klumpp requested clarifying language to define “end of sentence.” It also was requested that the language reflect credit for any period of suspension or restriction that occurs

before incarceration. The revisor was instructed to include the corrected language so that the period of suspension or restriction is stayed during incarceration with KDOC and credit is given for any period of suspension or restriction before incarceration.

Following further discussion, it was agreed to delete section (d) on page 33, which required the Division to suspend the person's driving privileges whenever the Division is notified by an ADSAP that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by the court.

Section 9 contains details on driving privileges, suspensions, and revocations.

*Ed Klumpp moved, Representative Pauls seconded, on page 36, in subsection (a)(1), to remove "and court or court-ordered supervision" on second and subsequent convictions to comply with federal law. Motion carried.*

Representative Kinzer requested clarifying language in (a)(2), addressing reasons for denial of restricted licenses. There was consensus agreement for the revisor to work with the DMV on appropriate language to clarify the presumption that a restricted license is to be approved unless the person is otherwise not eligible.

Following discussion, there was consensus agreement to remove subsection (e)(2) on page 38 and place it somewhere with the language on ignition interlock affidavit with the notice from ignition interlock providers.

Section 10 contains the rules and regulations regarding ignition interlock devices. The Commission changed the word "indigent" to "all" on page 40, (a)(4) of the bill draft. Therefore, all persons, not just indigent persons, are required to be informed that each manufacturer provides a credit of at least 2 percent of the gross program revenues in the state as a credit for certain individuals who qualify for assistance.

Section 11 covers rules and regulations on ignition interlock violations.

Following discussion, there was consensus to make clear that the penalties in subsection (c) only apply to violations of (a)(1) (tampering with an ignition interlock device for the purpose of circumventing it or rendering it inaccurate or inoperative) or (a)(2) (requesting or soliciting another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device).

Section 12 addresses administrative hearings.

*Representative Pauls moved, Greg Benefiel seconded, to set a flat fee of \$50 for driver's license hearings, the funds going to the Division of Motor Vehicles Operating Fund. There would be no differentiation between an in-person or telephone hearings. Motion carried. Doug Wells voted no and requested his vote be recorded.*

Section 13 covers changes to KSA 8-1567, driving under the influence. The Chairperson distributed a chart provided by Ed Klumpp. (Attachment 2)

*Greg Benefiel moved, Mary Ann Khoury seconded, to change first time convictions from a class B, nonperson misdemeanor to a class A, nonperson misdemeanor. Motion carried. Doug Wells voted no and requested his vote be recorded.*

*Ed Klumpp moved, Ken McGovern seconded, on page 44 (c)(2), to change the last sentence by inserting “unless otherwise ordered by the court.” Motion carried.*

*Doug Wells moved, Ken McGovern seconded, on page 45, subsection (e)(2), to allow house arrest after the mandatory ten consecutive days’ imprisonment for third time felony DUI convictions. Motion carried.*

*Mary Ann Khoury moved on page 51, subsection (k), that impoundment and immobilization be retained, and remove the ignition interlock option. Motion died for lack of a second.*

*Judge Ruddick moved, Doug Wells seconded, on page 51, subsection (k) to change the word “shall” to “may,” thereby, making impoundment or immobilization discretionary with the court. The motion also included a provision regarding hardship exemptions. Motion carried.*

*Ed Klumpp moved, Pete Bodyk seconded, that upon referral from a municipality, the county or district attorney shall make a disposition and shall not be allowed to re-refer a case back to the municipality. Motion carried.*

*Greg Benefiel moved, C. W. Klebe seconded, to require a prosecuting attorney to make the initial count determination on filing DUI in municipal court, rather than allowing the process to be initiated by filing the citation or ticket. Motion failed.*

Section 14 relates to municipal court jurisdiction.

Section 15 addressed the municipal judge powers and duties with a revision addressing procedures in DUI cases to ensure proper and timely reporting.

*Ed Klumpp moved, Pete Bodyk seconded, on page 62, (f), remove “electronically” and add a compliance date of July 1, 2012, for electronic reporting. Motion carried.*

*Ed Klumpp moved, Greg Benefiel seconded, in order for local municipalities to prosecute DUI cases, local law enforcement must report DUI arrests as required by statute. Motion carried. Doug Wells voted no and requested his vote be recorded.*

*Representative Kinzer moved, Mary Ann Khoury seconded, to make the courts responsible for reporting DUI case filings to the KBI. Representative Kinzer amended his motion to include the same language regarding electronic reporting and a compliance date of July 1, 2012. Motion carried. Doug Wells voted no and requested his vote be recorded.*

The Chairperson thanked the Commission and staff for the work done and indicated his intention of requesting an additional day to finish review of the draft bill. December 13, 2010, is the anticipated meeting date, if approved.

The meeting adjourned at 5:05 p.m.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Committee on:

December 13, 2010  
(Date)