

## MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee  
From: Jason Thompson, Senior Assistant Revisor  
Date: January 19, 2011  
Subject: Senate Bill No. 7 – Driving under the influence

**New Section 1.** (page 1) No automatic professional license consequence solely because of a first DUI conviction or diversion; person may request a hearing conducted in accordance with the Kansas administrative procedure act.

**New Sec. 2.** (p. 2) Creating the crime of “refusing to submit to a test to determine the presence of alcohol or drugs”; recodified criminal code format, language consistent with revised K.S.A. 8-2,144 and 8-1567 contained in the bill; prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria; only one diversion for any of the related crimes in the person's lifetime.

**New Sec. 3.** (p. 6) Provides a mechanism for early release from prison if person convicted of section 2, 8-2,144 or 8-1567 completes treatment programs and other items specified by the secretary of corrections (used K.S.A. 75-5210a as a model); companion amendment in K.S.A. 22-3717, see below, to require parole board decision on release.

**New Sec. 4.** (p. 7) KBI authority to approve saliva testing device (used K.S.A. 65-5,107 as a model); companion amendment in K.S.A. 8-1012, see below, for use of the approved device.

**Sec. 5.** (p. 7) K.S.A. 8-235, driver's licenses; no class C license for violators of K.S.A. 8-1567 in current law, adds K.S.A. 8-2,144 and section 2.

**Sec. 6.** (p. 8) K.S.A. 8-241, license examinations; K.S.A. 8-1567 reference, adds section 2.

**Sec. 7.** (p. 10) K.S.A. 8-262, driving while license canceled, suspended or revoked; K.S.A. 8-1567 references, adds K.S.A. 8-2,144 and section 2, other cleanup.

**Sec. 8.** (p. 11-12) K.S.A. 8-285, habitual violator; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 9.** (p. 13) K.S.A. 8-2,142, disqualification from driving commercial vehicle; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 10.** (p. 16) K.S.A. 8-2,144, "Driving a commercial motor vehicle under the influence"; recodified criminal code format, language consistent with revised section 2 and K.S.A. 8-1567 contained in the bill; prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria.

**Sec. 11.** (p. 22) K.S.A. 8-1001, implied consent; revised subsection (i) on urine collection; revised advisory in subsection (k) to reflect section 2 and the administrative penalty changes in K.S.A. 8-1014; revised subsection (n) to reflect section 2.

**Sec. 12.** (p. 28) K.S.A. 8-1008, alcohol and drug evaluations; removes statutory structure for community-based alcohol and drug safety action programs (ADSAP); evaluations by licensed providers with a DUI specialty, licensed by SRS; evaluations prior to diversion or sentencing for violators of section 2 and K.S.A. 8-2,144 and 8-1567.

**Sec. 13.** (p. 32) K.S.A. 8-1009, determination by prosecuting attorney of whether diversion agreement to be allowed; K.S.A. 8-1567 reference, adds section 2, other cleanup.

**Sec. 14.** (p. 33) K.S.A. 8-1012, preliminary testing; adds provisions for test of saliva using device approved by KBI (see section 4).

**Sec. 15.** (p. 34) K.S.A. 8-1013, definitions for article 10 of chapter 8; "alcohol or drug-related conviction" definition revised to be consistent with definition in section 2 and K.S.A. 8-2,144 and 8-1567; "department" definition added to reflect new KDHE responsibilities in K.S.A. 8-1016.

**Sec. 16.** (p. 36) K.S.A. 8-1014, administrative penalties for test refusal, test failure or conviction; revised penalties use shorter suspension period, with option for restricted privileges after 45 days (see K.S.A. 8-1015), then increasing ignition interlock restriction periods; any period of suspension or restriction is stayed during incarceration with the department of corrections, credit given for any time before incarceration.

**Sec. 17.** (p. 39) K.S.A. 8-1015, details on driving privilege suspension and revocation; subsection (a) authorizes restricted driving privileges during suspension period, in accordance with federal law; remaining subsections deal with ignition interlock details, reinstatement of driving privileges, retroactive application if requested.

**Sec. 18.** (p. 42) K.S.A. 8-1016, rules and regulations on ignition interlock devices; places rule and regulation responsibility for approval of devices with KDHE, rather than division of vehicles, but keeps rules and regulations on maintenance and reporting requirements with the division.

**Sec. 19.** (p. 44) K.S.A. 8-1017, ignition interlock violations; violations get extended interlock, rather than license suspension.

**Sec. 20.** (p. 45) K.S.A. 8-1020, administrative hearings; \$50 fee for hearings, no difference for in-person or telephone hearings, with the funds going to the division of vehicles operating fund.

**Sec. 21.** (p. 50) K.S.A. 8-1021, impoundment of motor vehicle; K.S.A. 8-1567 reference, adds section 2.

**Sec. 22.** (p. 51) K.S.A. 8-1022, permitting driving in violation of 8-1014; correct cross-reference to subsection (g) of K.S.A. 8-1567.

**Sec. 23.** (p. 51) K.S.A. 8-1102, abandoned motor vehicles; K.S.A. 8-1567 reference, adds section 2.

**Sec. 24.** (p. 53) K.S.A. 8-1501, application of sections in article 15; adds reference to section 2.

**Sec. 25.** (p. 54) K.S.A. 8-1567, "driving under the influence"; recodified criminal code format, language consistent with section 2 and K.S.A. 8-2,144; revised penalties, prior convictions or diversion for other related crimes count as prior convictions for this crime; city ordinance or county resolution authorized only if the city or county meets certain criteria; only one diversion for any of the related crimes in the person's lifetime.

**Sec. 26.** (p. 66) K.S.A. 12-4104, municipal court jurisdiction; removes concurrent jurisdiction for DUI violations when they would be punished as a felony if charged in district court.

**Sec. 27.** (p. 67) K.S.A. 12-4106, municipal judge powers and duties; subsection (f) adds responsibilities for municipal judge in ordinance violations of K.S.A. 8-2,144 or 8-1567 or section 2, including electronic reporting of dispositions to KBI by July 1, 2012.

**Sec. 28.** (p. 68) K.S.A. 12-4413, municipal court diversion, definitions; K.S.A. 8-1567 reference, adds section 2.

**Sec. 29.** (p. 68) K.S.A. 12-4414, municipal court diversion, policies; exception for K.S.A. 8-1567 and section 2.

**Sec. 30.** (p. 69) K.S.A. 12-4415, municipal court diversion, considerations and prohibitions; only one diversion for any DUI-related crimes in the person's lifetime.

**Sec. 31.** (p. 70) K.S.A. 12-4416, municipal court diversion, provisions; K.S.A. 8-1567 reference, adds section 2; cleanup for changes to K.S.A. 8-1008.

**Sec. 32.** (p. 72) K.S.A. 12-4516, expungement, municipal offenses; 10 year rule for expungement of violation of a DUI ordinance, current law allows no expungement.

**Sec. 33.** (p. 77) K.S.A. 12-4517, municipal conviction, fingerprinting and processing; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 34.** (p. 77) K.S.A. 22-2802, release prior to trial, bond; adds special bond provisions for violations of K.S.A. 8-2,144 or 8-1567 or section 2, not mandatory.

**Sec. 35.** (p. 80) K.S.A. 22-2908, diversions, considerations and prohibitions; only one diversion for any DUI or refusal crimes in the person's lifetime.

NOTE: subsection (b)(2), technical cleanup – already law, but shows as new.

**Sec. 36.** (p. 82) K.S.A. 22-2909, diversions, provisions; K.S.A. 8-1567 reference, adds section 2; cleanup for changes to K.S.A. 8-1008.

NOTE: subsection (d), technical cleanup – already law, but shows as new.

**Sec. 37.** (p. 85) K.S.A. 22-2910, conditioning diversion on plea prohibited, inadmissibility of agreement; K.S.A. 8-1567 reference, adds section 2.

**Sec. 38.** (p. 85) K.S.A. 22-3610, appeals from municipal court; new subsection (c) to allow amendment of complaint in district court.

**Sec. 39.** (p. 86) K.S.A. 22-3717, parole and postrelease; subsection (d)(1)(H) adds requirement of 24 months postrelease supervision for a violation of K.S.A. 8-2,144

or 8-1567 or section 2; subsection (w) adds parole board review for early release pursuant to section 3.

**Sec. 40.** (p. 97) K.S.A. 22-4704, central repository, rules and regulations; subsection (f) requires director of KBI to adopt rules and regulations requiring district courts to report case filings for violations of K.S.A. 8-2,144 or 8-1567 or section 2.

**Sec. 41.** (p. 98) K.S.A. 22-4705, central repository, reporting; adds specific reference to "filing of a charge" as a reportable vent.

**Sec. 42.** (p. 99) K.S.A. 28-176, laboratory analysis fee charged as separate court costs in certain cases; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144.

**Sec. 43.** (p. 100) K.S.A. 60-427, physician-patient privilege; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 44.** (p. 102) K.S.A. 74-2012, division of vehicles, records; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144 and section 2.

**Sec. 45.** (p. 105) K.S.A. 74-7301, definitions, crime victims compensation; K.S.A. 8-1567 reference, adds K.S.A. 8-2,144, other cleanup.

**Sec. 46.** (p. 107) Section 14 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, culpability; adds new crime of test refusal (section 2) to allow guilt without culpable mental state (note that 8-1567 is listed here currently).

**Sec. 47.** (p. 108) Section 48 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, battery; subsection (g) creates new crime of aggravated battery while DUI.

**Sec. 48.** (p. 111) Section 254 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, expungement; 10 year rule for expungement of DUIs, current law allows no expungement.

**Sec. 49.** (p. 118) Section 285 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, non-drug sentencing grid; special rule in subsection (i)(4) to retain jurisdiction in 3<sup>rd</sup> DUI cases; new subsection (u), special sentencing rule for 3<sup>rd</sup> and subsequent test refusal (section 2) or commercial DUI (8-2,144); new subsection (v), special sentencing rule for 4<sup>th</sup> and subsequent DUI (8-1567).

NOTE: subsections (s) and (t), technical cleanup – already law, but show as new.

**Sec. 50.** (p. 127) Section 292 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, criminal history classification; new subsection (c)(3) criminal history provision for involuntary manslaughter while DUI and aggravated battery while DUI.

**Sec. 51.** (p. 129) Section 299 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, departure sentences; prohibits dispositional or durational departure for 3<sup>rd</sup> or subsequent test refusal (section 2) or commercial DUI (8-2,144), and 4<sup>th</sup> or subsequent DUI (8-1567).

**Sec. 52.** (p. 130) Repealer section.

**Sec. 53.** (p. 130) Effective date ("publication in the statute book" = July 1, 2011).