

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on January 27, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Doug Wells, Attorney, Topeka, Kansas
Jay Norton, Kansas Association of Criminal Defense Lawyers
Sky Westerlund, Ex. Director of Kansas Chapter of the Nat'l Assn. of Social Workers
Phil Bradley, Kansas Licensed Beverage Association

Others attending:

See attached list.

Bill Introductions:

Megan Pinegar, Office of the Attorney General, requested introduction of two bills:

- A bill concerning child pornography
- A bill relating to the forfeiture of assets in crimes relating to the exploitation of a child

The Chairman opened the hearings on **SB 7 — Driving under the influence.**

Doug Wells stated he was speaking for himself and not as a member of the Commission. In his testimony in opposition to **SB 7**, he stated he is concerned with the cost of implementing the bill (Attachment 1). He opposes:

- The change in current law relating to the ignition interlock for the first-time offender
- The criminalization of a DUI test refusal
- The creation of the aggravated DUI battery
- The special sentencing rules for felony DUI offenses
- The term of the three-hour look back provision
- The term of the decay (look back) for sentence enhancement
- The modification of the physician-patient privilege

He expressed support for the expungement provision in **SB 7**. He stated that the bill should provide for the ability to plea bargain.

Jay Norton testified in opposition to the provision in **SB 7** which would criminalize the refusal to submit to a DUI test; it would be a strict liability crime (Attachment 2). He expressed concern for the extensive costs associated with the bill; he believes the bill will result in increased litigation and costs to the taxpayers.

Sky Westerlund testified in opposition to a provision in Section 12 of **SB 7** which would create a new license of a provider with a DUI Specialty who would be licensed by the Secretary of SRS. This provision conflicts with the licensure practice act of social workers and others licensed by the Behavioral Sciences Regulatory Board. She suggested an amendment to correct the conflict (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on January 27, 2011, in Room 548-S of the Capitol.

Phil Bradley testified in opposition to the provision in **SB 7**, which criminalizes the DUI test refusal. He expressed his concern that the current law is not evenly enforced. He drew the committee's attention to letters, attached to his testimony, which express concern with the mandatory ignition interlock device (Attachment 4). He also said he would make available a copy of a pamphlet titled *Effective Traffic Safety Solutions to Stop Drunk Driving –An ABL Toolbox*.

Written testimony in opposition to SB 7 was submitted by Karl Peterjohn, Sedgwick County, (Attachment 5) and Paul Burmaster, Kansas Association of Criminal Defense Lawyers (Attachment 6).

Senator King asked, "If a breath test is refused or cannot be completed, may the person opt to take a blood test?"

Jason Thompson, staff revisor, responded that it still constitutes a refusal.

Mr. Thompson explained the look back provision refers to the time period within which a blood test may be conducted.

The Chairman noted that the look back period had been extended from two to three hours for areas of the state in which it takes a longer period of time to travel to a test site.

Senator King asked whether or not the criminalization of DUI test refusal has been upheld in other states?

No answer was offered.

Senator Bruce asked if there were other methods (other than breath or blood tests) to determine the incapability of a person to operate a vehicle?

No answer was offered.

Senator Bruce asked Ms. Wunderland if her opposition to the bill was limited to the conflict in licensure of the treatment provider?

She responded, "Yes."

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for January 28, 2011.