

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2218**

As Agreed to April 3, 2013

Brief*

HB 2218 would amend statutes concerning the crime of driving under the influence of alcohol or drugs (DUI). First, the bill would amend the law governing when a law enforcement officer is required to request a person submit to alcohol or drug testing. Specifically, the bill would add to language concerning an officer's reasonable grounds to believe the person was DUI to require that the officer have such a belief "at the time of the request." Further, the bill would require an officer to request alcohol or drug testing when the officer has such a belief and the person has been arrested or otherwise taken into custody for any violation of any state statute, county resolution, or city ordinance. Testing already is required if the person is arrested or taken into custody for a DUI offense.

In the area of sentencing, the bill would specify that the sentence for felony violations of criminal refusal and commercial DUI is that provided for in the specific mandatory sentencing requirements of those statutes.

The bill also would amend the definition of the crime of aggravated battery to include DUI:

- When great bodily harm to another person or disfigurement of another person results from such

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act, which would be a severity level 5, person felony; and

- When bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement, or death can result from such act, which would be a severity level 8, person felony.

For the purpose of determining whether a new DUI conviction is a first, second, third, or subsequent conviction, which impacts the penalty imposed, aggravated battery while DUI would be considered a prior DUI conviction. The bill also would add clarifying language concerning DUI offenses committed by persons under the age of 21 and replace "drive" with "operate."

Finally, the bill would amend the boating under the influence statutes to make them more consistent with DUI statutes. The changes would include:

- Adding a provision prohibiting the operation or attempt to operate any vessel while the alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence (as defined in statute), is 0.08 or more;
- Changing the time period within which a person is prohibited from operating or attempting to operate a vessel if that person's alcohol concentration is 0.08 or more from two hours to three hours;
- Revising the prohibition on operating a vessel while under the influence of alcohol to include the phrase "to a degree that renders the person incapable of safely operating a vessel";

- Removing a provision prohibiting the operation of a vessel by a habitual user of any narcotic, hypnotic, somnifacient, or stimulating drug; and
- Revising the definition of “other competent evidence” to extend the time for sampling from two hours to three hours.

The boating under the influence provisions of the bill would be effective from and after January 1, 2014, and its publication in the statute book.

Conference Committee Action

The Conference Committee agreed to the Senate's amendments and added the contents of SB 49, concerning boating under the influence, and language to specify that the sentence for felony violations of criminal refusal and commercial DUI is that provided for in the specific mandatory sentencing requirements of those statutes.

Background

In the House Corrections and Juvenile Justice Committee, representatives of the Kansas Bureau of Investigation, Kansas County and District Attorneys Association (KCDA), Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association offered testimony in support of the bill. No others offered testimony.

The same conferees offered testimony in the Senate Judiciary Committee. The Senate Committee agreed to add the contents of HB 2043, concerning aggravated battery while DUI, with an amendment that would add this crime to the list of crimes considered prior DUI convictions.

The fiscal note prepared by the Division of the Budget for the bill, as introduced, indicates passage would require revision of the implied consent and hearing order forms. The Department of Revenue estimates revising, printing, and mailing the forms would cost \$20,000, which would be paid from the agency's Vehicle Operating Fund. The fiscal note also states any effect on state and local law enforcement likely would be accommodated within existing resources.

HB 2043. In the House Corrections and Juvenile Justice Committee, representatives of local district attorney's offices appeared in support of the bill. A local defense attorney appeared as an opponent.

The House Committee amended the bill to remove language that would make these new offenses strict liability crimes requiring no culpable mental state and to clarify that harm must be the result of driving under the influence of alcohol or drugs.

In the Senate Judiciary Committee, a representative of the KCDAA appeared in support of the bill. No others offered testimony.

The revised fiscal note prepared by the Division of the Budget for HB 2043, as introduced, indicates passage of the bill would increase caseloads, which likely could be accommodated within existing resources. The Kansas Sentencing Commission indicates passage would result in one to three additional prison beds in FY 2014, two to six additional prison beds in FY 2015, and three to nine additional prison beds by FY 2023.

SB 49. In the Senate Judiciary Committee, the chief counsel of the Kansas Department of Wildlife, Parks and Tourism testified in support of the bill. There was no opponent testimony. The Senate Committee amended the bill per further suggestions by the Office of the Revisor of Statutes to make the boating under the influence statutes more consistent with DUI statutes.

The Division of the Budget's fiscal note on the bill indicates it has the potential to increase the number of boating under the influence cases filed in courts, increasing the time required to process the cases. Additional cases also could produce added revenue from docket fees. However, the Office of Judicial Administration cannot predict an exact number of additional cases and so cannot determine a precise fiscal effect. Any fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. The Department of Wildlife, Parks and Tourism states the bill would have no fiscal effect on the agency.

driving under the influence, boating under the influence, DUI

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