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MEMORANDUM

To: Senate Committee on Judiciary
From: Jason Thompson, Senior Assistant Revisor of Statutes
Date: March 7, 2019
Subject: Bill Brief for HB 2104

House Bill 2104, as amended by House Committee, updates laws related to driving under the influence, including preliminary screening tests, implied consent advisories and test refusal. The bill is a recommendation from the Judicial Council’s DUI Advisory Committee.

Section 1 (page 1) amends K.S.A. 8-1001, commonly known as the implied consent statute. Under current law in subsection (a), as amended in 2018, any person who operates or attempts to operate a vehicle within this state may be requested to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. Subsection (c) provides the revised notice to be given when a test of breath or other bodily substance, other than blood or urine, is requested; and subsection (d) provides the revised notice to be given when a test of blood or urine is requested. The changes to these subsections do not change the administrative penalties, only how they are described in the notices.

Section 2 (page 5) amends K.S.A. 8-1012, the statute governing preliminary screening tests. Current subsection (b) would become subsection (a), providing that a law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate a vehicle while under the influence. There is a change of terminology from “saliva” to “oral fluid” to be scientifically accurate and modernize the statute. Current subsections (a) and (c) are removed so that no testing advisory is provided in the statute. Current subsection (d) is removed so that preliminary screening test refusal is not a traffic infraction. The Kansas Court of Appeals held that provision unconstitutional in State v. Robinson, 55 Kan. App. 2d 209 (2017).

The final remaining subsection of K.S.A. 8-1012 is amended to add that any preliminary screening of a person’s oral fluid shall be conducted in accordance with rules and regulations, if any, approved pursuant to K.S.A. 75-712h. Section 4 (page 16) amends K.S.A. 75-712h, the statute authorizing the director of the KBI to adopt certain rules and regulations related to preliminary screening devices, to change the term “saliva” to “oral fluid.”

The House Committee on Judiciary added section 3 (page 6) to the bill to make a conforming amendment to K.S.A. 8-2118, the uniform fine schedule for traffic infractions. The only change to the statute is to strike the fine for “Refusal to submit to a preliminary breath test” and the reference to “8-1012” (page 7, lines 9-10). As noted above, the traffic infraction in that statute is unconstitutional and the bill strikes that provision.

The final change in the bill is the repeal of K.S.A. 8-1025, the crime of refusing to submit to a test. The Legislature repealed the statute and all references to the statute in 2018, but due to another enactment amending the statute it was not fully repealed.

The bill would take effect after publication in the Kansas Register, but the changes to K.S.A. 8-1001 would not take effect until July 1, 2019.