

MINUTES

KANSAS DUI COMMISSION

June 30, 2010
Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Representative Lance Kinzer
Greg Benefiel, Assistant District Attorney, Douglas County
Chris Bortz substituted for Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Mary Ann Khoury, Victim Advocate
Deb Stithem substituted for Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Ted Smith, substituted for Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
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
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jennifer Horchem, 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, Commission Assistant

Others Attending

See attached list.

Wednesday, June 30

The meeting was called to order by Chairperson Owens at 9:10 a.m. The Chairperson updated the Commission on conversations he had with Supreme Court Justice Nuss and Howard Schwartz, Judicial Administrator, regarding issues to consider whether to make the recommendation for district magistrate judges to preside over all driving under the influence (DUI) cases statewide. Mr. Schwartz indicated there are certain points that need to be considered:

- The current jurisdiction from district magistrate judges would need to be expanded;
- The right to appeal of a district magistrate judge to a district judge to avoid trying a case twice;
- There are no district magistrate judges in six judicial districts, which would require district judges to hear the cases; and
- Due to scheduling conflicts, and other issues, district judges in other judicial districts may need to hear some DUI cases.

It was also noted that should district courts assume the caseload for DUI cases, some districts would require additional staffing of judges, clerks, and court officers. A detailed analysis of current and required staffing levels was included ([Attachment 1](#)).

Chris Mechler provided the Commission with a list of drug courts currently in operation in Kansas. Ms. Mechler outlined the Supreme Court feasibility study of drug courts. The National Center for State Courts is conducting a feasibility study on implementing drug courts in Kansas. They anticipate submitting a final report with recommendations to the Supreme Court late this summer ([Attachment 2](#)).

Les Sperling brought to the Commission's attention a pre-publication copy of a recidivism research study scheduled for publication in 2011 ([Attachment 3](#)).

Karen Wittman presented the Commission with information on aggravated battery while DUI. Ms. Wittman explained current statutes and case law regarding reckless driving and aggravated battery issues. She also recommended proposed language on the statute regarding aggravated battery while driving under the influence of alcohol or drugs, including special rule sentencing and other considerations ([Attachment 4](#)).

The Commission broke into subcommittees.

The Commission, as a whole, reconvened at 2:00 p.m. The subcommittees gave brief reports on their progress.

Karen Wittman reported on the Law Enforcement/Recordkeeping Subcommittee. The

Subcommittee looked at upgrading the ignition interlock law. New suggestions included: video technology, longer restrictions for ignition interlock for violating the use of the device, such as lockout, rolling retest violations, and producing a sample over 0.04. The Subcommittee discussed suspending a person's license and requiring the licensee to "request" the ignition interlock feature. Once approved by the Division of Motor Vehicles, the device could be installed. The Subcommittee also discussed whether the Kansas Department of Health and Environment would be the appropriate agency responsible for approving devices in the State of Kansas to insure that providers are complying with the reporting and monitoring of licensee requirements.

Les Sperling reported the Substance Abuse Subcommittee continued to work with the Revisor regarding KSA 8-1008 addressing the evaluation process of DUI offenders and how to implement the recommendations of the Subcommittee. These include:

- The licensing by the Department of Social and Rehabilitation Services (SRS) of substance abuse counselors who perform alcohol and drug evaluations;
- The providers must meet minimum standards;
- Provide SRS the authority to license individuals; and
- Provide a current, up-to-date listing statewide of providers licensed by the state.

The Subcommittee reviewed the original goal to take an effective program administered on fourth DUI convictions concerning collaboration between SRS and the Kansas Department of Corrections (KDOC) using multidisciplinary teams to supervise, provide appropriate care for offenders, and create an effective program; and moving it to third-time offenders.

Roger Werholtz reported the Criminal Justice Subcommittee discussed the following items and reported on recommendations reached:

- The Subcommittee agreed to modify a previous recommendation that a mechanism be put in place, whereby individuals convicted of a first time DUI or receiving a diversion are not automatically at risk of losing a professional license, registration, or certification. The Subcommittee revised the recommendation that holders of a commercial driver's license not be granted the ability to request a review and possible alternative corrective measures;
- A motion to establish the stationary shelter defense as an affirmative defense failed;
- The Subcommittee considered whether a mandate should be established for video recording of field sobriety tests and breath tests in law enforcement vehicles. While all agreed that it was highly desirable to have these events recorded, there was a great deal of concern about the cost of equipment, storage, and the absence of resources to support such a mandate. The Subcommittee agreed to recommend mandating the installation of video recording equipment in law enforcement vehicles within two years if resources are available to support the mandate. While this is less than a desirable option, it was the Subcommittee's intent to state support for the practice and for resources to put it in place;
- In order to achieve greater uniformity throughout the state, the Subcommittee recommends that any Chapter 8 case or violation of KSA 40-3105, unless

accompanied by a Chapter 21 violation or any other felony, will be filed as a traffic (TR) case.

Chairperson Owens indicated several recommendations appear to hinge on whether the third DUI conviction reverts back to a misdemeanor or would become a Class 2 felony. The Commission was polled on the option of recommending the third DUI conviction be reverted back to a misdemeanor. The Commission was in favor of the third conviction being a misdemeanor.

The Chairperson also verified that the Commission agreed that the Kansas Criminal Justice Information Systems be the central repository for all DUI records.

The meeting adjourned at 4:07 p.m. The next meeting was scheduled for August 23, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

August 23, 2010
(Date)