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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Ed Klumpp, Retired Chief of Police & Member of the Criminal Law Advisory Committee

DATE: March 24, 2021

Re: Testimony in Support of 2021 H.B. 2387 Concerning Operating an Aircraft Under the Influence

2021 H.B. 2387 was introduced at the request of the Judicial Council's DUI Advisory Committee. Due to a request from then-House Judiciary Chairman, Representative Blaine Finch to study topics related to driving under the influence, the Judicial Council formed the DUI Advisory Committee (the Committee). The Committee began meeting in December 2018 and continued to meet through 2020. A list of the Committee's members is included at the end of this testimony.

In February 2021, this bill was heard by the House Judiciary Committee, which amended the bill to clarify the application of and penalty for the felony provisions and to add provisions and references to further align the provisions of the bill with DUI provisions.

Kansas' current statutes governing the crime of operating an aircraft under the influence of drugs or alcohol¹ were enacted in 1981 and have never been updated. The Committee conferred with the federal aviation administration and others with expertise in this area. When someone suspects an aircraft is being operated under the influence, the person is to contact the local law enforcement agency. Having comprehensive and updated state statutes are critical for local law enforcement to properly investigate allegations, as well as collect evidence. The work of the local law enforcement agency is necessary for any criminal charges and administrative action taken by the federal aviation administration.

¹ K.S.A. 3-1001 *et seq.*

The Committee presumes that if the alcohol or drug testing procedures for operating an aircraft under the influence are challenged in court, the courts will look to the DUI case law for guidance. In order to provide consistency for law enforcement officers and to protect people's constitutional rights, it is important that the process and penalties for operating an aircraft under the influence closely resemble the DUI process and penalties. The statutes should also be updated because the statutes may be applied to drone operators in the future.

If the amendments to the DUI sentences in H.B. 2377 Section 7 are passed, the Committee asks that where applicable, the sentencing provisions in this bill be updated to mirror the provisions in the DUI statute.

The members of the Judicial Council DUI Advisory Committee are:

Rep. Brad Ralph, Chair; Dodge City, Kansas
State Representative, 119th District and City Attorney for Dodge City

Aaron Breitenbach; Wichita, Kansas
Sedgwick County Assistant District Attorney

Hon. Cindi Cornwell; Overland Park, Kansas
Overland Park Municipal Court Judge

Prof. Jeffrey Jackson; Topeka, Kansas
Washburn University School of Law

Corey Kenney; Topeka, Kansas
Assistant Kansas Attorney General

Ed Klumpp; Tecumseh, Kansas
Retired Topeka Chief of Police

Chris Mann; Lenexa, Kansas
Mann Law Firm, Attorney and Member of the Kansas Sentencing Commission

Jay Norton; Overland Park, Kansas
Norton Hare Law Firm, Defense Attorney

Hon. William Ossmann; Topeka, Kansas
Shawnee County District Court Judge

Jeremiah Platt; Manhattan, Kansas
Clark & Platt Law Firm, Defense Attorney

John Rapp; Wichita, Kansas
Hinkle Law Firm, Defense Attorney

Ted Smith; Topeka, Kansas
Attorney for the Kansas Department of Revenue

Roger Struble; Salina, Kansas
Blackwell & Struble Law Firm, Defense Attorney