

# STATE OF KANSAS

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February 12, 2018

The Honorable Rick Wilborn, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 541-E  
Topeka, Kansas 66612

Dear Senator Wilborn:

**SUBJECT:** Fiscal Note for SB 374 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 374 is respectfully submitted to your committee.

SB 374 would amend current law related to the crime of driving under the influence of alcohol or drugs (DUI) by combining and modifying the sentencing conviction calculations for the crimes of driving under the influence, driving a commercial vehicle under the influence, and refusing to submit to a test. It would also clarify that conviction calculations for these three crimes would include DUIs or violations of a similar ordinance of any city or resolution of any county within this state, violations that are otherwise comparable, violations of Wichita municipal ordinance section 11.38.150, and convictions of certain out-of-state statutes. The bill would remove a provision that limits the inclusion of DUI offenses in sentencing calculations for the crime of refusing to submit to a test to those that occurred after the age of 18, and remove certain references to "in this state" from various sentencing calculation provisions. The bill would include only convictions for test refusal that occur after July 1, 2018, in sentencing conviction calculations.

The bill would amend the crimes of driving under the influence, driving a commercial vehicle under the influence, and refusing to submit to a test to include an additional penalty for being 18 or over and committing one of the offenses with a minor in the vehicle, and add that offenders in violation of court ordered supervision as a result of these crimes that cannot be served with a warrant would be considered a fugitive of justice. It would require the court to determine whether any time between issuing the warrant and a finding that the offender has violated provisions of supervision would be counted as time served and allow the term of supervision to be extended at the court's discretion. It would also allow revocation of supervision and imprisonment for the remainder of the original sentence for violations that occur during supervision. Further, the bill would clarify that a person driving a commercial vehicle or any vehicle in Kansas consents

to taking one or more breath, alcohol, urine, or other bodily substance tests to determine alcohol concentration or test for drugs.

SB 374 would add bodily substance to the list of things that can be tested on a person to determine a person's alcohol concentration or the presence of other drugs where relevant. In addition, it would broaden the crime of driving a commercial vehicle under the influence of alcohol or drugs to include acts that are otherwise comparable to driving under the influence and clarifying that a person charged with a DUI would be in violation of driving a commercial vehicle under the influence. It would remove a requirement for courts to report diversion agreements for the crime of driving a commercial vehicle under the influence to the Director of Motor Vehicles. It would provide that a person can be disqualified from driving a commercial vehicle for submitting a test failure as defined in KSA 8-1013. It would also require that certification from law enforcement include whether or not a test of the person's blood or oral fluid revealed a schedule I or II controlled substance or its pharmacologically active metabolic. Additionally, it would require the law enforcement certification to include notice to an offender of an affirmative defense that the controlled substance was lawfully ingested. And, it would require law enforcement to direct that a test be done and the manner of testing.

The bill would also change the legal standard for which a law enforcement officer may require a test from having reasonable grounds to believe that the person driving or attempting to drive under the influence to having probable cause. It would provide procedures for the requirement of written and oral notices for tests for breath and bodily substance that are different from tests for blood or urine. It would also require oral fluids to be integrated into the variety of substances contemplated. Law enforcement would be required to direct a medical professional to draw samples of blood in certain situations only if they have first obtained a search warrant or when another judicially recognized exceptions applies, and medical professionals would be prohibited from requiring additional consent or further waiver for drawing blood. It would eliminate law enforcement authorization for a urine sample; eliminate the one-year suspension penalty for refusing to submit to a breath, blood or urine test; eliminates the related penalties for test failure, and eliminates the additional penalty for causing death or serious injury. It would also strike the definition for serious injury. The bill would remove implied consent of drivers to preliminary screening tests.

SB 374 would authorize law enforcement to request tests without certain notices and the consequence for refusal would be eliminated. The bill would amend the definition of a test failure to include schedule I or II controlled substances or its pharmacologically active metabolic in the person's blood or oral fluid, and add a definition for pharmacologically active metabolic. It would also add a copy of the lab report certifying a drug test failure to the list of permitted prehearing discovery. The bill would clarify the crime of refusing to submit to a test would be eliminated, and add a new penalty for conviction which would be a class B, nonperson misdemeanor with certain sentencing requirements to include a fine; potential imprisonment; public service before or as a condition of parole, probation, or house arrest. Finally, the bill would amend the crime of driving under the influence to include having a schedule I or II controlled substance present in the

person's blood within three hours of operating or attempting to operate a vehicle. The bill includes other technical and clarifying amendments.

The Office of Judicial Administration indicates the enactment of SB 374 would significantly increase expenditures of the Judicial Branch because it would increase the amount of time spent by Court Services Officers (CSO) in performing DUI pre-sentence investigations. The Office indicates it would likely be required to hire additional CSO's to assume the added workload. However, an estimate of the fiscal effect on Judicial Branch expenditures cannot be provided. The office also indicates the bill could have a significant fiscal effect on law enforcement because it would change DUI-related procedures. The Department of Corrections and the Kansas Sentencing Commission indicate the provisions of SB 374 would have no fiscal effect on prison admissions or beds. The Kansas Sentencing Commission indicates the bill would reduce the journal entry workload of the Commission, but reduction would be negligible. The Department of Revenue indicates the SB 374 would have no fiscal effect on its operations. The League of Municipalities and the Kansas Association of Counties indicate the bill would have no fiscal effect on local units of government. Any fiscal effect associated with SB 374 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,



Larry L. Campbell  
Chief Budget Officer

cc: Lynn Robinson, Department of Revenue  
Ashley Michaelis, Judiciary  
Scott Schultz, Sentencing Commission  
Chardae Caine, League of Municipalities  
Melissa Wangemann, Association of Counties