

MINUTES

KANSAS DUI COMMISSION

October 29, 2010
Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Leslie Moore substituted for Wiley Kerr, Kansas Bureau of Investigation
Deborah Stidham, substituted for Don Jordan, Secretary, Kansas Department of Social and Rehabilitative Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Honorable Richard Smith substituted for Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professionals
Les Sperling, President, KAAP
Doug Wells, Attorney, Kansas Bar Association
Karen Wittman, Traffic Safety Resource Prosecutor, Office of the Attorney General

Members Absent

Representative Lance Kinzer
Honorable Jennifer Jones
Roger Werholtz, Secretary, Kansas Department of Corrections
Mary Ann Khoury, DUI Victim Center of Kansas
Jeremy Thomas, Parole Officer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, 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, Committee Assistant

Others Attending

See attached list.

The meeting was called to order by Chairperson Owens at 9:10 a.m.

The minutes of October 8, 2010 were reviewed and corrections made to clarify the wording on Representative Paul's motion on page two, Karen Wittman's motion on page three, and spelling corrections. *Representative Pauls moved, Ed Klumpp seconded, to approve the Commission minutes of October 8, 2010, as corrected. Motion carried.*

Karen Wittman reported the findings of the subcommittee on Law Enforcement and Record Keeping (Attachment 1).

The Commission previously had agreed that the Kansas Criminal Justice Information System (KCJIS) is the appropriate entity for the records; the Subcommittee provided a list of recommendations pertaining to records. Ed Klumpp provided a summary addressing concerns raised during the last meeting regarding possible conflicts with the reporting system. Mr. Klumpp indicated his concerns are in areas that do not impact the DUI arrest and disposition reporting (Attachment 2).

Ms. Wittman reviewed the subcommittee recommendations regarding *per se* violations. *Following discussion Ed Klumpp moved, Greg Benefiel seconded, to change the two hour time frame for per se violations to three hours with the required changes to Chapter 8 of the Kansas Statutes Annotated.*

Doug Wells made a substitute motion to a crime with a rebuttal presumption. Motion died due to lack of a second.

Back on the original motion, motion carried.

Ms. Wittman reviewed recommendations regarding DUI aggravated battery.

Karen Wittman moved, Greg Benefiel seconded, to accept the subcommittee recommendation to allow for a DUI which causes bodily harm or great bodily harm similar to DUI manslaughter and make a special sentencing rule similar to DUI manslaughter special rule. Motion carried. Doug Wells voted no and requested his vote be recorded.

Senator Owens requested clarification on the third offense section of the report. Ms. Wittman indicated the Commission addressed the issue at the previous meeting during the review of recommendations of the Criminal Justice Subcommittee.

Ms. Wittman reviewed the recommendations regarding a change in definition of prior convictions to include commercial vehicles and military DUI convictions. Ms. Moore indicated that military records cannot be included on the KCJIS report but that information will be found on federal Interstate Identification Index (Triple I) reports. The question also was raised regarding Native American reservations which are under federal jurisdiction.

Greg Benefiel moved, Chris Mechler seconded, to amend the definition of previous DUI convictions to include commercial, military, and boating convictions. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman reviewed recommendations regarding amending municipal appeals. Senator Owens indicated this is a problem the public wants addressed.

Judge Pete Ruddick moved, Greg Benefiel seconded, to allow for amendment of charge in a municipal appeal. Motion carried.

Ms. Wittman reviewed recommendations regarding delays in driving suspensions until a person is released from prison. It is recommended that suspensions would begin on the date of release from a Kansas Department of Corrections (KDOC) facility which would require the KDOC report to the Kansas Department of Revenue, Division of Motor Vehicles (KDOR) the release date of the prisoner.

Karen Wittman moved, Ken McGovern seconded, to delay suspension until an offender is released from prison.

Greg Benefiel made a substitute motion that driving suspensions for DUI related offenses be stayed during incarceration in a KDOC facility and the KDOC will notify the Division of Motor Vehicles of the release date. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman reviewed recommendations regarding ignition interlock devices.

Karen Wittman moved, Greg Benefiel seconded, to recommend the Legislature require the Kansas Department of Health and Environment (KDHE) draft rules and regulations to approve ignition interlock devices, and set standards for ignition interlock devices. Motion carried.

Karen Wittman moved, Chris Mechler seconded, to require ignition interlock devices for all DUI convictions. It was noted the Commission already had adopted this recommendation. The motion was withdrawn.

Karen moved to change the statutes to reflect a special form for ignition interlock device providers to use in determination of indigent status. Motion died for lack of a second.

Ed Klumpp moved, Doug Wells seconded, to amend KSA 8-1016(5) by striking the language following the word "indigent" and inserting "by the court" and give the revisor latitude to draft language as needed. Following discussion, Doug Wells withdrew his second, followed by Ed Klumpp withdrawing his motion.

Greg Benefiel moved, Ken McGovern seconded, that KDHE ensure that ignition interlock device providers, as a requirement of doing business in Kansas, provide notice to offenders of what the definition of indigence is, notification that funds are available and how to apply for assistance, and that KDHE will ensure that all providers adhere to uniform charges throughout the state. Motion carried.

The Commission recessed for lunch at 12:00 p.m. and reconvened at 12:40 p.m.

Karen Wittman moved, Greg Benefiel seconded, to remove the word "leased" from the ignition interlock device requirement. Motion carried. Doug Wells voted no and requested his vote be recorded.

Karen Wittman moved, Greg Benefiel seconded, to require ignition interlock devices be equipped to capture a photographic image of the person providing the breath sample. Motion carried.

Karen Wittman moved, Doug Wells seconded, an affidavit explaining ignition interlock device violations be included in the application for ignition interlock device use. Motion carried.

Karen Wittman moved, Doug Wells seconded, to recommend if the ignition interlock device is installed and in use within 90 days of the offense date and have no violations during any suspension period or restriction (i.e., Driving outside restriction, DUI, Driving while suspended (DWS), violations of the device) the licensee will get 25 percent credit for every day he had the device installed and in use. Motion failed.

Ms. Wittman indicated there is no punishment for violations of the misuse of the device.

Karen Wittman moved, Pete Bodyk seconded, to amend KSA 8-1017 regarding circumvention of ignition interlock devices by extending the driving restriction an additional 90 days and upon a second conviction for violation of this section, the Division shall begin the original suspension period over. Motion carried.

Ms. Wittman reviewed a proposed new section to the bill regarding administrative ignition interlock devices violations (page 15 of Attachment 1).

Karen Wittman moved, Greg Benefiel seconded, to adopt the proposed new section with a change on (b) striking the language "...KDHE of the violations. KDHE upon review may submit to the..."; changing the reference KDHE to Division of Motor Vehicles (DMV) and giving the revisor latitude to insert corrective language. Motion failed.

Ms. Wittman indicated KSA 8-1567 is confusing by allowing DMV to suspend a person for a period of time due to testing, lack of testing, or non-payment of tickets.

Greg Benefiel moved, Honorable Pete Ruddick seconded, to strike the language in KSA 8-1567(l)(1) which states, "except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs". Motion carried. The Chairperson recommended the Commission grant the revisor latitude to draft language as needed to comply with federal requirements. The Commission agreed.

The Commission discussed the proposed recommendations on KSA 8-292, court imposition of driving privilege restrictions; duration; procedure; violation; penalty. Following discussion, the Commission decided no action needed to be taken regarding this section.

Ms. Wittman indicated KSA 8-254 (mandatory revocation of driver's license by division of vehicles; exceptions for court imposed restriction) lists violations in the mandatory suspension list that are no longer violations of the law. Ed Klumpp indicated the section needs specificity. The Committee discussed KSA 8-1014, suspension and restriction of driving privileges for test refusal, test failure or alcohol or drug-related conviction; increased penalties for blood or breath alcohol concentration of .15 or greater; ignition interlock device.

Following the discussion, *Greg Benefiel moved, Doug Wells seconded, to add specificity to KSA 8-1014 by including but not limited to DUI manslaughter and DUI aggravated battery to ensure offenses are reported to DMV for appropriate action. Motion carried.*

Ms. Wittman reviewed a proposed section (page 16, Attachment 1) addressing recommendations on bond conditions prior to release. Specifically, she discussed that except as otherwise provided, the court having jurisdiction over violations of this section shall adopt the following mandatory bond conditions while the case remains pending:

- For a first DUI offense, the person shall not drive without a valid license and insurance and the person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court.
- For a second and subsequent offenses, the person shall not drive without a valid license and insurance; the person shall not operate a motor vehicle without first showing the court proof of installation of an approved ignition interlock device, with reports sent to the court for monitoring; the person shall abstain from using alcohol or illegal drugs and shall agree to submit to testing when directed by the court; and the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided for in this act.
- The court may order a continuous transdermal alcohol monitoring device and/ or an in home alcohol monitoring device for any severity level DUI offense.

Karen Wittman moved, Greg Benefiel seconded, to adopt the proposal but not make mandatory. Additionally, they moved to amend the section (b) striking the word "treatment" and inserting the word "evaluation", Finally, they moved to remove the delineation in number of offenses. Motion carried.

The Commission discussed the issue of criminalizing breath test refusals deferred from the October 8 meeting. Greg Benefiel distributed and reviewed a proposed draft based on Nebraska's test refusal law (Attachment 3).

Following discussion, *Greg Benefiel moved, Karen Wittman seconded, to amend the proposed draft on page 2, section (c)(1) changing five days to 10 days; adding house arrest using a special rule for DUI, and no plea bargain except to the DUI and adopt the proposed draft, as amended. Motion carried. Doug Wells voted no and requested his vote be recorded.*

Greg Benefiel moved, Ed Klumpp seconded, implied consent adds warning that refusal is a separate crime. Motion carried. Doug Wells voted no and requested his vote be recorded.

Ed Klumpp moved, Ken McGovern seconded, to have the revisor either draft a standalone statute to mirror KSA 8-1012 or include in existing statutes, to allow preliminary drug screening test using saliva, with the device approved by the Kansas Bureau of Investigation (KBI). Motion carried. Doug Wells voted no and requested his vote be recorded.

Ms. Wittman brought to Commissions attention additional considerations not discussed by the Subcommittee on Law Enforcement and Recordkeeping (Attachment 4).

The Commission discussed changing the language defining who may be authorized to collect blood and urine samples. *Greg Benefiel moved, Ed Klumpp seconded, to amend KSA 8-1001 by adding "or other qualified medical personnel." Motion failed.*

Ms Wittman reviewed recommendations regarding wage assignment of persons given the ability to work while incarcerated. Currently, many do not make payments to the court as they should.

Karen Wittman moved to amend KSA 8-1567(l) to include as a condition of granting work release, requiring offenders sign and submit to the court a wage assignment authorizing the employer to deduct and forward to the clerk of the court a portion of each paycheck in an amount the court deems reasonable as payment of any restitution, fine, court costs, or court appointed attorney fees assessed by the court. Motion died due to lack of a second.

Ms. Wittman reviewed recommendations that driver's license hearings should remain with the DMV, a fee should be assessed for a request for a hearing, and protocols should be established for the hearing.

Karen Wittman moved, Ken McGovern seconded, to assess a filing fee for driver's license hearings. Motion carried.

Greg Benefiel advised the Commission there is no administrative sanction for failing a urine test. Greg Benefiel moved, to recommend a change to the existing statutes by mirroring the language on page 5 of Attachment 3, section (j) of the Nebraska refusal law distributed earlier.

Following discussion, *Greg Benefiel amended his motion to include the following changes: Section (j) strike "supervised by" and re-insert "supervised by" at the beginning of (j)(1) and insert the word "By" at the beginning of (j)(2), and (j)(3). Karen Wittman seconded.*

Doug Wells made a substitute motion to amend the sentence following (j)(3) beginning with "The results of qualitative testing....." by striking "the weight rather than." Senator Owens seconded for the sake of discussion. Motion failed.

Back on the original motion, Ed Klumpp requested the stricken line "When possible, the supervising person shall be a law enforcement officer" be re-inserted. It was agreed. Motion carried. Following the vote, staff indicated the change requested by Mr. Klumpp was in conflict with the changes of the original motion. It was agreed to go back to approve the original motion. Motion carried.

This concluded the Law Enforcement and Record Keeping Subcommittee recommendations.

Les Sperling reviewed the recommendations from the Evaluation and Treatment Subcommittee (Attachment 5).

Recommendations include:

- Require all providers of DUI evaluation and alcohol and drug Information schools to be licensed by Social and Rehabilitation Services-Addiction and Prevention Services in DUI services;
- Licensed DUI specialty providers comprise the DUI evaluation and education network available to all judicial districts and municipal courts;
- Require all DUI substance use evaluations to be completed in a standardized electronic format;

- SRS DUI specialty licensing standards should be revised to reflect best practices;
- Educational and treatment interventions should match the individual offender's clinical profile;
- Eliminate reference to "offender monitoring" from existing statutes;
- Encourage DUI specialty providers to implement best practices; and
- DUI evaluation and alcohol and drug information fees should be paid directly to DUI specialty providers at the time of service.

It was noted that a significant number of the recommendations will require additional effort and resources from the Kansas Department of Social and Rehabilitation Services. It is recommended that sufficient resources be provided to complete the tasks.

The Chairperson thanked the Commission and staff for the work done. The meeting will be used to review the final draft of the proposed bill.

The meeting adjourned at 4:50 p.m.

The next scheduled meeting is November 15, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

November 15, 2010
(Date)