

# **STATE OF KANSAS**

## **IMPAIRED DRIVING ASSESSMENT**

**July 10 – 14, 2006**

National Highway Traffic  
Safety Administration  
Technical Assistance Team

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Robert (Bob) Hohn, Impaired Driving Division, National Highway Traffic Safety Administration (NHTSA) facilitated the process. Also, Randy Bolin, NHTSA Central Region assisted in the facilitation process. The team would like to thank them for helping to give a national perspective to the assessment. The team wishes to commend Belinda Goodwin, Administrative Consultant to the team, for her ability to manage the production of a final report in a period of one week, which has been invaluable.

The team also thanks each of the participants in the review for the time and energy invested in preparing and delivering their presentations. Their candor and thoroughness in discussing their activities to target impaired driving in Kansas greatly assisted the team in conducting a complete review.

The team believes this report will contribute to the State's efforts to enhance the effectiveness of its impaired driving program in preventing injuries, saving lives, and reducing economic costs of motor vehicle crashes on Kansas' roadways.

Although the team realizes the assessment is a review of all impaired driving activities, the team wishes to commend and encourage all who are involved in the day-to-day functions of reducing impaired driving in Kansas.

## INTRODUCTION

In 2004, 42,636 persons were killed and nearly 2.8 million injured in motor vehicle crashes in the United States. Motor vehicle injuries are the leading cause of death for individuals from age 5 through 27. Motor vehicle crashes are the principal cause of on-the-job fatalities and are the leading cause of accidental death in the United States. Nationwide, the economic cost of motor vehicle traffic crashes exceeds \$230 billion annually. Alcohol was involved in approximately 39 percent (16,694) of the total number of traffic fatalities and responsible for nearly 290,000 injuries in 2004.

The mission of the National Highway Traffic Safety Administration (NHTSA) is to reduce deaths, injuries, and economic and property losses resulting from motor vehicle crashes. In its ongoing pursuit to reduce alcohol-related traffic crashes and subsequent fatalities and injuries, NHTSA continues its program of providing Technical Assistance Teams to the States upon request. This approach allows the States to use highway safety funds to support the team's evaluation of existing and proposed alcohol- and other drug-impaired driving control efforts.

NHTSA acts as a facilitator by assembling a team composed of individuals who have demonstrated competence in impaired driving program development and evaluation. Examples of program expertise among team members include criminal justice, enforcement, engineering, evaluation, prevention, program management, traffic records, and substance abuse treatment/rehabilitation.

The Kansas Department of Transportation (KDOT) requested NHTSA's assistance in assessing Kansas' alcohol and drug impaired driving countermeasures program. NHTSA agreed to facilitate this assessment and met with KDOT to define key issues of concern to the State.

The Kansas Impaired Driving Assessment was conducted at the Holiday Inn in Topeka, Kansas from July 10 - July 14, 2006. Under the leadership of Pete Bodyk, the Kansas Bureau of Traffic Safety Chief, arrangements were made for program experts to deliver briefings and provide support materials to the team on a wide range of topics over a three-day period. The team members interviewed numerous presenters, with several being contacted before, during, and after their presentations to provide additional information and clarification.

### **Kansas Demographics**

Kansas, nicknamed the Sunflower State, was admitted to the Union as the 34<sup>th</sup> state on January 29, 1861. Kansas has a land mass of 81,815 square miles, the 15th largest state. Kansas is bordered on the north by Nebraska, on the east by Missouri, on the south by Oklahoma and on the west by Colorado. The Kansas capital is Topeka, which has served as the state capital since 1861. Other major cities include Wichita, Kansas City, Overland Park, and Olathe.

U.S. Census Bureau 2005 estimates 2.7 million persons live in Kansas. Approximately 71 percent of Kansans reside in urban clusters. Kansas has 105 counties and 627 incorporated cities. Of those, the 10 most populated counties include Sedgwick, Johnson, Shawnee, Wyandotte, Douglas, Leavenworth, Reno, Riley, Butler, and Saline counties. The 95 remaining

counties have populations under 50,000; of those, 62 have populations under 10,000. Statewide, Caucasians comprise 86.1 percent of the population. Blacks or African Americans make up 5.7 percent, American Indian and Alaska Natives make up 0.9 percent, Asians make up 1.7 percent and 3.4 percent claim some other race or ethnicity. Hispanics or Latinos of any race make up about 7 percent.

Commerce and industry in Kansas are varied, but they are dominated by the aircraft industry and agriculture-related enterprises. Kansas is the world leader in the production of general aviation aircraft, with over 30,000 workers employed by four major aerospace companies. Kansas is also one of the leading agricultural states in the country with over 50 million acres of Kansas land devoted to farming. Kansas is the leading state in wheat production and ranks second in beef processing and production.

### **Highway Safety**

Kansas has approximately 135,017 miles of state highways, and city and county roads. Rural roadways comprise 124,420 miles of public roads and 10,597 of rural roads. The State has approximately 874 miles in interstate highways. Interstate Highway 35, 335 and 135 runs north/south and Interstate Highway 70 run east/west. Kansas has approximately 2.5 million registered vehicles and 2 million registered drivers.

Based on NHTSA's estimated 2000 economic costs due to motor vehicle crash data, Kansas' fatalities resulted in an economic loss of \$1.9 billion or \$701 cost per capita.

The Kansas safety belt use rates are listed below. Kansas remains a secondary law state with primary safety belt provisions for occupants under age 14.

Kansas experienced a large increase in their alcohol-related fatalities starting in 2001 through 2003 and was above the national average until 2004. The 2004 data indicates a huge drop in alcohol-related fatalities to 0.48 per 100 million vehicle miles traveled (VMT), one of the lowest states in the country.

An examination of state and national sources reveals the following highway safety data for Kansas over the past six years.

**STATEWIDE STATISTICS**

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Total Fatalities	461	494	507	469	459	428
Fatalities/100M VMT	1.6	1.8	1.8	1.6	1.6	N/A
Alcohol-Related Fatalities	161	193	227	199	148	N/A
Alcohol-Related Fatal Crashes	140	169	198	174	128	N/A
Est. Percent of Alcohol-Related Fatalities (NHTSA)	35%	39%	45%	42%	32%	N/A
Alcohol-Related Fatality Rate/100M VMT	.57	.69	.81	.72	.48	N/A
Total Injuries	27,300	28,700	27,000	24,700	23,700	22,700
Safety Belt Use	61.6	60.8	61.3	63.6	68.3	69.0
Total Motorcycle Fatalities	21	25	33	31	30	32
Population Census	2,692 k	2,700 k	2,712 k	2,724 k	2,733 k	2,744 k

Source: Fatality Analysis Reporting System  
 State Crash Data File  
 Kansas Observational Safety Belt Use Survey

## **PRIORITY RECOMMENDATIONS**

Priority recommendations are “bolded” in individual sections.

### **1-A: State, Local, and Tribal DWI Task Forces/Commissions**

- ◆ Establish a Kansas DUI Advisory Committee that is appointed by the Secretary of the Kansas Department of Transportation, representing key partners and interest groups.

### **1-D: Data and Records**

- ◆ Expand membership in the statewide TRCC to include participation by all stakeholders, including but not limited to ABC, Kansas Licensed Beverage Association, Kansas Association of Beverage Retailers, Kansas Social Rehabilitation Services, DUI Victim Center of Kansas, representation by county, district and municipal prosecutors.

### **1-F: Resources**

- ◆ Establish an impaired driving program coordinator for full program oversight, not just for grants management.

### **2-D-1: Schools**

- ◆ Structure designated driver programs so that they do not enable underage drinking or over-consumption by non-drivers.

### **2-D-3: Community Coalitions and Traffic Safety Programs**

- ◆ Include traffic safety advocates and professionals in the planning, development and implementation of prevention strategies of all community coalitions addressing substance abuse, youth development and/or safety.

### **3-A: Impaired Driving Laws**

- ◆ Improve the availability and accuracy of prior DUI conviction records.
- ◆ Enact an enhanced BAC offense for 0.15 or greater.

### **3-B: Enforcement**

- ◆ Train law enforcement officers on the procedures and requirements of an administrative license hearing.
- ◆ Create a panel of prosecutors and law enforcement officials to meet quarterly and discuss issues with impaired driving prosecutions and officer’s courtroom preparedness and testimony.

### **3-C: Publicity to Enhance General Deterrence**

- ◆ Ensure that there is a pre-blitz workshop for law enforcement personnel.
- ◆ Structure designated driver programs so that they do not enable underage drinking or over-consumption by non-drivers.

### **3-D: Prosecution**

- ◆ Prohibit part time prosecutors from practicing any criminal defense work outside of their prosecutorial jurisdiction.
- ◆ Improve accuracy and accessibility to records of prior DUI convictions and diversions.
- ◆ Enact a legislative remedy to the ruling in *State v. Elliott*.

### **3-E: Adjudication**

- ◆ Provide substantive DUI education regularly to all judges who adjudicate DUI cases and include SFST, HGN, Drug Evaluation and Classification (DEC), and CDL curriculum.
- ◆ Enact a legislative remedy to the ruling in *State v. Elliott*.
- ◆ Prohibit part-time judges who preside over criminal cases from practicing any criminal defense work, including DUI, outside of their judicial jurisdiction.

### **3-F-1: Administrative License Revocation and Vehicle Sanction**

- ◆ Streamline and improve the communication and dialogue between law enforcement and DMV hearing officers to improve the outcomes at the hearings and improve successful adjudication of DUI cases.
- ◆ Impose vehicle sanctions in a cost effective manner on repeat offenders and individuals who continue to drive with a license suspended or revoked for impaired driving.
- ◆ Permit the law enforcement officer at an ALR hearing to rebut his/her testimony given during the defendant's case in chief.

### **3-F-3: Information and Records System**

- ◆ Seek either legislative relief or administrative alternatives to rebuild the driver history file and use it as the only legislatively mandated source document for adjudicating DUI offenses.

#### **4-C: Monitoring Impaired Drivers**

- ◆ Improve monitoring and oversight of compliance with DUI sentence conditions.

## **I. STRATEGIC PLANNING AND PROGRAM MANAGEMENT**

Effective programs begin with strong leadership, strategic planning, and program management. Efforts should be data driven, focusing on populations, and geographic areas that are most at risk, and science-based, determined through independent evaluation to be likely to achieve success. Programs and activities should be guided by problem identification and carefully managed and monitored for effectiveness. Adequate resources should be devoted to the problem, and costs should be borne, to the extent possible, by impaired drivers.

### **1-A: State, Local, and Tribal DWI Task Forces/Commissions**

#### **Advisory**

*States, local subdivisions, and tribal governments should convene Driving While Impaired (DWI) task forces or commissions to foster leadership, commitment, and coordination among all parties interested in impaired driving issues. Task forces and commissions should:*

- *Enjoy active support and participation from the highest levels of leadership.*
- *Include members that represent all interested parties, both traditional and non-traditional, such as representatives of government – highway safety, enforcement, criminal justice, public health, driver licensing, and education; business – employers and unions; the military; medical, health care, and treatment; multi-cultural, faith-based, advocacy, and other community groups.*
- *Recommend goals and objectives, provide policy guidance, and identify available resources, based on a wide variety of interests and through leveraging opportunities.*
- *Coordinate programs and activities to ensure that they complement rather than compete with each other.*
- *Operate continuously, based on clear authority and direction established by law.*

#### **Status**

Kansas is currently benefiting from a renewed interest and commitment of leadership toward reducing the daily toll on the State's roadways. Kansas Department of Transportation (KDOT) management, state law enforcement liaisons, and the NHTSA Region law enforcement liaison have all made tremendous strides in enhancing the law enforcement involvement and dedication to highway safety programs. The current efforts of many organizations and interest groups are fortunate to have a strong representation and coordination effort by the Bureau of Traffic Safety. However the working relationships and participation are on an individual basis with little cooperative efforts other than the recently formed Traffic Records Coordinating Committee (TRCC).

No single focused group exists that brings together all of the partners and interest groups to one table for resource sharing, efficiency, or policy guidance.

## Recommendations

- ◆ **Establish a Kansas DUI Advisory Committee that is appointed by the Secretary of the Kansas Department of Transportation, representing key partners and interest groups.**
- ◆ Establish a Kansas DUI Coordinating Committee that is appointed by the Bureau Chief of the Bureau of Traffic Safety, representing key partners and interest groups.

## **1-B: Strategic Planning**

### **Advisory**

*States should develop and implement an overall plan for short- and long-term impaired driving activities. The plan should:*

- *Be based on careful problem identification that uses crash, arrest, conviction, driver record, and other available data to identify populations and geographic areas most at risk.*
- *Allocate resources for countermeasures determined to be effective that will impact populations and geographic areas most at risk.*
- *Include short-term objectives and long-range goals.*

### **Status**

The Bureau of Traffic Safety has set a three-year goal to reduce impaired driving fatalities by 35 percent or no more than 76 by 2008, using state data. The resources dedicated by the Bureau have also been significant at no less than 31 percent of the program funds available over the past six years.

There is no statewide or system wide plan in place for a coordinated effort to reduce impaired driving. The data to provide the overview and problem identification efforts exist; however they are often in silos or are only available at a summary level. A few larger metropolitan locations enjoy a comprehensive program but that appears to be more a result of sizable population and not due to planned or coordinated efforts.

The renewed interest and agency involvement in the Traffic Records Coordinating Committee is a very positive sign. The current Strategic Plan for Traffic Records will allow for better goals, performance measures, and system evaluation in the impaired driving program.

### **Recommendations**

- ◆ Develop a coordinated and system-supported Impaired Driving Plan.
- ◆ Establish long- and short-range goals for other areas of the impaired driving system, not just a reduction in alcohol-related fatalities.
- ◆ Continue the strong data review and aggressive planning within the Bureau of Traffic Safety.

## **1-C: Program Management**

### **Advisory**

*States should establish procedures to ensure program activities are implemented as intended. The procedures should provide for systematic monitoring and review of ongoing efforts to:*

- *Designate a lead agency responsible for overall program management and operations.*
- *Ensure appropriate data are collected to assess program impact and evaluation.*
- *Measure progress in achieving established goals and objectives.*
- *Detect and correct problems quickly.*

### **Status**

No lead agency or committee exists to monitor the overall health and performance of the impaired driving system.

Individual programs, state as well as local, track enough data to evaluate their own performance within their area of responsibility. No DUI tracking system, at any level, exists in the State.

Deficiencies and trouble spots that are identified are not always based in fact. When problems are identified, there is no central place or designated agency where resolution or discussion can be requested.

### **Recommendations**

- ◆ Establish a Kansas DUI Advisory Committee that is appointed by the Secretary of the Kansas Department of Transportation, representing key partners and interest groups.
- ◆ Issue an Executive Order delegating authority to the Kansas DUI Advisory Committee to make recommendations and evaluation on the overall health and capabilities of the impaired driving system.

## **1-D: Data and Records**

### **Advisory**

*States should establish and maintain records systems to fully support impaired driving program. States should also use data from other sources, such as the U.S. Census Bureau, Fatality Analysis Reporting System (FARS) and Crash Outcome Data Evaluation System (CODES), to supplement their systems. The State records system should:*

- *Permit the State to quantify the:*
  - \* *extent of the problem (e.g. alcohol-related crashes and fatalities)*
  - \* *impact on various populations (e.g. by age, gender, race, and ethnicity)*
  - \* *level of effort dedicated to address the problem (e.g. level of enforcement activities, training, paid and earned media)*
  - \* *impact of the effort (e.g. public attitudes, awareness, and behavior change)*
- *Contain electronic records of crashes, arrests, dispositions, driver licensing actions, and other sanctions of DWI offenders.*
- *Permit offenders to be tracked from arrest through disposition and compliance with sanctions.*
- *Be accurate, timely, linked, and readily accessible to persons authorized to receive the information, such as law enforcement, courts, licensing officials, and treatment providers.*

### **Status**

The Kansas Department of Transportation (KDOT), Division of Planning and Development, Bureau of Traffic Safety (Governor's Representative for Highway Safety) uses safety data to effectively set performance goals and targets. The State is able to compile the data elements that allow assessment of the impaired driving program. The sources of these data are Kansas Motor Vehicle Accident Reporting System, Kansas Statewide Student Survey, Kansas Safety Belt Observational Survey, Department of Revenue Driver Records, Judicial Data, and Kansas Bureau of Investigation Data.

Analysis is performed on statewide data which includes driver, vehicle, roadway crashes, and survey data which includes observational, knowledge, attitude, offender, and expert opinions. It is noteworthy that the highway safety problem area analysis ranks counties and cities by the severity of the total crash problem based on average ranking of the following:

- total crashes;
- fatal crashes;
- injury crashes;
- total crash rate;
- fatal crash rate;
- injury crash rate;
- alcohol-related crashes;
- alcohol-related fatal crashes;
- alcohol-related injury crashes;
- teenage total crashes;

- teenage fatal crashes;
- teenage injury crashes;
- motorcycle crashes; and
- pedestrian crashes.

Analysis of data is also performed on crash severity by time of the day and population. Supporting data analysis includes DUI arrest activity, severity of teenage crashes, and severity of single vehicle crashes (surrogate measures for drinking and driving).

KDOT has created a Kansas Strategic Highway Safety Plan (SHSP) that is based on scientific approach, is data driven and results oriented. The SHSP includes prevention, collaboration/partnerships, and improvement of information systems for decision making as strategies to address highway safety issues and concerns. The overall goal is to reduce the total number of fatalities and injuries. The impaired driving program is one of the emphasis areas of the SHSP with key strategies identified as:

- Continue providing locals with training and resources for conducting sobriety checkpoints.
- Recruit additional local participation in the Impaired Driving Deterrence Program (IDDP).
- Conduct Alcohol Assessment of current programs scheduled for July 2006.
- Increase the number of presentations and distributions of materials given to general public on the dangers of impaired driving.
- Increase paid media dedicated to reducing impaired driving.
- Underwrite education for court system personnel on the impaired driving laws and techniques used for removing impaired drivers.
- Increase the number of Drug Recognition Experts (DREs) in the State and provide opportunities for officers to maintain their certification.
- Continue providing education for high school students on the dangers of impaired driving.
- Increase public awareness of impaired driving through presentations and educational materials.
- Provide new state of art breath alcohol testing equipment for use by law enforcement.
- Research and begin process of establishing a pilot DUI court in Kansas.

- Improve offender identification for law enforcement on driver licenses and improve identification of diversions in driving records.
- Support tougher DUI sentencing for all offenders.
- Initiate emergency room assessments and improve data collection.
- Increase enforcement such as random checkpoints and concentrated enforcement corridors.
- Advocate stronger and more uniform implementation of “Ignition Interlock” and vehicle impoundment.
- Improve data collection for alcohol-related crashes and improve coding for DUI offenses.

The plan also includes many other strategies that are very comprehensive in nature and includes pre-crash, crash, post-crash and driver, vehicle and roadway matrix elements.

One concern expressed was the inability of the state driver records system to capture all citations as well as dispositions of all citations issued. Also, the State currently does not have a statewide uniform traffic citation.

Many of the issues with data and traffic records were identified in the recently completed Traffic Records Assessment. Efforts are underway to implement many of the 49 recommendations. One of the most noteworthy recommendations is the creation of a data repository to house data extracted from various traffic records components such as citation databases, EMS and Trauma database, and driver and vehicle databases. Other recommendations deal with the citations data. There are approximately 10 times as many citations (720,000) issued as reported crashes (74,000).

Another major recommendation dealt with creation of a two-tiered Traffic Records Coordinating Committee (TRCC) and to task the TRCC with the development of the Traffic Records Strategic Plan. The Traffic Records Strategic Plan was completed in May 2006. The actions identified in the strategic plan will be a significant challenge to all traffic records stakeholders and information technology support functions within the State of Kansas. It should be noted that the plan identifies current strengths, weaknesses, internal opportunities, and internal threats. The plan provides for prudent and practical investment in technology infrastructure, development of enterprise applications, comprehensive information-sharing technology, and support solutions that can extend beyond the individual agencies and benefit the entire traffic records community.

There is no uniform statewide DUI arrest report form. While the quality and use of the DUI arrest report forms (e.g. Kansas Highway Patrol’s [KHP] Alcohol/Drug Influence Report) was unclear, it includes information regarding location of the last point of alcohol sale, service or use. Such information is critical to assist in the enforcement of state liquor laws. The Kansas Department of Revenue (KDOR) Alcoholic Beverage Control (ABC) does not participate in the statewide TRCC.

Information was also provided that the driver records are incomplete as far as DUI convictions and diversions are concerned, making it difficult to address multiple DUI violations and any resulting convictions.

## **Recommendations**

- ◆ Develop a data dictionary for a uniform traffic citation and a plan for implementing a uniform traffic citation statewide.
- ◆ Design and implement a centralized statewide citation tracking system containing information about a citation from “cradle to grave.”
- ◆ Develop a data dictionary for a uniform DUI arrest report form and a plan for implementing a uniform DUI arrest report form statewide.
- ◆ Implement the use of the DUI arrest reports by ABC to provide an additional tool to enforce state liquor laws.
- ◆ Continue the development of a Geographic Information System platform to serve as the enterprise system for KDOT roadway and safety database.
- ◆ **Expand membership in the statewide TRCC to include participation by all stakeholders, including but not limited to ABC, Kansas Licensed Beverage Association, Kansas Association of Beverage Retailers, Kansas Social Rehabilitation Services, DUI Victim Center of Kansas, representation by county, district and municipal prosecutors.**
- ◆ Continue the current efforts to create a traffic records data repository to initially include the citations, crashes, and driver history files.
- ◆ Implement the Traffic Records Strategic Plan.

## **1-E: Evaluation**

### **Advisory**

*States should routinely evaluate all impaired driving programs and activities to determine effectiveness and ensure that resources are allocated appropriately. The evaluation should be:*

- *Planned before programs are initiated to ensure appropriate data are available and adequate resources are allocated.*
- *Designed to use available traffic records and other injury data.*
- *Used to determine whether goals and objectives have been met and to guide future programs and activities.*
- *Organized and completed at State and local levels.*
- *Reported regularly to project and program managers and policy makers.*

### **Status**

No statewide research or evaluation exists for impaired driving programs or activities. Individual agency or project-specific evaluation does exist, yet the interaction from one agency to another is weak or missing entirely.

The Bureau of Traffic Safety does publish community data in the annual Highway Safety Plan which is more in-depth than in past years. Program Managers and the Bureau Chief spend time in the problem identification phase to evaluate the locations or countermeasures that are likely priorities for the highway safety office grant funding. There are recent positive results in the impaired driving measures; however nothing can be directly tied to any recent change.

No central data source exists for a statewide data report. On a summary level many agencies currently report their own independent information. In some cases, the information is only shared if requested.

### **Recommendations**

- ◆ Publish an Impaired Driving Data Report that includes state level reports from the various agencies responsible for a portion of the impaired driving system.
- ◆ Require an evaluation of any new policy or law impacting the impaired driving system.

## 1-F: Resources

### Advisory

*States should allocate sufficient funding, staffing, and other resources to support impaired driving program. Programs should seek to be self-sufficient and costs should be borne by impaired drivers. The ultimate goal is for State impaired driving programs to be fully supported by impaired drivers and to avoid dependence on other funding sources. States should allocate funding, staffing, and other resources to impaired driving programs that are:*

- *Adequate to meet program needs and proportional to the impaired driving problem.*
- *Steady and derived from dedicated sources, which may include public or private funds.*
- *Financially self-sufficient and, to the extent possible, paid by the impaired drivers themselves. Some States achieve financial self-sufficiency using fines, fees, assessments, surcharges, or taxes. Revenue collected from these sources should be used for impaired driving programs rather than returned to the State Treasury or General Fund.*

### Status

The costs related to the impaired driver are not borne by the offender. The costs associated with the evaluation, capped at \$150 per statute, appear to be the only fee directly paid by the offender. Costs for treatment and monitoring are covered by third-parties or government funds in a majority of cases.

Associated fees in the court costs to the offender do include small amounts toward dedicated programs:

- \$ 1.00            Local training program
- \$11.50          Kansas Law Enforcement Training Center
- \$ 2.00            Juvenile Detention Facility
- \$ 0.50            Project Abuse
- \$ 0.50            Crime Victims
- \$ 1.00            Trauma Fund
- \$ 2.50            Kansas Commission POST

It is unclear if there is an issue with the collection of the fines or fees from impaired driving offenders.

Within the Bureau of Traffic Safety, a large percentage of the dedicated and flexible highway safety funds are programmed in the impaired driving program area. The amount has not been below 31 percent in any recent year.

A small amount of the revenues generated from the sale of alcohol are used for the training or equipment needs related to impaired driving. A majority are sent to the local or state general fund which can be allocated to multiple different uses.

The Bureau does not staff the impaired driving program with a dedicated full-time employee. The current work is distributed among three staff members.

### **Recommendations**

- ◆ **Establish an impaired driving program coordinator for full program oversight, not just for grants management.**
- ◆ Conduct a statistically valid study on the amount of fine and fees actually paid by DUI offenders.
- ◆ Increase the percentage of alcohol tax revenues dedicated to impaired driving programs.

## II. PREVENTION

Prevention programs seek to reduce impaired driving through approaches commonly associated with public health – altering social norms, changing risky or dangerous behaviors, and creating safe environments. Prevention programs promote activities that educate the public on the effects of alcohol and other drugs, limit availability, and discourage those impaired by alcohol and other drugs from driving. Prevention programs may include responsible alcohol service practices, transportation alternatives, public information and education, and community-based programs carried out in schools, at work sites, in medical and health care facilities, and by community coalitions. Programs should prevent underage drinking for persons under 21 years of age. They should prevent over-service and impaired driving by persons 21 or older. Prevention efforts should be directed toward populations at greatest risk. They should use programs and activities that are science-based and determined to be effective.

### 2-A: Communication Strategies

#### Advisory

*States should develop and implement communication strategies directed at underage drinking, impaired driving, and reducing the risk of injury, death and the resulting medical, legal, social and other costs. Communications should highlight and support specific program activities underway in the community and be culturally relevant and appropriate to the audience. States should:*

- *Focus their communication efforts on increasing knowledge and awareness, changing attitudes and modifying behavior.*
- *Develop and implement a year round communication plan that includes:*
  - \* *Messages that are coordinated with National campaigns*
  - \* *Special emphasis during Holiday periods and other high risk times throughout the year, such as New Year's, 4<sup>th</sup> of July, Labor Day, Halloween, Prom Season and Graduation*
  - \* *Appropriate use of message platforms that emphasize underage drinking, impaired driving enforcement and personal responsibility, including the use of designated drivers and alternative transportation*
  - \* *Messages that are culturally relevant and linguistically appropriate*
  - \* *Paid, earned and donated media*
- *Direct communication efforts at populations and geographic areas at highest risk or with emerging problems (such as youth, young adults, repeat and high BAC offenders and drivers who use prescription or over-the-counter drugs that cause impairment).*
- *Use creativity to encourage earned media coverage, using a variety of messages of “hooks” (such as inviting reporters to “ride-along” with law enforcement officers, conducting “happy hour” checkpoints or observing under-cover liquor law enforcement operations).*
- *Encourage communities, businesses and others to financially support and participate in communication efforts to extend their reach, particularly to populations and in geographic areas at highest risk.*

## **Status**

The Kansas Bureau of Traffic Safety conducts an approximately \$1.0 million federally funded program of public information, media, and education. The responsibility for the media portion is owned by one Bureau staff member.

The program conducts high visibility media campaigns in support of impaired driving programs, particularly during high risk driving times, high enforcement waves, and during the national campaign windows. The “You Drink, You Drive, You Lose” has been accepted as the state slogan and is supported by the media and local advocates.

The outreach for education and information is appropriately diverse for the State’s population. Paid media has been obtained to add an extra emphasis during peak campaign windows.

The Bureau supports an increasing number of involved law enforcement agencies with materials and campaign information. The number of involved agencies has increased almost three-fold. In addition the NHTSA law enforcement liaison and new management at the Bureau have made tremendous inroads with new enforcement agencies. This has allowed the identified slogan to be distributed and used in many smaller, local media outlets that are not a part of the paid media program.

Advocacy agencies and local programs have also added to the outreach and media messaging through their own contacts, clients, and presentations.

There were no indications of competing messages or slogans. The latest release of a new NHTSA theme may cause some issues for the State due to the late release of the information. Materials, hand-outs, and paid media commercials are already developed and promised that will run the “You Drink, You Drive, You Lose” theme.

Some permanent road sign messaging was observed as it related to construction and work zone operation. However no road signage or message boards were observed relating to any other highway safety program area. KDOT has adopted a policy to utilize variable message boards for work zone and traffic flow messages only.

## **Recommendations**

- ◆ Increase the number of law enforcement agencies and community programs that use the state selected theme for impaired driving mass media messaging.
- ◆ Assign the responsibility for DUI mass media, local outreach, and strategic communications to the Impaired Driving Program Manager.
- ◆ Continue the partnership and cooperation for the national media campaign emphasis times.
- ◆ Track the number of exposures received through paid, earned and donated media.

- ◆ Conduct survey of residents on the retention and message recall of the paid media messaging.
- ◆ Explore the ability to use Variable Message Signing or permanent road signing as a supplement to the State's mass media campaigns.

## **2-B: Responsible Alcohol Service**

### **Advisory**

*States should promote policies and practices that prevent underage drinking by persons under 21 years of age and over-service to persons 21 and older. States should:*

- *Adopt and enforce programs to prevent sales or service of alcoholic beverages to persons under the age of 21. Conduct compliance checks and “Cops in Shops” activities and support the proper use of technology in alcohol retail establishments, particularly those catering to youth, to verify proper and recognize false identification.*
- *Adopt and enforce alcohol beverage control regulations to prevent over-service. Prohibit service to visibly intoxicated patrons, restrict alcohol sales promotions (such as “happy hours”), limit hours of sale, establish conditions on the locations of establishments to limit impaired driving (e.g., zoning restrictions) and require beer keg registration.*
- *Provide adequate resources (including funds, staff, and training) to enforce alcohol beverage control regulations. Coordinate with traditional State, county, municipal, and tribal law enforcement agencies to determine where impaired drivers had their last drink and use this information to monitor compliance with regulations.*
- *Promote responsible alcohol service programs, written policies, and training.*
- *Encourage alcohol sales and service establishments to display educational information to discourage impaired driving and to actively promote designated driver and alternative transportation programs.*
- *Provide that commercial establishments and social hosts may be held responsible for damages caused by a patron or guest who was served alcohol when underage or visibly intoxicated (dram shop or social host liability.)*

### **Status**

In 1880 Kansas became the first state to enact prohibition. It remained a dry state through the national prohibition period ending in 1948. Even after that time, Kansas allowed highly restricted access to alcohol. Kansas was home to Carrie Nation, the fabled temperance leader made famous for destroying illegal bars with her axe. Currently, Kansas has a set of Alcohol Beverage Control laws that address most areas of alcohol control and the regulation of the sale of alcohol. With estimated consumption of less than two gallons of ethanol per capita, Kansas is among the lowest consumption states in the U.S.

Kansas is a “license” state, that is, alcohol for off-premise consumptions is sold in private retail outlets licensed by the Kansas Department of Revenue, Division of Alcoholic Beverage Control (KABC). KABC also licenses drinking establishments such as bars, clubs and restaurants serving alcohol for on-premise consumption.

Liquor stores may sell for off-premise consumption between 9:00 a.m. and 11:00 p.m. while on-premise sales at drinking establishments are allowed between 9:00 a.m. and 2:00 a.m.

KABC employs approximately 20 agents to monitor 3,000 licensees including 700 liquor stores and 2,300 drinking establishments. KABC provides training for local agents on the rules and

regulations of ABC enforcement and provides training for local organizations such as MADD and SADD. KABC works with local law enforcement on enforcement efforts including compliance checks, Cops-in-shops and control buys. A recent controlled buy program found 90 percent compliance with restrictions on sales to minors.

Under Kansas law, malt beverages with less than 3.2 percent alcohol by weight are not classified as beer but as cereal malt beverages. These are sold for off-premise consumption in a variety of outlets such as convenience stores. Licenses for sale of cereal malt beverage are issued by municipalities rather than KABC. Since there is no statewide agency with responsibility for licensing cereal malt beverage sales, the number of licensed outlets is unknown. Cereal malt beverages may not be sold to individuals younger than 21 years of age.

There is currently no mandate or significant incentives for server training. Server training is available through the Kansas Association of Beverage Retailers and the Kansas Licensed Beverage Association.

Kansas recently enacted a keg registration law that requires purchasers of kegs to provide identifying information. This information is kept on record until the keg is returned to the retailer.

Kansas prohibits sales promotions such as happy hours, two-for-one or drinking contests.

Kansas law prohibits the sale of alcohol without liquid (AWOL) products that have recently been introduced in other states.

Kansas recently enacted an extremely limited social host alcohol server liability law, known as the “hosting bill.” A social host, who serves alcohol to persons under the age of 18, can be held liable for damages suffered as a result of that person’s actions. Damages are collected through criminal prosecution of the social host for furnishing alcohol to minors. Collection is not allowed through a separate civil action. This law does not impose liability upon a social host who serves to minors between the ages of 18 and 21.

No dram shop liability exists in Kansas. Servers or licensees are not held liable for damages as a result of serving underage or visibly intoxicated persons. Attempts to enact or create dram shop liability in Kansas have been rejected over the years.

## **Recommendations**

- ◆ Enact a social host liability law that uniformly gives victims of DUI fair and equal access to the courts.
- ◆ Enact a comprehensive dram shop liability law that gives victims of DUI fair and equal access to the courts.
- ◆ Mandate server training for all licensed establishments to be funded by the applicant and/or the establishment.

## **2-C: Transportation Alternatives**

### **Advisory**

*States should promote alternative transportation programs that enable drinkers 21 and older to reach their destinations without driving. States should:*

- *Actively promote designated driver and safe ride programs, especially during high-risk times, such as holidays or special events.*
- *Encourage the formation of public and private partnerships to financially support alternative transportation programs.*

### **Status**

Emporia State University's Student Government organizes and maintains the Safe Ride program. This program allows students to call a cab when they feel too impaired to drive. Students are required to sign an alcohol awareness form upon enrollment at the university.

The State of Kansas appears to have a successful "Designated Driver" campaign. Several comments were made to the effect that this campaign has reduced the number of impaired drivers located on the roadways of Kansas. Law enforcement reports a dramatic increase in designated drivers at sobriety checkpoints.

Some bars in Kansas have also started to provide a designated driver for visibly alcohol-impaired drivers leaving their establishments.

### **Recommendations**

- ◆ Continue to form working relationships with private and public partners in promoting and financing safe ride programs.
- ◆ Encourage alcohol servers and owners to recommend alternate transportation to visibly impaired patrons.
- ◆ Explore alternate ride outreach for public transit providers in the urban settings as a viable safe ride.

## **2-D: Community-Based Programs**

Community-based programs implement prevention strategies at the local level through a variety of settings, including in partnerships involving traffic safety, schools, employers, medical and health care professionals, and community coalitions and traffic safety programs.

### **2-D-1: Schools**

#### **Advisory**

*School-based prevention programs, elementary school through college and trade school, can play a critical role in preventing underage drinking and impaired driving. These programs should be developmentally appropriate, culturally relevant, and coordinated with drug prevention and health promotion programs. States should:*

- *Implement K-12 traffic safety education, with appropriate emphasis on underage drinking and impaired driving, as part of a comprehensive health education program.*
- *Promote alcohol- and drug-free events throughout the year, with particular emphasis on high-risk times, such as homecoming, spring break, prom and graduation.*
- *Establish and support student organizations that promote traffic safety and responsible decisions; encourage statewide coordination among these groups.*
- *Provide training to school personnel (such as resource officers, health care providers, counselors, health educators, and coaches) to enable them to provide information to students about traffic safety and responsible decisions, and identify students who may have used alcohol or other drugs (Drug Impairment Training for Education Professionals).*
- *Encourage colleges, universities, and trade schools to establish and enforce policies to reduce alcohol, other drug, and traffic safety problems on campus, and to work with local businesses and law enforcement agencies to reduce such problems in neighboring communities.*

#### **Status**

The Kansas Drunk Driving Prevention (KDDP) Office is a contract program between the Kansas Department of Transportation and the Kansas State Nurses Association. The mission of the KDDP Office is to reduce the number of deaths and injuries by educational and public awareness efforts. The Office works with local coalitions, schools and other groups to provide materials and other resources. KDDP conducts a statewide survey of students in middle and high school to gauge attitudes and behaviors related to alcohol use and impaired driving. The survey asks specific questions about driving after drinking and where alcohol is obtained.

KDDP also provides materials addressing underage drinking including *Parents' Guide to Teen Parties and the Law*.

There is apparently no required safety education program in Kansas schools. Many schools utilize Life Skills Training (LST) and other science based prevention strategies to reduce substance abuse including impaired driving.

Students Against Destructive Decisions (SADD) has been active in schools throughout Kansas for over 20 years. Currently there are 282 chapters in middle and high schools. Chapters conduct impaired driving related activities such as Red Ribbon Week and mock crashes.

Approximately half of all schools in Kansas have School Resource Officers (SRO). While the primary functions of SROs is to provide safety and intervene in problem behaviors, SROs in Kansas also provide programs using such methods as DUI simulators or Fatal Vision goggles.

Two hundred fifty Drug Abuse Resistance Education (D.A.R.E.) officers are placed throughout the State to provide drug and violence prevention education to students. Kansas D.A.R.E. has formed partnerships with SADD and other preventive organizations to enhance their prevention message and reach more students. Some officers also provide Gang Resistance Education and Training (G.R.E.A.T.) addressing gang awareness and violence education within the schools.

Kansas juvenile statute authorizes Immediate Intervention (K.S.A. 38-1635). Juveniles who are accepted and successfully complete the program will have their charges dismissed without a finding of guilt. The program is similar to "diversion" for adults. Some prosecutors utilize Immediate Intervention with first-time alcohol and/or drug offenders. The program includes a contract that addresses avoiding illegal behaviors, attending a course and interaction with parents, school personnel and SROs.

College programs in Kansas appear to rely heavily on designated driver and safe ride programs. Representatives of law enforcement and others provided anecdotal information about seeing more designated drivers at checklanes and at other traffic stops. However, there was also concern expressed by some presenters that there is a significant number of rapes, fights, injuries and other alcohol-related problems involving college students in their jurisdictions. Several studies have indicated that safe ride and designated driver programs enable non-drivers to consume more alcohol potentially leading to these and other alcohol-related problems. In addition, promoting safe ride and designated driver programs for underage drinkers sends the message that violating the law is acceptable as long as the drinkers do not drive.

## **Recommendations**

- ◆ Integrate impaired driving information into all substance abuse prevention and health and wellness curriculums in schools.
- ◆ **Structure designated driver programs so that they do not enable underage drinking or over-consumption by non-drivers.**

## **2-D-2: Employers**

### **Advisory**

*States should provide information and technical assistance to employers and encourage them to offer programs to reduce underage drinking and impaired driving by their employees and their families. These programs should include:*

- *Model policies to address underage drinking, impaired driving and other traffic safety issues, including safety belt use and speeding.*
- *Employee awareness and education programs.*
- *Management training to recognize alcohol and drug use and abuse, and appropriate responses.*
- *Screening and brief intervention, assessment and treatment programs for employees, as appropriate, such as through an employee assistance program.*
- *Underage drinking and impaired driving prevention programs for youthful employees and programs that address use of prescription or over-the-counter drugs that cause impairment.*

### **Status**

The team was provided no information about employer programs. The Network of Employers for Traffic Safety (NETS) program is not operating in Kansas.

Employee Assistance Programs (EAPs) are available to employers throughout Kansas through organizations such as the Substance Abuse Center of Kansas (SACK) and the Healthquest program of the Kansas State Department of Administration.

Nationally, the trend has been toward fewer large employers with most people employed by small businesses. Kansas, as an agricultural state, has few employers in which to implement large safety programs.

### **Recommendations**

- ◆ Provide traffic safety information, training, and materials to public and private organizations that provide workplace safety or EAP services.

## 2-D-3: Community Coalitions and Traffic Safety Programs

### Advisory

*Community coalitions and traffic safety programs provide the opportunity to conduct prevention programs collaboratively with other interested parties at the local level, and may include representatives of government - highway safety, enforcement, criminal justice, public health, driver licensing, and education, business – employers and unions, the military, medical, health care, and treatment communities, and multi-cultural, faith-based, advocacy, and other community groups. States should:*

- *Encourage communities to establish community coalitions or traffic safety programs, comprised of a wide variety of community members and leaders.*
- *Provide information and technical information to these groups, including data concerning the problem in the community and information identifying science-based underage drinking and impaired driving programs.*
- *Encourage these groups to provide support for local law enforcement and prevention efforts aimed at reducing underage drinking and impaired driving, including designated driver and alternative transportation programs for persons 21 or older.*
- *Encourage professionals, such as prosecutors, judges, nurses, doctors, emergency medical personnel, law enforcement officers, and treatment professionals, to serve as community spokespeople to educate the public about the consequences of underage drinking and impaired driving.*

### Status

The Kansas Drunk Driving Prevention (KDDP) Office is a contract program between the Kansas Department of Transportation (KDOT) and the Kansas State Nurses Association. The mission of the KDDP Office is to reduce the number of deaths and injuries by educational and public awareness efforts. The Office works with local coalitions, schools, and other groups to provide materials and other resources. The Office has several campaigns including: “There’s No Excuse for Driving Drunk” aimed at all age groups and “Hand ‘Em Over to Someone Sober” promoting designated drivers. In addition, “Care About Underage Drinking, Make the Right Call” targets law enforcement and liquor retailers by distributing “Cops-in-Shops” materials, supporting server training, providing a safe and sober event planner and operating a 1-800-MUSTB21 phone number to report underage drinking.

The KDDP Office also hosts two-day seminars for Kansans interested in developing local efforts including establishing coalitions in their communities. In addition, KDDP prepares and distributes a newsletter called The Advocate with articles addressing underage drinking, DUI enforcement and other alcohol-related issues.

The Highway Safety Plan for 2006 indicates a goal of establishing “community-level traffic safety programs to promote partnerships, communication and collaboration statewide; 5 programs by 2006 and 10 by 2008.” However, there was no information provided regarding local traffic safety coalitions currently addressing impaired driving.

Because of limited traffic safety prevention resources many states have reduced their emphasis on community coalitions addressing limited traffic safety issues. At the same time the past several years have seen significant federal resources allocated to substance abuse prevention with an emphasis on capacity building through development of community coalitions. Kansas has several local coalitions funded through the Drug Free Community Support Program and Community Alcohol and Drug Abuse Coalitions of America (CADCA) lists 12 community level coalitions in Kansas. Websites for Regional Prevention Centers list many more local coalitions to which services are provided.

The Kansas Social and Rehabilitation Services/Addiction and Prevention Services support a statewide system of 13 Regional Prevention Centers. The Centers are intended to provide leadership in achieving outcomes to reduce the risk for adolescent behaviors through enhancing protective factors in important areas of children's lives: community, family, peers and school. Centers provide technical assistance to numerous community coalitions that address substance abuse prevention and youth development.

The Kansas Governor's Office has established the Governor's S.A.F.E. Communities Program. According to the project website, the program "administers grant programs and staffs boards and councils focused on improving and supporting public safety, drug and violence prevention, crime intervention, treatment, information technology, the criminal justice system and crime victim services." The program's service categories include: Policy & Strategic Planning, Grants Management, Results Analysis, Training & Resources. The Governor's S.A.F.E. Communities mission statement is as follows: "The Governor's S.A.F.E. Communities Program values Kansans living in healthy communities, where they can grow, learn, feel safe, and thrive economically. The program strives to remove obstacles in Kansas communities, neighborhoods, schools, businesses and homes to ensure the safety and security of all Kansans. By administering federal and state grants to state and local units of government, non-profits, community and faith-based organizations throughout the State, the program aims to enhance the criminal justice system, improve public safety, support crime victim services and drug and violence prevention programs throughout Kansas."

The efforts described above are likely to have an impact on substance abuse and therefore on impaired driving, especially among young people. However, information available to the assessment team does not allow a determination of the extent to which local traffic safety advocates and professionals participate in the various coalition efforts nor the extent to which impaired driving issues are addressed by these coalitions.

## **Recommendations**

- ◆ **Include traffic safety advocates and professionals in the planning, development and implementation of prevention strategies of all community coalitions addressing substance abuse, youth development and/or safety.**
- ◆ Include KDOT, through the Bureau of Traffic Safety, as an active member of the Governor's S.A.F.E. Communities Programs.

### III. CRIMINAL JUSTICE SYSTEM

Each State should use various components of its criminal justice system – laws, enforcement, prosecution, adjudication, criminal and administrative sanctions, and associated publicity - to achieve both specific and general deterrence.

Specific deterrence seeks to increase the probability that impaired drivers will be detected, arrested, prosecuted, and subject to swift, sure, and appropriate sanctions. Using these measures, the criminal justice system seeks to reduce future recidivism. General deterrence seeks to increase the perception that impaired drivers will face these consequences, so people who might otherwise be tempted to do so will choose not to drive impaired.

A multidisciplinary approach and close coordination among all components of the criminal justice system are needed to make the system work effectively. In addition, coordination among law enforcement agencies, on the State, county, municipal, and tribal levels, is needed to create and sustain both specific and general deterrence.

#### 3-A: Impaired Driving Laws

##### Advisory

*Impaired driving laws should be sound, rigorous, and easy to enforce and administer. The laws should clearly: define the offenses; contain provisions that facilitate effective enforcement; and establish effective consequences. The offenses should include:*

- *Driving while impaired by alcohol or other drugs (whether illegal, prescription, or over-the-counter), and treating both offenses with similar consequences.*
- *A blood alcohol concentration (BAC) limit of 0.08, making it illegal “per se” to operate a vehicle at or above this level without having to prove impairment.*
- *Zero Tolerance for underage drivers, making it illegal “per se” for persons under age 21 to drive with any measurable amount of alcohol (e.g., 0.02 or greater).*
- *High BAC (e.g., 0.15 or greater), with enhanced sanctions above the standard impaired driving offense.*
- *Repeat offender, with increasing sanctions for each subsequent offense.*
- *Test refusal, with sanctions comparable to or stricter than a high BAC offense.*
- *Driving with a license suspended or revoked for impaired driving, vehicular homicide or causing personal injury while driving impaired as separate offenses, with additional sanctions.*
- *Open container, which prohibits possession or consumption of any open alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way.*
- *Primary safety belt requirements, which do not require that officers observe or cite the driver for another offense.*
- *Provisions to enhance effective enforcement should:*
- *Authorize law enforcement to conduct sobriety checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether operators are driving while impaired by alcohol or other drugs.*

- *Authorize law enforcement to use passive alcohol sensors to improve detection of alcohol in drivers.*
- *Authorize law enforcement to obtain more than one chemical test from an operator suspected of impaired driving, including preliminary breath tests, evidential breath tests, and screening and confirmatory tests for alcohol or other impairing drugs.*
- *Require mandatory BAC testing of drivers involved in fatal and serious injury-producing crashes.*

*Effective penalties should include:*

- *Administrative license suspension or revocation (ALR), for failing or refusing to submit to a BAC or other drug test.*
- *Prompt and certain administrative license suspension of at least 90 days for first offenders determined by chemical test(s) to be at or above the State's "per se" level.*
- *Enhanced penalties for test refusals, high BAC, repeat offenders, driving with a suspended or revoked license, vehicular homicide or causing personal injury while driving impaired, including: longer license suspension or revocation; installation of ignition interlock; license plate confiscation; vehicle impoundment, immobilization or forfeiture; intensive supervision and electronic monitoring; and threat of imprisonment.*
- *Assessment for alcohol or other drug abuse problems for all impaired driving offenders and, as appropriate, treatment, abstention from use of alcohol and other drugs, and frequent monitoring.*
- *Driver license suspension for persons under age 21 for any violation of law involving the use or possession of alcohol or illicit drugs.*

## **Status**

Kansas has a comprehensive set of laws to address the impaired driving problem. The laws fall into several categories as follows:

- Driving under the influence (DUI) of alcohol or drugs or a combination of either;
- Per se alcohol concentration laws;
- Mandatory penalties including repeat offender enhanced penalties;
- Standards for breath test equipment and operator authorization;
- DUI causing death;
- Habitual offender and habitual user of drugs;
- Youthful offender and youthful licensing;
- Commercial motor vehicles and commercial drivers license;

- Implied consent to alcohol concentration test and administrative license revocation for test failure or refusal;
- Affirmative administrative duties and specific DUI evidentiary rules for courts; and
- Sentencing tools.

## Offenses

The Kansas legislature has statutorily declared that it is the public policy of the State to provide maximum safety to travelers on its highways, and to deny motor vehicle operating privileges to persons who by conduct, attitude, and record demonstrate indifference to the safety and welfare of others, as well as to the laws, the orders of its courts, and the acts of its administrative agencies.

The primary offense in the campaign against impaired driving is driving under the influence (DUI) of alcohol or drugs. “Under the influence” is defined as being incapable of safely driving a vehicle as a result of the use of alcohol and/or drugs. Municipalities and counties may enact DUI ordinances or resolutions that are equal to or more restrictive than state law.

The per se law is alcohol specific. There are several applications of this law. A blood or breath alcohol concentration of eight one-hundredths of one (0.08) is the primary per se law and carries the same penalties and implications as DUI. A person under the age of twenty-one (21) is subject to a standard of two one-hundredths of one (0.02). An operator of a commercial motor vehicle (CMV) is subject to a standard of four one-hundredths of one (0.04). “Alcohol concentration” means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

Both DUI and per se violations are absolute liability offenses. DUI causing death is defined as involuntary manslaughter which is a severity level 4 person felony.

Refusing to submit to a chemical test for intoxication is sanctioned through administrative license revocation (ALR). However, refusal to submit to a preliminary breath screening test is a traffic infraction offense.

Operation of a CMV with a blood alcohol concentration of four one-hundredths of one or greater (0.04) is a DUI misdemeanor offense. Commercial driver license (CDL) sanctions occur even if the CDL holder commits an alcohol offense in a non-commercial vehicle. CDL holders are prohibited from DUI diversion eligibility as well as the granting of a restricted driver license.

The offense of driving while suspended carries enhanced penalties if the suspension is the result of ALR or DUI conviction. In addition, driving in violation of court-ordered restrictions upon driving privileges is a misdemeanor offense.

Recidivist violators are subject to two status identifiers in the impaired driving setting. A habitual violator is determined by the Division of Motor Vehicles (DMV) upon review of a

person's driving record if it shows that the person fits within the statutory definition. A habitual violator status occurs when a driver accumulates a certain number of convictions for various offenses including DUI. The habitual violator is subject to administrative sanctions imposed by DMV. A person driving in violation of a habitual offender suspension commits a misdemeanor. The second status is habitual user of narcotic, hypnotic, somnifacient or stimulating drug. It is a criminal offense for a habitual drug user to merely operate or attempt to operate any vehicle.

Other laws in the arsenal to fight impaired driving include open container of alcohol, minors in possession or transporting alcohol, unlawful lending or use of another person's ID by minors, keg registration, social host liability for underage drinking, and admissibility of preliminary breath screening test results at trial for violation of underage drinking. Kansas lacks social host liability if the occurrence does not involve drinking by persons under age 18.

Kansas does not have an enhanced alcohol concentration offense, nor a separate offense for DUI causing serious bodily injury. Serious bodily injury is only weighed as a sentence aggravator.

Despite the appearance of a comprehensive impaired driving statutory scheme, there are some methods of avoiding some laws. The keg law has apparently caused an increase in canned beer sales. The social host liability law is very restrictive in its application to underage drinking occurrences and only if drinkers are under the age of 18. Thus a social host of alcohol to persons 18-20 years of age escapes social host liability. An attorney general opinion disregards federal preemption in establishing CDL sanctions as it relates to diversions. An offender culture of breath test refusal and inadequate driver records of prior DUI convictions makes felony DUI prosecution a challenge.

### Penalties and Sentencing Tools

The DUI and per se offense penalty scheme graduates as the number of convictions increase. First and second offenses are misdemeanors. A third or subsequent offense is a felony; however the maximum jail sentence remains the same no matter how many subsequent convictions an offender accumulates past three. The prior DUI convictions are counted over a lifetime and are not restricted to a set period of time. However, state DMV records for prior DUI convictions only go back to 1996. State law allows a DUI conviction to be expunged by the court after 5 years. Any violation of the Kansas DUI statute, pre-adjudication diversions, and violations of DUI statutes from other states count as a prior offense. The DUI and per se offense penalties are as follows:

# of Offense	Level of Offense	Fine	Jail Term	Mandatory Minimum Sentence	License Suspension		Treatment
1 <sup>st</sup>	Nonperson B Misdemeanor	\$500 - 1,000	48 hrs – 6 mos or 100 hrs of public service in lieu of jail	48 consecutive hrs or public service	30 days & restrictions for next 30 days	1 yr if under age 21	Alcohol & drug safety action program
2 <sup>nd</sup>	Nonperson A Misdemeanor	\$1,000 - 1,500	90 days – 1 yr	5 consecutive days which can be work release or house arrest	1 yr & interlock for 1 additional yr		Treatment as condition of probation or suspended sentence
3 <sup>rd</sup>	Nonperson Felony	\$1,500 - 2,500	90 days – 1 yr	90 days which can be work release or house arrest	1 yr & interlock for 1 additional yr		Treatment as condition of parole
4 <sup>th</sup> or subsequent	Nonperson Felony	\$2,500	90 days – 1 yr	90 days which can be work release No house arrest option. Also 1 yr post-release supervision	1 yr & interlock for 1 additional yr		Treatment as condition of parole & can require in-patient

There are several peculiarities to the mandatory minimum sentence. On a 2<sup>nd</sup> or 3<sup>rd</sup> DUI, at least 48 consecutive hours of the sentence must be served in jail. On a 4<sup>th</sup> or subsequent DUI, at least 72 consecutive hours of the sentence must be served in jail. Also, on a 4<sup>th</sup> or subsequent DUI, the mandatory minimum sentence must be followed by one year of post-release supervision.

In addition to these charted penalties, a court may also impound a vehicle for up to one year. Also, upon a 4<sup>th</sup> or subsequent offense a court may revoke a vehicle's plate or registration for one year. A 5<sup>th</sup> offense for DUI results in permanent driver license revocation. An offense that occurs with a passenger under the age of 14 carries a sentence enhancement of an additional one month and it is permissible for that sentence to be served on work release or house arrest.

The maximum jail sentence for repeat offense DUI never goes beyond one year no matter how many prior DUI convictions. Also, the mandatory driver license suspension remains constant at one year for 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> convictions. The enhanced penalties for repeat offenders lie in the fine structure, the mandatory minimum sentence, and deprivation of house arrest as an alternative to jail. The lack of significant enhanced penalties for repeat offenders is viewed as a weak link in the sentencing scheme.

Offenders aged 14 through 17 are treated as adults and are prosecuted in adult court for DUI. They face the same sentence structure as adults except the maximum jail sentence is 10 days in a juvenile detention facility. The remainder of an executed sentence can be served on house arrest.

Additional monetary sanctions include a \$150 assessment against the defendant for the alcohol and drug safety action fund. In lieu of any fine, the court may order the defendant to perform public service to be credited at \$5 per each hour served.

Both the DMV and the sentencing court may impose reasonable restrictions on driving privileges. A court may impose a restricted license in lieu of a revoked license. However, restricted driving privileges are prohibited for offenders who committed the DUI in a CMV. Reasonable restrictions may include driving to, from, and in the course of employment; to and from probation or parole meetings; to and from drug or alcohol treatment; or to such places and at such times as specified by the order. Also, a restriction can be the imposition of an ignition interlock device in lieu of revocation or suspension. The offender must carry a certified copy of the court's order imposing the restrictions at any time he/she is operating a vehicle.

Pre-sentence alcohol and drug evaluation shall be conducted on any person convicted of DUI and shall be made available to, and shall be considered by the court prior to sentencing. Also, prior to sentencing, the court shall request and shall receive from the DMV a record of all prior convictions obtained against the defendant. Any conviction during a defendant's lifetime shall be taken into account when determining a sentence. It is irrelevant if an offense occurred before or after conviction for a previous offense. A defendant may enter into a DUI diversion agreement only once in a lifetime. No plea bargaining agreement shall be entered, nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a defendant to avoid mandatory DUI penalties.

The sentencing court has an affirmative duty to require the offender to surrender to the court all driver licenses then held by the person.

DUI causing death is a severity level 4 person felony and the sentence is determined through a complicated sentencing grid. If the defendant has no prior DUI convictions, the sentence range is between 38 months and 43 months. The maximum sentence with aggravating circumstances is 172 months.

Administrative license revocation for a breath test refusal or failure is also graduated as follows:

	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>3<sup>rd</sup></b>	<b>4<sup>th</sup></b>	<b>5<sup>th</sup> or subsequent</b>
<b>Refusal</b>	1 year	2 years	3 years	10 years	Permanent Revocation
<b>Test Failure</b>	30 days	1 yr followed by 1 year Interlock	1 yr followed by 1 year Interlock	1 yr followed by 1 year Interlock	Permanent Revocation

If the offender is under age 21, any refusal or test failure suspension is for one year followed by re-examination by DMV.

### Administration and Evidence

Any person who operates a motor vehicle in Kansas has impliedly consented to one or more tests of the person's breath, blood, urine, or other bodily substance to determine the presence of alcohol or drugs. A law enforcement officer must have reasonable grounds to believe a person was operating or attempting to operate a vehicle while under the influence of alcohol, drugs, or both. Also, implied consent applies to persons under age 21 when a law enforcement officer has reasonable grounds to believe that the minor while having alcohol or other drugs in his/her system has either:

- been arrested or taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; or
- been involved in a collision resulting in property damage, personal injury or death.

An oral and written notice of Kansas implied consent law and penalties is a prerequisite to any test administration under the implied consent law.

Only a physician, or a person acting under a physician's supervision, a registered or licensed practical nurse, phlebotomist, or qualified medical technician may draw blood for the purpose of alcohol concentration testing. A person being tested shall be given a reasonable opportunity to have a physician of his/her choosing to perform a second test for intoxication. This provision is not utilized very often by offenders. Blood draws pursuant to search warrant after a breath test refusal are prohibited by case law (*State v. Adee*; *State v. Befort*).

Technical irregularities in the consent or notice requirements of implied consent do not effect the admissibility of a blood or breath test result at trial. Likewise, facts found at an ALR review hearing or trial de novo are not the law of the case. Those findings are independent of the determination of similar facts at trial. A trial disposition in favor of the defendant shall not affect the ALR suspension determination.

A test result or a test refusal is admissible as evidence against the accused. A result of less than 0.08 may be considered with other competent evidence to determine if the accused was under the influence. A test result of 0.08 or more is prima facie evidence that the accused was under the influence of alcohol to such a degree that renders him/her incapable of driving safely.

Preliminary screening breath test may be used by law enforcement in determining whether an arrest should be made and whether to request a certified breath or blood test. Preliminary screening breath test results are not admissible in any civil or criminal action, except to review probable cause for arrest or administrative license revocation and to enforce violations of underage drinking.

Other permissible evidentiary tools include mandatory blood testing in DUI death and DUI serious injury crashes, implied consent to more than one alcohol or drug test, and sobriety checkpoints. Admissibility of horizontal gaze nystagmus (HGN) tests is hampered by an appellate court decision (*State v. Witte*). However, that decision has not imposed a blanket prohibition of admissibility of HGN test results, although many persons mistakenly believe so.

### **Recommendations**

- ◆ Enhance maximum jail sentence and maximum driver license suspension for repeat DUI offenders.
- ◆ **Improve the availability and accuracy of prior DUI conviction records.**
- ◆ Enact a DUI causing serious bodily injury offense.
- ◆ Enact a social host liability law that uniformly gives victims of DUI fair and equal access to the courts.
- ◆ **Enact an enhanced BAC offense for 0.15 or greater.**
- ◆ Comply with federal regulation that prohibits masking of a DUI offense committed by a CDL holder.

### **3-B: Enforcement**

#### **Advisory**

*States should conduct frequent, highly visible, well publicized, and fully coordinated impaired driving (including zero tolerance) law enforcement efforts throughout the State, especially in locations where alcohol-related fatalities most often occur. To maximize visibility, the State should conduct periodic heightened efforts and also sustained efforts throughout the year. Both periodic and sustained efforts should be supported by publicity. The State should coordinate efforts among State, county, municipal, and tribal law enforcement agencies. Participating officers should receive training in the latest law enforcement techniques. States should:*

- *Ensure that executive levels of law enforcement and State and local government make impaired driving enforcement a priority and provide adequate resources.*
- *Develop and implement a year-round impaired driving law enforcement plan, which includes:*
  - \* *periods of heightened enforcement (e.g., 3 consecutive weekends over a period of 16 days) and frequent (e.g., monthly), sustained coverage throughout the year*
  - \* *high level of participation and coordination among State, county, municipal, and tribal law enforcement agencies, such as through law enforcement task forces*
- *Use law enforcement professional(s) to serve as liaisons in the State and help enhance coordination and level of participation.*
- *Deploy enforcement resources based on problem identification, particularly at locations where alcohol-related fatal or other serious crashes most often occur.*
- *Conduct highly visible enforcement that maximizes contact between officers and drivers, including sobriety checkpoints and saturation patrols, and widely publicize these efforts - before, during, and after they occur.*
- *Coordinate efforts with liquor law enforcement officials (see Section II.A. Responsible Alcohol Service).*
- *Use technology (e.g., video equipment, portable evidentiary breath tests, passive alcohol sensors, and mobile data terminals) to enhance law enforcement efforts.*
- *Require law enforcement officers involved in traffic enforcement receive state-of-the-art training, such as Standardized Field Sobriety Testing (SFST), emerging technologies for the detection of alcohol and other drugs; selected officers should receive training in media relations, and Drug Evaluation and Classification (DEC).*
- *Expedite the arrest process (e.g., by reducing paperwork and processing time, from time of arrest to booking and/or release).*
- *Measure success, emphasizing quantitative data, including level of effort (e.g., number of participating agencies, checkpoints conducted, arrests made), public awareness (e.g., of message and actual enforcement), reported change in behavior (e.g., reported number of drinking driving trips), and outcomes (e.g., alcohol-related fatalities, injuries, and crashes).*

#### **Status**

According to the Kansas Department of Transportation (KDOT) Bureau of Traffic Safety (2004) reports there were 18,303 Driving Under the Influence (DUI) arrests in 2004. This number decreased from 21,235 DUI arrests made in 2003, and 7,579 arrests below the number of 25,882

arrests made in 1996. Of the arrests made in 2004, only 41 percent resulted in convictions. In 2004, there were 117 alcohol-related fatalities or 25 percent of all traffic fatalities.

There seems to be some differences of opinions as to why the number of DUI arrests has drastically diminished. Some presenters perceive the drop in arrests is a direct result of public education campaigns, designated driver campaigns, and the zero tolerance level in the State. Others do not necessarily agree with this analysis, believing that impaired driving enforcement is not a high priority of the agency heads, and the various traffic enforcement units are the first reduced of officers, in times of personnel shortages. Various causes of personnel shortages are normal attrition rates, Homeland Security issues, criminal/drug interdiction programs, and other personnel issues. There is a problem of agencies not having enough resources or funds to properly enforce impaired driving. It seems some agencies stopped or reduced any special impaired driving enforcement activities when grant funding ended. Also, there is an issue of officers not actively pursuing the impaired drivers due to problems or perception of problems within the judicial system.

Law enforcement officers agree that the administrative driver license hearing have become a second trial in the impaired driving prosecution. Defense attorneys seem to use the administrative hearings as a method of discovery. The law enforcement officer does not have an attorney for assistance during these proceedings.

There is concern from some members of the criminal justice system that judges may be less knowledgeable of the State's impaired driving statutes than law enforcement.

There is also confusion on what training the law enforcement officer receives in relationship to detecting an impaired driver. The Kansas Law Enforcement Training Center (KLETC) requires all new officers to have 24 hours of Standardized Field Sobriety Testing (SFST) training. There is no requirement for senior officers who did not receive this training in the state academy to attend SFST in-service training. There is no requirement for refresher training for SFST. The state agency provides its own SFST training and requires a four-hour refresher every two years, but this is not always met. The KLETC provides a four-hour refresher course to other agencies, but it is not clear how law enforcement agencies throughout the State of Kansas are notified of such training. This also holds true for impaired driving courses offered to judicial officers within the State by the state agency. Even though in-service training is available for law enforcement officer in the State, it is a concern that there are two different programs used to teach SFST and in return, two different refresher programs of in-service classes offered.

Officers of the court believe refresher training is needed on SFST. Law enforcement officers, trained in SFST years earlier, are required to testify in court without the benefit of receiving any retraining in SFST. Some presenters expressed concern about law enforcement officers' lack of confidence in their ability to adequately testify on SFST.

The Kansas Highway Patrol officers assist local jurisdictions with impaired driving enforcement and check lanes. There seems to be an agreement between jurisdictions to have multiple jurisdictional check lanes, even though impaired driving check lanes do not occur as often as they did previously. The impaired drivers check lanes are usually conducted at alcohol-related

crash locations or areas that are identified as frequently utilized by impaired drivers. Statistical information reporting results of the check lanes is compiled by the local jurisdiction.

There is concern over the effectiveness of an impaired driver checkpoint compared to saturation patrols. Even though both are desired, no specific data that measure the effectiveness of saturation patrols were found. There are statistics and recommendations concerning impaired driving checkpoints. It was found that the use of low-staffing sobriety checkpoints was beneficial during personnel shortages. The use of the low-staffing sobriety checkpoints have demonstrated a more efficient use of personnel resources, increased visibility and general deterrence through greater mobility, lower operational costs, and more participation by smaller agencies.

Law enforcement officers in the State of Kansas mainly use the Intoxilyzer 5000. Some of the agencies are using instruments that are 20 years old or have instruments that do not work. The State is in the process of testing and purchasing new instruments.

The statewide Drug Recognition Expert (DRE) coordinator, a retired highway patrol officer, is responsible for coordinating DRE courses. Presently, there are 75 officers trained in DRE, including 15 that are DRE instructors. Last year there were 375 evaluations conducted with very few ending up in court. Most DRE cases of impaired driving are usually pled down to a lesser charge. There was not any statistical information provided or found in reference to drug impaired driving.

## **Recommendations**

- ◆ Provide legal assistance to law enforcement officers during administrative driver license hearings.
- ◆ **Train law enforcement officers on the procedures and requirements of an administrative license hearing.**
- ◆ **Create a panel of prosecutors and law enforcement officials to meet quarterly and discuss issues with impaired driving prosecutions and officer's courtroom preparedness and testimony.**
- ◆ Provide substantive DUI education regularly to all judges and DMV hearing officers who adjudicate DUI cases and include SFST, HGN, DEC, and CDL curriculum.
- ◆ Offer a course on impaired driving statutes to officers of the court.
- ◆ Mandate SFST refresher training for all law enforcement officers completing the NHTSA/IACP-approved SFST training at a minimum of every two years.
- ◆ Standardize the course of instruction in SFST throughout the State.
- ◆ Implement use of low-staffing sobriety checkpoints.

### **3-C: Publicity to Enhance General Deterrence**

#### **Advisory**

*States should publicize impaired driving law enforcement efforts and other elements of the criminal justice system to increase the public perception of the risks of detection, arrest, prosecution, and sentencing for impaired driving. Publicity should be culturally relevant and appropriate to the audience. States should:*

- *Focus publicity efforts on creating a perception of risk of detection, arrest, prosecution, and punishment for impaired driving.*
- *Develop and implement a year-round media plan that includes:*
  - \* *messages coordinated with National campaigns*
  - \* *special emphasis during periods of heightened enforcement and high risk holiday periods (including coverage before and reports of results after)*
  - \* *regular (e.g., monthly), sustained coverage throughout the year, using messages (or “media hooks”) that are law enforcement related*
  - \* *paid, earned, and donated advertising*
- *Use clear, concise enforcement messages to increase public awareness of enforcement activities and criminal justice messages (e.g., that focus on penalties and direct costs to offenders such as loss of license, towing, fines, court costs, lawyer fees, insurance, etc.).*
- *Monitor and evaluate media efforts to measure public awareness and changes in attitudes and behavior.*

#### **Status**

The Kansas Department of Transportation (KDOT) Bureau of Traffic Safety has adopted and implemented the national campaigns: “Buckle Up America/Click it or Ticket,” “You Drink, You Drive, You Lose,” and “100 days of Summer.” They should be praised for their excellence in bringing the various jurisdictions together by increasing participation in the Impaired Driving Deterrence Program and the Special Traffic Enforcement Program.

KDOT uses communication tools such as outdoor ads, community banners, news releases, television, and radio. KDOT has a coalition with the university sports programs to advertise at the various sport games. KDOT also advertises wherever there is a function where their targeted age group may attend.

KDOT has launched an underage drinking tip line. This tip line operates 24 hours a day, seven days a week, and is available for citizens to anonymously report parties involving underage drinking, plans to purchase alcohol for underage persons, and willingness of retailers to sell alcohol to underage persons.

KDOT supports the universities’ student bodies in building local alternatives for safe transportation for alcohol impaired college students called the Campus Blast (Safe Ride Program).

The Bureau is supporting a growing number of law enforcement agencies in DUI enforcement. Currently the program staff and law enforcement liaisons coordinate and monitor the public outreach and media messaging. As the number of agencies continues to grow, there will be a need to transition media work to the local agencies. No statewide campaign workshop is held for participating agencies.

### **Recommendations**

- ◆ Develop a system to enable an evaluation of impaired driving media campaigns to gauge effectiveness in altering public awareness, attitude, and behavior beyond the national media campaigns.
- ◆ **Ensure that there is a pre-blitz workshop for law enforcement personnel.**
- ◆ Continue developing coalitions with the public sector to maximize support, involvement, and private funding.
- ◆ **Structure designated driver programs so that they do not enable underage drinking or over-consumption by non-drivers.**

### **3-D: Prosecution**

#### **Advisory**

*Prosecutors who handle impaired driving cases face tough odds. Typically, these prosecutors have the least experience, handle hundreds of cases at a time and receive insufficient training. States should implement a comprehensive program to visibly, aggressively, and effectively prosecute impaired driving cases. States should:*

- *Make impaired driving cases a high priority for prosecution and assign these cases to knowledgeable and experienced prosecutors.*
- *Encourage vigorous and consistent prosecution of impaired driving (including youthful offender) cases, particularly when they result in a fatality or injury, under both impaired driving and general criminal statutes.*
- *Provide sufficient resources to prosecute impaired driving cases and develop programs to retain qualified prosecutors.*
- *Employ experienced prosecutors, such as State Traffic Safety Resource Prosecutors, to help coordinate and deliver training and technical assistance to prosecutors handling impaired driving cases throughout the State.*
- *Ensure that prosecutors who handle impaired driving cases receive state-of-the-art training, such as in SFST, DEC, emerging technologies for the detection of alcohol and other drugs; prosecutors should learn about sentencing strategies for offenders who abuse these substances and participate in multi-disciplinary training with law enforcement personnel.*
- *In Driving While Impaired by Drugs (DWID) cases, encourage close cooperation between prosecutors, state toxicologists, and arresting law enforcement officers (including Drug Recognition Experts). Their combined expertise is needed to successfully prosecute these cases.*
- *Establish and adhere to strict policies on plea negotiations and deferrals in impaired driving cases and require that plea negotiations to a lesser offense be made part of the record and count as a prior impaired driving offense.*

#### **Status**

The prosecution of criminal cases in Kansas is shared between district attorneys, county attorneys, and city prosecutors. District attorneys serve in the urban counties. County attorneys serve in the remaining counties. City prosecutors are a function of the city attorney's office of a municipality. Both county and district attorneys prosecute felony and misdemeanor statutory violations of Driving Under the Influence (DUI). City prosecutors enforce city ordinance DUI violations as a misdemeanor. The county and district attorneys are a countywide elected position. They serve four year terms and run on a partisan ticket. Most city prosecutors are appointed and serve at the will of the governing body, but there are a few elected city prosecutors throughout the State. The district attorneys and their assistants are full-time employees. The county attorneys and city prosecutors may be either part-time or full-time. The part-time attorneys may have a separate, private law practice and are permitted to practice criminal defense work, including DUI defense, in a jurisdiction separate from where they prosecute. The public's trust and confidence in the fairness of the judicial process is eroded by this practice.

Prosecution of misdemeanor DUI cases occurs primarily in the municipal courts of Kansas and is prosecuted by the city prosecutors. Felony DUI and jury trials of misdemeanor DUI occur in the district courts and are prosecuted by the county or district attorney.

It is a common practice for less-experienced prosecutors (and possibly interns) to manage DUI and other traffic offenses. By the time they acquire a good working knowledge of the complexities of DUI prosecution, they move on to other assignments and another recruit takes over. Frequently the defendant's attorney is much more experienced and knowledgeable of DUI law and trial techniques than the prosecutor. A majority of states have established statewide Traffic Safety Resource Prosecutors to provide technical assistance and mentoring for inexperienced DUI prosecutors.

DUI training occurs through the state district attorney's association or through an annual Kansas Highway Patrol (KHP) seminar. The Kansas Department of Revenue, Driver Licensing Bureau also provides education on DUI administration updates. DUI adjudication is complex litigation and requires regular education opportunities. No information was presented that indicated that prosecution or the courts are aware of a statewide Drug Evaluation and Classification (DEC) program. There is no statewide administrative support agency for prosecutors. This causes a void in the sharing of information, trends and developments among the district and county attorneys. It also limits the availability of ongoing DUI training. The annual KHP seminar doesn't fully address the needs of prosecutors in legal interpretation education.

A combination of frustrations causes many prosecutors to reduce priority towards DUI prosecution. Sources of frustration include:

- Lenient penalties for repeat offenders;
- Lack of post-sentencing supervision and probation services for misdemeanants;
- Lack of prosecutorial central administrative support agency and information sharing clearinghouse;
- Lack of judicial understanding and education on topic;
- Misinterpretation of horizontal gaze nystagmus (HGN) case law (*State v. Witte*);
- Inefficient and unreliable data on prior DUI convictions; and
- A repeat offender culture of breath test and field test refusal with no sustainable consequences.

Blood draw search warrants after breath test refusal are prohibited by case law (*State v. Adee*; *State v. Befort*).

Prosecutors are not involved in the administrative licenses revocation (ALR) hearing. By statute, a finding of fact by the administrative hearing officer shall not be binding upon the subsequent

adjudication of the criminal DUI charge. Nevertheless, some prosecutors accept the administrative finding of fact and dismiss or reduce the criminal charge rather than re-litigate or re-strategize the issue for criminal trial.

Disposition of DUI cases through a plea bargain and diversion is a common occurrence. Diversion generates revenue for the prosecutor. This suggests that the charging decision for diversion might be driven by a revenue motive. A DUI defendant is restricted to only one DUI diversion in a lifetime. However, it is reported that DUI defendants can, and do, receive multiple DUI diversions. Questionable accuracy and availability of prior DUI convictions and diversions hamper charging decisions. This data accuracy and availability problem has directly led to a recent Kansas Supreme Court decision (*State v. Elliott*) that could potentially render prosecution of 3<sup>rd</sup> DUI or subsequent offenses meaningless.

The total number of statewide DUI cases filed has steadily declined over the past 10 years (21,083 to 17,471). However, the percentage of diversions has increased in that same period (32 percent to 38 percent). The percentage of dismissals has remained constant. This suggests a shift in DUI disposition priority by prosecutors.

Neither prosecutors nor judges are aware of much, if any, utilization of vehicle impoundment or ignition interlock sentencing tools.

## **Recommendations**

- ◆ Encourage experienced prosecutors to be involved in DUI prosecutions.
- ◆ Establish a statewide Traffic Safety Resource Prosecutor.
- ◆ Require annual DUI training for prosecutors and include SFST, HGN, DEC, and CDL curriculum.
- ◆ Improve priority for DUI cases at the charging level.
- ◆ Enact legislation that specifically allows blood draw search warrants as a remedy in addition to license suspension when a breath test is refused.
- ◆ Repeal diversion for DUI offenses.
- ◆ **Prohibit part time prosecutors from practicing any criminal defense work outside of their prosecutorial jurisdiction.**
- ◆ **Improve accuracy and accessibility to records of prior DUI convictions and diversions.**
- ◆ **Enact a legislative remedy to the ruling in *State v. Elliott*.**

### **3-E: Adjudication**

#### **Advisory**

*The effectiveness of enforcement and prosecution efforts is strengthened by knowledgeable, impartial, and effective adjudication. The imposition of effective, appropriate, research-based sanctions, followed by close supervision, and the threat of harsher consequences for non-compliance, provides an opportunity to reduce recidivism, which is high among impaired drivers. States should:*

- *Involve the State's highest court in taking a leadership role and engaging judges in effectively adjudicating impaired driving cases and ensuring that these cases are assigned to knowledgeable and experienced judges.*
- *Encourage consistency in the adjudication of impaired driving (including youthful offender) cases, and the imposition of effective and appropriate sanctions, particularly when impaired driving resulted in a fatality or injury.*
- *Provide sufficient resources to adjudicate impaired driving cases in a timely manner and effectively manage dockets brought before judges.*
- *Ensure that judges who handle criminal or administrative impaired driving cases receive state-of-the-art education, such as in technical evidence presented in impaired driving cases, including SFST and DEC testimony, emerging technologies for the detection of alcohol and other drugs, and sentencing strategies for offenders who abuse these substances.*
- *Use court strategies to reduce recidivism through effective sentencing and close monitoring, by either establishing DWI courts, encouraging drug courts to hear impaired driving cases, or encouraging other courts to adopt DWI/Drug court practices; these courts increase the use of drug or alcohol assessments, identify offenders with alcohol or drug use problems, apply effective and appropriate sentences to these offenders, including abstinence from alcohol and other drugs and closely monitor compliance, leading to a reduction in recidivism.*
- *Provide adequate staffing of probation programs with the necessary resources, including technological resources, to monitor and guide offender behavior.*

#### **Status**

There are two tiers of trial courts in Kansas. District courts are created by the Constitution and have general original jurisdiction. There are 53 appointed and 52 elected district court judges with at least one resident judge in each county. All of the judges serve a full time four year term. Appointed judges face retention election. Elected judges face partisan, popular vote election. Jury trials are conducted in district court. District court judges must be lawyers. In addition, some counties have magistrate judges who are appointed by the district judge. Magistrate judges may or may not be lawyers.

The second tier of trial courts are the municipal courts. These courts adjudicate violations of city ordinances committed within the city limits. City ordinances may be sanctioned as misdemeanor offenses. DUI ordinances may be enacted by cities. Municipal judges are appointed by the city governing body and serve at will. Trials in municipal court are without a jury. A municipal judge may or may not be a lawyer. Those who are lawyers may maintain a private law practice

and are permitted to engage in criminal defense work, including DUI defense, outside of their judicial jurisdiction. The public's trust and confidence in the fairness of the judicial process is eroded by this practice.

Appeal from the district court goes to either an intermediate Kansas Court of Appeals, comprised of 12 judges, or the Kansas Supreme Court, comprised of seven justices. Appeal from municipal court is a trial de novo to the district court and the appellant may request a jury trial on this appeal.

The district courts are administratively served by the Kansas Office of Judicial Administration (OJA). OJA also provides education for the municipal court judges. Each district has an administrative judge who, in addition to judicial responsibilities, assigns cases to other judges within the district and administers supervisory authority over the clerical and administrative functions of the court.

Adjudication of DUI occurs in both tiers of trial courts. District court hears statutory misdemeanor DUI offenses that occur outside of municipalities and all felony DUI offenses. Municipal court hears misdemeanor DUI ordinance violations. The majority of DUI prosecutions occur in municipal court. In fiscal year 2005, 17,471 DUI cases were filed in the Kansas trial courts, of which 11,757 were filed in municipal courts.

Offenders aged 14 through 17 are treated as adults and are prosecuted in adult court for DUI. They face the same sentence structure as adults except the maximum jail sentence is 10 days in a juvenile detention facility. The remainder of an executed sentence can be served on house arrest.

Statewide judicial DUI education occurs occasionally at one of two bi-annual judicial conferences for district judges and at an annual conference for municipal judges. In addition, municipal judges receive a periodic newsletter that provides updated DUI legal information. KDOT conducted a DUI seminar which judges attended. A judicial ethics opinion determined that attendance at a future conference could violate the Canon of Judicial Conduct in regards to ex parte communication. Many different disciplines believe that Kansas judges are inadequately trained in the adjudication of DUI, especially in the area of standardized field sobriety tests (SFST), horizontal gaze nystagmus (HGN), and drug and alcohol impairment evidence. No information was presented that indicated that prosecution or the courts are aware of a statewide Drug Evaluation and Classification (DEC) program. The belief is that judges do not grasp the highly technical aspects of DUI. DUI adjudication is complex litigation and requires regular education opportunities.

Points of emphasis for judicial education should include commercial driver license (CDL), HGN, and alcohol and drug impairment evidence. Despite federal prohibition and risk of causing the entire state to lose federal highway dollars, some courts and prosecutors are permitting diversion to CDL holders. An attorney general opinion may be leading to this disregard of federal preemption. Also, many judges impose a blanket prohibition of HGN evidence as a result of misinterpretation of an appellate decision (*State v. Witte*). Other judges seem to place a scientific foundation standard on simple observations of impairment.

Probation services are not uniformly used to monitor DUI offenders in municipal court. Probation or parole supervision is more likely to occur upon defendants convicted from district court. Supervision of court sanctions also fall upon the Division of Motor Vehicles (DMV), local alcohol and drug treatment providers, and ignition interlock vendors, all of which are independent of the court. Persons who fail to comply with sanctions associated with these entities can escape detection if not under the supervision of a probation or parole agency. Felony treatment providers do not have a statutory or contractual duty to report non-compliance to parole authorities. Only the persons who prepare pre-sentence alcohol and drug evaluations have a statutory duty to report treatment non-compliance to a probation department. The evaluators are not always the same entity providing the treatment. The penalty associated with non-compliance is usually either a misdemeanor offense or a driver license suspension. Neither is a compelling incentive to improve supervision.

The recent appellate decision of *State v. Elliott* has created jurisdiction problems between district and municipal courts. Many repeat offenders could escape prosecution of a 3<sup>rd</sup> or subsequent DUI offense. Judges, lawyers, and law enforcement are seeking guidance in how to interpret this case.

Courts do not uniformly implement mandatory DUI administrative tools such as pre-sentence drug and alcohol evaluation, driver license surrender, and review of offender history of prior DUI convictions. Neither prosecutors, judges, nor law enforcement are aware of much, if any, utilization of vehicle impoundment or ignition interlock sentencing tools.

The judiciary is presently engaged in a statewide electronic case enhancement project. All state courts are to be on board by July 1, 2007. Two counties have been given legislative exemption from the project. The goal is to have data interface between the courts, the DMV, and other agencies. The enhancement is needed to improve efficiency in administration of the high volume traffic dockets. Immediacy of data should improve performance of the adjudication process.

## **Recommendations**

- ◆ **Provide substantive DUI education regularly to all judges who adjudicate DUI cases and include SFST, HGN, DEC, and CDL curriculum.**
- ◆ Secure highway safety funds for judicial continuing education use.
- ◆ Utilize standard DUI curriculum developed by NHTSA and the National Judicial College.
- ◆ Improve monitoring and oversight of compliance with DUI sentence conditions.
- ◆ Support the technology enhancement project of the state judiciary to include direct online access to driver records and creation of DUI online bench book.
- ◆ **Enact a legislative remedy to the ruling in *State v. Elliott*.**

- ◆ **Prohibit part-time judges who preside over criminal cases from practicing any criminal defense work, including DUI, outside of their judicial jurisdiction.**

### **3-F: ADMINISTRATIVE SANCTIONS AND DRIVER LICENSING PROGRAMS**

Administrative sanctions, including the suspension or revocation of an offender's driver license; the impoundment, immobilization, or forfeiture of a vehicle; the impoundment of a license plate, or the use of ignition interlock devices, are among the most effective actions that can be taken to prevent repeat impaired driving offenses. In addition, other driver licensing activities can be effective in preventing, deterring, and monitoring impaired driving, particularly among novice drivers.

#### **3-F-1: Administrative License Revocation and Vehicle Sanction**

##### **Advisory**

*Each State's Motor Vehicle Code should authorize the imposition of administrative penalties by the driver-licensing agency upon arrest for violation of the State's impaired driving laws. The statute should provide for:*

- *Administrative suspension of the driver's license for alcohol and/or drug test failure or refusal.*
- *The period of suspension for a test refusal should be longer than for a test failure.*
- *Prompt suspension of the driver's license (within 30 days of arrest), which should not be delayed, except when necessary, upon request of the State.*
- *Vehicle sanctions, including impoundment of or markings on the license plate, or impoundment, immobilization or forfeiture of the vehicle(s), of repeat offenders and individuals who have driven with a license suspended or revoked for impaired driving.*
- *Installation of ignition interlocks on the offender's vehicle(s) until a qualified professional has determined that the licensee and their alcohol and/or drug use problem will not interfere with their safe operation of a motor vehicle.*

##### **Status**

Kansas uses a dual process for handling DUI cases: an administrative proceeding for license revocation runs parallel to criminal proceedings leading to sentencing.

Refusing to submit to a chemical test for intoxication is sanctioned through administrative license revocation (ALR). However, refusal to submit to a roadside preliminary breath screening test is a traffic infraction offense.

Kansas Statute, Article 8-1014 deals with suspension and restriction of driving privileges for test refusal, test failure or alcohol- or drug-related conviction, and ignition interlock device. For details, see Section 3-A.

Current laws allow for administrative suspension of the driver license for alcohol test failure or refusal, the period of suspension for test refusal is longer than for test failure, adjudication and suspension of the driver license is prompt in a majority of cases with less than five percent of the 9,000 cases handled by Division of Motor Vehicles (DMV) resulting in delayed actions due to

continuance or challenges, allows imposition of vehicle sanctions, including impoundment as well as use of ignition interlock on offender's vehicles. Although vehicle sanctions are available, they are seldom used for repeat DUI offenders or drivers with suspended/revoked or restricted licenses. No information or data was provided from which to determine the frequency of driving with revoked or suspended driver license.

The scope of review at an ALR hearing is limited. If the review is of a test refusal, then the scope of the hearing is:

- whether the officer had reasonable grounds to believe that the person was, or was attempting to operate a vehicle while under the influence of alcohol or drugs or both;
- whether the person was in custody or arrested for an alcohol or drug related offense, or was involved in a fatal, personal injury, or property damage collision;
- whether the officer complied with written and oral implied consent notice; and
- whether the person refused the test.

If the review is of a test failure, then the scope of the hearing includes the first three items in the last paragraph and the following:

- whether the testing equipment was certified;
- whether the test operator was certified;
- whether the proper testing procedures were substantially followed;
- whether the test result was 0.08 alcohol concentration or greater; and
- whether the person was operating or attempting to operate a vehicle.

The hearing procedure is also strictly limited. Witnesses are limited to the licensee, the officer who signed the refusal or test failure certification form, and one other witness who was present at the time of the issuance of the certification and called to testify by the licensee. Examination of the officer is limited to the factual circumstances relied upon in the certification. The officer is unrepresented at these hearings and feels legally unprotected when examined by opposing counsel. The officer usually is not allowed to rebut or rehabilitate his testimony elicited by the opposing counsel. The only apparent reason for denying rebuttal is expedience of the hearing. The officer's testimony is sworn under oath and is available for later impeachment purposes in the trial court.

In addition, pre-hearing discovery is strictly limited to:

- the officer's certification and notice of license suspension;

- documents indicating the result of any evidentiary breath or blood test;
- certifications of the breath test instrument and the breath test operator; and
- a copy of the Kansas Department of Health and Environment testing protocol checklist.

The licensee has the burden of proving by a preponderance of the evidence that the officer's certification is false or insufficient. If the review hearing does not turn out favorably for the licensee, then he/she may appeal to the district court with a trial de novo. In 2005 there were 469 trial de novo appeals of this type.

Testimony provided indicated some frustration on the part of the law enforcement personnel in the way the adjudication process currently works while DMV feels that the hearing process is fair and results in very few challenges to their decisions. Despite the claims of unfairness, approximately 80 percent of the 9,062 hearings conducted in 2005 upheld the officer's certification for test refusal or test failure.

Under Kansas law the standard of "reasonable grounds" is equivalent to the standard of "probable cause." This creates confusion among law enforcement when the hearing officer makes ruling under a probable cause standard. Also, since the review standard includes review of whether a person was arrested, this causes law enforcement to believe that a hearing has gone beyond the limited scope set forth by statute.

It makes no sense why the administrative hearing officer has the ability to review reasonable suspicion/probable cause for arrest since that is a judicial determination to be made by the trial court. Also, the ruling of the administrative hearing officer has no evidentiary effect on the underlying criminal charge and subsequent trial. Reviewing reasonable suspicion for arrest at this stage appears to be an exercise in futility and only causes law enforcement to further believe that a hearing has gone beyond its scope.

## Recommendations

- ◆ **Streamline and improve the communication and dialogue between law enforcement and DMV hearing officers to improve the outcomes at the hearings and improve successful adjudication of DUI cases.**
- ◆ Establish a minimum standard of training and refresher training for Standardized Field Sobriety Testing (SFST) and implement priority recommendations from the recently completed SFST Program Assessment.
- ◆ Collect, analyze, and evaluate the data available on the use of ignition interlocks and vehicle impoundments.
- ◆ **Impose vehicle sanctions in a cost effective manner on repeat offenders and individuals who continue to drive with a license suspended or revoked for impaired driving.**

- ◆ Use ignition interlock devices more cost effectively on first and second time offenders.
- ◆ **Permit the law enforcement officer at an ALR hearing to rebut his/her testimony given during the defendant's case in chief.**
- ◆ Eliminate from the scope of the administrative review hearing determination of whether reasonable grounds for custody or arrest existed.

### **3-F-2: Programs**

#### **Advisory**

*Each State's driver licensing agency should conduct programs that reinforce and complement the State's overall program to deter and prevent impaired driving, including:*

- *Graduated Driver Licensing (GDL) for novice drivers that includes three distinct licensing phases for young novice drivers (learner's permit, restricted license and unrestricted license) and provides that:*
  - \* *Requires a learner's permit for a minimum of 6 months and a total combined period of one year prior to being eligible for an unrestricted license*
  - \* *Requires that drivers practice driving with parental or adult supervision for a minimum number of hours and demonstrate safe driving practices before they may drive unaccompanied by a parent or adult*
  - \* *Requires a nighttime driving restriction and limits on the number of young passengers who may be in the vehicle during phase two*
  - \* *Provides that the permit, the restricted and the unrestricted license, as well as licenses to drivers under and over the age of 21, are easily distinguishable*
  - \* *Provides for license suspension for drivers under age 21 who drive with a BAC exceeding the limit set by the State's zero tolerance law*
  - \* *Provides for primary enforcement of safety belt use laws for young novice drivers*
- *A public information program that describes alcohol's effects on driving and the consequences of being caught driving impaired or above the State's zero tolerance limits.*
- *A program to prevent individuals from obtaining and using a fraudulently obtained or altered driver's license including:*
  - \* *Training for alcoholic beverage sellers to recognize fraudulent or altered licenses and IDs and what to do with these documents and the individuals attempting to use them*
  - \* *Training for license examiners to recognize fraudulent documents and individuals seeking to fraudulently apply for them*

#### **Status**

Kansas Department of Revenues, Motor Vehicle Division, Driver's License Examination is responsible for examining anyone applying for a Kansas driver license. Driver Control maintains driving records and processes changes to driving privileges, such as restricted, suspended, revoked and reinstated licenses. They also coordinate administrative hearings on chemical test failures and test refusals, and manage proof of insurance requirements for drivers.

Kansas does not have a true graduated driver license program but includes many of the components suggested in a model program.

The details for the Kansas requirements follow:

### Instruction Permits

- Must be 14 years of age. Parent or guardian consent required for all applicants under the age of 16.
- Vision and written tests required.
- Instruction permit holder may drive at any time when accompanied by a licensed adult driver 18 years of age or older.
- To get a restricted license, applicant must have held an instruction permit for at least 6 months.

### Farm Permits

- Must be at least 14 years of age but less than 16.
- Parent or guardian consent required.
- Full test (vision, written, and drive) or driver education completion slip required.
- Must live or work on a farm of 20 acres or more. Written documentation from the parent or employer is required.

Prior to age 16, applicant must provide affidavit showing at least 50 hours of adult-supervised driving, with 10 of those hours being at night, by a licensed driver at least 21 years old. If affidavit is not provided prior to age 16, the driver will remain restricted until age 17 or until affidavit is provided, whichever occurs first. Farm permit holder may drive to and from school (not school activities); to, from or in connection with any farm-related work, or at any time when accompanied by a licensed adult driver 18 years of age or older.

### Restricted Driver License (Class C or M)

- Must be 15 years of age but less than 16.
- Parent or guardian consent required.
- Driver education completion slip required.
- Required to have had an instruction permit for at least 6 months, during which time the licensee must have completed at least 25 hours of supervised driving. Additional 25 hours required prior to age 16. All 50 hours can be completed anytime after obtaining instruction permit.
- Prior to age 16, applicant must provide affidavit showing at least 50 hours of adult supervised driving, with 10 of those hours being at night, by a licensed driver at least 21

years old. If affidavit is not provided prior to age 16, the driver will remain restricted until age 17 or until affidavit is provided, whichever occurs first.

- Restricted licensee may drive to and from school (not school activities); to, from or in connection with any employment or farm related work, or at any time when accompanied by a licensed adult driver 18 years of age or older.

#### Non-restricted Driver License (Class C or M) for 16 and 17 Year Olds

- Full test (vision, written, and drive) or driver education completion slip required.
- Applicant must provide affidavit showing at least 50 hours of adult supervised driving, with 10 of those hours being at night, by a licensed driver at least 21 years old.

#### Additional Information

- Any person under the age of 16 with a restricted license that is convicted of two or more moving violations will remain restricted until age 17.
- Any licensee issued a farm permit or restricted license may not transport non-sibling minor passengers. Any conviction for this is considered a moving violation.

#### The Kansas Safety Belt Use Act (KSA 8-2503) is a secondary law and applies to:

- All front seat occupants unless specifically exempted.
- Passenger cars, vans and certain trucks manufactured with safety belts in compliance with Federal Motor Vehicle Safety Standard (FMVSS) 208.
- Vehicles registered in Kansas and in all other states
- Vehicles that are in motion

#### Does not apply to:

- Vehicles designed for carrying more than 10 passengers.
- Vehicles constructed on a truck chassis registered for more than 12,000 pounds.
- Farm trucks registered for more than 16,000 pounds.
- Motorcycles and trailers

### Other Provisions

- Unless there is another primary violation of law, drivers may not be stopped for a safety belt violation.
- Citations for seat belt violations may not be issued without citing for the violation that caused the stop.
- Drivers may be cited at scene of accident absent other violation.
- Passengers must be cited separately from drivers.

### Exemptions

- Occupants who possess a written statement from a licensed physician.
- U.S. mail carriers while actually engaged in delivery and collection of mail.
- Newspaper persons while actually engaged in newspaper delivery.
- Occupants covered by the Child Passenger Safety Act.

The Child Passenger Safety Act ([KSA 8-1344](#)) is a primary law.

Beginning May 2004, the Kansas Division of Motor Vehicle started issuing Driver License, Permit, and Non-driver License documents with a new format. The actual document will no longer be issued immediately. Drivers and identification card holders will be issued a temporary receipt at the license station and the new document will be returned to them by mail. Each card is laminated with a tamper resistant coating that increases the card's security and durability. The front laminate shows a pattern of the Kansas State seal that changes color as the document is tilted for viewing. Printed data overlaps the digital photo and ghost portrait image. The 1D and 2D barcodes and Magnetic Stripe on the back of each document contain text data from the front of the card. The most evident new feature is the vertical license or ID card issued to applicants under 21 years of age. The distinction used is the layout of the license –full face photographs and prominent display of under 18 (green bar) or 21 (red bar) years of age on the license. An additional improvement made is that the under 21 licenses will expire once the driver reaches age of 21 years.

The Kansas Legislature passed a law known as Zero Tolerance which went into effect January 1, 1997. For person under 21 years of age, the law makes it illegal to operate or attempt to operate a motor vehicle in Kansas with a breath or blood alcohol content (BAC) of 0.02 or above.

- First Offense for a BAC of 0.02 to 0.07: Driving privileges will be suspended for 30 days and restricted for 330 days.

- Second/Subsequent Offense for a BAC of 0.02 to 0.07: Driving privileges will be suspended for one year.
- If BAC is 0.08 or above: Driving privileges will be suspended for one year and also be charged with Driving Under the Influence (DUI).

Minor in possession: A person must be 21 years of age to purchase, possess or consume cereal malt beverages or alcoholic liquor. A minor in possession charge carries fines of \$200 to \$500 and suspension of driving privileges.

- First Offense: Driving privileges will be suspended for 30 days. If the person does not have a driver license, person may not apply for one for a 30-day period following conviction.
- Second Offense: Driving privileges will be suspended for 90 days.
- Third/Subsequent Offense: Driving privileges will be suspended for one year.

Kansas Department of Transportation (KDOT) together with its partners in both public and private sectors have consistently supported a public information program that describes alcohol's effects on driving and the consequences of being caught driving impaired or getting involved in a crash. Notable among these are the programs aimed at college and high school students undertaken by Kansas Drunk Driving Prevention Office, Kansas Social Rehabilitation Services, DUI Victim Center of Kansas, SADD and MADD Chapters, and School Resource Officers.

KDOT in conjunction with Kansas Alcoholic Beverage Control, Kansas Licensed Beverage Association and Kansas Association of Beverage Retailers as well as Kansas Motor Vehicle Division encourages and provides training for license examiners, alcoholic beverage sellers and servers to recognize fraudulent or altered licenses and IDs and what to do with these documents and the individuals attempting to use them. Refresher and on-going training as well as in-service training is provided as needed and required for all 135 license examiners in 37 field offices of DMV. Additionally, training is also provided to servers on recognizing apparent signs of intoxication and when to stop serving additional alcohol.

## **Recommendations**

- ◆ Make server training mandatory.
- ◆ Improve the availability and accessibility of the server training opportunities in a cost effective manner.
- ◆ Include all components of a Graduated Driver Licensing Program.
- ◆ Adopt a true Zero Tolerance for those under 21 years.
- ◆ Enact primary safety belt (restraint) law.

- ◆ Enhance the education for teens and adults that emphasize Zero Tolerance.

### **3-F-3: Information and Records System**

#### **Advisory**

*Each State's driver licensing agency should maintain a system of records that enables the State to: (1) identify problem drinking drivers; (2) maintain a complete driving history of problem drivers; (3) receive timely and accurate arrest and conviction data from law enforcement agencies and the courts, including data on operators as prescribed by the commercial driver licensing (CDL) regulations; and (4) provide timely and accurate driver history records to law enforcement and the courts. The record system should:*

- *Include communication protocols that permit real-time linkage and exchange of data between law enforcement, the courts, the State driver licensing and vehicle registration authorities, and other parties with a need for this information.*
- *Provide enforcement officers with immediate on-the-road access to an individual's licensing status and driving record.*
- *Provide immediate and up-to-date driving records for use by the courts when adjudicating and sentencing drivers convicted of impaired driving.*
- *Provide for timely entry of any administrative or judicially imposed license action and the electronic retrieval of conviction records from the courts.*
- *Provide for effective exchange of data with State, local, tribal and military agencies, and with other governmental or sovereign entities.*

#### **Status**

The Driver License System is maintained by the Kansas Motor Vehicle Division Driver License Bureau. It currently contains over 2 million licensed drivers in addition to 128,000 commercial driver licenses. The file supports the functions of license issuance and driver control as well as participation in the National Driver Register and the Commercial Driver License Information System.

Records on instruction and restricted licenses are maintained. Though Kansas does not have a graduated license law, it maintains the Driver Education Form on image file. Driver histories from previous states of licensure are included in the driver history file and also convictions of Kansas drivers in other states are entered in the driver records. While there are no issues with recording convictions from other states, the recordings are done as equivalent offenses.

The Division of Motor Vehicle (DMV) has authority to suspend licenses administratively for Driving Under the Influence (DUI) offenses. There was no indication of failure to process withdrawals in this process.

Convictions from all levels of courts are entered in to the driver history file. In 2005, 17,471 DUI citations were filed with the district/county/municipal courts. There is no delay in recording the adjudication in the court system. However, there is no process to assure that all reportable convictions are submitted to DMV or to assure that the reports are in fact posted to the driver records.

DUI records were purged after five years prior to a law change in 2001. Although the law required DMV to delete convictions older than five years, the fact is that records were thereby degraded. Currently, the legislation allows driver history to contain 12 years of data though no provision was made to rebuild the purged records. It is now not possible to determine the actual histories of prior DUI convictions for those records affected. The court considers the driver record information obtained through the law enforcement networks to be more complete, reliable, and usable than those obtained from DMV.

Courts are required to report convictions to the DMV; only those defined as moving violations are entered on the driver record. The original offense is not recorded. However, an original offense may be a moving violation and the adjudicated offense a non-moving violation. That would not become an entry in the driver file.

Crash involvement is posted to the driver file. A single code reflects involvement in a crash with no implication of fault or indication of the severity of the crash. The driver file is not dynamically linked with the vehicle file.

The driver file is not generally accessible electronically by all courts. Some courts are able to obtain electronic access to driver records through “accessKansas” if the court has an account. Within the constraints of the Driver Privacy Protection Act (DPPA), the driver file serves authorized users.

There is no routine published annual report by DMV on driver or vehicle file information.

## **Recommendations**

- ◆ Implement legislation that allows transfer of electronic certified records between the courts and DMV.
- ◆ Establish processes to improve the response to courts and prosecutors for certified driver histories.
- ◆ Coordinate with courts and prosecutors to establish outputs which are more readable and useful than the current certified records being produced.
- ◆ **Seek either legislative relief or administrative alternatives to rebuild the driver history file and use it as the only legislatively mandated source document for adjudicating DUI offenses.**
- ◆ Seek either legislative relief or administrative alternatives to maintain a permanent driver history file and maintain any purged records in a supplemental file.
- ◆ Publish an annual driver and vehicle statistical report.

## **IV: ALCOHOL AND OTHER DRUG MISUSE: Screening, Assessment, Treatment, and Rehabilitation**

Impaired driving frequently is a symptom of the larger problem of alcohol or other drug misuse. Many first-time impaired driving offenders and most repeat offenders have alcohol or other drug abuse or dependency problems. Without appropriate assessment and treatment, these offenders are more likely to repeat their crime. One-third of impaired driving arrests each year involve repeat offenders. Moreover, individuals with alcohol or other drug abuse or dependency problems drive many times before they are arrested. Research has indicated that, on average, such individuals drive several hundred times within two hours of drinking before they are arrested for driving while impaired.

In addition, alcohol use leads to other injuries and health care problems. Almost one in six vehicular crash victims treated in emergency departments are alcohol positive, and one third or more of crash victims admitted to trauma centers - those with the most serious injuries - test positive for alcohol. In addition, studies report that 24-31 percent of all emergency department patients screen positive for alcohol use problems. Their frequent visits to emergency departments present an opportunity for intervention, which might prevent these individuals from being arrested or involved in a motor vehicle crash, and result in decreased alcohol consumption and improved health.

Employers, educators, and health care professionals in every State should have a system in place to identify, intervene, and refer drivers for appropriate substance abuse treatment to change their dangerous behavior.

### **4-A: Screening and Assessment**

Employers, educators, and health care professionals in every State should have a systematic program to screen and/or assess drivers to determine whether they have an alcohol or drug abuse problem and, as appropriate, briefly intervene or refer them for appropriate treatment.

#### **4-A-1: Criminal Justice System**

##### **Advisory**

*People who have been convicted of an impaired driving offense should be assessed to determine whether they have an alcohol or drug abuse problem and their need for treatment. The assessment should be:*

- *Conducted by a licensed counselor or other professional holding a special certification in alcohol or other drug treatment.*
- *Used to decide whether a treatment and rehabilitation program should be part of the sanctions imposed and what type of treatment would be most appropriate.*
- *Based on standardized assessment criteria, including standard psychometric instruments, historical information (e.g., prior alcohol or drug-related arrests or convictions), and structured clinical interviews.*

- *Appropriate for the offender's age and culture (e.g., use specialized assessment instruments tailored to and validated for youth or multi-cultural groups).*

### **Status**

A pre-sentence alcohol and drug evaluation shall be conducted on any person who is convicted of a DUI offense. The evaluation shall be considered by the court prior to sentencing. The evaluation shall contain a history of the defendant's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the defendant to education and rehabilitation. The evaluation shall be prepared by a program that has demonstrated practical experience in the diagnosis of alcohol and drug abuse. As a part of the evaluation process the defendant shall pay a \$150 fee and any other costs for any alcohol or drug education, rehabilitation or treatment program. This evaluation process also is mandatory for any person who enters into a diversion agreement with the prosecutor.

The entity or person(s) selected to perform the pre-sentence alcohol and drug evaluation shall be certified by either the Chief Judge of a judicial district or by the Secretary of Social and Rehabilitation Services.

Courts do not uniformly implement use of the pre-sentence alcohol and drug evaluation report.

### **Recommendations**

- ◆ Encourage all courts to uniformly utilize a pre-sentence alcohol and drug evaluation prior to imposing a sentence upon a DUI defendant.

## **4-A-2: Medical or Health Care Settings**

### **Advisory**

*Any adult or adolescent seen by a medical or health care professional should be screened to determine whether they may have an alcohol or drug abuse problem. If the person may have a problem with alcohol abuse or dependence, a brief intervention should be conducted and, if appropriate, they should be referred for assessment and further treatment. The screening and brief intervention should be:*

- *Conducted by trained professionals in hospitals, emergency departments, ambulatory care facilities, physician's offices, health clinics, employee assistance programs and other medical and health care settings.*
- *Used to decide whether an assessment and further treatment is warranted.*
- *Based on standardized screening tools (e.g., CAGE, AUDIT or the AUDIT-C) and brief intervention strategies.*

### **Status**

The panel received no information about currently active screening and brief intervention strategies. However, the Kansas Strategic Highway Safety Plan, in the emphasis area for Impaired Driving, briefly mentions such strategies to “initiate emergency room assessments and improve data collection.”

### **Recommendations**

- ◆ Implement screening and brief intervention services in emergency departments in hospitals in Kansas.

## **4-B: Treatment and Rehabilitation**

### **Advisory**

*States and localities should work with health care professionals, public health departments, and third party payers, to establish and maintain programs to treat alcohol and other drug dependent persons referred through the criminal justice system, medical or health care professionals, and other entities. These programs should:*

- *Match treatment and rehabilitation to the diagnosis for each person based on a standardized assessment tool, such as the American Society on Addiction Medicine (ASAM) patient placement criteria.*
- *Provide treatment and rehabilitation services designed specifically for youth.*
- *Provide treatment and rehabilitation services for non-English speaking offenders and culturally relevant treatment for special populations (e.g., Native Americans or newly arrived immigrant groups).*
- *Facilitate health insurance parity treatment for alcohol and other drug abuse disorders, to permit access for persons regardless of ability to pay and encourage States to pursue legislative changes to support health insurance parity payment for alcohol and other drug abuse disorders, particularly in rural and underserved areas.*
- *Ensure that offenders determined to have an alcohol or other drug dependence or abuse problem begin appropriate treatment immediately after conviction, based on an assessment. Educational programs alone are inadequate and ineffective for these offenders.*
- *Provide treatment and rehabilitation services in addition to, and not as a substitute for, license restrictions and other sanctions.*
- *Require that drivers who either refused or failed a BAC test, and/or whose driver's license was revoked or suspended, complete recommended treatment, and that a qualified professional has determined that their alcohol or drug use problem is under control before their license is reinstated.*

### **Status**

Under Kansas law, all drivers charged with DUI must complete an alcohol/substance abuse evaluation prior to sentencing. Certified assessment agencies must use one or more “standardized” screening instrument. However, there is no mandated instrument and no list of approved instruments. Results of the evaluation are used to make a recommendation for the appropriate level of treatment.

First offenders are required to complete an education program unless the evaluation indicates a need for treatment. There is no standard curriculum and no mandated time or content requirements for impaired driver education programs. The resulting inconsistency in implementation makes evaluation problematic and effectiveness uncertain.

The Kansas Addiction & Prevention Services (KAPS) licenses approximately 200 treatment programs for chemical dependency. KAPS also oversees the substance abuse block grant (56 providers) and Medicaid funding for substances abuse services. In most areas of the State, there appears to be adequate treatment capacity for individuals with ability to pay.

Kansas has recently implemented a treatment program for 4<sup>th</sup> and subsequent DUI offenders. The program is a cooperative effort of a private certified treatment provider and the Kansas Department of Corrections (KDOC). The program provides treatment and intensive supervision for offenders. KDOC allocates \$3,000 for treatment costs for each 4<sup>th</sup> offender program participant. Drivers who fail to comply with the treatment program are sentenced to a minimum of 90 days in prison.

For drivers with fewer than four convictions, treatment recommendations are included in the sentence and carried out by certified treatment providers. Monitoring can be provided by court services or probation in areas where available. In many smaller population areas, treatment agencies provide monitoring as well.

For purposes of reinstatement of driving privileges after suspension for DUI, treatment providers inform the Kansas Division of Motor Vehicles (DMV) only when drivers fail to comply with treatment conditions. Failure to comply results in the driver being suspended indefinitely until treatment is completed. While DUI offenders who successfully complete treatment are provided with written proof of completion, such proof is not required for reinstatement unless the driver has failed to comply at some point in treatment.

### **Recommendations**

- ◆ Develop guidelines or standards for the time and content of impaired driver education program.
- ◆ Require drivers to provide proof of completion of treatment prior to reinstatement of driving privileges.

## 4-C: Monitoring Impaired Drivers

### Advisory

*Monitoring functions should be housed in the driver licensing, judicial, corrections, and treatment systems. Monitoring systems should be able to determine the status of all offenders in meeting their sentencing requirements for sanctions and/or rehabilitation. Monitoring systems must be able to alert courts to non-compliance. Controlled input and access to an impaired driver tracking system, with appropriate security protections, is essential. Monitoring requirements should be established by law to assure compliance with sanctions by offenders and responsiveness of the judicial system. Non-compliant offenders should be dealt with swiftly either judicially or administratively. Many localities are successfully utilizing DWI courts or drug courts to monitor DWI offenders. States should:*

- *Have an effective monitoring system for all impaired driving offenders (including out-of-state offenders).*
- *Use effective technology (e.g., ignition interlock mechanisms, electronic confinement, and monitoring) and its capability to produce reports on compliance.*
- *Include driver license tracking systems as an essential component of monitoring.*
- *Generate periodic reports on offender compliance with administrative or judicially imposed sanctions.*

### Status

Probation services are not uniformly used to monitor Driving Under the Influence (DUI) offenders in municipal court. Probation or parole supervision is more likely to occur upon defendants convicted from district court. Supervision of court sanctions also fall upon the Division of Motor Vehicles (DMV), local alcohol and drug treatment providers, and ignition interlock vendors, all of which are independent of the court. Persons who fail to comply with sanctions associated with these entities can escape detection if not under the supervision of a probation or parole agency.

In the treatment field, only the persons who prepare pre-sentence alcohol and drug evaluations (known as the Alcohol and Drug Safety Action program) have a statutory duty to report treatment non-compliance to a probation department. The evaluators are not always the same entity providing the treatment. This can cause a disconnect in reporting non-compliance to the court. The penalty associated with non-compliance is usually either a misdemeanor offense or a driver license suspension which is not a compelling incentive to improve supervision. Also, pre-sentence alcohol and drug evaluations are not always utilized by the court, thus causing another possible disconnect in reporting non-compliance to the court. This duty to supervise and monitor treatment compliance also applies to diversion agreements. In those cases, non-compliance is supposed to be reported to the prosecutor. There is no data to show if diversions are revoked by prosecutors due to treatment non-compliance.

A second tier of monitoring treatment compliance is through the DMV. The Alcohol and Drug Safety Action program has a duty to notify the DMV of any non-compliance with treatment or

education. The DMV then has a duty to indefinitely suspend the offender's driver license until notice of compliance is provided.

Supervision of 4<sup>th</sup> and subsequent offender treatment compliance is a collaboration between the defendant, the parole officer, and the treatment provider. The Department of Corrections provides \$3,000 per offender to defray the costs of treatment and supervision. These treatment providers may report non-compliance to the parole agency however they do not have a statutory or contractual duty to do so.

House arrest is permitted for DUI defendants. Monitoring can occur through probation and parole, community corrections, or a house arrest monitoring vendor.

Ignition interlock is available as a monitoring tool but appears not to have yet been widely embraced by prosecutors, defense attorneys or the courts. Recent legislation requires an offender who is subject to an ignition interlock restriction to provide proof of installation of the device for the full year of the restricted period before the person's driving privileges can be fully reinstated. This affirmative duty does not apply if the ignition interlock was imposed as a discretionary condition of sentence or diversion. In those cases, it falls upon a probation department, the prosecutor, or the ignition interlock vendor to detect and notify the court of non-compliance. Neither prosecutors, judges, nor law enforcement are aware of much, if any, utilization of the ignition interlock device.

The drug court model is utilized in at least one court in Kansas. It is unknown if any DUI courts are operating in the State. Interest in DUI court exists.

## **Recommendations**

- ◆ **Improve monitoring and oversight of compliance with DUI sentence conditions.**
- ◆ Fund probation services for all courts that adjudicate DUI.
- ◆ Increase the use of ignition interlock in DUI sentencing.
- ◆ Repeal diversion for DUI offenses.

## TEAM CREDENTIALS

### CHIEF THOMAS MICHAEL BURNS

Chief of Police  
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Chief of Police – Manage a force of 414 members in the areas of Patrol, Youth and Intervention Services, Management Services, Support Services, Internal Affairs, and the 9-1-1 Communications Center

Chief of Staff – Managed the administrative operations of the Macon Police Department. Duties included, but were not limited to, supervising command staff; directing activities; coordinating policy implementation; providing administrative support; developing strategies; preparing reports; work delegation; planning and organizing; communication; employee development; quality assurance; problem identification and solution; and processing associated paperwork.

Major of Patrol Area II – Utilized professional and managerial skills to plan, organize and direct administrative and operational objectives in meeting the needs and services expected of Patrol Area II of the Macon Police Department.

Precinct II Patrol Division Commander – Planned, organized, directed and performed daily administrative and managerial duties for the successful operation of a patrol precinct including strategic planning for community policing and effective law enforcement.

Police Training Academy Director - Responsible for planning, organizing, budgeting and supervision of the daily function involving the Training Academy, including recruit training along with career educational training for all officers.

Traffic Division Commander - Responsible for all traffic related functions and supervision including, but not limited to traffic accident analysis, traffic fatality reconstruction, DUI enforcement, and coordinator for Governor's Office of Highway Safety Speed Enforcement grant

Internal Affairs Lieutenant - Assisted in the investigation of internal and external complaints regarding police personnel actions. Responsible for police applicant recruiting and background investigations.

Crime Laboratory Director (Sergeant) - Responsible for performing and supervising highly specialized technical work in the area of forensic physical evidence collection and other activities inherent of Crime Lab expectations.

Traffic Fatality Investigator (Sergeant) - Responsible for investigation and courtroom preparations of traffic fatality accidents. Recorded and analyzed data from fatality accidents for strategic planning reducing accidents.

FBI National Academy Association

Georgia Chief's Command College

State Certified Evidence Technician

Georgia Association of Chiefs of Police

International Association of Chiefs of Police

National Association of Traffic Accident Reconstructionists and Investigators

International Association of Identification

## **TROY E. COSTALES**

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Governor's Highway Safety Representative since September of 1997 with formal delegation letters from Governor Kitzhaber and Oregon's current Governor Ted Kulongoski

Has over 19 years experience in Transportation Safety

Member of the executive management team for the Oregon Department of Transportation

Served four terms as a member of the board for the Governor's Highway Safety Association (GHSA)

Serving as a member of the American Association of State Highway and Transportation Officials (AASHTO) – Standing Committee on Highway Safety

Serving as a member of the Transportation Safety Management Committee for the Transportation Research Board

Member of the 2005 Massachusetts Impaired Driving Assessment, 2004 Nevada Impaired Driving Assessment and 2000 Maryland Impaired Driving Assessment in cooperation with NHTSA

Has been recipient of multiple USDOT, ODOT and Governor's special recognition and excellence awards

“Administrator of the Year” in 2000 by the Oregon Traffic Safety Education Association

Member of the recent USDOT sponsored international scanning trip “Managing and Organizing Highway Safety” that visited Sweden, Netherlands, Germany and Britain

Member of the International Association of Chiefs of Police – Drug Evaluation Classification Technical Advisory Panel

Responsible for three Governor appointed committees: Oregon Transportation Safety Committee, Governor's Advisory Committee on Motorcycle Safety, and Governor's Advisory Committee on Driving Under the Influence

Lead instructor for the Executive Training Seminar, for new highway safety executives, on behalf of the Governor's Highway Safety Association  
Is a Governor appointed member of the Oregon Real Estate Board, second term

Under Mr. Costales' leadership, Oregon has seen a dramatic decline in traffic fatalities and injuries, to the lowest level since 1958. The number of individuals injured in traffic crashes has also declined by more than 30 percent since the peak of 39,000 in 1996 to 27,000 last year. In addition, Oregon started a strong graduated driver license program that includes an incentive for driver education. Over the past three years the number of 16 year-old drivers behind the wheel when someone is killed or injured, has declined by over 37 percent. Oregon continues to post one of the highest safety belt use rates in the nation at 93+ percent. With the decline in the overall fatality toll, the number of alcohol and/or drug-involved fatalities has also decreased to the lowest level in state history.

## **ROBERT P. LILLIS**

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[www.evalumetrics.org](http://www.evalumetrics.org)

- Rob Lillis is President of Evalumetrics Research, providing research and evaluation technical assistance to substance abuse, criminal justice, traffic safety, health and mental health programs at the state and local level. He serves as Research Consultant to the Partnership for Ontario County, Finger Lakes Drug Court, Ontario County Juvenile Drug Court, Wayne County Rural Middle School Consortium, Allegany Council on Alcoholism and Substance Abuse, and a number of other local youth development and substance abuse prevention programs. In the past three years he has conducted surveys of over 17,000 middle and high school students in the Finger Lakes area to assess their risk and protective factors related to substance abuse, violence, teen pregnancy and school dropout.
- Mr. Lillis served as Project Director on the State Incentive Cooperative Agreement (SICA) Outcome Study in which he completed an evaluation of school-based mentoring programs in schools in Ontario County, New York. Results of the study were presented at the National Prevention Network (NPN) annual prevention research conference in 2003.
- From 1991 through 2001 he was a faculty member and Director of the Research Accident Investigation Team in the Department of Community and Preventive Medicine, University of Rochester School of Medicine. From 2000 to 2001 he was Director of Research for the Department of Emergency Medicine. While at the University he served as Principal Investigator for numerous traffic injury research projects including: The Detection of Drugs in Injured Drivers Project and The Identification, Enforcement and Referral Project for Injured Impaired Drivers. He also served as a co-investigator on the Drinking Driver Treatment Outcome Study in San Juan County, New Mexico.
- From 1988 through 1991 Mr. Lillis served as Manager of Highway Safety Programs in the Injury Control Program, Division of Epidemiology, New York State Department of Health. He was responsible for the development and evaluation of state and local highway injury prevention initiatives. He was responsible for obtaining, linking and analyzing medical record, crash and driver history data at the state and local level.
- From 1978 to 1988 Mr. Lillis served as Project Director on numerous research projects at the New York State Division of Alcoholism and Alcohol Abuse. These included the Youth Alcohol Study, Special Highway Safety Policy Analysis Project, and the Problem Drinker Driver Needs Assessment. He also served as Research Consultant to Governor Carey's Task Force on Impaired Driving and provided ongoing research and technical assistance to the Governor's Office and the legislature during legislative consideration of increasing the

State's legal drinking age. He was responsible for extensive analyses of motor vehicle crash data and driver records.

- He has served as a Special Consultant to the U.S. General Accounting Office and conducted a review and synthesis of research related to the effectiveness of drinking age laws in the United States as well as reviews of research related to seatbelt laws and motorcycle helmet laws.
- Since 1991 Mr. Lillis has served as a member of the Impaired Driver Assessment consultant team for the National Highway Traffic Safety Administration (NHTSA). He has conducted reviews of impaired driving prevention and treatment activities in Maryland, California, Arizona, Texas, Connecticut, West Virginia, Wisconsin(2), Oregon, New Mexico, North Carolina, Minnesota, Tennessee, Missouri, Delaware, North Dakota, Montana, Utah, Ohio, South Carolina, Rhode Island, Puerto Rico Washington State, and Arizona.

## **MANU G. SHAH, P.E.**

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mshah@aacpl.net

### **PROFESSIONAL EXPERIENCE**

- Manu Shah has over thirty years of experience in transportation and highway safety field. He has extensive working knowledge of traffic safety programs, annual highway safety plans, business plans, and performance-based measures in highway safety. He is a Fellow of the Institute of Transportation Engineers and a Registered Professional Engineer in Maryland.
- Assistant Professor, Mathematics Department, Anne Arundel Community College, Arnold, Maryland.

### **EDUCATION**

- Postgraduate – Transportation Policy (Highway Safety), University of Maryland (1982 – 1986)
- MS – Civil Engineering (Traffic and Transportation), University of Maryland (1980)
- MA – Urban Planning and Policy Analysis, Morgan State University (1979)
- MBA – Finance & Accounting, Morgan State University (1975)
- BS – Engineering, University of London – Queen Mary College (1971)

### **PROFESSIONAL AFFILIATIONS AND TECHNICAL ACTIVITIES**

- Fellow, Institute of Transportation Engineers
- Member, American Society of Civil Engineers
- Member, Expert Panel, which developed the Model Minimum Uniform Crash Criteria (MMUCC) Guidelines
- Member, National Safety Council's Traffic Records Committee
- Member, ANSI D16.1 Committee on Motor Vehicle Accident Classification
- Member, ANSI D20.1 Committee on Data Element Dictionary for Traffic Records Systems

- Past Chair, Maryland Traffic Records Coordinating Committee
- Member, NCHRP Project 17-15, Accident Mitigation Guide for Congested Rural Two-Lane Highways (NCHRP Report 440)
- Chair, NCHRP Project 03-59, Assessment of Variable Speed Limit Implementation Issues
- Member, NCHRP Project 17-22, Identification of Vehicular Impact Conditions Associated with Serious Run-Off-the-Road Accidents
- Member – Technical Advisory Group – AASHTO’s Transportation Safety Information Management System Project
- Member, Traffic Records Assessment Team: New Mexico, Oregon and Member, Impaired Driving Assessment Team: Washington, Arizona, Colorado
- Member, NAGHSR – Curriculum Development for Traffic Safety Information Systems for Governor’s Highway Safety Representatives and Highway Safety Professional
- Member, US DOT, NHTSA, Curriculum Development for Quantitative Methods for Highway Safety Professionals
- Workshop Member – NCHRP Project 17-18 (3) – Implementation of the AASHTO Strategic Highway Safety Plan – Strategies for Head On and Run-Off-Road Crashes
- Member, NCHRP Project 17-28, Pavement Markings and Markers: Safety Impact & Cost Effectiveness
- Chair, NCHRP Project 17-29, Methodology to Predict the Safety Performance of Rural Multilane Highways
- Member, NCHRP Project 05-19, Guidelines for Roadway Safety Lighting Based on Safety Benefits & Costs
- Member, Technical Working Group, representing Maryland State Highway Administration in the multi-state effort to develop SafetyAnalyst (Comprehensive Highway Safety Improvement Model)
- Member, NCHRP Synthesis Topic 36-03 - Technologies for Improving Safety Data
- Member, NCHRP Synthesis 340: Convertible Roadways and Lanes Reversible Lanes
- Member, NCHRP Synthesis Topic 339: Centerline Rumble Strips

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### **Organizations/Appointments**

- Chairman, American Bar Association, National Conference of Specialized Court Judges
- American Judges Association
- Past Member, Board of Managers, Indiana Judges Association
- Past Member, Board of Directors, Judicial Conference of Indiana
- Indiana State Bar Association
- Indiana Commission on Courts
- Chairman, Southeast Regional Community Correction Department
- Chairman, special Courts Committee, Judicial Conference of Indiana
- Chairman, New Judge Orientation Committee, Judicial Conference of Indiana

### **Honors**

- Judicial Fellow, National Highway Traffic Safety Administration (NHTSA)
- National Judicial College, NHTSA Judicial Implementation Board
- Author, "Pre-Adjudication Intervention in Alcohol-Related Cases," ABA Judges Journal, Summer, 1998

### **Former Assignments**

- Private law practice, Denmure & Denmure, Aurora, Indiana
- Deputy Prosecuting Attorney, Dearborn County, Indiana

### **Consulting**

- NHTSA, Lifesavers: Albuquerque, NM; Orlando, FL; Cleveland, OH; Chicago, IL; San Antonio, TX
- NHTSA and National Judicial College, Adjudication of Impaired Driving Course: States of Indiana, New Hampshire, New Mexico, Missouri, Illinois
- NHTSA Partners in Progress
- NHTSA Impaired Driving Assessments: Hawaii, Missouri, Montana, South Carolina, Rhode Island

**Kansas Impaired Driving Assessment**  
**Holiday Inn West, I-70 at Fairlawn Road, Topeka**  
**July 10 – 14, 2006**

**Sunday, July 9, 2006**

**Board Room**

6:00 p.m. – 8:00 p.m.

**Dinner and Informal Team Briefing**  
KDOT Traffic Safety Bureau

**Monday, July 10, 2006**

**Salon A**

8:00 a.m. - 8:50 a.m.

**Program Management and Strategic Planning**  
Terry Heidner, Director, KDOT Division of Planning and Development  
Pete Bodyk, Chief, KDOT Bureau of Traffic Safety  
Chris Bortz, Assistant Chief, KDOT Bureau of Traffic Safety

9:00 a.m. - 9:50 a.m.

**Data and Records-KDOT**  
David Marshall, Data Analyst, KDOT Bureau of Traffic Safety  
Rex McCommon, State Crash File Manager, KDOT Bureau of Transportation Planning.  
Teresa Havenstein, FARS Coordinator, KDOT Bureau of Transportation Planning

10:00 a.m. - 10:50 a.m.

**Data and Records-Ks. Criminal Justice Info System and the KBI**  
Gordon Lansford, Director, Kansas Criminal Justice Information System  
David Sim, Assistant Director, KBI Division of Information Services

11:00 a.m. - 11:50 a.m.

**DUI Prevention thru Public Education-State Sponsored**  
Michele Reese, Kansas Drunk Driving Prevention Office  
Julie Faust, Kansas Drunk Driving Prevention Office  
Kelly Peak, Co-Director, KSRS Addiction and Prevention Services

12:00 p.m. - 1:00 p.m.

**Buffet Lunch in the Hotel Atrium provided by KDOT**

1:00 p.m. - 1:50 p.m.

**DUI Prevention thru Public Education-Community Programs**  
Mary Ann Khoury, Executive Director, DUI Victims Center of Kansas  
Ron Wilkey, Victim Advocate, DUI Victims Center of Kansas  
Maria Torrez Anderson, Kansas SADD Coordinator, Kansas Family Partnership

2:00 p.m. - 2:50 p.m.      **DUI Prevention Programs Intended for Younger Drivers**  
Officer John Crane, School Resource Officer, Wichita Police Department  
Deputy James Fletcher, DARE, Saline County Sheriff's Department  
Officer Bill Knight, President, KS Association of SROs, Independence Police Department  
Jessica Price, President & Mandy Hulme, Vice President, ESU Student Government.

3:00 p.m. - 3:50 p.m.      **DUI Deterrent Efforts of Liquor Regulators & Beverage Sales Industry**  
Thomas Groneman, Director, KDOR Division of Alcoholic Beverage Control  
Phil Bradley, Executive Director, Kansas Licensed Beverage Association  
Amy Campbell, Executive Director, Kansas Association of Beverage Retailers

4:00 p.m. - 5:00 p.m.      **State Statutes on DUI/Testing**  
Dave Corp, Law Enforcement Liaison, KDOT Bureau of Traffic Safety  
Jim Keller, Attorney, Kansas Department of Revenue  
Richard Howard, Manager of Quality Assurance, KDHE Laboratories

**Tuesday, July 11, 2006**

**Salon A**

8:00 a.m. - 8:50 a.m.      **Any needed follow-up interviews from Day 1**

9:00 a.m. - 9:50 a.m.      **Enforcement of DUI Laws, Session 1**  
Master Trooper Bill Poland, Kansas Highway Patrol  
Master Deputy Bob Hamilton, Johnson County Sheriff's Office  
Sergeant Don Odell, Topeka Police Department  
Master Trooper Clayton Jameson, Kansas Highway Patrol

10:00 a.m. - 10:50 a.m.      **Enforcement of DUI Laws, Session 2**  
Officer Brian Duncan, Lansing Police Department  
Sergeant Tom Hogard, Leawood Police Department  
Sergeant Brian Hirt, Hutchinson Police Department  
Sergeant Fred Grenier, Lansing Police Department

11:00 a.m. - 11:50 a.m.      **Enforcement-LE Command Perspective, Session 1**  
Undersheriff Kevin Cavanaugh, President of Kansas Peace Officer's Association

Lt. David Weed, Kansas Highway Patrol Breath Alcohol Unit  
Lt. Phil Bostian, Troop F, Kansas Highway Patrol  
Captain Dan Meyer, Commander, KHP Motor Carrier Safety Assistance Division

12:00 p.m. - 1:00 p.m.

**Buffet Lunch in the Hotel Atrium provided by KDOT**

1:00 p.m. - 1:50 p.m.

**Enforcement-LE Command Perspective, Session 2**

Chief Dan Givens, Arkansas City Police Department  
Assistant Chief Captain Sean Wallace, Arkansas City Police Department

2:00 p.m. - 3:15 p.m.

**Judiciary and the DUI Offender**

Administrative Judge Steven Ebberts, Topeka Municipal Court  
District Court Judge Ben Burgess, Wichita District Court  
Municipal Court Judge Brenda Stoss, Salina Municipal Court

3:30 p.m. - 4:45 p.m.

**Prosecutors and the DUI Offender**

Karen Wittman, Shawnee County Assistant District Attorney  
Ted Griffith, Wichita Assistant City Prosecutor  
Heather Jones, Franklin County District Attorney

**Wednesday, July 12, 2006**

**Salon A**

8:30 a.m. - 10:00 a.m.

**Driver's License Suspension and Appeal Process**

Alan Anderson, Chief of the DMV Driver's License Bureau  
Jennifer Hermann, Administrator with the DMV Driver Control Bureau  
James Keller, Attorney, Kansas Department of Revenue

10:15 a.m.-11:00 a.m.

**Evaluation and Treatment**

Charles Bartlett, Project/Policy Coordinator, KSRS Addiction & Prevention Services  
Nancy Fabiano 4<sup>th</sup> Time DUI Program Coordinator, Heartland Regional A/D Assessment Ctr.  
Jason Hess, Clinical Coordinator, Heartland Regional A/D Assessment Center  
Matthew Weller, President, Kansas Association of Alcohol Safety Action Programs.

11:00 a.m. - 12:00 p.m.

**Program Evaluation**

Pete Bodyk, Chief, KDOT Bureau of Traffic Safety  
Chris Bortz, Assistant Chief, KDOT Bureau of Traffic Safety  
David Marshall, Data Analyst, KDOT Bureau of Traffic Safety

12:00 p.m. - 5:00 p.m.      **Panel Deliberations**

**Thursday, July 13, 2006**

**Board Room**

8:00 a.m. - 11:30 p.m.      **Panel Deliberations**

**Friday, July 14, 2006**

**Salon A**

8: 00 a.m. – 9:30 a.m.      **Panel Findings and Recommendations**