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**TO: Senate Judiciary Committee**

**FROM: Kansas Judicial Council – Aaron Brietenbach, Chief Attorney in the Sedgwick County District Attorney Office**

**DATE: February 20, 2020**

**RE: Testimony in Support of 2020 SB 405 Regarding Ignition Interlock Devices Motorized Bicycle Licenses**

The Kansas Judicial Council (Council) and its DUI Advisory Committee (Committee) recommend the passage of SB 405. First, the bill would amend K.S.A. 8-235 to remove the ability for a first-time DUI offender to obtain a license to operate a motorized bicycle. Second, the bill would amend K.S.A. 8-1015 to implement a compliance-based removal system for drivers required to drive with an ignition interlock device (IID). Third, the bill would amend K.S.A. 8-1016 to expand the IID indigency program to incorporate more IID users and establish a sliding scale for program costs. Fourth, the bill would amend K.S.A. 8-1567a to shorten the length of the IID period for a driver under the age of 21 years old.

The Council's recommendations arose out of a study originally requested in May 2018 by Rep. Blaine Finch asking the Council to review Kansas' statutes relating to driving under the influence. The amendments in SB 405 are part of the Committee's most recent recommendations. The Committee's study is ongoing.

## **SEC. 1 – MOTORIZED BICYCLE LICENSES**

K.S.A. 2019 Supp. 8-235(d)(3) allows a first-time DUI offender the opportunity to receive a license to drive a motorized bicycle.<sup>1</sup> According to the Kansas Department of Transportation, because first-time DUI offenders can receive this license, Kansas is ineligible to receive \$250,000 in federal funding for the KDOT State Highway Safety Office to support the state's ignition interlock program. The Kansas Department of Revenue Division of Vehicles reports that there are only 29 motorized bicycle licenses currently issued in Kansas, which has over 2,300,000 active driver's licenses and identification cards. The Council recommends the deletion of K.S.A. 2019 Supp. 8-235(d)(3) and (e) to eliminate motorized bicycle licenses for first-time DUI offenders in order to allow the state to qualify for the additional federal funding.

## **SEC. 2 – 4 IGNITION INTERLOCK RESTRICTED DRIVERS**

### **Current Law**

If a law enforcement officer requests a driver take a breath, blood, urine or other bodily substance test to determine the presence of drugs or alcohol, and the driver refuses to submit to the test, the Kansas Department of Revenue's Division of Vehicles (the division) will take administrative action against the person's driving privileges. The division will suspend the person's driving privileges for one year. At the end of the suspension, the division then restricts the person's driving privileges for two to ten years depending on the driver's history of test refusal. During the restricted period, the driver may only drive a motor vehicle equipped with an ignition interlock device (IID).

A similar process applies when a driver fails a breath, blood, or bodily fluid test, or is convicted of an alcohol or drug-related conviction.<sup>2</sup> The driver is suspended for a period of time and then restricted to using an IID for another period. A chart from the division showing the timeframes for the suspension and restricted ignition interlock periods is attached. The required IID restricted period can range from 6 months to 10 years depending on the type of offense.<sup>3</sup>

An IID is a tool that separates drinking from driving and allows impaired driving offenders to maintain conditional driving privileges. The purpose of the IID is to prevent drivers, who have consumed alcohol, from operating a motor vehicle if their breath alcohol content exceeds a set point (typically 0.02). Drivers must provide a breath sample by blowing into the IID and if the driver's breath alcohol level is over the set point, the vehicle will not start. If the driver's breath alcohol level is below the set point, the vehicle will start; however, while the vehicle is in operation, the IID will prompt the driver to provide additional breath samples (rolling retest).

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<sup>1</sup> Motorized bicycle is defined in K.S.A. 8-126.

<sup>2</sup> "Alcohol or drug-related conviction" is defined in K.S.A. 8-1013(b).

<sup>3</sup> K.S.A. 8-1014.

## **Sec. 2 - Compliance-Based Removal**

Under the current statutes, a licensee who installs an IID in his or her vehicle and maintains the IID for the required timeframe may remove the IID and have unrestricted driving privileges at the end of the IID period. The IID may show that the licensee drank alcohol and then tried to start his car every day for the last month of the IID required period; however, as long as the IID has been installed for the required number of months, the licensee may have the device removed and unrestricted driving privileges restored. The IID program is to prevent people from driving while impaired, and to help drivers modify their behavior. Continuing to drink alcohol and then attempting to start a vehicle despite having and using the IID for months, demonstrates that the driver has not yet learned not to drink and drive.

Kansas should adopt a compliance-based removal system. The Committee reviewed and discussed many different compliance-based removal models. It recommends that before the IID can be removed and the person's unrestricted driving privileges restored, the person must show that (1) he or she has had the IID installed for the required length of time, and (2) the driver has not had more than three standard violations and no serious violations in the 90 consecutive days prior to the driver's application for reinstatement of unrestricted driving privileges. Standard and serious violations are defined on page 5 of the bill.

At the end of the required IID period, the driver would request a certification from the IID provider certifying that the driver has not had more than three standard and no serious violations in the last 90 days. The driver would then provide the IID provider's certification to the division along with the driver's application for reinstatement of the person's driving privileges. This system would put the burden on the driver to show a successful completion of the program, rather than requiring the division to develop a program to continually monitor the driver's performance. This system also allows for the automatic extension of the driver's IID period without intervention by the division. Even if the driver's IID period is over, the IID restriction will remain on the driver's licenses until the driver can show a period of 90 days without more than three standard violations and no serious violations.

## **Sec. 3 – IID Indigency Program**

According to the Kansas Department of Revenue's Division of Vehicles (the division), about half of all Kansas drivers required to complete a period with an IID restricted license will successfully complete the IID program requirements and have their driver's license privileges reinstated. The other half of drivers will remain either suspended or restricted indefinitely. The Committee reviewed the compliance data for drivers whose licenses were suspended or restricted due to an alcohol or drug related offense in 2014. Forty-eight percent of the drivers failed to install the IID as required. Of the drivers who failed to install the IID, 75% received a subsequent driving offense, indicating that they were continuing to drive without the required IID. The division estimated that about half of the drivers who fail to complete the IID program do so because of the financial cost of the IID. Depending on the IID provider, the annual cost of an

IID ranges from \$950 to \$1,215. The annual cost does not include any fees incurred due to non-compliance, including a lockout, tampering, or circumvention of the device.

K.S.A. 2019 Supp. 8-1016(a)(5) requires the division adopt rules and regulations requiring all IID providers operating in Kansas to provide a credit of at least 2% of the gross program revenues in the state as a credit for those who are required to have an IID and who are indigent as evidenced by qualification for the federal food stamp program. In 2018, there were eight IID providers operating IID programs in Kansas. Each provider sets its own fees and manages its own indigency program. In 2018, there were 10,206 IID devices in operation in Kansas. The eight IID providers reported that only 290 people participated in the providers’ indigency programs. Each IID provider administered its indigency program differently. Some waived one-time fees (such as installation or removal fees) while others merely reduced the one-time fees. All providers reduced the monthly leasing and monitoring fee. None waived it completely. Therefore, even for those who qualified for the indigency program, the set annual cost of the IID ranged from \$494 to \$915.<sup>4</sup>

The IID indigency program is essential to allowing all drivers required to use an IID to participate and complete the IID program. The Committee reviewed other states’ IID indigency program structures and received input from the IID providers. The IID providers explained that in states with indigency programs where all IID related costs are waived, people are more likely to damage the IID.

Kansas should adopt a sliding scale of payment based on the IID user’s household income. Kansas should also expand who qualifies for the program to include persons whose household income is up to 300% of the federal poverty level. The amendments in the bill would implement the following sliding scale.

**Proposed IID Indigency Program Sliding Scale**

<b>Household Income</b>	<b>Percentage of Program Costs User Must Pay</b>
Less than or equal to 300% but greater than 200% of the federal poverty level	90% of the program costs plus any additional costs due to non-compliance
Less than or equal to 200% but greater than 150% of the federal poverty level	75% of the program costs plus any additional costs due to non-compliance
Less than or equal to 150% but greater than 100% of the federal poverty level	50% of the program costs plus any additional costs due to non-compliance
Less than or equal to 100% of the federal poverty level	25% of the program costs plus any additional costs due to non-compliance
Persons eligible for the food assistance program pursuant to K.S.A. 39-709	25% of the program costs plus any additional costs due to non-compliance

<sup>4</sup> All information regarding the 2018 IID usage and indigency programs provided by the Kansas Highway Patrol.

Currently, the IID providers receive the IID indigency program application and determine whether an individual qualifies for the program. The Council recommends the division, not the IID providers, determine eligibility for the program and the individual's household income for the purposes of the sliding scale.

**Sec. 4 – IID Requirements for Drivers Under 21 Years Old**

There is an odd discrepancy with how the current statutes treat persons under 21 years old who drive with a blood or breath alcohol content (BAC) between 0.02 and 0.0799. On a first offense, if a person under 21 years old drinks and drives, the person will have a shorter ignition interlock period if the person is *more* intoxicated (BAC of 0.08 to 0.1499). If an under-21 driver's BAC is between 0.02 and 0.0799, the required ignition interlock period is 330 days. If the person consumed more alcohol and the person's BAC is higher, 0.08 to 0.1499, the required ignition interlock period is only 180 days.<sup>5</sup> The Council recommends the ignition interlock period for a driver under the age of 21 with a lower BAC (0.02-0.0799) be amended to match the length of the ignition interlock period for the same driver with a higher BAC (0.08 – 0.1499).

***Driver Under 21 – 1<sup>st</sup> Occurrence***

	<b>Current Statute</b>	<b>Proposal</b>
<b><i>Test Result BAC .02-.0799</i></b>	30 Day Suspension 330 Days Interlock	30 Day Suspension 180 Days Interlock
<b><i>Test result BAC .08 to .1499 (without previous violations as listed in K.S.A. 8- 1015(b)(2))</i></b>	30 Day Suspension 180 days	No change

**COMMITTEE MEMBERSHIP**

The members of the Judicial Council DUI Advisory Committee are:

**Rep. Brad Ralph**, Chair; Dodge City, Kansas  
*State Representative, 119<sup>th</sup> District and City Attorney for Dodge City*

**Gregory Benefiel**; McPherson, Kansas  
*McPherson County Attorney*

**Aaron Breitenbach**; Wichita, Kansas  
*Chief Attorney in the Sedgwick County District Attorney Office*

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

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<sup>5</sup> K.S.A. 8-1567a.

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

**Corey Kenney;** Topeka, Kansas  
*Assistant Kansas Attorney General*

**Ed Klumpp;** Tecumseh, Kansas  
*Retired Topeka Chief of Police*

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

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

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

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

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

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

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

Kansas Department of Revenue  
Alcohol Actions Chart

Alcohol Actions For Drivers Under 21					
Chemical Test Result	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .02-.0799</b> Driving Record Code (A61)	30 Day Suspension 330 Days Interlock No Exam	1 Year Suspension No Exam			

Alcohol Actions For Drivers Of All Ages - BAC .08 to .1499					
Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .08 to .1499</b> Driving Record Code (A98)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .08 to .1499</b> Driving Record Code (A08)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .08 to .1499</b> Driving Record Code (RK2)	30 Day Suspension 6 Month or 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 1 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - BAC .15 or Greater					
Chemical Test Failure	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .15 or Greater</b> Driving Record Code (A90)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .15 or Greater</b> Driving Record Code (A10)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Vehicle Battery - With DUI Conviction	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>BAC .15 or Greater</b> Driving Record Code (RK2)	1 Year Suspension 1 Year Interlock \$200 Reinstatement Fee	1 Year Suspension 2 Year Interlock \$400 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$800 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$800 Reinstatement Fee

Alcohol Actions For Drivers Of All Ages - Chemical Test Refusal (Administrative)					
Chemical Test Refusal	1st Occurrence	2nd Occurrence	3rd Occurrence	4th Occurrence	5th Occurrence
<b>Administrative</b> Driving Record Code (DI3)	1 Year Suspension 2 Year Interlock \$600 Reinstatement Fee	1 Year Suspension 3 Year Interlock \$900 Reinstatement Fee	1 Year Suspension 4 Year Interlock \$1,200 Reinstatement Fee	1 Year Suspension 5 Year Interlock \$1,500 Reinstatement Fee	1 Year Suspension 10 Year Interlock \$1,500 Reinstatement Fee

Alcohol Actions For CDL Drivers (Action is taken in addition to REGDL actions listed above)			
Administrative or Court Conviction for a Chemical Test Refusal or Failure	1st Occurrence	1st Occurrence (HazMat)	2nd Occurrence
	CDL Privileges are suspended for a period of 1 year	CDL Privileges are suspended for a period of 3 years	CDL Privileges are permanently revoked

A driver will only be eligible for a 6 month interlock restriction for first occurrence Chemical Test Failures, DUI Convictions, Vehicle Battery With DUI Convictions, and Chemical Test Refusal Convictions with a BAC of .08 to .1499 and if their driving record does not show any major convictions, prior suspensions, revocations, or cancellations, or a culmination of 3 moving violations on separate occasions within a 12 month period.



**STATE OF KANSAS**  
DEPARTMENT OF REVENUE

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