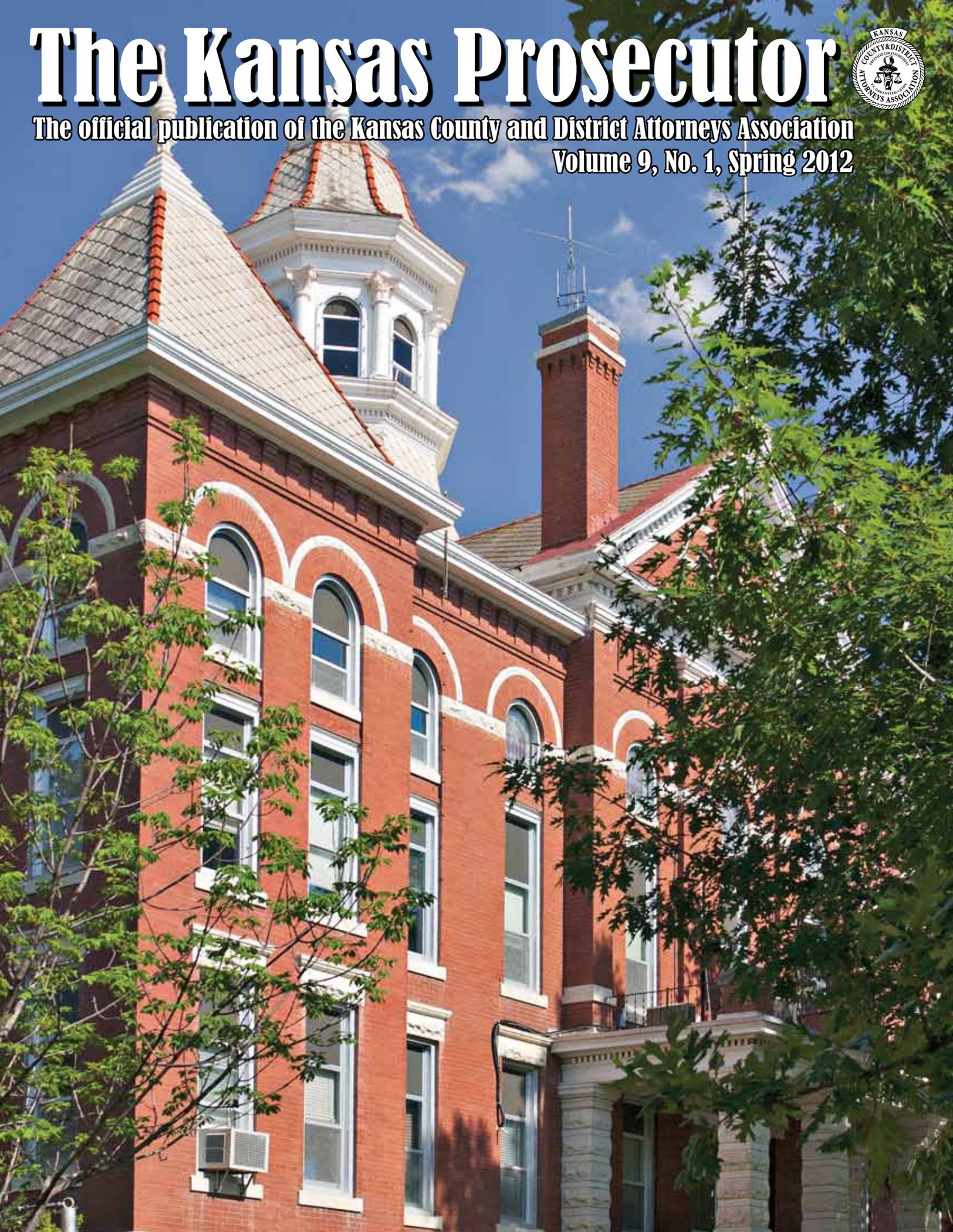


The Kansas Prosecutor



The official publication of the Kansas County and District Attorneys Association
Volume 9, No. 1, Spring 2012



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 County and District Attorneys Association

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 The purpose of the KCDAA is to promote,
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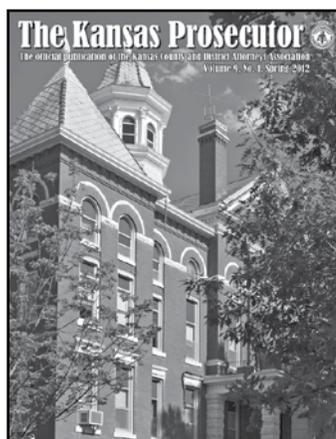
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About the Cover

The Kingman County Courthouse is an historic
 3-story redbrick courthouse building set on a
 ground-floor basement of rough-faced white
 limestone. Built in 1907-08 for Kingman County,
 it is one of 15 courthouses (13 in Kansas and one
 each in Illinois and Oklahoma) designed by noted
 architect George P. Washburn of Ottawa, Kansas.
 His design for this building has been called a
 mixture of Late Victorian, Romanesque, Free
 Classical and Queen Anne architectural styles.

On September 11, 1985, the Kingman County
 Courthouse was added to the National Register of
 Historic Places.

*Photo by John D. Morrison, Prairie
 Vistas Photography*



President's Column

by **Melissa Johnson, KCDAA President**
Assistant Seward County Attorney

KCDAA Items of Importance

The beginning of the year has been a busy time for KCDAA. In January, the Board of Directors descended upon Topeka for part one of KCDAA Day in the Legislature. The majority of our legislative items were all set for hearings throughout the day. In between hearings, we were fortunate to be able to have several legislators or their representatives join us for lunch. It was a great opportunity to be able to visit with the legislators in a more relaxed environment and obtain valuable feedback from them.

In March, we had part two of KCDAA Day at the Statehouse and many members of the Board of Directors were able to testify on our legislative agenda once again. Thanks to Steve, Patrick, and Kari for all of their hard work on behalf of our association in making sure that the views of KCDAA are represented so well in the legislature.

We have also had the opportunity, as a Board of Directors, to review the information that many of you provided to us on your surveys. It was of great help to us to know both who to call on to serve on committees and to know how we can better serve our members as an association. Many of your suggestions have been included in upcoming CLE presentations. It was great to see that there are so many new prosecutors among our ranks who are eager to become involved in our organization.

One of our legislative items passed this year was HB 2468. It was signed by Governor Brownback and will be effective July 1, 2012. It provides that if a defendant seeks discovery under K.S.A. 22-3212, that they now must provide the prosecuting attorney information on expert witnesses prior to trial. That information is to include a summary or written report of what the expert witness intends to testify about, including their qualifications, opinions and the basis and reasons for such opinions. This should help combat experts who are reluctant or unwilling to provide a report from simply appearing at trial to

express their opinions without any chance for the prosecutor to evaluate their credentials and opinions beforehand.

There have been many other legislative changes that will be discussed in this issue of the magazine and at the Legislative Update at the upcoming Spring Conference in Wichita in June. I hope all of you are looking forward to the conference. I know that Justin Edwards and the entire CLE Committee are putting together an outstanding program that will be both practical and beneficial to all of us in our daily work. The CLE Committee has planned sessions geared toward prosecutors who are just beginning their career as well as those of us who have been around a little longer. There will also be an additional breakout session for all of the elected officials to discuss issues specific to their positions that are outside of the more traditional CLE topics.

Finally, I would like to take this opportunity to thank Mike Russell for his many years of service both as a prosecutor and as a member of the Board of Directors for the Kansas County and District Attorney's Association. Mike was appointed by Governor Brownback to serve as a District Judge for the 29th Judicial District. At the time of his appointment to the bench, Mike was serving as the Secretary/Treasurer of the KCDAA Board of Directors. Mike will be missed by our association, but will truly be an outstanding judge. 🍷

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the KCDAA web site and
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www.kcdaa.org

Legislative Update from KCDAA

by Steve Kearney, KCDAA Executive Director & Patrick Vogelsberg, Kearney & Associates, Associate

Status of 2012 Legislative Agenda

As of this writing, the 2012 Kansas Legislative Session has adjourned until the full legislature returns on April 25 to begin what is widely expected to be a long wrap-up session. While the KCDAA legislative agenda has been progressing through the process, virtually all the big ticket items that need to be dealt with by the 2012 legislature have not been accomplished.

Budget

In the waning hours of the final day prior to first adjournment, the House conference committee on the budget exhibited buyer's remorse on an agreement with the Senate, causing the entire legislature to leave town without having passed a budget for FY 2013. Even more important, the agreement also included supplemental appropriations for FY 2012 essential to continuing the services of the Judicial Branch through the end of this year. The result will be furloughs by the Judiciary through the end of this fiscal year ending June 30, 2012. This action leaves all budget decisions for the wrap-up session with no position to work from. The last minute deal breaking is sure to foster an environment of distrust between the conferees making it even more difficult to reach an accord when they return.

Redistricting

Every decade following the census, the legislature must redraw the U.S. Congressional, Kansas Senate, and Kansas House of Representatives districts to reflect changes in demographics. As of this juncture, there are no maps in conference committee, with conventional wisdom indicating the budget debacle is likely tied to perceived leverage for particular maps of interest by some of the legislature. With the unprecedented run of incumbent Republican House members against sitting incumbent Republican Senators, the redrawing of legislative districts has taken on that additional overlay of political infighting, with some

maps favoring the House challengers and others the incumbent Senators. Too much delay will result in the filing deadline of June 1 being pushed back to June 10. The maps also are reviewed by the Kansas Supreme Court, which is not necessarily a fast process.

KPERS

Special committees of both the House and Senate have been meeting regularly throughout the Session, in large part seeking a solution to the multi-billion dollar unfunded liability for the Kansas Defined Benefit Plan. The focus of how to deal with the unfunded liability has been fuzzy much of the time with the committees spending time on other types of plans versus the more direct attempt to pay down the liability. It appears as of this writing that the most favored plan for prospective participants will be some type of hybrid offering a choice between a Defined Contribution Plan versus a Cash balance plan. Current KPERS participants do not appear likely to have their benefits changed much, if at all, as it pertains to being in a Defined Benefit Plan.

School Finance

This matter is also caught up predominantly in the budget process where the budget conference committee had come to agreement on the appropriation, \$24.6 million dollars, differing only on where the money would come from. The House wants to take it from the Highway plan and the Senate from the General Fund. The Governor, in his budget, takes the funding from the General Fund.

Taxes

There is still no agreement on tax reform, although the tax conference committee is meeting with both chambers having passed a tax proposal of their own. The measures are not completely diametrically opposed, but have plenty of differences to allow the legislature to leave with little or no tax

reform accomplished. Earned Income Tax Credits for the working poor is still front and center in that debate. Keep in mind that until the tax reform issues are put to bed, the budget is virtually impossible to resolve since the known size of any hole created by tax reform is unknown.

The better news is that the KCDAA legislative agenda, and that of several of our members we have been able to assist on, has advanced as follows:

Substitute for SB 307 (lesser included crimes; felony murder; SB 305; SB306; HB 2494)

Substitute for SB 307 is the bill that was brought by the KCDAA in response to *State v. Berry*, 292 Kan. 493 (2011) and would clearly state that there are no lesser included crimes of felony murder. The House Corrections committee amended SB 307 to include the contents of another KCDAA bill, SB 305. SB 305, as originally drafted made several changes to the speedy trial statute. The language from SB 305 that is now in SB 307 contains a slimmed down version of SB 305, but retains much of the substantive language. The conference committee of the Senate Judiciary and House Corrections and Juvenile Justice committees put the contents of SB 306 and HB 2494 into SB 307. SB 306 amended the crimes of intimidation and aggravated intimidation of a witness by adding the Secretary of SRS, any agent or representative of the Secretary, or any mandatory reporter to the statute. Lastly, HB 2494, which was a bill that was brought by the Attorney General would amend that statute of limitations for sexually violent crimes so that the time would start to run the day after the victim's 18th birthday.

This filling up and emptying of bills is common at this juncture of the session as legislators seek to find shells in which to put bills that have passed one chamber, but ran out of time in the other. It will be after the legislators return from recess before a conference committee report on SB 307 containing all three KCDAA measures can be voted on in each chamber.

HB 2468 (requiring defense attorneys to produce reports and allow inspection prior to criminal trial)

HB 2468 was signed into law by the Governor

on March 28, 2012. It was necessary to amend the bill from its original draft in order for it to become legislatively viable. The bill as signed would require that the defendant provide the prosecution, not less than 30 days prior to trial, a summary or written report of what any expert witness intends to testify, including the witness' qualifications, the witness' opinions, and the basis and reasons for such opinions. The House Corrections and Juvenile Justice committee added an amendment that stated, "All disclosures shall be made at the times and the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, such disclosures shall be made as provided in this section."

HB 2055 (Amending reporting requirements of the district and county attorney to the secretary of corrections).

HB 2055 was a carryover bill from the 2011 KCDAA agenda and was signed by the Governor on March 26, 2012. HB 2055 removes the requirement that when a defendant is sentenced to confinement, the court must forward a copy of all county and district attorney reports to the Department of Corrections. The bill clarified that when a person has been convicted of a felony and sentenced to prison, the information provided by the prosecutor is limited to any special facts and circumstances surrounding the commission of the offense or the offender that cannot be obtained from records already provided to the DOC.

HB 2318 (Amendments to the recodified criminal controlled substances provisions; new drug sentencing grid; supervision of drug offenders).

HB 2318 is a carryover bill from the 2011 session. It contains the 5-level drug grid that was suggested by the KCDAA. The Senate Judiciary committee added the provisions of SB 368, which is an initiative from the Kansas Sentencing Commission that makes changes to the drug treatment program (formerly SB 123). The Senate Judiciary committee also added provisions from the recodification policy bill -SB 308- except for the criminal sodomy changes and the new crime of armed criminal action. In conference committee, it was agreed to leave Grid blocks 4-C and 4-D

presumptive imprisonment and to have Grid blocks 5-C and 5-D become border boxes. The conference committee report will likely have a vote in both chambers after the legislators return from recess.

House Sub for SB 60 (DUI)

SB 60 is a carryover bill from the 2011 session, but the contents have been gutted and replaced with a combination of the provisions of SB 435 and House Substitute for SB 104 – both of which deal with DUI. Though there are many minor changes that are sought in SB 60 to the DUI laws, likely the most significant is the criminalization of refusal to submit to a sobriety test. The KCDAA adopted this

recommendation and testified during committee that this measure should be taken up by the legislature. Legislators on the conference committee have come to an agreement on the final version of SB 60 (containing the criminalization of refusal language). The conference committee report will likely be run on both floors after the recess.

At the moment, the 2012 KCDAA legislative agenda is in a favorable position as the legislators return from recess. However, other factors can weigh on the overall success of any legislative agenda. Certainly, with a budget to still be passed and redistricting to be resolved, no bill is safe until the Governor puts his pen to paper and signs the matter into law. ☺

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Guest Column

by US Attorney Barry Grissom

Cooperation Keeps the U.S. Attorney's Office Busy

The U.S. Attorney's office in the District of Kansas is busier and more productive than ever these days. In fact, we're setting records.

According to the U.S. District Court's figures, we filed a total of 528 federal criminal cases in FY 2011, which is a 19 percent increase over FY 2010, when we filed 443 cases. That's our highest number since 2007, when we filed 574 cases. Of our three offices in Kansas, Wichita showed the biggest jump – a 63 percent increase, from 168 criminal cases in FY 2010 to 274 cases in FY 2011. Our offices in Kansas City, Kan., and Topeka were close behind.

We also set a record for the number of criminal firearms cases we have filed. In FY 2011, we filed 279 criminal firearms cases, more than any other district, according to the Executive Office for United States Attorneys (EOUSA). That put us ahead of the Middle District of Florida, with 238 cases, and the other top-ranking districts, including the Western District of Texas, the Eastern District of North Carolina, the Western District of Missouri, the Eastern District of Tennessee, the District of Arizona, the Eastern District of Missouri, the District of New Mexico, and the Eastern District of Michigan. These results are calculated based on criminal cases in which 18 U.S.C. 922 or 924 was charged. The former prohibits convicted felons and certain other persons from possessing a firearm. The latter makes it a federal crime to use or carry a firearm in connection with a violent crime or drug trafficking crime.

The numbers of firearms cases are significant because they demonstrate that our prosecutors and staff are working hard to target armed criminals for prosecution. U.S. Attorney General Eric Holder has called on the nation's 94 U.S. Attorneys to use every available resource to prosecute armed criminals and to help protect our law enforcement officers through the Officer Safety Initiative. Last year, 177

law enforcement officers were lost in the line of duty – an increase of 16 percent from the previous year. Of those, 71 officers were killed by gun violence. Since the beginning of 2012, we have mourned the loss of an additional 26 officers. I hope the number is not higher by the time you read this article. I believe that every time we put a felon with a firearm behind bars, we make our communities safer for everyone, but particularly for law enforcement officers who are the first responders and whose job is to take armed criminals into custody. In addition to aggressive prosecution of firearms cases, the Justice Department has expanded its bullet-proof vest initiative and stepped up a series of cutting-edge officer safety training programs and information-sharing platforms. These include new efforts like the Officer Safety and Wellness Toolkit and the VALOR program.

How did our office increase its overall criminal case filings and, more specifically, the number of firearms cases? The answer is simple: Cooperation. The Wichita Police Department, for instance, was one of the driving forces in increasing both our total criminal case filings and our firearms cases. Last year, my office reached out to the Wichita Police Department. We told them we wanted to work more closely with them in developing cases for federal prosecution. First Assistant U.S. Attorney Mike Warner and Assistant U.S. Attorney Debra Barnett worked closely with the Wichita Police Department and Deputy Chief Tom Stolz. I was personally pleased to see Deputy Chief Stolz quoted in the Wichita Eagle, where he said he felt the department historically had good relations with U.S. Attorneys, but that we had "taken it to another level."

Another big factor in the increase in our gun cases was an undercover sting operation in Wichita in which the Wichita Police Department and the Sedgwick County Sheriff's Office took part along

with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. All those agencies contributed personnel during the investigation, which took 11 months to complete. As a result, 67 defendants were charged with federal and state crimes. Again, cooperation among law enforcement agencies and our office was the key to a successful operation.

In the past year, I've put more than 27,000 miles on my government-owned vehicle driving to meet with community leaders and law enforcement officials across the state of Kansas. I wanted to make sure that Kansas City, Kan., Topeka, and Wichita weren't the only communities that heard our message. So I visited Dodge City, Hays, Lawrence, Manhattan, Pittsburg, Pratt, Salina, Junction City, and Hutchinson, just to name a few. I sponsored the first Civil Rights Symposium and the first Prescription Drug Summit in the District of Kansas, as well as the Protect Our Children Conference that attracted an audience of law enforcement officers and victim advocates from across Kansas and the Midwest.

This year, I'll be on the road doing the same thing. I'll be reaching out to police chiefs, sheriffs, and district attorneys. I want every law enforcement agency in the state to know that they can pick up the phone and call our criminal chief, Assistant U.S. Attorney Jared Maag, our District's First Assistant U.S. Attorney Mike Warner, or me with questions if they are trying to decide whether federal prosecution would be a tool that could be used in one of their cases.

At the same time, I'll be out talking to civil rights groups, advocates for victims of human trafficking, students at colleges and community colleges, Indian tribal leaders, health care professionals, environmentalists, advocates for the disabled, social workers, corrections officers, Main Street business leaders and any other groups that want to know what a U.S. Attorney does. I'll be telling the story at every opportunity about how I and about 50 assistant U.S. attorneys and their staffs are working every day to protect Kansans from terrorism, crime, and unlawful discrimination, to enforce federal laws and advance the interests of the U.S. government, to provide federal leadership, and to serve as a catalyst for improving law enforcement through training and public education.

I'll be talking about my priorities. Protecting children from exploitation and Internet crime is one of them. Our specially trained prosecutors work with the Kansas Internet Crimes Against Children Task Force and others to prepare cases for federal prosecution. The fight against human trafficking is another priority. Our office is working closely with the Kansas Law Enforcement Training Center, the Midwest Criminal Justice Institute at Wichita State University, and the Regional Community Policing Training Institute at WSU to sponsor training on human trafficking.

At a time when most Americans are frustrated with political stonewalling and turf battles, I think it is important to let Kansans know that we are working together across party and jurisdictional lines, and we're making meaningful, measurable progress. In this time of limited budgets and growing demands, we've got to communicate better, collaborate more often, and more freely share ideas and insights across all levels of government.

I want to thank all our law enforcement and community partners across the state for helping us build a record of success. I'm looking forward to even greater accomplishments in 2012. 🇺🇸

County Courthouse Portraits



Kingman County Courthouse

John D Morrison
Prairie Vistas Gallery
151 N Rock Island, Suite 1D
Wichita, KS 67202
316-214-7566
www.prairievistas.com



Legislator's Column

by Representative Jan Pauls, Hutchinson

The Workings of the Legislative System

Greetings from the proverbial sausage factory. As a 21-year veteran of the Kansas House of Representatives, I have a certain perspective of a process that is often frustrating to me and my colleagues, unclear to the general public, run by part-time employees, but seemingly assigned the job of solving all societal ills.

Years ago, I had a law career as an attorney handling a lot of indigent clients, and it was easy to blame prosecutors for the woes of my people. I ran a high volume legal aid office at the time. Later, I became an assistant county attorney, and as a prosecutor it just seemed that the judge was the one to blame for not following our brilliant assessment of the law as it applied to our cases. I still identify quite strongly with prosecutors and other law enforcement officers (once a prosecutor, always a prosecutor). I then did a stint as a district court judge and as you might guess, it was common knowledge among us judges that the blame for bad outcomes was badly crafted laws and thus the blame really fell on the Legislature. So now as a state legislator, I can blame oh, let's see, how about federal mandates!

Actually the system works pretty well, so instead of casting stones, it might be constructive to look at the process that churns out hundreds of new pages of law every year and what a local prosecutor or attorney can do to make government and law enforcement work better. The attorney/legislator, such as myself, is actually less common in the Kansas House than it was a generation or more ago. I would prefer to see more attorneys working directly as legislators, however, a good nonpartisan staff of revisors and input from those of you in regular practice who get involved in the process and mitigate the complexities of writing new law can help as well.

A number of things come into play that set the parameters for the legislative branch of government

and help it work. Kansas really has a part-time citizen legislature (our salaries reflect that fact) and what we do in Topeka is the product of people who generally do other things for a living when out of session. We have traditionally had many farmers, school teachers, small businessmen, and retirees along with lawyers who provide the input from their own life experiences or from members of the communities where they live. The collaborative effort of 125 House members of such diverse backgrounds would be extremely difficult without the deliberations and the long vetting process of the committee system. It works when we get good input. A major source of our testimony is the expertise of representatives of various institutions and associations better known as ...“lobbyists.” It's really not a bad word (unless it's the other guy's lobbyist). Your various liaisons through the years with the Kansas County and District Attorneys Association have always been very helpful in presenting information and coordinating testimony from your members. An association lobbyist is only as good as his or her history of delivering relevant facts in an open and honest manner. Kansas has a good reputation for source transparency and with nonpartisan research and revisor staff, so we avoid some of the pitfalls that are problems for other states.

My primary committee assignment is the House Judiciary committee as the ranking Democrat, and I'm also on the Corrections and Juvenile Justice committee. Another major assignment was as a member of the Kansas DUI commission, a study group important to prosecutors, which represents another variation of the legislative process. The commission of 23 members met for more than two years, year-round at the capitol. There were four legislators along with appointments from the Governor; the Supreme Court; the AG; your association and other associations; the Secretaries

of Correction, SRS, Revenue, and Transportation; representatives of the Highway Patrol; and the KBI. Eventually we started working together instead of pointing fingers and blaming others. A big item taken up was information sharing and records from different courts being readily available. That work product was finally presented to the legislature and passed into law in 2011. One proposal that came from the Commission and not included in the 2011 bill was the criminalization of a refusal to take a test to determine the presence of alcohol or drugs. That may yet get passed in this session.

Three other variations of the legislative process that I am personally involved with include: Uniform Law Commission (ULC), National Conference of State Legislators (NCSL), and in Kansas, rules and regulations.

The Kansas Joint House and Senate Administrative Rules and Regulations Committee is one of the few legislative committees that has members from both houses and meets year-round. Some of us look at “rules and regs” almost as a fourth branch of government. State agencies create their own rules that have the force of law and are carefully scrutinized by the legislative branch through this committee. An example is the AG’s office presenting their proposals on rules and regulations regarding counselors in their “batterer intervention program.”

The ULC is a private national organization that dates back more than 115 years and does the grunt work of creating model laws primarily in the civil law field. The more informal version of model legislation is what the NCSL calls the “laboratories of the 50 states.” Each state faces similar budget, education, crime, and regulatory problems. They can conform to what is commonly done, past practice, or innovate on occasion and become the test sites for ideas other states will watch closely and learn from. Kansas has actually been a leader in legislation such as the Kansas Sexual Predator Act that was a direct result of discussions at NCSL. There will always be ideological interpretations, but generally best practices begin to spread when other legislatures see positive results.

Due to the changing nature of the culture, the economy, and new technology, every year presents new challenges and usually the introduction of

more bill proposals than can be fully dealt with in a 90-day session. It is a given that you can’t remedy every problem without displeasing some group, but it is quite amazing how many laws are passed with a 90 to 99 or 100 percent vote. That is actually the norm. The contentious issues and votes are what grab headlines, but we like to think that most laws are given enough hearing to eliminate the most obvious snags and compromise gives it wide support. The more eyes that follow these procedures, the better the outcome. For you prosecutors, take time to find a legislator who will listen to your real world situations and who is willing to learn a bit about the legal culture you face every day.

Those of us on the legislative end of the legal system are quite proud of the American model of self-government we have been given. We know what lawmaking can and should do, and we each strive in our own way to accomplish the greater good. However, we are certainly aware of glitches that are introduced to the process simply through human nature. I once was visiting with an older highway patrol officer who in the course of the conversation mentioned a particular statute that was somewhere between an irritant and a major problem in performing their day-to-day duties. As a young legislator, I immediately proposed a “solution” in the form of a bill to be introduced to the House that would change the law. His response: “Ma’am, I’ve found that sometimes it’s best not to open up these laws to the legislature who might tinker with them a little more than we want.”

Even with that said, as a prosecutor or attorney who deals with the law every day, your input into the legislative process can make it better. 🌟

**Mark Your Calendars for the
2012 KCDA Spring Conference**

**June 14 & 15
Hyatt Regency Wichita**



Watch www.kcdaa.org for more
details coming soon!

KCDAA Member Highlight: Nola Tedesco Foulston

by Amanda G. Voth, Assistant Attorney General

All photos courtesy of The Wichita Eagle

Long-serving District Attorney Nola Foulston instigated, and witnessed, tremendous change over the six terms she has served the citizens of Sedgwick County. When Nola first took office in 1989, the Sedgwick County District Attorney's Office housed one computer, employed 23 attorneys, and had only one general criminal division. "It was a throwback to the '60s," she notes, laughing. Not only was the office décor in need of an update, Nola knew she had to update the operation of the office to ensure the community was served in a professional manner. It took years for her to implement her quickly-devised plan, careful to never go over budget. Her goal was to turn what she called a "rinky-dink" operation, into a professional big law firm practice. Nola feels she accomplished this by seeking out attorneys with good skills, strong ethics, and a personal drive to serve the community. Perhaps most importantly, she worked to instill in them a career-prosecutor mentality.

Along with the changes Nola implemented in the D.A.'s Office came change around her. During her tenure as District Attorney, the population of Sedgwick County increased by 100,000 people as the face of crime changed as well. Increased gang activity in the 1990s prompted a rise in both person and non-person felonies. Nola says she knew she had to be ready for the new and increasing crimes. Today, the office employs more than 50 attorneys, contains 11 different divisions, and is on an entirely electronic system. Nola notes that it took a team effort to build the office into what it has become today.

Although she has been at the helm of leading her office in its positive changes, Nola has also remained engaged

in courtroom activity. She explains that representing the community required a blend of excellence in the administration and management of the office, with excellence in trial.



Nola Foulston high-fives 8-year-old Dusty Delaney at her victory party in 1989.



Nola Foulston spoke at a press conference about serial murder suspect Dennis L. Rader in March 2005.



Nola Foulston argues at the sentencing of Scott Roeder in April 2010. Roeder was convicted of murdering Dr. George Tiller.



Nola Foulston speaks with Kim Parker during the murder trial of the Carr brothers in 2002.

She tried homicide cases, child abuse and neglect cases, and “everything that came along.”

She says she will never forget the Nancy Shoemaker case: the heartache, the brutality, and the uneasiness it caused the community. Nancy, a nine-year-old girl, went missing in the summer of 1990. Months later, some people walking in Sumner County found some bones. With the help of an anthropologist, authorities were able to determine the bones belonged to Nancy Shoemaker. Nola diligently prosecuted the case, and has kept in contact with the family over the years.

Nola also tried Jonathan and Reginald Carr for the murders they committed. The violence began on December 14, 2000, and continued into December 15. It was Nola’s 50th birthday. She recalls getting a call in the middle of the night, and an officer informing her that there had been a mass homicide. After trying the Carr brothers in 2002 and receiving guilty verdicts, the cases still are on appeal. She continues to communicate with the lone survivor of the Carr brothers’ rampage.

Victims and families are not the only people with which Nola continues to communicate. Citizens approach her in grocery stores and other places around the county. “Everyone calls me by my first name,” Nola explains. “They are what keep me going.”

While the citizens are what have kept Nola going during the 28 years she has prosecuted, funny experiences have also helped. Nola recalls receiving an abundance of love letters from men she had sent to prison. Another man escaped from the jail after committing an armed robbery. While he was on the run, the defendant called Nola. He asked her to represent him so he could turn himself in. Nola suggested he call a defense attorney. The defendant responded: “I already did, but he was too expensive!”

Nola notes that while there have been funny moments in her prosecution career, prosecuting criminals and communicating with victims and family members causes a wide range of emotions, from sadness for the victims and families, and anger toward the acts people commit, to respect toward law enforcement officers and the work they accomplish daily.

Nola notes she would not have done anything differently in her life. The best accomplishment was being “able to break through a glass ceiling, do the things I wanted to do, and succeed in them.” Her goal in life is to leave this earth better than how she found it.

After retirement next year following 24 consecutive years as Sedgwick County District Attorney, Nola plans, at some point, to return to private practice. She will continue to write, teach, work with community organizations, and serve the community which she served for so long as District Attorney. 🍷



Nola Foulston with her 20-year-old Swedish Warmblood horse in 1999.



Nola Foulston hugs the mother of one of the victims of Reginald and Jonathan Carr after the jury recommended the death penalty for the brothers.

Appointments

Chief Deputy of the Wyandotte County District Attorney's Office **Michael Russell** was appointed by Governor



Sam Brownback as Judge of the Twenty-Ninth Judicial District. This time around, Mike worked in the Wyandotte County District Attorney's Office since May 2000 and was appointed Chief Deputy in 2005. Prior to that, Mike served as an Assistant Attorney General in the Medicaid Fraud Division (1996-2000), and his first stint in the Wyandotte County District Attorney's Office (1988-1996).



Births (or expecting)

Sedgwick County District Attorney's office

- Assistant District Attorney **Chelsea Anderson** and husband Jesse are expecting in July 2012. (It's a boy!)
- Assistant District Attorney **Julia Hart** and husband Jason are expecting in June 2012. (It's a boy!)
- Assistant District Attorney **Monika Hoyt** and husband Kelly are expecting in September 2012.
- Assistant District Attorney **Matt Dwyer** and wife Ashley are expecting in October 2012.
- Assistant District Attorney **Amanda Marino** and husband Andrew are expecting in August 2012. (This is their third child.)

- Assistant District Attorney **Matt Erb** and wife Tiffany are expecting in June 2012. (It's a girl and their third child.)

Wyandotte County District Attorney's Office

Wyandotte County Assistant District Attorney **Jennifer Myers** and her husband Ronnie welcomed their second child, Ronald Dean Myers III, born Nov. 11, 2011. Ronald joins big sister Lillie, who is now 4.



New Faces

Crawford County Attorney's Office

Joseph S. Behzadi is a new Assistant County Attorney in Crawford County. He started April 2. He earned his MBA in 2004 and JD in 2009 both from Washburn University. For the last three years, he worked at the public defender's office in Sedgwick County.



Finney County Attorney's Office

Megan E. Massey has commenced her employment as Assistant Finney County Attorney on Feb. 1, 2012. Megan achieved her undergraduate degree at the University of Alabama Birmingham in 2006. She obtained her Juris Doctorate Degree from Washburn University graduating in May 2011 and was admitted to the Kansas Bar in 2011.

Kansas Attorney General's Office

The Kansas Attorney General's office hired **Kelly McPherron** as a new KBI attorney. Kelly moved from the Shawnee County District Attorney's Office. Also, **Robert Schmisser** joined the Sexually Violent Predator team as a Special Assistant Attorney General.

Natalie Chalmers, formerly with the Shawnee County District Attorney's office joined the Attorney General's office in November 2011 as an Assistant Solicitor General in the Appellate Division. In the Appellate Division, Natalie handles criminal appeals and post-conviction proceedings in both the state and federal courts.

Natalie's appellate law focus began shortly after law school when she worked for the Kansas Courts of Appeals as a Central Staff Research Attorney. She then joined the Shawnee County District Attorney's Office as an Assistant District Attorney in the Appellate Division. During her two and half years in that office, she wrote numerous briefs and argued multiple cases in front of the Kansas Supreme Court and the Kansas Court of Appeals. She also represented the State in K.S.A. 60-1507 and other post-conviction proceedings.

Natalie earned her Bachelor of Arts in Spanish from Rockhurst University. She then obtained her Juris Doctorate from the University of Kansas School of Law.

Leavenworth County Attorney's Office

Adam Zentner was hired as a Leavenworth Assistant County Attorney. He was born and

KCDAA Milestones

raised in Lawrence, Kan. He received his Bachelor of Arts in Speech Communications from the University of Utah and is fluent in Spanish. He attended the University of Kansas School of Law where he earned his Juris Doctorate, and is admitted to the Kansas Bar and the United States District Court. Before coming to Leavenworth, he prosecuted misdemeanors for the Shawnee County District Attorney's Office and interned in the Leavenworth County Attorney's Office.

Adam presently handles traffic-related offenses, forfeitures, and non-person felonies.

Sherri Becker has been hired as a Leavenworth Assistant County Attorney. She grew up in Atchison, Kan. She attended Emporia State University and received a Bachelor of Science in Business, and then attended Washburn University School of Law where she received a Juris Doctorate. She is admitted to practice law in Kansas and the United States District Court. She started her prosecution career as an intern in Shawnee County where she primarily prosecuted domestic violence misdemeanors. In November 2011, Sherri joined the Leavenworth County Attorney's Office as an Assistant County Attorney. She primarily prosecutes non-person felonies, drug offenses, and person and non-person misdemeanors.

Wyandotte County District Attorney's Office

Susan Alig was hired by the Wyandotte County District Attorney's office. Susan is from Overland Park. She received her bachelor's degree in French and

History from the University of Kansas and her JD from the University of Kansas School of Law. Susan interned with the Franklin County Attorney's Office, the Johnson County District Attorney's office, and for Federal Magistrate Judge James P. O'Hara. Susan is currently on the board of the Lawyers Association of Kansas City, Young Lawyers Section. Susan will be handling general adult cases.



The Wyandotte County District Attorney's Office hired **Brett Richman**. Brett is from

Centralia, Mo. and attended Westminster College in Fulton, Mo. where he received his bachelor's degree in political science. Brett received his JD from the University of Kansas School of Law. While at KU, Brett received the Advocacy Certificate and in 2010 he participated in the Paul Wilson Project for Innocence. Brett interned at the Wyandotte County District Attorney's office where he handled a wide range of preliminary hearings, pleas and sentencing. Brett will be primarily handling adult offender cases as well as the DUI docket and will oversee traffic offenders.



Anna Krstulic joined the Juvenile Division of the Wyandotte County District Attorney's Office in January 2012. Anna is from Kansas City, Kan.

She graduated *cum laude* from Benedictine College with a bachelor's degree in psychology. Anna practiced social work for several years prior to obtaining her law degree from Washburn University, where she graduated with dean's honors. While in law school, Anna was a staff member for *Washburn Law Journal* from 2007 to 2009. She also served as junior editor from 2007 to 2008 and student editor in chief from 2008 to 2009 for *Family Law Quarterly*. In 2009, her law school nominated her for induction into the National Order of Scribes. Anna practiced commercial litigation and insurance regulatory law as an associate attorney for SNR Denton US LLP during the summer of 2008 and upon graduation from law school in 2009 until the end of 2011.



Office Moves

Finney County Attorney's Office

Brett Watson resigned his position effective January 6, 2012, as Assistant Finney County Attorney to pursue his Masters of Law in Environmental and Natural Resources Law at Lewis & Clark Law School in Portland, Ore. Brett started in the Finney County Attorney's office on June 7, 2010.

Seth Lowry resigned his position effective March 14, 2012, as Assistant Finney County Attorney to accept a position as Research Attorney for Kansas

KCDAA Milestones

Court of Appeals Judge Christel E. Marquardt. Seth began in the Finney County Attorney's office on May 11, 2009.

John P. Wheeler, Jr., Finney County Attorney, has announced that he is not seeking reelection to another term as County Attorney. Wheeler was first elected as Finney County Attorney in 1992.



Franklin County Attorney's Office

Heather Jones is stepping down from her current position as the Franklin County Attorney and

will not be filing for re-election. She has accepted a position with the Johnson County District Attorney's Office as the section chief of the Sex Crimes and Child Abuse Division. Her last day with Franklin County will be May 22.



Other News

In the Kansas Attorney General's office, **Andrew Bauch** moved from Criminal Litigation to Appeals. Also, **Kris Ailslieger** with the Kansas Attorney

General's office Appellate Division has been selected for battalion command in the Reserves.

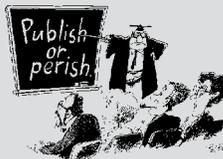


Retirements

Dennis Paul Theroff has retired from the Wyandotte County District Attorney's office after 29 years of service. Paul was a Senior Assistant District Attorney and Lead Charging Attorney. Paul was awarded the 2011 Lifetime Achievement Award by the KCDAA.



We want to share your news!



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2012 Deadlines:
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Fall 2012: October 26, 2012

DUI Search Warrants: Prosecuting DUI Refusals

By Gregory T. Benefiel, Assistant Douglas County District Attorney



Frustrated by a growing trend of chemical test refusals in driving under the influence (DUI) cases, Douglas County District Attorney Charles Branson authorized the use of DUI search warrants in 2009. The initial efforts were limited to specific saturation patrols or DUI check lanes, but that changed after a Lawrence police officer was involved in a crash with an impaired driver who ran a stop light. Following the crash, Branson authorized officers to seek a DUI search warrant any time a driver refused chemical testing. The early search warrant efforts were targeted at felony offenders who had “learned the system” and refused testing.

The enactment of House Sub. for S.B. 6 by the 2011 Kansas legislature reduced the administrative penalties for a chemical test refusal to the same penalties as a DUI test failure with a blood or breath alcohol content of 0.15 or greater.¹ Concerned that the new administrative penalties would increase the number of DUI refusals, Branson approved a zero tolerance policy and encouraged every Douglas County law enforcement officer to seek a DUI search warrant for any chemical test refusal.

DUI refusals are not just a Douglas County problem. Although every person who operates a vehicle in Kansas has consented to submitting to an evidentiary chemical test when arrested for DUI or after being involved in an accident and the investigating officer has reasonable grounds to believe the driver was under the influence,² more than 25 percent of drivers who are required to submit to an evidentiary chemical test refuse to do so.³ Drivers know if they refuse the evidentiary test, it is more difficult to convict them of DUI. A growing number of drivers realize that by refusing all field sobriety tests and the evidentiary test, it is even more difficult to convict them of DUI.

Nationally, 22.4 percent of impaired drivers

refuse evidentiary testing.⁴ Kansas’ refusal rate stood at just 15 percent in 2001⁵, but grew to 27.6 percent in 2010, 28.7 percent in the first six months of 2011, and 30.6 percent during the last six months of 2011.⁶ Responding to this growing problem is a priority of Kansas prosecutors.

Impaired drivers who escape prosecution fail to receive court-ordered treatment, receive no probation supervision, and are left with the impression that refusing testing is a “get out of jail free” card. Successfully prosecuting impaired drivers, particularly repeat offenders, holds those drivers accountable, reduces recidivism and serious injury and fatal crashes. A growing number of jurisdictions, including Douglas County, have chosen to combat the DUI refusal problem by seeking search warrants to obtain blood evidence from suspected impaired drivers who refuse evidentiary testing.

DUI search warrants have only been legal in Kansas since July 1, 2008. In 1987, the Kansas Supreme Court reviewed DUI search warrants and held that they were statutorily prohibited: Search warrants would be allowable but for the statutory language of K.S.A. 1986 Supp. 8-1001(f)(1), which provided in part, “If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given ...”⁷ The Kansas legislature amended K.S.A. 8-1001 in 2008 and struck this language.⁸ Through this statutory amendment deleting the language the Supreme Court relied upon to hold that DUI search warrants are statutorily prohibited, Adee informs

Footnotes

1 House Sub. S.B. 6, Kans. Sess. Laws, Ch. 105 § 14 (2011).

2 K.S.A. 8-1001.

3 Refusal of Intoxication Testing: A Report to Congress, National Highway Transportation Administration (NHTSA) Report No. DOT HS 811 098, 5 (September 2008).

4 Id.

5 Id.

6 Kansas Division of Motor Vehicles (data received from Driver Control Bureau 03/25/2012).

7 State v. Adee, 241 Kan. 825, 740 P.2d 611 (1987).

8 HB 2617, Kans. Sess. Laws, Ch. 170 § 1 (2008).

us that DUI search warrants are permitted when a suspected impaired driver refuses evidentiary testing.

Implementing DUI Search Warrants

The steps to implementing a zero tolerance DUI refusal policy are not complicated nor particularly time consuming. While the process begins with the County or District Attorney's support of DUI search warrants, critical support is needed from the heads of your local law enforcement agencies. Your sheriff and chiefs of police must support their officers taking the extra time necessary to obtain the search warrant and complete the blood draw.

Some might argue that your judges' support of DUI search warrants is the most critical support needed. As some judges have initially questioned DUI search warrants, you should inquire how your judges view the law regarding DUI search warrants. The initial hesitancy seems to reflect that the existing case law holds that DUI search warrants are statutorily barred. Providing the history of DUI search warrants and legislative amendments to the judges has seemed to ease this initial hesitancy.

When there is support for a DUI search warrant procedure in your community, you must then identify who will draw the blood when you have a signed search warrant. Does your jail have a full-time nurse that can be utilized? Will officers need to transport the suspect to the hospital for a blood draw? Will your EMS perform a search warrant blood draw? You need an identified qualified medical professional ready, willing, and able to draw the blood when an officer presents a suspect with a search warrant. It is best to make those arrangements ahead of time. Douglas County utilizes the local hospital for blood draws. While the hospital normally requires a signed consent to treat from a suspected impaired driver who is submitting to a consensual legal blood, on DUI search warrant blood draws the hospital accepts a copy of the search warrant in lieu of the signed consent to treat. Such details should be worked out during your planning phase.

The final preparatory step is the development of a written procedure. Karen Wittman, Kansas Traffic Safety Resource Prosecutor, developed a proposed DUI search warrant procedure and a

checkbox search warrant affidavit. Douglas County modified both for its own use. Your procedure can be a simple outline of what to do or a detailed set of instructions on what to do when a suspect refuses evidentiary testing. Any procedure follows three basic steps: 1) Provide the suspect with implied consent and request evidentiary testing; 2) If a suspect refuses chemical testing apply for a DUI search warrant; and 3) Execute the search warrant.

After the preparatory steps are completed, the final step in implementing a DUI search warrant procedure is educating the patrol officers of the mechanics of applying for a DUI search warrant and the benefits of DUI search warrants. The checkbox DUI search warrant affidavit used by Douglas County and other jurisdictions is similar to an alcohol influence report used by many law enforcement agencies throughout the state. The goal is for an officer to be able to complete the search warrant affidavit in about five minutes. The affidavit is either taken to the judge or notarized and transmitted electronically to the judge for review.

Until recently in Douglas County, it took two officers to obtain a search warrant. The arresting officer would complete the search warrant affidavit and drive to the judge's home while another officer would transport the suspect to the hospital. Each time an officer woke a judge, the judge had to wait for the officer to arrive and review the search warrant before being able to go back to bed (yes, most DUI search warrants occur in the early hours of the day). The Douglas County judges searched for a better system that would facilitate the issuance of search warrants. After purchasing an iPad® for each judge, a judge can now review a search warrant e-mailed in pdf format using GoodReader® software installed on the iPad®, sign the search warrant directly on the iPad®, and e-mail the signed search warrant back to the officer. Since beginning to use the equipment in February, what used to take two officers and one and a half to two man hours to obtain a search warrant and retrieve a blood sample now takes one officer about 45 minutes. From the time the officer begins completing the search warrant affidavit form to the time the judge returns the signed search warrant is now about 15 minutes. The additional time is the time necessary to get the suspect to the medical facility/professional

and obtain the blood sample, which will vary from jurisdiction to jurisdiction depending on how you choose to obtain the blood sample.

It will take time to determine the impact of zero tolerance. During the few months that zero tolerance has been practiced in Douglas County, there have been repeat offenders who have refused all testing that had blood drawn and DUI charges filed. There have been cases that previously would have been nearly impossible to prove beyond a reasonable doubt to a jury that now have strong per se evidence of DUI.

Probably every prosecutor has heard stories of defense attorneys telling their clients, “Don’t take

the test!” Recently, a local Douglas County defense attorney lamented at a local bar CLE, “In Douglas County, you should probably go ahead and take the test because if you don’t, they will just get a search warrant and get your blood anyway.” That reputation will reduce the number of DUI refusals. Isn’t that the reputation you want your jurisdiction to have?

For more information, contact Greg Benefiel to obtain an electronic copy of the DUI checkbox search warrant application and affidavit, a written DUI search warrant procedure, and Karen Wittman’s memorandum of law concerning the DUI search warrants. Greg’s email address is gbenefiel@douglas-county.com.

THE CIVIL SIDE OF DUI: DL HEARINGS

by Karen C. Wittman, Assistant Attorney General, Traffic Safety Resource Prosecutor

In 2011, the Kansas Department of Revenue conducted more than 10,000 driver license hearings statewide. Currently, there are only four hearing officers for the State. The breakdown of the hearings is as follows¹:

	Telephone	In-Person	Total
January	329	649	978
February	223	675	898
March	156	659	815
April	104	613	717
May	162	774	936
June	121	743	864
July	163	587	750
August	149	904	1,053
September	108	811	919
October	144	1,061	1,205
November	130	733	863
December	86	514	600
TOTAL	1,875	8,723	10,598

When a person (aka a Licensee) is requested

to take an evidentiary breath test associated with a DUI, two things can happen: 1) the person can take the test or 2) they can refuse the test. Upon doing either of these, the officer prepares a document referred to as a DC-27. The DC-27 is a form prepared by the KDOR, entitled Officer’s Certification and Notice of Suspension. This document serves as the person’s driver’s license until some type of action is taken by the KDOR. This document also explains to the licensee their rights if they wish to have a hearing concerning any action the KDOR wishes to take.

Within 14 days of being served² by an officer’s certification, a licensee may request a hearing to determine the fate of his/her license.³ If not specified in the request for an “in-person” hearing, the hearing will be by telephone. The “in-person” hearing must be set in the county in which the arrest occurred or an adjacent county.⁴ The hearing officer’s notes of the hearing are usually the only record. However, it is not unusual for the licensee (or more specifically a licensee’s attorney) to hire a court reporter to make a record of the hearing. A \$50 fee is assessed for any hearing held, whether

Footnotes

1 Obtained by KDOR on 01/30/12

2 Information on how a person is effectively served is outside the scope of this review.

3 K.S.A. 8-1020(a)(1): mail a written request postmarked 14 days after service or (a)(2): written request by Fax within 14 days after service

4 K.S.A. 8-1020(d)(1)

“in-person” or by telephone.⁵ If the licensee does not ask for a hearing or requests the hearing in a timely manner, the suspension/restriction will go into effect according to the certification.⁶

Once the timely request is received, the KDOR must set a hearing forthwith.⁷ This temporary license issued by the certifying officer will remain in effect until the 30th day after the KDOR has issued a final decision.⁸

At the administrative hearing, the licensee bears the burden of proving, by a preponderance of the evidence, that the facts supporting the certification of the test results were false or insufficient to sustain a driver’s license suspension.⁹

Discovery is set forth by statute¹⁰ allowing for only certain pieces of information to be given to the licensee. The items are as follows:

1. The officer’s certification and notice of suspension¹¹
2. In the case of a breath or blood test, copies of documents indicating the results of any evidentiary breath or blood test administered at the request of a law enforcement officer
3. In the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument
4. In the case of a breath test failure, a copy of the KDHE testing protocol checklist

As for any video or audio recording made at the time of the arrest, KDOR will issue an order allowing the licensee or the attorney for the licensee to review it. A law enforcement agency shall make the tape available for viewing or a copy can be made and provided to the licensee for a fee not to exceed

\$25 dollars. If viewing/listening is requested, the viewing will be at the location where the video or audio is kept.¹²

Witnesses, who are called by the licensee, at the hearing are limited to the following:

1. Any law enforcement officer who signed the certification form
2. One other witness who was present at the time of the issuance of the certification

The presence of these witnesses shall not be required unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer’s certification.¹³

Evidence at the hearing will always consist of the following:

1. A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both
2. The person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death
3. A law enforcement officer had presented the person with the oral and written notice required by the implied consent law

Lately under prong number 1 “reasonable grounds to believe” has recently been litigated extensively.¹⁴ “Reasonable grounds to believe”

5 K.S.A. 8-1020(d)(2): this fee will be given to State Treasurer and credited to the Division of Vehicles.

6 K.S.A. 8-1020(c): the suspension/restriction will be in accordance with K.S.A. 8-1002.

7 K.S.A. 8-1020(d)(1): Forthwith has been defined as “without unnecessary delay and requires reasonable exertion and due diligence consistent with all facts and circumstances of the case in order to carry out the legislative intent of removing dangerous drivers from state’s public highways.” It is not defined as “immediate” or within a set time frame. See *Foster v. KDOR* 281 Kan. 368 (2006) see also *Crawford v. KDOR*, 46 Kan. App. 2d 464, 263 P.3d 828(2011)

8 K.S.A. 8-1020(b)

9 K.S.A. 8-1020(k); *Martin v. KDOR*, 285 Kan. 625, 630 (2008)

10 K.S.A. 8-1020(e)(1-4)

11 The date on the certification is not a fact that may be contested in an administrative hearing or upon judicial review. A wrong date on the certification is not grounds for dismissal. See *Felgate v. KDOR*, unpublished, 264 P.3d 1058.

12 K.S.A. 8-1020(f)

13 K.S.A. 8-1020(g)

14 All cases listed here are “unpublished”: *Boswell v. KDOR* 2011 WL 5390216 (11/04/11) *Duhr v. KDOR* 260 P.3d 102, 2011 WL 4444481 (09/23/11) *Johnson v. KDOR* 2011 WL 4717364(10/07/11) *Nunemaker v. KDOR* WL 5143136 (10/28/11) *Sjoberg v. KDOR* 2011 WL 4906843 (10/14/11) *White v. KDOR* 263 P.3d 223, 2011 WL 5833610 (11/18/11) to name a few!

has been equated to “probable cause.”¹⁵ Due to this interpretation, the Driver’s License hearing is appearing to have turned into a probable cause hearing. It is becoming more and more prevalent for licensee attorneys to request officers’ arrest reports, which once again turns the scope of this hearing into what would appear to some officers as a “mini-trial” of sorts.

The Kansas Supreme Court has also recognized the reasonable-grounds test is somewhat easy to meet: an officer could have reasonable grounds to request a breath test while not yet having the probable cause required to make an arrest.¹⁶

In determining whether an officer had reasonable grounds to request a breath test under K.S.A. 8-1001(b)(1), the Kansas Supreme Court has said the test is whether, under all the circumstances, a reasonably prudent officer would have believed that the driver’s guilt was more than a mere possibility.¹⁷ Although the reason for the officer originally stopping the person has no relevance at an administrative hearing¹⁸ to determine “reasonable grounds to believe” the reason for the stop is explored at length in some cases.

When reviewing reasonable belief/probable cause, the Appellate Courts have routinely turned to two cases that have very minimal facts, however, have been deemed sufficient.

In **Campbell v. KDOR**,¹⁹ the trial court relied

on several factors in determining the arresting officer had reasonable grounds to believe Campbell was DUI. The Campbell factors included:

1. That Campbell was driving 72 mph in a 55-mph zone.
2. It was 1:10 am.
3. Officer could smell alcohol on Campbell’s breath.
4. Campbell admitted to consumption of alcohol.
5. Campbell’s eyes appeared bloodshot and glazed.

These facts were determined to have Probable Cause to arrest Campbell even before the administration of the field sobriety tests.²⁰

In **Slack v. KDOR**,²¹ the facts were found as follows:

1. Slack was travelling 84 mph in a 70 mph zone.
2. The stop occurred between 12:57 am and 1:09 am.
3. Officer could smell the odor of alcohol.
4. Slack admitted to consuming two beers.
5. Slack’s eyes were bloodshot.

The remaining evidence at the hearing depends on the reason for the action on the license specifically: refusing to take the test, failing a breath test, and/or failing a blood test.

15 In *Bruch v. KDOR* 282 Kan. 764 (2006) citing *Sullivan v. KDOR*, 15 Kan.App.2d 705, 707, 815 P.2d 566 (1991), the Court of Appeals held “reasonable grounds” equates to “probable cause,” explaining:

“ ‘Probable cause’ to arrest refers to knowledge of facts and circumstances which would lead a prudent person to believe a suspect is committing or has committed an offense. [Citation omitted.] Existence of probable cause must be determined by consideration of the information and fair inferences there from, known to the officer at the time of the arrest. It is not necessary that the evidence relied upon establish guilt beyond a reasonable doubt. The evidence need not even prove that guilt is more probable than not. It is sufficient if the information leads a reasonable officer to believe that guilt is more than a possibility. [Citation omitted.]” 15 Kan.App.2d at 707, 815 P.2d 566.

16 256 P.3d at 848 (citing *Smith v. KDOR*, 291 Kan. 510, [2010]); *State v. Pollman*, 286 Kan. 881, 896-97, 190 P.3d 234 (2008)

17 *E.g.*, *Shrader v. KDOR*, 45 Kan.App.2d 216, 220,

247 P.3d 681 (2011) *rev. granted* September 21, 2011 (pending); *Poteet v. KDOR*, 43 Kan.App.2d at 416 (2010).

18 *Martin v. KDOR* 285 Kan. 625 (2008)

19 25 Kan.App.2d 430, 431, 962 P.2d 1150, *rev. denied* 266 Kan. 1107 (1998) see also: *Rolfingsmeier v. KDOR*, No. 103,770, unpublished opinion filed April 29, 2011, slip op. at 8–9 (affirming district court where officer observed unsafe driving, bloodshot and watery eyes, slurred speech, poor balance, difficulty with field sobriety tests, and refusal to take PBT); *Snyder v. KDOR*, No. 103,767, unpublished opinion filed March 25, 2011, slip op. at 5–6 (finding substantial competent evidence in videotaped performance of field sobriety tests exhibiting loss of balance during instructional phase, improper turn and raising arms for balance during performance phase of walk-and-turn test, stopping counting before instructed and using arms for balance on the one-leg-stand test, admission of use and smell of alcohol).

20 25 Kan. App. 2d at 431-32.

21 Unpublished, 248 P. 3d 281, 2011 WL 1004602 (2011)

Refusing to take the test:

It must be shown that the person refused to submit to and complete a test as requested by law enforcement.²²

Failing a breath test:

It must be shown that

- The testing equipment used was certified by the KDHE²³
- The person who operated the testing equipment was certified by KDHE
- The testing procedures used substantially

complied with the procedures set out by KDHE²⁴

- The test result determined the person had an alcohol concentration of 0.08 or greater²⁵
- The person was operating or attempting to operate the vehicle

An affidavit prepared by the custodian of records of KDHE will be allowed to be admitted as if the person from KDHE had testified. The affidavit consists of the breath testing device being certified, and the operator was certified on the date of the test. The certified operator will be able to testify.²⁶

22 As cited in *State v. Fritzemeier*, Unpublished, 162 P.3d 66 (2007) : “[c]onduct constituting less than cooperation by a licensee in taking the test is tantamount to a refusal,” and citing *Call v. KDOR*, 17 Kan.App.2d 79, 83, 831 P.2d 970 (1992), and *Lund v. KDOR*, 16 Kan.App.2d 265(1991)

23 See *Barnett v. KDOR*, 44 Kan.App. 2d 498, Syl.¶ 2, 500, 238 P.3d 324 (2010) (issues concerning whether an Intoxilyzer machine was “properly tested in order to maintain its certification” with the KDHE were not issues encompassed by K.S.A. 2009 Supp. 8–1020[h][2] [D]). In support of its holding, the Barnett court stated its belief that “if the legislature intended to allow hearings to encompass proper certification of Intoxilyzers—rather than just whether the machine has been certified—it could have done so in the language of K.S.A. 2009 Supp. 8–1020 (h)(2)(D).” 44 Kan.App.2d at 501, 238 P.3d 324.

24 In *Creten v. KDOR*, 45 Kan. App. 2d 1098 (2011) the court stated: Notably, our conclusion that the legislature intended the phrase “testing procedures” in subsection (h)(2) (F) to be limited to the testing procedures established by the KDHE regarding the administration of a breath test, not the testing procedures established by the KDHE to ensure the continued certification of an Intoxilyzer machine, is entirely consistent with the conclusion reached by those courts in Kansas that have interpreted and applied K.S.A. 8–1020(h) (2)(F). See *Mitchell v. KDOR*, 41 Kan.App.2d 114, 117–19, 200 P.3d 496, rev. denied 289 Kan. 1279 (2009) (pursuant to K.S.A. 8–1020[h][2][F], court addressed issue of substantial compliance with KDHE protocols for administering breath test when driver, during 20–minute deprivation period, was allowed to drink cup of water and go to restroom alone for 2 to 4 minutes); *Martin v. KDOR*, 38 Kan.App.2d 1, 9–10, 163 P.3d 313 (2006) (pursuant to K.S.A. 8–1020 [h][2][F], court addressed issue of substantial compliance with KDHE protocols for administering breath test when officer who administered breath test left driver alone in testing room several times for only a few seconds at a time during 20–minute deprivation period); *Schoen v. KDOR*, 31 Kan.App.2d 820, 822–23, 74 P.3d 588 (2003) (pursuant to K.S.A. 8–1020[h] [2][F], court addressed substantial compliance with KDHE

protocols for administering breath test when officer failed to visually check to see if tubing running from simulator solution to Intoxilyzer 5000 was properly attached prior to administering breath test); *Bryant v. KDOR*, No. 99,515, 2009 WL 112821, unpublished opinion filed January 16, 2009, slip op. at 4–7 (pursuant to K.S.A. 8–1020[h][2][F], court addressed substantial compliance with KDHE protocols for administering breath test in conjunction with 20–minute deprivation period); *Burkhart v. KDOR*, No. 91,345, 2004 WL 2047556, unpublished opinion filed September 10, 2004, slip op. at 2–4 (pursuant to K.S.A. 8–1020[h][2][F], court addressed issue of whether Intoxilyzer 5000 machine which printed “inverted” copy of test results substantially complied with KDHE protocols for administering breath testing); *Resner v. KDOR*, No. 89,889, 2004 WL 48487, unpublished opinion filed January 9, 2004, slip op. at 3–5 (pursuant to K.S.A. 8–1020[h][2] [F], court addressed issue of substantial compliance with KDHE protocols for administering breath test when officer who conducted 20–minute deprivation period was not the same officer who administered the breath test). *Creten* also indicated: “testing procedure” does not include the weekly certified standard run that is performed to ensure continued certification of the Intoxilyzer machine by the KDHE.

25 In *Swank v. KDOR*, 222 P.3d 1020 (Kan. Ct. App. 2010), review granted (Apr. 11, 2011) the defendant claimed she had consumed before driving but also indicated she drank after driving and before her arrest. The court indicated intervening consumption of alcohol is not specifically enumerated as within the scope of an administrative hearing by subsection (h)(2), it cannot be considered by a court on review. See also *State v. Hall*, unpublished, 2011 WL 420710 (01/28/11)

26 K.S.A. 8-1020(i). This document has the following information: The records of the Kansas Department of Health and Environment show that on (Date of Test) a breath-testing device maintained by the (Law Enforcement Agency) in (City) and identified as Intoxilyzer (Type of Device), serial number ----- was currently certified and that (Name of Operator) was currently certified to operate such device under rules and regulations promulgated pursuant to K.S.A. 65-1,107.

Failing a blood test:

It must be shown that

- The testing equipment used was reliable²⁷
- The person who operated the testing equipment was qualified²⁸
- The test result determined that the person had an alcohol concentration of 0.08 or greater in such person's blood²⁹
- The person was operating or attempting to operate the vehicle

An affidavit³⁰ prepared by the KBI, other forensic laboratory or local law enforcement agency shall be admissible into evidence in the same manner and with the same force and effect as if the examiner who performed the analysis had testified in person.³¹

Once all evidence is admitted, the hearing officer

may issue an order at the end of the hearing or may take the matter under advisement and issue a hearing order at a later date.³² Once served with the order, the licensee may file, within 14 days after the effective date of the order, a petition for review of the hearing order. The hearing will be in the District Court in which the hearing was held or in case of a telephone hearing in the county in which the arrest or accident occurred. The review will be in accordance with the Kansas Judicial Review Act.³³

Upon review, the driver bears the burden of proving the decision of the agency should be set aside. The review shall be trial de novo to the court and the evidentiary restriction limiting the evidence as noted above shall not apply to the trial de novo. If the court finds the grounds for action by the agency have been met, the court shall affirm the agency action.³⁴

27 In *Henke v. KDOR* 45 Kan.App.2d 8 (2010) the Court of Appeals indicated a licensee may raise issues concerning whether the sample was collected in a reliable way i.e. whether the person who drew the blood sample from the individual was qualified to do so.

28 See also *State v. Stegman* 41 Kan.App.2d 568 (2009) "the list of people authorized to withdraw blood under K.S.A. 8-1001(c) indicates the legislature wanted to ensure blood withdrawals would be performed in such a way as to protect the health of the individual whose blood was being withdrawn 'to guard against infection and pain, and to assure the accuracy of the test.'"

29 See Footnote 24.

30 Certificate prepared pursuant to statutory amendments which allow reports and certificates by person performing forensic analysis to be admitted into evidence without testimony is required to contain statements indicating type of analysis performed, result achieved, any conclusions reached based upon that result, that subscriber is person who per-

formed analysis and made conclusions, subscriber's training or experience to perform such analysis, nature and condition of equipment used, and certification and foundation requirements for admissibility of breath test results, when appropriate. *K.S.A. 22-3437(2)*. *State v. Crow*, 266 Kan. 690 (1999).

31 *K.S.A. 8-1020(j)*

32 *K.S.A. 8-1020(n)*; Just recently there have been a number of cases where the hearing officer has "taken the issue under advisement" and not rendered a decision in an expected manner. In *Turner v. KDOR* 2011 WL 5438922 (11/10/11) the Court of Appeals determined 9 months to make a decision did not violate the licensee's due process rights however the court indicated: a 9 month delay by the hearing officer to render a decision was "unacceptable." See also: *Duhr*, supra- (7 month delay); *Gugler v. KDOR*, unpublished, 2011 WL 5526572 (10/10/11)- (10 months) *Miller v. KDOR*, unpublished, 2011 WL 5526573 (10/10/11)- (6 months)

33 *K.S.A. 77-601 et seq.*

34 *K.S.A. 8-1020(p)*



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Kansas Offender Registration Act: Violent Offenders

by Jason Covington, Assistant District Attorney, Johnson County District Attorney's Office

Nearly everyone in our community is aware of sex offender registration lists. Offender registries can now be easily accessed by the public on the internet with the click of a mouse. Custom applications can be downloaded from App Stores to search for offenders anywhere using your GPS enabled device. When the registries are accessed, many people are surprised to find that the registry also encompasses offenders who commit violent crimes.

The Kansas Offender Registration Act (KORA) requires violent offenders to register in the same fashion as the more commonly known sex offender. A violent offender is defined by statute and includes specific crimes as well as crimes committed in a specific fashion. Any defendant convicted of capital murder, murder in the first degree, second degree murder, voluntary manslaughter, involuntary manslaughter, kidnapping, aggravated kidnapping, and aggravated human trafficking, and any attempt of these crimes after May 29, 1997 will automatically be required to register under KORA.¹ Criminal restraint convictions after May 29, 1997 where the victim was under the age of 18 also results in registration.²

Any offender who has been convicted of a person felony after July 1, 2006 where the Court makes a finding that a deadly weapon was used in the commission of the crime will subject the offender to registry.³ The Court must make the deadly weapon finding on the record. This finding can be far reaching and include accomplices who never even handled the deadly weapon.⁴ Unlike the conviction-oriented components under K.S.A. 22-4902(e), this section requires the district court to engage in judicial fact finding when making this determination.⁵

Several defendants have unsuccessfully tried to argue that a jury and not the district court must make the deadly weapon finding. Defendants have contended that failure to submit this issue to a jury violates their constitutional rights under *Apprendi v. New Jersey*⁶ and *State v. Gould*⁷. This argument has been consistently denied by the Courts. In *State v. Chambers*, the Court of Appeals held that *Apprendi* and *Gould* are only applicable when the fact finding reached by the court results in a more severe sentence than the maximum sentence authorized by the facts found by a jury.⁸ Despite the recognized punitive components of KORA, the registration does not actually extend the defendant's sentence. Therefore, KORA does not violate *Apprendi* or *Gould*.⁹ This principal also dictates that the trial court's failure to advise a defendant of mandatory registration under KORA during acceptance of a plea is not a denial of due process since courts do not have to inform defendants of collateral consequences at the time of plea.¹⁰

This scenario can present itself even in cases where the defendant enters a plea. In *State v. Roberts*, a defendant made a no contest plea to aggravated battery with two alternative means: with a deadly weapon and without a deadly weapon.¹¹ At sentencing, the defendant argued that since he used the firearm as a club, it should not be considered a deadly weapon.¹² The Court made the requisite deadly weapon finding and ordered the defendant to register under KORA.¹³ On appeal, the defendant argued that this determination should have been made beyond a reasonable doubt by a jury. As in *Chambers*, this judicial finding was found permissible because it did not increase the length of the defendant's sentence beyond the statutory maximum.¹⁴ The same result was reached when

Footnotes

1 K.S.A. 22-4902.

2 *Id.*

3 *Id.*

4 *State v. Nambo*, 42 Kan.App.2d 731, 736-37, 216 P.3d 186, 189-190 (2009).

5 *State v. Roberts*, 247 P.3d 234, 2, 2011 WL 781612 (Kan.App.) (unpublished) (2011).

6 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

7 271 Kan. 394, 23 P.3d 801 (2001).

8 36 Kan.App.2d 228, 234, 138 P.3d 405, 411. (2006).

9 *Id.* at 238, 413.

10 *State v. Legg*, 28 Kan.App.2d 203, 206-07, 13 P.3d 355, 358 (2000).

11 247 P.3d 234, 2011 WL 781612 (Kan.App.) (unpublished) (2011).

12 *Id.*

13 *Id.*

14 *Id.*

determining whether a BB gun qualified as a deadly weapon for purposes of KORA.¹⁵

In order to comply with KORA, the court must take specific steps at sentencing. The offender must be informed by the court on the record of the procedure to register and the requirements of K.S.A. 22-4905, *Duties of offender required to register; reporting; updated photograph; fee; driver's license; identification card*.¹⁶ In practice, most prosecutors rarely see this portion of the statute fully complied with. Typically most courts simply tell the offender "you will have to register pursuant to statute." Going through each and every element of K.S.A. 22-4905 is impractical due to time constraints. For record purposes, it may be prudent to have copies of K.S.A. 22-4905 available in the Courtroom for defendants receiving the standard KORA instruction at sentencing.

K.S.A. 22-4904 also states the court shall direct the defendant to read and sign the registration form and direct the offender to report within three business days to the registering law enforcement agency after being released on probation.¹⁷ The remedy for failure to properly inform a defendant regarding KORA is unlikely to remove the registration requirement.¹⁸ However, it could have a significant impact on future Failure to Register charges against the offender.

K.S.A. 22-4905 dictates the registration requirements that surround the offender. If an offender enters a county to reside, work, or attend school, they are required to register with law enforcement within three business days of coming into that county. At the visit, the offender will submit to an updated photograph and documentation of any scars or tattoos. The offender is required to provide general personal identifiers to the agency as well as place of employment, all telephone numbers, driver's license numbers, vehicle information, professional licenses, all e-mail addresses, and all online identities including memberships to social

networks.¹⁹

Violent offenders are required to report in person to the registering agency four times a year.²⁰ One of the appearances may be conducted by certified letter at the discretion of the registering agency.²¹ Transient offenders are required to register every 30 days.²² All offenders are required to pay \$20 to the Sheriff's office four times a year on a schedule that revolves around the offender's birthday month.²³ Finally, if the offender is going to travel outside of the United States, they must provide notice 21 days prior to departure.²⁴

The length of registration is currently controlled by K.S.A. 22-4906. Defendants convicted of aggravated kidnapping, kidnapping, and aggravated human trafficking where the victim is under the age of 18 are subjected to lifetime registration. All other violent offenders are required to register for 15 years. The time period commences upon the defendant's release whether it be on probation or parole. If the defendant fails to comply with the requirements of KORA, the time period does not count toward the duration of registration. If the offender were to be convicted of a second registration offense, the offender's registration on the new offense shall be lifetime.

Much to the dismay of registering offenders, the *Ex Post Facto* Clause is not a protection afforded to individuals subject to registration. For example, Delarick Evans was convicted for a sex offense in 1999. At that time, the registration requirements for his offense was 10 years. In 2007, two years shy of the termination of his registration requirement, KORA was amended netting him a lifetime registration. His appeal on the issue was denied since the registration requirement is not punishment and therefore does not violate the *Ex Post Facto* Clause of the Constitution.²⁵

On a final note, be aware of the power of an expungement to extinguish the requirements of KORA. In *State v. Divine* the defendant

15 See *State v. Franklin*, 44 Kan.App.2d 156, 234 P.3d 860 (2010).

16 K.S.A. 22-4904.

17 *Id.*

18 See *State v. Everett*, 255 P.3d 1228, 2011 WL 325 (Kan. App.) (unpublished) (2011).

19 K.S.A. 22-4905.

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *State v. Evans*, 44 Kan.App.2d 945, 948, 242 P.3d 220, 223 (2010) citing *State v. Myers*, 260 Kan. 669, 696, 923 P.2d 1024 (1996).

successfully petitioned the court and the prosecutor for expungement of his conviction without a formal hearing.²⁶ After the order was signed, the defendant then petitioned to remove his registration which was still required under KORA. The defendant argued that after the expungement he no longer had a conviction, which would make him subject to KORA. The Court of Appeals agreed and ordered that the defendant be removed from the offender list.²⁷

KORA will continue to evolve based upon the community's needs. The demands it places on offenders, the Courts, and law enforcement are always subject to change. Although prosecutors need to maintain a watchful eye for updates, the case law has produced a tier free registration system. This consistency benefits everyone involved. 

26 *State v. Divine*, 291 Kan. 738, 246 P.3d 692 (2011).

27 *Id.*

FBI's Next Generation Identification

How does an officer identify an individual without identification?

Law enforcement officers across the country conduct hundreds of thousands of routine traffic stops each year and hear various stories of why the driver has no identification. When identification cannot be provided, how can officers tell the difference between a husband asked to go to the grocery store to grab a gallon of milk late one evening and a wanted or potentially dangerous felon?

Law enforcement officers are professionally trained to detect when someone is lying and/or trying to hide something, however, many lifelong criminals have become very adept at lying and getting away with it. While most of these encounters conclude peacefully, traditionally, if an officer suspected an individual was not telling the truth, they would have had a few options when attempting to determine whether he was dealing with a wanted or potentially dangerous individual. First, they would run a check on the driver's biographical information through a radio call to a dispatch officer, or by initiating a search on an in-car computer system. Either method would have searched for individuals matching the driver's biographical



information in the FBI's National Crime Information Center (NCIC) database, returning any existing warrants and criminal history. Second, the officer could have transported the individual to a police station, fingerprinted him, and checked those prints against their state and/or federal automated fingerprint identification system (AFIS).

This whole process is time consuming and subsequently takes that officer off of the streets they are hired to protect.

In many cases, the officer does not have enough suspicion to justify this tedious process, allowing many wanted felons to escape another encounter with a law enforcement officer.

This scenario can be eliminated with the use of a mobile identification device and participation in the FBI's Next Generation Identification (NGI) Repository for Individuals of Special Concern (RISC). The RISC supports mobile fingerprint identification operations on a national



level and enables law enforcement to identify the status of an encountered individual to quickly assess a subject's threat level within seconds.

An officer can use a mobile identification device to fingerprint an individual on the scene and within seconds, a response alerts them as to whether an encountered individual is a known or appropriately suspected terrorist, wanted person, National Sex Offender Registry subject, or a subject for whom there is heightened interest. The RISC investigative tool provides the first responders who are most likely to encounter a terrorist suspect with immediate access to intelligence data in the field. Prior to implementation of the RISC as a component of the FBI's NGI Program, local law enforcement agencies with mobile identification devices were only able to capture and search a subject's fingerprints against local and state records. Deployment of the RISC equipped law enforcement with the capability to concurrently search a local database and a subset of a national database using a single mobile identification device.

The Florida Department of Law Enforcement has been using the mobile identification devices for over three years. Recently, Florida State Trooper Rickie Zigler identified a vehicle with the headlights turned down as it drove down Interstate 95 near Ormond Beach at 8:09 p.m. Officer Zigler pulled over the vehicle and as he approached the driver's window, he smelled the scent of marijuana. When the driver handed over his identification, the observant officer noticed that the driver's license and bankcard bore different names. With his suspicions raised, Zigler used a mobile livescan capture device to submit the driver's fingerprints for a search against Florida's AFIS as well as the FBI's new RISC. The search returned no matches in the Florida database. However, within one minute, the RISC database returned a red hit. The search revealed the driver had an 8-year-old outstanding warrant for murder and aggravated assault, during a drug deal gone bad. The warrant had been entered into the NCIC system by the Gwinnett County (Georgia) Sheriff's Office many years prior to this traffic stop. The driver was immediately arrested and taken into custody.

The Houston Police Department (HPD) has been using the mobile identification devices for over two years and has had much success with the hand-held

devices. While participating in a routine inspection for seatbelt violations, a HPD officer pulled over a vehicle for a routine seatbelt violation. The driver of the vehicle could not produce identification and seemed nervous. During routine questioning, the driver supplied the officer his name and home address. The officer was suspicious and decided to utilize his mobile fingerprint identification device. The driver's fingerprints were taken on the scene and transmitted to the Texas Department of Public Safety and the FBI's RISC. The officer received a response within one minute of the submission. The response indicated the name and date of birth provided by the suspect did not match the information returned to the hand-held device. Instead the response indicated that the suspect had an outstanding warrant for Sexual Assault of a Child from Harris County, Texas. The response confirming an active warrant for the suspect was not a hit from the local HPD database, but the confirmation was from the FBI's RISC. The suspect was immediately arrested as a result of the active warrant.

"We asked ourselves how we could use this biometric technology as an investigative enabler," said Unit Chief Brian Edgell with the NGI Program Office's Implementation and Transition Unit, operating under the FBI's Criminal Justice Information Services (CJIS) Division. "How can we use the information that is gathered during an arrest cycle to help us, for example, in a traffic stop or in a random encounter where an individual does not have identification—or where the officer believes, based on his or her professional experience and training, that the individual is being deceptive or providing a false name or false information?"

The answer was a national mobile identification capability named RISC. The RISC database is made up of biographical and fingerprint information associated with wanted persons, known or appropriately suspected terrorists, registered sex offenders, and other individuals of special interest. In all, RISC includes approximately 1.3 million sets of fingerprints, including those of about 600,000 individuals on the National Sex Offender Registry. "Primarily, officers encounter people who have an open warrant from a state or federal court for their arrest, or they are a sex offender," said Edgell. The RISC system is available to process searches

24 hours a day, 7 days a week. The database is updated in near real-time, as states upload their data to NCIC. "As soon as a state submits a warrant to the FBI, it is immediately available to the system and therefore it is immediately available for all law enforcement users," Edgell explained.

For many agencies, the concept of RISC will not be new because they already have the ability to launch a roadside query on their local or state AFIS using a mobile-ID device. Lead Analyst David Jones with the NGI Implementation and Transition Unit explained, "What we have done is open up this capability to be a nationwide service. RISC gives the police officer access to a searchable national repository of information." The FBI CJIS Division works with representatives from each state typically at the lead state-level police organization to provide network connectivity. "The states then disperse their connections and relationships to local agencies within their jurisdictions by county or region," said Edgell. Each agency is responsible for procurement of the upgrades and devices necessary to access RISC. Edgell said that federal grants are available through the Department of Justice and the Department of Homeland Security.

"There are devices as inexpensive as \$2,000 per device and \$15 a month to a cell-phone service provider," said Edgell. "A small, ten-officer, rural agency can buy one or two of these devices, and they will be connected just like your major police departments that have large IT infrastructures and staff to support tens of thousands of users. It is lined up to support all of the law-enforcement

community without a significant IT investment." The implementation of future NGI increments will bring new capabilities for RISC. For example, one capability is to enable RISC to search against the Unsolved Latent File.

"We have about 600,000 latent fingerprints on file from crime scenes where there was no match in the criminal master file," said Edgell. "With this planned capability, we would be able to search those latent prints and, if there was a match, notify the agency that submitted that latent print and inform them where the encounter occurred, and point them to the agency that encountered that individual. Some of those responses may be in real-time and some of those may be the next day or in two hours. We are still working out those details, but we are steadily moving in that general direction." Additionally, NGI Increment 4 will provide the ability to return a photo of the individual on the officer's mobile-ID device if there is a hit on a RISC search. "Receiving a photograph is just one more piece of data for the officer to process roadside and to assist that officer in making a tactical decision," said Edgell.

The RISC capability officially moved from its status as a pilot program to a nationwide full operating capability. Now law enforcement agencies across the country have the ability to utilize the RISC and use this technology to enhance homeland and hometown security.

For more information about NGI and the RISC Program, you may visit our website at <http://www.fbi.gov/hq/cjisd/ngi.htm> or by contacting the NGI Program Office by calling (304) 625-3437. 

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