

To: House Judiciary Committee
From: Eric B. Smith, Legal Counsel
Date: January 14, 2016
RE: Opposition to HB 2289

I want to thank Chairman Barker and the Committee members for allowing the League of Kansas Municipalities to provide testimony in opposition to HB 2289.

HB 2289 would require a police officer to certify, in cases of DUI test failure and refusal, that “prior to stopping the person operating or attempting to operate a vehicle, a law enforcement officer had reasonable grounds to suspect the person was committing or had committed a crime or traffic infraction, or was involved in an accident resulting in property damage or injury.” This language would limit the types of cases that the administrative process would apply to.

Currently a police officer must certify that there were reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs. HB 2289 would limit a driver’s license suspension for DUI test failure or refusal to only those cases where the reasonable grounds to believe that the individual was DUI was based on a traffic infraction. There are actions other than traffic infractions that can cause an officer to find reasonable grounds to believe and individual is driving under the influence. For instance, in a DUI check lane, an officer may observe slurred speech, odor of alcohol or loss of motor function by a driver. Under the language of HB 2289, an individual who refuses or fails a DUI test would not be subject to the administrative suspension of their driver’s license if they were found to be driving under the influence at a DUI lane check. It is not logical for someone who fails or refuses a DUI test to not be subject to the administrative penalties simply based on how the violation was discovered.

It is important to keep in mind that the statutes that HB 2289 proposes to amend govern the administrative process for suspending a driver’s license of someone who has either failed or refused a DUI test. Section 2 of the bill would continue to expand the administrative procedure by allowing the questioning of a law enforcement officer concerning the reason for stopping the driver. The reason for stopping the driver would have no bearing on whether or not the driver failed or refused to submit to a DUI test. The League does recognize that any interaction with police should be based on a lawful and constitutional stop. The questions concerning the validity of the stop should be answered at the time of trial where both the People and the individual will have representation.

The League has reviewed the recommendations of the Judicial Council Criminal Law Advisory Committee, concerning HB 2289, and would support the amendments suggested in the December 4, 2015 report of the committee. The amendments suggested would remove the concerns the League has with this bill.

Based on the above issues the League of Kansas Municipalities opposes this bill in its current form and respectfully requests that the Committee not pass out HB 2289 to the full House.