

DRAFT LEGISLATIVE ISSUES REPORT

The eCitation project contemplates a near paperless process in which a police officer, using a laptop or hand held computer, obtains and records necessary information during a stop, prints a citation, and then presents a copy of it to the driver. Further, it is contemplated that the police officer would not print a second citation because such would be redundant. All the information on the citation would be retained within the computer system and the citation would immediately be processed and submitted electronically to the Traffic Records System (TRS), and routed to and stored in the eCitation repository. This would reduce the use of paper and do away with the need for the police officer to present the paper citation to a supervisor for approval, who would then present it to a court, who would then process it through disposition. Additionally, the TRS would automatically forward the citation to the police officer's supervisor for review and approval, which would also be performed electronically.

The contemplated process raises a number of statutory issues which are discussed herein.

1. Kansas' current statutory framework regarding issuance of traffic citations.

K.S.A. 8-2106(a) provides in pertinent part that “[a] law enforcement officer may prepare and deliver to a person a written traffic citation on a form approved by the division of motor vehicles, if the law enforcement officer stops the person for a violation of: (1) The uniform act regulating traffic on highways, which violation is a misdemeanor or a traffic infraction; (2) [through] (8) [listing other statutes for which a law enforcement officer is authorized to prepare and delivery to a person a written traffic citation]”. Subsection (b) lists information that the citation shall contain, including a “notice to appear in court, the name and address of the person, the type of vehicle the person was driving, whether hazardous materials were being transported, whether an accident occurred, the state registration number of the person’s vehicle, if any, a statement whether the vehicle is a commercial vehicle, whether the person is licensed to drive a commercial motor vehicle, the offense or offenses charged, the time and place when and where the person shall appear in court, the signature of the law enforcement officer, and any other pertinent information.” [Emphasis added.]. Subsection (c) requires that the “[t]he time specified in the notice to appear shall be at least five days after the alleged violation unless the person charged with the violation demands an earlier hearing.” Subsection (d) provides that “[t]he place specified in the notice to appear shall be before a judge of the district court within the county in which the offense is alleged to have been committed.”

K.S.A. 8-2106(e) provides in pertinent part that “ ... in the discretion of the law enforcement officer, a person charged with a misdemeanor may give written promise to appear in court by signing at least one copy of the written citation prepared by the law enforcement officer, in which event the law enforcement officer shall deliver a copy of the citation to the person and shall not take the person into physical custody.” Note that subsection (e) only applies when the officer charges the driver with a misdemeanor. It does not apply when the officer issues a citation for a traffic infraction.



K.S.A. 8-2106(f) provides in pertinent part that “[w]hen a person is charged with a traffic infraction, the notice to appear shall provide a place where the person may make a written entry of appearance, waive the right to a trial and plead guilty or no contest. Such notice to appear shall contain a provision that the person’s failure to either pay such fine and court costs or appear at the specified time may result in suspension of the person’s drivers’ license as provided in K.S.A. 8-2110, and amendments thereto. The notice to appear shall provide a space where the law enforcement officer shall enter the appropriate fine specified in the uniform fine schedule contained in K.S.A. 8-2118, and amendments thereto, for the violation charged and court costs in the amount provided by law. If the notice to appear does not do so, the law enforcement officer shall provide a person charged with a traffic infraction a form explaining the person’s right to appear and right to a trial and the person’s right to pay the appropriate fine and court costs prior to the appearance date. The law enforcement officer shall provide the person with the address of the court to which the written entry of appearance, waiver of trial, plea of guilty or no contest and payment of fine and court costs shall be mailed.” [Emphasis added.] Note that for a citation issued for a traffic infraction, K.S.A. 8-2106 does not require the person charged to sign the citation, but does require that the law enforcement officer sign the citation. Note also that there is no specific time frame in K.S.A. 8-2106(f) in which the person charged must make a written entry of appearance, waive the right to a trial, or plead guilty or no contest. Importantly, the statute does not require the person to make that decision at the time of the stop in the presence of the police officer. Since subsection (c) requires the hearing to be at least 5 days after the alleged violation, it appears that the intent of the statute is that such election can be made after the stop and up to some time prior to the hearing.

K.S.A. 8-2107(a)(1) provides in pertinent part that “ ... when a person is stopped by a police officer for any of the offenses described in subsection (d) and such person is not immediately taken before a judge of the district court, the police officer may require the person stopped, subject to the provisions of subsection (c), to deposit with the officer a valid Kansas driver’s license in exchange for a receipt therefore issued by such police officer, the form of which shall be approved by the division of vehicles. Such receipt shall be recognized as a valid temporary Kansas driver’s license authorizing the operation of a motor vehicle by the person stopped until the date of the hearing stated on the receipt. The driver’s license and a written copy of the notice to appear shall be delivered by the police officer to the court having jurisdiction of the offense charged as soon as reasonably possible. ...” Subsection (c)(1) provides in pertinent part that “[i]n lieu of depositing a valid Kansas driver’s license with the stopping police officer as provided in subsection (a), the person stopped may elect to give bond in the amount specified in subsection (d) for the offense for which the person was stopped. ...” Subsection (c)(2) provides that “[s]uch bond may be a cash bond, a bank card draft from any valid and unexpired credit card ... or a guaranteed arrest bond certificate ...” Subsection (c)(3) provides that “[s]uch cash bond shall be taken in the following manner: The police officer shall furnish the person stopped a stamped envelope addressed to the judge or clerk of the court named in the written notice to appear and the person shall place in such envelope the amount of the bond, and in the presence



of the police officer shall deposit the same in the United States mail. After such cash payment, the person stopped need not sign the written notice to appear, but the police officer shall note the amount of the bond mailed on the notice to appear form and shall give a copy of such form to the person. If the person stopped furnishes the police officer with a guaranteed arrest bond certificate or bank card draft, the police officer shall give such person a receipt therefor and shall note the amount of the bond on the notice to appear form and give a copy of such form to the person stopped. Such person need not sign the written notice to appear, and the police officer shall present the notice to appear and the guaranteed arrest bond certificate or bank card draft to the court having jurisdiction of the offense charged as soon as reasonably possible.” [Emphasis added].

K.S.A. 8-2108 provides that “[i]n the event the form of citation provided for in K.S.A. 8-2106 and amendments thereto includes information required by law and is signed by the officer preparing it, such citation when filed with a court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution for the violation specified.”

2. Whether to require the person stopped to sign the citation issued by the police officer?

One of the purposes of the eCitation project is to streamline the process and reduce the time of a police officer making a stop, obtaining and recording necessary information, and issuing a citation, so the officer can get back on the road as quickly as possible, while maintaining the accuracy and completeness of the information obtained and the processing of the citation.

Under the current statutory framework, when issuing a citation, the police officer must prepare and deliver to the person a written traffic citation, which must contain a notice of appear in court and other information. K.S.A. 8-2106(a) and (b). Generally, there is no requirement in the statutes that the person stopped sign the citation (which includes the notice to appear). There is, however, a statutory requirement that the police officer sign the citation given to the person. K.S.A. 8-2106(b) and 8-2108. Further, the statute requires that the written citation be on a form approved by the division of motor vehicles. K.S.A. 8-2106(a). Thus, while the statutes do not specifically require the signature of the driver, the form approved by the division of motor vehicles may require the person’s signature. Additionally, a person charged with a misdemeanor may give written promise to appear in court by signing as least one copy of the written citation in lieu of being taken into physical custody. K.S.A. 8-2106(e). However, there is no statutory requirement for the person to sign the citation if the police officer requires the person to surrender his/her driver’s license or provide a bond pursuant to K.S.A. 8-2107. (Note K.S.A. 8-2107(c)(3) where it specifically states that the person stopped need not sign the written notice to appear after the person provides a cash bond, guaranteed arrest bond certificate, or bank card draft.)



As anticipated, the eCitation process is to be designed to be as paperless as possible. This, of course, cuts down on the number of documents that must be handled and stored by the police officer, and delivered to the courts, which will decrease to opportunity for errors. If, in the traffic infraction situation, the only document is the written citation given to the person stopped, then requiring the person stopped to sign that citation would not accomplish any benefit. In the situation where the police officer is citing the person for a misdemeanor and the person charged wants to give a promise to appear in court in lieu of being taken into physical custody, the police officer will be able to make an entry on the eCitation that the person has been notified of such option, given such promise, is not being taken into custody, and is being provided a copy of the citation. The copy of the citation given to the person would contain this information also. If the Kansas Legislature decides that having the person sign the citation and such promise to appear in court in order to establish notice to the person and the person's agreement, then the eCitation program can be set up to allow for printing a second copy of the citation to be signed by the person, retained by the police officer, and then manually processed through the court system.

Should the Legislature and the Division of Motor Vehicles decide that it is unnecessary to require the person stopped to sign the citation, then we suggest that:

- a. the written traffic citation form approved by the Division of Motor Vehicles pursuant to K.S.A. 8-2106 not require the signature of the person stopped;
- b. K.S.A. 8-2106(e) be amended to remove the requirement that the person may give written promise to appear and revise it to provide for an oral promise to appear which is acknowledged by the police officer on the citation and that such acknowledgment appears on the citation given to the person (suggested language is provided below for consideration); and
- c. those places in the statutes which require a "written" citation or notice to appear in court be delivered or presented to the court need to be amended to allow for the electronic delivery and presentation to the courts.

The following are suggested amendments:

K.S.A. 8-2106(e) Except in the circumstances to which subsection (a) of K.S.A. 8-2104, and amendments thereto, apply, in the discretion of the law enforcement officer, a person charged with a misdemeanor may give an oral promise to appear in court to the law enforcement officer. The notice to appear shall provide a space where the law enforcement officer shall enter an acknowledgement on the citation that the person charged has given such oral promise to appear in court. In this event, the law enforcement officer shall deliver a copy of the citation to the person and shall not take the person into physical custody. [This suggestion removes the references to the person charged giving a written promise to appear in court by signing the citation, and replaces it with the authorization for an oral promise acknowledged by the officer on the citation. It appears in the first phrase of the current statute that the reference to K.S.A. 82-104 should actually refer to K.S.A. 8-2104. That was the reasoning for that suggested revision.]



K.S.A. 8-2107(a)(1) Notwithstanding any other provisions ... The driver's license and either an electronic or written copy of the notice to appear shall be delivered by the police officer to the court having jurisdiction of the offense charged as soon as reasonably possible. [This suggestion adds language authorizing the electronic delivery of the citation to the courts as an alternative to manually delivering a written copy.]

K.S.A. 8-2107(c)(3) Such cash bond ... Such person need not sign the written notice to appear, and the police officer shall present, either manually or electronically, the notice to appear and the guaranteed arrest bond certificate or bank card draft to the court having jurisdiction of the offense charged as soon as reasonably possible. [This suggestion clarifies the meaning of "present" by adding language authorizing the manual or electronic presentation of the citation and bond documents to the courts.]

3. Whether to require the law enforcement officer to sign the citation given to the person stopped?

K.S.A. 8-2106(b) and K.S.A. 8-2108 require that the law enforcement officer sign the citation. The purpose of such signature is believed to be to identify the issuing officer, and as the officer's acknowledgment that the officer believes that there is probable cause to issue the citation. The eCitation will have the identity of the issuing officer and may be configured with an acknowledgment that the officer believes that there is probable cause to issue the citation and an eSignature process, if necessary.

The Legislature and the Division of Motor Vehicles should consider whether the signature of the issuing officer is necessary. If it is determined to be necessary, then it may result in the need for the eCitation process to print duplicate citations so the officer will be able to retain a physical copy of the signed citation given to the person.

If it is determined that the issuing officer's signature is not required, then K.S.A. 8-2106 and K.S.A. 8-2108 need to be amended to remove the requirement. The following are suggested amendments:

8-2106. Traffic citation; procedure.

...

(b) The citation shall contain ..., the time and place when and where the person shall appear in court, the identity of the law enforcement officer, and any other pertinent information. [Remove the word "signature" and replace it with the word "identity". What constitutes the identity of the officer would be left to the Division of Motor Vehicles in approving the form of the citation. It could include information such as the officer's name, badge number, agency name, agency office address, telephone number, fax number, and email address, etc.]

8-2108. Citation deemed lawful complaint.



In the event the form of citation provided for in K.S.A. 8-2106 and amendments thereto includes information required by law, including, but not limited to, the identity of the officer preparing it, such citation when filed with a court, either manually or electronically, having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution for the violation specified. [These suggestions leave in the concept of placing importance upon the identity of the police officer appearing on the citation. Although, the phrase “includes information required by law” would cover the requirement that the citation contain the identity of the issuing officer as it would be required under K.S.A. 8-2106 as suggested above. Also, the suggestions about manually or electronically filing the citation clarify that electronic filing pursuant to the eCitation process is authorized.]

8-2108. Citation deemed lawful complaint.

In the event the form of citation provided for in K.S.A. 8-2106 and amendments thereto includes information required by law, such citation when filed with a court, either manually or electronically, having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution for the violation specified. [This suggestion removes the reference to the preparing officer signing the citation. The phrase “includes information required by law” would cover the requirement that the citation contain the identity of the issuing officer as it would be required under K.S.A. 8-2106 as suggested above. Also, the suggestions about manually or electronically filing the citation clarify that electronic filing pursuant to the eCitation process is authorized.]

4. Disclaimer

The above suggested amendments to the Kansas statutes are merely suggestions to provide notice that it may be necessary for the Kansas Legislature to amend certain statutes in order to fully implement the eCitation project as contemplated. There has not been an exhaustive review of the Kansas statutes to determine if the above identified statutes are the only statutes that may need amendment. Further, there has not been a review of the Kansas Constitution or the United States Constitution to determine if any of the above suggested amendments complies with or is in violation of either the Kansas Constitution or United States Constitution. It is anticipated that the Kansas Legislature and the Kansas Code Revisor’s Office will perform whatever review is necessary to determine what statutes may need revision to fully implement the eCitation project and that any such revision comply with constitutional requirements.

