

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./p.m. on January 31, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Hein,
Hess, Mulich and Werts.

Committee staff present: Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Ken Smith, Shawnee County Assistant District Attorney
Colonel David Hornbaker, Kansas Highway Patrol
Captain Ted Baehni, Topeka Police Department
Lieutenant Farrell Fouts, Shawnee County Sheriff's Department

The chairman announced the groups who were invited in to give their presentations as to how the DUI law that was passed last year is working, has it achieved the results desired, have fatalities been reduced, and what are the side effects.

Ken Smith explained he has full-time traffic prosecution duties in the Shawnee County District Attorney's office. He reported in Shawnee County they have seen a 15% decrease in filings; 70% of the people arrested in Shawnee County are eligible for diversion. He stated most persons who have come before the courts have been treated as though their convictions came after July 1st. Mr. Smith said Shawnee County has experienced some difficulty with the public service or community service aspect of the bill. They are looking at 90,000 hours potential diversion time; it creates administrative problems with trying to keep track of those individuals. He commented if we are going to keep the community service aspect, we need specifics as to what is expected. He explained they depend on the A.S.A.P. program for support and help. Mr. Smith stated another aspect that has created a problem for them is the question of reckless driving; the bill doesn't address reckless driving. He has rarely seen a person actually serving time in jail for reckless driving; as an alternative they will have file bargaining. He suggested imposing a penalty provision for reckless driving to reflect closer relationship to the DUI law. He stated there is disparity as to whether or not convictions for DUI prior to 1982 should count towards mandatory minimum sentencing. Mr. Smith stated as a whole it is an excellent bill; in general everyone who has some involvement in this has made their best step to integrate the changes and to take the best from it. He reported they feel they have 10% to 15% success with people charged with DUI who have completed the education program. He feels the bill has been effective.

Colonel David Hornbaker presented his remarks to the committee (See attachment #1).

Lieutenant Farrell Fouts explained since 1979 he has been in the traffic division working with alcohol related situations. He stated in 1982 they did see a decrease in DUI arrests compared to 1981. They did see an increase in alcohol related citations involving accidents with those drinking; fatal accidents remain the same since 1981. He stated the new law is very good; they have a few problems with it. He feels the law has taken away some of the officer's discretion on the street. Lieutenant Fouts said we have reduced the drunken drivers on the road; people are much more conscious of the seriousness of driving after drinking, and the consequences of doing so.

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Captain Ted Baehni said he thinks at this time the present law is working real well. It is too early for them to evaluate; they would like another six months or year. They have gone through the recent holiday season without fatalities, and finished up with a very good traffic record this year. From the information received in their office, he sees more emphasis on DWI. Captain Baehni stated that hit and run is an intentional act, and that it doesn't seem there is enough concentration on driving without a license. He reported while they were running a drivers license lane, they were making arrests every 3.75 minutes; he sees a need to follow up on people who don't pay attention to whether they belong on the street or not. He expressed a need for a record keeping system to track prior offenses and alcohol related offenses; also a system to tap into for out of state offenses. He stated many people are coming into Kansas getting drivers licenses when their license was revoked in another state. We need to get together with other jurisdictions. He showed the committee a drivers license that kids are using and altering the date of birth on it.

The chairman inquired concerning the persons they have stopped who don't have their driver's license, have they left their license at home or was none currently issued to them? Captain Baehni answered some have left the license at home; we are arresting numerous registration violations. He reported they are running 75% with illegal driver's license for different reasons. The chairman referred to the recent article in the Topeka paper that discussed an overload in the municipal court, and the municipal judge might be having to request another judge to handle DUI cases. He inquired if the department had a goal of increasing DUI arrests and have more next year as their goal. Captain Baehni replied in the affirmative; they are contemplating some additional help to concentrate on the drinking driver. The chairman inquired if it was usual to have a goal for a certain number of arrests for a particular offense. Captain Baehni replied, you set goals with the idea of something to work for; they probably single out drunken driving. The chairman commented, yes, it is a social problem; that is why the legislature passed that law. He can see no alcohol fatalities as a goal but inquired about a goal for arrests or individual officers having a quota for a night. Captail Baehni answered, he didn't interpret it that way. They feel the drinking driver is out there and will have an accident problem. The chairman commented the public needs to get to the place they realize it is not the thing to do; the deterrent effect is also important but he would be happy if there were zero arrests if that was because there were no violations of the law.

A committee member inquired of Ken Smith to what extent he found in general the awareness of charitable organizations or community organizations concerning public service or community service opportunities. Mr. Smith answered, he has received no contact from any organizations; no organizations have come forward to help. He said he didn't mean that is something they should have done; he can go out and seek that help. The problem is that it is rather limited; there are administrative problems in making sure those persons are there and agencies who can accept people to work. He stated the system of volunteer work is very, very fragile; if they utilize that service, they have to restructure the whole system; it will require court supervision; it will require some followup; as a practical matter, it doesn't exist here. The committee member inquired, are you saying public service is not practical? Mr. Smith replied the usefulness is very limited; it could be useful. It will increase the administrative burden, it creates additional court time. He doesn't think they can handle it as it is now structured because the jail is crowded. Another committee member inquired concerning their decision to adopt the clean slate approach; was this an interpretation of the law or a policy decision. Mr. Smith replied they had to make a decision prior to the actual enforcement dates of the statute, after meeting with different groups. There was no room in the jail; jailing these offenders would push out the violent offenders. The committee member inquired if there is a serious problem of crowding, if we don't have a new jail. Mr. Smith replied he thinks it is a problem if a jail term is the deterrent to drinking and driving. Another committee member referred to the

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90,000 hours potential in administrative and diversion programs. Mr. Smith reported there were 642 filings and explained how it was figured. Another committee member referred to the loophole procedurally in the statute with regard to prior convictions in other states, and did he find that a problem. Mr. Smith answered the law could be improved in this area. Another committee member inquired about the file bargaining and what kind of problems does it impose. Mr. Smith said the prosecutors themselves have created it where it exists.

Another committee member inquired of Colonel Hornbaker how accurate is the preliminary breath test if we would adopt the per se provisions as 25 other states have done. Colonel Hornbaker replied the test is extremely accurate from the best of his knowledge. Ken Smith stated he confirmed that statement.

Senator Mulich moved to approve the minutes of January 28, 1983; Senator Hess seconded the motion, and the motion carried.

The meeting adjourned.

1/7 '83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME ADDRESS ORGANIZATION

NAME	ADDRESS	ORGANIZATION
David Kunkler	TOPEKA	KHP
Burr Sifers	CHANNEL 19	
Gene Johnson	Topoka	Ks Assoc. of ASAP Coordinators
Ken Smith	Topoka	SWCO DISTRICT ATTORNEY'S OFFICE
Lee Sipes	Topoka	Topoka Police
TED BAEHNI	TOPEKA	" "
Jeanette Knight	Topoka	Governor's Office
Ralph A. Sycala	Topoka	ADAS
Sam R. Phelps	Topoka	SRS/ADAS
Chris Graves	Topoka	Assoc Students of Ks.
Tom Whitaker	Topoka	Ks Motor Carriers Assn.
Dick Foylon	Topoka	Life at CBS Best!
Samuel Deets	Topoka	Shawnee Cty Sheriff Dept.
Bill Hudson	Topoka	Shawnee Co Sheriff's Dept
Larry Humes	Staff	Steinger
M. Hannon	Topoka	Cauid-1010491
Kelly	"	UPI
Chris McKenzie	"	League of KS Municipalities
Denise Tilwell	"	OJA
Jeff Southard	"	Attorney General
John Montgomery	"	Dept Rev.
John Smith	"	Prison Control Bureau Dept Rev
Debbie Eder	Topoka	Ks Assn of Private Clubs
Mark Baerwald	"	KBWA
Terry Wooten	TOPEKA	Wichita EA GLC-BEAW

THE NEW DRIVING WHILE UNDER THE INFLUENCE LAW

AN OVERVIEW

BEFORE THE SENATE JUDICIARY COMMITTEE

REMARKS BY COLONEL DAVID HORNBAKER
SUPERINTENDENT, KANSAS HIGHWAY PATROL

JANUARY 31, 1983

PATROL ARRESTS FOR DRIVING UNDER THE INFLUENCE ROSE TO 3,296 DURING 1982. THIS REPRESENTS A 20.3% INCREASE OVER 1981 WHEN 2,717 ARRESTS WERE RECORDED.

INTERESTINGLY, 51% OF THESE ARRESTS OR 1,676 WERE MADE DURING THE FIRST SIX MONTHS OF THE YEAR. FORTY-NINE PERCENT (49%) OF THE ARRESTS, OR 1,620 WERE MADE DURING THE EFFECTIVE PERIOD OF THE NEW LEGISLATION.

THE DECREASE, IF IT IS INDEED SYMBOLIC, REFLECTS THE DESIRED EFFECT AND HOPEFULLY, THE DETERRENT VALUE OF THE LEGISLATION. WE CANNOT, HOWEVER, REALISTICALLY CREDIT THIS OR ANY OTHER SINGLE FACTOR FOR THE DECREASE AT THIS POINT IN TIME DUE TO THE LIMITED EXPERIENCE AFFORDED. IT IS SIMPLY TOO EARLY TO KNOW. TO ILLUSTRATE, DURING JANUARY OF 1982, THE PATROL EFFECTED 211 ARRESTS. TO DATE THIS MONTH THERE HAVE BEEN 223 ARRESTS.

WE HAVE RECEIVED ANOTHER MOST ENCOURAGING SIGN. ACCIDENT FATALITIES IN KANSAS DECREASED 14.5% IN 1982 BREAKING A 32 YEAR RECORD. PREMATURE PROBABLY, BUT EQUALLY ENCOURAGING, IS THE FACT THAT FATALITIES IN JANUARY ARE ONLY 50% OF THEIR

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NUMBER FOR LAST JANUARY.

AGAIN, WE CANNOT STATE A DEFINITIVE REASON OR REASONS FOR THE DECLINE, AND UNFORTUNATELY, WE DO NOT YET HAVE ACCESS TO TOTAL ACCIDENT STATISTICS FOR LAST YEAR TO DRAW A COMPARISON OR ESTABLISH A POSSIBLE CORRELATION. HOPEFULLY, A PORTION OF THE DECLINE WILL SURFACE IN THE AREA OF ALCOHOL INVOLVEMENT. IT IS COMMON KNOWLEDGE CONCERNING THE DISPROPORTIONATE PART DRINKING DRIVERS PLAY IN THE CONTRIBUTION TO FATAL AND SERIOUS INJURY ACCIDENTS REGARDLESS OF JURISDICTION.

THE PATROL IS SATISFIED WITH AND REMAINS CONVINCED THE NEW LAW PROVIDED BY THE PAST SESSION IS PART OF THE PROBLEM SOLUTION AND WE HAVE ENCOUNTERED NO INSURMOUNTABLE OBSTACLES IN THAT REGARD. WE ARE AWARE THAT CERTAIN PROVISIONS HAVE CAUSED CONSTERNATION IN THE AREA OF PROSECUTION AND FEEL THIS IS DUE PRIMARILY WITH THE NUMBER OF FILINGS AND THE REQUIRED PROCESSING OF THESE INDIVIDUALS.

FOR EXAMPLE, AND IN LIMITED INSTANCES, THE BAN ON PLEA BARGAINING HAS BEEN REPLACED BY FILE BARGAINING WHEREIN THE CHARGE IS BARGAINED PRIOR TO FILING AND THE CASE IS NOT FILED OR IS FILED AS A LESSER CHARGE. AGAIN, WE LACK SUFFICIENT EXPERIENCE TO GAUGE RESULTS AND MANY OF THE AFFECTED CASES ARE STILL AWAITING ADJUDICATION.

NEEDLESS TO SAY, THE OVERALL EFFECT OF THIS OR ANY OTHER LAW, HINGES ON ITS TOTAL APPLICATION. COOPERATION AND VIGOROUS EFFORT AT EVERY LEVEL OF THE PROCESS IS REQUIRED. ONLY THEN CAN THE FULL INTENT OF THE LAW BE REALIZED. WE ARE STRIVING TO EFFECT THIS RESULT.

WE ARE ALSO FULLY COGNIZANT THAT THE LAW ADDRESSES A SITUATION THAT WAS YEARS IN THE MAKING AND CANNOT BE INSTANTLY REVERSED. I AM SPEAKING SPECIFICALLY OF THE FACT THAT FOR FAR TOO LONG, DRIVING UNDER THE INFLUENCE WAS CONSIDERED A "MINOR OFFENSE" IN TOO MANY QUARTERS AND AS A RESULT, THE NATION WITNESSED A NEEDLESS SLAUGHTER AND CRIPPLING OF PERSONS THAT WOULD NOT HAVE BEEN TOLERATED UNDER ANY OTHER CIRCUMSTANCES.

THE PATROL, AS WE INDICATED IN OUR EFFORTS AND TESTIMONY LAST YEAR, REMAINS CONVINCED THE PENALTY SECTIONS CONTAINED IN THE LAW ARE ADEQUATE. WE WERE, AND REMAIN, PROPONENTS OF REHABILITATION WHERE THIS IS POSSIBLE. IT IS A RARE OFFICER WHO WORKS AN AREA FOR ANY EXTENDED TIME AND DOES NOT REALIZE A SMALL SEGMENT OF THE POPULATION CONSTITUTES THE REAL PROBLEM AND THEY ARE DEALING WITH THESE PERSONS PERIODICALLY. THEY ALSO BECOME QUICKLY AWARE THAT THESE SITUATIONS FAR TOO FREQUENTLY END IN TRAGEDY AT THE EXPENSE OF OTHERS.

WE ARE AWARE THIS LAW WILL BE SCRUTINIZED AND FURTHER CONSIDERED IN THE CURRENT SESSION. IT IS OUR INTENTION IN THAT REGARD TO SUGGEST ADOPTION OF A PER SE PROVISION TO REPLACE THE PRESENT PRIMA FACIE PROVISION. THIS RECOMMENDATION IS NOT WITHOUT PRECEDENCE AS TWENTY-FIVE STATES PRESENTLY UTILIZE A .10 PER SE LEVEL AND TWO A PER SE LEVEL OF .13. ENACTMENT OF THE .10 PER SE LEVEL WOULD, IN OUR ESTIMATION, STRENGTHEN AN OTHERWISE SOLID STATUTE AND ASSIST IN ITS PROSECUTION.

ADDITIONALLY, WE WILL RECOMMEND INSERTION OF A CLAUSE TO PERMIT PRELIMINARY BREATH TESTING WHEN AN OFFICER HAS REASONABLE GROUNDS TO SUSPECT DRIVING WHILE UNDER THE INFLUENCE. THIS WOULD ALLOW THE OFFICER TO DETERMINE IF THE INDIVIDUAL SHOULD BE ARRESTED AND FURTHER TESTED OR RELEASED AT THAT TIME WITH NO FURTHER

INCONVENIENCE.

I REGRET THAT WE CANNOT AT THIS REPORTING PROVIDE MORE CLEARLY THE RESULTS OF THE NEW STATUTE, BUT ASSURE YOU WE WILL CONTINUE TO MONITOR ALL CONSIDERATIONS CLOSELY WITH THAT PURPOSE IN MIND.

THANK YOU.