Approved March 15, 1983
Date

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 February 17, 19 83 in room 514-S of the Capitol.

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

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Senator Ross Doyen
Bruce Beale, Kansas Alcohol Safety Action Projects Coordinator
Ken Smith, Shawnee County Assistant District Attorney
Judge James P. Buchele, Shawnee County District Judge
Colonel David Hornbaker, Kansas Highway Patrol
Judge Herb Rohleder, Great Bend
Gene Johnson, Kansas Alcohol Safety Action Projects
Dr. Lorne Phillips, SRS/Alcohol and Drug Abuse Services
Steve Montgomery, Kansas Department of Revenue
Reverend Richard Taylor, Kansans For Life At Its Best
Jim Clark, Kansas County and District Attorneys Association
Ronald Eisenbarth, Kansas Citizens Committee on Alcohol and other Drug Abuse
Kathleen Sebelius, Kansas Trial Lawyers Association
Richard Pinaire, Kansas Trial Lawyers Association
George Heckman, Kansas Association of Alcohol and Drug Program Directors
Chris McKenzie, League of Kansas Municipalities
Dick Scott, State Farm Insurance Company
L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies
Robert Williams, State Department of Health and Environment
Robert Dobb, State Department of Health and Environment

Senate Bill 141 - Driving under the influence of alcohol or drugs.

Senator Doyen, the prime sponsor of the bill, appeared before the committee to explain the bill.

The chairman referred the committee to a copy of a letter from the governor indicating his support of the bill with the exception of the deletion of community service as a sentencing option (See Attachment #1).

Bruce Beale testified his association wholeheartedly supports the bill. A copy of his remarks is attached (See Attachment #2).

Ken Smith appeared in support of the bill. A copy of his remarks and suggestions is attached (See Attachment #3).

Judge James P. Buchele appeared before the committee to give comments on the bill. His comments were confined to those which relate to the court (See Attachment #4).

Colonel David Hornbaker testified the patrol strongly supports this bill. A copy of his remarks is attached (See Attachment #5).

Judge Herb Rohleder spoke in support of the bill. He believes the pre-screening test mentioned by Colonel Hornbaker is going to be a great improvement in helping law enforcement officers out in the field. He believes the per se part of the bill could possibly be a little more explicit. Judge Rohleder supported Judge Buchele's statements. He said it is going to continue to create public awareness,

Senate Bill 141 continued

and as a result, we will see less driving while drinking out on the highway. The perception of being stopped for DUI will improve.

Gene Johnson testified his organization supports the bill as another step in improving our legislation concerning the very serious problem of the drinking driver in the state of Kansas. A copy of his remarks is attached (See Attachment #6).

Dr. Lorne Phillips testified in support of the bill. A copy of his remarks is attached (See Attachment #7).

Steve Montgomery stated his department will be responsible for administering this bill. He discussed the responsibility of his office and the fiscal impact if the bill passed. A copy of his comments is attached (See Attachment #8).

Reverend Richard Taylor testified in support of the bill. A copy of his remarks is attached (See Attachment #9).

Jim Clark testified his association supports the bill. He explained the Department of Revenue has the ability to suspend licenses whether it goes through criminal justice or not, and that takes the burden off the criminal courts. He thinks the per se rule is very helpful for prosecution in regard to the suspension; it takes some of the burden off the criminal courts. Mr. Clark referred to Section (1), where the department is allowed to restrict or suspend the license, and pointed out that there is a little inconsistency in that section. He stated it was a major step in removing discretion from prosecutors last year. They do appreciate the evaluation function made available under the diversion programs. The chairman told Mr. Clark if his association had specific suggestions, the committee would be glad to receive those in written form.

Ronald Eisenbarth appeared in support of the bill. A copy of his remarks is attached (See Attachment #10).

Kathleen Sebelius introduced Richard Pinaire.

Mr. Pinaire appeared before the committee on behalf of the Criminal Law Committee of the Kansas Trial Lawyers Association. He presented suggested amendments to the bill (See Attachment #11). He stated the diversion program relieves far more people from the criminal process than the plea bargaining does.

George Heckman testified in support of the bill. A copy of his remarks is attached (See Attachment #12).

Chris McKenzie testified his organization has no official position on the bill. He said there was some concern on the probable cause to administer the breath test; the time it takes and expense to have officers present is of concern with cities in the state. He referred to Section (3) of the bill and stated there was some concern with defining crime; it doesn't outlaw that conduct. He suggested the deleted language in lines 308 and 309 be reinserted. He stated they support the amendments dealing with diversion.

Senate Bill 168 - Treble damages for injury caused by driving while impaired by alcohol or drugs.

Kathleen Sebelius testified the association she represents supports the bill.

Jim Clark testified his organization supports the bill.

Dick Scott testified in opposition to the bill. He stated the State Farm Insurance Company is concerned with anything that effects the insurance companies and the premium paid by policyholders, if you push insurance companies to provide

Senate Bill 168 continued

coverage to discourage drinkers on the highway. He feels it is an awkward approach. Mr. Scott stated they do not keep records of damages caused by drunk drivers, but it is going to be of significant impact on the cost of handling accidents. They strongly support good laws in regard to drunk driving. They believe the drinking driver does substantially contribute abominably to accidents and causes of accidents. Joe public driver is carrying the burden caused by the drunk driver. He stated passing of this bill will increase the burden for damages four times. If, on the other hand, the purpose of the bill is to penalize the drinking driver, they do not believe it will do that because the insurance company picks up the bill; it does not reach the pocketbook.

Bud Cornish testified in opposition to the bill. He stated there is no group that is more interested in removing the impaired driver from the highways, however, they must oppose this bill because of the number of policyholders who will pay the premium. The premium will be spread across to all drivers who are driving automobiles and not to the impaired driver. He said they have no statistics to present to the committee as to how much this bill will increase the premiums because they never have had this concept before. He referred to the language in lines 36 and 37 of the bill, the liability, if once before found guilty of DWI charge. He said it is not quite treble damages, it's more quadruple damages.

Written testimony in support of the bill from Gene Johnson is attached (See Attachment #13).

Written testimony in support of the bill from Dr. Lorne A. Phillips is attached (See Attachment #14).

Written testimony in support of the bill from Colonel David Hornbaker is attached (See Attachment #15).

Written testimony in favor of the bill from George Heckman is attached (See Attachment #16).

Senate Bill 141 - Driving under the influence of alcohol or drugs.

Robert Williams explained to the committee his department does the chemical tests, and they have reservations with the pre-arrest testing. He said this could throw the chemical testing in somewhat of a bad light. Their test is extremely important in getting convictions in court, and they don't want it to damage their present program. The chairman asked Mr. Williams to provide written testimony to the committee.

Robert Dobb explained to the committee his department is given the authority for the breath testing program under K.S.A. 65-1-107. They do not have at this point testing devices, and they are not sure about the accuracy of these tests. He stated one question they would have is the probable cause provision in the bill. Mr. Dobb stated the statute gives them the responsibilities for this training and testing, and they would hope that the committee would be aware, if the department takes on the added burden, they will find funds for these training purposes. The chairman asked Mr. Dobb to furnish the committee with written testimony.

Testimony in support of the bill from Glenn Leonardi of the Kansas Alcoholism Counselors Association is also attached (See Attachment #17).

The meeting adjourned.

2-17-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Ken Smith	Shawnee County Dist. Office	212 E. 7th Street
Art Weiss	"	"
Herb Rohleder	Great Bend, Ks	Citizen
Jeanellen Knight	Topeka	Governor's Office
Robert Williams	Topeka	Dept of Health & Env.
[illegible]	"	KDHE
Jim Clark	"	KCDAA
Sophie George	"	Senator [illegible]'s office
Joan Lieker	Osage City	Osage County Farm Bureau
Karen Badger	Carbondale	"
Vicki L. Meinhardt	Alma	KIN
George Heckman	[illegible]	KAAAPO
[illegible]	Topeka	AIA
David Ross	Mission, Ks.	Farmers Ins. Group
LM Cornish	Topeka	Ks Assoc. of Prop & Casualty Cos
R. W. Scott	Mission	State Farm Ins
Chris McKenzie	Topeka	League of Ks Mun.
Bruce Beale	Lawrence	KCASAP
Homer Cowan	Ft Scott	The Western Ins Co's
Gerald Scheid	Lyndon	KFB
Donna M. Davies	Reading	
Clinton Davies	Reading Ks	KFB
[illegible]	Topeka	Dept Rev
Marjorie J. Van Buren	Topeka	OJA
Larry Humes	Law.	Steineger
Kelly	Statehouse	UPI

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Suzanne E. Heath	Topeka	Shawnee Co Mental Health Assn
Carol Johnson	Topeka	private citizen
Dick Pinaire	Junction City	KTLA
Kathleen Sebelius	Topeka	KTLA
Cindy Omundson	Lawrence	aide - Sen. Angell
John A. Pinegar	Topeka	Senate
Dale V. Hamm	Topeka	SRS
Shirley Douglas	Shawnee	SMAC
Donna Carper	Shawnee	SMAC

HEARING S.B. 141

JUDICIARY COMMITTEE

Feb. 16, 1983

PROPONENTS

Senator Ross Doyen - Sponsor

Bruce Beale - Chairman
Kansas Alcohol Safety Action Projects Coordinator

Ken Smith - Assistant District Attorney
Shawnee County

Judge James Buchele - District Judge
Third Judicial District

Col. David Hornbaker- Supt.
Kansas Highway Patrol

Gene Johnson - Legislative Liaison
Kansas Alcohol Safety Action Projects

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STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612

John Carlin *Governor*

February 16, 1983

The Honorable Elwaine Pomeroy
Chairman, Senate Judiciary Committee
Statehouse - 143 North
Topeka, Kansas 66612

Dear Chairman Pomeroy and Senate Judiciary Committee Members:

This letter is written in support of Senate Bill No. 141. My office strongly endorses SB 141, with the exception of the deletion of community service as a sentencing option. The bill essentially upholds the Administration's position as outlined in the Public Safety section of my 1983 Legislative Message. In addition to the provisions in SB 141, I also favor the adoption of an Operating While Impaired law and a range of stricter penalties for OUI, with a corresponding increase in the severity of punishment as property damages, personal injuries and fatalities are involved.

One of the four criteria specified for a $450,000 federal alcohol traffic safety basic grant to be made available for eligible states is the implementation of an illegal per se law. There are two kinds of per se laws which are acceptable to the federal government: (1) changing a .10% Blood Alcohol Content (BAC) from prima facie evidence of operating while under the influence to per se evidence and; (2) making operating with a .10% BAC or above a crime in and of itself. The latter is proposed in SB 141 and, although not included in my recommendations, is the type of per se law which I could endorse. The Governor's Committee on Drinking and Driving regarded an illegal per se law as an integral component of a comprehensive plan to deter drinking and driving. The major argument in favor of the per se concept is that the probability of conviction is greater. States adopting per se laws have seen their conviction rates increase significantly. Furthermore, the per se law greatly reduces the amount of time officers spend in court testifying, as cases are decided more upon the basis of objective chemical tests and less upon subjective testimony. With more time for officers to patrol, some states are also finding increased arrest rates (Recommended Drunk Driving Countermeasures in Michigan, September, 1982, p. 11). Every method of BAC measurement is sufficiently accurate to provide clear evidence that driving abilities are significantly impaired at .10% or above. In determining whether to prosecute a charge of driving under the influence, the prosecutor must be able not only to know that the BAC is the best evidence, but also be able to tell a jury that statute recognizes it as the best evidence (Task Force Report: ALCOHOL, DRUGS and TRAFFIC SAFETY, Governor's Task Force on Alcohol,

Att. 1

Drugs and Traffic Safety, State of California, p. IV-10). As of May 1979, twelve states had enacted per se laws, and such laws are under consideration by a growing number of other states (Focus on Alcohol and Drug Issues, Vol. 5, Nov/Dec. 1982, p. 12).

I also strongly support amending current laws to allow the use of preliminary breath tests (PBT's) for determining probable cause in what appears to be an alcohol-related offense. This was one of the primary recommendations of the Kansas Governor's Committee on Drinking and Driving. Research done by the National Highway Traffic Safety Administration and the experience of several states which have laws authorizing the use of PBT's have shown that: (1) wider use of PBT's can increase the effectiveness of any alcohol enforcement effort through increases in arrests and an overall lowering of the average BAC of persons arrested for OWI; (2) PBT's are accepted by and useful to the police and (3) the PBT devices function accurately and dependably (Federal Register/Vol. 48, No. 3, Wednesday, January 5, 1983, Proposed Rules, p. 432).

An increase in chemical testing, in conjunction with a per se BAC law, is likely to substantially increase the risk of detection and conviction for the intoxicated driver without greatly inconveniencing the non-offending public. Combined with a public education campaign to make drivers aware of the greater risk of apprehension, it is my hope that we can make even greater progress this year in reducing traffic incidents involving drinking in our State.

Sincerely,

JOHN CARLIN
Governor

JC:kmg

2-17-83

#2

Kansas Community Alcohol Safety Action Project

2200 West 25th Street, Lawrence, Ks. 66044, (913) 841-2880
Kansas Coordinators of Alcohol Safety Action Project's

February 16, 1983

Senate Judiciary Committee
c/o Senator Elwaine Pomeroy
Chairman
Kansas State Capital
Topeka, KS 66612

Re: SB 141

Dear Mr. Chairman and Committee Members,

The Alcohol Safety Action Project Association represents 20 "court referral" programs throughout the state. These programs are responsible for over 80% of all the DUI pre-sentence evaluations performed as a result of SB 699.

The ASAP Association wholeheartedly supports SB 141. We feel that this bill does an excellent job of cleaning up the problem areas in SB 699. From our perspective, this bill would allow us to do diversion evaluations for prosecutors which are not currently reimbursable through the $85 assessment fee.

We knew that some problems would develop with SB 699 which would need legislative action this year. SB 141 does an outstanding job of addressing these areas and should play a major role in reducing alcohol and drug related deaths and injuries in the future.

Respectfully submitted,

Bruce H. Beale
Chairman

Att. 2

2-17-83

#3

Senate Judiciary Committee
Hearings on SB141
February 17, 1983

Dear Mr. Chairman and Committee Members:

My name is Ken Smith, I am an Assistant District Atorney for Shawnee County and I am primarily responsible for prosecution of drinking drivers. Prior to becoming a prosecutor, I was a police officer and was certified as a breath alcohol operator. I made approximately 200 DWI arrests, and ran in excess of five hundred breath tests. I also had the assignment of supervising the Lawrence Police and Douglas County Sheriff's Office breath testing program.

I want to thank the committee for the opportunity to speak here today. I propose to speak to several of the major features of the Bill and to offer a couple of specific options.

The first important area I would speak to is the establishment of a preliminary breath test in section one. I frankly do not support this proposal. My concerns are that we gain very little from such a test and the costs are considerable.

The only value I see in such a test would be as a screening device. This presumably would eliminate those suspects who did not test .10 or greater and therefore result in less screening time for prosecutors and better time utilization for field officers.

In the first place, the percent of arrested persons at present who test less than .10 is very small. I would estimate that less than ten percent of all chemical tests are under .10. I also want to point out that this would include the drug only or drug and alcohol catagory of violation since breath testing measures only ethyl alcohol. I think a prosecutor with all the information before him is in a better position to decline prosecution than to shift that decision to the field officer, particularly where so few cases are involved. Frankly, if the officer does not believe that the person stopped is sufficiently under the influence to

Att. 3

justify arresting him, then an arrest shouldn't be made. I know that a properly trained officer is a remarkably efficient screening device and I don't believe we would see stronger cases for trial if we shift from the present system.

I also see the proposed change as creating many more problems than it solves. For example, at present Health and Environment does not authorize any mobile breath testing equipment. They have no established procedures or "protocols" for mobile equipment. It is questionable whether much of our existing fixed site breath equipment can be adapted for mobile operation. Even if these problems are overcome, do we want to take existing "admissible test" equipment out of service to become mobile. It would be very unlikely that the same instrument could be used for both preliminary and official tests.

As is, we have a system where existing fixed site units are available at a central location to accomodate relatively large numbers of suspects. There is very little redundancy built into the system. The Topeka Police Department has one instrument. Division one of the Kansas Highway Patrol has one instrument. All of Douglas County has one instrument. I have difficulty seeing the wisdom in spending the dollars, training time, and man hours to create a double layer of testing which is of questionable value. Typically, a trooper sees a weaving vehicle and stops it. The driver smells of alcohol and a field coordination test is done. The decision to arrest is based on behavior, the driving behavior and the observations of speach, walk, memory, hand-eye coordination and other specific indicators of alcohol effect. This obvious but "subjective" information is then "objectively" validated with a conforming chemical test. Both types of evidence are important, I believe, to jurors.

It takes just as long to transport a mobile breath unit to an officer in the field as it would take an officer in the field to bring the suspect to a fixed "official" breath unit. An official

test is therefore by half the time, closer to reflecting the blood alcohol level of the driver at the time of the initial stop, this is a valuable point at trial. This would obtain in all cases, unless of course, every officer is to have a preliminary breath unit available with him at all times. I believe we should work to reduce processing time for DWI suspects, not increase it by perhaps an additional hour or more for no gain at trial.

In sum, I see no real gain to prosecution or to the officer in the field with preliminary breath tests. I see no gain to a suspect either, and last but not least, I see no benefit to the public who would end up footing the bill.

I do see value in the provision at section one (d) for suspension of the driver's license for a test of .10 or more. I believe an immediate suspension is a very effective deterrent. I do forsee some significant increased burden on the diviion of vehicles who would be processing and notifying the drivers. In essence this provision would establish two tracks; one administrative and one through court action.

I am strongly in favor of defining DWI as .10, the so called "per se" definition. I believe this feature of the bill goes a long way to dispel the confusion and ambiguity in the minds of jurors and some others as to precisely what conduct we are prohibiting. DWI is the most common violent crime in America and in order to change that we must change the attitudes of those who use alcohol. It is imperative that an objective standard of conduct be set. It is equally critical to adequate enforcement that the law that a set a clear standard of evidence.

According to the American Medical Association, all drivers are significantly impaired at .10. This is the proper place to draw a bright line on the question, "how much is too much." DWI now would be similar to most crimes, proof of a specific event proves the crime. I can tell you that it is a difficult task to

prove to any jury that a person is beyond reasonable doubt incapable of driving safely.

I strongly endorse this change, and I believe it will add a great deal to the effectiveness of the existing law. I believe it is especially important to set out, for a driver, that a blood alcohol, of .10 or more is in and of itself a violent crime.

I strongly support the deletion from the existing law of community service as an option at sentencing. This option is ambiguous and likely to be unequally imposed from place to place and from person to person. DWI is a crime that cuts across all social classes and it is critical to effective enforcement that equal treatment under the law actually obtain. At .10 a driver is twenty-five times more likely to be an accident statistic. DWI is the single most frequent violent crime in America. We simply cannot continue to turn our heads and hope it will go away.

The jail time required now is small in comparison to the terrible cost to the victims. The jail time is both an education and a strong motivator for change. It is a critical part of the carrot and stick approach to changing behavior. It is a great burden on the resources of the courts. We need to conserve the time of our judges and court services officers, not increase their involvement in an ambiguous and time consuming new arena.

More and more of the offenders before our courts will be problem drinkers, persons who cannot really control their drinking behavior. It is imperative that our courts apply the right mix of sentencing options to motivate these persons to use treatment to its best advantage. Community service is of very limited benefit in this area.

For those drinking drivers who are able to control their behavior, community service, in my judgment, reinforces society's inexcusable tolerance for death and destruction. To achieve maximum deterrence, we must assure the potential defendant of arrest,

conviction, and certain punishment, we should not tacitly approve the criminal conduct of those most culpable.

I believe that the mandatory jail minimums are appropriate and essential to the effective deterrence of DWI. I also believe that we are best served without community or public service as a sentencing option.

I want to suggest that this committee consider clarifying an existing ambiguity, the phrase "next preceding five years." The specific reference is page twelve line 0447. I do not see either possible interpretation as critical to the effectiveness of the new DWI law. My suggestion is as follows:

> Each conviction had under any statute or ordinance of any state or city which substantially conforms to K.S.A. 8-1567 or K.S.A. 8-1566 shall be counted as a prior conviction for purposes of sentencing under K.S.A. 8-1567 or K.S.A. 8-1566, if the date of the commission of the offense or offenses occurs within five years of the date of the commission of the present offenses.

I also would suggest the following amendments to the language of SB141:

1. at page 13, line 0464: after the word "revoking" add the words "or suspending"
2. at page 13, line 0470: add "or suspending"
3. at page 14, line 0508: strike word "revoked" and insert the word "suspend"
4. at page 2, line 0051: strike word "may" and insert word "shall"

Respectfully submitted,

KENNETH R. SMITH
Assistant District Attorney

2-17-83
#4

STATEMENT OF DISTRICT JUDGE
JAMES P. BUCHELE ON S.B. 141
February 17, 1983

Mr. Chairman and Members of the Committee:

Thank you for permitting me to appear today to give comments on S.B. 141. As you are aware this bill contains several amendments to the DWI law. I will attempt to confine my comments to those which relate to the Court.

Section 1, Subsection (b) requires "probable cause" for an investigative stop. This is a significant increase in the burden for the law enforcement officer to make the investigative stop and is a higher threshold than is required by our present statute which requires "reasonable grounds" or either the Kansas or United States Supreme Courts for constitutional reasons. I believe the latest constitutional requirement is that the officer have an articulable and specific suspicion.

In Section 1E of the bill, changes are proposed relative to the period of suspension upon refusal to submit to the chemical test. I would suggest that in circumstances where the case goes to court and a refusal was made, a sentencing court is in a better position to determine the length of suspension, to be imposed along with other sanctions, than the division. The courts are required to impose minimum sentences consistent with the mandatory provisions of K.S.A. 8-1567. I have no quarrel with the provisions for administrative revocation upon refusal when there is no conviction or sentence being imposed.

Atch. 4

Also Section 1, Subsection (e) would require the presence of law enforcement officers at many administrative hearings if the reasonableness of the law enforcement officer's request to administer the tests is an issue within the scope of the administrative hearing. This will cause longer and likely more hearings. I do not believe that provision for this issue in an adminstrative hearing is constitutionally required so long as it be may litigated on appeal in district court. I would suggest that this provision be carefully considered.

The provision of Section 2 of this bill which provides for drug and alcohol evaluation of persons who are being considered for the diversion program is a step in the right direction. I also favor the offender being financially responsible for the costs of evaluation and any education-rehabilitation or treatment program which he is required to participate in as a condition of the diversion agreement. Insofar as practical, I feel the diversion should be underwritten by the offenders and not the taxpayers in general.

As to the elimination of the 100 hours of public service provision contained in Section 3, I can only speak to our experience here in Shawnee County where we have been unable to implement a program of public service which is satisfactory to the Court, the Alcohol Safety Action Project, which must be responsible for the probation and supervision, and public agencies where the work would be performed. In short, in Shawnee County, we do not have the 100 hours of public service sentencing option available. I have personally set aside a guilty plea made by an

individual who was advised by counsel that he would have the opportunity for a public service sentence, when in fact, the only sentence option available was the 48 hours in jail. I would like to point out that if a person is truly a first offender, he will be placed in the diversion program where public service is not required. The questions of supervision of the work and who makes the certification of completion of the work have never been resolved to my satisfaction. Further, most persons wanting to do public service prefer to do it on weekends or other times outside of normal working hours, which complicate the foregoing. I concur with the Attorney General's opinion that the sponsoring organization would be liable in the event of injury or death of a person performing public service even though under Court direction. Finally, I would say the the persons truly being considered for this option are very few and that the concept, while sounding good and being well intended, is as a practical matter in our view, unworkable.

In Section 3, Subparagraph G, I approve and endorse the provisions to give the Court authority to, in addition to the jail time sentence, impose a treatment program for alcohol and drug abuse. While I personally support and endorse the mandatory minimum sentences in this difficult area of sentencing, we must be mindful that other than general deterrent, mandatory sentencing does little to rehabilitate or treat the causes of alcoholism.

I also support the changes contained in Section 3, Subsection (h) which gives the Court discretion to extend the period of time for payment of fines. Court costs and assessment for the alcohol

abuse school now total $104.00. The mandatory minimum fines, particularly for second and third offenders, are substantial and a 90 day period may be asking some offenders to do the impossible. The Court should have discretion to extend probation supervision and give additional time for payment. Placing an offender in jail who is working frequently causes loss of the employment which means no money will be collected and the taxpayers incur the cost of incarceration, ADC payments, etc. as a result.

In closing, I would commend this committee for the work done in this area last year. This bill addresses some minor problems of new legislation. I would add my general support for these amendments.

2-17-83

#5

SUMMARY OF TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
1983 LEGISLATIVE SESSION

SENATE BILL 141

PRESENTED BY COLONEL DAVID HORNBAKER
KANSAS HIGHWAY PATROL

February 17, 1983

APPEARED IN SUPPORT OF SENATE BILL 141

The Patrol strongly supports this bill.

The amendment contained in K.S.A. 8-1001(b) addresses preliminary breath testing which we feel is a definite step forward in combating the drinking driver problem. This could prove most beneficial to both enforcement officers and suspected violators by affording the means to determine if an arrest should ensue or if processing should cease at that point.

Under present conditions, and in all probability, the processing would continue at the inconvenience of the suspect. Additionally, the preliminary test would not be admitted in evidence at trial and the elements of probable cause in the initial stop would still apply. Law enforcement needs this additional consideration both for the benefit of the public at large and the suspected violator.

We are also most supportive of Section 3 which establishes a blood alcohol level of .10 or more as per se evidence of driving while under the influence. We would submit that it has been established that this level and above constitutes a disregard for the rights of other drivers. Adoption is not without precedence as 24 states presently use this per se level and 2 have established a per se level of .13.

.10 per se level: Alabama, Alaska, Arizona, Connecticut, California, Deleware, District of Columbia, Florida, Illinois, Maine, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Wisconsin, Washington

.13 per se level: Idaho, Iowa

We have one reservation concerning the bill and respectfully request consideration of an amendment in that area. This concerns the language in Section 1(e) on page 3 that addresses hearings granted on chemical test refusal driver's license suspensions. We are particularly at odds with the statement on lines 0092 and 0093, "or the reasonableness of the law enforcement officer's requiring the test . . ."

Atch. 5

In early 1982, the Patrol experiencing a problem with attendance at these hearings, requested an Attorney General's opinion in that regard. That opinion, #82-33, stated the person's refusal to submit to a test was the sole issue to be determined at an administrative hearing.

We are fully cognizant of the fact the ruling is not binding on the courts or the legislature but would submit the opinion is based on case law. A synopsis of that opinion follows:

> Synopsis: The sole issue to be resolved at an administrative hearing held under the "implied consent" law (K.S.A. 1981 Supp. 8-1001) is the reasonableness of a person's refusal to submit to a request to take a blood-alcohol test. At the hearing, the only testimony needed from the arresting officer is the sworn report required in the statute, and if the sworn report addresses the necessary issues, there is no need for the officer to attend the hearing. However, if the sworn report fails to discuss whether the licensee was capable of making a voluntary response to the request to submit to a blood-alcohol test, and it appears that this issue will be raised in the administrative hearing, the testimony of the arresting officer may be compelled by subpoena. (K.S.A. 8-255(b). Cited herein: K.S.A. 8-255, K.S.A. 1981 Supp. 8-1001 and K.S.A. 54-101.

Exceptions to the voluntary response would include, for example, a driver intoxicated to the point of unconsciousness or inability to answer. Case law, however, is quite explicit in this area and one justice, in an opinion, aptly stated that to let an unconscious drunk escape the consequences of his acts, would be to totally defeat the intent of the law.

Previously, attendance at hearings was most time consuming and issues were addressed including the reasonableness of the officer's request for a test, that were within the province of the courts to decide and not an administrative hearing officer. For these reasons, we would request deletion of this requirement from Senate Bill 141.

KANSAS DEPARTMENT OF REVENUE
DIVISION OF VEHICLES--STATE OFFICE BLDG.--TOPEKA, KANSAS 66626

LAW ENFORCEMENT OFFICER'S CHEMICAL TEST REFUSAL REPORT

Under K.S.A. 1981 Supp. 8-1001, the following Chemical Test Refusal Report is to be completed by the arresting officer when a driver refuses to submit to a chemical test to determine the alcoholic content of the driver's blood. The driver must have been arrested for an offense involving the operation of a motor vehicle upon a public highway under the influence of an intoxicating liquor in violation of a state statute or a city ordinance and must have been capable of making a knowing, intelligent, free and voluntary response to the officer's request to submit to the test. Refusal to take the test subjects the offender's license to suspension. This report will only be submitted to the Division of Vehicles upon such refusal.

NOTICE!--FILL IN COMPLETELY

Driver's:

Name _____ Address _____

Driver's License No. _____ City _____

DATE OF BIRTH	SEX	WEIGHT	COLOR OF EYES	HEIGHT

Place of Arrest _____ Date of Arrest _____

Name of Arresting Officer _____

Officer's Department Address _____
(Street No.) (Street Name) (City) (Zip)

STATE OF KANSAS)
) SS
COUNTY OF _____)

I, _____, a law enforcement officer as defined in K.S.A. 21-3110, being first duly sworn, depose and state:

That prior to the arrest of the above named person, on the date indicated, I had reasonable grounds to believe that said person was operating a motor vehicle while under the influence of intoxicating liquor upon a public highway.

That pursuant to K.S.A. 8-1001, and following a lawful arrest, I requested the above named person to submit to a chemical test and said person expressly refused to take the test.

That to the best of my knowledge the person arrested was capable of understanding my request to submit to the test and made a knowing, intelligent, free and voluntary response to that request.

That the above and foregoing information is true and correct to the best of my knowledge.

Oath:

I, _____, the arresting officer, do solemnly, sincerely and truly declare and affirm, before a person authorized to administer oaths, that the information contained in this report is true, complete and accurate. I swear to this under the pains and penalties of perjury.

_____
Signature and Title of Arresting Officer

Subscribed and sworn before me on this _____ day of _____, 19_____.

_____
Signature of Person Authorized to Administer Oath

My commission expires _____

(Report must actually be sworn to before a person authorized to administer oaths)

DC/27
(Rev. 3/82)

2-17-83

#6

SENATE BILL 141

Mr Chairman and members of the Committee, my name is Gene Johnson. I am the legislative liaison person for the Kansas Community Alcohol Safety Action Project Coordinators. Also, I am Project Coordinator of the Sunflower Alcohol Safety Action Project located in Topeka, Kansas, and, in addition, I represent the interests of the National Council on Alcoholism--Topeka Division. I have been asked to testify today on proposed legislation Senate Bill 141. My comments are based on nine years of experience of handling DWI cases before and after new legislation brought about by the Kansas Legislature during the 1982 session. As we all know, a major change in the DWI legislation was accomplished by the 1982 Legislature. We think the legislature should be applauded for taking such a positive step forward in attempts to reduce the number of alcohol related accidents, which will in turn reduce the needless slaughter and injury on our streets and highways in the State of Kansas.

We support Senate Bill 141 as another step in improving our legislation concerning the very serious problem of the drinking driver in the State of Kansas. We feel that the preliminary breath test at the scene of the offense would be of benefit to the arresting officers in the case of those people that he has had probable cause to apprehend. Some people have a very low tolerance for alcohol and even after a couple of drinks will become quite hilarious and have no control on their inhibitations. These people would probably be impaired to some extent, as far as their driving is concerned, but not nearly to the level of .10 as indicated by the law. These people might benefit from the preliminary breath test, which would clear them of the charge of DWI at the scene and the officer could instruct them to either have someone else drive them home or park their car and seek other transportation. It would not put these people through the necessary delay and inconvenience of accompanying the officer to the station to go through the procedure of the formal breath test. On the other hand, we have the person who drinks on a daily basis and exhibits little or no physical impairment with a relatively high B.A.C. These people are undoubtedly problem drinkers or possibly alcoholic and have learned, through tolerance, to operate substantially well while they are actually quite intoxicated and may well be over the level of .10. These persons will probably continue to operate a motor vehicle in a somewhat normal manner unless an unexpected event occurs in their line of travel. Quite often, the arresting officer who apprehends such an individual realizes that they have been drinking but, because of their fairly good response to the physical coordination tests, he may not place them under arrest and allow them to go on their way. These are the people who need to be apprehended and the preliminary breath test would be a sure

Atch. 6

indicator to the arresting officer that the person is certainly under the influence of alcohol.

I believe, in years to come, the mandatory suspension for the breath test refusal will be one of the most important elements of the legislation that we presently have on the books. Once the word is broadcasted, by those who have since bitten the bullet, that their license is going to be suspended for 120 days by the Department of Revenue, we will see a decrease in the percentage in those people who are refusing to take the breath test. In Shawnee County, at present, our breath test refusals are exceeding 30%. We hope to see a dramatic decrease in this refusal rate during the calendar year 1983.

The fact that the defendant does show in his breath chemical test that his B.A.C. is higher than .10 as prescribed by law, it is my belief that it would be to society's benefit to immediately have the Department of Revenue suspend his driving privileges, unless he requests for a hearing in writing. We feel that this type of legislation will get those people off of our streets and highways who continually use the court system to buy time while their case is being heard through the judicial process. We, in the education/information field, are quite convinced that any individual with a .10 or above is impaired under our present safety standards. The impairment will range from 17% to 50%. It is these people who need to be taken off of our highways immediately and provided the sanctions of an evaluation to determine where they are with their d.inking and driving habits. After that person is found guilty, pleads nolo contendere or is offered Diversion by the prosecuting attorney and has entered into a community Alcohol Safety Action Project for their information and education and/or treatment, we feel that the licensing should be a court matter and the existing law addresses that quite sufficiently.

This proposed legislation clarifies the matter of the alcohol and drug evaluations for those people who are considered eligible for Diversion. For the committees information, the Attorney General returned an opinion on this matter in the early part of this year in which he rules that probably some of the evaluations were not being handled properly in accordance with the statute that was passed last session. This section provides for the alcohol and drug evaluations being performed after the prosecutor considers that person arrested eligible for Diversion in lieu of further criminal proceedings. In other words, the prosecutor would hold the key as to determining when the evaluation process should begin and it would not necessarily have to be after a court appearance. Also, this legislation clears up the matter that the defendant must complete an alcohol and drug evaluation report and enter into any type of education and/or rehabilitation program that is suggested in the Diversion program.

It might be noted at this time, that the $85 has been striken from this legislation in regards that the Secretary of the Social Rehabilitation Services will have the

authority to set the evaluation fee as of July 1, 1983. It is hoped that the Secretary does not attempt to increase this assessment to make it more difficult to sell the judiciary on the assessment costs.

This legislation would delete all public service in lieu of 48 hours in jail on the first offenders. It is our belief that this is somewhat counterproductive to reducing alcohol related crashes. It also somewhat sets up a double standard for those persons who could perform community service because of their availability to that community at the hours available. For those persons who work long hours, or odd hours, it may be impossible to allow them community service due to conflicts with their hours of employment. Many people do not realize that the 100 hours of public service is 12 1/2 eight hour days. Also, when we're talking about community service of 100 hours, we are probably talking about a second time offender who has probably had Diversion on his first arrest. We feel that the supervision and monitoring of these people on public service is cost prohibitive as far as supervision is concerned by the local ASAP projects. We have found that the judges are somewhat negative to this approach unless proper supervision and monitoring is availble.

On Page 11, Line 392, it is suggested that the court, after a defendant has served his 90 days in jail, could be released on probation under the condition that he complete a treatment program. This would give the local community projects the ability to make available to that three time loser a treatment program in which he is amenable to. Otherwise, if that offender in held in jail for a period of 90 days, or longer, he will be set free and can, if he so wishes, return to his old habits of drinking and probably driving.

Again, on Page 11, Subsection H, the proposed legislation will allow the court some latitude in determining when the fine shall be paid. It is suggested that the assessment fee and court costs be paid within 90 days, however, the court does have the authority to grant more time to pay the fine imposed to meet the needs of the defendant. The court has the power not to release that defendant from probation, or parole, until that fine is paid in full.

Other provisions of the proposed legislation are nothing more than cleanup measures and clarifications of some terminology when it addresses the Municipal Court and their ordinances.

We, the coordinators of the 23 programs, have approved the changes in this bill unanimously and support it wholeheartedly for passage in this session.

Thank You.

2-17-83

#7

To: Senate Committee on Judiciary

From: Dr. Lorne A. Phillips, Commissioner
SRS/Alcohol and Drug Abuse Services

Date: February 17, 1983

RE: SB 141

Last Year the legislature passed S.B. 699 and this bill went on to become a very effective law in Kansas' attempt to combat driving under the influence of alcohol and other drugs. S.B. 141 makes many important changes in the current law. Many of these changes tighten up the legislation passed last year and will also bring Kansas into line with the Federal Regulations now being promulgated. These Regulations will enable Kansas to be eligible to receive about $475,000 over the next three years.

This bill has many important parts, some of which I would like to respond to in detail:

1) Preliminary breath testing, as described in lines 0037 to 0045, will allow a law enforcement officer an added tool to determine if further breath or blood tests are indicated. This will enable officers to utilize more objective criteria in making the determination that further testing is needed before an arrest is made for driving under the influence of alcohol.

2) The mandate, as found in lines 0115 to 0118, that suspends a persons driver's license for at least one year if that person refused to take a breath test and had previously been convicted of a DWI is a strong statement that says Kansas will not tolerate continued drinking and driving. If a person has been convicted of a DUI, we must assure that Kansas is doing everything possible to protect its citizens from impaired drivers.

3) The inclusion of diversion evaluations as a part of an ADSAP programs responsibility in lines 0149 to 0162, will allow these programs to be reimbursed from the ADSAP fund for duties they are performing. This type of evaluation is important in determining the appropriateness of an offender for diversion.

4) The per se language in lines 0314 to 0316 is an extremely important factor to this bill. It specifically designates that a person is driving under the influence if he/she has .10% or more alcohol in his/her blood. This is important to speed prosecutions and obtain convictions of offenders. The provision also brings Kansas into line with the basic grant provisions spelled out in the Federal Regulations.

Att. 7

5) Lines 0392 to 0396 include the provision to allow the court to require the completion of a treatment program for third or subsequent offenders after they have been imprisoned. This is needed to attempt to appropriately deal with persons who obviously have a serious problem with alcohol. This treatment episode, directly following incarceration, may be the deciding factor in this person not drinking and driving again.

Overall I feel this bill is a neceesary complement to our existing law and is needed by Kansas. I support your efforts in passing SB 141.

2-18-83 SM
PM

#8

MEMORANDUM

TO: Lynn Muchmore, Director
Division of the Budget

DATE: February 16, 1983

FROM: Michael Lennen
Secretary of Revenue

SUBJECT: Senate Bill 141
as Introduced

Brief of Bill

Senate Bill 141, as introduced, amends KSA 8-1001, 8-1008 and 8-1567.

Section 1 amends KSA 8-1001 to consider operation of a motor vehicle on a public highway as consent to submit to a chemical test of breath or blood whenever required by a law enforcement officer if the law enforcement officer has probable cause to believe that the person is in violation of the DWI laws. The officer may require a preliminary chemical test, prior to arrest, to determine if an arrest should be made and to determine whether to require a second chemical test. The results of this preliminary test will not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged or to prove that a test was properly required of a person. Also when a law enforcement officer arrests or takes a person into custody who the officer has probable cause to believe is in violation of the DWI laws, the officer may require the person to submit to a chemical test to determine the alcoholic content of the persons blood.

The section continues to provide that if a test is taken by a person who has been arrested or taken into custody and such test shows .10% or more by weight of alcohol, the law enforcement officer shall make a report, verified on oath of the result of the test to the division of vehicles. The division of vehicles shall then notify the person of his right to be heard on the issue of reasonableness of the person's failure to submit to the test, if the person refused to submit to the tests, or the reasonableness of the law enforcement officer's requiring the test, if the person submitted to the test.

If a hearing is not requested or if, after the hearing, the division finds the refusal was not reasonable or that the test was reasonable the division shall suspend the person's license or permit to drive or nonresident operating privilege for a period of: 1) not less than 90 days and not more than one year, if the person submitted to the test and has no previous DWI convictions; 2) not less than 120 days and not more than one year, if the person refused to submit to the test and has no previous DWI convictions; or 3) not less than one year for a person with a previous DWI conviction.

If a person refuses to submit to the chemical test and the person's license is suspended the suspension must remain in effect until the time specified by the division. If the person submitted to the test and his/her license is suspended as a result of the tests showing .10% or more blood alcohol content the suspension shall remain in effect until the time specified by the division unless, prior to that time, the court

Atch. 8

orders the person's license restricted pursuant to KSA 8-1567.

Section 2 amends KSA 8-1008. It provides two new groups which the ASAP programs would serve. The ASAP programs would provide alcohol and drug evaluations of persons who the prosecutor considers for eligibility to enter a diversion agreement in lieu of further DWI proceedings. ASAP programs would also provide supervision and monitoring of persons required under diversion agreements for DWI charges to complete an alcohol and drug safety action program.

Section 2 continues to provide that upon the establishment of the state alcohol and drug safety action program any person who the prosecutor considers eligible to enter a diversion agreement in lieu of further criminal proceedings shall complete an alcohol and drug evaluation. The drug and alcohol evaluation report would then be used by the prosecuting attorney in deciding whether to allow the considered person to enter into a diversion program.

Section 3 amends KSA 8-1567. The amendment expands the definition of driving under the influence to include the following:

1) Driving while under the influence of alcohol to a degree that renders the person incapable of safety driving a vehicle; or

2) Driving while having .10% or more by weight of alcohol in the persons blood as determined by KSA 8-1005.

The section continues to provide that in addition to any fine or imprisonment authorized by law for a conviction of a first violation of a DWI law, the judge of a municipal court, shall restrict a person's drivers license. If the person convicted has a suspended or revoked drivers license, the court shall not make the restricted license applicable until the suspension or revocation is terminated.

The effective date of this bill is from and after its publication in the Kansas register. On and after July 1, 1983 KSA 8-1001 and 8-1567 would be repealed.

Fiscal Impact

If this bill was enacted, there would be a slight increase in attendance for alcohol and drug safety action programs, with a consequent increase in fees collected for and distributed to such programs. There is no other fiscal impact associated with this bill.

Administrative Impact

The Department of Revenue estimates that it will take a considerable amount of funding to implement and administer SB 141. The increase will come about as a result of the provision in this bill that calls for a "preliminary" test of breath or blood in addition to a test taken after custody or arrest is made. This preliminary test has been estimated to cause a doubling in the number of chemical test refusal hearings.

The Department presently has 3 hearing officers who travel from county to county on chemical test, habitual violator and no liability insurance hearings. In house, 2 attorneys handle an administrative workload plus hearings on the above. The 1982 revised DWI laws caused a very substantial increase in hearing requests and subsequently all 5 attorneys are working at capacity levels. A further increase in hearing requests could not be absorbed by the present staff. The Legal Services Bureau has estimated that enactment of SB 141 would require the hiring of an additional 5 attorneys, 3 traveling hearing officers and 2 in-house hearing officers. Per diem, mileage, office space and office equipment would also be necessary costs.

Costs are detailed as follows:

Salaries & Wages	FY84 (annual costs)
Legal Services Bureau	
5 FTE Attorney I @ 23,028 ea./yr.	$115,140
1 Secretary II @ 12,426 ea./yr.	$ 12,426
Total Salaries & Wages	$127,566
Contractual Services	
Travel	
Private Vehicle @ .22/mile 32,000 miles	$ 7040
Motor Pool Vehicle	
Compact @ .21/mile 37,000 miles	$ 7770
100 days per diem @ $36/day	$ 3600
Turnpike Charges & Misc. Charges	$ 125
Telephones 4 @ $25/phone monthly charge	$ 1,200
Telephones Installation 4 @ $125 ea.	$ 500
Electrical Outlets 4 @ $36.50 ea.	$ 146
Total Contractual Services	$ 20,381
Capital Outlay	
4 5-drawer filing cabinets Legal @ $164 ea.	$ 656

3 desks, executive @ $272 ea.	$ 816
1 desk secretarial @ $375 ea.	$ 375
3 chairs executive @ 250	$ 750
1 chair secretarial @ $75	$ 75
1 13 inch IBM typewriter @ 982 ea.	$ 982
Total Capital Outlay	$ 3,654

Enactment of SB 141 would also require the renting of space for 2 additional in-house attorneys and the possible necessity of expanding the present in-house hearing facilities. At present there are no expansion capabilities in the Legal Services Bureau; therefore, a cost estimate is not available.

Total Salaries & Wages	$127,566
Total Contractual Services	20,381
Total Capital Outlay	3,654
Total FY 84 (annual) costs	$151,601

Legal Impact

The Department respectfully submits the following comments:

1. The effective date of this bill should be changed. It would be impossible to implement all the necessary changes and hire all the necessary personnel by the present effective date.

2. The bill proposes that first the division of vehicles hold hearings regarding license suspensions in cases in which the test results are .10% or more; then the DWI court apparently also imposes license penalties. There will also probably be considerable confusion over the status of a person's driving privileges. This will result from the court's ability to enter an order relating to driving privileges, which order apparently may ~~suspend~~ supersede the division's administrative order of suspension.

3. Senate Bill 141 leaves unclear what is at issue in hearings involving a chemical test in excess of .10%. The bill infers that the issue is the reasonableness of the officer's request to submit to the test. It is unknown what circumstances such a standard envisions, however, it appears the arresting officer's appearance at the hearing would be necessary to verify that the request was reasonable.

4. The purpose of the preliminary test is dubious. An officer must have probable cause in order to request a person to submit to the preliminary test. Yet the results of said test are only admissible to show probable cause. This procedure seems unnecessary.

5. Line 115 of the bill requires the division to suspend for a period of not less than 1 year. This language conflicts with K.S.A. 8-256, which limits the period of suspension the division may impose to a maximum of 1 year.

Michael Lennen, Secretary
Kansas Department of Revenue

ML:JVR:mas/C076/7/02

2-17-83

#9

Senate Bills 141 and 168
Hearing in Senate Judiciary Committee
February 17, 1983

Rev. Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

We all know that driving a car on a public highway is not a right, but may be permitted by law.

We all know that using recreational drugs, including alcohol, is not a right, but may be permitted by law.

Driving after drinking is a double non-right.

To reduce the butchering and slaughter on our highways, concerned persons want to pass and demand enforcement of laws that make punishment so swift, sure, and severe, that people will choose not to drive after drinking. SB 168 should get their attention!

Protection of the drinking driver is not our primary concern. The saving of life and limb is our goal. Give dedicated law enforcement officials the laws they need to make our highways safer. SB 141 seems to be one of those laws.

Atch. 9

2-17-83

#10

Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse

P.O. BOX 4052 TOPEKA, KANSAS 66604

February 17, 1983

TO: Senate Judiciary Committee

FROM: Ronald L. Eisenbarth, Chairperson, Kansas Citizens Committee on Alcohol and other Drug Abuse

SUBJECT: Senate Bill 141

As chairperson of the Kansas Citizens Committee on Alcohol and other Drug Abuse, I want to offer the Committee's overall support of Senate Bill 141. This bill proposes to strengthen several areas in the DWI legislation passed last year. We also support the recommended changes included in the testimony provided by Dr. Lorne Phillips of SRS-Alcohol and Drug Abuse Services and Bruce Beale of the Alcohol/Drug Safety Action programs.

Atch. 10

#11

LAW OFFICES OF
HOOVER, SCHERMERHORN, EDWARDS & PINAIRE
811 N. WASHINGTON
JUNCTION CITY, KANSAS 66441

C. L. HOOVER
R. A. SCHERMERHORN (1911-1975)
S. M. EDWARDS
RICHARD A. PINAIRE

TELEPHONE
AREA CODE 913
238-3126

February 16, 1983

The Honorable Members of the
Kansas Senate
State House
Topeka, KS 66612

Re: Senate Bill No. 141

Dear Sirs:

I appear before you as the Chairman of the Criminal Law Committee of the Kansas Trial Lawyers Association. On behalf of that committee, I would like to suggest the following amendments to Senate Bill No. 141, to-wit:

Line 0043 - able cause or lack thereof for an arrest if the arrest is challenged or to prove...
Line 0055 - the direction of a law enforcement officer. If
Line 0062 through Line 0072 - delete
Line 0075 through
Line 0077 - Delete the following language "and the person's refusal to submit to the test shall be admissable in evidence against the person at any trial for driving under the influence of alcohol."
Line 0137 - Delete the following: "who pleads nolo contendere to or"
Line 0141 through
Line 0142 - Delete: "who plead nolo contendere to or"
Line 0177 through
Line 0178 - Delete: "who pleads nolo contendere to or"
Line 0359 through
Line 0367 - Delete the last two sentences.

The members of the Criminal Law Committee of the Kansas Trial Lawyers Association believe that Driving Under the Influence of Alcohol is a serious matter, however, we believe that the suggestions set out above are constructive amendments and changes which should be made to Senate Bill No. 141 and we hope you will consider these changes which we have proposed as proposals which promote the interest of the public at large.

Att. 11

Thank you very much.

Respectfully submitted,

Richard A. Pinaire
Chairman of the Kansas Trial Lawyers
Association Criminal Law Committee

RAP:ae

2-17-83

#12

Kansas Association of Alcohol and Drug Program Directors

February 17, 1983

To: Elwaine Pomeroy, Senate Judiciary Chairman

From: George Heckman, Legislative Chairman, KAADPD

Re: SB 141

The Kansas Association of Alcohol and Drug Program Directors represents forty-five (45) agencies providing alcohol and drug abuse services in our state. The membership includes programs from all levels of the continuum of care. Services provided include treatment, prevention, alcohol and drug safety action programs in a variety of settings.

Our association believes that prompt drivers license action will be a powerful method of continuing efforts to keep the drunk driver off the road. The association also sees value in preliminary breath testing and making .10 BAC conclusive evidence that a person is driving under the influence.

Our association would also like to thank the legislation for continuing to work toward greater reductions in deaths on our highways by refining the drunk driving statute. As you are all aware, traffic fatalities in Kansas went down while miles driven increased and we attribute part of this trend to changing public policy on drunk driving.

Att. 12

#13

SENATE BILL 168

Mr Chairman and members of the Committee, my name is Gene Johnson. I am the legislative liaison person for the Kansas Community Alcohol Safety Action Project Coordinators. We are a statewide association of 23 ASAP and court referral programs located throughout the State. Also, I am representing the Sunflower Alcohol Safety Action Project located in Topeka, Kansas, and the National Council on Alcoholism -- Topeka Division. Our organizations, at this time, wish to express the very positive support of Senate Bill 168. We, in the past, have been very concerned and have worked actively for legislation to curtail the drinking driving epidemic on our streets and highways. This committee has been involved in the positive legislation that came forth last year concerning the DWI statute. We feel that this proposed legislation is another positive step to deter our citizens from drinking and driving.

It has been our position in the past to put the burden of financial responsibility on the drinking driver. If that person chooses to drink and drive and is involved in an accident where it results in injuries or property damage to another party, he must be held financially responsible.

Research has indicated that there is driving impairment at .05 by the average driver. We feel that anyone operating with a .05 in his/her blood stream is driving while impaired. Therefore, he/she should be made financially responsible for any personal or property damage that he/she has caused. We believe that when the citizens of Kansas realize the financial implications of three times the damage caused in an accident if they were driving while impaired by alcohol or other drugs, we will see a positive change towards the policy of drinking and driving in Kansas.

Thank You.

Atch. 13

2-17-83

#14

To: Senate Committee on Judiciary

From: Dr. Lorne A. Phillips, Commissioner
SRS/Alcohol and Drug Abuse Services

Date: February 17, 1983

RE: SB 168

Senate Bill 168 provides a unique approach in trying to curb impaired driving. The authorization of triple damages, which applies to the injury of other persons or their property, will hopefully reduce the number of intoxicated drivers. This bill will force insurance companies to take a harder stand on drunk drivers and may increase the amount of publicity put out by the insurance industry to try to dissuade their policy holders from driving while impaired.

Allowing the triple payment for damages caused by persons with a BAC of .05% or above, will cover most injuries and property damage done by persons who drink and drive.

I feel this bill puts the cost of an injury accident squarely upon the shoulders and pocketbook of the impaired driver and is an excellent step in attempting to curb a serious problem. I support this legislation and encourage you to vote favorably on this bill.

Atch. 14

2-18-83

#15

SUMMARY OF TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
1983 LEGISLATIVE SESSION

SENATE BILL 168

PRESENTED BY COLONEL DAVID HORNBAKER
KANSAS HIGHWAY PATROL

February 17, 1983

APPEARED IN SUPPORT OF SENATE BILL 168

The legislature, in revising the driving while under the influence statute last year, sent a clear message to the public that this conduct will not be tolerated.

In our opinion, this bill would reaffirm that message.

Considering the billions of dollars in cost to the economy that result from this source each year in the United States, it is reasonable to place a large portion of that cost on those that create the problem.

During 1981 there were over 66,000 accidents reported in Kansas.

Almost one-tenth of these, or 6,231, involved drinking drivers. Not a real large figure. But consider that within this 10 percent over one-half, or 3,421 accidents were in the fatal or injury category.

Of all the persons killed on Kansas highways 40.6%, or 235 persons, fall in this small percentage. This illustrates the true picture.

While we have no figures on the dollar cost we can readily assume it to be highly disproportionate also, considering physical damage, hospitalization costs and all other categories.

We readily agree with the blood alcohol level established in the bill as proof of impaired driving.

Tests conducted by Dr. Leonard Goldberg of Sweden's Caroline Institute, concluded "that even a slight amount of alcohol caused a deterioration of between 25 and 30 percent in the driving performance of expert drivers."

For instance, laboratory tests indicated that even moderate drinking caused 32 percent deterioration in vision. This was compared to driving with sunglasses in twilight or darkness.

With no desire to belabor the point, we can suffice to say, these persons are engaged in a willful disregard for others and must be held responsible, both ethically and financially, for their acts.

For these reasons, we urge favorable consideration of this bill.

Atch. 15

2-17-83

#16

Kansas Association of Alcohol and Drug Program Directors

February 16, 1983

To: Elwaine Pomeroy, Chairman, Senate Judiciary Committee

From: George Heckman, Legislative Chairman, KAADPD

Re: SB 168

Our association welcomes efforts to increase the responsibility of drivers impaired by alcohol and drugs who cause damages.

Several questions have arisen about this bill. The association would not favor spreading the increased liabilities over the pool of all insured drivers. We also question how .05 BAC would be determined in all accidents since portable breath-testing equipment is not readily available across the state.

We do support, however, efforts that foster a greater involvement by insurance companies to join in removing alcohol and drug impaired drivers from the road and in having them responsible for the costs they incur.

Atch. 16

Kansas Alcoholism Counselors Association

(913) 234-3448
1318 Fillmore, Topeka, KS 66604

#7

February 17, 1983

TESTIMONY

TO: Senate Judiciary Committee

FROM: Glenn Leonardi, President, Kansas Alcoholism Counselors Association

RE: Senate Bill No. 141
By Senators Doyen, Angell, and Meyers

The Kansas Alcoholism Counselors Association (K.A.C.A.) is an organization of approximately 200 certified alcoholism counselors representing the entire State of Kansas. The association's purpose is two-fold: to develop and maintain professional standards for alcoholism counselors and to insure the delivery of quality services by members of this profession.

I appear before you today on behalf of K.A.C.A. to voice our association's support of Senate Bill No. 141. In the legislative session of 1982, K.A.C.A. came out in full support of Senator Meyers' Senate Bill No. 699. Significant steps were taken by Senator Meyers to incorporate technical assistance from professionals throughout the field during Bill preparation. These steps were an effort to develop a piece of legislature that would effectively meet the social and technical needs of Kansas. We all knew at that time that there would be problems with SB-699 that would require attention and resolution in the future. SB-141 appears to take a constructive step in that direction.

K.A.C.A. is therefore, in full support of Senate Bill No. 141.

Atch. 17