

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRSThe meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson11:00 a.m./~~p.m.~~ on February 1, 1985 in room 254-E of the Capitol.

All members were present except: Senators Vidricksen and Walker were excused.

Committee staff present:

Fred Carman, Assistant Revisor of Statutes
 Russell Mills, Legislative Services
 Emalene Correll, Legislative Services
 June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Kansas Community ASAP Coordinators Association, Topeka
 James W. Clark, Kansas County and District Attorney Association, Topeka
 The Reverend Richard Taylor, Kansans for Life at Its Best, Topeka
 Kim Dugger, Kansas Coalition for Drug Free Driving, Topeka
 Donna Bolek, Riley, Kansas
 Marjorie Van Buren, Judicial Administrator's Office, Topeka
 Mike Kuhn, Mr. K's, Manhattan, Kansas
 Charles Busch, Mother's Worry, Manhattan, Kansas
 Judge James Wells, Judge, Municipal Court, Topeka

The Chairman stated that the Committee would hear testimony from various people today concerning

- SB126 - suspension or revocation of minor's driver's license for alcoholic beverage violations
- SB127 - restriction of driver's license after 2nd conviction of D.U.I.
- SB128 - limitations on sales practices relating to alcoholic beverages
- SB129 - restriction, suspension or revocation of driver's license as condition of D.U.I.

The Chairman introduced Gene Johnson, representative from Kansas Community Alcohol Safety Action Project Coordinators Association. Mr. Johnson said they support SB126 in the interests of promoting public safety on our highways. They support SB129 because it gives the district attorney, county or city attorney the authority to restrict, suspend or revoke the driving privileges of the defendant as a condition of diversion. They also support SB127 in which the second-time offender has his or her license suspended. Mr. Johnson's entire testimony is Attachment #1 of these Minutes.

Jim Clark, of the Kansas County and District Attorneys Association, was the next conferee. He said there is a recent Attorney General's Opinion that says diversion is a contract and an agreement, and you can almost do anything you want if the defendant goes for it. He said that diversion is a lot tougher under DUI than other felony crimes.

The Reverend Richard Taylor spoke for the Kansans for Life at Its Best in support of SB126, SB127, SB128 and SB129. His testimony is Attachment #2 of these Minutes. He said every state is getting tough with those who drive after drinking.

Kim Dugger, conferee for the Kansas Coalition for Drug Free Driving, presented her statement. It is Attachment #3. Their proposals for amending SB129 are part of the statement. It says that House Speaker Mike Hayden has agreed to sponsor a bill proposed by the Coalition in the House that would address weaknesses in diversion.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on February 1, 1985

The next conferee was Donna Bolek. She is the mother of a young woman who was killed in an automobile accident which was caused by a drunken driver. Her testimony is Attachment #4 of these Minutes. She said that drinking is an individual's choice, but if one drinks one must accept the responsibility and control drinking if driving. Mrs. Bolek is from Riley, Kansas.

Marjorie J. Van Buren, from the Office of the Judicial Administrator was the next conferee. Her testimony is Attachment #5 of these Minutes. The office supports the SB127 in the interest of consistency, the issue in SB127 was brought to their attention by some of their district magistrate judges.

Mike Kuhn and Charlie Busch, tavern owners from Manhattan, each appeared before the Committee and answered questions from Committee. They said that tavern owners in Manhattan already have an unwritten agreement to provide voluntary prohibition to drink and drown events. They said that most responsible tavern owners realize the adverse impact such events would have on business as well as the image of their business. They also said that B.A.D.D. (Bartenders Against Drunk Driving) started in Manhattan and is a program that combines server education and awareness with bus and taxi service. The program promotes responsible drinking and moderation. They feel that any legislation to control alcoholic beverages and cereal malt beverages should be enforceable and should not infringe upon free enterprise. Their joint statement is Attachment #6.

The Chairman then asked Judge James Wells, Judge of the Municipal Court in Topeka, if he would care to make any comments after having heard the testimony. He said he would be pleased to make himself available to assist the Committee. He stated that the Legislature should be commended for the 1982 revision of the DWI law. He has been reasonably comfortable with it, although there are things that need to be changed, altered and amended, but the concept was good. He said he would be happy to visit with anyone about diversion, that it is true that the prosecutor will call the shots on diversion, and it is also true that he is going to pay attention to the judge's wishes. He said they have a good understanding of diversion in their court system. He said that diversions are an excellent concept. He said that of the 100% of the people who come before him less than 5% will ever be back for a DWI offense.

The Chairman said this will conclude the hearings on SB126, SB127, SB128 and SB129.

The Chairman stated that SCR1606 will be heard Monday.

The meeting was adjourned.

2/1/85 JW
Attachment # 1

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY ON SENATE BILLS 126, 127, and 129

February 1, 1985

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. Our membership totals 28 Alcohol Safety Action Projects located throughout the state of Kansas. We provide all courts with the alcohol and drug evaluations for all DWI offenders whether they are granted diversion or are convicted of a DWI offense. For the most part we also provide the Alcohol Information School for those offenders who are directed to us by the district, county, and city attorneys, and also for those offenders who are directed to us by the sentencing court.

We support S.B. 126 in the interests of promoting public safety on our highways. We feel that it is necessary to place the responsibility on the offender regardless of the age of that offender. The fact that this law will have an effect on the offender's pocketbook and the driving privilege of that offender, bolstered by the chance of serving some time in jail, would be a great deterrent for those who would attempt to purchase or consume alcohol in an illegal manner.

We also support S.B. 127 in which the second time offender has his/her license suspended. After completion of treatment the Court has the

jurisdiction to reinstate the driving privileges of that offender under certain conditions. This would serve notice on these offenders that it is possible to have their driving privileges reinstated on a limited basis after they successfully complete the treatment program as ordered by the sentencing court.

Our association wholeheartedly supports S.B. 129 which gives the district attorney, a county or city attorney the authority to restrict, suspend, or revoke the driving privileges of the defendant as a condition of diversion. We find that this would be a good way to get the attention of these drivers who in the past have a rather bad driving record but do not have any violations which would suggest alcohol involvement. This bill would put these offenders on notice that the prosecutor is aware of their driving habits and the fact that the offense did occur while under the influence of intoxicating alcohol and this type of driving behavior can no longer be tolerated.

In addition, our Association would recommend that the prosecuting attorneys of their jurisdiction not have the authority to enter into a diversion agreement when the offender had been involved in an injury accident. Also, it is our wish that a person who has a blood alcohol content of .15 or above should not be eligible for a diversion in any jurisdiction. We feel that anybody who refuses the breath chemical test offered by the arresting officer has violated their privilege to drive and should not be considered eligible for diversion.

The Kansas Alcohol Safety Action Project Coordinators also support a per se law which would find all offenders guilty of driving while under the influence of alcohol if their blood alcohol content was .10 or greater. We also endorse the concept that if an offender has a blood alcohol content

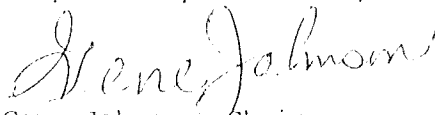
of .10 or above that he/she be subject to administrative license suspension for a period of not less than 30 days. After serving his administrative suspension, the defendant could be eligible for a restricted license granted by the sentencing court or as a condition of his diversion agreement.

The present DWI law was enacted July 1, 1982. However, our organization has been supporting this type of concept since prior to the 1981 session. We arrived at the \$85 evaluation fee by using 1980 expense factors. We would ask this committee to consider amending KSA 8-1008 by raising the \$85 evaluation fee assessed against the person by the sentencing court or under the diversion agreement to \$110. The purpose of this legislation some three years ago was to put the burden of the evaluation, education, and/or treatment on the offenders rather than on the taxpayers in general.

Our organizations throughout the State are finding it exceedingly difficult to approach their local units of government for support of the DWI program. By providing an increase to \$110 in the evaluation fee more alcohol and drug funds, formerly applied for by the Alcohol Safety Action Projects, would become available to other programs in the local communities. In addition, it has been our experience that in the majority of the cases hitting the offender in the pocketbook does have a lasting effect on the memory of the offender.

Thank you for the opportunity to appear before this Committee today. I will be available to answer any questions.

Respectfully submitted,



Gene Johnson, Chairman
KS Community ASAP Coordinators Association

KANSANS FOR LIFE AT ITS BEST!

Rev. Richard Taylor, Box 888, Topeka, Kansas 66601

Phone (913) 235-1866 Office 1273 Harrison
(3 Blocks South of Statehouse)



A Proud Land

Hearing on SB 126, 127, 128, 129
Senate Federal and State Affairs Committee

February 1, 1985
Rev. Richard Taylor

Lawmakers who want safer highways and less use of our most abused drug will vote YES for every step in the right direction. These four measures seem to be steps in the right direction.

By linking the passage of these four bills to a trade off for open saloon votes, liquor promoters are admitting the issue is consumption and highway safety.

These four measuers would tend to reduce consumption and make highways safer. This will not offset making it more convenient for more Kansans to drink more alcohol in more places on more occasions and then drive and kill. There can be no trade off when the issue deals with human life.

When the world is calling for less alcohol consumption, open saloon promoters want Kansas to take a big backward step. On national TV news early this morning, the Pope in South America is telling the people to avoid alcohol and the announcer said Peru has banned the sale of alcohol.

These four alcohol control measures would not be needed if this committee would call for repeal of section (d) of KSA 65-4102. By definition, alcohol is a controlled substance but is exempt from control under that statute.

There are probably additional states, but I have information on Massachusetts, New Jersey, and Nebraska where the happy hour and "twofers" are being banned. Every state is getting tough with those who drive after drinking. Lawmakers concerned for less consumption and suffering will want to support these four forward steps.

Respectfully yours,

A handwritten signature in black ink that reads 'Richard Taylor'. The signature is written in a cursive style and is located below the typed name.

Rev. Richard E. Taylor

Attachment 2

"Of our political revolution of 1776 we are all justly proud," said Abraham Lincoln on Washington's birthday in 1842. He went on to say "how proud the title of that land" where persons declare their freedom from alcoholic beverages because they "shall find a stronger bondage broken, a viler slavery manumitted, a greater tyrant deposed. . . perfect liberty!" With per-person consumption at nearly half the national average, thousands of Kansans enjoy that perfect liberty. Concerned users and non-users are united in this R-E-A-L effort to prevent alcoholism, highway tragedy, and other suffering caused by our most abused recreational drug.

Rehabilitation — Help alcohol-dependent persons adjust to life without the drug.

Education — Inform children, youth & adults of effect of alcohol on mind & body.

Amount — Encourage persons to be non-users and encourage users to use less.

Law — Pass and enforce laws that reduce consumption and suffering.

Kim Dugger
2/1/85
Attachment #3

KANSAS COALITION FOR DRUG FREE DRIVING

I represent the Kansas Coalition for Drug Free Driving. This organization is a statewide coalition of Kansas citizens against drunk driving, including several MADD (Mothers Against Drunk Driving) and RID (Remove Intoxicated Drivers) groups with the support of the Kansas PTA and the Kansas Women for Highway Safety.

There has been an impression that the Kansas drunk driving law is very tough but when it is compared to that of other states this is not true. Thirty-seven states have stronger license actions on first offense than Kansas including all four of the surrounding states. This is especially important since much research has shown that potential drunk drivers, particularly young males, have more fear of license actions than of jail. Forty-two states have stronger evidentiary rules; i.e., per se, than Kansas including all four surrounding states.

Another weakness of our law is diversion. Only three states offer diversion to first offenders but, more important, diversion is unequally applied across the state. This is unfair to everyone. Some jurisdictions never use diversion, while others use it 75% or more of the time. If we have to have diversion then surely we should add some fairness by limiting to some extent who is eligible for it.

House Speaker Mike Hayden has agreed to sponsor a bill proposed by the Coalition in the House that would address the weaknesses that I have talked about to you today. The Coalition would like to propose to this Senate committee that they amend Senate bill #127 to include the same four basic changes that are in Hayden's

house bill.

1. The current Kansas DUI law's license action is a restriction only with so many exceptions that it is virtually worthless as real punishment. The Coalition would like to see 60 days of hard suspension for both those convicted and those diverted. Some people fear that this will make drunk drivers lose their jobs. We feel this is nonsense. Anyone who really wants to keep a job will make other arrangements. More important, though, is that we all stop pampering the offender. The real victims of drunk driving are our loved ones who they kill and injure. The drunk driver is not the victim; the drunk driver is the offender who must be punished for disobeying the law and endangering us all on the streets and highways. It also needs to be realized that 80 to 85% of those drunk drivers who kill and injure are first offenders. They have never been arrested for drunk driving before. Thus, if we do not adequately punish the first offender, we will not stop the deaths and injuries of our loved ones. Of course, license suspensions are going to be ignored by some, but what law will stop those who don't care. The more important fact is many with suspended licenses will not drive, that those who do drive will be more careful and that a high proportion of potential drunk drivers fear loss of driving privileges.

2. The Coalition supports per se being substituted for prima facie. Per se makes 0.10 an indisputable fact that the person so measured is too drunk to drive whereas prima facie is only strong evidence not fact. Anti-drunk driving groups in 42 states have successfully worked to include this in their DUI law. Kansas should do this too.

3. Diversion needs to have some limitations.

A. Diversion could not be used if the blood/breath alcohol test is 0.15 or higher. At this level the Midwest Research Institute of Kansas City has shown that a person is 25 to 30 times more likely to have an accident at 0.15 or higher than a person at 0.10.

B. Diversion could not be used if an injury accident has occurred in relation to the drunk driving arrest.

4. The fourth point has to do with the fact that many drunk drivers are arrested and released before they even sober up. In addition, even if they are released after they are not intoxicated, they can legally drive until they go to court. Between the arrest and the court's decision they continue to drive and often drink and drive. Several states, in order to deal with this problem, have instituted administrative license actions at the time of arrest. Thus, if Kansas had a 0.10 per se law, the police could be charged with the responsibility to take the license of the offender at the time of arrest. The license could be administratively held by the Department of Motor Vehicles for 60 days. Such immediate punishment as this could have a dramatic effect on drunk drivers. Some people have indicated they think this is unconstitutional. Several states already do this without it being declared unconstitutional. The basic reason is that though we often forget the driver's license is a privilege not a right.

The Coalition is asking that this Committee amend Senate bill #127 to add four points. Let me summarize those four points.

1. 60 days real license suspension for those convicted and those diverted.
2. This could be accomplished by the police taking the license at the arrest with the Department of Motor Vehicles returning it after 60 days.
3. Per se substituted for prima facie.
4. Restrictions on the use of diversion

- A. Diversion cannot be used if blood/breath test is 0.15 or over
- B. Cannot be used if injury accident is involved

I live & operate a antique shop in Riley Kansas
I'm a mother & a grandmother, I had six children
which I love very, very much, as far as I was
concerned they were my entire life.

I would like to tell you a story that I think
we as the public have ignored far to long, it
pertains to the drunken driver my story is about
Lola Balok Tucker my youngest daughter.

It was a beautiful spring day of this year,
June 5, 1984. My husband & I had gotten up early
& gone about our usual chores, toward evening we
got ready to go to Manhattan to an auction never
dreaming of the horror we would meet along the
way or the circumstances that would come about
that would change my entire life & that of my
family.

We were on our way into Manhattan, it was
shortly before 6 PM when ahead of us we saw
several police cars, My husband said, "there must
have been a wreck," I said "how could that be when
the road is so straight," as we got closer, we seen
a car in the middle of the highway & a little
bit of a car sticking out of the ditch to our right.
My heart stopped! I said "Oh my God Dwayne
it's our girls." he said no it isn't now don't
let your imagination run away with you, by
this time he was past the wreck far enough to
where he could see the tag & he knew it was their car.

As he stopped our local police officer Dale-Farmer ran up to us & said, "go on to the hospital your daughter & daughter-in-law are both hurt & Lola is pretty bad." He ask if my husband was able to drive & he let us go.

A few minutes later we arrived at St. Marys Hospital a Dr. came out & told us there wasn't much hope for Lola but they were still working on her. I wanted to see her but they couldn't let me. She died 90 minutes later of massive injuries.

There really is no way to explain how we all felt ~~at that time~~, a million things go thru your mind things of what have been, of what should be & of what will never be. I've read where when Jesus was crucified his mother Mary said a hundred arrows periced her heart. I can now fully understand what she meant & can find no better way to describe the pain & suffering my family & I felt at that time.

Lola was 23 years old, she was very pretty, happy natured, friendly & determined to become self supporting of her self & two young children, she had recently been thru a bad divorce as her husband had a drinking problem & often became very violent, she was divorced in Dec. of 83 & there is a six month waiting period, it would have been final 2 days after she was killed.

She was attending Crambs Beauty School

& had just received her first pivot point, she had returned home to live with us in July of 83 her children were very young Miranda age 14 mo. & Donald age 2 years 5 mo, we loved them as much as if they were our own.

The young man that killed our daughter is 24 years old, he was driving in excess of 90 miles an hr. He had had 4 previous alcohol related convictions, he was charged with 2nd degree murder, transporting an open container, driving left of center, driving under the influence with a blood Alcohol Content of .30+ he had used fraud to obtain a Kansas drivers license & he carried no insurance.

On Aug. 21st at his preliminary hearing this charge was reduced to involuntary manslaughter, the reason was they claimed he was so drunk he was temporarily insane, so thus could not show malice, even though there were several witnesses that said he was chasing them back & forth across the highway.

On Sept. 10 he pleaded innocent to the charge of involuntary manslaughter his trial is now set for Febr. 27, 1985.

Our law reads that voluntary intoxication can not stand as a defense to a crime.

If you load a gun & point it at someone you are considered dangerous, are it you

equally as dangerous if you are loaded & behind the wheel of a car, aimed at each & every car you meet.

Then as citizens should realize that in our state as well as our nation we have a major alcohol problem, & it should be the concern of every citizen of these united states.

I use the word united because it means made one or combine, my self as one person probly can not do much, but if we unite or combine our efforts, I feel we can be heard to receive better law enforcement & better laws.

I am not against drinking, as that must be the individuals choice, but if we are old enough to drink we must except the responsibility & control the ammount we consume & not endanger the lives of others.

I am not seeking your sympathy only your concern, understanding & support. I still consider my self very lucky. I have a husband, 5 children, a daughter in law & several son in laws.

God also has blessed me with 14 grandchildren of which I am very proud & I will try to instil on them the knowledge that God gave us a big wide wonderful world to see & enjoy with out the need of liquor.

2/1/85
Attachment #5

Marjorie J. Van Buren
Office of Judicial Administration

Testimony on S.B. 127
February 1, 1985

Thank you for the opportunity to appear in support of S.B. 127. The issue addressed in this bill was brought to our attention by some of our district magistrate judges. In fact, the Judiciary Committee has introduced a very similar bill (S.B. 66) at our request.

We support this bill in the interest of consistency. One of the penalties for a first conviction is placing of restriction on the driver's license. In the case of a second conviction, the law provides for suspension of the license for one year or until an appropriate treatment program is completed. When the license is returned, it would be consistent to allow the judge to place restrictions on the license, as in the first conviction.

* * *

2/1/85
Attachment # 6

PREPARED STATEMENT OF
MIKE KUHN AND CHARLIE BUSCH
MANHATTAN, KANSAS

BEFORE THE SENATE COMMITTEE ON
FEDERAL AND STATE AFFAIRS

TOPEKA, KANSAS FEBRUARY 1, 1985

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

AS TAVERN OWNERS IN MANHATTAN, KANSAS WE WOULD LIKE TO TAKE THIS OPPORTUNITY TO ADDRESS OUR CONCERNS IN REGARDS TO SENATE BILL 128 -- LEGISLATION THAT WOULD PROHIBIT CERTAIN PROMOTIONAL PRACTICES OF PRIVATE CLUBS AND TAVERNS THAT SERVE ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES.

TAVERN OWNERS AND MANHATTAN HAVE ALREADY IMPLEMENTED MANY OF THE PROVISIONS OF S.B. 128. AN UNWRITTEN AGREEMENT AMONG TAVERNS IN MANHATTAN ALREADY PROVIDES A VOLUNTARY PROHIBITION TO DRINK AND DROWN EVENTS AND THE LIKE. MOST RESPONSIBLE TAVERN OWNERS REALIZE THE ADVERSE IMPACT SUCH EVENTS WOULD HAVE ON BUSINESS AS WELL AS IMAGE OF OUR BUSINESS.

A UNIQUE PROGRAM THAT STARTED IN MANHATTAN IS B.A.D.D (BARTENDERS AGAINST DRUNK DRIVING) THIS PROGRAM COMIBINES SERVER EDUCATION AND AWARENESS WITH BUS AND TAXI SERVICE TO PROMOTE RESPONSIBLE DRINKING AND MODERATION. SUCH A PROGRAM THAT IS SELF-INDUCED WILL BE MUCH MORE EFFECTIVE THAN ANY PROGRAM AT A GOVERNMENTAL LEVEL.

WE SUPPORT THE CONCEPT BEHIND S.B. 128. HOWEVER, PHILOSOPHICALLY WE MUST OPPOSE ANY PRICE RESTRICTIONS AND CRITERIA AS AN UNFAIR INTRUSION UPON OUR RIGHTS AS BUSINESS PEOPLE TO FREE ENTERPRISE. SIMILARLY, WE FEEL THE PROVISIONS OF S.B. 128 THAT CALL FOR GOVERNMENTAL SANCTIONS AGAINST HAPPY HOURS AND PROVISIONAL PRICING ARE NOT ENFORCABLE AND WOULD CAUSE DISRESPECT FOR THE LAW GOVERNING CEREAL MALT BEVERAGES AND ALCOHOLIC LIQUOR.

ATTEMPTS BY THE KANSAS LEGISLATURE TO REGULATE AND CONTROL ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES SHOULD BE ENFORCABLE AND SHOULD NOT INFRINGE UPON THE FREE ENTERPRISE RIGHTS OF BUSINESS. ANY ATTEMPTS BY THIS LEGISLATURE TO PROMOTE MODERATION AND RESPONSIBILITY ARE APPRECIATED IF THEY MEET SUCH CRITERIA.

THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU.