

Approved April 11, 1986  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~p.m.~~ on April 2, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington and Winter.

Committee staff present: Mary Hack, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

James McHenry, Alcohol and Drug Abuse Services  
Ruth Meserve, Kansas Coalition for Drug-Free Driving  
John Smith, Department of Revenue  
Gene Johnson, Sunflower Alcohol Safety Action Project  
Jim Davidson  
Lieutenant Bill Jacobs, Kansas Highway Patrol  
John Lamb, Alcohol Beverage Control Division  
Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors  
and Kansas Alcoholism and Drug Abuse Counselors Association  
Gene Heckman, Kansas Association of Alcohol and Drug Program Directors

House Bill 2822 - Diversion for DUI offenses, limit on prior convictions.

James McHenry, Alcohol and Drug Abuse Services, testified out of state convictions and guilty pleas should be put on same level with instate convictions. He asked for favorable action on the bill. Copies of his testimony are attached (See Attachments I).

Ruth Meserve, Kansas Coalition for Drug-Free Driving, testified the coalition supports the open container bill that would authorize alcohol evaluation and education for those violating the open containers law, for first offenders at the cost of the offender and not to the state or county. A copy of her testimony is attached (See Attachment II).

John Smith, Department of Revenue, testified the language in this bill is in the DWI statute. A conviction under our law can be used as your second subsequent action in the other states. He said this bill makes it compatible with the DWI law. Following committee discussion, Senator Gaines moved to amend the bill by striking the language referring to .20 blood alcohol concentration, in lines 59 through 61 and 102 through 103. Senator Langworthy seconded the motion, and the motion carried.

During committee discussion Senator Steineger recommended an interim study concerning sentencing persons to attend alcohol treatment programs at their own expense.

Senator Feleciano made a conceptual motion to amend the bill by amending the alcoholic liquor fund portion of Senate Bill 416 into this bill for the primary purpose of alcohol treatment and education. Senator Winter seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Talkington seconded the motion, and the motion carried.

Copy of a letter from Michael Glover is attached (See Attachment III).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on April 2, 1986

Sub. for House Bill 2953 - Penalties for transporting open container of alcohol or beer.

Dr. James McHenry testified his department supports the intention of the bill. There are technical issues in it they are concerned about. They are concerned because they have observed a large number of young drivers driving with open containers.

Gene Johnson, Sunflower Alcohol Safety Action Project, testified they support the bill as another method of promoting highway safety in the State of Kansas. Under this proposed legislation, the penalties for the first time offender would be a sentence of probation conditioned on the enrollment and successful completion of an alcohol and drug safety action program or, what is better known as a Alcohol Information School, which is certified pursuant to K.S.A. 8-1008. A copy of his testimony is attached (See Attachment IV). A committee member inquired what is the purpose in removing the liability other than the driver. Mr. Johnson replied, the House amended this on the floor, and they felt it is best to make the driver responsible.

Jim Davidson testified he has graduated from one of these alcohol treatment schools. He said the school has several benefits. It has the opportunity to educate you as an individual and allows you to spread that education to your friends. He explained the school will check the person to see if they have a problem, and if they don't they will educate him. Also it is specifically designed to take care of whatever problem you have with drug abuse. He felt the school was a good educational tool.

Lieutenant Bill Jacobs, Kansas Highway Patrol, testified their concern is the notice to appear because they have run into a problem of courts not accepting those. This is being addressed in another bill. He stated they are in support of the school aspect of the bill. A committee member inquired, are you wanting to arrest only the driver? Lt. Jacobs responded there are two ways to look at this. The way it is now you arrest both the driver and the passenger because the driver allowed it in the car. It will be up to the court of law.

John Lamb, Alcohol Beverage Control Division, testified they strongly recommend that the bill be amended keeping the violation in Chapter 41 and reference to this violation made in Chapter 8 or that in Chapter 8 a reference be made to Chapter 41 for the purpose of a violation. A copy of his testimony is attached (See Attachment V). He said they are concerned with the individual driver who is charged with having an open container. He said he feels this is bad public policy to tie it to the driver only. He stated they are concerned because it is lessening restrictions of terms for getting a liquor license in Kansas, and they are not in favor of the language that is written.

Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors, and Kansas Alcoholism and Drug Abuse Counselors Association, testified the organizations are in support of the bill.

Ruth Meserve, Kansas Coalition for Drug-Free Driving, testified we feel that an open container in a vehicle distracts from driving in an orderly manner. A copy of her testimony is attached (See Attachment VI).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m. ~~pm~~ on April 2, 1986

Sub. for House Bill 2953 continued

Gene Heckman, Kansas Association of Alcohol and Drug Program Directors, testified his association strongly supports the bill. A copy of his testimony is attached (See Attachment VII).

A committee member inquired who pays the cost now for the programs? Mr. Johnson explained it depends upon the local court. They have a sliding scale for juvenile offenders to pay for the program. Their emphasis is to get through the school.

The meeting adjourned.

Copy of the guest list is attached (See Attachment VIII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 4-2-86  
10:00 a.m.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Darlene Stearns	Topeka	PCAR/CCR
Jim Robertson	Topeka	SRS
Ruth Meserve	Prairie Village, Ks.	Ks. Coalition for Drug Free Driving
Jim McHenry	Topeka	SRS / ADAS
Gene Johnson	Topeka	Ks. A.S. AP ASSN
John W. Smith	Topeka	Dept of Rev
Lt. BILL JACOBS	TOPEKA	KANSAS HIGHWAY PATROL
John Lamb	Topeka	ABC
Clairbuck G. Mayo	"	KADACA/KRAA
Ray Lawton	"	
Marjorie Van Buren	Topeka	OJA
Fon Smith	"	ICBA
John Peterson	"	H. Leese Burch
Larry Wolgast	"	D H R
Jim Gore	"	KC DSA
Mark Bennett	Topeka	A.S.A.
George D. Meserve	Prairie Village	Concerned Citizen
Pat Jelen	Topeka	Ks. Action for Children
George Barber	Topeka	KCE
D. Stokely	KCK	CITY OF KCK
Chris Edwards	topeka	Rever/Kager

4-2-86  
10:00  
M. Lacey

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
ALCOHOL AND DRUG ABUSE SERVICES

House Bill 2822  
Diversion of DUI Offenses, Limit On Prior Convictions

- I. Title  
An act concerning certain alcohol related offenses; relating to diversion of criminal proceedings; amending K.S.A.-1985 Supp. 12-4415 and 22-2908 and repealing the existing sections.
- II. Purpose  
The bill adds pleas of nolo contendere of alcohol related offenses and previous convictions and pleas of nolo contendere of DUI in Kansas or another state to prohibitions of diversion agreements by city, county, or district attorneys in lieu of further criminal proceedings of alcohol related offenses or DUI.
- III. Background  
The bill eliminates the omission of consideration of out of state convictions or guilty pleas to DUI or other alcohol related offenses in the adjudication of DUI. Out of state and instate convictions are put on equal basis.
- IV. Effect of Passage  
As noted above, the bill will make out of state and instate convictions and/or guilty pleas to DUI and other alcohol related offenses considered on an equal basis for diversion purposes.
- V. SRS Recommendation  
Support the amendment of Kansas Statutes to consider the proposed offenses.

Robert C. Harder  
Office of the Secretary  
Social & Rehabilitation Services  
296-3925  
April 2, 1986

7711-1

S. Jud.  
4/2/86  
Attach. I



STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ALCOHOL AND DRUG ABUSE SERVICES

ROBERT C. HARDER, SECRETARY

2700 WEST 6TH STREET  
TOPEKA, KANSAS 66606  
(913) 296-3925  
KANS-A-N 561-3925

TESTIMONY FOR HB 2822 DIVERSION OF DUI PROCEEDINGS  
April 2, 1986

I am speaking today in favor of HB 2822. Existing statutes should be amended to include provisions which are absent in existing legislation. Out of state convictions and guilty pleas should be considered on an equal basis with in-state, Kansas, conviction and pleas of guilty.

I usually speak before this and other legislative committees for measures promoting alcohol and drug abuse treatment programming. Control measures, and in particular DUI related Alcohol and Drug Safety Action Programs, are important education and intervention programs. Intervention is a vital component of the Alcohol and Drug Abuse Continuum of Care. The Continuum includes prevention, intervention, and treatment programming. This bill is necessary to insure uniformity and equal treatment under Kansas laws. Thank you for the opportunity to testify in favor of HB 2822.

7711C

Attach. I

4-2-86  
10:47 AM

# Kansas Coalition for Drug-Free Driving

P.O. Box 195 Riley, KS 66531

913-485-2789

Mr. Chairman and Members of the Committee;

I am Ruth Meserve, Lobbyist for the Kansas Coalition for Drug-free Driving.

The coalition supports the open container bill that would authorize alcohol evaluation and education for those violating the open container law, for first offenders at the cost of the offender and not to the state or county.

We feel that an open container in a vehicle distracts from driving in an orderly manner. It is also a primary escape for those under age to have a friend of age stop at a convenience store and buy alcoholic beverages and drive around while drinking.

We feel that those who violate the law are a high risk for having alcohol or drug problems.

We feel it is important for the courts to know this before sentencing. Thank you.

Sincerely, .

Ruth N. Meserve  
Lobbyist, Kansas Coalition  
for Drug-Free Driving

S. Jud.  
4/2/86  
Attch. II + VI



*City of Lawrence*  
KANSAS

4-2-86  
101

BUFORD M. WATSON, JR., CITY MANAGER

MUNICIPAL COURT 111 EAST 11TH ST  
66044 913-841-7700 EXT 346

February 27, 1986

Robert J. VanCrum  
State Representative, 29th District  
House of Representatives-State Capital  
Topeka, Kansas 66612

RE: House Bill #2822

Dear Bob:

House Bill 2822, which you sent me in the mail, is a simple proposal intending to include any plea of No Contest to DWI as a prohibition against diverting the second offense, or subsequent offense.

You asked me to comment on any other aspect of diversion, and I would like to bring your attention to the following problems:

First of all, I prosecute over 300 DWI cases a year, and I have found that the two limits on diversion instituted by the legislature, i.e. (a) no diversions above .2 BAT and (2) no diversions for injury accidents, are somewhat cumbersome and difficult to administer. First of all, as you know, these limits were not part of the original DWI diversion plan, and as I understand it, the tougher DWI penalties would not have passed the House without the diversion provisions in the Bill.

These are the following procedural difficulties:

First of all, with injury accidents the question has arisen on a number of occasions how serious an injury has to be before the bar to diversions arises. For example, a simple bump on the head with no medical treatment v. a serious injury with hospital and medical treatment. Obviously in the second instance, no diversion. However, in the first instance, where you have a single car incident with one driver who gets one minor bump on the head and is otherwise polite and cooperative with the police and takes the test, it seems unusually stringent not to provide diversions in those cases. A second question has arisen, where the injury was to an animal, not a person, that was struck by the defendant when the animal ran unexpectedly onto the road. I checked with the Attorney General in the animal case; the Attorney General gave me a verbal opinion over the phone that said diversion was all right in that particular case.

S. Jud.  
4/2/86  
Attch. III



Secondly, the prohibition for diversion for any defendant with a BAT of .2 or above is difficult to administer because it allows a defendant who refuses the BAT but who is involved in a non-injury accident, has a poor driving record, is combative and antagonistic and a problem drinker, is eligible for diversion. However, someone with a BAT of .2 who is polite and cooperative, excellent driving record, no accident and a social drinker, isn't eligible. This isn't hypothetical--it happens every day in every major city in the State. It seems especially harsh for the defendant who cooperated to be precluded simply because of a legislative prohibition that for some reason was chosen at .2 BAT. Furthermore, the standard for conviction is the BAT at the time of driving. All sorts of calculations are possible to show that even though the BAT was .2 when the test was given, because the defendant just finished drinking prior to driving and two hours elapsed between the time of the stop and the time the test was given, the actual BAT at the time of driving was probably below .2.

My recommendation is to simply remove these two prohibitions or say instead of being absolute prohibitions, that they raise a presumption against diversions, but ultimately leave the decision with the prosecutor. The only other fair resolution is to prohibit diversions on all BAT refusals. However, this isn't a good position to put prosecutors in, because we would be stuck trying cases without very much evidence, and therefore waste a lot of everyone's time.

Eventually, the legislature has to trust someone in this DWI dilemma. Honestly, I believe you can trust a majority of the City, County, and District prosecutors in the State, because they are either elected public officials or appointed by officials that are subject to public review and comment. It is important to leave some discretion in the hands of the prosecutors, give us some guidelines, but ultimately keep the authority and the final decision with the prosecutor who has to daily deal with these cases. Obviously, no one would give a diversion for anyone with a prior DWI on the record, whether it is within the last five years or not. It is simply not good public policy. However, these arbitrary limits of injury accident and above .2 BAT really work a hardship on defendants who would otherwise be qualified for diversion because they were polite and cooperative and it's probably never going to happen again.

One last point: nothing in either this Bill or any legislation indicate the length of diversion. It should be stated in statute that the length of diversion period is one year. Frankly, in some counties in Kansas the diversion is entered into and as soon as the fine is paid and the alcohol school is completed the diversion is dismissed, the case is dismissed, and everything is over. I frankly find that difficult to believe, and it again points up that standards state-wide are necessary, but that those standards shouldn't limit the discretion of a prosecutor to offer diversion in first time cases where the facts justify it.


Thank you very much for an opportunity to comment on this area of the law. I believe my experience both in the legislature and in the prosecution of over 2,000 DWI cases in the last six years justifies your confidence in my comments. As you can see, I have sent carbon copies of this letter to my good friends Senators Reilly and Frey, and if they deem these comments necessary, I would

Attch. III

VanCrum - Page 3

certainly be glad to testify in their committee when the Bill is up for hearing in the Senate.

Sincerely,



Michael G. Glover  
City Prosecutor

MGG:po

cc: Senator Reilly  
Senator Frey

Attach. III

4-2-86  
10:14 AM



# Sunflower Alcohol Safety Action Project, Inc.

Suite E, 112 S.E. 7th / Topeka, Kansas 66603 / Phone (913) 232-1415

## TESTIMONY

Senate Judiciary Committee

House Bill 2953

Relating to Transportation in Open Containers

April 2, 1986

Mr. Chairman and Members of the Committee, I represent the KS Community Alcohol Safety Action Project Coordinators Assn. Our Association of thirty members provides for the Courts in the state of Kansas the evaluation and education for DWI offenders. Our organization is dedicated to the promotion of highway safety in the state of Kansas as it relates to the responsible use of alcoholic beverages and other drugs while operating a motor vehicle.

Under the present Kansas statute there is a maximum penalty of \$200 and imprisonment of not more than six months for those offenders who have violated the open container law as we find in statute 41-804 and 41-2719. In addition, the Court shall suspend the first offender's driving privileges for a period of three months. However, the Court does have the authority to grant that offender a restricted driver's license which would allow the person to operate a vehicle in the state of Kansas under certain conditions. When granting that restricted license, the Court must maintain a 90 day minimum restriction period but not to exceed one year's restriction. On the second or subsequent offense, the Court shall suspend the offender's driving privileges for a period of no less than one year. However, also the Court does have the authority to enter a restricted license under certain conditions for a period not to exceed one year.

We support House Bill 2953 as another method of promoting highway safety in the state of Kansas. Under this proposed legislation, the penalties for the first time offender would be a sentence of probation conditioned on the enrollment

S. Jud.  
4/2/86  
Attch. IV

and successful completion of an alcohol and drug safety action program or, what is better known as an Alcohol Information School, which is certified pursuant to KSA 8-1008. The cost of that School or program would not exceed \$100. The driver's license suspension and restriction would remain the same and the offender would be eligible for a restricted driver's license under the normal conditions. If that offender failed to complete the Alcohol Information School, or that particular program as recommended by the alcohol and drug safety action program, he or she would be returned to Court and sentenced as a second time offender for a fine of not less than \$100 nor more than \$500 or imprisonment for not more than six months, or both.

We would suggest to the Committee that if that person has a second or subsequent offense, or that person chooses not to go to the Alcohol Information School, that the Court would suspend that offender's driving privileges for a period of one year. However, we feel the Court should have within its discretion the ability to offer the offender a restricted driver's license under the usual and normal conditions for a period not to exceed one year.

We feel that alcohol information education has progressed positively in the past twelve years since the Alcohol Safety Action Projects have been operating in the state of Kansas. Locally, in 1974, we were faced with what we call a 37% recidivist rate for DUI offenders. That means that 37% of the people who had previously been arrested for DWI were returning for seconds, thirds, and fourths. Now I am happy to report that our recidivist rate is locally far less than 10%. Our organization feels that education and word of mouth advertising is making the rounds of the state of Kansas as far as DUI and alcohol related offenses are concerned. The general public has now come to realize that drinking and driving will no longer be condoned in the state of Kansas. We would support this bill on five different points.

Attach. IV

First, under the present law the law enforcement officer cannot file with the Court a uniform traffic summons for an open container because of the fact that the open container law is now placed in Chapter 41 of our statutes. In order for that matter to be adjudicated, the District Attorney, County Attorney, or City Attorney must dictate a complaint with language explaining the offense in accordance with the statute. The presiding judge then must review the complaint and accept its validity and then proceed on with the adjudication proceedings. This action results in many delays in filing because of the necessary paperwork involved. We find by checking with the Department of Revenue that in 1985 they listed 283 people who had their licenses suspended or revoked because of open container violations. In addition, there 1738 offenders who had their licenses restricted because of open container violations. However, the Department of Revenue was able to determine there were 916 arrests that they had no record of knowing what had happened in these cases. In other words, they probably got bogged down in paperwork. It is also known that many cases did not get reported to the Department of Revenue because of the difficulty with this statute. This resulted in cases not being filed, or plea bargained to a lesser offense, or just plain dismissed prior to the offender appearing in Court. We feel by changing the statute and placing it in Chapter 8 under the traffic violations this would correct and plug up the loopholes in this law.

Second, we feel by offering these offenders education on their first alcohol related offense, such as driving with an open container, we may prevent that individual through proper information and education from repeating that offense and possibly being apprehended at a later date for driving while under the influence. Our past record of lowering the recidivist rates for DUI offenders from the previous high of in excess of 35% to less than 10% speaks for itself as far as education is concerned.

Attach. IV


Three, we feel that traffic safety is of utmost concern for the citizens of Kansas and anybody who is operating a motor vehicle on our highways should be concentrating 100% on their driving and not on what they are consuming. The effects of alcohol, once consumed, are always present. Even one beer in some individuals has a negative effect on their judgment and decision making. By offering information to these so-called minor traffic offenses we may be in effect saving lives and serious injuries to those individuals in the future.

Four, we have found in the past that people who attend our Alcohol Information Schools sometimes become our best ambassadors of information. They, in turn, will tell their friends of the information they have received in this School and advise them that it is not a good idea to operate a motor vehicle while consuming alcohol. The ripple effect we have through the Alcohol Information Schools has spread in a positive manner throughout our communities.

Fifth, and last, we are not asking the Legislature to provide us any funds to finance this type of an educational program. We are asking you as legislators to place the burden of the education and information schools on the back of the person who violated that statute. In other words, the offender must pay for the knowledge that they have received.

Thank you for permitting me to appear before this Committee today in support of this legislation which will promote more safety on our streets and highways in the state of Kansas.

Respectfully submitted,

  
Gene Johnson, Chairman  
KS Community ASAP Coordinators Assn.

Attach IV

MEMORANDUM

4-2-86  
10:00 m

TO: Senator Bob Frey, Chairman  
Senate Judiciary Committee

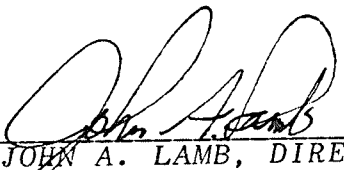
FROM: JOHN A. LAMB, DIRECTOR, ABC DIVISION

RE: Sub. for HB 2953

DATE: April 2, 1986

This bill would impose liability on the driver of a motor vehicle only, regardless who in the vehicle actually was found in possession of the open container. It would appear that this liability would be imposed regardless of whether or not the driver consented to, or even had knowledge of, the presence of that container. While it is perhaps reasonable to hold a driver responsible for anything that happens anywhere in his vehicle [and that matter is open to debate], it is unfair to penalize one person for the willful or voluntary acts of another, while the actual perpetrator escapes all liability for his/or her actions. This may adversely affect the designated driver programs where a non-drinking individual drives home those who have been drinking.

This bill would also remove the open container statutes from Chapter 41, the Liquor Control Act and place them in Chapter 8, Traffic Offenses. Such a change is relatively innocuous. However, such a change would raise a side issue relative to liquor licensees. Currently a conviction for violating the intoxicating liquor law could be a basis for revoking a license or for refusing to issue a license [KSA 1985 Supp. 41-330]. Currently, transporting an open container is in Chapter 41 and thus, it clearly is a violation of the intoxicating liquor law. To move that statute[s] to Chapter 8 would raise substantial questions about whether or not a conviction for transporting an open container could become grounds for denying a license. A conviction for drunk driving [KSA 8-1567] is a liquor law violation by virtue of an old Kansas Supreme Court case [Keck v Cheney, 196 K. 535]. Unless the issue of a conviction for transporting an open container as it relates to KSA 1985 Supp. 41-330 is addressed by the Legislature, it will probably wind up in the courts. There are no guarantees that the Court would follow Keck in this new matter. Therefore, we strongly recommend that the bill be amended keeping the violation in Chapter 41 of the Kansas Statutes Annotated and reference to this violation made in Chapter 8 or that in Chapter 8 a reference be made to Chapter 41 for the purpose of a violation.

  
\_\_\_\_\_  
JOHN A. LAMB, DIRECTOR

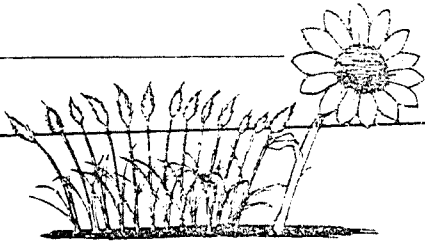
JAL/cjk

S. Jud.  
4/2/86  
Attach. V

4-2-86

10:00

m



# Kansas Association of Alcohol and Drug Program Directors

April 1, 1986

TO: Senate Judiciary Committee Members

FROM: George Heckman, KAADPD President *GH*

RE: Support for Sub HB 2953

The Kansas Association of Alcohol and Drug Program Directors represents more than 40 agencies providing alcohol and drug abuse services in the state. The member agencies operate treatment, prevention and alcohol-drug safety action programs in a variety of settings across our state.

Our association strongly supports Sub HB 2953. The basis for our support rests on our belief that changing the present law as it relates to drivers will result in early intervention that will prevent future DUI's and continue to change attitudes and behavior relating to drinking and driving.

This bill represents a logical step in our state's efforts to make our highways and streets safer. The penalties prescribed for first offense have a much greater likelihood of changing a person's drinking and driving behavior than the present statute which simply contains provisions for fines up to \$200 and license restriction or suspension. We would hope that this committee will take prompt favorable action on this bill.

*S. Jud.  
4/2/86  
Attach. VII*