

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 January 21, 1987 in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Donna Whiteman
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinator's Association
Bruce Beale, Coalition on Drug and Alcohol Programs
Ruth Meserve, Kansas Coalition for Drug Free Driving
Mike Boyer, Kansas Bureau of Investigation
Jim Clark, Kansas County and District Attorneys Association
Ron Smith, Kansas Bar Association

The chairman presented a bill request from the Kansas Judicial Council relating to civil procedure. Following explanation of the bill, Senator Burke moved to introduce the bill; Senator Gaines seconded the motion, and the motion carried.

The chairman announced the committee meeting scheduled for Friday, January 23, has been canceled and has been rescheduled for next Monday, January 26.

Senate Bill 15 - An act amending the Kansas juvenile offenders code; relating to dispositional alternatives; amending K.S.A. 38-1663 and repealing the existing section.

Representative Donna Whiteman explained the bill to the committee.

Senate Bill 14 - An act concerning criminal procedure; relating to diversion of proceedings on a complaint.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinator's Association, testified his organization supports the bill because it places more emphasis on the severity of the D.U.I. charge even through that person is granted diversion. He asked the committee to give serious concern to amending the proposed legislation on page 2, after line 52, creating a new subsection and adding "Refused to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto". A copy of his statement is attached (See Attachment I).

Bruce Beale, Coalition on Drug and Alcohol Programs, testified his organization is supportive of the bill. They like the changes agreed upon the diversion agreement. They feel too many people are offered diversion for D.U.I. offenses. He reported 75% of D.U.I. offenses are first time arrests, and for 1985 over half the first time offenders were offered diversion. His organization favors a person not be eligible for diversion if they refuse to take the test, and they feel anyone offered diversion the information should be made public. Committee discussion with him followed. A copy of his handout is attached (See Attachment II).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S Statehouse, at 10:00 a.m./~~p.m.~~ on January 21, 1987.

Senate Bill 14 continued

Ruth Meserve, Kansas Coalition for Drug Free Driving, testified her organization supports the general intent of the bill to improve reporting requirements of diversion agreements. She stated the coalition suggests two amendments, that diversion should not be available to those who refuse to take a test of their blood or breath alcohol content. The coalition would like to propose diversion be unavailable to those who have a BAC over 0.15. A copy of her statement is attached (See Attachment III).

Mike Boyer, Kansas Bureau of Investigation, pointed out their concern with the bill on page 13, lines 478 through 484.

Jim Clark, Kansas County and District Attorneys Association, testified his association feel that the breath or blood alcohol test is still strong evidence which gives a stronger case. Their main concern is with diversion in the criminal area on page 8 of the bill, requiring appearance before the court. He said the members don't like that. Also, in the criminal area the provisions of what can be done is not clear. Mr. Clark suggested in Section 6 adding a reporting requirement report to the county attorney's office. They are in support of the last section of the bill.

Ron Smith, Kansas Bar Association, testified he wanted to make it very clear the KBA does not have a position in favor or in opposition to the bill. He explained this bill was not ready until the end of the interim process so he was unable to send the bill out to people practicing criminal law for their opinion. He did have some interesting comments concerning the average cost of diversion and the recidivism rate of 15% to 18%. He said some say this is a good lawyers bill. The only option is a trial if blood alcohol is 0.15 or 0.10. The members pointed out they couldn't see legislative connection between system of diversion and result of diversion; there is no charge and no conviction. Why have that kind of law? The type of client put in diversion program is a real potential for recidivism from that. He said the D.U.I. case is not a very easy case to prosecute.

Since it was time for adjournment, the chairman announced the hearings on the bills today will continue tomorrow, January 22, at the usual time.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-21-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John W. Smith	Topeka	Dept of Revenue
Jane Johnson	Topeka	:KC: ASAP Carol Ann
Bruce Beale	Lawrence	Cit. Adv. Comm.
Larry Hinton	Topeka	SRS ADAS
Ruth Messner	Passaic Valley	in Cal. for Dog breeding
Susan Ring	Mission KS	KU Social Welfare
becky loges	Westwood KS	" " "
Luren Witt	Topeka, Mo.	" " "
Donna Ficker	KC Kansas	✓
Ruth L. Fellhauer	Overland Park	✓
Jan Owen	Kansas City	" " "
Patricia Beary	Topeka	RBT
Judy Clark	Topeka	KCDAA
Ann Miller	Topeka	League of Minnigabbe
Theresa Shively	Topeka	KANSAS NARAC
Elizabeth G. Jayko	Topeka	KAADPD/KADACU
Kevin M. Hill	Topeka	OJA
Margaret J. Van Buren	Topeka	OJA
Carol Gustafson	Merriam, KS	School of Univ. of Kansas Social Welfare
Marymbody	Louisburg, KS	" " Reg. Conf
Pamela Lee	K.C. MO	Univ. of KS/Social Welfare
Rep Donna Whitman	District 102	Hutchinson
Don Smith	Topeka	KBA
Bob Barron	Topeka	SRS Youth Svc
T.P. Anderson	Topeka	KSOPA

TESTIMONY ON SENATE BILL NO. 14
Before the Senate Judiciary Committee

Mr. Chairman and members of the Committee, I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinator's Association. We are the organization that performs evaluations and makes recommendations to the city, county and district attorneys throughout the state for those people who are granted diversion from the charge of D.U.I. We, for the most part, have been very satisfied with the operation of the diversion program throughout the state.

We support Senate Bill No. 14 because it places more emphasis on the severity of the D.U.I. charge even though that person is granted diversion. We have found in our investigation throughout the state that some people who were offered diversion under the current law were never required to appear at a court hearing, thus losing some of the impact of the seriousness of the crime. In addition, this always casts doubt that the offenders totally understand their rights that they are waiving under a diversion agreement.

We have one suggestion that we feel should be amended into Senate Bill 14 by this committee. Those people who fail to comply with the officer's request to submit to a chemical test to determine the percentage of alcohol in their bloodstream have violated their privilege to drive in the state of Kansas and, therefore, we do not feel that these people should be rewarded by offering a diversion agreement to them when they have violated that privilege. We have heard the comment that they do lose their license for a period of six months for that failure to comply with the officer's request to take the breath test and maybe this is punishment enough. We do not totally agree with that because we have a fairly positive feeling that those people who lose their license because they fail to take the chemical test probably are taking chances and operating a motor vehicle while they are suspended. This matter was discussed during the interim study committee this past summer and, at one time, the chemical test refusal was placed in the proposed legislation. However, because of some concern from the prosecutors' standpoint, this could cause some problems on questionable or borderline cases. The refusal to take the chemical test exclusion was deleted from the proposed legislation.

We feel that if there is a borderline case that maybe the best way to handle that is to allow the defendant to go to trial to determine the guilt or innocence

*Attch I
Senate Judiciary
1-21-87*

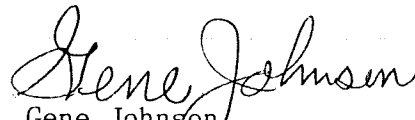
of that defendant. Most certainly we would not be in favor of granting a diversion for an individual who, had he taken the test, had a blood alcohol test of less than .10.

From the standpoint of the alcohol and drug evaluation it is a great deal of help to the evaluator if they have the results of the chemical test at their disposal during the evaluation interview. Because of the absorption rate being fairly constant in all individuals, the evaluator can determine approximately how many drinks the defendant had to coincide with their breath test. Without a chemical test, the evaluator will get the old "two beers" answer and is at the mercy of the defendant as far as how much alcohol was consumed.

We would ask this committee to give serious concern to amending the proposed legislation on Page 2 after Line 52 in creating a new subsection for the following phrase: "Refused to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto".

I wish to thank the committee for allowing us to be here on this matter today and hope that our suggestion is accepted.

Respectfully Submitted



Gene Johnson
Kansas Community Alcohol Safety
Action Project Coordinator's
Association



Kansas Community Alcohol Safety Action Project

2200 West 25th Street, Lawrence, Ks. 66044, (913) 841-2880

DUI DIVERSIONS

1985 Stats from DMV-Driver Control Bureau

2,922 Refusals	25%
4,248 Convictions	36%
4,747 Diversions	40%
1,493 No Action	

Over 50% of 1st time arrestees are getting diversion.

75% of fatalities are caused by 1st time arrestees.

At .15 your chances of having an accident are 25-30 times greater.

Drivers with .15 BAC and above are responsible for 33% of all traffic fatalities.

At .20 - entire motor area of the brain is depressed.

- perception and coordination are affected.
- reflexes are depressed
- circulation is impaired
- gross intoxication of all physical and mental facilities is evident

.20 is not light, social drinking - a 180 lb. man would have to drink 12 cans of beer or 12 mixed drinks in a 2 hour period to reach a .20 BAC.

Submitted By: Bruce Beale
Director

NATIONAL NEWS

THE AMERICAN MEDICAL ASSOCIATION has taken the lead in the push to lower the legal impairment level of the blood alcohol level (BAC) from .10% to .05%—January 1986 issue of the Journal of the American Medical Association published a report titled "Alcohol and the Driver". It notes that a driver's relative risk of having a road crash shows a dramatic rise as the driver's BAC increases.

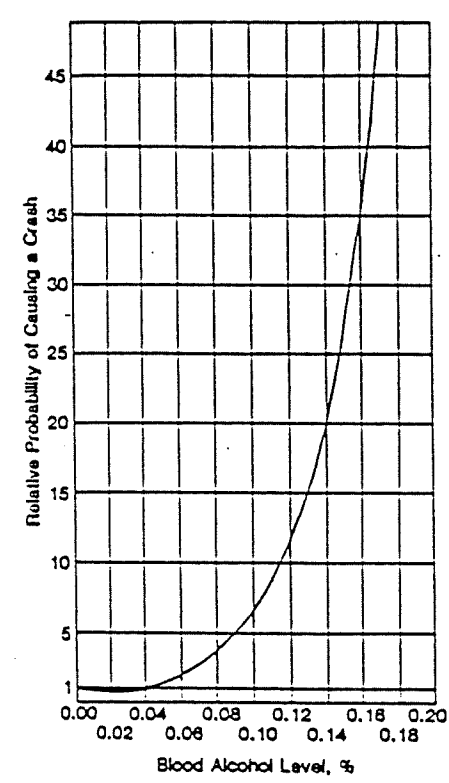


Fig 1.—Relative probability of causing crash rises with rising blood alcohol levels.

The A.M.A. adopted the following as official policy:

1. public education urging drivers not to drink,
2. adoption by all states of .05% BAC as per se evidence of impaired driving,
3. 21 as the legal drinking age,
4. adoption by all states of administrative driver's license suspension in DUI cases, and
5. encouragement for the auto industry to develop a safety module that thwarts operation of a car by an intoxicated person.

The NATIONAL COUNCIL ON ALCOHOLISM also called on all 50 States to reduce the BAC level to .05% for legal impairment. RID joins these national organizations in the plea for serious improvements in the DWI laws.

Attch. II
Senate Judiciary
1-21-87

Kansas Coalition for Drug-Free Driving

P.O. Box 58093

Topeka, KS 66658

913-286-0555

January 19, 1987

Dear Senator:

The Kansas Coalition for Drug-Free Driving, a statewide coalition of citizen groups working against drunk and drugged driving, supports of the general intent of the Senate Bill 14 to improve reporting requirements of diversion agreements.

The Coalition strongly supports that part of the bill (lines 0267-0277, page 8) that ensures that the appropriate court must agree to the diversion agreement. We feel that the present situation in which the offender offered a diversion agreement does not have to appear before the court at least once detracts from the impact of the punishment of the drunk driver. We feel that the present situation does not let the offender know that his diversion agreement has the power of the court behind it. Thus, the Coalition supports the proposed change.

The Coalition would like to suggest two further admendments to the law. The first of these is that diversion should not be available to those who refuse to take a test of their blood or breath alcohol content. Our opinion is that why should those who refuse to cooperate with the law have the law cooperate with them by offering diversion. Let those who refuse a BAC at arrest face court and a possible 48 hours in jail. We feel that those who refuse a BAC are trying to make a loophole in the law. Why should society cooperate with those who will not cooperate with society? The Coalition would, then, request that Senate Bill 14 be amended to make diversion unavailable to those who refuse a BAC at arrest.

The Coalition would also like to request that this law be changed to make diversion unavailable to those who have a BAC over 0.15. We would be willing to compromise on this to a possibly higher BAC, say 0.20, but we consider the issue very important. Research has shown that of those drunk drivers causing deaths three times as many had BAC's over 0.15 than had BAC's from 0.10 to 0.15. At a BAC of 0.10, the relative probability of having an accident is 3.5 to 1. At a BAC of 0.20, the relative probability of having an accident is 20 to 1. It is these high BAC drivers that are a particular threat to the law abiding people. Perhaps, it needs to be understood that it would take over 13 mixed drinks over a 2-3 hour period for a 200 lb. person to have a BAC of 0.20. The Coalition does not believe the leniency of diversion should be offered to those who drink beyond all reasonable extent and drive. We would, thus, request that this bill be admended to prevent those with BAC's over 0.15, at best, or 0.20, at least, from getting diversion. Thank you very much for your attention.

Sincerely,

Ruth Meserve
Ruth Meserve

The Coalition's Registered Lobbyist

Attach. III
Senate Judiciary
1-21-87

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