

Approved January 29, 1988

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~pm~~ on January 27, 1988 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association  
John Brax, Kansans For Life At Its Best

The chairman presented a proposal for a committee bill concerning dissolution of corporations caused by death or disqualification. Following his explanation, Senator Gaines moved to introduce the bill. Senator Steineger seconded the motion. The motion carried.

HOUSE BILL 2451 - Blood samples drawn to test for alcohol not privileged.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of the bill as amended. He stated the bill makes no change in legislative policy toward the problem of driving under the influence. Instead, it makes a minor change in the evidence code to allow use of blood alcohol content evidence in all DUI cases. A copy of his statement is attached (See Attachment I). In response to a question Mr. Clark replied no medical people did appear in the House on the bill. The bill really doesn't concern them.

The chairman announced Reverend Richard Taylor, Kansans For Life At Its Best, wanted the committee to be aware his organization does support the bill. He supported the bill a year ago in the House.

John Brax, Kansans For Life At Its Best, testified they are interested in the bill if it will get the drunk driver off the road. If this bill will help, we are strongly in favor of it.

The hearings on the bill were completed.

A list of bills was presented to the committee for consideration. Following discussion, Senator Yost moved to report Senate Bills 14, 110, 212, 226, 256, 274, 290, 293, 294, 317, 319, 336, 370, 375, 391, 409, House Bills 2084, 2392 and 2535 adversely. Senator Hoferer seconded the motion. Following further committee discussion, The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m. ~~pm~~ on January 27, 1988

SENATE BILL 111 - Crime of causing injury while driving under the influence of alcohol or drugs.

Following committee discussion, Senator Gaines moved to request the chairman dictate a letter to the Secretary of Corrections inquiring how this bill would affect the prisons. Senator Winter seconded the motion. The motion carried. A committee member suggested inviting the Secretary of Corrections to address the committee next week concerning prisons, overcrowding and Senate Bill 111.

SENATE BILL 270 - Capacity of partnership to sue or be sued.

Following committee discussion, the chairman announced staff will contact the Uniform Laws Commission office in Chicago, and staff will research the bill further.

SENATE BILL 315 - Amount of funeral expenses payable by Crime Victims Reparations Board.

Following committee discussion, Senator Feleciano moved to amend the bill by providing the same award as SRS. Senator Steineger seconded the motion. With four members voting in favor of the motion and five opposed the motion failed. Staff then explained technical amendments needed to the bill. Senator Parrish moved to amend the bill in the manor explained by staff. Senator Hoferer seconded the motion, and the motion carried. Senator Parrish then moved to reconsider that action on the bill. The motion failed for lack of a second. Senator Talkington moved to report the bill adversely. Senator Gaines seconded the motion. The motion carried.

HOUSE BILL 2218 - Preservation of juvenile records for historical research.

Following committee discussion, Senator Parrish moved to amend the bill to change the 70 years to 100 years after creation of the records. Senator Hoferer seconded the motion. The motion carried. Senator Hoferer moved to report the bill favorably as amended. Senator Langworthy seconded the motion, and the motion carried.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-27-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bob Giffin Sgt.	Topeka, Ks	Kansas Highway Patrol
Rinda Stephens	Topeka, Ks.	TAC-NFD
Betsy Fredrichs	Bremen, Ks.	—
Jane Johnson	Topolks Ks Kocam ASAP ass.	KC. Comm 175AD Assn
Sally Street	Topeka	AP
Jon Drap	Topeka	Life at its Best
Janie Kang	Topeka	League of Municipalities
Juan Reibe	Lawrence	KAEYC KS. ASS. Educ y. children
CHRIS EDWARDS	Lawrence	KAERYC
Dan Onda	Senate	Senato
BARB REINEBT	Topeka	KPOA
Doug Mays	Topeka	Ks. Securities Commissioner
Ken Clark	Topeka	KCDAA

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# Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK

January 27, 1988

TO: Senate Judiciary Committee

FROM: Jim Clark, Kansas County and District Attorneys Association

RE: House Bill 2451

The Kansas County and District Attorneys Association supports House Bill 2451, as amended. The bill makes no change in legislative policy toward the problem of driving under the influence. Instead, it makes a minor change in the evidence code to allow use of blood alcohol content evidence in all DUI cases.

The Legislature has created the implied consent statutes, 8-1001 et seq., and has frequently amended them to allow greater latitude in evidence collection in DUI cases. However, because of a conflict with the evidence code, specifically K.S.A. 60-407<sup>427</sup>, such evidence is not admissible unless a law enforcement officer has requested a test prior to the blood sample being taken. State v. Pitchford, 10 Kan. App. 2d 293. In that case, the defendant was discovered about 70 yards from his wrecked vehicle, bleeding profusely. When the officers approached him he began to run and fought off efforts to render medical attention. When subdued and taken to a hospital, he violently resisted efforts to treat his wounds. Understandably, the treating physician ordered a blood test to attempt to determine the cause of such behavior. The test results showed a blood alcohol content of .226%. Since the test was taken prior to a request by a law enforcement officer, the district judge ruled that it was not within the scope of 8-1001, and the physician-patient privilege applied. The Court of Appeals agreed, and the Supreme Court denied review. In a similar, but unpublished decision, the Court of Appeals held that the 1985 amendments to 8-1001, which allow a blood test where an accident with property damage or injury has occurred, still require the prior request by a law enforcement officer. State v. Ridgway.

As a result, the officer who remains at the accident scene and doesn't arrive at the hospital until after the blood test has been taken must request a second test, in spite of the driver's injuries, and the work-load of emergency medical personnel. This requirement is illogical, inconvenient, possibly injurious, and less accurate than the test taken closer to the time of the accident. The test is crucial to prosecution because an injured driver is unable to perform a field test (i.e. walking a straight line), and in most instances, no one observed his or her driving prior to the accident. In conclusion: HB 2451 simply is a minor adjustment that allows the use of blood tests in all DUI prosecutions.

*Attach. I*