

Approved 2-13-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Eric Yost at
Chairperson

10:00 a.m. ~~p.m.~~ on February 6, 1989 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Winter, Yost, Bond, Feleciano, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Senator Ross Doyen
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association
Dan Mitchell, Juvenile Judge, Third Judicial District
Jean Schmidt, Assistant District Attorney
Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors
Andrew O'Donovan, Commissioner of SRS Alcohol and Drug Services
Galen Davis, Office of the Governor

Senate Bill 75 - Alcohol and drug evaluations required for certain offenders.

Senator Ross Doyen, prime sponsor of the bill, explained the bill is expanding a type of program that will be used for persons under twenty-one. He asked the committee's approval of the bill.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association, testified his association supports the bill as a method of intervening for those young adults under age 21 who have violated drug laws. A copy of his testimony is attached (See Attachment I).

Judge Dan Mitchell, Juvenile Judge, Third Judicial District, testified he is concerned with the problems that he faces on a daily basis and those are the juveniles involved in drug and alcohol problems. Somewhere between forty to sixty percent of the cases that come before him drug and alcohol abuse is an underlying factor to be considered. He asked the committee to consider consistency throughout the various statutes, cereal malt beverage and liquor. Judge Mitchell proposed changing the language in the bill to make it discretionary for the court to order evaluations instead of mandatory, by changing shall to may. He explained in some cases parents put their child in a drug and alcohol treatment program. Under the law he would have to put the child back into a treatment program. He added he is not opposed to the language assessing the fee back to that respondent. In his court the respondent has to find a way to pay it back. I believe the concept is a good one. A committee member said in some states driving privileges are removed if a person under age 18 is convicted of drug or alcohol offense. Judge Mitchell replied, it would seem to me the same sanctions that apply to adults should apply to juveniles. The committee member inquired do you have the authority to suspend the driver's license? Judge Mitchell replied if offense is driving while intoxicated.

Jean Schmidt, Assistant District Attorney, testified she supports Judge Mitchell's proposal to change the language in the bill to make it discretionary rather than mandatory for the court to order evaluations. She explained in Shawnee County there are three facilities that have drug treatment programs, and see no reason to duplicate services. In Shawnee County if the child is referred to evaluation and must be in treatment, she suggested adding language for courts that modification be available because of needs of respondent.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 6, 1989.

Senate Bill 75 - continued

She pointed out areas of concern in the bill. She said she believes the judge has powers to restrict driver's license because of open container law. We have never done that. We usually charge possession and fine. Considerable committee discussion was held concerning a second arrest after the person has already been in a program. The chairman asked her to submit a draft of her suggested changes in the bill and work with staff.

Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors, testified the burden to society of alcoholism and drug addiction is extremely expensive not only in dollars but also in lives. To approach the problem early in its stages cannot only save the money for the state and the families but also it can save the lives of our Kansas youth. A copy of her testimony is attached (See Attachment II).

Andrew O'Donovan, Commissioner of SRS Alcohol and Drug Services, testified the bill is an important step in identifying, assessing and intervening in a young person's alcohol and drug problem at an early stage. A copy of his testimony is attached (See Attachment III). A committee member inquired about children under SRS and the expense of the evaluations. Commissioner O'Donovan replied that very expensive evaluations could get into this business, and this is the concern. The committee member inquired if the evaluation would be done by a certified person? Would that be private facilities as well? Gene Johnson responded, the evaluation will not exceed \$110; any licensed or certified person can do the evaluation. The committee member expressed concern for indigent children getting evaluation as well as children whose parents are willing to pay.

Galen Davis, Office of the Governor, testified with this bill you have the unique opportunity to turn young lives around that were destined for addiction, criminal activity and prison. By intervening early, recidivism, criminal activity and ultimately prison overcrowding could be reduced. A copy of the testimony is attached (See Attachment IV). A committee member requested the governor's recommendation to provide for the indigent clients. In response to a question Gene Johnson responded there are probably 37 to 40 evaluators in the state; some are hospital based. Most of them are free-standing as far as assessment is concerned. All of them are nonprofit.

Ruth Meserve, Kansas Coalition for Drug Free Driving, testified the coalition supports the bill. Drunk driving continues to be the leading cause of death for ones under 21 years of age. A copy of her testimony is attached (See Attachment V).

The chairman recognized Senator Doyen. He stated he appreciated the committee's attention to the bill. It is a serious problem, and I hope the problems presented today can be worked out.

The chairman requested staff to follow up with the Shawnee County District Attorney, Jean Schmidt, and work with Gene Johnson, and Judge Mitchell.

The chairman pointed out the change that would be made in the minutes concerning the request for a resolution. Senator Rock moved to approve the corrected minutes of February 2, 1989 and the minutes of February 1, 1989. Senator D. Kerr seconded the motion. The motion carried.

The meeting adjourned.

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

Copy of a letter from William R. Halvorsen, Nemaha County Attorney, is attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-6-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ruth Meserve	Prairie Village	K9 Coalition for ^{Drug} Free Driving
Dan Meserve	" "	Host
Bruce Beale	Lawrence	NCCCA
Gene Johnson	Topeka	KO A SAP ASSN
Ross Dwyer	Concordia	Senate
Galen Davis	Topeka	Governors Office
Tom Bras	Topeka	Life at its Best
Elizabeth C. Taylor	Topeka	Alcohol Drug Program
Doug Hester	Topeka	SRS/ADAS
Andrew O. Gaudin	Topeka	SRS/ADAS
Melissa Vogel	Topeka	Topeka
Paul Shielberg	Topeka	Supreme Court
William W. Coffey	Topeka	UFE
Dan Mitchell	Topeka	Dist. Ct. Judge
Gene Schmidt	Topeka	Dist Atty Office
Jacque Dakes	Topeka	HPOA
David Haver	Lawrence	Sen. Winter
M. Haver	Topeka	Cap-Journal
Gale F. Ferguson	Manhattan	KALU
George Wyatt III	Manhattan	KALU
BRUCE L. ARNOLD	MANHATTAN	KALU
Shila Kephaw	Calby	ST State
Paula Ann Shoathouse	Shardence	Antoin
Ken R. Self	Topeka	Observer

TESTIMONY

Senate Bill No. 75

Senate Judicial Committee, February 6, 1989

Mr. Chairman and Members of the Committee:

I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We provide approximately 9,000 evaluations annually for those individuals who have been arrested for driving while under the influence of alcohol and/or drugs for the Courts in our respective Judicial Districts. Throughout the past ten years, our organization has been dedicated to the promotion of highway safety in the State as it relates to the responsible use of alcoholic beverages. In addition, we have supported tougher penalties for those individuals who choose to use other illegal mind altering drugs. We support Senate Bill 75 as a method of early intervention for those persons under the age of 21 who possess or consume alcohol or cereal malt beverages in a public place. We also support Senate Bill 75 as a method of intervening for those young adults under age 21 who have violated drug laws.

Due to the change of the laws in the past several years in making alcoholic beverages more available in the public market places, these young adults have been quite resourceful in obtaining those beverages illegally and consequently are apprehended by law enforcement personnel. These offenders may be young adults who, because of their age group, are acting in defiance of the law or they may yielding to peer pressure. However, a good number of these young offenders may have the characteristics of an alcoholic or drug addict.

Under present statutes and ordinances, these offenders will be offered Diversion for their offense or ordered to pay a small fine and placed on unsupervised probation. These measures stop short of offering any information, education or treatment to that offender. A lack of a drug and alcohol evaluation to these young offenders allows them to "experiment" more with alcohol and then possibly progress into more serious crimes. For those who have the characteristics of becoming alcoholic or drug addicted, their addiction progresses because they go unnoticed until more serious life problems become apparent. We feel that any young offender of our alcohol and drug laws should have an alcohol and drug evaluation at the first offense to determine the seriousness of their alcohol and drug problem. Chances are, the majority will be classified as a

JAC
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Attachment I

social or early problem drinker and an information/education school will be recommended to the Court. However, a good number of those offenders may possess the characteristics or drinking patterns that would place them in a category of a problem drinker or drug abuser and professional assistance may be recommended to the Court. We support mandatory alcohol and drug evaluations for alcohol and drug offenders under the age of 21. The mechanism to accomplish these evaluations is all ready established throughout the State of Kansas through the Alcohol Safety Action Projects. Each Judicial District has an Alcohol Safety Action Project at their disposal for providing evaluations for those alcohol and drug offenders. These Alcohol Safety Action Projects have demonstrated in the past, throughout the years, that they are quite capable of quality evaluations to the Court systems. We would suggest that the same procedure as provided under KSA 8-1008 be legislated for all young offenders of alcohol and drug laws. In addition, we suggest that the evaluation fee, which is not to exceed \$110, be firmly established by the Court and be paid by the offender rather than placing the cost at the feet of the taxpayer.

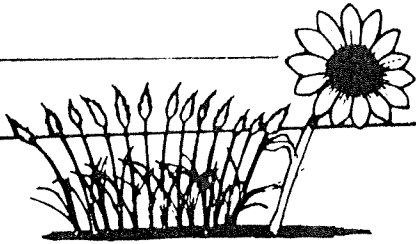
A majority of the young offenders of the alcohol and drug laws would eventually outgrow their problematic behavior. It is unfortunate that a certain percentage of them will not live long enough to do so. Alcohol and drug related accidents, including accidental overdose, are a leading cause of death for youth 13-21 years of age. Intervention in the form of drug and alcohol evaluation and a structured education program could provide these young people with accurate information and hopefully help reduce the number of alcohol and drug related accidents in this age group. Alcohol and drug abusers are much easier to treat and at a considerable less expense, than those who continue to abuse their drug of choice over a period of years. Identification and subsequent education and/or treatment for these youthful offenders could be a positive factor in reducing our prison population problem in the future. Thank you.

Respectfully Submitted,


Gene Johnson

Legislative Liasion

Kansas Community Alcohol Safety Action Project Coordinators Association



Kansas Association of Alcohol and Drug Program Directors

February 6, 1989

TO: Senate Judiciary Committee
Honorable Senator Wint Winter, Chairman

FR: Elizabeth E. Taylor, Legislative Consultant
Kansas Association of Alcohol and Drug Program Directors

RE: Juvenile Evaluations - Support of SB 75

The Kansas Association of Alcohol and Drug Program Directors is comprised of approximately 50 of the alcohol and drug programs in Kansas including programs which provide alcohol and drug safety action projects.

As presented by the Legislative Position of the Kansas Coordinators of Alcohol and Drug Safety Action Projects, early identification of the alcohol and drug abuser is much easier to treat and is less expensive than treatment at a later stage in the development of the disease of alcoholism and addiction. The KAADPD also supports an extension of the evaluation of juveniles to include enhanced alcohol and drug treatment when the evaluation shows that such treatment is needed.

The burden to society of alcoholism and drug addiction is extremely expensive not only in dollars but also in lives. The alcoholic or drug addict today is much younger than those commonly thought of. To approach the problem early in its stages can not only save the money for the state and the families but also it can save the lives of our Kansas youth.

Thank you for the opportunity to submit the position of the KAADPD.

Attachment II

SJC
2-6-89

Department of Social and Rehabilitation Services

Winston Barton - Secretary
Statement regarding: Senate Bill 75

- Title: An Act relating to certain alcohol and drug related offenses; concerning diversion, disposition or sentencing; amending K.S.A. 12-4509, 21-4509, 21-4603, 22-2909 and 38-1563 and K.S.A. 1988 Supp. 12-4416 and 38-1663 and repealing the existing sections; also repealing K.S.A. 21-4603a.
- Purpose: The principal purpose of the SB 75 is to provide alcohol and drug evaluations or education and training programs for persons under 21 years of age with drug or alcohol related offenses.
- Background: The bill is an important step in identifying, assessing and intervening in youth with alcohol and drug problems at an early stage. Governor Mike Hayden expressed support for this legislation in his "State of the State Message," January 9, 1989, page 21.
- Effect of Passage: Youth showing early signs of an alcohol or drug problem will have an assessment of their potential problem. Appropriate recommendations can be made for education, training and treatment. Community based alcohol and drug safety action programs are established and experienced to provide the service.
- Recommendations: Social and Rehabilitation Services supports passage of SB 75.

Andrew O'Donovan
Alcohol and Drug Abuse Services
296-3925

Attachment III
JGC
2-6-89

Testimony in Favor of Alcohol and Drug Evaluations
Education and Training Programs for Persons Under 21 years
of Age with Alcohol or Drug Related Offenses
Senate Bill 75
February 9, 1989

I am Andrew O'Donovan, Commissioner of SRS, Alcohol and Drug Services. Senate Bill 75 is an important step in identifying, assessing and intervening in a young persons alcohol and drug problem at an early stage. I support the bill and the provisions to have the evaluations performed by the community-based alcohol and drug safety action programs. They have the experience and expertise to perform the evaluations and make the proper assessment and referral. According to research, effectiveness of treatment is improved by matching patients to the most appropriate treatments.

Among adults, there is a temptation to sit back and evaluate a young person's use of alcohol and drugs for a longer period of time and hope the problems will go away. The odds are just too high if we take this approach. National research indicates that almost one-third of all school-aged youth are affected either by their own use of mood-altering chemicals or by that of their family members. Seventy-six percent of Kansas 11th and 12th graders have used alcohol in the past 30 days. Marijuana has been used by 18 percent. In high school binge drinking is too common. In a recent survey, more than 37 percent of high school seniors surveyed reported at least one occasion of heavy drinking (an occasion in which they had five or more drinks in a row) in the past two weeks. This use accounts for the majority of teenage accidents, drownings, suicides and violent injuries.

In Kansas, 36 percent of youth under 21 years of age enter treatment through referral from the criminal justice system. Senate Bill 75 is an important tool to turn around these young lives in the early stages of an alcohol or drug problem.

AOD:LH:ss
02/02/89

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612-1590
(913) 296-3232

Mike Hayden Governor

Testimony Concerning SB 75
Presented To
The Senate Judiciary Committee
February 6, 1989
By
Galen E. Davis
Governor's Special Assistant on Drug Abuse

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you today representing Governor Hayden's support for SB 75. This bill would require an alcohol and other drug abuse evaluation for anyone under 21 that is convicted of an alcohol or other drug offense.

We know that the problems of alcohol and drug abuse, alcoholism, and drug addiction are almost always denied, minimized, justified and covered up by the individual suffering from this illness, their loved ones, co-workers, and friends. This enabling process in the early stages of alcoholism and addiction allows the disease and often times accompanying criminal behaviors to continue and escalate.

For years the prevailing alcoholism and addiction treatment wisdom was that a person had to hit rock bottom, physically, mentally, and morally before treatment would work. Currently, research and experience have shown that significant crises, such as arrest and prosecution, impending loss of a job or separation from loved ones can serve as an effective intervention when the persons drinking and drug use is properly confronted. Treatment professionals now know that interventions do work in getting alcoholics and addicts to treatment and subsequently into alcohol and drug-free lifestyles.

By requiring an alcohol and drug evaluation for convicted young people under 21, the legislature and the criminal justice system have a tremendous opportunity to intervene early in the alcohol abuse, drug abuse, and criminal activity of young

Attachment IV
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people. This court ordered evaluation may very well be the first time that the young person and their family have ever confronted their alcohol and drug related behavior.

Another important element of this bill is that the offender pays the cost of the assessment. Additionally, courts can have confidence in the quality of the assessments by appointing one of their own community based alcohol and drug assessment programs as the court certified agency.

In conclusion, early assessment, intervention and treatment do work. This confrontation by evaluation will increase the possibility that those needing counseling will get it. You have the unique opportunity with this bill to turn young lives around that were destined for addiction, criminal activity and prison. By intervening early, recidivism, criminal activity and ultimately prison overcrowding could be reduced. The Governor encourages your positive support for this important bill. Thank you.

Kansas Coalition for Drug-Free Driving

8212 BRIAR PRAIRIE VILLAGE, KANSAS, 66208 913-649-1177

Ruth N. Meserve
KANSAS COALITION FOR
DRUG FREE DRIVING

February 6, 1988

TO: Judiciary Committee
RE: Senate Bill # 75

REGISTERED
LOBBYIST

PRAIRIE VILLAGE, KS
913-649-1177

Chairmen and members of the committee;

Kansas Coalition for Drug Free Driving is a statewide coalition made up of members Mothers Against Drunk Driving, Kansans for Highway Safety, Kansas PTA, Insurance Women of Wichita and ASAP Associations. Representing over 10,000 concerned citizens.

The coalition supports SB #75. Drunk driving continues to be the leading cause of death for ones under 21 years of age.

The law is that no one under the age of 21 should be drinking and driving. If we can educate and treat the under 21 year olds who are in violation of this law by either possession, consumption or purchasing of alcohol or drugs. With this violation it should be made mandatory that the court order under age persons to submit and complete an alcohol and drug evaluation program at the time the offense occurs and to pay the fee for such evaluation.

We ask for your support on Senate Bill #75.

Thank You

Ruth Meserve, Registered Lobbyist.

Attachment V
SGC
2-6-89

WILLIAM R. HALVORSEN
NEMAHA COUNTY ATTORNEY

P.O. BOX 166
SENECA, KANSAS 66538

511 MAIN STREET
(913) 336-3526

February 1, 1989

Senator Wint Winter, Jr.
Chairman, Judiciary Committee
Kansas Senate, Capitol
Topeka, Kansas 66601

Re: Senate Bill 9, re: District Attorney Proposal

Dear Wint:

I have been elected to serve two terms as County Attorney, the first in 1984 in Marshall County and the second in 1988 in Nemaha County, in which position I am currently.

From my understanding of the testimony that has been made before your committee concerning Senate Bill 9, I believe that some of the witnesses have seriously misrepresented the work of County Attorneys in Kansas. I hope that the transparency of these statements concerning the competence and success of County Attorneys is obvious.

With some notable exceptions, such as John Bork and Ed Van Petten, Attorney General Stephan's criminal division staff is by far less experienced than any of the County Attorneys in this area of the state. Most of Mr. Stephan's staff have tried few, if any, cases and have even less experience in dealing with the victims of crime. For General Stephan to advance the argument that he needs District Attorneys to work with rather than County Attorneys is preposterous.

Jim Clark, the Executive Director of the Kansas County and District Attorneys' Association, who testified as a proponent of the bill, has heretofore made it clear that he has little interest in the rural parts of this state, except for our training fund. Consequently, I have not belonged to the Association for about three years. I am not surprised that he would advocate this bill.

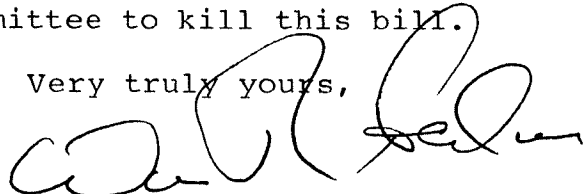
Attachment VII
SJC
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If a demonstrated need for a change can be made, the answer is not in developing another layer of bureaucracy that would place another demand on the state budget and, perhaps more of consequence, further insulate the public from its prosecutor. Perhaps the answer, if there is a problem in some parts of Kansas, is to adopt the system that Nebraska did for sheriffs, and that is to legislate a minimum salary that Counties must pay their County Attorneys. In this fashion, the position would be attractive enough to draw good candidates for the job.

I am proud of my record, and frankly it is an insult to County Attorneys and to the profession as a whole to hear some of these statements from people who know better. There must be a hidden motive somewhere.

I urge you and your committee to kill this bill.

Very truly yours,



William R. Halvorsen
Nemaha County Attorney

WRH/th

cc: Senator Montgomery
Representative Larkin
Representative Ekert
Attorney General Stephan
Mr. Clark