Approved 3-23-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 3, 19 89 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, 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:

Representative Donna L. Whiteman
Senator Marge Petty
Shirley Fleener, The Little Apple Task Force on Alcohol and Drug Abuse
Paul M. Klotz, Mental Health Centers of Kansas
Gene Johnson, Kansas Community Alcohol and Safety action Project Coordinators Association
Elizabeth Taylor, Kansas Alcohol and Drug Program Directors
Senator Ross Doyen
Ruth N. Meserve, Kansas Coalition For Drug Free Driving
Reverend Richard Taylor, Kansans For Life at Its Best
Dr. Richard Beech, Lawrence
Jim Clark, Kansas County and District Attorneys Association
John Gillette, Wilson County Attorney
Nanette Kemmerly, Allen County Attorney
Paul Morrison, Johnson County District Attorney
Mike Santos, Overland Park Police Department

Senate Bill 219 - Suspension of minor's driving privileges for any alcohol or drug related offense.

Representative Donna L. Whiteman testified driving is a privilege, not a right, and if we are to prevent future drinking and driving problems when they become adults, we must do more to discourage juveniles from drinking and driving when they are teenager. A copy of her testimony is attached (See Attachment I).

Senator Marge Petty, co-sponsor of the bill, testified the bill requires that teens experience the consequences of their actions. A copy of her testimony is attached (See Attachment II).

Shirley Fleener, The Little Apple Task Force on Alcohol and Drug Abuse, testified I support the bill for two reasons. The teenager who has been in trouble with alcohol will be removed from the road for his/her own protection and for the protection of the general public. It will also cause the parent to sit up and take notice at just what is going on. A copy of her testimony is attached (See Attachment III).

Juanita Carlson, American Civil Liberties Union, testified in opposition to the bill. She stated we believe this bill is bad public policy because it adopts a punitive rather than a rehabilitative approach to juvenile offenders. A copy of her testimony is attached (See Attachment IV).

Senate Bill 234 - Requiring evaluation and treatment of persons by separate communitybased alcohol and drug safety programs.

Paul M. Klotz, Mental Health Centers of Kansas, appeared in opposition to the bill. He testified we would seek to have licensed mental health centers exempted

Senate Bill 234 - continued

from the proposed legislation. A copy of his testimony is attached (See Attachment V).

Gene Johnson, Kansas Community Alcohol and Safety Action Project Coordinators Association, testified in opposition to the bill. He testified the bill in its present form is not too clear what is to be accomplished. We think the sponsor of the bill would like to see the treatment aspect as provided for the offender under the bill be separated from the organization that does the alcohol and drug evaluation. This is not spelled out too clearly. A copy of his testimony is attached (See Attachment VI).

Elizabeth Taylor, Kansas Alcohol and Drug Program Directors, appeared in opposition to the bill. She stated for economic reasons and many other reasons they would not be able to operate alone.

Senate Bill 170 - Driving with open container of alcoholic beverage in vehicle.

Senator Ross Doyen, prime sponsor of the bill, stated he feels this is a move in the right direction. He introduced Gene Johnson.

Mr. Johnson testified in support of the bill. He stated our organization feels that this is a positive step forward in the education of our citizens of Kansas who operate a motor vehicle to the dangers of drinking and driving. A copy of his testimony is attached (See Attachment VII).

Elizabeth Taylor testified her associaion supports the position of Mr. Johnson.

Ruth N. Meserve, Kansas Coalition for Drug Free Driving, testified the coalition feels this law provides the items that are necessary to prevent violations of the law. A copy of her testimony is attached (See Attachment VIII).

Senate Bill 171 - Driving with blood alcohol of .05 made a crime.

Senator Ross Doyen, prime sponsor of the bill, explained this bill reduces the blood alcohol content from .10 to .05.

Reverent Richard Taylor, Kansans For Life at Its Best, testified in support of the bill. He testified through the years as I have worked for less alcoholism and safer highways, some persons have tried to discredit this effort by claiming I look upon drinkers as bad peole. Drinking drivers are not bad people, they are dangerous people. Copies of his handouts are attached (See Attachments IX).

Dr. Richard Beech, Lawrence, reviewed the attached report from the American Medical Association concerning Alcohol and the Driver. A coy of the report is attached (See Attachment X).

Jim Clark, Kansas County and District Attorneys Association, appeared in opposition to the bill. He testified we feel this bill is a little radical; presumption of intoxication. They think if you want to create in the public's mind amend K.S.A. 8-1005 to reduced level instead of lowering present criminal statute. A copy of K.S.A. 8-1005 is attached (See Attachment XI).

John Gillette, Wilson County Attorney, appeared in opposition to the bill. He testified we didn't divert anybody for anything. We do now and we have diversion programs. There has to be some moderation. I am opposed to having it reduced to .05. He said he supports Mr. Clark's suggestion to lower the presumption. In his opinion they are losing cases when they come in with .10 in jury trials. It comes down to what we can actually prove.

Nanette Kemmerly, Allen County Attorney, appeared in opposition to the bill. She stated she would like to echo the sentiments of Jim Clark to lower the presumption. If you are considering lowering the blood/alcohol level, then lower the presumption. You can convict if it comes back .10. If you can prove driving

Senate Bill 171 - continued

at the impaired you can convict someone. I feel this is moving too far without appropriate study.

Senate Bill 296 - Evidentiary foundation necessary for admissibility of breath tests in certain alcohol and drug related offenses.

Paul Morrison, Johnson County District Attorney, appeared in opposition to the bill. He testified their office prosecutes several hundred DUI cases a year. Most are heard by magistrate judges that come in from around the state, and we have a problem with inconsistency in our cases.

Ruth Meserve, Kansas Coalition For Drug-Free Driving, testified the coalition is in support of the bill because the testimony by the law enforcement officer should be sufficient enough to submit as a valid test during testimony of a result of a breath test. A copy of her testimony is attached (See Attachment XII).

Mike Santos, Overland Park Police Department, appeared in support of the bill. He testified while defendants certainly deserve zealous representation, the prosecutor also deserves a fair and reasonable application of the rule of evidence to their case. A copy of his testimony is attached (See Attachment XIII).

Gene Johnson testified they are in support of the bill. He stated it could probably save the state a lot of money.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-3-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Richard Taylor	Topeka	Life at Best
Richard R Beach, M.D.	Lawrence	Self
Ruth Meserve	Prairie Village	Ks Coalition for Drug Free Drug
Don Meserve	" "	Guest
Jean Farrell	Manhattan Ks.	Little Apple Task Force
Gwen Kropp	Manhattan Kansas	Little Apple Task Force
Warren Parker	Manhattan	Kansas Farm Bureau
[illegible]	Topeka	KCMB
Shirley Fleener	Manhattan	Little Apple Task Force
[illegible] Kimmerly-Weber	Iola	Allen Co. Attorney
[illegible]	Fredonia	Wilson Co. Attorney
[illegible] Clow	Topeka	KCDAA
Theresa L. Hodge	Topeka	KDHE
Elizabeth E. Taylor	Topeka	Alc. & Drug Programs
[illegible] Allen	Topeka	Ks Health Care [illegible]
Dick Hummel	Topeka	KHCA
Ron Smith	"	Ks Bar Assoc
PATRICIA HENSHALL	TOPEKA	OJA
Kathy Rhalin	Topeka	General Public
[illegible] Klotz	Topeka	ACMHCK, INC
[illegible]	Topeka	Life at its Best
Gerald Henderson	Topeka	USA
Charles L. Stewart	Topeka	USA
Neal Whitaker	Topeka	KBWA
DON LINDSEY	OSAWATOMIE	UTU

Attachment XIV
Senate Judiciary Comm.
3-3-89

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jacque Oakes	Topeka	KPOA

STATE OF KANSAS

DONNA L. WHITEMAN
MINORITY WHIP
REPRESENTATIVE, 102ND DISTRICT
RENO COUNTY
401 W. FIRST, P.O. BOX 1224
HUTCHINSON, KANSAS 67504-1224

HUTCHINSON NUMBER: (316) 669-0467
TOPEKA: (913) 296-7630
1-800-432-3924

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LABOR AND INDUSTRY
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
CALENDAR AND PRINTING
LEGISLATIVE, JUDICIAL AND CONGRESSIONAL APPORTIONMENT
GOVERNOR'S ADVISORY COMMISSION ON JUVENILE OFFENDERS

March 3, 1989

SENATE BILL 219

CURRENT STATUTE: K.S.A. 8-2117 provides that children under 18 can be prosecuted for traffic offenses in a court of competent jurisdiction. The court is authorized to impose any fines or penalties authorized by law including the fines imposed in K.S.A. 8-1567 (driving under the influence) plus they may be placed in a juvenile detention facility for 10 days.

K.S.A. 8-1014 Suspension or restriction of driving privileges on an alcohol or drug related conviction, the court can:

1. First occurrence - suspend license for 30 days or until completed education program - restrict for additional 330 days.

2. 2nd conviction - suspend for 1 year or until completed treatment program required by court.

K.S.A. 8-1567 - provides the penalties for a DUI.

Conviction:

1st offense	48 hours - 6 months	$200 to $500
2nd offense	90 days - 1 year (5 day mandatory)	$500 to $1,000
3rd offense	90 days - 1 year (mandatory)	$1,000 to $2,500

PROPOSED CHANGE:

Subsection (b) - exempts traffic offenses involving any alcoholic beverage or controlled substances or both from the current suspension or revocation of driving privileges.

Subsection (d) - creates a new provision for having the juvenile surrender their license and the Department of Motor Vehicles shall revoke the license. The juvenile may petition the court to have them restored if she/he is 16 and 90 days have elapsed if it was a first conviction, 1 year has elapsed if it was a second conviction. The petition for restoration must show good cause and is subject to the completion of a driver's license examination.

Attachment I
SJC
3-3-89

BENEFITS:

1. Revokes license until 16 if violation committed while 14 or 15.

2. If occurs between 16 and 18 the revocation occurs for 90 days and 1 year if it is a second offense.

3. Driving is a privilege, not a right and if we are to prevent future drinking and driving problems when they become adults, we must do more to discourage juveniles from drinking and driving when they are teenagers.

STATED BRIEFLY

New Leadership

■ **Lt. Gov. Robert J. Miller** became Nevada's acting chief executive Jan. 3 when Gov. Richard Bryan, a fellow Democrat, was sworn in as U.S. senator.

Bryan, president of The Council of State Governments in 1987, unseated Republican incumbent Chic Hecht.

Miller will serve the remaining two years of the unfinished gubernatorial term. He took office in January 1987 after serving two terms as Las Vegas district attorney. He is a graduate of Loyola Law School, Los Angeles.

Law Enforcement

■ **Teens in Oklahoma and West** Virginia will find themselves relinquishing their drivers licenses if they run afoul of new laws. The laws were enacted to curb the dropout rate in West Virginia and teenage use of drugs and alcohol in Oklahoma.

West Virginia is the first state to adopt a law allowing the Department of Motor Vehicles to revoke the driver's licenses of students aged 16 to 18 who drop out before graduating. Since July, the department has notified 353 dropouts that their licenses will be revoked if they do not enroll in school or a GED (General Equivalency Diploma) program. About one-fourth of those teens have gone back to school, according to Cindy Hunt of the department's safety and enforcement division.

She estimated that some 5,000 students or 19 percent drop out of West Virginia high schools annually. Not all are licensed drivers. The law, which is retroactive two years, requires that students show proof of enrollment when applying for a learner's permit.

Hunt said most of the teens who have called about the program are willing to re-enroll or get a GED. About 20 hardship cases have been excused. These require a letter from the school district superintendent stating the necessity of a dropout keeping a license.

Oklahoma's new law takes away licenses of drivers under age 17 who are convicted for possession, use or abuse of drugs or alcohol. "It gives them a reason to say 'no,'" explained state Rep. Carolyn Thompson, House author of the legislation.

Under the law, which took effect Nov. 1, 1988, the licenses of first-time offenders could be suspended for up to one year (three months is mandatory for all offenders), and a second offense could result in a two-year suspension. A drug- or alcohol-related conviction can mean a minimum one-year delay in getting a license. Oklahoma allows learner's permits at age 15.

The Oklahoma law is patterned after a similar measure in Oregon which became law in 1983. Doug Allen, with Oklahoma's attorney general's office, said a study in Oregon showed a 17 percent reduction in alcohol-related driving arrests for juveniles under 18 from 1982 to 1984. The study showed a 12 percent reduction overall in liquor law violations in that age group and a 22 percent reduction in drug arrests.

Legal services

■ **Maryland's assistant attorneys** general are providing free legal help for some of the state's poor under a new program thought to be unique in the country.

Maryland Attorney General J. Joseph Curran Jr. partially lifted a longstanding ban on the private practice of law by assistant attorneys general to allow creation of the *pro bono* program. *Pro bono*, an abbreviated version of the Latin legal term *pro bono publico* which means "in the public interest," is often used to describe free legal services.

Creation of the program was prompted by a Maryland legal panel's call for more lawyers to donate services to the poor. Of the 300 eligible attorneys, 125 have volunteered.

An eight-member committee headed by Deputy Attorney General Dennis M. Sweeney is screening the legal cases sent to the attorney general's office and referring them to attorneys who have volunteered to handle them. Cases — all civil — will include those for which poor people frequently seek legal help, such as court protection for a battered spouse, wills and powers of attorney, landlord-tenant disputes, AIDS-related cases and uncontested divorce cases that don't involve requests for financial support.

Sweeney said about 10 clients have been assigned to attorneys thus far. In the next six months, he expects the caseload to level out between 50 and 100 cases at a time.

The *pro bono* representation must be undertaken in addition to full-time responsibilities. Secretaries and other support staff may assist lawyers volunteering their time within carefully observed limits. The program was set up to avoid any apparent or actual conflicts of interest, according to Sweeney.

FYI

■ **The Advisory Council** on Historic Preservation will be offering 14 training sessions in 13 cities this year. The course teaches federal, state, local and tribal officials and contractors the basics of the federal historic preservation project review process.

The sessions are scheduled: Jan. 24-26, Washington D.C.; Feb. 7-9, Dallas; Feb. 28-March 2, Mobile, AL; March 14-16, Santa Fe; April 4-6, Boise, ID; April 25-27, Raleigh, NC; May 2-4, Anchorage, AK; May 16-18, San Bernardino, CA; May 31-June 2, Boston; June 13-15, Omaha; June 27-29, San Francisco; July 12-14, Washington D.C.; Aug.1-3, Portland, OR; Sept. 11-13, Chicago.

For information, write GSA Training Center, Box 15608, Arlington, VA 22215. Attention: Peggy Sheelor. □

The Philadelphia Inquirer

FRIDAY
y 22, 1988

METRO

SECTION B

In two months, 1,290 youths lose licenses over alcohol

By Robert Zausner
Inquirer Harrisburg Bureau

HARRISBURG — A new state law that slaps underage drinkers with suspension of their drivers' licenses has produced 1,290 suspensions in less than two months on the books, and officials predict the number will exceed 50,000 in the first year.

"It shows that law enforcment is using the law. Hopefully, it will make some of the kids think twice," said Rep. Kevin Blaum (D., Luzerne), sponsor of the measure, which went into effect May 24.

"That's an awfully good sign," agreed Steven Schmidt, executive director of a group called Pennsylvania Driving Under the Influence Association. "Those are very consistent and excellent numbers this early on."

The latest statistics show there were 1,290 underage-drinking convictions across the state through July 20, before the law had been in effect even two months, according to Philip VanBriggle, manager of the Department of Transportation's license control division.

Using state police statistics and information from the initial round of convictions, PennDOT spokeswoman Susan Bertone said the department is projecting that there will be 51,000 cases within the law's first year.

Officials said the figures from the first two months were lower than those they expect in the future because PennDOT had to distribute the forms and alleviate other start-up problems for reporting license suspensions under the new law.

"Anytime you come out with a new piece of legislation there is uncertainty around it, new responsibilities for law enforcement," Schmidt said. "We were somewhat concerned that uncertainty might cause a dip in arrests. It didn't."

The recently enacted law, which had failed twice before to make it onto the state's books, sets a mandatory 90-day license suspension for anyone younger than 21 convicted of purchasing, consuming, possessing or transporting alcohol.

The law also incorporated the summary-offense penalty of a $25 to $300 fine that had been contained in the previous statute.

A second conviction under the new law would result in license suspension for one year, while subsequent convictions would revoke driving privileges for two years.

"It's a tool for law enforcement, and evidently they're using it," said Blaum, adding, "That was the last piece of the puzzle we were waiting to see — enforcement. This says that police departments and magistrates across the state are enforcing the law to the letter."

Blaum said that prior to the law's enactment, police would arrest underage drinkers, but "it was like a turnstile: They were out with nothing happening to them."

"If we can suspend 20 to 30 licenses per high school across Pennsylvania, then maybe we can change the way underclassmen think about drinking," he said. "If they can see the seniors coming back on Monday without their licenses, I think then we begin to chip away at the 'cool' [image] we see around underage drinking. It's no longer going to be

(See SUSPENSIONS on 4-B)

Law nets 1,290 licenses

SUSPENSIONS, from 1-B

the neat thing to do."

"It is a good way to deter our young people from getting into the habit of drinking and driving. The younger we can reach that market, the better off we are," said Sherry Walker, executive director for the Pennsylvania chapter of Mothers Against Drunk Driving.

"Previously there wasn't very much that could happen to them in the way of punishment. This is a good deterrent to them because no young person wants to lose their license."

Despite some opposition to the measure in the General Assembly by those who said it was unfair to tie driver's licenses to criminal penalties, Blaum said he does not expect any legal challenges to the law.

"I don't see any grounds for a court challenge. A driver's license is not a right, but a privilege, and the state can take it away when it wishes," he said.

A spokeswoman at the American Civil Liberties Union said that organization had no plans to challenge the law.

The group had opposed the measure in 1986 when it was before the General Assembly, but the basis of that opposition was an anti-abortion amendment that had been included. That bill passed the House and Senate but was vetoed by Gov. Dick Thornburgh. A similar bill introduced in the 1983-84 session never passed the legislature.

Blaum said that although Pennsylvania's law is the first in the nation to suspend drivers' licenses for underage drinking, a New Jersey court recently upheld a local magistrate's decision to lift a teenager's license as punishment for the same offense.

Blaum also said he did not believe parents would want to press a legal challenge for a teenager caught drinking illegally, but instead would welcome the disciplinary measure.

"I hope," he said, "that parents of teens who lose their licenses say, 'Good for you.'"

STATE OF KANSAS

MARGE PETTY
SENATOR, 18TH DISTRICT
SHAWNEE COUNTY

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: ASSESSMENT AND TAXATION
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
JUDICIARY
LABOR, INDUSTRY AND SMALL BUSINESS
LOCAL GOVERNMENT

Adolescents are at a time in their development when they are tackling the tasks of making life decisions, deciding which values of their families to endorse, wanting responsibility for their own lives, and at the same time, wanting others to be responsible for them. An important symbol for their newly emerging independence is their drivers licenses. None of this is new to any generation of teenager.

What is unique about the present generation of teens is that there is a mushrooming problem of substance abuse. Problems with alcohol and drugs, coupled with a new drivers license can become a combination which results in teens who are dangerous to themselves or to others if on the road.

As parents, the raising of responsible children requires a balance of two approaches. The first approach requires the assurance of emotional support, such as being held when they are hurt. Secondly, and as important, children need to know they are responsible for the consequences of their actions. If they don't study for a test, the consequence is a bad grade.

As lawmakers, encouraging kids to be responsible citizens requires both approaches as well. Supportive programs such as those approved by this committee in SB153 and SB75 are critical. They establish rehabilitation as part of the judicial process.

SB219 is the additional approach providing the balance. It requires that teens experience the consequences of their actions. The revocation of a license occurs if there is a driving offense related to alcohol. This approach has been used in Oregon with success in reducing the DUI arrests of teens (see attached article).

An amendment, as well as a step which would improve the effect of the bill, would be to send notice of junior high and high school students about the change in the law. The cost of this in Oklahoma was $5000. This would also address any legal questions of notice.

I urge your support of this bill.

Attachment II

106 WOODLAWN
TOPEKA, KANSAS 66606
(913) 232-4907

STATE CAPITOL BUILDING
TOPEKA, KANSAS 66612
(913) 296-7365

SJC
3-3-89

THE DAILY OKLAHOMAN
OKLAHOMA CITY TIMES
October 31, 1988

Teen-Driver Law's Success Touted

By Kathi Thacker
Staff Writer

An Oregon official predicts that Oklahoma's new law withholding driver's licenses for youths convicted of alcohol or drug violations will reduce the problem in this state.

Effective Tuesday, the Oklahoma Denial Law will withhold teen-agers' most prized privilege — driving — from youths 17 and under who are convicted of drug- or alcohol-related offenses.

The law, based on a 5-year-old Oregon statute, delays the granting of a driver's license to youths convicted of violating any laws governing drugs or alcohol for one year or until they are 17, whichever is later.

Teen-agers who already have their licenses face one-year driving suspensions.

A second or subsequent conviction postpones the granting of licenses for two years or until the person is 18, whichever is later.

An Oregon official says the law's stiff penalties have reduced teenage drug and alcohol abuse in that state.

"We have never had a more effective program in Oregon on drug and alcohol abuse — not one. This law is worth having. It can enhance Oklahoma's reputation around the country as being forward-looking and willing to try something new," said Gil Bellamy, administrator of the Oregon Traffic Safety Commission.

The law works because many teen-agers do not want to risk losing or delaying the long-anticipated possession of a driver's license, he said.

"A driver's license is no less than a rite of passage. It is a very desirable item, and teens will do a lot to protect it, as we have proved in Oregon," he said.

The concept was developed by Wes Smith, an Oregon school superintendent, and state legislators picked up on it, Bellamy said.

Oregon became the first state to enact such a law, in August 1983, and alcohol or drug arrests of juveniles began dropping, he said.

A total of 969 juveniles were arrested for drug violations in 1982, the last full year without the law, he said.

In 1984, the first full year under the law, the number of juveniles arrested for drug violations decreased to 755, a reduction of 22 percent, he said.

Total juvenile arrests for liquor

See DRIVERS, Page 2

From Page One

Drivers

Continued

offenses decreased from 4,496 in 1982 to 3,970 in 1984, a 12 percent drop, he said.

Arrests for transporting an open container went down 45 percent, from 373 in 1982 to 205 in 1984, he said.

Driving-under-the-influence arrests also decreased, he said. A total of 456 juveniles were arrested for DUI violations in 1982, compared with 378 in 1984, a 17 percent decrease.

"This was in the early '80s, before the 'Just Say No' campaigns. We had an explosive growth in the early '80s in drug problems. I don't know of any other reason the arrests should have gone down except that law," Bellamy said.

The statistics for juvenile arrests for drug and alcohol offenses have remained roughly the same since the improvements seen in 1984, he said.

Arrest numbers have not continued to drop, but arrests have not increased, either, he said.

The law not only has been effective, but it also has been inexpensive to administer, he said.

"The entire cost of the law was $5,000 to send a letter to every high school and junior high kid in Oregon. There was no new money committed, and no new people were hired, yet it had a tremendously good effect."

Bellamy said he believes the letters sent to students through the schools helped the state avoid legal problems and increased the law's effectiveness. He encouraged Oklahoma to make a similar attempt to inform juveniles.

Oklahoma officials plan a press conference and media campaign sometime this week, said Bruce Schults, spokesman for the state Highway Safety Office.

Bellamy said the law has survived court challenges in several states, and its popularity in Oregon is high.

"It has overwhelming support here. It isn't even controversial. Every legislative session, somebody will mumble about repealing it, but they don't get anywhere. The Legislature is not interested at all in repealing the law."

Judiciary Committee Statement

Support of S.B. 219

March 3, 1989

I am Shirley Fleener from Manhattan, Kansas. For the past 5 years I have worked with a grass roots volunteer organization, The Little Apple Task Force On Alcohol and Drug Abuse, whose concern is the consumption of alcohol by minors. Thank you for the opportunity to appear before this committee in support of Senate Bill 219.

SOME SOBERING FACTS

1. The average age to begin regular use of alcohol is 13 years.
2. There are over 3 million teenage alcoholics in the United States.
3. Young people make up 20% of all licensed drivers but they account for 42% of all alcohol-related accidents.
4. Alcohol is a factor in 50% of all accidents involving young people.
5. Youth are alcoholicly imparied at one-half the legal limit of blood-alcohol ratios.
6. 17% of fatally injured youth have blood-alcohol levels below the legal limit.

We, as a state and nation, are spending great amounts of time and money educating our children to the dangers of drugs and alcohol. In Manhattan we have had education for several years in high school, then it moved into the middle school and now the program has reached the elementary schools. That is fine and as it should be but these prgrams so far have not had a great impact on our teenagers -- they still consume alcohol.

Part of the solution is to reach the parents and community leaders so they will support this education the children are receiving. It is time for us to stop sending mixed messages to our young.

There had been for several years the idea that "kids are going to drink anyway, we can't stop them so why try?" Then came the increase in the number of teenagers getting in trouble with alcohol and another idea was added. "Kids are going to drink anyway, we can't stop them so we will teach them to drink responsibly." As time passed and the situation became worse the researchers began to study the young and consumption of alcohol and soon found out that alcohol beverages effect the young differently than the mature adult. There is no such thing as responsible drinking for the young person. Drinking is a health and safty risk for them.

I'm glad to say that this approach is not being taught in our schools anymore. Our education programs have gone from "responsible drinking" to "Just Say No."

SJC
3-3-89
Attachment III

But few adults have been exposed to this same education even though attampts are being made to reach them. Adults don't give the children and educational programs the support and reenforcement needed. Parents and community leaders must be made aware of this need for their support and become involved.

Through legislation you have told the young people that Kansas thinks they should abstain from the consumption of alcohol until age 21. Senate Bill 219 will back that up and reach the young in a very sensitive area -- their driving privilege.

I support Senate Bill 219 for two reasons. The teenager who has been in trouble with alcohol will be removed from the road for his/her own protection and for the protection of the general public. But it will also cause the parent to sit up and take notice at just what is going on.

Our high schools are surrounded by cars driven by the students so mom or dad doesn't have to interrupt their day to take the students to and from school, various activities, doctor appointment, jobs, ballgames, etc.,etc. If the teenager loses his/her driving privileges he/she must once again depend on mom and dad for transportation. So in a sense the parent now is being penalized for the actions of the teen. This could be very confining and time consuming for the parent but because of this intrusion on their life the parent may finally take the time to really look at the problem of teenage consumption, educate themselves, and take appropriate action.

In Senate Bill 219 you not only remove those young people who are high risk on the road but you also are reaching the adults who should be involved in the problem of the consumption of alcohol by minors. Both of these results are most positive.

I would like to close by reading a quote from the Daily Oklahoman when Oklahoma passed a similar law last summer. The Oklahoma law was copied from one that had been passed in Oregon 5 years previous. Gil Bellamy, administrator of the Oregon Traffic Safty Commission stated, "We have never had a more effective program in Oregon on drug and alcohol abuse - not one. The law not only has been effective, but it also has been inexpensive to administer. The entire cost of the law was $5,000 to send a letter to every high school and junior high kid in Oregon. There was no new money committed, and no new people were hired, yet it had a tremendously good effect."

Thank you for the opportunity to speak. Thank you for your consideration of Senate Bill 219. I respectfully request the passage of this bill.

Shirley Fleener
2026 Parkway Dr.
Manhattan, Ks. 66502

913-537-0472

March 3, 1989

SENATE BILL 219

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

My name is Juanita Carlson. I am a law student at Washburn University. I represent the ACLU of Kansas and I am here to express our opposition to Senate Bill 219, which concerns the revocation of drivers licenses for drug-related traffic offenses by juveniles. The ACLU is the only nationally recognized organization whose sole purpose is the defense of our constitutional liberties of freedom of inquiry and expression, free exercise of religion, privacy, due process of law and equal protection of laws.

I present three reasons.

First, it is not clear what acts are forbidden by the vague language found at line 137, "by reason of an act involving any alcoholic beverage" or drug. How far does the aura of "involving" extend? Does it include actions taken while suffering from a mild hangover? Or to actions taken one day later? Does it include actions taken by a driver when a passenger in the car possesses a can of beer? Does it include cases where the driver is unaware of the passenger's possession? Does this bill create a duty for teenaged drivers to search their passengers for drugs? We are simply unsure what this language covers.

Secondly, this bill creates a special category of misdemeanor which applies only to young people, namely committing a traffic offense "by reason of an act involving any alcoholic beverage or controllled substance". Moreover, it provides for a punishment not applied to adults in similar circumstances,

Attachment IV
Senate Judiciary Committee
3-3-89

namely the revocation of the young person's driving license. Our juvenile justice system is based on a separation of the juvenile from the adult. The goal in the juvenile system is one of rehabilitation and not punishment. This bill punishes youth in a far harsher manner than what adults would expect for similar behavior. The US Supreme Court has never upheld exceptional treatment of juveniles for the purpose of treating them more punitively than adults in similar circumstances so courts might in fact find a denial of equal protection.

Finally, we believe this bill is bad public policy because it adopts a punitive rather than a rehabilitative approach to juvenile offenders. For more than a decade, annual nation-wide polls by the respected University of Michigan Survey Research Laboratory have shown that an absolute majority of high school juniors and seniors have used illegal drugs at least once. Yet, the overwhelming majority of these young people go on to become productive and law-abiding citizens. Of course, a large minority of our teenagers do have serious alcohol and drug abuse problems. The juvenile justice system in Kansass already has numerous dispositional alternatives built into the Juvenile Offender Code which allow a judge to order drug and alchohol assessment, counseling and inpatient/outpatient treatment. These alternatives are used regularly by those in the court system, including judges, court services workers, and SRS social workers. Again, the emphasis for the juvenile is on treatment and rehabilitation and not punishment. This bill simply is not addressing the realities of what the law already provides for juveniles.

Thank you for the opportunity to present our views.

Association of Community
Mental Health Centers of Kansas
835 S.W. Topeka Ave., Suite B/Topeka, Kansas 66612/913 234-4773
Paul M. Klotz, Executive Director

POSITION ON: S.B. 234
SENATE JUDICIARY COMMITTEE

ASSOCIATION OF CMHC's of KANSAS, INC.

The Association appreciates this opportunity to comment on S.B. 234.

While our member centers primarily provide mental health services as opposed to alcohol and drug treatment services a number of the centers have established a relationship with the courts to provide alcohol and drug safety action evaluations and treatment programs.

We believe that it makes good clinical sense to have the treatment provided by the same professionals who conducted the evaluations. Plus, to split these two functions would produce an uncoordinated system and would interrupt current satisfactory arrangements that have been worked out between the centers and the courts.

Centers are separately licensed facilities under the overall direction of a physician. The ADSAP's, where they exist in centers are separate programs under the overall supervision of the center. The team approach allows us to to already separate the evaluation and treatment segments of this program.

Our Association opposes S.B. 234 as currently written for the above reasons. We would seek to have licensed mental health centers exempted from the proposed legislation.

Thank you.

Contact: Paul M. Klotz
913-234-4773

Attachment II
SJC
3-3-89

TESTIMONY

Senate Judiciary Committee
March 3, 1989
10:00AM

SENATE BILL NO. 234

Mr. Chairperson and Members of the Committee:

I represent the 27 member Kansas Community Alcohol Safety Action Project Coordinators Association. We oppose Senate Bill No. 234 in it's present form as not being too clear what is to be accomplished. We think the sponsor of the Bill would like to see the treatment aspect as provided for the offender under the Bill be separated from the organization that does the alcohol and drug evaluation. However, this is not spelled our too clearly.

We support the concept of having the evaluation done by an independant agency and referring that offender to an agency which would provide their professional treatment. However, in practicality, in the sparsely populated sections of our State, there is only one alcohol and drug agency to serve that particular Judicial District. In these sparsely populated areas, alcohol and drug agencies which primarily offer alcoholism and drug treatment also will provide the evaluations for the Court.

In addition, all of our Association members, with the exception of one, offers alcohol and drug education which we classify as an Alcohol and Drug Information School. We do not feel that this is treatment for the offender, but just general knowledge and education. By taking that school away from the evaluation agency would probably cause some financial concern for those Association members.

In addition, under the statute there is a $110 evaluation fee assessed by the Court for the evaluation and monitoring of that individual. Under the proposed legislation the evaluation would be done by one agency and the monitoring by another agency. We are not sure whether that would give the Courts the authority to assign two $110 fees or would the agency split the $110 fee that is now in the present statute. Again, if that fee was split it would be financial disaster for our Association members. We would suggest that the Committee take a strong look at this proposed legislation and perhaps refer it for further study. Thank you.

Respectfully,

Gene Johnson

Gene Johnson
Legislative Liasion
Kansas Community Alcohol Safety Action Project Coordinators Association

Attachment VI
SJC
3-3-89

TESTIMONY

Senate Judiciary Committee
March 3, 1989
10:00AM

Senate Bill No. 170

Mr. Chairperson and Members of the Committee:

I represent the Kansas Community Alcohol Safety Action Project Coordinators Association in the State of Kansas. Our 27 member body endorses Senate Bill No. 170 as another tool in responsible use of alcoholic beverages insofar as operating a motor vehicle in our State. Under present law, any person transporting an open container is subject to a fine and suspension or restriction of their license for violations of this statute. This means the operator of the vehicle and his passengers are responsible for open containers of any alcoholic beverage in the vehicle. We propose that the driver or operator of the vehicle be held responsible for his vehicle and his passengers. This proposed legislation would place the responsibility solely upon the operator of the vehicle.

Under this legislation, for the first violation in the past five years the operator would be subject to sentenced probation and required to enroll in and successfully complete an Alcohol and Drug Safety Action Project as certified by KSA 8-1008. The payment of the assessment for the completion of the program would not exceed $110, to be paid by the violator. Failure to complete the Alcohol Safety Action Program could result in being brought back before the sentencing Court to be fined not less than $100 nor more than $500 or imprisonment by not more than six months or both.

The sentencing Court shall suspend the operator's driver's license for a period of not less than 90 days. The Court also has within it's jurisdiction the discretion to issue the violator or defendant a restricted driver's license in lieu of suspension persuant to KSA 8-292.

The proposed legislation allows the District, County or City Attorney to grant a Diversion on first time offenders in the past five years under the same conditions as KSA 8-1008. Legislation also limits the prosecutor from any type of plea bargaining to avoid mandatory penalties established by this section or by any city ordinance.

Our organization feels that this is a positive step forward in the education of our citizens of Kansas who operate a motor vehicle to the dangers of drinking and driving. It also endorses our philosophy of placing the responsibility of the safe operation of that vehicle solely upon the driver. This is just another tool to promote safe driving in the state of Kansas with no added cost to the taxpayers of the State with the exception of the offender. We request your support in the passage of this proposed legislation. Thank you.

Respectfully Submitted,

Gene Johnson

Gene Johnson
Legislative Liasion
Kansas Community Alcohol Safety Action Project Coordinators Association

Attachment VII
SJC
3-3-89

Kansas Coalition for Drug-Free Driving

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

March 3,1989

TO: Judiciary Committee
RE: Senate Bill # 170

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

The Coalition strongly supports Senate Bill # 170.

For those who do drink out of an open container while driving, the legal response needs to be firm.

The Coalition feels this law provides the items that are necessary to prevent violations of the law. Those being Appropiate Punishment, Education and Evaluation.

We, as concerned citizens, of the Stste ask for your support of this bill.

Thank You

Ruth Meserve, Registered Lobbyist

Attachment VIII
SJC
3-3-89

IF THE DRUG COULD SPEAK

On TV,
Over the radio,
In newspapers and magazines,
From lips of beer and liquor lobbyists,
I say what I'm paid to say.

But in alcoholism treatment centers,
In blood splattered automobiles,
On battered bodies of child and spouse,
In the dulled brains of drinking drivers,
I tell the truth.

March 3, 1989
Hearing on SB 171
.05 Blood Alcohol

Senate Judiciary Committee
Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

Mr. Chairman and members of the committee. Thank you for giving us 10 minutes to present good reasons for supporting SB 171. Because your committee is extremely busy, we would give back all this time if SB 171 could be considered by the Senate Agriculture Committee where a hearing would not be needed since 6 members already have said YES to .05. After all, alcohol comes from agricultural products that have rotted!

You have many excellent bills before you today, and we strongly support every one of them. Because time is limited, we will address only SB 171. This new law will send a message to every Kansas driver - drink less before driving, MORE ALIVE WITH POINT O FIVE!

Three years ago when the American Medical Association called on states to pass .05, I said we must do that in Kansas when the time is right. Last session the Legislature made Kansas a leader with all sorts of excellent laws encouraging persons to not go above .10 BAC before driving. Now the time is right to hit at the heart of the problem. We must encourage persons to <u>drink</u> <u>less</u> before driving.

Last summer we wrote letters and sent information to all candidates for the Kansas Senate and House asking for their support of .05 BAC. To date 39 Representatives and 11 Senators have indicated solid support for this measure that will encourage persons to drink less before driving. Many other lawmakers are leaning in favor, but want to hear Committee testimony.

Dr. Richard Beach from Lawrence will present American Medical Association research. I will try to answer objections that have been raised.

POINT O FIVE IS TOO LOW A THRESHOLD. If we really want to remove the drinking driver from the road, we would pass a law for zero BAC. Airline pilots, bus drivers, and railroad engineers are expected to have zero BAC, yet a great many more people are killed and maimed by drinking drivers than by all those persons combined. BAC should be zero. It is now .10. Concerned lawmakers will accept .05 as a reasonable compromise.
(see two pages of charts)

Attachment IX
SJC
3-3-89

JAILS WILL OVERFLOW WITH DUI CONVICTIONS. The vast majority of persons make a good effort to obey the law. At .05 the concerned drinker will say after two drinks, "I better quit and spend time with non-alcoholic drinks and food before driving so I will not even come close to .05." Prevention, not punishment, is the goal of .05. After two drinks, the average person is still able to exercise fairly good judgment. After more drinking, the brain is unable to make a responsible decision to quit drinking. Persons who think they can drink quite a bit and not go over .10 often drink too much because their alcohol dulled brain does not make a decision to quit. Persons guilty of DUI never intended to drink that much. This bill should keep people out of the county jail, not add to the load.

LAW ENFORCEMENT OFFICERS CAN VISUALLY SPOT MOST PERSONS WHO ARE .10, BUT CAN NOT SPOT PERSONS WHO ARE .05 OR MORE. This bill will close the loophole that now allows drivers to go free if their BAC is under .10. Current law does provide for conviction of DUI if under .10, but all sorts of things must be proven and that takes lots of time and energy. In many and most cases, charges are not filed if a person is under .10 BAC. Law enforcement officers might not go out looking for persons with .05 BAC, but if a driver has been involved in a crash or is suspected of being at .10, SB 171 will not allow that driver to go free as currently takes place.

FIRST YOU NEED TO GENERATE PUBLIC SUPPORT FOR .05. The attached petitions and editorials give you a small sample of public support. Representative Amos took a poll of his Johnson County District and found 65.15% supported .05.

DUI PROSECUTORS ARE NOT IN FAVOR OF .05. I talked to a leading prosecutor, a person most knowledgeable of DUI laws. He said prosecutors have no opposition whatever to this bill, but their organization voted to remain neutral. They will accept legislative leadership in this matter. Will you choose to exercise leadership or will you take the easy way out and say, "Kansas can not do what other states have not yet done"?

.05 WILL MAKE CONVICTIONS MORE DIFFICULT. How can that be when the only change in current law is to substitute .05 for .10? Nothing else needs to be proven under current law except .10 BAC. Nothing else needs to be proven under SB 171 except .05 BAC. Convictions under this new law should be no more difficult than under the old.

ONE BEER WILL PUT YOU OVER .05. If you weigh around 70 pounds, one beer would put you near .05, but most drivers weigh more than that. .05 BAC in a 70 pound driver makes that person just as deadly as .05 BAC in a 200 pound person. BAC really means BRAIN ALCOHOL CONTENT.

MORE DRIVERS WILL REFUSE TO TAKE THE TEST FOR FEAR OF BEING OVER .05. Drivers today refuse to take the test for fear of being over .10, so nothing is changed. Under current law, a driver who believes he is under .10, gladly takes the test, and if under .10, usually nothing happens. If this same driver is concerned he might be over .05 and that causes him to refuse to take the test, he will become subject to administrative revocation and made painfully aware that he should drink less in the future before driving.

T'LL NOT SUPPORT .05 UNTIL RESULTS OF A NEW STUDY ARE RELEASED ON WHAT BAC LEVEL RIVER IS IMPAIRED. An informed person can only politely smile at that excuse. was the first of my eight years as pastor of Grand Avenue United Methodist Church in Salina.

I remember well reading the 1951 article from THE ROTARIAN magazine on WHAT TWO DRINKS WILL DO TO YOUR DRIVING because this was totally new material to me. As a non-user of the drug, alcohol impairment was no problem. I was surprised to learn how little was required to make a driver deadly.

A BAC level of .049 impaired the average driver by 41.8 percent. A study in Toronto of 919 drivers concluded alcohol concentrations as low as .03 became a factor in causing auto crashes. Six pages of research published by The American Medical Association in January of 1986 supported their call for all states to adopt .05 BAC.

A study by the British Medical Research Council indicated that field of vision for a driver fell off 30% with a blood alcohol concentration of .055. This reduction of visual field makes it more difficult for drivers to see potential hazards on either side.

A National Transportation Safety Board study found that a driver's likelihood of causing a highway crash increased measurably at .04. At .06 the risk was four times greater. At .08 it was six times as great. At .10 it was about eight times greater.

The issue has been researched for over 40 years!

Through the years as I have worked for less alcoholism and safer highways, some persons have tried to discredit this effort by claiming I look upon drinkers as bad people. Drinking drivers are not bad people, they are dangerous people. I have plenty of faults. There are a lot of things wrong with me. Just because a person does not drink, that alone does not make them better than someone who drinks. I have drinking friends who are superior to me in many ways. Alcoholics and other drinkers are not bad people. Alcohol is a powerful and deceptive drug that has no place in the veins and brains of a person behind the wheel. I have done my best to give you rational reasons for supporting SB 171.

DON'T DRINK BEFORE DRIVING is heard loud and clear throughout the land. SB 171 is a reasonable compromise between zero and .10 BAC. When this campaign began last Summer, all groups who claim to be concerned for highway safety were expected to support .05 BAC. Only MADD and SADD at Kansas State University have given their support so far.

I contacted many groups to be here today and support SB 171. Their refusal proves this is the big one. They will gladly support the other measures. This strikes at the heart of the drinking driver issue. This bill will put a responsibility on friends and neighbors to drink less before driving. Those groups not supporting SB 171 do not want to "offend their constituency."

Persons who want to enjoy the drug effect of more drinking before driving and persons who sell alcohol are not supporting SB 171. Lawmakers have the right to give any reason they choose for their NO vote, but the issue comes down to this simple question:

DO YOU WANT PERSONS TO DRINK LESS BEFORE DRIVING? If YES, vote YES.
If undecided, vote YES so the full Senate can decide the issue.
If you think it is OK for people to drink more before driving, vote NO.

The issue is injury, disability, and death. No person has a right to drive with a drug impaired brain. Do you care?

DO YOU WANT PERSONS TO DRINK LESS BEFORE DRIVING?

That is the <u>only</u> issue in SB 171.

MY FIRST EXPERIENCE WITH A DRUNK DRIVER

Shortly after a 1950 appointment to my first church, an emergency call came from Asbury Hospital in Salina that a United Methodist Minister was needed immediately. On arrival I learned that two families were traveling from Hutchinson to Nebraska when a drunk hit them head on north of Salina. It happened around noon in full sunshine and dry pavement. Both husbands were in the front seat with the daughter of one between them. She was badly injured, but after spending all afternoon and evening with her in that hospital room, Carolyn was able to tell me the last words from her father. "Get behind me!" Pushed behind her father, he took the full impact of the head on crash and died along with the driver. Both wives lived, but the hospital stay of all three was lengthy and they suffered permanent disability. I've been mad at drunk drivers ever since.

Teenage Carolyn lived because her father by choice took the full impact of a head on crash from the drunk left of center. This is the week when the world remembers in a special way the One who said, "Greater love has no man than this, that a man lay down his life for his friends."

THE CRUSADE OF WARREN HARDIN, NOW COUNTY ENGINEER AT BELLEVILLE

My Bishop appointed me to this special ministry in January of 1971. On October 3, 1971 a car load of Kansas State students was hit head on in Trego County as they returned from a Colorado football game. Five died. Warren Hardin of Wakeeney lost his son Greg and Greg's bride to be, Linda Henry of Big Springs, along with three other friends. The drunk also died. Warren and I have worked for tough drinking driver legislation since that day. The news media has given much coverage to our effort to reduce alcohol consumption and prevent gambling related suffering, but every year I have told friends I wish I could devote full time to one issue - keep alcohol drugged killers off the road!

I remember a letter dated November 19, 1973, from Senate President Bennett who told Mr. Hardin "I don't believe that you can blame the situation any more on legalized consumption of alcohol than you could on the availability of the automobile in which the drunk was driving." (Letter from Bennett to Hardin concerning death of Greg.)

How thankful we are that Kansas lawmakers are beginning to blame alcohol, to acknowledge that the product is the problem, to admit that alcohol impaired brains cause drivers to inflict more death and injury than all our wars combined. This new legislation does not ban the automobile, it bans driving when alcohol "renders the person incapable of driving safely."

Warren Hardin spent a half hour on TV with me a week ago voicing his concern and the concern of K-State students in 1972 who called for stiff legislation 10 years ago. I remember that legislation being debated on the floor of the House with Representatives telling sob stories of hardships inflicted on the poor drinking driver if judges and prosecutors came down with laws already on the books. Since 1971 I have seen legislation ignored or easily rejected by lawmakers fearful of being trapped in their own law.

During Holy Week of 1982, this page wa given to members of the Kansas Senate a House. Senate Bill 699 was passed that year, the first big step forward in reducing the number of alcohol drugged killers on our streets and highways.

Mr. Hardin and I fully understood why lawmakers had not passed a tough new law when Speaker of the House McGill got off in 1974 by refusing to take the breath test. We called for eliminating this loophole, but our voices were not heard. A newspaper story tells us that Senator Johnston was booked on a charge of driving while intoxicated February 14, 1980, but got off because he refused to take the breath test.

Concerned lawmakers have rejected the plea "There but for the grace of God go I." Driving after drinking has nothing to do with the grace of God. Persons choose to drive after drinking. No longer should the criminal behind the wheel get off by saying, "I'm sorry." That is how a child seeks to escape responsibility for making a bad choice. Let the so called social drinker, the leading businessman, the high ranking politician, and the richest man in town know that alcohol impaired driving makes them just as much a criminal as if they were a back alley bum.

As a Salina pastor, I remember visiting my first A.A. meeting. Afterwards I told my dry alcoholic friend that it seemed they were cruel to their drinking buddies. He said they show no mercy toward drinking alcoholics because sympathy keeps them drunk. Judges and prosecutors who show mercy toward drunk drivers have kept the killers on the road.

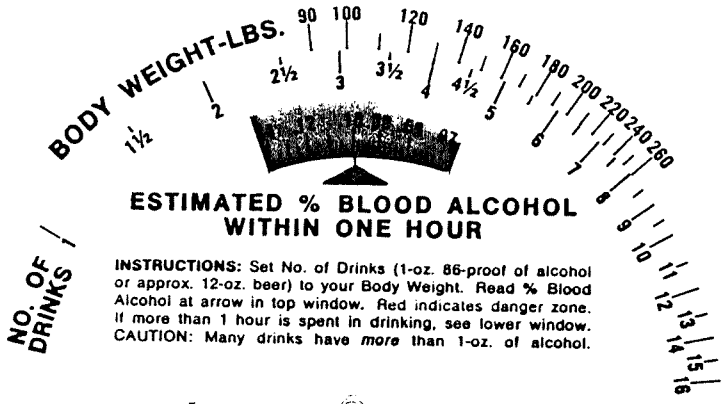
Under current law, drinkers choose not to take a breath test if caught driving because they know that is the best choice. Under a new tough law, drinkers will choose not to drive because they will know that is the best choice.

God so loved the world that He gave His only Son. His only Son loved us so much that He gave His life. May you so love Kansas that you will give your vote for a law that gives life to travelers on our highways. Let Holy Week of 1982 be remembered as a time when the Kansas legislature supported a law with penalities so swift, sure, and severe, that persons began choosing not to drive after drinking or they waited one hour per drink before driving.

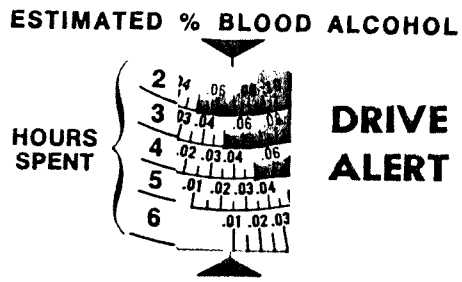
Most of our TV time this year has been used to lobby for tough drinking driver legislation. These programs included Senator Hess, House Transportation Chairman Crowell, Representative Fox; victims of this "criminal behind the wheel" Mary Foster, Mrs. Joe Driver, Mrs. Mary Dibble, Warren Hardin; and Captain Hadley and Colonel Hornbaker of the Highway Patrol. How thankful we are that our voices along with thousands of other concerned Kansans have been heard. Warren Hardin and I wish a tough law could have been passed 10 years ago so more persons would be alive to thank you. With their new law, the California Highway Patrol reported exactly 100 fewer persons died on California highways this January than during January of 1981.

As you go home to celebrate Easter, may a special joy be yours knowing that disability and death will be reduced because your love for Kansas caused you to vote for a tough new law.

Respectfully yours,
Richard Taylor, President
Kansans For Life
At Its Best!
218½ West Sixth
Topeka, Ks. 66603
6th April, 1982

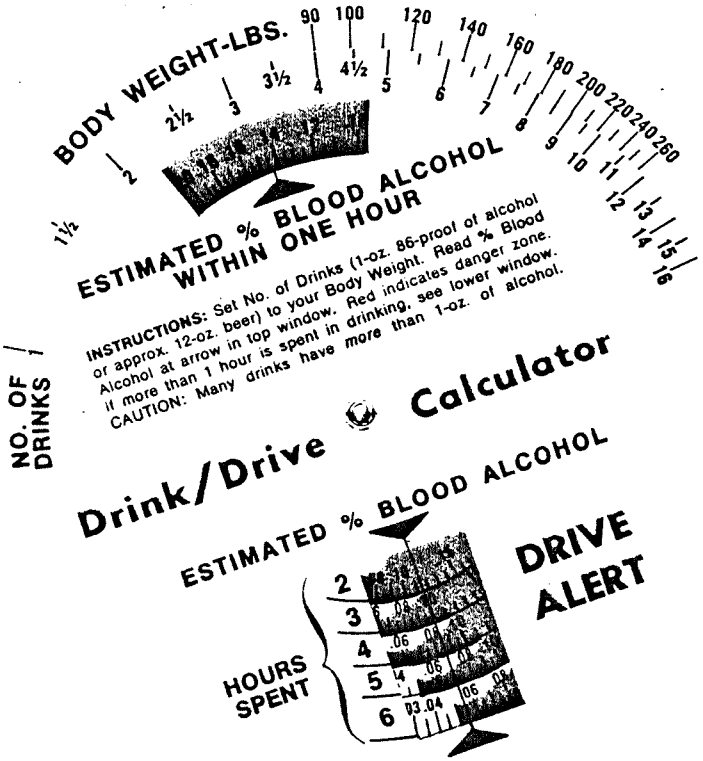


Drink/Drive Calculator



.10% is legally considered under the influence in Kansas

SAFETY DEPARTMENT
Topeka, Kansas



Drink/Drive Calculator

Chart is set to indicate number of drinks and body weight to produce a BAC of .10 within one hour.

I weigh 200 pounds so could have had 6+ drinks and still be under .10 within one hour.

USE *BEFORE* DRINKING

EXAMPLE

160 lb. driver consumes 4 drinks in one hour. Set 4 drinks (inner scale) to 160 lbs. (outer scale). Read Estimated % Blood Alcohol in top window at arrow—0.080%. If the time spent was more than one hour, see lower window. For instance, if two hours, read at 2—0.050%

EFFECTS

0.02%—Drivers show mild change, may seem slightly elated.
0.05%—Drivers hesitant: alternate from "who cares?" to impulsive aggression. The red band shows driver is in danger zone. Don't drive. If you *must* drive . . . be extremely cautious.
0.10%—Judgment seriously affected. Coordination impaired. Legally considered "under the influence". Simply stated—Don't drive.
0.15%—Unmistakably drunk. All faculties seriously affected.
0.30%—Stuporous.
0.40%—Unconscious. Possibly in coma and on verge of death.

DRIVE ALERT

OVER HALF OF LAST YEAR'S TRAFFIC DEATHS INVOLVED DRINKING!

Remember the best idea still is *"When you drink, don't drive."*

NOTE: This calculator is only a guide and not sufficiently accurate to be considered legal evidence. The figures you calculate are averages. Individuals may vary somewhat in their personal alcohol tolerance. Food in the stomach affects the rate of absorption. Medications, health, and psychological condition are also influential factors.

datalizer by DATALIZER Slide Charts, Inc., Maywood, Il. 60153

The law permits a blood alcohol test taken up to two hours after driver is picked up. Chart is set to indicate number of drinks and body weight to produce a BAC of .10 with 3 hours spent. (1 hour spent drinking and 2 hours spent waiting.)

I weigh 200 pounds so could have had 9 drinks and still be under .10.

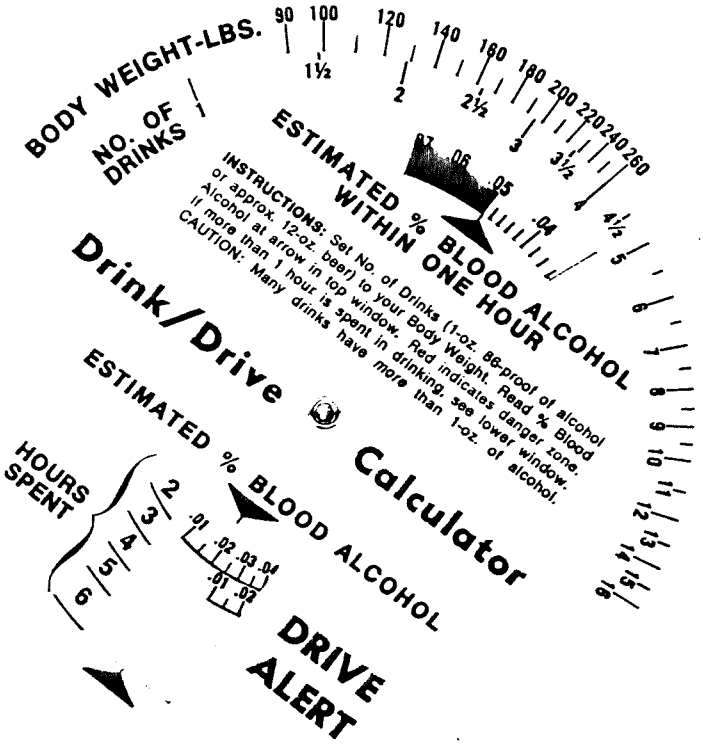
Under current law, a 200 pound person could have had 6 or 9 drinks and still be legal.

.05

Chart is set to indicate number of drinks and body weight to produce a BAC of .05 within one hour.

I weigh 200 pounds so could have had three+ drinks and still be under .05 within one hour.

3 hours spent would give me a BAC of near zero.



.10% is legally considered under the influence in Kansas

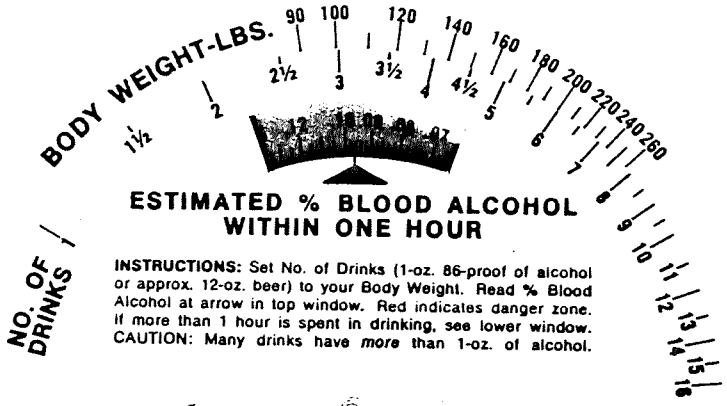
SAFETY DEPARTMENT
Topeka, Kansas

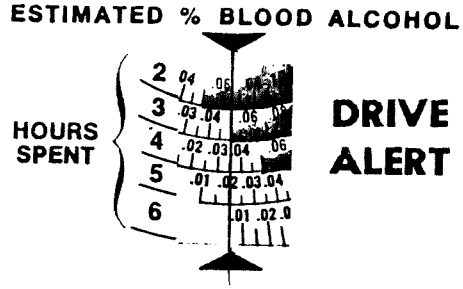
The law permits a blood alcohol test taken up to two hours after driver is picked up. Chart is set to indicate number of drinks and body weight to produce a BAC of .05 with 3 hours spent. (1 hour spent drinking and 2 hours spent waiting.)

I weigh 200 pounds so could have had 6 drinks and still be under .05.

With .05, a 200 pound person could have had 3 or 6 drinks and still be legal.

Under current law, a 150 pound person who spends 3 hours at a cocktail party, is picked up, and has the test taken up to 2 hours later, could have had 8 drinks and still be at .10 BAC. (150 pounds, 8 drinks, 5 hours, .10 BAC) Under this new law that person could have had only 6 drinks.





GEORGE NEAVOLL
Editorial Page Editor

Editorials

Sober driving

Tough blood limit, safer roads

THE criminal most likely to kill the average American isn't a knife-wielding psychopath, but a drunken driver. Indeed, 23,632 people died in alcohol-related traffic accidents last year, or 51 percent of all U.S. motor vehicle fatalities.

The good news is that the 1987 figures represent a drop from the previous year in the number of people killed in crashes where alcohol was a factor.

According to the national Centers for Disease Control, the major reasons for fewer alcohol-connected deaths are the enactment of tougher drunk driving laws, increased awareness of the problem and the 21-year-old drinking age in all states.

Also indicating that moderation is catching on, the National Highway Traffic Safety Administration reported last week that the percentage of fatal accidents involving people above the .10 blood-alcohol standard declined from 46 percent in 1982 to 40 percent in 1987.

In other words, the campaign against drunken drivers is working. Lives are being saved. People are learning not to mix drinking and driving.

Based on such success, it's time to take the next big step against drunken drivers — lower the blood-alcohol standard used to determine whether a person is legally intoxicated from the current .10 to .05. Reducing the standard would persuade many "social" drinkers not to assume the added risk of another cocktail or beer at a party, and it would be a strong deterrent against taking a chance on the road.

The group Kansans for Life at Its Best! wants the 1989 Legislature to lower the blood-alcohol level. If enacted, the .05 standard would enhance Kansas' image as one of the most enlightened states in the nation on drunk driving laws.

Although he has not committed himself to the lower standard, Gov. Mike Hayden recently won praise from the National Commission Against Drunk Driving for his efforts on the issue. Mr. Hayden was cited specifically for helping pass a package of laws last legislative session that toughen drunk driving penalties and provide for the automatic loss of license for drivers who fail or refuse to take alcohol tests.

Kansas would be a national leader in adopting the .05 standard, but the rule has proved successful in numerous foreign countries. In most of those nations, people simply don't drink and then get behind the wheel. The threat of punishment has made people more responsible in their drinking, and the number of alcohol-related traffic deaths has declined.

The .05 standard, however, need not be a party pooper. Although the effects of alcohol on individuals vary according to body type and personality, a 160-pound person who had consumed two drinks normally would be well under the limit.

Drunken driving is a senseless, selfish act. Kansans should not tolerate the drunken motorist who jeopardizes the lives of himself and others. Lowering the blood-alcohol standard would give many drinkers a greater incentive to act responsibly.

The number game

Hutchinson News August 27, 88

The Rev. Richard Taylor had his work cut out for him years ago when he took on sin.

Now, he's working on mathematics. And you know what kind of problems Kansans have with math.

Rev. Taylor, however, is on the side of the angels in his latest cause. He'll need the help of every one of the angels. Again.

He formally announced his latest campaign with letters to the governor, all candidates for the legislature, and newspapers. He urged them all to join with him in changing the state's legal definition of intoxication, by making drivers legally drunk if their blood-alcohol level is .05 percent, instead of the present .1 percent.

"If we're really serious about the alcohol-impaired driver, the drinking driver, this is it," Taylor said. "We're going to work hard on this. This is the big one."

No American state has lowered the level of official drunkenness to .05 from the more common .1 level. The Rev. Taylor's proposal would require not only that Kansas "get serious" about highway drunks, but that it become a leader. Kansas has tried to avoid both seriousness and leadership in this fight.

The Rev. Taylor is right. The campaign should be undertaken.

But even if he were to be successful, this would not be the "big one," as he describes it.

Kansas judges have been unwilling to get tough with drunken drivers at the existing drunk-coddling levels.

The "big one" in the drunken driving campaign is to kick the drunks-coddling judges off the bench, and replace them with judges who show they understand the seriousness of the slaughter of 25,000 Americans each year, and the maiming of thousands more.

Why not?

Ottawa Herald Aug. 27, 1988

Richard Taylor, president of Kansans for Life At Its Best! and a longtime lobbyist at the Kansas Legislature, has proposed a giant step.

He wants to reduce the blood alcohol content requirements for driving while intoxicated from .10 percent to .05 percent.

It would be, he says, a giant step forward for highway safety. He proposed amending KSA 8-1567 to read:

"No person shall operate or attempt to operate any vehicle within this state while the alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vehicle, is .05 or more."

Taylor points out that both The American Medical Association and the National Council on Alcoholism have called on every state to make it a crime to operate a motor vehicle with a blood alcohol level of .05 or more.

Taylor reports that, generally, a 160-pound person who has just had two drinks would be well below .05, and would be below the limit after two hours following four drinks.

What constitutes a drink? One 12-ounce can of 3.2 beer, one four-ounce glass of 12 percent wine or a mixed drink with one ounce of 96 proof distilled spirits. Each of these drinks contains the equivalent of a half ounce of absolute alcohol.

According to Taylor, the .05 measure is already used in many other nations, and it is lower yet in others.

Taylor who has long championed efforts to combat the misuse of alcohol, has mailed his proposal, in the form of a resolution, to every candidate for the Kansas Senate and House.

Why they would oppose such a move, we cannot say. But those who do should be required to explain why someone with more than two drinks in their system should be allowed to get behind the wheel.

wine, or liquor, signed by Judith Courtney, Libeeral, Kansas and thirteen others from the surrounding area.

SP 69, by Senator Morris: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Eileen Watson, Wichita, Kansas and eighteen others from the surrounding area.

SP 70, by Senator Karr: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Reverend Jerry C. Seybold, Emporia, Kansas and nine others from the surrounding area.

SP 71, by Senator Salisbury: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by W. E. Steps, Topeka, Kansas and twenty-eight others from the surrounding area.

SP 72, by Senator Reilly: A Petition expressing opposition to SB 69, signed by Margaret LeRoy, Overland Park, Kansas and thirty-five others from the surrounding area.

SP 73, by Senator Parrish: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Sherman Oyler, Topeka, Kansas and twenty-four others from the surrounding area.

SP 74, by Senator Doyen: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Eldon and Erma Thorman, Clay Center, Kansas and fifty-three others from the surrounding area.

SP 75, by Senator Doyen: A Petition opposing SB 69, concerning bingo, signed by Damon Christensen, Concordia, Kansas and ninety-seven others from the surrounding area.

SP 76, by Senator Reilly: A Petition opposing SB 69, concerning bingo, signed by Dorothy Woods, Shawnee, Kansas and fifty-eight others from the American Legion Post 327.

SP 77, by Senator Hayden: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Geraldine Dempsay, Satanta, Kansas and twenty-two others from the surrounding area.

SP 78, by Senator Harder: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Arthur G. Schrag, McPherson, Kansas and eighteen others from the surrounding area.

SP 79, by Senator D. Kerr: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Ruth Thompson, Hutchinson, Kansas and eighteen others from the surrounding area.

SP 80, by Senator Doyen: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine

sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Grace H. Jones, Oakhill, Kansas and nineteen others from the surrounding area.

SP 81, by Senator Reilly: A Petition supporting the parental rights bill and the post viable child protection act, signed by Earla Jo LaBarge, Miltonvale, Kansas and seventy-seven others from the surrounding area.

SP 82, by Senator Johnston: A Petition supporting legislation to tighten the Kansas corporate farm law, signed by Kenneth Whelan, St. Paul, Kansas and eighty-six others from the surrounding area.

SP 83, by Senator Johnston: A Petition supporting legislation to tighten the Kansas corporate farm law, signed by Don Sailors, Erie, Kansas and thirty-two others from the surrounding area.

SP 84, by Senator Lee: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Mr. and Mrs. Ben Clausen, Belleville, Kansas and twenty-seven others from the surrounding area.

SP 85, by Senator Karr: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Mabel Sweet, Admire, Kansas and twenty others from the surrounding area.

SP 86, by Senator Doyen: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Mary Margaret Skippy, Woodbine, Kansas and fourteen others from the surrounding area.

SP 87, by Senator Morris: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Robert J. Rue, Wichita, Kansas and seven others from the surrounding area.

SP 88, by Senator Salisbury: A Petition in support of .05 and to limited parimutuel gambling and opposd to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Edna Ferguson, Topeka, Kansas and eleven others from the surrounding area.

SP 89, by Senator Lee: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Calvin Cruise, Harlan, Kansas and thirteen others from the surrounding area.

SP 90, by Senator Thiessen: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Dean Knewtson, Caney, Kansas and six others from the surrounding area.

SP 91, by Senator D. Kerr: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Stan Cover, Hutchinson, Kansas and sixty-three others from the surrounding area.

SP 92, by Senator D. Kerr: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Phyllis Morgan, Hutchinson, Kansas and thirty-three others from the surrounding area.

SP 93, by Senator Montgomery: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Mr. and Mrs. Iver Swensen, Alta Vista, Kansas and twenty-three others from the surrounding area.

SP 94, by Senator Montgomery: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Gladys L. Winter, Onaga, Kansas and fifteen others from the surrounding area.

SP 95, by Senator Walker: A Petition supporting legislation for improving the state's highways, including US 69 and US 54, signed by Bill Pollock, Fort Scott, Kansas and forty others from the surrounding area.

SP 96, by Senator Lee: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by David Walters, Belleville, Kansas and twelve others from the surrounding area.

SP 97, by Senator Oleen: A Petition opposing SB 66, signed by Sandra Rush, Arkansas City, Kansas and eighty-eight others from the surrounding area.

SP 98, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Mrs. Roy Driver, Quenemo, Kansas and twenty-four from the surrounding area.

SP 99, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Willa Henderson, Ottawa, Kansas and eight others from the surrounding area.

SP 100, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Esther Lambertson, Ottawa, Kansas and thirty-two others from the surrounding area.

SP 101, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Phyllis E. Tudor, Overbrook, Kansas and twenty-five from the surrounding area.

SP 102, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Edna Mae Anderson, Williamsburg, Kansas and twenty-four others from the surrounding area.

SP 103, by Senator Moran: A Petition supporting .05 and limited pari-mutuel gambling and opposing Sunday carry-out 3.2 beer sales, strong beer and wine sales in grocery stores, price and brand advertising, and all measures that promote sales of our most abused drug, signed by Gordon Parr, Hodgeman, Kansas and eighteen others from the surrounding area.

SP 104, by Senator Moran: A Petition supporting .05 and limited pari-mutuel gambling, opposing Sunday carry-out 3.2 beer sales, strong beer and wine sales in grocery stores, price and brand advertising, and all measures that promote sales of our most abused drug, signed by Everett Spreier, Rozel, Kansas and fifteen others from the surrounding area.

SP 105, by Senator Lee: A Petition favoring .05 and limited parimutuel gambling and opposing Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, to all measures that promote sales of our most abused drug, signed by Sally Kuder, Stockton, Kansas and twenty three others from the surrounding area.

SP 106, by Senator Lee: A Petition favoring .05 and limited parimutuel gambling and opposing Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, to all measures that promote sales of our most abused drug, signed by Wava Hickert, Norton, Kansas and nine others from the surrounding area.

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 17, 1989—10:30 a.m.

PRESENTATION OF PETITIONS

The following petitions were presented, read and filed:

SP 33, by Senator Harder: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Mrs. Edith Orndorff, Newton, Kansas, and thirty-four others from the surrounding area.

SP 34, by Senator Salisbury: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Mr. and Mrs. Cecil V. Dain II, Topeka, Kansas, and thirty others from the surrounding area.

SP 35, by Senator Morris: A Petition urging a "Yes" vote on .05 and to limited parimutuel gambling and request a "No" vote on Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, signed by Ralph McCune, Wichita, Kansas and thirty-two others from the surrounding area.

SP 36, by Senator Salisbury: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Waldo and Esther Mitchel and Marjorie Curry, Topeka, Kansas.

SP 37, by Senator Walker: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by A. Dean Hayes, Iola, Kansas and sixteen others from the surrounding area.

SP 38, by Senator Winter: A Petition expressing support of a constitutional amendment that would limit parimutual gambling to horse and dog tracks that are totally owned, built, remodeled, operated, and developed by bona fide nonprofit organizations, signed by J. Turrentine, Lawrence, Kansas and twenty-eight from the surrounding area.

SP 39, by Senator Ehrlich: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Harold Jensen, Lyon, Kansas and twenty-two others from the surrounding area.

SP 40, by Senator Lee: A Petition favoring limited parimutuel gambling and against Sunday carry out 3.2 beer sales and strong beer and wine sales in grocery stores, to price and brand advertising, to all measures that promote sales of our most abused drug, signed by Ruth Wolf, Kensington, Kansas and twenty-two others from the surrounding area.

SP 41, by Senator Lee: A Petition favoring limited parimutuel gambling and opposing Sunday carry out 3.2 beer sales and strong beer and wine sales in grocery stores, to price and brand advertising, to all measures that promote sales of our most abused drug, signed by Helen Wesselowski, Beloit, Kansas and thirty-one others from the surrounding area.

SP 42, by Senator Frahm: A Petition expressing support of the Parental Rights Bill and the Post Viable Child Protection Act, signed by Richard Anderson, Oberlin, Kansas and ninety-eight others from the surrounding area.

SP 43, by Senator F. Kerr: A Petition supporting any legislative measures that would limit parimutuel gambling and restrict the sale of alcoholic beverages, signed by Myrle Normandin, Kingman, Kansas and seventeen others from the surrounding area.

SP 44, by Senator Doyen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by James Hatfield, Clay Center, Kansas and thirty others from the surrounding area.

SP 45, by Senator Doyen: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Mr. and Mrs. John Runnalls, Longford, Kansas and fifteen others from the surrounding area.

SP 46, by Senator Frahm: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Melvin Carman, St. Francis, Kansas and eleven others from the surrounding area.

SP 47, by Senator Frahm: A Petition opposing all measures that promote sales of alcoholic beverages, signed by Violet Parks, Ellis, Kansas and fourteen others from the surrounding area.

SP 48, by Senator Frahm: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Newton Jamison, Quinter, Kansas and twenty-eight others from the surrounding area.

SP 49, by Senator Daniels: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Ethel Wienhoff, Wichita, Kansas and twenty-nine others from the surrounding area.

SP 50, by Senator Walker: A Petition favoring .05 and limiting pari-mutuel gambling, opposing Sunday carry out 3.2 beer sales, strong beer and wine sales in grocery stores, price brand advertising, and opposing all measures that promote sales of our most abused drug, signed by Betty M. Bradbury, Redfield, Kansas and fifteen others from the surrounding area.

SP 51, by Senator Parrish: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Marvin B. Flohrschutz, Topeka, Kansas and twelve others from the surrounding area.

SP 52, by Senator Karr: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Homer Hett, Marion, Kansas and nineteen others from the surrounding area.

SP 53, by Senator Salisbury: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Frances Wood, Topeka, Kansas and thirty-six others from the surrounding area.

SP 54, by Senator Salisbury: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Katharine Haag, Topeka, Kansas and forty-six others from the surrounding area.

SP 55, by Senator Doyen: A Petition expressing concern about the malpractice insurance premiums paid by doctors, signed by Mildred A. Dalrymple, Salina, Kansas and nine others from the surrounding area.

SP 56, by Senator Doyen: A Petition supporting tighter Kansas corporate farm laws, signed by Carm Thibault, Concordia, Kansas and ten others from the surrounding area.

SP 57, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday be signed by Dee Vallmar, Ottawa, Kansas and eleven others from the surroundi

SP 58, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Roberta Hughes, Ottawa, Kansas and four others from the surrounding area.

SP 59, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Sondra Riggs, Ottawa, Kansas and twenty-seven others from the surrounding area.

SP 60, by Senator Allen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutual gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Carroll B. Wells, Ottawa, Kansas and thirty-six others from the surrounding area.

SP 61, by Senator Strick: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Joseph D. Biscoe, Kansas City, Kansas and twenty-four from the surrounding area.

SP 62, A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores; opposing Sunday beer sales, signed by Mrs. S. E. Kimberlin, Yates Center, Kansas, and twenty-five others from the surrounding area.

SP 63, by Senator Thiessen: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, beer and wine sales in grocery stores, opposing Sunday beer sales, signed by L. C. Simpson, Independence, Kansas and eleven others from the surrounding area.

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 24, 1989—12:00 noon

PRESENTATION OF PETITIONS

The following petitions were presented, read and filed:

SP 64, by Senator Doyen: A Petition urging the legislature to promote education, signed by Joan M. Dawson, Abilene, Kansas and twelve others from the surrounding area.

SP 65, by Senator Lee: A Petition in support of .05 and to limited parimutuel gambling and opposed to Sunday carry out 3.2 beer sales, to strong beer and wine sales in grocery stores, to price and brand advertising, and to all measures that promote sales of alcoholic beverages, signed by Dale and Norraine Ankenman, Almena, Kansas and thirty-one others from the surrounding area.

SP 66, by Senator Walker: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sunday beer and wine sales in grocery stores, and opposing all measures promoting sales of beer, wine, or liquor, signed by Carl F. Gump, Paola, Kansas and six others from the surrounding area.

SP 67, by Senator Walker: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing all measures promoting liquor, wine and beer sales in grocery stores; opposing Sunday beer sales, signed by Daryl D. Stephens, Paola, Kansas and fifteen others from the surrounding area.

SP 68, by Senator McClure: A Petition expressing support for .05 as the state's drunken driving standard and for limited pari-mutuel gambling; opposing Sun and wine sales in grocery stores, and opposing all measures promoting sales

Council Report

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January 24/31, 1986, Volume 255

Alcohol and the Driver

Council on Scientific Affairs

Richard E. Taylor, Jr.
Kansans For Life at Its Best
Box 888
Topeka, Kansas 66601

• Scientific investigations have produced 50 years of accumulated evidence showing a direct relationship between increasing blood alcohol concentration (BAC) in drivers and increasing risk of a motor vehicle crash. There is scientific consensus that alcohol causes deterioration of driving skills beginning at 0.05% BAC or even lower, and progressively serious impairment at higher BACs. Drivers aged 16 to 24 years have the highest representation of all age groups in alcohol-related road crashes; young drivers involved in alcohol-related fatal crashes have lower average BACs than older drivers. Alcohol impairs driving skills by its effects on the central nervous system, acting like a general anesthetic. It renders slower and less efficient both information acquisition and information processing, making divided-attention tasks such as steering and braking more difficult to carry out without error. The influence of alcohol on emotions and attitudes may be a crash risk factor related to driving style in addition to driving skill. Biologic variability among humans produces substantial differences in alcohol influence and alcohol tolerance, making virtually useless any attempts to fix a "safe" drinking level for drivers. The American Medical Association supports a policy recommending (1) public education urging drivers not to drink, (2) adoption by all states of 0.05% BAC as per se evidence of alcohol-impaired driving, (3) 21 years as the legal drinking age in all states, (4) adoption by all states of administrative driver's license suspension in driving-under-the-influence cases, and (5) encouragement for the automobile industry to develop a safety module that thwarts operation of a motor vehicle by an intoxicated person.

(*JAMA* 1986;255:522-527)

THREE resolutions relating to alcohol and driving were referred to the Board of Trustees at the 1984 Annual Meeting of the House of Delegates. The House requested that a comprehensive report on alcohol and its effects be prepared for the 1985 Annual Meeting.

Resolution 18 called for the American Medical Association (AMA) to study methodology intended to deter the use of an automobile by an intoxicated person. Resolution 64 asked the AMA to urge Americans to refrain from driving under the influence of alcohol, asked the AMA to conduct an education campaign on this subject, and asked the AMA to support mandatory suspension of a driver's license for one year for any conviction for a moving violation if any alcohol is found in the driver's blood. Resolution 83 urged an AMA study of recent legislation among the states on driving while impaired, with incorporation of the effective elements into model legislation for distribution to the membership.

In addressing the concerns cited in the resolutions, reviews were undertaken of current literature on (1) the relationship between blood alcohol levels and driver impairment, (2) scientific issues regarding the reliability of methods to test blood alcohol levels in drivers, and (3) alcohol-impaired driving countermeasures.

Epidemiology of Alcohol in Road Crashes

Studies carried out in the United States and other developed nations since the 1930s indicate a strong, direct relationship between increasing blood alcohol concentration (BAC) in a motor vehicle driver and increasing risk of his involvement in a road crash.[1,2]

A driver's relative risk of having a road crash shows a dramatic rise as

See also pp 450 and 529.

From the Council on Scientific Affairs, Division of Personal and Public Health Policy, American Medical Association, Chicago.

Report A of the Council on Scientific Affairs, adopted by the House of Delegates of the American Medical Association of the Annual Meeting, June 1984.

This report is not intended to be construed or to serve as a standard of medical care. Standards of medical care are determined on the basis of all of the facts and circumstances involved in an individual case and are subject to change as scientific knowledge and technology advance and patterns of practice evolve. This report reflects the views of the scientific literature as of June 1984.

Reprint requests to Division of Personal and Public Health Policy, Council on Scientific Affairs, American Medical Association, 535 N Dearborn St, Chicago, IL 60610 (John C. Ballin, PhD).

Attachment X
SJC
3-3-89

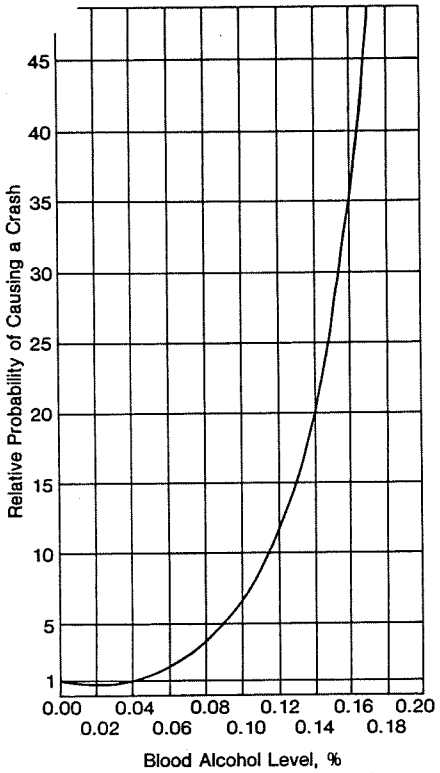

Fig 1.—Relative probability of causing crash rises with rising blood alcohol levels.

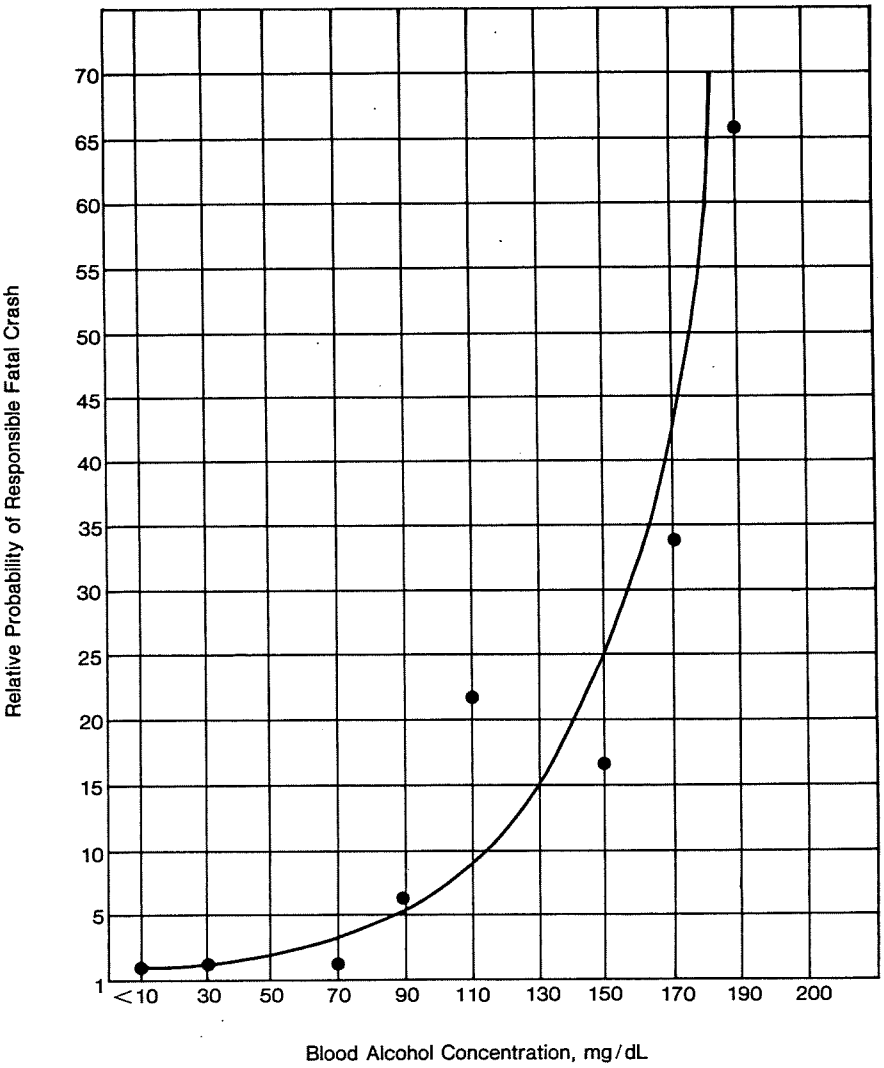

Fig 2.—Relative probability of being responsible for fatal crash rises with rising blood alcohol concentrations.

the driver's BAC increases (Figs 1 and 2).[3,4] Alcohol-impaired drivers are believed to be responsible for 25% to 35% of all crashes causing serious injury and 6% of all crashes. In single-vehicle crashes, 55% to 65% of fatally injured drivers have BACs of 0.10% or greater.[3]

In most states of the United States, a BAC of 0.10% is the legal definition of being under the influence of alcohol for driving-under-the-influence (DUI) prosecution. Since 1960 the AMA has recommended that a blood alcohol level of 0.10% be accepted as prima facie evidence of being under the influence, a position that the Council on Scientific Affairs believes should be revised to a lower BAC in light of scientific evidence. Significant alcohol involvement in injury-causing road crashes begins at a driver BAC of 0.05%. In a recent review, Johnston[5] concluded that 10% of drivers in crashes that cause property damage had BACs of 0.05% or greater and that 16% to 38% of drivers in injury-causing crashes had BACs of 0.05% or greater (Table 1).

In 1982, one in three persons killed in Australian road crashes and one in five injured had a BAC of 0.05% or more.[5] McDermott and Strong[6] found that drivers with alcohol levels of 0.05% or more have a greatly increased risk of being involved in a road crash causing injury or death. In the first three years of compulsory BAC testing of adult road crash victims in Australia's Victoria State, 27.1% of 21,863 male driver casualties and 8.7% of 9,187 female driver casualties had BACs exceeding the Victoria legal limit of 0.05%. Soderstrom et al[7] reported that of 413 road crash victims with measurable BACs at an emergency medical services center in Maryland, 91 had BACs of less than 0.10%.

Alcohol involvement in crashes had been called an epidemic, with little diminution in its proportions despite heightening of public consciousness by the activities of various community groups and anti-drunk-driving campaigns.[8] Ravages of the epidemic have been greater among the young. Fatal Accident Reporting System (FARS) data show, from 1977 to 1981, a steady increase in the overall proportion of measureable blood alcohol levels in drivers aged 16 to 25 years involved in fatal crashes.[9] The authors believed the data to be more representative of patterns of alcohol use in that age group than improvement in BAC testing and reporting.

Drivers aged 16 to 19 years have the highest rate of alcohol-involved fatal crashes per unit of travel.[8] Epidemiologic data from FARS also indicate over a number of years that younger drivers involved in fatal crashes have lower average BACs than older drivers.[10] Previous reviews of biographical variables in alcohol-

Table 1.—Incidence of Blood Alcohol Concentrations of 50 mg/dL, by Crash Severity and Type of Road User

Type of Road User	Crash Severity, % Property Damage	Injury	Fatal
Driver	≃10	16-38	45-55
Passenger*	. . .	25	25-35
Motorcyclist	. . .	22-25	35
Pedestrian*	. . .	19-25	30

*Percentage shown is of those older than 14 years.

related crashes furnished the same finding.

The role of alcohol in crashes of teenage drivers also is indicated in FARS data for 1981 showing that twice as many with positive BACs were involved in single-vehicle crashes as opposed to multiple-vehicle fatal crashes. A driver in a single-vehicle accident is presumed responsible for his own crash. In the same data, five times more male than female teenage drivers were involved in single-vehicle fatal accidents, bearing out by trend if not by precise ratio another consistent biographical finding.[9]

Analysis of 1983 FARS data showed that 33% (17,764) of all drivers in fatal road crashes that year were 16 to 24 years old. Of that number, 38% (6,833) were alcohol involved, compared with 26% in all other age groups. Fatalities in road crashes involving drinking drivers aged 16 to 24 years numbered 7,784 in 1983, of whom 51% (3,992) were the drivers themselves.[11]

A model developed by Simpson[12] (Fig 3) shows the relative risk by age group of having a fatal crash if drivers were impaired by BACs of 0.08% or greater. With the risk of a sober driver having a fatal crash set at 1, the risk for impaired 16- to 17-year-olds is 165.

Young drivers are overrepresented in crashes and also in alcohol-involved crashes when BACs are low to moderate. Overrepresentation may include exposure (miles driven) as a component. Overrepresentation at low BACs may be a function of younger drinkers having less alcohol tolerance than experienced drinkers and younger drivers having less experience than older drivers.[10]

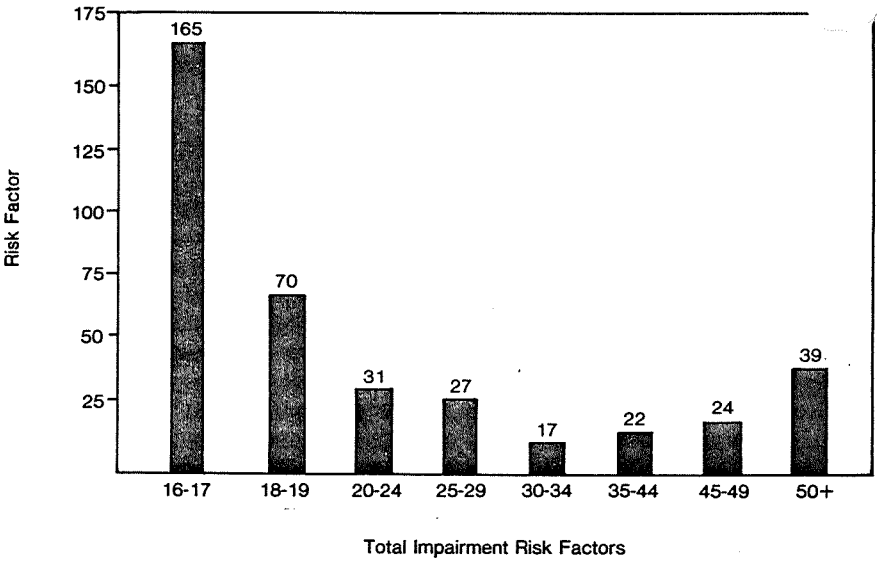

Fig 3.—Age group and risk of fatal collision if impaired.

The Effects of Alcohol

One effect of alcohol in road crashes is its contribution to enhancement of injury in alcohol-impaired victims. Prevention or limitation of trauma is less likely in alcohol-impaired drivers because they are less likely to use seat belts.[13,14] Contrary to the popular belief in being "too drunk to get hurt," more alcohol-impaired crash victims suffer serious injury than sober victims.[15] Alcohol complicates the physician's task of treating trauma: neurologic injury may be masked by drunkenness, and acute and/or chronic intoxication may be linked to a considerable range of metabolic disturbances, as well as to altered responses to anesthesia and alterations in host defenses against infection.[7] Experimentally controlled injuries to laboratory animals result in lower survival rates for animals first given alcohol and more extensive intracranial hemorrhage in alcohol-impaired animals after experimental penetration of brain tissue.[16,17]

The influence of alcohol related to driving behavior and driving skills is mediated through its effects on the central nervous system, similar to those of general anesthetic. Alcohol in small doses may cause performance of driving-related skills to fall off; in moderate to high amounts, alcohol diminishes performance across the board with general impairment of nervous function. Effects may vary with psychological profiles, tolerance to alcohol, and experience with the drug.

Dose/weight charts may not be appropriate guides to drinking behavior.[18] Biologic variability of response to alcohol has been demonstrated under controlled experimental conditions with both male and female subjects: in single-dose drinking tests the elapsed time from end of drinking to peak BAC varied from 14 to 138 minutes in one group, and in a follow-up study the same investigator found a 14-fold variation between absorption times in different subjects.[19,20] Women achieve higher peak BACs than men when given identical weight-adjusted doses.

A review of seven studies spanning a 50-year period (Table 2) indicates that at BACs of up to 0.05%, 0% to 10% of persons were considered to be "drunk"; at levels of 0.05% to 0.10%, 14% to 68% of persons were considered to be "drunk"; and at levels of 0.10% to 0.15%, 83% to 97% were considered to be drunk.[21]

The deleterious effect of alcohol at BAC levels of 0.05% to 0.06% is seen in persons performing curve-negotiating "driving" tasks under laboratory conditions. Verhaegen et al[22] concluded that at BACs between 0.05% and 0.06%, performance in information processing and curve-negotiation skill deteriorated in test subjects. Burns and Moskowitz[23] observed a 10% to 15% degree of impairment at BACs of 0.05% to 0.08% when subjects had to perform a divided-attention task of tracking and reaction.

Table 2.—Relation Between Blood Alcohol Level and Drunkenness

% of Persons Found to Be Drunk										
0.00-0.05*	0.051-0.10	0.101-0.15	0.151-0.20	0.201-0.25	0.251-0.30	0.301-0.35	0.351-0.40	0.401	Total Persons Examined	Investigators†
0	19	50	83	93	98	100	100	. . .	1,984	Widmark 221
2	38	93	97	99	100	100	. . .	. . .	950	Schwarz 195
10	18	47	83	90	95	96	93	100	1,000	Jetter 133
10	68	81	92	97	100	. . .	. . .	. . .	1,712	Andersen 9
0	46	50	92	100	100	100	100	100	140	Harger 111
0	14	69	90	94	94	100	100	100	100	Prag 186
7	25	49	85	93	97	98	100	99	750	Hine 123
4	32	62	89	95	98	99	99	100	6,594	. . .

*Percent weight by volume (0.05% w/v=50 mg/dL; 0.15% w/v=150 mg/dL) of blood alcohol.
†Numbers under names of investigators are reference citations in reference 35, source of Table 2.

Attwood et al[24] tested drivers on closed-course conditions and using a multivariate analysis technique found that drivers with BACs of 0.06% to 0.08% exhibited more variability than alcohol-free drivers in lane position, brake use, and steering controls. Impairment of judgment by alcohol was demonstrated at BACs as low as 0.04% when skilled bus drivers misjudged their ability to drive a vehicle through a space as much as 12 in narrower than the bus.[25]

Johnston[5] states that many tests of alcohol use and skills relevant to driving show that both information acquisition and information processing are rendered slower and less efficient, and the ability to carry out a divided-attention task that requires intellectual time sharing is impaired. He hypothesizes that when impaired drivers enter curves, they devote so much attention to the steering task that other perception of cues related to road curvature suffers, and they fail to reduce speed adequately.

Chemical Tests for BAC

Determination of BAC is made directly by chemical testing of blood drawn from the subject or indirectly by testing of expired breath or urine. More and more, breath-alcohol analysis is performed for the purpose of determining the concentration of alcohol in breath, rather than for attempted conversion to blood-alcohol concentration. Other fluids and tissues may be tested but usually are not in the living subject; recently, there has been a revival of interest in saliva-alcohol testing.

Laboratory methods for analysis of blood samples include (1) chemical reduction of acid dichromate, (2) enzymatic oxidation by alcohol dehydrogenase with colorimetric determination of NADH (the reduced form of nicotinamide - adenine - dinucleotide) conversion, and (3) gas-liquid chromatography. Choice of the method used by a laboratory may be influenced by the size and sophistication of the facility and the reliability of the method for confirmation of roadside breath analyses. All three methods have strengths and weaknesses, but gas chromatography is the most accurate and best suited for handling large numbers of samples. It also has the advantage of sensitivity to other aliphatic alcohols or volatile toxins that a suspect may have been ingesting with, or without, ethanol.[26]

Breath analysis is by far the most common method of measuring BAC. The concentration of ethanol in one volume of blood is stated in most textbooks and highway safety regulations to be equivalent to that in 2,100 volumes of alveolar air.[27]

Dubowski[28] challenges the 2,100:1 conversion factor on the basis of sophisticated chemical analyses of blood and breath alcohol. He and O'Neill place the mean alcohol partition factor between blood and breath, in the postabsorptive phase in healthy adult males, at approximately 2,300:1, with a range of 1,797:1 to 2,763:1 for 95% of a population of 393 healthy adult men and a range of 1,555:1 to 3,005:1 for 99.7%. Quantitative breath-alcohol analyzers are all currently factory calibrated to a conversion factor of 2,100:1 to meet official guidelines of the National Highway Traffic Safety Administration. Dubowski questions whether the conversion of breath alcohol concentration to BAC should be retained for forensic purposes and recommends that breath alcohol concentration alone be used for statutory definition of DUI.

That the 2,100:1 ratio is too low has been raised as a possibility to explain why breath analysis values from one well-regarded instrument are on the average 10% to 15% lower than alcohol concentration in blood samples taken at the same time.[29]

In a seven-month trial in London of three types of breath-testing instruments used in the United States, the breath-testing instruments tended to underread actual blood alcohol levels by 0 to 20 mg/dL in the BAC range of 0.05% to 0.10%.[30]

The US National Highway Traffic Safety Administration publishes model specifications for the performance, calibration, and testing of breath alcohol testing devices to ensure their reliability.

DUI Countermeasures

Strengthening of state DUI laws has been a trend over the past several years.

State legislators are apparently recognizing that a growing national

consensus against driving under the influence must be backed by specific laws needed by police, courts, and licensing agencies to get alcohol-impaired drivers off the road.

The AMA in May 1982 issued to state and medical specialty societies a document titled "Drunk Driving Laws" and urged state medical associations to consider seeking enactment of legislation to strengthen DUI laws in their respective states.

The AMA House of Delagates at its 1983 Annual Meeting (Resolution 95, A-83) reaffirmed AMA policy to encourage each state medical society to seek and support legislation to raise the minimum drinking age to 21 years, and it urged all physicians to educate their patients about the dangers of alcohol abuse in general and operating a motor vehicle while under the influence of alcohol in particular.

Among the more visible and easily identified strengthening of state DUI laws is the replacement of "presumptive" by "per se" laws. The latter laws make it illegal in and of itself to drive with a BAC over certain specified limits. In states with "illegal per se" laws, proof of driving under the influence of alcohol is automatic when a properly administered test of the specified type shows the driver's BAC to be over a specified limit. Most states with illegal per se laws set the BAC limit at 0.10%, but the range among all such state laws is from 0.08% to 0.15%.

A variation on the illegal per se law is a two-step law adopted in some states: (1) illegal per se set at a specified BAC, and (2) presumption of driving under the influence set at a lower BAC, requiring supporting evidence other than breath or blood test for prosecution.

The Highway Users Federation recommends an illegal per se law as one provision in any driving legislative package. Provisions include (1) administrative driver's license suspension, whereby the license of any driver arrested for driving under the influence is suspended for a specified period, with harsh penalties imposed for driving while the license is suspended (the measure is aimed at the repeat offender); and (2) recording of all alcohol-related arrests, a provision meant to identify repeat offenders and particularly those whose alcohol-related arrests are frequently plea bargained to a lesser charge not related to alcohol.

In reviewing the recent records of control measures, Waller[31] identified two as being associated with positive results: (1) An increase in the age at which one can be issued a driver's license or can drink legally seems to have a positive effect in reducing the number of alcohol-related crashes by 16- and 17-year-olds. (2) License suspension or revocation is the most cost-effective countermeasure yet identified for reducing driving by drunk driving offenders. Arrest, trial, and imprisonment are far more expensive in public servant time and public funds. Revocation of a license for driving under the influence may be mandatory on conviction or may occur administratively upon evidence that the person committed the offense. Waller noted that several investigators have reported that one third to two thirds of persons with revoked licenses continued to drive while the revocation or suspension was in effect but were driving less often and more carefully; multiple DUI offenders who were suspended had better subsequent records than comparable convictees whose licenses were not suspended.

The impact of per se legislation upon deterrence of alcohol-impaired driving was unclear in four reviews of the data, according to Waller. A difficulty often encountered was the inability of the reviewer to separate the effect of per se laws from that of other countermeasures instituted at about the same time in the same states.[31]

Comparison of mandatory licensing sanctions with education and rehabilitation programs for DUI offenders in four states demonstrated clear superiority of the licensing sanctions in reducing DUI recidivism and subsequent crash involvement.[32]

Research and Human-Related Risk Factors

Multidisciplinary investigations of driving and drinking are rare to nonexistent. Multiple foci of research interest—eg, highway and auto safety, pharmacology, alcohol and substance abuse, trauma treatment, legislation, and regulation—have tended to operate without strong linkages.

On three occasions, in 1972, 1978, and 1983, large assemblies of North American investigators ranked human-related risk factors at or near the top of DUI research needs. In each instance, the group asked for multivariate studies that incorporate human-related variables of an attitudinal-personality nature and a long-term research strategy coordinated through some central organization.[33]

Youthful driving and drinking is an area where research on multicausality seemed urgently warranted to investigators, in light of the peculiarly high risk of death and injury from alcohol-related crashes in this group.[34] Some suggestive research indicates that drinking and driving populations contain drinking/driving/crash-prone subpopulations in whom the influence of alcohol on emotions and attitudes may be an important causative factor.[35] The influence of alcohol on an emotionally charged driving style may be as important as its influence on driving skill.[30]

Social and cultural factors that influence the magnitude, characteristics, and persistence of the drinking and driving problem are not yet defined. Whether sustained shifts in social norms related to drinking and driving can be brought about—as they were in relation to littering, smoking, and diet/fitness/heart disease—is a question yet to be answered.[36]

Conclusions

1. Alcohol causes deterioration of driving skills beginning at 0.05% BAC (50 mg of ethanol per deciliter of blood) or even lower. Deterioration progresses rapidly with rising BAC to serious impairment of driving skills at BACs of 0.10% and above, according to scientific consensus.

2. Drivers with BACs of 0.05% to 0.10% are significantly represented in road crash statistics.

3. Drivers aged 16 to 21 years have the highest rate of alcohol-involved fatal crashes per mile, with lower average BACs than older drivers.

The Council on Scientific Affairs recommends that the AMA (1) direct public information and education against *any* drinking by drivers and encourage other organizations to do the same; (2) adopt a position sup-

ing a 0.05% BAC as per se illegal for driving and urge incorporation of that position into all state DUI laws; (3) reaffirm the position supporting 21 years as the legal drinking age, strong penalties for providing alcohol to persons younger than 21 years, and stronger penalties for providing alcohol to drivers younger than 21 years; (4) urge adoption by all states of an administrative suspension or revocation of driver licenses after DUI conviction and mandatory revocation after a specifed number of repeat offenses; (5) encourage automobile industry efforts to develop a safety module that thwarts operation of a car by an intoxicated person.

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8-1005. Evidence; test results admissible in prosecutions; weight to be given evidence. Except as provided by K.S.A. 1987 Supp. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) If the alcohol concentration is less than .10, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.

(b) If the alcohol concentration is .10 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.

(c) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

History: L. 1955, ch. 279, § 1; L. 1967, ch. 60, § 2; L. 1970, ch. 51, § 3; L. 1973, ch. 42, § 1; L. 1976, ch. 49, § 1; L. 1982, ch. 144, § 4; L. 1985, ch. 48, § 7; L. 1986, ch. 40, § 4; L. 1986, ch. 41, § 1; L. 1988, ch. 47, § 15; July 1.

Attachment XI
10 c
3-3-89

Kansas Coalition for Drug-Free Driving

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

Ruth N. Meserve
KANSAS COALITION FOR
DRUG FREE DRIVING

PRAIRIE VILLAGE, KS
913-649-1177

REGISTERED
LOBBYIST

March 3, 1989

TO: Judiciary Committee
RE: Senate Bill # 296

Chairman and members of the committee;

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

We are in support of this Bill because the testimony by the law enforcement officer should be sufficent enough to submit as a valid test during testimony of a result of a breath test.

The equipment used for a breath test of content of alcohol in a person is certified by the Department of Health and Enviroment as well as the officer doing the test is trained and certified by the Department of Health and Environment.

It is very flustrating to sit in the courts and see time after time the judge not letting the breath test strip and results of the test be submitted in a court case because of technicalities of a question of the equipment and solution or question of the certification of the law enforcement officer that administered the test.

This has happened so many times and the DUI Conviction has been dismissed.

We ask for your support on this bill.

Thank you

Ruth Meserve, Registered Lobbyist

Attachment XII
SJC
3-3-89

Santos

Overland Park

March 02, 1989

Honorable Wint Winter, Jr.
Chairman of Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Re: Senate Bill No. 296

Dear Mr. Chairman:

Since the introduction in 1982 of mandatory minimum jail sentencing for DUI offenders, defense attorneys have focused their defense on the admissibility of the breath test results. With the introduction of the per se .10 charge in 1985, these efforts have steadily increased to the extent that many DUI/.10 charges are lost due to specious attacks on the breath test results. While defendants certainly deserve zealous representation, the prosecutor also deserves a fair and reasonable application of the rule of evidence to their case.

At the present time, little case law exists as to the foundation evidence necessary to admit the results of a DUI breath test. Because there are no definitive foundation standards, courts require different foundation requirements depending on the creativity of the defense attorney or the knowledge or lack of knowledge of the judge hearing the case. Valid breath test results have been excluded due to a lack of foundation for reasons as varied as not having a certificate of conformance from the National Bureau of Standards to failing to have the police officer testify he asked the defendant if they only had one lung. In many cases, the prosecutor will lay a comprehensive evidentiary foundation for the admission of the test result only to have the results excluded on a general foundation objection without stating the specific basis for the objection.

Clearly, defense attorneys have the right and duty to attack the results of a breath test. These attacks are to the probative value of the test results, however, not its admissibility. While the case law is limited, the language of Senate Bill No. 296 comports with the foundation standards set forth in the cases of Shawnee v. Gruss, 2 Kan. App.2d 131 (1978) and State v. McNaught, 238 Kan. 567 (1986). (Copies attached).

Attachment XIII
Senate Judiciary Comm
3-3-89

The Kansas Supreme Court, as well as the United States Supreme Court, has freely acknowledged the legislature's power to create evidentiary presumptions when the need arises. In the U.S. Supreme Court case of Reitler v. Harris, 223 U.S. 437, the Court upheld a Kansas statutory presumption and indicated such rebuttable presumptions are constitutionally valid. The Kansas Supreme Court confirmed this principle in In Re Estate of Ward, 176 Kan. 614 (1954), where the Court stated "It is well settled that the legislation has power over the rules of evidence and it has power to prescribe new and alter existing rules, or to prescribe methods of proof. The legislature may declare one fact to be presumptive or prima facie evidence of another."

In the exercise of its right to prescribe evidentiary rules, legislatures must insure (1) there must be a natural and rational relation between the fact proved and that presumed, (2) the fact inferred from the fact actually proved cannot be purely arbitrary or wholly unreasonable and (3) the accused in all events must be given the right to have the trier of fact determine guilt or innocence after giving such weight to the presumption as they deem proper. 17 ALR 3d 482. Senate Bill No. 296 meets these requirements. Similar legislative language is presently found in K.S.A. 8-1002(i)(j) which sets a legislative foundation for the admissibility of test results in DUI driver license suspension cases. (Copy attached). Finally, the State of Alaska has enacted legislative standards similar to Senate Bill No. 296. (Copy attached).

The City of Overland Park supports and urges passage of Senate Bill No. 296.

Sincerely,

Ed Eilert
Mayor

EE/MRS:dkc

(576 P.2d 239)

No. 49,280

CITY OF SHAWNEE, KANSAS, *Appellee,* v. JOHN J. GRUSS, *Appellant.*

Petition for review denied April 28, 1978.

SYLLABUS BY THE COURT

1. AUTOMOBILES—*Driving under the Influence of Intoxicating Liquor—Independent Chemical Test.* Under K.S.A. 8-1004, a breathalyzer test operator is not required to inform the person being tested of his right to have an independent test taken by some other authorized person or agency.
2. SAME—*Driving under the Influence of Intoxicating Liquor—Breathalyzer Test—Foundation to Admit Test Results.* Testimony which establishes that a breathalyzer test machine has been approved and certified by the State as of the date of the test in question is sufficient foundation testimony to establish validity of test results from the machine.
3. SAME—*Driving under the Influence of Intoxicating Liquor—Breathalyzer Test—Foundation to Admit Operator's Testimony.* Testimony which establishes that the operator of a breathalyzer machine has been certified by the State of Kansas and is presently certified as an operator, and that the test he conducted is in accordance with the operational procedure of said breathalyzer machine is sufficient foundation for the operator's testimony relative to the results of the test.

Appeal from Johnson district court, division No. 3; BUFORD L. SHANKEL, judge. Opinion filed March 24, 1978. Affirmed.

David R. Gilman and *J. Steven Schweiker,* of Overland Park, for the appellant.

James T. Wiglesworth, assistant city attorney, for the appellee.

Before SWINEHART, P.J., REES and SPENCER, JJ.

SWINEHART, J.: The appellant, John J. Gruss, was convicted in the Municipal Court of Shawnee, Kansas, of driving under the influence of intoxicating liquor. He appealed to the district court, where his case was tried *de novo* to a six-member jury. He appeals the jury's verdict.

At the trial, breathalyzer test results showing that the appellant's blood alcohol content was .11 percent were admitted over his objections. K.S.A. 8-1005 states that a blood alcohol content of .10 percent by weight establishes a presumption of intoxication. The only question on appeal is whether the trial court erred in admitting the breathalyzer test results.

The appellant argues that the admission of the breathalyzer results constituted prejudicial error. The testimony presented at trial showed some evidence of intoxication other than the breathalyzer results (*i.e.*, erratic driving, belligerent behavior, and name-calling). Under the facts and circumstances of the case, we concur with the appellant that the admission of the test results

would be prejudicial if it was erroneous; however, for reasons discussed below, we find that the trial court did not err in admitting the breathalyzer results.

The appellant contends that the breathalyzer evidence was incorrectly admitted because the City of Shawnee failed to lay a proper foundation. He attacks the sufficiency of the foundation testimony on the following grounds:

(1) The breathalyzer operator failed to examine the appellant's mouth for foreign substances prior to the test;

(2) the operator failed to observe the appellant for a period of twenty minutes immediately prior to the test;

(3) the operator was not qualified to administer the test;

(4) the machine was not properly certified;

(5) the test ampoule was not properly certified as containing the correct chemical compound; and

(6) the appellant was denied a reasonable opportunity to have an additional chemical test by a physician of his own choosing.

K.S.A. 1977 Supp. 65-1,107 authorizes the secretary of health and environment to promulgate rules and regulations affecting breath testing, including testing procedures and certification, and periodic testing of operators and machines. Those guidelines are found at K.A.R. 1977 Supp. 28-32-1, *et seq.* Briefly summarized, the regulations require initial inspection of the testing machine for accuracy with yearly testing and certification thereafter, and initial training of operators with periodic proficiency testing and yearly certification. The regulations also require that breath testing machines be operated strictly in accordance with the manufacturer's operational manual. Summers, a chemist with the Kansas Department of Health and Environment, and Officer Morris, who administered the breath test, both testified concerning the requirements contained in the manufacturer's checklist for the Smith Wesson 900A, which was used to test the appellant's breath. The checklist requires that the test subject be observed for a twenty-minute period during which time he must not belch, regurgitate or ingest any substance. Belching, regurgitating or ingesting within twenty minutes of the breath test could substantially affect the test results, according to their testimony.

The facts important to the determination of this appeal occurred during the time span from the arrival of the appellant at the Shawnee Police Department through his taking of the test.

The appellant was divested of his personal property upon arrival at the police station. After preliminary questioning for purposes of police records, he was placed in the drunk tank where he remained, with the exception of two or three times when he was permitted to make phone calls in the hall to his wife and to his attorney. There was no water fountain in the drunk tank. The telephone was out of the sight of the officers who gave the test; however, they testified that the area did not contain a water fountain. The undisputed testimony was that the officers did not visually inspect the appellant's mouth for foreign substance, but they did testify that, during the twenty-minute observation period, he did not belch, regurgitate or ingest any substance.

Considering first the appellant's contention that the test results were inadmissible because he was not observed for a twenty-minute period prior to testing, we find that there was a conflict in the testimony regarding this fact. The appellant testified that he was observed for less than ten minutes. The officer testified that he observed the appellant for twenty minutes before testing him. Although we agree with the appellant that failure to observe the test subject for twenty minutes before administering the test would invalidate the results, the question of whether the appellant actually was observed for twenty minutes is a question of fact to be resolved by the trial court. The officer's testimony that he did watch the defendant for twenty minutes constitutes substantial, competent evidence supporting that finding of fact and it, therefore, will not be disturbed on review.

Considering next the appellant's contention that the officer did not inspect his mouth for foreign substance, we find the argument to be without merit. The officer's testimony that the appellant did not belch, regurgitate or ingest any substance during the twenty-minute observation period creates a *prima facie* showing that he had no foreign substance in his mouth at the time of testing. The appellant presented no evidence to rebut that showing.

The appellant also challenges the qualifications of the operator and the breathalyzer machine. It is sufficient to say that the Kansas Department of Health and Environment has established a program for certifying breath testing machines and operators. Both the operator and apparatus in question were currently certified at the time the appellant was tested. The current certification, in addition to the officer's testimony that he had passed all of

the periodic proficiency tests required (which measure both his proficiency and the machine's accuracy), shows the appellant's argument to be without merit.

Appellant argues that the test ampoule was not shown to contain the proper chemical compound. The ampoule used was shown to be part of a lot spot-checked and certified to contain the proper chemicals by the Wisconsin Alumni Research Foundation. It is impossible to require more, for once an individual ampoule is opened for testing it cannot be resealed. The ampoule was shown to have been properly certified and, therefore, the appellant's allegation of error is without merit.

The appellant's final argument is that the test results should have been excluded because he was not notified of his right to have an independent blood alcohol test conducted by a physician of his own choice under K.S.A. 8-1004. Significantly, the statute does not require police officers to inform an individual of this right. The reasoning of the Kansas Supreme Court in *Hazlett v. Motor Vehicle Department*, 195 Kan. 439, 407 P.2d 551, is persuasive. There, the court declined to add by judicial gloss the requirement that police officers inform a person who refuses to submit to chemical testing for intoxication that his refusal will result in an automatic suspension of his driver's license under K.S.A. 8-1001. Here, the appellant had the benefit of an attorney's advice concerning the test. Never having asked to take an independent test, he will not now be heard to allege error.

Judgment affirmed.

No. 58,052

STATE OF KANSAS, *Appellee*, v. THOMAS R. MCNAUGHT, *Appellant*.

(713 P.2d 457)

SYLLABUS BY THE COURT

1. CRIMINAL LAW—*Vehicular Homicide—Driving under Influence—Media Coverage—Permitting Spectators to Wear MADD and SADD Buttons in Courtroom—Admissibility of Evidence—Testimony of Witnesses Not Endorsed on Information—Jury Instructions—Motions for Acquittal, New Trial and Dismissal Denied—Error in Sentencing.* The record is examined in a criminal action in which the defendant was convicted of vehicular homicide (K.S.A. 21-3405) and driving under the influence of alcohol (K.S.A. 1984 Supp. 8-1567), and it is held that the district court did not err (1) in permitting photographic, audio, and television coverage of the preliminary hearing and the trial; (2) in overruling defendant's motion to prohibit spectators at the trial from wearing MADD and SADD buttons; (3) in its rulings pertaining to the admission of evidence; (4) in permitting two witnesses to testify whose names were not endorsed on the information; (5) in its instructions to the jury; and (6) in overruling defendant's motions for dismissal, judgment of acquittal, and for a new trial. The trial court erred in the sentence imposed.

2. SAME—*Media Coverage of Courtroom Proceedings—Balancing of Constitutional Guarantees and Due Process Rights.* The propriety of granting or denying permission to the news media to broadcast, record, or photograph court proceedings involves weighing the constitutional guaranties of freedom of the press and the defendant's right to a public trial on the one hand and, on the other hand, the due process rights of the defendant and the power of the courts to control their proceedings in order to permit the fair and impartial administration of justice.

3. SAME—*Media Coverage of Courtroom Proceedings—Due Process Rights of Accused Not Denied by Television Trial Coverage.* The due process rights of an accused are not inherently denied by television trial coverage, and no per se constitutional rule prohibits permitting broadcast or photographic coverage of criminal proceedings.

4. SAME—*Pretrial Publicity—Change of Venue—Burden of Proof on Defendant to Show Prejudice in Community.* The usual remedy for adverse pretrial publicity is a change of venue and this should be so whether the adverse publicity is in the form of a printed newspaper or television exposure. The burden of proof is on the defendant to show prejudice in the community from media publicity, not by speculation, but as a demonstrable reality.

5. SAME—*Media Coverage of Courtroom Proceedings—Prejudicial Effect—Burden of Proof.* Where a trial court permits photographic, audio, and television reproduction of the trial proceedings, the defendant has the burden to prove prejudice by showing that media coverage prevented the defendant from presenting his defense or in some way affected the ability of the jury to judge defendant fairly.

6. TRIAL—*Courtroom Decorum—Trial Court Discretion.* In the administration

and sat directly in front of the jury throughout trial. The defendant contended that this demonstration by the MADD members deprived him of a fair and impartial trial. The trial court conducted an extensive voir dire on the subject of MADD and dismissed two potential jurors as a result of the voir dire but refused to take any other action against the MADD presence.

The appellate court noted the right to public access to a criminal trial should be coordinated with the constitutional right of a defendant to a fair trial. The appellate court concluded that, under the factual circumstances shown in that case, the spectators were clearly distinguishable from other visitors in the courtroom and, led by the sheriff, they constituted a formidable, albeit passive, influence on the jury. The appellate court stated that it could not say that the presence of the spectators wearing MADD buttons, combined with the presence and activities of the uniformed sheriff leading them, did not do irreparable damage to the defendant's right to a fair trial by an impartial jury.

The record in the case now before us does not show the factual circumstances present on this issue. The record is absolutely silent regarding the number of MADD and SADD members attending the trial or how many of them wore buttons. During oral arguments in this case, defense counsel contended that there were always 20 to 30 members of MADD in the courtroom. The prosecutor stated that there were only three to four such persons present wearing buttons. Defense counsel contended that one juror voiced some concern about the incident to Judge Vickers after trial. The prosecution denied that allegation. The record does not contain an affidavit or the testimony of any person that the jurors showed any concern about the matter.

We have carefully considered this issue and concluded that the defendant has failed to show that he was prejudiced in any way by the wearing of MADD and SADD buttons by spectators in the courtroom. A reading of the record and a consideration of the verdicts of the jury in this case show that the members of the jury carefully considered the evidence and were not prejudiced against the defendant. As noted heretofore in the opinion, the jury acquitted the defendant of involuntary manslaughter, the only felony charge, and also acquitted the defendant of leaving the scene of an injury accident, failure to render aid, and failure to report an injury accident. The jury found the defendant guilty

of vehicular homicide and driving under the influence of alcohol, both misdemeanors. The trial judge was present at all times throughout the trial and had a full opportunity to observe the conduct of the spectators and consider any effect they might have on the jury. We cannot say as a matter of law that the trial court abused its discretion in refusing to require the spectators to remove their buttons or in denying the defendant's motion for a new trial. Under all of the circumstances, we have concluded that the defendant has failed to show that he was prejudiced in any way by the conduct of the spectators, and we hold that he is not entitled to a reversal of his conviction based upon this issue.

The fourth issue raised on appeal is that the trial court erred in refusing to admit evidence offered by the defense that the defendant had taken and passed a polygraph test. The rule in Kansas is that, in the absence of a stipulation between parties, the results of a polygraph examination are not admissible into evidence. See *State v. Mason*, 238 Kan. 129, 708 P.2d 963 (1985), citing many prior Kansas decisions. It has been said that one of the primary reasons for disallowing polygraph evidence is the weight commonly placed upon the evidence by the jury, which results in the jury function being usurped. *State v. Martin*, 237 Kan. 285, 293, 699 P.2d 486 (1985). In the present case there was no stipulation, and the trial court did not err in refusing to admit the results of the polygraph examination.

The fifth point raised on the appeal is that the trial court erred in admitting the results of the intoxilyzer test into evidence. The defendant first contends that the machine was not shown to be sufficiently accurate or reliable to allow the results of the breath test to be considered by the jury. The Kansas Court of Appeals has addressed the foundation necessary to admit the results of such a test, stating that testimony which establishes a breathalyzer test machine has been approved and certified by the State as of the date of the test is sufficient foundation testimony to establish the validity of the test results from the machine. *City of Shawnee v. Gruss*, 2 Kan. App. 2d 131, 576 P.2d 239, *rev. denied* 225 Kan. 843 (1978); *State v. Bristor*, 9 Kan. App. 2d 404, 682 P.2d 122, *rev'd on other grounds*, 236 Kan. 313, 691 P.2d 1 (1984). In this case the intoxilyzer test was given to defendant on July 29, 1984. The State presented testimony from the supervisor of the breath/alcohol program of the Kansas Department of

Health that the particular intoxilyzer machine was tested on July 24, 1984, and again on July 31, 1984, and was functioning properly. Furthermore, he testified that at the time the test was given the particular intoxilyzer met all of the requirements required by law. This evidence was sufficient to show the reliability of the breath test conducted on the defendant and to provide a foundation for its admission into evidence.

The defendant next argues that the intoxilyzer test was not administered at the direction of the arresting officer pursuant to K.S.A. 8-1001, which states that such test shall be administered at the direction of the arresting officer. Simply stated, Trooper Wilson arrested the defendant but he did not administer the intoxilyzer test which was administered later by Sgt. Hudson. Because of an agreement between the Highway Patrol and the Shawnee County sheriff's office covering territorial jurisdiction, the sheriff's department had supervisory jurisdiction over the highway where the accident occurred in this case. It is clear that State Highway Trooper Wilson, after placing the defendant under arrest, turned the defendant over to Sgt. Hudson at the scene of the accident. Hudson read defendant his *Miranda* rights, booked the defendant into jail, conducted the test, and also filed the notice to appear which made him the arresting officer. We have no hesitancy in holding that the statute was satisfied, because the intoxilyzer test was administered by one of the arresting officers.

The defendant next contends that the defendant was not advised of his right to have an independent test of his breath conducted by a person of his own choosing nor was he afforded such opportunity to have such a test conducted at the time of his arrest. Although K.S.A. 8-1004 allows such an independent test, there is no requirement that the arresting officer advise the person arrested that he has a right to an independent test. The defendant also argues that the results of the test should not have been admitted, because the sample of defendant's breath was not retained by the State for testing at a later time by an expert of defendant's choosing. In *State v. Young*, 228 Kan. 355, 363, 614 P.2d 441 (1980), this court held that an arresting officer is not obligated to advise a person of his statutory right to an independent chemical test by a person of his choosing and that the failure of the arresting officer to automatically furnish the defendant

with a sample of his breath is not a denial of due process. See also *Standish v. Department of Revenue*, 235 Kan. 900, 683 P.2d 1276 (1984), where the court discusses the warnings required, in addition to the *Miranda* warnings, which an officer making a DUI arrest should make. For the above reasons, we hold that the trial court did not err in admitting the results of the intoxilyzer test into evidence.

The defendant next contends that the trial court erred in admitting the results of tests conducted by officers to show the visibility of the victim's bicycle reflectors. Defendant argues that these tests were not disclosed pursuant to a discovery order and that the tests were not conducted under conditions similar to those existing at the time of the accident. The State contended that the tests were conducted solely for the purpose of determining whether Kathy Bahr's bicycle reflectors were visible from a distance of 100 to 600 feet as required by K.S.A. 8-1592. Such evidence was not contemplated by the prosecution nor were the tests conducted until after defendant's voir dire examination stressed the lack of visibility of the victim's bicycle. We find no error in the admission of this evidence. The test results were relevant on the issue whether the bicycle reflectors satisfied the requirement of the statute that they be visible from 100 to 600 feet to an oncoming vehicle with low beam lights. The jury was made well aware that the test was conducted on level ground using stationary vehicles while the accident occurred on a hill while both the bicycle and defendant's car were moving. We hold that the trial court did not commit error in admitting the evidence.

The seventh issue on the appeal is whether the trial court erred in allowing the testimony of Steve Hale and Eileen Burnau, whose names were not endorsed on the information. Late endorsement of witnesses is covered by K.S.A. 1984 Supp. 22-3201(6). In *State v. Costa*, 228 Kan. 308, 315, 613 P.2d 1359 (1980), it was held that the endorsement of additional witnesses on an information is a matter of judicial discretion and will not be the basis for reversal absent proof of an abuse of discretion. The test is whether or not the rights of the defendant were unfairly prejudiced by the late endorsement. The purpose of the endorsement requirement is to prevent surprise to the defendant and to give him an opportunity to interview and examine the

issuance of search warrants for blood samples subsection (g), State v. Adee, 241 K. 825, 833, 740 P.2d 611 (1987).

47. Admissibility of blood alcohol test performed with consent but without notices contained in K.S.A. 1985 Supp. 8-1001(f)(1) examined. State v. Doeden, 12 K.A.2d 245, 738 P.2d 876 (1987).

48. Cited; "reasonable opportunity" to have additional alcohol concentration test (8-1004) examined. State v. George, 12 K.A.2d 649, 652, 754 P.2d 460 (1988).

8-1002. Test refusal or failure; suspension of license; notice; hearing; procedure. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. The certification shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both; (B) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs, or both; (B) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .10 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 1988 Supp. 8-1014. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath or blood sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) The notice shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and the effective date of the suspension, which shall be the 45th day after the date of arrest or until a hearing has been held pursuant to this section, whichever date is sooner; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248 and amendments thereto if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended,

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revoked or canceled, shall issue a temporary license effective until the date of suspension stated in the notice. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. The officer shall also provide the person with a copy of the officer's certification as set forth in subsection (c). Within five days after the date of certification of the test refusal or test failure, the officer who effected service shall forward the officer's certification and a copy of the notice of suspension, along with any licenses taken, to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) If the person mails a written request which is postmarked within 10 days after service of the notice, if by personal service, or 13 days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee's request for subpoenas must be made in accordance with the notice provided pursuant to subsection (d) and may extend only to the law enforcement officer or officers certifying refusal. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (l). The person's driving privileges shall be suspended in accordance with the notice of suspension served upon the person and the suspension shall not be stayed nor shall the temporary license be extended as a result of the hearing request.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs, or both; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto; (D) the testing equipment used was reliable; (E) the person who operated the testing equipment was qualified; (F) the testing procedures used were reliable; (G) the test result determined that the person had an alcohol concentration of .10 in such person's blood or breath; and (H) the person was operating a motor vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. Such affidavit shall be admitted to prove such reliability without further foundation requirement. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evi-

dence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) The suspension period imposed pursuant to this section shall begin upon the expiration of the temporary license granted under subsection (e), whether or not a request for hearing is made. If a timely request for hearing is made, the hearing shall be held within 45 days of the date the request for hearing is received by the division. If the division is unable to hold a hearing within 45 days of the date upon which the request for hearing is received, the division, at the end of the 45-day period, shall issue temporary driving privileges to the person to be effective until the date of the hearing, which shall be held at the earliest available opportunity. No temporary driving privileges shall be issued for continuances requested by or on behalf of the licensee. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(l) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to subsection (k) shall be sent by first-class mail and a U.S. post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(m) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

History: L. 1955, ch. 61, § 2; L. 1985, ch. 48, § 4; L. 1985, ch. 50, § 2; L. 1986, ch. 40, § 3; L. 1988, ch. 47, § 14; July 1.

CASE ANNOTATIONS

2. Inadvertent failure to provide blood test results for DUI (8-1567) no justification for suppression of results. State v. Wanttaja, 236 K. 323, 324, 691 P.2d 8 (1984).

3. Prior to 1985 amendment, failure to verify chemical test refusal report on oath (8-1001) per 54-101 et seq. invalidated challenged suspension. Dewey v. Kansas Dept. of Revenue, 11 K.A.2d 72, 713 P.2d 490 (1986).

4. Cited; refusal to submit to blood tests does not permit issuance of search warrants for blood samples (8-1001(f), 8-1001(g)). State v. Adee, 241 K. 825, 829, 833, 740 P.2d 611 (1987).

5. Cited; admissibility of blood alcohol test performed with consent but without notices contained in K.S.A. 1985 Supp. 8-1001(f)(1) examined. State v. Doeden, 12 K.A.2d 245, 251, 738 P.2d 876 (1987).

8-1004. Same; additional test by own physician; effect of denial. Without limiting or affecting the provisions of K.S.A. 8-1001 and amendments thereto, the person tested shall have a reasonable opportunity to have an additional test by a physician of the person's own choosing. In case the officer refuses to permit such additional testing, the testing administered pursuant to K.S.A. 8-1001 and amendments thereto shall not be competent in evidence.

History: L. 1955, ch. 61, § 4; L. 1985, ch. 48, § 6; L. 1985, ch. 50, § 3; July 1.

Law Review and Bar Journal References:

"S.B. 699—A Comment on Kansas' New 'Drunk Driving' Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230 (1982).

CASE ANNOTATIONS

4. Cited; vehicular homicide (21-3405), DUI (8-1567) convictions; intoxylizer test procedures (8-1001), independent test discussed. State v. McNaught, 238 K. 567, 582, 713 P.2d 457 (1986).

5. Individual believing breath test unreliable may have independent blood test administered at their expense. In re Appeal of Ball, 11 K.A.2d 216, 219, 719 P.2d 750 (1986).

6. Cited; admissibility of blood alcohol test performed with consent but without notices contained in K.S.A. 1985 Supp. 8-1001(f)(1) examined. State v. Doeden, 12 K.A.2d 245, 252, 738 P.2d 876 (1987).

7. "Reasonable opportunity" to have additional alcohol concentration test depends upon circumstances of each case. State v. George, 12 K.A.2d 649, 653, 654, 754 P.2d 460 (1988).

8-1005. Evidence; test results admissible in prosecutions; weight to be given evidence. Except as provided by K.S.A. 1987 Supp. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) If the alcohol concentration is less than .10, that fact may be considered with other competent evidence to determine if the defendant was under
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History: L. 195
ch. 60, § 2; L. 197
42, § 1; L. 1976,
144, § 4; L. 1985,
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21. Instruction, while
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233 K. 702, 704, 705,

22. The phrase "you
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708, 710, 664 P.2d 86

23. Statute, being in
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233 K. 972, 974, 980,

24. Cited in holding
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25. Two-hour lapse
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ALASKA STATUTES

Title 28. Motor Vehicles.
Chapter 35. Miscellaneous Provisions.
Article 2. Operating While Intoxicated; Implied Consent.

Sec. 28.35.033. Chemical analysis of breath or blood.

(a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.05 percent or less by weight of alcohol in the person's blood, or 50 milligrams or less of alcohol per 100 milliliters of the person's blood, or 0.05 grams or less of alcohol per 210 liters of the person's breath, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, or in excess of 50 but less than 100 milligrams of alcohol per 100 milliliters of the person's blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(3) [Repealed, s 13 ch 129 SLA 1980.]

(4) If there was 0.10 percent or more by weight of alcohol in the person's blood, or 100 milligrams or more of alcohol per 100 milliliters of the person's blood, or 0.10 grams or more of alcohol per 210 liters of the person's breath, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) For purposes of this chapter, percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 milliliters of blood.

(c) The provisions of (a) of this section may not be construed to limit the introduction of any other competent evidence bearing upon the question of whether the person was or was not under the influence of intoxicating liquor.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath or blood shall have been performed according to methods approved by the Department of Public Safety. The Department of Public Safety is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath or blood was performed according to approved methods by a person trained according to techniques, methods, and standards of training approved by the Department of Public Safety, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.