

Approved April 25, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

9:15 a.m. ~~xxx~~ on February 23, 1990 in room 514-S of the Capitol.

All members were present except: Senator Gaines who was excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Arthur Weiss, Deputy Attorney General
Shirley Fleener, The Little Apple Task Force on Alcohol and Drug Abuse
Gene Johnson, Kansas Association of Alcohol and Drug Program Directors,
Kansas Alcoholism and Drug Addiction Counselors Association, and
Kansas Commission on Alcohol Safety Action Project
Judge Karen Humphreys, 18th Kansas Judicial District
Leslie Hulnick, Kansas Association of Criminal Defense Lawyers
Reverend Richard Taylor, Kansans For Life At Its Best
Roger Carlson, Director of Kansas Health and Environmental Laboratories,
Kansas Department of Health and Environment
James Clark, Kansas County and District Attorneys Association
John Smith, Kansas Department of Revenue

Senator Yost called the meeting to order by opening the hearings for:

- SB 170 - concerning alcoholic beverages; relating to transportation in open containers and consumption while operating a motor vehicle.
- SB 219 - concerning juvenile offenders; relating to dispositional alternatives for alcohol and drug-related offenses.
- SB 631 - concerning certain alcohol and drug-related offenses; relating to the operation or attempted operation of a vehicle by a person under 21 years of age under certain circumstances.
- SB 700 - concerning driving under influence of alcohol or drugs; relating to the conduct of driver's license revocation hearings.
- SB 701 - concerning driving under the influence; relating to a work release program being part of imprisonment.
- SCR 1608 - concerning the assessment and treatment of all juvenile offenders for alcohol and drug abuse problems.

Arthur Weiss, Deputy Attorney General, testified on behalf of Attorney General Robert Stephan in support of SB 219, SB 631, and SCR 1608. (ATTACHMENT I)

Shirley Fleener, The Little Apple Task Force on Alcohol and Drug Abuse, testified in support of SB 219. (ATTACHMENT II)

Gene Johnson, Kansas Association of Alcohol and Drug Program Directors, Kansas Alcoholism and Drug Addiction Counselors Association, and Kansas Commission on Alcohol Safety Action Project, testified in support of SB 170 by stating that it was another step in stressing the responsible use of alcohol when operating motor vehicles. Mr. Johnson expressed their support of SB 219 if the treatment is required to be completed prior to the application approval for restricted licenses. He added that his groups also basically support SB 700.

Mr. Johnson testified in support of the language in SB 701 with the exception of subsection (g) on page 2. He feels Kansas will lose a lot of federal funds if the bill is passed as currently written.

Judge Karen Humphreys, 18th Kansas Judicial District, offered written testimony from Sedgwick County District Attorney Nola Foulston, Sedgwick County Sheriff Michael Hill, and Wichita Municipal Court Judge Harold Flaigle in support of SB 701. (ATTACHMENTS III, IV and V)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 9:15 a.m. ~~p.m.~~ on February 23, 1990.

Judge Humphreys added that she also supports SB 701. She stated that a work release option would be extremely helpful and valuable, when appropriate.

Leslie Hulnick, Kansas Association of Criminal Defense Lawyers, testified in support of SB 701. He related that the individuals considered eligible for work release are those that are in a treatment program and/or those employed and have a family. Mr. Hulnick added his request that the discretion be allowable as a tool; incarceration gets the attention of offenders.

Reverend Richard Taylor, Kansans For Life At Its Best, testified in support of SB 631. He stated that we teach our children that alcohol is a drug, we must also teach our children that drunk driving is a crime and offer a consequence that they will be able to relate to. He added that he and his group support all tough drinking legislation and would support lowering the maximum allowable tolerance from .10 to .08.

Roger Carlson, Director of Kansas Health and Environmental Laboratories, testified in support of SB 631. (ATTACHMENT VI)

James Clark, Kansas County & District Attorneys Association, testified with comments on SB 701. He stated that he feels the language in the current bill is confusing, specifically on page 6, line 10 (i) and throughout the bill when referring to "second and subsequent conviction". He stated his opinion that it was doing away with any enhanced penalties for a third DUI conviction. He suggested that "subsequent" be stricken.

John Smith, Department of Revenue, testified on SB 631. He asked for a technical amendment to the bill, on line 35 of page 3 to replace "court" with "division" as stated in the cited K.S.A.

The Chairman adjourned the meeting.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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TESTIMONY OF
DEPUTY ATTORNEY GENERAL ARTHUR R. WEISS
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
TO THE SENATE JUDICIARY COMMITTEE

RE: S.B. 219, S.B. 631, S.C.R. 1608

FEBRUARY 23, 1990

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert Stephan I wish to take this opportunity to address this committee concerning Senate Bills 631 and 219 and Senate Concurrent Resolution 1608. The Attorney General wishes to express his support for these bills. Senate Bill 631 would extend the crime of driving under the influence of alcohol to persons under the age of 21 whose blood alcohol level is .02 or more. While .10 is the level at which all persons are presumed to be under the influence of alcohol, many states have lowered that level to .05 after recognizing that most persons are at least adversely affected by a blood alcohol level significantly lower than .10. The factors affecting a person's level of intoxication vary according to the person's age, drinking experience, body weight and metabolism. Medical experts agree that any amount

Senate Judiciary Committee
Attachment I
2-23-90 *Page 1 of 3*

of alcohol will have at least some effect on a person's mental and physical functions.

Senate Bill 631 is a bold new step towards recognizing that fact. Since persons under the age of 21 in Kansas are not legally able to purchase alcoholic beverages, their blood systems should be totally free of any alcohol before they get behind the wheel of a motor vehicle. Someone who should not be drinking in the first place, should not be driving a motor vehicle.

Under Senate Bill 219, a child who is convicted of either a traffic offense or adjudged to be a juvenile offender by reason of an act involving any alcoholic beverage or controlled substance or both would be required to surrender his or her driver's license. The Division of Motor Vehicles would then revoke the driving privileges of that child. The child could petition the court to have driving privileges restored no sooner than 90 days after the revocation upon a first offense and no soon than one year after revocation upon a second or subsequent offense. The court would have discretion as to whether or not the child's driving privileges should be restored and could require the child to complete a driver's license examination.

As recognized in Senate Concurrent Resolution 1608, there is a connection between the abuse of drugs and alcohol and the propensity of a juvenile to commit crime. We must remember that driving is a privilege not a right in the State of Kansas. Those who abuse that privilege, particularly through the use

of illegal drugs or the consumption of alcohol, should not be allowed to endanger themselves or others.

Senate Concurrent Resolution 1608 not only recognizes the connection between alcohol and drugs and the propensity to commit crime but also recognizes that in order to help juveniles who have an alcohol or drug problem so that they may be rehabilitated and be productive members of our society, those offenders who are adjudicated for felony type offenses must be assessed for drug and alcohol problems and referred to treatment or education programs if necessary. Those offenders who commit misdemeanor type offenses and those placed on diversion could also be ordered by the court to receive a drug and alcohol assessment.

The Attorney General believes that these three bills take a necessary and positive step forward for Kansas in recognizing and dealing with the serious problems faced by our youth in dealing with drug and alcohol abuse.

Thank you very much for this opportunity to appear on behalf of these bills.

S.B. 219

Judiciary Committee Statement

Support of S.B. 219

February 23, 1990

I am Shirley Fleener from Manhattan, Kansas. For the past 6 years I have worked with a grass roots volunteer organization, The Little Apple Task Force on Alcohol and Drug Abuse, whose concern is the use of alcohol and drugs 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 alcoholically impaired at one-half the legal limit of blood-alcohol ratios.
6. 17% of fatally injured youth have blood-alcohol levels below the legal limit.
7. Alcohol is considered the gateway into recreational, nonmedicinal use of intoxicants for adolescents.

FACTS ABOUT MINORS

1. Minors want and need guidelines and limits. They look to adults for them.
2. Minors need and want a strong, sure reason for saying no to peer pressure to consume.
3. Minors need to learn responsibility for their actions. A quick, sure consequence of their actions teaches this responsibility.
4. Young people, as opposed to most mature adults, tend to have only two alcohol use patterns: to drink until it is gone -- or drink until drunk.
5. Statistics show the longer young people wait before using alcohol and other drugs, the less likelihood there is of alcohol or drug related problems in the future.

REASONS FOR SUPPORT OF THE BILL

1. This bill will reach minors where they will be affected the most -- their driving privilege.
2. It will impact parents -- either this will support parents in their efforts to impress on their children the importance of not drinking until 21 years old, or it will call to their attention an alcohol/drug problem with their child.
3. It will provide support for minors resisting peer pressure.

Senate Judiciary Committee
2-23-90
Attachment II page 1 of 2

4. It will improve highway safety.
5. It will protect the health of minors -- may help put off use by minor until there would be less negative physical impact.
6. It may keep minors from using alcohol and other drugs on a regular basis.
7. The cost of enforcing the law would be very small. In Oregon, seven years ago the total cost was \$5,000.
8. Along with Oregon other states that have passed a similar law include Oklahoma, Missouri and California.

The Little Apple Task Force has worked for 6 years in Manhattan to keep minors from using alcohol and other drugs.

We have encouraged and supported the school district in its effort to include drug education in the schools. This past year we were pleased to see that education has been moved into the grade schools.

We have attempted to educate the parents by sending them newsletters when their child enters middle school and again when the child enters high school. The letters ask the parents to educate themselves about the problems, decisions, and peer pressure facing their child. It encourages them to become involved in the activities of their child and their friends. Also included are guidelines for giving parties for minors.

We have started a parent network so parents can know and support one another.

We have made attempts to educate and receive support from the community through our Town Meetings held twice a year. We also sponsored the Red Ribbon Campaign this past October.

We have supported the Riley County Police Department in enforcing the laws now in effect.

We have been very successful in supporting alternative activities. Manhattan has several alcohol-free parties each year for their young people.

Each of these programs is just one part of the overall picture of fighting the use of alcohol and other drugs by minors. Each one is important and helpful -- but each one is only a part of the whole.

Now you have the opportunity to add one more part, one more tool to help us.

A similar law passed in Oregon cut the number of juveniles arrested for drug violations by 22%. That is an amazing decrease for one year.

If Kansas could have a similar decrease with such a modest investment, it could bring about a real turn around in the behavior of our youth.

Thank you for your time.

Shirley Fleener
Chairman, Laws & Legislation
Little Apple Task Force on
Alcohol and Drug Abuse
2026 Parkway Drive
Manhattan, Kansas 66502
913-537-0472

OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
535 N. MAIN
WICHITA, KANSAS 67203



NOLA FOULSTON
District Attorney

(316) 268-7281

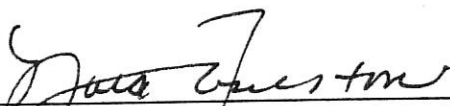
OUTLINE OF TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE WITH REGARD TO SENATE BILL 701
BY NOLA T. FOULSTON, SEDGWICK COUNTY DISTRICT ATTORNEY

Thank you for the opportunity to address this Committee with regard to Senate Bill 701. The Office of the District Attorney is supportive of the passage of this legislation providing work release as an alternate placement for third-time offenders in D.U.I. cases.

In Sedgwick County, we have had the opportunity to observe the work release program as a viable alternative to jail sentences. We have found that our courts are selective in the placement of individuals in work release, and that their discretion exercised gives consideration to only those individuals who would benefit from a work release program and who would not present a danger or other threat to our community. The judicial consideration of work release placement has traditionally looked to the history and background of the offender, as well as numerous other factors, including but not limited to whether the individual has performed satisfactorily in a detoxification program, and whether the individual's continued employment would be beneficial to the individual as well as to our work force. I believe that the passage of Senate Bill 701 would continue to vest in our courts the necessary discretion to deal with D.U.I. offenders on a case-by-case basis, allowing provision for work release as an alternative sentencing.

The Office of the District Attorney supports the passage of this necessary legislation.

Respectfully submitted,



Nola Foulston, District Attorney

*Senate Judiciary Committee
2-23-90
Attachment III page 1 of 1*



SEDGWICK COUNTY, KANSAS

SHERIFF'S DEPARTMENT

MIKE HILL
Sheriff

COUNTY COURTHOUSE • 525 N. MAIN • WICHITA, KANSAS 67203 • TELEPHONE 383-7264 • FAX 383-7055

February 22, 1990

The Honorable Wint Winter, Jr.
Kansas State Senate
Statehouse, Room 120-S
Topeka, Kansas 66612

Dear Senator Winter:

On behalf of the Sedgwick County Sheriff's Department, I am asking for your support and assistance regarding SENATE BILL No. 701. This particular piece of legislation would allow judges the opportunity to place third (3) or subsequent DUI offenders in a work release program. This would allow the judge an option in the sentencing of DUI offenders. I am aware work release is not appropriate in all cases.

The Sedgwick County Work Release Facility, which is under the control of the Sedgwick County Sheriff, holds inmates convicted of DUI offenses from Municipal Court, City of Wichita, and the 18th Judicial District.

In 1989 the Wichita Police Department arrested 1,680 DUI's, the Sedgwick County Sheriff's Department arrested 1,359, the Kansas Highway Patrol Troop F arrested 547 in Sedgwick County, and Kansas Highway Patrol Troop G Turnpike Patrol arrested 29 in Sedgwick County. This is a total of 3,615 arrested for DUI in 1989. This total does not, however, include the DUI arrests from the other 19 Municipalities in Sedgwick County.

The City of Wichita also reports that for the period of September, 1989 through February, 1990, a total of 43 inmates were serving 90 days or more for their third DUI conviction. Sedgwick County retained an additional 65 inmates, bringing the total number of inmates to 108 for that time period.

Let me assure you, I am a strong supporter of tough DUI enforcement etc., however, courts should have the option of assigning certain convicted DUI offenders to work release.

I strongly seek and encourage your assistance and support of SENATE BILL No. 701 which would allow judges the option of confining appropriate offenders in a work release setting.

Senate Judiciary Committee
2-23-90
Attachment IV page 1 of 3

If I, or the Sedgwick County Sheriff's Department can be of assistance to you on any matter, do not hesitate to inquire.

Sincerely,



MICHAEL D. HILL
SHERIFF

MDH:kg

cc: The Honorable Paul Clark
The Honorable Karen Humphreys
The Honorable Harold E. Flaigle

OFFICER REPORT

02-22-90

MAJOR L. REESE D0003

ATTENTION: JUDGE PAUL CLARK

SUBJECT: WORK RELEASE PROGRAM

The Sedgwick County Work Release Program is currently holding inmates convicted of DUI offenses, as assigned by the City of Wichita and the 18th Judicial District.

A brief breakdown between September, 1989 thru February 21, 1990; of inmates serving 90 days or more for their 3rd DUI conviction:

(County)	males	=	56
(City)	males	=	37
(Other Cities)	males	=	6
(County)	females	=	2
(City)	females	=	6
(Other Cities)	females	=	1
	TOTAL	=	108

It goes without saying with the current population cap placed on our old facility by the federal courts, there are no beds available.

Given these figures and the new facility, this would cause us to begin operation at capacity.

The Work Release program, allows us to control the offenders habits, see that he/she attends AA programs which are all conducted "in-house", as well as maintain their employment.

I hope this information is helpful.

Major L. Reese
MAJOR L. REESE
Division Commander
Technical Services

THE CITY OF WICHITA

ROBERT A. THIESSEN, Judge Div. I
THOMAS A. BUSH, Judge Div. II
HAROLD E. FLAIGLE, Judge Div. III
MAURICE MOWREY, Clerk of the Court
JOHN J. EISENBART, Chief Probation Officer



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CITY HALL — THIRD FLOOR
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(316) 268-4431
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(316) 268-4629
CHIEF PROBATION OFFICER
(316) 268-4582

February 22, 1990

Senator Wint Winter, Chairperson
Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: Senate Bill 701
DUI Sentencing

Dear Senator Winter:

On behalf of the Municipal Court of the City of Wichita, I would strongly recommend that legislation be enacted to allow judges the opportunity to place third (3rd) or subsequent DUI offenders in a work release program. While work release is not appropriate in all cases, judges should have that as an option.

Current statistics on City prisoners show that 25% of those being held are serving a minimum of ninety (90) days in the work release program for a third (3rd) or subsequent DUI offense. This figure remains relatively constant. Without the option of work release, at least 25% of our City prisoners will require incarceration in the County Jail - adding to the ongoing overcrowding problem.

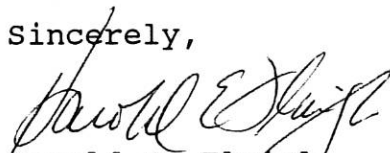
Equally important is the need for the defendant to have an incentive to improve. If a defendant knows that he will lose his job while incarcerated for 90 days, thereby disrupting any life that he is trying to create for himself and his family, he is certainly not as likely to want to change. Continued employment is a definite incentive that needs to remain an option.

Senate Judiciary Committee
2-23-90
Attachment V page 1 of 3

Senator Wint Winter, Chairperson
Senate Judiciary Committee
Page 2
February 22, 1990

Again, I recommend legislation allowing judges to determine if and when a multiple DUI offender is an appropriate candidate for confinement in a work release program.

Sincerely,



Harold E. Flaigle
Administrative Judge

HEF:ckg

Attachment: 1

cc: The Honorable Paul Clark
The Honorable Karen Humphreys
Cathy Holdeman, Intergovernmental Relations Officer

FEBRUARY 22, 1990

TOTAL NUMBER OF CITY PRISONERS AS OF 2-22-90	42
NUMBER OF PRISONERS SERVING IN SEDGWICK CO.	11
NUMBER OF PRISONERS IN OUTSIDE COUNTIES	10
NUMBER OF PRISONERS SERVING ON WORK RELEASE	21
# OF D.U.I. OFFENDERS ON WORK RELEASE	17
# OF D.U.I. OFFENDERS SERVING 90 DAYS OR MORE ON WORK RELEASE.	13
# OF D.U.I. OFFENDERS SERVING LESS THAN 90 DAYS.	4
# OF OTHER OFFENDERS ON WORK RELEASE	4



State of Kansas

Mike Hayden, Governor

Department of Health and Environment Kansas Health and Environmental Laboratory

Stanley C. Grant, Ph.D., Secretary

Forbes Field, Bldg. 740, Topeka, KS 66620-0002

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Testimony presented to
Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill 631

Senate Bill 631 would amend K.S.A. 8-1567 to place an age/concentration differential on the present Kansas "per se" alcohol level of 0.1 by establishing a maximum level of .02 for persons under 21 who operate or attempt to operate a vehicle. The Kansas Department of Health and Environment has not taken a position on the merit of this concept, but we do believe that it is very important for this committee to understand the limitations of the Kansas breath alcohol testing program to support the specific proposal outlined in this bill.

The Kansas breath alcohol test program currently includes 106 certified evidential instruments located in 84 law enforcement agencies throughout the state. There are currently 1,427 certified instrument operators who have been specifically trained to test the 12,000 DUI subjects arrested each year. Rigid test procedures are necessary to ensure that court-defensible alcohol data are available for DUI prosecution because the primary focus of many DUI court proceedings is on the validity of test results. We are not aware of documented scientific research which demonstrates significant driver impairment at alcohol concentrations below .04 or .05. Thus, the arresting officer could not rely on roadside sobriety tests or a preliminary breath test device to establish probable alcohol levels of .02. Clinical signs and symptoms associated with various alcohol levels are shown in the attached table.

Similarly, the evidential alcohol test instruments in use throughout Kansas have not been evaluated for accuracy below .05 where they are certified to meet the criteria endorsed by the National Highway Traffic Safety Administration and the Federal Department of Transportation.

In summary, there is strong agreement that we must educate our young people about the hazards associated with alcohol use, particularly when combined with vehicle operation. However, the proposed adoption of enforcement levels as low as .02 would present operational difficulty for the arresting officer in addition to significant difficulty related to the production of court-defensible alcohol test data. These reservations could largely be overcome at alcohol levels at or above .05.

Testimony presented by: Roger H. Carlson, Ph.D.
Kansas Health and Environmental Laboratory
February 23, 1990

*Senate Judiciary Committee
2-23-90
Attachment VI page 1 of 2*

Exhibit
Stages of Acute Alcoholic influence/intoxication¹

ETHYL ALCOHOL LEVEL, Percent By Weight Blood	STAGE OF ALCOHOLIC INFLUENCE	CLINICAL SIGNS/SYMPTOMS
0.01 - 0.05	Sobriety	No apparent influence Behavior nearly normal by ordinary observation Slight changes detectable by special tests
0.03 - 0.12	Euphoria	Mild euphoria, sociability, talkativeness increased self-confidence; decreased inhibitions. Diminution of attention, judgment, and control Loss of efficiency in finer performance tests
0.09 - 0.25	Excitement	Emotional instability; decreased inhibitions Loss of critical judgment Impairment of memory and comprehension Decreased sensory response; increased reaction time Some muscular incoordination
0.18 - 0.30	Confusion	Disorientation, mental confusion; dizziness Exaggerated emotional states (fear, anger, grief, etc.) Disturbance of sensation (diplopia, etc.) and of perception of color, form, motion, dimensions Decreased pain sense Impaired balance; muscular incoordination; staggering gait, slurred speech
0.27 - 0.40	Stupor	Apathy; general inertia, approaching paralysis Markedly decreased response to stimuli Marked muscular incoordination; inability to stand or walk Vomiting; incontinence of urine and feces Impaired consciousness; sleep or stupor
0.35 - 0.50	Coma	Complete unconsciousness; coma; anesthesia Depressed or abolished reflexes Subnormal temperature Incontinence of urine and feces Embarrassment of circulation and respiration Possible death
0.45 +	Death	Death from respiratory paralysis

¹Prepared by: Kurt M. Dubowski, Ph.D., FAIC, Director, Department of Clinical Chemistry and Toxicology, University of Oklahoma, School of Medicine, Oklahoma City, Oklahoma, Member, Committee on Alcohol and Drugs, National Safety Council