Approved 4-18-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach
Chairperson at

3:30 ~~x~~a.m./p.m. on February 18, 19 91 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Heinemann, Everhart and Hamilton

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Cindy Empson
Sgt. John Sidwell, Topeka Police Department
Ed Klumpp, representing Kansans for Highway Safety
Lila Paslay, Chair, Legislative Affairs, The Assoc. for Retarded Citizens of Ks. Inc.
Tom Bridges, representing Adult Day Services at Topeka Assoc. for Retarded Citizens
Paul Shelby, Office of Judicial Administration
Ron Smith, Kansas Bar Assoc. Legislative Counsel
Anne Smith, Director of Legislation, Kansas Assoc. of Counties
Cpl. Mark Fendley, Topeka Police Department
Lt. Bill Jacobs, Kansas Highway Patrol

The Chairman called the meeting to order and called for hearing on HB 2160, regulation of traffic, inattentive driving.

Representative Cindy Empson, sponsor of HB 2160 appeared in support of the bill. (See Attachment # 1).

A committee member asked if municipalities currently have this city ordinance. Representative Empson affirmed. A committee member asked if it is a non-moving violation in this bill. Representative Empson affirmed.

Sgt. John Sidwell, Topeka Police Department, appeared to speak in support of HB 2160. (See Attachment # 2.)

A committee member asked if there are many cases, now, where a citation is not given to either driver in a two-car accident. Mr. Sidwell affirmed. A committee member said HB 2160 seems to be designed to find fault and that it appears one of the drivers in a collision would be cited for inattentive driving; that both could not walk away "not guilty"; that the first paragraph of the bill appears to be a mandate to find out which driver was guilty. Mr. Sidwell said Topeka has an inattentive driving ordinance but not everyone gets a ticket for inattention; that in investigating an accident they look for whether or not the person was paying full attention.

A committee member asked if there is a definition of "inattention". Mr. Sidwell said the definition is only set out within the ordinance. The committee member asked if each officer would make his determination of what attention is. Mr. Sidwell said he believes they would look for negligent inattention.

Ed Klumpp, representing Kansans for Highway Safety appeared in support of House Bill 2160. (See Attachment # 3).

A committee member called upon John Smith, Division of Vehicles, and asked if his division's rules and regulations determine whether it will be a moving or non-moving violation. Mr. Smith affirmed. The committee member asked how Mr. Smith would clarify it. Mr. Smith said he would recommend to the Secretary of Revenue that it be a non-moving violation.

There being no further conferees, the hearing was closed on HB 2160.

The Chairman called for hearing on HB 2143, procedure when a mentally retarded person is a victim of a crime.

Lila Paslay, Chair, Legislative Affairs, The Association for Retarded Citizens of Kansas, Inc., appeared in support of HB 2143. (See Attachment # 4).

A committee member asked if there should be an in-camera hearing, in court chambers, to determine whether or not certain evidence should be heard in the presence of the retarded victim; that the trial judge could take into consideration recommendations of psychologists or other professional testimony as to whether it might traumatize the victim. The committee member noted that the reference to clear and convincing evidence throughout the statute raises a question. Another committee member noted that clear and convincing evidence is needed so that cross examination may be legally used.

A committee member asked if counsel has the right to cross examine an adjudicated retarded person under this bill. Another committee member responded that the right to cross examine is there but the witness could not be confronted directly; that it would have to be through a video.

A committee member said the bill had originally been drafted to allow only the attorneys for the defendant, the state and the child to be present; that the defendant him or herself cannot be present.

Ms. Paslay distributed written testimony from Virginia Lockhart, a parent of a disabled child. (See Attachment # 5).

Representative Empson, sponsor of HB 2143, appeared in support of the bill. (See Attachment # 6).

Tom Bridges, representing Adult Day Services at Topeka Association for Retarded Citizens, appeared in support of HB 2143, (See Attachment # 7).

There being no further conferees, the hearing on HB 2143 was closed.

The Chairman called for hearing of HB 2144, sheriff fee for service by certified mail.

Representative Empson, sponsor of HB 2144, appeared in support of the bill. (See Attachment # 8).

A committee member asked if it would be cheaper to serve notice by certified mail than personally serving. Representative Empson said the county officials have informed her that they have no budgeted money for certified mailing.

Paul Shelby, Office of Judicial Administration, appeared to express concern with HB 2144. (See Attachment # 9).

Ron Smith, Kansas Bar Association Legislative Counsel, appeared with concerns about HB 2144. (See Attachment # 10). Mr. Smith recommended allowing the 1990 compromise work, as set out in 1990 House Bill 3021.

Anne Smith, Director of Legislation, Kansas Association of Counties, appeared in opposition to HB 2144. (See Attachment # 11).

There being no further conferees, the hearing on HB 2144 was closed.

The Chairman called for hearing on HB 2152, when traffic violater required to be taken into custody.

Representative Empson, co-sponsor of HB 2152, appeared in support of HB 2152 (See Attachment # 12).

A committee member questioned the removal of KSA 8-262, driving under a restrictive license. Representative Empson said she has no problem with removing that section in addition.

Revisor's staff noted HB 2175 takes KSA 8-262 out.

Cpl. Mark Fendley, Topeka Police Department, appeared to suggest changing the wording of HB 2152 to allow the investigating officer the option of taking the suspect into custody or not. (See Attachment # 13).

A committee member asked if Mr. Fendley believes that someone driving on a suspended or revoked license should go into custody. Mr. Fendley affirmed.

A committee member asked if the law is changed, could Mr. Fendley still do inventory searches; e.g. search a car after someone has been taken into custody.

A committee member asked if hit and run means leaving the scene of a non-injury accident or an injury accident. Mr. Fendley said if a person had unintentionally hit someone, he should not be taken into custody.

A committee member pointed out that if the bill is passed the opportunity still exists for the investigating officer to take someone into custody but at the officer's discretion.

Ed Klumpp, President, Kansans for Highway Safety, appeared in support of HB 2152 (See Attachment # 14). Mr. Klumpp said he would support the removal of KSA 8-262.

A committee member pointed out that intoxicated drivers may leave the scene of the accident. Mr. Klumpp said he doesn't believe the law will affect the driver's behavior and that there is still time to make a case.

Lt. Bill Jacobs, Kansas Highway Patrol, appeared to comment regarding HB 2152. Lt. Jacobs said that people stopped for driving with a suspended license should not be exempt from being taken into custody because a license is suspended for a serious reason; that KSA 8-262 should not be deleted. Also Lt. Jacobs said he agrees that there is an incentive to leave the scene of an accident under the proposed law.

There being no further conferees, the hearing on HB 2152 was closed.

The Chairman called for action on HB 2160.

Representative Garner made a motion that HB 2160 be passed. Representative Gomez seconded the motion.

The committee discussed language contained in the Topeka Ordinance.

Representative Rock made a substitute motion to amend HB 2160 with the Topeka Ordinance language. Representative Snowbarger seconded the motion.
Committee discussion continued.

The language of "inattentive driving" was discussed. A committee member said the charge of "inattentive driving" should follow a collision and not be based on an officer's observation; that HB 2160 does not have a definitional section; that negligent in attention and non-negligent inattention are not defined; that a provision without a triggering mechanism causes concern.

A committee member asked how inattentive driving can be a non-moving violation.

The Chairman called for a vote on the substitute motion. The substitute motion failed.

The Chairman called for a vote on the original motion. The motion failed.

Representative Sebelius made a motion to table HB 2160. Representative O/Neal seconded the motion. The motion carried.

The Chairman called for action on HB 2152.

Representative Garner made a motion that HB 2152 be passed. Representative Rock seconded the motion.

2152 corrected 4/2/91 minutes gml

Representative O'Neal made a substitute motion that HB ~~2160~~ be amended by striking KSA 8-262 in addition to the other stricken sections set out in the bill. Representative Sebelius seconded the motion. The motion carried.

2152 corrected 4/2/91 minutes gmc

Representative Garner made a motion that HB ~~2160~~ be passed as amended. Representative Smith seconded the motion. The motion carried.

The Chairman called for action on HB 2143.

Representative Sebelius made a motion to amend HB 2143 by adding mentally retarded people functioning under the age of 13. Representative O'Neal seconded the motion.

Committee discussion followed.

The motion carried.

Representative Sebelius made a motion that HB 2143 be passed as amended. Representative O'Neal seconded the motion.

Committee discussion followed.

A committee member said the proposed legislation may present a serious confrontation with the Bill of Rights.

Representative Sebelius further amended her motion by adding a severability clause. The motion to pass HB 2143, as amended, carried.

The Chairman called for action on HB 2175.

Representative O'Neal made a motion that HB 2175 be not passed as it had been incorporated into HB 2152. Representative Rock seconded the motion. The motion carried.

Representative O'Neal made a motion that HB 2144 be not passed. Representative Rock seconded the motion. The motion carried.

The Chairman appointed a sub-committee to study SB 183, as indicated in hearing of HB 2117 on February 14, 1991. Sub-committee members appointed were: Representative Hochhauser, Chairperson, Representative Carmody and Representative Heineman.

There being no further business, the meeting was adjourned at 5:25 P.M. The next scheduled meeting will be on February 19, at 3:30 P.M. in Room 514-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/18/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Mark Tinsley	Topeka	Topeka Police
Lila Gaslay	Topeka	ARC/Kansas
Tom Bridges	Topeka	T.A.R.C.
John B. Sidwell	Topeka	Topeka Police
Ed Klumpp	Topeka	Kansans for Highway Safety
Lt. Bill Jacob	TOPEKA	KS Highway Patrol
John W. Smith	TOPEKA	Div of Veh
Jeff DeGraffenreid	TOPEKA	KPOA

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

February 18, 1991

TO: HOUSE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H.B. 2160

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you in support of H.B. 2160.

This bill was introduced at the request of Montgomery County law enforcement officials. It adds inattentive driving to the list of traffic infraction violations and sets a minimum fine of $20.00 in the uniform fine schedule. Currently, approximately 300 cities have this violation in their standard traffice ordinances, but since it is not a statutory violation, it can't be used by our county law enforcement officials or the Highway Patrol.

According to a recently completed review by the Transportation Systems Center of driver attentional processes, lapses in driver attention have been identified as a significant contributing factor in as many as 90 percent of traffice accidents. The five most common physical and psychological factors that are likely to decrease a driver's alertness are: 1) physical fatigue; 2) drowsiness; 3) excess mental workload; 4) intoxication due to alcohol, drugs or oother chemicals; and, 5) simple inattention. While these conditions represent a wide range of physical and psychological states, they have one particular behavioral similarity: in a nonalert state a driver is less likely to respond

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Attachment #1

in a fashion timely and appropriate to his or her environment than in an alert state.

H.B. 2160 would provide our county and state law enforcement officials with an additional option in circumstances that might not otherwise fit our current infraction violations. This option is already available to many city enforcement officials and, in my opinion, should be available to our Highway Patrol and county officials as well.

Again, I thank you for allowing me to appear before you today and ask for your favorable consideration of H.B. 2160.

SGT. JOHN SIDWELL
HOUSE BILL NO. 2160

Mr. Chairman and members of this committee. I am Sgt. John Sidwell with the Topeka Police Department. I am here to speak in support of the House Bill 2160 on Inattentive Driving. As an Accident Reconstructionist for the Police Department I examine the causes of accidents involving motor vehicles. From my past experience I have found that one of the most common errors in accidents is failing to give full attention to what is occurring around them.

I have prepared an example of a series of situations that indicate the importance of attention to driving. I used a known speed of 30 mph and used the 85 percentile driver reaction time as printed in GEOMETRIC DESIGN OF HIGHWAYS AND STREETS. The situation line shows a vehicle following another at 30 mph at a distance of 88 feet. This is the proper distance for the 2 second rule. At this point the lead vehicle slammed on his brakes and slides to a stop in 41.6 feet. On line 1 the driver of the following car saw a hazard coming and reacted in one second. In one second he traveled 44 feet then slide 41.6 feet to a stop. He had 44 feet to spare or 2 car lengths. In situation 2 the other cars panic stop was totally unexpected but the driver was attentive in their driving. It took 1.5 seconds to react or 66 feet. They slide 41.6 feet to a stop and had 22 feet to spare. In the third situation the driver had one more piece of information to process, such as tuning the radio. It took 2.5 seconds to react to the situation or 110 feet. He was able to brake his vehicle for 20 feet before striking the other car. They were still going 21 mph at the time of impact. This situation is very simplified and seldom happens this way but it points out the importance of paying attention to your driving.

I therefore support this bill but would like to offer one small request. The purpose of investigating accidents is to gather information that can be used to reduce the number of accidents. This bill only address enforcement after the accident occurs. The wording should be changed to allow enforcement before the accident as well as after the accident has occurred.

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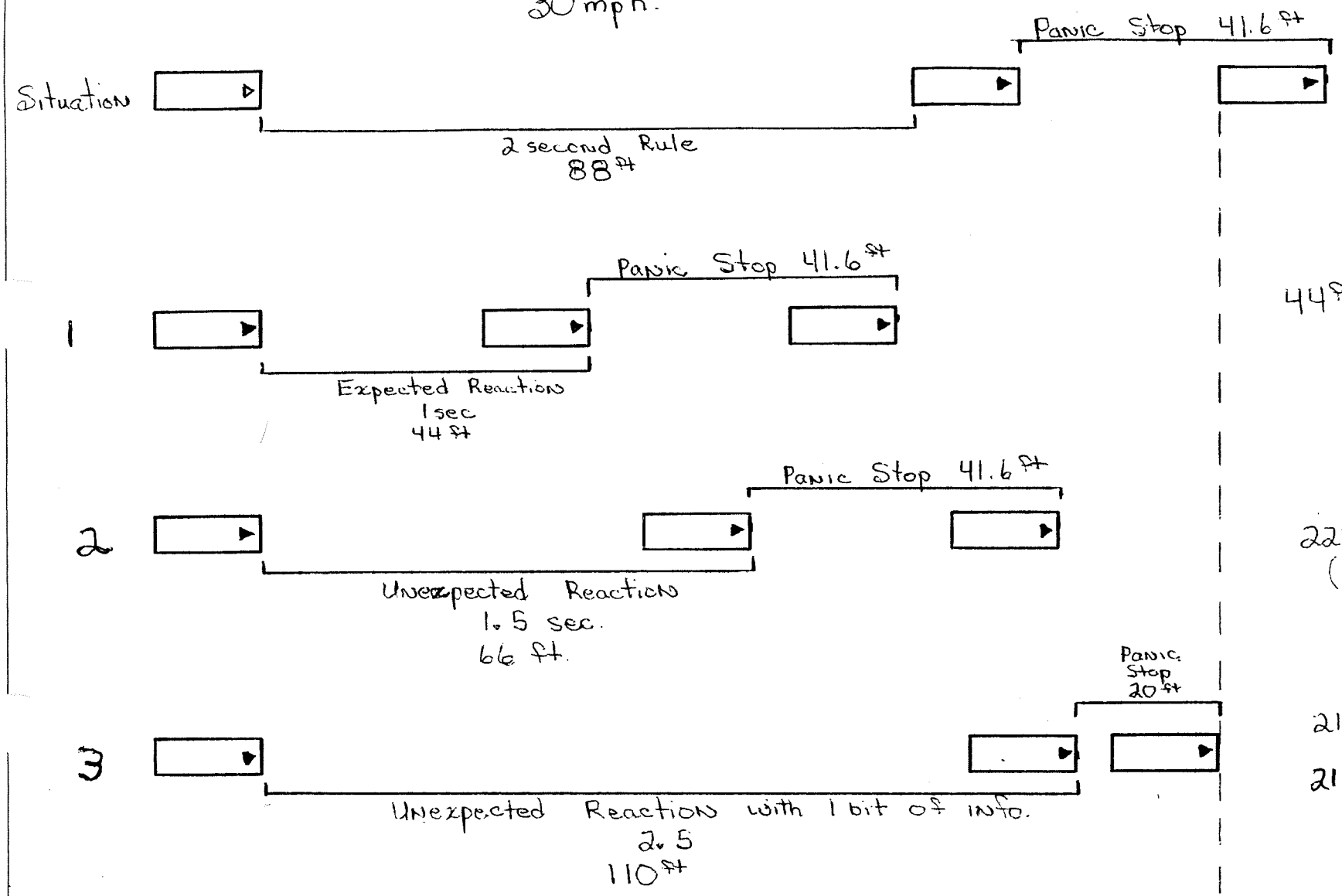
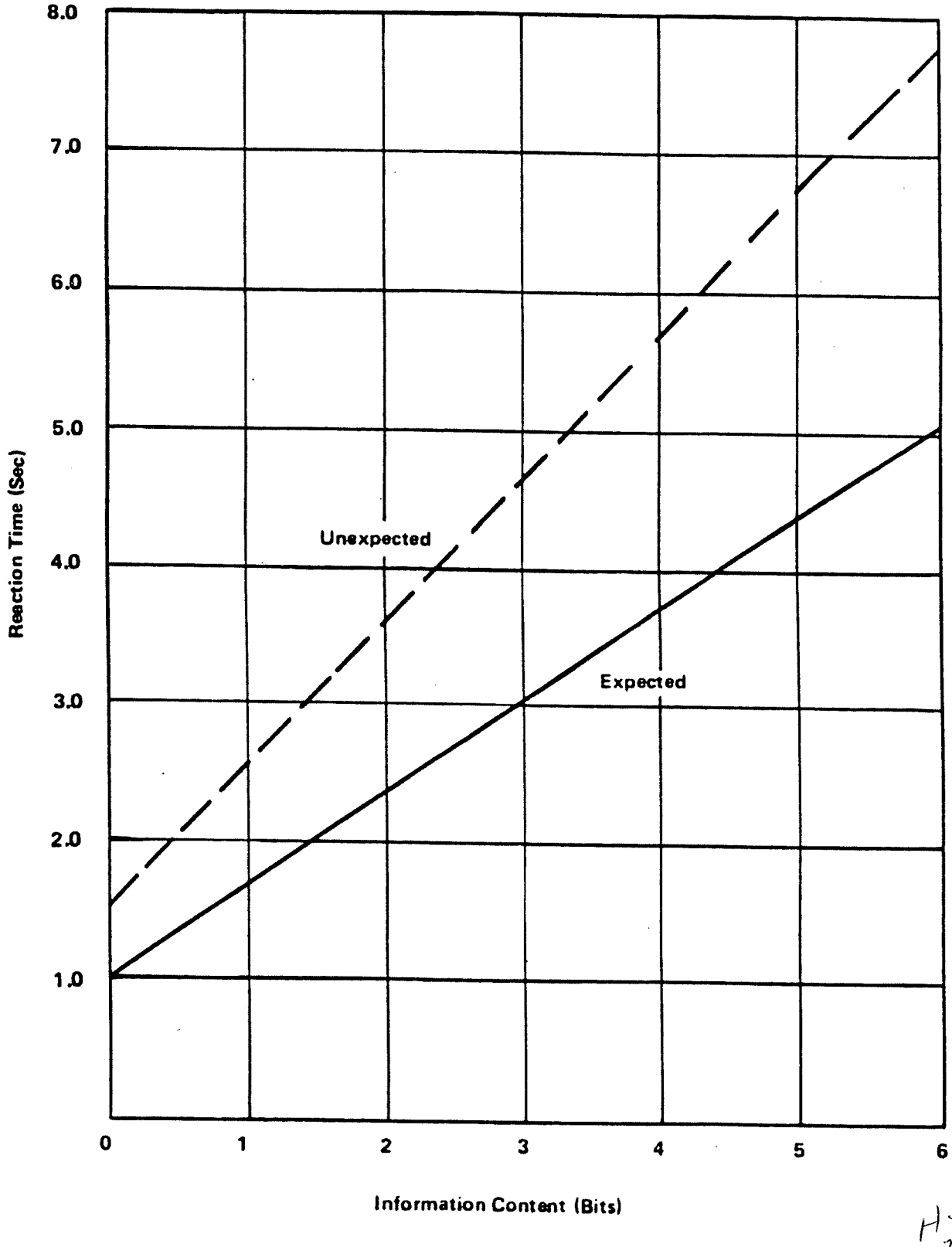
Attachment # 2

30 mph.





HJUD 2-18-91 attachment # 2-3

Figure II-15. 85th-percentile driver reaction time to expected and unexpected information.

Kansans for Highway Safety

FEBRUARY 18, 1991

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
REFERENCE HOUSE BILL NO. 2160
Inattentive Driving

Currently there are many cities in the state that use the Standard Traffic Ordinances written by the Kansas League of Municipalities. These standard ordinances include section which is identical to the proposed bill. In addition there are several cities that have their own inattentive ordinance. As an example a copy of the ordinance used by the City of Topeka is attached.

We feel that a statute like this would be superior to the one proposed because it will allow enforcement before an accident happens. The proposed statute would only allow law enforcement be reactive rather than proactive, or merely shut the gate after the cows have gotten out.

Many accidents every year are reported as occurring due to inattentive driving as an accident factor. **In 1989, the investigating officer indicated inattentive driving by 18,467 drivers as the primary circumstance contributing to accidents. This is over 30% of all the drivers indicated.** Yet currently under state law there is no inattentive statute. Let's look at some situations where the cities that currently have inattentive ordinances utilize this law and there is no current state law to apply.

1. A driver is driving down the road and is engaged in some activity that diverts his attention from the highway. Perhaps he is fishing for a cigarette he dropped or trying to discipline small children that are not in child restraints as required or just looking around at the beauty of the Kansas landscape. A vehicle in front of him stops or slows due to a hazard in the roadway. Suddenly this vehicle is hit from behind before the inattentive driver has even had a chance to notice the vehicle stopping or slowing ahead of it. Under state law the officer cannot apply the reckless driving statute because there has not been "willful and wanton disregard for the safety of others." The following too close statute does not apply because he was not too close to the vehicle to stop had he been paying enough attention to the road to see the vehicle ahead stopping. To the accident investigator the difference between inattentive and following too close is very clear. In following to close there is almost always skid marks leading to the point of impact, when it is inattentive there frequently is none. The driver's statements are also revealing. One saying, "he stopped ahead of me and I just couldn't get stopped in time," the other saying, "I didn't see that he was stopping."

A second problem has developed from the abuse by some municipal prosecutors that allows the city ordinance for inattentive to become a plea bargaining tool. Since there is no state statute for inattentive, a conviction of this violation in a municipal court will not appear on the driver's record. As a result some city prosecutors are allowing violators of red lights, stop signs, speeding, left of center and other serious moving violations to plead guilty to inattentive driving so that it will not go on their driving record. They are thus circumventing the monitoring of driving records by the state and by insurance companies to protect the careful law abiding driver from dangerous drivers and from the high insurance rates we must pay to cover the costs of

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Route 4 • Box 241A • Leavenworth, Kansas 66048 • (913) 651-5591

accidents involving these drivers.

One of the arguments against this bill that I have heard is that there is the potential for prosecutors to utilize it to plea bargain and that officers will over use it when other statutes should be used. As I already stated the passage of this bill will reduce the plea bargaining potential and even if plea bargaining does occur, it will still appear on the driving record as a moving violation. As far as the officers over using the law, I just don't believe that will happen. Some officers do right a summons for inattentive rather than a red light when a driver says he didn't see the light, or for running a stop sign when the driver states that he didn't see the sign. But is this over use. I don't think so, it is really being more realistic about what really created the violation.

The passage of this bill will fill a void that is needed in the state traffic statutes and will bring more equality into the recording of moving violations on the driving records.

We encourage the Committee to pass the bill favorably.

Ed Klumpp, President
4339 SE 21st
Topeka, Kansas 66607
Home:913-235-5619
Work:913-354-9450

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2-18-91
attachment 3-2

CITY OF TOPEKA INATTENTIVE DRIVING ORDINANCE

Sec. 43-271. Inattentive, negligent or unsafe driving.

(a) *Inattentive driving.* Every driver shall remain alert and give full attention to the safe operation of his/her vehicle while it is in motion, and any driver who does not, shall be in violation of this subsection.

(b) *Negligent driving.* No driver, while operating or attempting to operate his/her vehicle, shall engage in any activity or do any act which interferes with the safe control of his/her vehicle.

(c) *Unsafe driving.* No person shall operate or halt any vehicle in such a manner as to indicate a careless or heedless disregard for the rights or safety of others, or in such a manner as to endanger, or be likely to endanger, any person or property. (Code 1975, § 26-1045; Ord. No. 15711, § 8, 1-27-87)

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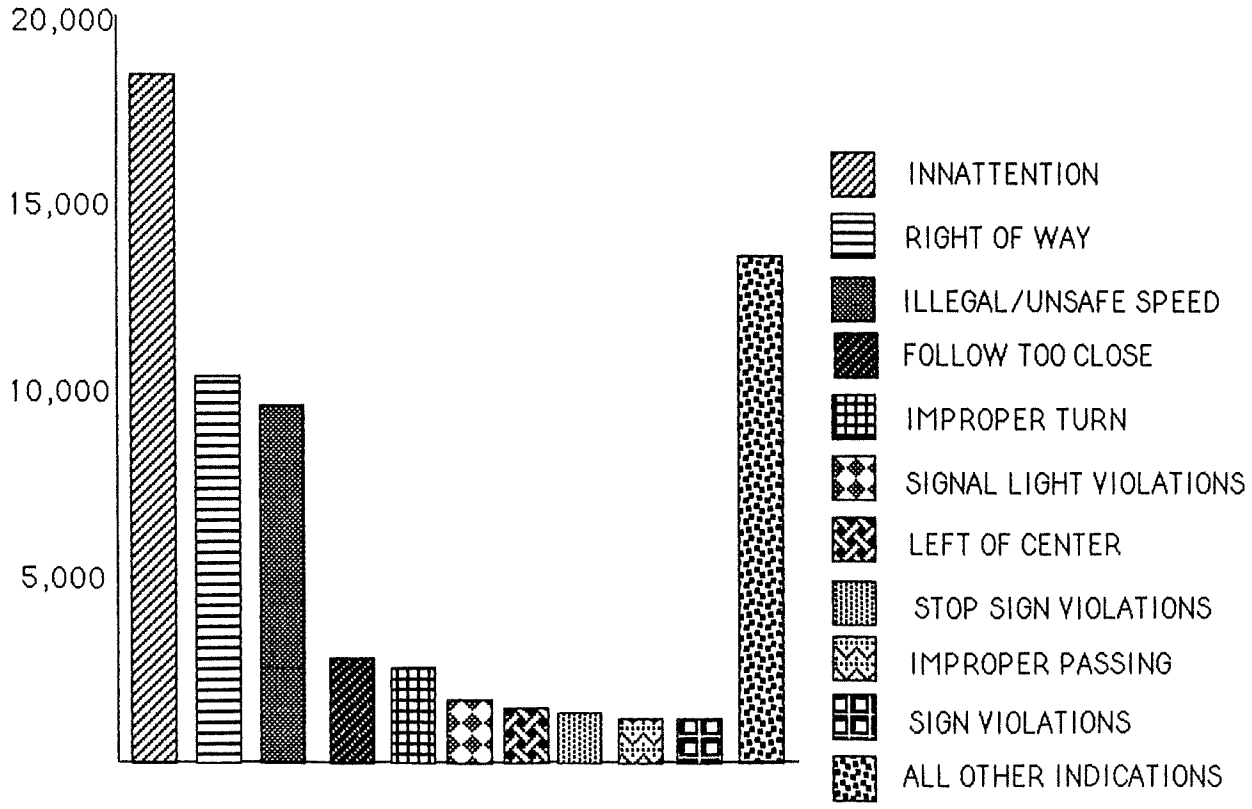
attachment 3-3

PRIMARY CIRCUMSTANC CONTRIBUTING TO ACCIDENT	NUMBER INDICATED	PERCENT OF ALL DRIVERS	PE OF DRIVERS INDICA AS CONTRIBUTING TO ACCIDENT
ILLEGAL/UNSAFE SPEED	9650	8.7%	15.4%
IMPEDING TRAFFIC	155	0.1%	0.2%
FOLLOW TOO CLOSE	2803	2.5%	4.5%
IMPROPER OVERTAKING	1031	0.9%	1.6%
IMPROPER TURN	2420	2.2%	3.9%
IMPROPER START/STOP/PARK	1228	1.1%	2.0%
SIGNAL LIGHT VIOLATION	1712	1.5%	2.7%
SIGN VIOLATIONS	1015	0.9%	1.6%
RIGHT OF WAY	10364	9.3%	16.5%
LEFT OF CENTER	1474	1.3%	2.3%
NO/IMPROPER SIGNAL	329	0.3%	0.5%
INATTENTION	18467	16.6%	29.4%
OTHER	12180	10.9%	19.4%
TOTAL DRIVERS INDICATED	62828	56.4%	100.0%
NONE	43267	38.9%	
NOT CODED	5272	4.7%	
TOTAL DRIVERS	111367	100.0%	
TOTAL DRIVERS INDICATED	62828		



HJUD
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attachment 3-4

PREPARED BY KANSANS FOR HIGHWAY SAFETY

3-4

THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

Hope through understanding

P.O. BOX 676 • HAYS, KS 67601

February 18, 1991

TO: Rep. John Solbach, Chair
Members of the House Judiciary Committee

FROM: Lila Paslay, Chair
Legislative Affairs

RE: H.B. 2143

As spokesperson for the Association for Retarded Citizens of Kansas, I am here today to speak in support of H. B. 2143. The Association has a membership of 5,000 individuals most of whom are parents and/or guardians for persons with mental retardation. They belong to 37 local ARCs across the state.

At the present time, we are experiencing growth in the expansion of services in the community for persons with mental retardation. The range of services are from group homes to supported living. With these community programs, the risk for becoming a victim of a crime increases.

As a victim, the person with retardation may be able to identify and describe the exact circumstances. However, situations which may appear to be threatening to the individuals may cause the victim to be unable to express themselves without great difficulty.

Providing a setting in which the victim's support system could participate to insure vocabulary used could be understood by the individuals and could enable much more accurate information.

We are particularly concerned about the area of abuse and/or neglect. Often the person with mental retardation is very anxious to please his/her family member, supervisor, instructor and teacher. We will have testimony from a service provider speaking to this issue. For the person with a disability to confront the individual in a court setting might prove to be impossible.

We would encourage that individuals who are capable and desire to participate in a court proceeding be given that opportunity. We do not want the rights removed unless it is in the best interest of the person with mental retardation.

We believe the passage of this legislation would provide additional protection for the disabled individual and urge your support of this bill.

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Attachment # 4

DATE: February 18, 1991

TO: Rep. John Solbach, Chair
Members of the House Judiciary Committee

FROM: Virginia Lockhart

RE: H.B. 2143

I would like to present a brief statement in support of H.B. 2143.

I am the mother of a 25 year old daughter with Down Syndrome who functions at an age level somewhere between three and six years. I firmly believe that individuals with mental retardation who are capable and wish to publicly testify in a court of law should be permitted to do so. However, knowing that these individuals are intellectually and functionally much younger than their chronological age, I believe that those who may be adversely affected emotionally and traumatized by public testimony be offered the protection of the court which would enable them to present their testimony in a more protective and supportive environment.

Virginia Lockhart
3012 SW Arrowhead
Topeka, KS 66614

HJUD
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attachment
#5

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

February 18, 1991

TO: HOUSE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H.B. 2143

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you in support of H.B. 2143. I introduced this bill at the request of a detective and the Chief of Police on the Independence Police Department. We had an incident in our community during the past year which precipitated the request.

Three female clients of Class Limited living in a group home setting in Independence were allegedly victims of sexual acts performed by the manager of the group home. The manager was arrested, charged and a trial date was set. The charges were subsequently dropped because it was determined that the three young ladies, while able to recount what happened to them, were not capable of testifying in an open courtroom setting.

H.B. 2143 simply adds the mentally retarded to a provision we passed last session which allows for video taping of the testimony of children under the age of 13 who are victims of a crime when it is established that the child would be traumatized by appearing in person.

I don't think the incident that occurred in Independence is an isolated incident. Therefore, I believe this bill would be beneficial to a prosecutor, but, more importantly, it would provide additional protection to a special group of people who, through no fault of their own, might be unable to

HJUD 2-18-91 attachment #6

adequately speak in their own behalf in an open courtroom setting.

With that in mind, I ask for your favorable consideration of H.B. 2143.

HJUD
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attachment #6-2

TARC
Topeka Association For Retarded Citizens, Inc.

The Ethel May Miller Community ... er
For The Mentally Retarded
Southgate Work Center
2701 Randolph, Topeka, Kansas 66611
(913) 232-0597
Executive Director, Lila Paslay

DATE: February 16, 1991

TO: Rep. John Solbach, Chair
Members of the House Judiciary Committee

FROM: Tom Bridges
Program Manager

RE: H.B. 2143

I'm Tom Bridges and represent Adult Day Services at Topeka Association for Retarded Citizens (TARC). I support HB 2143 and if passed, this legislation would allow adult mental retarded victims to communicate information to a jury with a minimal amount of traumatic and emotional stress that might occur if they were required to be present and face their alleged abusers.

A recent situation involving a mentally retarded adult we work with at TARC demonstrated a need for this legislation. Our client had been sexually abused in his foster home. He had lived as part of this family for the past 14 years. When the abuse issues came to the surface, our client discussed the events with people he felt comfortable with and trusted. It had taken 6 months to develop a trusting relationship with this client. The process he had to go through as victim was lengthy and involved. It required repeating the extremely traumatic and painful sequence of events many times. Each session appeared to be more confusing and more painful, as oppositional forces within him resisted the process. The conflict being his love and need for his family versus his need to tell the truth and stop the abuse.

If we could have limited the repetitious testimony and used a video tape early in the process, I believe our client's emotional well being would have been best served.

Following the conclusion of this case, our client developed a severe series of aberrant behaviors that he had not displayed previously. Self injurious behaviors, such as head banging, physical aggression to peers and staff, and property destruction.

Fortunately, our client did not have to appear in court, as the abuser admitted his guilt and the case was closed. If he would have had to face his parents in court, the trauma would most likely have been worse than it was, and may have inhibited his testimony.

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Attachment #7

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

February 18, 1991

TO: HOUSE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H. B. 2144

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you in support of H.B. 2144.

I introduced this bill at the request of the Montgomery County Sheriff. We passed legislation last session which allows for the service of summons by certified mail. According to my sheriff this is costing our county time and money as there is no provision to cover the cost of certified mailing and they have not budgeted money for this purpose. The costs of certified mail must be paid up front at the post office and whoever pays these charges must wait for reimbursement until the county approves monthly expenditures.

H.B. 2144 addresses these concerns by amending the legislation we passed last year to provide for the fee for certified mail. It simply adds the provision that a nonrefundable fee of $5.00 will accompany the written request filed with the clerk for service by certified mail of summons and petition.

As you can see from the attached Attorney General's Opinion, it was the intent of last year's legislation to provide a means of recovering the costs incurred in filing by certified mail. With that thought in mind, H.B. 2144 provides a means in which incurred costs can be recovered up front in the form of a fee, as opposed to waiting until they are recovered by billing the party

HJUD
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requesting this service.

I have also attached to my testimony a sheet from my County Sheriff's Office listing the number of processes served by certified mail in Montgomery County for the period 1-9-91 to 2-11-91 and the resulting costs.

Thank you again for allowing me to testify before you today. I ask for the committee's favorable consideration of H.B. 2144.

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

January 11, 1991

Honorable Robert T. Stephan
Attorney General
Kansas Judicial Center
301 Southwest 10th
Topeka, Kansas 66612

Dear General Stephan:

An issue has arisen concerning the interpretation of K.S.A. 60-303(b) as amended by L. 1990, Ch. 202 regarding who must pay for the service of process by certified mail. The 1990 amendment was part of H.B. 3021 which established a preference of service of process by certified mail. Apparently, a number of attorneys representing private litigants are assuming county sheriffs' departments are responsible for paying the costs of service of process by certified mail.

I do not believe it was the Legislature's intent in enacting H.B. 3021 that county sheriffs' departments pick up the certified mailing costs for private litigants. Counties apparently have not budgeted moneys for this added expense, either.

The question is simply, are counties responsible for paying the costs of mailing process by certified mail for private litigants? Your prompt response will be much appreciated. Thank you for your attention to this matter.

Sincerely,

Representative Cindy Empson

Representative Cindy Empson
State Representative, District No. 8

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 15, 1991

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 10

The Honorable Cindy Empson
State Representative, 8th District
State Capitol, Room 182-W
Topeka, Kansas 66612

Re: Procedure, Civil -- Process -- Summons; By Whom Served; Certified Mail by Sheriff

Procedure, Civil -- Costs -- Items Allowable as Costs; Postage Fees Incurred Pursuant to K.S.A. 60-303

Synopsis: While postage costs might initially be incurred by a county, K.S.A. 1990 Supp. 60-2003(6) and K.S.A. 1990 Supp. 28-110 permit certain service costs to be taxed against and collected from parties or attorneys utilizing a county sheriff to effectuate such service. Cited herein: K.S.A. 1990 Supp. 28-110; 60-303; 60-2003.

* * *

Dear Representative Empson:

As State Representative for the Eighth District, you request our opinion concerning the 1990 amendments to the service of process procedures set forth at K.S.A. 60-303. You specifically ask who must pay for the costs of service of process by certified mail when such service is for a private litigant and the mailing is handled by a county sheriff.

K.S.A. 1990 Supp. 60-303(b) provides in pertinent part:

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"Except if the attorney for the party or the party, if the party is not represented by an attorney, requests personal or residence service pursuant to subsection (c); if the attorney or the party requesting service elects to serve process by certified mail pursuant to this subsection; as provided in K.S.A. 60-903, 60-906 or 60-3104, and amendments thereto; or as otherwise provided by law, the sheriff shall serve any process by certified mail, evidenced by return receipt signed by any person or by restricted delivery, unless otherwise permitted by this article. The sheriff, attorney for the party seeking service or the party, if the party is not represented by an attorney, shall cause a copy of the process and petition or other document to be placed in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The sheriff, the party's attorney or the party, if the party is not represented by an attorney, shall execute a return on service stating the nature of the process, the date on which the process was mailed, and the name and address on the envelope containing the process mailed as certified mail return receipt requested. The sheriff, party or the party's attorney shall file the return on service and the return receipt or return envelope in the records of the action." (Emphasis added).

The provisions of K.S.A. 1990 Supp. 60-303(b) concerning service by mail and a county sheriff have been discussed and reviewed by a noted Kansas civil procedure authority:

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"The existence of these two different types of mail service was a source of some confusion. It was the thought of alleviating this confusion as well as generally improving the procedure for serving process that led the Civil Code Advisory Committee of the Kansas Judicial Council to propose the adoption of service by certified mail as an alternative form of service for most kinds of actions. Although the law that has resulted differs in some ways from the Advisory Committee's original proposal, its basic structure was retained.

. . . .

"With respect to service by certified mail, the Advisory Committee and the Judicial Council recommended providing simply that the attorney for the party seeking service, or the party if not represented by an attorney, should cause a copy of the process and petition to be sent by certified mail, return receipt requested. However, the legislature, for reasons that are not all clear, saw fit also to empower the sheriff to effect such service, and in so doing added language to the Judicial Council's proposal that is quite confusing, but seems to suggest that service by the sheriff is the preferred method of service by certified mail.

. . . .

"The opening sentence of § 60-303(b) is quite confusing. The confusion stems from mixing together in one sentence authorization for and limitations on service by the sheriff and authorization and limitations on service by certified mail. Apparently what the sentence means could be paraphrased in these words:

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'The sheriff shall serve any process that is to be served by certified mail unless:

(a) The attorney for the party or the party elect to serve it by certified mail themselves;

(b) the attorney (or party) requests personal or residence service in accordance with § 60-303(c);

(c) certified mail service is not permitted (as it is not in the instances referred to in § 60-903, 906 and 3104);

(d) some other law prevents service by the sheriff or service by certified mail.'

"Why an attorney or party would want to have the sheriff rather than an employee of the law firm take the process to the post office and mail it is far from clear. If the attorney does it, he or she can be assured that the proper steps are taken and that the mail was properly addressed. That control is lacking if the task is turned over to the sheriff. It will make no difference to the defendant if a uniformed sheriff or deputy rather than a law clerk takes the process to the post office. In either case, it is the uniformed postman that actually makes the delivery of the process to the defendant. Accordingly, it seems highly unlikely that the option of having the sheriff mail the process, added to the Judicial Council's proposed bill with such confusing effect, will be used very much in practice." Casad, "Service of Process by Certified Mail", 59 JBA 25 (1990).

If, despite Professor Casad's concerns about having the sheriff mail the process, an attorney or party chooses to utilize the assistance of a sheriff for such a purpose, K.S.A.

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60-2003 was specifically amended in 1990 to permit the cost of postage fees to be taxed:

> "Items which may be included in the taxation of costs are:
>
> . . . .
>
> "(6) The postage fees incurred pursuant to K.S.A. 60-303 or subsection (e) of K.S.A. 60-308, and amendments thereto.
>
> "(7) Such other charges as are by statute authorized to be taxed as costs." (Emphasis added).

Thus, pursuant to K.S.A. 1990 Supp. 60-2003, the cost of postage fees may be taxed. This authority appears to be in addition to the fees discussed by K.S.A. 1990 Supp. 28-110:

> "The sheriffs of each county in the state shall charge for the services required by law to be performed by them the following fees:
>
> Serving or executing and returning any writ, process, order or notice, or tax warrant, including a copy of the same, whenever a copy is required by law, except as otherwise provided, for the first person $1.00
>
> . . . .
>
> "All fees provided by this section, except those expressly given to the sheriff, are to be paid into the county general fund." (Emphasis added).

We believe there is ample statutory authority indicating legislative intent to allow the cost of service by mail effectuated by and through the county sheriff to be recovered. While initial payment might be incurred by the

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county, K.S.A. 1990 Supp. 60-2003(6) and K.S.A. 1990 Supp. 28-110 permit the cost of service to be recovered by the county.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Theresa Marcel Nuckolls

Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

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MONTGOMERY COUNTY SHERIFF'S OFFICE

Independence, Kansas 67301

INDEPENDENCE
PHONE 316-331-1500
JACK DANIELS, SHERIFF
RES. 316-673-8065

COFFEYVILLE
PHONE 316-251-3500

February 15, 1991

CERTIFIED MAILING OF PROCESS SERVICE

EXPENSES

For period covering 01-09-91 thru 02-11-91	65 papers
Total cost for mailing process.	$ 144.77
Process server averages 20 min. per paper processed	65 x 20 = 1300 min. or **21.67 hrs.**

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House Bill No. 2144
House Judiciary Committee
February 18, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2144. This bill amends service of process statutes to require a $5 sheriff's fee in those cases in which a party or attorney wishes the sheriff to serve the process by certified mail.

Our main concern with this bill is that the amendment as drafted, contradicts other language in the bill. Lines 24 through 30 on page 2 direct the sheriff to use certified mail if there is no request by a party or attorney to serve the process by personal service.

In the proposed language, lines 19 through 21 require a check to accompany a "written" request to the sheriff for service by certified mail.

We would request the committee change either provision so they are consistent.

I might just add that the new law on process has only been in effect since January 1, 1991. This proposed change might be premature.

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KANSAS BAR ASSOCIATION

POSITION STATEMENT

TO: Rep. John Solbach, Chair;
House Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2144

DATE: February 18, 1991

Mr. Chairman, Members of the Judiciary Committee. KBA represents 5,300 attorneys and judges in Kansas. Our legislative role spans more than a century of service to our state.

I don't know whether we're opposed to this legislation or not, because I'm not sure what problem it attempts to fix. I do not, however, think it accomplishes what Rep. Empson's constituents want.

Those of you who participated in the laborious discussions over 1990 HB 3021 will recall the Bar, especially the collections bar, had major concerns with "add-on" filing fees to fund personal service or certified mail, at the sheriff's option. HB 2144 undoes 1990 HB 3021.

History. 1990 HB 3021 originally considered a general $5.00 filing fee increase across the board (both Chapter 60 and 61 cases) with the money earmarked for county general funds and applicable to sheriff office expenses, for use to defray costs of mailing out process. The problems with this approach were twofold: (1) sheriffs in some counties could not be assured their commissioners would earmark the funds for sheriff's offices,1/ and (2) there was con-

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[1]Sheriffs and their commissioners don't always see eye to eye. There was concern whatever the sheriff's budget was at the time, some commissions would simply deduct the amount allocated to the sheriff under the HB 3021 filing fee and the earmarked money would simply be a way of increasing the county general budget.

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1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

cern the attorneys, having to collect an additional $5.00 from their clients for this fee would simply order that process be served personally. Thus sheriffs would collect an additional $5.00 per case but still be using personal service of process, defeating the preference for service of process by mail.

Further, sheriffs also told you that in most instances, the cost of the mailings could come from the reduced cost of sending officers and automobiles into the county to physically serve process. Sheriff Hackler indicated that if sheriffs have options to serve by mail and that such options lead to a significant decrease in the number of personal services of process currently in sheriff offices, the savings in current budgets would preclude the need for additional fees. Thus the 1990 conference committee adopted language that allows the sheriff to mail out service of process unless directed otherwise.2/ The consensus was to let the $5.00 fee ride a year or so and see what happens with service of process by mail. No additional filing fee was recommended.3/

May I point out that this new service of process by mail has been effective only since January 1, 1991. That is hardly enough time to determine statewide impact, assess costs, and conclude that a major changes need be made.

HB 2144. This legislation requires attorneys (or pro se plaintiffs) to pay the sheriff a $5.00 nonrefundable fee for each person to be served by mail. The clerk forwards the check and enough copies of the document to the sheriff for mail service. Our problems are as follows:

1. The proposed language presumes attorneys actually request that service of process be done by mail. They do not. Page 2, lines 24-26 and page 4, lines 34-36, indicate that the attorney can specify whether personal or residential service is to take place. If the attorney does not

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[2]See page 2, lines 24-26 and page 4, lines 34-36, of HB 2144 for current law.

[3]As you'll recall, that "no filing fee increase" recommendation was adopted only in part. Senator Winter wanted to fund juvenile jails in Kansas, but not dip into the state general fund to do it. A filing fee of $5.00 was adopted last year, with proceeds dedicated to juvenile jail construction. We had a filing fee increase, but it did not go to to help sheriff's office cost of operations.

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request personal or residential service, the sheriff must serve by process by mail.

(a) Page 2, line 30, and again in page 4, line 43 the word "shall" makes it mandatory that the sheriff shall serve by mail unless directed otherwise. This was not an oversight. It was felt that sheriffs should serve process by mail unless otherwise directed so that we could see if it made a difference in costs. You could change "shall" to "may" in both places, but if you do then some sheriffs will elect to serve process personally or by residence even when unnecessary. Your "statistics" on cost savings -- that was one of the reasons HB 3021 was set up the way it was -- will be hopelessly skewered and useless.

(b) Further, we discussed in 1990 when the attorney did not specify the type of service of process, whether to give the sheriff the option to serve by mail. It was decided not to give sheriffs that option. By keeping authority of what kind of service to permit either with the attorney or, by statutory direction, by mail **shielded sheriffs from liability** in case the form of service they chose ended up in the plaintiff missing an important statute of limitation.

2. More important, this bill totally discourages attorneys from authorizing sheriffs to serve process by mail. The attorneys will quickly learn that by withholding authorization for sheriffs to serve process by mail -- by specifically requesting that personal or residential service -- the attorney avoids the $5.00 fee increase on his client. The sheriff then expends time and expense on personal service that could have gone to costs for service of process by mail. HB 2144 defeats the delicate compromises of 1990 HB 3021.

3. Further, page 3, lines 21-24 state that the clerk delivers the fee and copies "**of the process and petition ... to the sheriff of the county where the process is to be served by certified mail.**"

First, the language appears to indicate that only the "petition" phase of process is served this way with a $5.00 fee. K.S.A. 60-303 and 61-1803 cover all service of process in Kansas. That means this $5.00 fee would be required not only in serving pleadings in new actions, but also in subsequent aids in execution, subpoenas, etc.

Second, why this complication? Assume a Shawnee County plaintiff sues on a debt a defendant who

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received medical care at St. Francis hospital in Topeka, but now lives in Montgomery County. Under this section, the Shawnee County clerk would send the process papers and the $5.00, to the Montgomery county sheriff -- even though service by mail could be initiated from the Topeka Post Office by the Shawnee County sheriff.

4. For collection firms, this additional $5.00 fee is a bureaucratic mess.

Assume a major collection firm is filing fifty different collection lawsuits against forty different clients in thirty different counties of Kansas. HB 2144 means a separate $5.00 check be cut for process fees for each case in which service by mail is authorized. There might be six plaintiffs in separate lawsuits against one defendant debtor. Must the firm collect and pay $5.00 for each case even though all five could go in one large envelope? As you can see **the firm can avoid the entire rigamarole by simply ordering sheriffs to serve process by personal or residential service.** When that happens we'll be right back into the situation we were in prior to 1990 HB 3021.

5. Finally, as I said last year, if the sheriffs do not want this authority and prefer to keep nickel and diming the business community (plaintiffs) with new fees and keep insisting that attorneys do what sheriffs have been empowered to do since statehood, the legislature should consider creating new private business enterprise which gets into the "personal service by certified mail" business for a fee, and gets sheriffs out of the process business altogether. The client's filing fees should not keep going to support county sheriffs and county commissions when no service is being provided.

Further, last year you added on $5.00 for civil litigants to pay to fund juvenile jails. The trade off was Sheriffs would serve process by mail unless otherwise directed. If the purpose of HB 2144 is to push attorneys towards serving process by mail and doing all the paperwork from the attorney's office, then it is only fair that our client's $5.00 be refunded.

In summation, KBA believes you should allow the 1990 compromise to work.

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KAC KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

212 S.W. 7th Street
Topeka, Kansas 66603
(913) 233-2271
FAX (913) 233-4830

February 18, 1991

To: House Judiciary Committee
Chairman John Solbach

From: Anne Smith
Director of Legislation

Re: HB 2144

The Kansas Association of Counties and our affiliate the Kansas Sheriffs Association do not support HB 2144.

There was extensive work put into last session's service of process legislation. The main intent was to allow sheriffs to mail service of process whenever possible. HB 2144, however, would defeat the purpose of the current system in use. If an attorney has to pay a five dollar fee for mailing service of process, it is likely the attorney will go ahead and request personal service of process.

The Sheriffs Association also clearly stated at the time the legislation was passed last year that the sheriff's departments would be able to absorb the costs of mailing. Since the sheriffs are required to deliver service of process and their only option prior to last session's legislation was to deliver by vehicle, the ability to mail service of process is more economical to them both in terms of time and money.

Thank you for the opportunity to address these concerns.

HJUD
2-18-91
attachment #11

STATE OF KANSAS

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

February 18, 1991

TO: HOUSE JUDICIARY COMMITTEE

FROM: CINDY EMPSON

RE: H.B. 2152

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you in support of H.B. 2152.

H.B. 2152 removes three statutory violations from the list of 6 specific violations that require a law enforcement officer to take a person stopped for these offenses into immediate custody. These three violations are: 1) KSA 8-1602 which pertains to leaving the scene of an injury accident; 2) KSA 8-1603 which pertains to leaving the scene of an accident; and, 3) KSA-1604 which pertains to the duty of a driver to give certain information after an accident; failure to provide proof of liability; duty to render aid after an accident.

H.B. 2152 would provide an officer with the discretion to determine if the circumstances warrant immediate custody. There is also considerable paper work involved with an arrest and this time could be better used by the officer if the circumstances don't warrant immediate custody.

Because all accidents don't fit into specific categories and circumstances differ with every accident, I believe our law enforcement officers are more capable of assessing a specific situation than we are from Topeka. This bill would give them that opportunity. I ask for your favorable consideration of H.B. 2152.

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MR. CHAIRMAN, MEMBERS OF THE COMMITTEE.

I AM CPL. MARK FINLEY OF THE TOPEKA POLICE DEPARTMENT. I HAVE BEEN A POLICE OFFICER FOR ABOUT 7 YEARS. I AM A SUPERVISOR IN THE TRAFFIC DIVISION. I HAVE BEEN ASSIGNED TO HIT & RUN INVESTIGATIONS FOR THE PAST 3 YEARS AND HAVE SPECIALIZED IN ACCIDENT INVESTIGATION SINCE LEAVING THE ACADEMY.

STATE LAW REQUIRES THAT ANYONE INVOLVED IN A HIT AND RUN ACCIDENT SHALL BE TAKEN INTO CUSTODY AND TAKEN WITHOUT UNNECESSARY DELAY BEFORE A JUDGE OF THE DISTRICT COURT. THERE SEEMS TO BE SOME CONFLICTING OPTIONS AS TO WHETHER SOMEONE CHARGED UNDER MUNICIPAL STATUTES IS REQUIRED TO BE TAKEN INTO CUSTODY. IN THE LAST YEAR WE HAVE HAD 1702 HIT AND RUN ACCIDENTS WE SOLVED 41% AND CHARGED 63% OF THOSE WITH LTS AND/OR FTR. I BELIEVE JUSTICE COULD BE BETTER SERVED BY PERMITTING THE OFFICER INVESTIGATING THE ACCIDENT TO HAVE THE OPTION OF BOOKING THE SUSPECT OR SIMPLY ISSUING A SUMMONS TO APPEAR AND ALLOWING THE PERSON TO GO ON THEIR WAY.

PEOPLE LEAVE THE SCENE OF ACCIDENTS FOR A VARIETY OF REASONS: DUI, SUSPENDED DRIVERS LICENSES, NO INSURANCE, AND WARRANTS ARE VERY COMMON.

I PERSONALLY HAVE HEARD ALL OF THESE AND ANOTHER YOU MAY NOT EXPECT, " I WAS AFRAID" . AFRAID OF WHAT? I ASK. PHYSICAL AND/OR MENTAL ABUSE FROM PARENTS OR SPOUSES IS MENTIONED WITH OBVIOUS ANXIETY.

TEENAGERS ARE OFTEN UNEXPERIENCED AND INTIMIDATED BY LEGAL MATTERS. AUTHORITY FIGURES FRIGHTEN THEM.

ANOTHER GROUP OF PEOPLE WHO I'M CONCERNED ABOUT ARE THE ELDERLY OR ANYONE REALLY WITH PHYSICAL OR MEDICAL PROBLEMS WHICH MAKE THEM APPREHENSIVE ABOUT REPORTING ACCIDENTS. THEY ARE JUSTIFIABLY CONCERNED ABOUT LOSING THEIR DRIVING PRIVILEGES. AS A LAW ENFORCEMENT OFFICER IT IS MY OBLIGATION TO PROTECT EVERYBODY. THIS CAN TRANSLATE TO MEAN IF I SUSPECT A PROBLEM WITH SOMEONE'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE, I HAVE THE DUTY TO REQUEST THE STATE TO REVOKE THE DRIVING PRIVILEGES OF THE PERSON UNTIL FURTHER TESTING CAN BE ARRANGED BY A DRIVERS LICENSE EXAMINER. I AM NOT ABLE TO PROVIDE FIGURES, HOWEVER I BELIEVE THE PERCENTAGE WHO LOSE THEIR DRIVING PRIVILEGES TO BE QUITE HIGH.

TELLING SOMEONE THEY ARE NOT GOING TO JAIL, IS QUITE OFTEN ENOUGH TO GET THE TRUTH OF THE MATTER OUT. IT IS DIFFICULT IF NOT IMPOSSIBLE TO RIDE AROUND IN MOTOR VEHICLES WITHOUT BEING INVOLVED IN AN ACCIDENT AT SOME POINT IN TIME. REGARDLESS OF WHO IS AT FAULT, FEAR CAN KICK IN THE "FIGHT OR FLIGHT" SYNDROME IN SOME INDIVIDUALS.

SOMEONE CHARGED WITH RECKLESS DRIVING CAN BE WRITTEN A TICKET AND SENT ON THEIR WAY. IF ONE OF YOUR GRANDPARENTS,

HJUD
2-18-91
Attachment #13

SPOUSES, OR CHILDREN BUMPS ANOTHER CAR, BECOMES FRIGHTENED AND CONFUSED AND LEAVES THE SCENE OF THE ACCIDENT, HE OR SHE WILL BE REQUIRED TO SUBMIT TO PAT DOWNS, HANDCUFFS, MUG SHOTS, FINGERPRINTS, AND POSSIBLE JAIL TIME.

I WOULD RECOMMEND THE WORDING BE CHANGED TO ALLOW THE INVESTIGATING OFFICER THE OPTION OF TAKING THE SUSPECT INTO CUSTODY OR NOT. THE AMOUNT OF MALICE INVOLVED TO BE THE DETERMINING FACTOR.

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Kansans for Highway Safety

FEBRUARY 18, 1991

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
REFERENCE HOUSE BILL NO. 2152
Custodial arrest of persons charged with KSA 8-1602, 8-1603, and 8-1604

The essence of this bill is to no longer require that a law enforcement officer take a person into custody and take that person before the court for violating KSA 8-1602 (Leaving the scene of an injury accident), 8-1603 (Leaving the scene of a non-injury accident), and 8-1604 (Duty to render aid give information and duty to give information). Since all of these charges are misdemeanors and not traffic infractions this bill would leave it to the officers discretion whether or not to take the person into custody or to issue a notice to appear under KSA 8-2104 subsection (b). The result of passage of this bill should be to reduce the number of persons taken into custodial arrest for these violations.

We believe that the passage of this bill would result in a substantial savings of man hours to law enforcement agencies. While booking a person for these misdemeanor charges may provide a device to impress upon the defendant the seriousness of the charges, a check of current bonding procedures show that little deterrent effect would be gained other than the inconvenience to the defendant. In Shawnee County a violation of 8-1602 requires a $1,000 surety bond, 8-1603 only requires a signature bond, and 8-1604 a $500 surety bond. The Topeka Municipal Court requires only a signature bond on any of the charges. All of these charges would result in the suspension of the driver's license if the defendant failed to appear. In fact some agencies we checked with do not follow this procedure now.

Many times persons who leave the scene of an accident do so because of being intoxicated. Of course if a driver were found to be intoxicated when apprehended they would be taken into custody due to the DUI. However, hit and run drivers are usually identified at a later time, sometimes days after the accident.

If there are other reasons to believe that the person may not appear in court if not taken into custody the officer would still have that option. Some examples of situations that would indicate this need would be a person living out of state, a person with no identification, or a person who states he will not appear. We would oppose this bill if that option were not kept alive.

We see no reason to believe that the passage of this bill would be detrimental to traffic safety on Kansas highways. Since the apprehension of drivers committing serious traffic violations such as DUI or reckless driving before the are involved in an accident is very dependant on the law enforcement officer being available and on the road, we feel that a potential exists for the officers to utilize their time more productively then by transporting and booking drivers charged with these violations. Especially those who show a high probability of appearing in court or being located again if they do not appear when their identity is known.

Ed Klumpp, President
4339 SE 21st
Topeka, Kansas 66607
Home:913-235-5619
Work:913-354-9450

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2-18-91
Attachment #14