Approved: April 28, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 14, 1995 in Room 313-S-of the Capitol.

All members were present except:
Representative Clyde Graeber - Excused
Representative Belva Ott - Excused
Representative Joel Rutledge - Excused
Representative Candy Ruff - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Gene Johnson, Kansas Alliance on Alcohol & Drugs
Wanda Stewart, Mothers Against Drunk Drivers
Roger Carlson, Director of Health & Environment Laboratory
Dave Hanson, National Association of Independent Insurers
John Smith, Department of Revenue, Division of Motor Vehicles
Jim Keller, Department of Revenue, Division of Motor Vehicles
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
Carla Stovall, Attorney General
Darlene Stearns, American Civil Liberties Union
Bill Lucero on behalf of Sue Norton, Murder Victim's Families for Reconciliation
David Harper, Kansas Collation Against the Death Penalty
Melody Curtis Cathy, Administrative Counsel Indigent Defense Services
Ron Wurtz, Capital Defense Coordinator, Board of Indigent Defense

Others attending: See attached list

Hearings on **HB 2519** - Drivers under 21 blood alcohol concentration .01 or greater, drivers license suspended, were opened.

Gene Johnson, Kansas Alliance on Alcohol & Drugs, appeared before the committee as a proponent of the bill. He told the committee that the loss of driving privileges would be a deterrent to underage drinking and driving. (Attachment 1)

Wanda Stewart, Mothers Against Drunk Drivers, appeared before the committee in support of the bill. She commented that she would be in favor of lowering the blood alcohol concentration lower than .04, since they are prohibited from drinking alcohol anyway. She provided the committee with handouts from MADD and stated that 29 states have established lower alcohol limits for drivers under the age of 21. Many of these states have established .00 or .02 tolerance levels. (Attachment 2)

Roger Carlson, Director of Health & Environment Laboratory, appeared before the committee with general information and to answer questions. He stated that this bill establishes a deterrent for under age drivers. The instruments that Kansas has are designed to measure alcohol levels at approximately .01 + or - .05, which is only 50% accuracy. Therefore, .01 might be hard to defend in court. If the Department had all new instruments it would be easier to determine the .01. Impairment begins at .05 and that is the reason why the commercial drivers BAC is set at .04, so they can be stopped before the impairment begins. (Attachment 3)

Chairman O'Neal asked if it would be simpler to have a test that shows any level of alcohol, so if the testing unit shows traces it has verified the presence of alcohol. Dr. Carlson responded that this is a worthy goal. The issue is what level is defensible. The Chairman stated that he understood that the existing equipment can detect the evidence of alcohol so there can be no positive/negative. Dr. Carlson agreed that the instruments are specific in their ability to detect alcohol.

Representative Garner asked if mouthwash or medicine with small amounts of alcohol could be detected by the equipment. Dr. Carlson answered that this would not be an issue. The officer is required to wait 20 minutes to make sure that he is not measuring mouth alcohol but, rather, deep lung alcohol.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on March 14, 1995.

Dave Hanson, National Association of Independent Insurers, appeared before the committee in support of the bill, as is. He commented that 40% of traffic fatalities between the ages of 15 - 20 were alcohol related and by lowering the BAC it would save more lives. (Attachment 4)

John Smith, Department of Revenue, Division of Motor Vehicles, appeared before the committee with a balloon draft which would change the BAC from .01 to .04 so that the division could properly and effectively administer the legislation. (Attachment 5)

Chairman O'Neal asked how the division would feel if the balloon amendment was adopted with the exception of the .04 and instead going with a positive/negative test. Jim Keller, Department of Revenue, Division of Motor Vehicles, commented that he didn't have any problems with that but .04 is defensible and it is questionable as to whether .01 or lower would be.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, appeared before the committee as a opponent of the bill. He stated that impairment begins at .05 and law that would have BAC under that level would not be necessary. (Attachment 6)

Hearing on **HB 2519** were closed.

Hearings on **HB 2529** - Amendments to the capital murder and sentence of death statute, were opened.

Carla Stovall, Attorney General, appeared before the committee as the sponsor of the bill and explained why the bill was needed. (Attachment 7)

Darlene Stearns, American Civil Liberties Union, appeared before the committee as an opponent of the bill. She stated that this bill goes way too far in broading the death penalty. (Attachment 8)

Bill Lucero appeared on behalf of Sue Norton, Murder Victim's Families for Reconciliation, to provide the committee with her written testimony. (Attachment 9)

David Harper, Kansas Collation Against the Death Penalty, & David Gottlieb appeared before the committee as opponents of the death penalty. (Attachments 10 & 11)

Melody Curtis Cathy, Administrative Counsel Indigent Defense Services, appeared before the committee with an estimate that it would cost $573,000 to provide defense services for three capital murder defense cases. (Attachment 12)

Ron Wurtz, Capital Defense Coordinator, Board of Indigent Defense, appeared before the committee neither as a proponent or opponent of the bill. He told the committee that this bill would increase the number of potential death cases by allowing those age 16 and over to receive the death penalty. (Attachment 13)

Elaine Mann, League of Women Voters of Kansas and Donna Schneweis, Amnesty International did not appear before the committee but requested that their testimony be included in the minutes. (Attachments 14 & 15)

The committee meeting adjourned. The next meeting is scheduled for March 15, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 14, 1995

NAME	REPRESENTING
Betty McBride	KDOR - MVD
John W. Smith	KDOR MVD
Jim Keller	KDOR - Legal Services
Doug IRVIN	OJA
Max Sutherland	KS MADD
Cathy Stenger	KS MADD
[illegible] Johnson	Ks. A.S.A.P. Assn
[illegible]	Ks Wine/spirits wholesalers Assn.
Morgan [illegible]	Intern - Britt Nichols
Bob [illegible]	KHP
Rosalie [illegible]	KDOT
Stanley P. Sutton	KAEL Laboratory Improvement
[illegible]	KAEL
David Hanson	NAII
Fr Vincent E Krische	Lawrence
Jeanne McK[illegible]	[illegible]
Nancy Lindberg	AG
Dale Finger	KBI
David A. [illegible]	KBI

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/14/95

NAME	REPRESENTING
Jim Clark	KCDAA
R Baker	CP
Yvonne Butcher	citizen / Wichita KCADP
John Butcher	Citizen / Wichita KCADP
Cindy [illegible]	KPCH Commission
Rev. Raymond Berry	Ks. Coalition Against Death Penalty
Sister Margaret Buchta	Ks Co. Against Death Penalty
Mariella Ann Moylan	Ks Co against Death Penalty
Martha Coffman	Lawrence KCADP
DAVID C. HARPER	KCADP
Sidney Brush	Wichita, KCADP
Marge Bradshaw	ACLU
David Palmer	SRS/ADAS
James Crawford	Intern
Barbara Townley	KCADP
Jud Townley	KCADP
Eleanor H. Bell	KCADP & UUSC
Esther Miller	KCADP
Wilfred Miller	KCADP

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/14/95

NAME	REPRESENTING
Janet Cashman	KCADP
Darlene Greer Stearns	ACLU
Londonne Corder	Intern Lehman, Brande Berry
ASHOK SHIMPI	KCADP
Jim Keele	B L E
DON LINDSEY	UTU
McCarthy	BIDS
Karen Burke	Capital Defense Coordinator's Office
TREVA POTTER	TOPEKA
DAVID GOTTLIEB	Citizen / Lawrence, KCADP
Kristin Vorhies	Amnesty International

Testimony
House Judiciary Committee
House Bill 2519
March 14, 1995

To: Representative Michael O'Neal, Chariman
House Judiciary Committee
Statehouse
Topeka, KS 66612

From: Gene Johnson, Lobbyist

Dear Chairman O'Neal and Members of the House Judiciary Committee:

The Kansas Alliance of Alcohol and other Drug Abuse Services, the Kansas Alcoholism and Drug Addiction Counselors Association, and the Kansas Community Alcohol Safety Action Project Coordinators Association endorse the concept set forth in House Bill 2519.

This committee is well aware of the changes in the legislature several years ago, making it a misdemeanor for those under the age of 21 to consume, or possess alcoholic beverages. We all know that the majority of these young adults do not have the capability to fully realize the extent of the effects of drugs and alcohol on their driving skills.

By passing this legislation,with the amendments suggested by the Department of Revenue, the underage offender would forfeit their driving privileges for a period of not less than 30 days. Upon successful completion of a four hour alcohol and drug information class, they would be eligible for a restricted drivers license for the balance of the year.

We feel the loss of driving privileges would be a positive deterrent to underage drinking and driving in the future. Also, by subjecting these young offenders to an alcohol and drug information class, we would enhance their knowledge of the negative effects of drinking alcoholic beverages and its effect on their driving skills.

We support this proposed legislation as long as it is liberally construed to promote public health, safety and welfare.

Respectfully,

Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Alliance on Alcohol & Other Drug Abuse Services, Inc.
Kansas Community Alcohol Safety Action Project Coordinators Association

Relative Risk of Fatal Crash

As a Function of BAC and Age

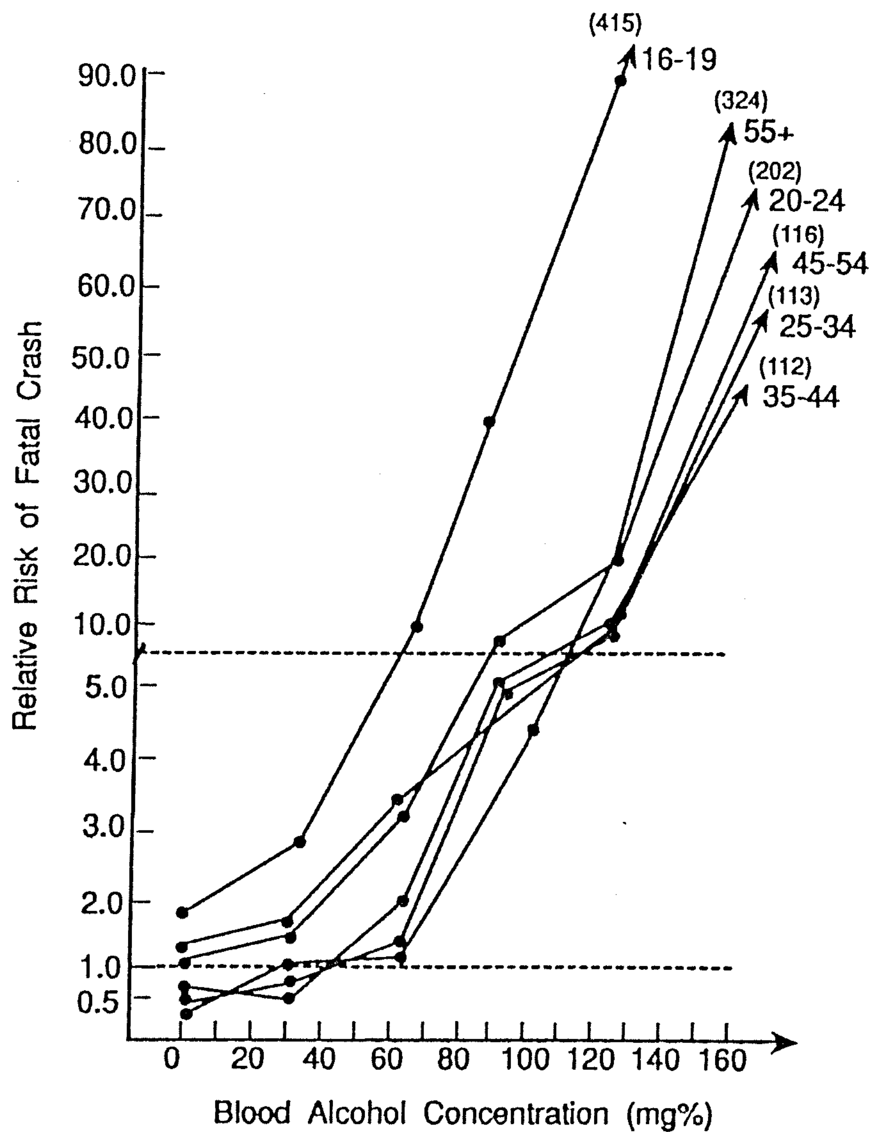
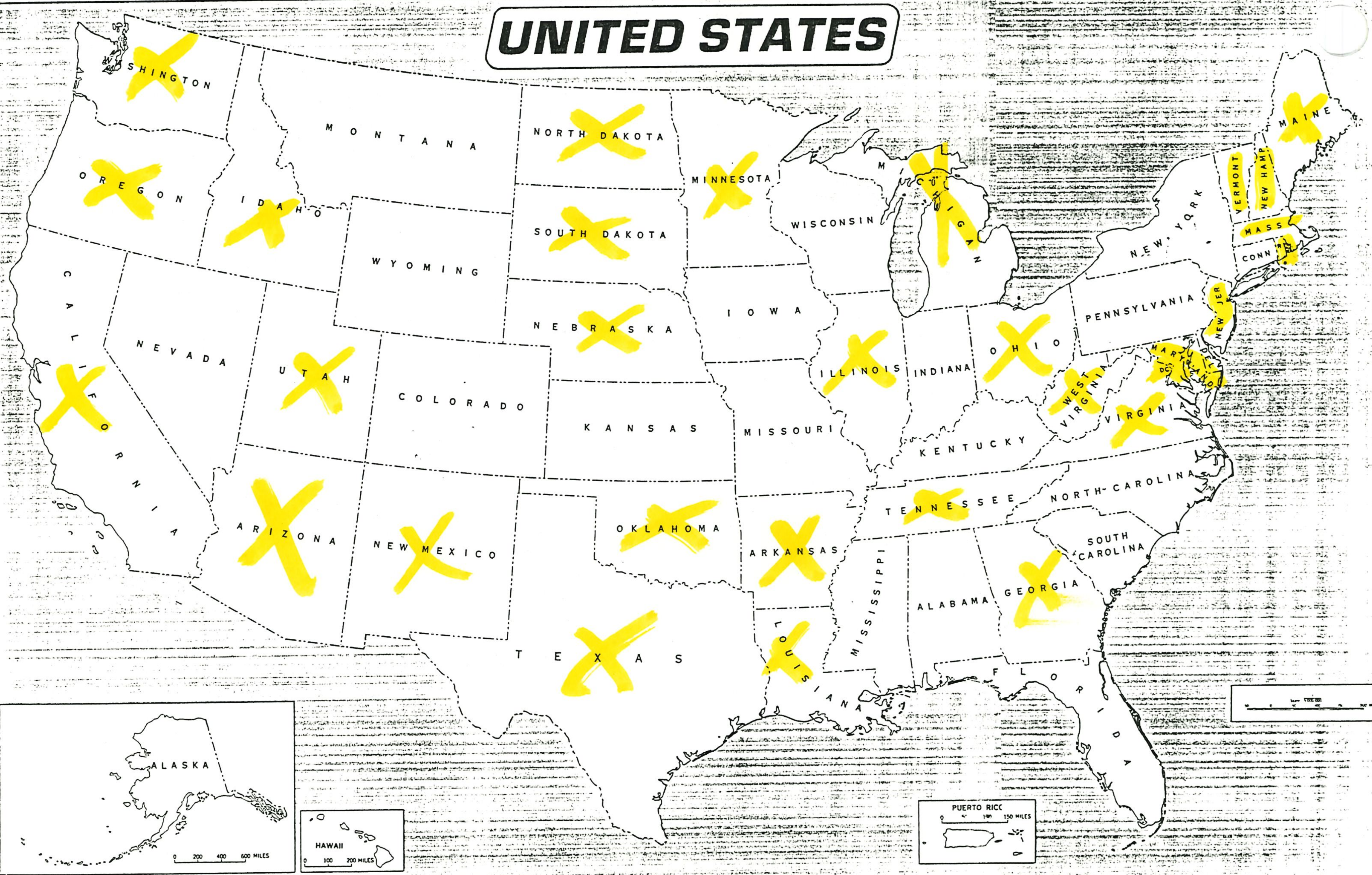


Figure 6.6 Source: Simpson, H. (1985)

House Judiciary
3-14-95
Attachment 2


UNITED STATES
SHINGTON
OREGON
CALIFORNIA
IDAHO
NEVADA
MONTANA
WYOMING
UTAH
COLORADO
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
MARYLAND
DEL
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VERMONT
NEW HAMP
MAINE
ALASKA
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HAWAII
0 100 200 MILES
PUERTO RICO
150 MILES

Youth Issues:

"Zero Tolerance" for Youth & Lower BAC for Youth:

(39)

The following states have "Zero Tolerance" for youth under 21:

Arizona .00 <21
Arkansas .02 <21
California .01 <21
(1/1/94)
D.C. .00 <21
Idaho .02 <21
(eff. 7-1-94)
Illinois .00 <21
(eff. 1-95)
Maine .02 <21
Maryland .02 <21

Massachusetts .02 <21
(eff. 5-27-94)
Michigan .02 <21
(eff. 11-1-94)
Minnesota .00 <21
Nebraska .02 <21
(eff. 1/1/94)
New Jersey .01 <21
New Mexico .02 <21
(eff. 1/94)
Ohio .02 <21
(eff. 5/4/94)

Oregon .00 <21
South Dakota <21
(eff. 1/94)
Tennessee .02 <21
Utah .00 <21
Virginia .02 <21
(eff. 7/1/94)
Wash. St. .02 <21
(eff. 7/1/94)
West Vir., 02 <21
(eff. 6/10/94)

These states have "Zero Tolerance" for youth at various ages:

North Carolina .00 16-18 Wisconsin .00 <19

The following states also have lower BAC levels for under 21:

Georgia .04 <18
(eff. 7-1-94)
Louisiana .04 <18
(eff. 7-7-94)

New Hamp. .04 <21*
Oklahoma .02 <18
(eff. 7-1-95)

Rhode Is. .04 <21
Texas .07 <21
Vermont .02 <18

* civil only

(17)

The following states have/had bills to lower BAC levels for youth:

Alabama--to be introduced.
Colorado--to be introduced.
Connecticut--introduced, no bill number yet.
Delaware--Complete DUI package is planned to be presented including zero tolerance.
Florida--0.02 percent to be introduced.
Georgia--to be introduced.
Hawaii--to be introduced.
Iowa--to be introduced.
Kansas--to be introduced.
Kentucky--to be introduced.
Louisiana--to be introduced.
Mississippi--to be introduced.
Missouri--to be introduced.
New York--to be introduced.
North Carolina--to be introduced.
Texas--to be introduced.
Vermont--to be introduced.

LOWER BAC LEVELS FOR YOUTHFUL DWI OFFENDERS

STATE	AGE LEVEL	BAC LEVEL	SANCTIONS			
			LICENSING	FINE	JAIL	COMMUNITY SERVICE
ARIZONA	<21	0.00		X	X	
ARKANSAS	<21	0.02	X	X		X
CALIFORNIA	<21	0.01	X			
DIST. OF COLUMBIA	<21	0.00	X	X	X	
GEORGIA	<18	0.04	X	X	X	
IDAHO	<21	0.02	X	X	X[1]	
ILLINOIS*						
LOUISIANA	<18	0.04	X	X	X	X
MAINE	<21	0.02	X			
MARYLAND	<21	0.02	X	X		
MASSACHUSETTS	<21	0.02	X			
MICHIGAN	<21	0.00	X	X		X
MINNESOTA	<21	0.00	X	X	X	
NEBRASKA	<21	0.02	X	X		
NEW HAMPSHIRE	<21	0.04	X			
NEW JERSEY	<21	0.01	X			X
NEW MEXICO	<21	0.02	X			
NORTH CAROLINA	<18	0.00	X			
OHIO	<21	0.02	X	X	X	
OKLAHOMA	<18	0.02	X	X		X
OREGON	<21	0.00	X			
RHODE ISLAND	<21	0.04	X	X		X
TENNESSEE	<21	0.02	X	X		X
TEXAS	<21	0.07	X			
UTAH	<21	0.00	X			
VERMONT	<18	0.02	X			
VIRGINIA	<21	0.02	X	X		
WASHINGTON	<21	0.02	X			
WEST VIRGINIA	<21	0.02	X	X	X[2]	
WISCONSIN	<19	0.00	X			

TOTAL=30

*Legislation has been enacted and is waiting for the governor's signature.

[1]This sanction applies only for 3rd and subsequent offenses.
[2]This sanction applies only for subsequent offenses.

Revised 8/12/94

LOWER BAC LIMITS FOR YOUTH
Evaluation of the Maryland .02 Law

Alcohol continues to be associated with a substantial number of highway crashes and deaths among those under 21 years of age. The objective of this study was to determine the effects of special drinking-driving sanctions aimed at youth.

Results

The first analyses were structured to examine the impact of the sanction statewide on the number of crash-involved drivers judged HBD. Several statistically significant time series models were developed based on the statewide data series of crash-involved drivers under 21 judged HBD. The significant model with the most traditional form showed an estimated decrease in the monthly mean number of crash-involved drivers under 21 judged HBD of 14.9 from the mean of 133 per month mean prior to adoption of the sanction. This is a reduction of approximately 11 percent. There was no significant reduction in the statewide data series associated with the introduction of the PI&E in the experimental counties.

In the experimental counties, the analysis showed a 21 percent reduction in crash-involved drivers under 21 judged HBD during the post-sanction period through January 1990, and an additional reduction of 30 percent in the post-PI&E period through December 1990. Among the comparison counties, only the intervention associated with the January 1989 adoption of the law was significant: an estimated 26 percent reduction in the monthly mean.

The survey data supported the crash data findings: awareness of the law was relatively high even before the start of the PI&E program; and knowledge of the law increased in the experimental counties after application of the PI&E program but did not change in the comparison counties.

Conclusions

This study leads to the conclusion that the Maryland 0.02 BAC sanction for youth is a highly effective highway safety countermeasure.

Cost Benefit Estimates

A NHTSA evaluation of the 0.02 law in Maryland showed an 11 percent decrease in the number of drivers under age 21 involved in crashes who, police report, "had been drinking." A study of four other States (Maine, New Mexico, North Carolina, and Wisconsin) revealed a 34 percent decline in adolescent night fatal crashes during the post-law years compared to only a 7 percent decrease in adult night fatal crashes. A more recent study of 12 States with lower limits showed a 16 percent decrease in single vehicle nighttime fatal crashes for drivers targeted by the laws while these crashes rose one percent among drivers of the same ages in comparison States where the laws were not changed.

Additional Sources of Information

A number of reports have supported legislation of this type:

Lower BAC Limits For Youth: Evaluation of the Maryland .02 Law. NHTSA Report Number DOTHS 807 860, March 1992. (Technical Summary. DOT HS 807 859, March 1992.)

"Reduced BAC Limits for Young People (Impact on Night Fatal Crashes)", Alcohol, Drugs, and Driving, R. Hingson, et al., Vol. 7 No. 2, pp 117-127.

"Lower Legal Blood Alcohol Limits for Young Drivers" R. Hingson, et al, 73rd Meeting, Transportation Research Board, January 1994.

Bill Graves Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to
House Judiciary Committee
by
The Kansas Department of Health and Environment

House Bill 2519

The intent of HB2519 is to establish a deterrent against the consumption of alcohol by younger drivers through administrative suspension of license at the lowest level of alcohol which is technically and judicially defensible. Currently established DUI programs in Kansas, including those at the Kansas Department of Health and Environment, are focused on educational and enforcement actions associated with the prosecution of 20,000 impaired drivers who are arrested on our highways each year. The value of the proposal outlined in HB2519 hinges upon careful analysis of three central issues: 1) Is there good reason to believe that the deterrent would be effective?, 2) Can probable cause for arrest be readily established to encourage enforcement?, and 3) Can an alcohol level of 0.01% be established as court defensible using current evidential instruments which were designed to verify impairment levels nearly ten times higher in concentration?

Currently, twenty-nine states and the District of Columbia have established lower alcohol limits for drivers younger than 21 than for adult drivers. The experience of several states has generally been favorable in reducing alcohol-related highway deaths and injuries. In addition, some epidemiologic evidence published in the current Journal of the U.S. Public Health Service shows a lower incidence of alcohol-related fatalities in younger drivers in states which have established 0.00 or 0.02% tolerance levels.

Although traditional roadside sobriety tests which are used to indicate alcohol impairment will not be applicable to the detection of very low alcohol levels, physical evidence and the use of preliminary breath test devices may help to establish probable cause for arrest. At the same time, however, we must be acutely aware of the fact that rigorous operation of the proposed deterrent effort will require staff resources from all program components during these times of fiscal restraint. Funding for these resources is not included in the Governor's budget.

Finally, Kansas evidential instruments which are operating under optimal conditions can be expected to detect alcohol at a level of 0.01 ± 0.005%. However, this level may be difficult to achieve routinely with some older instruments. As the Agency responsible for the quality assurance of breath alcohol data produced in Kansas, we would be much more confident in defending a low alcohol level of 0.02% using the 167 certified instruments which are located in 135 Kansas law enforcement agencies. In fact, of the 29 states that have established lower alcohol levels for young drivers, two-thirds have chosen a level of 0.02% or higher as the best practical compromise between deterrence and court-defensible program operations.

The Kansas Department of Health and Environment supports the deterrent concept which is proposed in HB2519.

Testimony presented by: Roger H. Carlson, Ph.D., Director
Kansas Health and Environmental Laboratory
March 14, 1995

Kansas Health and Environmental Laboratory
Forbes Field, Bldg. 740, Topeka, KS 66620-0001

Printed on Recycled Paper

1995 National Association of Independent Insurers

CELEBRATING FIFTY YEARS OF SERVICE

Robyn B. Simon
Assistant Counsel

March 13, 1995

Honorable Michael O'Neal
Chairman House Judiciary Committee
State House
Topeka, Kansas

Dear Chairman O'Neal:

In 1993 alone, 40% of traffic fatalities involving young drivers between the ages of 15 and 20 were alcohol related[1]. That is why on behalf of the National Association of Independent Insurers, I am writing to urge support of House Bill 2519. The NAII is a national trade association of property/casualty insurers with approximately 570 members. Our members write 42% of the private passenger auto liability insurance in Kansas.

In all fifty states, it is illegal for persons under the age of 21 to purchase alcoholic beverages. Yet a significant number of states do not impose sanctions on young drivers with enough alcohol in their bloodstream to impair their driving ability. While the .08 BAC level in Kansas may be a sufficient indicator of alcohol impairment for an adult, experienced driver, lower BAC levels have a more pronounced effect on the young, inexperienced driver. In fact, approximately one third of the 15 to 20 year old drinking drivers in fatal crashes had BACs between .01 and .09.

The numbers speak for themselves: lowering the blood alcohol limits for young drivers saves lives. A recent study conducted by the Boston University School of Public Health[2] showed that in the 29 states with lower BAC levels for young drivers, fatal crashes involving young drivers declined by 16%. In comparison, the number of fatalities among the same age group increased by 1% in states that did not lower the BAC limits. The same study also concluded that the lower the BAC limit, the greater the reduction in fatalities: states with a BAC level of .00 saw a 22 % decrease in fatalities whereas states with a level of .02 saw a 17% decrease. By lowering the BAC limit to .01, Kansas would be joining more than half the states in a crusade to save young lives.

---

1 Statistics courtesy of the National Highway Traffic Safety Administration's Youth Fatal Crash and Alcohol Facts 1993.

2 Hingson, R., Heeren, T., Howland, J., and Winter, M., : Reduced BAC Limits for Young People. Public Health Reports 733-734 (1994).

Suspension of driving privileges is an effective deterrent for any driver. While many adults may take their driving privileges for granted, the teen-aged driver places a much higher value on his or her drivers license. It is widely believed, therefore, that driver license suspension might prove to be an even stronger deterrent for the teen-aged driver. The purpose of more stringent drunk driving laws for teenagers is not only to punish transgressors, but to convince teenagers that driving under the influence of alcohol is simply not worth the risk.

Thank you for your consideration of this important issue.

Sincerely,

Robyn B. Simon
Assistant Counsel

RBS:sk
H:\legal\nmidata\simon\ksgdl.sam

STATE OF KANSAS

Betty McBride, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66626-0001

(913) 296-3601
FAX (913) 296-3852

Department of Revenue
Division of Vehicles

To: Honorable Micheal O'Neal, Chairman
House Judiciary Committee

From: John Smith, Vehicle Services Administrator
Division of Vehicles

Date: March 14, 1995

Mr. Chairman, Members of the Committee,

I am John Smith, Vehicle Services Administrator for the Driver Licensing and Driver Control Bureaus. I appear before you today on behalf of the Kansas Department of Revenue regarding House Bill 2519.

We would like to propose several amendments to this bill. Our reasons for doing so are to ensure that the division can properly and effectively administer this legislation, and of equal importance, to ensure that Kansas law will be interpreted by the courts as remedial and for the protection of the public, rather than punitive or double jeopardy, as is the issue in several cases now before the courts.

We feel a .04 blood alcohol level is subject to less of a challenge than a lower limit. This is the current level for commercial drivers. It will not be necessary to recalibrate current machines since those machines are already calibrated at this level.

We also feel that the period of driver's license sanctions should be the same as for the .08 level.

As a remedial action, we would recommend that prior to reinstatement of driving privileges or granting of restricted privileges, the driver be required to complete an alcohol education program of four hours, pass a complete driver license examination, and pay a $50.00 reinstatement fee.

In our proposed amendments, we have deleted the administrative fine which could be interpreted as punishment and double jeopardy. Instead, we have increased the reinstatement fee to $50.00 which would be divided between three agencies and help defray administrative cost.

We also feel the temporary license should be good for (30) days rather than the present (20) to enable the division more time to set administrative hearings, since this legislation will definitely cause an increase in the number of hearings.

I would stand for any questions you may have at this time.

Session of 1995

HOUSE BILL No. 2519

By Committee on Federal and State Affairs

2-15

9 AN ACT concerning alcohol or drug related offenses involving the op-
10 eration of a vehicle; concerning the blood alcohol concentration of a
11 person under 21; amending K.S.A. 1994 Supp. 8-241, 8-259, 8-1001,
12 8-1002, 8-1013 and 8-1014 and repealing the existing sections.
13
14 *Be it enacted by the Legislature of the State of Kansas:*
15 Section 1. K.S.A. 1994 Supp. 8-241 is hereby amended to read as
16 follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142,
17 and amendments thereto, any person licensed to operate a motor vehicle
18 in this state shall submit to an examination whenever: (1) The division of
19 vehicles has good cause to believe that such person is incompetent or
20 otherwise not qualified to be licensed~~; or~~ (2) ~~such person has been con-~~
21 ~~victed of a violation of K.S.A. 8-1567, and amendments thereto; or (3)~~
22 ~~the division of vehicles has suspended such person's license pursuant to~~
23 ~~subsection (e) of K.S.A. 8-1014, and amendments thereto.~~
24 (b) When a person is required to submit to an examination pursuant
25 to subsection (a)(1), the fee for such examination shall be in the amount
26 provided by K.S.A 8-240, and amendments thereto. When a person is
27 required to submit to an examination pursuant to subsection (a)(2) *or*
28 *(a)(3)*, the fee for such examination shall be $5. In addition, any person
29 required to submit to an examination pursuant to subsection (a)(2) *or*
30 *(a)(3)* shall be required, at the time of examination, to pay a reinstatement
31 fee of ~~$25~~. All examination fees collected pursuant to this section shall
32 be disposed of as provided in K.S.A. 8-267, and amendments thereto. All
33 reinstatement fees collected pursuant to this section shall be remitted to
34 the state treasurer, who shall deposit the entire amount in the state treas-
35 ury and credit ~~75%~~ to the community alcoholism and intoxication pro-
36 grams fund created pursuant to K.S.A. 41-1126, and amendments thereto
37 ~~and 25%~~ to the juvenile detention facilities fund created by K.S.A. 79-
38 4803, and amendments thereto.
39 (c) When an examination is required pursuant to subsection (a), at
40 least five days' written notice of the examination shall be given to the
41 licensee. The examination administered hereunder shall be at least equiv-
42 alent to the examination required by subsection (e) of K.S.A. 8-247, and
43 amendments thereto, with such additional tests as the division deems

[Handwritten/marginal amendments:]

or

the division of vehicles has suspended such person's license pursuant to K.S.A. 8-1014, and amendments thereto, as the result of a test refusal, test failure or conviction for a violation of K.S.A. 8-1567, except that no person shall have to submit to and successfully complete an examination more than once as the result of separate suspensions arising out of the same occurrence.

$50

60%

, 20%

, and 20% to the forensic laboratory and materials fee fund of the Kansas bureau of investigation.

5-3

necessary. Upon the conclusion of such examination, the division shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain such license, or may issue a license subject to restrictions as permitted under K.S.A. 8-245, and amendments thereto.

(d) Refusal or neglect of the licensee to submit to an examination as required by this section shall be grounds for suspension or revocation of the license.

Sec. 2. K.S.A. 1994 Supp. 8-259 is hereby amended to read as follows: 8-259. (a) Except in the case of mandatory revocation under K.S.A. 8-254 or 8-286, and amendments thereto, mandatory suspension for an alcohol or drug-related conviction under subsection (b) ~~or (c)~~ of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under subsection (a)(1), (2) or (3) of K.S.A. 8-2,142, and amendments thereto, the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 *et seq.*, and amendments thereto, or of an order of disqualification under subsection (a)(4) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held or the county where the person was arrested. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. The court on review shall consider the petitioner's traffic violations record and liability insurance coverage before granting a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section, within 10 days after the final disposition of such appeal, shall forward a notification of the final disposition to the division.

Sec. 3. K.S.A. 1994 Supp. 8-1001 is hereby amended to read as fol-

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1 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle
2 within this state is deemed to have given consent, subject to the provisions
3 of this act, to submit to one or more tests of the person's blood, breath,
4 urine or other bodily substance to determine the presence of alcohol or
5 drugs. The testing deemed consented to herein shall include all quanti-
6 tative and qualitative tests for alcohol and drugs. A person who is dead
7 or unconscious shall be deemed not to have withdrawn the person's con-
8 sent to such test or tests, which shall be administered in the manner
9 provided by this section.
10 (b) A law enforcement officer shall request a person to submit to a
11 test or tests deemed consented to under subsection (a) if the officer has
12 reasonable grounds to believe the person was operating or attempting to
13 operate a vehicle while under the influence of alcohol or drugs, or both,
14 or to believe that the person was driving a commercial motor vehicle, as
15 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
16 or other drugs in such person's system; and one of the following condi-
17 tions exists: (1) The person has been arrested or otherwise taken into
18 custody for any offense involving operation or attempted operation of a
19 vehicle while under the influence of alcohol or drugs, or both, or involving
20 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
21 amendments thereto, while having alcohol or other drugs in such person's
22 system, in violation of a state statute or a city ordinance; or (2) the person
23 has been involved in a vehicle accident or collision resulting in property
24 damage, personal injury or death. The law enforcement officer directing
25 administration of the test or tests may act on personal knowledge or on
26 the basis of the collective information available to law enforcement offi-
27 cers involved in the accident investigation or arrest.
28 (c) If a law enforcement officer requests a person to submit to a test
29 of blood under this section, the withdrawal of blood at the direction of
30 the officer may be performed only by: (1) A person licensed to practice
31 medicine and surgery or a person acting under the supervision of any
32 such licensed person; (2) a registered nurse or a licensed practical nurse;
33 or (3) any qualified medical technician, including, but not limited to, an
34 emergency medical technician-intermediate or mobile intensive care
35 technician, as those terms are defined in K.S.A. 65-6112, and amend-
36 ments thereto, or a phlebotomist. When presented with a written state-
37 ment by a law enforcement officer directing blood to be withdrawn from
38 a person who has tentatively agreed to allow the withdrawal of blood
39 under this section, the person authorized herein to withdraw blood and
40 the medical care facility where blood is withdrawn may rely on such a
41 statement as evidence that the person has consented to the medical pro-
42 cedure used and shall not require the person to sign any additional con-
43 sent or waiver form. In such a case, the person authorized to withdraw

or to believe that the person is under 21 years of age and was operating a vehicle while having alcohol or other drugs in such person's system,

, or for a violation of K.S.A. 41-727, and amendments thereto,

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blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) (1) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both; (B) the opportunity to consent to or refuse a test is not a constitutional right; (C) there is no constitutional right to consult with an attorney regarding whether to submit to testing; (D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for at least one year; (E) ~~if the person is 21 or more years of age at the time of the test, submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for at least 30 days;~~ (F) ~~if the person is less than 21 years of age at the time of the test, submits to and completes the test or tests, and the test results show an alcohol concentration of .01 or greater, the person's driving privileges will be suspended for at least 30 days; (G)~~ if the person refuses a test or the test results show an alcohol concentration of .08 or greater and if, within the past five years, the person has been convicted or granted diversion on a charge of driving under the influence of alcohol or drugs, or both, or a related offense or has refused or failed a test, the person's driving privi-

if the person is 21 or more years of age at the time of the test, submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, or if the person is less than 21 years of age at the time of the test, submits to and completes the test or tests and the test results show an alcohol concentration of .04 or greater, the person's driving privileges will be suspended for at least 30 days;

for a person 21 or more years of age, or show an alcohol concentration of .04 or greater for a person less than 21 years of age,

1 leges will be suspended for at least one year; ~~(G)~~ ~~(H)~~ refusal to submit to
2 testing may be used against the person at any trial on a charge arising out
3 of the operation or attempted operation of a vehicle while under the
4 influence of alcohol or drugs, or both; ~~(H)~~ ~~(I)~~ the results of the testing
5 may be used against the person at any trial on a charge arising out of the
6 operation or attempted operation of a vehicle while under the influence
7 of alcohol or drugs, or both; and ~~(I)~~ ~~(J)~~ after the completion of the testing,
8 the person has the right to consult with an attorney and may secure ad-
9 ditional testing, which, if desired, should be done as soon as possible and
10 is customarily available from medical care facilities and physicians. If a
11 law enforcement officer has reasonable grounds to believe that the person
12 has been driving a commercial motor vehicle, as defined in K.S.A. 8-
13 2,128, and amendments thereto, while having alcohol or other drugs in
14 such person's system, the person must also be provided the oral and
15 written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any
16 failure to give the notices required by K.S.A. 8-2,145 and amendments
17 thereto shall not invalidate any action taken as a result of the requirements
18 of this section. After giving the foregoing information, a law enforcement
19 officer shall request the person to submit to testing. The selection of the
20 test or tests shall be made by the officer. If the person refuses to submit
21 to and complete a test as requested pursuant to this section, additional
22 testing shall not be given unless the certifying officer has probable cause
23 to believe that the person, while under the influence of alcohol or drugs,
24 or both, has operated a vehicle in such a manner as to have caused the
25 death of or serious injury to another person. As used in this section, the
26 officer shall have probable cause to believe that the person operated a
27 vehicle while under the influence of alcohol or drugs, or both, if the
28 vehicle was operated by such person in such a manner as to have caused
29 the death of or serious injury to another person. In such event, such test
30 or tests may be made pursuant to a search warrant issued under the
31 authority of K.S.A. 22-2502, and amendments thereto, or without a search
32 warrant under the authority of K.S.A. 22-2501, and amendments thereto.
33 If the test results show a blood or breath alcohol concentration of ~~.01~~ *or*
34 *greater if such person is less than 21 years of age, or* .08 or greater *of any*
35 *person*, the person's driving privileges shall be subject to suspension, or
36 suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and
37 amendments thereto. The person's refusal shall be admissible in evidence
38 against the person at any trial on a charge arising out of the alleged op-
39 eration or attempted operation of a vehicle while under the influence of
40 alcohol or drugs, or both. If a law enforcement officer had reasonable
41 grounds to believe the person had been driving a commercial motor ve-
42 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test
43 results show a blood or breath alcohol concentration of ~~.01~~ or greater,

(G)

(H)

(I)

.04

.04

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1 the person shall be disqualified from driving a commercial motor vehicle,
2 pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforce-
3 ment officer had reasonable grounds to believe the person had been driv-
4 ing a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
5 ments thereto, and the test results show a blood or breath alcohol
6 concentration of .08 or greater, or the person refuses a test, the person's
7 driving privileges shall be subject to suspension, or suspension and re-
8 striction, pursuant to this section, in addition to being disqualified from
9 driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
10 amendments thereto.

or the person is under 21 years of age and the test results show a blood or breath alcohol concentration of .04 or greater,

11 (2) Failure of a person to provide an adequate breath sample or sam-
12 ples as directed shall constitute a refusal unless the person shows that the
13 failure was due to physical inability caused by a medical condition unre-
14 lated to any ingested alcohol or drugs.
15 (3) It shall not be a defense that the person did not understand the
16 written or oral notice required by this section.
17 (4) No test shall be suppressed because of technical irregularities in
18 the consent or notice pursuant to K.S.A. 8-2,145, and amendments
19 thereto.
20 (g) Nothing in this section shall be construed to limit the admissibility
21 at any trial of alcohol or drug concentration testing results obtained pur-
22 suant to a search warrant.
23 (h) Upon the request of any person submitting to testing under this
24 section, a report of the results of the testing shall be made available to
25 such person.
26 (i) This act is remedial law and shall be liberally construed to promote
27 public health, safety and welfare.
28 Sec. 4. K.S.A. 1994 Supp. 8-1002 is hereby amended to read as fol-
29 lows: 8-1002. (a) Whenever a test is requested pursuant to this act and
30 results in either a test failure or test refusal, a law enforcement officer's
31 certification shall be prepared. If the person had been driving a com-
32 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
33 thereto, a separate certification pursuant to K.S.A. 8-2,145 and amend-
34 ments thereto shall be prepared in addition to any certification required
35 by this section. The certification required by this section shall be signed
36 by one or more officers to certify:
37 (1) With regard to a test refusal, that: (A) There existed reasonable
38 grounds to believe the person was operating or attempting to operate a
39 vehicle while under the influence of alcohol or drugs, or both, or to be-
40 lieve that the person had been driving a commercial motor vehicle, as
41 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
42 or other drugs in such person's system; (B) the person had been placed
43 under arrest, was in custody or had been involved in a vehicle accident

or to believe that the person was under 21 years of age at the time of the test request and had been operating a vehicle while having alcohol or other drugs in such person's system,

1 or collision; (C) a law enforcement officer had presented the person with
2 the oral and written notice required by K.S.A. 8-1001, and amendments
3 thereto; and (D) the person refused to submit to and complete a test as
4 requested by a law enforcement officer.
5 (2) With regard to a test failure, that: (A) There existed reasonable
6 grounds to believe the person was operating a vehicle while under the
7 influence of alcohol or drugs, or both, or to believe that the person had
8 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
9 and amendments thereto, while having alcohol or other drugs in such
10 person's system; (B) the person had been placed under arrest, was in
11 custody or had been involved in a vehicle accident or collision; (C) a law
12 enforcement officer had presented the person with the oral and written
13 notice required by K.S.A. 8-1001, and amendments thereto; and (D) the
14 result of the test showed that the person had an alcohol concentration of
15 ~~.01~~ *or greater if such person is less than 21 years of age, in such person's*
16 *blood or breath or* .08 or greater in ~~such~~ *any* person's blood or breath.
17 (3) With regard to failure of a breath test, in addition to those matters
18 required to be certified under subsection (a)(2), that: (A) The testing
19 equipment used was certified by the Kansas department of health and
20 environment; (B) the testing procedures used were in accordance with
21 the requirements set out by the Kansas department of health and envi-
22 ronment; and (C) the person who operated the testing equipment was
23 certified by the Kansas department of health and environment to operate
24 such equipment.
25 (b) For purposes of this section, certification shall be complete upon
26 signing, and no additional acts of oath, affirmation, acknowledgment or
27 proof of execution shall be required. The signed certification or a copy
28 or photostatic reproduction thereof shall be admissible in evidence in all
29 proceedings brought pursuant to this act, and receipt of any such certi-
30 fication, copy or reproduction shall accord the department authority to
31 proceed as set forth herein. Any person who signs a certification submit-
32 ted to the division knowing it contains a false statement is guilty of a class
33 B nonperson misdemeanor.
34 (c) When the officer directing administration of the testing deter-
35 mines that a person has refused a test and the criteria of subsection (a)(1)
36 have been met or determines that a person has failed a test and the criteria
37 of subsection (a)(2) have been met, the officer shall serve upon the person
38 notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and
39 amendments thereto. If the determination is made while the person is
40 still in custody, service shall be made in person by the officer on behalf
41 of the division of vehicles. In cases where a test failure is established by
42 a subsequent analysis of a breath, blood ~~or urine~~ sample, the officer shall
43 serve notice of such suspension in person or by another designated officer

[Marginal amendment at line 7:] or to believe that the person was under 21 years of age at the time of the test request and had been operating a vehicle while having alcohol or other drugs in such person's system,

[Marginal amendment at line 15:] .04

[Marginal amendment at line 42:] or

1 or by mailing the notice to the person at the address provided at the time
2 of the test.
3 (d) In addition to the information required by subsection (a), the law
4 enforcement officer's certification and notice of suspension shall contain
5 the following information: (1) The person's name, driver's license number
6 and current address; (2) the reason and statutory grounds for the suspen-
7 sion; (3) the date notice is being served and a statement that the effective
8 date of the suspension shall be the ~~20th~~ 30th calendar day after the date of
9 service; (4) the right of the person to request an administrative hearing;
10 and (5) the procedure the person must follow to request an administrative
11 hearing. The law enforcement officer's certification and notice of suspen-
12 sion shall also inform the person that all correspondence will be mailed
13 to the person at the address contained in the law enforcement officer's
14 certification and notice of suspension unless the person notifies the di-
15 vision in writing of a different address or change of address. The address
16 provided will be considered a change of address for purposes of K.S.A.
17 8-248, and amendments thereto, if the address furnished is different from
18 that on file with the division.
19 (e) If a person refuses a test or if a person is still in custody when it
20 is determined that the person has failed a test, the officer shall take any
21 license in the possession of the person and, if the license is not expired,
22 suspended, revoked or canceled, shall issue a temporary license effective
23 until the ~~20th~~ 30th calendar day after the date of service set out in the law
24 enforcement officer's certification and notice of suspension. If the test
25 failure is established by a subsequent analysis of a breath or blood sample,
26 the temporary license shall be served together with the copy of the law
27 enforcement officer's certification and notice of suspension. A temporary
28 license issued pursuant to this subsection shall bear the same restrictions
29 and limitations as the license for which it was exchanged. Within five days
30 after the date of service of a copy of the law enforcement officer's certi-
31 fication and notice of suspension the officer's certification and notice of
32 suspension, along with any licenses taken, shall be forwarded to the di-
33 vision.
34 (f) Upon receipt of the law enforcement officer's certification, the
35 division shall review the certification to determine that it meets the re-
36 quirements of subsection (a). Upon so determining, the division shall
37 proceed to suspend the person's driving privileges in accordance with the
38 notice of suspension previously served. If the requirements of subsection
39 (a) are not met, the division shall dismiss the administrative proceeding
40 and return any license surrendered by the person.
41 (g) If the person mails a written request which is postmarked within
42 10 days after service of the notice, if by personal service, or 13 days after
43 service, if by mail, the division shall schedule a hearing in the county

1 where the alleged violation occurred, or in a county adjacent thereto. The
2 licensee may request that subpoenas be issued in accordance with the
3 notice provided pursuant to subsection (d). Any request made by the
4 licensee to subpoena witnesses must be made in writing at the time the
5 hearing is requested and must include the name and current address of
6 such witnesses and, except for the law enforcement officer or officers
7 certifying refusal or failure, a statement of how the testimony of such
8 witness is relevant. Upon receiving a timely request for a hearing, the
9 division shall mail to the person notice of the time, date and place of
10 hearing in accordance with subsection (l) and extend the person's tem-
11 porary driving privileges until the date set for the hearing by the division.
12 (h) (1) If the officer certifies that the person refused the test, the
13 scope of the hearing shall be limited to whether: (A) A law enforcement
14 officer had reasonable grounds to believe the person was operating or
15 attempting to operate a vehicle while under the influence of alcohol or
16 drugs, or both, or to believe that the person had been driving a com-
17 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
18 thereto, while having alcohol or other drugs in such person's system; (B)
19 the person was in custody or arrested for an alcohol or drug related of-
20 fense or was involved in a vehicle accident or collision resulting in prop-
21 erty damage, personal injury or death; (C) a law enforcement officer had
22 presented the person with the oral and written notice required by K.S.A.
23 8-1001, and amendments thereto; and (D) the person refused to submit
24 to and complete a test as requested by a law enforcement officer.
25 (2) If the officer certifies that the person failed the test, the scope of
26 the hearing shall be limited to whether: (A) A law enforcement officer
27 had reasonable grounds to believe the person was operating a vehicle
28 while under the influence of alcohol or drugs, or both, or to believe that
29 the person had been driving a commercial motor vehicle, as defined in
30 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
31 drugs in such person's system; (B) the person was in custody or arrested
32 for an alcohol or drug related offense or was involved in a vehicle accident
33 or collision resulting in property damage, personal injury or death; (C) a
34 law enforcement officer had presented the person with the oral and writ-
35 ten notice required by K.S.A. 8-1001, and amendments thereto; (D) the
36 testing equipment used was reliable; (E) the person who operated the
37 testing equipment was qualified; (F) the testing procedures used were
38 reliable; (G) the test result determined that the person had an alcohol
39 concentration of ~~.01~~ *or greater if such person is less than 21 years of age*
40 *in such person's blood or breath or* .08 or greater in ~~such~~ *any* person's
1 blood or breath; and (H) the person was operating a vehicle.
2 (i) At a hearing pursuant to this section, or upon court review of an
43 order entered at such a hearing, an affidavit of the custodian of records

[Insert after "drugs, or both," (line 16):] or to believe that the person was under 21 years of age at the time of the test request and had been operating a vehicle while having alcohol or other drugs in such person's system,

[Insert after "offense" (line 20):] , or for a violation of K.S.A. 41-727, and amendments thereto,

[Insert after "drugs, or both," (line 28):] or to believe that the person was under 21 years of age at the time of the test request and had been operating a vehicle while having alcohol or other drugs in such person's system,

[Insert after "offense" (line 32):] , or for a violation of K.S.A. 41-727, and amendments thereto,

[Replace ".01" (line 39):] .04

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 evidence 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) If no timely request for hearing is made, the suspension period imposed pursuant to this section shall begin upon the expiration of the temporary license granted under subsection (e). If a timely request for hearing is made, the hearing shall be held within 30 days of the date the request for hearing is received by the division, except that failure to hold such hearing within 30 days shall not be cause for dismissal absent a showing of prejudice. At the hearing, the director or the representative of the director, shall either affirm the order of suspension or suspension and restriction or dismiss the administrative action. If the division is unable to hold a hearing within 30 days of the date upon which the request for hearing is received, the division shall extend the person's temporary driving privileges until the date set for the hearing by the division. No extension of 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

1 enforcement officers in giving the notice required by this section.
2 (n) This section and the applicable provisions contained in subsec-
3 tions (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the
4 administrative procedures to be used for all administrative hearings held
5 under this act. To the extent that this section and any other provision of
6 law conflicts, this section prevails.
7 (o) The provisions of K.S.A. 60-206 and amendments thereto regard-
8 ing the computation of time shall not be applicable in determining the
9 effective date of suspension set out in subsection (d) or the time for
10 requesting an administrative hearing set out in subsection (g). "Calendar
11 day" when used in this section shall mean that every day shall be included
12 in computations of time whether a week day, Saturday, Sunday or holiday.
13 Sec. 5. K.S.A. 1994 Supp. 8-1013 is hereby amended to read as fol-
14 lows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012,
15 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,
16 and this section:
17 (a) "Alcohol concentration" means the number of grams of alcohol
18 per 100 milliliters of blood or per 210 liters of breath.
19 (b) (1) "Alcohol or drug-related conviction" means any of the follow-
20 ing: (A) Conviction of vehicular battery or aggravated vehicular homicide,
21 if the crime is committed while committing a violation of K.S.A. 8-1567
22 and amendments thereto or the ordinance of a city or resolution of a
23 county in this state which prohibits any acts prohibited by that statute, or
24 conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B)
25 conviction of a violation of a law of another state which would constitute
26 a crime described in subsection (b)(1)(A) if committed in this state; (C)
27 conviction of a violation of an ordinance of a city in this state or a reso-
28 lution of a county in this state which would constitute a crime described
29 in subsection (b)(1)(A), whether or not such conviction is in a court of
30 record; or (D) conviction of an act which was committed on a military
31 reservation and which would constitute a violation of K.S.A. 8-1567, and
32 amendments thereto, or would constitute a crime described in subsection
33 (b)(1)(A) if committed off a military reservation in this state.
34 (2) For the purpose of determining whether an occurrence is a first,
35 second or subsequent occurrence: (A) "Alcohol or drug-related convic-
36 tion" also includes entering into a diversion agreement in lieu of further
37 criminal proceedings on a complaint alleging commission of a crime de-
38 scribed in subsection (b)(1) which agreement was entered into during the
39 immediately preceding five years, including prior to the effective date of
40 this act; and (B) it is irrelevant whether an offense occurred before or
41 after conviction or diversion for a previous offense.
42 (c) "Division" means the division of vehicles of the department of
43 revenue.

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1 (d) "Ignition interlock device" means a device which uses a breath
2 analysis mechanism to prevent a person from operating a motor vehicle
3 if such person has consumed an alcoholic beverage.
4 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-
5 related conviction, or any combination thereof arising from one arrest,
6 occurring in the immediately preceding five years, including prior to the
7 effective day of this act.
8 (f) "Other competent evidence" includes: (1) Alcohol concentration
9 tests obtained from samples taken two hours or more after the operation
10 or attempted operation of a vehicle;, and (2) readings obtained from a
11 partial alcohol concentration test on a breath testing machine.
12 (g) "Samples" includes breath supplied directly for testing, which
13 breath is not preserved.
14 (h) "Test failure" or "fails a test" refers to a person's having results
15 of a test administered pursuant to this act, other than a preliminary
16 screening test, which show an alcohol concentration of ~~.01~~ *or greater if*
17 *such person is less than 21 years of age, in such person's blood or breath*
18 *or* .08 or greater in ~~the~~ *any* person's blood or breath, and includes failure
19 of any such test on a military reservation.
20 (i) "Test refusal" or "refuses a test" refers to a person's failure to
21 submit to or complete any test, other than a preliminary screening test,
22 in accordance with this act, and includes refusal of any such test on a
23 military reservation.
24 (j) "Law enforcement officer" has the meaning provided by K.S.A.
25 21-3110, and amendments thereto, and includes any person authorized
26 by law to make an arrest on a military reservation for an act which would
27 constitute a violation of K.S.A. 8-1567, and amendments thereto, if com-
28 mitted off a military reservation in this state.
29 Sec. 6. K.S.A. 1994 Supp. 8-1014 is hereby amended to read as fol-
30 lows: 8-1014. (a) Except as provided by subsection ~~(d)~~ *(e)* and K.S.A. 8-
31 2,142, and amendments thereto, if a person refuses a test, the division,
32 pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the
33 person's driving privileges for one year~~.~~
34 (b) Except as provided by subsection ~~(d)~~ *(e)* and K.S.A. 8-2,142, and
35 amendments thereto, if a person fails a test or has an alcohol or drug-
36 related conviction in this state, the division shall:
37 (1) On the person's first occurrence, suspend the person's driving
38 privileges for 30 days~~,~~ then restrict the person's driving privileges as pro-
39 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
40 days; and
41 (2) on the person's second or a subsequent occurrence, suspend the
42 person's driving privileges for one year~~.~~
43 ~~(c) Except as provided by subsection (e), if a person less than 21 years~~

[Handwritten margin annotations:]

.04 [replacing .01, line 16]

and until the requirements for reinstatement in subsection (c) of this section have been met, whichever is longer. [inserted at line 33]

and until the requirements for reinstatement in subsection (c) of this section have been met, whichever is longer, [inserted at line 38]

and until the requirements for reinstatement in subsection (c) of this section have been met, whichever is longer. [inserted at line 42]

1 ~~of age shows an alcohol concentration of .01 or greater in such person's~~
2 ~~blood or breath, the division, pursuant to K.S.A. 8-1002, and amendments~~
3 ~~thereto, shall:~~
4 ~~(1) On the person's first occurrence, suspend the person's driving~~
5 ~~privileges for six months;~~
6 ~~(2) on the person's second or a subsequent occurrence, suspend the~~
7 ~~person's driving privileges for one year;~~
8 ~~(3) assess an administrative fine of $25 to the person to cover the~~
9 ~~Kansas bureau of investigation laboratory costs. The division shall remit~~
10 ~~all fines received under this section to the state treasurer at least monthly.~~
11 ~~Upon receipt of such remittance, the state treasurer shall deposit the entire~~
12 ~~amount thereof in the state treasury to the credit of the forensic laboratory~~
13 ~~and materials fee fund of the Kansas bureau of investigation; and~~
14 ~~(4) require the person to submit to an examination pursuant to K.S.A.~~
15 ~~8-241, and amendments thereto.~~

(c) To be eligible for reinstatement of driving privileges, including restricted driving privileges, any person whose driving privileges have been suspended pursuant to this section shall submit to and successfully complete the examination required by K.S.A. 8-241, and amendments thereto, and pay all fees required for such examination. If the person's driving privileges have been suspended for a test refusal or test failure, the person must also complete an alcohol and drug safety action information class, consisting of four hours of instruction, administered by a community-based alcohol and drug safety action program certified in accordance with K.S.A. 8-1008, and amendments thereto, and present evidence of such completion on a form approved by the division to the driver license examiner at the time of the examination required by K.S.A. 8-241, and amendments thereto. The cost of the alcohol and drug safety action information class, not to exceed $35, shall be paid by the applicant.

16 ~~(c)~~ *(d)* Whenever the division is notified by an alcohol and drug safety
17 action program that a person has failed to complete any alcohol and drug
18 safety action education or treatment program ordered by a court for a
19 conviction of a violation of K.S.A. 8-1567, and amendments thereto, [or the alcohol and drug safety action information class required under subsection (c),] the
20 division shall suspend the person's driving privileges until the division
21 receives notice of the person's completion of such program.
22 ~~(d)~~ *(e)* Except as provided in K.S.A. 8-2,142, and amendments
23 thereto, if a person's driving privileges are subject to suspension pursuant
24 to this section for a test refusal, test failure or alcohol or drug-related
25 conviction arising from the same arrest, the period of such suspension
26 shall not exceed the longest applicable period authorized by subsection
27 (a) [or] ~~or,~~ (b) ~~or (c)~~, and such suspension periods shall not be added together
28 or otherwise imposed consecutively. In addition, in determining the pe-
29 riod of such suspension as authorized by subsection (a) [or] ~~or,~~ (b) ~~or (c)~~, such
30 person shall receive credit for any period of time for which such person's
31 driving privileges were suspended while awaiting any hearing or final
32 order authorized by this act.
33 If a person's driving privileges are subject to restriction pursuant to
34 this section for a test failure or alcohol or drug-related conviction arising
35 from the same arrest, the restriction periods shall not be added together
36 or otherwise imposed consecutively. In addition, in determining the pe-
37 riod of restriction, the person shall receive credit for any period of sus-
38 pension imposed for a test refusal arising from the same arrest.
39 ~~(e)~~ *(f)* If the division has taken action under subsection (a) for a test
40 refusal or under subsection (b) ~~or (c)~~ for a test failure and such action is
41 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
42 rary driving privileges are issued pursuant to subsection (k) of K.S.A. 8-
43 1002, and amendments thereto, the stay or temporary driving privileges

1 shall not prevent the division from taking the action required by subsec-
2 tion (b) for an alcohol or drug-related conviction.
3 ~~(f)~~ *(g)* Upon restricting a person's driving privileges pursuant to this
4 section, the division shall issue without charge a driver's license which
5 shall indicate on the face of the license that restrictions have been im-
6 posed on the person's driving privileges and that a copy of the order
7 imposing the restrictions is required to be carried by the person for whom
8 the license was issued any time the person is operating a motor vehicle
9 on the highways of this state.
10 Sec. 7. K.S.A. 1994 Supp. 8-241, 8-259, 8-1001, 8-1002, 8-1013 and
11 8-1014 are hereby repealed.
12 Sec. 8. This act shall take effect and be in force from and after its
13 publication in the statute book.

5-16

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALERS ASSOCIATION, INC.

March 14, 1995

To: House Judiciary Committee
From: R.E. "Tuck" Duncan
RE: HB 2519

I appear today in opposition of HB 2519. This position is not easily taken. As an opponent we may be viewed by some as supporting impaired driving; but nothing could be farther from the truth -- as veteran members of this committee are aware. We have appeared here in the past on DUI matters and suggested that we concentrate on the area of greatest abuse: the repeat offender who generally tests at .15 and over. We have supported interlocks and we supported the third time felony provision. Long before the term *"social responsibility"* became fashionable in the lexicons of academia, our industry has urged moderation, restraint and temperate use of its products. Our association concurs with the objectives recommended by the National Highway Traffic Safety Administration to reduce the impaired driving recidivism of drivers who have already been arrested and processed through our criminal justice system; plus preventing drinking and driving by such means as public information, education, more responsible serving and hosting practices, intervention by friends, designated driver programs, COPS IN SHOPS, and preventing the sale of beverage alcohol to minors. With that background, let us reason together about whether this approach is really going to be helpful.

This bill creates a whole new class for administrative sanction: persons under the legal age of consumption who test at .01. We believe that such a measure can only serve to divert resources away from the larger part of the problem and potentially could have negative effects. The increased burden of more administratively impaired drivers could stretch the current enforcement resources.

Please consider the effect this new sanction might have on insurance rates for families. As we understand it, a policy for insurance can be cancelled when the named insured or any other operator, either a resident in the household or one who customarily operates an automobile under the policy has had their driver's license suspended or revoked during the policy period. A .01 for a person under the legal age could cause that individual or their family a disastrous financial hardship in retaining insurance, or they may have to participate in the assigned risk plan. If there is a dramatic increase in premiums as a result of this violation, coverage levels may be reduced in order to save costs. Worse yet, persons who cannot secure insurance may drive uninsured (the last

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214 S. W. 7TH STREET • TOPEKA, KANSAS 66603 • (

estimate I saw indicated Kansas had approximately 5-7% of all motorists as uninsured) and that truly threatens the safety and welfare of us all. Thus, what looks like a positive revision in the law with negative effects for a few could become a negative policy for all.

We would like to propose that the committee concern itself with the following matters first, before taking such dramatic action as called for in HB 2519.

+ Establish a mechanism whereby persons who have been convicted of impaired driving can drive with insurance when they are sober. If that is extending the use of interlock devices, great. On previous occasions I have expressed concern that we have repeat offenders on the road who are uninsured. Repeat offenders place all of us at greater risk than the population to which this bill is aimed.

+ Establish a more reasoned approach with dealing with first offenders. For example current case law has established that a refusal to take a test can be anything short of unqualified, unequivocal consent to testing including a "deficient sample." To lose a license on a refusal for a full year is an extreme measure. Many people just do not understand the consequences of such an act, and may not comprehend the consequence even when the officer gives the implied consent warnings (which they are not required to explain). We believe on a first refusal the offender should not lose their license for an entire year as that places their ability to work in jeopardy. Establish mandatory educational programs with a fixed curriculum and uniform number of hours. *With persons under the legal age of consumption we want to prevent repetition, not merely punish. This bill is aimed at punishment not prevention.*

+ In the past we have encouraged this committee to look at server training. It is still a good idea.

+ We must increase elementary and secondary educational efforts, for we believe that the combination of current laws against impaired driving and educational efforts are responsible for alcohol related traffic deaths being at their lowest level in a dozen years (as reported in a February 23, 1995 Associated Press article).

Please do not misunderstand -- the loss of one life due to abuse of beverage alcohol cannot be tolerated. The question we present is whether *in light of the foregoing is reducing the BAC level to .01 for persons under 21 in order to suspend their license truly providing a solution, or is merely disillusioning message that does not really get at the true problem.*

Thank you for your kind attention to and consideration of these matters.

State of Kansas

Office of the Attorney General

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CARLA J. STOVALL
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TESTIMONY OF
ATTORNEY GENERAL CARLA STOVALL
HOUSE JUDICIARY COMMITTEE
March 14, 1995

In 1994, the Kansas Legislature passed a death penalty statute which recognized the overwhelming desire of the public to hold society's most heinous killers accountable for their actions. I am coming to you today to discuss minor changes in the statute which, I believe, will more closely reflect the legislative intent in last years bill, as well as modify a procedure which currently rushes a prosecutor in the decision to seek a death penalty.

I must again emphasize my support for an expanded death penalty which more accurately defines the rarified class of killers for whom the possibility of execution must exist. For example, a convicted murderer who escapes and kills again; or the premeditated killing of a witness, prosecutor or judge; or the torture, execution and dismemberment of a victim.

The current law defines seven very limited areas that qualify for consideration of a death penalty. In three of those instances, the murder is a capital murder during the commission of certain crimes. While it seems clear that the legislative intent was to cover a murder during the commission or the attempt to commit the crime, that language is not included. For example, the intentional and premeditated killing of a victim during the commission of a rape qualifies for the death penalty. Clearly, if the woman did not yield and the rape was only "attempted" and the victim was killed as a result, the crime is just as heinous. We should not reward murderers whose victims, by their dying struggle, prevent the completion of the crime.

The next proposed amendment addresses the unreasonable double requirement that a murderer first kill a child during a kidnapping and second that such kidnapping have been for the purpose of a sex offense. A mother of two small children asked me "Shouldn't it be enough to kidnap and execute a child? What if their only purpose was to kill my baby, or torture my baby? They must also have intended to rape my baby before qualifying for the death penalty?" So the amendment simply deletes the additional requirement that the state must prove that the reason the murderer kidnapped and killed a child was for a sexual assault. The amendment also

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moves for consistency regarding the "age of innocence." It raises the age from 14 to 16. Who can argue that the kidnapping of a 14 or 15 year old isn't as outrageous. Our legislators from Kansas City are familiar with the case of Ann Harrison, a 15 year old Missouri girl kidnapped and murdered while waiting for her school bus. The community outrage was overwhelming, as it would be in Kansas, and yet 15 year old Ann Harrison would be "too old" for protection under the current statute.

Similarly, for those few 16 and 17 year olds who have killed or assaulted or raped before, we must make the ultimate penalty available to local prosecutors. Nearly seventy-percent of the states authorize capital punishment for certain murderers under the age of 18. The majority of states provide for a minimum age of 16 in recognition of the changes in America--some 16 and 17 year olds can be just as cold-blooded as their 18 year old friends. Instead of being driven by an outraged public when the first gang execution is orchestrated by a 17 year old member to avoid the death penalty, let us pro-actively recognize that some 16 and 17 year olds must be treated as adults. Safeguards remain to insure that only juveniles certified to stand trial as adults and whose crimes and backgrounds fit the statutory requirements of a capital murder would qualify.

The third amendment changes the time frame within which prosecutors must file notice of seeking death. The change moves the timetable from 5 days after arraignment until a reasonable time before trial. This change does not affect the rights of either the state or defendant, but does give the prosecutor more time to determine whether to seek death. As a practical matter, there is enormous pressure on a prosecutor immediately following a murder to seek death, and this is at a time when laboratory reports may not be completed. The amendment gives time for the prosecutor to make an informed decision, rather than rushing to judgment.

Changes in Sec 3 (c) & (d) bring our statute into compliance with U.S. Supreme Court requirements that the sentencer be given as much information as possible regarding the defendant. It also eliminates a provision which would allow a defendant to commit perjury and not be prosecuted, carving out an exception for, then, convicted murderers that does not exist for others.

OUTLINE OF REMARKS BY
ATTORNEY GENERAL CARLA STOVALL
HOUSE JUDICIARY COMMITTEE
MARCH 14, 1995

I. Slightly expanded scope
   a) add attempted kidnapping
   b) murder 1 person, while trying to murder 2
   c) add attempted kidnapping of a child and remove necessary intent to commit sexual offense

II. Increase age of protection to 15 and lower age to 16 for perpetration.
   a) Now juveniles between 15 and 17 are in "never, never land"
   b) Our goal is consistency -- 16 and under protect/16 and up are perpetrators
   c) 16 states have capital punishment for 16 and up
   d) 60% of states have under 18 and less than 1/10 of 1% of people on death row are under 18
   **e) AMEND: RAISE AGE OF CHILD TO 17 AND LEAVE 18 AS LOWEST TO BE SUBJECTED TO CAPITAL PUNISHMENT

III. Section 3a - "reasonable time before trial"

IV. Section 3c - uses United States Supreme Court test and results in defendant being able to admit more evidence.

V. Section 3d - language now in Pattern Instructions but we propose making in statute.

VI.** Section 3e - AMEND TO REQUIRE AGGRAVATING FACTORS TO OUTWEIGH MITIGATING FACTORS. Now if they are equal, "tie" goes to state. We're proposing "tie" goes to defense. Single issue defense has identified they intend to challenge constitutionality.

VII. Section 4 - "assaultive convictions" to replace the definition of Agg. Battery. This language is used around the U.S.

Testimony
in Opposition to House Bill No. 2529
March 13, 1995
House Judiciary Committee
Hon. Michael O'Neal, Chair

Good afternoon, Mr. Chairman. I would like to thank you and members of the Committee for this opportunity to speak in opposition to House Bill 2529.

My name is Carla Dugger, and I am the Associate Director of the American Civil Liberties Union of Kansas and Western Missouri. We are a private, not-for-profit membership organization which supports and defends civil liberties.

Last year this legislature passed into law a narrowly-drawn death penalty bill. Those of us who opposed that bill, and who have consistently opposed the death penalty, may have listened to that debate with the real hope that last year's promise not to expand capital punishment -- at least not this session -- would hold. Others may have listened with a more jaded perspective, and of course they were right to expect a bill, even as early as this year, such as HB 2529.

When added together, the amendments in HB 2529 mean increased uncertainty in prosecution and sentencing, increased litigation (due to this uncertainty), more discretion on the part of the prosecution and more cost. The bottom line is that HB 2529 makes it much easier to obtain a sentence of death, and muddies the line separating capital from non-capital crimes.

The ways in which HB 2529 casts the "death net" wider include lowering the age of a capital murder defendant at the time of the crime from 18 to 16 years (line 21, page 2)); removing the prosecutor's firm deadline for giving notice to the defense that the death sentence will be sought (lines 31-32, page 2); opening up the kinds of aggravating (and mitigating) circumstances which may be presented during sentencing by removing the reference to specific statutes (lines 15-21, page 3); and specifically changing the limitation on aggravating circumstances from a previous felony conviction "in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another" to "one or more serious assaultive convictions" (lines 27-29, page 4). Will it be permissible to detail a string of barroom fights as "aggravating circumstances?" Are these appropriate considerations for the death penalty?

By far the worst of these amendments is the lowering of the defendant's age at the time the crime was committed. The Attorney General's office can come up with horrific examples of incorrigible youth whose lives, she says, aren't worth trying to rehabilitate. However, the more the age is lowered the closer we get to executing the victimized child. Does the state want to say there are victimized children who cannot be rehabilitated and should instead be executed? Will we will soon see legislation which lowers the age to 14? To 13? Please ask yourselves how far is "too far?"

ACLU believes the amendments HB 2529 go way "too far" in broadening the death penalty. Please reject this bill.

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TESTIMONY OF SUE NORTON
AGAINST THE DEATH PENALTY FOR SIXTEEN YEAR OLDS
MARCH 7, 1995

January 8, 1990, my daddy and step-mother were shot to death in their rural farmhouse, in Tonkawa, Oklahoma. As I cleaned up the pools of blood where my parents had lain, an impression of horror overwhelmed me. The double funeral and the duties of all of the affairs that are involved would not let me forget and get away from it.

I sat through five and one half weeks of preliminary hearing and jury trial. During that time, I came to realize the hate that society expected me to have, could consume me, if I let it.

At that time, I did not realize what a privilege it was to live in a Death Penalty Free State! I went through another time of mourning when our Kansas government adopted the Death Penalty bill that we now have! Now, are we considering killing Sixteen-year olds? Pardon Me! But I think in order to teach children to do what is right, we, as adults have to set a good example for them to follow, and in my book, it says killing is against the rules. Sixteen-year olds are children.

Knowing the offender is going to have to die, is comforting to some, but in my case, I find it appalling! Through much prayer and the help of God, I forgave the man I had never know. I made it my business to get to know him and to figure out why he had chosen to commit this crime.

I am in my fourth year of prison ministry. I have not only studied the individual who murdered my parents, but many others. I have studied the effects of murder on family members and understand the feelings of hate and hurt. I also understand when the offender is executed that the hate and hurt never go away. When you, have lived with it so long, it is by then, too hard to put to rest.

If the offender is executed by legal killing, then we are putting another family in the position of hurt, anger and hate. Remember that the executed have mommies, daddies, brother and sister, too.

Instead of expanding the death penalty, let's spend our state monies on preventing crime BEFORE it happens, with parenting the "unparented", working with kids that need self-respect, self-esteem and helping them to find a positive place in society removing any reason for crime.

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I am not naive, we can not rehabilitate all offenders, prevent all murders, or get help for all children who are hurting enough to kill; but, we can start by presenting ourselves and our state as positive role models by refusing to kill others. Two wrongs do not make a right! We were all taught, that we should "DO UNTO OTHERS AS WE WOULD WANT TO BE DONE UNTO." Legalized killing puts all of us on the level of the offender who murdered my parents, and to murder a sixteen-year old, is a heinous act. DO YOU WANT THAT HANGING OVER YOUR HEAD FOR THE REST OF YOUR LIFE? I DO NOT!

We as "MURDER VICTIM'S FAMILIES", will never stop hurting, I miss Daddy and Virginia very much. I know that the convicted individual can never be released into society, but I also know that execution will add another hurt to the pile of hurts I already have.

I BEG YOU -- AS A "DOUBLE MURDER" VICTIM'S FAMILY MEMBER, DO NOT LEGALIZE HEINOUS KILLING OF CHILDREN! Let's not show our Kansas Teens by our actions that it is O.K. to murder.

THANK YOU FOR CONSIDERING MY OPINION.

TESTIMONY BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE
ON H.B. 2529 (expansion of Kansas Death Penalty)
BY DAVID C. HARPER, STATE COORDINATOR- KANSAS COALITION
AGAINST THE DEATH PENALTY

Mr. Chairman, ladies and gentleman of the committee, thank you for the opportunity to participate in this afternoons proceedings. As I understand it, time is of a minimum and I want to insure that everyone has the ability to be heard so my remarks will be brief.

As I see it, the death penalty is largely a principle and practice issue. When we take some time to understand the history of the death penalty in practice, it's much harder to support it in principle. In my position, I am constantly discussing one or another issue surrounding capital punishment. As you may guess, sometimes I'm not the most popular guy around. It's always been amazing to me how some folks can become so furious at me simply for expressing a different opinion. Most of the time, we can get through the hostility and anger and have a reasonable discussion. It's easy to see during these conversations that, if everyone of us had a choice, we would all come up with a different crime or criminal we deem worthy of death. At the same time, and I know there are some who will always dispute this, most Kansans I speak with acknowledge that even though they might support the death penalty, they nevertheless express the opinion that it doesn't work, may not ever work and is a waste of time and money.

Between the 16th and 19th of April of 1994, a number of Kansas organizations initiated a survey of Kansans feelings around some key death penalty questions. The survey instrument was designed by Bill Bowers and Patricia Duggan of Northeastern University and administered by Survey Samle Inc. (SSI) , a leading supplier of survey samples nationwide. Interviews were conducted with a total of 411 registered voters in Kansas and checked for represenatation by geographical area within the state. The margin of error for this poll was +/- 5 percentage points. The results of this survey were widely distributed throughout the press, legislature and then Governor Joan Finney's office but I fear came about at too late a time to have any real impact.

Just offering the people of Kansas a simple yes or no question of choice on the death penalty provides an abstract acceptance but not a concrete preference when given a choice between the death penalty and other punishments. I have enclosed a brief summary of the survey's results with my testimony and have copies of the full results I would be happy to share following the hearing.

Certainly what is most significant about the results of the survey is that there is a clear division given the +/-5 points on the question of preference between genuine life sentence and the death penalty. This becomes more significant when other alternative measures are afforded. Given the question of death penalty or life with no chance for parole and with inmates required to work in prison industries for money that would go to the families of the victims, a clear majority (66%) favored the life without parole with restitution over the death penalty (30%).

As I mentioned earlier, the poll also attempted to define some of the abstract issues around the death penalty. 87% responded that they believed the practice was arbitrary or as Forrest Gump would say, "You never know what your gonna get".

Furthermore, 84% replied that a good lawyer will keep you off of death row and 81% wished that we had a better way then the death penalty to deal with violent crime.

Quite clearly, a majority of Kansans reject the death penalty favoring alternative punishments for convicted first degree murderers. This poll conveys the image that support for the death penalty is A MILE WIDE AND AN INCH DEEP.

KCADP would welcome any thoughtful, scientific survey initiated by the Attorney General 's office or the legislature on this question. We are certain the results would be the same.

The death penalty was enacted and not even a year has passed before we return to address amendments which are grave concerns to the members of the coalition.

Foremost, Kansas should not be in the business of killing children. Have we become so jaded and frustrated with our inability to deal substantively and thoughtfully with the problems of our youth that we are going to throw up our hands, steal money from productive, cost-effective intervention and prevention programs, not to mention services for children, expectant mothers and schools and expect that sentencing a 16 - year-old to death will somehow be the solution?

The United States is but one of a handful of countries still executing individuals for serious violent crimes committed before the age of 18 - Saudi Arabia, South Yemen and Pakistan join us. Great Company indeed! Not even Texas, the world's most prolific place of execution, kills 16 year olds! Instead of putting our energies and resources into the execution of 16 year olds, let us strive as citizens of this state to educate our children about violence and the dead-end street that it leads to.

1994 Kansas State Survey Data

"Do you generally favor or oppose capital punishment, that is the death penalty, in cases where people are convicted of first degree murder? 85 % yes

"If convicted first degree murderers in this state were actually kept in prison for 40 years before even being considered for parole, would you prefer this as an alternative to the death penalty?"

- 44% yes, would prefer a life sentence with the possibility of parole in 40 years to the death penalty
- 49% no, would prefer the death penalty to a life sentence with the possibility of parole after 40 years in prison
- 7% not sure, don't know, refused to answer

"If convicted murderers in this state could be sentenced to life in prison with absolutely no chance of ever being released on parole or returning to society, would you prefer this as an alternative to the death penalty?"

- 47% yes, would prefer a life sentence without parole over the death penalty
- 49% no, would prefer the death penalty over a life sentence without parole
- 4% not sure, don't know, refused to answer

"What if convicted murderers in this state could be sentenced to life with no chance of parole and also be required to work in prison industries for money that would go to the families of their victims; would you prefer this as an alternative to the death penalty?"

- 66% yes, would prefer life without parole plus restitution over the death penalty
- 30% no, would prefer the death penalty over life without parole plus restitution
- 4% not sure, don't know, refused to answer

KANSANS ARE AMBIVALENT ABOUT THE DEATH PENALTY

Kansans were asked whether they agreed or disagreed with the following statements about the death penalty.

87% Agreed: The death penalty is too arbitrary because some people are executed while others serve prison terms for the same crimes.

84% Agreed: Defendants who can afford good lawyers almost never get a death sentence.

81% Agreed: **We wish we had a better way than the death penalty of stopping murderers.**

Testimony on HB No. 2529
March 7, 1995
David J. Gottlieb
Professor, University of Kansas School of Law

I am a Professor at the University of Kansas School of Law. I have taught a course on the law of the death penalty, and I have represented individuals in other states charged with capital offenses. I am here today to testify against the changes in the death penalty law suggested in HB 2529. I do so because I believe that the changes will unjustifiably expand the class of individuals eligible for the penalty, confuse the litigation process, and expand the costs associated with death penalty implementation.

While I opposed the death penalty bill passed by the legislature last year, I recognized that it was a bill serious about attempting to screen out the few most heinous murders from the over 100 non-negligent homicides that occur in our State every year, to provide sentencing procedures that channel the jury's discretion, and to limit the number of cases so that a huge capital puishment bureaucracy is not required. It did so by limiting the kinds of homicides eligible for the penalty, the kinds of defendants eligible for the penalty, and by specifying with a degree of clarity the procedures required to be followed if the death penalty is sought by the State. If we have to have a death penalty, all of those efforts will help, at least to some degree, to make the process rational. This bill takes a step backward from the efforts last year to construct a rational death penalty.

While the changes in the bill are not enormous, many of them expand the numbers of individuals subject to the death penalty. The most significant of these additions is the lowering of the age of those eligible for the penalty. Our legislature last year decided that individuals who are, by reason of age and mental infirmity, less responsible for what they do than normal adults, should not be subject to the death penalty. Thus, they made retarded individuals and children ineligible. This bill seeks to lower the age of those eligible for the penalty from 18 to 16. It is, of course, entirely incorrect to label this change a "technical" change in the death penalty law. It represents a moral and political judgment that it is appropriate for us to kill those of our children who kill. It ignores, or attempts to reverse, the judgment made less year that even if the acts of children produce terrible consequences, they should not be held responsible to the same extent as adults.

The other changes in 21-3439, while less significant, also expand the reach of the penalty. The amendments to subsection (6) of the bill expands the category of individuals who may be subjected to the death penalty, albeit in extremely confusing fashion. Under current law, those who kill more than one person may be subjected to capital punishment. The new legislation extends the penalty to those who kill one person during the commission or attempted commission of the killing on one or more

other persons. While the current bill reserves the death penalty (in this specification) for the heinous individual who kills more than one person, the amendment allows the penalty for any individual who risks death for more than one person. Similarly, the amendments to subsection (7) of the bill expand its reach for individuals who kill children.

I would oppose these expansions, even if they did not have adverse fiscal and legal consequences. The bill passed last year was a serious effort to limit the number of capital cases to the most heinous murders. That decision was taken because the individuals most responsible for the bill recognized that even in jurisdictions that use the penalty in an extremely active way, capital punishment is imposed in a fraction of murders. The less the state limits the numbers, the more the capital punishment process becomes a lottery, with the individuals selected for capital punishment little different from those who receive imprisonment. The proposed changes are likely to make our penalty less rational.

Moreover, the expansion of capital punishment will inevitably have fiscal consequences. The broader the death penalty law, the more likely we are to increase the number of cases filed as capital cases. Each additional case will cause significant increases in expenditures of public funds for prosecution, defense, and judicial costs. As unpalatable as it may be to accept, there is simply no question that it costs far more to fund a system with capital punishment than one without it. The State must expect that for each capital punishment case, the state will spend hundreds of thousands of dollars over and above the amount of money required to defend the case were it not capital. This difference is not a matter of speculation. It has been measured time and time again. In the most comprehensive study yet done, researchers tracked every death penalty case filed in North Carolina over a two-year period. The study concluded that the additional costs of litigating a capital case in the state were over $300,000 per case. Since most capital cases do not go to execution, the actual cost per execution was over $2 million dollars per case.

Any additions to our death penalty expenses at this time will affect an already stressed appointed counsel system. As a result of Governor Finney's veto of funds set aside for a capital defender office last year, our appointed counsel system has already run out of money. Routine felony cases are not being paid as of today. The Board of Indigents Defense Services has already been required to submit a request for a supplemental appropriation so that felony defense cases may be paid. Even if the supplemental appropriation is approved, it is expected to run out on June 1, leaving one month where vouchers are unpaid. Given the current crisis level for felony defense funds, the State should be wary of any proposals that will increase demands on the treasury for state funds for criminal defense.

Finally, the procedural changes requested in this bill should not be implemented, since they decrease the clarity and certainty in the bill, and will create litigation issues where those issues did not previously exist. For example, the Bill requests that KSA 21-4624(a) be amended from its current language, which requires the prosecution to announce its intent to seek the death penalty five days after arraignment, to a requirement that the announcement occur "in a reasonable time before trial." What the definition of reasonable time is, of course, is anyone's guess, and it is fair to anticipate that the appellate courts will be required to sort out this question, with all the delays and expense attendant to additional issues in appellate litigation. Moreover, because the bill would allow the prosecution to delay filing notice of the death penalty, it would surely require the defense to request addtional time to prepare the case, with attendant delays in the trial and additional costs to the state. The amendments to 21-4624(c) and (d), which purport to expand the types of evidence the prosecution could offer are both confusing and likely to cause additional litigation concerning the question of the scope of relevant evidence in a death penalty proceeding. Since we have yet to have our first sentencing proceeding under the current law, it would be unfortunate to introduce additional complications in the law by these amendments.

Testimony before the House Judiciary Committee
Jody Cathey, Administrative Counsel
State Board of Indigents' Defense Services
March 14, 1995
House Bill 2532 (1995 Proposed Legislation to Expand the Death Penalty)

We estimate that it will cost $3,629,000 to provide defense services for premeditated murder cases under HB2532.

The average time spent in defense of all felony cases, considered together, is about 10 hours. A non-capital murder trial involves 100 to 200 hours of attorney time, a capital murder trial involves 1,000 to 2,000 hours of attorney time. Two-thirds of that time is expended prior to trial. While I cannot predict how prosecutors will react to legislation, I can predict how defense counsel will react with a fair amount of accuracy. If you increase the penalty for premeditated murder from a life sentence to a death sentence, you will increase the cost by a factor of ten.

The cost associated with an increase in penalty for a criminal conviction is evident when looking at the comparison which the Board of Indigents' Defense Services prepared for the Senate Subcommittee on Ways and Means. When that penalty is increased from years incarcerated to death, the cost increases exponentially.

The Board of Indigents' Defense was underfunded by over a million dollars this year and we are having to take drastic measures. We are out of money, every dollar we have is committed. We have asked for a supplemental appropriation. The Board will be holding hearings on reducing the fees which are paid to attorneys, already the lowest rate paid by the state to outside counsel. We cannot make payments on assigned counsel claims for defense services which have already been provided. With the supplemental appropriation as it stands now, the agency projects that **at the very least** fees for 6,800 attorney hours will have to go unpaid until FY1996. Even without the expansion of the death penalty, the proposed appropriation for next year is also over one million dollars short.

6 Month Comparison of Non-Capital Murder Case Defense Costs (Assigned Counsel System) Following legislation in FY 1994 which increased mandatory prison time.

1st Degree Murder

FY 1994			FY 1995		
$180,406 ÷ 52 claims	69.4 hours per claim	$3,470.00 per claim	$274,701 ÷ 65 claims	84.5 hours per claim	$4,225.00 per claim

Number of Premeditated Murder Cases

As I said before, we cannot predict the number of cases that would be filed, we have no control over crimes or prosecutors. However, we do know that by February of 1995, there were 19 premeditated murder cases reported to the Board of Indigents' Defense Services administrative office by the capital coordinator, plus an additional number of double homicides which were not filed because the perpetrator committed suicide.

We can predict the cost of providing defense in a single capital murder case will exceed $100,000. The cost projections prepared over the last two years by the agency and legislative staff are attached.

House Judiciary
3-14-95
Attachment 12

Attachments

Excerpts from 1995 BIDS budget presentation to Senate Subcommittee on Ways & Means

Memo of Capital Coordinator dated 2/17/95

Detail of cost of appellate defense in capital case from 1994 BIDS Task Force Report

Detail of response to subcommittee questions on assigned counsel cost increases

Excerpts from 1995 BIDS budget presentation to the Governor's Division of the Budget

Capital Defense budget accounting model

Excerpts from 1994 Performance Audit Report, "Reviewing the Operations of the Board of Indigents' Defense Services" of the Legislative Division of Post Audit

Regarding fiscal impact of 1994 death penalty legislation

Excerpts from 1994 Research Memorandum, "Cost Considerations of Implementing the Death Penalty" by Kansas Legislative Research Department

MEMO

To: Ron Miles

From: Capital Coordinator

Date: February 17, 1995

Subject: 1995 Subcommittee Questions Regarding Capital Defense

===

1) What is the cost of a "typical" stand alone death penalty case, recognizing that it will only be an estimate?

Assuming case is totally assigned counsel:

2000 attorney hours @ $125	$250,000
500 investigator hours @ $25	12,500
700 mitigation expert hours @ $25	17,500
Psychological Testing	3,000
Psychiatric Exam, Report & testimony	7,500
Miscellaneous Expert	3,000
Expenses (copy, travel, etc)	1,000
TOTAL IF ASSIGNED COUNSEL ESTIMATE	$303,500

If only one assigned counsel with capital coordinator:

Above less 1/2 counsel fee	$178,500
Remote Office Expense	3,000
Travel	4,500
Lodging	5,000
TOTAL WITH ONE ASSIGNED COUNSEL	$191,000

If one in six capital cases goes all the way through jury trial, a figure I have heard bandied about, and one estimates that a non-tried case will cost about two-thirds that of a fully tried case (time is heavily used in pre-trial stages), a non-tried case with one assigned counsel would cost about $95,500. Those six cases would cost $678,500 [$191,000 + ($95,500 x 5)]. Thus the <u>average estimated cost per capital case</u> under the current system would be about $113,000.

2) What is the fewest number of attorneys we would need to add to capital defense in order to avoid assigned counsel in FY 1995, 1996, 1997 (projecting overlap into FY 96 and 97)?

First, we cannot completely avoid some use of assigned counsel unless and until the Regional Public Defender Offices become staffed to handle their current loads of non-capital cases and their more experienced attorneys become capital-qualified. If two or more defendants are charged in the same incident, there is no way to avoid contracting private counsel under the present plan. Also, local counsel will likely be hired in non-public defender districts to consult with capital defenders on local

practice/procedure and to help reduce travel time for docket calls and client contact.

Assuming there are no multi-defendant capital cases, and further that there are no more than four well-spaced cases in a given year, we might get by with three attorneys. Each could be lead in a case with the others serving as co-counsel for each other. This minimal plan will work if (1) adequate investigator and mitigation expert services are employed and contracted, and (2) too many cases do not arise contemporaneously.

(3 What would be the cost of adding two more attorneys and one more investigator in FY 96 to Capital Defense?

BIDS Administrative Office is working on this.

(4 Would one investigator be adequate for 3 attorneys in the Capital Defender Office?

This depends on two factors: (1) Geography and (2) Stage of cases. Cases located in geographically separated areas of the state would affect an investigator's ability to cover the work. Investigator time is heavily invested in the first two months of a case, therefore if two cases arise at the same time, it would be virtually impossible for one investigator to handle two cases at once, even if they are geographically close.

If cases are spaced in time at least two months apart, one staff investigator should be able to serve three attorneys handling no more than three cases open at one time.

STRUCTURE/FUNCTIONING OF THREE ATTORNEY
CAPITAL DEFENDER OFFICE

Chief Attorney:

Responsible for overall administration and training. Would also be lead counsel in one or possibly two cases, depending on stage of cases and experience/qualifications of assistant attorneys. As assistants become more experienced/trained chief attorney would serve as supervisory or motion writing counsel for the teams in the field in order to maximize the experience level on each case.

Assistant Attorneys:

Early on they would serve as co-counsel to the chief, or if already fully capital qualified would be lead counsel. Once experienced, each could serve as lead counsel in at least one case at a time with the other serving as co-counsel.

Investigator:

An experienced capital case trained investigator could handle one case at a time which is in the initial investigative phase (first two-three months after appointment.) After the initial investigation is complete, he/she could take on another case and still adequately do the follow-up investigation on the earlier case. If cases are sufficiently spaced out, the investigator could conceivably handle up to four open cases at a time. This assumes that the investigator will be doing fact investigation and that a mitigation investigator will be working on the penalty phase investigation. If the investigator must do both fact and penalty phase (mitigation) investigation, he/she could not handle more than two open cases at once--assuming we could find an investigator qualified in both phases.

Secretary:

Normal office management duties. May be able to assume some mitigation investigative duties gradually, especially in records collection functions.

Contract Employees:

<u>Mitigation Expert</u>

Every case will require a mitigation investigator/expert. This function would be contracted case by case and could be expected to require 600-800 hours per case which goes to trial. Again this time is heavily concentrated in the first two months of the defense, but will continue throughout the course of the case. The standard fee is $25/hour plus expenses.

<u>Psychiatric/Psychological</u>

A psychologist to do the testing ($3,000 - $5,000) and a forensic psychiatrist ($4,000 - $10,000) will be required in every case to prepare either defense or mitigation evidence.

Local Counsel

In virtually every case which arises in non-public defender districts a local attorney experienced in criminal practice will be needed to advise the capital defenders on local practice. In geographically distant locales local counsel would be cost-effective to maintain client contact, file court documents and attend non-critical hearings (docket calls). If we cannot find someone to help as a professional courtesy, the standard BIDS rate of $50 per hour should suffice. Advice only service should not cost more than $250-$500. Client service and docket-minding should not more than double the expense. In many cases, local counsel will not be necessary.

Miscellaneous Experts

Whenever the prosecution uses forensic evidence, the defense will need to hire its own experts. Areas of expertise could include fingerprint examination, ballistics, blood (traditional and occasionally DNA), hair/fiber examination, toxicology, handwriting, polygraph or psychological stress exams (rarely), pathology. Costs of these experts run from a $100 consult to thousands of dollars for a full DNA examination. Jury consultants may also be required in high publicity cases, which run $5,000+ per case.

Other Contract Expenses:

Office Space:

Any case occurring over 50 miles from the home office will require rudimentary office space for the team to work out of. If the case occurs in a public defender city, space can probably be arranged at no cost to the state. Otherwise, at least one large room would be necessary. Possibilities include space in a local attorney's office, motel rooms or vacant office space. Example: pending case in Kansas City, Kansas $400/month)

Local Phone Service:

At least one line must be installed even when a public defender office is used. Our experience in Salina was that the capital team substantially interferes with the operation of a public defender office, especially in tying up the phones. If a separate office is obtained, two lines will suffice. ($____/month)

Photocopying Access:

The team must have easy access to copying facilities for motions prepared for filing. Heavy copying of reports and other discovery materials can be shipped to the home office, the nearest public defender office or contracted professionally. It is likely that arrangements can be made with a local attorney to obtain this service. (Estimate 10,000 pages in normal case @ .5/copy: $500)

Lodging

Motel rooms for the team on site may be contracted. In the two cases thus far (Salina & Kansas City) we have managed to contract for $25/night/person. Estimate: $1,000/month or $3,000-$5,000 total per case).

Per diem.

A case tried through jury trial would require attorneys to be on site overnight 60-120 days, depending on the distance from home station. Mitigation and fact investigators will spend nearly full time on site due to need for after-hours work for two months with attendance during a two to four week trial. Estimate 320 days @ $22/day = $7,040

Revised Cost of Additional Staff at Capital Coordinator's Office

Salaries	
OA I	$13,767
Chief Atty	$60,767
2-PD IV	$77,160
Sp. Inv. II	$27,768
TOTAL	$179,462

Space Requirements-Square Foot	
Secretary/Reception Area	143
Chief	192
2-PD III	200
Sp. Inv.	100
Conference Room	291
TOTAL	926

Capital Outlay	
3-Laptop Computers	$7,095
5-Networks	$6,435
3-Software	$1,152
2-Bubble Jet Printers 10-E	$900
3-Desk , Executive	$1,260
3-Chair, Executive	$876
5-Chair, Side	$750
3-Data Workstations	$360
1-5 Drawer File Cabinet-Letter	$238
3-2 Drawer File Cabine-Letter	$411
1-Storeage Cabinet	$260
4-Library Shelves	$788
3-4 Shelf Bookcase	$752
1-Calculator	$80
3-Telephones	$300
Telephone System	$3,000
Law Books	$6,000
Fax Machine	$746
8 -Chairs, Conference	$1,600
1-Table, Conference	$200
1-Transcriber	$400
1-Dictating Unit	$50
1-Camcorder	$1,550
1-35mm Camera w/Lens	$400
TOTAL	$35,603

Expenditures	
Communication	$9,000
Freight	$300
Printing	$11,000
Rents	$20,500
Repairing	$860
Travel	$50,000
Fees–Professional	$3,570
Utilities	$1,150
Other Contractual	$760
Professional Supplies	$15,500
Office Supplies	$3,000
TOTAL	$115,640

(From 1994 BIDS Task Force Report)

APPELLATE COSTS

I Extra Levels of Review

a) "It is now clear that a permanent and indispensable feature of capital litigation involves the review of constitutional, statutory and discretionary questions at a minimum of ten state and federal judicial levels. These include, but are not limited to:

1. the guilt and penalty phases of the trial
2. review by the highest state court of the sentence of death and the underlying conviction
3. writ of certiorari to the United States Supreme Court
4. post conviction proceedings including evidentiary hearings to vacate judgment or set aside sentence or both;
5. review by the highest state court of adverse determinations in such post-conviction proceedings;
6. writ of certiorari to the United States Supreme Court;
7. petition for writ of habeas corpus to the United States District Court;
8. appeal of a negative determination of a writ of habeas corpus to the Federal Court of Appeals for the circuit encompassing the district wherein the writ was brought;
9. a petition for rehearing en banc from a negative determination of the Court of Appeals;
10. a writ of certiorari to the United States Supreme Court to review a negative determination of either the Court of Appeals or a rehearing en banc.

After final judicial review, commutation applications directed to the executive branch are conducted. Stays at each level or stage of litigation are routine. A litigation process lasting eight to ten years is the norm. These levels of judicial review are the mandatory daily fare of capital litigation...."[1]

Based upon data from the Colorado State Public Defender, one-third of cases prosecuted to the sentencing phase as death penalty cases will get the death penalty. (Note: New York reports an increase at the rate of 25% each year). Statistics currently show a 41% reversal rate at the state level, so Kansas would have 59% of the appellate cases continue through the state habeas process on appeal. The case would be in the hands of the state appointed attorney during the time limit for filing a Writ of Certiorari to the United States Supreme Court. Not filing the Writ could result in a federal habeas finding of ineffective assistance which would return the case to the state for retrial, at state cost. Increased federal habeas would increase costs for Kansas taxpayers at some level, at this time however, BIDS would not be effected, as the state does not pay for appeals continued on through the federal habeas process.

II Attorney Hours

(a) Based upon compilation of statistics from Michigan, New York and Kansas, 1 death penalty appeal to the State Supreme Court takes 1,000 hours.

(b) Petitions for Cert, according to NLADA Standards reported by New York Public Defenders Association require 256 attorney hours if Petitions for Cert are not granted; 883 hours if Petitions are granted.

(c) State post-conviction appeals, according to the Spangenberg Group study require 200 hours at the state appeal level and 100 hours for second level Petitions for Cert. Assuming 41% of the Kansas death penalty cases are reversed at the direct appeal, 59% are then projected through the post-conviction process at 300 attorney hours each.

(d) The non-capital murder case appeals will require 200 attorney hours.

1 Capital Losses, April 1, 1982, New York State Defenders Association, Inc, 150 State Street, Albany, NY 12207.

III Cost:

Attorney fees: Assuming no additional staff is provided to the State Appellate Defender office to provide service for the additional hours related to capital cases, it would be necessary to pay private counsel to provide those services. Attorney fees for appellate work on death penalty cases are calculated at the same rate as attorney fees for trial work on death penalty cases, calculated to be $125.00 per hour. Attorney fees for non-capital cases are calculated at the current rate of $50.00 per hour.

Transcripts & general expenses: Each capital case direct appeal is estimated to involve 3500 pages of trial and pretrial transcripts. No additional transcripts are required for a Petition for Cert. A Post-conviction appeal of a capital case will require additional transcription of about one-fifth as much more. Non-capital case appeals will involve transcripts of about 1000 pages in length. The current rate for transcription is $2.00 per page.

Caveat: The remaining cases charged as death penalty, not receiving the death sentence, would increase the volume of the transcripts and issues on appeal, as the case was subject to "super due process" prosecution and defense tactics through out the lower court proceedings.

	1,000 x A		(direct appeals capital cases)
+	256 x C	(C=50%B)	(Petition for Cert denied)
+	883 x C	(C=50%B)	(Petition for Cert granted)
+	200 x B	(B=59%A)	(post-conviction capital case appeals)
+	100 x B	(B=59%A)	(post-conviction Petitions for Cert
=	Y =	Total annual capital case hours	
+	200 x N-A	(number of murder cases minus capital cases)	
=	X = Total annual appellate hours for murder one		

Note: The number of attorney hours projected for first Petition for Cert and post-conviction appeals are based upon the assumption that the same attorney who prepares the direct appeal will remain the attorney throughout the appellate process.

Formula for calculating appellate attorney hours

Additional expenses will include copying charges, travel expenses, phone calls and the like, which may not exceed that of a non-capital case and will not be included in the calculation.

(1) The subcommittee asked for clarification of the percentage of increase experienced in assigned counsel claims versus the percentage of increase experienced in costs. In response, the agency provides information regarding the actual numbers of claims filed and cost figures broken down by in-court and out-of-court time.

(2) The subcommittee asked whether the general increase was related to any recent legislation. In response, the agency has attempted to identify specific offenses with increased penalties since the adoption of sentencing guidelines. In addition, the agency responds by recalling its FY 94 budget submission, wherein the agency predicted a minor increase in attorney time for each case due to the adoption of sentencing guidelines. The agency predicted that the minor increase would have a substantial fiscal impact.

A breakdown of fourteen offenses subjected to increased penalties in Out-of-Court time and In-Court time for those offenses is set out in Table 1. The agency previously provided the subcommittee with an estimated 12 month increase in thirteen offense categories and five post conviction matters. Table 2 expands that comparison to 27 major offense categories and six post conviction matters.

The overall difference experienced between attorney fees in the 27 offenses and six post conviction matters averages half an hour per claim (10.5 versus 11 hours). Out of the 27 identified offenses, 15 (including the new offense of felony stalking) have had increased penalties since the beginning of fiscal year 1994. Of those offenses with increased penalties, there were 797 claims filed in the first six months of 94, 1085 claims filed in the first six months of 95. Considered together, there were 288 more claims in that group with an average increase of fifteen minutes in attorney time per claim. In reality, the number of hours spent on each case is relative to the offense charged.

Table 1

	94 out of court time	95 out of court time	Difference in hours	Avg +/- hrs per claim	94 in court time	95 in court time	Difference in hours	Avg +/- hrs per claim
'M1	$109,198	$197,652	1769	27.2	$59,942	$61,843	38	0.6
'M2	$11,185	$37,863	534	26.7	$2,435	$16,553	282	14.1
MSl	$1,728	$13,435	234	21.3	$848	$4,760	78	7.1
ChA	$8,330	$10,723	48	2.2	$2,490	$5,160	53	2.4
AgBt	$94,995	$84,743	-205	-1.0	$38,079	$32,152	-119	-0.6
Kdnp	$54,890	$55,934	21	0.4	$17,415	$18,037	12	0.2
Rbry	$98,085	$68,649	-589	-5.5	$40,354	$25,847	-290	-2.7
Rape	$51,964	$67,320	307	5.0	$21,316	$19,472	-37	-0.6
Sdm	$22,732	$12,458	-205	-9.8	$9,021	$4,078	-99	-4.7
SwC	$55,017	$63,762	175	1.6	$17,351	$22,216	97	0.9
ASB	$8,733	$4,443	-86	-7.2	$1,482	$2,858	28	2.3
Arsn	$11,403	$23,359	239	8.9	$6,170	$7,770	32	1.2
DWS	$39,062	$59,117	401	1.7	$15,469	$23,357	158	0.7
DUI	$2,796	$38,423	713	5.0	$747	$17,134	328	2.3
Total	$570,116	$737,878	3356.0	5.5	$233,117	$261,234	561.0	1.7

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Total	$570,116	$737,878	3356.0	5.5	$233,117	$261,234	561.0	1.7

FY 86 BUDGET

STATE BOARD OF INDIGENTS' DEFENSE SERVICES

1							
x							
x							
x							
x							
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x	x						
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x	20	x	x	x			
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x	x	x	x	x			
x	x	20	x	x	1		
x	x	x	x	x	x		
x	x	x	x	x	x		
x	x	x	x	x	x		
x	x	x	x	x	x		
x	x	x	20	x	x		
x	x	x	x	x	x	x	

There are several ways we can project the cost of these cases for budget purposes. one way would be to take the projected average case cost times the number of cases which we expect to be filed during the two year period.

The projection submitted in our FY 96 budget request is based on what we believe will be a better accounting model for annual budget purposes. Since not all of those cases are expected to be filed at the same time, each one can take from one to twelve years to pass through the system and the trial process takes approximately fourteen months, we can allocate the costs to different aspects of the process over time.

The FY95-96 model includes the additional factor of timing of a projected eight filings.

The model staggers the filings to one being charged every month and a half. Being only a model, the projection is based on model circumstances and can only approximate reality. In reality, several cases are likely to be filed simultaneously, as co-defendants can be expected to be involved in some of the cases and the cases will have longer and shorter intervals between them. However, the agency believes this accounting model will present a more accurate picture of when funds will be needed for capital defense than a request which lumps the entire cost at the end or beginning of the case.

A conservative eight annual filings was selected as the number to be used in the model. The homocide rate is up from 1993 and several double homocides have occurred in the state since 7/1/94. Although these are potential capital cases, as of 9/1/94, no case in which a suspect or suspects had been arrested had yet been charged as a capital murder.

Until the first case is actually completed we must continue to rely on the national experience and similar Kansas murder cases from previous years. The case costs associated with different aspects of the trial process can be broken into three 20 week segments, using interim vouchering to stagger the costs over the course of the trial and pretrial process. The average attorney hours (600) projected in the report of the capital defense task force, the cost of trial and mitigation experts and investigators can be allocated to form the basis of actual budget needs as the case progresses over time.

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DOB USE

Those 33.3% which fall out prior to trial will not incur further defense costs at the trial court or appellate level. The 33.3% which fall out prior to the sentencing phase will average 30 prep. hours + 80 in-court hours for the trial process. Although no longer continuing as a capital murder case, the appellate process for these cases will be complex due to the numerous issues which will have been litigated and preserved for appeal under super due process requirements at the pretrial and guilt phase. The final 33.3% will average 48 prep hours, 112 in-court hours, 16 prep hours post-trial, 10 in-court post-trial motions, 40 hours post-trial investigation and still be subject to continuing super due process requirements at the appellate level as well.

Consistent with current cases, we can speculate eight capital cases will be filed per year under the current definition of capital murder. If, however, prosecutors begin to utilize a more aggressive definition of the statute, become more comfortable with the legal process involved in capital cases or begin to respond to political pressure to prosecute these cases, that number can be expected to escalate.

Kansas Example:
The Judge ordered that two defense attorneys were required for effective assistance in a complex murder case. Both prosecution and defense called numerous expert witnesses, the case took a full year in pretrial and 4-6 weeks were blocked out of the Court's calendar for the trial itself. The case was pled out at the completion of the pretrial process and did not go to trial.

Primary Counsel billed:

July to October 87 prep hours & 12.5 in-court hours
October to July 930 prep hrs & 63 in-court hours
TOTAL: 1017 prep & 150 in-court hours

Secondary Counsel billed:

September to April 143 prep hours & 39 in court
May to July 9 hours prep & 18 hrs court
TOTAL: 152 prep & 57 in-court hours

1,376 attorney hours total	$68,800.00
attorney expenses	1,866.00
expert, investigative & transcripts	15,682.00
TOTAL COST PRETRIAL	$86,348.00

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AGENCY NAME STATE BOARD OF INDIGENTS' DEFENSE
AGENCY NUMBER 32800 FUNCTION NO.
PROGRAM TITLE AND NUMBER AID TO INDIGENT DEFENDANTS
SUBPROGRAM TITLE AND NUMBER ASSIGNED COUNSEL-42140

DOB USE ONLY

a	35	a	a	a											
a	36	a	a	61	x	x	x	x	x	x	x				
a	37	a	a	a	x	40	x	x	x	x	x	1			
a	38	a	a	a	x	x	x	x	x	x	x	x			
a	39	a	a	a	x	x	x	x	x	x	x	x			
a	40	a	a	a	x	x	x	40	x	x	x	x			
a	41	a	a	a	x	x	x	x	x	x	x	x			
a	42	a	a	a	61	x	40	x	x	x	x	x	1		
a	43	a	a	a		x	x	x	x	x	x	x	x		
a	44	a	a	a		x	x	x	x	x	x	x	x		
a	45	a	a	a		x	x	x	x	20	x	x	x		
a	46	a	a	a		x	x	x	x	x	x	x	x		
a	47	a	a	a		x	x	40	x	x	x	x	x	1	
a	48	a	a	a		61	x	x	x	x	x	x	x	x	
a	49	a	a	a		a	x	x	x	x	x	x	x	x	
a	50	a	a	a		a	x	x	x	x	x	x	x	x	
a	51	a	a	a		a	x	x	x	x	20	x	x	x	
a	52	a	a	a		a	x	x	40	x	x	x	x	x	1
a	6/97	a	a	a		a	61	x	x	x	x	x	x	x	x

week 1 - 20
investigation
scientific experts
records collection
mitigation coordinator
discovery motions
research

(FY 95)
x 5 = $231,875.00

222 out of court attorney hours
23 in court attorney hours
235 attorney hours = $29, 375.00
$ 7,000 experts, investigation & expenses
$10,000 mitigation coordinator
$46,375.00

(FY 96)
x 9 = $417,375.00

week 21 - 40
negotiation & strategy
medical & mitigation experts
motions

(FY 95)
x 2 = $39,750.00

66 out of court attorney hours
69 in court attorney hours
135 attorney hours = $16,875.00
$ 3,000.00 experts & expenses
$19,875.00

(FY 96)
x 9 = $178,875.00

week 41 - 61
trial
trial motions
testimony
argument

(FY 95)
x 0 = $0
$271,625.00

261 out of court attorney hours
158 in court attorney hours
372 attorney hours = $46,875.00
$ 1,000.00 experts & expenses
$47,875.00

(FY 96)
x 8 = $383,000.00
$979,250.00

FY 95
5 cases pass 33.3% complete
2 cases pass 66.6% complete

FY 96
9 pass 3
9 pass 6
8 cases

RMATION—DA 400

AGENCY NAME STATE BOARD OF INDIGENTS' DEFENSE
AGENCY NUMBER 32800 FUNCTION
PROGRAM TITLE AND NUMBER AID TO INDIGENT DEFE
SUBPROGRAM TITLE AND NUMBER ASSIGNED COUNSEL-
DOB USE O

12-17

PERFORMANCE AUDIT REPORT

Reviewing the Operations of the Board of Indigents' Defense Services

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
September 1994

94-42

12-18

the Department of Corrections and the Kansas Bureau of Investigation, as well as the experience of defense attorneys.

Estimated impact: $417,956

Persistent offenders. This law doubles the sentence of people convicted of serious crimes who previously have committed two or more person felonies.

Individuals affected by this legislation probably already would have been represented by the Board. However, the Board estimated that because the legislation doubles the sentence, more of these cases would go to trial. As a result, the number of attorney hours would increase. Public defenders we spoke with—and information from other states—suggests that persistent-offender legislation would result in more trials.

Estimated impact: $63,750

New or enhanced crimes. Legislation also was passed that would increase the severity or penalty for crimes such as using minors in criminal activity, shooting at unoccupied buildings, stalking, battery on a law enforcement officer, and criminal participation in a street gang.

The Board estimated that these pieces of legislation would result in some 103 additional cases a year as well as an increase in attorney hours. The estimates are based on the experience of public defenders.

Estimated impact: $138,374

☞ **Cost estimate data appropriate**

The fiscal impact of legislation is likely to be somewhat less than the Board estimated. We reviewed the estimates of fiscal impact to determine whether they were reasonable. In general, we found that the Board used appropriate data when making its estimates. It reviewed the caseload in its public defender offices, information from the Department of Corrections, and statistics from the Kansas Bureau of Investigation. The estimates relating to the cost of trying a death penalty case were based on studies done in other states and on American Bar Association standards for trying such cases.

However, based on our analysis, we think the overall fiscal impact of the legislation probably will be less than the Board has estimated for two reasons:

- ***most individuals we contacted said the number of death penalty cases would most likely be less than the 19-40 cases estimated by the Board***

  We spoke with prosecutors in each of the State's four largest counties as well as judges in four other counties across the State. The consensus was that the Board was interpreting the section of the death penalty law relating to "killing

☞

5 cases
$ 881,000

15 cases
$2,100,000

by contract" too liberally. Based on these individuals' opinions, a more reasonable range would be five to 15 cases per year. The cost for five cases would range from $1.2 million (if public defenders were used) to $881,000 (if assigned counsel were used). At this low number of cases, assigned counsel actually would cost less than public defenders. For 15 cases, the costs would range from $2.1 million to $2.6 million.

- ***the fiscal impact estimates of some of the other pieces of legislation are somewhat high***

  Excluding the death penalty, the Board estimated that the other crime legislation would cost the agency just over $620,000. This includes estimates for the costs for trial-level cases, expert services, and appeals. Although the estimates of the impact on the agency in terms of new cases and additional time appear to be reasonable, the costs appear to be slightly high. The Board used an average cost per trial-level case of $584 to estimate the impact of additional cases. We calculated the average cost of fiscal year 1993 trial-level cases to be $510. (In fiscal year 1994, the average cost actually went down somewhat.) If $510 cost-per-case figure is used, the Board's fiscal impact estimate can be reduced by at least $55,000, to about $565,000.

The Board likely will need additional money to fund the impact of this legislation, because the Governor vetoed money for the death penalty. The Legislature appropriated $900,000 to the Board to pay for capital defender expenses associated with the passage of the death penalty legislation. However, the Governor vetoed the entire amount. In her veto message, she said that "until the capital punishment law is in effect and experience is gained concerning the number of persons affected, funding is premature."

To-date, no death penalty cases have been filed in the State. However, to prepare for the possibility of such cases, the Board has temporarily assigned one of the chief public defenders to the position of capital coordinator. That position will be responsible for several activities:

- coordinating information on murder cases across Kansas so that judges can appoint individuals from appropriate panels
- providing judges with legal guidelines for capital cases
- compiling a list of out-of-State counsel who could handle capital cases
- creating a database of cases involving capital crimes
- developing a capital defense manual

Because of the death penalty legislation and the Governor's veto, the Legislature undoubtedly will be asked to provide the Board with a supplemental appropriation during the next legislative session.

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N -- Statehouse
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Telephone (913) 296-3181 FAX (913) 296-3824

Revised
February 15, 1994

COST CONSIDERATIONS OF IMPLEMENTING THE DEATH PENALTY

1994 H.B. 2578 and S.B. 473

This memorandum was prepared in response to requests from several legislators for information about the potential cost of implementing the death penalty.

Any prospective discussion of the cost of implementing the death penalty is, of necessity, speculative and might well begin with recognition that a precise projection cannot be made with any level of confidence. However, agencies that will be charged with implementation attempt to develop general estimates that might be used by policymakers as indicators of the magnitude of resource demand. Development of such estimates can be a laborious task, and even with the application of considerable time and expertise can be imprecise because of the large number of variables that impact the amount of resources that must be devoted to execution of convicted murderers (the death penalty bills before the Kansas Legislature at this time only provide for execution of those found guilty of first degree murder under certain circumstances).

Ideally, policymakers in Kansas would be able to obtain expense information from the other 36 states that have the death penalty. However, few efforts have been made to examine actual systemwide costs. As part of the research for preparation of this memorandum, a Maryland study (1985) and a North Carolina study (1993), based on those states' experiences, were reviewed. For a number of reasons the experiences of those states cannot predict with any great degree liability the costs that might be incurred in Kansas to implement the death penalty. Some of those reasons include differences in: criminal procedure, sentencing laws, allocation of state and local financing responsibility, rates paid to assigned counsel, and comprehensiveness of the research design used. Other publications that discuss the cost of specific elements also were reviewed for this memorandum. All sources reviewed during preparation of this memorandum are listed at the end.

As discussed in the literature, experience of those involved in prosecuting and defending capital cases appears to be that these cases take longer and require dedication of more resources than noncapital murder cases. How much longer and how many more resources are functions of a number of variables that can be identified in advance. Unfortunately, the impact of any one variable, or the combined impact of several variables is virtually impossible to predict.

This memorandum is presented with an understanding that legislators might legitimately disagree with the exact amount of resources projected to be necessary to implement the death penalty.

TABLE II

ESTIMATE OF ADDITIONAL STATE AND COUNTY COSTS TO IMPLEMENT 1994 S.B. 473

(See Accompanying Memorandum for Explanation of Assumptions)

Cost Center	Estimate	State/County
Trial		
Jury	$ 2,980	County
Defense	91,370	State
Prosecution	51,242	County
Subtotal -- Trial Costs per case	$ 145,592	
Appeals		
Defense Attorney (including transcripts)	$ 229,100	State
Prosecution	43,640	State
	48,000	County
Subtotal -- Appeals Cost per case	$ 320,740	
Capital Improvements/Injection Machine	$ 80,000	State
TOTAL PER CASE -- ALL COSTS	$ 546,332	State & County
TOTAL COST PER DEATH SENTENCE[a]	1,006,474	State & County
Incarceration in DOC[b]	(51,200)	State
TOTAL COST PER EXECUTION[c]	$ 2,733,336	State & County
Additional State Expense per case	$ 444,110	
Additional County Expense per case	102,222	
	$ 546,332	

a) Allocates cost of all trials and appeals to the projected number of death sentences. See discussion on pages 8 and 9 of text.

b) Department of Corrections' estimate of marginal cost of incarceration for one year is $1,600. The savings represented here would be for the 32 years of a 40-year sentence an executed inmate would not serve.

c) Allocates cost of all trials and appeals to the single execution that might result. See discussion of pages on 8 and 9 of text.

94-0008226.01/MG

BEFORE THE KANSAS HOUSE COMMITTEE ON THE JUDICIARY
REGARDING HOUSE BILL NO. 2529
by

Ronald E. Wurtz
Capital Defense Coordinator
Board of Indigents' Defense Services
121 SE 6th Street, Suite 6
Topeka, KS 66604
(913) 296-6555
FAX (913) 296-4718

I am the public defender designated by the Board of Indigents' Defense Services to coordinate the defense of capital cases filed in Kansas. That job includes the collection of materials specific to the unique problems in the defense of capital cases, providing that information to interested defense attorneys and training defense attorneys to defend death penalty cases. I also provide judges with a list of attorneys qualified to accept appointments to such cases, and I defend those cases when my other duties permit.

I was lead counsel in the first capital murder case filed in Kansas (State v. Peirano), which was settled by a plea to a Hard-40 life sentence before preliminary hearing. Presently I am lead counsel in a capital murder case in Wyandotte County (State v. Brady) and co-counsel in a third capital murder case pending in Leavenworth county (State v. Tillman).

My purpose is to provide you with a perspective from the defense attorney. I do not propose to offer my opinion on the wisdom of the proposed amendments. Rather, I offer my limited experience and training to help you anticipate issues which may arise if this bill is enacted.

House Bill 2529 clearly increases the number of potential death-eligible cases. This is done in two ways: (1) it broadens the definition of capital murder in three subsections, and (2) it expands the reach of the death penalty 18-year-olds to 16-year-olds.

The bill also makes it easier for the prosecution to obtain a death sentence through (1) an expansion of the evidence prosecutors may present at the sentencing phase, (2) discouraging the accused from testifying in his/her own behalf, and (3) broadening the definitions of two aggravating factors.

Finally, it eliminates the bright line for giving notice of intent to seek the death penalty.

EXPANSION OF THE DEATH PENALTY'S SCOPE

Section 1 amends three categories of capital murder in the following ways:

It expands K.S.A. 1994 Supp 21-3439(a)(1) to cover attempted kidnapping for ransom. Presently attempts are not covered. Because kidnapping for ransom are relatively rare, the impact on number of death-eligible cases will be small, but nevertheless it is an expansion.

The bill radically changes to the multiple killings section. [K.S.A. 1994 Supp 21-3439(a)(6)] Under current law if more than one person is killed during the same course of events, capital murder may be charged. Based on my own records of homicides this year, the amendment, if in effect this year could have resulted in two more capital cases being filed. (Butler & Finney counties)

The bill also significantly expands K.S.A. 1994 Supp 21-3439(a)(7) by (1) deleting the specific intent to commit a sex crime, (2) including attempted kidnapping and (3) raising the victim age limit from 14 to 16. Under this bill a premeditated killing during <u>any</u> kidnapping or <u>attempted</u> kidnapping of a child 16 years old or younger is capital murder. This will expand the number of capital cases.

§2 completes the expansion of the death penalty's reach by allowing 16-18 year olds to be executed. I have been collecting data on murder cases filed, and based on my records perhaps one additional case could have been filed as capital cases to date if this provision were in effect. (Johnson county)

INCREASING THE ODDS OF OBTAINING A DEATH SENTENCE

§3(a) removes the deadline for the prosecution's decision whether to seek the death penalty. This will cover the prosecutor who "forgets" to file on time, and it extends the time in which the prosecutor can withhold the decision to seek the death penalty. This will increase pretrial litigation, the accompanying attorney costs and the number of issues for an appeal. With the deadline, the prosecution decision to seek life imprisonment rather than death will result in the case reverting to a non-death penalty case with only one attorney, no mitigation expense, fewer novel legal issues, etc. An early decision on whether to seek the death penalty eliminates the heavy (and expensive) pretrial motion practice which must occur in all death penalty cases. Finally, the amendment opens the door to the sharp prosecutorial tactic of intentional delay. This will increase the likelihood of continuances for lack of timely notice of intent to seek the death penalty and the facts used to prove aggravating factors. In short, this provision carries the potential for unfair abuse by the state, will increase costs and chances for reversal on appeal.

§3(c) would permit the prosecution to introduce bad character evidence of the accused, including conduct which has not resulted in a conviction. This change will also increase litigation over the admissibility of such evidence. Other states with similar provisions find that there are multiple "mini-trials" over whether a certain act happened and whether it is admissible. Permitting the prosecution to introduce character evidence (except in rebuttal) is also a significant departure from Kansas' tradition. Our evidence code has long eschewed general bad character evidence as a method of deciding cases. (See K.S.A. 60-421, 422, 445, 447)

Another change to this section removes the accused's protection from use of his/her penalty phase testimony in other trials or retrials. Cases involving the Constitutionality of the death penalty emphasize the need for certainty (correctness) in the jury's decision. Removal of the "use immunity" provision could deny the jury a most useful tool for evaluating the need for a death sentence: the accused's own words. The amendment discourages honesty at sentencing, and will result in increased constitutional and statutory challenges by the defense.

§3(d) also broadens the evidence the sentencing jury may consider. The change raises good constitutional arguments that the jury's discretion is not sufficiently guided and that there is insufficient narrowing of the death penalty's application. Like other proposed changes, this amendment is fodder for increased pretrial litigation.

§4 changes the aggravating circumstances statute (K.S.A. 21-4625) by first amending the prior conviction subsection from a crime which inflicted serious harm on the victim to one which is merely a "serious assaultive" conviction. This proposal invites a constitutional challenge based on vagueness and overbreadth. What is "serious" when used in the context of an assault? Do simple assaults qualify?

The amendment to subsection (2) is insignificant.

SUMMARY

The current death penalty statute has been invoked three times since its enactment, and those unfortunate events confirm that death penalty cases are inordinately expensive to properly prosecute and defend. The proposed amendments add to those costs by encouraging the filing of more cases and by complicating those which are filed. If these changes are adopted, this legislature should consider the cost of the increased defense work the bill will require, and then decide whether the changes are worthwhile. The defense of each death penalty case requires a minimum of four persons: two attorneys, a fact investigator and a someone to investigate mitigation and aggravation evidence. Nearly every case also requires expert assistance for the defense. Increased time is required of the prosecution and court to handle the cases. The price tag on this bill is difficult to quantify, but it is certain that it will increase the state's costs to both the prosecution and defense.

LEAGUE OF WOMEN VOTERS OF KANSAS

919½ South Kansas Avenue Topeka, KS 66612 (913) 234-5152

Testimony submitted to the House Judiciary Committee
March 7, 1995

RE: HB 2529

Chairman O'Neal and Members of the Committee:

I am Elaine Mann, Lobby Corps Co-Coordinator for the League of Women Voters of Kansas. I appreciate the opportunity to submit written testimony on behalf of the League of Women Voters in opposition to HB 2529, which expands the death penalty in Kansas.

As you may know, the League of Women Voters is a nonpartisan political organization of informed citizens who take positions on a variety of state and national public policy issues after extensive study and consensus. The Kansas League has opposed a death penalty in Kansas since it studied sentencing alternatives in the state in 1981 and 1982.

Last year we joined other individuals and groups in opposing the re-institution of the death penalty. We based our opposition on the following reasons;

"1. It is not a deterrent to others.
2. A guilty person may be acquitted because juries may be less willing to return a guilty verdict if the sentence is death.
3. An innocent person may be wrongfully convicted.
4. It is too costly to the state in terms of legal fees and court time." (League of Women of Kansas, Study and Action 1993-95, p. 8).

The bill before you today, HB 2529, expands the narrow compromise statute passed by the 1994 Legislature to cover additional situations and persons. The same rationale upon which we based our opposition to last year's law applies equally to this expansion. If HB 2529 becomes law we can expect the state to spend even more resources on a measure that actually does nothing to deter or lessen crime. The legislature is already committed to spending millions to implement last year's law; the additional costs which would be incurred under HB 2529 would be far better spent making a real impact on the crime problem.

Perhaps the most objectionable aspect of HB 2529 is the fact that, if it were to be enacted, sixteen- and seventeen-year-olds would be death eligible. Is this the solution to the junvenile crime problem that the Kansas legislature proposes? To youth who value life little, this bill sends the message that the state shares their view. Our Juvenile Offenders Code is predicated on the notion that children who transgress the law can be rehabilitated. Are the citizens and lawmakers of Kansas ready to give up on that notion entirely? How many juvenile services could be financed with the cost of one death-penalty trial and appeal for a sixteen-year-old?

House Judiciary
3-14-95
Attachment 14

Much attention in the media has been given to alleged public support for capital punishment. The citizens of Kansas have yet to experience an execution under the new statute. We feel compelled to ask, how much public support will there be the first time a sixteen-year-old is executed? Moreover, we question whether a jury would even convict a sixteen- or seventeen-year-old, knowing that execution was a real possibility.

Finally, HB 2529 makes several changes to the sentencing portions of a capital case. The wording of the proposed changes muddies the waters as far as what aggravating and mitigating circumstances are admissible. It seems unclear how many additional cases would qualify for a death sentence under these provisions, if any, or what evidence would be admissible that is not admissible under the current statute. To the extent that these provisions broaden the reach of the death penalty, we ask that you reject them for the reasons cited above.

Thank you for your consideration.

AMNESTY
INTERNATIONAL
USA

Donna Schneweis CSJ, Kansas Death Penalty Abolition Coordinator
827 SW Tyler, #21, Topeka, KS 66612 (913) 234-3061

TESTIMONY ON HB 2529
Kansas House Judiciary Committee
March 14, 1995

Mr. Chair, and Members of the Committee, I am Donna Schneweis, CSJ, State Death Penalty Abolition Coordinator for Amnesty International. I submit this written testimony on behalf of Amnesty International on HB 2529.

Amnesty International is opposed to the changes in Section 1, items (1), (6), and (7), plus Section 2. Before I go into the why of our opposition, I wish to briefly review who AI is for your members not as familiar with our organization.

Amnesty International is a worldwide, politically non-partisan human rights movement. We have over 2300 members and supporters in Kansas. The fundamental basis for our work is the Universal Declaration of Human Rights. We work for the release of prisoners of conscience, those persons who have not advocated or used violence but who are imprisoned simply because of their political or religious beliefs. We work for fair and prompt trials for all political prisoners. We oppose, without reservation, the use of the death penalty and torture.

Amnesty International opposes the changes in Sections 1 and 2 because it will put Kansas into a situation of an even greater frequency of violation of human rights. The changes in Section 1 will most likely lead to an increased number of persons sentenced to death and being executed. When Kansas reinstated the death penalty last year, it put into motion a sequence of events that unless altered, will result in Kansas violating international human rights standards. If the proposed changes in the provisions of Section 1 are accepted by the legislature and governor, then Kansas will undoubtedly violate the Universal Declaration of Human Rights even more often. The Universal Declaration of Human Rights does guarantee every person, regardless of moral rectitude, the fundamental right to life--a right that governments cannot violate. Thus Amnesty International must oppose the provisions in Section 1 of HB 2529.

Amnesty International is an independent worldwide movement working impartially
conscience, fair and prompt trials for political prisoners, and an end to torture and e
from its members and supporters throughout the world.

Amnesty International opposes section 2 of HB 2529 because it would make sixteen and seventeen year olds death eligible. This provision is contrary not only to the Universal Declaration of Human Rights, as noted above, but also to the International Covenant on Civil and Political Rights (ICCPR). This Covenant states "sentence of death shall not be imposed for crimes committed by persons below 18 years of age." While the US has ratified the ICCPR and made reservation to the death penalty articles, it should be noted that these reservations have been ruled illegal by the Inter-American Court of Human Rights.

In addition to the objections based on human rights standards, Amnesty International also wishes to express a practical concern about the implications of Sections 1 and 2's resultant expansion of the death penalty, and ultimately of executions. That concern is rooted in something not often considered by legislators, specifically the impact on the state correctional staff that takes part in executions. If the changes in Sections 1 and 2 of this bill are accepted there will be consequences for employees of the Kansas Department of Corrections for each and every execution that results from this bill and the original law.

In the July 1993 issue of Corrections Today , the official magazine of the American Correctional Association, Morris Thigpen, former commissioner of the Alabama Department of Corrections said, "...I have never heard anyone who has participated in an execution say, 'I would like to do that again'."(1) In that same issue, Daniel Vasquez, warden of the California State Prison at San Quentin, wrote, "One cannot perform a more emotionally charged correctional duty than participating in the officially sanctioned taking of an inmate's life." He went on to describe the comprehensive pre- and post-execution intervention program developed for staff. Vasquez wrote, "I am convinced that without this type of preparation, we would have been liable for stress claims as a result of the execution of Robert Alton Harris." (2)

In summary, Amnesty International opposes the changes in Section 1 because of their resultant increase in the violation of the right to life. Amnesty opposes Section 2's change because

it would not only violate the right to life, but also violate international parameters relating to juveniles and the death penalty. Additionally, we wish to remind the Legislature of the increased human cost to the staff in the state's prisons if more executions occur.

Amnesty International is fully aware that the problem of violent crime is a serious one and that political leaders have a responsibility to effectively address this problem. We do not condone the violation of a person's right to life by the criminal, however we believe that the answer does not lie in the proposed changes in this bill. We believe that other, non-capital, solutions are more in line with human rights standards and will not have the increased brutalization effect on staff and the general public that would result from this bill becoming law.

(1) "A Tough Assignment", Morris L. Thigpen, in Corrections Today, July 1993, page 58.*

(2) "Helping Prison Staff Handle The Stress of an Execution", Daniel B. Vasquez, in Corrections Today, July 1993, page 70.*

*(Copies of these articles have been given to Rep. O'Neal and Rep. Garner.)