

Approved: March 10, 1999  
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Acting Chairperson Pugh at 10:18 a.m. on March 9, 1999 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (excused)  
Senator Petty (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Carla Stovall, Attorney General  
Sergeant Charlie Kohler, Salina Law Enforcement  
Craig Spomer, Wabaunsee County Attorney  
Don Kaufman, Moundridge, Kansas  
Sergeant Stan Conkwright, Ks. Peace Officers Association  
Rosalee Thornburgh, Chief, Bureau of Traffic Safety, KDOT  
Gene Johnson, Kansas Alcohol Safety  
Ron Eisenbarth, Kansas Alcoholism & Drug Addiction Counselors

Others attending: see attached list

The minutes of the March 4 meeting were approved on a motion by Senator Bond and seconded by Senator Donovan; carried.

**SB 341—concerning crimes, punishments and criminal administrative procedure; relating to driving under the influence of alcohol and drugs**

Conferee Stovall testified in support of **SB 341**. She presented an overview of the Far-Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force created in June, 1998 to examine the current traffic and alcohol laws and make recommendations for any necessary changes. She discussed areas of the law which the task force examined and highlighted recommended changes. (attachment 1)

Conferee Kohler testified in support of **SB 341**. He detailed changes to current traffic and alcohol laws which are designed to deter the drinking driver. These changes include increases in fines and penalties for repeated offenses including an additional penalty for Driving under the Influence (DUI) with a child under 14 years old in the vehicle. (attachment 2)

Conferee Spomer testified in support of **SB 341**. He asked the Committee to consider: increasing the duration of incarceration and fines for repeat DUI offenders; elimination of the five-year limitation on the use of previous DUI convictions; and additional sentencing for a person convicted of DUI with a child less than 14 years of age in the vehicle. He provided personal testimony as a county attorney prosecuting DUI violators in Wabaunsee County and discussed the ineffectiveness of current law. (attachment 3)

Conferee Kaufman testified in support of **SB 341**. He presented personal testimony about his family's suffering when their 18 year old daughter was killed by a drunk driver in July of 1995. He stated that while **SB 341** is not the final solution to the problem of drunk driving, it is a step in the right direction. (attachment 4)

Conferee Conkwright testified in support of **SB 341** and discussed Section 5 of the bill, which concerns Administrative Hearings for offenders who refuse to submit to testing at the request of a police officer, hearings which, he stated, often become "trials". He stated that the bill would restore balance to Administrative Hearings limiting their focus to key issues. (attachment 5)

Conferee Thornburgh testified in partial support of **SB 341**. She discussed the federal law requiring states enact a "repeat offender" law. She stated that any state that is not compliant will lose federal funding. She described the process by which the state would lose funding. She discussed four federal law conforming criteria and stated that, currently, Kansas is only one-criteria compliant. She stated **SB 341** would bring Kansas in compliance. (attachment 6)

Conferee Johnson testified in support of **SB 341**. He stated his association provides for the Kansas courts, pre-sentence evaluations of persons convicted of DUI or other alcohol related offenses. He further stated that he was a member of the FATAL Task Force and he discussed suggestions made by the task force which are incorporated into the bill. (attachment 7)

Conferee Eisenbarth testified in support of **SB 341** with the exception of "...on the fifth offense the drivers license would be permanently revoked". Following personal testimony as a recovering alcoholic with 30 years sobriety, he recommended a clause be added "allowing persons who demonstrate continuous recovery over a lengthy period of time to make application for reinstatement of drivers license privileges." (attachment 8)

Written testimony supporting **SB 341** was submitted by the Kansas Peace Officers' Association and Kansas County & District Attorneys' Association. (attachments 9 & 10)

The meeting adjourned at 11:06 a.m. The next scheduled meeting is March 10, 1999.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 9, 1999

NAME	REPRESENTING
Christopher Noble	Sunflower Alcohol Safety Action
Franziska Petrash	Tescott High School
Georgia A. Markel	Tescott High
Etouise Sutton	" "
Carolyn Minor	Farm Bureau
Jan Sommerfeld	Farm Bureau
Rusty Hammock	Farm Bureau
Marly J. Powell	Farm Bureau - USD 226
Jared B.	USD 226
David Roberts	USD 226
Jada Kohlmeier	Farm Bureau - USD 232
Jan Noh	Attorney General's Office
Nancy Linkberg	" "
Tiffany Ball	" " "
JAMES CLARK	KC DAA
Craig J. Spomer	WBCA
Rosalie Thornburgh	KDOT
Bill Watts	KDOT
STANLEY CONKWRIGHT	POLEY COUNTY POLICE DEPT.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/9/99

NAME	REPRESENTING
Martin Hawver	Hawver's Capitol Report
Bill Sneed	KPOA
Laurie Williams	Governor's office
Bill Henry	KS Gov. Consulting
Amy Kelly	QIA
<del>Ron Smith</del>	<del>KBA</del>
<del>Marcia Balto</del>	<del>KDOR - Vehicles</del>
Alan Anderson	KDOR - Vehicles
Don & Bonnie Kaufman	Moundridge Ks.
Max Stubbins	KS MADU
James S. Keller	KDR
Brian J. Leiminger	Kansas Highway Patrol
Chava Kehler	" " "
Orville Cole	Sen. Tyson
Jan Johnson	KDOC
Dene Johnson	Ks. A SAP Inc
Ron Eisenbarth	KADACA
Kevin A. Ash	KSC
Paul Jants	KSO





State of Kansas

## Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

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MAIN PHONE: (785) 296-2215  
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TESTIMONY OF  
ATTORNEY GENERAL CARLA J. STOVALL  
BEFORE THE SENATE JUDICIARY COMMITTEE  
RE: SENATE BILL 341  
MARCH 9, 1999

Senator Emert and Members of the Committee:

Thank you for the opportunity to appear before you today to ask for your support of Senate Bill 341. This bill, which was originally introduced on January 28, 1999 in the Senate Federal and State Affairs Committee, amends the criminal penalties and administrative hearings and sanctions imposed for driving under the influence of alcohol and drugs.

I created the Far-Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force in June 1998 to conduct a comprehensive examination of current traffic and alcohol laws and provide recommendations to change these laws. Members on the Task Force include representatives from the legislature, judiciary, law enforcement, prosecution, defense bar, victim rights, alcohol treatment providers, insurance industry as well as officials from Kansas Department of Health and Environment, Kansas Department of Transportation/ Bureau of Traffic Safety and the Kansas Department of Revenue. The Task Force was divided into three subcommittees to concentrate on areas of prevention, administrative hearing procedures and criminal penalties. This bill combines the efforts of the criminal and administrative subcommittees who critically reviewed the statutory penalties and administrative procedures and sanctions. Attached is the Task Force's summary of the criminal penalty and administrative sanction recommendations.

Drunk driving is the number one cause of injury nationwide of young people. The Task Force is confident that the changes proposed in this bill will save lives by sending a strong message that there are serious penalties and consequences to any person who drives while under the influence of alcohol or drugs.

The criminal subcommittee reviewed the criminal penalties currently in existence and recommend the following: (1) the amount of imprisonment time should significantly increase for repeat DUI offenses (page 21-23); (2) work release or house arrest would not be granted until such minimum mandatory sentence has been served (page 21-23); (3) the definition of conviction under K.S.A. 8-1567 shall be expanded to include convictions over a person's lifetime instead of

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over the previous five years (page 24); (4) any person convicted of a DUI offense more than three times during lifetime shall be required to serve imprisonment in the custody of the Department of Corrections in lieu of the local county jail (page 28); and (5) only one DUI diversion would be permitted over a person's lifetime. We would respectfully ask that an amendment be added under K.S.A. 8-1567 on page 24 to clarify that only one DUI diversion is permitted over the person's lifetime. We would also request deleting section (r) on page 25 and amending section 10 on page 29 to provide an exception that K.S.A. 8-1567 convictions will not include deductions for good time credits. And, we would ask that on page 22 section (f), that it read a "third conviction" thereby deleting "or a subsequent".

Many drivers are placing young lives in danger when they choose to drive under the influence of alcohol or drugs. Therefore, the Task Force feels very strongly that any driver who has a child under the age of 14 in the car at the time they are under the influence of alcohol or drugs should face an enhanced penalty of thirty days of additional imprisonment (page 23).

There are currently no criminal penalty for refusing to take a breath, blood or urine test as requested by a law enforcement officer except for failing to take the preliminary breath test. There are only administrative licensing sanctions for refusing to take the requested test which amount to one year of suspension. This bill proposes to establish a class B misdemeanor for refusing to take a breath, blood or urine test as requested by a law enforcement officer (page 19). The State of Nebraska has enacted a similar law to encourage drivers to submit to the requested tests. In addition, the Task Force is recommending that the one year administrative suspension period be significantly increased for refusing to take the requested tests after the first occurrence (page 19).

I am aware that an offender in Wichita had seventeen DUI convictions and under the current system, after the suspension expires, the state hands him back his license to drive again. The Task Force recommends that at some point the state should permanently revoke a repeat offender's drivers license. We would recommend that after a person has cumulatively received five convictions, test failures or test refusals, the person's drivers license should be permanently revoked (page 19 and 20).

The administrative subcommittee reviewed the administrative hearing procedures relating to DUI offenses. The number one complaint from law enforcement officers, bar none, relates to these procedures. This bill clarifies the administrative procedures and specifies the type of evidence which will be admissible at the hearing (page 17). It also establishes a means for the Department of Revenue to conduct telephonic hearings when requested for the convenience of all parties (page 14). We respectfully ask the committee to amend this provision to also permit video hearings in addition to telephonic hearings. We would also ask you to add the word "forthwith" to section (d) on page 14, line 23, which was inadvertently omitted from the bill. Under the bill, the licensee would be required to submit a \$50.00 subpoena fee for the officer to appear at the hearing (page 15). This fee would compensate local police departments for the expense in paying officers to appear as well as reduce the number of continuances requested by the licensee or counsel once the officer arrives.

We have received a memo late yesterday from Secretary of Corrections Chuck Simmons pointing out several concerns needing clarification. They include imprisonment on the fourth or subsequent conviction, good time credits, alcohol treatment requirements and availability of work release. We have reviewed their concerns and will suggest several amendments when you work this bill to address their concerns.

These are some of the highlights of the changes the FATAL Task Force are recommending. Several additional Task Force members will discuss in more detail some of the specific recommendations. Of all of the Task Force's recommendations, this bill, in my opinion, is the most important. On behalf of the FATAL Task Force, I would urge your favorable consideration of Senate Bill 341.





State of Kansas

## Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

**CARLA J. STOVALL**  
ATTORNEY GENERAL

Attorney General Carla Stovall's  
**Far-reaching Alteration of Traffic and Alcohol Laws  
(FATAL) Task Force**

MAIN PHONE: (785) 296-2215  
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### **Criminal:**

Brian Leininger, Kansas Highway Patrol, Topeka  
Brad Ambrosier, Attorney, Elkhart  
Tim Holmes, Russell County Sheriff, Russell  
Don Kaufman, Moundridge  
Terry Malone, Dodge City City Attorney, Dodge City  
Craig Spomer, Wabaunsee County Attorney, Alma  
Max Sutherland, MADD, Topeka

### **Administrative:**

Mike Watson, Wichita Police Chief, Wichita  
Jim Keller, Department of Revenue, Topeka  
Mary Ann Khoury, DUI Victim Center of Kansas, Wichita  
Sergeant Charlie Kohler, Kansas Highway Patrol, Salina  
Senator Lana Oleen, Manhattan  
Honorable John Sanderson, District Court Judge, Emporia  
Stan Sutton, Kansas Department of Health and Environment, Topeka

### **Prevention:**

Rosalie Thornburgh, Bureau of Traffic Safety, Topeka  
Captain Gayle Beth, Kansas City Police Department, Kansas City  
R.E. "Tuck" Duncan, Topeka  
Representative David Haley, Kansas City  
Gene Johnson, Sunflower Alcohol Safety Action Project, Inc., Topeka  
David Nance, City Council, Pittsburg  
Rick Wilborn, Alliance Insurance, McPherson

### **Staff:**

Julienne Maska, Victims' Rights Coordinator, Topeka  
Jane Nohr, Assistant Attorney General, Topeka  
Nancy Lindberg, Assistant to the Attorney General, Topeka

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State of Kansas

## Office of the Attorney General

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ATTORNEY GENERAL

ATTORNEY GENERAL CARLA STOVALL'S

### FAR-REACHING ALTERATION OF TRAFFIC AND ALCOHOL LAWS TASK FORCE LEGISLATIVE RECOMMENDATIONS

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MARCH, 1999

#### I. A. DUI Criminal Penalties and Administrative Sanctions

##### Current

##### Proposed

1<sup>st</sup> CONVICTION w/i 5 yrs: B Misdemeanor

1<sup>st</sup> CONVICTION *in lifetime* B Misdemeanor

##### Criminal:

48 hrs - 6 months jail or

100 hrs community service

\$200 - \$500 fine

Complete ADSAP educ. or treatment

48 hrs- 6 months jail or

100 hrs community service

***\$500 - \$1,000 fine***

Complete ADSAP educ. or treatment

##### Administrative:

License suspended 30 days/and restricted  
330 days for test failure

License suspended 1 yr for refusal

License reinstatement fee \$50

License suspended 30 days/and restricted  
330 days for test failure

License suspended for 1 yr for refusal

***License reinstatement fee \$200***

2<sup>nd</sup> CONVICTION w/i 5 yrs: A Misdemeanor

2<sup>nd</sup> CONVICTION *in lifetime* A Misdemeanor

##### Criminal:

48 hrs + 3 days work release - 1 yr  
(90 days minimum sentence)

\$500 - \$1,000 fine

Ignition interlock required if BAC  
is .15 or above after admin.  
suspension expires

***10 days - 1 yr*** (90 days minimum sentence)

***Work release/house arrest permitted after  
10 days.***

***\$1,000 - \$1,500 fine***

Ignition interlock required if BAC is .15  
or above after admin. suspension expires

No treatment required unless  
released on probation/parole

***Mandatory inpatient or outpatient  
treatment (not education)***

Administrative:

License suspended 1 yr for failure  
License suspended 1 yr for refusal  
License reinstatement fee \$50

License suspended 1 yr for failure  
License suspended **2 yrs** for refusal  
License reinstatement fee **\$400**

3rd CONVICTION w/i 5 yrs: Felony crime(nongrid) 3<sup>rd</sup> CONVICTION ***in lifetime***

Criminal:

48 hrs + 88 days work release - 1 yr  
(90 days minimum sentence)  
\$1,000 - \$2,500 fine  
Ignition interlock required if BAC is  
.15 or above after admin. suspension  
expires  
Optional treatment

***120 days - 1 yr (work release/house  
arrest permitted after 120 days)  
\$1,500 - \$2,500 fine  
Ignition interlock required if BAC is  
.15 or above after admin. suspension  
expires  
Mandatory inpatient or outpatient  
treatment (not education)***

Administrative:

License suspended 1 yr for failure  
License suspended 1 yr for refusal  
License reinstatement fee \$50

License suspended 1 yr for failure  
License suspended **3 yrs** for refusal  
License reinstatement fee **\$600**

4<sup>th</sup> CONVICTION w/i 5 yrs: Felony crime(nongrid) 4<sup>th</sup> CONVICTION ***in lifetime***

Criminal:

48 hrs + 88 days work release - 1 yr  
(90 days minimum sentence)  
\$1,000 - \$2,500 fine  
Court can revoke license tag or  
temporary registration for one year  
Optional treatment

***15 months imprisonment in DOC  
before parole  
\$2,500 fine  
Court can revoke license tag or  
temporary registration for one year  
Mandatory inpatient or outpatient  
treatment (not education)***

Administrative:

License suspended 1 yr for failure  
License suspended 1 yr for refusal  
License reinstatement fee \$50

License suspended 1 yr for failure  
***License revoked 10 yrs for refusal***  
License reinstatement fee **\$800**

5<sup>th</sup> CONVICTION w/i 5 yrs: Felony crime (nongrid) 5<sup>th</sup> CONVICTION *in lifetime*

Criminal:

48 hrs + 88 days work release - 1 yr (90 days minimum sentence)	<i>15 months imprisonment in DOC before parole</i>
\$1,000 - \$2,500 fine	<i>\$2,500 fine</i>
Court can revoke license tag or temporary registration for one year	Court can revoke license tag or temporary registration for one year
Optional treatment	<i>Mandatory inpatient or outpatient treatment (not education)</i>

Administrative:

License suspended 1 yr for failure	<i>License revoked for lifetime</i>
License suspended 1 yr for refusal	<i>License revoked for lifetime</i>
License reinstatement fee \$50	<i>Reinstatement not permitted</i>

**B. Risking A Child's Safety (K.S.A. 8-1567)**

- Enhance the applicable DUI penalty by 30 days for persons who have a child under 14 years of age in the vehicle at the time they are driving under the influence of alcohol or drugs.

**C. DUI Test Refusal and Preliminary Breath Test (PBT) Refusal**

- Refusal to take a breath, blood or urine test as requested by a law enforcement officer would be a class B misdemeanor. (Under current law, this is administrative only.)

**D. DUI Diversions**

- DUI diversions shall be limited to one per lifetime.

**II. Administrative Hearing Issues**

- Amend administrative hearing procedures in K.S.A. 8-1002(h)(2) to clarify that the testing equipment and person operating the testing equipment is certified by KDHE and the testing protocols are in accordance with KDHE. Also, amend the language stating "the person was operating a vehicle" to "the person was operating or *attempting* to operate a vehicle."
- Amend K.S.A. 65-1,107(a) and (b) to add "*testing protocol*."
- Allow a \$50 subpoena fee to be charged for each law enforcement officer subpoenaed to attend and or testify in the administrative hearing. The law enforcement agency would receive the fee.

- Allow for administrative hearings to be conducted telephonically and/or by video at the discretion of Kansas Department of Revenue.
- Set out specific documents and evidence which the licensee is to have access to at the administrative hearing (or prior to the hearing).
- The signed statement of the officer, (DC27), would represent the testimony of the officer and would stand on its own except in the event the officer has been subpoenaed.
- Amend K.S.A. 8-1002(k) which requires a hearing to be held within 30 days.
- Change references within K.S.A. 8-1002, such as in 8-1002(g) to "*calendar* days" instead of "days."
- Similar changes should be made in the Uniform Commercial Driver's License Act to reflect those set out above, as appropriate.

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March 8, 1999

Mr. Chairman - Members of the Committee

My name is Charles Kohler. I am a Sergeant with the Kansas Highway Patrol assigned to the Drug and Alcohol Evaluation Unit. I stand before you in favor of Senate Bill 341 and ask for favorable consideration of its passage.

This bill is designed to deter the drinking driver. First, to require an increase in the reinstatement fees paid by an offender. In the past it has been \$50 per reinstatement, no matter how many times a person has been suspended. With this bill, the fee increases with each reinstatement. A \$200 fee for the first conviction, a \$400 for the second, \$600 for the third and \$800 on the fourth conviction. After five convictions, the license will not be reinstated.

At this time there is not a criminal penalty for refusing a breath test. An offender has nothing to loose by refusing testing. This bill would address that issue by making it a class B misdemeanor criminal penalty for refusal. The issue of under 21 year old driving is address in this bill by changing probable cause to reasonable suspicion which allows enforcement of the zero tolerance laws.

The administrative suspension hearings would require a \$50 subpoena fee to the law enforcement agency for an officer to attend the hearing. The scope of the hearing would change to allow a telephonic hearing at the discretion of the hearing officer. If a person refused the test, the hearing would be limited to issues only concerning the refusal if the person operated the vehicle, arrested or involved in serious accident, given oral notice, not a full trial.

It also addresses the repeat offender by suspending the driving privileges for one year on the first refusal, two years on the second refusal, three years for the third refusal, 10 years for the fourth refusal and permanently revoked on the fifth offense.

This bill will also increase the fines and penalties for conviction of Driving under the Influence. It raises the fines from \$200-\$500 for the first lifetime conviction to \$500-\$1000 plus 48 hours-6 months jail or 100 hours of community service and must complete ADSAP education or treatment.

The second lifetime conviction raises from \$500-\$1000 to \$1000-\$1500 fine plus 10 days- 1 year minimum with work release or house arrest permitted after 10days served. A mandatory inpatient or outpatient treatment is required for the offender.

The third lifetime conviction upgrades the fine from not less than \$1500 to not less than \$2500 plus 120 days to 1-year imprisonment with work release or house arrest allowed after 120 days served. An ignition interlock is required if a BAC of .15 or higher is recorded and a mandatory inpatient or out patient treatment is required.

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The fourth lifetime conviction would be \$2500 and a non-person felony. This would require a 15-month imprisonment in the Department of Corrections before parole. The Court would also be able to revoke the license tag for one year. Again a mandatory inpatient or outpatient treatment is required.

The additional penalty of 30 days of imprisonment for Driving under the Influence with a child under 14 years old in the vehicle will protect our youth of today from those who choose to endanger their life.

Additionally, the lifetime arrest feature will assist in determining the sentence imposed for repeat offenders. Kansas needs to protect our citizen and if a driver ignores the Law, on the fourth and subsequent conviction, imprisonment in a State facility is mandated.

Thank you for your time in allowing me to present my testimony.

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TESTIMONY OF  
WABAUNSEE COUNTY ATTORNEY CRAIG SPOMER  
BEFORE THE SENATE JUDICIARY COMMITTEE  
RE: SENATE BILL 341  
MARCH 9, 1999

Good Morning, Chairman Emert and Members of the Committee

My name is Craig Spomer and I am the County Attorney of Wabaunsee County, Kansas and a member of the Kansas Attorney General's Far Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force.

As the county attorney for a county that has Interstate 70 running its entire length a large proportion of our cases are DUI and DUI related. Of these DUI cases a substantial number are second, third and subsequent offenses.

I am here today to ask you to consider increasing the duration of incarceration and fines for these repeat offenders. Also I would ask that you consider elimination of the five-year limitation on the use of previous DUI convictions. I also strongly agree with the proposed bill that any person who drives drunk with a child under the age of fourteen in a vehicle should have to serve thirty days in jail in addition to the sentence imposed for DUI.

After over two and a half years of prosecuting DUI violators and five years before that defending them I have seen the same people break the same laws repeatedly. By the time a defendant has his second or third conviction their need to drink and drive seems to be stronger than their fear of the current consequences for their actions. It is my experience that second and subsequent offenders have much higher blood alcohol levels than first time offenders do. This fact and their pattern of driving drunk makes them extremely dangerous to themselves and to any one else on the roads of Kansas with them. Penalties for repeat offenders should reflect the increased risks that they impose on those around them

Current penalties are not strong enough to deter these repeat offenders. Increased penalties can have a strong deterrent effect particularly on third and fourth time offenders. Work release would not be granted until the minimum sentence had been served. Under the current law second and subsequent offenders can be given work release or placed on house arrest after serving only forty- eight hours in jail. The penalty for a fourth time offense is currently the same as a third time offense. Under this bill fourth time offenders would face fifteen months in a state corrections facility.

By the time someone has gotten their second, third or fourth DUI, the only effective deterrent is an extended mandatory jail sentence. In most cases defendants with a history of drinking and driving are already entrenched in a pattern alcohol abuse which eliminates most of the things of value in their lives. The fear of long jail sentences will go a long way to discouraging this behavior and protect those who share the roads with them.

In many cases a second or third conviction for DUI would be a forth, fifth or sixth conviction for DUI if we could use a defendants lifetime convictions. Under the Kansas Sentencing Guidelines we use lifetime convictions to calculate criminal history. It makes no sense to me that people who drive drunk should be given a clean slate if it has been five years since their last conviction for DUI.

Thank you for allowing me to testify and I attempt to answer any questions you may have.

Respectfully,



Craig J. Spomer  
Wabaunsee County Attorney

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To: Judiciary Committee Members

*I have a daughter whom I love very much! In fact, I visit with her often.... I pull the weeds where she lays and tend the flowers as they bloom around her. I am a father whose little girl was killed by someone misusing and abusing their privileges, by a man who decided to get drunk and take his pickup for a spin through stop signs and through people.*

*Our 18 year-old daughter, Janelle Kaufman, was killed by a drunk driver in July of 1995. Words will always only be words and to try and convey to someone else the pain you feel will still be only words; but, we would like to let you know what drunk driving has done to our lives.*

*If we could describe to you what we think a touch of hell would be like we would say this: It's the door that leads to our daughter's bedroom and our daughter is no longer there. It's setting the table and knowing the chair she sat in will no longer - ever - be used by her again. It's wanting so bad to give her a hug and tell her we love her but knowing we can only whisper into the heavens and God will pass it on. It's trying not to think or be left alone because you know the pain may be too great to bear - and please don't let us go crazy because other people need us. It's going into a store and passing by all the things we used to buy for her knowing there is no one to buy them for any more. It's getting the phone call Sunday night telling us that our daughter has been seriously injured and we need to come right away. It's praying all the way to the hospital and promising God that if she lives you'll do anything - and then finding out that you will do anything to survive because she died.*

*I wish we could have just given her one more hug and one more kiss. Two hours before she was killed Janelle told her mother she loved her. Janelle was the youngest of our three children and she definitely was our baby. We were very strict with our children when they were growing up. Drinking and partying were forbidden and they rarely argued with us because we made them understand the harm it could do. Janelle played an active role in the D.A.R.E. program because of her beliefs and also because she loved little children.*

*We are here because of what we have - which is an opportunity to make a difference. We are also here because of what we no longer have - Our 18 year-old daughter Janelle who died on July 9, 1995, because of a drunk driver.*

*Ladies and gentlemen, my family and I are grateful for your acknowledgement of the DUI problem and your commitment to finding a solution. I have attended numerous meetings, Fatal Task Force, Madd, DUI victim center, etc. and listened and considered different ideas and opinions, learned at a beginners level how the law applies in these types of cases and, most importantly, have worked on developing some answers to the increasingly disturbing problem of DUI offenders and repeat offenders. I believe the legislation before you is not the final solution, however, it is a step in the right direction. Due to the enormity of this problem, we need to take one step at a time and continue on the road for a final solution to rid society of "The Drunk Driver".*



*Don & Bonnie  
Kaufman Sen Jul  
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Good Morning:

I am Sergeant Stanley Conkwright with the Riley County Police Department in Manhattan. I have been employed as a Police Officer for 29 years. During that time I have served as a patrol officer, and patrol sergeant. In that capacity I have had a number of occasions to arrest, and to supervise the arrest of drivers for Driving Under the Influence of alcohol and or drugs. As a result of these arrests I have often testified at Municipal and District court trials and at Administrative Hearings.

I am here to address a small portion of Senate Bill 341 which you are considering today. Section 5 concerns Administrative Hearings for offenders who refuse to submit to testing at the request of a Police Officer.

The Administrative Hearings were designed to determine: whether the officer advised the individual of the implied consent advisory (KSA 8-1001); whether there is reasonable grounds to believe that the individual was operating a vehicle while under the influence; that the individual was in custody or under arrest or was involved in a vehicle accident; the person operating the testing equipment was qualified; and, the procedures were reliable.

Unfortunately in many instances the Administrative Hearings have become "Trials". The arrested individual is often represented by an attorney while the officer has no representation. In situations where Administrative Hearing Officers strictly limit testimony to the refusal, officers do not require legal representation. However, some Administrative Hearing Officers allow defense attorneys to extensively question the circumstances leading to the arrest under the guise of "reasonable grounds to believe the subject was intoxicated". When this occurs, the defense counsel is allowed to conduct a fact finding trial. Under normal trial conditions, the state, (or officer), would be represented by the prosecutor. As questioning violates accepted trial procedures, the prosecutor can object to the questioning. This is not the case in Administrative Hearings.

It is my belief that the proposed Section 5 being considered today would assist in restoring a balance to the Administrative Hearings whereby defense counsels would restrict their "fact finding" to matters envisioned by the legislation: the officers certification, the informed consent or refusal of the offender, and whether testing procedures were reliable. While the proposed legislation still allows defense counsel to determine whether there were "reasonable grounds" for the arrest, a matter for a trial court not an Administrative Hearing, the bill does limit outside witnesses. In addition, the fees established by the proposed legislation seem appropriate and fair.

The proposed bill is not perfect, however I believe that it will assist in limiting the focus of Administrative Hearings to the key issues.

Thank you for your attention. I now stand for questions.

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**KANSAS DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY OF TRANSPORTATION**

E. Dean Carlson  
SECRETARY OF TRANSPORTATION

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Bill Graves  
GOVERNOR

**TESTIMONY BEFORE  
SENATE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 341  
SANCTIONS FOR DUI OFFENDERS**

**March 9, 1999**

Mr. Chairman and Committee Members:

I am Rosalie Thornburgh, Bureau Chief of Traffic Safety. On behalf of the Department of Transportation, I am here today to testify on Senate Bill 341 regarding enhanced criminal sanctions for DUI offenders and the federal requirement to enact a "repeat offender" law.

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) created Section 164 which encourages States to enact and enforce a repeat intoxicated driver law that establishes, at a minimum, certain specified penalties for second and subsequent convictions for driving under the influence. These penalties include: 1) a one-year driver's license suspension; 2) the impoundment or immobilization of, or the installation of an ignition interlock system on, all motor vehicles owned by the repeat intoxicated drivers, 3) assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate; and 4) the sentencing of the repeat intoxicated driver to a minimum number of days of imprisonment or community service.

Any State that does not enact and enforce a conforming repeat intoxicated driver law will be subject to a transfer of funds. If the State does not meet the statutory requirements on October 1, 2000 (FFY 2001) or October 1, 2001 (FFY 2002), 1 ½ percent of certain federal-aid highway construction funds will be transferred to the State's Section 402 highway safety program. If the State does not meet the statutory requirements on October 1, 2002 (FFY 2003), 3 percent will be transferred. Three percent will continue to be transferred on October 1 of each subsequent federal fiscal year, if the State does not meet the requirements on those dates. The funds transferred must be used for alcohol-impaired driving countermeasures or activities under Section 152 Hazard Elimination Program. Currently Kansas law complies with one criterion.

Sen Jud  
3-9-99  
att 6

Based upon current estimates, the penalty transfer amount for FFY 2001 and FFY 2002 would be \$3.2 million in each year. Beginning in FFY 2003, the penalty transfer amount would be \$6.6 million per year.

Criterion one requires the imposition of a mandatory minimum one-year "hard" drivers license suspension or revocation on all repeat intoxicated drivers. Current law provides for this sanction and Senate Bill 341 maintains that provision. Therefore, Kansas law complies with this criterion.

SB 341  
Criterion two requires that a State provide for one of three sanctions: the impoundment or immobilization of, or the installation of an ignition interlock on, all motor vehicles owned by the repeat intoxicated drivers. States may provide limited exceptions to the impoundment or immobilization requirement installed on an individual basis, to avoid undue hardship to an individual, including a family member of the repeat intoxicated driver, or a co-owner of the motor vehicle. No exception to the installation of the ignition interlock system, however, is acceptable. Kansas law does not comply with this criterion.

Criterion three requires that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the State must authorize the imposition of treatment as appropriate. The State law must make it mandatory for the repeat intoxicated driver to undergo an assessment, but the law need not impose any particular treatment (or any treatment at all). It need only authorize the imposition of treatment when it is determined to be warranted. Senate Bill 341 satisfies this criterion.

Criterion four requires the imposition of a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service. The agencies have defined "imprisonment" to mean confinement in a jail, minimum-security facility, community correction facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. House arrest is included in the definition of "imprisonment," provided that electronic monitoring is used. Senate Bill 341 satisfies this criterion.

Testimony Before Senate Judiciary Committee

Senate Bill 341

March 9, 1999

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In summary, the Department of Transportation is supportive of enhanced criminal sanctions for repeat DUI offenders that will bring Kansas into compliance with Section 164 of the Transportation Equity Act for the 21<sup>st</sup> Century. Passage of Senate Bill 341, in these specific areas, would move Kansas within one criterion of full compliance and would be a major step toward preventing the penalty transfer of federal-aid highway funds.

3-9-99  
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**Testimony**  
**Senate Judiciary Committee**  
**Senate Bill 341**  
**March 9, 1999**

Good Morning Chairperson Emert and Members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We provide the courts of the State of Kansas pre-sentence evaluation and referral suggestions for those persons who have been convicted of, or are receiving diversion from, the charge of DUI or other alcohol related offenses. We are also available to the courts for those individuals under the age of 21 who violate the alcohol and drug laws.

I was also a member of the FATAL Task Force created by the Attorney General of Kansas during the Summer, Fall and early Winter of 1998. Some of the suggestions from that task force are incorporated into Senate Bill 341, which is being discussed today in this committee.

At first glance the penalties and sentencings under S.B. 341 may appear to be severe. However, keep in mind that we are not talking about the first, second, or third occurrences or convictions. We are in reality talking about the first time "caught" offenders. The National Safety Council, through their spokesman, on Saturday, May 6, 1998, on MSNBC, stated that it is estimated that a person more likely has driven 800 to 1,000 times (under the influence) before being apprehended for a DUI charge. This may seem high but consider lowering it to say 100 times, for each arrest or occurrence and see how fast these occurrences add up.

Driving in Kansas is a privilege. Violation of the law revokes that privilege for a period of time. Continued abuse of that privilege causes longer periods of revocation until such time that the offender should lose that privilege to drive altogether.

Presently the maximum administrative penalty for failure to take a breath test is one year.

*Sen. Jud*  
*3-9-99*  
*att 7*

Some of our repeat offenders, knowing that a breath/blood test may be used to their disadvantage in a trial, refuse the test on a second of subsequent offense knowing there will be no further suspension of their driving privileges. Classifying a refusal as a Class B misdemeanor, may encourage the offender to comply with the officer's request for a chemical test.

It was pointed out in our FATAL Task Force meetings over the past summer, that Kansas had the lowest drivers license reinstatement fee in the nation. Present language in this proposed legislation would rectify that seemingly inconsequential expense to get a reinstatement of driving privileges.

New language has been introduced in this proposed legislation to clarify to those individuals under the age of 21, who choose to use intoxicating beverages. Under the present law, persons under the age of 21 are forbidden to consume alcoholic beverages, unless under the supervision of their parent or guardian. If that underage person chooses to drink intoxicating beverages and then operates a vehicle, they become a danger to themselves or anyone else on the road. This particular legislation allows a law enforcement officer, believing that a person under the age of 21, has alcohol or drugs in their system, to request a breath/blood alcohol test. If that under age person has alcohol or drugs in their system, the officer may file the necessary paperwork under this proposed legislation to cause the Department of Revenue to suspend the underage offender's drivers license for a minimum period of 30 days. Should the under-aged person's blood alcohol level be above .08%, even though they may be under the age of 21, they could be charged for DUI. It is estimated that of the 20,000 drivers in the State of Kansas who are arrested annually for DUI, about 10% are under the age of 21.

Under S.B. 341 considerable changes have been made in the method of Administrative Hearings regarding the breath test failures and refusals conducted by the Department of Revenue. This committee heard last week, in hearings held on S.B. 178, the amount of monies and time incurred by local law enforcement agencies, who must under the order of subpoena, send their officers to these Administrative hearings.

In new Section 5 on page 13 through line 21, page 19, clarifies the manner of these administrative hearings to be conducted. It has been suggested, as now being used in the State of Oklahoma, that these hearings could be done by a telephone conference call. Also, this committee may consider the suggestions made by Senator Feleciano concerning the hearings via television transmission.

One of the most significant changes as far as our organization is concerned, is on page 23, line 13. Should a person decide to consume alcoholic beverages to the point of intoxication, from the Kansas law, and allow a child under the age of 14, to be a passenger in the vehicle at the time, shall have their punishment enhanced by 30 days. Any person who operates a vehicle while under the influence and has a child under the age of 14 with them at that time, is not providing a very good role model and certainly should pay a stiffer penalty than if he or she was alone in the vehicle.

Another plus in S.B. 341 is that alcohol and drug treatment is mandated on all second or subsequent offenses throughout that individual's career of DUI convictions.

In the State of Kansas a person is killed in an alcohol related motor vehicle crash, every four and a quarter days, based on 1997 figures. Based on those same figures, on the average, seven person are injured as a result of an alcohol related crash, every day in the State of Kansas.

Under the provision of S.B. 341 a DUI offender would be sentenced to the Secretary of Corrections for a period of no less than 15 months upon a fourth or subsequent conviction. This may sound harsh to many of us in this room. Remember that these are convictions, not the number of times that person has operated a motor vehicle under the influence. Also keep in mind that all changes in negative behavior is painful and until the offender is suffering more pain than those surrounding them, such chances for a change in that negative behavior, is slim. In other words we must continue to keep a tough line in order to make Kansas a safer place from those persons who continually operate motor vehicles while under the influence of intoxicating



beverages.

My organization, which has been in existence for 20 years, totally supports the concept of S.B. 341 and urges this Committee to take positive action in moving it through the legislative process during this session.

Thank you for allowing me to appear before the committee and I will attempt to answer any questions.

Respectfully,



Gene Johnson

Legislative Liaison

Kansas Community Safety Action Project Coordinators Association

7-4

5-3000  
3-9-99  
att 8



**Kansas Alcoholism and Drug Addiction Counselors Association**

Testimony in support of SB341 prepared for presentation before the Kansas Senate Judiciary Committee March 9, 1999.

By Kansas Alcoholism and Drug Addiction Counselors Association.  
Ron Eisenbarth, Legislative Committee Chairperson.

Mr. chairman and members of the committee, I am appearing before you today representing the Kansas Alcoholism and Drug Addiction Counselors Association-KADACA.

KADACA represents the professional interests of approximately 500 alcohol/drug counselors who work in a variety of prevention, intervention and treatment settings across Kansas. Over the past 25 years KADACA has supported considerable legislation on alcohol and drug issues and it is our belief that the strengthening of DUI sentencing laws as proposed in SB 341 is vitally important to the State of Kansas. We offer our enthusiastic support of SB 341 with one exception.

The exception is our concern that on the fifth offense the drivers license would be permanently revoked. We support this in general but have one recommendation. On the fifth DUI it is almost certain that the offender is alcoholic or drug addicted. Because denial is the primary symptom of this disease sometimes treatment may not be effective until several attempts have been made. We feel there should be a clause in the laws allowing persons who demonstrate continuous recovery over a lengthy period of time to make application for reinstatement of drivers license privileges. It doesn't seem fair to permanently revoke a persons license who may then admit their illness and begin to participate in a recovery process.

I will be happy to stand for any questions.

Sen Juel  
3-9-99  
att 8

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BOYCE MOSES  
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# Kansas Peace Officers' Association

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## MEMORANDUM

TO: Senator Tim Emert, Chair  
Senate Judiciary Committee

FROM: Bill Sneed  
Kansas Peace Officers Association

DATE: March 9, 1999

RE: SB 341

Mr. Chairman, members of the committee, my name is Bill Sneed and I appear today on behalf of the Kansas Peace Officers Association ("KPOA"), Kansas' largest professional law enforcement organization. We thank you for the opportunity to express our support of Senate Bill 341. This legislation is long overdue. KPOA considers this bill to be comprehensive in scope and improvement. Its passage will end the cumbersome, complicated, and sometimes abusive practices taking place under current law, and will establish more appropriate penalties for alcohol and drug-related driving offenses.

*In Unity There Is Strength*

*Sen Jud  
3-9-99  
att 9*

Specifically, KPOA overwhelmingly supports the many changes this legislation effects in the area of administrative license suspension hearings. Today, officers are forced to travel long distances, far from their jurisdictions and the places of the original arrests, to testify at hearings that too often sweep far beyond determining the basic issues of whether the officer acted appropriately at the time of arrest. These officers are subjected to what have become known in Kansas law enforcement circles as “mini-trials,” hearings which defense counsel repeatedly use a discovery devices to prepare for ultimate trial, developing issues wholly irrelevant to the actual purpose of the hearings. SB 341 specifically narrows the issues and admissible evidence to those which are relevant to the proceeding. It also specifies that hearings are to be held in the county of arrest or an adjacent county.

Too, SB 341 strengthens the deterrent aspects of DUI sentencing laws by requiring stiffer jail sentences and stiffer penalties for subsequent DUI violations. Similarly and importantly, punishments for refusing to submit to breath/chemical testing are increased beyond what may be termed as today’s “slap the wrist.”

Finally, the bill establishes a most critical punishment-that of permanent license revocation for chronic, fifth-time test refusals/failures. KPOA suggest that the committee consider an amendment to this bill requiring revocation for a fifth DUI *conviction*.

page 2  
SB 341

Again, KPOA strongly supports Senate Bill 341 and urges its favorably consideration and passage.

Very truly yours,

POLSINELLI, WHITE, VARDEMAN & SHALTON, P.A.



William W. Sneed

OF .S

Julie A. McKenna, President  
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*SJUD*  
*3-9-99*  
*att*  
*#10*

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### Testimony in Support of

### SENATE BILL NO. 341

The Kansas County and District Attorneys Association supports SB 341. The increased sanctions, both administrative and penal, indicates a desire by the State of Kansas to provide a greater deterrence to those who drive under the influence of alcohol or drugs.

This desire is particularly evident in the requirement that those convicted of a fourth offense must serve their time in state correctional institution. Not only does this provision show a commitment of state, rather than county, correctional resources; but it also acknowledges that for a chronic offender, who already has served time in a county facility on three prior occasions, a stronger deterrent is required.

The bill also acknowledges that DUI is a form of child endangerment with the requirement that if a child under 14 is an occupant of a car operated by a driver under the influence, an additional mandatory 30-day sentence. This provision is impliedly an acknowledgement of the Child Death Review Board's statistics, which repeatedly show that traffic accidents remain the main killer of children in Kansas.

In conclusion, KCDA would like to thank the effort of the members of the FATAL task force in drafting this legislation, and would urge the Committee to recommend it favorably.

Submitted by:  
James W. Clark  
KCDA Executive Director  
March 9, 1999

*Sen Jud*  
*3-9-99*  
*att 10*