

Approved: Feb 1, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Acting Chairperson Vratil at 10:10 a.m. on January 31, 2000 in Room 123-S of the Capitol.

All members were present except: Sen. Emert (excused)

Committee staff present:

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

Conferees appearing before the committee:

Attorney General Carla Stovall
Don Kaufman, Mound Ridge
Charlie Kohler, Salina Highway Patrol
Jim Keller, Department of Revenue
Rosalie Thornburgh, Bureau Chief for Chief of Traffic Safety, KDOT
Brian Leininger, Attorney, Kansas Highway Patrol
Paul Morrison, Johnson County District Attorney

Others attending: see attached list

The minutes of the January 26th and 27th meeting were approved on a motion by Senator Harrington and seconded by Senator Donovan. Carried.

There were no bill introductions.

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

SB 333—concerning motor vehicles; relating to the operation thereof while under the influence of alcohol or drugs

SB 195—concerning crimes, criminal procedure and punishment; relating to aggravated battery

Conferee Stovall presented an overview of **SBs 341, 333, and 195**, bills which were proposed in 1999 by her office on behalf of the Far-Reaching Alteration of Traffic and Alcohol Laws Task Force (FATAL). She stated that **SB 341** "recommends increased criminal penalties and administrative sanctions and changes to the administrative hearing process" and discussed in detail the recommended amendments, revisions and clarifications. She stated that **SB 333** amends the zero tolerance statute which applies to persons under 21 years of age whose alcohol content is .02 or less than .08 and discussed how the amendments make the nearly unenforceable statute enforceable and more effective. Discussing **SB 195**, she stated that, under the current statute, "simply driving while intoxicated and causing an injury does not equate to reckless conduct as required under the aggravated battery statute" and that **SB 195** would amend the aggravated battery statute to include "unintentionally causing great bodily harm or bodily harm while driving or boating under the influence of alcohol or drugs or fleeing or attempting to elude a law enforcement officer." (attachment 1) Brief discussion followed.

Conferee Kaufman testified in favor of **SBs 341, 333, and 195**. He gave personal testimony regarding the loss his family experienced 5 years ago when his 17 year old daughter was killed by a "drunk driver." He provided statistics on the number of national victims who are killed as a result of drunk driving and implored the Committee to pass these bills. (attachment 2)

Conferee Kohler testified in support of **SB 341**, discussing and emphasizing the importance for administrative hearing changes. He stated that compliance with the current statute requires officers, who have made DUI arrests, to attend the DUI hearings to give their testimony. Often attorneys for the defense abuse this by obtaining continuances, request irrelevant documents, or use the hearing as a discovery trial and officer waiting time. The result is costly in terms of manpower and overtime pay. He stated the use of electronic

testimony, as stated in the amendment, would alleviate the burden on law enforcement officers. He briefly discussed other amendments as well. (attachment 3)

Conferee Keller stated he handles appeals from administrative hearings. He stated that he was appearing to answer any questions Committee might have from his department. (no attachment) Brief discussion followed.

Conferee Thornburgh testified in support of **SB 333** focusing her support on the probable cause language change which will enable more effective enforcement. She also assured the Committee that this change would not compromise compliance status with the federal Zero Tolerance Law requirements. (attachment 4) On inquiry regarding non-compliance penalties she informed Committee that in the fiscal year 2000 the cost would be \$23.2 million and in 2001, \$22.2 million. Discussion followed.

Conferee Leininger testified in support of **SB 333**. He stated that the intent of the bill is "to send a strong message to young people under the age of 21 about driving with any measurable alcohol in their system." He discussed how amending the probable cause standard would make the law more effective. He also discussed: the recommendation that violation of this law would be a traffic infraction and \$200 fine; and the request to criminalize the refusal of a preliminary breath test making it a Class C misdemeanor. (no attachment, but see attachment 1 part II A. and B.)

Conferee Morrison testified in support of **SB 195**. He discussed a 1998 Kansas Supreme Court case which found that the act of driving under the influence of alcohol or drugs is not, per se, "reckless driving". He stated that the Supreme Court "left the door open" and commented that it was up to the legislature to criminalize reckless driving while driving under the influence of alcohol or drugs. (attachment 5)

Written testimony in support of the three bills was submitted by: Jeffery Bottenberg, Kansas Peace Officers' Association and Kansas Sheriffs' Association (attachments 6,7 & 8) and MADD. (attachment 9)

The meeting adjourned at 11:03 a.m. The next scheduled meeting is February 1.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 31 2000

| NAME | REPRESENTING |
|---------------------------------|-------------------------|
| Chris Noble | KCASAP |
| Dickigan Helsel | Budget |
| Tom Whitaker | Ks Motor Carriers Assn |
| Rosalie Thornburg | LUOT |
| Carl Stovam | AG |
| Nancy Lindberg | AG |
| Charles Kohler | KHP |
| Brian Jennings | KHP |
| Jeff Botolphberg | Kansas State 'Hs' Ass'n |
| Paul Davis | KBA |
| Lyla Martin | - |
| Julienne Masten | AG office |
| Jane Noh | AG office |
| John + Bennett Faust | Citizen |
| Jim Shabel | Citizen |
| Kathy Pulte | QJA |
| Sharon Nelson | BVNEA |
| Pat Stratton | BVNEA |
| Tom m = Birds | SM-NEA |



State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY OF
ATTORNEY GENERAL CARLA J. STOVALL
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILLS 341, 333 & 195
JANUARY 31, 2000

MAIN PHONE: (785) 296-2215
FAX: 296-6296

Senator Emert and Members of the Committee:

Thank you for the opportunity to appear before you today to ask for your support on Senate Bills 341, 333 and 195. These bills were proposed last year by my office on behalf of the Far-Reaching Alteration of Traffic and Alcohol Laws Task Force (FATAL), which I created to conduct a comprehensive examination of current traffic and alcohol laws and provide recommendations to change these laws.

Last year, you may recall I testified in front of this committee on Senate Bill 341. This bill recommends increased criminal penalties and administrative sanctions and changes to the administrative hearing process. The FATAL Task Force recommended the following amendments for criminal penalties: (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 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. Last year, we requested that a number of revisions be made due to oversights during the drafting process and concerns voiced to me by the Department of Corrections after the bill was drafted. We would ask for the following amendments: clarify provisions applying to 4th or subsequent DUIs and risking a child's safety provisions (page 23); state that only one DUI diversion is permitted over the person's lifetime (page 24); delete section (r) on page 25 and amend section 10 on page 29 to provide an exception that K.S.A. 8-1567 convictions will not include deductions for good time credits.

Senate Bill 341 also recommends an enhanced penalty of 30 days in jail for persons driving under the influence of alcohol or drugs while a child under the age of 14 is in the vehicle (page 23). Too many drivers are placing young lives in danger when they choose to drive under the influence of alcohol or drugs.

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Currently, there are no criminal penalties for refusing to take a breath, blood or urine test as requested by a law enforcement officer. There are only administrative licensing sanctions suspending a person's license for one year when a person refuses to take the requested test. 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).

Senate Bill 333 proposes amending the zero tolerance statute, K.S.A. 8-1567(a), which applies to persons under 21 years of age whose alcohol content is .02 or less than .08. Currently, K.S.A. 8-1567(a) requires law enforcement officers to have "reasonable grounds to believe that a person was operating a vehicle while under the influence of alcohol or drugs" before an evidentiary test can be obtained. This standard is virtually unenforceable since preliminary breath tests and field sobriety testing is insufficient to accurately assess when a person's alcohol content is under .08. This bill proposes changing the probable cause standard to "reasonable grounds to believe a person was operating a vehicle *while having alcohol or drugs in such person's system.*" Law enforcement officers will then be able to perform evidentiary testing based upon smelling an odor of alcoholic beverage on the person or observing other evidence of alcohol or drug use. This is the same probable cause standard used for commercial DUI cases.

Other amendments include creating a traffic infraction penalty for persons under 21 years of age with a test result of .02 or less than .08 in K.S.A. 8-1567(a) and increasing the penalties for refusing the preliminary breath test from a traffic infraction to a class C misdemeanor in K.S.A. 8-1012.

Senate Bill 195 proposes amending the aggravated battery statute, K.S.A. 21-3414, to include unintentionally causing great bodily harm or bodily harm while driving or boating under the influence of alcohol or drugs or fleeing or attempting to elude a law enforcement officer. This Task Force recommendation was a result of the Kansas Supreme Court's decision, *State v. Huser*, 265 Kan. 228 (1998), which said that simply driving while intoxicated and causing an injury does not necessarily equate to reckless conduct as required under the aggravated battery statute. FATAL Task Force members feel strongly that there should be appropriate felony penalties for individuals who seriously injure innocent parties while committing these crimes.

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).

Senate Bill 341 also recommends amendments to administrative licensing hearings 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 would ask the committee to amend this provision to also permit video hearings in addition to telephonic hearings and 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.

Drunk driving is the number one cause of injury nationwide of young people. The Task Force is confident that the changes proposed in these bills 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.

On behalf of the FATAL Task Force, I would urge your favorable consideration of Senate Bills 341, 333 and 195.



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ATTORNEY GENERAL

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

MAIN PHONE: (785) 296-2215
FAX: 296-6296

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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ATTORNEY GENERAL CARLA STOVALL'S FAR-REACHING ALTERATION OF TRAFFIC AND ALCOHOL LAWS TASK FORCE LEGISLATIVE RECOMMENDATIONS

JANUARY, 2000

I. A. DUI Criminal Penalties and Administrative Sanctions - Senate Bill 341

Current

Proposed

1st CONVICTION w/i 5 yrs: B Misdemeanor

1st 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

2nd CONVICTION w/i 5 yrs: A Misdemeanor

2nd 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) 3rd 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**

4th CONVICTION w/i 5 yrs: Felony crime(nongrid) 4th 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**

5th CONVICTION w/i 5 yrs: Felony crime (nongrid) 5th 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

- 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.

Administrative Hearing Issues - also Senate Bill 341

- 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 prior to the administrative 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.
- 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.

II. A. DUI By Any Person Less Than 21 Years Of Age - Senate Bill 333
(K.S.A. 8-1567a)

- Amend the probable cause standard from "reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs" to "reasonable grounds to believe the person has been operating or *attempting* to operate a vehicle while *having alcohol or drugs in such person's system.*"
- Criminal penalty: traffic infraction and \$200.00 fine.
- If a change is made in K.S.A.8-1567a to base the test request upon "reasonable grounds to believe that the person has alcohol in his or her person's system," there should be a change in the language in K.S.A. 8-1001 and 8-1002 to adapt to that change, since it is the same test.

B. Preliminary Breath Test (PBT) Refusal - Senate Bill 333

- Refusal to take PBT test would be increased from a traffic infraction to a class C misdemeanor.

III. Aggravated Battery (K.S.A. 21-3414) - Senate Bill 195

- In response to *State v. Huser*, 265 Kan. 228 (1998), add provisions for unintentionally causing bodily harm or great bodily harm to another person while committing or attempting to commit a violation of driving while under the influence of alcohol or drugs, fleeing or attempting to elude a police officer or boating under the influence of alcohol or drugs.
- Penalties: If great bodily harm is inflicted, severity level 6 person felony; if bodily harm is caused whereby great bodily harm can be inflicted, severity level 9 person felony; if bodily harm is inflicted, class A person misdemeanor.

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Dear Committee Members,

I was here last year and I visit you again because I am in support of the bills presented before you. I support these bills because I have had first hand experience of what tolerance allows. As a parent of an 18 year old daughter killed by a drunk driver, I believe we need to do everything we can to keep drunk drivers off our roads. It will be 5 years in July that my daughter, Janelle, was killed on a Sunday afternoon from a 47 year old drunk driver. Sometimes it seems like we buried her only yesterday; and sometimes, it seems as if an eternity has passed. Last November a 17 year old girl from Whitewater, Kansas, was killed by an alleged drunk driver. Her name is Kari McCormick. As was the case with the person who killed Janelle, driving while drunk was not a new activity--this person was a repeat offender.

I try to understand why if a person gets sick from E-coli poisoning, we have a massive effort to get the contaminated food recalled and the product out of the market for the safety of the public. Likewise, if a grain elevator blows up--hurting or killing people, we have all sorts of government agencies involved in inspections, investigations, legislation to establish additional requirements to prevent this type of tragedy from happening again. I am not minimizing these issues; rather, I am emphasizing the severity of the issue at hand--drunk driving. Think about it, every 29 minutes, someone--a real person--dies as a result of drunk driving. In other words, drunk driving occurs so often that the reality of your friend being injured, your spouse being hurt, your child being killed by a drunk driver happens 49 times a day. What a dangerous world we live in!

"If we keep doing what we are doing, we are going to keep getting what we got!" If we don't like what we got, we have to change what we are doing and I would hope none of us like what we got! I wish I had the power, the authority, the influence to change what we have--and to some extent, I do. I can change how I am; I can hopefully influence my family, my friends, my social circle. You, however, can change what we have as a society, a community, a family--what an honor that holds. Not long ago I read and I hold it to be true that "to whom much is given, much is expected." As Kansas lawmakers, it is not only the power you have to make decisions, but also the

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responsibility that such power entails. The responsibility to see that our state, our towns, our lives are made better as the result of your decisions.

I am only one person—one dad who lost a daughter to a drunk driver. My daughter might be a statistic to some, an unfortunate situation, an obituary in the local newspaper. However, she is none of these to me. She is a real person who lived, someone whom I loved. My daughter, Janelle, is why I am here—to help you see the pain, the hurt, the unnecessary anguish that drunk driving causes; to help prevent you from experiencing that same pain of losing a friend, a spouse, a child because of someone driving while they were drunk.

Drunk driving HAPPENS. Drunk driving is REAL. Drunk driving
KILLS. How can we serve to stop it?

Please give these bills due consideration as they can serve to create a safer and better place to live.

Thank you for your time.

Sincerely,

Don E Kaufman

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January 31, 2000

Mr. Chairman, members of the committee:

Good morning, my name is Charles Kohler and I am a Sergeant with the Kansas Highway Patrol. I am currently assigned to the Drug and Alcohol Evaluation Unit and I am here in support of Bill 341.

I am currently assigned as a drug and alcohol instructor teaching police officers how to detect impaired drivers on our Kansas highways. My assignment has taken me throughout the state of Kansas and the number one issue with police officers who make DUI arrests is the administrative hearing.

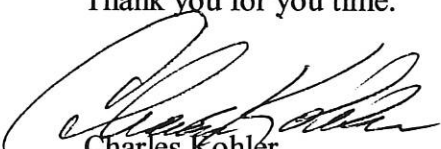
Some of the issues that are mentioned are continuing the hearing date multiple times, asking for documents that or not relevant to the arrest, using the hearing as a discovery trial and officer waiting time.

The Kansas Attorney General's task force, of which I am a member, supports Bill 341 and asks for the following amendments to be approved.

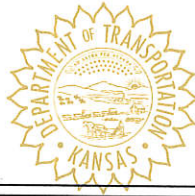
1. Allow the use of telephone conference call and or video testimony in the hearing. This will help the law enforcement agency by keeping the officer in his city or county. (Many times the hearing is continued, officer is waiting and the defendant does not show up)
2. A \$50.00 subpoena fee for each officer requested by the defendant to appear at the hearing.
3. Keep the request for documents limited to the issue.
4. Only officers who certified and signed the form are required to attend the hearing.

The Attorney General's task force asks that you approve these changes to assist law enforcement's efforts in removing the impaired driver from the Kansas highways.

Thank you for you time.


Charles Kohler
Sergeant
Kansas Highway Patrol

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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 THE
SENATE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 333
ZERO TOLERANCE (DUI) LAW FOR THOSE UNDER THE AGE OF 21**

January 31, 2000

Mr. Chairman and Committee Members:

I am Rosalie Thornburgh, Chief of Traffic Safety in the Department of Transportation. On behalf of the Department of Transportation, I am here to testify on Senate Bill 333 regarding driving under the influence by those under the age of 21, commonly referred to as a Zero Tolerance Law.

The 1996 Kansas legislature passed a federally conforming zero tolerance law which meets the requirements under Section 161 of Title 23, and the Department certified the state's compliance to the U.S.D.O.T. on May 16, 1997. The Department wishes to focus its testimony on the amendment offered by the Attorney General regarding the probable cause language change.

The Department supports the amendment and wishes to inform the committee that this change would not affect Kansas' compliance with Section 161 and has been verbally approved by the National Highway Traffic Safety Administration.

In summary, the Department supports the probable cause language amendment that will enable more effective enforcement. This change will not compromise our compliance status with the federal Zero Tolerance Law requirements.

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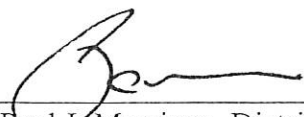
Judiciary

~~Committee on Federal and State Affairs~~

Comments in Support of Senate Bill 195

As I'm sure you all are aware, drunk driving continues to be a serious crime problem in our state. As a prosecutor since 1980, I have seen many, many people killed and seriously injured as a result of those who choose to drink and drive. As we are all aware, the law prohibits driving while impaired because it affects judgment, reaction time, etc. This impairment can lead to death or serious bodily injury. In 1998, the Kansas Supreme Court in State v. Huser specifically found that the act of driving while under the influence of alcohol or drugs is not per se "reckless driving." This rule dramatically affected situations where a drunk driver injured another person. Formerly, it was assumed that the law would allow for a finding that drunk driving alone would support reckless conduct under the Aggravated Battery statute, K.S.A. 21-3414. Since the Huser decision, however, we must now prove that separate, specific acts of recklessness in driving were proven in addition to intoxication.

In the Huser decision the Supreme Court specifically "left the door open" and commented that it was up to the legislature to criminalize that sort of conduct in this context. Here is your opportunity. I believe that the majority of citizens within the State believe that driving while under the influence is in and of itself reckless conduct. That fact should be incorporated into the statute.



Paul J. Morrison, District Attorney

Sen Jud
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Memorandum

TO: The Honorable Tim Emert, Chairman
House Judiciary Committee

FROM: Jeffery S. Bottenberg, Legislative Counsel
Kansas Peace Officers' Association
Kansas Sheriffs' Association

RE: S.B. 195

DATE: January 31, 2000

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Peace Officers' Association and the Kansas Sheriffs' Association, which collectively represent approximately 5,000 members of the Kansas law enforcement community. We thank you for the opportunity to express our continued support of Senate Bill 195.

KPOA and KSA strongly support enhanced penalties for intoxicated drivers, for we feel that is the best deterrent to prevent people from driving under the influence of alcohol or drugs. Current law does not provide appropriate penalties for a driver of a vehicle that causes great bodily harm to another person while driving under the influence. On many occasions we have seen intoxicated drivers severely injure others and evade the appropriate punishment that they deserve by hiding behind the fact that they were incapacitated when the crime was committed. The legal theory is that since they were incapacitated at the time of the accident, their actions did not rise to the level of "recklessness" necessary to convict under the aggravated battery statute. However, they knew full well before they decided to drink or use illegal drugs

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that driving under the influence is a reckless act and against the law, and yet they still got behind the wheel. It is time that people recognize that a car used inappropriately is just as deadly as a bullet, and that people who drive under the influence should be held fully accountable for their actions.

We further believe that the changes proposed by this law are in conformity with the Kansas Supreme Court's recent decision in State v. Martinez, which upheld the legislature's imposition of strict liability for a DUI felony conviction.

Again, KPOA and KSA strongly support Senate Bill 195 and urge its favorable consideration and passage.

Very Truly Yours,



Jeffery S. Bottenberg



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Memorandum

TO: The Honorable Tim Emert, Chairman
Senate Judiciary Committee

FROM: Jeffery S. Bottenberg, Legislative Counsel
Kansas Peace Officers' Association
Kansas Sheriffs' Association

RE: S.B. 341

DATE: January 31, 2000

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Peace Officers' Association ("KPOA") and the Kansas Sheriffs' Association ("KSA"), which collectively represent approximately 5,000 members of the Kansas law enforcement community. We thank you for the opportunity to express our continued support of Senate Bill 341.

This legislation is long overdue. KPOA and KSA consider 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.

Specifically, KPOA and KSA overwhelmingly support 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

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become known in Kansas law enforcement circles as “mini-trials,” hearings which defense counsel repeatedly use 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 that are relevant to the proceeding. It also specifies that hearings are relevant to the proceeding. It also specifies that hearings are to be held in the county of arrest or an adjacent county.

SB 341 also 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 a “slap on the wrist.”

Finally, the bill establishes a most critical punishment-that of permanent license revocation for fifth-time test refusals and fifth-time DUI convictions.

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

Very truly yours,



Jeffery S. Bottenberg



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Memorandum

TO: The Honorable Tim Emert, Chairman
Senate Judiciary Committee

FROM: Jeffery S. Bottenberg, Legislative Counsel
Kansas Peace Officers' Association
Kansas Sheriffs' Association

RE: S.B. 333

DATE: January 31, 2000

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Peace Officers' Association ("KPOA") and the Kansas Sheriffs' Association ("KSA"), which collectively represent approximately 5,000 members of the Kansas law enforcement community. We thank you for the opportunity to express our continued support of Senate Bill 333.

First, KPOA and KSA would like to state that we strongly support increasing the penalty for refusing to submit to a preliminary alcohol breath test from a traffic infraction to a class C misdemeanor. Such a change reflects the zero tolerance that law enforcement and the citizens of this state have for intoxicated drivers on our highways.

The KPOA and the KSA also strongly support the imposition of a traffic offense for anyone under 21 that operates a motor vehicle with a blood alcohol content of .02-.08. The current license suspension provisions are not enough of a deterrent to prevent young people to drive under the influence, even though the suspension period was increased last session to one year.

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However, while we strongly support the tougher restrictions against drivers under the influence contained in this bill, we believe that this bill should be amended to allow law enforcement to better remove underage drivers under the influence of alcohol or drugs from the streets and highways of this state. Specifically, we desire that a law enforcement officer be able to request that a driver under 21 years of age submit to an alcohol and drug screening test when reasonable grounds exist to believe that the driver has alcohol or drugs in their system. Currently a law enforcement officer has the ability to request a person under 21 years of age that was driving a commercial vehicle to submit to an alcohol and drug screening test if reasonable grounds exist to believe that the person has alcohol or drugs in their system.

Our proposed amendment will not lessen the standard to require a person to submit to an alcohol and drug screening test, as an officer will still need reasonable grounds to request that a person submit to such test. Our amendment will however give law enforcement the ability to better stop underage drivers from driving under the influence of alcohol and drugs. For instance, many times an officer will pull an underage driver over for speeding and smell alcohol, marijuana or other substances coming from the car. However, the driver was coherent, answered the officer's questions intelligently, and except for excessive speed, was driving the car in an appropriate manner. The end result of this dilemma is far too prevalent in Kansas- underage drivers are being released from a stop to continue to drive under the influence of alcohol and drugs and injure or kill other motorists. Time and time again law enforcement from across the state have voiced their concerns about this situation, and they are looking to their elected leaders to give them the tools to prevent young adults from driving under the influence.

Further, the fact that a person under the influence drives a personal vehicle rather than a commercial vehicle does not make him less dangerous or a threat to other motorists, as an impaired driver can cause great loss of life and injury with their own car. Therefore the requested

amendment to this bill will allow law enforcement to better remove drivers impaired by the use of alcohol and drugs from the road and enforce the mandate of zero tolerance for such use.

Again, KPOA and KSA strongly support Senate Bill 333 and urge its favorable consideration and passage with our proposed amendment.

Very truly yours,



Jeffery S. Bottenberg

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Mothers Against Drunk Driving

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KANSAS STATE OFFICE

January 28, 2000

Senator Tim Emert, Chairman
Senate Judiciary Committee
State Capital Room 356 E
Topeka, Kansas 66612

Dear Senator Emert and Committee Members:

During 1998, Kansas recorded 3,234 alcohol-related motor vehicle crashes involving 7,005 men, women and children. These crashes involved 3,282 drinking drivers and resulted in 2,415 injuries and 79 deaths. Approximately 50% of all injuries and 40% of all fatalities incurred were not the drinking drivers. Approximately 2,245 of the total number of individuals involved were non-drinking drivers and their passengers which included 294 children under the age of 10. Approximately 1,478 individuals involved were passengers riding with the drinking driver and included 112 children under the age of 10.

Kansas MADD strongly supports the enhancement of DUI criminal penalties and administrative sanctions proposed in Senate Bill 341. Kansas MADD also supports those changes proposed in Senate Bill 333 and Senate Bill 195.

Kansas MADD asks your support for these three pieces of legislation.

Sincerely,

Dee Meyer
State Chairperson
Kansas MADD

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