

Approved Feb 29, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:15 a.m. on February 24, 2000 in Room 123-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

None

Others attending: see attached list

The minutes of the February 23rd meeting were approved on a motion by Senator Goodwin, seconded by Senator Donovan. Carried.

SB 530—concerning child support enforcement; establishing Kansas Payment Center; income withholding

Senator Harrington, speaking on behalf of Senator Oleen, reviewed the balloon amendments to **SB 530**. Senator Vratil discussed the balloon stating that a portion of it was too restrictive and suggested striking the first line of the balloon language on page 2 at line 17 where it states “prior to entry of any support order and” so that the balloon only reads.. “upon notice to any person having an interest in the support order.....” Discussion and clarification by an SRS representative followed. Senator Harrington moved to amend the balloon as suggested by Senator Vratil and to adopt the balloon as amended, Senator Vratil seconded. Carried. Senator Harrington moved to recommend the bill out favorably as amended, Senator Goodwin seconded. Carried. (attachment 1)

SB 341—concerning 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

A representative from the attorney general’s office briefly reviewed the substance of **SBs 341, 333, and 195**. (attachment 2) Following lengthy discussion the Chair stated he would recommend these bills be blessed and would assign them to a subcommittee.

SB 595—concerning crimes, criminal procedure and punishment; relating to stalking

Senator Vratil reviewed his subcommittee’s hearing on **SB 595**, a bill which amends the criminal stalking statute to include stalking by electronic means to deal with cyberstalking. He noted subcommittee action taken on the bill was that it be passed favorably in lieu of Section 1 of 2000 SB 384 which creates the crime of electronic harassment. (see 2-21 minutes attachment 1) Following discussion, Senator Vratil moved to pass the bill out unamended and favorably, Senator Goodwin seconded. Carried.

SB 629—concerning business entities; relating to annual reports; annual franchise tax

Senator Vratil reviewed his subcommittee's hearing on **SB 629**, a bill which eliminates requirement that reconciliation of capital accounts of certain organizations be included on an annual report and requires the secretary of state to not disclose the amount of franchise tax paid by a business entity. It was the subcommittee's recommendation that the bill be amended to include limited partnerships in the provisions of the bill and delay the effective date until January 1, 2001. Following discussion, Senator Vratil moved to amend the bill as recommended by the subcommittee and pass the bill out favorably as amended, Senator Donovan seconded. Carried.

SB 386—concerning crime and punishment; regarding inquisitions; subpoenas

The Chair briefly reviewed **SB 386**, a bill which amends the Kansas statute authorizing inquisition subpoenas to reflect the impact of computers and which was passed out of Committee on 2-21. He noted that language in the bill was amended to read "any crime involving a computer" rather than "computer crimes". He expressed concern that this definition was too broad and offered a list of crimes compiled by Kyle Smith, KBI, to be included in the statute. (attachment 3) Discussion followed. No action was taken.

The meeting adjourned at 10:56 a.m. The next scheduled meeting is February 29, 2000.

41 Sec. 3. K.S.A. 1999 Supp. 23-4,118 is hereby amended to read as
42 follows: 23-4,118. (a) ~~The department of social and rehabilitation services~~
43 ~~is designated as the state income withholding agency in title IV-D cases.~~

SB 530

5

1 ~~For the purpose of keeping adequate records to document, track and~~
2 ~~monitor support payments in title IV-D cases and for the purpose of~~
3 ~~initiating the income withholding process in such cases, the department~~
4 ~~may contract for the performance of all or a portion of the withholding~~
5 ~~agency function with existing title IV-D contractors or any newly created~~
6 ~~entity capable of providing such services.~~

7 ~~(b) In all other cases, except as otherwise provided in this subsection,~~
8 ~~the clerk of the district court is designated as the income withholding~~
9 ~~agency for the purpose of keeping adequate records to allow the obligor~~
10 ~~and obligee to track and monitor support payments. If a district court~~
11 ~~trustee has been designated by the chief judge to receive, process and~~
12 ~~maintain records for moneys received under support orders, the district~~
13 ~~court trustee is designated as the income withholding agency for non-IV-~~
14 ~~D cases in the judicial district. The department of social and rehabilitation~~
15 ~~services, the title IV-D agency for the state, shall establish a central unit~~
16 ~~for collection and disbursement of support payments to meet the require-~~
17 ~~ments of title IV-D. The department shall collaborate with the Kansas~~
18 ~~supreme court to establish the central unit for collection and disbursement~~
19 ~~of support payments, which shall include, but is not limited to, all support~~
20 ~~payments subject to the requirements of title IV-D. Upon designation by~~
21 ~~the Kansas supreme court, the central unit for collection and disbursement~~
22 ~~of support payments shall commence operations with respect to support~~
23 ~~orders entered in each county as provided in a schedule adopted or ap-~~
24 ~~proved by the supreme court or the supreme court's designee.~~

25 (b) *When the central unit for collection and disbursement of support*
26 *payments commences operations with respect to a county, any provision*
27 *in any child support order or income withholding order entered in that*
28 *county which requires remittance of support payments to the clerk of the*
29 *district court or district court trustee shall be deemed to require remit-*
30 *tance of support payments to the central unit for collection and disburse-*
31 *ment of support payments, regardless of the date the child support or*
32 *income withholding order was entered.*

33 (c) *As used in this section, "child support order" includes any order*
34 *for maintenance of a spouse or ex-spouse issued in conjunction with a*
35 *child support order.*

The department shall not require any person to pay a service fee solely because payments are processed by the central unit for collection and disbursement of support payments.

K.S.A. 23-4,118

Sen. Judd
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Att 1

29 Sec. 7. K.S.A. 1999 Supp. 60-1610 is hereby amended to read as
30 follows: 60-1610. A decree in an action under this article may include
31 orders on the following matters:

32 (a) *Minor children.* (1) *Child support and education.* The court shall
33 make provisions for the support and education of the minor children. The
34 court may modify or change any prior order, including any order issued
35 in a title IV-D case, within three years of the date of the original order
36 or a modification order, when a material change in circumstances is
37 shown, irrespective of the present domicile of the child or the parents. If
38 more than three years has passed since the date of the original order or
39 modification order, a material change in circumstance need not be shown.
40 The court may make a modification of child support retroactive to a date
41 at least one month after the date that the motion to modify was filed with
42 the court. Any increase in support ordered effective prior to the date the
43 court's judgment is filed shall not become a lien on real property pursuant

1 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
2 custodial arrangement ordered by the court, the court may order the child
3 support and education expenses to be paid by either or both parents for
4 any child less than 18 years of age, at which age the support shall ter-
5minate unless: (A) The parent or parents agree, by written agreement
6 approved by the court, to pay support beyond the time the child reaches
7 18 years of age; (B) the child reaches 18 years of age before completing
8 the child's high school education in which case the support shall not ter-
9minate automatically, unless otherwise ordered by the court, until June
10 30 of the school year during which the child became 18 years of age if
11 the child is still attending high school; or (C) the child is still a bona fide
12 high school student after June 30 of the school year during which the
13 child became 18 years of age, in which case the court, on motion, may
14 order support to continue through the school year during which the child
15 becomes 19 years of age so long as the child is a bona fide high school
16 student and the parents jointly participated or knowingly acquiesced in
17 the decision which delayed the child's completion of high school. The
18 court, in extending support pursuant to subsection (a)(1)(C), may impose
19 such conditions as are appropriate and shall set the child support utilizing
20 the guideline table category for 16-year through 18-year old children.
21 Provision for payment of support and educational expenses of a child after
22 reaching 18 years of age if still attending high school shall apply to any
23 child subject to the jurisdiction of the court, including those whose sup-
24 port was ordered prior to July 1, 1992. If an agreement approved by the
25 court prior to July 1, 1988, provides for termination of support before the

26 date provided by subsection (a)(1)(B), the court may review and modify
 27 such agreement, and any order based on such agreement, to extend the
 28 date for termination of support to the date provided by subsection
 29 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
 30 provides for termination of support before the date provided by subsection
 31 (a)(1)(C), the court may review and modify such agreement, and any
 32 order based on such agreement, to extend the date for termination of
 33 support to the date provided by subsection (a)(1)(C). For purposes of this
 34 section, "bona fide high school student" means a student who is enrolled
 35 in full accordance with the policy of the accredited high school in which
 36 the student is pursuing a high school diploma or a graduate equivalency
 37 diploma (GED). In determining the amount to be paid for child support,
 38 the court shall consider all relevant factors, without regard to marital
 39 misconduct, including the financial resources and needs of both parents,
 40 the financial resources and needs of the child and the physical and emo-
 41 tional condition of the child. Until a child reaches 18 years of age, the
 42 court may set apart any portion of property of either the husband or wife,
 43 or both, that seems necessary and proper for the support of the child.

SB 530

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1 *Every Except for good cause shown, every* order requiring payment of
 2 child support under this section shall require that the support be paid
 3 through the clerk of the district court or the court trustee ~~except for good~~
 4 ~~cause shown~~ *the central unit for collection and disbursement of support*
 5 *payments designated pursuant to K.S.A. 23-4,118, and amendments*
 6 *thereto.*

*Until
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 to instruct*

Prior to entry of any support order and upon notice to any person having an interest in the support order, either parent may ask the court to determine whether such good cause exists.

7 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
 8 the provisions of the uniform child custody jurisdiction act (K.S.A. 38-
 9 1301 *et seq.*, and amendments thereto), the court may change or modify
 10 any prior order of custody when a material change of circumstances is
 11 shown, but no ex parte order shall have the effect of changing the custody
 12 of a minor child from the parent who has had the sole de facto custody
 13 of the child to the other parent unless there is sworn testimony to support
 14 a showing of extraordinary circumstances. If an interlocutory order is
 15 issued ex parte, the court shall hear a motion to vacate or modify the
 16 order within 15 days of the date that a party requests a hearing whether
 17 to vacate or modify the order.

18 (B) *Examination of parties.* The court may order physical or mental
19 examinations of the parties if requested pursuant to K.S.A. 60-235 and
20 amendments thereto.

21 (3) *Child custody or residency criteria.* The court shall determine
22 custody or residency of a child in accordance with the best interests of
23 the child.

24 (A) If the parties have a written agreement concerning the custody
25 or residency of their minor child, it is presumed that the agreement is in
26 the best interests of the child. This presumption may be overcome and
27 the court may make a different order if the court makes specific findings
28 of fact stating why the agreement is not in the best interests of the child.

29 (B) In determining the issue of custody or residency of a child, the
30 court shall consider all relevant factors, including but not limited to:

31 (i) The length of time that the child has been under the actual care
32 and control of any person other than a parent and the circumstances
33 relating thereto;

34 (ii) the desires of the child's parents as to custody or residency;

35 (iii) the desires of the child as to the child's custody or residency;

36 (iv) the interaction and interrelationship of the child with parents,
37 siblings and any other person who may significantly affect the child's best
38 interests;

39 (v) the child's adjustment to the child's home, school and community;

40 (vi) the willingness and ability of each parent to respect and appreciate
41 the bond between the child and the other parent and to allow for a
42 continuing relationship between the child and the other parent; and

43 (vii) evidence of spousal abuse.

1 Neither parent shall be considered to have a vested interest in the
2 custody or residency of any child as against the other parent, regardless
3 of the age of the child, and there shall be no presumption that it is in the
4 best interests of any infant or young child to give custody or residency to
5 the mother.

6 (4) *Types of custodial arrangements.* Subject to the provisions of this
7 article, the court may make any order relating to custodial arrangements
8 which is in the best interests of the child. The order shall include, but
9 not be limited to, one of the following, in the order of preference:

10 (A) *Joint custody.* The court may place the custody of a child with
11 both parties on a shared or joint-custody basis. In that event, the parties
12 shall have equal rights to make decisions in the best interests of the child
13 under their custody. When a child is placed in the joint custody of the
14 child's parents, the court may further determine that the residency of the
15 child shall be divided either in an equal manner with regard to time of
16 residency or on the basis of a primary residency arrangement for the child.

17 The court, in its discretion, may require the parents to submit a plan for
18 implementation of a joint custody order upon finding that both parents
19 are suitable parents or the parents, acting individually or in concert, may
20 submit a custody implementation plan to the court prior to issuance of a
21 custody decree. If the court does not order joint custody, it shall include
22 in the record the specific findings of fact upon which the order for custody
23 other than joint custody is based.

24 (B) *Sole custody.* The court may place the custody of a child with one
25 parent, and the other parent shall be the noncustodial parent. The cus-
26 todial parent shall have the right to make decisions in the best interests
27 of the child, subject to the visitation rights of the noncustodial parent.

28 (C) *Divided custody.* In an exceptional case, the court may divide the
29 custody of two or more children between the parties.

30 (D) *Nonparental custody.* If during the proceedings the court deter-
31 mines that there is probable cause to believe that: (i) The child is a child
32 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-
33 1502 and amendments thereto; (ii) neither parent is fit to have custody;
34 or (iii) the child is currently residing with such child's grandparent, grand-
35 parents, aunt or uncle and such relative has had actual physical custody
36 of such child for a significant length of time, the court may award tem-
37 porary custody of the child to such relative, another person or agency if
38 the court finds the award of custody to such relative, another person or
39 agency is in the best interests of the child. In making such a custody
40 order, the court shall give preference, to the extent that the court finds
41 it is in the best interests of the child, first to awarding such custody to a
42 relative of the child by blood, marriage or adoption and second to award-
43 ing such custody to another person with whom the child has close emo-

1 tional ties. The court may make temporary orders for care, support, ed-
2 ucation and visitation that it considers appropriate. Temporary custody
3 orders are to be entered in lieu of temporary orders provided for in K.S.A.
4 38-1542 and 38-1543, and amendments thereto, and shall remain in effect
5 until there is a final determination under the Kansas code for care of
6 children. An award of temporary custody under this paragraph shall not
7 terminate parental rights nor give the court the authority to consent to
8 the adoption of the child. When the court enters orders awarding tem-
9 porary custody of the child to an agency or a person other than the parent
10 but not a relative as described in subpart (iii), the court shall refer a
11 transcript of the proceedings to the county or district attorney. The county
12 or district attorney shall file a petition as provided in K.S.A. 38-1531 and
13 amendments thereto and may request termination of parental rights pur-
14 suant to K.S.A. 38-1581 and amendments thereto. The costs of the pro-
15 ceedings shall be paid from the general fund of the county. When a final
16 determination is made that the child is not a child in need of care, the
17 county or district attorney shall notify the court in writing and the court,

18 after a hearing, shall enter appropriate custody orders pursuant to this
19 section. If the same judge presides over both proceedings, the notice is
20 not required. Any disposition pursuant to the Kansas code for care of
21 children shall be binding and shall supersede any order under this section.
22 When the court enters orders awarding temporary custody of the child
23 to a relative as described in subpart (iii), the court shall annually review
24 the temporary custody to evaluate whether such custody is still in the best
25 interests of the child. If the court finds such custody is in the best interests
26 of the child, such custody shall continue. If the court finds such custody
27 is not in the best interests of the child, the court shall determine the
28 custody pursuant to this section.

29 (b) *Financial matters. (1) Division of property.* The decree shall di-
30 vide the real and personal property of the parties, including any retire-
31 ment and pension plans, whether owned by either spouse prior to mar-
32 riage, acquired by either spouse in the spouse's own right after marriage
33 or acquired by the spouses' joint efforts, by: (A) a division of the property
34 in kind; (B) awarding the property or part of the property to one of the
35 spouses and requiring the other to pay a just and proper sum; or (C)
36 ordering a sale of the property, under conditions prescribed by the court,
37 and dividing the proceeds of the sale. Upon request, the trial court shall
38 set a valuation date to be used for all assets at trial, which may be the
39 date of separation, filing or trial as the facts and circumstances of the case
40 may dictate. The trial court may consider evidence regarding changes in
41 value of various assets before and after the valuation date in making the
42 division of property. In dividing defined-contribution types of retirement
43 and pension plans, the court shall allocate profits and losses on the non-

1 participant's portion until date of distribution to that nonparticipant. In
2 making the division of property the court shall consider the age of the
3 parties; the duration of the marriage; the property owned by the parties;
4 their present and future earning capacities; the time, source and manner
5 of acquisition of property; family ties and obligations; the allowance of
6 maintenance or lack thereof; dissipation of assets; the tax consequences
7 of the property division upon the respective economic circumstances of
8 the parties; and such other factors as the court considers necessary to
9 make a just and reasonable division of property. The decree shall provide
10 for any changes in beneficiary designation on: (A) Any insurance or an-
11 nuity policy that is owned by the parties, or in the case of group life
12 insurance policies, under which either of the parties is a covered person;
13 (B) any trust instrument under which one party is the grantor or holds a
14 power of appointment over part or all of the trust assets, that may be
15 exercised in favor of either party; or (C) any transfer on death or payable
16 on death account under which one or both of the parties are owners or
17 beneficiaries. Nothing in this section shall relieve the parties of the ob-
18 ligation to effectuate any change in beneficiary designation by the filing
19 of such change with the insurer or issuer in accordance with the terms
20 of such policy.

21 (2) *Maintenance.* The decree may award to either party an allowance
 22 for future support denominated as maintenance, in an amount the court
 23 finds to be fair, just and equitable under all of the circumstances. The
 4 decree may make the future payments modifiable or terminable under
 25 circumstances prescribed in the decree. The court may make a modifi-
 26 cation of maintenance retroactive to a date at least one month after the
 27 date that the motion to modify was filed with the court. In any event, the
 28 court may not award maintenance for a period of time in excess of 121
 29 months. If the original court decree reserves the power of the court to
 30 hear subsequent motions for reinstatement of maintenance and such a
 31 motion is filed prior to the expiration of the stated period of time for
 32 maintenance payments, the court shall have jurisdiction to hear a motion
 33 by the recipient of the maintenance to reinstate the maintenance pay-
 34 ments. Upon motion and hearing, the court may reinstate the payments
 35 in whole or in part for a period of time, conditioned upon any modifying
 36 or terminating circumstances prescribed by the court, but the reinstate-
 37 ment shall be limited to a period of time not exceeding 121 months. The
 38 recipient may file subsequent motions for reinstatement of maintenance
 39 prior to the expiration of subsequent periods of time for maintenance
 40 payments to be made, but no single period of reinstatement ordered by
 41 the court may exceed 121 months. Maintenance may be in a lump sum,
 42 in periodic payments, on a percentage of earnings or on any other basis.
 43 At any time, on a hearing with reasonable notice to the party affected,

SB 530

1 the court may modify the amounts or other conditions for the payment
 2 of any portion of the maintenance originally awarded that has not already
 3 become due, but no modification shall be made without the consent of
 4 the party liable for the maintenance, if it has the effect of increasing or
 5 accelerating the liability for the unpaid maintenance beyond what was
 6 prescribed in the original decree. *Every Subject to the requirements of*
 7 *the Kansas income withholding act, K.S.A. 23-4,105 through 23-4,123,*
 8 *and amendments thereto, every court order requiring only the payment*
 9 *of maintenance under this section shall require that the maintenance be*
 10 *paid through the clerk of the district court or the court trustee except for*
 11 *good cause shown.*

12 (3) *Separation agreement.* If the parties have entered into a separa-
 13 tion agreement which the court finds to be valid, just and equitable, the
 14 agreement shall be incorporated in the decree. The provisions of the
 15 agreement on all matters settled by it shall be confirmed in the decree
 16 except that any provisions for the custody, support or education of the
 17 minor children shall be subject to the control of the court in accordance
 18 with all other provisions of this article. Matters settled by an agreement

19 incorporated in the decree, other than matters pertaining to the custody,
20 support or education of the minor children, shall not be subject to sub-
21 sequent modification by the court except: (A) As prescribed by the agree-
22 ment or (B) as subsequently consented to by the parties.

23 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
24 party as justice and equity require. The court may order that the amount
25 be paid directly to the attorney, who may enforce the order in the attor-
26 ney's name in the same case.

27 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
28 of a spouse, the court shall order the restoration of that spouse's maiden
29 or former name.

30 (2) *Effective date as to remarriage.* Any marriage contracted by a
31 party, within or outside this state, with any other person before a judg-
32 ment of divorce becomes final shall be voidable until the decree of divorce
33 becomes final. An agreement which waives the right of appeal from the
34 granting of the divorce and which is incorporated into the decree or
35 signed by the parties and filed in the case shall be effective to shorten
36 the period of time during which the remarriage is voidable.



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

224 SJW ATZ
MAIN PHONE: (785) 296-2215
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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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CARLA J. STOVALL
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**Attorney General Carla Stovall's
Far-reaching Alteration of Traffic and Alcohol Laws
(FATAL) Task Force**

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Jim Keller, Department of Revenue, Topeka
Mary Ann Khoury, DUI Victim Center of Kansas, Wichita
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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)
\$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 revoked for lifetime
License revoked for lifetime
Reinstatement not permitted**

*How many
fatalities have
occurred beyond
the 5 suspensions*

*No \$55,000
O.T. for
specimens to attend
hearings*

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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SB 386

Crimes Needing Rapid Access to E-Mail and other Computerized Evidence

Murder	21-3401
Murder 2 nd degree	21-3402
Kidnapping	21-3420
Aggravated Kidnapping	21-3421
Criminal Threat	21-3419
Blackmail	21-3428
Stalking	21-3438
Sexual exploitation of a child	21-3516
Rape	21-3502
Criminal Sodomy	21-3505
Agg. Criminal Sodomy	21-3506
Indecent Liberties with a child	21-3503
Agg. Indecent Liberties	21-3504
Criminal Solicitation of a child	21-3510
Agg. Sexual Battery	21-3518
Theft	21-3701
Making false Information	21-3711
Computer Crime	21-3755
Witness Intimidation	21-3832
Agg. Witness Intimidation	21-3833
Identity theft	21-4018

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