

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On February 14, 2001 in Room 526-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - Excused
Representative Andrew Howell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jennifer Strait, Intern for Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Michael O'Neal
Terry Heidner, Director of Planning & Development, Kansas Department of Transportation
Harry Tiffany, Manager Driver Control, Division of Vehicle
Kevin Graham, Assistant Attorney General, Criminal Justice Division
Sgt. Charles Tippie, Overland Park Police Department
Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects & Alcohol & Drug Service
Providers Associations
Steve Hageman, East Central Mental Health Center

Hearings on **HB 2230 - suspension or revocation of driving privileges**, were opened.

Representative Michael O'Neal reported that the proposed bill is identical to SB 429 from 2000 Legislative Session that failed on a tie vote in the Senate. He explained that the Federal Government enacted the Transportation Equity Act for the 21st Century (TEA-21) which contains requirements that the state must meet or lose highway construction funding. (Attachment 1)

He requested an amendment which would require the manufacturer to provide a credit of at least 2% of the gross program revenues to help those people who qualify for food stamps and are required to have an ignition interlock on their vehicle pay for them. (Attachment 2)

Terry Heidner, Director of Planning & Development, Kansas Department of Transportation, informed the legislators that the state lost \$3.4 million in highway construction funding for non-compliance. It was actually diverted to the State's Section 402 Highway Safety Program or the Section 152 Hazard Elimination Program. He estimated that the State would lose \$3.2 million in FFY2002 and in FFY 2003 could lose \$6.6 million. (Attachment 3)

Harry Tiffany, Manager Driver Control, Division of Vehicle, appeared in support of the proposed bill because it cleans-up discrepancy for drivers under the age of 21. (Attachment 4)

Kevin Graham, Assistant Attorney General, Criminal Justice Division, requested the following amendments:

- ◆ significantly increasing the fine provisions for DUI violations
- ◆ substantially increasing the fees for driver's license reinstatement
- ◆ creation of a class misdemeanor for refusing to submit to a breath, blood or urine test
- ◆ and creation of a provision granting law enforcement officers to request a blood alcohol test if there is probable cause. (Attachment 5)

Sgt. Charles Tippie, Overland Park Police Department, supported the position on the mandatory use of interlock but opposed the administrative hearing section of the bill which would be problematic. (Attachment 6)

The hearings on **HB 2230** were closed.

Hearings on **HB 2135 - increasing evaluation fee for DUI's from \$125 to \$150**, were opened.

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects & Alcohol & Drug Service Providers Associations, appeared as the sponsor of the proposed bill which would increase the fees paid by those convicted of DUI's to cover the evaluation costs. 1994 was the last time the evaluation fee was raised. (Attachment 7)

Steve Hageman, East Central Mental Health Center, informed the committee that the courts keep 10% of the fee for administrative costs. (Attachment 8)

Hearings on **HB 2135** were closed.

Chairman O'Neal appointed Representatives Loyd, Patterson, & Pauls to serve on a subcommittee to work the following bills and report back to the committee as a whole on Tuesday, February 20th.

- ◆ **HB 2078 - if a minor shoplifts, the parents are liable for a civil penalty up to \$500**
- ◆ **HB 2079 - theft of property from three businesses as part of the same criminal transaction is a severity level 9, non person felony**
- ◆ **HB 2080 - unlawful use of possession of sale receipt or universal product code label**
- ◆ **HB 2296 - mandatory sentencing and fines for forgery**

HB 2297 - increasing the Court of Appeals to 14 judges; increasing by one each year to 2004

Representative Loyd made the motion to report HB 2297 favorably for passage. Representative DiVita seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled on February 15, 2001.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT
HUTCHINSON/NORTHEAST RENO COUNTY

LEGISLATIVE HOTLINE
1-800-432-3924
e-mail: oneal@house.state.ks.us



CHAIRMAN:
JUDICIARY COMMITTEE
REDISTRICTING COMMITTEE

MEMBER:
KANSAS FUTURES
FISCAL OVERSIGHT
UNIFORM LAW COMMISSION
KANSAS JUDICIAL COUNCIL

TESTIMONY ON H.B. 2230
Feb. 14, 2001
House Judiciary Committee

My interest in ignition interlock technology dates back to the mid-80's. An advocate for tougher DUI laws, I attended a meeting of the National Conference of State Legislatures and was introduced to a novel tool in the anti-DUI arsenal. I brought news of the technology back to Kansas and in 1988 Kansas became one of only a handful of states to recognize ignition interlock technology as a tool of law enforcement.

Since that time, despite interest by judges across the state to implement the technology, the federal government created a disincentive by forcing states to implement mandatory license suspension laws or risk the loss of millions of dollars of federal highway funding. However, over time, while administrative suspension laws have had a positive impact on drunk driving, statistics continue to point to repeat offenses by those who ignore the suspensions. At the same time, ignition interlock technology has become even better and studies have demonstrated it's advantage over other forms of sanction in the area of recidivism.

Congress now recognizes the importance of the technology and has included it in its latest federal package of drunk-driving initiatives. As representatives of the Department of Transportation will explain, the Transportation Equity Act for the 21st Century (TEA-21) contains a requirement that, in order to avoid transfer of highway construction funds a state must have laws in place containing a number of anti drunk driving initiatives. Kansas has been a faithful participant in the federal programs over the

years but failed to meet the initial deadline for TEA-21 compliance of Oct. 1, 2000 when we failed to pass S.B. 429 last session. The House passed the measure by a wide margin but the measure failed on a tie vote in the Senate with several members absent on literally the last vote taken that session. The new initiative required by the feds is mandatory impoundment or immobilization of, or the installation of an ignition interlock system on motor vehicles registered to the repeat DUI offender. The House last year soundly defeated impoundment and immobilization in favor of interlock.

In the wake of the federal mandate and our failure to pass necessary legislation last session to prevent loss of highway construction funds, Governor Graves made passage of an ignition interlock measure one of his specific priorities addressed in his State of the State message. The bill the House endorsed last year has received the blessing of the federal oversight authority, the National Highway Traffic Safety Administration (NHTSA), subject, perhaps to very minor language adjustments per consultation with KDOT.

As the Legislative Research memo sets out, there are other provisions in the bill that address loopholes found in current DUI legislation and I'll leave those provisions to others to explain. Thank you for your consideration.

From: ROBERT LINNELL

PHONE No. : 802 295 9575

Mar. 10 1994 5:32PM

Robert H. Linnell, PhD
Consultant

255 Kings Highway West
White River Jct., VT 05001

TEL/FAX: 802-295-9575

March 10, 1994

Senate Judiciary Committee
State Legislature, State of Kansas
Topeka, KS 66612

via: FAX 316-665-7619

Dear Committee Members:

I was the Principal Investigator for the research report "Ignition Interlock Devices: An Assessment of Their Application to Reduce DUI" funded and published by the AAA Foundation for Traffic Safety". This study analyzed and evaluated the results of all earlier and then current studies and in addition provided original data collected by us. We initiated this study with no pre-conceived feelings about breath interlock devices. Our objective was to provide the best evaluation possible of the use of this technology in dealing with the DUI problem.

Our evaluation results were very positive. Over 90% of Interlock users reported that the device was successful or very successful in preventing them from drinking and driving. The overwhelming majority of interlock users (over 90%) were satisfied or very satisfied with interlocks and very few users would not recommend it to others. Although users report that interlocks are a nuisance when first installed, most report that after a week or two there is no problem; other users of the interlock vehicle also seem to have a positive attitude toward the device. A minority of users found the costs to be a problem but this requires some perspective; the cost is less than two beers a day, which is a good deal less than what most problem DUI offenders spend on alcoholic beverages. Furthermore several states that use Breath Interlock devices have established special funds to pay for Interlocks for those unable to pay but these funds have been under-utilized. A minority of interlock users (15-25%) admit to having tried to bypass the device; although some have succeeded in bypassing they can and will be caught with the usual routine monitoring program. It is important that those who bypass know that they will be appropriately punished.

License suspension is a widely used sanction for those convicted of DUI. A large number of studies show that most individuals under license suspension continue to drive. The positive effects of license suspension are largely due to the fact that those driving without a license drive more carefully because of concern for the penalty if they are caught; this effect is no doubt less for those with a drinking problem. Compared to license suspension interlock users have a reduced rate of recidivism, in the largest and best study the reduction was over 50%.

In summary, Interlocks work and they are cost effective. Given the choice, most people prefer to

From: ROBERT LINNELL

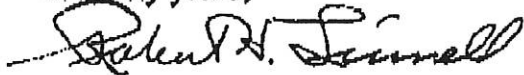
PHONE No. : 802 295 9575

Mar. 10 1994 5:32PM

drive legally and interlocks offer that opportunity whereas license suspension forces people to drive illegally. Interlock also tends to keep people in family and/or community relationships (as compared to jail) and reminds them every time they start their car that they must face up to their drinking problem.

If I can answer any questions or be of help to your committee please do let me know. And for the record I want you to know that I have no financial ties to interlock companies and I have declined and will continue to decline fee-for-service consulting or other financial interests in interlocks. I value my integrity and credibility and I do a lot of my work as a public service.

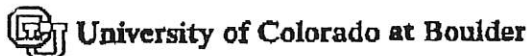
Sincerely yours,



*Robert H. Linnell
Professor Emeritus, Univ. of So. Cal.
and former Chairman, Safety Science Department*

BAIDKS.394

Environmental Health...Safety...Education



Institute of Behavioral Science

Campus Box
Boulder, Colorado 80309
FAX: (303) 492-6924

DATE: March 10, 1994

TO: State of Kansas, Senate Subcommittee

FROM: Dr. Barbara Morse
Institute of Behavioral Science
University of Colorado, Boulder, Colorado

RE: Effects of ignition interlock devices on DUI recidivism

To Whom It May Concern:

At the request of Lifesaver Interlock of Kansas, I am writing this letter to provide compelling evidence for the effectiveness of ignition interlock devices as a deterrent to a repeated drunk driving arrest.

Our Institute has recently concluded a five-year study designed to evaluate the relative impact of the ignition interlock device on DUI recidivism as compared to that resulting from license suspension (see Morse and Elliott, 1992; Elliott and Morse, 1993). Results from the Hamilton County Drinking and Driving Study (funded by NIAAA), indicate that across a 30-month risk period during which interlock installation, license suspension, and probation sanctions were in effect, interlock installation significantly reduced the likelihood of a repeated DUI as compared to license suspension. In contrast to the 12% failure rate among DUI offenders assigned to license suspension, the 4% failure rate among offenders assigned to interlock installation represents a 66% reduction in the probability of a repeated DUI offense during the court-ordered sanction period.

It also appears that the overall reduction in DUI recidivism realized by interlock use is enhanced by not only immediate, but increased duration of installation - a sanction effect not observed for license suspension.

In addition, our study confirms earlier findings which estimate that up to 75% of those with suspended licenses drive illegally (see e.g., Waller, 1985; Ross and Gonzalez, 1988). DUI offenders with license suspension were far more likely than those with the interlock device to circumvent their court-ordered sanction. The rearrest rate for subsequent driving infractions among those assigned to license suspension was four to seven times as great as that among those using the interlock.

Overall, these study findings, by providing evidence of the interlock's superior capability for preventing DUI recidivism, clearly support a continuing interest in ignition interlock devices as a court-ordered alternative to license suspension.

Sincerely,

Handwritten signature of Barbara J. Morse in cursive script.

Barbara J. Morse, Ph.D.



HAMILTON COUNTY DRINKING AND DRIVING STUDY: 30 MONTH REPORT

EXECUTIVE SUMMARY

by

Barbara J. Morse, Ph.D.
Institute of Behavioral Science
University of Colorado, Boulder

and

Delbert S. Elliott, Ph.D.
Institute of Behavioral Science
University of Colorado, Boulder

February 1990

Executive Summary

The present report provides information on the effectiveness of ignition interlock devices in reducing recidivism among convicted DUI offenders in Hamilton County, Ohio. The findings presented here are based on data collected over the first 30 months of the five year Hamilton Country Drinking and Driving Study (HCDDS), and represent the most complete findings published to date.

The HCDDS is a longitudinal, quasi-experimental study with nonrandom assignment of subjects into judge and self-selected experimental (interlock) and control (license suspension) groups. Eligible subjects include: 1) offenders with a BAC of .20 or higher at arrest, 2) offenders with a prior DUI conviction during the last 10 years, and 3) persons who refused to take the BAC test upon arrest. Evaluation of the group assignment process revealed some evidence of selection bias in both the judicial and self-selected groups, limiting generalization of study findings with any known degree of statistical accuracy. However, the direction of the selection bias indicates that those in the study experimental group (to which controls are matched) should be at higher risk for a repeated DUI than those in the eligible pool, suggesting that the findings would be more appropriately generalized to a more serious population of DUI offenders.

In order to protect against selection biases, subjects were precision-matched on three factors statistically shown to be predictive of DUI recidivism (i.e, using multiple regression and discriminant analyses). Using a cluster analysis, control group members were matched to experimental group members on the basis of their similarity on: 1) problem drinker classification; 2) number of prior alcohol-drug related arrests (non-DUI); and 3) number of prior DUI arrests. The matching process was verified by a series of t-tests which indicated that the experimental and control groups were significantly different on one of the three matching variables - number of prior DUI arrests. Experimental group members had more prior DUI arrests, putting them at a slightly greater risk for a repeated DUI.

Short-term survival rates for DUI indicate that interlock devices installed in the vehicles of DUI offenders significantly reduced the likelihood of a repeated DUI arrest as compared to license suspension. The risk period for all subjects, that is, the time during which experimentals had the interlock installed and controls were under license suspension, ranged from 12 to 30 months. The DUI rearrest rate for persons with license suspension was approximately three times as great as that of persons with interlock installation across the entire 30 month risk period. Compared to a 30 month failure rate of 9.8% for the control group, the 3.4% failure rate in the experimental group represents a 65% decrease in the probability of DUI recidivism.

Further, evidence of sanction circumvention was significantly lower for those offenders with interlock installation. Estimates of short-term survival rates for DUS (Driving Under Suspension) and NDL (No Driver's License) indicate that compared to license suspension, interlock installation reduced sanction circumvention by 91% across the 30 month study period. After 30 months, 16.1% of those offenders with license suspension were arrested for DUS or NDL compared to 1.5% of those with the interlock device.

Findings based upon self-report data collected from experimental group subjects 12 months post interlock installation revealed substantial user complaints. While over 90% claimed that they had some difficulty starting their car while sober, the frequency and nature of these complaints did not appear to be particularly serious, reflecting operational rather than mechanical problems. Questions assessing interlock users' perceptions of their experience with the device indicate that the vast majority felt that the system was very successful at both preventing them from drinking and driving as well as changing their drinking and driving habits.

March 11, 1994

Kansas Legislative Senate Sub-Committee
RE: House Bill #2579

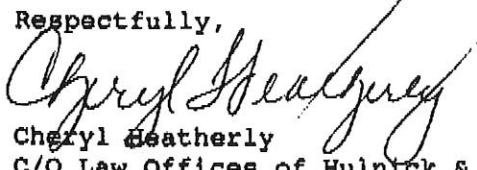
Dear Ladies and Gentlemen:

I am offering this testimonial in support of House Bill #2579. I have had an interlock system in my car since June 1993. This device was ordered into my vehicle in connection with a domestic child custody case as I had driven and drank with my seven year old daughter, Holly in my car. The only other option available to me was to surrender visitation. This alternative was offered in the best interests for the safety of my daughter, Holly.

I had very little sobriety when the interlock was installed in my car. I have been very relapse prone in the past three years. The interlock system would not only lock me out of my car but also send a message to Judge Dewey that I had made a decision that alcohol was going to come first in my life before my daughter. This has really helped with the impassivity of relapse. When I thought of taking a drink I was forced to weigh the consequences of my decision.

I now have a substantial amount of sobriety. I feel I owe this in part to the interlock system. I also feel that because of my past drinking behavior the system may not only have saved me and allowed visitation with my daughter but may have also saved another and perhaps a few lives. The system is not perfect but it is definitely the best thing that is offered for people who cannot or have not been able to distinguish whether or not they are too impaired to drive. I would welcome any questions or comments at the address and telephone number listed below.

Respectfully,


Cheryl Heatherly
C/O Law Offices of Hulnick & Gribble
310 W. Central at Waco
Wichita, Ks. 67202 316-263-7596

The Average DWI Offender Can Afford The Cost of An Alcohol Ignition Interlock Device!

Research indicates that in addition to being deterred from drinking and driving, the experience of having an alcohol ignition interlock device installed results in a significant reduction in many participants overall alcohol consumption.

This would suggest that a modest reduction in alcohol consumption makes the less than \$2.00 per day cost of the device affordable to the participant.

Recently the Harris County Probation Department, Houston, TX released the results of 2,500 Substance Abuse/Life Circumstance Evaluation (SALCE) tests. SALCE is a computerized alcohol assessment program and voluntary survey on alcohol consumption patterns.

The Results of 2,500 SALCE Tests:

Average Monthly Income.....	\$1,331.00
Average Monthly Expenditure for Alcohol.....	\$ 375.00

The Results of 2,500 Voluntary Surveys:

Average Attorney Fee.....	\$ 590.00
Average Bond Fee.....	\$ 301.00
Average Fine.....	\$ 380.00
Average Salary Loss.....	\$ 474.00
Average Car Damage.....	\$1,848.00
Average Insurance Premium Increase/Year.....	\$ 829.00

These DWI offenders are spending 28% of their income on alcohol consumption at an average rate of \$12.50 per day.



1. A 15% reduction in their daily alcohol consumption will finance their interlock device.
2. Another 15% reduction in their daily consumption will finance the bond, court costs, and fines.
3. Another 13% reduction in their daily consumption will finance the cost of an attorney.
4. Another 20% reduction in daily consumption will finance their increased insurance cost.

By reducing their daily alcohol consumption by 62% to \$4.75 per day, the participants can finance the major costs of their DWI, including installing an alcohol interlock device.



Clay County Sheriff's Department

Gary F. Caldwell
Sheriff

Chuck Dunn
Undersheriff

539 Lincoln, P.O. Box 115, Clay Center, Kansas 67432-0115

Telephone (785) 632-5601

Fax (785) 632-3278

January 10, 2001

To Whom It May Concern:

I would like to express my feelings on the Kansas Interlock Systems. Prior to July 1, 1999 when a young driver under the age of 21 years of age was charged with DUI, after their 30-day suspension they could go on the Interlock System for the remaining 11 months of their restrictions. This enabled these people to go on with their lives, such as college and going to their jobs. At the same time, we were assured they wouldn't be driving their vehicles and drinking.

Since July 1, 1999 the state has made it mandatory for drivers under the age of 21 that were charged with DUI have a full year suspension making it impossible for them to use Interlock System.

I know that this not only has caused a great hardship but it is also causing some of these people to miss out on their education and job opportunities. Also it has caused a hardship on many parents and at the same time has deprived these parents of the relief they had when they knew their kids were driving with the Interlock System.

With my 32 years in Law Enforcement and dealing with young people, I would like to strongly suggest that we go back to the way it was on July 1, 1999, with one exception. That the State makes it mandatory for Interlock System during the 11 months restriction. By having this mandatory Interlock on their vehicle, the State can be assured that these people will be driving their vehicle without the use of alcohol and can still continue on with their lives. I might even suggest we make it a State Law that all DUI convictions regardless of age have an Interlock System.

Furthermore I feel it will encourage these kids to drive while suspended and break the law with our present system.

Sincerely,

A handwritten signature in cursive script that reads "Gary F. Caldwell".

Sheriff Gary F. Caldwell

Ignition Interlocks Deter Impaired Drivers



by Peter Haapaniemi

Campaigns against drinking and driving have hit home with many people, and the overall fatality rates for intoxicated drivers have declined. But alcohol is still a factor in about 41 percent of fatal crashes, according to the National Highway Traffic Safety Administration. In particular, there is growing concern over the number of people who have recurring problems with drinking and driving. Nationwide, "roughly a third" of those arrested for drunk driving are repeat offenders, says James F. Frank, highway safety specialist with NHTSA's impaired driving division.

For decades, officials have relied on three basic methods for dealing with repeat offenders: revoke their licenses, impound their cars, or put them in jail. In recent years another approach has been finding its way into state programs: the use of ignition-interlock systems. These devices are essentially Breathalyzers linked to a car's ignition system. The driver has to blow into it in order to start the car. If there is alcohol on his or her breath, the car won't start.

Ignition interlocks have been commercially available since the mid-1980s. Today there are an estimated 30,000 in use across the United States. To date, 35 states have

passed legislation authorizing their use, but how they are used varies from state to state. In general, those states that have active programs use ignition interlocks to deal with multiple offenders who have had their licenses revoked, and make the use of the device for a certain period of time a condition for re-licensing.

Study shows they work

Despite this widespread use, however, it has been difficult for officials to say whether the devices actually curb drinking and driving—until last spring when the University of Maryland announced the results of its research into that state's ignition-interlock program. The study "indicated that being in an interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent," says Kenneth Beck, professor of Health Education at the University of Maryland.

The study is significant because of the population it studied. For the most part, past research looked at people who volunteered to be in a program. Such a population would presumably be predisposed to using the device and changing their behavior. So the Maryland study examined a random sample that was more typical of the overall repeat-offender population. "We did this to test under real-world conditions, where not everyone is going to be a faithful, compliant, good citizen," says Beck.

A University of Maryland study indicated that being in an interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent.

The study tracked 1,387 repeat offenders who had lost their licenses, gone through treatment, and been deemed ready for re-licensing on a restricted basis by a medical screening board. They were randomly assigned to either the ignition-interlock program or a control group. "We monitored the one-year traffic arrest rate, and we found that these interlock programs work significantly better than the traditional treatment program at reducing the violation rate for



Photo courtesy of LifeSafer Interlock Inc.

alcohol traffic offenses during that year when the interlock restriction was in effect," says Beck. In the end, 2.4 percent of the drivers using the device were arrested for alcohol-related offenses, as opposed to 6.7 percent of the control group.

Success depends on many factors

In addition to straightforward deterrence, ignition-interlocks are effective because they target a specific aspect of the problem, says Beck. "Previous approaches to dealing with drinking and driving have tried to prevent the drinking. The interlock addresses the point at which a drinking person will try to start and drive a car." It is a deterrent that doesn't simply rely on self-control.

The effective use of interlocks depends on the administrative aspects of a program, as well as the technological strength of the device. Screening, for example, helps make sure that individuals are in a position to benefit from an interlock, and ongoing monitoring complements the devices in making sure that people don't violate the rules of the program. In Maryland, participants had to bring their cars in for inspection every 60 days, allowing technicians to check for tampering and read the device's computer to see how often the car was started, how often breath tests were failed, and so forth. When someone was found to have "cheated" on the program, their license was immediately revoked.

In addition, ignition-interlock programs are often not as expensive or painful as some traditional programs. "We know that vehicle impoundment, incarceration and even license-plate impoundment work. But they are costly, and they are not always applied, because of judicial prerogative," says Beck. Judges are sometimes reluctant to take away a convicted person's car because the person may need it in order to keep a job, or other people in the family may be relying on that driver or the car. An interlock program provides some middle ground where action is being taken to control drunk driving, but the individual and his or her family still have access to a car.

In terms of cost, the interlock devices are usually leased for about \$2 a day, which is borne by the individual in the program, rather than the state. "Of course there are some costs associated with a program," says Frank. "But there may well be some savings that are much greater than costs, if you calculate out the reduction in the number of people who are drinking and driving."

Not a cure-all

Ignition-interlock programs are not a miracle cure, however. "It's important to stress that they are an important counter measure, but they are by no means a perfect way of preventing [drinking and driving]," says Beck. The devices can be circumvented, although technological improvements are making that increasingly difficult. Among those arrested in the Maryland study, many were simply driving borrowed cars with no interlocks on. In addition, follow-up research in Maryland suggests that the

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New devices prevent circumvention




Like technology in general, ignition-interlock devices have grown more sophisticated over the years. Older models, for example, reportedly could give false positive readings for alcohol when drivers had only been smoking cigarettes. Newer models are alcohol-specific.

The biggest problem, however, has been human ingenuity. "People always challenge the device," says Richard Freund, president of Cincinnati-based LifeSafer Interlock. As a result, NHTSA guidelines call for anti-circumvention features that counter tactics such as:


False or Filtered Breath Freund says people will try to blow through charcoal, which absorbs alcohol; use balloons to push air through the device; or even breathe through a 2-liter plastic bottle with a hole cut in the bottom in order to force a clean sample into the machine.

To beat such tricks, Freund's company's device requires people to provide a hum tone during the test; other systems require a coded sequence of breathes that is hard to duplicate mechanically.

Fake Test This is essentially having another person, who is sober, take the test and start the car, and then let the intoxicated person drive away. To help prevent this, devices today use a "rolling re-test" that requires the driver to blow into the device at certain intervals while driving. If he or she fails the test, the car's lights begin flashing and the horn starts honking (rather than having the car stop dead in traffic). "It draws attention to the car, and makes it easier for a police officer to have probable cause to pull someone over," says the University of Maryland's Kenneth Beck. The rolling re-test also prevents drivers from going to a bar sober, and leaving their car idling while they go in and drink. 

interlock's effect on behavior is not permanent, and that once the devices are removed, the rate of alcohol-related arrests begins to climb. Beck says such findings suggest that longer-term use of interlocks may be warranted.

Finally, some hard-core repeat offenders will always remain beyond the reach of interlocks, simply because they will continue to drive without a license.

Still, interlocks provide one more tool for getting intoxicated drivers off the road. "There is going to have to be additional fine tuning on how these things are best utilized, but I think the first generation of projects has suggested that they are doing the job of suppressing drinking and driving among people who have them on their vehicles," says Frank. Indeed, NHTSA has committed itself to further research on the subject. "I think the general feeling is that there is a need to pull out all stops on the war on impaired driving," Frank says. "This is one approach that we hope will have some impact. We have to keep chipping away at the problem." 

1-13

K.S.A. 1998 Supp. 8-1016

(a)

(5) The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a ~~subsidy~~ credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the Federal Food Stamp program.



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

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
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Topeka, Kansas 66612-1568
Ph. (785) 296-3461 FAX (785) 296-1095
TTY (785) 296-3585

Bill Graves
Governor

**TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE

REGARDING HOUSE BILL 2230
PENALTIES FOR DUI REPEAT OFFENDERS**

February 14, 2001

Mr. Chairman and Committee Members:

I am Terry Heidner, Director of Planning and Development. On behalf of the Department of Transportation, I am here today to testify on House Bill 2230 regarding enhanced criminal sanctions for DUI offenders and the federal requirement to enact a "repeat offender" law.

I will direct my testimony to the provisions affecting our compliance with federal law, specifically the ignition interlock penalty. KDOT came before you last year and presented this issue in a broad, you choose one-of-three-options format. We realize that perhaps we did not take the best approach and may have presented it in a confusing manner. Therefore, this year we are taking a different approach and focusing on a specific legislative action. House Bill 2230 contains a minor modification to the current ignition interlock law necessary for Kansas to comply with federal law. Kansas law now has ignition interlock. This bill simply removes the .15.

The Transportation Equity Act for the 21st Century (TEA-21) authorized 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, 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.

House Judiciary Committee
Testimony on House Bill 2230
February 14, 2001

Currently, Kansas law complies with three of the four criteria, leaving us in noncompliance with Criterion 2. House Bill 2230 contains the necessary language to allow us to satisfy Criterion No. 2 by applying ignition interlock requirements to all repeat offenders and maintains the required one-year hard driver's license suspension.

Any state that did not enact and enforce a conforming repeat intoxicated driver law by October 1, 2000 (FFY 2001) was subject to a transfer of certain federal-aid highway construction funds. Kansas did not meet the statutory requirements on October 1, 2000 (FFY 2001) and incurred a penalty transfer equal to one and one-half (1½) percent of certain federal-aid highway construction funds. The penalty redirected the funds to either the State's Section 402 Highway Safety Program or the Section 152 Hazard Elimination (HES) Program.

If the State does not meet the statutory requirements on October 1, 2001 (FFY2002), one and one-half percent (1½) will be transferred. If the state is out of compliance on October 1, 2002 (FFY 2003), three (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 the hazard elimination program.

The penalty transfer apportionment for FFY2001 was \$3.4 million. The estimated penalty apportionment transfer in FFY2002 will be \$3.2 million, and beginning in FFY 2003 the estimated penalty apportionment transfer will be \$6.6 million per year. If the Legislature does not amend the Kansas statutes, we could lose as much as \$55 million over the life of the Comprehensive Transportation Program (CTP) for use in the construction program.

In summary, passage of this legislation would bring Kansas into compliance with the federal requirements contained in section 164. Compliance with Section 164 would prevent a penalty transfer from federal-aid highway construction funds on October 1, 2001, and thus preserve those dollars for construction purposes.

Sheila J. Walker, Director
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Division of Vehicles

TESTIMONY

TO: House Judiciary Committee Chair Mike O'Neal
Members of the House Judiciary Committee

FROM: Harry Tiffany, Driver Control Bureau Chief
on behalf of
Sheila J. Walker, Director of Vehicles

DATE: February 14, 2001

RE: House Bill 2230

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to provide testimony today on House Bill 2230.

House Bill 2230 mirrors a bill that passed the House last year the last day of the session on a 97 to 26 vote. That bill (Senate Bill 429) then failed in the Senate by one vote later that night.

Like Senate Bill 429, this year's bill contains new legislation, as well as numerous amendments to driver's license related statutes involving driving and the use of alcohol. In addition, it overhauls the state's implied consent law. This bill is very complex, and legal challenges will likely result from the comprehensive changes in this bill.

There are some segments of the bill that we support and introduced both last session and this session.

Clean-up Discrepancy for Drivers Under 21

As mentioned earlier, Senate Bill 429 was introduced in the 2000 session by the Kansas Division of Vehicles to clean up a discrepancy for drinking drivers under the age of 21.

Currently, a driver under the age of 21, whose blood alcohol content is less than .08, serves a hard, one-year driver's license suspension. If that same driver's blood alcohol content measures *above* .08, the license is suspended for one-year or the length of diversion. There are courts that are allowing 30-day license suspensions, rather than a full year. The message this sends to teens is: the more you drink, the less of a driver's license suspension you may serve.

The division recommends equity, so affected drivers under the age of 21 whose blood alcohol content measures above .08 serve a standard, one-year suspension. Such equity is reflected in this bill.

Meanwhile, we have introduced a similar measure this year (Senate Bill 67) that is being worked by the Senate Judiciary Committee.

Bowie Fix

House Bill 2230 also authorizes the Division of Vehicles to suspend the driving privileges of an *unlicensed* driver to obtain a license for the same period that a *licensed* driver is suspended.

In March of 2000, the Kansas Supreme Court held that a person who had not obtained a driver's license could not be charged with driving while suspended although the person had committed an offense which would otherwise have resulted in a license suspension had he driven thereafter (*State v. Bowie*).

In other words, if an unlicensed driver commits a DUI violation, which carries with it a mandatory driver's license suspension, the unlicensed driver can currently only be charged with driving without a license, rather than driving while suspended. The message this sends to bad drivers is: just don't get a Kansas driver's license.

The Supreme Court suggested that the Legislature take action to amend current law. House Bill 2230 corrects the flaw. We have, again, introduced a similar measure this session (Senate Bill 56) which also subjects unlicensed drivers to the same suspension or revocation as drivers *with* a Kansas driver's license. For public safety reasons, we recommend reinstating this procedure.

The Division of Vehicles wholeheartedly supports these two provisions of the bill.

Fiscal Impact

According to the Department of Revenue's fiscal note, the Driver Control Bureau of the Division of Vehicles would need an additional Office Specialist (at \$32,714 a year, and an additional \$6,320 to cover one-time operating expenses in Fiscal Year 2001) to administer the additional administrative work associated with the ignition interlock component of this bill.

We appreciate your consideration.



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
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM
BEFORE THE HOUSE JUDICIARY COMMITTEE
RE: HOUSE BILL 2230
February 20, 2001

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

Chairman O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today to offer support for H.B. 2230. This bill amends and clarifies a number of provisions related to the crime of driving under the influence (DUI) and associated administrative law. The issue of drunk driving is one that Attorney General Carla Stovall has always taken very seriously. In 1998 Attorney General Stovall organized the Far-Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force 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 and the 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 Attorney General's Office, on behalf of the FATAL Task Force, has introduced three bills this legislative session, Senate Bills 131, 132 and 215, designed to make the changes in law recommended by the FATAL Task Force.

H.B. 2230 contains several changes in current law supported by the FATAL Task Force and the Attorney General's Office. New Section 2 of H.B. 2230 creates a much-needed new administrative hearing procedure for driver's license suspensions. The administrative subcommittee of the FATAL Task Force closely reviewed the administrative hearing procedures relating to DUI offenses. Bar none, the number one complaint voiced by law enforcement officers to the Attorney General's Office and the FATAL Task Force relates to these procedures. This bill clarifies the administrative procedures and specifies the type of evidence which will be admissible at the hearing. It also establishes a means for the Department of Revenue to conduct telephonic and video hearings when requested for the convenience of all parties. The changes to the administrative procedure made by this bill should serve to save the State of Kansas and local law enforcement agencies time and money, while still providing for a valid and effective review process.

The FATAL Task Force supports the imposition of a mandatory one year driver's license suspension for individuals under 21 years of age who either refuse an officer's request for a blood alcohol content test or submit to the test and produce a result of .08 or higher, as provided for in Section 7 of H.B. 2230.

The Task Force is also in favor of the provision found at Section 9 of H.B. 2230 which seals a loophole in the driving under the influence (DUI) diversion provision so that all DUI diversions carry at least a one year license suspension.

In addition, H.B. 2230 contains language in New Section 1 which solves a troublesome problem brought to light by the Kansas Supreme Court decision in the case of **State v. Bowie**, 268 Kan. 794 (2000). The **Bowie** decision held that a person who has never obtained a valid Kansas driver's license cannot be charged with the crime of "driving while suspended" under K.S.A. 8-262(a), a class A misdemeanor, no matter how many times the person is caught driving without a license. Prior to the **Bowie** decision if an individual was caught driving a motor vehicle in Kansas without having obtained a Kansas driver's license, the Kansas Department of Revenue Division of Motor Vehicles would create a driver's record for that individual and then suspend that person's privilege to drive. Then, if the person were caught a second time, the person would be charged with "driving while suspended." In **Bowie** the Supreme Court held that the division of motor vehicles could not follow this course of action. The court held that if a person had never obtained a valid Kansas driver's license, no matter how many times the person was caught driving without a license, the person could never be charged with the crime of "driving while suspended" under K.S.A. 8-262, a class A misdemeanor. Thus, under current law these offenders may only be charged with a violation of K.S.A. 8-235, "driving without a valid license," a class B misdemeanor. New Section 1, and Sections 4 and 5 of H.B. 2230 remedy this problem by specifically authorizing the division of motor vehicles to create a record for an offender who is caught driving without a license and then issue an order suspending that person's privilege to drive in the State of Kansas. Then, if the offender is caught driving without a license a second or subsequent time, the offender may be charged with the crime of "driving while suspended." A second conviction for the crime of "driving while suspended" would allow the offender to be sentenced under the stiffer class A misdemeanor penalty.

An offender with three or more such convictions would likewise qualify as a "habitual violator" under this bill.

The FATAL Task Force and Attorney General Stovall respectfully request that the House Judiciary Committee consider the adoption of several amendments to H.B. 2230 to include the following provisions:

1. Significantly increase the fine provisions for DUI violations under K.S.A. 2000 Supp. 8-1567. Currently the fine for a first DUI ranges from \$200 to \$500. The FATAL Task Force recommends that this amount be increased to a range of \$500 to \$1,000. Current law provides a fine of \$500 to \$1,000 for a second DUI. The FATAL Task Force recommends that this fine be increased to a range of \$1,000 to \$1,500. Current law provides a fine of \$1,000 to \$2,500 for a third or subsequent DUI. The FATAL Task Force recommends that

the fine for a third DUI be raised to a range of \$1,500 to \$2,500. The FATAL Task Force also recommends that the fine for a fourth or subsequent DUI be set at \$2,500.

2. Substantially increase the fees for driver's license reinstatement under K.S.A. 2000 Supp. 8-241(b) for individuals who have had their driving privileges suspended or revoked. The current law allows for a license to be reinstated upon payment of a \$50 fee. The FATAL Task Force would like this reinstatement fee to be increased to \$200 for a first reinstatement, \$400 for a second reinstatement, \$600 for a third reinstatement and \$800 for a fourth or subsequent reinstatement. This reinstatement fee structure would put Kansas in line with the fees charged by many other states that were surveyed.
3. Creation of a class B misdemeanor criminal penalty for refusing to submit to a breath, blood or urine test which has been lawfully requested by a law enforcement officer.
4. Creation of a provision granting law enforcement officers probable cause to request a blood alcohol test to be performed in any case where a motor vehicle was operated in such a manner to cause injury or death.

The FATAL Task Force feels strongly that these proposed additions to H.B. 2230 would have the dual effects of increasing public safety for the people of Kansas and discouraging offenders from continuing to drive drunk.

On behalf of the FATAL Task Force and Attorney General Stovall I would like to thank you again for the opportunity to appear before the committee and I urge your favorable consideration of House Bill 2230 with the requested amendments.

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

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OVERLAND PARK KANSAS POLICE DEPARTMENT

House Bill No. 2230

The City of Overland Park's position.

Limited comments to HB 2230 proposing amendments to K.S.A 8-1002 (i) and K.S.A. (l) (1-6).

Police Officers have consistently reported that Administrative Hearings as they are conducted at this time go beyond the statutory scope of K.S.A 8-1002. Currently, Administrative Hearings often resemble full-blown criminal proceedings.

These hearings are problematic in several areas. Defense Attorneys often use these proceedings as a source for discovery. They are attempting to find details about the case which help them decide the most beneficial way to handle the matter in the criminal proceeding. The focus of these hearings often stray from the intended purpose, which is whether the driver license suspension will stand or fall, and instead have become "free depositions" requiring substantial amounts of the officers' time. In addition, the officer does not have the benefit of legal counsel to object to inappropriate inquiries by the defense attorney.

Officers report they have been often interrogated by defense attorneys at length and sometimes in the presence of a court reporter. During this questioning the officer does not have the benefit of being represented by counsel. These officers have little or no control of the proceedings which routinely branch into areas that require the officer to present evidence and testimony that goes beyond the limited statutory requirements of KSA 8-1002 listed below:

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; (D) the testing equipment used was reliable; (E) the person who operated the testing equipment was qualified; (F) the testing procedures used were reliable; (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood or breath; and (H) the person was operating a vehicle.

OVERLAND PARK KANSAS POLICE DEPARTMENT

The position of the Overland Park Police Department is that the provisions in HB 2230 proposing the amendments to K.S.A 8-1002 will create further departure from the spirit of the Administrative Hearing. That spirit being the determination of whether the officer met statutory requirements in his or her contact with the licensee and if the licensee failed or refused the requested test. Administrative hearings are meant to be expeditious, they are not meant to provide an opportunity for protracted, intensive examination of the evidence.

The provision proposing the addition of (l) (1-6) to K.S.A. 8-1002 could be interpreted to place an unreasonable burden on the Officer to produce audiotapes, intoxilizer videos, booking room videos, in-car videos and security videos. The natural result of this provision would be to encourage the use of the Administrative Hearing as a tool for discovery and further encourage the defense bar to use these hearings as a forum for intensive examination of the officer and the evidence. While this activity is appropriate for a criminal proceeding, it is not appropriate for an administrative hearing.

The provision proposing the removal of the sentence, "Such affidavit shall be admitted to prove such reliability without further foundation requirement" from K.S.A. 8-1002 (I) could also be interpreted to place an unreasonable burden on the officer. The officer may be required to lay foundational requirements to admit the affidavit from the Kansas Department of Health and Environment into evidence.

For the reasons I have listed , the Overland Park Police Department would ask that this Body not adopt HB 2230.

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cmtippie@opkansas.org

KADSPA

Kansas Alcohol and Drug Service Providers Association, Inc.

LEGISLATIVE TESTIMONY

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

FROM: Dan Hermes, Lobbyist, Kansas Alcohol and Drug Abuse Service Providers Association and Kansas Coordinators of Alcohol Safety Action Projects

DATE: February 14, 2001

SUBJECT: HB 2135 -- Increase in Evaluation Fees for DUI Assessments

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent the Kansas Alcohol and Drug Abuse Service Providers Association and the Kansas Coordinators of Alcohol Safety Action Projects.

Both have these groups have approved their legislative platforms for 2001 and the platforms both include an increase in the DUI evaluation fees set in KSA 8-1008 from \$125 to \$150.

The history of the evaluation fee is:

1982 to 1985	\$ 85
1985 to 1994	\$110
1994 to present	\$125

The current \$125 fee charged to DUI offenders is intended to cover costs for testing and evaluation, monitoring of client progress while on probation or diversion, and reports to the courts. Providers incur additional costs when testimony is required.

Since 1994, the inflation rate as measured by the CPI-U has increased by just over 17 percent. With the rising wage costs, the current fee is below the cost to provide the service and both organizations would like to increase the fee beginning in July of 2001 to more nearly cover the cost of conducting the evaluations.

I respectfully request that the committee report HB 2135 favorably for passage. I thank the committee for its time and attention and would stand for any questions.

700 S.W. Harrison, Suite 1420, Topeka, Kansas 66603 * Telephone 785-234-4160 * Fax 785-234-3189

Milt Fowler, President * Natalie Meugniot, Managing Officer * Dan Hermes, Governmental Relations Officer

House Judiciary
2-14-01
Attachment 7

Mental Health Center of East Central Kansas



Chase
Coffey
Greenwood
Lyon
Morris
Osage
Wabaunsee

1000 Lincoln St. ♦ Emporia, KS 66801 ♦ 316-343-2211 or 800-279-3645
Fax: 316-342-1021 ♦ After Hours Emergency: 316-343-2626

February 8, 2001

Chairman Mike O'Neal and Members of the House Judiciary Committee
State Capitol Building
Topeka, Kansas 66601

Re: Testimony in favor of House Bill No. 2135

Dear Representative O'Neal and Members of the Committee:

The current fee for an alcohol and drug evaluation of \$125.00 is no longer adequate and should be increased to \$150.00. This fee, set by statute has not been raised since 1994.

Keep in mind that while the cost of the evaluation may be increased to \$150.00, many courts keep a 10% administrative fee.

A \$150.00 evaluation is a bargain for both the client and the courts when you consider the following:

1. Evaluations take an average of three hours to prepare
2. Court testimony regarding the evaluation may be required
3. The judge may ask the provider to provide the evaluation free of charge
4. The provider is only paid if the court is paid.

During Fiscal year 2000, this agency billed \$22,125 for DUI Evaluations. However, the Center only collected \$10,000.

Please contact me if you have any questions or concern. I appreciate the opportunity to speak in support of this legislation.

Sincerely,

Steve Hageman, Director
Alcohol, Drug & Emergency Services



Ca

House Judiciary
2-14-01
Attachment 8

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