

Approved

Date: *March 19, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:41 a.m. on March 15, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (excused)
Senator Goodwin (excused)
Senator Adkins (excused)

Committee staff present:

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

Conferees appearing before the committee:

Representative Mike O'Neal
Dan Hermes, Alcohol and Drug Service Provider Association
Kevin Graham, Assistant Attorney General
Terry Heidner, Kansas Department of Transportation (KDOT)
Les Sperling, Central Kansas Foundation
Sheila Walker, Department of Revenue
R.E. "Tuck" Duncan, Kansas Wine & Spirits Wholesalers Association

Others attending: see attached list

Minutes of the March 14th meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

HB 2230—re: driving; powers and duties of the division of vehicles; operation of vehicles; concerning suspension or restriction of drivers' licenses

Conferee Representative O'Neal testified in support of **HB 2230**. He presented an historical overview of his efforts to make the use of the ignition interlock device (IID) a statutory law enforcement tool in DUI cases. (see **2000-SB 429**) He discussed federal transportation funding requirements whereby states must institute certain statutory drunk-driving initiatives, i.e., impoundment, immobilization, and/or interlock in order to avoid transfer of highway construction funds and stated that in circa 2000 the Kansas House soundly defeated the former two in favor of IID. He also discussed research data relating to IID costs versus alcohol costs. (attachment 1) He cited statistics from a University of Maryland study which indicated that being in an interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent. (Traffic Safety, May/June 1998, pp. 16-17)

Conferee Hermes testified in support of **HB 2230**. He briefly discussed the need for an increase in DUI evaluation fees. (attachment 2)

Conferee Graham testified in support of **HB 2230**. He presented a brief historical review of the attorney general's task force on traffic and alcohol laws (FATAL) and mentioned three of its recommended bills introduced this year. He discussed several of **HB 2230's** provisions: New Section 2, which creates a new administrative hearing procedure for DUI driver's license suspensions; remedies to problems discovered in the State v. Bowie case and other loopholes in the law; and several amendments which passed the House. He recommended that the Committee work **SB 215** along with **HB 2230** due to the similarities between both although he stated each has its own important elements. (a detailed comparison is attached) (attachment 3)

Conferee Heidner testified in support of **HB 2230**, a bill which he stated enhances criminal sanctions for DUI offenders and meets the federal requirement to enact a "repeat offender" law. He discussed the Transportation Equity Act for the 21st Century (TEA-21) and stated that Kansas law currently complies with three of the four criteria, the application of interlock ignition requirements to all repeat offenders being the last requirement. He further discussed the penalty transfer of federal-aid highway construction funds for FFY 2001 due to failure on the part of the state to meet the statutory requirements of TEA-21 on October 1, 2000 and revealed significant future losses for non-compliance. (attachment 4) Discussion followed.

Conferee Sperling testified in support of **HB 2230**. He briefly discussed the services CKF offers and discussed several factors influencing the request for a DUI evaluation fee increase. (attachment 5)

Conferee Walker testified in support of "some" segments of **HB 2230** which she stated were contained in **2000-SB 429**. She detailed what she called the "Bowie" solution and clean-up discrepancy for drivers under 21 and briefly discussed the bill's fiscal impact. (attachment 6)

Written testimony was submitted by Secretary of Transportation Dean Carlson proposing a balloon amendment with substitute language in **HB 2230**. (attachment 7)

Conferee Duncan testified in opposition to several items in **HB 2230**. He addressed the issue of making refusal to take a breath alcohol test (BAC) a misdemeanor, stated that mandatory interlock should not apply until the third and subsequent offense and discussed the effectiveness of impoundment and/or immobilization which he stated is missing from this bill. (attachment 8)

Written testimony in support of **SB 88** was submitted by Paul Davis and Terry Humphrey (attachment 9) and distributed to Committee as was written testimony in support of **HB 2207** from Jim Kaup, City of Garden City. (attachment 10)

The meeting adjourned at 10: 32 a.m. The next meeting is March 19, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/15/01

NAME	REPRESENTING
Joe Herald	KSC
Kathy Pires	Armedical Branch
Mark Gleeson	OSA
James VAND	K Dist. Mag. Judges Assn
Scott Lotts	KAPS
Keith Hooper	K Dist Mag Judges Assn
Rep. Mike O'Neal	self - House Judiciary
Terry Heidner	KDOT
Hancy Bogina	KDOT
Walter Thomburg	KDOT
Mike Rees	KDOT
Kevin GRATHAM	A.G.
Nancy Lindberg	AG
Tom Pales	JJA
Michael Leary	JJA
Albert Murray	JJA
Susan Richard	KEDAA
Shirley Walker	KDOR - DMV
Harry Flynn	" "

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

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CHAIRMAN:
JUDICIARY COMMITTEE
REDISTRICTING COMMITTEE

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

TESTIMONY ON H.B. 2230
March 12, 2001
Senate 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 can 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

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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 20-15 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.

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.

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KADSPA

Kansas Alcohol and Drug Service Providers Association, Inc.

LEGISLATIVE TESTIMONY

TO: Chairman John Vratil and Members of the Senate Judiciary Committee

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

DATE: March 15, 2001

SUBJECT: Selected Provisions of HB 2230

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 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

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State of Kansas

Office of the Attorney General

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TESTIMONY OF
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: HOUSE BILL 2230
March 15, 2001

Senator Vratil 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. Our office respectfully suggests the Senate Judiciary Committee consider working S.B. 215 at the same time as H.B. 2230 in light of the many similarities between the bills, as well as the important elements in each bill which are not included in the other.

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 DUI 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 10 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 requested that the House Judiciary Committee adopt certain amendments to H.B. 2230 and the Committee did vote to include two of the requested amendments. Those amendments are now part of H.B. 2230 as it appears before you. The two amendments requested by the FATAL Task Force and the Attorney General's Office which have been added to H.B. 2230 include:

1. 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. (New Section 15.)
2. 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. (Section 7, subsection (f).)

Additionally, H.B. 2230 was amended by the House Judiciary Committee to provide for an increase in the presentence evaluation fee for DUI charges from \$125 to \$150. (This provision is from 2001 H.B. 2135 and may be found at Section 9 of H.B. 2230.)

The FATAL Task Force feels that H.B. 2230 is a solid and valuable piece of legislation that contains much-needed provisions for dealing with the problem of repeat DUI offenders in Kansas. The passage of H.B. 2230, especially if done in concert with the passage of S.B. 215, 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.

NOTE: Attached is a copy of a brief comparison of the basic elements of H.B. 2230 and S.B. 215 identifying the similarities and differences between the two bills. Also attached are a summary of the elements of S.B. 215 as compared to current law and a list of the members of Attorney General Carla Stovall's FATAL Task Force.



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

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Criminal:

Brad Ambrosier, Attorney, Elkhart
Don Kaufman, Moundridge
Terry Malone, Dodge City City Attorney, Dodge City
Craig Spomer, Wabaunsee County Attorney, Alma
Max Sutherland, MADD, Topeka

Administrative:

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

Prevention:

Rosalie Thornburgh, Bureau of Traffic Safety, Topeka
Captain Gayle Beth, Kansas City Police Department, Kansas City
R.E. "Tuck" Duncan, Topeka
Senator David Haley, Kansas City
David Nance, City Council, Pittsburg
Rick Wilborn, Alliance Insurance, McPherson

Staff:

Julienne Maska, Victims' Rights Coordinator, Topeka
Kevin Graham, Assistant Attorney General, Topeka
Nancy Lindberg, Assistant to the Attorney General, Topeka

OVERVIEW COMPARISON OF MAJOR FEATURES OF H.B. 2230 VS. S.B. 215
(Summary)

IN House Bill 2230 (original bill):

1. Fixes the State v. Bowie problem so that if a person is caught driving without a license (and has never had a Kansas license) the person's ability to be issued a license can be suspended or revoked and the person can thereafter be charged with driving while suspended.
2. New administrative hearing procedure. (Same as FATAL bill except does not have the \$50 appearance fee for LEO's.)
3. Makes BAC test refusal by person under 21 years of age a mandatory one year driver's license suspension.
4. Ignition interlock - made mandatory for individuals with a second or subsequent occurrence for DUI - commencing July 1, 2001. Interlock will be required after license suspension completed and will be in place on vehicle for one year while the license is restricted.
5. Secretary of Revenue adopts rules on ignition interlock service, repair, calibration, proper use, certification, etc.
6. Does away with the exception that if a person receives a diversion for a DUI the license suspension will only be for the length of the diversion agreement. (This seals a loophole that Revenue would like fixed.)
7. Amends K.S.A. 8-1567a to say that if a person under 21 has a BAC of .02 but less than .08 the person's driver's license will be suspended for "*at least 60 days but not more than*" one year. Current law mandates a one year suspension. [This was language Sen. Oleen wished to have included last year.]
8. Allows the court to order a 30 day driver's license suspension for a Minor in Possession of alcohol conviction.

NOT IN House Bill 2230 (original bill) - (ARE IN Senate Bill 215)

1. Increased criminal penalties for DUI.
2. Prison for 4th and subsequent DUI offenders.
3. Increased fines for DUI.
4. Increased lengths of license suspensions for DUI.
5. Permanent driving privilege revocation for 5th or subsequent DUI.
6. Mandatory drug treatment for repeat DUI offenders.
7. DUI count to take place over lifetime instead of last five years.
8. DUI with a minor in the vehicle results in an increased incarceration penalty.
9. Only one DUI diversion allowed per lifetime.
10. Increased driver's license reinstatement fees for DUI offenders.

11. The “*law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle, while having alcohol or other drugs in such person’s system*” probable cause standard for offenders under 21.
12. New B misdemeanor created for refusing a breath, blood or urine BAC test.
13. Probable cause to order a BAC test if person operated a vehicle in a manner as to have caused injury or death.
14. Increased length of license suspensions for BAC test refusal and permanent revocation for a 5th or subsequent refusal.
15. \$50 appearance fee for LEO’s subpoenaed for administrative license appeals.
16. Language requested by the KDHE regarding “testing protocols,” “certification” etc. for BAC test equipment.

ADDITIONS TO House Bill 2230 - As Amended by House Committee:

1. New B misdemeanor created for refusing a breath, blood or urine BAC test.
2. Probable cause to order a BAC test if person operated a vehicle in a manner as to have caused injury or death.
3. Increases the presentence evaluation fee, for DUI charges, from \$125 to \$150. This provision is from 2001 HB 2135.



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

Senate Bill 215

I. A. DUI Criminal Penalties and Administrative Sanctions

Current

Proposed

1st CONVICTION w/i 5 yrs: B Misdemeanor

1st CONVICTION *in lifetime* B Misdemeanor

Criminal:

48 hrs - 6 months jail or
100 hrs community service
\$200 - \$500 fine
Complete ADSAP educ. or treatment

48 hrs- 6 months jail or
100 hrs community service
\$500 - \$1,000 fine
Complete ADSAP educ. or treatment

Administrative:

License suspended 30 days/and restricted
330 days for test failure
License suspended 1 yr for refusal
License reinstatement fee \$50

License suspended 30 days/and restricted
330 days for test failure
License suspended for 1 yr for refusal
License reinstatement fee \$200

2nd CONVICTION w/i 5 yrs: A Misdemeanor

2nd CONVICTION *in lifetime* A Misdemeanor

Criminal:

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

\$500 - \$1,000 fine
Ignition interlock required if BAC
is .15 or above after admin.
suspension expires

10 days - 1 yr (90 days minimum sentence)
***Work release/house arrest permitted after
10 days.***
\$1,000 - \$1,500 fine
Ignition interlock required if BAC is .15
or above after admin. suspension expires

No treatment required unless
released on probation/parole

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

Administrative:

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

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

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

Criminal:

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

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

Administrative:

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

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

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

Criminal:

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

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

Administrative:

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

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

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

Criminal:

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

Administrative:

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

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

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

C. DUI Test Refusal

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

D. DUI Diversions

- DUI diversions shall be limited to one per lifetime.

Administrative Hearing Issues

- 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.

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2. New administrative hearing procedure. (Same as FATAL bill except does not have the \$50 appearance fee for LEO's.)
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4. Ignition interlock - made mandatory for individuals with a second or subsequent occurrence for DUI - commencing July 1, 2001. Interlock will be required after license suspension completed and will be in place on vehicle for one year while the license is restricted.
5. Secretary of Revenue adopts rules on ignition interlock service, repair, calibration, proper use, certification, etc.
6. Does away with the exception that if a person receives a diversion for a DUI the license suspension will only be for the length of the diversion agreement. (This seals a loophole that Revenue would like fixed.)
7. Amends K.S.A. 8-1567a to say that if a person under 21 has a BAC of .02 but less than .08 the person's driver's license will be suspended for "*at least 60 days but not more than*" one year. Current law mandates a one year suspension. [This was language Sen. Oleen wished to have included last year.]
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11. The "*law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle, while having alcohol or other drugs in such person's system*" probable cause standard for offenders under 21.
12. New B misdemeanor created for refusing a breath, blood or urine BAC test.
13. Probable cause to order a BAC test if person operated a vehicle in a manner as to have caused injury or death.
14. Increased length of license suspensions for BAC test refusal and permanent revocation for a 5th or subsequent refusal.
15. \$50 appearance fee for LEO's subpoenaed for administrative license appeals.
16. Language requested by the KDHE regarding "testing protocols," "certification" etc. for BAC test equipment.

ADDITIONS TO House Bill 2230 - As Amended by House Committee:

1. New B misdemeanor created for refusing a breath, blood or urine BAC test.
2. Probable cause to order a BAC test if person operated a vehicle in a manner as to have caused injury or death.
3. Increases the presentence evaluation fee, for DUI charges, from \$125 to \$150. This provision is from 2001 HB 2135.



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att 4

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

E. Dean Carlson
Secretary of Transportation

Docking State Office Building
915 SW Harrison Street, Rm.730
Topeka, Kansas 66612-1568
Ph. (785) 296-3461 FAX (785) 296-1095
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Bill Graves
Governor

**TESTIMONY BEFORE
SENATE JUDICIARY COMMITTEE**

**REGARDING HOUSE BILL 2230
PENALTIES FOR DUI REPEAT OFFENDERS**

March 15, 2001

Mr. Chairman and Committee Members:

I am Terry Heidner, Director of Planning and Development, Kansas Department of Transportation (KDOT). On behalf of the department, 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 requirements. Kansas' law now has ignition interlock. This bill simply removes the .15 alcohol concentration threshold which drops it back to .08.

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.

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Currently, Kansas law complies with three of the four criteria, leaving us in noncompliance with Criterion No. 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 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 (FFY 2002), one and one-half percent will be transferred. If the state is out of compliance on October 1, 2002 (FFY 2003), three 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 FFY 2001 was \$3.4 million. The estimated penalty apportionment transfer in FFY 2002 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 of the TEA-21. 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.

1 reports into a statewide report and submit such statewide report
2 to the legislature on or before March 1 of each year.

3 (f) The secretary of social and rehabilitation services shall re-
4 mit all moneys received by the secretary under this section to the
5 state treasurer at least monthly. Upon receipt of the remittance,
6 the state treasurer shall deposit the entire amount in the state
7 treasury and credit it to the certification of community-based al-
8cohol and drug safety action programs fee fund, which is hereby
9 created. All expenditures from such fund shall be made in accord-
10ance with appropriation acts upon warrants issued pursuant to
11 vouchers approved by the secretary of social and rehabilitation
12 services or a person designated by the secretary.

13 Sec. 9: 10. K.S.A. 2000 Supp. 8-1014 is hereby amended to read as
14 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
15 2,142, and amendments thereto, if a person refuses a test, the division,
16 pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the
17 person's driving privileges for one year.

18 (b) Except as provided by subsections (c) and (e) and K.S.A. 8-2,142,
19 and amendments thereto, if a person fails a test or has an alcohol or drug-
20 related conviction in this state, the division shall:

21 (1) On the person's first occurrence, suspend the person's driving
22 privileges for 30 days, then restrict the person's driving privileges as pro-
23 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
24 days; and

25 (2) on the person's second or a subsequent occurrence, suspend the
26 person's driving privileges for one year *and, commencing July 1, 2001,*
27 *then at the end of the suspension,* ~~restrict the person's driving privileges~~ *[for an alcohol-related conviction*
28 *for one year to driving only a motor vehicle equipped with an ignition*
29 *interlock device.*

30 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
31 amendments thereto, if a person who is less than 21 years of age fails a
32 test or has an alcohol or drug-related conviction in this state, the division
33 shall:

34 ~~(1) suspend the person's driving privileges for one year; or~~
35 ~~(2) if such person has entered a diversion agreement under K.S.A.~~
36 ~~12-4412 et seq., and amendments thereto, or K.S.A. 22-2906 et seq., and~~
37 ~~amendments thereto, suspend the person's driving privileges for the term~~
38 ~~of such diversion agreement.~~

39 (d) Whenever the division is notified by an alcohol and drug safety
40 action program that a person has failed to complete any alcohol and drug
41 safety action education or treatment program ordered by a court for a
42 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
43 division shall suspend the person's driving privileges until the division



Salina Office

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Telephone (785) 825-6224 • Fax: (785) 825-7595 • E-mail: ckf@c-k-f.org
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Abilene Office

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Telephone (785) 263-7388 • Fax: (785) 263-7811
<http://www.c-k-f.org>

Written Testimony of Les Sperling
On Selected Provisions of HB 2230
Kansas Senate Judiciary Committee
March 15, 2001

HB 2230

Dear Chairman Vratil and Committee Members:

Thank you for the opportunity to testify today related to House Bill 2230. The Central Kansas Foundation (CKF) is located in Salina, Kansas and provides a full continuum of substance abuse services to residents of central and north central Kansas. Fifteen different municipal and district courts certify the Foundation as an Alcohol and Drug Safety Action Program (ADSAP).

Revenue generated by DUI evaluations is a significant source of revenue for the Foundation and for other substance abuse programs certified as an ADSAP. There are several factors influencing the request for a DUI fee increase.

- 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. The total direct and indirect cost of a two and one-half hour DUI evaluation at CKF in October of 2000 was \$107. This was for the evaluation only.
- Municipal and District Courts are allowed to retain 10% of the DUI evaluation fee to cover administrative overhead. That reduces net to provider to \$112.
- Payments to providers in most jurisdictions are not processed until the offender has paid the fee to the court. In FY 2000, CKF billed for 571 DUI evaluations and was reimbursed for 492 resulting in a bad debt write off of 14% or \$8,848.
- Court jurisdictions are allowed to request free evaluations for indigent clients. While the number of indigent requests is small, providers absorb 100% of costs associated with these evaluations.
- Salary expenses have increased 3% per year since the last increase in DUI evaluation fees. Other operating expenses, particularly utilities, have also increased significantly.



FUNDED IN PART BY MEMBERSHIPS, CONTRIBUTIONS, UNITED WAY, SRS, SATR,
SALINA AND SALINE COUNTY LOCAL LIQUOR TAX FUNDS



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An increase of \$25 in the DUI fee will allow providers to recoup the increase in expenses mentioned above. Thank you for your consideration of House bill 2230.

Respectfully submitted,

Les Sperling

Executive Director

Sheila J. Walker, Director
Division of Vehicles
915 SW Harrison St.
Topeka, KS 66626-0001



(785) 296-3601
FAX (785) 291-3755
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ink.org/public/kdor

Division of Vehicles

TESTIMONY

TO: Senate Judiciary Committee Chair John Vratil
Members of the Senate Judiciary Committee

FROM: Sheila J. Walker, Director of Vehicles

DATE: March 15, 2001

RE: House Bill 2230

Sheila J. Walker

Chairman Vratil and members of the Senate 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 may 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.

Bowie Solution

New Section 1 of House Bill 2230 authorizes the Division of Vehicles to suspend the privilege of an *unlicensed* driver to obtain a license for the same period that a *licensed* driver's driving privileges are suspended. This is the same provision found in our bill, Senate Bill 56, which has unanimously passed the Senate and will be heard by the House Transportation Committee this afternoon.

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

*Signed
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5
6 HOUSE BILL No. 2230

7
8 By Representative O'Neal

9
10 1-31

11
12 AN ACT relating to driving; powers and duties of the division of vehicles;
13 operation of vehicles; concerning suspension or restriction of drivers'
14 licenses; amending K.S.A. 8-258, 8-285 and 41-727 and K.S.A. 2000
15 Supp. 8-255, 8-262, 8-1001, 8-1002, **8-1008**, 8-1014, 8-1015, 8-1016
16 and 8-1567a and repealing the existing sections.
17

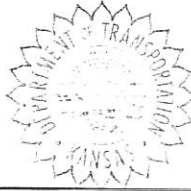
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. (a) Whenever a nonresident or a person who is un-
20 licensed is convicted of any offense or is subject to a juvenile adjudication
21 or an order of the division which would require the revocation or sus-
22 pension of ~~a driver's license~~, if the person had been issued a driver's
23 license by the division, such nonresident's privilege to operate a motor
24 vehicle in this state or such unlicensed person's privilege of obtaining a
25 driver's license issued by the division shall be revoked or suspended. Such
26 revocation or suspension shall be for a period of time equal to the period
27 of time that the driver's license of a licensed driver would be revoked or
28 suspended. If the driving privileges of a licensed driver would be re-
29 stricted by a court or the division, the driving privileges of a nonresident
30 shall be restricted in the same manner. If the driving privileges of a li-
31 censed driver would be restricted by a court or the division, an unlicensed
32 driver shall be eligible to apply for a driver's license during the period of
33 restriction, but any license issued shall be subject to the same restrictions
34 which would apply to a licensed driver.

[such person's driving privileges]

35 (b) The division is hereby authorized to create a record with an iden-
36 tifying number and other identifying information, including address and
37 date of birth, if known, for any nonresident or unlicensed driver subject
38 to subsection (a). Such record shall include information showing any rev-
39 ocation, suspension or restriction entered under subsection (a) and the
40 reason for such action in the same manner that records are maintained
41 for licensed drivers, pursuant to K.S.A. 8-249, and amendments thereto.
42 If any such person becomes a licensed driver, the information contained
43 in such record shall be included in the person's driving record maintained

STATE OF KANSAS



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KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION

E. Dean Carlson
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Bill Graves
Governor

March 14, 2001

The Honorable John Vratil, Chair
Senate Judiciary Committee
State Capitol Building, Room 120-S
Topeka, Kansas 66612

Dear Mr. Chairman:

I am writing in regard to House Bill 2230. While in subcommittee hearings, Senator Pugh discovered a wording problem in Senate Bill 206, a companion ignition interlock bill. We have since discovered a similar problem in HB2230. As currently written, the bill would require people convicted of a drug offense to utilize ignition interlock when it can only detect alcohol. Therefore, we have prepared a balloon with substitute language that we plan to offer for the committee's consideration at Senate Judiciary Committee meeting, Thursday, March 15. The proposed substitute language is attached. This language would make the ignition interlock requirement apply only to persons having an alcohol conviction.

If you have questions or concerns, please contact me at (785) 296-3461 or Nancy L. Bogina, Special Assistant to the Secretary/Director, Division of Public Affairs, at (785) 296-3276.

Sincerely,

Handwritten signature of E. Dean Carlson in black ink.

E. Dean Carlson
Secretary of Transportation

Attachment

cc: Gordon Self, Revisor's Office

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3-15-01
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1 reports into a statewide report and submit such statewide report
 2 to the legislature on or before March 1 of each year.

3 (f) The secretary of social and rehabilitation services shall re-
 4 mit all moneys received by the secretary under this section to the
 5 state treasurer at least monthly. Upon receipt of the remittance,
 6 the state treasurer shall deposit the entire amount in the state
 7 treasury and credit it to the certification of community-based al-
 8cohol and drug safety action programs fee fund, which is hereby
 9 created. All expenditures from such fund shall be made in accord-
 10ance with appropriation acts upon warrants issued pursuant to
 11 vouchers approved by the secretary of social and rehabilitation
 12 services or a person designated by the secretary.

13 Sec. 9-10. K.S.A. 2000 Supp. 8-1014 is hereby amended to read as
 14 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
 15 2,142, and amendments thereto, if a person refuses a test, the division,
 16 pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the
 17 person's driving privileges for one year.

18 (b) Except as provided by subsections (c) and (e) and K.S.A. 8-2,142,
 19 and amendments thereto, if a person fails a test or has an alcohol or drug-
 20 related conviction in this state, the division shall:

21 (1) On the person's first occurrence, suspend the person's driving
 22 privileges for 30 days, then restrict the person's driving privileges as pro-
 23 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
 24 days; and

25 (2) on the person's second or a subsequent occurrence, suspend the
 26 person's driving privileges for one year *and, commencing July 1, 2001,*
 27 *then at the end of the suspension,* ~~restrict the person's driving privileges~~ *[for an alcohol-related conviction*
 28 *for one year to driving only a motor vehicle equipped with an ignition*
 29 *interlock device.*

30 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
 31 amendments thereto, if a person who is less than 21 years of age fails a
 32 test or has an alcohol or drug-related conviction in this state, the division
 33 shall:

34 ~~(1) suspend the person's driving privileges for one year; or~~
 35 ~~(2) if such person has entered a diversion agreement under K.S.A.~~
 36 ~~12-4412 et seq., and amendments thereto, or K.S.A. 22-2906 et seq., and~~
 37 ~~amendments thereto, suspend the person's driving privileges for the term~~
 38 ~~of such diversion agreement.~~

39 (d) Whenever the division is notified by an alcohol and drug safety
 40 action program that a person has failed to complete any alcohol and drug
 41 safety action education or treatment program ordered by a court for a
 42 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
 43 division shall suspend the person's driving privileges until the division

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

March 15, 2001

To: Senate Judiciary Committee

From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association

RE: HB 2230

On behalf of the Kansas Wine and Spirits Wholesalers Association I thank the committee for the opportunity to appear and comment on HB 2230. Over the years the KWSWA has supported efforts to reduce impaired driving and to combat the hard core drunk driver. Legislation enacted in this state has had a positive effect in reducing impaired driving yet it is the repeat offender that still requires our attention. HB 2230 does not meet that goal. There are several items in the bill that cause us some concern.

First, we suggest that it is inappropriate to make the refusal to submit to the BAC test a misdemeanor. There are occasions when even though a person has agreed to the BAC test they are unable to complete said test and as such the inability to complete the test is denoted as a refusal. (p. 13, line 43, p. 14 line 1 and new section 15).

Second, we suggest that the mandatory interlock should not apply until the third and subsequent offense. (p. 25 lines 26-29; p. 27 lines 13-18). These administrative penalties should be escalated with suspension and restrictions first time, longer suspension second time and combination of suspension and interlock third and subsequent occurrences -- just as we escalate the monetary and other sanctions.

Third, having served on the Attorney General's Task Force the one item that might be most effective is absent from this bill: impoundment and/or immobilization of vehicles. What we need to curtail is the suspended driver from driving. With immobilization and/or impoundment a person caught driving while suspended is denied the use of their vehicle for a designated time. That is a powerful message and it has had been very successful where implemented.

Therefore, we ask that you not created the new crime of refusal to take the BAC, implement interlocks on third and subsequent occurrences and include impoundment/immobilization. Thank you for your attention to these matters.

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MEMORANDUM

3/15/01

TO: Members of the Senate Judiciary Committee

FROM: Paul Davis and Terry Humphrey

RE: Senate Bill 88

As you know, the Kansas Medical Society proposed an alternative bill to Senate Bill 88 at the hearing yesterday. The Kansas Bar Association and Kansas Trial Lawyers Association have reviewed this bill and we want to jointly address a number of issues we have with the proposal. We want to stress to you that we are prepared to support the Medical Society's proposal should you choose to adopt the amendments that we offer in the attached balloon. However, we cannot support the proposal in its current form. The issues that we have with the KMS proposal are as follows:

1) Authorization

-The KMS bill references a written authorization in Section 1(c), however it does not provide a definition for an "authorization". In our balloon to Senate Bill 88, we provide a definition for an authorization. We did this to address concerns expressed by health care providers regarding confidentiality. The Kansas Pharmacists Association, in particular, believes that this definition is very important. This provision ensures that patient confidentiality is maintained and gives important protections to providers. We don't believe that insertion of this definition should not be controversial.

2) Definition of Health Care Records

-The definition of health care records in the KMS bill is extremely narrow. The patient should be able to obtain a complete copy of his or her medical records when requested and not simply whatever the provider deems to be an appropriate reflection of the patient's records. This definition would give the provider significant flexibility to not produce the patient's entire medical records when they are requested. Furthermore, the KMS bill inappropriately inserts the issue of peer review and risk management privileges into the definition of health care records. We have addressed the concerns of the medical community on this topic in our balloon to Senate Bill 88, but we do not believe the definition of health care records is the proper place to address this issue. Therefore, we have moved their language to Section 2(b). Our definition more closely resembles the HIPAA definition of health care records. Both definitions include billing records. Again, we don't believe this should be controversial.

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3) Patients' ability to access records at a reasonable cost

-The KMS draft does not resolve the problem of patients being able to access their records at a reasonable cost. This is why in Section 4 of their bill we replace their language with Section 4 from our balloon to Senate Bill 88. Providers will continue to charge exorbitant costs for the reproduction of medical records unless some boundaries are established. We believe the work comp fee schedule is very reasonable because it allows for adjustments in cost.

4) Health Care Provider Liability

-KMS has proposed that health care providers not be liable if they provide medical records in good faith. We are willing to accept this provision, however, we suggest that language referring an authorization be added to this section. We don't believe this should be controversial.

5) Enforcement/Remedy

-This bill must have an effective enforcement mechanism in order for it to be workable. We have inserted language from our balloon to Section 6 so that the enforcement mechanism can function properly. As originally drafted, Senate Bill 88 required the health care provider to pay the patient's attorney fees if a court finds that the health care provider failed to comply with the act and produce the requested medical records. However, we have done away with the attorney fee provision in the balloon in an effort to accommodate concerns expressed by the medical community. Therefore, a patient who has to bring an action to force a health care provider to produce requested medical records will be responsible for paying their own attorney fees (I should mention that under PIP insurance statutes an insurance company can obtain attorney fees if a health care provider fails to provide medical records and an action is necessary to obtain the records). We believe that a patient should at least be able to recover the costs of the action and be able to obtain the records without cost if a health care provider is found to have violated the act.

We believe that these amendments coupled with the KMS bill will adequately allow patients to access medical records in a timely manner and at a reasonable cost, while protecting patient confidentiality and not placing an unreasonable burden on health care providers. We encourage you to support all the amendments in the attached balloon. Thank you!

Substitute for SB 88

AN ACT concerning access to health care records by patients and their authorized representatives

Be it enacted by the Legislature of the State of Kansas:

Section 1 As used in this act:

(a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 65-4915, and amendments thereto, except for purposes of this act the term does not include health maintenance organizations.

(b) "Patient" means a person who receives medical or health care services from a health care provider

(c) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

~~(d) "Health care records" means a written or electronic record maintained by a health care provider that reflects the clinical findings, examinations, tests, treatment, and services rendered to a patient by such health care provider. Records, documents, and information protected from disclosure pursuant to state or federal law, including but not limited to K.S.A. 65-4915 and K.S.A. 65-4921 et seq., shall not be included within the definition of health care record.~~

Section 2 (a) Health care records shall be confidential and the information contained in such records may only be released pursuant to a written authorization or written consent by the patient or the patient's authorized representative, except upon order of a court of competent jurisdiction, or as otherwise required by law. A patient or the patient's authorized representative shall have a right to a copy of the information contained in such patient's health care records. Except as otherwise provided by law and subsection (b) of this section, a health care provider shall provide a copy of a patient's health care records to the patient or to the patient's authorized representative upon receipt of a written authorization or written consent from the patient or the patient's authorized representative.

(b) A health care provider may withhold copies of health care records, or a portion thereof, if the health care provider reasonably believes that providing copies of the requested records, or a portion thereof, will create a risk of harm to the patient, or if disclosure of health care records is otherwise prohibited by law.

(c) Any health care provider who receives a written authorization or written consent for copies of any health care records from a patient or from an authorized representative of a patient shall, within 30 days after the receipt of such written authorization or written consent, provide copies of such records or notify the patient or authorized representative of the patient making the request of the reason copies of such records are not available.

Section 3 An authorized representative who has obtained health care records concerning a patient shall maintain the confidentiality of such records and shall not use or release such records except for the purpose for which authorization or consent was given by the patient or in connection with the proceedings for which authorization was given by court order or operation of law.

(d) "Authorization" means a written or printed document signed under oath or affirmation by a patient or patient's representative containing (1) a description of the patient records a provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to inspect or obtain copies of the patient records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's representative, the representative's name, address, telephone number, and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

(e) "Health care records" mean any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of a provider dealing with or related to a patient's health care including billing records identifying the services rendered to the patient, any charges or fees for the services rendered and any billing payments, credits or adjustments.

HC

would violate any state or federal law, including but not limited to K.S.A. 65-4915 and K.S.A. 65-4921 et seq..

~~Section 4. (a) A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records.~~

~~(b) Except when the health care records are needed for treatment of the patient, a health care provider may demand that reimbursement for reasonable expenses be provided in advance of providing copies of health care records.~~

~~Section 5. Any health care provider who provides copies of health care records to a patient or an authorized representative of the patient in good faith and without malice pursuant to this act shall have immunity from any civil or criminal liability which might otherwise be incurred or imposed in an action resulting from release of such records.~~

~~Section 6. Any health care provider, patient, or authorized representative of a patient may bring a claim or action to enforce the provisions of this act.~~

~~Section 7. This act shall take effect and be in force from and after its publication in the statute book.~~

A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records. The charges shall not exceed the maximum fees allowed under the workers compensation schedule of medical fees issued by the Kansas Department of Human Resources unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied without additional expense, and may demand that such reimbursement be provided in advance of providing access to or copies of such records.

reliance on a properly executed authorization shall not be civilly or criminally liable for release of such records.

, and any court having jurisdiction of such claim or action shall, upon a showing that the failure to comply with this act without just cause or excuse, award the costs of the action and order the records produced without cost or expense to the requesting party.

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3-15-01
att 10

LOGAN RILEY CARSON & KAUP, L.C.

CATHERINE P. LOGAN*
DOROTHEA K. RILEY**
MARY F. CARSON
JAMES M. KAUP

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(816) 221-0500 Facsimile

* Admitted in Kansas and Missouri
** Admitted in Missouri
All others admitted in Kansas

MEMORANDUM

Legislative Testimony, Senate Judiciary Committee

TO: Chairman Vratil and members, Senate Judiciary Committee

FROM: Jim Kaup, on behalf of the City of Garden City

RE: **Support for HB 2207(common nuisances); heard by Committee on March 8, 2001**

DATE: March 13, 2001

This Committee heard testimony in support of HB 2207 last Thursday, March 8. This memo is to provide additional information from the City of Garden City in support of HB 2207.

At the committee hearing Detective Randy Ralston appeared and responded to questions from committee members. However, Detective Ralston had comments, and written testimony, which he intended to provide regarding the nature of the gang activity in Garden City which is the impetus for this legislation.

Detective Ralston, who is assigned to the Garden City/ Finney County Street Gang Unit (SGU) intended to distribute testimony prepared by Captain Utz, Investigations Division Commander for the Garden City Police Department, prepared in support of HB 2207. The testimony of Captain Utz (attached) provides a concise statement of the severity of the gang problem, and how the community, and the SGU, have responded with all means at their disposal to reduce the impact of gang activity on the quality of the life in the community.

HB 2207, to add "gang activity" to the existing list of common nuisances would provide, we

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believe, the City with a valuable new tool to combat these blights upon neighborhoods.

Thank you for the hearing on March 8. I am hopeful Committee members will find the testimony presented on that date, and the attached letter from Captain Utz, valuable information in support of HB 2207.

JMK:ckw
Enclosure

cc: Representative Ward Loyd

MEMORANDUM



TO: Jim Kaup

FROM: Captain Michael D. Utz, Investigations Division Commander

DATE: February 8, 2001

SUBJECT: Overview of Law Enforcement Response to Gang Activity in Garden City

I am currently assigned as the Investigations Division Commander for the Garden City Police Department and oversee the administrative duties of the Garden City/Finney County Street Gang Unit (SGU). The SGU is comprised of officers and detectives from the Garden City Police Department, the Finney County Sheriff's Office, the Holcomb Police Department and the Kansas Highway Patrol. The SGU also has one prosecutor from the Finney County Attorney's Office assigned to the SGU. The SGU was formed in June of 1996.

Garden City began to notice gang activity in the early 1990's, and as many cities in the Midwest perceived these juveniles as "wanna bee's". As time went by, gang activity within the Midwest grew, and the gang problem in Garden City was no different. Gang members who were committing drive-by shootings, rapes, robberies, burglaries, aggravated assaults and aggravated battery victimized the community of Garden City. In February of 1996, one of the worst case scenarios occurred. Members of a street gang in Garden City murdered a 34-year old family man with four children. Six gang members were ultimately convicted for their role in the murder.

Currently, there are approximately 39-documented criminal street gangs in Garden City. There are at least 412-documented criminal street gang members and at least 75-criminal street gang associates. Over the past three years the SGU has been doing an excellent job identifying gang members, and investigating cases involving gang members are ultimately arrested and prosecuted. Gang members usually do their criminal acts when other gang members accompany them. They also enjoy hanging out at certain locations where they will consume alcohol and drugs, discharge firearms into the air, engage in criminal damage, fighting, etc. Unfortunately, after we arrest them and they bond out, they return back to their hang out. This reduces the quality of life in the neighborhoods that they hang out at, as well as reducing the safety of the young children in the neighborhood. The Garden City Police Department, as well as the SGU have responded to and have successfully cleaned up neighborhoods after having to put special enforcement in the neighborhood for several weeks, if not months.

In the last three years the SGU has done an excellent job combating the criminal street gangs. With the current operation of the SGU, each officer is assigned a task coordinating gang activities with the schools, parole, probation, SRS, other law enforcement agencies, etc. They are also assigned to monitor various gang members and their activities.

The SGU started a responsible retailer program with local retailers that sell spray paint. This program had the retailers voluntarily post signs that sale of spray paint to anyone under 18-years of age was unlawful, and also moved their spray paint displays to the front counters so they may be monitored by store employees. In 1996, there were over 250 reports of graffiti in Garden City, and there were only 25-reports of graffiti in 1999. Graffiti is again on the rise as there were more reports for 2000 than in 1998 and 1999 combined. This is a strong indication that the gang activity is on the rise.

Once the SGU identifies a person as a member of a criminal street gang; an officer serves the parent of the gang member a letter notifying them that their child has been identified as a gang member. The overall consensus from most parents is that they were not aware of their child's activities in a gang.

There is no doubt that law enforcement in Garden City has taken every stride possible to curb activities by the criminal street gang. The SGU has found that any tool available to curb their criminal activities is another step in making our neighborhoods safe. Currently, the neighborhoods and streets are not controlled by any criminal street gang, but the next time they move into a neighborhood it would be advantageous to have additional laws to aid law enforcement in making the neighborhood safe again.

It is unfortunate that the current laws do not permit law enforcement and prosecutors to rid neighborhoods of criminal street gang activity that is disruptive and dangerous to the children in the neighborhood. We can not permit the criminal street gangs to hold our neighborhood hostage where the citizens are too afraid to come out on their front yard.

We would encourage you to support and pass the current bill regarding amending the criminal/civil nuisance statutes by including criminal street gang activities. We do appreciate your attention to this matter, and if we can be of any further assistance please do not hesitate to contact us.


Michael D. Utz, Captain
Investigations Division Commander