

Approved  
Date: March 20, 2001

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:34 a.m. on March 19, 2001 in Room 123-S of the Capitol.

All members were present except: Senator O'Connor (excused)

Committee staff present:

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

Conferees appearing before the committee:

Representative Ward Loyd  
Kathy Porter, Office of Judicial Administration (OJA)

Others attending: see attached list

Minutes of the March 15<sup>th</sup> meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

### **HB 2208—re: jurisdiction of district magistrate judges**

Conferee Porter testified, on behalf the president and members of the Kansas District Magistrate Judges Association, in support of **HB 2208**, a bill which would give district magistrate judges authority to preside over cases filed under the limited actions code of civil procedure. She reviewed **2000 House Substitute for SB 504** which increased the limited actions jurisdiction and stated that the jurisdictional limit for the district magistrate judges set out in another statute did not increase accordingly. (attachment 1) She distributed a letter from District Magistrate Judge James Vano who supports **HB 2208**. (attachment 2) Written testimony was submitted by Representative Loyd supporting **HB 2208**. (attachment 3)

### **SB 302—juvenile justice code; re: sentencing**

The Chair reviewed **SB 302**, a bill which would modify sentencing alternatives for juvenile offenders. Following discussion Senator Schmidt moved to table the bill, Senator Umberger seconded. Motion failed on a vote of 2-5. Following further discussion, Senator Donovan moved to pass the bill out favorably, Senator Goodwin seconded. Motion carried 5-2.

### **HB 2212—re: records**

Conferee Representative Loyd testified in support of **HB 2212**, a bill which amends the code of civil procedure concerning records to require branch banks and certain other lending institutions to designate an officer or employee as the custodian of records to identify records for evidentiary purposes. He discussed the events which prompted a need for this bill. (attachment 4)

### **HB 2083—re: release on appearance bond**

The Chair reviewed **HB 2083**, a bill which would change the criminal procedure law regarding the release of a surety when a person released on appearance bond is subsequently arrested and incarcerated. Following discussion, Senator Pugh moved to amend certain language into the bill, Senator Donovan seconded. Carried. Senator Goodwin moved to pass the bill out favorably as amended, Senator Donovan seconded. Carried.

## 2084—competency to stand trial

The Chair reviewed **HB 2084**, a bill which amends the criminal procedure code regarding certain persons who are incompetent to stand trial and who are not likely to become competent in the foreseeable future. Following discussion Senator Schmidt moved to adopt the SRS amendments to **HB 2084**. Senator Goodwin seconded. Motion carried with Senators Donovan and Pugh voting no. Senator Goodwin moved to pass the bill out favorably as amended, Senator Schmidt seconded. Motion carried with Senator Pugh voting no.

## SB 88—concerning access to health care records by patients and others.

The Chair reviewed **SB 88**, a bill which would allow patients or their representatives and authorized parties to obtain copies of the patient's health care and billing records from the patient's health care provider. The bill also addresses confidentiality. The Chair stated that both the proponents, the Kansas Trial Lawyers and the Kansas Bar Association, and the opponents, the Kansas Medical Society, agree in principle on patients rights to access their medical records and both parties have worked toward resolution of disagreements relating to certain language and provisions in the bill; there is as yet, however, incomplete agreement on such issues as: authorization; fees to be charged for obtaining records; and prevailing party's recovery costs. (see attachments 5-8) Following lengthy discussion Senator Gilstrap recommended an interim study be done on **SB 88**, Senator Umbarger seconded. During further discussion Senator Pugh made a substitute motion to amend proposals by the Kansas Bar Association and the Kansas Trial Lawyers Association into **SB 88**, Senator Adkins seconded. Motion failed. Motion to do an interim study on **SB 88** carried.

## SB 208—DUI of Inhalants

Senator Pugh reviewed his subcommittee's hearing on **SB 208**. (attachment 9 - this attachment includes subcommittee action and testimony on **SB 131**, **SB 206** and **SB 215**) Discussion followed. Senator Goodwin moved to amend the bill as recommended by the subcommittee, Senator Donovan seconded. Carried. Senator Donovan moved to pass the bill out favorably as amended, Senator Oleen seconded. Carried.

## HB 2207—re: abatement of nuisances

The Chair reviewed **HB 2207**, a bill which expands the list of activities that constitute common nuisances to include felony activity by criminal street gangs.. Following brief discussion Senator Goodwin moved to pass the bill out favorably, Senator Adkins seconded. Carried.

## HB 2174—concerning district courts; re: clerks

The Chair reviewed **HB 2174**, a bill which changes the method of appointing district court chief clerks. Senator Donovan moved to pass the bill out favorably, Senator Adkins seconded. Discussion. Kathy Porter explained an amendment from the house which would provide for the chief judge alone appointing the clerk without having to have the approval of the majority of the district judges. There was general consensus to not adopt this amendment. Motion carried.

The meeting adjourned at 10:32 a.m. The next meeting is March 20, 2001.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 19, 2001

| NAME                  | REPRESENTING               |
|-----------------------|----------------------------|
| John Parisi           | KANSAS TRIAL LAWYERS       |
| Steve Dickeyson       | KANSAS TRIAL LAWYERS       |
| John House            | SRS                        |
| <del>John House</del> | <del>SRS</del>             |
| Jim Gurn              | Ks Council on DD<br>KCAPS  |
| Mark Gleeson          | Judicial Branch            |
| Edy M. Nearvell       | KANSAS JUDICIAL COUNCIL    |
| J. Kenneth Hales      | JJA                        |
| Albert Murray         | JJA                        |
| Michael Geay          | JJA                        |
| Bill Gross            | Saint Lukes Showne Mission |
| RSMckenna             | SRS Legal                  |
| William Mull          | Kathy Damon + Assoc.       |
| Chip Wheelen          | Assoc. of Osteopathic Med. |
| John Piregar          | Piregar Smith Co.          |
| Jeff Botkin           | Kansas Police Officers     |
| Bill Sneed            | UKHA                       |
| Joe Herold            | KSC                        |
| Paul Jones            | KSC                        |
| Kathy Porta           | Judicial Branch            |







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State of Kansas  
**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

**Senate Judiciary Committee**

Testimony on House Bill 2208  
Monday, March 19, 2001

Kathy Porter  
Office of Judicial Administration

Thank you for the opportunity to testify in support of House Bill 2208 on behalf of the President of the Kansas District Magistrate Judges Association, the chairperson of its Legislative Committee, and several Legislative Committee members. I apologize that their schedules would not allow them to appear in person today.

2000 House Substitute for Senate Bill 504, among other provisions, increased the amount of judgments that may be sought in limited actions cases from actions in which the amount claimed does not exceed \$10,000 to actions in which the amount claimed does not exceed \$25,000. Although district magistrate judges have traditionally heard a significant portion of the limited actions cases filed statewide, the statute that defines the jurisdiction of district magistrate judges, K.S.A. 2000 Supp. 302b, was not amended to reflect the change in the limited actions jurisdictional limit. House Bill 2208 would bring the jurisdiction of district magistrate judges back in line with the amounts that may now be claimed in limited actions cases. Without the amendment, district magistrate judges may hear limited actions cases in which the amount claimed is \$10,000 or under, but a district judge would have to hear limited actions cases in which the amount claimed is over \$10,000.

The House amendment is clarifying in nature. Subsection (a)(1) of K.S.A. 2000 Supp. 20-302b (at page one, line 30) specifies that district magistrate judges do not have jurisdiction over actions, other than actions seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services, or money, in which the amount in controversy, exclusive of interests and costs, exceeds \$10,000. To clarify that this does not include limited actions cases, the phrase "excluding actions filed under the code of civil procedure for limited actions, K.S.A. 2000 Supp. 61-2801 et seq., and amendments thereto," was inserted.

Thank you for your attention to this bill.

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**DISTRICT COURT OF KANSAS**  
TENTH JUDICIAL DISTRICT  
JOHNSON COUNTY COURTHOUSE  
OLATHE, KANSAS  
66061

CHAMBERS OF:  
**JAMES F. VANO**  
DISTRICT MAGISTRATE JUDGE  
(913) 715-3577

March 19, 2001

RE: HB 2208

Mr. Chairman and Members of the Committee:

I am offering this testimony today as a representative of the Kansas District Magistrate Judges' Association to lend support to House Bill 2208.

The increase of the Limited Actions jurisdiction that was passed by the Legislature last year was long overdue. However the jurisdictional limit for the District Magistrate Judges that is set out in K.S.A. 20-302b did not increase accordingly.

Without an increase in the District Magistrate Judges jurisdiction these cases would be placed on the civil docket and assigned to a District Judge. The District Judge's civil docket is crowded as it is, without the addition of these cases with the increased limit.

Throughout the state the District Magistrate Judges hear the limited civil dockets. We currently hear suits on open accounts beyond the \$10,000 limit. The procedures, rules of evidence and substantive law for a cause of action are the same regardless of the amount in controversy. We feel that increasing our jurisdictional limit gives us the ability to quickly determine those cases that might be backlogged otherwise in courts due to the increased number of cases on already crowded dockets before the District Judges. Significantly, we still have procedures to convert a case to Chapter 60, transfer a case to a District Judge, and appeal from a Magistrate decision. It is important to allow litigants the opportunity for an expedited process with limited discovery delays using the Limited Actions procedures before the Magistrate Judges. Matching our jurisdictional limit to the jurisdiction of the Limited Actions code simply makes good sense.

Our Association thinks this bill should be passed and would urge this Committee to give the full house a favorable report and support for its passage.

Thank you for your consideration and the opportunity to be heard.

James F. Vano

*James F. Vano*  
3-19-01  
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WARD LOYD  
 REPRESENTATIVE, 123RD DISTRICT  
 FINNEY COUNTY  
 1304 CLOUD CIRCLE, P.O. BOX 834  
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 (316) 276-7280  
 ROOM 174-W STATEHOUSE  
 TOPEKA, KANSAS 66612-1504  
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 E-MAIL: loyd@gcnet.com



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEES  
 CHAIR RULES & JOURNAL  
 VICE-CHAIR JUDICIARY  
 MEMBER UTILITIES  
 TAX, JUDICIAL &  
 TRANSPORTATION BUDGET  
 CORRECTION & JUVENILE  
 JUSTICE OVERSIGHT

March 14, 2001

Senator John Vratil, Chairman  
 Senate Judiciary Committee  
 Statehouse, Room 123-S  
 Topeka, KS 66612

Re: House Bill 2208

Dear Senator Vratil:

House Bill 2208 was filed with the intent of expanding the jurisdiction of district magistrate judges in keeping with increased claim limits under the code of civil procedure for limited actions as amended last year. House Sub. for Senate Bill 504 substantially revised Chapter 61, and one portion of the revision was to increase to \$25,000 those claims that could be filed as limited actions. At the same time, the legislature did not amend any provisions of Chapter 20, so the jurisdictional limit on claims that could be considered by district magistrate judges remained at \$10,000. This meant, naturally, that our district judges must now hear any limited action contract claim exceeding \$10,000. District magistrate judges have never had jurisdiction over tort claims.

I filed HB 2208 at the request of a local judge who noticed the disparity in the dollar limits. K.S.A. 2000 Supp. 20-302b sets forth the jurisdiction and power of district magistrate judges, and acts by identifying those actions over which such judges shall not have jurisdiction. My original thought was that the dollar limitation in 20-302b(a) (1) simply be changed from \$10,000 to \$25,000.

As it is, HB 2208 was drawn so as to specifically recite that district magistrate judges have concurrent jurisdiction over actions filed pursuant to code of civil procedure for limited actions. That would extend jurisdiction to claims arising in tort. Given that many of the district magistrate judges are not law trained, at least in our area, this may not be the best policy decision.

There would appear to be little reason for me to appear on the bill at the scheduled hearing, and take time you might use otherwise. I do support HB 2208, but leave it to the wisdom of Senate Judiciary as to the appropriate action on the measure, if any.

Regards,

  
 Ward Loyd

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEES  
CHAIR: RULES & JOURNAL  
VICE-CHAIR: JUDICIARY  
MEMBER: UTILITIES  
TAX, JUDICIAL &  
TRANSPORTATION BUDGET  
CORRECTION & JUVENILE  
JUSTICE OVERSIGHT

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF H.B. 2212  
MARCH 19, 2001

Chairman Vratil and Senators:

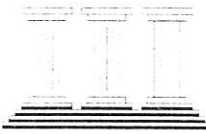
House Bill 2212 is intended to require branches of financial institutions, including banks, savings and loan association, and credit unions to designate an officer or employee as the custodian of records, in order to facilitate identification of records for evidentiary purposes.

The bill was the response to a concern called to my attention by the City Manager of Garden City. An investigation disclosed that a former employee responsible for the city housing authority had embezzled funds from the authority. At the preliminary hearing the prosecutors were not able to present evidence regarding a number of the financial transactions through a branch because the branch employee appearing with the records could not establish the qualifications necessary to identify/authenticate the records.

If financial institutions are to do business via branches in the various parts of our state, they should have an obligation to designate a person at each of the branches (located in counties other than the parent) who can respond to requirements of Kansas law regarding identification of records of banking transactions through the branches.

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KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

March 19, 2001

Mr. Jerry Slaughter  
Executive Director  
Kansas Medical Society  
623 SW 10<sup>th</sup> St.  
Topeka, KS 66612

Re: KMS Substitute for Senate Bill 88 - Balloon of 3/16/01

Dear Mr. Slaughter:

We have reviewed the balloon amendments that were provided to us this afternoon for KMS Substitute for Senate Bill 88. With the exception of your definition of "authorization" in Section 1(e) of the bill, we find the other amendments that you have made unacceptable. It is our position that the language we proposed amending the KMS substitute for SB 88 on March 15 more effectively guarantees a patient's right of access to their medical records within a reasonable time frame and at a reasonable cost.

In Section 1(d) of the bill, you have amended the definition of health care records. This definition would be acceptable if the last sentence was removed whereby you state, "records, documents, and information protected from disclosure pursuant to state or federal law, including but not limited to K.S.A. 65-4915, et seq. and K.S.A. 65-4921, et seq. shall not be included within the definition of health care records." The inclusion of this language in the definition of health care expands peer review and risk management privileges. As introduced and further amended by KTLA and KBA, SB 88 neither expands nor limits the peer review or risk management privileges. Senate Bill 88 clearly protects the peer review and risk management privileges, as well as any other privilege or prohibition that exists under state or federal law. I would note that you have included our proposed language guaranteeing these protections in Section 2(b) of your amendments.

The language of Section 4(b) is likewise unacceptable. Although the amendment purports to utilize the Workers Compensation Fee Schedule for medical fees issued by the Kansas Department of Human Resources, it effectively eliminates that standard by the inclusion of the language, "or the health care providers documented expenses of retrieval and copying of the requested records." This language will effectively undermine the fee schedule and will allow providers to charge whatever they want for medical records, which is the situation we currently find ourselves in. Obviously, this language will not protect Kansas citizens from exorbitant fees. Senate Bill 88 clearly allows health care

*Terry Humphrey, Executive Director*

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3-19-01  
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providers to charge more than the fee schedule for medical records when they establish the reason the requested records cannot reasonably be retrieved or copied for the amount provided in the Worker's Compensation schedule of medical fees issued by the Kansas Department of Human Resources.

The language of Section 5 is unacceptable as it provides unbridled immunity to a health care provider for any potential action resulting from the information contained in the medical record who simply releases medical records in good faith. It needlessly broadens the issues that SB 88 addresses. Our language is more than sufficient to ensure that a health care provider will not be held criminally or civilly liable for the release of records if they do so on the basis of a properly executed authorization.

You have also amended Section 6 of the KMS substitute bill to include a remedy provision allowing the award of the costs of an action to a prevailing party. However, you have eliminated the right of a party to obtain the medical records without cost if the health care provider refused to provide them without just cause or excuse. The amendment to Section 6 is unacceptable and we must insist upon the language that we proposed.

As indicated above, with the exception of the amendment to authorization contained in Section 1(e), the amendments that you have made to KMS Substitute for Senate Bill 88 are unacceptable to the KBA and the KTLA. We believe the language that we have proposed in amendment to your substitute bill will more effectively guarantee a patient's right of access to their medical records within a reasonable time frame and a reasonable cost.

Very Truly Yours,

Terry Humphrey  
KTLA Executive Director

Paul Davis  
KBA Legislative Counsel

Cc: Sen. John Vratil

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March 16, 2001

The Honorable John Vratil, Chairman  
Senate Judiciary Committee  
State Capitol Building  
Topeka, Kansas 66612

**Re: SB 88**

Dear Senator Vratil:

Enclosed is the draft of SB 88 which includes the final revisions we discussed in your office this morning. I have also faxed the draft to Paul Davis at the KBA, and asked that he forward a copy to the KTLA.

We sincerely appreciate your willingness to give us the opportunity and time to express our concerns with this legislation. As we have previously emphasized, we do not believe this legislation is necessary, particularly in view of the fact that comprehensive privacy regulations under HIPAA are very likely to be implemented in the very near future.

However, we wanted to be responsive to your request of us to offer an alternative to the original SB 88 (which was completely unacceptable to us). It is in that spirit of cooperation that we offered the substitute bill, although there are areas of the substitute that have since changed during the subsequent discussions which concern us. Because this process has moved very quickly since the hearing on March 14, we have not had an opportunity to fully inform our elected leaders and Board about this evolving legislation. Consequently, our good faith efforts to work on a draft bill that is less objectionable than the original should not be interpreted as our final endorsement, and we reserve the right to continue to object about problematic areas.

Thank you again for taking the time to understand our concerns. Please call me if you have any questions about the enclosed balloon.

Sincerely yours,

Jerry Slaughter  
Executive Director

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3-19-01  
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**KMS 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 *et seq.* and K.S.A. 65-4921 *et seq.*, shall not be included within the definition of health care records.

any recorded information regardless of form or characteristics, which is maintained by or is in the possession of a health care provider directly dealing with or related to services rendered to a patient by the health care provider, 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.

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

(e) "Authorization" means a written or printed document signed by a patient or patient's authorized representative containing: (1) a description of the health care records a health care 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 obtain copies of the health care records; and (4) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number, and relationship or capacity to the patient.



representative.

(b) A health care provider may withhold copies of health 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.~~

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

(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.

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

, except that the health care provider's charge shall not exceed the maximum fees allowed for the reproduction of medical records in the workers compensation schedule of medical fees issued by the Kansas department of human resources or the health care provider's documented expenses of retrieval and copying the requested 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.

, and any court having jurisdiction of such claim or action shall award  
the costs of the action to the prevailing party if it is determined that  
the opposing party failed to comply with this act without just cause  
or excuse.

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KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the Senate Judiciary Committee

FROM: Terry Humphrey, KTLA Executive Director  
Paul Davis, KBA General Counsel

RE: 2001 SB 88

DATE: March 19, 2001

Attached is the most recent version of the substitute SB 88 that contains only two changes from the KTLA/KBA version you received last week. Since that time, we have amended the bill to include the KMS definition of "authorization" (Sec. 1 (d) and amended the definition of billing records in Sec. 1 (e) to read "fully itemized billing records," as requested by Sen. Kay O'Connor.

KMS offered amendments late Friday afternoon. We incorporated the change in the definition of "authorization" but find the remainder of their amendments to be unacceptable. We have attached the letter to the Kansas Medical Society explaining our concerns and the reasons for which we cannot accept these amendments.

The KTLA and the KBA appreciates the thoughtful consideration which the committee has given this important issue and SB 88. We remain committed to guaranteeing for Kansans a statutory right of access to medical records in a reasonable time period and at an affordable cost. We encourage you to support the KTLA/KBA version with the latest amendments.

*Terry Humphrey, Executive Director*

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Kansas Bar Association / Kansas Trial Lawyers Association  
Amendments // March 19, 2001

2-7

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 by a patient or patient's authorized representative containing: (1) a description of the health care records a health care 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 obtain copies of the health care records; and (4) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number, and relationship or capacity to the patient.

(e) "Health care records" means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of a health care provider dealing with or related to a patient's health care, including fully itemized billing records.

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..



Kansas Bar Association / Kansas Trial Lawyers Association  
Amendments // March 19, 2001

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

~~(c) 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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**SB 88**

KTLA-KBA

Medical Society

1. **Definitions.** Six terms are defined: health care provider; patient; representative of a patient; authorization; health care; and health care record.

1. There are four terms defined, *i.e.*, health care provider, patient, authorized representative, and health care records. The net result is there are similar definitions since the term "authorized representative" combines two terms defined in the KTLA-KBA bill.

2. **Right to Inspect and Copy.** Section 2 (a) grants a patient or patient representative express authorization (written document signed under oath) shall be entitled to inspect and copy health care records in possession of health care provider.

2. Similar provisions in Section 2 (a)—no oath required.

3. **Access Within 30 Days** Section 2 (b) requires health care provider to provide requested records within 30 days or explain why access is withheld.

3. Similar provision in Section 2 (c).

4. **Duty of Confidentiality.** Section 3 establishes a duty to maintain this confidentiality of the medical records obtained except for the purpose authorized or in connection with court order or operation of law.

4. Similar provisions. See Section 2 (a) and Section 3.

5. **Right to Withhold Records—Risk of Harm.** A health care provider has a right to withhold health care records if access to or copies will create a significant risk of harm to patient, or if disclosure violates federal or state law. Notice of reason for withholding must be made within 30 days.

5. Similar provisions. See Section 2 (b) and (c).

6. **Maximum Fees for Records.** Maximum fees for providing records are tied to workers compensation schedule.

6. No maximum fee set. Right to reasonable fees for providing records and the right to advance payment when records needed for treatment.

7. **Cause of Action Created—Costs.** Section 6 establishes a right of any party to bring an action to enforce rights under the act—a court shall order, enforce a finding of no just cause or excuse, the records provided without cost, and the costs of bringing the action.

7. Cause of action created but no right to get records without cost if withheld or no explicit right to recover costs of bringing an action.

*In good*  
3-19-01  
att 8

March 13, 2001

## SENATOR PUGH'S JUDICIARY SUBCOMMITTEE February 19 and 22, 2001

1. **SB 131** would change the standard for the zero tolerance statute, KSA 8-1567, from "probable cause" to "reasonable grounds," makes a refusal to take a preliminary breath test a class C misdemeanor, and makes other changes.

**Proponents:** The Office of Attorney General and the FATAL Task Force (Attachment 1); AAA Kansas (Attachment 2); Kansas Department of Transportation (Attachment 3); Kansas Coordinators of Alcohol Safety Action Projects Association (Attachment 4); and Mothers Against Drunk Driving (Attachment 5).

**Subcommittee Action:** The Subcommittee voted to recommend the full Committee table the bill since it would conflict with provisions of SB 67, already passed out of the Committee and the Senate.

2. **SB 206** deals with ignition interlock and the driving under the influence law.

**Conferees:** Kansas Department of Transportation (Attachment 6); Kansas Department of Revenue (Attachment 7), a cleanup amendment; and Steve Kearney (Attachment 8).

**Subcommittee Action:** The Subcommittee recommended the bill be tabled so proponents can work out difficulties regarding interlock devices and drug usage.

3. **SB 208** regards the use of inhalants and the driving under the influence law.

**Proponents:** Kansas Highway Patrol, which had an amendment (Attachment 9); the Emporia Police Department (Attachment 10); an Emporia physician (Attachment 11); and an Emporia mental health center (Attachment 12).

**Opponents:** None.

**Subcommittee Action:** The Subcommittee recommends the bill be amended as noted *ie.* on page 4 line 40 strike "for the purpose" and put a period after "intoxication", strike the remainder of subsection (r), and be passed favorably by the full Committee.

Inquid  
3-19-01  
att 9

**4. SB 215** would enhance penalties for repeat DUI offenders.

**Proponents:** The Attorney General's Office and the FATAL Task Force (Attachment 1); Kansas Highway Patrol (Attachment 13); the Riley County Police Department (Attachment 14); the Kansas Department of Health and Environment offered an amendment (Attachment 15), AAA of Kansas (Attachment 16); Kansas Coordinators of Alcohol Safety Action Projects Association (Attachment 17); and Mothers Against Drunk Driving (Attachment 18).

**Opponents:** None.

**Subcommittee Action:** The Subcommittee recommends SB 215 for further discussion by the full Committee and for favorable action on the bill.



SENATE BILL No. 208

By Committee on Judiciary

Proposed Subcommittee Amendments to SB No. 208

2-1

9 AN ACT concerning crimes, criminal procedure and penalties; relating  
10 to driving under the influence of inhalants; amending K.S.A. 2000  
11 Supp. 8-1567 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2000 Supp. 8-1567 is hereby amended to read as  
15 follows: 8-1567. (a) No person shall operate or attempt to operate any  
16 vehicle within this state while:

17 (1) The alcohol concentration in the person's blood or breath as  
18 shown by any competent evidence, including other competent evidence,  
19 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-  
20 ments thereto, is .08 or more;

21 (2) the alcohol concentration in the person's blood or breath, as meas-  
22 ured within two hours of the time of operating or attempting to operate  
23 a vehicle, is .08 or more;

24 (3) under the influence of alcohol to a degree that renders the person  
25 incapable of safely driving a vehicle;

26 (4) under the influence of any drug or combination of drugs to a  
27 degree that renders the person incapable of safely driving a vehicle; or

28 (5) under the influence of a combination of alcohol and any drug or  
29 drugs to a degree that renders the person incapable of safely driving a  
30 vehicle.

31 (b) No person shall operate or attempt to operate any vehicle within  
32 this state if the person is a habitual user of any narcotic, hypnotic, som-  
33 nifacient or stimulating drug.

34 (c) If a person is charged with a violation of this section involving  
35 drugs, the fact that the person is or has been entitled to use the drug  
36 under the laws of this state shall not constitute a defense against the  
37 charge.

38 (d) Upon a first conviction of a violation of this section, a person shall  
39 be guilty of a class B, nonperson misdemeanor and sentenced to not less  
40 than 48 consecutive hours nor more than six months' imprisonment, or  
41 in the court's discretion 100 hours of public service, and fined not less  
42 than \$200 nor more than \$500. The person convicted must serve at least  
43 48 consecutive hours' imprisonment or 100 hours of public service either

1 before or as a condition of any grant of probation or suspension, reduction  
2 of sentence or parole. In addition, the court shall enter an order which  
3 requires that the person enroll in and successfully complete an alcohol  
4 and drug safety action education program or treatment program as pro-  
5 vided in K.S.A. 8-1008, and amendments thereto, or both the education  
6 and treatment programs.

7 (e) On a second conviction of a violation of this section, a person shall  
8 be guilty of a class A nonperson felony and sentenced to not less  
9 than 90 days nor more than one year's imprisonment and fined not less  
10 than \$500 nor more than \$1,000. The five days' imprisonment mandated  
11 by this subsection may be served in a work release program only after  
12 such person has served 48 consecutive hours' imprisonment, provided  
13 such work release program requires such person to return to confinement  
14 at the end of each day in the work release program. Except as provided  
15 in subsection (g), the person convicted must serve at least five consecutive  
16 days' imprisonment before the person is granted probation, suspension  
17 or reduction of sentence or parole or is otherwise released. As a condition  
18 of any grant of probation, suspension of sentence or parole or of any other  
19 release, the person shall be required to enter into and complete a treat-  
20 ment program for alcohol and drug abuse as provided in K.S.A. 8-1008,  
21 and amendments thereto.

22 (f) On the third or a subsequent conviction of a violation of this sec-  
23 tion, a person shall be guilty of a nonperson felony and sentenced to not  
24 less than 90 days nor more than one year's imprisonment and fined not  
25 less than \$1,000 nor more than \$2,500. Except as provided in subsection  
26 (g), the person convicted shall not be eligible for release on probation,  
27 suspension or reduction of sentence or parole until the person has served  
28 at least 90 days' imprisonment. The court may also require as a condition  
29 of parole that such person enter into and complete a treatment program  
30 for alcohol and drug abuse as provided by K.S.A. 8-1008, and amend-  
31 ments thereto. The 90 days' imprisonment mandated by this subsection  
32 may be served in a work release program only after such person has served  
33 48 consecutive hours' imprisonment, provided such work release program  
34 requires such person to return to confinement at the end of each day in  
35 the work release program.

36 (g) On a second or subsequent conviction of a violation of this section,  
37 the court may place the person convicted under a house arrest program,  
38 pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-  
39 mainder of the minimum sentence only after such person has served 48  
40 consecutive hours' imprisonment.

1 (h) The court may establish the terms and time for payment of any  
42 fines, fees, assessments and costs imposed pursuant to this section. Any  
43 assessment and costs shall be required to be paid not later than 90 days

1 after imposed, and any remainder of the fine shall be paid prior to the  
2 final release of the defendant by the court.

3 (i) In lieu of payment of a fine imposed pursuant to this section, the  
4 court may order that the person perform community service specified by  
5 the court. The person shall receive a credit on the fine imposed in an  
6 amount equal to \$5 for each full hour spent by the person in the specified  
7 community service. The community service ordered by the court shall be  
8 required to be performed not later than one year after the fine is imposed  
9 or by an earlier date specified by the court. If by the required date the  
10 person performs an insufficient amount of community service to reduce  
11 to zero the portion of the fine required to be paid by the person, the  
12 remaining balance of the fine shall become due on that date.

13 (j) The court shall report every conviction of a violation of this section  
14 and every diversion agreement entered into in lieu of further criminal  
15 proceedings or a complaint alleging a violation of this section to the di-  
16 vision. Prior to sentencing under the provisions of this section, the court  
17 shall request and shall receive from the division a record of all prior  
18 convictions obtained against such person for any violations of any of the  
19 motor vehicle laws of this state.

20 (k) For the purpose of determining whether a conviction is a first,  
21 second, third or subsequent conviction in sentencing under this section:

22 (1) "Conviction" includes being convicted of a violation of this section  
23 or entering into a diversion agreement in lieu of further criminal pro-  
24 ceedings on a complaint alleging a violation of this section;

25 (2) "conviction" includes being convicted of a violation of a law of  
26 another state or an ordinance of any city, or resolution of any county,  
27 which prohibits the acts that this section prohibits or entering into a di-  
28 version agreement in lieu of further criminal proceedings in a case alleg-  
29 ing a violation of such law, ordinance or resolution;

30 (3) only convictions occurring in the immediately preceding five  
31 years, including prior to the effective date of this act, shall be taken into  
32 account, but the court may consider other prior convictions in determin-  
33 ing the sentence to be imposed within the limits provided for a first,  
34 second, third or subsequent offender, whichever is applicable; and

35 (4) it is irrelevant whether an offense occurred before or after con-  
36 viction for a previous offense.

37 (l) Upon conviction of a person of a violation of this section or a  
38 violation of a city ordinance or county resolution prohibiting the acts  
39 prohibited by this section, the division, upon receiving a report of con-  
40 viction, shall suspend, restrict or suspend and restrict the person's driving  
41 privileges as provided by K.S.A. 8-1014, and amendments thereto.

42 (m) Nothing contained in this section shall be construed as prevent-  
43 ing any city from enacting ordinances, or any county from adopting res-

1 olutions, declaring acts prohibited or made unlawful by this act as unlaw-  
 2 ful or prohibited in such city or county and prescribing penalties for  
 3 violation thereof, but the minimum penalty prescribed by any such or-  
 4 dinance or resolution shall not be less than the minimum penalty pre-  
 5 scribed by this act for the same violation, and the maximum penalty in  
 6 any such ordinance or resolution shall not exceed the maximum penalty  
 7 prescribed for the same violation. In addition, any such ordinance or  
 8 resolution shall authorize the court to order that the convicted person  
 9 pay restitution to any victim who suffered loss due to the violation for  
 10 which the person was convicted.

11 (n) No plea bargaining agreement shall be entered into nor shall any  
 12 judge approve a plea bargaining agreement entered into for the purpose  
 13 of permitting a person charged with a violation of this section, or a vio-  
 14 lation of any ordinance of a city or resolution of any county in this state  
 15 which prohibits the acts prohibited by this section, to avoid the mandatory  
 16 penalties established by this section or by the ordinance. For the purpose  
 17 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
 18 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not  
 19 constitute plea bargaining.

20 (o) The alternatives set out in subsections (a)(1) (2) and (3) may be  
 21 pleaded in the alternative, and the state, city or county, but shall not be  
 22 required to, may elect one or two of the three prior to submission of the  
 23 case to the fact finder.

24 (p) Upon a fourth or subsequent conviction, the judge of any court  
 25 in which any person is convicted of violating this section, may revoke the  
 26 person's license plate or temporary registration certificate of the motor  
 27 vehicle driven during the violation of this section for a period of one year.  
 28 Upon revoking any license plate or temporary registration certificate pur-  
 29 suant to this subsection, the court shall require that such license plate or  
 30 temporary registration certificate be surrendered to the court.

31 (q) For the purpose of this section: (1) "Alcohol concentration"  
 32 means the number of grams of alcohol per 100 milliliters of blood or per  
 33 210 liters of breath.

34 (2) "Imprisonment" shall include any restrained environment in  
 35 which the court and law enforcement agency intend to retain custody and  
 36 control of a defendant and such environment has been approved by the  
 37 board of county commissioners or the governing body of a city.

38 (r) For purposes of this section drug includes an inhalant or other  
 39 substance containing a chemical capable of releasing any toxic vapors or  
 40 fumes [for the purpose] inducing a condition of intoxication [such as any  
 41 glue, cement or any other substance containing one or more of the follow-  
 42 ing chemical compounds: Acetone and acetate, amyl nitrite or amyl nitrate  
 43 or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their

Delete

1 isomers, ethyl acetate, ethyl alcohol, ethyl nitrate or ethyl nitrate, ethylene  
 2 dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl  
 3 ethyl ketone, nitrous oxide, n-propyl alcohol, pentan-1-ol, pentan-2-ol, pentan-3-ol, pentan-4-ol,  
 4 leum ether, propyl nitrate or propyl nitrate, propyl nitrate, propyl nitrate, propyl nitrate,  
 5 or xylene or any other chemical substance which is capable of producing a  
 6 of intoxication, including, but not limited to, the following: the  
 7 brain or ~~nerve~~ in such a manner as to produce a condition of intoxication  
 8 of such chemical substance.]

Delete

9 Sec. 2. K S A 2000 Supp 8 1567 is hereby repealed  
 10 Sec. 3. This act shall take effect and be in force from and after its  
 11 publication in the statute book.



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 SENATE JUDICIARY COMMITTEE  
RE: SENATE BILLS 131 & 215  
February 19, 2001

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

Senator Pugh and Members of the Sub-Committee:

Thank you for the opportunity to appear before you today to ask for your support on Senate Bills 131 and 215. These bills amend criminal penalties, administrative hearing provisions and administrative sanctions imposed for driving under the influence of alcohol and drugs.

As many of you are aware, in June of 1998 Attorney General Carla Stovall created 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 of 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. [A full list of the members of the FATAL Task Force accompanies this testimony.] The Task Force was divided into three subcommittees to concentrate on areas of prevention, administrative hearing procedures and criminal penalties. This bill combines the efforts of the criminal and administrative subcommittees who critically reviewed the statutory penalties and administrative procedures and sanctions. Please refer to the attached summary of the criminal penalty and administrative sanction recommendations.

### Senate Bill 215

The criminal subcommittee reviewed the criminal penalties currently in existence and recommended the following: (1) the amount of imprisonment time should significantly increase for repeat DUI offenses (pages 22 - 23); (2) work release or house arrest would not be granted until such minimum mandatory sentence has been served (pages 22 - 23); (3) the definition of conviction under K.S.A. 8-1567 shall be expanded to include convictions over a person's lifetime instead of over the previous five years (page 24); (4) any person convicted of a DUI offense more than three times during a lifetime shall be required to serve imprisonment in the custody of the Department of



Corrections in lieu of the local county jail (page 28); and (5) only one DUI diversion would be permitted over a person's lifetime.

Clearly the revised criminal penalty provisions of Senate Bill 215 would send repetitive, dangerous, drunk drivers to prison. There will be some cost to the State for those prison beds which will have to be addressed. However, the question that must be answered first is "How will we protect the people of Kansas from the threat that chronic drunk drivers represent?" At what point will we decide to take these offenders off the street and order them to substantial sentences as punishment for their crimes and for the deadly threat they have created for our families by drinking and driving, over, and over and over? The FATAL Task Force submits to you that four DUI convictions are more than enough. Under Senate Bill 215, fourth and subsequent DUI offenders will be sentenced to a term of 15 months in State prison. (Page 23) The Kansas Sentencing Commission has reviewed the impact on prison bed space needs that adoption of this bill could create. A copy of the Sentencing Commission's projections for this bill is attached. Those projections indicate that passage of SB 215 would require the usage of a maximum of less than 160 beds over the course of the next 10 years. I submit to you that the added safety for the people of Kansas created by this bill is worth the projected bed space.

Another provision of SB 215 deals directly with protecting children. Many drivers are placing young lives in danger when they choose to drive under the influence of alcohol or drugs. Therefore, the Task Force feels very strongly that any driver who has a child under the age of 14 in the car at the time they are under the influence of alcohol or drugs should face an enhanced penalty of thirty days additional imprisonment (page 23).

There are currently no criminal penalties for refusing to take a breath, blood or urine test as requested by a law enforcement officer except for failing to take the preliminary breath test. There are only administrative licensing sanctions for refusing to take the requested test which amount to one year of suspension. This bill proposes to establish a class B misdemeanor for refusing to take a breath, blood or urine test as requested by a law enforcement officer (page 6). The State of Nebraska has enacted a similar law to encourage drivers to submit to the requested tests. In addition, the Task Force is recommending that the one year administrative suspension period be significantly increased for refusing to take the requested tests after the first occurrence (pages 6 and 19).

An example Attorney General Stovall cited to the legislature last year was an offender in Wichita with at least seventeen DUI convictions. Under the current laws, after that individual's license suspension expires, the state will be required to hand him back his license to drive again. The Task Force recommends that at some point the state should permanently revoke a repeat offender's drivers license. We recommend that after a person has cumulatively received five convictions, test failures or test refusals, the person's drivers license should be permanently revoked (pages 7 and 19).

The administrative subcommittee of the FATAL Task Force reviewed the administrative hearing procedures relating to DUI offenses. The number one complaint from law enforcement

officers, bar none, relates to these procedures. This bill clarifies the administrative procedures and specifies the type of evidence which will be admissible at the hearing (page 17). It also establishes a means for the Department of Revenue to conduct telephonic or video-conference hearings when requested for the convenience of all parties (page 14). Under the bill, the licensee would be required to submit a \$50.00 subpoena fee for the officer to appear at the hearing (page 15). This fee would compensate local police departments for the expense in paying officers to appear as well as reduce the number of continuances requested by the licensee or counsel once the officer arrives.

The Task Force's efforts resulted in a number of recommendations, and many of those recommendations have been introduced by this committee in the form of Senate Bills 131, 132 and 215 but Attorney General Stovall has asked that I convey to you that, in her opinion, SB 215 is the most important of the three bills. It is well documented that drunk driving is the number one cause of injury nationwide of young people. Drunk driving poses a grave danger to all the citizens of Kansas. The FATAL Task Force is confident that the changes proposed in this bill will save lives by sending a strong message that there are serious penalties and consequences to any person who drives while under the influence of alcohol or drugs.

### **Senate Bill 131**

First, Senate Bill 131 proposes amending the zero tolerance statute, K.S.A. 8-1567(a), which applies to persons less than 21 years of age whose alcohol content is .02 or less than .08. Currently, K.S.A. 8-1567(a) requires law enforcement officers to have "reasonable grounds to believe that a person was operating a vehicle while under the influence of alcohol or drugs" before an evidentiary test can be obtained. This standard is virtually unenforceable since preliminary breath tests and field sobriety testing is insufficient to accurately assess when a person's alcohol content is less than .08. This bill proposes changing the probable cause standard to "reasonable grounds to believe a person was operating a vehicle *while having alcohol or drugs in such person's system.*" Law enforcement officers will then be able to perform evidentiary testing based upon smelling an odor of alcoholic beverage on the person or observing other evidence of alcohol or drug use. Please be aware that this is a probable cause standard that law enforcement officers are already familiar with enforcing as this is the same standard they currently apply to drivers of commercial vehicles in DUI cases.

Other amendments in Senate Bill 131 include creating a traffic infraction penalty for persons less than 21 years of age with a test result of .02 or less than .08 in K.S.A. 8-1567(a) and increasing the penalties for refusing the preliminary breath test from a traffic infraction to a class C misdemeanor in K.S.A. 8-1012.

Please allow me to reinforce to you again that the FATAL Task Force wants you to know that they are convinced that serious steps must be taken to address the problem of drunk driving, and they are committed to strengthening our State laws dealing with drunk drivers. We are confident that the changes proposed in this bill will save lives by sending a strong message that there are serious penalties and consequences to any person who drives while under the influence of alcohol or drugs. On behalf of the FATAL Task Force, I would urge your favorable consideration of Senate Bills 215 and 131.

As a final note, I encourage you to review each of the ideas submitted in Senate Bills 131 and 215. If this subcommittee feels that it is not possible to recommend the bills favorably with all of the provisions as they are currently drafted then consider the individual provisions of the bills for your recommendations. While the FATAL Task Force would like to see each of their recommendations passed into law, any improvements in the DUI laws for the State of Kansas would be welcomed.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

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

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

#### **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



State of Kansas

# Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

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

MAIN PHONE: (785) 296-2215  
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FEBRUARY, 2001

### I. A. DUI Criminal Penalties and Administrative Sanctions - Senate Bill 215

#### Current

#### Proposed

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

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

#### Criminal:

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

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

#### Administrative:

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

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

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

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

#### Criminal:

48 hrs + 3 days work release - 1 yr  
(90 days minimum sentence)  
  
\$500 - \$1,000 fine  
Ignition interlock required if BAC  
is .15 or above after admin.  
suspension expires

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

9-13

No treatment required unless released on probation/parole

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

Administrative:

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

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

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

Criminal:

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

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

Administrative:

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

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

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

Criminal:

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

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

Administrative:

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

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



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

Criminal:

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

Administrative:

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

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

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

**C. DUI Test Refusal**

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

**D. DUI Diversions**

- DUI diversions shall be limited to one per lifetime.

**Administrative Hearing Issues - also Senate Bill 215**

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

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

**II. A. DUI By Any Person Less Than 21 Years Of Age - Senate Bill 131**  
(K.S.A. 8-1567a)

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

**B. Preliminary Breath Test (PBT) Refusal - Senate Bill 131**

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

**III. Aggravated Battery (K.S.A. 21-3414) - Senate Bill 132**

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

## **Bed space Impact Assessment**

### **DUI Fourth Plus from Nongrid to Mandatory 15 Months Imprisonment**

#### **KEY ASSUMPTIONS**

- Projected admissions to prison is assumed to increase by an annual average of one percent. Bed space impacts are in relation to the baseline forecast produced in August 2000 by the Kansas Sentencing Commission.
- Targeted inmates of DUI 4<sup>th</sup> plus convictions are assumed to be in prison for 15 months before post-release.
- It is projected that approximately 38% of the DUI third plus convictions reported to the Kansas Sentencing Commission would go on to be convicted of DUI 4<sup>th</sup> offense. This rate is calculated from the aggregate number of DUI convictions provided by KBI.
- The diversion rates of DUI 4<sup>th</sup> plus convictions are assumed to be 10%, 25%, 35%, 50%, and 75% of the 38% of the DUI third plus offenders who were sentenced during FY 2000.
- Percentage of targeted inmate sentences served in prison is assumed 100 percent, with no good time credits applicable.

#### **FINDINGS**

- In FY 2000, there were 397 offenders sentenced for felony DUI 3<sup>rd</sup> conviction.. Based on the information provided by KBI, if 38% of the DUI 3<sup>rd</sup> convictions result in a fourth or subsequent DUI conviction, there would be a target population of 151 offenders.
- If 10% of the above target population of offenders have a fourth DUI or subsequent conviction and are mandated to prison for 15 months, there will be 21 beds needed by the year 2011.
- If 25% of the above target population of offenders have a fourth or subsequent conviction and are mandated to prison, there will be 53 beds needed by the year 2011.
- If 35% of the above target population of offenders have a fourth or subsequent conviction and are mandated to prison, there will be 73 beds needed by the year 2011.
- If 50% of the target population of offenders have a fourth or subsequent conviction and are mandated to prison, there will be 104 beds needed by the year 2011.
- If 75% of the offenders have a fourth or subsequent conviction and are mandated to prison, there will be 156 beds needed by the year 2011.
- The impact of this bill, if it is passed, will result in the need for an additional 21,53, 73, 104, and 156 beds, respectively.

**Bed Space Impact Assessment  
DUI Fourth Plus Conviction from Nongrid to Mandatory 15 Months Imprisonment  
With Different Diversion Rates**

| <b>June of Each Year</b> | <b>Scenario #1<br/>10% Diversion</b> | <b>Scenario #2<br/>25% Diversion</b> | <b>Scenario #3<br/>35% Diversion</b> | <b>Scenario #4<br/>50% Diversion</b> | <b>Scenario #5<br/>75% Diversion</b> |
|--------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| 2002                     | 15                                   | 38                                   | 53                                   | 76                                   | 114                                  |
| 2003                     | 19                                   | 49                                   | 67                                   | 95                                   | 145                                  |
| 2004                     | 20                                   | 49                                   | 68                                   | 96                                   | 146                                  |
| 2005                     | 20                                   | 50                                   | 69                                   | 97                                   | 148                                  |
| 2006                     | 20                                   | 50                                   | 70                                   | 99                                   | 149                                  |
| 2007                     | 20                                   | 50                                   | 70                                   | 9                                    | 150                                  |
| 2008                     | 20                                   | 51                                   | 71                                   | 100                                  | 151                                  |
| 2009                     | 20                                   | 51                                   | 71                                   | 101                                  | 154                                  |
| 2010                     | 20                                   | 52                                   | 72                                   | 102                                  | 155                                  |
| 2011                     | 21                                   | 53                                   | 73                                   | 104                                  | 156                                  |

#2

**Testimony in support of SB 131  
Senate Judiciary Committee  
February 19, 2001  
Presented by: Cherie Sage, AAA Kansas**

Good morning. My name is Cherie Sage and I am the Public Affairs Coordinator for the American Automobile Association of Kansas. AAA Kansas is an organization representing over 132,000 members in our state.

On behalf of AAA Kansas and its members, I am here to urge your support of SB 131 for stricter DUI penalties.

According to the National Highway Traffic Safety Association, during a typical weekend, an average of one teenager dies every hour in a car crash. Almost 50 percent of those crashes involve alcohol. Alcohol-related highway crashes are the leading cause of death for adolescents and young adults in the U.S. Lesser penalties propagate the idea that drinking and driving is not a serious offense. License suspension is not enough of a deterrent. By imposing stricter penalties, the message is sent to young drivers that drinking and driving is serious business.

In a public affairs survey conducted last October, AAA Kansas members said that their top safety concern as motorists was drunk drivers (82%). This is no surprise considering that about 2 in every 5 Kansans will be involved in an alcohol-related crash sometime in their life. (KDOT) Seventy-two percent of the driving age public agrees that the penalties for drinking and driving should be more severe. (NHTSA)

With the severity of consequences from drinking and driving, coupled with the public support for stricter penalties, AAA Kansas urges your support of SB 131. Thank you.

#



**KANSAS DEPARTMENT OF TRANSPORTATION  
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Secretary of Transportation

Bill Graves  
Governor

**TESTIMONY BEFORE THE  
SENATE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 131  
DRIVING UNDER THE INFLUENCE (DUI)  
BY THOSE UNDER THE AGE OF 21**

**February 19, 2001**

Mr. Chairman and Committee Members:

I am Rosalie Thornburgh, Chief of Traffic Safety in the Department of Transportation. On behalf of the Department, I am here to testify on Senate Bill 131, specifically as it applies to driving under the influence by those under the age of 21, commonly referred to as the zero tolerance law. Senate Bill 131 contains a change to the probable cause language.

The Department supports the proposed change to the probable cause language and further wishes to inform the committee that this change would not affect Kansas' compliance with federal law, Section 161. The proposed language change has been verbally approved by the National Highway Traffic Safety Administration.

The 1996 Kansas legislature passed a federally conforming zero tolerance law which meets the requirements under Section 161 of Title 23, and the Department certified the state's compliance to the U.S.D.O.T. on May 16, 1997.

In summary, the Department supports the probable cause language amendment intended to enable more effective enforcement. This change will not compromise our compliance status with the federal zero tolerance law requirements.





#4

# Kansas Coordinators of Alcohol Safety Action Projects Association

## LEGISLATIVE TESTIMONY

TO: Chairman Ed Pugh and Members of the Senate Judiciary Subcommittee

DATE: February 19, 2001

SUBJECT: SB 215 and SB 231

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent the Kansas Coordinators of Alcohol Safety Action Projects (KCASAP).

KCASAP has identified support of General Stovall's and the FATAL task force recommendations on changes to the state's DUI laws as their top priority for the 2001 Legislative Session.

As other conferees have and will cover other provisions of these bills, I would like to focus on the provisions of SB 215 that require inpatient and outpatient for repeat offenders. SB 215 requires that upon second and subsequent offenses, offenders are required to complete an inpatient or outpatient treatment program for substance abuse.

These provisions are strongly supported by state data compiled on DUI offenders from 1998 to 2000. Examination of this data shows a major distinction between offenders determined to be social drinkers and those determined to be alcohol addicted drinkers based on the evaluations conducted by my members. The following table documents these distinctions:

|                                                      | Social Drinkers | Alcohol Addicted Drinkers |
|------------------------------------------------------|-----------------|---------------------------|
| How many times has the client been arrested for DUI? |                 |                           |
| Once                                                 | 82.6%           | 25.1%                     |
| Twice                                                | 12.5%           | 26.1%                     |
| Three                                                | 1.7%            | 19.7%                     |
| Four or More                                         | 0.9%            | 27.6%                     |

As is clear from viewing this data, repeat offenders are far more likely to be alcohol addicted and requiring treatment as opposed to the current requirement for education seems like an effective step to try and prevent multiple offenses.

I respectfully request that the committee report SB 215 and SB 131 favorably for passage. I thank the committee for its time and attention and would stand for any questions.

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3312 Clinton Parkway  
Lawrence, Kansas 66047



## Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (785) 271-7525 • Fax (785) 271-0797 • 1 (800) 228-6233

KANSAS STATE OFFICE

2/16/01

Senator Edwin Pugh, Vice Chairman  
Senate Judiciary Subcommittee  
Room 128-S  
State Capitol  
Topeka, Kansas 66612

Dear Senator Pugh and Subcommittee Members:

Kansas MADD's Public Policy Liaison will be unable to be present to testify at the subcommittee hearings regarding Senate Bill 131 and Senate Bill 215.

On February 8, 2001, a letter was sent by Kansas MADD to all Senate Judiciary Committee members summarizing alcohol-related crash data in Kansas for the year 1999. As stated in the letter, 52% of all individuals involved in alcohol-related crashes during 1999, were not the drinking drivers. Approximately 47% of injuries and 41% of fatalities sustained in these crashes were not the drinking drivers.

Approximately 429 children ages 0-14 were involved in alcohol-related crashes in 1999 and 31% were injured and three were killed. Of the 429 children involved, 257 were under the age of ten years. Forty-one percent of the children involved, were riding with a drinking driver at the time of the crash.

Kansas MADD strongly supports Senate Bill 131 and Senate Bill 215 and ask for your support of these two bills.

Please accept this letter and the enclosed documents as written testimony on behalf of these two bills.

Sincerely,  
*Dee Meyer*  
Dee Meyer  
State Chairperson  
Kansas MADD

# KANSAS - ALCOHOL-RELATED CRASH SUMMARY 1999

9-23

|                                                  |       |                                                                  |       |        |
|--------------------------------------------------|-------|------------------------------------------------------------------|-------|--------|
| TOTAL NUMBER OF ALCOHOL-RELATED CRASHES          | 3,273 | TOTAL NUMBER OF PERSONS INVOLVED IN ALCOHOL-RELATED CRASHES      | 6,890 |        |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS INVOLVED                        | 3,340 | (48%)  |
|                                                  |       | TOTAL NUMBER OF PASSENGERS INVOLVED RIDING WITH DRINKING DRIVERS | 1,444 | (21%)  |
|                                                  |       | OTHERS INVOLVED                                                  | 2,106 | (31%)  |
|                                                  |       |                                                                  | 6,890 | (100%) |
| TOTAL NUMBER OF ALCOHOL-RELATED INJURY CRASHES   | 1,585 | TOTAL NUMBER OF PERSONS INJURED IN ALCOHOL-RELATED CRASHES       | 2,437 |        |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS INJURED                         | 1,281 | (53%)  |
|                                                  |       | TOTAL NUMBER OF PASSENGERS INJURED RIDING WITH A DRINKING DRIVER | 546   | (22%)  |
|                                                  |       | OTHERS INJURED                                                   | 610   | (25%)  |
|                                                  |       |                                                                  | 2,437 | (100%) |
| TOTAL NUMBER OF ALCOHOL-RELATED FATALITY CRASHES | 72    | TOTAL NUMBER OF PERSONS KILLED IN ALCOHOL-RELATED CRASHES        | 83    |        |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS KILLED                          | 49    | (59%)  |
|                                                  |       | TOTAL NUMBER OF PASSENGERS KILLED RIDING WITH A DRINKING DRIVER  | 23    | (28%)  |
|                                                  |       | OTHERS KILLED                                                    | 11    | (13%)  |
|                                                  |       |                                                                  | 83    | (100%) |

SOURCE: KDOT-State of Kansas Alcohol Involvement in Motor Vehicle Accidents 1990-1999  
 Kansas MADD 10/25/00

# KANSAS - SUMMARY OF CHILDREN AGES 0 - 14 INVOLVED IN ALCOHOL-RELATED CRASHES IN 1999

9-24  
p26

|                                                  |       |                                                                                                                    |     |        |
|--------------------------------------------------|-------|--------------------------------------------------------------------------------------------------------------------|-----|--------|
| TOTAL NUMBER OF ALL ALCOHOL-RELATED CRASHES      | 3,273 | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES                                         | 429 | (100%) |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER     | 187 | (44%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER | 242 | (56%)  |
| TOTAL NUMBER OF ALCOHOL-RELATED INJURY CRASHES   | 1,585 | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES                                          | 132 | (31%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER      | 76  | (58%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER  | 56  | (42%)  |
| TOTAL NUMBER OF ALCOHOL-RELATED FATALITY CRASHES | 72    | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES                                           | 3   | (1%)   |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER       | 2   | (67%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER   | 1   | (33%)  |

Source: KDOT "State of Kansas Alcohol Involvement in Motor Vehicle Accidents 1990-1999"

Kansas MADD 12/4/00

\*Percentages are rounded off.



4



**KANSAS DEPARTMENT OF TRANSPORTATION  
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Bill Graves  
Governor

**TESTIMONY BEFORE  
SENATE JUDICIARY COMMITTEE**

**REGARDING SENATE BILL 206  
PENALTIES FOR DUI REPEAT OFFENDERS**

**February 19, 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 Senate Bill 206 regarding enhanced criminal sanctions for DUI offenders and the federal requirement to enact a "repeat offender" law.

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. Senate Bill 206 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 alcohol content provision.

The Transportation Equity Act for the 21<sup>st</sup> 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.

6-2252

9-25

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 (FFY 2002), one and one-half percent 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 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.



Session of 2001

SENATE BILL No. 206

By Committee on Judiciary

2-1

AN ACT relating to driving under the influence of alcohol or drugs; concerning penalties; amending K.S.A. 2000 Supp. 8-1014 and 8-1015 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) (f) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the person's driving privileges for one year.

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

(1) On the person's first occurrence test failure, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days; and

(2) on the person's second or a subsequent occurrence test failure, suspend the person's driving privileges for one year.

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

(1) On the person's first drug-related conviction, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days; and

(2) on the person's second or a subsequent drug-related conviction, suspend the person's driving privileges for one year, then at the conclusion of the one-year suspension, the person's driving privileges shall be restricted to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense.

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

# Memo

**To:** Senate Judiciary Sub-Committee

**From:** Steve Kearney

**Date:** 02/21/01

**Re:** SB 206

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Attached please find an excerpt from Traffic Safety magazine May/June 1998 concerning the efficacy of Interlock devices. I thought this information would be helpful in your deliberations.

# 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.

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*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

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

## New devices prevent circumven

**L**ike 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 LifeSaver 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.

**Rolling Re-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." ☹



# 9

# KANSAS HIGHWAY PATROL

*Service—Courtesy—Protection*

Bill Graves  
Governor



Col. Donald W. Brownlee  
Superintendent

## Summary of Testimony on SB 208 Senate Judiciary Committee

Presented by  
Second Lieutenant John Eichkorn  
February 19, 2001

Good morning Mr. Chairman and members of the committee. My name is Second Lieutenant John Eichkorn, and I appear before you on behalf of Colonel Don Brownlee and the Kansas Highway Patrol to comment on Senate Bill 208.

SB 208 is a relatively simple bill. The provisions set forth attempt to amend Kansas' current law (K.S.A. 8-1567) regarding driving under the influence or DUI.

Presently, our DUI law makes it illegal to operate or attempt to operate any vehicle within this state while under the influence of alcohol and or drugs to a degree that renders the person incapable of doing so safely. Because the word drug is not defined for use in this statute, courts in Kansas have interpreted the definition in different ways. There have been instances where cases have been dismissed because the court did not view an intoxicating substance as a drug. For example, if a driver is arrested for driving under the influence of paint fumes, the court may or may not view this intoxicant as a drug. Consequently the driver can be relinquished of his or her legal obligations associated with a DUI arrest if the fumes are not viewed as a drug.

SB 208 adds a subsection to the current DUI law that for the purposes of this law, defines a drug to include inhalants or other substances containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication. The Patrol agrees with the intent of this proposal but has some concerns with its delivery. Ultimately, this addition may leave other substances out.

The Patrol would like to offer an amendment to SB 208, which would strike the language in subsection (r) and replace it with the following:

(r) *For purposes of this section, drug includes any substance, which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.*

With this simple amendment, a drug is defined for the purposes of our current DUI law. As written, any substance including inhalants that when taken into the body, can impair the ability of the person to operate a vehicle safely. With this change, the Kansas Highway Patrol strongly urges this Committee to give SB 208 a favorable report.

122 SW SEVENTH STREET  
TOPEKA, KANSAS 66603-3847  
(785) 296-6800 FAX (785) 296-5956

#11

SENATE JUDICIARY COMMITTEE

Ref. SB 208

This bill in essence would change the wording of K.S.A. 8-1567 (a) (4). The change would read “under the influence of any drug or combination of drugs, *or any substance* to a degree that renders the person incapable of safely driving a vehicle.”

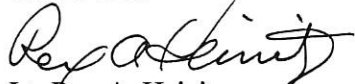
The reason for this change is to close what we believe to be a “loop hole” in the current statue. At the current time there is no provision in this or any other statue, that I can find, to prohibit people from driving under the influence of certain other chemicals. These could include paint vapors, vapors from certain fuels, *or any substance* that would render a person incapable of safely driving a vehicle.

At the current time it is not a violation for an individual commonly referred to as a “huffer ” to operate a vehicle, and sniff paint fumes in an effort to reach a “high”. As we all know, breathing the vapors of this type of substance effects the brain as does alcohol and certain drugs. The result is their reaction time is slowed, and at times the reality of existing situations is impaired. Further, it is our contention *any substance* that is consumed by a person which renders them incapable of safely driving a vehicle, should be a violation of the statue. After all what difference does it make what the substance or the cause is; if it makes a person incapable of safely operating a vehicle.

Our agency did have a specific instance a few years ago in which an individual was arrested for DUI. The subject was originally stopped for speeding. He met the criteria for one who was under the influence. His speech was slurred, his performance on the field sobriety test were indicative of one who was under the influence, and his balance appeared to be affected.

During the arrest procedure a small vial of liquid was found in his vehicle. A subsequent analysis of the substance by the K.B.I. Laboratory showed the substance to be Isopropyl Nitrite. I was later told this substance was used as a fuel. I was also later advised the subject had told the court he had been “sniffing” the substance and there was no law against doing that. Since the substance was not alcohol and was not considered to be a controlled substance or drug, the court agreed with him and the DUI charge was dismissed.

Thank You:



Lt. Rex A. Heinitz

Emporia Police Department  
518 Mechanic St.  
Emporia, Kansas 66801

Phone (316) 342-1766  
Fax (316) 343-4228



***Kansas Communities that Care***  
**2000 Student Survey Data**

| <u>USAGE PREVALENCE</u>                                | <u>1999</u>   | <u>2000</u>   |
|--------------------------------------------------------|---------------|---------------|
| <b>Lifetime Use:</b>                                   |               |               |
| Smokeless Tobacco                                      | 21.1%         | 19.8%         |
| Cigarettes                                             | 46.0%         | 43.0%         |
| Alcohol                                                | 59.7%         | 59.0%         |
| Marijuana                                              | 23.5%         | 20.9%         |
| Cocaine                                                | 5.3%          | 4.4%          |
| Inhalants                                              | 14.3%         | 12.8%         |
| <b>Past 30 Day Use:</b>                                |               |               |
| Smokeless Tobacco                                      | 8.3%          | 7.8%          |
| Cigarettes                                             | 21.3%         | 18.5%         |
| Alcohol                                                | 38.6%         | 36.8%         |
| Marijuana                                              | 12.1%         | 10.0%         |
| Cocaine                                                | 2.2%          | 1.7%          |
| Inhalants                                              | 5.4%          | 4.4%          |
| <br><u>COMMUNITY DOMAIN RISK FACTORS</u>               |               |               |
| <b>Community Laws and Norms:</b>                       |               |               |
| Would not be caught by police if using alcohol         | 74.6%         | 72.1%         |
| Would not be caught by police if using marijuana       | 64.4%         | 61.7%         |
| <b>Perceived Availability:</b>                         |               |               |
| Very easy to obtain tobacco                            | 45.0%         | 42.7%         |
| Very easy to obtain alcohol                            | 31.9%         | 31.2%         |
| Very easy to obtain marijuana                          | 27.2%         | 24.1%         |
| <br><u>FAMILY DOMAIN RISK FACTORS</u>                  |               |               |
| <b>Family Management Problems:</b>                     |               |               |
| Would not be caught for use of alcohol                 | 49.5%         | 47.5%         |
| Would not be caught skipping school                    | 23.6%         | 21.8%         |
| Would not be caught carrying a handgun                 | 24.5%         | 21.8%         |
| <br><u>INDIVIDUAL/PEER DOMAIN RISK FACTORS</u>         |               |               |
| <b>Early Initiation of the Problem Behavior:</b>       |               |               |
| Average age of first cigarette use                     | 12 yr. 2 mos. | 12 yr. 3 mos. |
| Average age of first alcohol use                       | 12 yr. 5 mos. | 12 yr. 6 mos. |
| Average age of first marijuana use                     | 13 yr. 6 mos. | 13 yr. 8 mos. |
| Average age of regular alcohol use                     | 14 yr. 2 mos. | 14 yr. 4 mos. |
| <br><b>Friends Who Engage in Alcohol and Drug Use:</b> |               |               |
| One of four best friends smoke cigarettes              | 52.4%         | 48.5%         |
| One of four best friends drink alcohol                 | 59.7%         | 58.7%         |
| One of four best friends use marijuana                 | 33.3%         | 30.1%         |

Data collected through the Kansas Communities that Care Youth Survey administered by research Services of Greenbush for the Kansas Alcohol and Drug Abuse Services, Division of Kansas Social Rehabilitation Services.

## 2000 KCTC Survey Data Explanation of Terms:

- Lifetime Use:** Percent of students in grades 6, 8, 10, and 12 reporting that they have used a specific substance (i.e., smokeless tobacco, cigarettes, alcohol, marijuana, cocaine, or inhalants) at least once in their lives.
- Past 30 Day Use:** Percent of students in grades 6, 8, 10, and 12 reporting that they have used a specific substance (i.e., smokeless tobacco, cigarettes, alcohol, marijuana, cocaine, or inhalants) at least once in the past thirty days.
- Community Laws and Norms:**
- (Alcohol)* Percent of students in grades 6, 8, 10, and 12 reporting that if a kid in their neighborhood drank some beer, wine, or hard liquor they would not be caught by police.
- (Marijuana)* Percent of students in grades 6, 8, 10, and 12 reporting that if a kid in their neighborhood smoked marijuana they would not be caught by police.
- Perceived Availability:** Percent of students in grades 6, 8, 10, and 12 reporting that if they wanted to obtain a specific substance (i.e., alcohol, tobacco, or marijuana) it would be "very easy" to get some.
- Family Management Problems:**
- (Alcohol)* Percent of students in grades 6, 8, 10, and 12 reporting that if they drank some beer, wine, or hard liquor without permission they would not get caught by their parents.
- (Skipping school)* Percent of students in grades 6, 8, 10, and 12 reporting that if they skipped school without permission they would not get caught by their parents.
- (Handgun)* Percent of students in grades 6, 8, 10, and 12 reporting that if they carried a handgun without permission they would not get caught by their parents.
- Early Initiation:** The average age that students in grades 6, 8, 10, and 12 report having first used a specific substance (i.e., cigarettes, alcohol, and marijuana), or having engaged in regular alcohol use (i.e., drinking alcoholic beverages at least once or twice a month).
- Friends Who Engage in Alcohol and Drug Use:**
- Percent of students in grades 6, 8, 10, and 12 reporting that at least one of their four best friends has used a specific substance (i.e., alcohol, tobacco, and marijuana) at least once during the past year.

#

**INTERNAL MEDICINE**

- James M. Geitz, M.D.
- James A. Barnett, M.D., F.A.C.P.
- W. Brock Kretsinger, D.O.
- W. Timothy Duncan, M.D.
- Rachel A. Duncan, M.D.

Mr. Chairman and fellow Senators, thank you for the opportunity to testify in support of SB118.

Sergeant Lane Ryno of the Emporia Police Department has requested assistance with this issue, having experienced difficulty with prosecution of drivers operating vehicles under the influence of inhalants.

In researching this issue, I learned that the problem actually hits very close to home. As I shared during my introduction of this bill, a 15-year-old girl is buried in Emporia. She was killed by a driver under the influence of inhalants. Her mother was moved to promote legislation in her home state. Georgia now includes inhalants in their statutes, along with other states in our nation. Today, I ask that you consider adding Kansas to that growing list.

**CARDIOLOGY**

- M. Usman Sheriff, M.D.

Unfortunately, huffing is not uncommon. Difficulty arises in identification. Fortunately, law enforcement officers are aware of this concern and are adept at identifying signs of intoxication. Telltale signs such as paint or glue on the fingernails may be evident. With the availability of proper training and equipment, tox traps may now be used to obtain additional evidence for prosecution.

**EMERITUS**

- Phillip W. Morgan, M.D.  
(1928-1966)
- Edward J. Ryan, M.D.  
(1947-1979)
- John L. Morgan, M.D.  
(1949-1984)
- Gould C. Garcia, M.D.  
(1964-1999)

I have spoken with Susan Wilson Tucker, mother of the teenager killed by the driver under the influence of inhalants. Her support for this issue is present today. I have enclosed a copy of a resolution signed by Governor Graves expressing his previous concern and support for this issue.

**SERVICES**

- Bone Densitometry
- Ultrasonography
- Mammography
- In-Office Laboratory
- Nuclear Cardiology
- Echocardiography
- Cardiac Catheterization
- Diagnostic*
- Interventional*
- Holter Monitor
- Exercise Testing
- Pacemaker Clinic

Thank you for the opportunity for your time and consideration, and I respectfully ask for your support of this legislation.



James A. Barnett, M.D., F.A.C.P.

JAB/gkp



**INHALANTS & POISONS**  
THEY'RE UNDER YOUR NOSE.

**SYNERGIES**  
**NATIONAL INHALANT PREVENTION COALITION**

Senator James Barnett  
Kansas State Senate  
136-N, State Capitol Building  
Topeka, KS 66612

14 February 2001

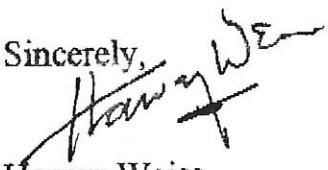
Dear Senator Barnett:

I am writing to you concerning Senate Bill No. 208. Inhalant abuse among young drivers is a significant problem, especially when we note that over 855, 000 people, nationally, between the ages of 18 and 25 have used inhalants in the past year (National Household Survey, US Substance Abuse and Mental Health Services Administration).

We hear about numerous accidents that have occurred while a young driver is under the influence of inhalants. Many times the results are tragic and fatal. This past October, in Chattanooga, TN., a young driver was inhalant impaired and drove into a tree. He was killed and three passengers were critically injured. Just this weekend we received an e-mail from a dad who told us that his son bought a product to inhale and did so in the parking lot of the store where he bought the product. Then, not more than a couple of hundred yards from the store, passed out and had an accident. Several years ago we worked on a similar bill to yours in Georgia. This was a result of a fatal accident that resulted in the death of young woman who was the passenger in a car driven by someone who wa high on inhalants. The mother, Susan Wilson-Tucker, is an ex-Kansan. I had the privilege of being invited a news conference held to acknowledge the signing of this legislation by then Governor Zell Miller.

I applaud your efforts to address this important issue. I would like to note that March 14th to 24th, is the eighth annual National Inhalants & Poisons Awareness Week. I hope you join in the efforts to raise awareness about the dangers of inhalant abuse.

If there is anything else I can do for, please do not heistiate to call on me.

Sincerely,  
  
Harvey Weiss  
Executive Director

2904 Kerbey Lane, Austin, TX 78703 ▼ 800.269.4237 ▼ 512.480.8953 ▼ FAX 512.477.3932

TO THE PEOPLE OF KANSAS, GREETINGS:

WHEREAS, Poisons and the improper use of inhalants pose an ever-present danger to the citizens of this state. All Kansans should be made aware of the potential harm of these substances; and

WHEREAS, While legal and helpful when properly used and administered, these substances can be disabling and even fatal when misused; and

WHEREAS, Inhalants often lead to the use of marijuana, crack, and other illegal drugs. Chronic inhalant users suffer permanent and severe brain damage. Other possible risks include heart failure, loss of consciousness, and irreversible damage to the liver, kidneys, and bone marrow. More than 1,000 legal products can be inhaled to "get high"; and

WHEREAS, In 1996, more than 1.8 million people suffered from ingestion and/or exposure to household poisons. In most cases, common household items such as aspirin, cough and cold remedies, perfumes, and cleaning products are the source of poisoning; and

WHEREAS, Poisons and inhalants pose a threat to the well-being of citizens of this state. The people of Kansas should be encouraged to support the National Inhalant Prevention Coalition in their efforts to make others aware of the dangers of these substances;

NOW, THEREFORE, I, BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS, do hereby proclaim the week of March 30 - April 6, 1997, as

*Inhalant & Poison Awareness Week*

in memory of Jennifer Nicole Wilson and urge the appropriate recognition thereof.

DONE At the Capitol in Topeka  
under the Great Seal of  
the State this 19th day of  
February, A.D. 1997

BY THE GOVERNOR:



11/12

Testimony in Support of  
Senate Bill No. 208  
February 19, 2001  
Submitted by  
Rochelle Schmidt  
Intervention Counselor  
Youth Assistance Program Coordinator  
Mental Health Center of East Central Kansas  
1000 Lincoln  
Emporia, KS

I'm writing in support of Senator Barnett's bill proposal regarding penalties for inhalant abusers. Frankly, I envision supporting future bills he proposes as, to date, they have all been extremely forthright and helpful in nature and "Americanly" common sense. As an Emporian and a Kansan, I feel fortunate to know him and have him as a voice for the people in the Kansas Senate.

The need for ensuring that the penalties for inhalant abusers convicted of operating a motor vehicle are the same as for one convicted of driving under the influence is paramount. Statistics show us clearly the negative and detrimental outcome of individuals operating vehicles while incapacitated by any substance used abusively. The medical and emotional costs can be further crippling to an individual, their family, and society. One doesn't have to look very far to see the carnage that accompanies most any substance we use wrongly. Like I tell my students I counsel with in the field of addiction, "I don't care what you call your "candy", if you're being destructive in your use of illegal or legal substances, it can all potentially take you and/or others down." Unfortunately, at times, because of my professional career in substance abuse intervention, I am aware first hand of young people and adults who have abused inhalants and alcohol, tobacco, and other drugs and operated a vehicle under the influence. The damage in some cases and astronomical risks being taken are frightening.

It is without hesitation that I submit this support to you for Senator Barnett's bill proposal re: penalties for inhalant abusers. I regret that I am unable to testify in person at this time.



44 13

# KANSAS HIGHWAY PATROL

*Service—Courtesy—Protection*

Bill Graves  
Governor



Col. Donald W. Brownlee  
Superintendent

**Kansas Highway Patrol  
Summary of Testimony  
Senate Bill 215  
Senate Judiciary Subcommittee  
presented by  
Second Lieutenant John A. Eichkorn  
February 19, 2001**

Good morning Mr. Chairman and members of the committee. My name is Second Lieutenant John Eichkorn and I appear before you on behalf of Patrol Superintendent, Colonel Don Brownlee, to comment on Senate Bill 215, which contains the recommendations of the Attorney General's Far-reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force. The Kansas Highway Patrol was an active participant in this Task Force and strongly supports the enhancements to Kansas' DUI laws contained within Senate Bill 215.

In 1999, Kansas Department of Transportation statistics indicate that there were more than 3,000 alcohol related motor vehicle crashes in our state. These collisions directly resulted in 71 deaths and more than 1,500 persons sustaining injuries. Senate Bill 215 attempts to decrease these staggering statistics through stiffer penalties, stricter licensing standards and a streamlined administrative process.

While all of the enhancements in this bill will bolster the safety of Kansans, the Patrol is especially supportive of the amendments that attempt to streamline the driver's license administrative hearing process. Law enforcement officers are regularly taken away from their regular duties to attend administrative hearings called by defendants and attorneys who's only defense was hoping that the officer would not attend the hearing. Other attorney's have misused the administrative hearing process turning it into an opportunity to cross-examine officers before criminal proceedings can take place. Many times, these hearing are held in neighboring counties requiring officers to travel out of their patrol areas to attend hearings at great cost to their agencies. The Patrol believes that Senate Bill 215 will address many of the problems that law enforcement officials have identified in the administrative hearing process.

On behalf of the Kansas Highway Patrol, I thank you for the opportunity to provide testimony on Senate Bill 215 and strongly urge you to give it a favorable report.

#####  
122 SW SEVENTH STREET  
TOPEKA, KANSAS 66603-3847  
(785) 296-6800 FAX (785) 296-5956

#14



# RILEY COUNTY POLICE DEPARTMENT

1001 S. Seth Child Road  
Manhattan, KS 66502  
(785) 537-2112

**William M. Watson**  
Director



To: Senate Judiciary Committee  
From: William M. "Mike" Watson, Director  
Riley County Police Department  
Re: SB 215  
Date: February 19, 2001

Chairperson Vratil and Committee Members:

I am Mike Watson, Director of the Riley County Police Department, headquartered in Manhattan. I have been the director of the Riley County Police Department for the last year and prior to that was a police officer with the Wichita Police Department for twenty-five years, the last five as chief of police. As part of my official duties as chief of police and director, as well as my efforts as a member of the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, and Kansas Peace Officer's Association, I have listened to the concerns of chiefs and officers on many topics. One of the most frequent complaints I hear from administrators and officers alike are the administrative hearings regarding drivers license suspensions. I must echo their concerns based upon my personal experiences.

In Wichita, nearly every week dozens of officers would be required to attend administrative hearings regarding drivers license suspensions as a result of DUI arrests. On-duty officers spent hundreds of hours in hearings and waiting for hearings that might keep them off the streets for an entire shift. Paying off-duty personnel to attend hearings cost the Wichita Police Department in excess of \$50,000 a year. Having relocated to Manhattan and Riley County has not altered my concerns, where the problem is also significant. In some areas of the state, officers must drive for hours to attend the out of county hearings, and law enforcement protection is reduced or eliminated until the officers return to their home county.

It is the opinion of most law enforcement officers and their administrations that many administrative hearings are being used as part of a strategy by the offender and their counsel as: 1) discovery hearings; 2) another opportunity to see if officers might be absent or delayed so the offender may receive a favorable ruling; 3) a financial punishment to the officer's department; and 4) punishment for the officer in the form of intense questioning without the assistance of counsel to assist/represent the officer's interests. This frustration leads to reluctance on the part of officers and their departments to believe in the stated purpose of the laws--to keep impaired drivers off the roadways.

I would like to take this opportunity to ask your support of SB 215 in general, and specifically for the provisions in regard to administrative hearings. SB215 contains provisions that allow personal attendance, telephone or video conferencing for hearings. It includes a witness fee for officers so departments can off-set some of the costs associated with hearings. Officers would only have to attend the hearings if subpoenaed; otherwise their signed statement could represent their testimony. These and other provisions of SB215 would keep administrative hearings from being a drain on the resources of law enforcement agencies and punishment for officers who enforce laws which were designed to keep impaired drivers from making our roadways dangerous for themselves and the driving public.

Thank you for the opportunity to share my concerns on behalf of myself and other law enforcement agencies and officers. Again, I ask your support of SB 215.

Sincerely,

A handwritten signature in black ink, appearing to read 'William M. Watson', with a long horizontal line extending to the right.

William M. Watson

Director

Riley County Police Department

WMW/mlk

Testimony on SB 215

Judiciary Committee

The Kansas Department of Health and Environment is responsible for administering the statewide breath alcohol program and approving laboratories performing tests for controlled substances. The Department supports SB 215. However, the Department suggests that on page 38, lines 1 and 5, that "testing protocols" be deleted. Testing protocols are unique to a specific instrument model and are not easily adopted into rules and regulations. Any model change would necessitate a revision of the regulations before a change in testing could be implemented. For controlled substance laboratories, K.A.R.28-33-12(c)(2) requires the use of a written protocol approved by the laboratory director. For law enforcement programs conducting breath testing, K.A.R. 28-31-1(a)(3) requires that "equipment shall be operated strictly according to description provided by the manufacturer and approved by the department of health and environment." The current regulatory provisions adequately address the need for accurate, consistent and uniform testing.

#11

**Testimony in support of SB 215  
Senate Judiciary Committee  
February 19, 2001  
Presented by: Cherie Sage, AAA Kansas**

Good morning. My name is Cherie Sage and I am the Public Affairs Coordinator for the American Automobile Association of Kansas. AAA Kansas is an organization representing over 132,000 members in our state.

On behalf of AAA Kansas and its members, I am here to urge your support of SB 215 for stricter DUI penalties.

In a public affairs survey conducted last October, AAA Kansas members said that their top safety concern as motorists was drunk drivers (82%). This is no surprise considering that in 1999 alcohol was involved in 35 percent of all crash fatalities in Kansas (186 of 537 deaths.) About 2 in every 5 Kansans will be involved in an alcohol-related crash sometime in their life. (KDOT) Seventy-two percent of the driving age public agree that the penalties for drinking and driving should be more severe. (NHTSA) With stricter penalties, the message would be sent to the public that driving while under the influence of alcohol or drugs is serious business.

Almost one-third of all drivers arrested or convicted while driving under the influence of alcohol are repeat offenders (NHTSA.) Although drivers licensing sanctions have aided in the reduction of alcohol-related fatalities, the truth is that some offenders will continue to drive without a license. This fact reflects the importance of treating the problem. Punishment alone will not change the behavior of a habitual drunk driver. One example of the success of treatment programs is Milwaukee's Intensive Supervision Probation program. Through a behavioral monitoring program, recidivism was reduced by more than 50 percent (from 11 percent to 55 percent.) Therefore, we support the proposed mandatory treatment of drivers with multiple drunk driving convictions.

AAA Kansas also supports a stricter penalty for those drivers who have a child under the age of 14 in the vehicle at the time they are driving under the influence. Statistics show that more than one-fifth of all traffic deaths among children ages 14 and under involve alcohol. Nearly 65 percent of the children killed in alcohol-related crashes are passengers in vehicles with drunk drivers. We believe the endangerment of children is certainly justification for additional penalties.

As an advocate for traffic safety, AAA Kansas urges your support of SB 215 as a step towards making the roads and highways a safer place to be. Thank you.





# 17

**Kansas Coordinators  
of Alcohol Safety Action  
Projects Association**

LEGISLATIVE TESTIMONY

TO: Chairman Ed Pugh and Members of the Senate Judiciary Subcommittee  
DATE: February 19, 2001  
SUBJECT: SB 215 and SB 231

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent the Kansas Coordinators of Alcohol Safety Action Projects (KASAP).

KCASAP has identified support of General Stovall's and the FATAL task force recommendations on changes to the state's DUI laws as their top priority for the 2001 Legislative Session.

As other conferees have and will cover other provisions of these bills, I would like to focus on the provisions of SB 215 that require inpatient and outpatient for repeat offenders. SB 215 requires that upon second and subsequent offenses, offenders are required to complete an inpatient or outpatient treatment program for substance abuse.

These provisions are strongly supported by state data compiled on DUI offenders from 1998 to 2000. Examination of this data shows a major distinction between offenders determined to be social drinkers and those determined to be alcohol addicted drinkers based on the evaluations conducted by my members. The following table documents these distinctions:

|                                                      | Social Drinkers | Alcohol Addicted Drinkers |
|------------------------------------------------------|-----------------|---------------------------|
| How many times has the client been arrested for DUI? |                 |                           |
| Once                                                 | 82.6%           | 25.1%                     |
| Twice                                                | 12.5%           | 26.1%                     |
| Three                                                | 1.7%            | 19.7%                     |
| Four or More                                         | 0.9%            | 27.6%                     |

As is clear from viewing this data, repeat offenders are far more likely to be alcohol addicted and requiring treatment as opposed to the current requirement for education seems like an effective step to try and prevent multiple offenses.

I respectfully request that the committee report SB 215 and SB 131 favorably for passage. I thank the committee for its time and attention and would stand for any questions.

(785) 841-2880  
Fax (785) 841-5777

3312 Clinton Parkway  
Lawrence, Kansas 66047

9-44





## Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (785) 271-7525 • Fax (785) 271-0797 • 1 (800) 228-6233

KANSAS STATE OFFICE

2/16/01

Senator Edwin Pugh, Vice Chairman  
Senate Judiciary Subcommittee  
Room 128-S  
State Capitol  
Topeka, Kansas 66612

Dear Senator Pugh and Subcommittee Members:

Kansas MADD's Public Policy Liaison will be unable to be present to testify at the subcommittee hearings regarding Senate Bill 131 and Senate Bill 215.

On February 8, 2001, a letter was sent by Kansas MADD to all Senate Judiciary Committee members summarizing alcohol-related crash data in Kansas for the year 1999. As stated in the letter, 52% of all individuals involved in alcohol-related crashes during 1999, were not the drinking drivers. Approximately 47% of injuries and 41% of fatalities sustained in these crashes were not the drinking drivers.

Approximately 429 children ages 0-14 were involved in alcohol-related crashes in 1999 and 31% were injured and three were killed. Of the 429 children involved, 257 were under the age of ten years. Forty-one percent of the children involved, were riding with a drinking driver at the time of the crash.

Kansas MADD strongly supports Senate Bill 131 and Senate Bill 215 and ask for your support of these two bills.

Please accept this letter and the enclosed documents as written testimony on behalf of these two bills.

Sincerely, <sup>4</sup>

*Dee Meyer*

Dee Meyer  
State Chairperson  
Kansas MADD

# KANSAS - ALCOHOL-RELATED CRASH SUMMARY 1999

9-86

|                                                  |       |                                                                  |              |              |
|--------------------------------------------------|-------|------------------------------------------------------------------|--------------|--------------|
| TOTAL NUMBER OF ALCOHOL-RELATED CRASHES          | 3,273 | TOTAL NUMBER OF PERSONS INVOLVED IN ALCOHOL-RELATED CRASHES      | 6,890        |              |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS INVOLVED                        | 3,340        | (48%)        |
|                                                  |       | TOTAL NUMBER OF PASSENGERS INVOLVED RIDING WITH DRINKING DRIVERS | 1,444        | (21%)        |
|                                                  |       | OTHERS INVOLVED                                                  | <u>2,106</u> | <u>(31%)</u> |
|                                                  |       |                                                                  | 6,890        | (100%)       |
| <br>                                             |       |                                                                  |              |              |
| TOTAL NUMBER OF ALCOHOL-RELATED INJURY CRASHES   | 1,585 | TOTAL NUMBER OF PERSONS INJURED IN ALCOHOL-RELATED CRASHES       | 2,437        |              |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS INJURED                         | 1,281        | (53%)        |
|                                                  |       | TOTAL NUMBER OF PASSENGERS INJURED RIDING WITH A DRINKING DRIVER | 546          | (22%)        |
|                                                  |       | OTHERS INJURED                                                   | <u>610</u>   | <u>(25%)</u> |
|                                                  |       |                                                                  | 2,437        | (100%)       |
| <br>                                             |       |                                                                  |              |              |
| TOTAL NUMBER OF ALCOHOL-RELATED FATALITY CRASHES | 72    | TOTAL NUMBER OF PERSONS KILLED IN ALCOHOL-RELATED CRASHES        | 83           |              |
|                                                  |       | TOTAL NUMBER OF DRINKING DRIVERS KILLED                          | 49           | (59%)        |
|                                                  |       | TOTAL NUMBER OF PASSENGERS KILLED RIDING WITH A DRINKING DRIVER  | 23           | (28%)        |
|                                                  |       | OTHERS KILLED                                                    | <u>11</u>    | <u>(13%)</u> |
|                                                  |       |                                                                  | 83           | (100%)       |

SOURCE: KDOT-State of Kansas Alcohol Involvement in Motor Vehicle Accidents 1990-1999  
 Kansas MADD 10/25/00

# KANSAS - SUMMARY OF CHILDREN AGES 0 - 14 INVOLVED IN ALCOHOL-RELATED CRASHES IN 1999

11-6

|                                                  |       |                                                                                                                    |     |        |
|--------------------------------------------------|-------|--------------------------------------------------------------------------------------------------------------------|-----|--------|
| TOTAL NUMBER OF ALL ALCOHOL-RELATED CRASHES      | 3,273 | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES                                         | 429 | (100%) |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER     | 187 | (44%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INVOLVED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER | 242 | (56%)  |
| TOTAL NUMBER OF ALCOHOL-RELATED INJURY CRASHES   | 1,585 | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES                                          | 132 | (31%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER      | 76  | (58%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 INJURED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER  | 56  | (42%)  |
| TOTAL NUMBER OF ALCOHOL-RELATED FATALITY CRASHES | 72    | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES                                           | 3   | (1%)   |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A DRINKING DRIVER       | 2   | (67%)  |
|                                                  |       | TOTAL NUMBER OF CHILDREN AGES 0-14 KILLED IN ALL ALCOHOL-RELATED CRASHES WHILE RIDING WITH A NON-DRINKING DRIVER   | 1   | (33%)  |

Source: KDOT "State of Kansas Alcohol Involvement in or Vehicle Accidents 1990-1999"

Kansas MADD 12/4/00

\*Percentages are rounded off.