Approved: March 12, 2003
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Nancey Harrington at 10:45 a.m. on January 28, 2003 in Room 245-N of the Capitol.

All members were present except: Senator Brungardt, excused

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:
Senator David Adkins
Dennis and Linda Beaver
Robert Nichols
Margi Grimwood, Emporians for Drug Awareness
Gerald Beaver
Karen Thompson
Stephanie Neu, Regional Prevention Center, Education and Training Consultant, Overland Park
Dr. Dennis Hoss
Sheriff John Calhoon, Atchison County
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association

Others attending: Please see attached.

Chairperson Harrington opened the meeting by asking the committee for bill introductions.

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, asked the committee for the introduction of a bill regarding video gaming machines.

Senator Vratil made a motion to introduce the bill. Senator Gilstrap seconded the motion. The bill was introduced.

Senator Vratil asked the committee for the introduction of three bills. He stated that the first two dealt with school finance, one allowing any school to use a local school tax as an enhancement fund to increase their general fund budgets by five percent, and the other dealing with a capital outlay fund to allow funds going forward to pay for utilities, insurance premiums, and technical expenses. He stated that the third bill had been requested by Senator Emler as a result of an increase in citation fees; local courts were granting diversions and then keeping the diversion funds for themselves instead of passing them along to the state.

Senator O'Connor made a motion to introduce the three bills. Senator Barnett seconded the motion. The bills were introduced.

Chairperson Harrington opened the public hearing on:

SB 33– An act concerning driving under the influence; relating to the penalties therefor

Theresa Kiernan briefly explained the bill to the committee.

Senator Barnett presented testimony in support of the bill. (Attachment 1)

Senator Adkins presented testimony in support of the bill. (Attachment 2)
The committee discussed concerns about the impact on a family if the family car were impounded.

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:45 a.m. on January 28, 2003 in Room 245-N of the Capitol.

Dennis and Linda Beaver presented testimony in support of the bill. (Attachment 3)

The committee expressed its sympathy over the loss of their son. Senator Gooch stated that he shared their pain through the loss of his own son, though through different circumstances.

Robert Nichols presented testimony in favor of the bill. He stated that he had been a college roommate and lifelong friend of the Beaver's son, Casey. He stated that he and some other friends has organized Casey's Journey, a bicycle ride across the nation in honor of Casey with the goal of speaking to as many people as possible. He stated that although **SB 33** might not eradicate drinking and driving, it was another tool in the toolbox, and he was strongly in support of the bill's passage.

Margi Grimwood presented testimony in support of the bill. (Attachment 4)

Jerry Beaver presented testimony in support of the bill. (Attachment 5)

Karen Thompson presented testimony in support of the bill. (Attachment 6)

Stephanie Neu presented testimony in support of the bill. (Attachment 7)

Dr. Hoss presented testimony in favor of the bill. He stated that he was an optometrist in Lawrence, and Casey had been one of the best pre-optometry students he had ever worked with in his twenty years in practice. He stated that Casey had a bright future, and that the drunk who hit and killed him destroyed that.

Sheriff John Calhoon presented testimony in support of the bill. (Attachment 8)

Tuck Duncan presented testimony as a proponent, but raised some technical concerns with the bill and suggested a few revisions. (Attachment 9)

Chairperson Harrington drew the committee's attention to the written testimony in support of the bill:

Attorney Richard Dearth, City Attorney, City of Parsons (Attachment 10)
Theresa Walters, Director, Emporians for Drug Awareness (Attachment 11)
Matt Sutherland, MADD (Attachment 12)
Kerry Stafford, Executive Director, MADD, New York (Attachment 13)
Lyon County Commission (Attachment 14)

The committee also received a fiscal note on the bill. (Attachment 15)

Chairperson Harrington closed the public hearing and adjourned the committee meeting at 12:00 p.m.

The next meeting will be a joint meeting with House Federal and State Affairs at 12:00 p.m. on January 30 in Room 313-S.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: January 28, 2003

NAME	REPRESENTING
Phil Bradley	KLBA
John Calhoon	Atchison County Sheriff
Joe Herold	KSC
Eliza Nichols	Beaver Family Senate Bill 33
Robert Nichols	Beaver Family Senate Bill 33
Karen Thompson	Beaver Family SB 33
Jerry Beaver	Beaver Family S.B. 33
Margi Brunnworth	Emporia School District
ADAM GASPER	SEN ADKINS
AMBER KJELSHUS	SEN. BRUNGARDT
Michael Misener	Beaver Family SB 33
Donna Williams	Beaver Family SB 33
Sheila Walker	KDOR - DMV
Harry Tippin	" "
Luella Misener	Beaver Family, SB 33
Lester Murphy	" "
Anita Murphy	" " "
Melvin Dean Owen	Friend " " "
Michelle Peterson	KS Gov. Consulting

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 1-28-03

NAME	REPRESENTING
TUCK DUNCAN	Kansas wine & spirits wholesalers association
Tom Palace	IMCA OF KANSAS
DENNIS BEAVER	SENATE BILL 33
Linda BEAVER	SENATE BILL 33
Gina Poertner	Senator Barnett
Ari Hyten	JUDICIAL BRANCH

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GEARY, GREENWOOD
LYON, MARION, MORRIS, OSAGE, AND
WABAUNSEE COUNTIES

STATE OF KANSAS

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIR: PUBLIC HEALTH AND WELFARE
VICE CHAIR: FINANCIAL INSTITUTIONS AND INSURANCE
MEMBER: FEDERAL AND STATE AFFAIRS

TESTIMONY

Senate Bill 33

Madam Chair and members of the Federal and State Affairs Committee, thank you for the opportunity today to speak in support of Senate Bill 33.

The intent of this legislation is to reduce the risk of tragic accidents and unnecessary deaths that can occur on Kansas highways. My first awareness of this issue came from a conversation with Linda and Dennis Beaver. They will share their story with you. Their loss touched my heart and brings me before this committee today to ask for your help.

Impoundment of vehicles is not a new subject. A number of cities have enacted this legislation across the United States. They include New York City, Springfield, Missouri, Albuquerque, New Mexico, and Portland, Oregon. Upon review of available data and discussion with research staff, I advised the Beavers that we introduce legislation to allow cities and counties the local option of developing impoundment or immobilization ordinances. In order to do so, statutory change is necessary to the uniform DUI laws for our state. To maintain equal protection under the law, the proposed legislation also includes district courts. This has been added to provide a level playing field in our court system. As well, the language is permissive, to allow consideration of the many social factors and issues involved with the both the families of the victim and the drunk driver. Additionally, I have visited with the Kansas Bankers Association to be certain that appropriate language is included to handle outstanding liens on impounded or immobilized vehicles.

For the first time in a number of years, the state of Kansas has seen an increase in the number of drunk driving fatalities. This legislation is one tool that we can use to reduce those tragic deaths and injuries that could involve any one of us or our loved ones.

I appreciate your consideration of this proposal.

Signed:

Senator Jim Barnett

JAB/gkp

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Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 1

STATE OF KANSAS

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SENATOR DAVID ADKINS

Testimony before the Senate Committee on Federal and State Affairs
January 28, 2003
SB 33

Dear Madam Chair and Members of the Committee:

Thank you for this opportunity to appear in support of SB 33.

In 2001, 96 people died in alcohol-related crashes on Kansas roads, and 2,508 people were injured. The National Highway Traffic Safety Administration estimates that 17,380 people were killed in alcohol-related crashes in 2000 in the U.S.; that is 41 percent of the people killed in traffic crashes. The agency suggests that for every DUI arrest, there are 772 occurrences of drunk driving. These tragic statistics urge us to continue to be vigilant in our attempts as public policy makers to address drunk driving as a significant public safety and public health threat.

SB 33 provides local officials with another valuable tool to address drunk driving. It provides impoundment of an offender's vehicle as a consequence of drunk driving. I support such a provision.

I am also here today to ask that SB 33 serve as a vehicle for discussion and action on several other policy initiatives that I believe would enhance public safety. Attached to this testimony you will find a copy of proposed legislation prepared at my request by law students at the University of Missouri. This legislation would provide for forfeiture of vehicles upon a third DUI offense with the proceeds being split between the law enforcement agency making the arrest and a DUI crime victims fund administered by the attorney general. The proposed legislation also creates a method for public disclosure of people whose driving privileges have been suspended by requiring a website to be established to provide the public with notice of that information. Finally, the bill would repeal the defense of voluntary intoxication in both criminal and civil proceedings.

I would hope that these enhancements to current law would also be considered by the committee in its deliberations on this issue.

Again, thank you for your consideration of my interest in this important issue.

Respectfully submitted,

David Adkins

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 2

SENATE BILL No. ----

AN ACT relating to the prevention and punishment of intoxicated operation of a conveyance, by land or water, specifically, the forfeiture of vehicles and vessels, public disclosure of offenders, and the elimination of the voluntary intoxication defense.

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

Section 1: K.S.A. 2001 8-1567 is hereby amended to read as follows: 8-1567.
(a) No person shall operate or attempt to operate any vehicle within this state while:
(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.
(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $500 nor more than $1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.
(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to

serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,500 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. *Any motor vehicle, as defined under K.S.A. 8-1437, used in the commission of the third or subsequent offense shall be forfeited to the state and seized by the arresting law enforcement authority pursuant to K.S.A. 60-4101 through K.S.A. 60-4126 and amendments thereto, otherwise known as the Kansas standard asset seizure and forfeiture act.*

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections and shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse as determined by the secretary. Upon completion of the term of imprisonment and the required treatment program for alcohol and drug abuse, the person shall be released to a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an approved aftercare plan as determined by the Kansas parole board as a condition of release. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq. , and amendments thereto and as otherwise provided by law. *Any motor vehicle, as defined under K.S.A. 8-1437, used in the commission of the fourth or subsequent offense shall be forfeited to the state and seized by the arresting law enforcement authority pursuant to K.S.A. 60-4101 through K.S.A. 60-4126 and amendments thereto, otherwise known as the Kansas standard asset seizure and forfeiture act.*

(h) Any person convicted of violating this section or an ordinance, which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense, shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance, which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
(k) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.
(l) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:
(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;
(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;
(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and
(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.
(m) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments

thereto.
(n) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.
(p) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.
(q) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.
(r) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.
(s) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

Sec. 2: K.S.A. 2001 32-1131 is hereby amended to read as follows 32-1132.
(a) No person shall operate or attempt to operate any vessel within this state while:
(1) The alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vessel, is .08 or more;
(2) the alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vessel is .02 or more and the

person is less than 21 years of age;
(3) under the influence of alcohol;
(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or
(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.
(b) No person shall operate or attempt to operate any vessel within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.
(d) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.
(e) Except as provided by subsection (f), violation of this section is a misdemeanor punishable:
(1) On the first conviction, by imprisonment of not more than one year or a fine of not less than $100 nor more than $500, or both; and
(2) on the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than $100 nor more than $500. *Any vessel, as defined under K.S.A.32-1102, used in the commission of the second or subsequent offense shall be forfeited to the state and seized by the arresting law enforcement authority pursuant to K.S.A. 60-4101 through K.S.A. 60-4126 and amendments thereto, otherwise known as the Kansas standard asset seizure and forfeiture act.*
(f) Subsection (e) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.
(g) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction approved by the secretary before such person subsequently operates or attempts to operate any vessel.

Sec. 3. K.S.A. 2001 8-249 is hereby amended to read as follows: 8-249. (a) The division shall file every application for a driver's license received by it and shall maintain suitable records from which information showing the following may be obtained:
(1) All applications denied and the reason for such denial;
(2) all applications granted;
(3) the name of every licensee whose driver's license has been suspended or revoked by the division and after each such name note the reasons for such action.
(4) *The Division of Motor Vehicles or any successor agency shall create and maintain a website accessible to the public that contains the names, addresses, and effective dates of license revocation or suspension for persons who have had their driving license suspended or revoked under K.S.A. 8-252; 8-252(a); 8-253; 8-254; or 8-255. Driver's*

information shall not be removed from the website until the term of their suspension concludes or the revoked license is reinstated.
(b) The division also shall file all accident reports and abstracts of court records of convictions received by it under the laws of the state and, in connection therewith, maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of moving violations, as defined by rules and regulations adopted by the secretary of revenue, of such licensee and the traffic accidents in which such licensee has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of a driver's license and at other suitable times.

Sec. 4. K.S.A. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 2001 Supp. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:
(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;
(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;
(3) sell property which is not required by law to be destroyed and which is not harmful to the public:
(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.
(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.
(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or
(4) salvage the property, subject to any lien preserved by the court.
(b) When firearms are forfeited under this act, the firearms in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another law enforcement agency for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.
(c) The proceeds of any sale shall be distributed in the following order of priority:
(1) For satisfaction of any court preserved security interest or lien;
(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;
(3) reasonable attorney fees:
(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another

governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget; or

(B) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency;

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau

of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund , the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

(e) Proceeds from forfeitures conducted pursuant to K.S.A. 8-1567 or K.S.A. 32-1131 shall be distributed as follows:

(1) One half of the proceeds shall be distributed to the arresting law enforcement authorities pursuant to K.S.A. 60-4117(d)(1) or K.S.A. 60-4117(d)(2). One half shall be deposited in the crime victims compensation fund, pursuant to K.S.A. 74-7317 and shall be used for funding DUI education programs and DUI victims assistance programs, administered through the Crime Victims Compensation Board.

Sec. 5. K.S.A. 21-3208 is hereby amended to read as follows: 21-3208. (1) The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct and of conforming his conduct to the requirements of law. ~~(2) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.~~ *Voluntary intoxication may not be a defense to any criminal or civil proceedings in this state.*

Sec. 6. K.S.A. 8-1567 is hereby repealed.

Sec. 7. K.S.A. 32-1131 is hereby repealed.

Sec. 8. K.S.A. 2001 8-249 is hereby repealed.

Sec. 9. K.S.A. 60-4117 is hereby repealed.

Sec. 10. K.S.A. 21-3208 is hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Legislation Statutory Comparison

Forfeiture of vehicles is recognized in many states as a penalty for the commission of certain crimes ranging from drug convictions to vehicles used in commission of a felony. In particular, several states have provisions for forfeiture in drunken driving cases usually to punish repeat offenders. Some of the states with such statutes are New York, Wisconsin, Alaska, Minnesota, Ohio, Louisiana, Tennessee, Oklahoma, Pennsylvania, South Carolina, Nevada, and Michigan. The Kansas statute has provisions contained in part in forfeiture statutes in other jurisdictions.

The proposed Kansas statute contains the following key elements:

1. Definition of vehicle;
2. A number of convictions (three) for drunk driving before the forfeiture occurs;
3. A provision for sale of the vehicle and dispersal of funds;
4. Exemptions to forfeiture for innocent vehicle owners and perfected security interests;
5. Website posting of driving offenders;
6. Eliminating the "voluntary intoxication" defense in the State of Kansas.

The similarities and differences in these key elements in other jurisdictions are as follows:

Element 1. Definition of vehicle.

The proposed Kansas statute encompasses most every type of motorized vehicles short of wheel chairs. This is a very broad interpretation of vehicle that seems to be the

norm in forfeiture statutes. The Alaska statute for example, ALASKA STAT. § 38.35.036 (2001), is similar to Kansas in that it is also very broad in definition of vehicle. Alaska's statute allows for seizure of the same types of vehicles that Kansas allows including aircraft. The forfeiture of aircraft is unique to Kansas, Alaska and a few other jurisdictions. Inclusion of aircraft is an important point because it puts the same deterrence on flying while intoxicated as driving. Most any type of vehicle commonly used for transportation purposes is subject to seizure in the different states with forfeiture statutes. The proposed Kansas statute seems to be right on track with other jurisdictions.

As a side note, Tennessee does not allow for forfeiture of tractors. Seemingly they would be included in the Kansas Statute, and could be subject to controversy since Kansas is a primarily agricultural state. It would probably be unnecessary to include tractors, as they do not present the same dangers as an automobile operated by an intoxicated person. Nor is there as great an occurrence of intoxicated tractor operation on the roads of Kansas.

Element 2. Number of convictions before forfeiture.

The proposed Kansas statute provides for forfeiture upon the third conviction for driving under the influence within a ten-year period. The number of incidents that triggers forfeitures of vehicles varies widely between the different jurisdictions.

For example, Wisconsin has a similar provision to the proposed Kansas statute that allows forfeiture on the third conviction. WIS. STAT. § 346.65 (2001). However, Alaska allows for forfeitures after the second conviction and gives the judge the power to order forfeiture based on a public good theory. ALASKA STAT. § 28.35.036 (2001).

Michigan also allows for forfeitures upon the second conviction, however the forfeiture is not mandatory. MICH. COMP. LAWS § 257.625n (2002). Michigan also ties forfeiture to the severity of the act. Ohio allows for forfeiture after two convictions but ties the forfeiture to a certain time period. For example, if an individual is convicted two times within five years they are subject to forfeiture. OHIO REV. CODE ANN. § 4503.23.4 (Anderson 2002). The proposed Kansas statute also has a time period for convictions of ten years in this or any other jurisdiction in the United States. The proposed Kansas statute takes the middle of the road approach and balances the extremes of the different jurisdictions. It also looks at the time periods from the last conviction and the number of offenses the individual previously had.

Element 3. A provision for sale of vehicle and dispersion of funds.

The proposed Kansas statute allows for the sale of vehicles after the forfeiture and the dispersion of funds from the forfeiture. The proposed Kansas statute appropriates half of the obtained funds from the forfeiture to go to the local law enforcement agency that made the arrest and the other half to be transferred to the crime victim's compensation fund to provide for DUI educational programs and DUI victim assistance programs.

Most jurisdictions have relatively the same provision as far as the sale of vehicles. However, the appropriation of the funds varies widely. For example, Wisconsin gives half of the proceeds to pay for court costs and any remaining dollars goes to the school system. WIS. STAT. § 346.65 (2001). While the formula for where proceeds from forfeiture sales go differs widely, most all jurisdictions give some money to the court and

law enforcement agencies and the remainder of the funds goes to the victims or an assistance program.

Element 4. Exemptions to forfeiture for innocent vehicle owners and perfected security interests.

Kansas's asset, seizure and forfeiture provisions are incorporated into the proposed Kansas Statute. Therefore, Kansas's asset, seizure and forfeiture exemptions is also incorporated. KAN. STAT. ANN. § 60-4106. The exemptions to forfeiture of property, including vehicles, are primarily the same among the many jurisdictions that have the exceptions provisions in their statutes. The exemptions are in place to protect innocent car owners from losing their vehicle when they themselves did not commit or knowingly assist in the act. The exemptions also protect those with a security interest in a vehicle such as a bank or rental car agency. Many jurisdictions with forfeiture laws have subtle differences between their exemptions, however, the exemptions are primarily in place to protect the property of the innocent owners and the proposed Kansas statute achieves these same results.

Element 5. Website posting for drivers whose license has been suspended or revoked.

We have researched this idea extensively and have been unable to find another jurisdiction that uses this type of punishment. Many jurisdictions use this type of posting in the case of sex offenders and sexual predators, but not for drivers whose license has been suspended or revoked.

Element 6. Eliminating the "voluntary intoxication" defense in Kansas.

In the state of Kansas, the voluntary intoxication defense is currently recognized as a defense to the commission of a crime. KAN. STAT. ANN. § 21-3208(2) (2001); *See* State v. Papst, 44 P.3d 1230, 1236-1237 (2002). The proposed Kansas statute seeks to eliminate the voluntary intoxication defense in both criminal and civil proceeding within the state and therefore the defense would be unavailable in any possible forfeiture proceedings.

However, other jurisdictions maintain the "voluntary intoxication" defense. For example, Ohio recognizes the defense of voluntary intoxication if the defendants can establish that they were so influenced by alcohol or drugs that they could not form the purpose or have the knowledge required by the elements of the crime charged. Under this defense the defendants could not be held accountable for the crime charged. This is true even if the defendant intended to become intoxicated.

Comparable to the proposed Kansas statute that eliminated the voluntary intoxication defense, the United States Supreme Court held that a Montana law that eliminated the defense of voluntary intoxication was not unconstitutional simply because it prevented judges and juries from considering intoxication in determining whether a defendant intended to commit the crime charged. *Montana v. Egelhoff*, 518 U.S. 37, 56 (1996). In reaching that decision, Justice Scalia noted that lawmakers should be free to decide what evidence is relevant in determining whether or not a crime has been committed. *See id.* at 56.

Constitutional Analysis: Forfeiture of Vehicles Operated Under the Influence

Kansas can adopt a constitutional statute that would allow forfeiture of automobiles and watercraft used to commit the offense of driving drunk. The Fifth Amendment contains the most obvious means of attacking a forfeiture statute, and the owner of a seized vehicle may attack on the basis of the Double Jeopardy, Due Process, or Takings Clause. The Supreme Court has used different tests in evaluating the constitutionality of forfeiture statutes, depending on which of these clauses was asserted. Under the Eighth Amendment, an owner could challenge the forfeiture statute on the basis that it constitutes an excessive fine. None of these arguments should be effective.

Double Jeopardy

The double jeopardy clause protects against multiple punishments for the same offense. *U.S. v. Ursery*, 518 U.S. 267 (1996). *Ursery* involved two cases, one in which the defendants first were convicted and then faced forfeiture proceedings, and a second in which the forfeiture came first. In the second case, police discovered marijuana being grown next to and inside the defendant's house. The United States instituted civil forfeiture proceedings against the house, and the defendant ultimately paid $13,250 to settle the forfeiture claim in full. Before this settlement, the defendant was indicted, and ultimately was found guilty by a jury. In this case, the Sixth Circuit overturned his criminal conviction on the basis that it violated double jeopardy. In the other case, the Ninth Circuit reversed the forfeiture under the same rationale.

The Supreme Court held that civil in rem forfeitures were not "punishment" for purposes of the double jeopardy clause. The court distinguished in rem civil forfeitures as remedial civil actions, from potentially punitive in personam civil penalties such as fines. The difference between the two is that the latter are aimed at a person, and the former are aimed at a property.

In reaching its decision, the court utilized a two-part test from the case of *U.S. v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984)(involving forfeiture of firearms after the owner was acquitted of dealing firearms without a license). First, the court would look to whether the legislature intended the particular forfeiture statute to be a remedial civil sanction or a criminal penalty. *Ursery*, 518 U.S. at 277-78. Second, the court would look to whether the forfeiture proceeding, by the "clearest proof," would be so punitive in fact as to establish that it could not be legitimately viewed as civil in nature despite any legislative intent. *Id.* The court stated that the fact there is a connection between a criminal violation and a forfeiture, is far from meeting this "clearest proof" standard. *Id.* at 292. On applying this test, the court reversed both cases, and found that neither violated double jeopardy.

Cases such as *Ursery* and its progeny demonstrate that double jeopardy should not pose a significant obstacle to the forfeiture statute being proposed. In situations where the owner was not the driver, they could never assert double jeopardy under the proposed statute, since only the driver could have also received criminal penalties based on the same conduct. In cases where the owner is the operator, a constitutional challenge on the basis of double jeopardy should fail so long as the legislature indicates the statute is a remedial civil sanction. In order to negate the presumption of the statute's remedial civil

nature, a petitioner would have to show by the "clearest proof" that it ought to be viewed as a criminal penalty. The court in *Ursery* seems to have focused primarily on whether the forfeiture statutes reviewed served important non-punitive goals. Because forfeiture statutes can serve many purposes, and because of the high burden placed on a petitioner, this second prong should be easy to satisfy.

Due Process and Takings Clauses

In *Bennis v. Michigan*, 516 U.S. 442 (1996), the Supreme Court held that the forfeiture of a wife's interest in a car she and her husband owned jointly, and which was forfeited as a result of her husband's using it in violation of Michigan's indecency law during an encounter with a prostitute, was not a violation of the due process Clause.

Ms. Bennis argued that she was entitled to contest abatement of the car by showing that she did not know her husband would use the car to violate Michigan's indecency law. The court majority relied on a "long and unbroken line of cases" holding that an owner's interest in property my be forfeited by reason of the use to which the property was put, even though the owner did not know the property would be so used. *Id.* at 446. The court traced this line of cases back to the 1827 case of *The Palmyra*, 12 Wheat. 1, 6 L.Ed. 531 (1827), a case dealing with a privateer ship that was seized and forfeited before the owner had been convicted of privateering. This chain of cases also includes *Van Oster v. Kansas*, 272 U.S. 465 (1926). *Van Oster* involved a Kansas forfeiture law from the Prohibition-era. The law was applied against an automobile used in illegal transportation of intoxicating liquor. The court found the forfeiture did not violate due process. The *Bennis* court summarized this chain of cases as uniformly

holding that the guilt or innocence of the owner is irrelevant because of the legal fiction that it is the property itself that is guilty. *Bennis*, 516 U.S. at 446-451.

The court in *Bennis* also found that the forfeiture being reviewed did not constitute a taking of private property for public use in violation of the takings clause. Interestingly, the court reached this conclusion by reasoning that, if the forfeiture did not violate the Fourteenth Amendment and due process, the property was transferred by virtue of that proceeding from Ms. Bennis to the State, and therefore the State had no duty to compensate her since it had already lawfully obtained the property. *Id.* at 452. In other words, the forfeiture could not violate the takings clause because it did not violate the due process clause.

The *Bennis* decision has been cited and commented on in literally hundreds of cases, articles and law reviews. Much of this attention has been negative. Regardless, *Bennis* remains good law. Based on the foregoing, the forfeiture statute being proposed should survive attacks that focus on due process or the Taking Clause.

Excessive Fines

At first glance, the Eighth Amendment seems to pose the most significant threat to the type of statute at issue. In *Austin v. U.S.*, 509 U.S. 602 (1993), the United States filed an in rem action in federal district court against Austin's mobile home and auto body shop under 21 U.S.C. §§881(a)(4) and (a)(7), which provided for the forfeiture of vehicles and real property used or intended to be used to facilitate the commission of certain drug-related crimes. The Supreme Court held that the Eighth Amendment's excessive fines clause applies to in rem civil forfeiture proceedings. This means that

regardless of whether the forfeiture statute is viewed as being criminal or civil in nature, so long as it is designed at least in part to punish, it is subject to the Excessive Fines Clause. Hence, it is difficult to imagine a forfeiture statute that would not be subject to the Excessive Fines Clause. Having decided that the clause applied in *Austin*, the Court declined establishing a test for determining whether a forfeiture was constitutionally excessive, and remanded the matter. The court did not advocate a test for excessiveness until *U.S. v. Bajakajian*, 524 U.S. 321 (1998).

In *Bajakajian*, the respondent pled guilty to violating a law that required reporting if a person was transporting more than $10,000 in currency outside the United States. The respondent had been arrested transporting $357,144, and the United States sought forfeiture of the entire amount. On review, the Supreme Court had "little trouble" concluding that forfeiture of the currency constituted punishment *Id* at 328 The court stated that the forfeiture did not bear any of the hallmarks of a traditional civil in rem forfeiture in that: the government sought and obtained a criminal conviction instead of proceeding against the currency itself, the forfeiture served no remedial purpose, it was designed to punish offenders, and it could not be imposed upon innocent owners *Id.* at 331-332. The forfeiture statute was only triggered by conviction of an underlying felony, and only applied to the person convicted.

Having found the forfeiture constituted a punishment and thus a "fine" within the meaning of the Excessive Fines Clause, the court had to determine whether the forfeiture was "excessive." The court found little guidance in the text and history of the Excessive Fines Clause, and so turned to other sources in order to formulate a test for excessiveness. *Id.* at 335-336. First, the court looked to its decisions in Cruel and Unusual Punishment

cases, and found the principle that legislatures have broad authority concerning the appropriate punishment for an offense. *Id.* at 336. Second, the court noted that any judicial determination regarding the gravity of a criminal offense would be inherently imprecise. *Id.* Using these principles, the court concluded that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportionate to the gravity of the defendant's offense. *Id.*

Based on this test, the court found that forfeiture of the respondent's entire $357,144 would violate the Excessive Fines Clause since it was grossly disproportionate to the offense of not reporting. The court noted several facts in support of its conclusion, among them that the violation was unrelated to any other illegal activities, the money was the proceeds of lawful activity, and that it was being transported to pay a lawful debt. The court also noted that under the Sentencing Guidelines, the maximum sentence the defendant could have faced was six months, and the maximum fine only $5,000. *Id.* at 338.

The Excessive Fines Clause will almost certainly apply to the proposed forfeiture statute. Although the proposed law arguably serves remedial purposes, it would be difficult if not impossible to argue that it did not have a punitive element as well. For instance, under the current draft proposal, a judge would not have discretion over whether to order the forfeiture. Furthermore, the law only targets vehicles that have been operated by repeat offenders. While the inclusion of an innocent owner defense is desirable, it also shows a recognition that forfeiture is a hardship for owner's to bear, and indicates an unwillingness that innocent people suffer that hardship. The question then is whether it is grossly disproportionate to have to forfeit your vehicle because you committed the

offense of operating it while under the influence or allowing it to be operated by someone under the influence.

Bennis v. Michigan is of limited use in analyzing excessiveness. *Bennis* pre-dates *Bajakajian*, and was not expressly decided on excessiveness grounds. However, an innocent spouse losing her interest in a vehicle could seem excessive, and court members may have considered this and held the forfeiture statute constitutional anyway. Even assuming this, the facts show that Ms. Bennis and her husband owned another vehicle, and had purchased the forfeited vehicle for only $600. Since the value of a vehicle can vary widely, it is not clear whether the court would have reached the same conclusion if Ms. Bennis had held a larger financial stake in the vehicle.

Nevertheless, a petitioner would face a high burden in showing that forfeiture was grossly disproportionate to the offense. Under the terms of the proposed law, the offender would not face forfeiture unless they are convicted three times in the last ten years of operating while intoxicated. The requirement of past convictions makes the owner-operator more culpable, and so lessens disproportionality between the offense and forfeiture. The requirement of past convictions also means that any owner who was not the operator is more likely to have known that the person they gave permission to operate the vehicle had a prior history. This would lessen the disproportionality between forfeiture and allowing a repeat offender to operate the vehicle. Considering the history of the offender, the high potential for harm to others, and the high burden, it seems likely that in most instances an attack on the statute based on excessiveness should fail.

Conclusion

The proposed forfeiture statute does not violate the Fifth Amendment's Double Jeopardy Clause, Due Process Clause, or Takings Clause, and does not violate the Excessive Fines Clause of the Eighth Amendment. Although the Supreme Court has yet to reach a decision regarding this precise type of statute, the case law indicates that at least under some circumstances, forfeiture of a vehicle is constitutional, even when the owner did not commit the underlying offense. The forfeiture law being proposed for Kansas deals with intoxicated drivers much less harshly than laws already in place in other states (dealt with elsewhere). Because forfeiture statutes vary so widely from state to state, a successful challenge to one would not necessarily succeed against the statute proposed here. In conclusion, the proposed forfeiture statute is constitutional. It has been drafted in such a way that, at the least, it should survive judicial scrutiny more easily than similar laws enacted by other states.

KANSAS VEHICLE FORFEITURE

The state of Kansas recorded 461 motor vehicle related deaths last year. Thirty-three percent of those 461 deaths were alcohol related. Mothers Against Drunk Driving (M.A.D.D.), an advocacy group whose influence has toughened drunk driving laws nationwide since its creation in 1980, reviews each states comprehensive DWI laws every three years. M.A.D.D.'s last report card gave Kansas a "B" grade in 2000. In its critique, M.A.D.D. noted Kansas had solid penalties for failed roadside blood-alcohol content tests, but lacked vehicle forfeiture laws and lower B.A.C. (Blood-Alcohol Content) limits for repeat offenders. In sum, the report suggested Kansas strengthen measures aimed at reducing repeat offenses.

Policy makers have explored a multitude of options in the hope of deterring drunk driving. Administrative license revocation and mandatory roadside B.A.C. tests are preventative in nature, hoping to deter people from considering drunk driving an option. A B.A.C.-interlock system is an example of a more severe method of deterrence. Administered only for repeat offenders, the interlock system prevents a car from starting unless the driver satisfactorily breathes into a mouthpiece and the corresponding analysis computer finds the driver's B.A.C. within legal limits. Aimed at lowering the recidivism rate among drunk drivers, the B.A.C. interlock system can still be defeated with the help of a willing accomplice. Vehicle impoundment has similar goals, the conventional wisdom believing a drunk driver without a car is just a drunk, not a potential killer. Like interlocks, vehicle impoundment has not been overly effective at reducing recidivism levels. License suspension has not fixed the problem either. Studies have shown suspended drivers to have dogged persistence in finding ways to keep driving after they

had lost their license. In one study, nearly 1/3 of two time offenders received a violation or crash citation during their suspension, and 61% of three-time offenders received a similar citation.

With all levels of government, non-profit, and private sector resources examining and analyzing the drunk driving problem, one (of many) recurring themes emerges, that is, drunk driving becomes habitual for many people, and despite repeated dangers to themselves and others, as well as possible criminal sanction, people continue to drive drunk. This fact calls for stronger punitive measures that provide a more permanent sanction that makes it harder for repeat offenders to have the means to drive while intoxicated. Take away someone's license, and they will still drive their car. Nearly everyone has forgotten at one time to take along their license when they drove. Installing an interlock system is a creative solution, but it simply requires a friend's assistance to defeat. Impounding a vehicle is effective, because it deprives someone of the means to drive drunk. Borrowing a car is more difficult than driving one's own without proper legal authority to do so. People do not lend cars readily, especially to someone is known to drink and drive. Impoundment is a good idea, but too temporal. Building upon the idea that depriving one of the instrumentality they use to harm people is the most effective way to avoid the harmful behavior, forfeiture of motor vehicles is the next logical step in reducing the volume of repeat offenders in Kansas. The submitted bill seeks to curb repeat offenses through the seizure and sale of repeat offender's vehicles, whether a motor vehicle or watercraft.

The bill has placed the forfeiture provisions within criminal sanctions in order to trigger the standard asset seizure and forfeiture act, pursuant to KAN. STAT. ANN. § 60-

4104, which authorizes forfeiture for "All offenses, which statutorily and specifically authorize forfeiture." This was seen as the most efficient way to provide for vehicle forfeiture because forfeiture penalties will pattern the DUI criminal sanctions. As a driver faces stiffer criminal penalties for recurring violations under KAN. STAT. ANN. § 8-1567 they will also face the loss of their vehicle as a civil penalty. At the request of Senator Adkins we have included watercraft, in our definition of vehicles that we seek to cover with the goal of reducing the operation of watercraft while under the influence of drugs or alcohol, specifically, the use of smaller personal watercraft that offer the least amount of protection to their operators.

The Division of Motor Vehicles has also been directed to create and maintain a website that discloses individuals who had their licenses revoked or suspended. The site will contain the effective dates of such disclosure, and the type of information that should be included. Public shaming can be an effective tool in deterring undesirable conduct. Humiliation is an inexpensive but highly personal form of punishment. The website should be fairly inexpensive to maintain and will hopeful yield results.

The last amendment made to a pre-existing statute involves the distribution of proceeds secured from the sale of the forfeited vehicle. The standard seizure and forfeiture act is well developed and has many pre-existing processes to distribute proceeds. A small addition was made for forfeitures arising under KAN. STAT. ANN. § 8-1567. Accordingly, the money derived from sale shall be split, with one half going to the arresting law enforcement agency, whether state or local. An arresting state agency will have the funds deposited in the state treasury, with funds credited to that agency's forfeiture fund pursuant to KAN. STAT. ANN. § 60-4117(d)(1). If a local agency made the

arrest, proceeds will be deposited in that agency's city or county agency, and credited to a special trust fund pursuant to KAN. STAT. ANN. § 60-4117(d)(2).

Eliminating voluntary intoxication as an available defense required the repeal of KAN. STAT. ANN. § 21-3208(b). An affirmative statement disallowing the defense was inserted to assure any common law involuntary intoxication defense would be abrogated, and insure it is understood to be unavailable in both criminal and civil proceedings.

Are Poisons Lurking in Human Bodies?

Did you ever wonder what toxic pollutants might be flowing through your veins?

The Centers for Disease Control and Prevention (CDC) answers this question with the release of its first "National Report on Human Exposure to Environmental Chemicals."

The new data, which provide information on concentrations of 27 toxic substances in the U.S. population (more than 100 will be tracked in the future), is part of the National Health and Nutrition Examination Survey, the nation's most comprehensive study.

"This new resource is a significant development in the field of environmental health," says Health and Human Services Secretary Tommy G. Thompson. "It will help us to better track the exposures of Americans to chemicals in the environment and to measure the effectiveness of our public health efforts."

A team of health personnel and laboratory technicians using high-tech, state-of-the-art equipment, staff the mobile examination centers.

The exposure report provides legislators, policymakers and the general public with the first accurate glimpse of the chemicals Americans are exposed to, and will be a step toward making the connection between health and the environment. This first report includes data on substances such as lead, mercury, phthalates (chemicals used in soft plastics and cosmetics), second-hand smoke and pesticides.

Knowing what chemicals Americans are exposed to will determine the hazards and help public health officials and legislators develop sound policies. This type of monitoring has already proved vital in shaping lead poisoning prevention policy.

The study was used to show that the number of Americans with high levels of lead in their blood dropped by 78 percent between 1980 and 1984, demonstrating that prevention efforts were working.

"The good news is that blood lead levels continue to decline among children overall," says Eric Sampson of CDC's Environmental Laboratory and a co-author of the report. "However, other data show that children living in environments placing them at high risk for lead exposure remain a major public health concern."

The exposure report data shows that both lead and cotinine (a marker for second-hand cigarette smoke) levels decreased significantly, documenting that no-smoking policies and lead poisoning prevention work.

The report also showed that certain portions of the population may not be adequately protected from mercury and phthalates. Mercury is found in fish, and its main source is coal-fired power plants.

Phthalates are common in cosmetics, shampoo and soaps. Although the risks posed by exposure to them are unknown, some research suggests that phthalates may be linked to developmental and reproductive disorders, such as reduced sperm counts, testicular abnormalities and early puberty.

The report can be found at: www.cdc.gov/nceh/dls/report

Too Drunk to Be Guilty

An enraged, drunken husband hits his wife. She ends up in the emergency room. An intoxicated, belligerent man barricades himself in his house and threatens police. But when taken to court, both plead that they were too intoxicated to know what they were doing.

Seem unbelievable? It's not. In several states, people ranging from drunken teens trying to burn down their school to the man barricaded in his house in an armed standoff with police have argued they were too intoxicated to know what they were doing.

NEVER 'TOO DRUNK' IN THESE STATES

States that now forbid voluntary intoxication as a defense are:

Arizona	Michigan
Arkansas	Mississippi
Delaware	Missouri
Florida	Montana
Georgia	Pennsylvania
Hawaii	South Carolina
Idaho	Texas
Oklahoma	

Michigan legislators last May followed 14 other states to slam the door on this obscure "voluntary intoxication defense."

"We're not saying this has been a successful defense," noted Michigan prosecutor Anica Letica. "What we're saying is that the repeal is better public policy."

In fact, Arkansas legislators said they excluded voluntary intoxication as a criminal defense because it was a public emergency. Such drunkenness, said lawmakers, was detrimental to the welfare and safety of their citizens, and a law excluding the defense was seen as necessary for the preservation of public peace, health and safety.

2-27

Legislative Administrative Services

Date: Sunday 6-30-02

( ) Topeka Capital Journal
( ) Wichita Eagle
( ) Kansas City Star
( ) Chanute Tribune
( ) Dodge City Daily Globe
( ) Emporia Gazette
( ) Garden City Telegram
( ) Hays Daily News
( ) Hutchinson News
( ) Iola Register
( ) Johnson County Sun
( ) Junction City Daily Union
( ) Kansas City Kansan
( ) Lawrence Journal World
( ) Leavenworth Times
(●) Manhattan Mercury
( ) Olathe Daily News
( ) Ottawa Herald
( ) Parsons Sun
( ) Pittsburg Morning Sun
( ) Salina Journal
( ) Winfield Daily Courier

Stand up against criminal drivers

In the aftermath of the death of a Wichita youth under the wheels of a car driven by an unlicensed driver, there have been one or two encouraging signs that some Kansas public officials may finally be prepared to listen to arguments the state can and should do more to protect us from them.

It's regrettable that blood sometimes has to be spilled in order to get people's attention. But better that than the blood being spilled without getting anybody's attention.

The most recent incident took the life of 18-year-old Neil Riggs while he stood on a Wichita median strip. The car that struck him was loosely piloted by Kenneth R. Williams, whose license had been revoked for habitual traffic violations including multiple DUIs.

At least part of the problem is that while the state properly saw fit to revoke Mr. Williams' driving privileges, it also saw fit not to tell anybody it had done so. (Although the impression exists that suspensions and revocations are judicial sanctions administered in open court, they are in fact administrative actions under the control of the Kansas Department of Revenue). The department's standard cover story in these matters is that it is barred by federal law from releasing information concerning an individual's driving record; what that amounts to is leaving it up to folks such as Mr. Williams to oversee the sanctions the state has imposed against them. Much to nobody's surprise, Mr. Williams proved a poor overseer.

We have grumbled about incidents of this sort before, but it has taken Mr. Riggs' death to get some wider attention. Now that attention is mounting. Last Sunday the Wichita Eagle confirmed what we have suspected, the high toll taken by unlicensed drivers. Using state records, The Eagle found that for the past decade, about 700 people — more than one per week — have been killed in an accident in this state involving a driver whose license had been suspended, revoked or never issued. Those drivers were involved in more than 4,000 accidents per year, accidents in which more than 3,000 people annually were injured.

Rep. Michael O'Neal, a Hutchinson Republican, took notice. And he is in position to do something about it, chairing as he does the House Judiciary Committee. We don't concur with Mr. O'Neal's suggested solution — increasing the ability of local police to run license checkpoints — but we're glad the problem has entered his air space. It deserves the attention of more legislators.

We have a better suggestion, one we're reiterated a few times already. It is time for the state of Kansas to post on its website the names and addresses of those drivers whose licenses it has suspended or revoked for unsafe driving practices. If it did so, Kansans could see for themselves who isn't supposed to be on the road. Police tell us that they already have the power to apprehend unlicensed drivers — in those cases, the mere act of driving is in and of itself cause to be pulled over and arrested. The problem lies in identifying who to stop. Compared with more police checkpoints, public posting of names and addresses is preferable for two reasons. First, it would cast literally tens of thousands of pairs of eyes in assistance toward the effort. And second, it would do so without needlessly occupying the police or inconveniencing law-abiding drivers.

If the feds threaten to hold up state funds because the state tips its residents to the identity of dangerous drivers, then the state ought to dare the feds to sue. It would be unthinkable for Washington to argue for the privacy rights of those who are breaking the law while running up the toll of highway death. Kansas ought to speak for their victims.

Opinion

The Premature Goodbye

Casey's Story

Senate Fed & State
Date: 01 / 28 / 2003
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Casey Ray Beaver

- **Graduated from the University of Kansas in Lawrence December 1999-Degree: Microbiology**
- **Accepted to the Illinois College of Optometry in Chicago. Dreamed of becoming an optometrist.**
- **23 year old hard-working exceptional individual on his way to making his dreams a reality.**

Vencen Gilmete

- **Convicted 8 times of Driving while Intoxicated.**
- **Convicted 7 times of Driving on a Revoked License over a 7 year period.**
- **Served 120 days of a 5 year sentence for felony DUI.**

Gilmete's Driving Record:

Convictions:

2-1-99 / Driving while intoxicated

8-11-98 / Driving while intoxicated

1-27-98 / Driving while suspended/revoked

8-5-97 / Driving while intoxicated

8-5-97 / Driving while suspended/revoked

12-17-96 / Driving while suspended/revoked

11-19-96 / Driving while intoxicated

Convictions (con't):

11-19-96 / Driving while intoxicated

11-19-96 / Driving while suspended/revoked

11-19-96 / Driving while suspended/revoked

11-19-96 / Driving while intoxicated –

NOTE: *Second* DUI in the same day!

8-23-96 / Failure to yield right of way

Convictions (con't):

8-23-96 / No driver's license

11-21-95 / Driving while intoxicated

11-21-95 / Driving while suspended/revoked

9-16-94 / Blood Alcohol Content*

***(original charge-driving while intoxicated and reckless driving.)**

5-27-93 / No driver's license

Violent Crime-Not an ACCIDENT!

- **The CRIME occurred when Casey and 2 of his best friends were 20 minutes away from their destination.**

.268 BAC

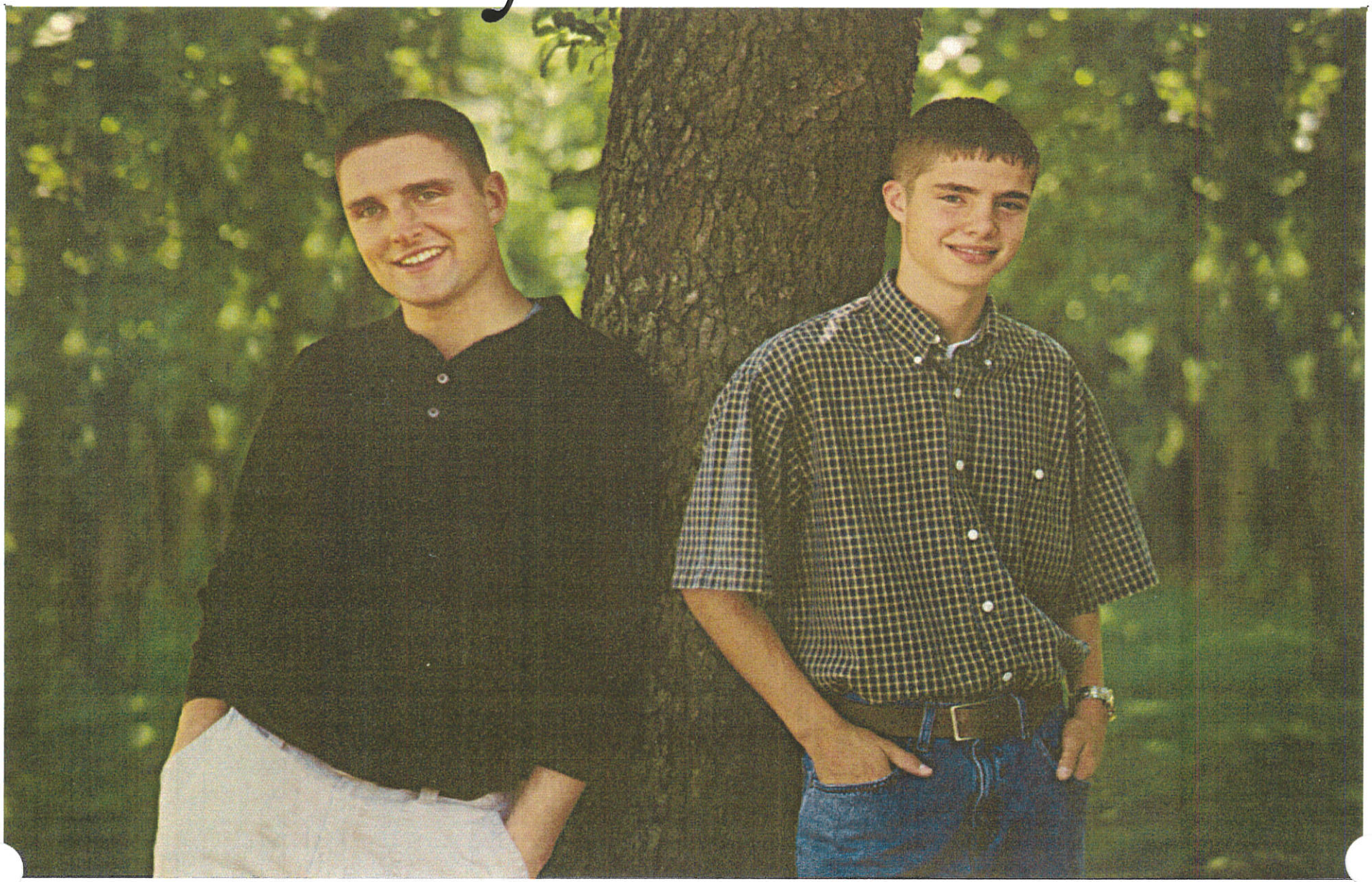
Gilmete got behind the wheel of his vehicle on August 4, 2000, with a <u>.268 BAC</u> and caused a wreck involving 6 cars on MO HWY 71.

<u>Murdered</u> 23 year old Casey Beaver on August 4, 2000, 9:35 PM.

3-9

3-9

Casey and Aaron



There Should Have Been 3!

CASEY'S JOURNEY

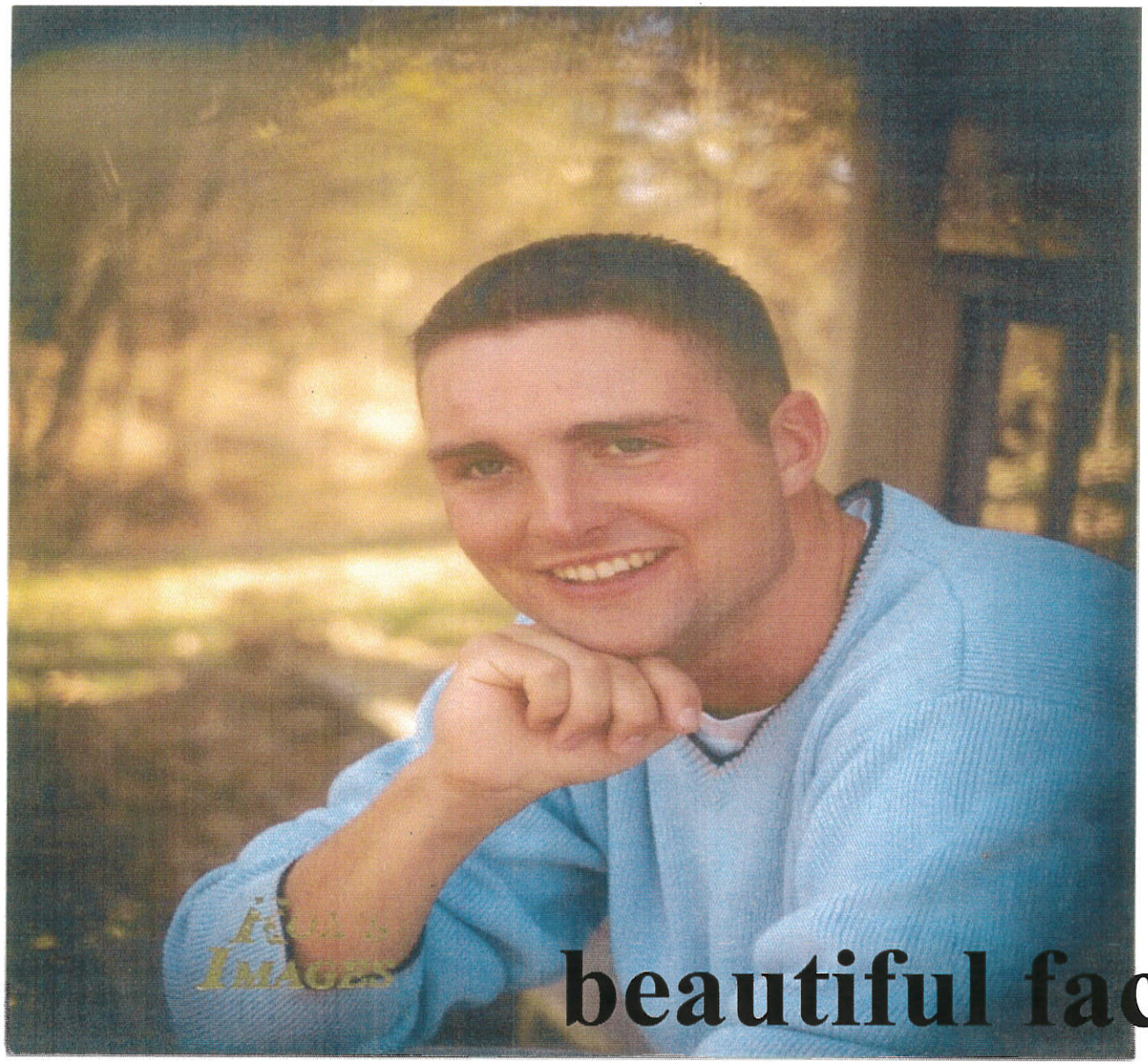
Chance Meeting on July 1, 2001, with the Help From Our "Special Angel"

http://casey.kansite.com

My Best Friend

3-14

Remember Casey's



beautiful face.

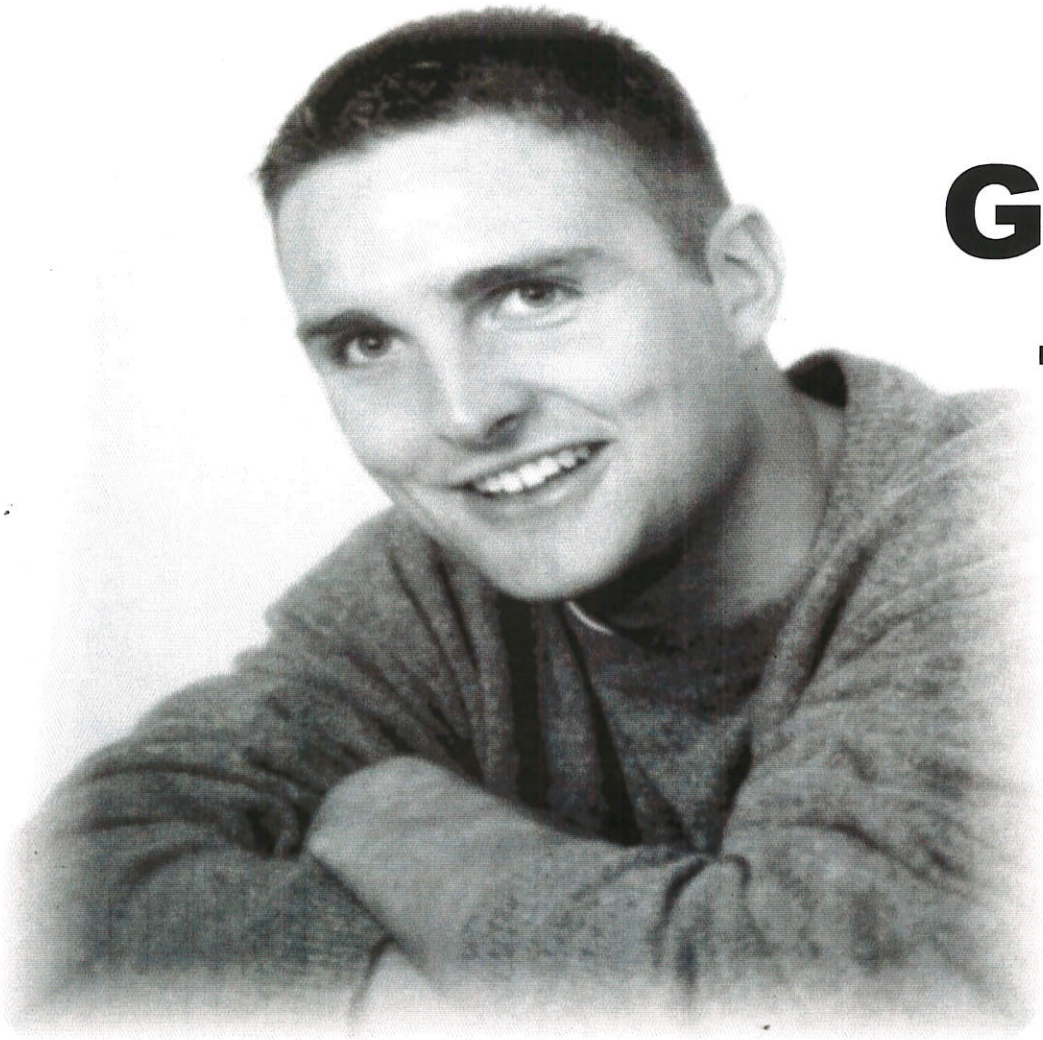
3-16

Remember Casey,

Our son

Aaron's brother

3-16



God gave us this gift...

A Drunk took him!

MADD

Activism Victim Services Education ™

A copy of the billboard being placed in the Joplin, MO area by Lamar Outdoor Advertising and Newton Jasper County MADD Chapter

3-19

8 DUI convictions in 7 years!

The judges who let that drunk driver continue to go free put a death sentence on Casey Beaver and changed this family forever…

3-19

If tears could build a stairway,
and memories were a lane.

I'd walk right up to heaven to
bring you home again.

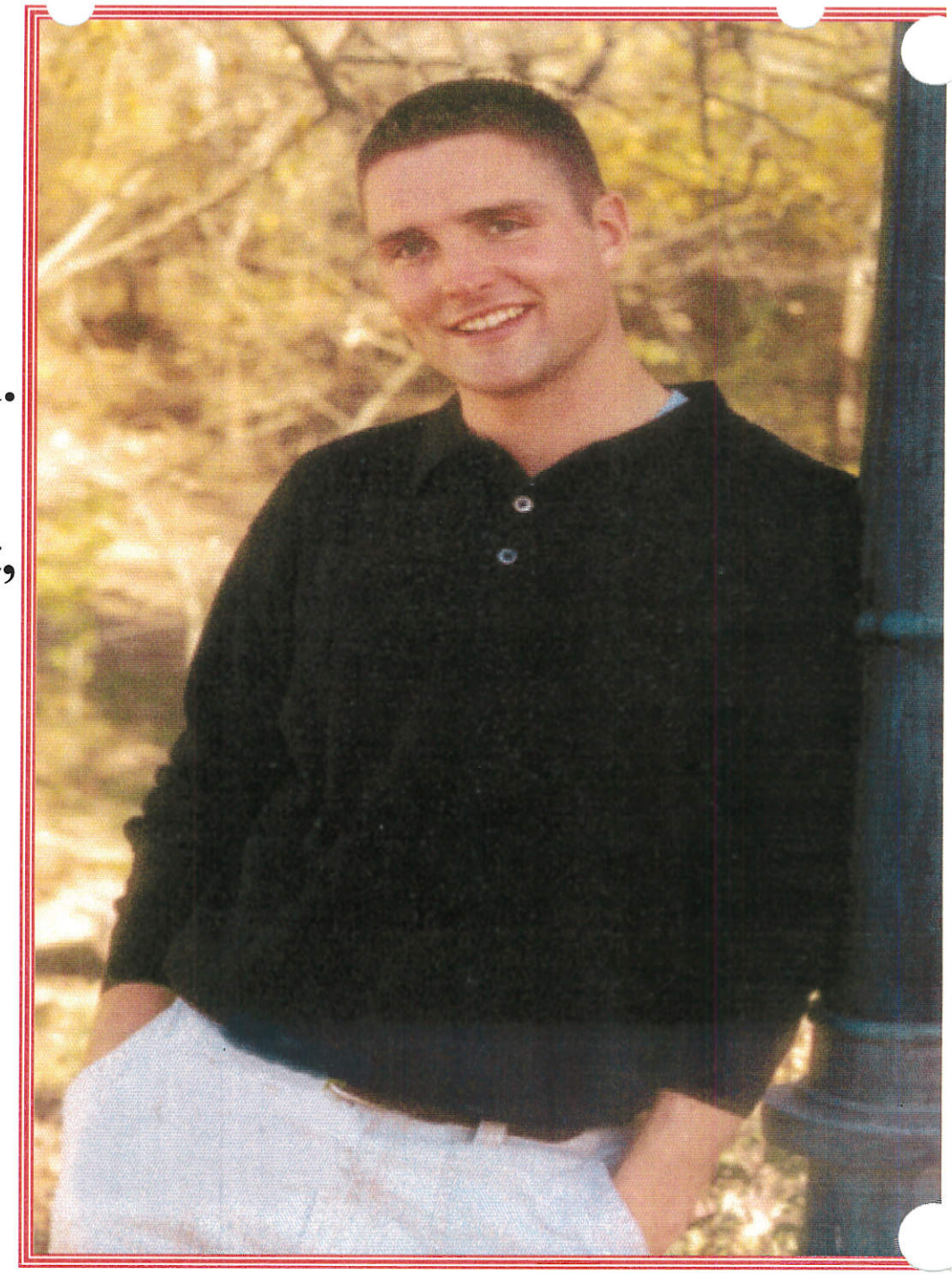
No farewell words were spoken.
No time to say good-bye.

You were gone before I knew it,
and only God knows why.

My heart still aches in sadness,
and secret tears still flow.

What it meant to lose you no
one will ever know.

Author Unknown



EMPORIA USD 253

Safe and Drug Free Schools

P.O. Box 2015 • Emporia, Kansas 66801 • (620) 341-2450 • Fax (620) 341-2331

January 28, 2003

The Honorable Senator Nancey Harrington, Chair
Federal and State Affairs Committee
Room 245-N, State Capitol
Topeka, KS 66612

Honorable Senator Harrington and Committee Members,

I am a social worker practicing as the Safe and Drug Free Schools Coordinator for the Emporia School District. Please allow me to testify in favor of Senate Bill No. 33 being introduced by Senator James Barnett.

Senate Bill 33 would give local courts the ability to impound a drunk driver's vehicle. As Dennis and Linda Beaver have often stated, "the vehicle is the weapon, and alcohol is the ammunition." If the driver's car is seized, the "weapon" is removed from the hands of the drunk driver. In the past, concerns have been expressed about the hardship this would pose for the family. Allowing local courts to impose these sanctions locally would also enable local resources to help a family who truly has transportation problems. Local social service agencies, local probation offices, local workplaces, and local schools could work with these families on a case by case basis to assist with transportation needs.

Transportation issues can be solved, but an even greater hardship to our families and communities occurs when children are riding in the car with the drunk driver. As citizens, we have to be concerned about protecting innocent children who may be passengers with a drunk driver, or who may be in the other car. According to DUI statistics compiled by Kansas MADD, there were 1,278 children between the ages of 0 and 14 who were involved in alcohol related crashes between 1999 and 2001. This means that over 400 children in Kansas each year are involved in an alcohol related crash, either as a passenger with the drunk driver or as the victim in the other car. Vehicle forfeiture would protect these children from injury and possible death.

Ignition Interlock is being used in Kansas as a deterrent for the repeat drunk driver. I have spoken with two Auto Shops in Emporia which have installed these. Williams Automotive stopped doing this about 4 years ago because they had so many problems with the system failing, and no backup support from the company that sold the interlock system. Currently, the only company in Emporia installing ignition interlock is University Audio. They just started doing this in November, and have installed 2 systems. They feel the system is working well, and it would be hard to "disable" the system, although it is possible. However, the cost is pretty steep. It costs $149 for the installation, $73 for the set up fee, and a $73 leasing fee each month for a year. Another problem is that ignition interlock at this point is voluntary for the 2nd time DUI offender. About 75% of suspended drivers continue to drive, and many of them may be

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choosing to just drive illegally instead of paying these fees. The advantage of vehicle forfeiture would be that the vehicle is taken away, so the driver doesn't have a way of "beating the system".

Ignition interlock, when used and used properly, is one tool that Kansas is using to protect the public. Vehicle forfeiture would give local municipalities an additional and even stricter sanction to impose on the repeat offender.

Thank you for considering these issues as you study Senate Bill 33.

Sincerely,

Margi Grimwood

Margi Grimwood
Coordinator

January 27, 2003

Federal and State Affairs Committee
Kansas State Senate
Topeka, Kansas

Re: Support of Senate Bill 33

To the Committee:

The date was August 5, 2000 at 1:06 A.M. when a phone call forever changed our lives. The callers were my brother and his wife, sharing with us the devastating news that a drunk driver, at 9:35 P.M. the prior evening, had murdered our 23-year-old nephew, Casey Beaver. The news was even more difficult to accept when we were told the drunk driver had eight previous DUI convictions. He had been sentenced to prison, had served only a very short time for so many offenses, and was back on the road using alcohol as the ammunition and a car as a weapon.

The pain and agony I have watched over the past two and one-half years is indescribable. The pain of parents losing a child, the pain of a brother losing his only sibling, the pain of grandparents, aunts, uncles, cousins, friends and the list goes on. I am watching a family endure a life sentence of pain and loss as a result of an individual who made the choice to drink and drive, and thus take a life.

I definitely want to go on record as a supporter of Senate Bill 33. Perhaps if the Newton County Judge had had the opportunity to choose to impound vehicles for repeat offenders, Casey would be alive and serving his residency as a third year medical student. I want my children and family to feel safe as they drive on our state's roads. I feel Senate Bill 33 creates another tool for our local governments to use to help make this happen.

I sincerely want to thank you for being attentive to, and considering the passage of Senate Bill 33. I feel tools such as this can assist our judicial system in lessening the number of families that have to deal with such a tragic and senseless death.

Sincerely,
Jerry Beaver
Olathe, Kansas

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Karen Thompson

F[illegible] afternoon, I saw an ad on television that featured home-movies of a teenage girl who was killed by a drunk driver, and I thought to myself, "Who cares?" Not the "I don't give a darn about this 'who cares' but the "Who is listening? Who is relating to this? Who *cares?*" Today, our DUI/DWS laws are tougher than ever before, but these laws are not enough. In Kansas, while statistics show that fewer people are dying on our highways in alcohol-related crashes today than 20 years ago, a closer looks points out an alarming trend. The bottom line is that, in spite of stricter DUI/DWS laws, the percentage of alcohol-related fatalities actually increased in Kansas from 35 percent to 39 percent from the year 2000 to 2001.[1] The threat of fines, jail time, and loss of a driver's license is only effective against those of us to have something to lose…people who value other things besides the taste of alcohol and the lure of oblivion that several drinks can bring.

My sister asked if I would speak to you today, because she wanted me to tell you about the clause that I have in my daycare policy. It states:

> *Please do not ask or expect me to release your child to you or an authorized person who is physically or mentally impaired by alcohol or other controlled substance. The safety of your child is very important to me, and child endangerment is against the law.*

This clause may be a small thing. I don't even know how often—or if—someone might come to pick up their child after they have been drinking, but I have seen first-hand the agony and loss that a family can suddenly be thrust into as a result of a drunk driver. If having this clause in my policy handbook causes even *one person* to stop and think before drinking and driving, then maybe I have saved an innocent child's life.

Mr. Gilmete murdered my nephew. He combined alcohol and his car, and used those devices in a thoughtless, irresponsible manner. We have all heard about the effects of alcohol—the lack of coordination, blurred vision, and slower reaction time. Tie those physical effects together with the mental effects of loss of reason and aggressive behavior and a vehicle becomes a lethal weapon.

The National Highway Traffic Safety Administration (NHTSA) is waging a war against drunk drivers. Their program, "You Drink & Drive. You Lose," is aimed at educating the public through advertising, publications, and media involvement.

In an article entitled "Driving Home the Facts—About Repeat Offenders," the NHTSA states that

> "Studies show that the severity of motor vehicle crashes increases with the degree of alcohol involvement. Drivers with BACs exceeding .15 are 200 times more likely to be involved in a fatal crash, and those with BACs exceeding .20 are 460 times more likely. Because repeat offenders often drive at highly elevated BAC levels, their potential to become involved in a fatal crash is high. In fact, hard core drinking drivers accounted for nearly half of all alcohol-related fatal crashes in 1997, while representing only one percent of the drivers on the road at that time."

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[1] Source: 1982-2000 (Final) FARS Files and 2001 FARS Annual Report File, FHWA's Highw
Center for Statistics and Analysis 400 Seventh St., SW, Washington DC 20590

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S studies show that as many as 75 percent of drivers continue to drive during periods of suspension or revocation.

Recognizing that repeat offenders are an extreme threat to themselves and others, the NHTSA is recommending that strong enforcement and strict penalties are necessary to curb this behavior, such as (and I quote) "the use of ignition interlock devices and *impoundment or immobilization of the repeat offender's vehicle*, in coordination with treatment through a formal substance abuse or dependency program." Their studies have found that vehicle immobilization is having a positive effect in states like California, reducing the number of crashes and subsequent citations.

I beg you today to enact legislation that will get drunks off our highways. Vehicle immobilization works.

So, back to my original question, "Who cares?" I am here today to tell you that ***I*** care. I care because my nephew was an innocent victim of a man armed with a lethal weapon—his car—in spite of his having eight previous DUI violations, the loss of his driver's license, and mandatory jail time (which had been greatly reduced). I care that the system failed to keep this man from driving a car while he was drunk.

Furthermore, I care because I know that some of those 17,448 people who died in the United States in 2001 in alcohol-related crashes were not drunks. Some were just someone's parents or child or young children. These people never had a choice.

With a person in the United States dying every 32 minutes from alcohol-related injuries, we—as individuals—have to start caring. We have to keep drunks from driving. Those opposed to vehicle immobilization say that it is a hardship for the families of drunks. I say that losing a family provider because of some drunk is harder than losing your car. I say that burying your child is harder than losing your car.

As lawmakers, you are not responsible for judges who sidestep and minimize the law. You are not responsible for attorneys who defend their clients with outright lies or prosecutors who plead a case to a lesser charge. But you do have a responsibility to make the laws that empower those judges and prosecutors who want to keep drunks off our highways.

For Casey's sake and for the sake of all of the non-drinking victims of drunk drivers, I implore you once again to show your support for tougher DUI/DWS laws in the State of Kansas. I believe in Casey's Law. I believe it will save lives.

Please care.

Testimony in Support of SB 33
January 28, 2003
Submitted by Stephanie Neu,
On behalf of Johnson County Safe Communities, Inc. and
The Johnson County STOP Underage Drinking Project

My name is Stephanie Neu and I am employed with the Regional Prevention Center serving Johnson, Leavenworth and Miami Counties in Kansas. I am here today also representing two alcohol-abuse prevention non-profit organizations in Johnson County, Kansas. I am a founding member and on the Board of Directors for Johnson County Safe Communities, Inc. whose mission is dedicated to reducing alcohol related injury and death across the lifespan. I am also the Co-Chair for the Johnson County STOP Underage Drinking Prevention Project whose mission is to eliminate the incidence of underage drinking and related tragedies.

Both organizations address and focus on the education for prevention of the negative consequences and tragedies relating to alcohol abuse, including drunk driving.

This testimony is in support of additional sentencing options/penalties for judges to use to combat drunk driving, such as is outlined in SB 33. By adding options, we can ultimately decrease the risk of repeat offenders and help save lives and prevent injuries caused by drunk driving.

The statistics that represent the victims of drunk driving speak volumes. According to MADD (Mothers Against Drunk Driving), last year (2001) 17,448 people were killed and more than half a million others were injured in crashes involving alcohol. In 2001 in Kansas, there were 494 total traffic deaths, 96 of which were alcohol-related (19%). The total traffic deaths under 21 years of age were 151, 18 of which were alcohol-related. (*Source: Kansas Accident Records System*) Kansas from 1997 to 2001 has experienced an increase of nine percentage points in their alcohol-related crashes and currently 39% of fatalities are alcohol-related. (*Source: NHTSA, Traffic Safety Digest*) In Johnson County in 2001, there were 495 alcohol-related crashes, 192 of which involved injury, and 4 fatalities. Johnson County ranks fifth in the state on counties with traffic safety problems. (*Source: KS Department of Transportation, Bureau of Traffic Safety and NHTSA, Traffic Safety Digest)*

An alcohol-related crash is devastating enough to a victim's loved ones, but imagine compounding the tragedy, on any level, with the news that the drunk driver is a multiple repeat offender. And too often, the drunk driver *is* a repeat offender.

We know that the numbers are outrageous. We know that one life lost or injured in an alcohol-related crash is too many.

Again, we support legislation that will give judges more options in sentencing DUI offenders and help deter repeat DUI offenders in order to save lives. Just one death from this preventable crime is too many—we must have more options and sanctions to help deter and prevent such acts in the future.

Testimony concerning SB 33

Senate Federal and State Affairs
Jan. 28th, 2003
Presented by John Calhoon, Atchison County Sheriff

Mr. Chairman and members of the committee, my name is John Calhoon and I currently serve as a governing board member of the Kansas Association of Counties, President of the Kansas Sheriff's Association and Sheriff of Atchison County.

I am here today to specifically address Section (K) of SB 30 relating to giving the courts the viable **option** of impounding a convicted person's motor vehicle. It is my understanding that this bill would allow local units of governments the ability to enact such an ordinance or resolution to assist their communities in combating drunk driving.

Clearly, the legislature has the right and authority to increase consequences and penalties of offenders associated with taking the lives of innocent individuals traveling our Kansas roadways. As an 18-year veteran of Law Enforcement, with the past 9 years serving as Sheriff, I have had the unfortunate responsibility of dealing with numerous repeat offenders of drunk driving. We must certainly take aggressive action to take their weapons from them in order to decrease the number of alcohol related fatalities within the State of Kansas.

While I could share many horror stories with you related to drunk drivers and alcohol related crashes, I would rather thank you for your concerns and actions over the past several years related to drunk driving, and ask that you continue to hold DUI offenders more accountable for their actions by passing SB 30.

I very much appreciate the work you do and for your time in listening to my comments.

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

To: Senate Committee on Federal and State Affairs

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

RE: Senate Bill 33

I am here today to support the concept of vehicle immobilization and impoundment as a tool to stop the hard core impaired driver. SB33 provides that: *In addition to any other penalty which may be imposed upon a person… the court may order that the convicted person's motor vehicle be impounded or immobilized and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.*

As a member of Attorney General Stovall's Task Force on DUI issues I supported this concept. Overnight impoundment of the vehicle of an individual arrested for impaired driving is a typical practice in most states. At least thirteen states have laws that permit longer-term impoundments based on a DUI convictions. These states (and there may be others) include California, Florida, Illinois, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, Ohio, Oregon, Vermont and Wisconsin

The MADD website sets forth the following summary of the effectiveness of such programs:

"In a 1991 study conducted for the National Highway Traffic Safety Administration (NHTSA) Ohio's impoundment laws found that "vehicle impoundment and immobilization greatly enhance the effectiveness of license suspension and should be applied to multiple offenders and those who drive while suspended because of a DUI offense." The study looked at the effectiveness of the "Vehicle Action" law that governs vehicle immobilization and vehicle impoundment.... The law was implemented on September 1, 1993, and applied specifically to multi-DUI offenders and those driving while suspended offenders who had been suspended because of a prior DUI charge. The study found that in Franklin County the number of DUI and driving while suspended offenders had a lower frequency of repeat DUI and driving while suspended offenses while their vehicles were sanctioned (i.e. taken out of their control) than did comparable offenders who did not have their vehicles sanctioned. During the period when their vehicles were inaccessible, the offense rates of 820 DUIs with impounded vehicles were reduced 65 percent. Similar results were found in Hamilton County where the reduction rate was 60 percent."

"Another significant result found by this study was that the frequency of DUI and driving while suspended offenses was lower in the sanctioned group for up to 23 months after the return of their vehicles. The DUI rates reduced 35 percent and the driving while

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suspended rates reduced by 42 percent. An important component of the Ohio law was the confiscation of the offender's vehicle's license plates."

"In California, drivers with suspended licenses have 3.7 times the fatal crash rate of the average driver. Studies have shown that 75 percent of drivers with suspended licenses in California continue to drive and that 84 percent of those drivers do not reinstate their license after the suspension period has ended. In response to these statistics, California began an impoundment program in January 1995. Under this program, law enforcement can impound vehicles on the spot when drivers are caught driving with a suspended license. The impoundment lasts for 30 days. According to state law enforcement agencies, more than 100,000 vehicles are being impounded each year. The National Highway Traffic Safety Administration (NHTSA) sponsored a study of the California program comparing driving records for driving while suspended violations, driving while unlicensed violations, total traffic violations, and crash data for first-time and repeat offenders. The study found that the subsequent driving while suspended conviction rates for first-time offenders were 24 percent lower in those cases where the vehicle had been impounded. For repeat offenders the rate fell to 34 percent fewer driving while suspended convictions for those whose vehicles had been impounded. Drivers whose vehicles had been impounded also had fewer subsequent traffic convictions and fewer crashes. The study results show that vehicle impoundment is having a positive effect on reducing the number of crashes and subsequent citations. Additionally, by removing access to the vehicle, impoundment is proving to be an effective method of limiting driving during periods of license suspension."

I have also attached hereto from the Century Council's Hard Core Drunk Driving Project material additional information regarding how these programs are used and their effectiveness.

New Jersey has a specific laws regarding the immediate impoundment of a vehicle. In summary, the primary provisions of N.J.S.A. 39:4-50.23 mandate that the law enforcement agency which has arrested a driver for a DWI or a Refusal violation must take two actions with regard to the vehicle operated by the arrested person. N.J.S.A. 39:4-50.23(a) "Whenever a person has been arrested for a violation of [N.J.S.A. 39:4-50] or . . . [N.J.S.A. 39:4-50.4a], the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of the arrest." .

N.J.S.A. 39:4-50.23(b) The vehicle which had been operated by the arrested person "shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release" under N.J.S.A. 39:4-50.23(d). Although the first provision of the statute calls for an immediate impoundment of the vehicle being operated by the person arrested, that provision of the statute does not negate the constitutional right of the arrested person to make other arrangements for the removal of the vehicle by another person who is present at the scene of the arrest. Thus, if there is a passenger in the vehicle at the time the operator is arrested, the arrestee may permit that passenger to operate the vehicle or to make arrangements for its removal without the vehicle being impounded. Of

course, the person remaining with the vehicle must possess a valid driver's license, be capable of operating the vehicle or making arrangements for its removal, and not be in violation of the motor vehicle laws of this State.

Additional provisions of the statute allow for the release of an impounded vehicle, prior to the end of the period of impoundment, subject to several conditions and compliance with the provisions of N.J.S.A. 39:4-50.23(d).

In California there are provisions to allow the Courts to utilize its equitable powers, on a case by case basis, to avoid hardships.

"For the purposes of this section, the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition."

Excerpts of the California law are attached.

Thus the plain language of SB33 is insufficient to implement a statewide program. Merely granting authority for such program is inadequate. Numerous questions must be answered. Various appeal rights must be set forth. Should not the owner of a motor vehicle that has been impounded be allowed an appeal on the following grounds:

- that the vehicle had been stolen or converted at the time it was impounded
- that the Police officer didn't have the necessary reasonable grounds of belief, or did not comply with the notice requirements
- that the owner didn't know, and couldn't reasonably have been expected to know, that the driver was not permitted to drive the vehicle
- that the owner took all reasonable steps to stop the driver driving the vehicle
- that the driver drove in a serious medical emergency (including imminent childbirth)

What about personal property left in a vehicle?

Louisiana and Texas require the impoundment of uninsured motor vehicles (La. R. S. 32.863 § D (A) 1 and Tex. Transp. Code § 601.294).

Iowa, Michigan, and New York permit the impoundment of uninsured motor vehicles (Iowa Code § 321.20B, MCL § 479.12, and NY CLS Veh. and Tr. § 318 (12) a).

We would suggest that the committee adopt standards addressing the issues discussed above such that we do not have a patchwork of differing programs, differing exceptions and thus inequalities across the state.

While many states delegate police powers to municipalities, and a local government's police power may be said to be subject to its enabling legislation, the general rule is that the means employed in the exercise of the police power can be neither arbitrary nor oppressive, and there must be a reasonable and substantial relationship between the means employed and the end to be attained. Moreover, the end to be attained must be a public one, specifically the public health, public safety, or public morals, or some other facet of the "general welfare."

A government's exercise of its police power is presumed to be constitutional, and anyone challenging an exercise of the police power has the burden of establishing that the use of the police power was arbitrary and unreasonable and unrelated to the public health, safety, morals, or general welfare. Although the exercise of police power often causes tensions between the government and its citizens, if a challenge is raised, a court will examine whether the statute, ordinance, or regulation was promulgated for a legitimate "police power" purpose, and whether it is carried out in an unreasonable and arbitrary manner.

A standard set of guidelines will prevent the arbitrary use of this new power.

Executive Secretary and General Counsel Kansas Wine and Spirits Wholesalers Association (KWSWA). University of Kansas, B.S., Journalism '73; Washburn University J.D. '76. Secretary and Chief Counsel, Kansas Board of Tax Appeals '76-'78; Assistant Attorney General, Kansas Alcoholic Beverage Control, '79-'81; Assistant City Attorney, City of Topeka, KS, '81-'83. Private practice 1983 to present. Admitted to practice in Kansas, Federal District Court, Circuit Courts of Appeal, and the United States Supreme Court. Mr. Duncan has made numerous presentations to regional and national NCSLA conferences on beverage alcohol law, and is a frequent speaker for server training programs. Mr. Duncan currently sits as a Judge *Pro Tem*, Shawnee County District Court for Domestic Violence matters. Mr. Duncan represents the KWSWA, the Kansas Occupational Therapy Association and American Medical Response before the Kansas Legislature. Previous activities include: President Topeka Friends of the Zoo, Member and Vice-Chairman Topeka Public Schools Board of Education; Chairman Kansas Expocentre Operating Board; President Voluntary Action Center (a United Way agency); Member, Topeka and Kansas Bar Associations; Life Member Washburn Law School Association; Life Member, University of Kansas Alumni Association; Life Member Topeka/Shawnee County Friends of the Library; President-Elect and Board Member Shawnee County Historical Society; 2002-2003 Chairman Topeka Postal Service Customer Advisory Council; and Chairman, Topeka Housing Authority 1999-present. Senior Warden, St. David's Episcopal Church. Married 28 years to Kathleen Allen Duncan, father two adult sons and proud grandfather to granddaughter Tessa, age 4.

California

Vehicle Impoundment: Suspended, Revoked, or Unlicensed Driver: Hearing

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a ***driver's*** license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. ***The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.***

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision ( )[1] ***without*** presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the ( )[2] ***15th*** day of impoundment. ***Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.***

(3) The legal owner or the legal owner's agent presents ***either lawful*** foreclosure documents or an affidavit of repossession for the vehicle, ***and a security agreement or title showing proof of legal ownership for the vehicle***. ( )[3] ***Any documents presented*** may be originals, photocopies, or facsimile copies, or may be transmitted electronically. ***The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.***

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) ( )[4] ***may*** not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent ( )[4] ***may*** not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency ( )[4] ***may*** not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

Added Ch. 1221, Stats. 1994. Effective January 1, 1995. Amended Sec. 3, Ch. 922, Stats. 1995. Effective January 1, 1996. Amended Sec. 5, Ch. 582, Stats. 1998. Effective January 1, 1999. Amended Sec. 2.5, Ch. 554, Stats. 2001. Effective January 1, 2002. The 2001 amendment added the italicized material, and at the point(s) indicated, deleted the following:

1. ", except upon"
2. "fifteenth"
3. "The foreclosure documents or affidavit of repossession"
4. "shall"

Impoundment of Vehicles

223594. (a) Except as provided in subdivision (b), the interest of any registered owner of a motor vehicle that has been used in the commission of a violation of Section 23152 or 23153 for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction, the court may order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 90 days.

For the purposes of this section, the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(b) No vehicle which may be lawfully driven on the highway with a class C or class M driver's license, as specified in Section 12804.9, is subject to impoundment under this section if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the defendant's immediate family which may be operated on the highway with a class C or class M driver's license.

Added Sec. 84, Ch. 118, Stats. 1998. Effective January 1, 1999. Operative July 1, 1999.

FROM:
NATIONAL HARDCORE DRUNK DRIVER PROJECT

Sanctions

Vehicle Impoundment

In employing this sanction, which is applied primarily against hardcore drunk drivers, an offender's vehicle is seized and stored in a compound. In most states, a DWI offender's vehicle can be impounded overnight. The impoundment is longer if the offender is a recidivist or is caught driving with a suspended license. Application of the sanction varies among jurisdictions. Some target drivers who violate license suspension, while others use the sanction only after repeated DWI convictions. In San Francisco, police can impound the vehicles of unlicensed or suspended drivers for up to 30 days. Those who claim their vehicles must pay towing and storage fees, plus a $150 administrative fee. The total for a 30-day impoundment can reach $1,000. In some jurisdictions, impoundment is a component of a vehicle impoundment/forfeiture law. (Also cited under Vehicle Forfeiture.)

Where Is Vehicle Impoundment Used?

Until recently, few jurisdictions operated active impoundment programs. However, in the past few years there has been a dramatic increase in new program implementation. Now 12 states use vehicle impoundment as a sanction, according to the National Hardcore Drunk Driver Project Survey. In California, a pilot vehicle impoundment program was developed by the Santa Rosa Police Department and modified by San Francisco. Based on the success of the San Francisco program, the state's Office of Traffic Safety has awarded grants to 13 more cities to start vehicle impoundment programs.

How Effective Is Vehicle Impoundment?

A study in California attempted to measure the effectiveness of impoundment independent of other sanctions, but failed because of the lack of complete records linking police data on impoundments with DMV records on repeat offenses. However, a 1996 study was done on a Franklin County, Ohio, program that has a combination vehicle impoundment/immobilization law. That study suggests that preventing the use of the vehicle for a period from one to six months is a promising sanction for hardcore drunk drivers. It found that the sanction, whose primary component is immobilization, appeared to reduce recidivism even after the sanction was no longer in effect.[35]

San Francisco's Traffic Offender Program (STOP) provides for a 30-day impoundment of any vehicle driven by a person with a suspended or revoked license, or who has never been issued a license. Although the program is not aimed solely at drunk driving offenders, safety officials credit the law with having a tremendous impact on drunk driving. In the program's first two years, it is credited with a 63% drop in alcohol-related fatal and injury collisions and a 43% reduction in hit-and-run fatal and injury collisions. Police say that a key to the program's

success is that it funds a district attorney to prosecute resulting cases. Through San Francisco's program, 7,016 vehicles were impounded in 1995 and 7,293 in 1996.

Problems traditionally associated with vehicle impoundment include:

- a judicial reluctance to punish the offender's family by depriving them use of a vehicle;
- inability of offenders to pay towing and storage costs;
- insufficient value of the vehicles seized to recoup the costs to the state when offenders fail to pay impoundment charges;
- the lack of adequate storage facilities.

What Is the Cost of Vehicle Impoundment?

The cost is usually paid by the offender, but research shows that the cost of storing the vehicles frequently exceeds their value, resulting in abandoned vehicles for which the locality must then pay the towing and storage bill.

In San Francisco, the vehicle impoundment program collected $1.5 million in violator-paid administrative fees in 1995 and 1996, an amount program administrators consider break-even. Among other expenses, the fees provide reimbursement for the costs of the program, police officers' time, the dedicated district attorney, and two clerks' salaries. However, the city makes money by requiring offenders to pay outstanding parking tickets and to get valid registrations before the city will release the vehicles. Police estimate that the city collects $500,000 yearly in parking fines alone through the impoundment program. Registration fees bring in additional revenues.

Where to Go for More Information on Vehicle Impoundment

Popkin, C.L., and Wells-Parker, E. 1994.
A research agenda for the specific deterrence of DWI,
J. Traffic Med. vol. 22, no. 1.

Simpson, H.M., Mayhew, D.R., and Beirness, D.J. 1996.
Dealing With the Hard Core Drinking Driver.
The Traffic Injury Research Foundation, Ottawa, Canada.

Voas, R.B., Tippetts, A.S., and Taylor, E. 1996.
The Effect of Vehicle Impoundment and Immobilization on Driving Offenses of Suspended and Repeat DWI Drivers.
40th annual proceedings of the Association for the Advancement of Automotive Medicine, Vancouver, British Columbia.

California Office of Traffic Safety,
7000 Franklin Blvd., Suite 440, Sacramento, CA 95823;
916-262-0990.

Vehicle Immobilization

Immobilizing an offender's vehicle has the advantage of preventing the vehicle from being used by the hardcore offender while avoiding the procedural problems and costs involved with vehicle confiscation and storage. The vehicle can be immobilized on the offender's property by using a locking device to secure the steering wheel or a "boot" to lock the wheel. This reduces the cost to the offender and eliminates the problems of the state disposing of unclaimed vehicles.

Where Is Vehicle Immobilization Used?

According to data gathered by the National Hardcore Drunk Driver Project Survey, eight states use this type of sanction.

How Effective Is Vehicle Immobilization?

A 1996 study was done on a Franklin County, Ohio, program that has a combination vehicle impoundment/immobilization law. That study suggests that preventing the use of the vehicle for a period from one to six months is a promising sanction for hardcore drunk drivers.[35] It found that the sanction, whose primary component is immobilization, appeared to reduce recidivism even after the sanction was no longer in effect (also cited under Vehicle Impoundment). Exact results of the impoundment/ immobilization law are difficult to isolate and measure because the state implemented that law and an administrative license revocation law on the same day in 1993. The most recent figures for Franklin County, Ohio, reflect a 40% reduction in alcohol-related accidents from 1992 through 1996.

What Is the Cost of Vehicle Immobilization?

In Ohio, where immobilization is an administrative sanction, defendants pay a $100 fee to the Department of Motor Vehicles, which then returns the money to the arresting agency. In many counties, those fees cover the cost of buying clubs, which average about $30, or boots, which cost about $200.

Where to Go for More Information on Vehicle Immobilization

Ohio Department of Public Safety,
Office of the Governor's Highway Safety Representative,
240 Parsons Ave., Columbus, Ohio 43266-0563.

Voas, R.B., Tippetts, A.S., and Taylor, E. 1996.
The Effect of Vehicle Impoundment and Immobilization on Driving Offenses of Suspended and Repeat DWI Drivers. 40th annual proceedings of the Association for the Advancement of Automotive Medicine, Vancouver, British Columbia.

Tippetts, A.S. and Voas, R.B. 1997.
Statewide Impact of the Ohio ALR and Impound/ Immobilization Laws.
Presented for the Transportation Research Board.

January 24, 2003

Federal and State Affairs Committee
Kansas State Senate
Topeka, Kansas

Re: Support of Senate Bill 33

To the Committee:

I have been active in the legal representations of Kansas municipalities since 1969. I have served as the City Attorney for Parsons since 1976. I am actively engaged in prosecuting DUI cases in the Parsons Municipal Court. This experince has convinced me that we need to be ever vigilant in the control of alcohol impaired drivers on Kansas streets and highways. While I applaud the efforts of the Kansas Legislature in removing the so-called grace period on prior DUIs, I feel that more work needs to be done.

Senate Bill 33 provides an opportunity for Kansas municipalities to enact ordinances that provide for forfeiture or impoundment procedures for vehicles used by alcohol impaired drivers in the commission of crime. In my view, this would provide a very useful tool in our efforts to deal with this dangerous problem. Perhaps this measure would be an incentive for those convicted of DUI not to re-offend.

I would like to go on record as supporting the passage of Senate Bill 33.

Very truly yours,

Richard C. Dearth
3112 30th Drive
Parsons, Kansas 67357

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 10

Emporians for DRUG AWARENESS

Working for a Safer Community

January 28, 2003

The Honorable Senator Nancey Harrington, Chair
Federal and State Affairs Committee
Room 245-N, State Capital
Topeka, Kansas 66612

Honorable Senator Harrington and Committee Members,

On behalf of the Board of Directors of Emporians for Drug Awareness, I urge the committee to endorse Senate Bill No. 33 being introduced by Senator James Barnett.

According to the National Highway Traffic Safety Administration, about 1/3 of all drivers arrested or convicted of driving while intoxicated or driving under the influence of alcohol are repeat offenders (NHTSA, January 2001). In addition, the risk of a driver who has one or more driving while intoxicated (DWI) convictions becoming involved in a fatal crash is 1.4 times the risk of a driver with no DWI convictions (NHTSA, 2002). MADD reports that the annual cost of alcohol-related crashes in Kansas in 2001was $900,000,000. 194 alcohol-related traffic deaths were reported that year, at an estimated cost per fatality of $3,400,000. As significant as these figures are in costs to our state, it is impossible to put a price tag on the toll these crashes take on the victims' families.

Too often, having their license revoked or suspended does not prevent an individual who is drunk from getting behind the wheel of their car. Granting local governing bodies authority to impose stricter sanctions such as vehicle impoundment or immobilization in cases of repeat DUI offenders will provide an important tool to remove a potential weapon from the hands of individuals who persist in choosing to drive impaired and put innocent victims' lives at risk.

Sincerely,

Teresa Walters

Teresa Walters
Executive Director

P.O. Box 2015 • Emporia, Kansas 66801-2015 • (62
Fax: (620) 341-2331 • Website: emporia.com/dru

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 11

Presented by
Matt Sutherland

MADD
Activism | Victim Services | Education™

Mothers Against D ving
KANSAS ST. OFFICE
3601 SW 29th St., Suite 211
Topeka, KS 66614
Phone (785)271-7525
1-800-228-6233
Fax (785)271-0797
maddkansas@parod.com

1/27/03

Senator Nancy Harrington, Chairperson
Senate Committee on Federal and State Affairs
Rm. 143 N
State Capitol
Topeka, Kansas 66612

Dear Senator Harrington and Committee Members:

During the year 2001 (the most current statistics available) Kansas recorded 3,611 alcohol-related motor vehicle crashes involving 7,313 men, women and children. These crashes resulted in 96 fatalities and 2,508 injuries with societal costs estimated at $328 million.

More than 20,000 individuals are arrested annually for DUI in Kansas. Approximately 25% of those arrested are repeat offenders. Approximately 12% of DUI arrests of repeat offenders are of offenders driving on a suspended license.

MADD advocates confiscating (or impounding) vehicles or plates from the vehicles of habitual impaired drivers or those who drive while under driver's license suspension or revocation, where the suspension or revocation was the result of driving under the influence or any other alcohol-related driving offense.

MADD, Kansas supports Senate Bill 33 and asks for your support for this legislation.

Sincerely,
Wanda Stewart
Wanda Stewart
State Chairperson
MADD, Kansas

Submitted: written testimony

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 12

Beaver, Dennis

From: MADDNYKJS@aol.com
Sent: Monday, January 27, 2003 9:19
To: dbeaver@kgas.com
Subject: NYC stats thru May 02

Hi Dennis,

As we discussed, so far the stats available are:

NYC began vehicle seizure in February 1999. Since the inception of this initiative through May 2002, 5460 cars were seized, 647 during the months January through May 2002. From the years 2000-2001 NYC realized a 72% reduction in DWI fatalities. Fourteen percent of the cars have been returned to the owners through a settlement policy that mandates treatment and counseling. The vehicle seizure, used through an existing NYC ordinance that allows the seizure of the "instrumentality of the crime" has been challenged in court and thus far has been upheld in the New York State Court of Appeals.

I do not have dollar figures for the cost to the city, but I know that one of the primary issues has been storage of the vehicles. Obviously in a city such as New York where room is limited to begin with, storing the vehicles has been a problem and they have had to store them in other areas such as Staten Island. They don't have the option to boot the vehicle outside the owner's home as parking on the streets is already a nightmare in New York City.

I am still waiting to see if there are updated statistics, and will let you know if I hear back from them.

I hope this helps. Have a great day!

Kerry Stafford

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 13

The Honorable Senator Nancey Harrington, Chair
Federal and State Affairs Committee
Room 245-N, State Capital
Topeka, Kansas 66612

Re: Senate Bill No. 33

Honorable Senator Harrington and Committee members:

The Lyon County Commission does hereby confirm their support of Senate Bill No. 33 as introduced by Senator James Barnett.

The Commission unanimously supports the bill's purpose and intent of granting local governing bodies the authority to adopt stricter vehicle sanctions against repeat DUI offenders, such as impoundment or immobilization. Being able to take such action is a tool that some communities and counties in Kansas may use and find helpful in reducing DUI recidivism.

Signed this 23rd of January, 2003.

Marshall Miller

Peggy Torrens

Myron Van Gundy

Senate Fed & State
Date: 01 / 28 / 2003
Attachment # 14

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 27, 2003

The Honorable Nancey Harrington, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Harrington:

SUBJECT: Fiscal Note for SB 33 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 33 is respectfully submitted to your committee.

SB 33 would add impoundment of a driver's vehicle to the list of potential penalties for conviction of driving under the influence of alcohol or drugs. A person convicted of driving under the influence would be responsible for payment of any associated expenses before the vehicle would be released. If payment is not made, then the vehicle may be disposed of or auctioned. Local governments would be authorized to adopt similar provisions by ordinance or resolution.

Both the Department of Revenue and the Judiciary state that this bill would have no fiscal effect on any state fund.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Jerry Sloan/Amy Hyten, Judiciary

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 66612
Voice 785-296-2436 Fax 785-296-0231 http://da.state.