



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

March 12, 2013

**Testimony Regarding HB 2043
Submitted by Tom Weilert, Assistant District Attorney
On Behalf of Marc Bennett, District Attorney
Eighteenth Judicial District
And the Kansas County and District Attorneys Association**

Honorable Chairman King and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2043. On behalf of Marc Bennett, District Attorney, Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I would like to bring to your attention barriers to attaining justice for those harmed by offenders driving under the influence of drugs or alcohol and accountability for those inflicting the harm because of existing state law regarding reckless aggravated battery.

In State v. Huser, 265 Kan. 228 (1998), the Supreme Court evaluated a reckless aggravated battery prosecution based on injuries caused by a drunk driver. The Court reiterated that evidence of an individual driving under the influence, standing alone, does not amount to evidence of reckless behavior. Reckless behavior is conduct done under circumstances that show a realization of the imminence of danger and a conscious and unjustifiable disregard of the same. Accordingly, in order to prosecute an offender who caused bodily harm while driving under the influence, the State must also prove the offender knew at the time of the incident that his or her conduct posed an imminent danger and that he or she demonstrated complete indifference to such danger by proceeding to operate a motor vehicle in such a manner as to cause harm. General knowledge of the dangers of "drinking and driving" is insufficient evidence to find the crime of reckless aggravated battery has been committed. The current state of the law effectively makes it very difficult for prosecutors to hold DUI offenders accountable for injuries to others caused by their conduct.

Many collisions involving DUI offenders occur without witnesses to their pre-crash driving or under circumstances that present no clear evidence of the driver's awareness of the danger posed by his or her actions. As opposed to the high speeds or prolonged erratic driving more common in reckless driving, DUI offenders often cause serious collisions and injury by driving too slowly, inattentively, or by having momentary lapses in judgment or perception as a result of their intoxication. Some DUI offenders have even argued to juries they were too intoxicated to appreciate and disregard the dangerousness of their conduct, preferring a conviction for simple DUI to that of the higher offense of aggravated battery.

HB2043 is a sensible solution to this problem. As K.S.A. 8-1567 provides strict liability for those who choose to drive under the influence of alcohol or drugs, HB 2043 seeks to impose the same strict liability to hold DUI offenders accountable for the consequences of that choice. There would be no requirement for the State to prove an offender's awareness of the danger posed by drinking and driving. In 1996, the legislature imposed the same strict liability standard on those who unintentionally cause death to another while driving under the influence when it created the new crime of Involuntary Manslaughter while driving under the influence of alcohol or drugs, now codified at K.S.A. 2011 Supp. 21-5405(3). It is reasonable to apply the same standard of liability to those causing injury or death while driving under the influence as the offender's choice and conduct is the same in either result.

We need to close the chasm of criminal culpability between those who kill while driving under the influence and rightfully face, at a minimum, a severity level 4 felony and those who cause bodily harm (including paralysis, disfiguring scars, etc.) and may face, at worst, only a Class B misdemeanor DUI charge.

In summary, we seek to amend K.S.A. 2011 Supp. 21-5413 so as to hold accountable those who choose to drive under the influence and ultimately cause bodily harm to others in a manner more consistent with the level of harm they inflict in our communities. Such an amendment would put into law a widely-held value: that those who choose to drive under the influence and put their lives and the lives of others in jeopardy will be held properly accountable for the consequences of that choice.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Tom Weilert
Assistant District Attorney
Eighteenth Judicial District