

DAVID A. PAGE - COUNTY ATTORNEY

JAMIE L. KARASEK - DEPUTY COUNTY ATTORNEY

BRITT COLLE - DEPUTY COUNTY ATTORNEY

SUE WARD - OFFICE MANAGER/LEGAL ADMIN ASST



JENNIFER FARR-BREWER - LEGAL ADMINISTRATIVE ASSISTANT

PAULA DAVIS - LEGAL ADMINISTRATIVE ASSISTANT

DWILA BUSSE - VICTIM/WITNESS COORDINATOR

TESSA KUHLENGEL - DIVERSION COORDINATOR

122 W. MARLIN, SUITE 201 • McPHERSON, KS 67460

PHONE: 620.241.1027 • FAX: 620.241.0001

E-MAIL: [Administrator@McphersonCountyAttorney.org](mailto:Administrator@McphersonCountyAttorney.org)

March 17, 2015

Senate Standing Committee on Judiciary  
The Honorable Jeff King, Chairman

Re: *Substitute for HB 2115, aka Mija Stockman's Law*

Mr. Chairman, Committee Members:

Thank you, Chairman King and Committee Members, for the opportunity to appear before you today to testify in support of Substitute for HB 2115, also known as Mija Stockman's Law. My name is David A. Page; I am the elected McPherson County Attorney. I prosecuted the drunk driver who struck and severely injured Mija Stockman on December 20, 2013.

The Defendant in this case was convicted on May 27, 2014 of one count of Aggravated Battery while DUI—causing great bodily harm—in violation of K.S.A. 21-5413(b)(3)(A), a Severity Level 5 Person Felony. The penalty, established by this Legislature, for a Severity Level 5 Felony is between 31 to 136 months imprisonment and a fine not to exceed \$300,000.00.

Despite having a prior conviction for *Illegal Transportation of Liquor* in 1984 (Hutchinson, Kansas, Municipal Court); a prior conviction for *Driving While Intoxicated* in 1995 (Zachary, Louisiana, Municipal Court); and a prior conviction for *Operating a Vehicle While Intoxicated* in 1999 (East Baton Rouge District Court), the Defendant fell into a criminal History Category of "I" for sentencing purposes. A Category "I" is the lowest category on the Sentencing Guideline Grid. The Defendant's sentencing classification was in a "border box", with a sentencing range between 31 to 34 months; the Defendant was eligible for being placed on probation without the Court "departing" from the Guideline Sentence.

After hearing testimony and taking evidence during a lengthy sentencing hearing—with the Courtroom filled to capacity—the sentencing Judge denied probation and imposed the Aggravated Guideline Sentence of 34 months—the *maximum* sentence allowed under current law—with 5.1 months of good time credit to be earned, and a post release supervision duration of 24 months. I used every tool available under the law to try and bring about a swift and just resolution to this case; however, in the end, a 34 month sentence is the maximum the law would allow. Pursuant to his sentence, the Defendant is due to be released from prison on April 27, 2016—next year.

Although this Substitute HB 2115 leaves the crime of Aggravated Battery while DUI at a Severity Level 5, Person Felony, it provides for a defendant's sentence to be enhanced—horizontally on the Sentencing Grid—based specifically on their prior DUI convictions. This means a defendant with one (1) prior DUI conviction would be *presumptive prison*, have a Criminal History Score of “G”, and have a sentencing range between 38 and 43 months; a defendant with two (2) prior DUI convictions would be *presumptive prison*, have a Criminal History Score of “C”, and have a sentencing range between 53 and 60 months; a defendant with three (3) prior DUI convictions would be *presumptive prison*, have a Criminal History Score of “B”, and have a sentencing range between 114 and 128 months; and a defendant with four (4) prior DUI convictions would be *presumptive prison*, have a Criminal History Score of “A”, and have a sentencing range between 122 and 136 months. This manner of enhancement is similar to that provided by statute for the commission of Involuntary Manslaughter while DUI.

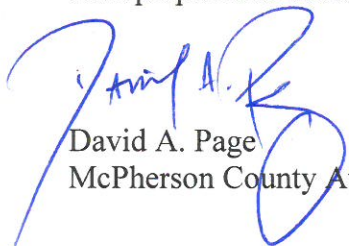
This makes sense because there are certain things we know about a defendant who has a prior DUI conviction—besides the punishment they received. We know they were previously caught operating a vehicle after consuming drugs or alcohol; we know they either admitted to committing the DUI *or* were otherwise convicted at a trial; and we know they received some type of drug/alcohol evaluation, some level of treatment, and some manner of education designed to prevent them from committing another DUI.

When I compare the Defendant's relatively light sentence to that of the devastation his actions brought upon the Stockman and Lysell Families, I cannot help but stand in disbelief. Consider for a moment that the Defendant is the only person responsible for the automobile crash on December 20, 2013. Yet, as the Defendant looks forward to his release next year, Mija Stockman and her family are looking at a future filled with struggle—struggle which will literally last their lifetimes.

I encourage each of you to support Substitute HB 2115 because it provides for a sentencing enhancement that is both right and just *and* it is altogether appropriate that this Bill bear Mija's name.

Thank you, Mr. Chairman. May God bless you, this Committee, and this Honorable Institution.

I am prepared to stand for questions.



David A. Page  
McPherson County Attorney