

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by CHAIRMAN MILLER at _____
Chairperson

1:30 a.m./p.m. on March 17, 1988 in room 526S of the Capitol.

All members were present except:

Representatives Sifers, Grotewiel, & Peterson

Committee staff present:

Mary Torrence, Revisor's Office
Mary Galligan, Research Department
Lynda Hutfles, Secretary

Conferees appearing before the committee:

Galen Davis, Governor's Office
Bob Stephan, Attorney General
Jim Clark, County & District Attorneys Assn.
Nick Tomasic, Wyandotte District Attorney
Jon Brax, Kansans for Life at its Best
Ruth Meserve
Gene Johnson
Elizabeth Taylor
Senator Dave Kerr
Bob Wunsch
Nancy Lindburg
Charles McGee, Haven
James Ralston, Overland Park
Tom Burning, Bonner Springs
Cliff Heckathorn, Topeka
Roger Carlson, Health & Environment
Larry Hinton, SRS

Representative Aylward made a motion, seconded by Representative Rolfs, to introduce as committee bills two bills. One dealing with fire sprinklers and the other with conservation easements. The motion carried.

Representative Jenkins made a motion, seconded by Representative Bryant, to approve the minutes of the March 16 meeting. The motion carried.

SB111 - Crime of causing injury while driving under the influence of alcohol or drugs

Bob Stephan, Attorney General, gave testimony in support of the bill which establishes the crime of vehicular battery in the first and second degrees. He supports the creation of such a crime for those who wantonly disregard the safety of other by willfully driving in such a manner. See attachment A.

Galen Davis, Governor's Office, expressed his support of the bill which will establish a new law that makes it a Class E felony crime to cause great bodily harm, disfigurement or dismemberment to another person while committing the crime of driving under the influence. See attachment B.

Jim Clark, County & District Attorneys Assn., gave testimony in support of SB111 which allows a person to cause serious bodily injury to another while driving under the influence of alcohol or drugs be subjected to the same degree of punishment as if no injury occurred is analogous to allowing a person who aims a gun, shoots but does not kill another person to be subjected only to the punishment of discharging a firearm within the city limits. See attachment C.

Senator Dave Kerr gave testimony in support of the bill. A review of the criminal code is much needed. Senator Kerr said that the biggest concern on the Senate floor was the causation factor. See attachment D

Nick Tomasic told the committee that he has requested this bill last year. This bill corrects an injustice; you are punishing the act not the crime.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

room 526S, Statehouse, at 1:20 a.m./p.m. on March 17, 19

There was discussion of the causation factor and also of prison overcrowding. There should be innovative sentencing. Not everyone belongs in prison. Criminals belong in prison; persons committing criminal acts, need something else.

Jon Brax, Kansas For Life at its Best, gave testimony in support of the bill. See Attachment E.

Representative Bob Wunsch expressed his support of the bill and told the committee that the Judiciary Committee is in the process of changing some of the Class E felonies. The Governor has just appointed a commission on the Criminal Justice system to codify the system.

Charles McGee gave testimony in support of the bill. He said there is a need for punishments associated with DUI that befit the crime. A drunk driver who permanently injures another person deserves punishment similar to that given for assault and battery. Mr. McGee talked about his 17 year old daughter who is paralyzed as a result of an accident involving a DUI. See attachment F.

James Ralston, Overland Park, talked about his wife who was hit head on by a drunk driver on July 26, 1987. She suffered severe brain damage and was in a coma for two weeks. She is a prisoner of a crippled body and mind and will never be the same. Medical costs are running about \$1100 and fortunately he has insurance to cover these costs. The driver of the other car received a 5 day jail sentence and was required to do community service. There needs to be a stronger punishment for those who drink and drive.

Tom Burning, Bonner Springs, expressed his support of the bill and read some thoughts his wife had written about their 16 year old son who was robbed of functions and rights after an accident with a drinking driver.

Cliff Heckathorn, Kansas Head Injury Association, gave support for the bill and told the committee about his 26 year old son who is handicapped as a result of an accident in 1980. It has been devastating and expensive. Alcohol was involved in the accident and was probably the cause.

Ruth Meserve, Kansas Coalition for Drug free Driving, gave testimony in support of the bill as long as it does not take away the mandatory minimums of the DUI offender under KSA 8-1567. She has been involved in five accidents. See attachment G.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinator Association gave testimony in support of SB111 as another tool to inform those who drink and drive that Kansas citizens are no longer accepting this kind of behavior. He suggested language be added which would prohibit the plea bargaining or dismissal of any charge of DUI in order to escape the minimum penalties in KSA 8-1567. See attachment H.

Liz Taylor, Alcohol & Drug Program Directors, expressed support of SB111.

Hearings were concluded on SB111.

SB484 - Alcohol and drug tests on victims of fatal accidents

Liz Taylor, Alcohol & Drug Program Directors, expressed support of SB484.

Dr. Roger Carlson, Health & Environment, gave testimony in support of the bill which recognizes the absolute importance that laboratory tests be performed in a manner which would assure the quality of test results. See attachment I.

Larry Hinton, SRS, was present in support of SB484 which will improve data by mandating testing and reporting. See attachment J.

Jon Brax, Kansans for Life at its Best, was present in support of SB484. See attachment K.

Ruth Meserve, Kansas Coaliton for Drug Free Driving, was present in support of SB484. See attachment L.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

room 526S, Statehouse, at 1:30 a.m./p.m. on March 17, 19

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association, was present in support of SB484 which will provide them with more information for evaluation and research purposes. See attachment M.

Barbara Reinhart, Kansas Sheriff's Association, expressed support for both SB111 and SB484.

SB646 - Chief physician of correctional institution; duties

Representative Roy made a motion, seconded by Representative Barr, to report SB646 favorable for passage. The motion carried.

SB647 - Inmate employment and educational training programs

Representative Sughrue made a motion, seconded by Representative Barr, to report SB647 favorable for passage. The motion carried.

SB648 - Purpose of state reception and diagnostic center

Representative Gjerstad made a motion, seconded by Representative Barr, to remove sexual connotations from the bill. The motion carried.

Representative Roenbaugh made a motion, seconded by Representative Grotewiel, to report SB648 favorable as amended. The motion carried.

SB651 - Work by inmates outside correctional institutions.

Representative Gjerstad made a motion, seconded by Representative Walker, to amend the bill by insrting on line 24 "minimum or less security" in lieu of "minimum security" and insert on line 19 after "community" "and results in minimal negative impact on the private sector workforce". The motion carried.

Representative Walker made a motion, seconded by Representative Jenkins, to report SB651 favorable as amended. The motion carried.

The meeting was adjourned.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

TESTIMONY OF ATTORNEY GENERAL

ROBERT T. STEPHAN

ON SENATE BILL 111

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS

MARCH 17, 1988

Mr. Chairman and members of the committee:

As you are well aware, we have a serious problem in this state with drunk drivers. In 1986, 224 of the 500 traffic fatalities in Kansas involved alcohol and that was up from 155 out of 486 in 1985. The Legislature previously has responded to this problem by enacting tougher legislation for DUI cases in which someone is killed. In such cases, the drunk driver may be convicted of aggravated vehicular homicide which is a class E felony.

But what if that drunk driver does not cause the death of the young mother who happens into the drunk driver's patch? What happens if the young mother is permanently paralyzed or suffers a

Attach A

head injury that deprives her of the ability to ever know or recognize her children again? Under the present laws, the driver may be charged with driving under the influence of alcohol or drugs. That is all. There are no stricter penalties for the drunk driver if his victim does not die, regardless of the years of agony he has caused his victim and the victim's family.

I am asking you to pass Senate Bill 111 which would establish the crimes of vehicular battery in the first and second degrees. Vehicular battery in the first degree would be causing bodily injury to a person while driving under the influence of alcohol or drugs. The penalty is set as a class E felony. We must make it clear that drunk drivers who injure or kill others on Kansas roads will suffer substantial consequences. Although not included in this bill, I have also asked that the penalty for aggravated vehicular homicide be raised to a class D felony. That bill, HB 2951, has passed the House and is in the Senate Judiciary Committee. I'd like to thank those of you who supported that change.

Vehicular battery in the second degree would apply to those instances in which the driver of a vehicle is not driving under the influence but is driving recklessly or is attempting to flee or elude a police officer. I support the creation of such a crime for those who wantonly disregard the safety of others by willfully driving in such a manner.

I would add that Senate Bill 111 would enact into law one of the proposals made by the Governor and myself for stiffening DUI sanctions.

Thank you for your consideration.

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612-1590
(913) 296-3232

Mike Hayden Governor

Testimony Concerning SB 111
Presented To
The House Federal and State Affairs Committee
March 17, 1988
By
Galen E. Davis
Governor's Special Assistant on Drug Abuse

Mr. Chairman, members of the committee, I appreciate the opportunity to testify before you today in favor of Senate Bill 111, which would make it a felony crime for causing serious injury while driving under the influence.

I would like to begin my testimony by expressing sincere appreciation for the positive action by this committee on previous bills aimed at preventing and reducing drunk driving in our state. Thank you for your demonstrated commitment to a safer, healthier Kansas by passing bills this session that will impact this serious crime. Senate Bill 111 has the potential to further deter the irresponsible behavior of drunk driving, especially when that inexcusable behavior results in the serious injury of innocent victims.

In response to our society's alcohol and other drug abuse dilemma Governor Hayden has, on several occasions, outlined the need and his support for a comprehensive approach to prevent and reduce the tragedies related to substance abuse. This approach includes:

- * Providing substance abuse education and prevention services for youth, their families and the general public

- * Providing intervention and treatment services for those individuals impaired by alcohol and other drugs
- * Providing legal sanctions including laws, enforcement, prosecution and adjudication that will serve as a general deterrence as well as guarantee justice for the victim and the accused.

All are necessary elements in the reduction of substance abuse in general and drunk driving in particular.

Today, we are requesting your approval for this legislation which would establish a new law that makes it a Class E felony crime to cause great bodily harm, disfigurement or dismemberment to another person while committing the crime of driving under the influence. The ultimate goal of this bill and the other six DUI measures presented to you by the Governor and Attorney General is to protect the health and safety of Kansas citizens by deterring the incidence of drunk driving, alcohol related crashes, injuries and deaths.

The perceived likelihood that an individual will suffer severe legal consequences for drunk driving has a significant deterrence value which has been recognized by the National Commission on Drunk Driving, the National Institute of Justice, and the National Highway Traffic Safety Administration. This measure has also been supported by Kansans through letters of support to the Governor, by letters to the editor and by editorials in Kansas newspapers. Examples of this support are found in the following quotes:

- * "Drunks who maim innocent victims should be charged with a felony crime and treated accordingly." Editorial entitled Coddling drunks by the Hutchinson News.
- * "Adult Kansans have the right to drink if they choose to but they don't have the right to endanger others when they do. And the state has the responsibility to make drunk driving laws tough enough that they aren't winked at by offenders." Editorial entitled Anti-drunk driving law changes needed by the Great Bend Tribune.
- * "Almost no one would argue that someone who picks up a gun and shoots someone while drunk should be excused from tough penalties on the ground that 'he didn't mean to do it.' A car is a deadly weapon. Those who choose to operate one while drunk or drugged should face tough penalties." Editorial entitled Get tough on drunks. by the Salina Journal and reprinted in the Topeka Capital - Journal.

Many statistics can and have been recited about this state's and nation's tragedies related to drunk driving. Statistics only tell a piece of the pain and suffering caused by driving under the influence. In many cases innocent victims are forced to live the rest of their lives trapped in bodies broken by injuries as the result of an alcohol related crash. Statistics can't describe the surgeries, the rehabilitation, the time off work, and the trauma the innocent victims and their families endure literally for the rest of their lives.

Clearly, driving under the influence is a crime against us all. It poses a tremendously dangerous threat to public safety. We have no sure way for any one of us to protect ourselves from the drunken driving of another. Drunk driving is a serious crime. Killing another person while driving under the influence is a serious crime. We believe that causing great bodily harm, disfigurement or dismemberment while committing the crime of driving under the influence is also a serious offense against us all and worthy of being classified a Class E felony crime.

We encourage your positive support for adding this law to our states comprehensive approach to prevent and reduce drunk driving.

Thank you Mr. Chairman and members of the committee for considering our comments on this bill.

C

OFFICERS

Linda Trigg, President
Sally Pokorny, Vice-President
James E. Puntch, Jr., Sec. Treasurer
Stephen R. Tatum, Past-President



DIRECTORS

James R. Feters
Terry Gross
Daniel L. Love
Dennis W. Moore

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK

SENATE BILL 111

The Kansas County and District Attorneys Association appears in support of SB 111. To allow a person to cause serious bodily injury to another while driving under the influence of alcohol or drugs to be subjected to the same degree of punishment as if no injury occurred is analogous to allowing a person who aims a gun, shoots but does not kill, another person to be subjected only to the punishment of discharging a firearm within the city limits.

This bill recognizes the more serious nature of an offense in which an injury occurs, just as our criminal law now recognizes that if a the victim of the firearm offense does not die, the perpetrator may be found guilty of aggravated battery, a Class C felony; or attempted first or second degree murder, Class B or C felonies, respectively.

While the bill as amended by the Senate is not as clean as the original version, our Association prefers the present version over further amendments (and the possible referral to a conference committee).

We urge the Committee to recommend the bill favorably for passage.

Attach C

Class E Felony (98)

- Third and Subsequent Conviction for Driving With a Revoked or Suspended License (K.S.A. 8-262)
 Habitual Violator Who Operates Motor Vehicle (K.S.A. 8-287)
 Fleeing From Police Officer in Motor Vehicle - Third and Subsequent Offense (K.S.A. 8-1568)
 Attempt to Commit a Class D or E Felony (K.S.A. 21-3301)
 Conspiracy to Commit Any Felony Other Than a Class A Felony (K.S.A. 21-3302)
 Criminal Solicitation (K.S.A. 21-3303) (of a Felony Other Than a Class A or B Felony)
 Assisting Suicide (K.S.A. 21-3406)
 Terroristic Threat (K.S.A. 21-3419)
 Aggravated Interference With Parental Custody (K.S.A. 21-3422a)
 Blackmail (K.S.A. 21-3428)
 Aggravated Indecent Solicitation of a Child (K.S.A. 21-3511)
 Habitually Promoting Prostitution (K.S.A. 21-3514)
 Sexual Exploitation of a Child (K.S.A. 21-3516)
 Bigamy (K.S.A. 21-3601)
 Incest (K.S.A. 21-3602)
 Abandonment of a Child (K.S.A. 21-3604)
 Nonsupport of a Child or Spouse (K.S.A. 21-3605)
 Criminal Desertion (K.S.A. 21-3606)
 Abuse of a Child (K.S.A. 21-3609)
 Aggravated Juvenile Delinquency (K.S.A. 21-3611)
 Contributing to a Child's Misconduct or Deprivation (K.S.A. 21-3612)
 Theft (\$150 or more or less than \$150 if two theft convictions in past five years) (K.S.A. 21-3701)
 Theft of Services (\$150 or More) (K.S.A. 21-3704)
 Giving a Worthless Check (\$150 or More) (K.S.A. 21-3707)
 Habitually Giving a Worthless Check (K.S.A. 21-3708)
 Forgery (K.S.A. 21-3710)
 Destroying a Written Instrument (K.S.A. 21-3712)
 Altering a Legislative Document (K.S.A. 21-3713)
 Possession of Forgery Devices (K.S.A. 21-3714)
 Possession of Burglary Tools (K.S.A. 21-3717)
 Criminal Damage to Property (\$150 or More) (K.S.A. 21-3720)
 Aggravated Tampering With a Traffic Signal (K.S.A. 21-3726)
 Unlawful Use of Financial Card (\$150 or More) (K.S.A. 21-3729)
 Criminal Use of Explosives (K.S.A. 21-3731)
 Impairing a Security Interest (\$50 or More) (K.S.A. 21-3734)
 Fraudulent Release of a Security Agreement (K.S.A. 21-3735)
 Warehouse Receipt Fraud (K.S.A. 21-3736)
 Throwing Rocks or Other Objects From Bridge Onto Street (K.S.A. 21-3742)
 Theft of Telecommunication Services (\$50 or More) (K.S.A. 21-3745)
 Piracy of Sound Recordings (K.S.A. 21-3748)
 Practicing Criminal Syndicalism (K.S.A. 21-3803)
 Perjury (Other Than a Felony Trial) (K.S.A. 21-3805)
 Corruptly Influencing a Witness (K.S.A. 21-3806)
-
- Compounding a Crime (K.S.A. 21-3807)
 Obstructing Legal Process (Felony Cases) (K.S.A. 21-3808)
 Aggravated Escape From Custody (K.S.A. 21-3810)
 Aiding Escape (K.S.A. 21-3811)
 Aiding a Felon (K.S.A. 21-3812)
 Aggravated Failure to Appear (K.S.A. 21-3814)
 Attempting to Influence a Judicial Officer (K.S.A. 21-3815)
 Corrupt Conduct by Juror (K.S.A. 21-3817)
 Aggravated False Impersonation (K.S.A. 21-3825)
 Traffic In or Unauthorized Possession or Distribution of Contraband in Penal Institutions (K.S.A. 21-3826)
 Aggravated Intimidation of a Witness (K.S.A. 21-3833)
 Presenting a False Claim (\$50 or More) (K.S.A. 21-3904)
 Permitting a False Claim (\$50 or More) (K.S.A. 21-3905)
 Unlawful Use of Weapon (Only Automatic Weapons) (K.S.A. 21-4201)
 Aggravated Weapons Violation (K.S.A. 21-4202)
 Obtaining Prescription-Only Drug by Fraudulent Means (Second Offense) (K.S.A. 21-4214)
 Promoting Obscenity (Third Offense) (K.S.A. 21-4301)
 Promoting Obscenity to Minors (Second Offense) (K.S.A. 21-4301a)
 Commercial Gambling (K.S.A. 21-4304)
 Dealing in Gambling Devices (K.S.A. 21-4306)
 Installing Communication Facilities for Gamblers (K.S.A. 21-4308)
 Commercial Bribery (K.S.A. 21-4405)
 Sports Bribery (K.S.A. 21-4406)
 Tampering With a Sports Contest (K.S.A. 21-4408)
 Unlawful Conduct of Pit Dog Fighting (K.S.A. 21-4315)
 Election Perjury (K.S.A. 25-2411)
 Election Forgery (K.S.A. 25-2412)
 Possessing False or Forged Election Supplies (K.S.A. 25-2414)
 Election Fraud (K.S.A. 25-2420)
 Election Suppression (K.S.A. 25-2421)
 Unauthorized Voting Disclosure (K.S.A. 25-2422)
 Election Tampering (K.S.A. 25-2423)
 Voting Machine Fraud (K.S.A. 25-2425)
 Printing and Circulating Imitation Ballots (K.S.A. 25-2426)
 Destruction of Election Supplies (K.S.A. 25-2428)
 Destruction of Election Papers (K.S.A. 25-2429)
 False Impersonation of a Voter (K.S.A. 25-2431)
 Electronic Voting Fraud (K.S.A. 25-4414)
 Optical Scanning Equipment Fraud (K.S.A. 25-4612)
 Improper Issuance of a Negotiable Grain Receipt by a Warehouseman (K.S.A. 34-293)
 Improper Grain Receipt Negotiation Where a Lien or No Title (K.S.A. 34-295)
 Defrauding an Innkeeper Over \$50 (K.S.A. 38-206)
 Illegal Disposition or Purchase of Welfare Assistance (K.S.A. 39-717)
 Failure to Plug Oil and Gas Wells (K.S.A. 55-156)
 Failure to Cement in the Surface Casing of an Oil or Gas Well (K.S.A. 55-157)
 Unlawful Disposal of Salt Water From Oil and Gas Wells - Second and Subsequent Offenses (K.S.A. 55-904)
 Uniform Land Sales Practices Act Violation (K.S.A. 58-3315)
 Fraudulent Violation of Meat and Poultry Regulations (K.S.A. 65-6a40)
 False Swearing - Kansas Healing Arts Act (K.S.A. 65-2861)
 Forgery of Declaration of Withholding Life-Sustaining Procedures (K.S.A. 65-28,107)
 Unlawful Disposal of Hazardous Waste (K.S.A. 65-3441)
 Simulated Controlled Substances and Drug Paraphernalia Violation (K.S.A. 65-4153)
 Representation of a Noncontrolled Substance as a Controlled Substance (K.S.A. 65-4155)
 Falsification of Fingerprints or Photographs Required Under Private Detective Act (K.S.A. 75-7b19)
 Signing a Fraudulent Income Tax Return (K.S.A. 79-3228)

E

Study shows death certificates failed to reflect role of alcohol

The Associated Press

CHICAGO — Researchers studying the deaths of more than 400 young Army veterans found that six times as many alcohol-related deaths occurred as were reflected on death certificates.

The study suggests that doctors gather too little information before filling out death certificates — the main source of U.S. mortality data, the researchers said.

Their study was reported in today's edition of the *Journal of the American Medical Association*, which also carried a report from an AMA committee recommending wider use of autopsies to establish the cause of death and catch medical mistakes.

"We think the study ... illustrates the important role alcohol plays in premature death and indicates the extent to which alcohol's role is underestimated if you use official cause-of-death data," said Dr. Daniel J. Pollock, who led researchers at the national Centers for Disease Control in Atlanta.

They studied death records of 426 young veterans, ranging in age from 20 to 41, who had died between 1967 and 1984. The records were of the deaths among a random sample of 18,000 men who had served in various countries, their duties rang-

For example:

A study of the deaths of more than 400 young Army veterans found:

(B/W) Alcohol played a role 40 percent of the time in motor-vehicle injuries, listed as the leading cause of death.

(B/W) Alcohol was a factor 30 percent of the time for both suicides and homicides, ranked second.

ing from combat to office work.

Although 446 men in the sample had died, researchers said they were unable to obtain both death certificates and the medical and legal records on the cause of death in 20 of those cases.

Motor-vehicle injuries were the leading cause of death, alcohol playing a role 40 percent of the time. Suicides and homicides ranked second, and alcohol was a factor 30 percent of the time for each, the researchers reported.

They reached their conclusions after learning all they could about the deaths from sources other than the certificates — law enforcement records, autopsy reports and hospital records — and made inde-

pendent evaluations.

Overall, death certificates indicated that alcohol was related to 21 of the deaths. The researchers, however, found that it was a factor in 133 deaths.

Almost all of the discrepancy was due to omission of data on blood-alcohol levels from death certificates in deaths due to injury, the researchers said.

Pollock said he thought that most of the time lab reports on blood-alcohol levels weren't available at the time the death certificates were filled out.

The problem could be largely solved with a two-phase death certificate process in which the cause of death would be added later, he said.

"Death certificates serve not only as legal documents that allow for insurance claims to be filed or inheritance to proceed, but also serve as important sources of data for health planning and evaluation," Pollock said.

Estimates of alcohol-related deaths annually in the United States now range from 15,000 to more than 200,000, Pollock said, "and one of reasons for the wide range in estimates is that official cause-of-death data are of questionable validity."

Hearing on SB 484, March 17, 1988
House Federal & State Affairs Committee

Rev. Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

Even with poor reporting, the National Institute on Alcohol Abuse and Alcoholism tells us 250,000 Americans suffer alcohol-related deaths each year.

The atomic bomb dropped on Hiroshima reportedly killed 80,000 and the next bomb on Nagasaki killed 35,000. Yet today in America we tolerate the equivalent of two Hiroshimas and two Nagasakies in alcohol-related deaths every year. And this is with under-reporting!

The above clipping indicates death certificates reported alcohol was related to 21 deaths, but researchers found it was a factor in 133 deaths.

On this St. Patricks Day there are thousands of people who look upon restrictive beer drinking laws as a big joke and consume the drug openly on our public streets and sidewalks. SB 484 is a step in the right direction in determining just how big a killer hides inside that green beer.

Respectfully yours,
Richard Taylor

Attach E

Senate passes tougher penalties for drunk driving

TOPEKA (AP) — Toughening penalties for drunken driving dominated action Thursday in the Legislature.

The Senate passed, 35-5, and sent to the House a bill that would make injuring a person while driving under the influence of alcohol or other drugs a felony.

Under the original proposal, the penalty for injuring a person while driving intoxicated would have been a misdemeanor, punishable by up to a year in the county jail.

However, Sen. Dave Kerr, R-Hutchinson, succeeded in getting the bill amended during floor debate to make the offense a Class E felony, punishable by two to five years in a state prison.

Stiffer punishment for various drunk driving offenses also was the subject of a hearing before the House Federal and State Affairs Committee, with Attorney General Robert T. Stephan among those urging legislative ac-

tion.

The Senate bill also was amended to require proof that a driver's intoxication was a reasonable cause of the accident. If a sober driver causes an accident with a drunk driver and someone is injured, for example, then no felony charge would be filed against the drunk driver.

The bill was amended after considerable floor debate. Opponents argued the penalty was too severe.

Kerr passed out a list of other Class E felonies, showing other types of crimes that carry the same sentence. Other Class E felonies include defrauding an innkeeper for more than \$50, false impersonation of a voter, piracy of sound recordings and altering a legislative document.

"Who would you rather meet on a dark street at night, someone who has just impersonated a voter or someone who has just

taken six drinks?" Kerr asked.

For years Kansans have been snickering at drunk driving laws, he said, and lawmakers have considered it a light offense.

"It's not something to snicker at," he said. "What we're dealing with is a penalty for a serious offense."

He cited a case in his senatorial district in which a young woman is confined to a wheelchair after the car she was riding in was struck by a drunk driver. That driver was sentenced to 30 days in a youth facility and fined \$500, he said.

"I would suggest to you that is not an adequate penalty for causing what he caused," Kerr told senators.

Sen. Robert Frey, R-Liberal, said sending people to prison for a longer period of time rather than to the local jail would not be an additional deterrent. He said he thought Kerr was motivated by a desire for retribution.

"I don't believe in the whole scheme of things that's good public policy," Frey said. "It's not going to get anyone out of a wheelchair."

Stephan and Gov. Mike Hayden's special assistant on drug abuse, Galen Davis, testified before the House Federal and State Affairs Committee in support of three bills that also would toughen the state's drunk-driving laws.

"We must make it clear that we do not condone the selfish act of the drunk who drives without regard to the lives of others," Stephan said.

One of the bills would make aggravated vehicular homicide a Class D felony, punishable by two to 10 years in prison. It is now a Class E felony, punishable by one to five years.

On other legislative fronts Thursday:
 ■ The House advanced to final vote a bill

that would enact a 1 percent state guest tax. The measure, which would add the 1 percent to all hotel and motel bills, would raise an estimated \$1.3 million to \$1.5 million a year for economic development. Many cities in the state already have local guest taxes.

■ The House passed, 120-3, and sent to the Senate a bill game officials hope will help solve a problem of deer overpopulation. It is designed to encourage landowners to hunt deer on their own property, allow Kansans to hunt and get hunters to corral deer from other states to take Kansas deer.

■ Anti-smoking activists and the governor's specialist on drug abuse asked the House Public Health and Welfare Committee to ban the use of tobacco products in public school buildings. A bill would make it illegal to smoke or use smokeless tobacco products in schools, but it has no penalty provision.

Editorials

Tuesday, February 16, 1988

The Hutchinson News

Coddling drunks

The members of the Kansas Senate's Judiciary Committee added their own names to the list of drunk-coddlers last week.

With a smoke screen that should fool no one, the members agreed that a drunken driver who maims or paralyzes an innocent victim should continue to be charged only with a misdemeanor in Kansas.

One committee member, Sen. Frank Gaines, told the press it would get "pretty extreme" to accuse a drunken driver of a felony. If a drunken driver were convicted of a felony he would lose his right to vote and would have to report his conviction on job applications, Gaines said.

"A misdemeanor didn't quite carry the impact for life that a felony does, because once you've been convicted of a felony it hangs around your head like a noose forever and ever," another senator, Committee.

Audrey Langworthy of Prairie Village, told The News. Sens. Langworthy and Gaines, and their committee, should save their tears over the drunks. They should visit victims of drunken drivers.

But even if they don't, the rest of the Kansas Senate should reject their pathetically wrong decision and do something constructive.

Drunks who maim innocent victims should be charged with a felony and treated accordingly. The drunks also should be required to receive medical treatment provided by the state, which also should confiscate the drunk's car and levy appropriate fines.

In addition to that, the state itself should assume liability for the carnage created by drunken drivers who have been coddled by the state and such leading public figures as the senators on the Judiciary Committee.

Hearing on SB 111, March 17, 1988
 House Federal & State Affairs Committee
 Rev. Richard Taylor
 KANSANS FOR LIFE AT ITS BEST

The Senate Judiciary Committee amended the penalty in this bill to a misdemeanor. On the floor of the Senate it was changed back to a class E Felony.

During Senate debate, Senator Frey said a stiffer penalty would not "get anyone out of a wheelchair". That is not the point. A stiffer penalty is to prevent others from needing a wheel chair.

PREVENTION, NOT PUNISHMENT, IS OUR GOAL.

If the penalty is sure, swift, and severe, intelligent persons will choose not to drink before driving. We've coddled highway killers long enough.

How wonderful it is that this legislature is working a large number of measures that should reduce the number of persons who choose to drink before driving.

Please support SB 111.

Respectfully yours,

Richard Taylor

Charlie McGee
Box 147
Haven, Ks. 67543

March 17, 1988

HOUSE, FEDERAL AND STATE, AFFAIRS COMMITTEE
TESTIMONY REGARDING SENATE BILL #111

The difference between the punishment a drunk driver receives for causing serious personal injury and that received when he kills someone is abhorring. This discrepancy is an embarrassment to the State of Kansas. Laws and their associated punishments for non-compliance are reflections of our values. Our legislation should, therefore, indicate the value Kansans place on quality of life, as well as life, itself.

My 17 year old daughter, Rachel, is the victim of a drunk driver. Ten months ago, Rachel was elected 1988 President of both the Haven Kayettes and her Senior Class. She was also selected to the cheerleading squad, the National Honor Society and was a member of Students Against Drunk Drivers.

As a result of the May 8, 1987, accident, Rachel received permanent brain damage among many other serious injuries. She was in a deep coma for three months. Today she cannot feed herself, she must wear diapers because she cannot go to the bathroom on her own nor can she speak to tell people her needs. She cannot stand-up, much less walk. The potential she demonstrated prior to the accident may never be realized.

Rachel is now in a rehabilitation center in Gardner, Kansas, where she receives intensive therapy. Although significant progress is being made, she will for the rest of her life be permanently damaged. You can imagine the impact this has had, and will continue to have, on her brother, her sister and our home life.

The driver responsible had a blood alcohol content of 2.46%; more than double the legal limit. His punishment: a one year suspension of his driver's license; probation; approximately \$600 in fines; 30 days in a youth detention center; and, required participation in an Alcohol and Substance Abuse Program.

This type of sentencing reflects no consideration for the victim and provides no significant deterrent. This is demonstrated by the fact that he received his third liquor violation, while on probation, following the accident.

We need to have punishments associated with DUI that befit the crime. Although there is no punishment that can be imposed by man that would atone for the damage done, the punishment this driver received does not even begin to reflect the severity of the crime committed.

Why do we not have the same punishment across the board for any and all crimes? Because we believe that some crimes are worse than others. The punishment warranted by a crime should be somehow commensurate with the magnitude of the victim's injury. It should reflect a Kansan's sense of justice.

Attach F

Why do we have any laws at all? Because they keep us focused on what is best for our society as a whole. Laws are created to protect us. They offer protection to the degree that people respect them and see the punishment for non-compliance as more costly than adherence. When the law is violated, the courts must have the ability to administer punishment that befits the crime. Otherwise, the law's effectiveness is diminished, as well as the protection that it was designed to provide.

A drunk driver who permanently injures another person deserves punishment similar to that received for assault and battery. For one person to assault another is barbaric and deserves harsh punishment. To attack someone indicates a lack of respect for the law and, more importantly, the well-being of others. A person guilty of driving under the influence of chemicals displays a disregard for both. The only difference between the drunk driver and an assaulter is motive. Both represent a threat to society, because the end result is all-to-often the same; loss of life or damage so severe that complete recovery is impossible.

Punishment for violating a law serves as incentive to keep the law. To the degree that the punishment is impotent to serve this purpose, it is less likely that the law will be upheld voluntarily and it loses its effectiveness. Such is the case with DUI convictions.

We have done a good job of using the media to tell people that DUI is unlawful. We have also implied that punishment is severe. One billboard says, "Drunk Driver, your room is ready" and pictures a man behind bars. However, experience teaches us that the punishment is not as severe as one might think.

There is always room for mercy and compassion. But to the degree that a person's action demonstrates a disregard for the law and the well-being of others, we are obligated to help that person recognize their responsibility and thereby protect ourselves. People must be held responsible for their actions and punishment must be meted out that is significant enough to discourage others from committing the same crime.

In closing let me say that a car crash involving a drunken driver is not an accident. It is no accident that a person raises a glass or bottle to their lips to take a drink. It is no accident that they continue to drink until they are out of control. I have had comments made to me in reference to my daughter's situation that it is "just one of those things." People get sick and that's part of life. People die of old age and that's part of life. But to put a victim of a drunk driver in that category is a shame. For a drunk driver to ruin the life of another human causing that victim to suffer a fate that is perhaps worse than death and then receive punishment akin to a "slap on the hand" does nothing to encourage people to act responsibly.

I encourage you to support the bill under consideration.

Kansas Coalition for Drug-free Driving ⁶

P.O. Box 58093

Topeka, KS 66658

913-286-0555

March 18, 1988

To: Federal and State Affairs Committee

Re: Senate Bill 111

Kansas Coalition for Drug Free Driving, a statewide coalition make up of over 10,000 members of MADD(Mothers Against Drunk Driving), RID(Remove intoxicated Drivers) Kansas for Highway Safety, Kansas PTA, Insurance Women of Wichita and the Kansas ASAP Association.

The coalition supports SB 111 which establishes a class E Felony for aggravated battery as long as it does not take away the mandatory minimum of the DUI offender under KSA 8-1567.

Thank You for your support on this bill.

Ruth Meserve

Ruth N. Meserve
KANSAS COALITION FOR
DRUG FREE DRIVING

REGISTERED
LOBBYIST

PRAIRIE VILLAGE, KS
913-649-1177

Attach G

H.

TESTIMONY IN SUPPORT OF SENATE BILL NO. 111

Federal and State Affairs Committee

March 17, 1988 - 1:30 p.m.

Good afternoon Mr. Chairman and members of the Federal and State Affairs Committee. I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We, as an association, provide the evaluations and monitor the DUI offenders for all 31 judicial districts in the State of Kansas. During the Federal fiscal year of 1987, we provided 8,875 evaluations.

Since 1980, we as an organization have supported stiffer penalties for those people who choose to drink and drive. Our organization was instrumental in introducing a bill in the Kansas Senate in 1981 which was used as a springboard to develop stiffer penalties for those who drink and drive which ultimately passed in 1982. Throughout the years, we have supported legislation which we feel will reduce the alcohol related crashes in our state.

We support Senate Bill No. 111 as another tool to inform those who drink and drive that Kansas citizens will no longer accept this kind of behavior.

However, we have some negative feelings concerning the wording of Senate Bill No. 111 in which we believe opens the door for plea bargaining possibilities of those who are charged under the crime of vehicular battery while committing an act as described in K.S.A. 8-1567, or driving while impaired. It is conceivable for a person who has been arrested for DUI and vehicular battery in the first degree, through plea bargaining, have the DUI charge dismissed and plea to the Class E Felony as suggested by this legislation. Normally, Class E Felonies which are first time offenders are granted probation. Basically, what would happen is that there would be no mandatory jail time, no alcohol and drug evaluation, nor a court ordered Alcohol Information School or treatment or both.

We would suggest language be added to this legislation which would prohibit the plea bargaining or dismissing any charge of DUI in order to escape the minimum penalties as set forth in K.S.A. 8-1567. This

would provide the court the necessary directive to at least order an evaluation by a certified community alcohol safety action project to be presented to the court before sentencings, such as it is at the present time.

Conceivably, under this proposed legislation, a three time loser, or a third time arrested DWI offender, could have his third conviction dismissed through plea bargaining, plea to the class E felony of vehicular battery and be placed on probation without any mandatory jail time. This is a possibility because in case of injury accidents, in which the perpetrator of the offense is also injured, the officer's first responsibility is to care for the injured before investigating any wrong doings. This may lead to a lapse in time in gathering evidence necessary to prosecute the DWI and also lapse in time in obtaining a blood sample. The prosecutor, because of a weak DUI case, may allow that case to be dismissed and ask for a plea on the class E felony.

We would hope that this committee would consider the possibility of adding the necessary language which would prevent the offender from escaping the minimum penalties as set forth in K.S.A. 8-1567, regardless of any other circumstances.


Gene Johnson
Legislative Liaison

GJ/dls

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to

House Federal and State Affairs Committee

By

The Kansas Department of Health and Environment

Senate Bill 484

National statistics have clearly shown that operator impairment by alcohol or by other drugs is a frequent contributing factor in many motor vehicle fatalities. DUI drivers on Kansas public highways represent a significant public health issue as well as an important law enforcement issue.

The breath alcohol training and certification program at the Kansas Department of Health and Environment currently includes 80 Kansas law enforcement agencies and 900 certified instrument operators who provide court defensible analyses for the prosecution of more than 10,000 DUI suspects arrested in Kansas each year. In 1983, 92% of subjects arrested for DUI were found to have blood alcohol levels at or above the per se 0.1%. However, in subsequent years, the percentage of DUI subjects measuring at least 0.1% blood alcohol has steadily decreased to the current level of 86%. These data lead to the concern that increasing numbers of Kansas vehicle operators may be impaired by non-alcohol drugs for which they are not now tested. At the present time, there is no comprehensive Kansas data base of information on this issue. However, we recommend an amendment to SB 484 to include the provision that all vehicle operators who are involved in fatality accidents be required to submit to laboratory tests for alcohol and for drugs of abuse. At the present time, these tests are subject to the discretion of the law enforcement officer and may be refused by the driver.

Finally, this bill does recognize the absolute importance that laboratory tests be performed in a manner which would assure the quality of test results. Certification of Kansas drug screening laboratories, according to standards of the National Institute of Drug Abuse, would accomplish this goal.

Presented by:

Dr. Roger Carlson
March 17, 1988

Attach I

J

Department of Social and Rehabilitation Services
Winston Barton, Secretary

Senate Bill No. 484

AN ACT REQUIRING TESTS FOR ALCOHOL AND DRUGS IN THE
BLOOD OF CERTAIN VICTIMS OF FATAL ACCIDENTS.

SRS Alcohol and Drug Abuse Services supports the testing of accident victims for the presence of alcohol and drugs and the use of the results for statistical purposes.

Accidental deaths are a widely used statistic in estimating the extent of the alcohol and drug abuse problem. Senate Bill 484 will significantly improve the validity of the data. This information is used for many purposes such as in determining the need for alcohol and drug programming and allocation of resources.

Alcohol and drug abuse is an important contributor to accidental deaths across the nation. As much as 50% of motor vehicle traffic accident deaths are attributable to alcohol. Twenty percent of water transport accident deaths are attributed to alcohol. We lack good Kansas data on the extent of the problem. This bill will improve the data by mandating testing and reporting.

Thank you for the opportunity to support Senate Bill 484.

Submitted by Andrew O'Donovan, Commissioner, Alcohol and Drug Abuse Services
Larry Hinton, Administrator of Research
Department of Social and Rehabilitation Services
296-3925

AOD:LH:kg
3/16/88

Attach J

Study shows death certificates failed to reflect role of alcohol

The Associated Press

CHICAGO — Researchers studying the deaths of more than 400 young Army veterans found that six times as many alcohol-related deaths occurred as were reflected on death certificates.

The study suggests that doctors gather too little information before filling out death certificates — the main source of U.S. mortality data, the researchers said.

Their study was reported in today's edition of the *Journal of the American Medical Association*, which also carried a report from an AMA committee recommending wider use of autopsies to establish the cause of death and catch medical mistakes.

"We think the study ... illustrates the important role alcohol plays in premature death and indicates the extent to which alcohol's role is underestimated if you use official cause-of-death data," said Dr. Daniel J. Pollock, who led researchers at the national Centers for Disease Control in Atlanta.

They studied death records of 426 young veterans, ranging in age from 20 to 41, who had died between 1967 and 1984. The records were of the deaths among a random sample of 18,000 men who had served in various countries, their duties rang-

For example:

A study of the deaths of more than 400 young Army veterans found:

(B/W) Alcohol played a role 40 percent of the time in motor-vehicle injuries, listed as the leading cause of death.

(B/W) Alcohol was a factor 30 percent of the time for both suicides and homicides, ranked second.

ing from combat to office work.

Although 446 men in the sample had died, researchers said they were unable to obtain both death certificates and the medical and legal records on the cause of death in 20 of those cases.

Motor-vehicle injuries were the leading cause of death, alcohol playing a role 40 percent of the time. Suicides and homicides ranked second, and alcohol was a factor 30 percent of the time for each, the researchers reported.

They reached their conclusions after learning all they could about the deaths from sources other than the certificates — law enforcement records, autopsy reports and hospital records — and made inde-

pendent evaluations.

Overall, death certificates indicated that alcohol was related to 21 of the deaths. The researchers, however, found that it was a factor in 133 deaths.

Almost all of the discrepancy was due to omission of data on blood-alcohol levels from death certificates in deaths due to injury, the researchers said.

Pollock said he thought that most of the time lab reports on blood-alcohol levels weren't available at the time the death certificates were filled out.

The problem could be largely solved with a two-phase death certificate process in which the cause of death would be added later, he said.

"Death certificates serve not only as legal documents that allow for insurance claims to be filed or inheritance to proceed, but also serve as important sources of data for health planning and evaluation," Pollock said.

Estimates of alcohol-related deaths annually in the United States now range from 15,000 to more than 200,000, Pollock said, "and one of reasons for the wide range in estimates is that official cause-of-death data are of questionable validity."

Hearing on SB 484, March 17, 1988
House Federal & State Affairs Committee

Rev. Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

Even with poor reporting, the National Institute on Alcohol Abuse and Alcoholism tells us 250,000 Americans suffer alcohol-related deaths each year.

The atomic bomb dropped on Hiroshima reportedly killed 80,000 and the next bomb on Nagasaki killed 35,000. Yet today in America we tolerate the equivalent of two Hiroshimas and two Nagasakies in alcohol-related deaths every year. And this is with under-reporting!

The above clipping indicates death certificates reported alcohol was related to 21 deaths, but researchers found it was a factor in 133 deaths.

On this St. Patricks Day there are thousands of people who look upon restrictive beer drinking laws as a big joke and consume the drug openly on our public streets and sidewalks. SB 484 is a step in the right direction in determining just how big a killer hides inside that green beer.

Respectfully yours,

Richard Taylor

Attach K

Kansas Coalition for Drug Free Driving

P.O. Box 58093

Topeka, KS 66658

913-286-0555

KANSAS COALITION FOR DRUG-FREE DRIVING

TESTIMONY ON SENATE BILL 484

The Kansas Coalition for Drug-Free Driving is a coalition of chapters of Mothers Against Drunk Driving (MADD), ASAP organizations, and others to work statewide on the problem of drunk driving.

When a fatal vehicle accident occurs in Kansas, the decision of whether it was alcohol-related is not based on factual evidence. It is based on the law enforcement officer in charge of the accident scene deciding whether, in his opinion, the accident was alcohol-related or not. It is simply one question on the accident report.

It is certainly not the fault of the officer if it is not apparent to him that the accident was alcohol-related. There may be no open containers for him to see. The death may prevent him from making any judgment based on behavior. Other factors, such as seriously injured persons, may be diverting his attention.

As the law currently is in Kansas, an alcohol-related fatal accident may occur without factual evidence of the importance of alcohol. Innocent people are being killed and no one knows whether alcohol was involved or not. This is neither fair nor right.

All fatality accidents should involve testing for alcohol. The courts and the public should know when alcohol is involved in a fatal accident. This knowledge should be based on a blood alcohol test rather than unfairly placing the burden on the law enforcement officer making a decision in a very difficult situation. Consequently, the Coalition supports and asks you to support Senate Bill 484.

Attach 2

m

TESTIMONY IN SUPPORT OF SENATE BILL NO. 484

Federal and State Affairs Committee

March 17, 1988 - 1:30 p.m.

Good afternoon Mr. Chairman and members of the Federal and State Affairs Committee. I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We are an association of 25 members who prepare the evaluations and monitor the progress of the DUI offenders for all the judicial districts in the State of Kansas.

As part of our legislative program for the calender year of 1988, we support Senate Bill No. 484 for the purpose of giving us better documentation for those people who are fatally injured either in a vehicle crash or a boating accident. By using this method in determining the blood alcohol level or the presence of drugs in the deceased person, gives us concrete evidence that alcohol and/or drugs is a factor in a good number of our traffic and boating accidents. We also, can use this information for better research in evaluating all fatalities involving all drugs. This information would provide the background necessary to develop means of intervention to control some fatalities in the future.

We, as an association, totally support this type of legislation as it is written in order to give us more information available for evaluation and research purposes.


Gene Johnson
Legislative Liaison

GJ/dls

Attach m