

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 9, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Tim Carmody - Excused  
Representative Clyde Graeber - Excused  
Representative Robert Krehbiel - Excused  
Representative Rand Rock - Excused  
Representative Elaine Wells - Excused

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Cindy Wulfsuhle, Committee Secretary

Conferees appearing before the Committee:

Gene Johnson, Kansas Alcoholism & Drug Addiction Counselor Association  
Andrew O'Donovan, Commissioner, SRS-Alcohol & Drug Abuse Services  
Leona Edwards, MADD, Mayetta, Kansas  
Susan & Rachel McGee, MADD, Haven, Kansas  
Wanda Stewart, MADD, El Dorado, Kansas  
Stacy Hoogstraten, Legislative Liaison, MADD  
John Smith, Kansas Vehicle Administration  
Jim Keller, Attorney, Kansas Department of Revenue  
Tim Schultz, Kansans for Life at its Best  
Bob Giffin, Captain, Kansas Highway Patrol  
Charles Zimmerman, City Attorney, Junction City  
Bruce Beale, Chairman, Kansas Community Alcohol Safety Action Coordinators  
Association  
Dr. Roger Carlson, Director, Kansas Health & Environmental Laboratories  
Frances Wood, Woman's Christian Temperance Union  
Jim Clark, Kansas Counties & District Attorneys Association  
Joan Hamilton, District Attorney, 3rd Judicial District  
Nancy Lindberg, Attorney General's Office  
Rosalie Thornburgh, , Kansas Department of Transportation

Committee minutes for February 1, 2, 3, & 4 were distributed.

Hearings on HB 2133 were opened concerning alcohol and drug-related offenses involving vehicles.

Gene Johnson, Kansas Alcoholism & Drug Addiction Counselor Association, appeared before the committee as a proponent and gave a brief summary of what is included in the bill. He stated that five states have already lowered the BAC level to .08%: Maine, Vermont, Oregon, California and Utah. They would go along with an administrative suspension for those under the age of 21 who have .02%. They would also like to have amended into the bill that BAC level of .15% or above would not be a candidate for diversion and would like a better term than the words "legal limit" to be used in this bill. (Attachment #1)

Andrew O'Donovan, Commissioner, SRS-Alcohol & Drug Abuse Services, appeared before the committee as a proponent. He testified that the bill is an important step toward changing behavior and reducing alcohol impaired crashes and fatalities. The national goal is that by the year 2000 the BAC level will be at .04%. (Attachment #2)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 9, 1993.

Leona Edwards, MADD, appeared as a supporter of the bill. She hopes that the committee will lower the BAC level to .08% so that more drivers will think before drinking and driving. ([Attachment #3](#))

Susan and Rachel McGee, MADD, appeared before the committee as proponents of the bill. Susan believes that penalties for alcohol related crashes are not severe enough and that by dropping the BAC level to .08% would hopefully deter people who want to drink and drive. Her daughter, Rachel, was a victim of a drunk driver. ([Attachment #4](#))

Wanda Stewart, MADD, appeared before the committee in support of the bill. The passage of [HB 2133](#) would help Kansas in qualifying for grant money and also, would be valuable in saving lives and reducing alcohol-related injuries. She and her husband lost a son due to the actions of a drunk driver. ([Attachment #5](#))

Stacy Hoogstraten, MADD, appeared before the committee as a proponent. She explained why the BAC level should be lowered based on recent statistics. Hoogstraten would like the bill to deny diversions for people who have BAC levels of .15% or greater. ([Attachment #6](#))

John Smith, Kansas Vehicle Administration, appeared before the committee to introduce Jim Keller, Attorney, Kansas Department of Revenue.

Chairman O'Neal requested that John Smith provide information on the ignition interlock system.

Jim Keller, Attorney, Kansas Department of Revenue, appeared before the committee with several requests for amendments to the bill. ([Attachment #7](#)) Chairman O'Neal asked that Jim be available to explain the amendments when the committee works the bill.

Tim Shultz, Kansans For Life At Its Best, appeared before the committee in support of the bill. He also requested an amendment that would make the third conviction a Class E felony. ([Attachment #8](#))

Bob Giffin, Captain, Kansas Highway Patrol, appeared before the committee as a proponent of the bill. He stated that in 1991 933 tests were administered and came back with BAC levels at .08% or .09%. Out of those, 94 were involved in accidents, one was in a fatality and 505 were the result of erratic driving situations. That number is 5% of the tests that were administered in 1991. ([Attachment #9](#))

Charles Zimmerman, City Attorney, Junction City appeared before the committee in support of the bill. He also requested an amendment that would have the same language that appears in Section 12 also appear in Section 14 subsection (k). ([Attachment #10](#))

Bruce Beale, Kansas Alcohol Safety Action Project, appeared before the committee in support of the bill. He stated that .17% is the average BAC level. ([Attachment #11](#))

Rosalie Thornburgh, Department of Transportation, appeared before the committee to explain the Anti-Drug Abuse Act of 1988, and the grant requirements. ([Attachment #12](#))

Dr. Roger Carlson, Director, Kansas Health & Environmental Laboratory, appeared before the committee as a proponent to the bill. He requested language clarification of the words "legal limit", recommending "threshold limit". On the issue of a .02% standard for underage drivers, Dr. Carlson testified that the current equipment, the margin of error at .02% is +21% and that at .04% & above the margin of error is only about 5%. ([Attachment #13](#))

Frances Wood, Woman's Christian Temperance Union, appeared before the committee as a proponent of the bill. She testified that it is imperative that we lower the legal BAC limits and encourage strict enforcement. ([Attachment #14](#))

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 9, 1993.

Nancy Lindberg, with the Office of Attorney General, appeared before the committee to voice Attorney General Stephen's support of the bill and believes that the passage of this bill would be a means to remove alcohol impaired drivers from our streets and highways. (Attachment #15)

Joan Hamilton, District Attorney, appeared before the committee as a proponent of the bill. She stated that she proposes that for those 21 years and under a BAC of .02% would be a criminal offense. (Attachment #16)

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee in support of HB 2133. He also requested an amendment to subject a third and subsequent offense to the habitual violator statute. (Attachment #17)

The Committee adjourned at 5:30 p.m. The next Committee meeting is February 10, 1993 at 3:30 p.m. in room 313-S.

# GUEST LIST

## HOUSE JUDICIARY COMMITTEE

DATE February 9, 1993

NAME

ADDRESS

ORGANIZATION

JERRY S. COLE	TOPEKA, KS	APPROPRIATIONS
Ronald D. McNeigh	Topeka, Kas.	Governor's Office of Drug Abuse Programs
Ben Grove	Lawrence, KS	University Daily Kansan
Michael Whitaker	Topeka	KS Beer & Molasses
Tom Whitaker	TOPEKA	Ks Motor Carriers Assn
Joe Crick	Salina, KS	Close-up Kansas
Jerry Hedges	Salina	Close-up Kansas
Jeremy Bowman	Lawrence, KS	Close-Up Kansas
Harriet Bland	Lawrence, KS	Close-Up Kansas
Brian R. Frederick	Lawrence	Close Up Kansas
Nate Welch	LAWRENCE KS	Close up KANSAS
L. Travis Zilberick	Lawrence KS	Close Up Kansas
Amanda Mellinger	Lawrence, Kansas	Close-up Kansas
Becca Coggins	Lawrence, KS	Close - Up Kansas
Kate Chaffee	Lawrence, KS	Close-Up Kansas
Paul Shuave	Lawrence, KS	" " "
Kelaysia Hoss	Olathe, KS	Close-Up Kansas
Debra Miller	Olathe, Ks.	Close-Up Ks.
Debra Lutton	Lawrence, KS	Close Up Kansas
Jim Fick	Topeka	BC
Aik Hawn	Winfield	Wfld. Chamber of Commerce
Ron Godsey	"	" " " ON Back



<u>Name</u>	<u>Address</u>	<u>Organization</u>
Donald Hobson	McPherson	Internship
Kristin Van Voorst	O.P.	PP of Ke
Stan Stewart	Eldorado K's	City of Eldorado
Wanda Stewart	El Dorado	MA, D.D.
John Peterson	Tyler	

# GUEST LIST

## HOUSE JUDICIARY COMMITTEE

DATE \_\_\_\_\_

NAME	ADDRESS	ORGANIZATION
John McIntire	Winfield, KS	Winfield Chapter of Kansas
Greg Thompson	Winfield	
Bill Watts	Topeka	KDOT
Mosalie Thornburgh	Topeka	KDOT
Nancy Trilberg	Topeka	Atty Gen
Jim Smith	Topeka	Kansas for Life At the Best
Nancy Thomas	RR1 Fall River	CRECC Coops
Jason Dierley	Sedona, KS	Close-Up Kansas
Julie H. Hider	Sedona, KS	Close-Up Kansas
<del>John D. Hider</del>	"	"
<del>John D. Hider</del>	"	"
<del>John D. Hider</del>	"	"
John D. Hider	Pt. 2 Box 61 Sedona, KS	Close-Up Kansas
Leon R. Edwards	Pt. 2 Box 219 Maple, KS	
Sandra J. Bourdo	Topeka	MADD Kansas
Lacy Hoogstraten	Topeka	MADD, Kansas
Janette Scheller	Olathe	Close-up
ROTHANN HIEBERT	N. Newton	Women And Men For Choice
Dorcas Hiebert	North Newton	Women And Men For Choice
Dr. Roger Carlson	Topeka	KDHE
Paul Shelby	Topeka	OJA
Mark Markowski	Olathe	Close-up
Eric Taylor	Olathe	Close-up

TESTIMONY

HOUSE BILL 2133

COMMITTEE ON JUDICIARY  
HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1993

To: Representative Michael R. O'Neal, Chairman  
House Judiciary Committee  
Statehouse, Topeka, KS

Mr. Chairman and Members of the Committee:

I am Gene Johnson and I represent the Kansas Alcoholism and Drug Addiction Counselors Association, the Kansas Association of Alcohol and Drug Program Directors and the Kansas Community Alcohol Safety Action Project Coordinators Association. Our organizations in the past have promoted highway safety through the elimination of the drinking driver. We are not opposed to drinking but feel there is a time and place for that social activity. In no way should drinking and driving be tolerated. We do not feel that it is safe for our Citizens of Kansas to have open containers in the vehicle while that vehicle is in motion. Even though the driver himself may not be drinking, he most certainly could be distracted by his drinking passengers. He must be held responsible for those individuals in his vehicle.

Since 1982 this Legislature has taken a firm stand in regards to those people who consistently drink and drive. As you well know in 1982 a major change was made in our DWI Legislation. One might note that since this major change was made, the alcohol related fatalities have steadily dropped to approximately one-half of the total that were being identified in those early years. It is now within our grasp, through stronger legislation and stricter DUI enforcement of those Laws, to see a day that we will reduce these fatalities to under 100 persons per year.

House Bill 2133 is a positive step in achieving that goal. Throughout the provisions of this proposed legislation, we are taking a firmer stand in regards to those people who consistently refuse to obey the Traffic Laws of our State.

The first section of this proposed legislation simplifies the procedure in enforcing the Habitual Violators Laws of our State. Presently, the Administrative Hearing is held before a District Judge. It is a civil hearing, there are no Court costs, no fines or punishment involved. All the hearing does is to have the Court inform the driver that he has been deemed an Habitual Violator through his past traffic performances in the State. He is advised at that time that he can no longer drive for a period of three years within this State. This Administrative Hearing should be held in the Department of Revenue, which has the records to determine whether that individual has violated the traffic laws of the State of Kansas and can be adjudged an Habitual Violator. This would save the Courts of our State many hours, and also save the Prosecutor's Office of each county many hours of preparation of these civil cases.

Another provision of House Bill 2133 is striking the the word "motor" from the existing statute to eliminate the DUI offender who presently can obtain a license to operate a vehicle under 49 cc's or a so-called mo-ped vehicle. Presently, individuals who have lost their license because of previous DUIs, approach the Motor Vehicle, and receive a mo-ped license and then continue to drink and drive, on their mo-peds. I can relate three serious incidents in the City of Topeka in which two of the drivers were hospitalized because of serious injuries after consuming alcohol and trying to operate their mo-peds. By removing the word "motor" we will eliminate this very dangerous procedure.

We support lowering the level to .08 for drivers over age 21, which is defined in this Legislation and also the .02 for the drivers under age 21. One might think an .02 breath alcohol content for an underage driver may be too severe a penalty to charge that person with DUI. We think not, but if this Committee would feel that it is too severe, we could support an Administrative Suspension of the offender's driving privileges.

Although it is not in the proposed Legislation, we would support the condition that any offender who has a breath test of .15 or above, not be deemed eligible for a diversion program under the Prosecutor's Office. We do not feel that any individual who has a breath test of .15% or above is a social drinker and certainly does not need any special considerations such as a diversion from the charge of a DUI arrest.

We would hope this Committee would create a better term than "legal limit" which appears in the present legislation. The term "legal limit" might imply to some of our potential DUI offenders, that it is "legal" to operate a vehicle to a point of .07 of alcohol concentration. In other words, we could be encouraging drivers to do some drinking, but not to exceed .08%, by the use of the term "legal limit." I am sure that the defense counsel throughout the State would attack the cases which clearly show that the driver was impaired for less than a .08% and attempt to confuse the Court with the idea that anything less than .08% was legal in the State of Kansas.

Also in this proposed legislation a provision has been added to cover DUI offenses on military reservations and making those individuals, arrested on those reservations, punishable as if they were outside of those reservations. We would support this change in the Statute as it has been somewhat of a problem for local officials in those localities of military reservations.

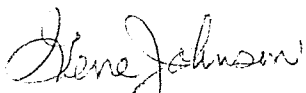
We support the provision on page 18, line 20-26, which places the responsibility on the Alcohol Safety Action Program which provided the evaluation of the offender to the Court, for the offender to report to the Division if that offender fails to complete the Alcohol and Drug Safety Action education or treatment program. At that point the Division would then suspend that person's driving privileges in the State until he or she completes the program. This would be consistent with a continuum of care developed in the State to insure that we are providing ample intervention measures and treatment measures for those people who are in need of alcohol and drug services.



Our organizations also support the changes in the Open Container statute which allows the Alcohol Beverage Control officers still to make arrests, under Chapter 41 of our alcohol laws. This would not take away any of their authority. The proposed legislation also refers this violation to the Uniform Act, regulating traffic on highways and would allow our traffic officers to file under Chapter 8, which then makes the Open Containers a traffic violation and not necessarily a criminal violation. By changing this Open Container statute, we are combining three statutes into one which would make it less confusing to the arresting officer. In addition there is a provision in this proposed legislation that would give that innocent party in the automobile, who had no knowledge of the Open Container, the right to defend himself in Court.

Although some of these measures may sound severe to some people, our Organizations feel we must send a message through legislation that we no longer will tolerate unsafe operation of vehicles by the drinking driver on our streets and highways. It is our intention that this act be construed as an act to promote public safety, rather than to unduly penalize the DUI offender.

Respectfully submitted,



Gene Johnson  
Legislative Liaison  
Kansas Alcoholism and Drug Addiction Counselors Association  
Kansas Association of Alcohol and Drug Program Directors  
Kansas Community Alcohol Safety Action Project Coordinators Association

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
ALCOHOL AND DRUG ABUSE SERVICES  
Andrew O'Donovan, Commissioner

House Bill 2133  
Before the House Judiciary Committee  
February 9, 1993

Mr. Chair and members of the committee, on behalf of the Secretary of SRS, I thank you for the opportunity to present you with this testimony. The issue that I want to address in H.B. 2133 is Section 9 (a) and (b), which would lower the legal blood alcohol content level at which a driver operating a vehicle is considered to be intoxicated and incapable of driving safely.

The Kansas Alcohol and Drug Safety Action Programs and groups such as Mothers Against Drunk Driving (MADD) and Students Against Driving Drunk (SADD) have been significant forces in increasing public awareness and in changing attitudes about the risks and consequences associated with "drunken driving." Even that term is outdated because the major challenge now is to change the social norms that imply any use of alcohol is acceptable when driving.

A recent national study indicated that nearly one-third of the men and 14 percent of the women surveyed occasionally drive after drinking. All tests conclude that any drinking impairs a person's judgment and coordination. It is a well-known fact that impairment can occur long before a person is intoxicated. The "one drink for the road" may seem harmless but when confronted with an emergency or unusual situation it can be deadly. Alcohol's involved in half of all fatal auto crashes and is still the number one cause of death for 15-24 year olds.

This bill is another important step in changing behaviors and in reducing alcohol impaired crashes and fatalities. We support lowering the blood alcohol content to .08 percent from .10 percent.

AOD:jh  
DG/2/8/93

My name is Leona Edwards. We live at Mayetta, Kansas and have lived at the same place since 1955. We had two children, Judy and Dale.

Our son Dale, age 28; our daughter-in-law Nancy, age 26; and our three grandchildren, Daniel Dean, age 9; Angela Dale, age 4; and Kattie Jo, age 3 were on their way to a birthday party, driving south on Highway 75, near Hoyt, Kansas, when this pickup came from the ditch-way on Dale's side of the road and hit them head on. Four were killed instantly and Kattie Jo died a few minutes later.

According to Dr. Gary Thompson, a specialist in recreating accidents, said Dale was going 47.3 mph and Goodnow was going 58.7 mph. Dr. Thompson placed both vehicles completely in the south bound lane. Several witnesses said Goodnow was going from one side of the road to the other before the accident. Goodnow even went across the center line and onto the shoulder before returning to the northbound lane.

Daryl Goodnow's blood alcohol was .07 which was taken two-three hours after the accident. Goodnow wasn't charged with an alcohol-related offense but Judge Kling-smith allowed testimony at the trial about alcohol consumption before the crash.

This man was not legally drunk but he was driving erratically on a crowded highway. He did not know how close he was to cars in front of him because of his impaired vision. Goodnow received two to 10 years on each of five counts of involuntary manslaughter. He was supposed to serve seven years and 22 days. He started his sentence Oct. 1, 1987 and was released in April of 1991, serving just over 3 years.

This accident broke our hearts and our dreams; and our childrens dreams. Dale was our only son and the only one, with our grandson Daniel Dean, to carry on the Edwards name. Daniel turned 16 January 31, 1993. Angela and Kattie Jo would be 11 and 10 this June. This accident happened 7 years ago this February 26, 1993.

I hope you will lower the blood alcohol to .08 so more drivers will think before drinking and driving, and maybe going out and killing some -one.

SUSAN AND RACHEL MCGEE  
405 E, SECOND STREET  
HAVEN, KANSAS

In 1987, there were 4559 alcohol related crashes in Kansas. That is just a number to you. Rachel was in one. I believe that number will mean something to you if you know someone personally. I want you to know Rachel. I want you to know our family.

Before the wreck, Rachel was finishing her Junior year at Haven High School. She was President-elect of the senior class of 1988. She had just been installed as President of the school KAY Club. She played in the band, sang in the school choir, was a cheerleader, and was quite active with school and extra-curricular activities. She was also an A student. She loved life and was busily planning her future.

Rachel had begun to get inquiries from universities across the country and had already received scholarship offers. She truly had a gift with French and intended to work as an interpreter and translator for the United Nations. I know she could have easily attained this goal. But, on that warm spring night, her life was changed forever. Rachel was one who was included in that number.

Rachel was a passenger in a car that was hit head on by a speeding drunken driver who was already on probation for an alcohol offence... only one of the 4559 alcohol crashes that year. She was pinned in the car for approximately an hour. It took the "Jaws of Life" to get her out of the car. She had a shattered right leg, a cracked pelvis, her jaw was broken in three places and she had a brain stem injury. That, of course, doesn't include the uncounted cuts and bruises or the severe emotional trauma to come.

Healing broken bones is the easiest part. Ten days after the wreck, Rachel went to surgery. She was there for seven hours. They repaired her shattered leg by putting in a steel rod. The doctors made their best guess at how long to make it because there wasn't enough bone left to piece it back together. Today her right leg is about an inch and a half shorter than her left. That day, another doctor put a permanent tube in her stomach.. to feed her. When you are in a coma, you can't eat or drink, Yet another doctor put in a tracheostomy to assist her in breathing.

Three days later she was in surgery again. The feeding tube wasn't working. This time it was put into her intestine, below her stomach, because they thought her stomach wasn't working. We were assured that the feeding could not "back-up" into her stomach. Twenty-four hours later, not only was the feeding "backed-up" but the tubing was in her stomach, too.

This required yet another surgery to remove the second set of tubes and equipment. All of this time and for six more months more, Rachel was in a coma. She was hanging somewhere between worlds. She wasn't alive, yet, she wasn't dead.

The Kansas Department of Transportation lists 3955 as the total number of alcohol related injuries in 1987. What that number doesn't include is the rest of us. Just because we were not passengers in the car doesn't mean we were not victims. Rachel wasn't the only one whose life was forever altered that night.

While she was in the hospital, the rest of us had to go on, somehow, with our duties and responsibilities. My husband and I had jobs, he managed some time off, I never went back. Our other children were still in school-- for finals! I can only imagine how difficult it was for those two youngsters to try to concentrate on schoolwork while their whole world continued to explode around them, without any warning and seemingly, without any ending.

Rachel was hospitalized for two and a half years. The Kansas Department of Transportation lists the average societal cost of an alcohol injury as \$14,000. Rachel's first weekend in the hospital was over \$25,000. Her first month was \$82,000. The entire hospital stay was almost one million dollars.

The societal cost takes into account not only medical cost, but property damage, wages lost and insurance administrative costs. The figures I've given you for Rachel's bills only include medical costs. How can you total up what has been taken from her?

Rachel has been home since November, 1989. The costs have not stopped. She has had and will continue to have corrective surgeries. There have been many hours of therapy, psychologist visits and now, psychiatrist. There has been counseling for the rest of our family, too. Unless you have been there, you can only imagine the frustration and anger that must be dealt with on a continual basis. The good thing about death is that you don't have to live with seeing it every day.

Because Rachel has been disabled for life, the state of Kansas and the federal government are supporting her. She lives on \$400 a month plus some medical assistance. If she didn't have us, how could she do it?

At the time of the wreck, Rachel was one of few who survived with such devastating injuries. With current and future medical advances, there are now and will continue to be more and more survivors. Are we able and willing to support them?



The best way is to stop the carnage. Alcohol crashes are NOT accidents. If the penalties are high enough and the punishment severe enough, it will be a deterrent to most people. You, as our legislators, are in control of this terrible growing number. How can you not pass this bill? We have dragged our feet long enough, you have the power to change the destinies of others.

I am convinced that if Rachel was your child, your sibling, your loved-one this law would already be in effect. Once you see, close up, how devastating alcohol crashes can be and how easily preventable they can be, there is only one clear choice. Please make that choice to protect you and your loved-ones. Work to pass HB2133, please. It is a good place to begin.

Imagine being a Junior in high school. The year has almost ended and you are looking back at all of your accomplishments. You have been elected Senior class president and president of your favorite club. You are head cheerleader or team captain in sports. You are involved in many school activities. You work hard for your grades and make the presidential honor roll each year. You have already received scholarship offers and have planned your career. You support your school with pride and lots of spirit and much love for each other. As you look back at these memories, you focus in on the Junior/Senior prom--a night you looked forward to for quite some time. All the preparations, decorating, shopping, and hoping for that special someone to ask you to go. Even the after prom plans seemed so exciting--until the unexpected happens. The one thing that we think only happens to someone else--you are in a wreck. You are hit by a drunk driver and from that moment on, your life will never be the same.

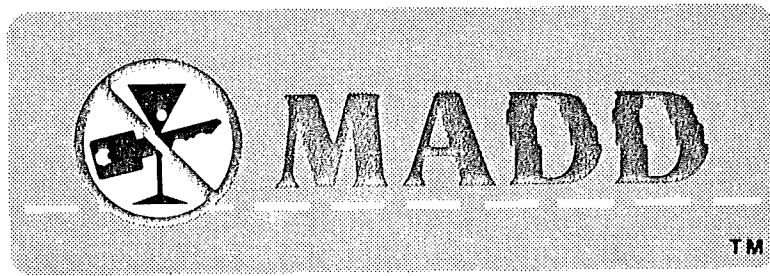
This was my life: very happy and carefree! This is also why I am here. I would like to tell you about the next three years, about how my life was changed. Changed in an instant, without any warning.

The wreck was severe, leaving me in critical condition. I was flown to a specialized hospital with little hope from the doctors that I would even live. I had a brain stem injury with the extent of my other injuries unknown. I can't accurately describe the pain, anguish and fears of my family because I was in a coma for months. I'm sure my family went through hell. You see, one life cannot change without affecting the lives of those around you. And many changes have taken place. Time didn't mean anything while I was in a coma. As I came out of the coma and could slowly understand what was going on around me, I could see many changes had taken place. I did not know much about my body or what had actually happened. As I looked around, I knew time had gone by. My brother and sister were no longer little kids. They were teenagers--the same age as I remember myself being. Dad had a little more gray hair and seemed to be carrying a great deal on his mind. And Mom--Mom had tears in her eyes everytime she looked at me.

Little by little I acquired details of the wreck and the condition of my body. I realized that my world was turned upside down and would never be the same. All of my plans and dreams were gone. I fought for my very life only to face a harsh reality. Life for me was having therapy every day. Physical therapy so my muscles would still be active, occupational therapy so I would have some range of motion, and speech therapy to see if I could learn to communicate with anyone on a knowledgable level. Depression and resentment set in with my increasing awareness of my surroundings. Resentment towards anyone who could do anything I couldn't, and resentment towards my own body for it would no longer allow me to do anything. I could no longer eat a meal; it was fed to me. I could no longer take a bath; it was given to me. I could no longer go to the bathroom; I was taken. I was completely dependent on someone else for my very existence.

More time has passed and more changes have taken place. Although I still need the help of others, I can do some things for myself. My body needs much more therapy, but my mind is almost as good as new. But, no one notices your mind. I understand everything going on around me. I see the way people look and act toward me. People see a body that doesn't work so well and assume that my mind works in the same way. My responses are slow because of my physical condition. I think many more thoughts than my mouth ever has time to say. Some might say "Hi" as they pass by, not waiting for a response. Adults sometimes talk slow or loud, thinking I can't hear or I need extra time for processing a thought. A lot is assumed about me because it is hard for most people to stop and take the time to listen and understand.

All of this brings me to why I am here. I want to take this time to open your eyes about drunk driving. I didn't give you the details of the wreck to ask for your pity. I gave you the details in hopes that you can understand a little bit of what you could go through. Wrecks like this don't just happen to someone else. I am here to ask that you take an active part in caring for each other. Be responsible for your actions. I cannot imagine the burden a person would have to carry, knowing they altered another's life so drastically. And I pray that none of you have to face life as a victim of a drunk driver. The choices you make now are what you look back on in years to come. So look back and smile, then take a look at now. If you are taking steps against drunk driving, I say God bless you. If you do drink and drive, may an angel be sitting on your shoulder.



## Mothers Against Drunk Driving

P.O. Box 332 • El Dorado, Kansas 67042 • (316) 321-9113  
BUTLER COUNTY CHAPTER

House Judiciary Committee -HB 2133

MADD is the voice of the victim; the watchdog of the system. I am proud to represent Kansas on the National Board of Mothers Against Drunk Driving. I want to help motivate Kansas to address the problem of drunk and impaired driving. Kansas has made tremendous gains and your leadership is needed to continue the fight against drunk driving. To be effective in reducing fatalities and injuries our state needs to continually look at what needs to happen to make our state a safer place in which to live. Our fatalities and injuries are down yet I and other Kansans don't feel 112 fatalities and nearly 4,000 injuries are acceptable. Each of these numbers can be magnified to represent the individuals affected by the tragic toll of drunk driving.

Two years ago a national MADD survey called "Rating the States" was completed and a report issued-

It was an assessment of the nation's attention to the problem of alcohol and other drug-impaired driving. I am now one serving on the National Board and appointed to the Rating of the States Task Force. The process of assessment will begin again this spring. I would like to see Kansas recognized for its DWI Legislation. The '93 can make this happen by passing .08 per se for drivers (boats included); lower BAC for youth;.04 for commercial drivers; felony charge for third time offenders and; limits on diversion.

**Why .02 BAC for youth?** 89% of all drivers ages 15-20 were killed in alcohol-related crashes from 1980-1990.

There is a need to establish that any measurable amount of alcohol of a driver under age 21 would be an "illegal per se" offense and provide for immediate d.l. suspension



HOUSE JUDICIARY  
Attachment #5  
02-09-93

periods for those under age 21 who exceed the BAC limit. Young drivers place a high value on their d.l. and the threat of license revocation would prove to be an effective sanction for this age group. Research has shown that there is a need for a consistent "no use" message for our youth. We prohibit the purchase and possession of alcohol for those under 21 which communicates a clear "no use" message. The message of "zero tolerance" law establishing a BAC level of .02 or less at which it is illegal for those under the age of 21 to operate a motor vehicle would match the "no use" message. We need to set higher expectations for our youth--they can and will accept the challenge from you. Underage drinking drivers represent a greater risk for crash involvement than do older drivers. Twelve states have lower BAC levels for youth under 21 with eight advocating .02 or lower BAC (AZ, NC, OR, WI, ME, MD, OH, VT). More states are addressing legislation this session. I would like to see be one of those states reporting successful passage.

.08 per se An illegal per se law at the .08 level is needed in Kansas. It is needed because we know that any amount of alcohol in the system will impair our ability to do anything let alone drive. Research shows when .08 is reached even experienced drinkers show driving impairment. The "fatality risk" for drivers with BAC between .05-.09 in single-car crashes is 11 times higher than for a non-drinking driver. Five States (CA, ME, OR, UT, VT) have a law at this level with 12 others addressing legislation this session. California is a state that is noted for its enactment of .08 per se and its success. Alcohol-related fatalities declined by 12 percent. A 12% reduction for Kansas would of potentially represented thirteen lives saved in 1991. This doesn't seem substantial to some unless it could potentially spare your family of this senseless tragedy. 80% of the California drivers surveyed were aware of the stricter BAC limit and as a result indicated they were less likely to drive after drinking. It also showed no increases have been reported in the proportion of DWI defendants pleading guilty, requesting jury trials or appealing convictions. Support for .08 per se or lower is impressive; it includes but not limited to:

- American Medical Association
- American Association of Neurological Surgeons
- American Spinal Injury Association
- National Safety Council
- National Committee on Uniform Traffic Laws and Ordinances
- National Commission Against Drunk Driving
- National Highway Traffic Safety Administration
- Mothers Against Drunk Driving (MADD)
- Remove Intoxicated Drivers (RID)
- Insurance Institute for Highway Safety



.08 BAC per se is a limit which is reasonable and necessary for the driving safety of all.

Tougher laws and punitive sanctions are both appropriate and imperative. Sanctions should be swift and sure to maximize effectiveness in deterring future offenses as well as better connect the crime with the consequences. The drunk driver who killed Scott received a \$100 fine and a d.l. restriction which didn't match the crime that had been committed—that was almost 12 years ago. Since then great things have happened with the impaired driving issue and our legislative body should be commended. We all need to keep the focus to further reduce the senseless tragedies on our streets and highways. It won't make a difference for Scott but it will make a difference for all of us, for Scott's brother and sister and their families to follow.

Passage of HB 2133 would help assure Kansas in qualifying for grant money but it will also be valuable in saving lives and reducing alcohol-related injuries like Rachael McGee's.

Thank you,

Wanda Stewart  
Regional Director  
MADD National Board  
609 Random Rd.  
El Dorado, Ks. 67042  
316-321-6576

Testimony Before the  
House Judiciary Committee  
February 9, 1993

House Bill 2133

Mr Chairman and Members of the Committee:

I am here representing the 24,000 members and affiliates of Mothers Against Drunk Driving of Kansas. We are strongly in support of House Bill 2133, A bill to lower the illegal intoxication limit to 0.08 BAC.

Why should the illegal intoxication limit be lowered? There are several reasons:

1. It increases the enforcement ability of our law enforcement officers. They are frustrated by having dangerously impaired drivers go free by having a BAC of 0.08 or 0.09.
2. It acts as a stronger deterrent to those who may drink and drive. The best deterrent we have is strong laws and enforcement. If you are more likely to be arrested, you are less likely to drink and drive
3. It can save lives. The combination of reasons one and two lead to fewer impaired drivers on our streets and highways, resulting in more Kansas lives saved.
4. Because it's the right thing to do.

Forget for a moment the additional federal money Kansas can receive. Forget all of the lobbyists and those testifying on both sides of the issue. Take out your wallet or billfold and look at the photos you carry with you. Those are the reason you should pass House Bill 2133.

Thank You,

Stacy Hoogstraten  
Kansas Mothers Against Drunk Driving

**MEMORANDUM**

**TO:** The Honorable Michael O'Neal, Chairman  
House Judiciary Committee

**FROM:** Jame G. Keller, Attorney  
Kansas Department of Revenue

**DATE:** February 9, 1993

**SUBJECT:** House Bill No. 2133

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I appreciate the opportunity to appear before you with regard to House Bill No. 2133.

This bill amends a number of statutes administered by the Division of Vehicles. The Department of Revenue supports this bill, but would suggest certain changes. Many of the changes are simply to clarify existing procedures in the statutory language, some are to clean up language as a result of other changes in this bill or in prior legislation and some have been suggested by recent court decisions.

Attached hereto is an explanation of the changes suggested by the Department of Revenue along with a copy of the bill with the proposed changes.

**EXPLANATION OF PROPOSED AMENDMENT**  
**TO HOUSE BILL NO. 2133**

**Section 1:**

Changes are proposed in paragraph (c), adding language in recognition that some driver's license suspensions result from one conviction while others result from more than one. This change merely clarifies that both types of situations are included.

The term modified is added because a suspension based upon several offenses may appropriately be lessened as the result of removal of one offense from the record although some sanction is still appropriate. The word "dismissed" seems clearer than the phrase "set aside."

**Section 2:** No changes proposed

**Section 3:**

Rather than listing all types of offenses in which the administrative driver's license suspension is based upon a conviction for a traffic or other criminal offense, language is proposed to simply state that no judicial review from such is to be provided. This merely clarifies the intention that a person who is convicted in a criminal court and has the opportunity for full judicial review of that underlying offense will not have the opportunity to again pursue court review of the resulting mandatory driver's license sanction.

**Section 4:** No changes proposed

**Section 5:**

The language "or the division" is necessary in paragraph (b) because the bill proposes changing from a court ordered withdrawal of driving privileges to a suspension of driving privileges by the division. For some period of time an order not to operate could be either by a court or by the division.

**Section 6:** No changes proposed

Section 7:

Page 7, Line 5: The proposed language is similar to that used for grounds to test persons who are driving a commercial motor vehicle. If the standard is lower, then it may be more difficult for the officer to develop reasonable grounds to believe the person is "under the influence" and since a person under 21 years of age is not supposed to be drinking at all a standard based upon reasonable belief that the person has alcohol or other drugs "in the person's system" would be appropriate.

Page 7, Lines 10-11: The proposed language eliminates the need to arrest only for "under the influence" and allows an arrest for any of the violations in K.S.A. 8-1567 as a ground for a test request.

Page 8, Line 26: The words "at least" are proposed to be deleted because the suspension is for "one year."

Page 8, Line 27: It is proposed that the term "indicate" be used instead of the term "show" or "determine" throughout these statutes. The testing devices used to determine alcohol level are subjected to a periodic testing program by the Kansas department of health and environment. Certain procedures are required to be followed in testing alcohol level. Some other states also use "indicate" rather than "show" or "determine" to eliminate arguments that the testing device must meet a standard of perfection rather than the standard set by the department of health and environment or other similar agency.

Page 8, Line 28: The term "legal limit" seems to imply that a certain level is "legal." It seems contradictory to say that it is illegal to drive with an alcohol level at the "legal limit." The department of revenue proposes that this term be changed to "prohibited alcohol level."

Page 8, Line 35: The words "at least" are proposed to be deleted because the suspension is for "one year."

Page 8, Lines 42-43: The language "has the right to consult with an attorney" should be deleted. The original intention of that language was to advise that the Fifth Amendment right to counsel would still be available after the testing procedures were completed. However, recent court decisions have construed the phrase as



granting a statutory right to counsel in addition to any constitutional right. There have also been arguments made that the language seems to restrict right to counsel only to those who have submitted to the test, but not those who refused. Removal of the language will simply eliminate these issues, but will have no effect upon any constitutional right to counsel which the person will still have.

Page 9: All proposed changes are explained above.

Page 10, After Line 13: This language is the same as that contained in the Commercial Driver's License Act. Most prior court decisions have construed this law as a remedial law which should be liberally construed. However, some recent Kansas Court of Appeal decisions have overlooked prior precedents and stated that the act should be strictly construed. This proposed change will simply eliminate the issue and make it clear that the proper standard is that expressed in *State v. Adey*, 241 Kan. 825, 829 (1987).

Section 8:

Page 10, Line 26: Same explanation as for page 7, line 5.

Page 10, Line 37: Same explanation as for page 7, line 5.

Page 11, Line 2: Same explanation as for page 8, line 27.

Page 11, Line 3: Same explanation as for page 8, line 28.

Page 11, Lines 25-33: The proposed changes are necessary to eliminate technical issues that arise regarding who serves the copy of the certification and notice of suspension on the person and to accommodate certain police procedures regarding the handling of personal property of individuals in custody and in mailing documents.

Page 11, Lines 34-42: The proposed changes are to clarify that the person is to be suspended on the 20th calendar day after service of the notice of suspension--in other words, the 20 day period includes weekends and holidays. A recent court case ruled that the present language was unclear.

Page 12, Lines 9-19: The proposed changes are to carry out the purposes explained on the previous page and to make it clear

that the direction to forward the law enforcement officer's certification and notice of suspension to the division of vehicles within five days is directory rather than mandatory. Some suspensions have been overturned because the certification was sent in after six days rather than five although there was no effect upon the proceeding.

Page 12, Lines 29-30: The proposed changes are to help make it clear that K.S.A. 60-206 does not apply to this time period. To help reduce the time period for setting administrative hearings to meet federal guidelines, the time requesting a hearing is made the same whether the certification was served by mail or in person.

Page 13, Lines 14-31: The section setting out the issues to be raised at an administrative hearing for a test failure are separated into breath test failure and blood test failure. A change in the language of the issues for a breath test failure recognizes that the Kansas department of health and environment is required to approve all breath-testing instruments in use in Kansas and has a program for periodic inspection of all such instruments and examination of all persons certified to operate such devices. The Kansas courts have repeatedly referred to the inspection and certification program of the KDHE when issues have been raised about "reliability" and "qualifications."

Page 13, After Line 31: This section sets out the issues for blood test failures.

Page 13, Lines 40-43: The proposed changes are necessary as a result of the changes proposed for paragraph (h)(2).

Page 14, Lines 14-22: The proposed language removes language that has been used as a basis for an argument that the suspension action should be dismissed if the matter is not set for hearing within 30 days, although the statute presently provides that the only result is that the temporary license is extended until the date set for hearing. The change merely eliminates the reference to thirty days, but keeps the same procedure in effect. The additional language sets out a procedure for the service of administrative orders upon persons who have appeared at an administrative hearing.

Page 14, Line 31: The proposed language is necessary as a result of the additional language proposed in paragraph (k).

Page 14, After Line 36: Two additional paragraphs are proposed. Paragraph (n) was suggested by the result of a recent appellate decision which held that there were no procedural statutes for implied consent cases and ruled that the Act for Judicial Review should be used to supply administrative procedures. This proposed paragraph makes it clear that this section and some of the provisions in K.S.A. 8-255 constitute the administrative procedures to be used for the implied consent law. Paragraph (o) is to clarify that the time periods set out in this section are not governed by K.S.A. 60-206. A definition of the term "calendar day" as used in this section is included. This is in response to a recent court decision which held that the present statutory language is unclear without such references.

Section 9: No changes proposed

Section 10: No changes proposed

Section 11: No changes proposed

Section 12:

Page 17, Lines 8-After Line 18: The term "prohibited alcohol level" is substituted for the term "legal limit," as stated in the explanation for the same change on page 8, line 28. Additional language is also provided to tie the amount of .02 or .08 into the definition for "alcohol concentration" set out in K.S.A. 8-1013(a).

Section 13:

Page 18, Lines 12-19: New subsection (d) in this bill eliminates the need for the language proposed to be deleted.

Page 19, Line 1: The language proposed to be deleted should have been taken out when the sanction for a first occurrence refusal was changed from 180 days to one year. There is no reason for a reference to 150 days under present law.

Section 14:

Page 19, Lines 25-29: Merely inserts "prohibited alcohol level" for "legal limit."

Page 22, Line 41: Merely inserts "prohibited alcohol level" for "legal limit."

Section 15: No changes proposed

Section 16:

Page 23, Line 20: Merely inserts "prohibited alcohol level" for "legal limit."

Section 17: No changes proposed

Section 18: No changes proposed

Section 19: No changes proposed

Section 20: No changes proposed

## HOUSE BILL No. 2133

By Committee on Judiciary

1-26

8 AN ACT concerning alcohol and drug-related offenses involving ve-  
9 hicles; amending K.S.A. 8-255, 8-256, 8-259, 8-286, 8-287, as  
10 amended by section 28 of chapter 239 of the 1992 Session Laws  
11 of Kansas, 8-288, 8-1001, 8-1002, 8-1005, 8-1011, 8-1012, 8-1013,  
12 8-1014, 8-1567, as amended by section 1 of chapter 298 of the  
13 1992 Session Laws of Kansas, 8-2204, 12-4305, 41-201 and 41-804  
14 and repealing the existing sections; also repealing K.S.A. 8-289,  
15 41-2719 and 41-2720.  
16

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

18 Section 1. K.S.A. 8-255 is hereby amended to read as follows:  
19 8-255. (a) The division is authorized to suspend or revoke a person's  
20 driving privileges upon a showing by its records or other sufficient  
21 evidence the person:

22 (1) Has been convicted with such frequency of serious offenses  
23 against traffic regulations governing the movement of vehicles as to  
24 indicate a disrespect for traffic laws and a disregard for the safety  
25 of other persons on the highways;

26 (2) has been convicted of three or more moving traffic violations  
27 committed on separate occasions within a 12-month period;

28 (3) is incompetent to drive a motor vehicle;

29 (4) has been convicted of a moving traffic violation, committed  
30 at a time when the person's driving privileges were suspended or  
31 revoked; or

32 (5) is a member of the armed forces of the United States stationed  
33 at a military installation located in the state of Kansas, and the  
34 authorities of the military establishment certify that such person's  
35 on-base driving privileges have been suspended, by action of the  
36 proper military authorities, for violating the rules and regulations of  
37 the military installation governing the movement of vehicular traffic  
38 or for any other reason relating to the person's inability to exercise  
39 ordinary and reasonable control in the operation of a motor vehicle.

40 (b) The division shall suspend a person's driving privileges when  
41 required by K.S.A. 8-262, ~~and amendments thereto, and K.S.A.~~  
42 ~~or 8-1014, and amendments thereto, and shall disqualify a person's~~  
43 ~~privilege to drive commercial motor vehicles when required by~~

1 K.S.A. 8-2,142, and amendments thereto.

2 (c) When the action by the division suspending, revoking or  
3 disqualifying a person's driving privileges is based upon a report of  
4 ~~conviction~~ convictions from the a convicting court, of a violation conviction or  
5 ~~of K.S.A. 8-262 or 8-1567, and amendments thereto, any offense~~  
6 ~~listed in K.S.A. 8-254, and amendments thereto, or the offenses~~ or courts  
7 ~~listed in paragraphs (1), (2) or (3) of subsection (a) of K.S.A. 8-~~  
8 ~~2,142, and amendments thereto, the person may not request a~~  
9 hearing but, within 30 days after notice of suspension, revocation or  
10 disqualification is mailed, may submit a written request for admin-  
11 istrative review and provide evidence to the division to show the  
12 person whose driving privileges have been suspended, revoked or  
13 disqualified by the division was not convicted of ~~the~~ any any  
14 which the suspension, revocation or disqualification is based. Within  
15 30 days of its receipt of the request for administrative review, the  
16 division shall notify the person whether the suspension, revocation  
17 or disqualification has been affirmed, ~~or set aside.~~ modified modified  
18 administrative review shall not stay any action taken by the division.  
19 ~~or dismissed.~~ dismissed dismissed

20 (d) Upon suspending, revoking or disqualifying the driving priv-  
21 ileges of any person as authorized by this act, the division shall  
22 immediately notify the person in writing. Except as provided by  
23 K.S.A. 8-1002; ~~and amendments thereto, K.S.A. and 8-2,145, and~~  
24 ~~amendments thereto,~~ and subsection (c) of this section, if the person  
25 makes a written request for hearing within 30 days after such notice  
26 of suspension or revocation is mailed, the division shall afford the  
27 person an opportunity for a hearing as early as practical not sooner  
28 than five days nor more than 30 days after such request is mailed.  
29 If the division has not revoked or suspended the person's driving  
30 privileges or vehicle registration prior to the hearing, the hearing  
31 may be held within not to exceed 45 days. Except as provided by  
32 K.S.A. 8-1002; ~~and amendments thereto, and K.S.A. and 8-2,145,~~  
33 ~~and amendments thereto,~~ the hearing shall be held in the person's  
34 county of residence or a county adjacent thereto, unless the division  
35 and the person agree that the hearing may be held in some other  
36 county. Upon the hearing, the director or the director's duly au-  
37 thorized agent may administer oaths and may issue subpoenas for  
38 the attendance of witnesses and the production of relevant books  
39 and papers and may require an examination or reexamination of the  
40 person. When the action proposed or taken by the division is au-  
41 thorized but not required, the division, upon the hearing, shall either  
42 rescind or affirm its order of suspension or revocation or, good cause  
43 appearing therefor, extend the suspension of the person's driving  
privileges, modify the terms of the suspension or revoke the person's

1 driving privileges. When the action proposed or taken by the division  
2 is required, the division, upon the hearing, shall either affirm its  
3 order of suspension, revocation or disqualification, or, good cause  
4 appearing therefor, dismiss the administrative action. If the person  
5 fails to request a hearing within the time prescribed or if, after a  
6 hearing, the order of suspension, revocation or disqualification is  
7 upheld, the person shall surrender to the division, upon proper  
8 demand, any driver's license in the person's possession.

9 (e) In case of failure on the part of any person to comply with  
10 any subpoena issued in behalf of the division or the refusal of any  
11 witness to testify to any matters regarding which the witness may  
12 be lawfully interrogated, the district court of any county, on appli-  
13 cation of the division, may compel obedience by proceedings for  
14 contempt, as in the case of disobedience of the requirements of a  
15 subpoena issued from the court or a refusal to testify in the court.  
16 Each witness who appears before the director or the director's duly  
17 authorized agent by order or subpoena, other than an officer or  
18 employee of the state or of a political subdivision of the state, shall  
19 receive for the witness' attendance the fees and mileage provided  
20 for witnesses in civil cases in courts of record, which shall be audited  
21 and paid upon the presentation of proper vouchers sworn to by the  
22 witness.

23 (f) The division, in the interest of traffic and safety, may establish  
24 driver improvement clinics throughout the state and, upon reviewing  
25 the driving record of a person whose driving privileges are subject  
26 to suspension under subsection (a)(2), may permit the person to retain  
27 such person's driving privileges by attending a driver improvement  
28 clinic. A person who is required to attend a driver improvement  
29 clinic shall pay a fee of \$15. Amounts received under this subsection  
30 shall be remitted at least monthly to the state treasurer who shall  
31 deposit the same in the state treasury and shall be credited to the  
32 division of vehicles operating fund.

33 Sec. 2. K.S.A. 8-256 is hereby amended to read as follows: 8-  
34 256. (a) The division shall not suspend a person's license to operate  
35 a motor vehicle on the public highways for a period of more than  
36 one year, except as permitted under K.S.A. 40-3104 and 40-3118,  
37 and amendments thereto, and K.S.A. 8-262, 8-1219, 8-2107 or  
38 8-2110, and amendments thereto or K.S.A. 8-2,125 through 8-  
39 2,142 8-262, 8-286, 8-2,125 through 8-2,142, 8-1219, 8-2107, 8-2110,  
40-3104 and 40-3118, and amendments thereto.

42 (b) Any person whose license to operate a motor vehicle on the  
43 public highways has been revoked shall not be entitled to have such  
license renewed or restored unless the revocation was for a cause

which has been removed, except that after the expiration of one year from the date on which the revoked license was surrendered to and received by the division such person may make application for a new license as provided by law, except as otherwise provided by K.S.A. 8-2,142 and amendments thereto, but the division shall not then issue a new license unless and until it is satisfied after investigation of the habits and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways.

Sec. 3. K.S.A. 8-259 is hereby amended to read as follows: 8-

259. (a) ~~Except in the case of mandatory revocation under K.S.A. 8-251 or 8-256, and amendments thereto, mandatory suspension under subsection (b) of K.S.A. 8-1014, and amendments thereto, mandatory suspension under K.S.A. 8-262, and amendments thereto, or mandatory disqualification of the privilege to drive a commercial motor vehicle under paragraphs (1), (2) or (3) of subsection (a) subsection (a)(1), (2) or (3) of K.S.A. 8-2,142, and amendments thereto,~~ the cancellation, suspension, revocation, disqualification or denial of a person's driving privileges by the division is subject to review. Such review shall be in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 *et seq.*, and amendments thereto, or of an order of disqualification under paragraph (4) of subsection (a) subsection (a)(4) of K.S.A. 8-2,142, and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613, and amendments thereto, and venue is the county where the licensee resides. The action for review shall be by trial *de novo* to the court. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension, cancellation or revocation under the provisions of this act. The court on review shall consider the petitioner's traffic violations record and liability insurance coverage before granting a stay or other temporary remedy pursuant to K.S.A. 77-616, and amendments thereto. If a stay is granted, it shall be considered equivalent to any license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's driving privileges are canceled pursuant to K.S.A. 8-250, and amendments thereto.

when the action by the division suspending, revoking or disqualifying a person's driving privileges is based upon a report of conviction or convictions from a convicting court or courts



1 (b) The clerk of any court to which an appeal has been taken  
2 under this section, within 10 days after the final disposition of such  
3 appeal, shall forward a notification of the final disposition to the  
4 division.

5 Sec. 4. K.S.A. 8-286 is hereby amended to read as follows: 8-  
6 286. Whenever the files and records of the division shall disclose  
7 that the record of convictions of any person is such that the person  
8 is an habitual violator, as prescribed by K.S.A. 8-285 *and amend-*  
9 *ments thereto*, the division forthwith shall certify a full and com-  
10 plete abstract of such person's record of convictions to the  
11 district or county attorney of the county where such person  
12 resides, as disclosed by the records of the division, or if such  
13 person is a nonresident, to the district attorney of Shawnee  
14 county. Upon receiving said abstract, the district or county  
15 attorney forthwith shall commence prosecution of such person  
16 in the district court of such county, alleging such person to be  
17 an habitual violator. Such court shall cause a summons to be  
18 served on the accused, ordering the accused to appear before  
19 the court at a time and date stated therein to show cause why  
20 he or she should not be convicted of being an habitual violator.  
21 At the time and date stated in the summons, the court shall  
22 hold a hearing to determine the identity of the accused and  
23 the accuracy of the abstract of such person's record of  
24 convictions.

25 If the court finds that such accused person is not the same  
26 person as the accused named in such records, or that the con-  
27 victions are not such as to constitute the accused "an habitual  
28 violator" under this act, the prosecution shall be dismissed;  
29 but if the court finds that the accused is the same person named  
30 in the records certified by the division, the court shall find  
31 such person guilty of being "an habitual violator" of the motor  
32 vehicle laws of Kansas and shall direct such person by appro-  
33 priate order not to operate a motor vehicle on the public high-  
34 ways in this state. The clerk of the court shall file with the  
35 division a copy of such order which shall become a part of the  
36 permanent records of the division *suspend the person's driving*  
37 *privileges for three years.*

38 Sec. 5. K.S.A. 8-287, as amended by section 28 of chapter 239  
39 of the 1992 Session Laws of Kansas, is hereby amended to read as  
40 follows: 8-287. (a) It shall be unlawful for any person to operate any  
41 motor vehicle in this state while any court order declaring such  
42 person to be a habitual violator and prohibiting such operation  
43 remains in effect. Any person found to be a habitual violator

under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a class E felony. On or after July 1, 1993, such person's driving privileges are suspended under K.S.A. 8-286 and amendments thereto or under subsection (c).

(b) Any person found to be a habitual violator under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a severity level 9, nonperson felony.

(c) Upon receipt of notice of a conviction of a person for a violation of this section, the division shall extend the period of suspension of the person's driving privileges for a period of one additional year.

Sec. 6. K.S.A. 8-288 is hereby amended to read as follows: 8-288. ~~(a)~~ No license to operate a motor vehicle in Kansas shall be issued to a convicted habitual violator:

~~(1)~~ (a) For a period of three years from the date of the order of the court finding the person to be a habitual violator division's order suspending the violator's driving privileges; and

~~(2)~~ (b) until the privilege of the person to operate a motor vehicle has been restored by the division.

(b) At the expiration of three years from the date of any final order of a court finding a person to be a habitual violator and directing the person not to operate a motor vehicle in this state, the person may petition the court in which the person was convicted to have the privilege to operate a motor vehicle in this state restored. Upon such petition and for good cause shown, the court, in its discretion, may restore the privilege and may place restrictions on the privilege as provided by K.S.A. 1984 Supp. 8-292, subject to other provisions of law relating to the issuance of drivers' licenses.

Sec. 7. K.S.A. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a motor vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

or the division

1 (b) A law enforcement officer shall request a person to submit  
2 to a test or tests deemed consented to under subsection (a) if the  
3 officer has reasonable grounds to believe the person was operating  
4 or attempting to operate a ~~motor~~ vehicle while under the influence  
5 of alcohol or drugs, or both, ~~or to believe that the person was driving~~  
6 a commercial motor vehicle, as defined in K.S.A. 8-2,128, and  
7 amendments thereto, while having alcohol or other drugs in such  
8 person's system; and one of the following conditions exists: (1) The  
9 person has been arrested or otherwise taken into custody for any  
10 ~~offense involving operation or attempted operation of a motor vehicle~~  
11 ~~while under the influence of alcohol or drugs, or both,~~ or involving  
12 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,  
13 and amendments thereto, while having alcohol or other drugs in  
14 such person's system, in violation of a state statute or a city ordi-  
15 nance; or (2) the person has been involved in a ~~motor~~ vehicle ac-  
16 cident or collision resulting in property damage, personal injury or  
17 death. The law enforcement officer directing administration of the  
18 test or tests may act on personal knowledge or on the basis of the  
19 collective information available to law enforcement officers involved  
20 in the accident investigation or arrest.

21 (c) If a law enforcement officer requests a person to submit to  
22 a test of blood under this section, the withdrawal of blood at the  
23 direction of the officer may be performed only by: (1) A person  
24 licensed to practice medicine and surgery or a person acting under  
25 the supervision of any such licensed person; (2) a registered nurse  
26 or a licensed practical nurse; or (3) any qualified medical technician.  
27 When presented with a written statement by a law enforcement  
28 officer directing blood to be withdrawn from a person who has ten-  
29 tatively agreed to allow the withdrawal of blood under this section,  
30 the person authorized herein to withdraw blood and the medical  
31 care facility where blood is withdrawn may rely on such a statement  
32 as evidence that the person has consented to the medical procedure  
33 used and shall not require the person to sign any additional consent  
34 or waiver form. In such a case, the person authorized to withdraw  
35 blood and the medical care facility shall not be liable in any action  
36 alleging lack of consent or lack of informed consent. No person  
37 authorized by this subsection to withdraw blood, nor any person  
38 assisting in the performance of a blood test nor any medical care  
39 facility where blood is withdrawn or tested that has been directed  
40 by any law enforcement officer to withdraw or test blood, shall be  
41 liable in any civil or criminal action when the act is performed in  
42 a reasonable manner according to generally accepted medical prac-  
43 tices in the community where performed.

to believe the person was under the age of 21  
and was operating or attempting to operate a  
vehicle while having alcohol or other drugs  
in such person's system

offense involving a violation under K.S.A. 8-  
1567

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) (1) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both; (B) the opportunity to consent to or refuse a test is not a constitutional right; (C) there is no constitutional right to consult with an attorney regarding whether to submit to testing; (D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for ~~at least~~ one year; (E) if the person submits to and completes the test or tests and the test results ~~show~~ an alcohol concentration of ~~10 the legal limit~~ or greater, the person's driving privileges will be suspended for at least 30 days; (F) if the person refuses a test or the test results ~~show~~ an alcohol concentration of ~~10 the legal limit~~ or greater and if, within the past five years, the person has been convicted or granted diversion on a charge of driving under the influence of alcohol or drugs, or both, or a related offense or has refused or failed a test, the person's driving privileges will be suspended for ~~at least~~ one year; (G) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a ~~motor~~ vehicle while under the influence of alcohol or drugs, or both; (H) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a ~~motor~~ vehicle while under the influence of alcohol or drugs, or both; and (I) after the completion of the testing, the person ~~has the right to consult with an attorney and~~ may secure additional testing, which, if desired

indicate

prohibited alcohol level

indicate

prohibited alcohol level

should be done as soon as possible and is customarily available from medical care facilities and physicians. If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person must also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a motor vehicle in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto. If the test results show a blood or breath alcohol concentration of ~~.10 the legal limit~~ or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002, and amendments thereto, and K.S.A. 8-1014, and amendments thereto. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a motor vehicle while under the influence of alcohol or drugs, or both. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of ~~.10 the legal limit~~ or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142,

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prohibited alcohol level

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prohibited alcohol level

and amendments thereto.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(g) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(h) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

Sec. 8. K.S.A. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by

(i) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

to believe the person was under the age of 21 and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system

to believe the person was under the age of 21 and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system

1 K.S.A. 8-1001, and amendments thereto; and (D) the result of the  
2 test ~~showed~~ that the person had an alcohol concentration of ~~10 the~~  
3 ~~legal limit~~ or greater in such person's blood or breath.

indicated

4 (3) With regard to failure of a breath test, in addition to those  
5 matters required to be certified under subsection (a)(2), that: (A) The  
6 testing equipment used was certified by the Kansas department of  
7 health and environment; (B) the testing procedures used were in  
8 accordance with the requirements set out by the Kansas department  
9 of health and environment; and (C) the person who operated the  
10 testing equipment was certified by the Kansas department of health  
11 and environment to operate such equipment.

prohibited alcohol level

12 (b) For purposes of this section, certification shall be complete  
13 upon signing, and no additional acts of oath, affirmation, acknow-  
14 ledgment or proof of execution shall be required. The signed cer-  
15 tification or a copy or photostatic reproduction thereof shall be  
16 admissible in evidence in all proceedings brought pursuant to this  
17 act, and receipt of any such certification, copy or reproduction shall  
18 accord the department authority to proceed as set forth herein. Any  
19 person who signs a certification submitted to the division knowing  
20 it contains a false statement is guilty of a class B misdemeanor.

shall be served with a copy of the law enforcement  
officer's certification and

a n

21 (c) When the officer directing administration of the testing de-  
22 termines that a person has refused a test and the criteria of subsection  
23 (a)(1) have been met or determines that a person has failed a test  
24 and the criteria of subsection (a)(2) have been met, the officer shall  
25 ~~serve upon the person~~ notice of suspension of driving privileges  
26 pursuant to K.S.A. 8-1014, and amendments thereto. If the deter-  
27 mination is made while the person is still in custody, service shall  
28 be made in person by the officer on behalf of the division of vehicles.

For purposes of this section, personal service shall  
include placing the copy of the law enforcement  
officer's certification and notice of suspension in  
safekeeping to be given to the person upon release  
from custody.

a n

29 In cases where a test failure is established by a subsequent analysis  
30 of a breath, blood or urine sample, the officer shall serve notice of  
31 ~~such~~ suspension in person ~~or by another designated officer~~ or by  
32 mailing the notice to the person at the address provided at the time  
33 of the test.

the copy of the law enforcement officer's  
certification and notice of

Mailing of the notice by another employee of the  
law enforcement agency at the direction of an  
officer shall constitute mailing by an officer.

In addition to the information required by  
subsection (a) of this section, the law enforcement  
officer's certification and

of suspension

34 (d) ~~The notice shall contain the following information:~~ (1) The  
35 person's name, driver's license number and current address; (2) the  
36 reason and statutory grounds for the suspension; (3) the date notice  
37 is being served and the effective date of the suspension, ~~which shall~~  
38 be the 20th day after the date of service; (4) the right of the person  
39 to request an administrative hearing; and (5) the procedure the per-  
40 son must follow to request an administrative hearing. The notice of  
41 suspension shall also inform the person that all correspondence will  
42 be mailed to the person at the address contained in the notice of  
43 suspension unless the person notifies the division in writing of a

a statement that

calendar

law enforcement officer's certification and

law enforcement officer's certification and

different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the date of suspension stated in the notice. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. ~~The officer shall also provide the person with a copy of the officer's certification as set forth in subsection (c).~~ Within five days after the date of certification of the test refusal or test failure, the officer who effected service shall forward the officer's certification and a copy of the notice of suspension, along with any licenses taken, to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

(g) If the person mails a written request which is postmarked within ~~10 days after service of the notice, if by personal service, or 12 days after service, if by mail,~~ the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witnesses and, except for the law enforcement officer or officers certifying refusal or failure, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (i) and extend the person's temporary driving privileges until the date set for the hearing by the division.

(h) (1) If the officer certifies that the person refused the test,

20th calendar day after the date of service set out in the law enforcement officer's certification and notice of suspension

copy of the law enforcement officer's certification and

service of a copy of the law enforcement officer's certification and notice of suspension

shall be forwarded

The failure to forward the law enforcement officer's certification and notice of suspension within five days after the date of service shall not be cause for dismissal of the administrative action on the person's driving privileges absent a showing of prejudice to the licensee.

11 calendar

whether by personal service or by mail



1 the scope of the hearing shall be limited to whether: (A) A law  
2 enforcement officer had reasonable grounds to believe the person  
3 was operating or attempting to operate a ~~motor~~ vehicle while under  
4 the influence of alcohol or drugs, or both, or to believe that the  
5 person had been driving a commercial motor vehicle, as defined in  
6 K.S.A. 8-2,128, and amendments thereto, while having alcohol or  
7 other drugs in such person's system; (B) the person was in custody  
8 or arrested for an alcohol or drug related offense or was involved  
9 in a ~~motor~~ vehicle accident or collision resulting in property damage,  
10 personal injury or death; (C) a law enforcement officer had presented  
11 the person with the oral and written notice required by K.S.A. 8-  
12 1001, and amendments thereto; and (D) the person refused to submit  
13 to and complete a test as requested by a law enforcement officer.

14 (2) If the officer certifies that the person failed the test, the scope  
15 of the hearing shall be limited to whether: (A) A law enforcement  
16 officer had reasonable grounds to believe the person was operating  
17 a ~~motor~~ vehicle while under the influence of alcohol or drugs, or  
18 both, or to believe that the person had been driving a commercial  
19 motor vehicle, as defined in K.S.A. 8-2,128, and amendments  
20 thereto, while having alcohol or other drugs in such person's system;  
21 (B) the person was in custody or arrested for an alcohol or drug  
22 related offense or was involved in a ~~motor~~ vehicle accident or col-  
23 lision resulting in property damage, personal injury or death; (C) a  
24 law enforcement officer had presented the person with the oral and  
25 written notice required by K.S.A. 8-1001, and amendments thereto;  
26 (D) the testing equipment used was ~~reliable~~; (E) the person who  
27 operated the testing equipment was ~~qualified~~; (F) the testing pro-  
28 cedures used were ~~reliable~~; (G) the test result ~~determined that the~~  
29 person had an alcohol concentration of ~~10 the legal limit or greater~~  
30 in such person's blood or breath; and (H) the person was operating  
31 a ~~motor~~ vehicle.

32 (i) At a hearing pursuant to this section, or upon court review  
33 of an order entered at such a hearing, an affidavit of the custodian  
34 of records at the Kansas department of health and environment  
35 stating that the breath testing device was certified and the operator  
36 of such device was certified on the date of the test shall be admissible  
37 into evidence in the same manner and with the same force and effect  
38 as if the certifying officer or employee of the Kansas department of  
39 health and environment had testified in person. Such affidavit shall  
40 be admitted to prove such ~~reliability~~ without further foundation re-  
41 quirement. A certified operator of a breath testing device shall be  
42 competent to testify regarding the ~~proper procedures to be used in~~  
43 ~~conducting the test.~~

a breath

certified by the Kansas department of health and environment

certified by the Kansas department of health and environment

substantially complied with procedures approved by the Kansas department of health and environment

indicated

prohibited alcohol level

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating a motor vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; (D) the test result indicated that the person had an alcohol concentration of the legal limit or greater in such person's blood; and (E) the person was operating a motor vehicle.

certification

approved by the Kansas department of health and environment.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) If no timely request for hearing is made, the suspension period imposed pursuant to this section shall begin upon the expiration of the temporary license granted under subsection (e). If a timely request for hearing is made, ~~the hearing shall be held within 30 days of the date the request for hearing is received by the division.~~ At the hearing, the director or the representative of the director, shall either affirm the order of suspension or suspension and restriction or dismiss the administrative action. ~~If the division is unable to hold a hearing within 30 days of the date upon which the request for hearing is received, the division shall extend the person's temporary driving privileges until the date set for the hearing by the division.~~ No extension of temporary driving privileges shall be issued for continuances requested by or on behalf of the licensee. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(l) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to subsection (k) shall be sent by first-class mail and a U.S. post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(m) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

Sec. 9. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a

division shall set the matter for

and extend the person's temporary driving privileges until the date set for the hearing by the division

The director or the representative of the director shall serve a copy of the administrative order affirming or dismissing the administrative action upon the person, or, if the person is represented at the hearing by an attorney, upon the person's attorney. If the director or the representative of the director takes the matter under advisement and does not decide the matter at the close of the hearing, notice of the decision shall be served upon the person or the person's attorney by mail and shall be considered effective on the third calendar day after the notice is mailed. If the person is represented at the hearing by an attorney, service of the administrative order upon the attorney shall be considered effective service on the person.

and notices of decisions of administrative hearings mailed

(n) This section and the applicable provisions contained in K.S.A. 8-255(d) and (e) constitute the administrative procedures to be used for all administrative hearings held under this act. To the extent that this section and any other provision of law conflicts, this section prevails.

(o) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall not be applicable in determining the effective date of suspension set out in subsection (d) or the time for requesting an administrative hearing set out in subsection (g). "Calendar day" when used in this section shall mean that every day shall be included in computations of time whether a week day, Saturday, Sunday or holiday.

city ordinance relating to the operation or attempted operation of a ~~motor~~ vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) If the alcohol concentration is less than  $\pm 0.08$ , that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.

(b) If the alcohol concentration is  $\pm 0.08$  or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.

(c) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

Sec. 10. K.S.A. 8-1011 is hereby amended to read as follows: 8-1011. A law enforcement officer, and the state or any political subdivision of the state that employs a law enforcement officer, arresting or taking custody of a person for any offense involving the operation of or attempt to operate a ~~motor~~ vehicle while under the influence of alcohol or drugs, or both, shall have immunity from any civil or criminal liability for the care and custody of the ~~motor~~ vehicle that was being operated by or was in the physical control of the person arrested or in custody if the law enforcement officer acts in good faith and exercises due care.

Sec. 11. K.S.A. 8-1012 is hereby amended to read as follows: 8-1012. A law enforcement officer may request a person who is operating or attempting to operate a ~~motor~~ vehicle within this state to submit to a preliminary screening test of the person's breath to determine the alcohol concentration of the person's breath if the officer has reasonable grounds to believe that the person: (a) Has alcohol in the person's body; (b) has committed a traffic infraction; or (c) has been involved in a ~~motor~~ vehicle accident or collision. At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer

1 then shall request the person to submit to the test. Refusal to take  
2 and complete the test as requested is a traffic infraction. If the person  
3 submits to the test, the results shall be used for the purpose of  
4 assisting law enforcement officers in determining whether an arrest  
5 should be made and whether to request the tests authorized by  
6 K.S.A. 8-1001 and amendments thereto. A law enforcement officer  
7 may arrest a person based in whole or in part upon the results of  
8 a preliminary screening test. Such results shall not be admissible in  
9 any civil or criminal action except to aid the court or hearing officer  
10 in determining a challenge to the validity of the arrest or the validity  
11 of the request to submit to a test pursuant to K.S.A. 8-1001 and  
12 amendments thereto. Following the preliminary screening test, ad-  
13 ditional tests may be requested pursuant to K.S.A. 8-1001 and  
14 amendments thereto.

15 Sec. 12. K.S.A. 8-1013 is hereby amended to read as follows: 8-  
16 1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-  
17 1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,  
18 and this section:

19 (a) "Alcohol concentration" means the number of grams of alcohol  
20 per 100 milliliters of blood or per 210 liters of breath.

21 (b) (1) "Alcohol or drug-related conviction" means any of the  
22 following: (A) Conviction of vehicular battery or aggravated vehicular  
23 homicide, if the crime is committed while committing a violation of  
24 K.S.A. 8-1567 and amendments thereto or the ordinance of a city  
25 or resolution of a county in this state which prohibits any acts pro-  
26 hibited by that statute, or conviction of a violation of K.S.A. 8-1567  
27 and amendments thereto; (B) conviction of a violation of a law of  
28 another state which would constitute a crime described in subsection  
29 (b)(1)(A) if committed in this state; ~~or~~ (C) conviction of a violation  
30 of an ordinance of a city in this state or a resolution of a county in  
31 this state which would constitute a crime described in subsection  
32 (b)(1)(A), whether or not such conviction is in a court of record; or  
33 *(D) conviction of an act which was committed on a military reser-*  
34 *vation and which would constitute a violation of K.S.A. 8-1567, and*  
35 *amendments thereto, or would constitute a crime described in sub-*  
36 *section (b)(1)(A) if committed off a military reservation in this state.*

37 (2) For the purpose of determining whether an occurrence is a  
38 first, second or subsequent occurrence: (A) "Alcohol or drug-related  
39 conviction" also includes entering into a diversion agreement in lieu  
40 of further criminal proceedings on a complaint alleging commission  
41 of a crime described in subsection (b)(1) which agreement was en-  
42 tered into during the immediately preceding five years, including

1 an offense occurred before or after conviction or diversion for a  
2 previous offense.

3 (c) "Division" means the division of motor vehicles of the de-  
4 partment of revenue.

5 (d) "Ignition interlock device" means a device which uses a breath  
6 analysis mechanism to prevent a person from operating a motor  
7 vehicle if such person has consumed an alcoholic beverage.

8 ~~(e) "Legal limit" means .02, for a person less than 21 years of~~  
9 ~~age, and .08, for a person 21 or more years of age.~~

10 ~~(f) "Occurrence" means a test refusal, test failure or alcohol or~~  
11 ~~drug-related conviction, or any combination thereof arising from one~~  
12 ~~arrest, occurring in the immediately preceding five years, including~~  
13 ~~prior to the effective day of this act.~~

14 ~~(g) "Other competent evidence" includes: (1) Alcohol con-~~  
15 ~~centration tests obtained from samples taken two hours or more after~~  
16 ~~the operation or attempted operation of a vehicle; and (2) readings~~  
17 ~~obtained from a partial alcohol concentration test on a breath testing~~  
18 ~~machine.~~

19 ~~(g) (h) "Samples" includes breath supplied directly for testing,~~  
20 ~~which breath is not preserved.~~

21 ~~(h) (i) "Test failure" or "fails a test" refers to a person's having~~  
22 ~~results of a test administered pursuant to in accordance with this~~  
23 ~~act, other than a preliminary screening test, which show an alcohol~~  
24 ~~concentration of .10 the legal limit or greater in the person's blood~~  
25 ~~or breath, and includes failure of any such test on a military~~  
26 ~~reservation.~~

27 ~~(i) (j) "Test refusal" or "refuses a test" refers to a person's failure~~  
28 ~~to submit to or complete any test, other than a preliminary screening~~  
29 ~~test, in accordance with this act, and includes refusal of any such~~  
30 ~~test on a military reservation.~~

31 (k) "Law enforcement officer" has the meaning provided by  
32 K.S.A. 21-3110, and amendments thereto, and includes any person  
33 authorized by law to make an arrest on a military reservation for  
34 an act which would constitute a violation of K.S.A. 8-1567, and  
35 amendments thereto, if committed off a military reservation in this  
36 state.

37 Sec. 13. K.S.A. 8-1014 is hereby amended to read as follows: 8-  
38 1014. (a) Except as provided by subsection ~~(d)~~ (e) and K.S.A. 8-  
39 2,142, and amendments thereto, if a person refuses a test, the di-  
40 vision, pursuant to K.S.A. 8-1002, and amendments thereto, shall  
41 suspend the person's driving privileges for one year.

42 (b) Except as provided by subsection ~~(d)~~ (e) and K.S.A. 8-2,142,

(e)

(f)

(g) "Prohibited alcohol level" means an  
alcohol concentration of .02, for a person less  
than 21 years of age, and an alcohol  
concentration of .08, for a person 21 or more  
years of age.

1 suant to K.S.A. 8-1002, and amendments thereto, shall:

2 (1) On the person's first occurrence, suspend the person's driving  
3 privileges for 30 days, then restrict the person's driving privileges  
4 as provided by K.S.A. 8-1015, and amendments thereto, for an  
5 additional 60 days; and

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

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

11 (1) On the person's first occurrence, suspend the person's driving  
12 privileges for 30 days ~~or until the person has completed educational~~  
13 ~~and treatment programs required by the court, whichever is longer,~~  
14 then restrict the person's driving privileges as provided by K.S.A.  
15 8-1015, and amendments thereto, for an additional 330 days; and

16 (2) on the person's second or a subsequent occurrence, suspend  
17 the person's driving privileges for one year ~~or until the person has~~  
18 ~~completed the treatment program required by the court, whichever~~  
19 ~~is longer.~~

20 (d) *Whenever the division is notified by an alcohol and drug*  
21 *safety action program that a person has failed to complete any*  
22 *alcohol and drug safety action education or treatment program or-*  
23 *dered by a court for a conviction of a violation of K.S.A. 8-1567*  
24 *and amendments thereto, the division shall suspend the person's*  
25 *driving privileges until the division receives notice of the person's*  
26 *completion of such program.*

27 (e) Except as provided in K.S.A. 8-2,142, and amendments  
28 thereto, if a person's driving privileges are subject to suspension  
29 pursuant to this section for a test refusal, test failure or alcohol or  
30 drug-related conviction arising from the same arrest, the period of  
31 such suspension shall not exceed the longest applicable period au-  
32 thorized by subsection (a), (b) or (c), and such suspension periods  
33 shall not be added together or otherwise imposed consecutively. In  
34 addition, in determining the period of such suspension as authorized  
35 by subsection (a), (b) or (c), such person shall receive credit for any  
36 period of time for which such person's driving privileges were sus-  
37 pended while awaiting any hearing or final order authorized by this  
38 act.

39 If a person's driving privileges are subject to restriction pursuant  
40 to this section for a test failure or alcohol or drug-related conviction  
41 arising from the same arrest, the restriction periods shall not be  
42 added together or otherwise imposed consecutively. In addition, in  
43 determining the period of restriction, the person shall receive credit

1 for ~~150 days~~ of any period of suspension imposed for a test refusal  
2 arising from the same arrest.

3 (e) (f) If the division has taken action under subsection (a) or  
4 (b) and such action is stayed pursuant to K.S.A. 8-259, and amend-  
5 ments thereto, or if temporary driving privileges are issued pursuant  
6 to subsection (k) of K.S.A. 8-1002, and amendments thereto, the  
7 stay or temporary driving privileges shall not prevent the division  
8 from taking the action required by subsection (c).

9 (f) (g) Upon restricting a person's driving privileges pursuant to  
10 this section, the division shall issue without charge a driver's license  
11 which shall indicate on the face of the license that restrictions have  
12 been imposed on the person's driving privileges and that a copy of  
13 the order imposing the restrictions is required to be carried by the  
14 person for whom the license was issued any time the person is  
15 operating a motor vehicle on the highways of this state. If the person  
16 is a nonresident, the division shall forward a copy of the order to  
17 the motor vehicle administrator of the person's state of residence.

18 Sec. 14. K.S.A. 8-1567, as amended by section 1 of chapter 298  
19 of the 1992 Session Laws of Kansas, is hereby amended to read as  
20 follows: 8-1567. (a) No person shall operate or attempt to operate  
21 any vehicle within this state while:

22 (1) The alcohol concentration in the person's blood or breath as  
23 shown by any competent evidence, including other competent ev-  
24 idence, as defined in ~~paragraph (1) of subsection (f)~~ subsection  
25 (g)(1) of K.S.A. 8-1013, and amendments thereto, is ~~10 the legal~~  
26 ~~limit~~ or more;

prohibited alcohol level

27 (2) the alcohol concentration in the person's blood or breath, as  
28 measured within two hours of the time of operating or attempting  
29 to operate a vehicle, is ~~10 the legal limit~~ or more;

prohibited alcohol level

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

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

34 or

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

38 (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.

41 (c) If a person is charged with a violation of this section involving  
42 drugs, the fact that the person is or has been entitled to use the

the charge.

(d) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be 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 \$200 nor more than \$500. 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 sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. 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. Except as provided in subsection (g), 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. 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 or a subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection (g), 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



1 program.

2 (g) On a second or subsequent conviction of a violation of this  
3 section, the court may place the person convicted under a house  
4 arrest program, pursuant to K.S.A. 21-4603b, and amendments  
5 thereto, to serve the remainder of the minimum sentence only after  
6 such person has served 48 consecutive hours' imprisonment.

7 (h) The court may establish the terms and time for payment of  
8 any fines, fees, assessments and costs imposed pursuant to this sec-  
9 tion. Any assessment and costs shall be required to be paid not later  
10 than 90 days after imposed, and any remainder of the fine shall be  
11 paid prior to the final release of the defendant by the court.

12 (i) In lieu of payment of a fine imposed pursuant to this section,  
13 the court may order that the person perform community service  
14 specified by the court. The person shall receive a credit on the fine  
15 imposed in an amount equal to \$5 for each full hour spent by the  
16 person in the specified community service. The community service  
17 ordered by the court shall be required to be performed not later  
18 than one year after the fine is imposed or by an earlier date specified  
19 by the court. If by the required date the person performs an in-  
20 sufficient amount of community service to reduce to zero the portion  
21 of the fine required to be paid by the person, the remaining balance  
22 of the fine shall become due on that date.

23 (j) The court shall report every conviction of a violation of this  
24 section and every diversion agreement entered into in lieu of further  
25 criminal proceedings or a complaint alleging a violation of this section  
26 to the division. Prior to sentencing under the provisions of this  
27 section, the court shall request and shall receive from the division  
28 a record of all prior convictions obtained against such person for any  
29 violations of any of the motor vehicle laws of this state.

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

33 (1) "Conviction" includes being convicted of a violation of this  
34 section or entering into a diversion agreement in lieu of further  
35 criminal proceedings on a complaint alleging a violation of this  
36 section;

37 (2) "conviction" includes being convicted of a violation of a law  
38 of another state or an ordinance of any city, or resolution of any  
39 county, which prohibits the acts that this section prohibits or entering  
40 into a diversion agreement in lieu of further criminal proceedings  
41 in a case alleging a violation of such law, ordinance or resolution;

42 (3) only convictions occurring in the immediately preceding five  
43 years, including prior to the effective date of this act, shall be taken

1 into account, but the court may consider other prior convictions in  
2 determining the sentence to be imposed within the limits provided  
3 for a first, second, third or subsequent offender, whichever is ap-  
4 plicable; and

5 (4) it is irrelevant whether an offense occurred before or after  
6 conviction for a previous offense.

7 (l) Upon conviction of a person of a violation of this section or  
8 a violation of a city ordinance or county resolution prohibiting the  
9 acts prohibited by this section, the division, upon receiving a report  
10 of conviction, shall suspend, restrict or suspend and restrict the  
11 person's driving privileges as provided by K.S.A. 8-1014, and amend-  
12 ments thereto.

13 (m) Nothing contained in this section shall be construed as pre-  
14 venting any city from enacting ordinances, or any county from adopt-  
15 ing resolutions, declaring acts prohibited or made unlawful by this  
16 act as unlawful or prohibited in such city or county and prescribing  
17 penalties for violation thereof, but the minimum penalty prescribed  
18 by any such ordinance or resolution shall not be less than nor exceed  
19 the minimum penalty prescribed by this act for the same violation,  
20 nor shall the maximum penalty in any such ordinance or resolution  
21 exceed the maximum penalty prescribed for the same violation. In  
22 addition, any such ordinance or resolution shall authorize the court  
23 to order that the convicted person pay restitution to any victim who  
24 suffered loss due to the violation for which the person was convicted.

25 (n) No plea bargaining agreement shall be entered into nor shall  
26 any judge approve a plea bargaining agreement entered into for the  
27 purpose of permitting a person charged with a violation of this sec-  
28 tion, or a violation of any ordinance of a city or resolution of any  
29 county in this state which prohibits the acts prohibited by this sec-  
30 tion, to avoid the mandatory penalties established by this section or  
31 by the ordinance. For the purpose of this subsection, entering into  
32 a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906  
33 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

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

38 (p) For the purpose of this section:

39 (1) "Alcohol concentration" means the number of grams of alcohol  
40 per 100 milliliters of blood or per 210 liters of breath.

41 (2) ~~"Legal limit"~~ has the meaning provided by K.S.A. 8-1013 and  
42 amendments thereto.

43 Sec. 15. K.S.A. 8-2204 is hereby amended to read as follows: 8-

"Prohibited alcohol level"

2204. This act shall be known and may be cited as the uniform act regulating traffic on highways. The uniform act regulating traffic on highways includes K.S.A. 8-1334 to 8-1341, inclusive, and through 8-1341, and amendments thereto; all sections located in articles 10 and 14 to 22, inclusive, through 22 of chapter 8 of the Kansas Statutes Annotated and; K.S.A. 8-1,129, 8-1,130a, 8-1428a, 8-1742a and, 8-2118 and 41-804, and amendments to these sections thereto.

Sec. 16. K.S.A. 12-4305 is hereby amended to read as follows: 12-4305. (a) The municipal judge shall establish a schedule of fines which shall be imposed for municipal ordinance violations that are classified as ordinance traffic infractions. Also, the municipal judge may establish a schedule of fines which shall be imposed for the violation of certain other ordinances. Any fine so established shall be within the minimum and maximum allowable fines established by ordinance for such offenses by the governing body. The following traffic violations are specifically excluded from any schedule of fines:

(1) Reckless driving;

(2) driving while under the influence of alcohol or drugs, or both, or driving with a blood or breath alcohol concentration of ~~10 the legal limit~~, as defined by K.S.A. 8-1013 and amendments thereto, or more;

(3) driving without a valid license issued or on a canceled, suspended or revoked license;

(4) fleeing or attempting to elude a police officer; or

(5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603 and 8-1604 and amendments thereto.

(b) A person charged with the violation of an ordinance contained in a schedule of fines established under subsection (a) shall, except as provided in subsection (c), appear at the place and time specified in the notice to appear. If the person enters an appearance, waives right to trial, pleads guilty or no contest, the fine shall be no greater than that specified in the schedule.

(c) Prior to the time specified in the notice to appear, a person charged with the violation of an ordinance contained in a schedule of fines established under subsection (a) may enter an appearance, waive right to trial, plead guilty or no contest and pay the fine for the violation as specified in the schedule. At the election of the person charged, such appearance, waiver, plea and payment may be made by mail or in person and payment may be by personal check. The complaint shall not have been complied with if a check is not honored for any reason, or the fine is not paid in full prior to the time specified in the notice to appear. When a person charged with an ordinance traffic infraction or other ordinance violation on a sched-

prohibited alcohol level

1 ule of fines makes payment without executing a written waiver of  
2 right to trial and plea of guilty or no contest, the payment shall be  
3 deemed such an appearance, waiver of right to trial and plea of no  
4 contest.

5 The municipal judge may authorize the clerk of the municipal  
6 court or some other person to accept by mail or in person such  
7 voluntary appearance, plea of guilty or no contest and payment of  
8 the fine imposed by the schedule.

9 The schedule of fines and persons authorized to accept such pleas  
10 shall be conspicuously displayed in the office where such voluntary  
11 appearance, plea of guilty and payment of fine occurs.

12 Sec. 17. K.S.A. 41-201 is hereby amended to read as follows:

13 41-201. (a) The director of alcoholic beverage control and agents and  
14 employees of the director designated by the director, with the ap-  
15 proval of the secretary of revenue, are hereby vested with the power  
16 and authority of peace and police officers, in the execution of the  
17 duties imposed upon the director of alcoholic beverage control by  
18 this act and in enforcing the provisions of this act *and the provisions*  
19 *of K.S.A. 41-804, and amendments thereto.*

20 (b) The director and each agent and employee designated by the  
21 director under subsection (a), with the approval of the secretary of  
22 revenue, shall have the authority to make arrests, conduct searches  
23 and seizures and carry firearms while investigating violations of this  
24 act *or violations of K.S.A. 41-804, and amendments thereto*, and  
25 during the routine conduct of their duties as determined by the  
26 director or designee. In addition to the above, the director and such  
27 agents and employees shall have the authority to make arrests, con-  
28 duct searches and seizures and generally to enforce all the criminal  
29 laws of the state as violations of those laws are encountered by such  
30 employees or agents during the routine performance of their duties.  
31 In addition to or in lieu of the above, the director and the director's  
32 agents and employees shall have the authority to issue notices to  
33 appear pursuant to K.S.A. 22-2408 and amendments thereto. No  
34 agent or employee of the director shall be certified to carry firearms  
35 under the provisions of this section without having first successfully  
36 completed the firearm training course or courses prescribed for law  
37 enforcement officers under subsection (a) of K.S.A. 74-5604a and  
38 amendments thereto. The director may adopt rules and regulations  
39 prescribing other training required for such agents or employees.

40 (c) The attorney general shall appoint, with the approval of the  
41 secretary of revenue, an assistant attorney general who shall be the  
42 attorney for the director of alcoholic beverage control and the division

1 fixed by the attorney general with the approval of the director of  
2 alcoholic beverage control and the state finance council.

3 Sec. 18. K.S.A. 41-804 is hereby amended to read as follows:  
4 41-804. (a) *As used in this section, "alcoholic beverage" means any*  
5 *alcoholic liquor, as defined by K.S.A. 41-102 and amendments*  
6 *thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701*  
7 *and amendments thereto.*

8 (b) No person shall transport in any vehicle upon a highway or  
9 street any alcoholic liquor beverage unless such liquor is:

10 (1) In the original unopened package or container, the seal of  
11 which has not been broken and from which the original cap, cork  
12 or other means of closure has not been removed;

13 (2) in the locked rear trunk or rear compartment, or any locked  
14 outside compartment which is not accessible to any person in the  
15 vehicle while it is in motion; or

16 (3) in the exclusive possession of a passenger in a vehicle which  
17 is a recreational vehicle, as defined by K.S.A. 75-1212 and amend-  
18 ments thereto, or a bus, as defined by K.S.A. 8-1406 and amendments  
19 thereto, who is not in the driving compartment of such vehicle or  
20 who is in a portion of such vehicle from which the driver is not  
21 directly accessible.

22 (b) (c) Violation of this section is a misdemeanor punishable by  
23 a fine of not more than \$200 or by imprisonment for not more than  
24 six months, or both.

25 (e) Except as provided in subsection (f) upon conviction or  
26 adjudication of a violation of this section, the judge, in addition  
27 to any other penalty or disposition ordered pursuant to law,  
28 shall suspend the person's driver's license or privilege to op-  
29 erate a motor vehicle on the streets and highways of this state.  
30 Upon conviction or adjudication of the first violation by such  
31 person, the suspension shall be for three months. Upon adju-  
32 dication of a second or subsequent violation, the suspension  
33 shall be for one year.

34 (d) Upon suspension of a license pursuant to this section,  
35 the court shall require the person to surrender the license to  
36 the court, which shall transmit the license to the division of  
37 motor vehicles of the department of revenue, to be retained  
38 until the period of suspension expires. At that time, the licensee  
39 may apply to the division for return of the license. If the license  
40 has expired, the person may apply for a new license, which  
41 shall be issued promptly upon payment of the proper fee and  
42 satisfaction of other conditions established by law for obtaining  
43 a license unless another suspension or revocation of the per-

son's privilege to operate a motor vehicle is in effect.

(e) As used in this section, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

(f) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person convicted of violating this section, as provided in subsection (e), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of less than three months for a first violation nor more than one year for a second violation.

Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this section.

Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions estab-

lished by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this subsection, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(d) The court shall report to the division every conviction of a violation of this section or of a city ordinance or county resolution that prohibits the acts prohibited by this section. 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.

(e) Subject to the provisions of subsection (f), the division, upon receiving a report under subsection (d), shall suspend the driving privileges of the convicted person pursuant to K.S.A. 8-255 and amendments thereto as follows: (1) Upon the first reported conviction of such person, a suspension for three months; and (2) upon the second or a subsequent reported conviction of such person, a suspension for one year.

(f) In lieu of suspension of a person's driving privileges as provided by subsection (e), the court may place restrictions on the person's driving privileges as provided by K.S.A. 8-292 and amendments thereto for a period of: (1) Not less than three months upon the first reported conviction of such person; and (2) not less than one year upon the second or a subsequent reported conviction.

(g) It shall be an affirmative defense to any prosecution under this section that an occupant of the vehicle other than the defendant was in exclusive possession of the alcoholic beverage.

(h) The court shall require any person who is under the age of 21 who violates this section to enter into and complete an alcohol and drug safety action program as provided by K.S.A. 8-1008 and amendments thereto.

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

(1) "Conviction" includes being convicted of a violation of an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits;

(2) only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken

1 into account, but the court may consider other prior convictions in  
2 determining the sentence to be imposed within the limits provided  
3 for a first, second or subsequent offender, whichever is applicable;  
4 and

5 (3) it is irrelevant whether an offense occurred before or after  
6 conviction for a previous offense.

7 (j) This section shall not be construed as preventing any city  
8 from enacting ordinances, or any county from adopting resolutions,  
9 declaring acts prohibited by this section as unlawful or prohibited  
10 in such city or county and prescribing penalties for violation thereof,  
11 but such ordinance or resolution shall provide for suspension or  
12 restriction of driving privileges as provided by this section and the  
13 convicting court shall be required to report convictions for violations  
14 of such ordinance or resolution as provided by subsection (d).

15 (k) This section shall be part of and supplemental to the uniform  
16 act regulating traffic on highways.

17 Sec. 19. K.S.A. 8-255, 8-256, 8-259, 8-286, 8-287, as amended  
18 by section 28 of chapter 239 of the 1992 Session Laws of Kansas,  
19 8-288, 8-289, 8-1001, 8-1002, 8-1005, 8-1011, 8-1012, 8-1013, 8-1014,  
20 8-1567, as amended by section 1 of chapter 298 of the 1992 Session  
21 Laws of Kansas, 8-2204, 12-4305, 41-201, 41-804, 41-2719 and 41-  
22 2720 are hereby repealed.

23 Sec. 20. This act shall take effect and be in force from and after  
24 its publication in the statute book.



TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

HOUSE BILL 2133

by

Timothy Shultz

KANSANS FOR LIFE AT ITS BEST

Good afternoon. My name is Tim Shultz and I am testifying today on behalf of Kansans For Life At Its Best. I would like to thank the committee for allowing me to speak.

It is a commonly known fact that drinking alcohol and driving a vehicle is a deadly combination. I would venture to say that every person in this room has been adversely affected by alcohol related traffic accidents in one way or another. Maybe it was a friend or a relative involved in an accident, or maybe it was you. The simple facts are that alcohol does cause traffic accidents which result in not only physical damage to the vehicles involved and serious personal injury to the people riding in the vehicles, but such accidents also cause death.

The drunk driving problem is not getting any better. According to the Kansas Bureau of Investigation statistical report, Crime In Kansas, 1991, more adults were arrested in 1991 for Driving While Intoxicated than were arrested for any other crime in the state of Kansas. (Attachment A). Nearly 20% of all adult arrests made in 1991 were for Driving While Intoxicated equalling a total of 21,461 arrests for Driving While Intoxicated. There were more adult arrests for Driving While Intoxicated than there were for all drug related crimes combined

in 1991. (Attachment B). When the juvenile arrests are added to the number of adult arrests for Driving While Intoxicated the total number of DWI arrests in 1991 was 21,827.

The Office of Judicial Administration, 1991-1992 Fiscal Year Report shows that there were 8,833 charges for Driving While Intoxicated brought in the Kansas District Courts alone. (Attachment C). The same report for Kansas Municipal Courts shows 15,339 DWI charges were initiated in the 1991-92 fiscal year in the Municipal Courts. (Attachment D). Added together the number of DWI cases in Kansas courts in the 1991-92 fiscal year totaled 24,172.

I have seen a number DWI cases in Municipal Court personally. For the past year I prosecuted in Topeka Municipal Court on behalf of the Topeka City Attorneys Office. I have seen the police tapes of individuals whose blood-alcohol level is very near the current .10 level. I can tell you that you would be shocked at the obviously drunken state many people are in while they are at or are very near a .10 blood alcohol level. The current statutory .10 blood-alcohol level is just not sufficient to insure me that when I, or my wife or family gets into a car they will be safe from drunk drivers.

Therefore, Kansans For Life At Its Best supports H.B. 2133 and strongly urges this committee to pass this bill out favorably.

One area that I would suggest the committee consider amending in the bill is in New Section 14 which amends KSA 8-1567 dealing with the blood-alcohol level and the penalties for

conviction. On page 20 of the bill, section (d) at the top of the page, it states that a violation of this section is a misdemeanor for the first three convictions. I would suggest the bill be amended to make the third conviction a class E felony.

I point out that it is a more serious crime to be caught driving with a suspended drivers license for a third time than it is to be caught driving drunk for a third time. I have attached a copy of KSA 8-262 to my testimony as Attachment E which shows third time convictions for driving on a canceled, suspended or revoked drivers license is a class E felony. The penalty for a first time driving while suspended conviction is likewise more severe than the penalty for a first time DWI conviction.

Only when the crime of driving while intoxicated is made a more serious violation of the law will people stop to think before they get in their car drunk.

Again let me state that Kansans For Life At Its Best strongly supports H.B. 2133. Thank you for your attention. I would answer any questions the committee might have.

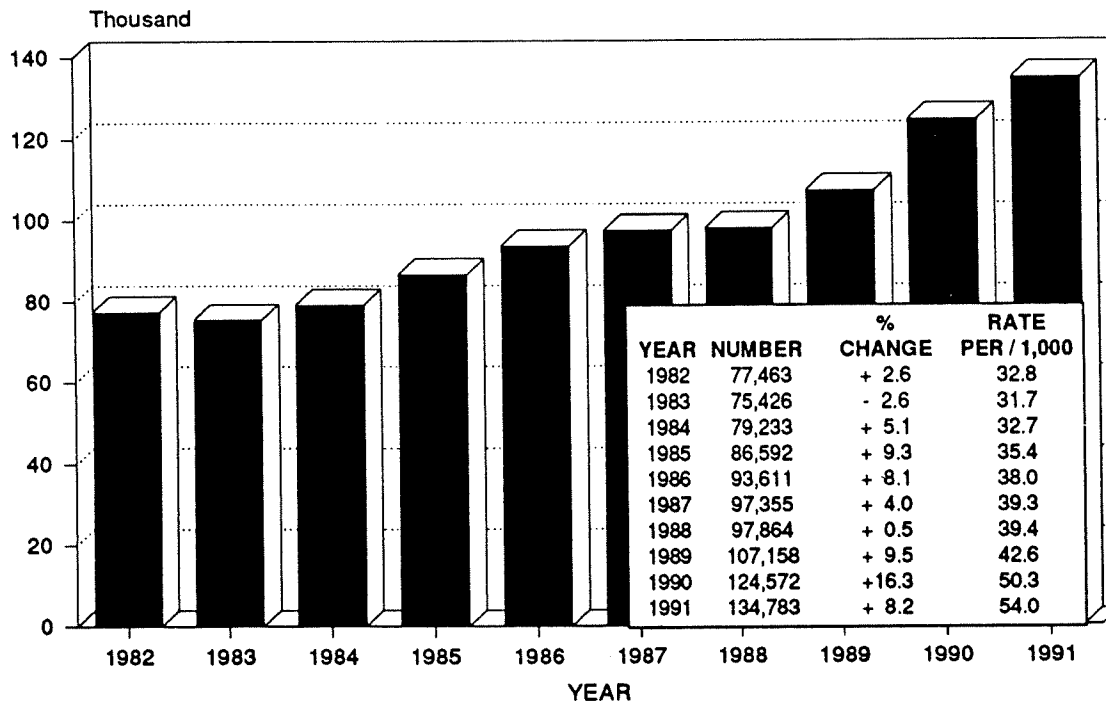
## ARRESTS

The total arrests for 1991 increased 8.2% when compared to 1990. However, this is a continuation of an eight year trend which has seen overall arrests increase 73.8% from 1984 to 1991. The largest increase in 1991 arrests was in Part II adult arrests with 86,220 reported in 1990 and 94,301 (an increase of 9.4%) in 1991.

Juveniles seventeen years of age were the most often arrested accounting for twenty-two percent of all juvenile arrests. While the most frequently arrested adults were 24-29 amounting to 20.9% of total adult arrests.

The greatest number of juveniles arrested (6,303) were for the Part I crime of theft. While the largest number of adult arrests (21,461) were for the Class II offense of DUI.

### ARRESTS TREND 1982 - 1991



**ARRESTED BY STATUS AND SEX OF PERSONS RESTED**  
**TYPE OF OFFENSE**  
**1991**

<b>CRIME INDEX OFFENSES</b>	<b>JUVENILE MALE</b>	<b>JUVENILE FEMALE</b>	<b>TOTAL JUVENILE</b>	<b>ADULT MALE</b>	<b>ADULT FEMALE</b>	<b>TOTAL ADULT</b>
Murder	14	1	15	98	14	112
Rape	44	0	44	241	2	243
Robbery	165	10	175	555	57	612
Aggravated Assault	528	69	597	2,025	313	2,338
Burglary	1,787	108	1,895	2,199	136	2,335
Theft	4,566	1,737	6,303	6,950	3,995	10,945
Motor Vehicle Theft	354	52	406	380	34	414
Arson	97	8	105	105	28	133
<b>TOTAL CRIME INDEX</b>	<b>7,555</b>	<b>1,985</b>	<b>9,540</b>	<b>12,553</b>	<b>4,579</b>	<b>17,132</b>
<b>CLASS II OFFENSES</b>						
Neg. Manslaughter	2	0	2	22	4	26
Other Assaults	1,402	409	1,811	9,873	1,718	11,591
Forgery	87	25	112	606	425	1,031
Fraud	7	12	19	1,717	1,514	3,231
Embezzlement	2	0	2	60	19	79
Stolen Property	110	14	124	252	31	283
Vandalism	1,533	173	1,706	1,932	303	2,235
Weapons	401	23	424	1,254	129	1,383
Prostitution	3	0	3	180	391	571
Other Sex Offenses	212	11	223	896	81	977
<b>DRUG OFFENSES</b>						
Sale-Narcotics	51	6	57	509	103	612
Sale-Marijuana	48	7	55	511	101	612
Sale-Synth Narc	2	0	2	47	8	55
Sale-Other	2	0	2	52	6	58
SALE SUBTOTAL	103	13	116	1,119	218	1,337
Poss-Narcotics	71	11	82	1,075	341	1,416
Poss-Marijuana	215	40	255	2,564	390	2,954
Poss-Synth Narc	7	1	8	75	17	92
Poss-Other	7	9	16	178	52	230
POSSESSION SUBTOTAL	300	61	361	3,892	800	4,692
<b>DRUG OFFENSE TOTAL</b>	<b>403</b>	<b>74</b>	<b>477</b>	<b>5,011</b>	<b>1,018</b>	<b>6,029</b>
<b>GAMBLING OFFENSES</b>						
Bookmaking	0	0	0	0	0	0
Numbers	0	0	0	3	0	3
Other Gambling	3	0	3	44	4	48
<b>GAMBLING TOTAL</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>47</b>	<b>4</b>	<b>51</b>
Family Offenses	33	24	57	208	56	264
DWI	306	60	366	18,544	2,917	21,461
Liquor Violations	1,045	387	1,432	5,088	1,200	6,288
Drunkenness	0	0	0	32	1	33
Disorderly Conduct	639	171	810	3,294	783	4,077
Vagrancy	2	0	2	49	7	56
All Other	2,006	607	2,613	26,391	8,191	34,582
Suspicion	29	2	31	45	8	53
Curfew-Loitering	562	236	798	0	0	0
Runaway	1,260	1,535	2,795	0	0	0
<b>CLASS II TOTAL</b>	<b>10,047</b>	<b>3,763</b>	<b>13,810</b>	<b>75,501</b>	<b>18,800</b>	<b>94,301</b>
<b>GRAND TOTAL</b>	<b>17,602</b>	<b>5,748</b>	<b>23,350</b>	<b>88,054</b>	<b>23,379</b>	<b>111,433</b>

ANNUAL REPORT  
OF THE  
COURTS OF KANSAS  
1991-92 FISCAL YEAR

\*TRAFFIC -- DRIVING UNDER THE INFLUENCE -- CASELOAD ACTIVITY  
YEAR ENDING JUNE 30, 1992, BY COUNTY, BY DISTRICT

	FILINGS	DISPOSITIONS						Total
	Driving Under The Influence	Guilty Pleas	Bond For- feitures	Dis- missals	Trials To Court	Trials By Jury	Diver- sions	
<u>District 1</u>								
Atchison	47	8	0	5	13	0	21	47
Leavenworth	<u>124</u>	<u>4</u>	<u>0</u>	<u>1</u>	<u>17</u>	<u>0</u>	<u>80</u>	<u>102</u>
Total	171	12	0	6	30	0	101	149
<u>District 2</u>								
Jackson	27	11	0	3	2	0	5	21
Jefferson	86	30	0	4	2	1	19	56
Pottawatomie	119	29	0	15	2	0	59	105
Wabaunsee	<u>19</u>	<u>12</u>	<u>0</u>	<u>1</u>	<u>4</u>	<u>1</u>	<u>4</u>	<u>22</u>
Total	251	82	0	23	10	2	87	204
<u>District 3</u>								
Shawnee	276	122	0	2	5	1	159	289
<u>District 4</u>								
Anderson	27	0	0	4	9	0	7	20
Coffey	22	5	0	1	0	0	15	21
Franklin	36	8	0	1	9	0	18	36
Osage	<u>73</u>	<u>19</u>	<u>0</u>	<u>16</u>	<u>3</u>	<u>0</u>	<u>33</u>	<u>71</u>
Total	158	32	0	22	21	0	73	148
<u>District 5</u>								
Chase	43	11	0	3	2	0	20	36
Lyon	<u>90</u>	<u>48</u>	<u>0</u>	<u>12</u>	<u>2</u>	<u>1</u>	<u>18</u>	<u>81</u>
Total	133	59	0	15	4	1	38	117
<u>District 6</u>								
Bourbon	21	7	0	0	0	0	7	14
Linn	18	6	0	2	1	0	10	19
Miami	<u>94</u>	<u>37</u>	<u>0</u>	<u>5</u>	<u>7</u>	<u>0</u>	<u>41</u>	<u>90</u>
Total	133	50	0	7	8	0	58	123
<u>District 7</u>								
Douglas	145	26	0	47	1	2	38	114
<u>District 8</u>								
Dickinson	62	25	0	10	2	3	20	60
Geary	86	8	0	0	52	1	16	77
Marion	12	4	1	1	0	0	4	10
Morris	<u>9</u>	<u>4</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>9</u>	<u>14</u>
Total	169	41	1	12	54	4	49	161
<u>District 9</u>								
Harvey	161	74	5	23	0	0	67	169
McPherson	<u>42</u>	<u>45</u>	<u>7</u>	<u>4</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>58</u>
Total	203	119	12	27	1	1	67	227
<u>District 10</u>								
Johnson	587	185	0	105	80	0	208	578

\*These figures are an additional breakdown of the preceding section.

\*TRAFFIC -- DRIVING UNDER THE INFLUENCE -- CASELOAD ACTIVITY  
YEAR ENDING JUNE 30, 1992, BY COUNTY, BY DISTRICT

	<u>FILINGS</u>	<u>DISPOSITIONS</u>						
	<u>Driving Under The Influence</u>	<u>Guilty Pleas</u>	<u>Bond Forfeitures</u>	<u>Dismissals</u>	<u>Trials To Court</u>	<u>Trials By Jury</u>	<u>Diversions</u>	<u>Total</u>
<u>District 11</u>								
Cherokee	50	5	0	6	5	0	26	42
Crawford	125	32	0	10	4	0	70	116
Labette	<u>66</u>	<u>13</u>	<u>0</u>	<u>6</u>	<u>3</u>	<u>0</u>	<u>31</u>	<u>53</u>
Total	241	50	0	22	12	0	127	211
<u>District 12</u>								
Cloud	43	15	0	8	2	0	21	46
Jewell	2	4	0	1	0	0	1	6
Lincoln	20	2	0	7	1	0	5	15
Mitchell	11	4	0	1	1	0	4	10
Republic	19	0	0	0	10	0	7	17
Washington	<u>9</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>6</u>	<u>9</u>
Total	104	26	1	18	14	0	44	103
<u>District 13</u>								
Butler	96	38	0	3	1	2	24	68
Elk	10	2	0	2	14	0	0	18
Greenwood	<u>44</u>	<u>13</u>	<u>0</u>	<u>13</u>	<u>2</u>	<u>0</u>	<u>12</u>	<u>40</u>
Total	150	53	0	18	17	2	36	126
<u>District 14</u>								
Chautauqua	11	3	0	0	0	0	6	9
Montgomery	<u>62</u>	<u>33</u>	<u>1</u>	<u>6</u>	<u>3</u>	<u>0</u>	<u>9</u>	<u>52</u>
Total	73	36	1	6	3	0	15	61
<u>District 15</u>								
Cheyenne	4	0	0	1	0	0	0	1
Logan	3	1	0	0	1	0	1	3
Rawlins	2	1	0	0	0	0	0	1
Sheridan	2	0	0	0	0	0	0	0
Sherman	37	0	0	4	6	0	15	25
Thomas	26	3	0	2	0	0	15	20
Wallace	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
Total	77	5	0	7	7	0	32	51
<u>District 16</u>								
Clark	13	6	0	0	0	0	2	8
Comanche	2	1	0	0	0	0	1	2
Ford	142	90	1	4	1	0	47	143
Gray	70	35	0	4	3	1	23	66
Kiowa	11	1	0	0	2	0	7	10
Meade	<u>19</u>	<u>11</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>8</u>	<u>21</u>
Total	257	144	1	9	7	1	88	250
<u>District 17</u>								
Decatur	3	1	0	0	2	0	0	3
Graham	2	1	0	0	1	0	0	2
Norton	6	8	0	0	0	0	1	9
Osborne	2	0	0	0	0	0	1	1
Phillips	18	10	0	3	0	0	5	18
Smith	<u>19</u>	<u>13</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>16</u>
Total	50	33	0	6	3	0	7	49

\*These figures are an additional breakdown of the preceding section.



\*TRAFFIC -- DRIVING UNDER THE INFLUENCE -- CASELOAD ACTIVITY  
YEAR ENDING JUNE 30, 1992, BY COUNTY, BY DISTRICT

	FILINGS Driving Under The Influence	DISPOSITIONS						Total
		Guilty Pleas	Bond For- feitures	Dis- missals	Trials To Court	Trials By Jury	Diver- sions	
<u>District 18</u>								
Sedgwick	1,435	882	72	147	25	13	386	1,525
<u>District 19</u>								
Cowley	156	45	0	13	5	1	37	101
<u>District 20</u>								
Barton	154	33	0	25	0	0	64	122
Ellsworth	30	9	1	0	0	0	20	30
Rice	31	3	0	4	39	0	9	55
Russell	39	14	0	17	0	5	19	55
Stafford	<u>20</u>	<u>6</u>	<u>1</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>8</u>	<u>20</u>
Total	274	65	2	51	39	5	120	282
<u>District 21</u>								
Clay	14	4	0	0	2	0	9	15
Riley	<u>186</u>	<u>34</u>	<u>0</u>	<u>29</u>	<u>0</u>	<u>1</u>	<u>91</u>	<u>155</u>
Total	200	38	0	29	2	1	100	170
<u>District 22</u>								
Brown	65	33	1	3	6	0	26	69
Doniphan	26	18	0	2	0	0	9	29
Marshall	62	28	0	9	5	0	18	60
Nemaha	<u>14</u>	<u>2</u>	<u>0</u>	<u>3</u>	<u>1</u>	<u>0</u>	<u>6</u>	<u>12</u>
Total	167	81	1	17	12	0	59	170
<u>District 23</u>								
Ellis	445	89	10	21	0	5	320	445
Gove	8	0	0	0	1	0	4	5
Rooks	14	1	0	5	0	0	4	10
Trego	<u>19</u>	<u>10</u>	<u>6</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>7</u>	<u>25</u>
Total	486	100	16	28	1	5	335	485
<u>District 24</u>								
Edwards	8	2	1	2	1	0	3	9
Hodgeman	8	1	0	1	2	0	1	5
Lane	6	0	0	0	0	0	4	4
Ness	3	0	0	0	0	0	0	0
Pawnee	20	3	0	2	4	0	11	20
Rush	<u>15</u>	<u>2</u>	<u>2</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>8</u>	<u>20</u>
Total	60	8	3	13	7	0	27	58
<u>District 25</u>								
Finney	520	266	16	22	10	0	134	448
Greeley	6	4	0	0	0	0	3	7
Hamilton	19	4	0	4	0	0	8	16
Kearny	60	15	0	3	3	0	22	43
Scott	14	5	0	2	2	0	7	16
Wichita	<u>12</u>	<u>6</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>9</u>
Total	631	300	16	31	15	0	177	539

\*TRAFFIC -- DRIVING UNDER THE INFLUENCE -- CASELOAD ACTIVITY  
YEAR ENDING JUNE 30, 1992, BY COUNTY, BY DISTRICT

	FILINGS Driving Under The Influence	DISPOSITIONS						Total
		Guilty Pleas	Bond For- feitures	Dis- missals	Trials To Court	Trials By Jury	Diver- sions	
<u>District 26</u>								
Grant	22	7	0	2	3	0	9	21
Haskell	17	0	5	0	12	0	16	33
Morton	9	1	0	1	2	0	3	7
Seward	35	6	0	6	4	0	14	30
Stanton	19	10	0	3	0	0	6	19
Stevens	<u>10</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>6</u>
Total	112	27	5	12	21	0	51	116
<u>District 27</u>								
Reno	516	124	20	29	149	0	161	483
<u>District 28</u>								
Ottawa	25	5	0	3	1	0	8	17
Saline	<u>307</u>	<u>103</u>	<u>0</u>	<u>60</u>	<u>35</u>	<u>2</u>	<u>48</u>	<u>248</u>
Total	332	108	0	63	36	2	56	265
<u>District 29</u>								
Wyandotte	832	212	0	17	5	2	480	716
<u>District 30</u>								
Barber	34	14	0	2	0	0	14	30
Harper	44	5	0	9	2	0	16	32
Kingman	29	10	0	5	0	0	15	30
Pratt	25	1	0	0	11	0	8	20
Sumner	<u>92</u>	<u>47</u>	<u>0</u>	<u>7</u>	<u>2</u>	<u>1</u>	<u>17</u>	<u>74</u>
Total	224	77	0	23	15	1	70	186
<u>District 31</u>								
Allen	44	10	0	5	0	0	22	37
Neosho	55	44	0	28	3	0	1	76
Wilson	92	20	0	13	3	0	47	83
Woodson	<u>39</u>	<u>10</u>	<u>0</u>	<u>7</u>	<u>3</u>	<u>0</u>	<u>12</u>	<u>32</u>
Total	230	84	0	53	9	0	82	228
STATE TOTAL	8,833	3,226	151	878	618	44	3,368	8,285

\*These figures are an additional breakdown of the preceding section.

**KANSAS MUNICIPAL COURTS**

**CASELOAD REPORT**

**FY 1992**

**Kansas Supreme Court  
Office of Judicial Administration**

	<u>Reckless Driving</u>	<u>Driving Under Influence</u>	<u>Fleeing Police</u>	<u>Other Traffic Violations</u>	<u>Crimes Against Persons</u>	<u>Crimes Against Property</u>	<u>Other Crimes</u>	<u>Total</u>
WEIR	0	2	0	105	1	1	9	118
WELLINGTON	5	61	1	319	43	21	92	542
WELLSVILLE	1	3	0	71	6	6	9	96
WESTWOOD	0	48	0	1,485	0	9	17	1,559
WESTWOOD HILLS	0	3	0	248	0	0	1	252
WHITE CITY	0	0	0	4	0	1	1	6
WHITEWATER	0	0	0	66	0	0	3	69
WICHITA	104	2,790	103	88,806	8,292	2,092	12,199	114,386
WILSON	0	0	0	55	0	0	0	55
WINCHESTER	1	0	0	8	0	0	1	10
WINFIELD	4	24	0	719	101	75	372	1,295
YATES CENTER	0	0	0	244	0	0	61	305
STATEWIDE GRAND TOTAL:	1,665	14,110	1,017	354,034	17,368	11,393	52,992	452,579

	<u>DUI</u>						<u>ALL OTHER</u>					
	<u>Guilty</u> <u>Pleas</u>	<u>Bond</u> <u>Forfeitures</u>	<u>Dis-</u> <u>missals</u>	<u>Trials</u>	<u>Diver-</u> <u>sions</u>	<u>Total</u> <u>DUI</u>	<u>Guilty</u> <u>Pleas</u>	<u>Bond</u> <u>Forfeitures</u>	<u>Dis-</u> <u>missals</u>	<u>Trials</u>	<u>Diver-</u> <u>sions</u>	<u>Total</u> <u>Other</u>
WEIR	0	0	0	0	1	1	90	0	19	1	1	111
WELLINGTON	9	3	2	4	17	35	236	6	69	8	11	330
WELLSVILLE	0	0	0	0	2	2	71	0	14	1	8	94
WESTWOOD	1	0	1	2	43	47	1,414	0	87	29	0	1,530
WESTWOOD HILLS	0	0	0	0	3	3	264	0	38	5	0	307
WHITE CITY	0	0	0	0	0	0	5	0	2	1	0	8
WHITEWATER	0	0	0	0	0	0	66	0	0	3	0	69
WICHITA	1,171	412	368	149	564	2,664	60,827	4,509	17,311	1,460	400	84,507
WILSON	0	0	0	0	0	0	49	0	2	0	0	51
WINCHESTER	0	0	0	0	0	0	8	0	0	0	0	8
WINFIELD	7	0	6	1	20	34	356	757	118			
YATES CENTER	0	0	0	0	0	0	224	0	29	16	0	269
GRAND TOTAL:	4,990	727	2,281	1,835	5,506	15,339	290,231	14,455	67,852	16,931	6,329	395,798

**8-261.**

History: L. 1937, ch. 73, § 28; Repealed, L. 1949, ch. 104, § 53; July 1.

**8-261a. Making false affidavit perjury.**

Any person who shall willfully and corruptly swear or affirm falsely to any material matter or thing required by the terms of this act to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

History: L. 1959, ch. 49, § 29; July 1.

**CASE ANNOTATIONS**

1. Violation of city ordinance prohibiting same acts does not count toward conviction under 8-285. *State v. Wood*, 231 K. 699, 701, 647 P.2d 1327 (1982).

**8-262. Driving while license canceled, suspended or revoked; penalty; extension of time of suspension or revocation.** (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked shall be guilty of a class B misdemeanor on the first conviction, a class A misdemeanor on the second conviction and for third and subsequent convictions shall be guilty of a class E felony.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license or was, at the time of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply for a new license to operate a motor vehicle.

(3) Except as otherwise provided by subsection (a)(4), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so

suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) The division upon receiving a record of the conviction of any person under this section or any ordinance of any city or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.

History: L. 1937, ch. 73, § 29; L. 1949, ch. 104, § 33; L. 1959, ch. 49, § 30; L. 1967, ch. 59, § 6; L. 1970, ch. 52, § 1; L. 1972, ch. 28, § 2; L. 1974, ch. 38, § 5; L. 1981, ch. 43, § 1; L. 1983, ch. 34, § 4; L. 1985, ch. 48, § 1; L. 1985, ch. 78, § 6; L. 1991, ch. 39, § 1; July 1.

**Research and Practice Aids:**

Automobiles — 326.

C.J.S. Motor Vehicles §§ 638, 639, 651.

Am.Jur.2d Automobiles and Highway Traffic §§ 126, 127.

**Law Review and Bar Journal References:**

1956-57 survey of Kansas law, Fred N. Six, 6 K.L.R. 163, 165 (1957).

Changes in penalties for driving with canceled, suspended or revoked license, Robert F. Bennett, 39 J.B.A.K. 107, 109 (1970).

"Recent Developments—Traffic Cases and License Problems," William M. Ferguson, 39 J.B.A.K. 351, 401 (1970).

**Attorney General's Opinions:**

Driving under influence of alcohol; imposition by municipal courts for subsequent violations. 82-155.

Use of prior convictions in determining sentence for DUI offense. 82-185.

Municipal Court Jurisdiction. 83-79.

Drivers' licenses; driving while license canceled, suspended or revoked; nonresident motorist. 85-9.

Motor vehicle drivers' license act; application of mandatory 90-day jail term. 88-23.

**CASE ANNOTATIONS**

1. Sheriff has no authority to authorize driving while licenses suspended. *State v. Merrifield*, 180 K. 267, 269, 303 P.2d 155.

2. Violation is act malum prohibitum; standing alone is not common law manslaughter. *State v. Yowell*, 184 K. 352, 359, 362, 363, 364, 336 P.2d 841.

**SUMMARY OF TESTIMONY**

**Kansas Highway Patrol  
Before the  
House Judiciary Committee  
In Support of  
House Bill # 2133**

**Presented by  
Captain Bob Giffin  
February 9, 1993**

On behalf of the superintendent, Colonel Lonnie McCollum, I appear before you today in support of two provisions contained in House Bill 2133. Those two provisions are:

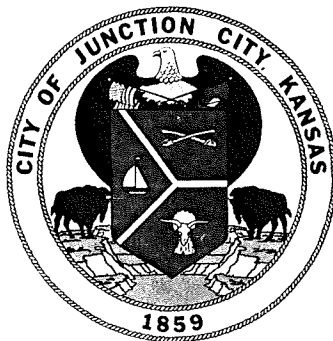
1. **Section 12:** Establishing the alcohol concentration in a persons blood or breath at .08 or more as per se evidence that a person was driving under the influence.

Several recent studies have indicated that all persons are impaired to some extent at .08 BAC. Other studies have shown that the higher the alcohol concentration, the greater the risk of involvement in a motor vehicle crash. These studies have indicated a clear health based rationale for a lower BAC standard.

By enacting .08 legislation, the Kansas legislature creates a greater deterrent for drunk driving by setting a tougher standard.

2. **Section 18:** Establishing a new definition, "alcoholic beverage", and combining K.S.A. 41-2719 (cereal malt beverage) with K.S.A. 41-804 (alcoholic liquor). This should make open container laws easier to understand and enforce.

CHARLES A. ZIMMERMAN  
City Attorney



Municipal Building  
7th & Jefferson  
P.O. Box 287  
Junction City, KS 66441  
913-238-2975

OFFICE OF THE CITY ATTORNEY

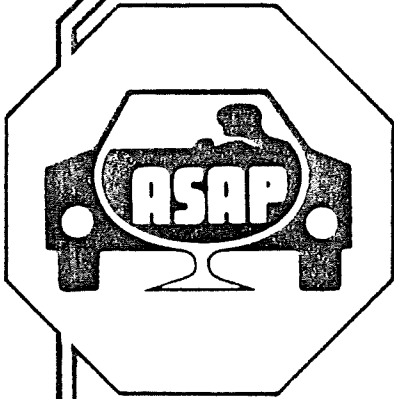
TESTIMONY CONCERNING HB2133 BEFORE THE  
HOUSE JUDICIARY COMMITTEE

As you know, Junction City is contiguous with the Ft. Riley Military Reservation. Unfortunately, our Junction City Municipal Court must deal with violations of Kansas DUI laws on a regular basis. HB2133 proposes, inter alia, changes to K.S.A. 8-1013, the definitions Section of the law concerning administrative and procedural matters concerning DUI. Section 12 of HB2133 at (b)(1) adds to the definition of "alcohol or drug related conviction" the following: "conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state". Without the addition of this language persons convicted in Federal Magistrate's Court on a military reservation are treated differently from persons convicted in state and municipal courts. That is, their convictions are not considered as "alcohol or drug related convictions". For this reason, I strongly urge the Committee to favorably consider the proposed language referred to.

In the same vane, I would ask the Committee to consider an additional amendment to HB2133. This would add language to Section 14 which amends K.S.A. 8-1567, the DUI criminal statute. Currently, under subsection (k), the law defines a conviction as a violation of the statute itself (K.S.A. 8-1567), a diversion agreement in lieu of criminal proceedings, conviction of the DUI law of another state or the ordinances of any city. What it does not include is conviction for DUI committed on a military reservation. In order that the criminal statute mirrors the procedural statute, I recommend that the same language currently recommended in Section 12 of HB2133 mentioned above be added to Section 14 at subsection (k). This amendment would insure that all Kansas courts can consider DUI convictions occurring on a military reservation as prior convictions.

HOUSE JUDICIARY  
Attachment 10  
02-09-93





# Kansas

## Alcohol Safety Action Project

3312 Clinton Parkway, Lawrence, KS 66047

February 9, 1993

House Judiciary Committee  
Rep. Mike O'Neil, Chairman  
Kansas House of Representatives

Re: HB 2133

Dear Mr. Chairman and Committee Members,

I am testifying today on behalf of the Kansas Coordinators of Alcohol Safety Action Projects in support of HB 2133. KCASAP is a state association that represents local drunken driving programs throughout the state. KCASAP has been active in this field for the past fourteen years. We feel that HB 2133 is a positive step in further reducing tragic alcohol and drug related traffic fatalities. The National Highway Traffic Safety Administration recently projected that 1992 will be the lowest traffic death toll in the past 30 years. This is due in large part to strong drunken driving laws enacted by state legislators. We commend your past efforts in this regard and hope you will vote to support HB 2133.

Thank you for your time and consideration.

Respectfully submitted,

Bruce H. Beale  
President 1993

Kansas Department of Transportation  
February 9, 1993

SECTION 410 ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES:

The Anti-Drug Abuse Act of 1988 created the program, which was re-authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The interim final rule was issued June 30, 1992. Congress has since made some technical amendments to the section, adding a sixth basic grant criteria, and changing the funding ceiling and apportionment process.

Availability of Funds

Five year program with funding FY92 - FY97.

Basic Grant:

A state is eligible if five out of six following criteria is met:

- 1) Prompt license suspension: requires administrative revocation of drivers license and the arrest to suspension time of an average of 30 days. Establishes suspension periods.
- \*\*2) Per Se law: requires .10 BAC first three years of program, .08 BAC last two years.
- \*\*3) Roadside sobriety checks - statewide program.
- 4) Self-sustaining drunk driving prevention program - requires significant portion of fines/surcharges (or equiv. amt.) collected from those apprehended and fined be returned to communities with comprehensive programs.
- \*\*5) Underage 21 prevention program: requires "effective system" for prevention of purchasing by under 21, e.g. distinguishable licenses.
- \*\*6) Mandatory sentence - requires 48 consecutive hours jail time.

\*\*indicates current eligibility.

Amount of Basic Grant:

Ceiling: Up to 30% of the amount apportioned to the state under Section 402 for FFY92 apportionment.

Estimated maximum grant amount FFY93: \$635,900

Supplemental Grant:

- 1) Per se law for under 21: requires .02 BAC for persons under age 21.
- \*\*2) Open container law.
- 3) Suspension of registration and return of license plates: requires susp. of regis. and plates, applies to repeat offenders in addition to driving on susp or revoked license.
- \*\*4) Mandatory blood alcohol testing programs.
- 5) Drugged driving prevention: requires DUI laws to apply to controlled substances, plus enhances penalties beyond for both on 3rd or subsequent offenses. Provides for effective system, including prosecution, training, and rehab and treatment.
- 6) Per se law: .08 BAC first three years of program
- \*\*7) Video equipment for detection of drunk and drugged drivers: state provides a program to acquire equipment for detection and prosecution with training.

\*\*indicates current eligibility.

Amount of Supplemental Grant:

Ceiling: Each supplemental grant criteria provides 5% of the amount apportioned to the state under Section 402 for FFY92.

Estimated maximum grant amount based on three qualifying criteria  
FFY93: \$45,000.

Total Maximum Estimate for FFY93: \$680,900.

Reapportionment of Non-eligible State Funds:

The amount(s) not apportioned to a state(s) because of non-eligibility shall be reapportioned to the other states eligible to receive a grant, up to the maximum allowable. This shall be made after August 1 of each fiscal year.

**NOTE:** The estimated grant amounts reflect those quoted by the National Highway Traffic Safety (NHTSA) 7-29-92. These amounts represent the MAXIMUM allowable. Upon qualification, each state will receive an initial allocation, based upon all states qualifying. NHTSA has not issued an initial allocation schedule at this time. In FY92, 19 states qualified.



## Department of Health and Environment

Robert C. Harder, Secretary  
Testimony presented to Reply to: (913) 296-1620  
Committee on Judiciary  
by

The Kansas Department of Health and Environment

House Bill 2133

The Kansas Department of Health and Environment has statutory responsibility to administer a statewide breath alcohol program which ensures that court-defensible test results are available for the prosecution of 20,000 DUI subjects who are arrested in Kansas each year. The Kansas breath alcohol program has been operational in current form since 1973 and breath alcohol evidential test results are widely accepted throughout the judicial system.

Preventable morbidity and mortality from drinking drivers on Kansas highways constitute a significant public health problem in our state. There is clear evidence that demonstrated impairment of driving ability begins at 0.05 and it is for this reason that an established level of 0.04 is consistent with federal recommendations for commercial vehicle operators. There is equally convincing evidence that an alcohol level of 0.08 is inconsistent with the ability to safely operate a motor vehicle. At this alcohol level, all persons, regardless of drinking experience, have seriously impaired motor skills and reaction times. Kansas should join several other states which have established a per se level of 0.08 to improve highway safety.

This bill also proposes to establish a limit of 0.02 for drivers under the age of 21 years. While this proposal may be directed at the worthy goal of discouraging underage drinking, establishing this limit could result in several operational difficulties. First, this alcohol level is not associated with any consensus on driver impairment. Roadside sobriety tests would not be expected to detect this level of alcohol and establishing probable cause for arrest may be difficult. And finally, evidential breath test instruments have not been documented to produce court-defensible data at these low alcohol levels. If it is important to establish an additional alcohol level based upon an age differential, 0.04 may provide a more defensible choice.

One point of language clarification is worthy of note. On page 17, line 8, the term "legal limit" is defined. This term is then used throughout the bill. It should be changed to "threshold limit" or some similar terminology. As currently drafted, it would appear to be illegal to be at the "legal limit."

In summary, we are strongly supportive of the establishment of a "per se" DUI alcohol level of 0.08 in order to make our highways safer for all Kansas citizens.

Testimony presented by: Dr. Roger Carlson, Director  
Kansas Health and Environmental Laboratory  
February 9, 1993



Chairman Mike O'Neal,  
Members of the House Judiciary Committee

My name is Frances Wood, 4724 S. E. 37th St., Topeka, KS 66605, a volunteer for Woman's Christian Temperance Union on the state and local level.

I am speaking as a proponet for HB 2133.

You are aware of many statistics that would support this bill. I would like to reference some:

Approximately 24.8% of all drivers involved in fatal crashes were intoxicated at the time of their crash.

In the past decade, four times as many Americans died in drunk driving crashes as were killed in the Vietnam War.

It is estimated that one out of every 200 babies born today will die in a crash with an intoxicated driver.

About two in every five Americans will be involved in an alcohol-related crash at some time in their lives.<sup>1</sup>

"Impairment in all these areas (motor skills) was significant at blood alcohol concentrations of .05 percent, and impairment first appeared in many of these important areas of performance at blood alcohol concentrations of .02 percent, substantially below the legal standard in most states for drunkenness, which is .10 percent."<sup>2</sup>

Nearly one-third of all high school seniors "binge drink" on a regular basis.

A young American dies every three hours in an alcohol-related car crash.<sup>3</sup>

In respect to the above facts, it is imperative that we lower the legal limits of .10% blood alcohol and encourage strict law enforcement and expeditious court proceedings.

1. National Highway Traffic Safety Administration, 1991
2. Alexander C. Wagenaar, PHD, University of Minnesota
3. National Council on Alcoholism and Drug Dependence, Inc.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

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Testimony of  
Nancy Lindberg  
Assistant Attorney General  
Before the House Judiciary Committee  
RE: House Bill 2133  
February 9, 1993

On behalf of Attorney General Bob Stephan and his Victims' Rights Task Force, I am here to speak in support of House Bill 2133.

In February 1988, Attorney General Stephan formed a 50-member Victims' Rights Task Force. The purpose of the task force was and still is to insure that the rights and needs of Kansas crime victims are not neglected. The Victims' Rights Task Force continues to look at the needs of crime victims.

The task force and Attorney General Stephan support legislation which makes it illegal for a person to operate a motor vehicle if he/she has a blood alcohol level of .08 or more. This bill is one of several that will lower the legal limit.

Attorney General Stephan believes that since it is against the law to consume alcohol under the age of 21, then it is superfluous to include a .02 level for a person less than 21 years of age. He believes that if you want to tighten

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restrictions on juveniles who drink, then increase the penalty if they are drinking and not wait until they are caught driving a vehicle. It is an additional expense for blood alcohol analysis and law enforcement services to include the .02 provision.

National statistics show that approximately 22,000 people are killed and 345,000 injured in the United States each year due to drunk driving. In Kansas, in 1991 there were 110 alcohol related deaths and 3,855 alcohol related accidents. According to the KBI in 1991 there were 366 DUI juvenile arrests and 21,461 other DUI arrests. A frightening number of Kansans are still drinking and driving.

It is imperative that we enhance sanctions against those who drive while under the influence. There have been many studies done to determine the extent which alcohol impairs the person who drives. The National Technical Information Service of Springfield, Virginia, did a study for the U.S. Department of Transportation. This study revealed that all persons to some extent are impaired at .08. In fact, some studies have shown an impact on driving ability after an alcohol concentration of .015.

We believe by passing House Bill 2133, you will be providing law enforcement another means to remove alcohol impaired drivers from our streets and highways.

I urge your support of House Bill 2133. Thank you.

First Assistant District Attorney  
Joanne Meinecke  
Assistant District Attorneys  
Athena E. Andaya  
James A. Brown  
David B. Debenham  
Gwynne E. Harris  
Michelle V. Hostetler  
E. Bernard Hurd  
Michael F. McElhinney  
Tony W. Rues  
Lori Reyes Seifert  
Jodie Van Meter

Joan M. Hamilton  
District Attorney  
Kansas Third Judicial District

Suite 214 • Shawnee County Courthouse • Topeka, Kansas 66603-3922  
Telephone: (913) 291-4330 • Fax: (913) 291-4162

Victim/Witness Coordinator  
Suzanne H. Johnson

Investigators  
Donald M. Murphy  
David A. Russell

February 9, 1993

HOUSE BILL NO. 2133

TO: House Judiciary Members

FROM: Joan Hamilton, Shawnee County District Attorney

POSITION: In favor of the passage of House Bill No. 2133

I want to address you only briefly to tell you that the Shawnee County District Attorney's office supports the passage of House Bill No. 2133. The significant part of this bill is, of course, the lowering of the blood alcohol level from .10 to .08. However, line 8 & 9, page 17 is also of importance in the prosecution of DUI cases. A person less than 21 years of age is not supposed to be drinking at all and it is very difficult to register any level under .02 on the machine. Therefore, by setting a maximum of .02, there is a presumption of consumption of alcohol. Other elements can apply, but this distinction will assist law enforcement officers.

The other changes in this House Bill 2133 are competently addressed by the substance abuse programmers that work with the courts and our office of the District Attorney.

Thank you for your time and I am available for questions.

*Justice for All*

HOUSE JUDICIARY  
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02-09-93



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# Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

## Testimony in Support of

### House Bill No. 2133

House Judiciary Committee

February 9, 1993

The Kansas County and District Attorneys Association appears in support of HB 2133. The concentration of license revocation and suspension actions in the Department of Motor Vehicles would appear to make such sanctions more efficient and more uniform throughout the state. In addition, such sanctions makes it clear that driving in the State of Kansas is still a privilege, and not a right.

Our specific concerns deal with Section 14 of the bill, which amends K.S.A. 8-1567, as amended by Section 1 of SB 350. We are still concerned about the advisability of taking the PIK definition of "under the influence" which includes "to a degree that renders the person incapable of safely driving a vehicle" and making it part of the statutory elements of the crime. In those cases where a BAT is refused, and there is no evidence of poor driving (such as a checklane stop), there is insufficient evidence to convict under the amended statute.

Our main concern, however, is that in spite of the public outcry and legislative scrutiny involving driving under the influence, conviction of DUI for a third offense in five years is still a misdemeanor. It is the position of the Kansas County and District Attorneys Association that such a person should at least be subject to the same sanctions as a person caught driving after having been declared a/an habitual violator (a violation of K.S.A. 8-287, as amended by Sec. 28, Ch. 239, 1992 Session Laws); or a person who fails or refuses to bring his or her vehicle to a stop, flees, or attempts to elude a police vehicle, when given visual or audible signals to stop (a violation of K.S.A. 8-1568, as amended by Sec. 29, Ch. 239, 1992 Session Laws). KCDAAs proposes an amendment to HB 2133 to provide for similar penalties. We have attached a balloon of Section 14(d) of the bill with the proposed language. We have also attached copies of the habitual violator and fleeing and eluding statutes which presently contain such penalties.

We respectfully urge the Committee to adopt our proposed amendment to Section 14(d) of House Bill 2133 and recommend the bill favorably for passage.

subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) The division, upon receiving a record of the conviction of any person under this section or any ordinance of any city or a law of another state which is in substantial conformity with this section, such conviction upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.

Sec. 28. K.S.A. 8-287 is hereby amended to read as follows: 8-287. It shall be unlawful for any person to operate any motor vehicle in this state while any court order declaring such person to be ~~an~~ a habitual violator and prohibiting such operation remains in effect. Any person found to be ~~an~~ a habitual violator under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a class E felony. *On or after July 1, 1993, any person found to be a habitual violator under the provisions of this act who is thereafter convicted of operating a motor vehicle in this state, while the order of the court prohibiting such operating is in effect, shall be guilty of a severity level 9, nonperson felony.*

Sec. 29. K.S.A. 8-1568 is hereby amended to read as follows: 8-1568. (a) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (b). The signal given by the police officer

may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying such officer's badge of office, and the officer's vehicle shall be appropriately marked showing it to be an official police vehicle.

(b) Every person convicted of violating subsection (a), upon a first conviction, shall be guilty of a class B misdemeanor. Every person convicted of violating subsection (a), upon a second conviction of such subsection, shall be guilty of a class A misdemeanor. Every person convicted of violating subsection (a), upon a third or subsequent conviction of such subsection, shall be guilty of a class E felony. *Every person convicted of violating subsection (a) on or after July 1, 1993, upon a first conviction, shall be guilty of a class B nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a second conviction of such subsection, shall be guilty of a class A nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a third or subsequent conviction of such subsection, shall be guilty of a severity level 9, person felony. For the purpose of this section "conviction" means a final conviction and without regard whether sentence was suspended or probation granted after such conviction; also, Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.*

Sec. 30. K.S.A. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt committed in court or for failure to obey process issued by such municipal judge, in the same manner and to the same extent as a judge of the district court.

(b) The municipal judge shall have the power to hear and determine all cases properly brought before such municipal judge to: Grant continuances; sentence those found guilty to a fine or confinement in jail, or both; commit accused persons to jail in default of bond; determine applications for parole; release on probation; grant time in which a fine may be paid; correct a sentence; suspend imposition of a sentence; set aside a judgment; permit time for post trial motions; and discharge accused persons.

(c) The municipal judge shall maintain a docket in which every cause commenced before such municipal judge shall be entered. Such docket shall contain the names of the accused persons and complainant, the nature or character of the offense, the date of trial, the names of all witnesses sworn and examined, the finding of the court, the judgment and sentence, the date of payment, the date

On charge.

(d) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be 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 \$200 nor more than \$500. 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 sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. 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. Except as provided in subsection (g), 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. 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 or a subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection (g), 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

except upon a third or subsequent conviction.

*Every person convicted of violating subsection (a) on or after July 1, 1993, upon a first conviction, shall be guilty of a class B nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a second conviction of such subsection, shall be guilty of a class A nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a third or subsequent conviction of such subsection, shall be guilty of a severity level 9, person felony.*