

## 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 10, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Greta Goodwin - Excused  
Representative David Heinemann - Excused  
Representative Rand Rock - Excused

Committee staff present:

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

Conferees appearing before the Committee:

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association  
Philip Alexander, Senior Assistant City Attorney, Wichita  
Rosalie Thornburgh, Kansas Department of Transportation  
Representative Rex Crowell  
Gene Johnson, Kansas Alcoholism & Drug Addiction Counselors Association  
Dr. Roger Carlson, Health and Environmental Laboratory  
Terry Scott, Highway Patrol  
John Smith, Department of Revenue

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

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, appeared before the committee as an opponent to the bill. They believe that the real problem is not addressed in this bill that problem is the repeat offender. (Attachment #1)

Philip Alexander, Senior Assistant City Attorney, Wichita, appeared before the committee as a supporter of this bill and HB 2355. He requested an amendment on HB 2133 dealing with prosecution of erratic drivers that take the breathalyzer test but show BAC levels slightly under .10% (see HB 2133). An amendment requested on HB 2355 would allow local units to provide DUI penalties which exceed those prescribed by the statute. (Attachment #2)

Hearings on HB 2133 were closed.

Hearings on HB 2355 were opened dealing with alcohol related offenses.

Representative Rex Crowell appeared before the committee as the main sponsor of the bill. He gave a brief description of what the bill proposes. (Attachment #3)

Gene Johnson, Kansas Alcoholism & Drug Addiction Counselors Association, appeared before the committee as a proponent to the bill. He stated that the language on page 13, lines 15 through 20 are not clear and leads one to believe that the \$110 Evaluation Fee will be waived by the Court if the offender immediately places himself in a treatment program. (Attachment #4)

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 10, 1993.

Dr. Roger Carlson, Kansas Department of Health & Environmental Laboratory, appeared before the committee in support of this bill. He stated that the BAC levels are influenced by four major factors: amount of alcohol consumed, the time frame of consumption, the nature and volume of food consumed and the total body weight of the person. With regard to the issue of .07% standard for underage drivers, he testified that the results were not influenced by such substances as cough medicine or a product such as NyQuil. (Attachment #5)

Terry Scott, Highway Patrol, appeared before the committee in support of the bill. He stated that they would support anything that would help keep drunk drivers off the roads. He disputed earlier testimony given by Tuck Duncan to the effect that there weren't enough law enforcement resources to enforce a .08% standard. He testified that there were adequate resources and that the Highway Patrol strongly endorses the .08% standard.

Rosalie Thornburgh, Kansas Department of Transportation, stated that the State is currently receiving federal funds but if the result of a second or more DUI arrest is the interlock system, then the State will be out of compliance with the federal government requirements for suspension.

John Smith, Kansas Department of Revenue, appeared before the committee to support all the DUI restrictions in this bill.

Hearings on HB 2355 were closed.

The Committee adjourned at 5:15 p.m. The next Committee meeting is February 11, 1993 at 3:30 p.m. in room 313-S.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 10

[illegible]

A . A . N . S . A . S  
**WINE & SPIRITS**  
WHOLESALE ASSOCIATION, INC.

February 9, 1993

To: House Judiciary Committee  
From: R.E. "Tuck" Duncan  
RE: HB 2133

We appreciate this opportunity to testify and want to commend you Mr. Chairman, and your leadership, and that of your colleagues on this committee, for focusing attention on the tragedy of drunk driving. Long before the term "social responsibility" became fashionable in the lexicons of academia, our industry has urged moderation, restraint and temperate use of its products as enjoined by President Roosevelt at the time of federal repeal and Governor Carlson at the time of state repeal. State and local officials and leaders of public and private groups must continue with a systematic view of the problem recognizing the inter-relationships between legal, health, public information, educational and technological responses to the problem.

Progress has been made in the last decade, namely impressive reductions in alcohol related fatalities and significant reductions in highway fatalities involving young teenage drivers. (Reference: Drunk Driving Facts, U.S.D.O.T., Natl. Highway Traffic Safety Administration, Center for Statistics, September, 1990; and Age, Alcohol and Traffic Accident, Kansas D.O.T., June 1988, State Library Kan. T52, A265).

The vast majority of Americans and Kansan's will consume beverage alcohol responsibly. The motivation behind this bill is honorable. The message a change in BAC levels is intended to send is commendable. However, passage of this bill is

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disillusioning. I appear here today in opposition because this bill does not confront the true problem; that is, stopping persons who have a history of drinking and driving from continuing to drink and drive.

As true with many things in life a small percentage of persons who do abuse the use of beverage alcohol and beer, create new restrictions on the overwhelming majority of persons who are responsible consumers. The saints are punished and the sinners go undeterred. They find alternative ways to continue their irresponsible behaviors.

Our association concurs with the objectives recommended by the National Highway Traffic Safety Administration to reduce the impaired driving recidivism of drivers who have already been arrested and processed through our criminal justice and/or administrative sanctioning and rehabilitation processes; plus preventing drinking and driving by such means as public information, education, more responsible serving and hosting practices, intervention by friends, designated driver programs, safe ride programs, and preventing the sale of beverage alcohol to minors.

This bill creates a whole new class of criminal: people who have had 2 or 3 drinks in 60 minutes. (f.n.1) I know that's not its purpose, but that is its effect.

Look at what has been done -- our current laws have acted as

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fn.1.- 1 drink based on 1.25 oz. spirits, 12 oz. beer, or 4 oz. wine, @ 120 lbs. body weight 2 drinks = .07, @ 140 lbs. 3 drinks = .09; @ 160 lbs 3 drinks = .08 (DISCUS).

a deterrent. Spirits consumption in Kansas is down 12.7% over the period FY 1984 to FY 1992 (based on spirits gallonage tax collections, Overview of the Kansas Liquor Industry ABC, Kansas Department of Revenue, January, 1993.) Awareness of the problem is up, through both government and private sector efforts. This association has actively participated in the educational efforts to curb drinking and driving. Please refer to the additional report regarding K.W.S.W.A. efforts to heighten the understanding of the consumer. This industry produced and distributed some of the first public education materials when the original law was passed in the early 1980s.

In a report available in the State library entitled "DWI-Are We Off Track?" by Terry M. Klein, a consultant to the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA), and a former chief evaluator in the planning and evaluation division NHTSA, he states:

"Counter measures aimed at what are today considered responsible drivers can only serve to divert resources away from the larger part of the problem and potentially could have negative effects. The increased burden of 'more legally drunk drivers' could stretch the current enforcement and judicial resources beyond their means."

H. Laurence Ross, Ph.D., a professor of Sociology at the University of New Mexico, author of numerous studies dealing with the effect of law on driving while impaired by alcohol including Deterring the Drinking Driver: Legal Policy and Social Control

and, Life Saving: Policy for Reducing Drunk Driving in America, wrote in June 1991, commenting on Klein's work:

"[T]he bulk of the problem is accounted for by drivers who have blood alcohol concentrations (BAC's) of 0.10% or more. There is a need for our society to reduce deaths due to drunk driving. A common response to this need has been to increase the severity of the punishment for drunk driving, especially by mandating jail, at least for repeat offenders. Unfortunately, this approach has not led to important progress in reducing alcohol-related fatalities..."

"Because the risk of a fatality increases steeply with more alcohol in the blood, a second response has been to lower the limit of legal tolerance from 0.10% BAC to .08%. This is currently the law in four states. Such a concentration could be achieved by some people with three drinks in an hour. Klein's report addresses this policy. He properly argues that the heart of the drunk driving fatality problem is not at these levels--and that it is inefficient to squander resources in dealing with drivers who have relatively low BACs. Instead, policy should focus on heavier drinking drivers, who are disproportionately involved in fatal crashes."

"Recent research supports Klein's assessment that 0.10% BAC is a reasonable legal limit. Drivers with BACs between 0.10% and 0.15% appear to be over four times more likely to cause a fatal crash than those who, in most states, are obeying the current law. Drivers over 0.15% BAC appear to be over 30 times more dangerous. Clearly, the heart of the problem lies in the area of extremely heavy drinking -- the drinker with a BAC of more than 0.15%, who has probably consumed more than a dozen drinks in a few hours."

"Data from a national survey of drivers indicate that reducing the tolerated BAC below 0.10% would not necessarily be good public safety policy. Reducing the limit to 0.08% would increase the number of law violators by about 60% ... Unless enforcement is increased proportionately, this might result in a decrease in the probability of arrest for extreme violators. To the extent that the law's threats lack credibility (because of a low risk of apprehension), the change could greatly exacerbate enforcement difficulties and possibly reduce the existing effectiveness of the law." \* \* \*

"Finally, it can be argued that at BACs below 0.10%, the ratio of the benefits of drinking to the costs associated with it is far more favorable than at higher BACs. It is an error to allocate scarce resources to this segment of drinkers when the more dangerous segment is seldom apprehended. Further research into benefits deriving from alcohol consumption is needed, but plausible claims have been made for reductions in stress and cardio-vascular problems."

"Drunk driving is still a significant social problem in America but laws on lowering the tolerated BAC below 0.10% are unlikely to be helpful in addressing the problem. Such laws may reduce the credibility of the threat to punish the heaviest drinkers thus possibly reducing deterrence of the most dangerous drivers. At the same time, they would brand as criminal much behavior that is customary, pleasurable, and much less risky to society. I concur with Klein that reducing the BAC limit is unlikely to be either fair or effective in reducing deaths due to drunk driving."

Typically a first offender will receive a diversion and a fine. However, when you take a breath test and fail or refuse to take such a test a suspension of one's license results. As a result, pursuant to K.S.A. 40-277 an insurance company may cancel it's policy where "the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy (a) has had such persons driver's license suspended or revoked during the policy period." A .02 for a child under this bill could cause their family disasterous financial hardship in securing a new policy, most likely through KAIP.

A standard (not preferred) policy for a good student single male in his 20's in Topeka will cost approximately \$275.00 for 6 months. If he has no speeding tickets, and no accidents, the



license suspension due to the first DUI will increase that policy to approximately \$575.00 for six months; more than double. Add in other minor violations and the cost increases even more. For a middle aged person with a preferred rate the increase from their current rate (\$1200.00 @ 6 months for 3 cars, husband, wife and student driver) could triple and most likely that individual would not be able to secure the higher coverage limits of a preferred policy.

You might say, "Well that's his problem, he shouldn't have gotten the DUI." Unfortunately, it becomes all of our problem. Current estimates provided me by the Insurance Commissioners office indicate that uninsured motorists in Kansas comprise approximately 6-7% of all motorists. In the real world, our offender secures his new insurance, pays 1 or 2 months, buys his tags and then because the cost is prohibitive, allows his insurance to lapse. I contend these lower limits of a BAC level will increase the percentage of uninsured and underinsured motorists in Kansas. I am informed that premiums for uninsured motorists rates have recently modestly increased, because of increased loss experiences. It is reasonable to project that as the number of uninsured motorists become greater, uninsured motorist losses will increase and thus premiums for the rest of us will likewise increase again. These new BAC levels will probably cause more people to become part of the Kansas Automobile Insurance Plan, and the limits of coverage will generally decrease, e.g. fewer insured and lower average coverage

limits to protect the rest of us. Thus, what looks like a minor revision with negative effects for the few and positive effects for the many, becomes a negative policy for all.

Let us now look at the justification that unless we do this we lose federal highway dollars. I am informed from discussions with the Kansas Department of Transportation that there is a two tier system for receiving certain highway funds. The first tier requires that a state meet five of six criteria: (1) Prompt drivers license suspension; (2) .10 per se DUI law; (3) Roadside check points; (4) Self-sustaining drunk driving programs; (5) Underage 21 prevention programs; and (6) Mandatory sentencing. It appears that Kansas most likely will meet five of the aforementioned six criteria to be eligible for a maximum of \$635,000.00. [Please note this dollar figure is the best available at this time]. With regard to the second tier there are seven elements for which additional funding would be provided by the federal government to the state. In that, with each of the following, for which a state complies, an additional amount of funding is available. The second tier items include (1) .02 under 21 BAC; (2) Open container law; (3) Suspension of registration and return of license plates; (4) Mandatory BAC testing; (5) Drugged driving prevention; (6) .08 per se BAC; (7) Video equipment for detection. The maximum available funds at the current time for any one item is \$15,000, according to KDOT. The issue here, as reflected in the comments of Klein and Ross, supra, is whether resources should be diverted to this new class

of offenders for so little monetary return.

The U.S. department of Justice in its report Jailing Drunk Drivers: Impact on the Criminal Justice System, National Institute of Justice, May 1985, stated:

"Increased resources, in the form of additional money, personnel, or facilities, are generally required to effectively carry out a mandatory confinement strategy. Legislators should recognize the impact that mandatory confinement of drunk drivers is likely to have on Judges, Prosecutors, and particularly the correctional system."

It is reasonable to assume that a 20% reduction in the BAC limit will result in increased arrests and pressures on the judicial system. I have heard testimony in previous years (when only discussing the .08 question, not even considering a .02 level) estimates ranging from no less than 5% to most likely 10% more arrests.

The only comprehensive Kansas study, prepared by the Institute for Public Policy, University of Kansas, analyzing the Wichita Comprehensive Program to reduce DWI, in May 1986 (found at Kan. E50.1249, no. 121, State Library) states: "Indeed, the TOP [Target of Opportunity Program] has pushed to the limit the ability of the police, prosecutors and courts to handle DWI cases." What would a 10% increase do statewide? And, at these lower levels where the margins of error increase proportionally, there will be more contested and tried cases.

Another issue that must be explored in further detail is the impact these new levels will have on the employment prospects for these new offenders. Certain jobs in clubs, drinking

establishments, and CMB restaurants might be unavailable. Statutory criteria for obtaining a commercial driver's license and federal regulations appear to restrict individuals who have had suspended licenses. Persons between 18 and 21 receiving a .02 conviction may not be able to operate certain farm equipment under certain circumstances. Do we want to eliminate eligibility for certain employment by going to .08 and .02 ? I suggest that the committee explore this area with the experts.

The real problem that is not addressed by this bill is the repeat offender. In my view, the current law compounds the problem rather than solves it. From a person who gets multiple DUIs, we extract large fines, incarcerate and then take away their driving privileges. Nonetheless, they drive. They drive because they must get to work, in order to pay bills, support their families and pay their fines.

The most detailed work in this area is The Hard Core Drinking Driver, 1991. An executive summary is provided herewith. The statistics show that drivers with high BACs pose the greatest threat on the highway.

A key conclusion is that the legal system must have access- and make use of - methods which effectively keep the so called "hard core" offender from driving: ignition inter-lock devices; confiscation of the license plate or car; and electronic monitoring (house arrest) devices.

The attached editorial by Candy Lightner, founder of Mothers Against Drunk Driving, confirms other independent studies. She

notes that half of the drinking drivers involved in fatal crashes have a BAC of 0.17 or greater; and, that among young people aged 16 to 24 the great majority of deaths involve drinkers with a BAC of at least .15%.

"Lowering the blood content won't make a difference to these offenders. After twelve years we should be passed the point of just raising public consciousness. We need to bring creativity into play and focus on the programs and laws that will make the most difference," she says.

Its impaired driving we should be curbing, not all driving by some offenders. The law should allow the Courts, in appropriate cases, to restore limited driving privileges provided the offender installs an inter-lock device. The law is in place to allow for such devices, see. K.S.A. 8-1016 and 8-1017. The legislature must encourage its use, perhaps by allowing part of what would otherwise be the fine to be used to pay for the purchase and payment of such devices.

We must redouble our educational and treatment efforts, for as we have seen there have been dramatic reductions in the instances of alcohol related accidents and fatalities as a result of such efforts in the past decade.

Please do not misunderstand -- the loss of one life due to abuse of beverage alcohol cannot be tolerated. The question we present is whether in light of the foregoing this legislation is truly providing a solution, or is it merely a disillusioning message. We submit, regrettably, this approach does not confront the true problem. Thank you for your kind attention to and consideration of these matter.



DEPARTMENT OF LAW  
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February 10, 1993

Representative Michael R. O'Neal  
Chair, House Judiciary Committee  
State Capitol  
Topeka, KS 66612

Re: House Bills no. 2133 and  
2263 Driving under influence  
of alcohol or drugs

Ladies and Gentlemen:

Your committee will shortly consider the House Bills 2133 and 2263, both of which propose amendments to statutes aimed at driving under the influence of alcohol or drugs ("DUI"). The City Council of the City of Wichita is very concerned about this issue as it represents a serious threat to each and every resident of the City.

A few statistics illustrate the magnitude of this problem locally. In Wichita in 1992, police made 2,562 arrests for DUI. This represents an increase of 11.9% from 1991. Of the 2,444 arrestees prosecuted, only 44 were acquitted at trial. These numbers demonstrate that DUI is a serious problem in Wichita and, more to the point for the Committee's purposes, is on the increase.

The City Council believes that strong medicine is required, and that local units of government need increased flexibility in order to allow them to fashion more effective responses to the problem. For this reason, the City supports the substance of both bills and urges that they be favorably considered.

**H.B. 2133**

This bill includes a number of changes to DUI-related laws. Perhaps most important, it would lower the presumptive intoxication level from .10% to .08% for persons 21 and over and .02% for those under 21. Police report that many traffic stops for erratic driving do not result in arrests because breathalyzer tests show blood alcohol levels only slightly under .10%. The

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amendment would permit prosecution of such drivers. Wichita's municipal court diversion and probation programs are quite effective and would be particularly beneficial to youthful offenders. The bill's provisions dealing with revocation of driving privileges will also materially improve current procedures for processing of offenders.

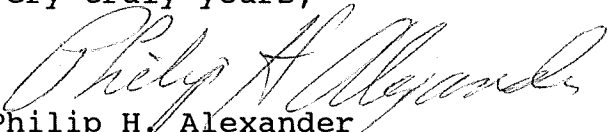
**H.B. 2263**

This bill, which proposes an amendment to K.S.A. 8-1567 (m), would authorize local units to provide by ordinance for minimum DUI penalties which exceed those prescribed by the statute. This increased flexibility would allow jurisdictions which have a high incidence of DUI to fashion a more effective local response. The DUI problem is not uniformly distributed across the state. Moreover, K.S.A. 8-1567 is one of the few state laws which limits the discretion of local elected officials in crafting remedial ordinances to meet local needs.

In sum, the City of Wichita encourages favorable consideration of both bills. We are advised that the substance of H.B. 2263 may be incorporated into the more comprehensive H.B. 2133 by amendment; the City will continue its support for H.B. 2133 should it be so amended.

Thank you for your attention.

Very truly yours,

  
Philip H. Alexander  
Senior Assistant City Attorney

PHA:cdh

State of Kansas

REX CROWELL  
STATE REPRESENTATIVE, SEVENTY-SIXTH DISTRICT  
GREENWOOD, ELK, CHAUTAUQUA,  
AND LYON COUNTIES



TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS  
CHAIRMAN: TRANSPORTATION  
SECRETARY-TREASURER:  
KANSAS TURNPIKE AUTHORITY  
MEMBER: TAXATION  
CLAIMS AGAINST THE STATE

TO: House Judiciary Committee

FROM: Rex Crowell

DATE: February 10, 1993

Following is a description of HB 2355.

1. Applies to all vehicles
2. .08 per se
3. If ordered to complete alcohol and drug safety action education or treatment program, it must be completed or driving privileges will be suspended until it is completed.
4. Requires an ignition interlock on a second or subsequent conviction of an alcohol related offense if the offender has .15 or more alcohol concentration.
5. No diversion at .15 or more.
6. Puts open container under uniform act.
7. Puts level at .08 for boats.
8. Can't operate a boat for three months if refuse to take the test.
9. If refuse to take a test while operating a boat, then cannot operate boat until satisfactory completion of boater education course.
10. If convicted of alcohol related offense while operating a boat, than cannot operate a boat until complete a boater education course.
11. Combines CMB and hard liquor into alcoholic beverages.
12. Convictions of violations of a city ordinance or county resolution count against offender.
13. Anyone who is under 21 who violates open container provisions must complete an alcohol and drug safety action program.
14. It is an affirmative defense to prosecution under open container provisions if an occupant of a vehicle other than the defendant was in exclusive possession of the alcoholic beverage.

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HOME ADDRESS:  
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LONGTON, KS 67352  
(316) 642-3598  
HOUSE JUDICIARY  
Attachment #3  
02-10-93



TESTIMONY

HOUSE BILL 2355

COMMITTEE ON JUDICIARY  
HOUSE OF REPRESENTATIVES

February 10, 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 Association, and the Kansas Community Alcohol Safety Action Project Coordinators Association. Our organizations generally support House Bill 2133 in regards to lowering the blood alcohol concentration level to .08% for all of those offenders.

We would also support the Motorboat provision in the suggested legislation which takes positive action against those individuals who threaten the lives of themselves and others with bodily injury or possibly death, when combining the pleasures of boating and drinking excessively. Our organizations would work hand in hand with the Secretary in developing a satisfactory boater education course for those offenders.

We do have some difficulty with the language which appears on page 13, from line 15 through 20. It appears that if the offender, after his arrest, before he goes to Court, would immediately place himself in a treatment program, the \$110 Evaluation Fee could be waived by the Court or the Prosecuting Attorney. We believe that this language is not consistent with the language in KSA-8-1008, which occurs on page 12, starting with line 37, that, "The alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the person.

The alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the alcohol and drug evaluation report may also include monitoring persons in the treatment programs, notifying the prosecutor and the court of any person failing to meet the conditions of diversion or referrals to treatment, and providing assistance and data reporting and program evaluation."

Although waiving the \$110 Evaluation Fee might seem on the surface to be an economical thing to do, in reality, it is actually harming most of these offenders.

If an individual shows up at a treatment program's doorstep and states, "I have received a DUI and I need treatment", that program will find some way to offer services to that individual, provided he has insurance or a method of paying. It is entirely possible that this individual may be a social drinker who on this one occasion, overindulged and would profit more positively from alcohol and drug education than from alcohol and drug intensive treatment.

We feel that if a defendant immediately enters treatment after arrest, and prior to a conviction, it is highly unlikely that treatment could fulfill other statutory requirements such as monitoring the District Attorney's Office and the Court in regards to data reporting and program evaluation.

Each year my office in Topeka receives calls from our members throughout the State reporting various organizations, most of them inpatient treatment organizations, that have approached their courts and offered a free of charge pre-sentence evaluation, provided that it is done within their facility. It has also been reported to me that some of these organizations are going outside their own jurisdictions and into other Judicial Districts to offer this service.

We think that this language could be the start of seeing a dangerous precedent throughout the State and actually having the Courts lose control over who is performing the DUI evaluations in their systems.

One of the most important parts of recovery is making that drug addict or alcoholic be responsible for their behavior. If the Judicial System gives the offender a break or special consideration, the offender may view this as permission to again go out and drink and drive.

Respectfully,



Gene Johnson

Legislative Liaison

Kansas Alcoholism and Drug Addiction Counselors Association

Kansas Association of Alcohol and Drug Program Directors

Kansas Community of Alcohol Safety Action Project Coordinators Association



Department of Health and Environment

Robert C. Harder, Secretary

Reply to:

Testimony presented to

Committee on Judiciary

by

The Kansas Department of Health and Environment

House Bill 2355

Preventing the deaths and injuries which result from drunk drivers on Kansas highways is a significant public health priority. There is a large volume of scientific evidence which clearly supports the conclusion that all drivers with a blood alcohol level of 0.08 or greater are unable to safely operate a vehicle. A review of this evidence may be found in a monograph ("Effect of Low Doses of Alcohol on Driving Related Skills - A Review of the Evidence," Moskowitz, 1988) which draws consensus from 177 articles in the scientific literature. An executive summary of this monograph is attached.

Blood alcohol levels are influenced by four major factors which include: (1) amount of alcohol consumed, (2) the time frame of consumption, (3) the nature and volume of food consumed and, (4) total body weight. Because of the number of variables to be considered, the attached BAC chart should be viewed with caution. However, the BAC values shown are generally based upon Widmark calculations and may help with the concern that one or two drinks which may be consumed on social occasions will result in an alcohol level of 0.08 or greater. Clearly this result is quite unlikely.

In summary, drinking and driving do not mix. However, it is important that the enforcement level which is chosen represent national consensus on alcohol impairment and be scientifically and operationally defensible. We strongly support the reduction of "per se" DUI alcohol level from 0.10 to 0.08 to make our highways more safe for all Kansas citizens.

Testimony presented by: Dr. Roger Carlson, Director  
Health and Environmental Laboratory  
February 10, 1993

## Executive Summary

This report reviews the experimental literature on the effects of alcohol on driving-related behavior, with particular attention given to the BAC level at which impairment first appears. The information provided here is intended to contribute to decisions on appropriate BAC limits for drivers.

The study began with a series of computer searches of the literature on skills performance effects of alcohol. Five hundred and fifty seven citations were found, of which 399 publications were obtained. Of this number, 177 were used in this report, with most of the remaining studies not included for one of the following reasons: the behavioral area was not considered relevant to driving, insufficient methodological detail was provided, or the publication was not available in English. For the 177 selected studies, the authors have calculated BACs at the time behavioral tests were administered, based on the reported dosages. Using details of gender and body weight of subjects, an estimated volume of distribution for alcohol was determined assuming the mean water body weight as 49% for females and 58% for males. Then, using a 15 mg. percent per hour metabolism rate, the BAC was computed for the time of starting behavioral testing. Since the metabolism estimate is conservative and the mean BAC estimate for the duration of testing would be lower, the estimated BAC at which impairment is reported here is also conservative, erring on the high side.

Of the 177 studies for which computations were performed, 158 reported impairment of one or more behavioral skills at one or more BAC levels. Only 19 studies found no impairment at the levels studied. In 35 studies impairment was found at BACs of 0.04% or less. The majority of studies found impairment below 0.07%. Since the majority of studies examined only one BAC level, these results must represent an underestimation of the BAC level at which impairment begins, principally because these studies failed to examine any level below that at which they initially tested and found impairment. It seems that the determination of what BAC levels are studied is frequently made with reference to the prevailing legal BAC limit. Without drug-dose level studies, it is difficult to determine the BAC level at which impairment might initially occur.

Most of the studies considered here were published during the last decade. The BAC levels studied by these studies appear lower than those typically found in the literature from the 1940s and 1950s and, as a result, impairment is reported at significantly lower levels than in the literature of previous decades.

The studies considered here were segregated into nine behavioral categories to determine if the BAC at which impairment began was a function of the type of skills involved. The categories were: reaction time, tracking, vigilance or concentrated attention, divided attention, information processing, visual functions, perception, psychomotor skills, and driving on the road or in a simulator.

Despite some problems in assigning experimental tasks to these behavioral categories, considerable differences exist in the BAC at which impairment first appears. The area of behavior showing the largest initial rise in demonstrated impairment was divided attention

performance, with the second fastest rise in impairment found with tracking performance. Studies of vigilance showed the lowest number of findings of early impairment. Effects found for each behavioral category can be summarized as follows:

1. REACTION TIME. Impairment was found at lower BACs for complex reaction time, as compared with the studies of simple reaction time. Typically impairment appeared at higher BACs than in other areas.
2. TRACKING. A majority of studies reported impairment at or below BACs of 0.05%. Differences between types of tracking tasks appeared less important than the context in which tracking performance was studied, with some studies using multi-task situations.
3. CONCENTRATED ATTENTION. Concentrated attention appeared to be the least sensitive area to alcohol impairment, with no study finding impairment below 0.05%.
4. DIVIDED ATTENTION. Most studies of divided attention found impairment at quite low BACs. Impairment began at less than 0.02%, and a majority of studies found impairment at or below 0.05%.
5. INFORMATION PROCESSING. Information processing skills appear to be impaired at relatively low BACs with most studies reporting impairment at or below 0.08%.
6. VISUAL FUNCTIONS. Studies of oculomotor control tended to show impairment at low BACs, while other visual functions such as glare recovery, visual acuity, and flicker fusion, did not appear to be impaired at low or moderate BACs when studied by themselves.
7. PERCEPTION. Studies in this area showed relatively few findings of impairment below 0.08% BAC.
8. PSYCHOMOTOR SKILLS. Tasks which required skilled motor performance and coordination were more likely to be impaired at lower BACs, while studies of other psychomotor tasks tended not to show impairment below 0.07% BAC.
9. DRIVING. A considerable variation in results was found, depending on the behavioral demands imposed by the various driving tasks.

It was concluded that there is evidence that behavioral areas relevant to driving differ in their susceptibility to impairment, with divided attention tasks most likely to be impaired at low BACs. It seems that there is no lower threshold level below which impairment does not exist for alcohol.

*From Effect of Low Doses of Alcohol on Driving Related Skills - A Review of the Evidence.* Moskowitz, 1988.

## Blood Alcohol Content (BAC)

NUMBER OF DRINKS (1 oz. 86 proof Liquor or 12 ozs. Beer)									
BODY WEIGHT	1	2	3	4	5	6	7	8	9
100	.032	.065	.097	.129	.162	.194	.226	.258	.291
120	.027	.054	.081	.108	.135	.161	.188	.215	.242
140	.023	.046	.069	.092	.115	.138	.161	.184	.207
160	.020	.040	.060	.080	.101	.121	.141	.161	.181
180	.018	.036	.054	.072	.090	.108	.126	.144	.162
200	.016	.032	.048	.064	.080	.097	.113	.129	.145
220	.015	.029	.044	.058	.073	.088	.102	.117	.131
240	.014	.027	.040	.053	.067	.081	.095	.108	.121



BAC TO .05%



.05 - .09%



.10% & UP