

Approved: 3/9/93  
Date

## MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidrickson at 9:00 a.m. on February 24, 1993 in Room 254-E of the Capitol.

All members were present except:  
Senator Rock - Excused

Committee staff present: Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Martha Ozias, Committee Secretary

Conferees appearing before the committee:  
Rosalie Thornburgh, Administrator, Office of Traffic Safety.  
Gene Johnson, Kansas Community Alcohol Safety Action Project  
Coordinators Association  
Kyle Smith, Assistant Attorney General, KBI

Others attending: See attached list

The committee met to hear and discuss **SB 294** which would provide for the suspension of a person's driver's license for conviction of a drug offense and **SCR 1611** which expresses the Kansas Legislature's opposition to the Federal legislation requiring revocation or suspension of drivers' licenses for any drug-related offense.

The staff briefed the committee on these two bills and pointed out that paragraph 3 in the bill gave an "out" to handle this on the state level.

Rosalie Thornburgh gave testimony on the proposed legislation and concurrent resolution and pointed out that the statutory requirement includes a certification date of April 1, 1993 for the state to submit appropriate documents. Passage of one of these would bring the state into compliance and would remove the possibility that the state will lose a substantial amount of highway construction funds. (See Attachment A)

Gene Johnson spoke in favor of a diversion program for individuals who were first time offenders of the drug laws by way of education or treatment. He suggested that offenders pay the cost of such evaluation and monitoring as well as education and treatment. In this manner these drug offenders are made responsible for the cost of their education and rehabilitation and not the taxpayers of Kansas. (See Attachment B)

A suggestion was made to pass **SCR 1611** for the Governor to sign. Kyle Smith felt that this would not solve the problem, urged maintenance and deterrence for drug offenses and recommended passage of **SB 294**.

After some discussion Senator Burke made a motion to recommend **SCR 1611** favorable for action. This was seconded by Senator Harris. Motion carried.

Senator Burke then made a motion to make **SB 294** the subject of an interim committee study. Senator Harris seconded this. Motion carried.

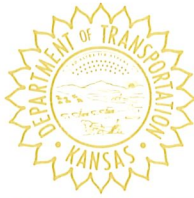
The chairman briefed the group on bills still in the committee and adjourned the meeting.

## GUEST LIST

## SENATE TRANSPORTATION COMMITTEE

DATE: February 24, 1993

[illegible]



Michael L. Johnston  
Secretary of Transportation

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Joan Finney  
Governor of Kansas

TESTIMONY BEFORE  
SENATE TRANSPORTATION AND UTILITIES COMMITTEE

REGARDING SENATE BILL 294 AND  
SENATE CONCURRENT RESOLUTION 1611

DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION  
February 24, 1993  
OFFICE OF TRAFFIC SAFETY

Mr. Chairman and Committee Members:

Mr. Chairman and members of the committee, I am Rosalie Thornburgh, Administrator of the Office of Traffic Safety. On behalf of the Department of Transportation, I am here today to provide testimony on the proposed legislation and concurrent resolution.

Senate Bill 294 would amend K.S.A. 8-256 and provide for six months suspension of a person's driver's license for conviction of a drug offense, and/or delay the issuance or reinstatement of a driver's license if the person does not have a driver's license.

Concurrent Resolution 1611 would express the legislature's opposition to enactment or enforcement of the federally mandated law referenced above.

Section 333 of the Department of Transportation and Related Agencies Appropriations Act for 1991 was enacted October 28, 1991. As amended, Section 333 requires the withholding of certain federal-aid highway funds from states that do not enact and enforce legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub. L. 91-513) or any drug offense. Alternatively, a state can avoid the withholding of funds by submitting to the Secretary of Transportation a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

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If the statutory requirements are not met by October 1, 1993, five percent of certain federal-aid highway funds will be withheld beginning in federal fiscal year 1994 (October 1, 1993). Five percent will be withheld in federal fiscal year 1995 if the state does not meet the statutory requirements by October 1, 1994. If the state does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with federal fiscal year 1996, or October 1, 1995), the withholding will increase to ten percent. The current estimates for FFY 1994 and FFY 1995 are \$8 million in each year. The current estimates for FFY 1996 and FFY 1997 are \$17 million in each year. The total withholding of federal funds would amount to an estimated \$50 million for the four-year period. I have attached a synopsis of the specifications of Section 333 indicating those categories of construction funds affected.

The statutory requirement includes a certification date of April 1, 1993 for the state to submit appropriate documents.

In summary, passage of Senate Bill 294 or Senate Concurrent Resolution 1611 would bring Kansas into compliance with Section 333 and would remove the possibility that the state will lose a substantial amount of highway construction funds.

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Kansas Department of Transportation  
February 19, 1993

Section 333 of The Department of Transportation and Related  
Agencies Appropriations Act for FY 1991

Drug Offenders's Driver's License Suspension

Background.

Section 333 of The Department of Transportation and Related Agencies Appropriation Act for FY 1991 was amended under the FY 1992 Appropriations Act under sections 333 and 159, Public Law 102-143.

Section 159 of the Act requires the withholding of certain Federal-aid highway funds from states that do not enact and enforce legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub. L. 91-513, as amended) or any drug offense.

States can avoid the withholding of funds by submitting to the Secretary of Transportation written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

Adoption of Drug Offender's Driver's License Suspension.

A state meets the requirements of this section if: the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

- The revocation, or suspension for at least six months, of the driver's license of any individual who is convicted, after the enactment of such law, of
  - (A) Any violation of the Controlled Substances Act, or
  - (B) Any drug offense, and
- A delay in the issuance or reinstatement of a driver's license to such an individual for at least six months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted,

The Governor of the State must:

- Submit to the Secretary, a written certification stating that she is opposed to the enactment or enforcement in the State of a law described above, and
- Submit to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described above.

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If a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal aid highway apportionment under 23. U.S.C. 104(b)(1), 104(b)(3), 104(b)(5) shall be withheld. Five percent will be withheld also in FY 1995 if the State does not meet the statutory requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

The programs which would be subject to the withholding are: National Highway System, Surface Transportation Program, and Interstate Maintenance. NOTE: Hold Harmless funds (in FY 1994 and 1995) and Reimbursement funds (in FY 1996 and 1997), which the state is expected to receive, have also been included in these calculations as this funding will be transferred to the state's Surface Transportation Program.

**Apportionments Withheld in Millions**

PROGRAM	FY 1994	FY 1995	FY 1996	FY 1997
I.M.	\$39.5	\$39.5	\$39.5	\$39.5
N.H.S.	48.1	48.1	48.2	48.2
S.T.P.	51.5	51.5	51.5	51.5
H.H.	14.5	14.5	0	0
Reim.	<u>0</u>	<u>0</u>	<u>35.0</u>	<u>35.0</u>
Total				
Apportionment	\$153.6	\$153.6	\$174.2	\$174.2
% Reduction	5%	5%	10%	10%
Apportionment				
Withheld	\$ 7.68	\$ 7.68	\$ 17.42	\$ 17.42

Definition:

Drug offense means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(2) The operation of a motor vehicle under the influence of such a substance.

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Certification requirements.

Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of 23 U.S.C. Section 159.

If the state believes it meets the requirements of Section 159 on the basis that it has enacted and is enforcing a law, the certification shall contain:

(1) A statement by the Governor, or an official designated, that the State has enacted and is enforcing a Drug Offender's Driver's License Law.

Until a state has been determined to be in compliance, the certification shall also include:

(1) A copy of the state law, regulation, or binding policy directive implementing or interpreting such law or regulation, and

(2) A statement describing the steps the state is taking to enforce its law with regard to within state convictions, out-of-state convictions, federal convictions and juvenile adjudications.

If the state believes it meets the requirements of Section 159 on the basis that it opposes a law that requires that requires driver's license suspension or revocation, the certification shall contain:

(1) A statement by the Governor of the State, or an official designated by the Governor, that he or she is opposed to the enactment or enforcement of such a law and that the state legislature has adopted a resolution expressing its opposition to such a law.

Until a state has been determined to be in compliance, the certification shall include also a copy of the resolution.

The certification shall be submitted to the local FHWA Division Administrator who will forward copies to the Regional Administrator of FHWA and NHTSA. The Regional Offices will forward a copy to the respective Washington headquarters.

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Period of availability of withheld funds.

Funds withheld from apportionment to any state on or before September 1995 will remain available for apportionment as follows:

- (1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A), the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.
- (2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B), the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.
- (3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), or 104(b)(3), the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

Funds withheld from apportionment to any state after September 30, 1995 will not be available for apportionment to the state.

Rosalie Thornburgh  
Office of Traffic Safety

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TESTIMONY  
SENATE BILL 2984

SENATE TRANSPORTATION AND UTILITIES COMMITTEE  
FEBRUARY 24, 1993

To: Senator Ben Vidricksen, Chairman  
Senate Transportation and Utilities Committee  
Statehouse, Topeka, KS

Mr. Chairman and Member of the Committee:

I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association which is made up of coordinators of approximately 25 different Community Alcohol Safety Action Projects throughout the State. We are the individuals who do the evaluations and the monitoring of DUI offenders for the purpose of diversion and sentencing thru our Court System.

We feel that if we are going to win this war against illegal drugs, we must be able to educate the public about the devastating effects of those drugs. In the event that some person does violate our Laws as a first time offender, either by not understanding our Drug Laws or by plain stupidity, we would suggest offering a diversion program for those individuals.

We would suggest that diversion program be structured similar to the present set of conditions on our DUI Laws which are included in K.S.A. 8-1008. In order for a person to obtain a diversion from the charge of drugs, he must undergo an evaluation by an alcohol and drug safety action project, within the community. That project would then make a report to the Prosecuting Attorney or to the Court as to whether the defendant can benefit from an educational program or, in fact, may need professional assistance for their drug usage. Each Prosecutor would consider the evaluator's report before allowing a person to be placed on diversion.

If the defendant is not a candidate for diversion which may be born out by the evaluator's report, such report should be considered by the Court, prior to sentencing.

ATTACHMENT B

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By offering diversion for first time offenders, and a condition of that diversion is that they undergo an evaluation process, such as DUI offenders, then the possibility of education or treatment would intervene in that person's use of illegal drugs.

We are not in favor of any illegal drug usage. We do not like the term "recreational drug." There is no recreation in using drugs that alter one's state of mind and causes one's judgement to be impaired.

These Alcohol Safety Action Projects are already in place throughout the State and available to all of the 31 Judicial Districts. They are staffed by competent individuals who have understanding of alcohol and drugs and their effects on individuals who choose to use them. We would also expect that the offender pay the cost of such evaluation and monitoring and any cost of education and/or treatment. In this manner these drug offenders are made responsible for the cost of their education and rehabilitation, not the tax payers of the State of Kansas.

I am enclosing a copy of KSA-1008 for your review in order for you and the Committee to understand the nature of the evaluation process, under the DUI Laws of the State of Kansas.

I will be available for any input and will try to answer any questions.

Respectfully submitted,



Gene Johnson

Legislative Liaison

Kansas Community Alcohol safety Action Project Coordinators Association

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Alcohol and drug safety action program; evaluation and supervision in D.U.I. cases; certification of programs; fees, disposition.  
(a) Community-based alcohol and drug safety action programs certified in accordance with subsection (b) shall provide:

(1) Presentence alcohol and drug evaluations of any person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(2) supervision and monitoring of all persons who are convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section;

(3) alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(4) supervision and monitoring of persons required, under a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section; or

(5) any combination of (1), (2), (3) and (4).

(b) The presentence alcohol and drug evaluation shall be conducted by a community-based alcohol and drug safety action program certified in accordance with the provisions of this subsection to provide evaluation and supervision services as described in subsections (c) and (d). A community-based alcohol and drug safety action program shall be certified either by the administrative judge of the judicial district to be served by the program or by the secretary of social and rehabilitation services for judicial districts in which the administrative judge declines to certify a program. In establishing the qualification for programs, the administrative judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the administrative judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If within 60 days after the effective date of this act the administrative judge declines to certify any program for the judicial district the judge shall notify the secretary of social

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and rehabilitation services, and the secretary of social and rehabilitation services shall certify a community-based alcohol and drug safety action program for that judicial district. The certification shall be for a four-year period. Recertification of a program or certification of a different program shall be by the administrative judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If upon expiration of certification of a program there will be no certified program for the district and the administrative judge declines to recertify or certify any program in the district, the judge shall notify the secretary of social and rehabilitation services, at least six months prior to the expiration of certification, that the judge declines to recertify or certify a program under this subsection. Upon receipt of the notice and prior to the expiration of certification, the secretary shall recertify or certify a community-based alcohol and drug safety action program for the judicial district for the next four-year period. To be eligible for certification under this subsection, the administrative judge or the secretary of social and rehabilitation services shall determine that a community-based alcohol and drug safety action program is capable of providing, within the judicial district: (1) The evaluations, supervision and monitoring required under subsection (a); (2) the alcohol and drug evaluation report required under subsection (c) or (d); (3) the follow-up duties specified under subsection (c) or (d) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. Community-based alcohol and drug safety action programs performing services in any judicial district under this section prior to the effective date of this act may continue to perform those services until a community-based alcohol and drug safety action program is certified for that judicial district.

(c) A presentence alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The presentence alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. The presentence alcohol and drug evaluation report shall contain a history of the defendant's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the defendant to education and rehabilitation. The presentence alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the defendant. The presentence 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 presentence alcohol and drug evaluation report may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring defendants in the treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation. The cost of any alcohol and drug education, rehabilitation and treatment programs for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e). If financial obligations are not met or cannot be met, the sentencing court shall be noti-

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fied for the purpose of collection or review and further action on the defendant's sentence.

(d) An alcohol and drug evaluation shall be conducted on any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The alcohol and drug evaluation report shall be made available to the prosecuting attorney and shall be considered by the prosecuting attorney. The alcohol and drug evaluation report shall contain a history of the person's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the person to education and rehabilitation. 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. The cost of any alcohol and drug education rehabilitation and treatment programs for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e).

(e) In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings or a complaint alleging a violation of that statute or such an ordinance, \$110 shall be assessed against the person by the sentencing court or under the diversion agreement. The \$110 assessment may be waived by the court or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs,

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except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section.

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