

Approved: 3/22/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 8, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Oleen (excused)
Senator Vancrum (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Sunflower Alcohol Safety
John Smith, Motor Vehicle Department
Judge William Carpenter
Richard Freund, LifeSafer Interlock of Kansas
Jim Green, National Highway Traffic Safety Administration
Rosalie Thornburg, Kansas Department of Transportation
Attorney General Robert Stephan
Wanda Stewart, Mothers Against Drunk Drivers
Henry Helmke, Kansas Alcohol Safety Action Project
John Smith, Motor Vehicle Department
William R. Carpenter, Administrative Judge, Shawnee County

Others attending: See attached list

HB 2579--driving privileges revoked and restricted for alcohol and drug-related convictions; use of interlock device

Richard Freund, LifeSafer Interlock of Kansas testified in support of HB 2579 and provided written testimony (Attachment No. 1). Mr. Freund addressed various concerns in regard to the interlock devices and responded to those concerns.

Attorney General Robert Stephan testified in opposition to HB 2579 and provided written testimony (Attachment No. 2). Attorney General Stephan said he opposes the provisions of HB 2579 that reduce the period of driver's license suspension for various DUI violations.

Wanda Stewart, MADD testified in opposition to HB 2579 and provided written testimony (Attachment No. 3). She said the ignition interlock devices should not be used as a substitute for administrative license suspension or revocation. She referred to studies that support the use of drivers license suspension or revocation sanctions as an effective DUI countermeasure rather than the ignition interlock device. She said of all of the studies included in her testimony, not one will support ignition interlock devices in lieu of drivers license suspension or revocation.

Henry Helmke, Kansas Alcohol Safety Action Project testified in opposition to HB 2579. He said the concern in his judicial district was that the money could be better spent in treatment and education rather than interlock devices. Mr. Helmke stated license suspension was a greater deterrent for DUI offenders than the interlock device.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 8, 1994.

Gene Johnson, Sunflower Alcohol Safety testified in opposition to HB 2579 and provided written testimony (Attachment No. 4). He said one of the problems with the interlock device include: 1) many offender families have two vehicles at their disposal and 2) the cost feasibility for those offenders who work at a marginal occupation.

John Smith, Motor Vehicle Department testified on behalf of Betty McBride, Director of the Division of Vehicles on HB 2579 and provided written testimony with technical amendments (Attachment No. 5).

Jim Green, National Highway Traffic Safety Administration testified neither for nor against HB 2579 and provided written testimony (Attachment No. 6). He said if HB 2579 was enacted, the federal incentive funding for Title 23, Section 410 could be in jeopardy.

Rosalie Thornburg, Kansas Department of Transportation testified neither for nor against HB 2579 and provided written testimony (Attachment No. 7). Ms. Thornburg said this legislation amends the sanctions for test refusals and test failures and replaces some or all of the suspension periods with the ignition interlock sanction.

SB 774--revocation of habitual violator's driving privileges by division of motor vehicles

Gene Johnson, Sunflower Alcohol Safety testified in support of SB 774 and provided written testimony (Attachment No. 8). Mr. Johnson referred to a statement from William R. Carpenter, Administrative Judge, Shawnee County (Attachment No. 9).

John Smith, Motor Vehicle Department testified on behalf of Betty McBride, Director of the Division of Vehicles in support of SB 774 and provided written testimony (Attachment No. 10).

Chairman Moran announced that SB 764 and SB 765 would be heard on March 9, 1994.

A motion was made by Senator Bond, seconded by Senator Feleciano to approve Committee minutes for February 18, 1994. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 9, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 3/8/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Jim Green	6301 North 11 Rd. KC, MO	National Highway Traffic Safety Admin
Susan Baker	6301 Rockhill Rd KC Mo	Nat'l Hwy Traffic Saf Adm
Kosalie Thonburg	Topeka	KDOT
Pat Tynes	3601 SW 29th	MADD
Jon Powell	1 East 9th Hutchinson KS	LIFESAVER INTERSTATE
TERESA L. NORTH	TOPEKA	KDOT
Dene Johnson	Topeka	KS ASAP ASSN
John W. Smith	Topeka	KDOR DMV
Christine Lloyd	WW322 Warden Ct, Lawrence	Senator Walker - Leg. Intern
Wendell Strom	TOPEKA	AARP - CCTF
HAROLD P. TTY	TOPEKA	AARP CCTF
Bob Hlyka	Topeka	AM
Kathie Daniels	Topeka	KDHE
Paul Shelton	"	OJA
Bill Watts	Topeka	KDOT
HEWY HELYKE	LIBERMAN ISS.	SW Ko. Ak + My Address
Ben Coates	Topeka	KPA
WANDA STEWART	609 Random EL DORADO	MADD -
MAX Sutherland		KS MADD
Harry Herington	Topeka	League of KS Municipalities
Kathy Peterson	" "	DISCUS
Stan Stewart	51 Dorado	City of El Dorado
Stanley P Sutton	KDHEL Forbes	Laboratory Improvement

#1
Date 3/8/94

TESTIMONY ON HB2579

INTRODUCTION.

1. 15000 people on interlock in the U.S.
2. Thirty states have legislation concerning interlocks and several states, CA, OR, TX, WV, WI, IA. have legislation that requires interlock as a condition of a restricted license or reinstatement of the privilege.
3. Interlock has reduced recidivism by up to 90% while the device is in the vehicle.
4. A 48 month follow-on study in Hamilton County in Cincinnati, showed that offenders who had interlock installed for at least 6 months had a lower re-arrest rate than matched pairs of offenders receiving license suspension after the devices were removed from the vehicle.

1. CONCERN. Interlock devices are unreliable and easily circumvented.

RESPONSE. Not true. Early technology had reliability problems and there were easy ways to circumvent the equipment without detection. In April of 1992, NHTSA published recommended guidelines to address these two issues. In order to meet these guidelines, the accuracy had to be demonstrated over temperature ranges and the devices had to demonstrate their functionality when exposed to automobile and other environmental problems. NHTSA also required the devices to successfully address the major circumvention issues by incorporating features like HUM tone, ROLLING Retest and EVENTS logs. Today the devices are very difficult to circumvent without detection. Attachment A, shows the re-arrests results of 2nd generation NHTSA devices.

2. CONCERN. Offenders can not afford the cost of interlock programs and what about indigents?

RESPONSE. Not true. The average DWI offender spends \$375.00 per month on alcohol or \$12.50 per day. A 15% reduction in daily consumption will pay for the cost of an interlock. In Oregon from 1989-1993 over 2000 devices were installed through a DMV early license reinstatement program. The state agreed to pay the full cost of the interlock if the offender qualified for the Federal food stamp program. The state paid for less than 2% of the people. The manufacturer will commit to providing free programs to those individuals that qualify under the Oregon model. Further the manufacturer will provide a program at 1/2 cost to

State Judiciary
3-8-94
Attachment 1-1

5% of the users who qualify as having an economic hardship. The definition of hardship and indigence would be established by the Department of Motor Vehicles.

3. CONCERN. This program just makes an interlock company a lot of money.

RESPONSE. Interlock is provided by the private sector seeking profit and because of the emergence of demand for the technology, the industry has become highly competitive. There are currently five manufacturers that have developed technology that meets NHTSA guidelines. Although several sole source contracts have been awarded, they have been competitively bid. The service provider business is competitive in most states, offering offenders a choice.

4. CONCERN. Private providers must be regulated and could take bribes to adjust equipment or not report violations.

RESPONSE. The manufacturer has developed and implemented a Management Information System (MIS) that remotely controls the programming, calibration and down-loading of the devices and provides automated electronic access for the monitoring agency to receive such information. If the state requires such capability in their rules and regulations of "Service Delivery" this is a non-issue.

5. CONCERN. This could be a large program and create administrative burdens due to the intensive nature of supervision that is provided by the interlock device.

RESPONSE. True, the monitoring of the offender versus license suspension is greatly increased. The implementation of an MIS with the provider coordinating all enrollment and flow of reporting information to the Courts and DMV, creates a very efficient and cost-effective way to guarantee integrity of information. Administration is required but will not be a burden.

6. CONCERN. The legislation appears to reduce license suspension and groups like MADD and NHTSA support long-term license suspension because it reduces the incidence of drunken driving.

RESPONSE. True. Administrative license suspension (swift and assured) has been shown to reduce alcohol related fatalities and reduce the incidence of drunk driving in the general population. The manufacturer supports administrative license suspension. However, NHTSA acknowledges that 80% of all DWI offenders drive under suspension, especially after 90 days. Albeit more safely. According to data presented recently to the National Academy of Sciences, 50% of all DWI offenders who receive a suspension over 90 days never reapply for a license. They fall-out of the system. They are driving with no license or car insurance and no monitoring of whether they are drinking and driving. A person with an interlock restricted license is less likely to get re-arrested for a DWI while the device is in the car than a person driving under long-term license revocation.

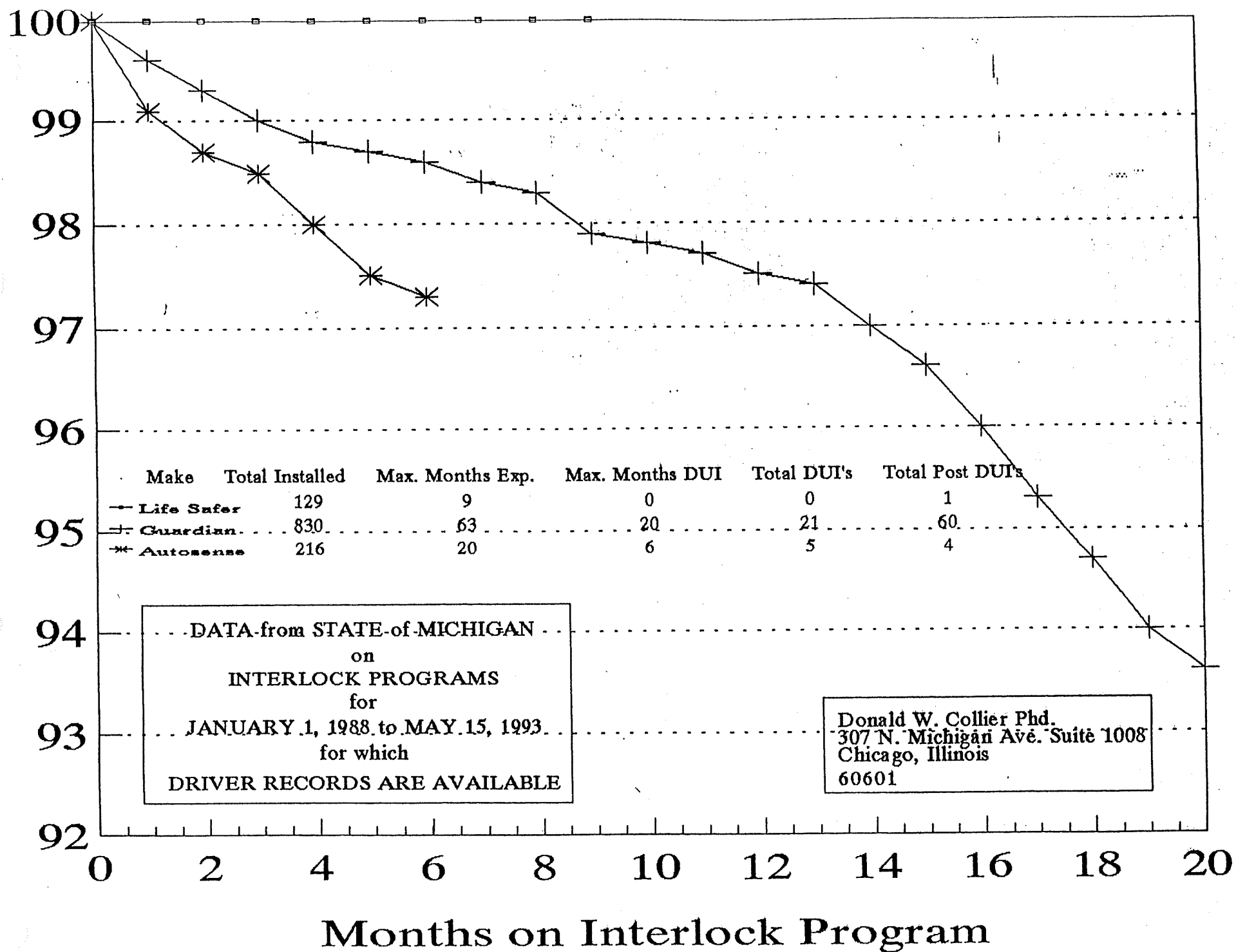
7. CONCERN. This legislation would eliminate the opportunity to receive Federal Highway safety grant moneys authorized under 408 and 410 funds.

RESPONSE. 408 grants for Kansas end at the end of 1994 and 410 moneys might be available. However, in order to qualify for 410 moneys, the law would need to require a minimum mandatory 30 hard suspension for 1st failure or refusal of a breath test and a 1 year minimum hard suspension for failure or refusal of a breath test. Several states including West Virginia have passed similar legislation and have kept their 408 moneys. In WV, 1st offense DWI results in a 6 month to 1 year revocation depending on whether the test is refused, with an interlock restricted license available after 30 days of hard suspension. 2nd offense is a mandatory 2 year revocation with an interlock restricted license available after 1 year. To date, NHTSA has not allowed for an interlock restricted license for a repeat offender after 90 days of hard suspension called for in this legislation.

8. CONCERN. Should 1st offenders be required to install interlock devices?

RESPONSE. According to NHTSA through FARS, a person with one DWI conviction is 9 times more likely to be involved in an alcohol related fatality. According to NADAC, 80% of all first offenders have drinking problems or are alcoholics. The national average BAC at the time of arrest is .18. The typical 1st time DWI offender is not a social drinker. Unless these individuals address their alcohol issue and the state intervenes at this level to at least attempt to control drinking and driving behavior a large percentage of these offenders are bound to become the repeat offenders. Treatment and education and the intervention of an interlock device to control behavior represent the best opportunity to cost-effectively reduce the stubbornly high levels of recidivism that have persisted despite the stiffening of sanctions for the DWI offender.

% Not Rearrested (Survival)





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of Robert T. Stephan
Kansas Attorney General
Before the Senate Committee on Judiciary
Re: House Bill No. 2579
March 8, 1994

Mr. Chairman, Members of the Committee:

I oppose the provisions of House Bill 2579 that reduce the period of driver's license suspension for various DUI violations.

Currently the law provides for a one year driver's license suspension for anyone who refuses to submit to a test to determine the presence of alcohol. House Bill 2579, as amended, would reduce that period to a 90-day revocation for a first refusal and a 180-day revocation for a second refusal.

Currently the law requires a 30-day suspension and a 60-day restriction for first time test failure and a one year suspension for a second test failure. House Bill 2579 would reduce this to 210-day restriction for the first failure and a

Senate Judiciary
3-8-94
attskmmt 2-1

90-day revocation with one year restriction for the second failure.

Currently the law requires a 30-day suspension and 330-day restriction for the first DUI conviction and a one year suspension for a second conviction. House Bill 2579 would reduce this to 210-day restriction for the first conviction and a 90-day revocation with a one year restriction for the second.

While conceivably it may be more difficult to get a new license once it has been revoked, there is no guarantee that this will ever be the case as it is discretionary with the division of motor vehicles. It is more likely that offenders will be back on the streets more quickly under House Bill 2579 than they would be under the current law; and for first time test failure and first time conviction, they will not even lose their licenses! This is clearly a step backward in the progress that has been made to date for tougher drunk driving laws.

Further, the provisions for restriction would be less burdensome under House Bill 2579 than under current law. Currently law limits restricted drivers to going to and from work and any mandated alcohol education or treatment program. House Bill 2579 would allow restricted drivers to go anywhere

Testimony of Attorney General Stephan
Before the Senate Committee on Judiciary
Page 3
March 8, 1994

at anytime. This too, in my opinion, is a step backward.
People who choose to drive while intoxicated, thereby risking
the lives of other people, should be held more accountable.

I ask you to take a stand for the rights and protection
of innocent victims and potential victims of DUI offenses and
reject the proposed amendments in House Bill 2579.

43

Senate Judiciary Committee Hearing
on
HB2579-Use of ignition interlock device

March 8, 1994

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

I am here as a representative of MADD in opposition to HB2579. MADD's position is that ignition interlock devices should not be used as a substitute for administrative license suspension or revocation. The ignition interlock devices should only be considered as an additional sanction to license suspension or revocation.

MADD acknowledges the leadership role the Kansas legislature has provided in the past regarding DUI legislation. Past years I have represented MADD in support of drinking and driving countermeasures. Interestingly enough I am in opposition of what appears to be and is being marketed as the sure-fire answer to address drunk driving in our state. I was "intrigued" by the intent of ignition interlock devices but "beyond the glamor" there is no support of using ignition interlock devices in lieu of suspension or revocation. Passage of HB2579 will only weaken the progress Kansas has made in DUI legislation.

Sanctions have been weakened across the board for refusals and convictions. I am offended that the proposed change for test failure or first conviction has no suspension. In essence, whether it's a refusal or conviction you can buy your license back.

MADD has raised concern over 410 incentive grant funds compliance. Compliance requires 5 out of 6 criteria-one of which is the one year suspension for a second DUI offense. We were told that the other criteria of self-sufficiency could be met to assure compliance. Qualifying for self-sufficiency will not be easy. In the National "Rating of the States" Survey Kansas was graded down in self-sufficiency. We currently qualify for 410 incentive grant monies because of license suspension why impede our progress.

Senate Judiciary
3-8-94
attached 3-1

In 1986 California became the first state to permit judges the option of requiring drunk driving offenders to install ignition interlock systems as a condition of probation. Kansas law presently allows for ignition interlock devices to be imposed by the convicting court. In July 1993 the device became mandatory on a repeat offense after serving a one year suspension.

This proposed bill would remove this sanction from the court and establish the use of IID's (Ignition Interlock Device) as an administrative sanction under the Department of Revenue, Division of Motor Vehicles. Use of the IID should be considered a breath alcohol program and be placed under the auspices of the Kansas Department of Health and Environment-Breath Alcohol Program. But once again the IID should not be used in lieu of suspension/revocation.

A statewide implementation of ignition interlock devices will not effectively address the repeat offenders nor the issue of drivers driving with suspended licenses.

The following studies support the use of driving license suspension/revocation sanctions as an effective DUI countermeasure NOT ignition interlock:

1. California, 1977-Effectiveness of License Suspension or Revocation for Drivers Convicted of Multiple Driving-Under-The-Influence Offenses, Research and Statistics, California Department of Motor Vehicles, 2415 First Ave. Sacramento, CA 95818
2. Washington, 1981-License Revocation and Alcoholism Treatment Programs for Habitual Traffic Offenders, Washington Department of Licensing, Highways-Licenses Building, Olympia, Washington 98504
3. North Carolina, 1983-An Initial Evaluation of the North Carolina Alcohol and Drug Education Traffic Schools, Highway Safety Research Center, University of North Carolina, CTP-197A, Chapel Hill, NC 27514
4. California, 1984-The Long-Term Traffic Safety Impact of Pilot Alcohol Abuse Treatment as an Alternative to License Suspensions, Research and Statistics, California Department of Motor Vehicles, 2415 First Ave. Sacramento CA 95818
5. Alabama, 1983 & 1985-The Impact of the Revision of DUI Legislation in Alabama, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102-1511

Studies continued in support of driver's license suspensions/revocations:

6. California, 1986-An Evaluation of the Process Efficiency and Traffic Safety Impact of the California Implied Consent Program, Department of Motor Vehicles, 2415 First Ave., Sacramento, CA 95818
7. Wisconsin, 1987-Deterrent Effect of Mandatory License Suspension for DWI Convictions, Blomberg, Preusser and Ulmer, National Technical Information Service, Springfield, Virginia 22161
8. Insurance Institute for Highway Safety, 1988-Fatal Crash Involvement and Laws Against Alcohol Impaired Driving, Insurance Institute for Highway Safety, 1005 N. Glebe Road, Arlington, VA 22201
9. Wisconsin, 1988-Follow-up Evaluation of Wisconsin's 1982 Drinking and Driving Law, Preusser, Blomberg and Ulmer, National Technical Information Service, Springfield, VA 22161
10. Effects of License Revocation On Drunk Driving Offenders, 1988, Ross and Gonzales, University of New Mexico, Albuquerque, NM 87131
11. Changes in Alcohol-Involved Fatal Crashes Associated With Tougher State Alcohol Legislation, 1989, Sigmastat, Inc., 18416 Shady View Lane, Brookeville, MD 20833
12. An Evaluation of Administrative Per Se Laws, 1989, Stewart, Gruenewald and Roth, Pacific Institute for Research and Evaluation, 7101 Wisconsin Ave., Bethesda, MD 20814
13. Impact of Driver's License Suspension on Employment Stability of Drunken Drivers, 1987 Wells-Parker and Cosby, Social Science Research Center, Mississippi State University, MS 39762
14. The Effect of Administrative License Revocation on Employment: A Preliminary Report, 1986, Delmas Johnson, Office of Alcohol and State Programs, National Highway Traffic Safety Administration, 400 7th St., SW, Washington, D.C. 20590

The following studies evaluate the effectiveness of Ignition Interlock Programs:

1. The Technology of Breath-Alcohol Analysis, 1992, Kurt M. Dubowski, Ph. D., U.S. Department of Health and Human Services, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Rockville Maryland 20857
2. The Effectiveness of Oregon's Ignition Interlock Program, Barnie Jones, Ph.D., Salem, OR, Motor Vehicles Division
3. An Evaluation of the Effectiveness of the Interlock in Preventing Recidivism in a Population of Multiple Offenders, 1992, Popkin, Stewart, Martell, Birckmayer, The University of North Carolina Highway Safety Research Center

Of all the above studies not one will support ignition interlock devices in lieu of driver license suspension or revocation. They do bring to light serious problems with ignition interlock devices.

The Federal Highway Safety Act of 1987 (P.L. 100-17, Section 203) required the Secretary of Transportation to "report to Congress on the effectiveness and the potential for application of the technology and devices..." that prohibit the operation of motor vehicles by intoxicated individuals. That report was rendered in May 1988 and concludes that "the technology is feasible but there is not yet sufficient evidence available to judge the effectiveness of the devices in deterring alcohol impaired driving" (U.S. Department of Transportation 1988b,p.i.)

Breath-alcohol testing in traffic law enforcement had made remarkable progress in the half century since its introduction. In order of their reliability and the validity of their functions, the devices are:

- 1st- quantitative evidential breath-alcohol analyzers
- 2nd- screening or prearrest breath-alcohol testers
- 3rd- passive breath-alcohol detectors
- 4th- alcohol-sensing automobile ignition interlocks

IID's rank fourth (4th) in reliability and the validity of their functions. Ignition interlock devices do not meet the quality controls necessary to warrant full implementation in lieu of driver license sanctions.

The researchers (California) also found the interlock systems can be bypassed or circumvented by a drinker determined to drive. "Nearly half of a sample of records for interlock devices demonstrated that they had been bypassed at some point", they reported. Experts from the Kansas Department of Health and Environment-Breath Alcohol Program can be called upon to address the technical issue of circumvention. Two areas I can address are curb-side assistance in starting the vehicle and simply not driving the vehicle with the ignition interlock device. Noted in the Oregon study... of the IID drivers who were involved in a traffic conviction or accident 40% of them were driving a different vehicle at the time of an accident or citation. Forty percent - and that just represents those caught. With multi-car families this will also be an issue in Kansas.

It is suggested in the North Carolina study that current findings do not enable us to identify the types of convicted drunk drivers for whom interlock would be most effective. With time, it may be possible to pool the results of programs targeting different groups of offenders in order to determine if there are particular types of offenders for whom interlocks are most effective.

It continues in saying that while the Interlock program reduces recidivism during the period of program participation unfortunately, recidivism rates returned to higher levels after full licensing privileges were returned, and interlocks removed.

The gravest concern of North Carolina's are the large numbers of drinking drivers who leave the licensing system completely and continue to drive often drunk. The development of countermeasures to separate these people from their vehicles is desperately needed. A model program to do just that comes from Ohio effective September 1993. It deals with administrative license suspensions for refusals and test failures. Refusals have more enhanced suspension sanctions yet both are progressive. For convicted repeat offenders and driving under DUI suspension they face impoundment of plates and immobilization of vehicles and eventually vehicle forfeiture.

In conclusion MADD would like to see ignition interlock kept in the jurisdiction it currently is in. No ignition interlock program should be implemented in lieu of current sanctions. If a program is implemented in should be done as an additional sanction.

MADD would suggest addressing the high refusal rate by enhancing the 2nd offense to 2 years.

MADD would suggest addressing driving under DUI suspension or driving under suspension without insurance/proof of financial responsibility impose penalties of impounded vehicle plates, vehicle immobilization, and vehicle forfeiture.

These countermeasures are proven to be effective whereas the ignition interlock device would be a DUI drivers' "toy".

(14) #4

**Testimony
Senate Judiciary Committee
March 8, 1994**

House Bill 2579

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors. Our organizations appear before this committee today in opposition to House Bill 2579 in its current form.

When this concept was first examined by this committee several years ago, we did support an interlock device as a method of keeping drinking drivers off the highways. We also supported this concept as an addition to any other minimum penalties as set forth by the Court or the Division of Motor Vehicles. However, we see that in the past several years, to the best of our knowledge, only one or two individuals have taken advantage of this interlock device in the State of Kansas. This lack of usage of the interlock device under present law would lead us to believe this concept is not too popular with the DUI offenders in the State of Kansas.

Our organizations are more concerned about changing the attitudes of the drinking driver, than in providing these devices and thereby giving the DUI offender a challenge as to whether he or she could beat the system. We feel there is a great deal of difficulty in implementing this program to a group of offenders which will exceed over 10,000 individuals in any one year.

Another problem with the interlock device is that many offender families have two vehicles at their disposal. Does the offender who has violated his privilege to drive in the State of Kansas, then lease a device for all of the vehicles of his or her family? Does the farmer who owns a pickup, a farm truck and a family vehicle have to put interlock devices on all vehicles to get this products to town during the harvest season? What about the offender that owns a personal vehicle and also has at his disposal a company owned vehicle to perform his occupational duties? If he puts an interlock device on his personal vehicle, does he then have to provide another device to place in the company car?

*Senate Judiciary
3-8-94
attachment 4-1*

Testimony
House Bill 2579
page 2

Our organizations find it hard to believe that the Department of Revenue can determine on a sliding scale who pays what amount for their interlock device. We do not feel that it is the obligation of the Revenue Department to determine the cost of the interlock device as under this proposed legislation.

We also see a problem with the device for those offenders who work at a marginal occupation and do not have additional funds to lease an interlock device in order for them to operate a motor vehicle. Under present law, those offenders would have a minimum 30 days suspension and then be placed on restricted privileges for 60 days, allowing them to get back and forth to work. Under this proposed legislation, because this offender cannot afford to lease an interlock device, they will be suspended from driving a motor vehicle in any fashion for a period of seven months.

Our organizations feel this proposed legislature favors those offenders who have adequate funds to drink and drive and adequate funds to lease an interlock device. For the working poor, these offenders cannot afford to lease an interlock device nor can they, under this proposed legislation, drive to work. They are just out of luck.

We would much rather see an interlock device which would be added on after minimum penalties which are now Kansas Law. We have no problems with the interlock device being installed at the order of the Court, in addition to and not in lieu of minimum penalties.

Our organizations also feel that our main concern about the DUI laws is to correct the deficiencies that were overlooked last year in the legislative session. The major deficiency that comes to our attention is that the municipal courts can prosecute a third time offender as a misdemeanor. Yet, the county courts, maybe in the same building, or a short walk away, would have to prosecute this third time offender as a felony, making that offender subject to the sentencing guidelines passed by this Legislature over the past two years.

(16)

Testimony
House Bill 2579
page 3

We would hope this committee look at this proposed legislation long and hard, before it mandates interlock devices for ALL offenders of our DUI laws in the State of Kansas.

Thank you for allowing me to appear today, I will attempt to answer any questions.

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

John Smith

MEMORANDUM

TO: Sen. Jerry Moran
Chairman, Senate Judiciary Committee

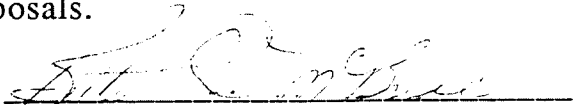
FROM: Betty J. McBride
Director of Vehicles

RE: House Bill No. 2579

DATE: March 8, 1994

The Division of Vehicles has the following concerns with House Bill 2579 which should be addressed to make the legislation workable.

1. The present bill does not contain amendments to the notice provisions in K.S.A. 8-1001. If passed without such amendments, the legislation will require notice to a licensee that certain action will take place upon a test failure or test refusal under K.S.A. 8-1001, but require different action under K.S.A. 8-1014 when a test failure or test refusal occurs. Whatever the final version regarding license sanctions, the statutory notice provisions should reflect those changes and warn the individual of the action which actually will be taken by the Division.
2. Some minor changes in wording need to be made in K.S.A. 8-255, 8-1001 and 8-1002 to reflect the terminology used in HB 2579.
3. The present bill does not allow a time period for the person to have an ignition interlock installed prior to the onset of the restriction period. A person could go to a hearing for a first-time failure, have a determination that the interlock device will be required, and, although not suspended, be unable to drive until the interlock is installed.
4. The Division has prepared proposed amendments to address the concerns in paragraphs 1 and 2 above and will cooperate with the committee and the revisor's office regarding any other proposals.


Betty J. McBride, Director of Vehicles

Senate Judiciary
3-8-94
attached 5-1

5-2

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1994

HOUSE BILL No. 2579

By Committee on Judiciary

1-10

11 AN ACT concerning driving privileges, relating to alcohol or drug
12 related convictions; amending K.S.A. 8-255, 8-286 and 8-1017 and
13 K.S.A. 1993 Supp. 8-259, [8-262,] 8-1014 and 8-1015 and repealing
14 the existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

39 (b) The division shall suspend a person's driving privileges when
40 required by K.S.A. 8-262, and amendments thereto, and K.S.A. 8-
41 1014, and amendments thereto, and shall disqualify a person's priv-
42 ilege to drive commercial motor vehicles when required by K.S.A.
43 8-2,142, and amendments thereto.

shall revoke, restrict, or restrict and
revoke when required by

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

restricting,

restriction,

restricted,

restriction,

restriction,

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

1 order of suspension, revocation or disqualification, or, good cause
 2 appearing therefor, dismiss the administrative action. If the person
 3 fails to request a hearing within the time prescribed or if, after a
 4 hearing, the order of suspension, revocation or disqualification is
 5 upheld, the person shall surrender to the division, upon proper
 6 demand, any driver's license in the person's possession. restriction,

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

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

31 Sec. 2. K.S.A. 1993 Supp. 8-259 is hereby amended to read as
 32 follows: 8-259. (a) Except in the case of mandatory revocation under
 33 K.S.A. 8-254, and amendments thereto, mandatory suspension ~~rev-~~ driver's license sanctions
 34 ~~cation for an alcohol or drug-related conviction in this state~~
 35 subsection (e) (b) of K.S.A. 8-1014, and amendments thereto, man-
 36 datory suspension under K.S.A. 8-262, and amendments thereto, or
 37 mandatory disqualification of the privilege to drive a commercial
 38 motor vehicle under paragraphs (1), (2) or (3) of subsection (a) of
 39 K.S.A. 8-2,142, and amendments thereto, the cancellation, ~~suspension,~~ restriction,
 40 revocation, disqualification or denial of a person's driving priv-
 41 ileges by the division is subject to review. Such review shall be in
 42 accordance with the act for judicial review and civil enforcement of
 43 agency actions. In the case of review of an order of suspension under driver's license sanctions

1 K.S.A. 8-1001 *et seq.*, and amendments thereto, or of an order of
2 disqualification under paragraph (4) of subsection (a) of K.S.A. 8-
3 2,142, and amendments thereto, the petition for review shall be filed
4 within 10 days after the effective date of the order and venue of
5 the action for review is the county where the administrative pro-
6 ceeding was held or the county where the person was arrested. In
7 all other cases, the time for filing the petition is as provided by
8 K.S.A. 77-613, and amendments thereto, and venue is the county
9 where the licensee resides. The action for review shall be by trial
10 *de novo* to the court. The court shall take testimony, examine the
11 facts of the case and determine whether the petitioner is entitled
12 to driving privileges or whether the petitioner's driving privileges
13 are subject to suspension, cancellation or revocation under the pro-
14 visions of this act. The court on review shall consider the petitioner's
15 traffic violations record and liability insurance coverage before grant-
16 ing a stay or other temporary remedy pursuant to K.S.A. 77-616,
17 and amendments thereto. If a stay is granted, it shall be considered
18 equivalent to any license surrendered. If a stay is not granted, trial
19 shall be set upon 20 days' notice to the legal services bureau of the
20 department of revenue. No stay shall be issued if a person's driving
21 privileges are canceled pursuant to K.S.A. 8-250, and amendments
22 thereto.

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

27 Sec. 3. K.S.A. 1993 Supp. 8-1014 is hereby amended to read as
28 follows: 8-1014. (a) Except as provided by subsection (e) (d) and
29 K.S.A. 8-2,142, and amendments thereto, if a person refuses a test,
30 the division, pursuant to K.S.A. 8-1002, and amendments thereto,
31 shall suspend ~~revoke~~ the person's driving privileges for one
32 year ~~on a first or second occurrence and shall revoke the per-~~
33 ~~son's driving privileges for 3, two years on a second occurrence~~
34 ~~and three years on a third or a subsequent occurrence~~;

35 [(1) On the person's first occurrence, revoke the person's driving
36 privileges for 90 days, then restrict the person's driving privileges
37 as provided by K.S.A. 8-1015, and amendments thereto, for an
38 additional 270 days;

39 [(2) on the person's second occurrence, revoke the person's driv-
40 ing privileges for 180 days, then restrict the person's driving priv-
41 ileges as provided by K.S.A. 8-1015, and amendments thereto, for
42 an additional one year; and

43 [(3) on the person's third or a subsequent occurrence, revoke

restriction,

1 the person's driving privileges for three years].

2 (b) Except as provided by subsection (e) (d) and K.S.A. 8-2,142,
3 and amendments thereto, if a person fails a test *or has an alcohol*
4 *or drug-related conviction in this state*, the division, pursuant to
5 K.S.A. 8-1002, and amendments thereto, shall:

6 (1) On the person's first occurrence, ~~suspend~~ *revoke* the per-
7 son's driving privileges for 30 days; then restrict the person's
8 driving privileges as provided by K.S.A. 8-1015, and amendments
9 thereto, for an additional 60 days ~~180~~ [210] days; and

10 (2) on the person's second ~~or a subsequent~~ occurrence, suspend
11 ~~revoke~~ the person's driving privileges for ~~one year~~.

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

15 (1) On the person's first occurrence, suspend the person's
16 driving privileges for 30 days; then restrict the person's driving
17 privileges as provided by K.S.A. 8-1015, and amendments
18 thereto, for an additional 30 days; and

19 (2) 90 days and then restrict the person's driving privileges for
20 one year as provided by subsection (a) of K.S.A. 8-1015, and amend-
21 ments thereto; and

22 (3) on the person's second ~~third~~ or a subsequent occurrence,
23 ~~suspend~~ *revoke* the person's driving privileges for ~~one year~~ three
24 years.

25 (d) (c) Whenever the division is notified by an alcohol and drug
26 safety action program that a person has failed to complete any alcohol
27 and drug safety action education or treatment program ordered by
28 a court for a conviction of a violation of K.S.A. 8-1567, and amend-
29 ments thereto, the division shall ~~suspend~~ *revoke* the person's driving
30 privileges until the division receives notice of the person's completion
31 of such program.

32 (e) (d) Except as provided in K.S.A. 8-2,142, and amendments
33 thereto, if a person's driving privileges are subject to ~~suspension~~
34 ~~revocation~~ pursuant to this section for a test refusal, test failure or
35 alcohol or drug-related conviction arising from the same arrest, the
36 period of such ~~suspension~~ *revocation* shall not exceed the longest
37 applicable period authorized by subsection (a), ~~or (b) or (e)~~, and
38 such ~~suspension~~ *revocation* periods shall not be added together or
39 otherwise imposed consecutively. In addition, in determining the
40 period of such ~~suspension~~ *revocation* as authorized by subsection
41 (a), ~~or (b) or (e)~~, such person shall receive credit for any period of
42 time for which such person's driving privileges were suspended
43 ~~revoked~~ while awaiting any hearing or final order authorized by this

1 act.

2 If a person's driving privileges are subject to restriction pursuant
3 to this section for a ~~test failure or alcohol or drug-related conviction~~ test refusal,
4 arising from the same arrest, the restriction periods shall not be
5 added together or otherwise imposed consecutively. In addition, in
6 determining the period of restriction, the person shall receive credit
7 for any period of suspension ~~revocation~~ imposed for a test refusal
8 arising from the same arrest.

9 If a person's driving privileges are revoked for three years pur-
10 suant to this section and for the same occurrence, such person is
11 subject to the revocation of driving privileges pursuant to K.S.A.
12 8-286, and amendments thereto. ~~Such~~, [such] person shall be subject
13 to revocation pursuant to this section only, and not subject to rev-
14 ocation pursuant to K.S.A. 8-286, and amendments thereto.

15 (f) (e) If the division has taken action under subsection (a) or (b)
16 and such action is stayed pursuant to K.S.A. 8-259, and amendments
17 thereto, or if temporary driving privileges are issued pursuant to
18 subsection (k) of K.S.A. 8-1002, and amendments thereto, the stay
19 or temporary driving privileges shall not prevent the division from
20 taking the action required by subsection (e) (b) ~~for an alcohol or~~
21 ~~drug-related conviction in this state.~~ for a test failure under subsection

22 (g) (f) Upon restricting a person's driving privileges pursuant to
23 this section, the division shall issue without charge a driver's license
24 which shall indicate on the face of the license that restrictions have
25 been imposed on the person's driving privileges and that a copy of
26 the order imposing the restrictions is required to be carried by the
27 person for whom the license was issued any time the person is
28 operating a motor vehicle on the highways of this state. If the person
29 is a nonresident, the division shall forward a copy of the order
30 to the motor vehicle administrator of the person's state of res-
31 idence.

32 Sec. 4. K.S.A. 1993 Supp. 8-1015 is hereby amended to read as
33 follows: 8-1015. (a) A driver whose violations were committed
34 in a commercial motor vehicle is exempt from utilizing the
35 below-stated restrictions. When subsection (b)(1) or (b)(2) of
36 K.S.A. 8-1014, and amendments thereto, requires or authorizes the
37 division to place restrictions on a person's driving privileges, the
38 division shall restrict the person's driving privileges to driving only
39 under the following circumstances: In going to and returning
40 from the person's place of employment and in going to and
41 returning from a mandated alcohol education or treatment pro-
42 gram a motor vehicle equipped with an ignition interlock device,
43 as required by the division and obtained, installed and maintained at

1 the person's expense. [The division, by rules and regulations, shall
2 establish a sliding scale for the costs of the ignition interlock device
3 based on the person's ability to pay.]

4 (b) (1) When subsection (c)(1) of K.S.A. 8-1014, and amend-
5 ments thereto, requires the division to place restrictions on a
6 person's driving privileges, the division shall restrict the per-
7 son's driving privileges to driving only under the following
8 circumstances for a period of 60 days: In going to and returning
9 from the person's place of employment and in going to and
10 returning from a mandated alcohol education or treatment pro-
11 gram.

12 (2) Upon expiration of the 60-day period provided by sub-
13 section (b)(1), the division shall restrict the person's driving
14 privileges as provided by K.S.A. 8-202, and amendments
15 thereto, for an additional 270 days, unless the convicting court,
16 in lieu of such restrictions, has ordered the restrictions set out
17 in subsection (b)(3).

18 (3) Upon convicting a person of an alcohol or drug related
19 offense, the convicting court, in lieu of the restrictions set out
20 in subsection (b)(2), may restrict the person's driving privileges
21 to driving only a motor vehicle equipped with an ignition in-
22 terlock device, approved by the division and obtained, installed
23 and maintained at the person's expense. Any fine imposed by
24 the court for the conviction shall be reduced by the court in
25 an amount equal to the expense incurred by the person for
26 obtaining, installing and maintaining the ignition interlock de-
27 vice.

28 (4) Upon a person's second or subsequent conviction for an
29 alcohol related offense and the person had an alcohol concen-
30 tration of .15 or more in the person's blood or breath, the
31 convicting court shall restrict the person's driving privileges to
32 driving only a motor vehicle equipped with an ignition inter-
33 lock device, approved by the division and obtained, installed
34 and maintained at the person's expense. Any fine imposed by
35 the court for the conviction may be reduced by the court in
36 an amount equal to the expense incurred by the person for
37 obtaining, installing and maintaining the ignition interlock de-
38 vice.

39 (b) In addition to any other requirements of this section, the
40 director of vehicles shall require a person to acquire insurance and
41 for such person's insurance company to maintain on file with the
42 division evidence of such insurance for a period of three years from
43 the date such person's driving privileges are otherwise eligible to

1 be reinstated after such person has been placed under restrictions
2 pursuant to subsection (b)(1) or (2) of K.S.A. 8-1014, and amend-
3 ments thereto, or 22-2909, and amendments thereto.

4 The company of the insured shall immediately mail notice to the
5 director whenever any policy required by this subsection to be on
6 file with the division is terminated by the insured or the insurer
7 for any reason. The receipt by the director of such termination
8 shall be prima facie evidence that no financial security exists with
9 regard to the person concerned.

10 (e) ~~(b)~~ (c) Upon expiration of the period of time for which re-
11 strictions are imposed pursuant to this section, the licensee may
12 apply to the division for the return of any license previously sur-
13 rendered by the licensee. If the license has expired, the person may
14 apply to the division for a new license, which shall be issued by
15 the division upon payment of the proper fee and satisfaction of the
16 other conditions established by law, unless the person's driving priv-
17 ileges have been suspended or revoked prior to expiration.

18 (d) Violation of restrictions imposed under this section is a
19 misdemeanor subject to punishment and suspension of driving
20 privileges as provided by K.S.A. 8-201, and amendments
21 thereto.

22 Sec. 5. K.S.A. 8-1017 is hereby amended to read as follows: 8-
23 1017. (a) No person shall:

24 (1) Tamper with an ignition interlock device for the purpose of
25 circumventing it or rendering it inaccurate or inoperative;

26 (2) request or solicit another to blow into an ignition interlock
27 device, or start a motor vehicle equipped with such device, for the
28 purpose of providing an operable motor vehicle to a person whose
29 driving privileges have been restricted to driving a motor vehicle
30 equipped with such device; or

31 (3) blow into or start a motor vehicle equipped with an ignition
32 interlock device for the purpose of providing an operable motor
33 vehicle to a person whose driving privileges have been restricted to
34 driving a motor vehicle equipped with such device; or

35 (4) *operate a vehicle not equipped with an ignition interlock*
36 *device during the restricted period.*

37 (b) Violation of this section is a class C A, nonperson misde-
38 meanor.

39 (c) *In addition to any other penalties provided by law, upon*
40 *receipt of a conviction for a violation of this section, the division*
41 *shall revoke the person's driving privileges for a period of two years.*

42 Sec. 6. K.S.A. 8-286 is hereby amended to read as follows: 8-
43 286 Whenever the files and records of the division shall disclose

1 that the record of convictions of any person is such that the person
2 is an habitual violator, as prescribed by K.S.A. 8-285, and amend-
3 ments thereto, the division forthwith shall certify a full and complete
4 abstract of such person's record of convictions to the district or
5 county attorney of the county where such person resides, as dis-
6 closed by the records of the division, or if such person is a non-
7 resident, to the district attorney of Shawnee county. Upon receiving
8 said such abstract, the district or county attorney forthwith shall
9 commence prosecution of such person in the district court of such
10 county, alleging such person to be an habitual violator. Such court
11 shall cause a summons to be served on the accused, ordering the
12 accused to appear before the court at a time and date stated therein
13 to show cause why he or she such person should not be convicted
14 of being an habitual violator. At the time and date stated in the
15 summons, the court shall hold a hearing to determine the identity
16 of the accused and the accuracy of the abstract of such person's
17 record of convictions.

18 If the court finds that such accused person is not the same person
19 as the accused named in such records, or that the convictions are
20 not such as to constitute the accused "an a habitual violator" under
21 this act, the prosecution shall be dismissed; but if the court finds
22 that the accused is the same person named in the records certified
23 by the division, the court shall find such person guilty of being "an
24 a habitual violator" of the motor vehicle laws of Kansas and shall
25 direct such person by appropriate order not to operate a motor
26 vehicle on the public highways in this state. The clerk of the court
27 shall file with the division a copy of such order which shall become
28 a part of the permanent records of the division.

29 If the habitual violator's driving privileges are revoked pursuant
30 to this section, and for the third conviction, such violator is subject
31 to the revocation of driving privileges pursuant to K.S.A. 8-1014,
32 and amendments thereto. ~~Such~~ [such] person shall be subject to
33 revocation pursuant to this section only, and not subject to revocation
34 pursuant to K.S.A. 8-1014, and amendments thereto.

35 [Sec. 7. K.S.A. 1993 Supp. 8-262 is hereby amended to read
36 as follows: 8-262. (a) (1) Any person who drives a motor vehicle on
37 any highway of this state at a time when such person's privilege
38 so to do is canceled, suspended or revoked shall be guilty of a class
39 B nonperson misdemeanor on the first conviction, a class A non-
40 person misdemeanor on the second conviction and for third and
41 subsequent convictions shall be guilty of a severity level 9, non-
42 person felony.

43 [(a) No person shall be convicted under this section if such

1 person was entitled at the time of arrest under K.S.A. 8-257, and
2 amendments thereto, to the return of such person's driver's license
3 or was, at the time of arrest, eligible under K.S.A. 8-256, and
4 amendments thereto, to apply for a new license to operate a motor
5 vehicle.

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

11 [(4) If a person (A) is convicted of a violation of this section,
12 committed while the person's privilege to drive was suspended or
13 revoked for a violation of K.S.A. 8-1567, and amendments thereto,
14 or any ordinance of any city or a law of another state, which
15 ordinance or law prohibits the acts prohibited by that statute, and
16 (B) is or has been also convicted of a violation of K.S.A. 8-1567,
17 and amendments thereto, or of a municipal ordinance or law of
18 another state, which ordinance or law prohibits the acts prohibited
19 by that statute, committed while the person's privilege to drive was
20 so suspended or revoked, the person shall not be eligible for sus-
21 pension of sentence, probation or parole until the person has served
22 at least 90 days' imprisonment, and any fine imposed on such person
23 shall be in addition to such a term of imprisonment. *The mandatory*
24 *term of imprisonment on a third or subsequent conviction shall be*
25 *served in the county jail. The state shall reimburse the county for*
26 *the actual costs of imprisonment in the county jail.*

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

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

39 [Sec. 8. K.S.A. 1993 Supp. 8-262 is hereby amended to read
40 as follows: 8-262. (a) (1) Any person who drives a motor vehicle on
41 any highway of this state at a time when such person's privilege
42 so to do is canceled, suspended or revoked shall be guilty of a class
43 B misdemeanor on the first conviction, and a class A

5-12

1 nonperson misdemeanor on the second conviction and for third
2 and subsequent convictions shall be guilty of a severity level 9,
3 nonperson felony.

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

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

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

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

35 [(c) For the purposes of determining whether a conviction is a
36 first, second, third or subsequent conviction in sentencing under
37 this section, "conviction" includes a conviction of a violation of any
38 ordinance of any city or a law of another state which is in substantial
39 conformity with 6 this section.]

40 Sec. 6 7 [9]. K.S.A. 8-255, 8-286 and 8-1017 and K.S.A. 1993
41 Supp. 8-259, [8-262,] 8-1014 and 8-1015 are hereby repealed.

42 Sec. 7 8 [10]. This act shall take effect and be in force from and
43 after January 1, 1995, and its publication in the statute book.

(c) The provisions of this section shall be a part of and supplemental to the Kansas uniform commercial drivers' license act.

History: L. 1993, ch. 222, § 1; April 22.

Article 10.—DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS: RELATED PROVISIONS

3-1001. Tests for alcohol or drugs: request by officer, grounds: consent implied; administration of tests, when; procedures; immunity from liability; warning statement; search warrant, admissibility of test; availability of test result; remedial nature of law.

(a) Any person who operates or attempts to operate a 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.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,123, and amendments thereto, while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,123, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law en-

forcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(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 .08 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 .08 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 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 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, 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. 8-2.12S, 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.

revoked for not less than 90 days and not more than three years

restricted to driving only a motor vehicle equipped with an ignition interlock device, or if the person, within the past five years, 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 revoked for not less than 90 days and not more than three years

F

G

H

D OTHER VEHICLES

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 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 .08 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 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 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 .08 or greater, or the person refused 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, and amendments thereto.

revocation, restriction, or revocation
and restriction of driving privileges

(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.

DRIVING UNDER INFLUENCE

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

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.

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.

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

History: L. 1955, ch. 61, § 1; L. 1967, ch. 30, § 1; L. 1973, ch. 41, § 1; L. 1977, ch. 38, § 4; L. 1978, ch. 36, § 1; L. 1982, ch. 144, § 3; L. 1985, ch. 48, § 3; L. 1985, ch. 50, § 1; L. 1986, ch. 40, § 2; L. 1988, ch. 47, § 13; L. 1990, ch. 47, § 1; L. 1991, ch. 36, § 18; L. 1993, ch. 259, § 1; L. 1993, ch. 275, § 1; July 1.

CASE ANNOTATIONS

57. Failure to inform accused of notice provisions herein requires suppression of blood/alcohol test results: retroactive effect of ruling stated. *State v. Luft*, 248 K. 911, 913, 811 P.2d 573 (1991).

58. What constitutes a "traffic offense" as defined in 8-2117(d): examined: driving with suspended license (8-262) held not within definition. *State v. Frazier*, 248 K. 963, 871, 811 P.2d 1240 (1991).

59. Two-hour limitation in 8-1567(a)(2) does not apply to administrative suspensions resulting from test failure under implied consent provisions. *Podrebarac v. Kansas Dept. of Revenue*, 15 K.A.2d 383, 387, 807 P.2d 4327 (1991).

60. "Reasonable grounds" equated with "probable cause": suspension of license following refusal to consent to test examined. *Sullivan v. Kansas Dept. of Revenue*, 15 K.A.2d 705, 706, 815 P.2d 566 (1991).

61. Refusal of DUI test by arrestee examined. *Lund v. Kansas Department of Revenue*, 16 K.A.2d 265, 266, 267, 824 P.2d 211 (1992).

62. Failure to comply with and give notice required by section divests state of authority to suspend driver's license. *Meigs v. Kansas Dept. of Revenue*, 16 K.A.2d 537, 538, 541, 825 P.2d 1175 (1992).

63. Introduction of evidence of defendant's refusal to perform field sobriety tests not a violation of 5th Amendment. *State v. Rubik*, 16 K.A.2d 585, 587, 827 P.2d 771 (1992).

64. Substantial compliance with notice provisions examined: advising that suspension of at least six months imposed for refusing test insufficient. *Meigs v. Kansas Dept. of Revenue*, 251 K. 677, 840 P.2d 448 (1992).

65. Cited in holding that specific statutory authority not a prerequisite to stop a vehicle at sobriety checkpoint. *Davis v. Kansas Dept. of Revenue*, 252 K. 224, 843 P.2d 260 (1992).

66. Denial of right to consult attorney after breath test, test results and other evidence suppressed. *Ostmeyer v. Kansas Dept. of Revenue*, 16 K.A.2d 639, 642, 643, 644, 827 P.2d 780 (1992).

67. What constitutes completed breath test, inadequate sample due to physical inability caused by medical condition examined. *Call v. Kansas Dept. of Revenue*, 17 K.A.2d 79, 80, 831 P.2d 970 (1992).

68. Drunken condition preventing completion of preparatory requirements of agreed-to breathalyzer test constitutes refusal. *McRoberts v. Kansas Dept. of Revenue*, 17 K.A.2d 680, 682, 843 P.2d 230 (1992).

69. Cited: discussion of "verified on oath v. merely signing a DUI report." *Double S, Inc. v. Northwest Kansas Prod. Cred. Ass'n*, 17 K.A.2d 740, 743, 843 P.2d 741 (1992).

3-1002. Test refusal or failure: suspension of license: notice: hearing; procedure. 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. 8-2,129, 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 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. 8-2,129, 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 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 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. 8-2,129, 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 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 result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

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

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

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of ~~suspension of driving privileges~~ pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

driver's license sanctions

driver's license sanctions

driver's license sanctions

driver's license sanctions

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of ~~suspension~~ shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the ~~suspension~~; (3) the date notice is being served and a statement that the effective date of the ~~suspension~~ shall be the 20th calendar

D OTHER VEHICLES

driver's license sanctions

driver's license sanctions

driver's license sanctions

driver's license sanctions

driver's license sanctions

driver's license sanctions

revoke, restrict, or revoke and restrict

driver's license sanctions

day after the date of service: (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of ~~suspension~~ shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of ~~suspension~~ unless the person notifies the division in writing of a 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 20th calendar day after the date of service set out in the law enforcement officer's certification and notice of ~~suspension~~. 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 copy of the law enforcement officer's certification and 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. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of ~~suspension~~, the officer's certification and notice of ~~suspension~~, along with any licenses taken, shall be forwarded 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 the 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 15 days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county in

DRIVING UNDER INFLUENCE

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 (b) 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, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a 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 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; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed the 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 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 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 testing equipment used was reliable; (E) the person who

operated the testing equipment was qualified; (F) the testing procedures used were reliable; (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood or breath; and (H) the person was operating a vehicle.

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

(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, except that failure to hold such hearing within 30 days shall not be cause for dismissal absent a showing of prejudice. 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

of driver's license sanctions

driver's license sanctions

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.

subject to driver's license sanctions

(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.

driver's license sanctions

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

(n) This section and the applicable provisions contained in subsections (d) and (e) of K.S.A. 8-255 and amendments thereto 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.

driver's license sanctions

History: L. 1955, ch. 61, § 2; L. 1985, ch. 48, § 4; L. 1985, ch. 50, § 2; L. 1986, ch. 40, § 3; L. 1988, ch. 47, § 14; L. 1989, ch. 38, § 35; L. 1989, ch. 38, § 36; L. 1990, ch. 44, § 3; L. 1991, ch. 36, § 19; L. 1993, ch. 259, § 2; L. 1993, ch. 275, § 2; July 1.

CASE ANNOTATIONS

10. Failure to inform accused of notice provisions in 8-1001(f) held to require suppression of blood/alcohol test results. *State v. Luft*, 248 K. 911, 912, 811 P.2d 873 (1991).

11. Conditions for administrative suspension under implied consent statute reviewed. *Podrebarac v. Kansas Dept. of Revenue*, 15 K.A.2d 383, 386, 807 P.2d 1327 (1991).

12. "Reasonable grounds" in 8-1001 equated with "probable cause"; refusal to consent to test following notices herein examined. *Sullivan v. Kansas Dept. of Revenue*, 15 K.A.2d 705, 706, 815 P.2d 566 (1991).

5322



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Region VII
Iowa, Kansas, Missouri,
Nebraska

P.O. Box 412515
Kansas City, Missouri 64141

TESTIMONY BEFORE
SENATE JUDICIARY COMMITTEE
ON
HOUSE BILL NO. 2579
DRIVING PRIVILEGES, RELATING TO ALCOHOL OR
DRUG RELATED CONVICTIONS

March 8, 1994

Mr. Chairman and Committee Members:

Mr. Chairman and members of the Committee, I am Jim Green, Senior Program Manager with the National Highway Traffic Safety Administration, Region VII Office. I have been asked by the State MADD organization to provide testimony on House Bill 2579 relating to the driving privileges of alcohol or drug related offenders, and also the use of Breath Alcohol Ignition Interlock Devices.

Currently, the state of Kansas is in its final year of Title 23, Section 408 alcohol incentive program, and has the ability to qualify for Title 23, Section 410 alcohol incentive funds in Fiscal Year 1994. However, if House Bill 2579 is enacted, the federal incentive funding for Section 410 could be in jeopardy if Kansas needs to comply under the prompt license suspension criteria. This includes a 90-day suspension of driving privileges for first time offenders, the first 30 days must be a hard suspension, and a one year hard suspension for all driving privileges for second and subsequent offenders. As House Bill No. 2579 amends the current statutes, this criteria will no longer be met.

In addition, the National Highway Traffic Safety Administrations (NHTSA), Office of Chief Council has issued an opinion to Mothers Against Drunk Driving on May 12, 1989, stating:

"In its final rule, published in the Federal Register on August 25, 1988, the agency encouraged States to explore the use of these devices as an additional restriction, which may accompany, for example, a restricted or hardship license after the periods of hard suspension have been served. We stated specifically, however, that NHTSA will not accept the

Senate Judiciary
3-8-94
attachment 6-1

Testimony on Driving Privileges
Senate Judiciary Committee
Page Two
March 8, 1994

use of an ignition interlock device as a substitute for the suspension requirements under the regulation. Accordingly, use of these devices will not affect the State's eligibility for Title 23, Section 410 alcohol incentive funds, provided they are available only after offenders serve their minimum hard suspension periods."

I would also like to clarify any misinformation regarding the National Highway Traffic Safety Administration certification of the Breath Alcohol Ignition Interlock Devices. The National Highway Traffic Safety Administration does not certify Breath Alcohol Ignition Interlock Devices. It is the responsibility of the manufacturer or the State to provide for certification of the Breath Alcohol Ignition Interlock Devices, if required. On April 7, 1992, the National Highway Traffic Safety Administration issued model specifications for Breath Alcohol Ignition Interlock Devices in Federal Register Volume 57, Number 67. These specifications provide guidelines to create uniformity with Breath Alcohol Ignition Interlock Devices and to help ensure that the interlock devices or systems will work properly.

This concludes my testimony and I hope this information will assist the committee in making your final decision on House Bill 2579.

I will be happy to answer any questions you may have.



KANSAS DEPARTMENT OF TRANSPORTATION

Michael L. Johnston
Secretary of Transportation

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
FAX - (913) 296-1095

Joan Finney
Governor of Kansas

TESTIMONY BEFORE
SENATE JUDICIARY COMMITTEE
ON
HOUSE BILL NO. 2579
DRIVING PRIVILEGES, RELATING TO ALCOHOL OR
DRUG RELATED CONVICTIONS

March 8, 1994

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 House Bill No. 2579 relating to the driving privileges of alcohol or drug related offenders.

This proposed legislation amends the administrative licensing sanctions for those apprehended for driving under the influence (DUI). This legislation amends the sanctions for test refusals and test failures, and replaces some or all of the suspension periods with the ignition interlock sanction. The effective date of this proposed legislation is January 1, 1995. It is the Department's desire that the January 1, 1995 effective date be retained so that funding for existing grant programs can be preserved.

In my testimony before the House Judiciary Committee, I indicated that the changes proposed for failures, specifically first and second offense, would cause the State of Kansas to be out of compliance with the federal alcohol incentive grant program we are currently receiving, if the law takes effect during 1994. The State is in its final year of the Section 408 alcohol incentive grant program. For program year 1994 (January 1 through December 31), the available funds total approximately \$657,000. If the legislative changes take effect during 1994, the state would be subject to a termination of federal funding.

Senate Judiciary
3-8-94
attachment 7-1

Testimony on Driving Privileges
Senate Judiciary Committee
Page Two
March 8, 1994

In summary, preserving the effective date of January 1, 1995, or later, would prevent the termination of federal funds. This concludes my testimony. I would be happy to answer any questions you may have.

Testimony
Senate Judiciary Committee
March 8, 1994

Senate Bill 774

Good Morning, Mr. Chairman and Members of the Committee,

I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors. We support Senate Bill 774 in the interests of highway safety for those individuals who have violated their driving privileges in the State of Kansas at least three times and satisfactory proof of these violations have been submitted to the Department of Motor Vehicles.

At the present time the Department of Revenue, Division of Motor Vehicles, after they have been provided proof by the convicting court of three or more serious violations on the Habitual Violator statute, send a certified copy of these convictions to the County Attorney or District Attorney of the offender's last known residence. Upon receipt of this certified copy, the County Attorney or the District Attorney then files a civil action in the District Court, against the offender. The Court then rules on the certified copies, that the offender is an Habitual Violator.

It does not seem this procedure is necessary. The Division of Motor Vehicles can take administrative action, as they do on all other drivers license suspensions. This particular legislation lessens the load of the County Attorneys and the District Attorneys and the court systems of a good number of cases every month that must have court time set aside to handle these offenses. Another problem with this current procedure is often these offenders are hard to locate and do not have current addresses filed with the Motor Vehicle Department. Therefore, after sending out letters to these offenders, plus notices to appear in Court, only one out of four will appear in order to be adjudicated an Habitual Violator.

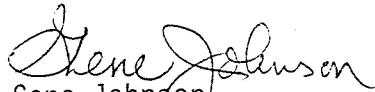
Senate Judiciary
3-8-94
Attachment 8-1

Testimony
Senate Bill 774
page 2

There must be a better way to enforce this law and we feel this proposed legislation which gives the authority to the Motor Vehicle Department, is a proper and simple solution to the problem.

Thank you for allowing me to appear today. I will now answer any questions.

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

#9

District Court of Kansas
Third Judicial District

Shawnee County, Kansas

Chambers of
William Randolph Carpenter
Administrative Judge of the District Court
Division No. One
Shawnee County Courthouse
Topeka, Kansas 66603-3922

March 7, 1994

Officers:
Carol A. Meggison, C.S.R.
Official Reporter
913-233-8200 Ext. 4351
Judith M. Bush, P.L.S.
Administrative Assistant
913-233-8200 Ext. 4355

Senator Jerry Moran
Chairman, Senate Judiciary Committee
State Capital, Rm 255-E
Topeka, KS 66612

Re: Senate Bill No. 774

Dear Mr. Chairman:

A prior commitment prohibits my attendance at the March 8th hearing on SB 774. Therefore, I would like to take the opportunity by letter to voice my support of this Bill.

The Court has been verifying convictions already substantiated by the Division of Motor Vehicles, thereby performing a duplicitious act. This bill will enable habitual violator hearings to be held in their proper place, that being with the Division of Motor Vehicles.

Sincerely,



WILLIAM R. CARPENTER
Administrative Judge

WRC/jb

Senate Judiciary
3-8-94
Attachment 8-1

#10

STATE OF KANSAS

Betty McBride, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66626-0001



(913) 296-3601
FAX (913) 296-3852

Department of Revenue
Division of Vehicles

To: The Honorable Senator Jerry Moran, Chairman
Senate Judiciary Committee

From: John Smith, Administrator of Driver License and Driver Control
Kansas Department of Revenue, Division of Vehicles

Date: March 8, 1994

Mr. Chairman, Members of the Committee,

My name is John Smith, and I am the Administrator of the Driver License and Driver Control Bureaus of the Kansas Division of Vehicles. I appear before on behalf of Betty McBride, Director of the Division of Vehicles, and the Kansas Department of Revenue regarding Senate Bill 774.

As introduced, this bill amends several statutes relating to driver's license suspensions. This bill removes the court from implementing driver sanctions for a habitual violator, and requires the Division of Vehicles to revoke the person's driving privileges for three years.

The present statute limits the issues before the court only to determining that the accused person is the person that received the citations, and that the person was convicted. This can be accomplished administratively and does not violate due process as the person has already been convicted.

This bill will reduce the administrative burden on the Driver Control Bureau, and provide for a more expedient and sure revocation process for habitual violators. It will also relieve some workload on the court system. In CY 1993, the Bureau certified to the courts 1,717 drivers as habitual violators, but only 662 were adjudicated by the courts to be habitual violators. Many times the courts cannot locate the drivers, prosecutors do not file charges, or defense attorneys petition the court to have a conviction set aside, removing the person from qualifying as a habitual violator.

The division supports the passage of this bill.

Thank you for the opportunity to appear before you and present my testimony. I would stand for your questions.

Senate Judiciary
3-8-94
attachment 10-1