

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:30 a.m. on March 9, 2011, in Room 152-S of the Capitol.

All members were present except:

Senator Les Donovan-excused

Committee staff present:

Scott Wells, Office of the Revisor of Statutes

Daniel Yoza, Office of the Revisor of Statutes

Chris Courtwright, Kansas Legislative Research Department

Jill Shelley, Kansas Legislative Research Department

Toni Beck, Committee Assistant

Conferees appearing before the Committee:

**SB2044**

Representative Paul Davis

Karen Wittman, Assistant Attorney General, Traffic Safety Resource Prosecutor

Ryan Crum

Jill Kanost

Jeffrey Stolz, Written Testimony Only

Betty Lawrenz, Written Testimony Only

Charles Branson, District Attorney, Douglas County

Representative Sydney Carlin

Others attending:

See attached list.

Senator Schmidt made a motion to approve the minutes for 3-2-11 as written. Senator Reitz seconded the motion. The motion carried.

**HB 2169 - Designating the junction of United States highway 24 and K-7 highway as the Representative Margaret Long interchange**

Chairman opened the hearing on **HB2169**. This is the same bill as **SB58** presented by the Senate.

There being no testimony offered for the bill, Chairman closed the hearing on **HB2169**.

**HB 2044 - Amending the requirements for action and notification upon motor vehicle accident**

Chairman opened the testimony for **HB2044**.

Daniel Yoza, Revisor, detailed the bill changes would be page 2, section 2, for a Level Five offense. Representative Paul Davis presented testimony in support of the bill. Changes he presented would allow prison time for offenders. (Attachment 1) Karen Wittman presented testimony in support of the bill stating hit and run is a clear option because they can not be prosecuted if they are not found. (Attachment 2) Ryan Crum presented testimony in support of the bill stating his father was killed by a hit and run driver in 2008. (Attachment 3) Jill Kanost testified in support of the bill, stating her son, Ryan, was killed by a hit and run driver in 2006. (Attachment 4) Jeffrey Stoltz provided written testimony in support of the bill, stating his sister-in-law was killed by a drunk driver while riding her bike. (Attachment 5) Betty Lawrenz provided written testimony in support of the bill, stating her sister was killed by a hit and run driver in 2006. (Attachment 6) Charles Branson, provided new testimony in support of the bill seeking a Level Five offense on a grid chart he presented. (Attachment 7) Severity level on the chart provides for Level 5 to require prison time. Severity Level Six allows for probation as opposed to prison time.

Senator Hensley commented on why this legal issue would be considered in committee. Senator Reitz commented on the length of time this has been an issue in the state with no reconciliation as of yet. Representative Carlin testified on behalf of the bill, with no written testimony presented. Charles Branson commented leaving the scene gives the driver time to sober up to protect their insurance, license and possible jail time. Later prosecution can not prove DUI responsibility of the driver for hit and run.

## CONTINUATION SHEET

The minutes of the Senate Transportation Committee at 8:30 a.m. on March 9, 2011, in Room 152-S of the Capitol.

There being no further testimony, Chairman closed the hearing on **HB2044** with action to follow.

The next meeting is scheduled for March 10, 2011.

The meeting was adjourned at 9:25 a.m.

# SENATE TRANSPORTATION COMMITTEE

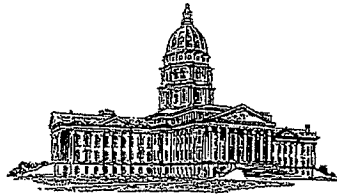
## GUEST LIST

DATE: March 9  
Wednesday

[illegible]

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

PAUL DAVIS  
REPRESENTATIVE 46TH DISTRICT  
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(785) 749-1942



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TOPEKA  
HOUSE DEMOCRATIC LEADER

**TESTIMONY IN SUPPORT OF HOUSE BILL 2044  
REPRESENTATIVE PAUL DAVIS**

**MARCH 9, 2011  
SENATE TRANSPORTATION COMMITTEE**

Mr. Chairman and Members of the Committee:

I am pleased to testify in support of House Bill 2044. The impetus behind this bill comes from two individuals who have lived through horrible family tragedies and have witnessed an injustice as a result of a deficiency in our criminal statutes. I was approached by Jeff Stolz and Ryan Crum about introducing legislation that would prevent hit-and-run drivers from receiving the inadequate punishment for their actions that is currently provided in Kansas law.

Right now in Kansas, a drunk driver can operate a vehicle, kill an individual through reckless driving, flee the scene of an accident and not do one single day of prison time. This simply is not right. We need to give prosecutors and law enforcement more tools so that they can ensure that perpetrators of hit-and-run accidents receive proper punishment.

House Bill 2044 makes two important changes in the law. The first is found on lines 23 and 24 on the first page of the bill. This provision upgrades the penalties so that a hit-and-run perpetrator who causes great bodily harm to a person can be prosecuted for a severity level 8, person felony. The other important change is found right below this on lines 25 and 26 whereby the perpetrator of a hit-and-run accident that results in death can be prosecuted as a level 5, person felony. Both of these changes make it possible for the perpetrator to spend time in prison for his or her actions.

There are some additional provisions in the bill that I will not go into detail on because other conferees will be addressing them. However, the general nature of these provisions are to give prosecutors a greater ability to charge an offender in a manner whereby the punishment fits the crime.

I thank you for your indulgence and request your favorable consideration of this very important piece of legislation.

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STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

March 9, 2011

TESTIMONY-HB 2044  
as Amended by the House Committee  
Amending K.S.A. 8-1602 through K.S.A. 8-1606  
LEAVING THE SCENE/FAILING TO REPORT

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My name is Karen Wittman. I am an Assistant Attorney General and the Traffic Safety Resource Prosecutor for the State.

In 2006, myself and Officer Martin Brown of the Topeka Police Department went to the legislature with the proposal to make changes to the above listed statutes. At that time, the punishment for leaving the scene and failing to report a crash was the same if you hit a mailbox or you hit a person. The legislature agreed with us as well as a number of victims families that testified and changed the law to a felony conviction, level 9 if the person dies and a level 10 for great bodily harm.

At the time there was no discussion to make it anything more than a level 9. There was no consideration to have continuity with other crimes.

In almost all states they do distinguish between duty to stop and remain and the requirement of "rendering assistance". Rendering assistance does not require actually providing comfort or aide but making reasonable arrangements for getting help for the injured person. Also, in most states, they distinguish between injury, serious injury and death.

In review of the various states it appears all states treat serious injury and death as a felony. The punishment ranges from mandatory 90 days to 15 years with fines from no more than \$100 and as high as \$10,000.

With all that said you actual have to catch the person that hit and ran and that is not always easy. Good police work and the help of the community is key for that effort. Clearly if the person is never found they will never be prosecuted — hence the reason to run.

As with the occurrences in Lawrence, Kansas and other places around the State there is always rumor, innuendo and sometimes a little evidence to indicate things such as intoxication but as we all know that is NOT enough to prosecute a person for a crime.

When asked to suggest changes I looked to what our goal was and that was to get persons that are dangerous drivers off the street. How do I prove they are dangerous drivers? By their driving history. All crimes are "punished" by criminal history unfortunately, most if not all, traffic offenses are NOT included in a person criminal history to put them on the grid for sentencing purposes. So a person with a very bad driving record will have little or no "criminal history" for sentencing purposes. So that is what drove my suggestions for this bill.

Here are the proposed changes:

1. If you have great bodily harm in a crash in which you leave the scene it has been changed from a level 10 person felony to a level 8 person felony. (equal to reckless aggravated battery penalty)

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2. If the person is killed and you leave the scene it has been changed from a level 9 person felony to a level 5 person felony. (equal to involuntary manslaughter, reckless)
3. In State v. Holm 41 Kan.App.2d 1096 (2009) the Court of Appeals noted the legislature did not take into account damage to a vehicle under \$1000 that did not involve damage to another vehicle or unattended property (ie. A one vehicle crash-In the Holm case defendant rolled his vehicle. There was no damage to anything except the defendant's vehicle. The vehicle was left in a ditch. 22 hours after the crash-- after a number of calls from police-- the defendant made contact with police.) The court noted: A single-car non-injury accident does not require remaining at the scene unless the property of some other person is damaged. To fix this a change to include "single vehicle crashes" with no reference to amount of damage. "damage to any attended vehicle or property" -A misdemeanor
4. The list of dangerous driving includes:
  - a. 8-235-no license
  - b. 8-262-Driving while Suspended
  - c. 8-287-Driving while an Habitual Violator
  - d. 8-291-Driving in violations of restrictions
  - e. 8-1566-Reckless Driving
  - f. 8-1567-DUI
  - g. 8-1568-Flee and Eluding
  - h. 8-1602-Leaving the Scene/Failing to report
  - i. 8-1605-Leaving the Scene/Failing to report-unattended property
  - j. 40-3104-No proof of Insurance
  - k. Section 40 of Chapter 136--Involuntary manslaughter
  - l. Section 41 of Chapter 136 --Vehicular Homicide

Change in K.S.A. 21-4711 would allow for certain prior convictions of serious traffic offenses to become person felonies to determine the criminal history of the defendant such as DUI, vehicular homicide, and leaving the scene (misdemeanor).

FOR EXAMPLE: If you had 2 prior DUIs and you were found to be the driver of the vehicle that struck and killed someone in which you left the scene, this bill would make your criminal history "B" for sentencing purposes. I cannot prove you were DUI at the time you hit the person but due to your poor driving history you will be punished accordingly.

**Lastly the duty of the driver to determine if they hit a person is crucial.** Section 2 K.S.A. 8-1604(a)(2): Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, ... On more than one occasion I have had difficulty showing a hit and run driver knew they hit a person; with this provision a crash would require a person to determine what they hit and the extent of the damage done.

Madam Chairperson and members of the committee, I appreciate the opportunity to be here and to testify today. I'm here today in support of the House Bill \*\*\* regarding the new Hit & Run law. There are many Hit and Run stories that you can read about and hear, but I only have one. There was a tragedy in my family on May 4, 2008, my father was killed in a Hit & Run accident. A driver pulled out from a stop sign, hit my father's vehicle from the side and sent it head on into a brick building. The driver left the scene of the accident and left my father there to suffer alone and ultimately die. There are many reasons why people run from an accident. In my case the person who hit my father was drunk; he had a previous DUI and wanted to avoid another. Unfortunately, there are people in this world that can live with the fact that they've left a person to die because of their actions and they will never be held accountable.

As law makers, sometimes you need to force people to do the right thing. This is one of those times. Kansas must have a law on the books that has much more severe penalties than the current version. I can tell you that in Lawrence, it's more common now than ever to hear about Hit & Run accidents, it's reached epidemic proportions. People are very aware that if they can just put an hour or two hours between them and police, that they won't be convicted of anything severe. In my case as in most, if the driver ever gets caught, the worst that could happen is getting probation for leaving the scene of an accident. Many of these people have a poor driving history, but no criminal record.

We need to have a Hit and Run law that will send people to prison if they run from a fatality accident. People must understand that if they're involved in an accident, they need to stay and render assistance. In addition to changing the penalties, the Kansas sentencing guidelines needs to consider the

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defendants driving record, especially in cases where the defendants have proven themselves to be dangerous drivers (ex: DUI, reckless driving, driving on suspended license).

As law makers, you have to also consider the fiscal/ bed space impact of the bills you're proposing. I've attached a report from the KDOT. This report is a summary of all accidents involving Hit and Run vehicles between 2004 and 2008. As you can see, there were over 31,000 Hit and Run accidents in that time. Thankfully, there were few deaths compared to the number of accidents. I don't think that this law would adversely affect our bed space in our jail/prison system. However, I have one idea on how to offset any fiscal impact there would be. I propose that in addition to our draft, we add a mandatory \$1,000.00 fine for any person convicted of a Hit and Run accident. If you study the potential impact, I think you'll find that this fine would help compensate for any additional.

Thank you for your time and consideration.

Sincerely,

Ryan Crum



Testimony of Jill, Michael, and Leah Kanost in support of House Bill 2044  
To the Senate Standing Committee on Transportation:

In September 2006, our son and Leah's brother Ryan Kanost was a senior at the University of Kansas, majoring in Human Biology and Spanish, and he had just completed applications to medical school. He was walking late at night with a group of friends in Lawrence, crossing Kentucky Street in a crosswalk, when he was hit by a car traveling at a high rate of speed. Ryan's body was thrown a long distance, and he had died by the time paramedics arrived.

The driver who killed Ryan had been drinking heavily in the hours before the collision. When he left the bar that night, one of his friends tried to prevent him from driving because of his apparent intoxication. He chose to drive, and after hitting and killing my son, he did not stop. Instead, he drove back to the bar where he had been drinking, contacting his friends and telling them that "something bad" had happened. His friends arranged to have his severely damaged car towed away from the bar to his home. No one contacted the police. The next day, the driver turned himself in to police, but too late for an alcohol test to determine his state of intoxication the night before. He was eventually charged with involuntary manslaughter while driving under the influence and leaving the scene of an accident involving death. A trial on these charges took place in Douglas County in 2008. The driver was convicted of vehicular homicide and leaving the scene of an injury accident, both of which are misdemeanors. He was sentenced to 90 days in jail with work release, which was scheduled during the summer to not interfere with his school year, and two years of probation.

My family and I believe that this sentence was extremely light and resulted partly from problems in the existing laws. Leaving the scene allowed the driver to avoid alcohol testing, and lack of this evidence hampered the prosecution and likely affected the jury's decision not to convict of involuntary manslaughter while under the influence. I believe the driver benefited from leaving the scene and avoiding a timely blood alcohol test. Since Ryan's death, several similar incidents have occurred in Lawrence, and it appears that there is a continuing problem in Kansas that the penalty can be less for drunk drivers if they flee and do not contact police until they have sobered up. The current laws and relatively low penalties for leaving the scene may provide an incentive for drivers to not stop after a drunk driving crash. House Bill 2044 will help to remedy this problem by increasing the level of person felony for leaving the scene of an accident resulting in death or great bodily harm.

We have an additional concern about the application of the current law regarding leaving the scene of an accident involving death or great bodily harm. In the trial of the driver who killed Ryan, the judge's instructions to the jury included the requirement that to establish the charge of leaving the scene of an accident involving death, it "must be proved that the defendant had knowledge or a reasonable belief that a death had occurred." The same type of instruction was provided for the lesser charge, that proof was required "that the defendant had knowledge or a reasonable belief that great bodily harm had occurred." This provides an easy defense for hit-and-run drivers. If they don't stop, how can they know that a death or great bodily harm has occurred? I urge that changes be made in relevant statutes to clarify that claiming not to know what they hit should not help hit-and-run drivers avoid conviction of the person felonies addressed in House Bill 2044.

Jill M. Kanost  
Michael R. Kanost  
Leah M. Kanost  
2229 Seaton Avenue  
Manhattan, Kansas 66502

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Jeffrey Stolz  
1019 Pennsylvania Street  
Lawrence, KS 66044  
jeffreystolz@hotmail.com

On October 16, 2009, my wife's sister, Rachel Leek, 20 years old, was hit and killed by a drunk driver while riding her bike. The driver never stopped to help her in any way, did not alert the authorities, call emergency services, remain at or return to the scene of the accident. Currently, in the state of Kansas, the penalty for this crime, fleeing the scene, is six months probation without even the possibility for jail time.

It is common knowledge that the right and proper thing to do after an automobile accident of any kind is to stay at the scene and call the police or emergency services. Not only do drivers need to stay and face the consequences of their actions, saving law enforcement time to track them down, but immediately notifying help can save someone's life during the critical moments after an accident.

As in Rachel's case, tragedies like these become front page stories; and, unfortunately, it is also common knowledge in Kansas that fleeing the scene prevents law enforcement from acquiring the necessary evidence required to prove intoxication as the cause of the accident. Drunk drivers, who have already made a bad decision to get behind the wheel after drinking, are being encouraged, as a result of an oversight in the law, to commit another crime in order to avoid being held responsible for the stricter DUI charges. To put it simply, it is much better for a drunk driver to flee the scene than to stay and help.

I am testifying in support of this bill because it increases the penalty for hit and run accidents. Hopefully, with passage of this bill, the word will get out that this loophole has been closed, and drivers will know that the new law does not reward further poor judgment. Penalties for criminal behavior exist for many reasons. One of those is a penalty's capacity to act as a deterrent. If this bill can deter drivers who have hit someone from leaving their victims on the side of the road without aid, seemingly a more egregious crime than the accident itself, then it may save lives and it deserves your support. Thank you for your time and consideration of this bill.

Sincerely,  
Jeffrey A. Stolz  
Lawrence, KS

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On June 10, 2006, my husband and I celebrated our 50th wedding anniversary with a party given by our children. It was a fabulous day; family, friends, relatives on both sides, church friends and Scouts, all gathered together to help us celebrate.

My younger sister, Margaret, and her husband, Ray, and son, Tony, however did not make it because as they were on their way to the party, a teenager in a stolen van ignored a yield sign and zoomed out in front of Ray and Margaret, causing their motorcycle to crash into the van, killing Ray instantly and my sister, a few minutes later. The teenager fled the scene of the accident but was quickly apprehended. Their son, Tony was on a motorcycle in front of them and witnessed the whole thing. He was in shock seeing his dad killed and not knowing if his mom was ok or not as the ambulance had taken her to the hospital. Unfortunately she died in just minutes and was DOA on arrival at the hospital. This, he found out hours later when they released him from the scene of the accident.

I will never be able to give my sister a hug or have get-togethers for lunch any more. I will never get to be able to talk with her on the phone again or tell her that I love her. The pain of losing her is still with me even now. We had made so many plans as she had just retired and had the time to get together with me and our other sister, Helen.

There has to be some stronger punishment for those people who cause this kind of accident and death. I miss my sister so much and my anniversary was one of the best AND WORST days of my life because of this.

It hurts. I didn't get a chance to say Good-bye.

Please pass this bill as my sister and her husband are not the only ones and we are not the only family to suffer the sadness of such a tragedy.

BettyLawrenz  
rblawrenz@yahoo.com

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## DOUGLAS COUNTY DISTRICT ATTORNEY

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Charles E. Branson  
District Attorney

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### Testimony in Support of H.B. 2044 Given March 8, 2011

**Mr. Chairman and Committee Members:**

My name is Charles E. Branson. I am the District Attorney for the 7<sup>th</sup> Judicial District comprising entirely of Douglas County, Kansas. I am here to testify in support of H.B. 2044.

#### Background

As our driving under the influence (DUI) laws become more stringent, there is more incentive for drivers to try and avoid the criminal and administrative consequences of a conviction. A driver leaving the scene of an accident is becoming one of the preferred ways in Kansas to beat a DUI offense. Drivers know if they are under the influence and they hit something or someone they can avoid more serious criminal charges by fleeing the accident scene instead of stopping and giving assistance or rendering aid.

If the driver is capable of delaying their contact with law enforcement it lessens their chances of being held responsible for their actions. Alcohol and drugs dissipate from the offenders' system making breath and blood tests useless in prosecution of the offender. Without this key evidence, successful prosecution of the offender for driving under the influence or in the case of a fatality, involuntary manslaughter, is nearly impossible. The prosecutor or judge is left with seeking or imposing sanctions on the driver for the lesser offenses of leaving the scene and/or failure to report an accident.

#### Proposal

H.B. 2044 increases the penalties for drivers that flee the scene of an accident where great bodily harm or death occurs. In the case of great bodily harm an offender with no criminal history would see their sentence increase from a standard range of five to seven months to a standard range of seven to nine months. This sentence would be presumptive probation for the offender with no criminal history.

The more important purpose of this bill is to increase the penalty for the offender involved in a fatality where they leave the scene. In the case of a fatality an offender with no criminal history would see their sentence increase from a standard range of five to seven months with a presumption of probation to 17-19 months with a presumption of probation. The bill as amended by the House Committee modifies the original proposed increase in penalty from a level five felony to a level six felony. A level five felony is a

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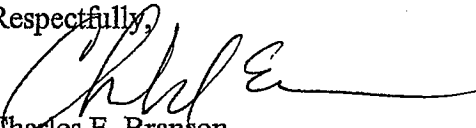
border box sentence under the Kansas Sentencing Guidelines and the court can sentence the offender to prison or probation without making special departure findings.

Contrast this with an offender who does not leave the scene of a DUI fatality. Under K.S.A. 21-3442 that offender would face a charge of Involuntary Manslaughter a level four person felony. Under the Kansas Sentencing Guidelines this offender, assuming no criminal history, would receive a presumptive prison sentence of 38-43 months.

Not every case deserves a prison sentence and under this proposal the prosecutors and judges will still have great discretion to seek or impose a sentence that is appropriate to the facts of a particular case. My preference is to maintain the bill as originally proposed making leaving the scene of an accident involving death a border box crime. However, passage of the amended bill is preferable to no change in the law.

For these reasons, I urge you to pass this legislation.

Respectfully,



Charles E. Branson  
District Attorney

# KANSAS GUIDELINES GUIDE

	A	B	C	D	E	F	G	H	I	Probation	Postrelease
	3+ Person Felonies	2 Person Felonies	1 Person and 1 Nonperson Felony	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misds	1 Misd or No Record		
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147	36	
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109		
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55		
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38		
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38			24	
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25					
VII	34 32 30	31 29 27									
VIII	23 21 19	20 19 18									
IX	17 16 15	15 14 13								12	
X	13 12 11	12 11 10									

## SENTENCING RANGE - DRUG OFFENSES

	A	B	C	D	E	F	G	H	I	Probation	Postrelease
	3+ Person Felonies	2 Person Felonies	1 Person and 1 Nonperson Felony	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misds	1 Misd or No Record		
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138	36	
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46		
III	51 49 46	47 44 41	42 40 37	36 34 32							
IV	42 40 37	36 34 32	32 30 28	26 24 23							

### COLOR LEGEND

Presumptive Imprisonment

