

Approved: _____
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Acting Chairperson Vratil at 10:10 a.m. on January 31, 2000 in Room 123-S of the Capitol.

All members were present except: Sen. Emert (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Attorney General Carla Stovall
Don Kaufman, Mound Ridge
Charlie Kohler, Salina Highway Patrol
Jim Keller, Department of Revenue
Rosalie Thornburgh, Bureau Chief for Chief of Traffic Safety, KDOT
Brian Leininger, Attorney, Kansas Highway Patrol
Paul Morrison, Johnson County District Attorney

Others attending: see attached list

The minutes of the January 26th and 27th meeting were approved on a motion by Senator Harrington and seconded by Senator Donovan. Carried.

There were no bill introductions.

SB 341—concerning crimes, punishment, and criminal administrative procedure; relating to driving under the influence of alcohol and drugs

SB 333—concerning motor vehicles; relating to the operation thereof while under the influence of alcohol or drugs

SB 195—concerning crimes, criminal procedure and punishment; relating to aggravated battery

Conferee Stovall presented an overview of **SBs 341, 333, and 195**, bills which were proposed in 1999 by her office on behalf of the Far-Reaching Alteration of Traffic and Alcohol Laws Task Force (FATAL). She stated that **SB 341** “recommends increased criminal penalties and administrative sanctions and changes to the administrative hearing process” and discussed in detail the recommended amendments, revisions and clarifications. She stated that **SB 333** amends the zero tolerance statute which applies to persons under 21 years of age whose alcohol content is .02 or less than .08 and discussed how the amendments make the nearly unenforceable statute enforceable and more effective. Discussing **SB 195**, she stated that, under the current statute, “simply driving while intoxicated and causing an injury does not equate to reckless conduct as required under the aggravated battery statute” and that **SB 195** would amend the aggravated battery statute to include “unintentionally causing great bodily harm or bodily harm while driving or boating under the influence of alcohol or drugs or fleeing or attempting to elude a law enforcement officer.” (attachment 1) Brief discussion followed.

Conferee Kaufman testified in favor of **SBs 341, 333, and 195**. He gave personal testimony regarding the loss his family experienced 5 years ago when his 17 year old daughter was killed by a “drunk driver.” He provided statistics on the number of national victims who are killed as a result of drunk driving and implored the Committee to pass these bills. (attachment 2)

Conferee Kohler testified in support of **SB 341**, discussing and emphasizing the importance for administrative hearing changes. He stated that compliance with the current statute requires officers, who have made DUI arrests, to attend the DUI hearings to give their testimony. Often attorneys for the defense abuse this by obtaining continuances, request irrelevant documents, or use the hearing as a discovery trial and officer waiting time. The result is costly in terms of manpower and overtime pay. He stated the use of electronic testimony, as stated in the amendment, would alleviate the burden on law enforcement officers. He briefly

discussed other amendments as well. (attachment 3)

Conferee Keller stated he handles appeals from administrative hearings. He stated that he was appearing to answer any questions Committee might have from his department. (no attachment) Brief discussion followed.

Conferee Thornburgh testified in support of **SB 333** focusing her support on the probable cause language change which will enable more effective enforcement. She also assured the Committee that this change would not compromise compliance status with the federal Zero Tolerance Law requirements. (attachment 4) On inquiry regarding non-compliance penalties she informed Committee that in the fiscal year 2000 the cost would be \$23.2 million and in 2001, \$22.2 million. Discussion followed.

Conferee Leininger testified in support of **SB 333**. He stated that the intent of the bill is “to send a strong message to young people under the age of 21 about driving with any measurable alcohol in their system.” He discussed how amending the probable cause standard would make the law more effective. He also discussed: the recommendation that violation of this law would be a traffic infraction and \$200 fine; and the request to criminalize the refusal of a preliminary breath test making it a Class C misdemeanor. (no attachment, but see attachment 1 part II A. and B.)

Conferee Morrison testified in support of **SB 195**. He discussed a 1998 Kansas Supreme Court case which found that the act of driving under the influence of alcohol or drugs is not, per se, “reckless driving”. He stated that the Supreme Court “left the door open” and commented that it was up to the legislature to criminalize reckless driving while driving under the influence of alcohol or drugs. (attachment 5)

Written testimony in support of the three bills was submitted by: Jeffery Bottenberg, Kansas Peace Officers’ Association and Kansas Sheriffs’ Association and MADD.

The meeting adjourned at 11:03 a.m. The next scheduled meeting is February 1.