



*Kansas
Licensed
Beverage
Association*

Testimony on SB 7
Senate Judiciary Committee on January 27, 2011

Mr. Chairman, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association. The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

We are here to ask for modification of this measure. My appearance does NOT indicate that we support drunk driving nor does it indicate that we oppose DUI laws. I have testified before this committee in the past for our members in favor of reasonable statutes and penalties and we still hold those positions.

In fact, there is a model bill, supported by law enforcement agencies, the judiciary and others in many states. It has been adopted as the model, by ALEC. Even the industry supports it. We support that model bill and urge its adoption.

Failing that we ask the committee several questions and ask you to make changes to address these issues.

First, what is the definition of "professional"? And why only those licenses and permits protected in this measure. There are many livelihoods, jobs and businesses dependent upon KS granted licenses and permits. Why a distinction? Who are you trying to punish while protecting others? Does indicate some persons or businesses are privileged?

We oppose creating a crime of refusal. I am not an attorney, but it seems this raises issues of self incrimination and challenges other rights? I am certain others will address this further.

Oppose taking out all judicial discretion in a time that we are trying to keep folks at work we need give the judiciary to use their ability of the to make the choices that are best in the many varying situations. We support the inclusion of DUI Courts and Judicial Discretion and there expansion as the best tool to reduce, retrain and return citizens to a safe law-abiding life.

We believe that even current law is not being evenly enforced and that sentences of interlocks are not being adhered to now. National statistics show that, under current law, only 9-10% of those sentenced to IID's actually comply. The new language will throw thousands (if not 10s of thousands) of new cases into the KS judicial pot putting those in charge of compliance into a situation where they will be unable to assure compliance of even those who are multiple offenders and over .15 let alone all those newly proposed.

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**Drink Responsibly.
Drive Responsibly.**

Senate Judiciary
1-27-11
Attachment 4

It will create a real headache for probation officers and others who are responsible for such matters. Shouldn't we require an accurate report of current conditions and then if you still feel expansion necessary the include language requiring reporting and a minimum percent (ideally 100%) compliance? And it should require an explanation of failure. We would ask and urge you to do so, putting measureable performance standards in place.

And what is the cost. Especially what is the cost to the local counties and cities? What is the fiscal note? Many of your local officials -Mayors, County & City Commissioners, budget officers, and judges are not aware of the fiscal problems that, if enacted, this policy would create.

Proponents of this language nationally have been informing Congressional lawmakers that the proposal is revenue neutral due to the fact that DUI offenders would pay for the IIDs, as well as installation and maintenance costs for the duration of their use. That simply is not accurate. Please reference the letter attached from the American Parole and Probation Association (APPA) written when federal legislation proposed expanding interlocks on all offenders.

Please note, beginning with the third paragraph, the compliance/enforcement difficulties currently faced by probation officers due to "...excessive caseloads and unmanageable workloads". Page two begins with the statement that, "States and localities will bear the burden of the cost of an adequate workforce to ensure compliance." Following that statement is an analysis showing the overall financial burden nationally to be conservatively \$432,165,306. And the proposals in SB 7 are even more extreme. This "unfunded mandate" of almost a half-billion dollars is not something local officials are going to sit-by quietly and accept from Congress nor should local governments and judiciaries accept these without being fully funded by the state imposing these mandates.

This caused such concerns that prominent during the last session US Senator Feingold member of Senate Ways and Means Committee wrote the attached letter asking the Congressional Budget Office (CBO) to report on the cost of such mandates. Believe you will find his concerns compelling.

And speaking of costs, there has been much made of the costs of the indigent being paid by the industry and yet I haven't found that language in the bill. If that is what we are depending on then these "scholarship" funds should be put forth in advance and the Judiciary should determine those that qualify and make appropriate allocations.

We also ask the committee to consider the attached causes of accidents as compiled by KDOT. We do not minimize the role of illegal and inappropriate alcohol use we condemn it. We also recognize that there are other causes that are involved it exponentially greater number of accidents and ask the committee to consider if the same penalties and resources should be applied to those that account for so many more accidents injuries and fatalities.

The issue of drunk driving is important to all of us. So too, is finding the right mix of prevention, technology and policies to stop it.

Thank you for your time.

Philip Bradley



Drink Responsibly.
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4-2

What's Wrong With Ignition Interlocks

We spent yesterday with about 50 officials – criminal justice, treatment and industry – who gathered to talk about how technology can change the way the criminal justice system deals with alcohol misuse.

The Beverage News Daily

November 11, 2009



Public officials are excited by technology like SCRAM alcohol monitors, which detect alcohol use continuously through the skin, because they offer the prospect of being able to avoid putting many nonviolent offenders in prison, thereby greatly reducing costs to the taxpayers as well as offering the hope of changing behaviors.

National Partnership on Alcohol Misuse & Crime. Council and Beam Global Spirits & Wine.

But there are problems, speakers told the Sponsors of the Partnership include Century

Industry participants in its meetings, in addition to the sponsors, include Anheuser-Busch, American Beverage Licensees, Distilled Spirits Council and National Beer Wholesalers Association.

One problem is that that many offenders do a cost-benefit analysis – in essence, “If I drink, even though I’m not supposed to, what are the odds I’ll get caught and what additional punishment will I get?” – Brad Kilmer, co-director of the RAND Drug Policy Research Center, said direct surveillance technology “can make alcohol use by offenders prohibitively expensive” because it can pick up every infraction.

Robyn Robertson, CEO Traffic Injury Research Foundation, said:

“We pay lip service to behavior change, but don’t practice it well. At the end of the day, we always sacrifice rehabilitation for punishment.”

Offenders that abuse alcohol often suffer from neuro-cognitive deficits, which makes it difficult for them to change their behavior, she said. The main problem: They aren’t able to delay reward gratification. “It’s easier for them to drink today, to drive today, and if they don’t have a license, too bad.”

Most ignition interlocks are “simply aimed at separating drinking and driving, not at changing behavior,” she said.

Partly that's because officials simply don't have enough money or people to monitor abstinence. And if they do monitor abstinence, they get a lot more "fails," which means the workload goes up even more.

In a study of 7000 offenders that when monitored for abstinence with appropriate follow-up, the failure rate went down but the BAC level also went down."

"Technology is a supervision tool, not a substitute for supervision," Robertson said. "There's the perception that if you just stick the interlock in the car you're done."

Illinois has adopted a strategy of putting ignition interlocks in vehicles of first offenders rather than just repeat offenders. Given inadequate resources, there's no follow-up.

"All the offender learns is that if I'm noncompliant, there's no consequence other than I can't start the car," she said.

Officials need to figure out who should get interlocks. "We just can't afford to do everybody," she said.

Officials need to integrate technology and treatment, she said. "All the data collected by technology can be of greatest value to the treatment community.

"If we continue on the same path, we can expect continued poor outcomes," Robertson said, citing a New York State study that found DWI offenders were drinking and driving every day. "Fees and licenses suspensions aren't much of a deterrent," she said.

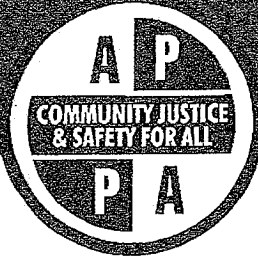
"We need changes to current practices," she said. "If we keep doing what we're doing, we're not going to make progress."

Strategy: As jurisdictions adopt interlock technology, the industry needs a good strategy, other than just saying "no." We think that strategy ought to be based on two principles:

First, interlocks should be installed only if there is a comprehensive treatment strategy attached to it.

Second, because governments can't afford to monitor every DWI offender, interlocks should be installed only in the cars of repeat offenders.

American Probation and Parole Association



July 20, 2009

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The Honorable Jim Oberstar
The Honorable John Mica
The Honorable Peter DeFazio
The Honorable John Duncan
The Honorable Charles Rangel
The Honorable Dave Camp

PRESIDENT

Gary Hinzman
Iowa

Dear Representatives:

PRESIDENT-ELECT

Barbara Broderick
Arizona

The American Probation and Parole Association would like to express its concern with the early intention to include penalties for states that do not have laws requiring ignition interlocks for all driving while intoxicated (DWI) offenders. This potential requirement is problematic and troubling on several levels.

VICE-PRESIDENT

Carmen Rodriguez
Illinois

Ignition interlock is indeed a promising technological tool that can aid in reducing drunk driving behavior. However, it is only a *tool*. There is no credible evidence that ignition interlocks by themselves can have a positive impact on long-term recidivism. In short, ignition interlocks are not a program but one tool in a necessary comprehensive response that may be used to produce behavior change in DWI offenders. There are evidence-based responses that are shown to change substance abusing behaviors. Additionally, R. Gail Kerlikowske, Director of the Office of National Drug Control Policy recently stated that his office would be, "working to ensure drug abuse treatment services are incorporated into our national health care reform process", indicating his understanding that treatment of substance abuse is needed and vitally important to the health and safety of our nation. These responses require a balance of monitoring, intervention and treatment. Ignition interlocks are only one potential tool in the monitoring aspect of an evidence-based response. Pushing states to put an inordinate amount of the focus on such a limited aspect may result in some minor short-term success, but is not likely to have a lasting impact on public safety.

SECRETARY

Julie Howe
Ohio

TREASURER

James Birrittella
New York

Enforcement of court-ordered ignition interlocks has been spotty at best. Simply ordering offenders to have an interlock system installed is no guarantee that they will comply. Compliance has been a problem in nearly every area where the technology has been introduced. A workforce of probation officers is needed to ensure compliance with court-ordered ignition interlocks. Probation officers nationally already have excessive caseloads and unmanageable workloads.

**AT-LARGE REGIONAL
REPRESENTATIVES**

Linda Layton
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Minnesota

**AT-LARGE AFFILIATE
REPRESENTATIVE**

Carl Fox
Arizona

EXECUTIVE DIRECTOR

Carl Wicklund

States and localities will bear the burden of the cost of an adequate workforce to ensure compliance.

Furthermore, requiring ignition interlocks for all DWI offenders is an unnecessary and costly response. The FBI 2007 Uniform Crime Report arrest data shows 1,114,805 people were arrested for DWI and a Fell/MADD symposium reports a conviction rate of 71-86%. Adding ignition interlock devices to all these convictions, above the cost of community supervision, has the potential to create skyrocketing costs. Estimating very conservative costs of \$3/day for the supervision of an individual on probation for a DWI, results in estimated expenditures to states and localities of \$432,165,306 (71% of 1,114,805 X \$3 at a conservative average of 182 days or six months supervision). Certainly, we would not argue against the use of ignition interlock devices for the hardcore DWI offender – those with high blood alcohol content or a repeat offender. However, many first time DWI offenders will not recidivate. Allowing the justice system to respond in an efficacious and discretionary manner by assessing the risk of re-offending and tailoring sentencing conditions to an individual's unique circumstances and propensity to drive drunk is a much wiser use of tax payer monies. Demanding the use of ignition interlocks for all DWI offenders will effectively drain resources from and distract the judicial systems' and probation departments' efforts to deal with other high risk offenders – e.g. domestic violence, sex offenders, gang members.

No state – including New Mexico which requires the use of ignition interlocks for all DWI offenders – has the infrastructure in place or the resources currently (or in the foreseeable future) to implement such a far-reaching requirement. Also, there is a lack of certified and available instrument installers and people able to regularly recalibrate the alcohol sensors.

Not all offenders will have the ability to pay for ignition interlocks and the cost will have to be borne by either state or local government entities for those that do not have the means to pay. Further, the myriad costs realized by DWI offenders through fines, fees, surcharges, treatment and increased insurance can create a financial hopelessness or further damage one's ability to meet everyday financial obligations and needs – e.g. child support, rent, food. A recent survey by Open Society/Lake Research Partners reveals that nearly half of U.S. adults say they cannot afford alcohol or drug treatment if they need itⁱⁱ. Additional fees for ignition interlocks may force many to never seek treatment for a substance addiction potentially leading to recidivism. To this end, further burdening DWI offenders with additional financial burdens related to ignition interlocks should be reserved for the most serious offenders or hardcore drunk drivers.

Sincerely,



Carl Wicklund
Executive Director

ⁱ CESAR FAX, Vol. 18, Issue 27, July 13, 2009. Center for Substance Abuse Research, University of Maryland.

ⁱⁱ http://www.soros.org/initiatives/treatmentgap/research/poll_20090616

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United States Senate

WASHINGTON, DC 20510-4904

July 14, 2010

Douglas W. Elmendorf
Director
Congressional Budget Office
Ford House Office Building, 4th Floor
Second and D Streets, SW
Washington, DC 20515

Dear Director Elmendorf:

Several of my constituents have expressed concern about the impact that an interlock ignition federal mandate may have on states, local governments and private citizens.

Attached is a letter from the American Probation and Parole Association that describes my constituents' concerns about the potential ramifications of requiring states to implement mandatory ignition interlock requirements by tying highway funding to whether a state has such a state law. While I understand that this condition on federal funding may not technically meet the unfunded mandate definition that you use for reviewing legislation, I would appreciate any estimate of the impact that implementing such a requirement would have, as well as an analysis of which states would be in jeopardy of losing highway funding without a change in state law so that I can share this information with my constituents. Similarly, if you have information on other previously enacted mandates tied to highway funding that resulted in reduced funding for particular states – such as those dealing with helmets for motorcyclists and criteria relating to driving under the influence infractions -- it would be of interest as well.

Thank you for considering this request. Should you have further questions feel free to contact Mike Schmidt (ph. 202-224-5323; mike_schmidt@feingold.senate.gov) in my office.

Sincerely,


Russell D. Feingold

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Contributing Circumstances

	Category	Contributing Circumstance (top 40)	Frequency*	% Total
1	DRIVER	Inattention	20,129	26.3%
2	DRIVER	Failed to yield right of way	7,846	10.2%
3	DRIVER	Too fast for conditions	7,397	9.7%
4	ENVIRONMENT	Animal	6,764	8.8%
5	DRIVER	Followed too closely	4,272	5.6%
6	DRIVER	Disregard traffic signs, signals, markings	3,262	4.3%
7	DRIVER	Under the influence of alcohol	2,893	3.8%
8	ONROAD	Icy or slushy	2,646	3.5%
9	DRIVER	Improper lane change	1,843	2.4%
10	DRIVER	Made improper turn	1,763	2.3%
11	DRIVER	Avoidance or evasive action	1,750	2.3%
12	DRIVER	Reckless/Careless driving	1,704	2.2%
13	DRIVER	Improper backing	1,617	2.1%
14	ENVIRONMENT	Rain, mist, or drizzle	1,299	1.7%
15	ONROAD	Wet	1,173	1.5%
16	ENVIRONMENT	Falling snow	945	1.2%
17	DRIVER	Exceeded posted speed limit	856	1.1%
18	DRIVER	Other Distraction in or on vehicle	832	1.1%
19	DRIVER	Fell asleep	672	0.9%
20	DRIVER	Wrong side or wrong way	663	0.9%
21	ONROAD	Snowpacked	654	0.9%
22	ENVIRONMENT	Sleet, hail, or freezing rain	529	0.7%
23	DRIVER	Did not comply - license restrictions	461	0.6%
24	DRIVER	Ill or medical condition	457	0.6%
25	DRIVER	Improper passing	443	0.6%
26	DRIVER	Distraction - mobile (cell) phone	394	0.5%
27	ENVIRONMENT	Strong winds	373	0.5%
28	ENVIRONMENT	Vision obstruction: glare from sun or headlights	350	0.5%
29	DRIVER	Aggressive/Antagonistic driving	302	0.4%
30	DRIVER	Under the influence of illegal drugs	290	0.4%
31	ONROAD	Debris or obstruction	277	0.4%
32	VEHICLE	Brakes	272	0.4%
33	VEHICLE	Tires	271	0.4%
34	ENVIRONMENT	Vision obstruction: building, vehicle, objects made by humans	244	0.3%
35	DRIVER	Unknown	202	0.3%
36	ATROAD	Icy or slushy	192	0.3%
37	VEHICLE	Wheel(s)	150	0.2%
38	VEHICLE	Cargo	140	0.2%
39	PEDESTRIAN/CYCLIST	Inattention	132	0.2%
40	DRIVER	Improper or no signal	128	0.2%

*More than one Contributing Circumstance may be recorded per accident