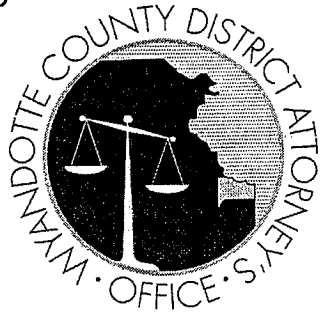


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January 24, 2013

Testimony Regarding HB 2043

**Submitted by Christopher Mann, Assistant District Attorney
On Behalf of Jerome Gorman, District Attorney, 29th Judicial District**

Honorable Chairman Rubin and Members of the House Committee on Corrections and Juvenile Justice:

Thank you for the opportunity to address you regarding House Bill 2043. On behalf of myself and Jerome Gorman, District Attorney, 29th Judicial District, I would like address the deficiencies in our current aggravated battery law as it relates to impaired drivers.

Our Supreme Court, in *State v. Huser*, 265 Kan. 228 (1998), has limited the ability of prosecutors to properly address incidents where drunk drivers cause serious injuries to citizens in our community. The decision in *Huser* essentially provides that drunk driving alone is not reckless as defined in our current aggravated battery statute. This is contrary not only to the legislative intent in criminalizing drunken driving, but also contrary to common sense. I say this from experience as a former police officer who has witnessed countless drunk driving injuries and deaths, as a prosecutor handling cases involving similar drunk driving injuries and deaths and as a victim of a drunk driver.

Nine years ago, I was a police officer working the midnight shift in Lawrence Kansas. It was 3:30 in the morning on a car stop, while I was standing outside of my car that I became a victim. I was hit by a drunk driver. It was a day that changed my life forever. A day that cost me my career as a police officer, cost me my hobby of running marathons. It was the last day that I remember waking up without pain.

The person that injured me was charged with reckless aggravated battery and he pled guilty to avoid possible prison time. I knew that going to trial on the non-specific law would have been a formidable task. I knew this because our Supreme Court has declared that just driving drunk on its own was not reckless. With 10,000 deaths and an estimated 300,000 injuries per year caused by drunk drivers, common sense dictates that this activity is indeed reckless.

As a victim, I know the difficulties of navigating the criminal legal system from the outside. The victims are who we need to consider in this piece of legislation. The victims are who our laws protect. As a victim, I urge the passage of common sense legislation to punish offenders who hurt our families, our friends.

As a prosecutor, I agree with the intent and direction of HB 2043, however, I would suggest a change in the construction of the statute as it has been introduced. I think as it is presented, the law poses some potential problems with charging and prosecuting specific cases. The most efficient way to solve this problem and achieve the desired result is to include drunk driving or acts included in K.S.A. 8-1567 into the definition of reckless as it is used in the current aggravated battery statute. This approach does not require a new law or removing all culpability, it simply does what our Supreme Court did not and finds that as a matter of law, driving while drunk is reckless.

In summary, we are seeking to amend our current aggravated battery statute to hold accountable those criminals who choose to drive drunk and through their actions injure others. The current proposal will achieve results necessary to hold accountable those who choose to put others at risk and ultimately cause injury. However, I urge consideration of the changes suggested and believe they are the most reasonable solution.

Thank you for your time and consideration of this important matter.

Respectfully Submitted,

Christopher Mann
Assistant District Attorney
Wyandotte County District Attorney's Office