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J. Pelham Johnston
University of Kentucky

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LEGISLATION—A PROPOSED DRUNKEN DRIVING STATUTE*

In recent years it has become increasingly apparent that there is a need for revision of our driving statutes with the view of providing better enforcement of the driving laws and of reducing the number of injuries and deaths from automobile accidents. One important section of these driving laws is that pertaining to drunken driving.

There are two schools of thought in regard to the "drunken driving" statute. One school advocates leaving our present statute as it stands but urges that it be enforced, while the other favors revision, believing that this will encourage enforcement. Let us examine the merits of each.

It is obvious that the present Kentucky drunken driving statute¹ is not being enforced. This is undoubtedly because the people do not want it enforced, for if they demanded enforcement it would be enforced. In the present state of the law it is submitted that proper enforcement cannot be accomplished as long as the people are indifferent to such enforcement. The answer, perhaps, lies in the statutory provisions themselves, which provide the following penalties for driving "under the influence of intoxicating liquor"

First offense—a fine of not less than \$100.00 nor more than \$500.00,² and driver's license revoked for 6 months.³

Second offense—a fine of not less than \$100.00 nor more than \$500.00, 6 months in jail,⁴ and driver's license revoked for 1 year.⁵

Additional offenses—a fine of not less than \$100.00 nor more than \$500.00, 6 months in jail,⁶ and driver's license revoked for 2 years.⁷

It is to be noted first that these penalties are for driving while "under the influence of intoxicating liquors." Under

* Governor Willis has appointed a *State Co-ordinating Committee on Highway Safety*. This note and one on reckless driving, also appearing in this issue of the *Kentucky Law Journal*, page 82, were prepared in cooperation with the Sub-Committee of Laws and Ordinances of which Emmet V. Mittlebeeler, Assistant Attorney General, is chairman. Each note suggests a Model Statute to the Governor's Committee.

¹ Ky. R. S. (1946) secs. 189.520, 189.990, and 186.560.

² Ky. R. S. (1946) sec. 189.990.

³ Ky. R. S. (1946) sec. 186.560.

⁴ Ky. R. S. (1946) sec. 186.560.

⁵ Ky. R. S. (1946) sec. 189.990.

⁶ Ky. R. S. (1946) sec. 189.990.

⁷ Ky. R. S. (1946) sec. 186.560.

this wording one drink of liquor might be sufficient to put a driver under the influence, but in the great majority of cases would not make him a drunken and dangerous driver. Surely the law was not intended to apply to a person whom drink had not made more dangerous than he otherwise would have been, and for that reason the law enforcement officers are not only reluctant but refuse to arrest people who come within the above category

The easiest way to write the statute is undoubtedly to make the offense read "for driving under the influence of intoxicating liquor." This relieves legislatures of the difficult and unhappy task of defining what constitutes driving while intoxicated, and many legislatures take that way out of a knotty problem.⁸ Some states apparently having a sentiment among their people which favors very strict measures to combat the dangers of drunken drivers, intentionally used that phrase.

However, other states, among them California, Alabama, and Pennsylvania,⁹ require the driver to be (or to become) intoxicated for a conviction. These states evidently are not troubled with the difficulty of establishing just what is driving while intoxicated.

Were our statute to read so as to provide penalties for any one who "while intoxicated" drives a vehicle rather than while "under the influence" it would eliminate one part of the statute which is disregarded not only by the law enforcement officers but by many drivers as well, and our law would not suffer but would gain thereby

It may be objected that the proposed wording puts the burden on peace officers to determine when the alleged offender is intoxicated, a difficult task in some cases, since there must be evidence which will be admissible in court if the accused is to be convicted. The testimony of individuals who see the

⁸ Massachusetts, Washington, Ohio, South Carolina, Mississippi, Wisconsin, and Kentucky, to name a few (See fn. 12, 14, 16, 25, 19, 15, and 23, *infra*)

⁹ PENAL CODE OF CAL. (Deering, 1941) Pt. 1, T. 9, ch. 12, sec. 367d, "Any person operating or driving an automobile, motorcycle, or other motor vehicle who becomes or is intoxicated while so engaged."
 CODE OF ALA. (1940) T. 36, sec. 2, "who is intoxicated"
 PA. STATUTES (Purdon, 1936) T. 18, sec. 1521, "when in an intoxicated condition."

accused at the time of the offense is sufficient to prove drunkenness, but many states have shied away from such testimony to convict because of the fact that usually only peace officers see the accused at the time of arrest and there is a fear that they might be prejudiced in favor of convicting.

Consequently, breath tests, blood tests, and urine tests are sometimes employed to determine whether or not the accused is drunk. These tests are accurate on the whole, but, being affected by so many varied factors, they are not always correct.¹⁰ However, it is believed that such tests, coupled with the testimony of observers, would prove satisfactory and protect the rights of the accused better than any other, and at the same time maintain all interests of the Commonwealth.¹¹

From a practical point of view, however, such tests would require the services of a trained medical man (not necessarily a doctor) to obtain the blood for the test. This requires proper sanitary facilities also, a thing not difficult perhaps for larger cities to provide, but beyond the facilities of the rural sections.

Thus, however feasible such laboratory tests appear in theory, they must, at present, be ruled out for Kentucky as a practical matter. It is thus necessary to rely upon the arresting officers, the desk sergeant, and occasionally upon other witnesses for the testimony to convict of driving while intoxicated. But does not the Commonwealth rely in the main on these same people today for its testimony upon which convictions of driving while under the influence of intoxicating liquor are based? And since it is more difficult for those witnesses to err as to the drunkenness than it is for them to err as to the accused's being under the influence, the accused is more fully protected in this regard it would seem under a statute requiring intoxication rather than one merely requiring him to be under the influence.

Another undesirable feature in our law is the heavy initial penalty. With such a heavy initial penalty law enforcement officers are reluctant to arrest, for a \$500.00 fine could well embarrass a great many people, and one hesitates to cause

¹⁰ Henry W Newman, M.D., *Proof of Alcoholic Intoxication* (1946), 34 Ky. L. J. 250.

¹¹ *Id.* at 267.

serious financial embarrassment. If the initial penalties were lighter it is believed that many more arrests would be made under this statute since the possibility of placing the offender's wife and children in financial jeopardy would be eliminated. Thus an initial penalty of \$25.00 might well result in much better enforcement of the statute in question.

It is interesting to note the range of penalties for first offenses in statutes of a cross-section of the states selected at random.

	Fine		Imprisonment		or Both	License Revoked
	Not Less Than	Not More Than	Not Less Than	Not More Than		
State A ¹²	\$ 35.00	\$ 200.00	2 weeks	2 years	Yes	Yes ¹³
State B ¹⁴	\$ 50.00	\$ 500.00	30 days	6 months	Yes	No
State C ¹⁵	-----	\$ 100.00	-----	6 months	Yes	No
State D ¹⁶	-----	\$ 500.00	-----	6 months	Yes	No
State E ¹⁷	\$100.00	\$1,000.00	-----	1 year	Yes	Yes ¹⁸
State F ¹⁹	\$100.00	\$1,000.00	10 days	1 year	Yes	Yes ²⁰
State G ²¹	\$ 50.00	\$ 500.00	30 days	6 months	Yes	No
State H ²²	\$ 5.00	\$ 100.00	-----	3 months	Yes	No
State I ²³	\$100.00	\$ 500.00	-----	-----	Yes	Yes ²⁴
State J ²⁵	\$ 50.00	\$ 100.00	10 days	30 days	No	Yes ²⁶

Of the states listed, those having as a matter of common knowledge, the best enforcement of drunken driving statutes are those which, on the whole, provide the lighter initial penalties, namely Massachusetts, Washington, Wisconsin, California, and Pennsylvania, and conversely, those on the whole having the poorest enforcement are those with the heavy initial penalties, namely Alabama, Mississippi and Kentucky

¹² GENERAL LAWS OF MASS. (Tercentenary Ed., 1932) ch. 90, sec. 24 as amended in 1936 and 1939. See ACTS AND RESOLVES OF MASS. (1936) ch. 434, p. 588, and the same (1939), ch. 82, p. 77.

¹³ Unless the court directs otherwise, for one year.

¹⁴ 7 REVISED STATUTES OF WASH. ANN. (Remington, 1940) sec. 6362-51.

¹⁵ WIS. STATUTES (1943) secs. 85.13 and 85.91 (3)

¹⁶ OHIO GENERAL CODE ANN. (Page, 1945) sec. 6307-19.

¹⁷ CODE OF ALA. (1940) T. 36, sec. 2.

¹⁸ Mandatory, for one year.

¹⁹ MISS. CODE ANN. (1942) sec. 8174.

²⁰ Mandatory, but no length of time provided.

²¹ PENAL CODE OF CAL. (Deering, 1941) Pt. 1, T. 9, ch. 12, sec. 367d, and VEHICLE CODE sec. 502, found in the appendix of the PENAL CODE, p. 718.

²² PA. STATUTES (Purdon, 1936) T. 18, sec. 1521.

²³ KY. R. S. (1946) sec. 189.520, 189.990, and 186.560.

²⁴ Mandatory for six months.

²⁵ CODE OF LAWS OF S. C. (1942) sec. 1616 (30) and (33).

²⁶ For six months.

For second and third offenses the penalty should be increased until it is as severe as provided in the present Kentucky statutes. Thus, it is believed, the regular offenders would not find their prospect of a severe penalty reduced but rather increased, for there would be more arrests and more convictions for drunken driving.

Under the Massachusetts statute²⁷ a second offense is treated as a first offense if it occurs more than six years immediately following final convictions under the drunken driving statute. Thus an offender will be considered as a first offender if his second violation of the law occurs more than six years after his final conviction of a similar charge.

It is doubted, however, if such a provision in a Kentucky statute at this time would be desirable, and no need for it as yet is apparent. Consequently it is not included in the proposed statute.

Some states create a separate offense and prescribe still heavier penalties for any person who, driving while intoxicated, causes an accident which results in the death of another. This does not prevent prosecution under usual homicide statutes. Massachusetts, for example, after an investigation and hearing at which it is found that the accused caused an accident while under the influence of intoxicating liquor requires the revocation of the offender's driver's license for a period of ten years, during which period no license can be issued to him. And for a subsequent final conviction of a like offense his license is revoked permanently.²⁸ In California the statute provides that for doing any act or neglecting any duty imposed by law which results in the death of or bodily injury to any person the penalty shall be not over 5 years in the state penitentiary or not over 1 year in the county jail, or a fine of not over \$500.00 or by both, such fine and imprisonment.²⁹

As has been pointed out above there are three sections of the Kentucky statutes which cover the law on this matter.³⁰

²⁷ GENERAL LAWS OF MASS. (Tercentenary Ed., 1932), ch. 90, sec. 24, line 23.

²⁸ *Id.* at line 61.

²⁹ PENAL CODE OF CAL. (Deering, 1941) Pt. 1, T. 9, ch. 12, sec. 367e.

³⁰ KY. R. S., sec. 189.520 states the offense, and sec. 189.990 enumerates the penalties for violation of sec. 189.520. Sec. 186.560

These sections are not consecutive nor are they all in the same chapter. Consequently, one of them could easily be overlooked completely when checking the statutes on this point. This is particularly true of section 186.560 regarding the revocation of the offender's license, since it is not indexed under "Drunkenness" with the other two sections. While there is a cross-reference to this section under section 189.990, it is believed that the consolidation of the three sections into one would be an improvement.

After considering the points discussed above the following statute is proposed as meeting the present need in Kentucky for a modern, practicable statute on drunken driving

DRUNKEN DRIVING PROHIBITED

a. No person shall operate any motor vehicle upon any highway while he is intoxicated.

b. Any person upon conviction of violating section *a* above shall, for the first offense, be punished by a fine of not less than \$25.00 nor more than \$50.00. Upon a second conviction of a like offense he shall be fined \$100.00 or imprisoned for not more than three months, or both such fine and imprisonment may be imposed, and his driver's license shall be suspended for a period of one month. Upon any subsequent conviction of a like offense he shall be fined not less than \$100.00 nor more than \$500.00, or imprisoned for not more than six months, or both such fine and imprisonment may be imposed, and his driver's license shall be suspended for six months.

c. Any person who while operating a motor vehicle upon any highway while intoxicated causes an accident which results in the death of another shall have his driver's license revoked for five years and shall be fined not less than \$500.00 nor more than \$1,000.00, or imprisoned for not more than one year, or both such fine and imprisonment may be imposed.

The proposed statute, then, embodies the following changes from the present statute

(1) The offense is driving while intoxicated rather than driving under the influence of intoxicating liquors.

covers the revocation of driver's licenses for the offense of driving under the influence of intoxicating liquors.

(2) The initial penalty is much lighter than in the present statute.

(3) A section is added which punishes any person who, driving while intoxicated, causes an accident which results in the death of another.

These changes, it is believed, will result in better enforcement of the statute and thus reduce the number of injuries and deaths caused each year by drunken drivers.

J. PELHAM JOHNSTON