Kentucky Law Journal

Volume 36 | Issue 1 Article 5

1947

Legislation--A Proposed Dangerous Driving Statute for Kentucky

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LEGISLATION

LEGISLATION—A PROPOSED DANGEROUS DRIVING STATUTE FOR KENTUCKY*

It is common knowledge that deaths and injuries resulting from improper operation of vehicles upon the highways have reached, in the past few years, alarming and tragic proportions. It is therefore necessary that increased attention be given to improving existing motor vehicle laws.

That this need is recognized, is evidenced by the report from the *President's Highway Safety Conference*[1] and by statutes in at least forty states.[2] The former contains the reckless driving statute proposed by the *Uniform Vehicle Code* and the latter have created offenses of reckless driving though the language employed is often not accurately descriptive of recklessness.

The *Uniform Vehicle Code* provides that, "any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." It is to be noted that this definition includes, as do the state statutes, a reference to property This is uncalled for because human safety and property are not equally deserving of protection and should not be placed on an equal footing. The primary purpose in having dangerous driving statutes should be to insure the safety of the public. Mention of property accompanied by the idea of safety of persons would seem to detract from, or to obscure, the importance of the latter. Furthermore, recovery of damages for the destruction of property is an adequate remedy and sufficient safeguard therefor, while this is probably not true in cases of personal injury and certainly not true

* Governor Willis has appointed a State Co-ordinating Committee on Highway Safety This note and one on drunken driving, also appearing in this issue of the Kentucky Law Journal, page 90, 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] REPORT OF COMMITTEE ON LAWS AND ORDINANCES (1946) 28 (This report is of the President's Highway Safety Conference).

[2] *Ibid.*

in case of death. While it might be argued that the offenses of assault and battery, manslaughter, and murder are sufficient deterrents against dangerous driving, such an argument ignores reality People seldom imagine themselves injuring or killing anyone and therefore do not foresee prosecution for assault and battery, manslaughter or murder. But, if there is a dangerous driving statute, those operating vehicles may be constantly aware of possible violation of such a statute and of the consequent penalization therefor.

Another observation may be made of the reckless driving statute contained in the uniform code. The definition of the proposed offense is *general* in nature rather than specific or enumerative. This is as it should be. To enumerate is to mark the limits of and to confine the operations of a statute. A case unanticipated by the framers of a dangerous driving statute, though involving highly dangerous conduct might fall without its enumerative scope.

This enumerative type of statute is found within the motor vehicle laws of a few states.[3] However, reckless driving is defined in general terms and then certain prohibited acts are set out, the doing of which is declared to constitute reckless driving. Typical of this enumerative type of statute is that of Virginia which specifies eight acts which constitute reckless driving, e. g., failure to stop upon approaching a school bus where children are getting on or off.[4] Though such a statute may have its merits, it is believed for reasons stated previously in this note, that an offense of dangerous driving should be defined in general terms. This has evidently been recognized for the great majority of the statutes are worded generally [5]

The most serious objection to the *Uniform Code* provision and to most state statutes on reckless driving is based upon the use of the words "wilful or wanton."[6] These words are em-

[3] PENN. STATUTES (Purdon, Compact ed. 1936) Tit. 75, sec. 481, VA. CODE (1942) sec. 2154 (108).

[4] VA. CODE (1942) sec. 2154 (108)

[5] ALA. CODE (1940) Tit. 36, sec. 3; DIGEST OF THE STATUTES OF ARK. (Pope, 1937) sec. 6708; CAL. CODE (Deering, 1935) Vehicles, sec. 505; 2 COLO. STATUTES ANN. (1935) Chap. 16, sec. 188; IOWA CODE (1939) sec. 5022.04; MICH. COMPILED LAWS (1929) 4694, subsec. (4), OHIO GEN. CODE ANN. (Page, 1945) sec. 6307-20.

[6] DIGEST OF THE STATUTES OF ARK. (Pope, 1937) sec. 6708; CAL. CODE (Deering, 1935) vehicles, sec. 505; 2 COLO. STATUTES ANN.

ployed as equivalents of "reckless" when in fact they mean something more. According to dictionary definitions the words are not at all synonomous and apparently rank in the order of reckless, wanton, and willful, from the least to the greatest degree of departure from the standard of desirable conduct (or desirable mental state) Thus, reckless may mean "utterly heedless", wanton, "arrogant recklessness", and willful may be termed "intentional."[7] A typical statute purporting to create the offense of reckless driving by this inexact use of words is that of California which states that, " Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving "[8]

This statute apparently was drawn in ignorance of the distinction between what constitutes reckless conduct and what constitutes wanton or willful conduct. Criminal negligence may be categorized according to the degree of negligence involved in particular offenses.[9] Thus, in negligent manslaughter the word "reckless" should be employed in describing the negligence requisite for that offense,[10] while the word "wanton" is appropriate in the case of the negligent murder.[11] Words, then, should be chosen carefully in drafting a statute because words actually have their peculiar functions in describing separate and particular realities.

Other statutes are more accurately worded. Of these, typical language employed to describe reckless driving is " without due regard so as to endanger ."[12] " reck-

(1935) Chap. 16, sec. 188; ILL. REV. STATUTES (1945) Chap. 95½, sec. 145; IOWA CODE (1939) sec. 5022.04.

[7] WEBSTER'S NEW INTERNATIONAL DICTIONARY (2nd ed. 1945) *Reckless*: 1. "That does not reck of one's duty, character, life, or the like; now usually careless; neglectful; indifferent; inconsiderate; as, utterly reckless of danger. 2. Characterized by or manifesting lack of due caution; rash; utterly heedless; as, *reckless* youth, adventures, buying or driving." *Wanton* "Marked by or manifesting arrogant recklessness of justice, of the rights or feelings of others, or the like; brutally insolent; merciless; inhumane; " *Willfull* 1. "Willing; disposed or ready; also, wishful; desirous. 2. Self determined; voluntary; intentional; as, *willful* murder."

[8] CAL. CODE (Deering, 1935) Vehicle, sec. 505.

[9] MORELAND, A RATIONALE OF CRIMINAL NEGLIGENCE (1944) 62.

[10] MORELAND, *op. cit. supra,* note 9 at 64.

[11] MORELAND, *op. cit. supra,* note 9 at 68.

[12] OHIO GEN. CODE ANN. (Page, 1945) sec. 6407-20.

lessly, or in a manner so as to endanger "[13] "in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway "[14]

It would seem that these statutes describe reckless driving more accurately than those which use the words wanton or willful. The latter, if construed according to their ordinary meaning should be held to describe conduct of a more serious nature than that of recklessness. Driving which involves a high degree of danger may be reckless and that which involves an extremely high degree of danger may be wanton. Though all wanton driving should warrant conviction under a reckless driving statute, the converse is not true. The greater offense includes the lesser but the lesser does not include the greater offense. Certainly there are degrees of dangerous conduct and this should be borne in mind in drafting a dangerous driving statute. It is a miscarriage of justice to convict one of reckless driving under circumstances indicating wantonness, or to convict of wanton driving under a state of facts revealing only recklessness. Therefore, a dangerous driving statute should be carefully worded so as to create both offenses.

To so embody two offenses in a dangerous driving statute would not be unusual, for courts have interpreted statutes as doing just that. In *Barkley* v *State,*[15] the court interpreted the statute as creating two offenses, that of willful or wanton driving, and that of driving so as to endanger persons or property For the first offense the court was of the opinion that something more than ordinary negligence was required, but the tort standard of care was deemed appropriate for the second offense. In *Neessen* v *Armstrong,*[16] the court in considering a reckless driving statute similar to that before the court in *Barkley* v *State,* also reached the conclusion that two offenses had been created. It interpreted the phrase "without due caution and circumspection" as referring to *simple* negligence and not something more such as *recklessness.* It would seem then, that using the words willful or wanton, or without due caution

[13] VA. CODE (1942) sec. 2154 (108)
[14] 2 LAWS OF N.Y. (Thompson, 1939) VEH. & TRAFF. LAW sec. 58.
[15] 165 Tenn. 309, 54 S.W 2d 944 (1932).
[16] 213 Iowa 378, 239 N.W 56 (1931).

and circumspection, within the same statute[17] creates two offenses.

However, due care has the connotation of the tort standard of negligence and should not be included in a dangerous driving statute as the basis for one of the offenses. The reason is that *conduct* which ordinarily calls only for civil liability is being transposed by statute into criminal conduct. Even were this proper, to create such an offense along with the offense of wanton driving is not reasonable. They are poles apart in degrees of danger to the public and leave between them a wide gulf wherein criminal conduct may be committed without actually constituting either offense. Thus for recklessness which involves a high degree of danger it would be unjust to punish offenders for wanton conduct since the latter involves an *extremely* high degree of danger. Neither would it be just to punish such reckless offenders for conduct involving a degree of danger characteristic of civil negligence. Though it is logical, therefore, to create two offenses in a dangerous driving statute, conduct on the civil negligence level should not be one of them. Rather, the offenses should be those higher in degrees of danger, reckless driving and wanton driving.

Kentucky statutes relative to improper driving go little beyond ordinary traffic regulations. Particular acts in operating vehicles deemed undesirable, are covered by various and separate statutes. Thus driving at a speed greater than is reasonable and prudent is prohibited by one statute;[18] another declares that on approaching a curve or obstruction the driver shall have the vehicle under control;[19] vehicles are to be driven on the right side of the road;[20] and operating a vehicle while intoxicated is prohibited.[21] It is, of course, impossible to have a statute for every situation that may arise without wording a statute in such general terms that any situation or combination of situations might fall within it. An individual under the present Kentucky statutes might commit highly dangerous

[17] ALA. CODE (1940) Tit. 36, sec. 3; 1 MICH. COMPILED LAWS (1929) sec. 4696, subsec. (4) N.C. GEN. ST. (1943) sec. 20-140

[18] KY. R. S. (1946) sec. 189.390 (1)

[19] KY. R. S. (1946) sec. 189.410.

[20] KY. R. S. (1946) sec. 189.300.

[21] KY. R. S. (1946) sec. 189.520.

conduct in operating a vehicle and receive, at most, only a light penalty.[22] The only Kentucky statute which in general terms prohibits improper driving without particularizing is one on careful driving. It provides. "The operator of any vehicle upon a highway shall operate the vehicle in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway."[23] This statute is wholly inappropriate for it would apply to conduct of the civil negligence level though negligence of a criminal nature were not involved. It seems unfortunate that a statute should be so drawn as to speak in tort standard terms when what is sought to be prevented is driving involving high degrees of danger and of a criminal nature.

With the foregoing considerations in mind, the writer proposes the following statute on dangerous driving

DANGEROUS DRIVING PROHIBITED.

(1) Reckless driving.
   (a) Any person who drives a vehicle upon a highway of this state under such circumstances, and in such a manner as to create a *high* degree of danger to human life, which he should realize, as a reasonable man, constitutes a reckless disregard of the safety of others, is guilty of reckless driving; and,
   (b) Upon conviction thereof shall be punished by fine of not less than twenty (20) dollars nor more than one hundred (100) dollars or imprisonment for not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment and suspension of license for ninety (90) days; and, upon a subsequent conviction the maximum fine or the maximum imprisonment herein provided for, or both, *shall* be inflicted upon such person and his license *shall* be revoked for such a period as is deemed proper by the court.

(2) Wanton driving.
   (a) Any person who drives a vehicle upon a highway of this state under such circumstances, and in such a manner as to create an *extremely high* degree of danger to human life, which he should realize, as a reasonable man, constitutes a wanton disregard of the safety of others, is guilty of wanton driving; and,
   (b) Upon conviction thereof shall be punished by fine of not less than fifty (50) dollars nor more than one hundred fifty (150) dollars or by imprisonment for not less than fifteen (15) days nor more than forty (40) days or by both such fine and imprisonment and suspension of license for

[22] KY. R. S. (1946) sec. 189.990.
[23] KY. R. S. (1946) sec. 189.290.

> six (6) months; and, upon a subsequent conviction either the maximum fine or maximum imprisonment herein provided for, or both, *shall* be inflicted upon such person, and his license *shall* be revoked for such a period as is deemed proper by the court.

This proposed statute has resulted from an examination of the statutes of other states on reckless driving, and it is believed, has important advantages over many of them. It avoids a limitation of its application to specified acts which is probably characteristic of the enumerative type of statute. In order to find one guilty of dangerous driving, all of the circumstances such as rate of speed, width of the road, traffic and use of the road, intersections, weather conditions, weight of the vehicle and probability of endangering others, should be considered.[24] This is made possible in the proposed statute by the use of the words, "under such circumstances." It is the circumstances under which a traffic violation occurs, not the violation alone, that will determine whether reckless or wanton driving has occurred. One may drive at a high rate of speed contrary to law and not be guilty of reckless driving under the circumstances,[25] or he may observe the speed limit and yet be guilty of recklessness under the circumstances.[26]

Another important characteristic of the proposed statute is that the words are chosen carefully in recognition of the fact that particular words may be peculiarly adapted to describe different grades of negligence. The word "willful" is omitted because it means intentional. If an automobile is driven with the intention of endangering persons, a crime of attempt could be made out and criminal penalties therefor should provide adequate remedy in the way of deterrence. Words that might lay down a tort standard of conduct are omitted in the belief that instances of ordinary negligence will be covered by ordinary traffic regulations and that such conduct does not constitute a serious, certainly not a criminal, threat to public safety That which is to be deterred is dangerous conduct which, were it to result in injury would call for conviction of assault and battery,

[24] State v Dill, 34 Del. (W W Harr.) 320, 152 Atl. 424 (1930).

[25] People v Carrie, 204 N. Y. Supp. 759, 122 Misc. Rep. 753 (1924)

[26] State v. Mickle, 194 N. C. 808, 140 S. E. 150 (1927).

and if death resulted would call for conviction of manslaughter or murder.

Finally, a word should be said as to what constitutes appropriate penalties. Not much can be concluded from the statutes on reckless driving except that they vary in the penalties they prescribe. The Pennsylvania statute provides for a very light penalty for reckless driving—a fine of not less than ten dollars nor more than twenty-five dollars and costs of prosecution, and, in default of payment, imprisonment for not more than ten days.[27] At the other extreme are statutes[28] of which the Colorado statute is roughly typical. It provides for a fine of not more than five hundred dollars or imprisonment for not more than ninety days or for both such fine and imprisonment. For a second or subsequent conviction a fine of not more than one thousand dollars or imprisonment for not more than six months, or both such fine and imprisonment, may be imposed plus a revocation of the offender's license.[29] Other statutes[30] fall somewhere between these extremes, as does the statute herein proposed. The latter, logically, prescribes higher punishment for the offense of wanton driving than it does for the offense of reckless driving. This is as it should be for the "punishment should fit the crime," and wanton driving is the more serious of the two offenses. Too, for subsequent convictions the greater punishment may be imposed. This is logical for the reason that it requires more severe treatment to deter the type of individual who will repeat a crime. It is proper of course to emphasize the fact that penalties should be reasonable, otherwise the law is not likely to be enforced. Those proposed are believed to be satisfactory in this respect.

In conclusion, the writer submits that a dangerous driving statute similar to the one proposed should be enacted in Kentucky and that it would make a worthwhile contribution to the safety of the public.

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[27] PA. STATUTES (Purdon, Compact ed. 1936) Tit. 75, sec. 481.

[28] ALA. CODE (1940) Tit. 36, sec. 3; DIGEST OF THE STATUTES OF ARK. (Pope, 1937) sec. 6708; N. C. GEN. ST. (1943) Motor Vehicles, sec. 20-140.

[29] 2 COLO. STATUTES ANN. (1935) Chap. 16, sec. 188.

[30] CAL. CODE (Deering, 1935) Vehicle sec. 505; IOWA CODE (1939) sec. 5022.05.