

SENATE BILL No. 287

By Committee on Federal and State Affairs

3-7

9 AN ACT concerning certain drug-related offenses relating to motor ve-
10 hicles; amending K.S.A. 8-1005 and 12-4305 and K.S.A. 2004 Supp.
11 8-1567 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. The following are the amounts of drugs referred to
15 in K.S.A. 8-1005, 8-1567 and 12-4305, and amendments thereto:

16 Drug	Urine	Blood
17	(nanograms per	(nanograms per
18	milliliter)	milliliter)
19 Amphetamine	1,000	500
20 Benzoyllecgonine (Cocaine metabolite)	150	n/a
21 Cocaine	150	50
22 Codeine	5,000	150
23 Delta-9-tetrahydrocannabinol-9-carboxylic acid	15	n/a
24 (marijuana metabolite)		
25 Diethylamide/Lysergide/LSD	25	10
26 Methamphetamine	1,000	500
27 Methylene-dioxymethamphetamine/MDMA	500	100
28 Morphine	5,000	150
29 Phencyclidine/PCP	25	10
30 Tetrahydrocannabinol	10	1 whole blood
31		2 serum/plasma
32 6-Acetylmorphine (Heroin metabolite)	10	10

33 Sec. 2. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005.
34 Except as provided by K.S.A. 8-1012 and amendments thereto, in any
35 criminal prosecution for violation of the laws of this state relating to op-
36 erating or attempting to operate a vehicle while under the influence of
37 alcohol or drugs, or both, or the commission of vehicular homicide or
38 manslaughter while under the influence of alcohol or drugs, or both, or
39 in any prosecution for a violation of a city ordinance relating to the op-
40 eration or attempted operation of a vehicle while under the influence of
41 alcohol or drugs, or both, evidence of the concentration of alcohol or
42 drugs in the defendant's blood, urine, breath or other bodily substance
43 may be admitted and shall give rise to the following:

- 1 (a) If the alcohol concentration is less than .08, that fact may be con-
2 sidered with other competent evidence to determine if the defendant was
3 under the influence of alcohol, or both alcohol and drugs.
- 4 (b) If the alcohol concentration is .08 or more, it shall be prima facie
5 evidence that the defendant was under the influence of alcohol to a de-
6 gree that renders the person incapable of driving safely.
- 7 (c) *If the amount of a drug in the defendant's blood or urine is less*
8 *than the amount specified in section 1, and amendments thereto, that fact*
9 *may be considered with other competent evidence to determine if the*
10 *defendant was under the influence of drugs, or both alcohol and drugs.*
- 11 (d) *If the amount of a drug in the defendant's blood or urine is equal*
12 *to or greater than the amount specified in section 1, and amendments*
13 *thereto, it shall be prima facie evidence that the defendant was under the*
14 *influence of drugs to a degree that renders the person incapable of driving*
15 *safely.*
- 16 ~~(e)~~ (e) If there was present in the defendant's bodily substance any
17 narcotic, hypnotic, somnifacient, stimulating or other drug which has the
18 capacity to render the defendant incapable of safely driving a vehicle, *and*
19 *which is not enumerated in section 1, and amendments thereto* that fact
20 may be considered to determine if the defendant was under the influence
21 of drugs, or both alcohol and drugs, to a degree that renders the defend-
22 ant incapable of driving safely.
- 23 Sec. 3. K.S.A. 2004 Supp. 8-1567 is hereby amended to read as fol-
24 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
25 within this state while:
- 26 (1) The alcohol concentration in the person's blood or breath as
27 shown by any competent evidence, including other competent evidence,
28 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
29 ments thereto, is .08 or more;
- 30 (2) the alcohol concentration in the person's blood or breath, as meas-
31 ured within two hours of the time of operating or attempting to operate
32 a vehicle, is .08 or more;
- 33 (3) under the influence of alcohol to a degree that renders the person
34 incapable of safely driving a vehicle;
- 35 (4) *the amount of a drug in the defendant's blood or urine, as shown*
36 *by any competent evidence, is equal to or greater than the amount spec-*
37 *ified in section 1, and amendments thereto;*
- 38 ~~(4)~~ (5) under the influence of any drug or combination of drugs to a
39 degree that renders the person incapable of safely driving a vehicle; or
- 40 ~~(5)~~ (6) under the influence of a combination of alcohol and any drug
41 or drugs to a degree that renders the person incapable of safely driving
42 a vehicle.
- 43 (b) No person shall operate or attempt to operate any vehicle within

1 this state if the person is a habitual user of any narcotic, hypnotic, som-
2 nifacient or stimulating drug.

3 (c) If a person is charged with a violation of this section involving
4 drugs, the fact that the person is or has been entitled to use the drug
5 under the laws of this state shall not constitute a defense against the
6 charge.

7 (d) Upon a first conviction of a violation of this section, a person shall
8 be guilty of a class B, nonperson misdemeanor and sentenced to not less
9 than 48 consecutive hours nor more than six months' imprisonment, or
10 in the court's discretion 100 hours of public service, and fined not less
11 than \$500 nor more than \$1,000. The person convicted must serve at
12 least 48 consecutive hours' imprisonment or 100 hours of public service
13 either before or as a condition of any grant of probation or suspension,
14 reduction of sentence or parole. In addition, the court shall enter an order
15 which requires that the person enroll in and successfully complete an
16 alcohol and drug safety action education program or treatment program
17 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
18 ucation and treatment programs.

19 (e) On a second conviction of a violation of this section, a person shall
20 be guilty of a class A, nonperson misdemeanor and sentenced to not less
21 than 90 days nor more than one year's imprisonment and fined not less
22 than \$1,000 nor more than \$1,500. The person convicted must serve at
23 least five consecutive days' imprisonment before the person is granted
24 probation, suspension or reduction of sentence or parole or is otherwise
25 released. The five days' imprisonment mandated by this subsection may
26 be served in a work release program only after such person has served
27 48 consecutive hours' imprisonment, provided such work release program
28 requires such person to return to confinement at the end of each day in
29 the work release program. The court may place the person convicted
30 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
31 ments thereto, to serve the remainder of the minimum sentence only
32 after such person has served 48 consecutive hours' imprisonment. As a
33 condition of any grant of probation, suspension of sentence or parole or
34 of any other release, the person shall be required to enter into and com-
35 plete a treatment program for alcohol and drug abuse as provided in
36 K.S.A. 8-1008, and amendments thereto.

37 (f) On the third conviction of a violation of this section, a person shall
38 be guilty of a nonperson felony and sentenced to not less than 90 days
39 nor more than one year's imprisonment and fined not less than \$1,500
40 nor more than \$2,500. The person convicted shall not be eligible for
41 release on probation, suspension or reduction of sentence or parole until
42 the person has served at least 90 days' imprisonment. The court may also
43 require as a condition of parole that such person enter into and complete

1 a treatment program for alcohol and drug abuse as provided by K.S.A. 8-
2 1008, and amendments thereto. The 90 days' imprisonment mandated by
3 this subsection may be served in a work release program only after such
4 person has served 48 consecutive hours' imprisonment, provided such
5 work release program requires such person to return to confinement at
6 the end of each day in the work release program. The court may place
7 the person convicted under a house arrest program pursuant to K.S.A.
8 21-4603b, and amendments thereto, to serve the remainder of the min-
9 imum sentence only after such person has served 48 consecutive hours'
10 imprisonment.

11 (g) On the fourth or subsequent conviction of a violation of this sec-
12 tion, a person shall be guilty of a nonperson felony and sentenced to not
13 less than 90 days nor more than one year's imprisonment and fined
14 \$2,500. The person convicted shall not be eligible for release on proba-
15 tion, suspension or reduction of sentence or parole until the person has
16 served at least 90 days' imprisonment. The 90 days' imprisonment man-
17 dated by this subsection may be served in a work release program only
18 after such person has served 72 consecutive hours' imprisonment, pro-
19 vided such work release program requires such person to return to con-
20 finement at the end of each day in the work release program. At the time
21 of the filing of the judgment form or journal entry as required by K.S.A.
22 21-4620 or 22-3426, and amendments thereto, the court shall cause a
23 certified copy to be sent to the officer having the offender in charge. The
24 law enforcement agency maintaining custody and control of a defendant
25 for imprisonment shall cause a certified copy of the judgment form or
26 journal entry to be sent to the secretary of corrections within three busi-
27 ness days of receipt of the judgment form or journal entry from the court
28 and notify the secretary of corrections when the term of imprisonment
29 expires and upon expiration of the term of imprisonment shall deliver the
30 defendant to a location designated by the secretary. After the term of
31 imprisonment imposed by the court, the person shall be placed in the
32 custody of the secretary of corrections for a mandatory one-year period
33 of postrelease supervision, which such period of postrelease supervision
34 shall not be reduced. During such postrelease supervision, the person
35 shall be required to participate in an inpatient or outpatient program for
36 alcohol and drug abuse, including, but not limited to, an approved after-
37 care plan or mental health counseling, as determined by the secretary
38 and satisfy conditions imposed by the Kansas parole board as provided
39 by K.S.A. 22-3717, and amendments thereto. Any violation of the con-
40 ditions of such postrelease supervision may subject such person to revo-
41 cation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and
42 amendments thereto and as otherwise provided by law.

43 (h) Any person convicted of violating this section or an ordinance

1 which prohibits the acts that this section prohibits who had a child under
2 the age of 14 years in the vehicle at the time of the offense shall have
3 such person's punishment enhanced by one month of imprisonment. This
4 imprisonment must be served consecutively to any other penalty imposed
5 for a violation of this section or an ordinance which prohibits the acts that
6 this section prohibits. During the service of the one month enhanced
7 penalty, the judge may order the person on house arrest, work release or
8 other conditional release.

9 (i) The court may establish the terms and time for payment of any
10 fines, fees, assessments and costs imposed pursuant to this section. Any
11 assessment and costs shall be required to be paid not later than 90 days
12 after imposed, and any remainder of the fine shall be paid prior to the
13 final release of the defendant by the court.

14 (j) In lieu of payment of a fine imposed pursuant to this section, the
15 court may order that the person perform community service specified by
16 the court. The person shall receive a credit on the fine imposed in an
17 amount equal to \$5 for each full hour spent by the person in the specified
18 community service. The community service ordered by the court shall be
19 required to be performed not later than one year after the fine is imposed
20 or by an earlier date specified by the court. If by the required date the
21 person performs an insufficient amount of community service to reduce
22 to zero the portion of the fine required to be paid by the person, the
23 remaining balance of the fine shall become due on that date.

24 (k) (1) Except as provided in paragraph (5), in addition to any other
25 penalty which may be imposed upon a person convicted of a violation of
26 this section, the court may order that the convicted person's motor vehicle
27 or vehicles be impounded or immobilized for a period not to exceed one
28 year and that the convicted person pay all towing, impoundment and
29 storage fees or other immobilization costs.

30 (2) The court shall not order the impoundment or immobilization of
31 a motor vehicle driven by a person convicted of a violation of this section
32 if the motor vehicle had been stolen or converted at the time it was driven
33 in violation of this section.

34 (3) Prior to ordering the impoundment or immobilization of a motor
35 vehicle or vehicles owned by a person convicted of a violation of this
36 section, the court shall consider, but not be limited to, the following:

37 (A) Whether the impoundment or immobilization of the motor ve-
38 hicle would result in the loss of employment by the convicted person or
39 a member of such person's family; and

40 (B) whether the ability of the convicted person or a member of such
41 person's family to attend school or obtain medical care would be impaired.

42 (4) Any personal property in a vehicle impounded or immobilized
43 pursuant to this subsection may be retrieved prior to or during the period

1 of such impoundment or immobilization.

2 (5) As used in this subsection, the convicted person's motor vehicle
3 or vehicles shall include any vehicle leased by such person. If the lease
4 on the convicted person's motor vehicle subject to impoundment or im-
5 mobilization expires in less than one year from the date of the impound-
6 ment or immobilization, the time of impoundment or immobilization of
7 such vehicle shall be the amount of time remaining on the lease.

8 (l) The court shall report every conviction of a violation of this section
9 and every diversion agreement entered into in lieu of further criminal
10 proceedings or a complaint alleging a violation of this section to the di-
11 vision. Prior to sentencing under the provisions of this section, the court
12 shall request and shall receive from the division a record of all prior
13 convictions obtained against such person for any violations of any of the
14 motor vehicle laws of this state.

15 (m) For the purpose of determining whether a conviction is a first,
16 second, third, fourth or subsequent conviction in sentencing under this
17 section:

18 (1) "Conviction" includes being convicted of a violation of this section
19 or entering into a diversion agreement in lieu of further criminal pro-
20 ceedings on a complaint alleging a violation of this section;

21 (2) "conviction" includes being convicted of a violation of a law of
22 another state or an ordinance of any city, or resolution of any county,
23 which prohibits the acts that this section prohibits or entering into a di-
24 version agreement in lieu of further criminal proceedings in a case alleg-
25 ing a violation of such law, ordinance or resolution;

26 (3) any convictions occurring during a person's lifetime shall be taken
27 into account when determining the sentence to be imposed for a first,
28 second, third, fourth or subsequent offender;

29 (4) it is irrelevant whether an offense occurred before or after con-
30 viction for a previous offense; and

31 (5) a person may enter into a diversion agreement in lieu of further
32 criminal proceedings for a violation of this section, and amendments
33 thereto, or an ordinance which prohibits the acts of this section, and
34 amendments thereto, only once during the person's lifetime.

35 (n) Upon conviction of a person of a violation of this section or a
36 violation of a city ordinance or county resolution prohibiting the acts
37 prohibited by this section, the division, upon receiving a report of con-
38 viction, shall suspend, restrict or suspend and restrict the person's driving
39 privileges as provided by K.S.A. 8-1014, and amendments thereto.

40 (o) (1) Nothing contained in this section shall be construed as pre-
41 venting any city from enacting ordinances, or any county from adopting
42 resolutions, declaring acts prohibited or made unlawful by this act as
43 unlawful or prohibited in such city or county and prescribing penalties

1 for violation thereof. Except as specifically provided by this subsection,
2 the minimum penalty prescribed by any such ordinance or resolution shall
3 not be less than the minimum penalty prescribed by this act for the same
4 violation, and the maximum penalty in any such ordinance or resolution
5 shall not exceed the maximum penalty prescribed for the same violation.

6 Any such ordinance or resolution shall authorize the court to order that
7 the convicted person pay restitution to any victim who suffered loss due
8 to the violation for which the person was convicted. Except as provided
9 in paragraph (5), any such ordinance or resolution may require or au-
10 thorize the court to order that the convicted person's motor vehicle or
11 vehicles be impounded or immobilized for a period not to exceed one
12 year and that the convicted person pay all towing, impoundment and
13 storage fees or other immobilization costs.

14 (2) The court shall not order the impoundment or immobilization of
15 a motor vehicle driven by a person convicted of a violation of this section
16 if the motor vehicle had been stolen or converted at the time it was driven
17 in violation of this section.

18 (3) Prior to ordering the impoundment or immobilization of a motor
19 vehicle or vehicles owned by a person convicted of a violation of this
20 section, the court shall consider, but not be limited to, the following:

21 (A) Whether the impoundment or immobilization of the motor ve-
22 hicle would result in the loss of employment by the convicted person or
23 a member of such person's family; and

24 (B) whether the ability of the convicted person or a member of such
25 person's family to attend school or obtain medical care would be impaired.

26 (4) Any personal property in a vehicle impounded or immobilized
27 pursuant to this subsection may be retrieved prior to or during the period
28 of such impoundment or immobilization.

29 (5) As used in this subsection, the convicted person's motor vehicle
30 or vehicles shall include any vehicle leased by such person. If the lease
31 on the convicted person's motor vehicle subject to impoundment or im-
32 mobilization expires in less than one year from the date of the impound-
33 ment or immobilization, the time of impoundment or immobilization of
34 such vehicle shall be the amount of time remaining on the lease.

35 (p) No plea bargaining agreement shall be entered into nor shall any
36 judge approve a plea bargaining agreement entered into for the purpose
37 of permitting a person charged with a violation of this section, or a vio-
38 lation of any ordinance of a city or resolution of any county in this state
39 which prohibits the acts prohibited by this section, to avoid the mandatory
40 penalties established by this section or by the ordinance. For the purpose
41 of this subsection, entering into a diversion agreement pursuant to K.S.A.
42 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
43 constitute plea bargaining.

1 (q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
2 be pleaded in the alternative, and the state, city or county, but shall not
3 be required to, may elect one or two of the three prior to submission of
4 the case to the fact finder.

5 (r) Upon a fourth or subsequent conviction, the judge of any court in
6 which any person is convicted of violating this section, may revoke the
7 person's license plate or temporary registration certificate of the motor
8 vehicle driven during the violation of this section for a period of one year.
9 Upon revoking any license plate or temporary registration certificate pur-
10 suant to this subsection, the court shall require that such license plate or
11 temporary registration certificate be surrendered to the court.

12 (s) For the purpose of this section: (1) "Alcohol concentration" means
13 the number of grams of alcohol per 100 milliliters of blood or per 210
14 liters of breath.

15 (2) "Imprisonment" shall include any restrained environment in
16 which the court and law enforcement agency intend to retain custody and
17 control of a defendant and such environment has been approved by the
18 board of county commissioners or the governing body of a city.

19 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
20 4165, and amendments thereto.

21 (t) The amount of the increase in fines as specified in this section
22 shall be remitted by the clerk of the district court to the state treasurer
23 in accordance with the provisions of K.S.A. 75-4215, and amendments
24 thereto. Upon receipt of remittance of the increase provided in this act,
25 the state treasurer shall deposit the entire amount in the state treasury
26 and the state treasurer shall credit 50% to the community alcoholism and
27 intoxication programs fund and 50% to the department of corrections
28 alcohol and drug abuse treatment fund, which is hereby created in the
29 state treasury.

30 Sec. 4. K.S.A. 12-4305 is hereby amended to read as follows: 12-
31 4305. (a) The municipal judge shall establish a schedule of fines which
32 shall be imposed for municipal ordinance violations that are classified as
33 ordinance traffic infractions. Also, the municipal judge may establish a
34 schedule of fines which shall be imposed for the violation of certain other
35 ordinances. Any fine so established shall be within the minimum and
36 maximum allowable fines established by ordinance for such offenses by
37 the governing body. The following traffic violations are specifically ex-
38 cluded from any schedule of fines:

39 (1) Reckless driving;

40 (2) driving while under the influence of alcohol or drugs, or both, ~~or~~
41 driving with a blood or breath alcohol concentration of .08 or more; *or*
42 *driving while the amount of a drug in one's blood or urine is equal to or*
43 *greater than the amount specified in section 1, and amendments thereto;*

- 1 (3) driving without a valid license issued or on a canceled, suspended
2 or revoked license;
- 3 (4) fleeing or attempting to elude a police officer; or
- 4 (5) offense comparable to those prescribed by K.S.A. 8-1602, 8-1603
5 and 8-1604 and amendments thereto.
- 6 (b) A person charged with the violation of an ordinance contained in
7 a schedule of fines established under subsection (a) shall, except as pro-
8 vided in subsection (c), appear at the place and time specified in the
9 notice to appear. If the person enters an appearance, waives right to trial,
10 pleads guilty or no contest, the fine shall be no greater than that specified
11 in the schedule.
- 12 (c) Except as provided in subsection (c) of K.S.A. 12-4214, and
13 amendments thereto, prior to the time specified in the notice to appear,
14 a person charged with an ordinance cigarette or tobacco infraction or a
15 violation of an ordinance contained in a schedule of fines established
16 under subsection (a) may enter an appearance, waive right to trial, plead
17 guilty or no contest and pay the fine for the violation as specified in the
18 schedule or in subsection (a) of K.S.A. 12-4214 and amendments thereto.
19 At the election of the person charged, such appearance, waiver, plea and
20 payment may be made by mail or in person and payment may be by
21 personal check. The complaint shall not have been complied with if a
22 check is not honored for any reason, or the fine is not paid in full prior
23 to the time specified in the notice to appear. When a person charged with
24 an ordinance cigarette or tobacco infraction or an ordinance traffic in-
25 fraction or other ordinance violation on a schedule of fines makes pay-
26 ment without executing a written waiver of right to trial and plea of guilty
27 or no contest, the payment shall be deemed such an appearance, waiver
28 of right to trial and plea of no contest.
- 29 The municipal judge may authorize the clerk of the municipal court or
30 some other person to accept by mail or in person such voluntary appear-
31 ance, plea of guilty or no contest and payment of the fine imposed by the
32 schedule or by subsection (a) of K.S.A. 12-4214 and amendments thereto.
- 33 The schedule of fines and persons authorized to accept such pleas shall
34 be conspicuously displayed in the office where such voluntary appearance,
35 plea of guilty and payment of fine occurs.
- 36 Sec. 5. K.S.A. 8-1005 and 12-4305 and K.S.A. 2004 Supp. 8-1567 are
37 hereby repealed.
- 38 Sec. 6. This act shall take effect and be in force from and after its
39 publication in the statute book.