

SENATE BILL No. 341

By Committee on Judiciary

1-10

9 AN ACT relating to driving under influence of alcohol or drugs; con-
10 cerning excessive blood or breath alcohol concentration; providing
11 penalties; creating crime of aggravated involuntary manslaughter while
12 driving under the influence of alcohol or drugs; amending K.S.A. 8-
13 1014 and K.S.A. 2005 Supp. 8-1567 and repealing the existing sections.
14

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

16 New Section 1. Aggravated involuntary manslaughter while driving
17 under the influence of alcohol or drugs is the unintentional killing of a
18 human being committed in the commission of, or attempt to commit, or
19 flight from an act described in K.S.A. 8-1567, and amendments thereto,
20 and having a blood or breath alcohol concentration of .16 or more.

21 Aggravated involuntary manslaughter while driving under the influence
22 of alcohol or drugs is a severity level 2, person felony.

23 Sec. 2. K.S.A. 8-1014 is hereby amended to read as follows: 8-1014.

24 (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amend-
25 ments thereto, if a person refuses a test, the division, pursuant to K.S.A.
26 8-1002, and amendments thereto, shall:

27 (1) On the person's first occurrence, suspend the person's driving
28 privileges for one year;

29 (2) on the person's second occurrence, suspend the person's driving
30 privileges for two years;

31 (3) on the person's third occurrence, suspend the person's driving
32 privileges for three years;

33 (4) on the person's fourth occurrence, suspend the person's driving
34 privileges for 10 years; and

35 (5) on the person's fifth or subsequent occurrence, revoke the per-
36 son's driving privileges permanently.

37 (b) (1) Except as provided by *paragraph (2) of this subsection*, sub-
38 sections (c) and (e) and K.S.A. 8-2,142, and amendments thereto, if a
39 person fails a test or has an alcohol or drug-related conviction in this state
40 *and the person's blood or breath alcohol concentration is .08 or more, but*
41 *less than .16*, the division shall:

42 ~~(A)~~ (A) On the person's first occurrence, suspend the person's driving
43 privileges for 30 days, then restrict the person's driving privileges as pro-

1 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
2 days;

3 ~~(2)~~ (B) on the person's second, third or fourth occurrence, suspend
4 the person's driving privileges for one year and, commencing July 1, 2001,
5 then at the end of the suspension for an alcohol-related conviction, restrict
6 the person's driving privileges for one year to driving only a motor vehicle
7 equipped with an ignition interlock device; and

8 ~~(3)~~ (C) on the person's fifth or subsequent occurrence, the person's
9 driving privileges shall be permanently revoked.

10 (2) *Except as provided by paragraph (1) of this subsection, subsec-*
11 *tions (c) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person*
12 *fails a test or has an alcohol or drug-related conviction in this state and*
13 *the person's blood or breath alcohol concentration is .16 or more, the*
14 *division shall:*

15 (A) *On the person's first occurrence, suspend the person's driving*
16 *privileges for 60 days, then restrict the person's driving privileges as pro-*
17 *vided by K.S.A. 8-1015, and amendments thereto, for an additional 300*
18 *days;*

19 (B) *on the person's second occurrence, suspend the person's driving*
20 *privileges for one year and then at the end of the suspension for an alcohol-*
21 *related conviction, restrict the person's driving privileges for two years to*
22 *driving only a motor vehicle equipped with an ignition interlock device;*
23 *and*

24 (C) *on the person's third or subsequent occurrence, the person's driv-*
25 *ing privileges shall be permanently revoked.*

26 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
27 amendments thereto, if a person who is less than 21 years of age fails a
28 test or has an alcohol or drug-related conviction in this state, the division
29 shall suspend the person's driving privileges for one year.

30 (d) Whenever the division is notified by an alcohol and drug safety
31 action program that a person has failed to complete any alcohol and drug
32 safety action education or treatment program ordered by a court for a
33 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
34 division shall suspend the person's driving privileges until the division
35 receives notice of the person's completion of such program.

36 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
37 if a person's driving privileges are subject to suspension pursuant to this
38 section for a test refusal, test failure or alcohol or drug-related conviction
39 arising from the same arrest, the period of such suspension shall not
40 exceed the longest applicable period authorized by subsection (a), (b) or
41 (c), and such suspension periods shall not be added together or otherwise
42 imposed consecutively. In addition, in determining the period of such
43 suspension as authorized by subsection (a), (b) or (c), such person shall

1 receive credit for any period of time for which such person's driving
2 privileges were suspended while awaiting any hearing or final order au-
3 thorized by this act.

4 If a person's driving privileges are subject to restriction pursuant to
5 this section for a test failure or alcohol or drug-related conviction arising
6 from the same arrest, the restriction periods shall not be added together
7 or otherwise imposed consecutively. In addition, in determining the pe-
8 riod of restriction, the person shall receive credit for any period of sus-
9 pension imposed for a test refusal arising from the same arrest.

10 (f) If the division has taken action under subsection (a) for a test
11 refusal or under subsection (b) or (c) for a test failure and such action is
12 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
13 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-
14 ments thereto, the stay or temporary driving privileges shall not prevent
15 the division from taking the action required by subsection (b) or (c) for
16 an alcohol or drug-related conviction.

17 (g) Upon restricting a person's driving privileges pursuant to this sec-
18 tion, the division shall issue a copy of the order imposing the restrictions
19 which is required to be carried by the person at any time the person is
20 operating a motor vehicle on the highways of this state.

21 (h) Any person whose license is restricted to operating only a motor
22 vehicle with an ignition interlock device installed may operate an em-
23 ployer's vehicle without an ignition interlock device installed during nor-
24 mal business activities, provided that the person does not partly or entirely
25 own or control the employer's vehicle or business. The provisions of this
26 subsection shall be effective on and after July 1, 2001.

27 Sec. 3. K.S.A. 2005 Supp. 8-1567 is hereby amended to read as fol-
28 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle
29 within this state while:

30 (1) The alcohol concentration in the person's blood or breath as
31 shown by any competent evidence, including other competent evidence,
32 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
33 ments thereto, is .08 or more;

34 (2) the alcohol concentration in the person's blood or breath, as meas-
35 ured within two hours of the time of operating or attempting to operate
36 a vehicle, is .08 or more;

37 (3) under the influence of alcohol to a degree that renders the person
38 incapable of safely driving a vehicle;

39 (4) under the influence of any drug or combination of drugs to a
40 degree that renders the person incapable of safely driving a vehicle; or

41 (5) under the influence of a combination of alcohol and any drug or
42 drugs to a degree that renders the person incapable of safely driving a
43 vehicle.

1 (b) No person shall operate or attempt to operate any vehicle within
2 this state if the person is a habitual user of any narcotic, hypnotic, som-
3 nifacient or stimulating drug.

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

8 (d) Upon a first conviction of a violation of this section, a person shall
9 be guilty of a class B, nonperson misdemeanor and sentenced to:

10 (1) *Except as provided in paragraph (2), not less than 48 consecutive*
11 *hours nor more than six months' imprisonment, or in the court's discre-*
12 *tion 100 hours of public service, and fined not less than \$500 nor more*
13 *than \$1,000. The person convicted must serve at least 48 consecutive*
14 *hours' imprisonment or 100 hours of public service either before or as a*
15 *condition of any grant of probation or suspension, reduction of sentence*
16 *or parole; or*

17 (2) *if a person's blood or breath alcohol concentration was .16 or*
18 *more, not less than 96 consecutive hours nor more than one year's im-*
19 *prisonment, or in the court's discretion 200 hours of public service, and*
20 *fined not less than \$1,000 nor more than \$2,000. The person convicted*
21 *must serve at least 96 consecutive hours' imprisonment or 200 hours of*
22 *public service either before or as a condition of any grant of probation or*
23 *suspension, reduction of sentence or parole.*

24 In addition, the court shall enter an order which requires that the
25 person enroll in and successfully complete an alcohol and drug safety
26 action education program or treatment program as provided in K.S.A. 8-
27 1008, and amendments thereto, or both the education and treatment
28 programs.

29 (e) On a second conviction of a violation of this section, a person shall
30 be guilty of a class A, nonperson misdemeanor and sentenced to:

31 (1) *Except as provided in paragraph (2), not less than 90 days nor*
32 *more than one year's imprisonment and fined not less than \$1,000 nor*
33 *more than \$1,500. The person convicted must serve at least five consec-*
34 *utive days' imprisonment before the person is granted probation, suspen-*
35 *sion or reduction of sentence or parole or is otherwise released. The five*
36 *days' imprisonment mandated by this ~~subsection~~ paragraph may be*
37 *served in a work release program only after such person has served 48*
38 *consecutive hours' imprisonment, provided such work release program*
39 *requires such person to return to confinement at the end of each day in*
40 *the work release program. The court may place the person convicted*
41 *under a house arrest program pursuant to K.S.A. 21-4603b, and amend-*
42 *ments thereto, to serve the remainder of the minimum sentence only*
43 *after such person has served 48 consecutive hours' imprisonment; or*

1 (2) if a person's blood or breath alcohol concentration was .16 or
2 more, not less than 180 days nor more than two year's imprisonment and
3 fined not less than \$2,000 nor more than \$3,000. The person convicted
4 must serve at least 10 consecutive days' imprisonment before the person
5 is granted probation, suspension or reduction of sentence or parole or is
6 otherwise released. The 10 days' imprisonment mandated by this para-
7 graph may be served in a work release program only after such person
8 has served 96 consecutive hours' imprisonment, provided such work re-
9 lease program requires such person to return to confinement at the end
10 of each day in the work release program. The court may place the person
11 convicted under a house arrest program pursuant to K.S.A. 21-4603b,
12 and amendments thereto, to serve the remainder of the minimum sentence
13 only after such person has served 96 consecutive hours' imprisonment.

14 As a condition of any grant of probation, suspension of sentence or
15 parole or of any other release, the person shall be required to enter into
16 and complete a treatment program for alcohol and drug abuse as provided
17 in K.S.A. 8-1008, and amendments thereto.

18 (f) On the third conviction of a violation of this section, a person shall
19 be guilty of a nonperson felony and sentenced to:

20 (1) Except as provided in paragraph (2), not less than 90 days nor
21 more than one year's imprisonment and fined not less than \$1,500 nor
22 more than \$2,500. The person convicted shall not be eligible for release
23 on probation, suspension or reduction of sentence or parole until the
24 person has served at least 90 days' imprisonment. ~~The court may also~~
25 ~~require as a condition of parole that such person enter into and complete~~
26 ~~a treatment program for alcohol and drug abuse as provided by K.S.A. 8-~~
27 ~~1008, and amendments thereto.~~ The 90 days' imprisonment mandated by
28 this ~~subsection~~ paragraph may be served in a work release program only
29 after such person has served 48 consecutive hours' imprisonment, pro-
30 vided such work release program requires such person to return to con-
31 finement at the end of each day in the work release program. The court
32 may place the person convicted under a house arrest program pursuant
33 to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of
34 the minimum sentence only after such person has served 48 consecutive
35 hours' imprisonment; or

36 (2) if a person's blood or breath alcohol concentration was .16 or
37 more, not less than 180 days nor more than two year's imprisonment and
38 fined not less than \$3,000 nor more than \$5,000. The person convicted
39 shall not be eligible for release on probation, suspension or reduction of
40 sentence or parole until the person has served at least 180 days' impris-
41 onment. The 180 days' imprisonment mandated by this paragraph may
42 be served in a work release program only after such person has served 96
43 consecutive hours' imprisonment, provided such work release program

1 *requires such person to return to confinement at the end of each day in*
2 *the work release program. The court may place the person convicted un-*
3 *der a house arrest program pursuant to K.S.A. 21-4603b, and amend-*
4 *ments thereto, to serve the remainder of the minimum sentence only after*
5 *such person has served 96 consecutive hours' imprisonment.*

6 *The court may also require as a condition of parole that such person*
7 *enter into and complete a treatment program for alcohol and drug abuse*
8 *as provided by K.S.A. 8-1008, and amendments thereto.*

9 (g) On the fourth or subsequent conviction of a violation of this sec-
10 tion, a person shall be guilty of a nonperson felony and sentenced to:

11 (1) *Except as provided in paragraph (2), not less than 90 days nor*
12 *more than one year's imprisonment and fined \$2,500. The person con-*
13 *victed shall not be eligible for release on probation, suspension or reduc-*
14 *tion of sentence or parole until the person has served at least 90 days'*
15 *imprisonment. The 90 days' imprisonment mandated by this subsection*
16 *paragraph may be served in a work release program only after such per-*
17 *son has served 72 consecutive hours' imprisonment, provided such work*
18 *release program requires such person to return to confinement at the end*
19 *of each day in the work release program; or*

20 (2) *if a person's blood or breath alcohol concentration was .16 or*
21 *more, not less than 180 days nor more than two year's imprisonment and*
22 *fined \$5,000. The person convicted shall not be eligible for release on*
23 *probation, suspension or reduction of sentence or parole until the person*
24 *has served at least 180 days' imprisonment. The 180 days' imprisonment*
25 *mandated by this paragraph may be served in a work release program*
26 *only after such person has served 144 consecutive hours' imprisonment,*
27 *provided such work release program requires such person to return to*
28 *confinement at the end of each day in the work release program.*

29 At the time of the filing of the judgment form or journal entry as
30 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the
31 court shall cause a certified copy to be sent to the officer having the
32 offender in charge. The law enforcement agency maintaining custody and
33 control of a defendant for imprisonment shall cause a certified copy of
34 the judgment form or journal entry to be sent to the secretary of correc-
35 tions within three business days of receipt of the judgment form or journal
36 entry from the court and notify the secretary of corrections when the
37 term of imprisonment expires and upon expiration of the term of impris-
38 onment shall deliver the defendant to a location designated by the sec-
39 retary. After the term of imprisonment imposed by the court, the person
40 shall be placed in the custody of the secretary of corrections for a man-
41 datory one-year period of postrelease supervision, which such period of
42 postrelease supervision shall not be reduced. During such postrelease
43 supervision, the person shall be required to participate in an inpatient or

1 outpatient program for alcohol and drug abuse, including, but not limited
2 to, an approved aftercare plan or mental health counseling, as determined
3 by the secretary and satisfy conditions imposed by the Kansas parole
4 board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-
5 olation of the conditions of such postrelease supervision may subject such
6 person to revocation of postrelease supervision pursuant to K.S.A. 75-
7 5217 *et seq.*, and amendments thereto and as otherwise provided by law.

8 (h) Any person convicted of violating this section or an ordinance
9 which prohibits the acts that this section prohibits who had a child under
10 the age of 14 years in the vehicle at the time of the offense shall have
11 such person's punishment enhanced by one month of imprisonment, *ex-*
12 *cept that if the person's blood or breath alcohol concentration was .16 or*
13 *more such person's punishment shall be enhanced by two months of im-*
14 *prisonment.* This imprisonment must be served consecutively to any other
15 penalty imposed for a violation of this section or an ordinance which
16 prohibits the acts that this section prohibits. During the service of the
17 ~~one month~~ enhanced penalty, the judge may order the person on house
18 arrest, work release or other conditional release.

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

24 (j) In lieu of payment of a fine imposed pursuant to this section, the
25 court may order that the person perform community service specified by
26 the court. The person shall receive a credit on the fine imposed in an
27 amount equal to \$5 for each full hour spent by the person in the specified
28 community service. The community service ordered by the court shall be
29 required to be performed not later than one year after the fine is imposed
30 or by an earlier date specified by the court. If by the required date the
31 person performs an insufficient amount of community service to reduce
32 to zero the portion of the fine required to be paid by the person, the
33 remaining balance of the fine shall become due on that date.

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

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

- 1 (3) Prior to ordering the impoundment or immobilization of a motor
2 vehicle or vehicles owned by a person convicted of a violation of this
3 section, the court shall consider, but not be limited to, the following:
- 4 (A) Whether the impoundment or immobilization of the motor ve-
5 hicle would result in the loss of employment by the convicted person or
6 a member of such person's family; and
- 7 (B) whether the ability of the convicted person or a member of such
8 person's family to attend school or obtain medical care would be impaired.
- 9 (4) Any personal property in a vehicle impounded or immobilized
10 pursuant to this subsection may be retrieved prior to or during the period
11 of such impoundment or immobilization.
- 12 (5) As used in this subsection, the convicted person's motor vehicle
13 or vehicles shall include any vehicle leased by such person. If the lease
14 on the convicted person's motor vehicle subject to impoundment or im-
15 mobilization expires in less than one year from the date of the impound-
16 ment or immobilization, the time of impoundment or immobilization of
17 such vehicle shall be the amount of time remaining on the lease.
- 18 (l) The court shall report every conviction of a violation of this section
19 and every diversion agreement entered into in lieu of further criminal
20 proceedings or a complaint alleging a violation of this section to the di-
21 vision. Prior to sentencing under the provisions of this section, the court
22 shall request and shall receive from the division a record of all prior
23 convictions obtained against such person for any violations of any of the
24 motor vehicle laws of this state.
- 25 (m) For the purpose of determining whether a conviction is a first,
26 second, third, fourth or subsequent conviction in sentencing under this
27 section:
- 28 (1) "Conviction" includes being convicted of a violation of this section
29 or entering into a diversion agreement in lieu of further criminal pro-
30 ceedings on a complaint alleging a violation of this section;
- 31 (2) "conviction" includes being convicted of a violation of a law of
32 another state or an ordinance of any city, or resolution of any county,
33 which prohibits the acts that this section prohibits or entering into a di-
34 version agreement in lieu of further criminal proceedings in a case alleg-
35 ing a violation of such law, ordinance or resolution;
- 36 (3) any convictions occurring during a person's lifetime shall be taken
37 into account when determining the sentence to be imposed for a first,
38 second, third, fourth or subsequent offender;
- 39 (4) it is irrelevant whether an offense occurred before or after con-
40 viction for a previous offense; and
- 41 (5) a person may enter into a diversion agreement in lieu of further
42 criminal proceedings for a violation of this section, and amendments
43 thereto, or an ordinance which prohibits the acts of this section, and

1 amendments thereto, only once during the person's lifetime.

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

7 (o) (1) Nothing contained in this section shall be construed as pre-
8 venting any city from enacting ordinances, or any county from adopting
9 resolutions, declaring acts prohibited or made unlawful by this act as
10 unlawful or prohibited in such city or county and prescribing penalties
11 for violation thereof. Except as specifically provided by this subsection,
12 the minimum penalty prescribed by any such ordinance or resolution shall
13 not be less than the minimum penalty prescribed by this act for the same
14 violation, and the maximum penalty in any such ordinance or resolution
15 shall not exceed the maximum penalty prescribed for the same violation.

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

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

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

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

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

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

39 (5) As used in this subsection, the convicted person's motor vehicle
40 or vehicles shall include any vehicle leased by such person. If the lease
41 on the convicted person's motor vehicle subject to impoundment or im-
42 mobilization expires in less than one year from the date of the impound-
43 ment or immobilization, the time of impoundment or immobilization of

1 such vehicle shall be the amount of time remaining on the lease.

2 (p) No plea bargaining agreement shall be entered into nor shall any
3 judge approve a plea bargaining agreement entered into for the purpose
4 of permitting a person charged with a violation of this section, or a vio-
5 lation of any ordinance of a city or resolution of any county in this state
6 which prohibits the acts prohibited by this section, to avoid the mandatory
7 penalties established by this section or by the ordinance. For the purpose
8 of this subsection, entering into a diversion agreement pursuant to K.S.A.
9 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
10 constitute plea bargaining.

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

15 (r) Upon a fourth or subsequent conviction, the judge of any court in
16 which any person is convicted of violating this section, may revoke the
17 person's license plate or temporary registration certificate of the motor
18 vehicle driven during the violation of this section for a period of one year.
19 Upon revoking any license plate or temporary registration certificate pur-
20 suant to this subsection, the court shall require that such license plate or
21 temporary registration certificate be surrendered to the court.

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

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

29 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
30 4165, and amendments thereto.

31 (t) The amount of the increase in fines as specified in this section
32 shall be remitted by the clerk of the district court to the state treasurer
33 in accordance with the provisions of K.S.A. 75-4215, and amendments
34 thereto. Upon receipt of remittance of the increase provided in this act,
35 the state treasurer shall deposit the entire amount in the state treasury
36 and the state treasurer shall credit 50% to the community alcoholism and
37 intoxication programs fund and 50% to the department of corrections
38 alcohol and drug abuse treatment fund, which is hereby created in the
39 state treasury.

40 Sec. 4. K.S.A. 8-1014 and K.S.A. 2005 Supp. 8-1567 are hereby
41 repealed.

42 Sec. 5. This act shall take effect and be in force from and after its
43 publication in the statute book.