

HOUSE BILL No. 2601

By Committee on Corrections and Juvenile Justice

Requested by Jeff Wagaman on behalf of the Kansas Association of Addiction Professionals

1-25

1 AN ACT concerning driving; relating to driving under the influence;
2 requiring certain persons on a third or subsequent conviction thereof to
3 participate in a multidisciplinary model of services for substance use
4 disorders; amending K.S.A. 8-1567 and repealing the existing section.
5

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

7 Section 1. K.S.A. 8-1567 is hereby amended to read as follows: 8-
8 1567. (a) Driving under the influence is operating or attempting to operate
9 any vehicle within this state while:

10 (1) The alcohol concentration in the person's blood or breath as
11 shown by any competent evidence, including other competent evidence, as
12 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.08 or more;

13 (2) the alcohol concentration in the person's blood or breath, as
14 measured within three hours of the time of operating or attempting to
15 operate a vehicle, is 0.08 or more;

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

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

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

23 (b) (1) Driving under the influence is:

24 (A) On a first conviction, a class B, nonperson misdemeanor. The
25 person convicted shall be sentenced to not less than 48 consecutive hours
26 nor more than six months' imprisonment, or in the court's discretion 100
27 hours of public service, and fined not less than \$750 nor more than \$1,000;

28 (B) on a second conviction, a class A, nonperson misdemeanor. The
29 person convicted shall be sentenced to not less than 90 days nor more than
30 one year's imprisonment and fined not less than \$1,250 nor more than
31 \$1,750. The following conditions shall apply to such sentence:

32 (i) As a condition of any probation granted under this subsection, the
33 person shall serve at least 120 hours of confinement. The hours of
34 confinement shall include at least 48 hours of imprisonment and otherwise

1 may be served by a combination of: Imprisonment; a work release
2 program, if such work release program requires such person to return to
3 the confinement at the end of each day in the work release program; or a
4 house arrest program pursuant to K.S.A. 21-6609, and amendments
5 thereto;

6 (ii) (a) if the person is placed into a work release program or placed
7 under a house arrest program for any portion of the minimum of 120 hours
8 of confinement mandated by this subsection, the person shall receive hour-
9 for-hour credit for time served in such program until the minimum
10 sentence is met. If the person is placed into a work release program or
11 placed under a house arrest program for more than the minimum of 120
12 hours of confinement mandated by this subsection, the person shall receive
13 hour-for-hour credit for time served in such program until the minimum of
14 120 hours of confinement is completed, and thereafter, the person shall
15 receive day-for-day credit for time served in such program unless
16 otherwise ordered by the court; and

17 (b) when in a work release program, the person shall only be given
18 credit for the time served in confinement at the end of and continuing to
19 the beginning of the person's work day. When under a house arrest
20 program, the person shall be monitored by an electronic monitoring device
21 that verifies the person's location and shall only be given credit for the
22 time served within the boundaries of the person's residence;

23 (C) on a third conviction, a class A, nonperson misdemeanor, except
24 as provided in subsection (b)(1)(D). The person convicted shall be
25 sentenced to not less than 90 days nor more than one year's imprisonment
26 and fined not less than \$1,750 nor more than \$2,500. The following
27 conditions shall apply to such sentence:

28 (i) As a condition of any probation granted under this subsection, the
29 person shall serve at least 30 days of confinement. After at least 48
30 consecutive hours of imprisonment, the remainder of the period of
31 confinement may be served by a combination of: Imprisonment; a work
32 release program, if such work release program requires such person to
33 return to the confinement at the end of each day in the work release
34 program; or a house arrest program pursuant to K.S.A. 21-6609, and
35 amendments thereto; and

36 (ii) (a) if the person is placed into a work release program or placed
37 under a house arrest program for any portion of the minimum of 30 days
38 of confinement mandated by this subsection, the person shall receive hour-
39 for-hour credit for time served in such program for the first 240 hours of
40 confinement, and thereafter, the person shall receive day-for-day credit for
41 time served in such program unless otherwise ordered by the court; and

42 (b) when in a work release program, the person shall only be given
43 credit for the time served in confinement at the end of and continuing to

1 the beginning of the person's work day. When under a house arrest
2 program, the person shall be monitored by an electronic monitoring device
3 that verifies the person's location and shall only be given credit for the
4 time served within the boundaries of the person's residence;

5 (D) on a third conviction, a severity level 6, nonperson felony if the
6 person has a prior conviction which occurred within the preceding 10
7 years, not including any period of incarceration. The following conditions
8 shall apply to such sentence:

9 (i) As a condition of any probation granted under this subsection, the
10 person shall serve at least 30 days of confinement. After at least 48
11 consecutive hours of imprisonment, the remainder of the period of
12 confinement may be served by a combination of: Imprisonment; a work
13 release program, if such work release program requires such person to
14 return to the confinement at the end of each day in the work release
15 program; or a house arrest program pursuant to K.S.A. 21-6609, and
16 amendments thereto; and

17 (ii) (a) if the person is placed into a work release program or placed
18 under a house arrest program for any portion of the minimum of 30 days
19 of confinement mandated by this subsection, the person shall receive hour-
20 for-hour credit for time served in such program for the first 240 hours of
21 confinement, and thereafter, the person shall receive day-for-day credit for
22 time served in such program unless otherwise ordered by the court; and

23 (b) when in a work release program, the person shall only be given
24 credit for the time served in confinement at the end of and continuing to
25 the beginning of the person's work day. When under a house arrest
26 program, the person shall be monitored by an electronic monitoring device
27 that verifies the person's location and shall only be given credit for the
28 time served within the boundaries of the person's residence; and

29 (E) on a fourth or subsequent conviction, a severity level 6,
30 nonperson felony. The following conditions shall apply to such sentence:

31 (i) As a condition of any probation granted under this subsection, the
32 person shall serve at least 30 days of confinement. After at least 48
33 consecutive hours of imprisonment, the remainder of the period of
34 confinement may be served by a combination of: Imprisonment; a work
35 release program, if such work release program requires such person to
36 return to the confinement at the end of each day in the work release
37 program; or a house arrest program pursuant to K.S.A. 21-6609, and
38 amendments thereto; and

39 (ii) (a) if the person is placed into a work release program or placed
40 under a house arrest program for any portion of the minimum of 30 days
41 of confinement mandated by this subsection, the person shall receive hour-
42 for-hour credit for time served in such program for the first 240 hours of
43 confinement, and thereafter, the person shall receive day-for-day credit for

1 time served in such program unless otherwise ordered by the court; and

2 (b) when in a work release program, the person shall only be given
3 credit for the time served in confinement at the end of and continuing to
4 the beginning of the person's work day. When under a house arrest
5 program, the person shall be monitored by an electronic monitoring device
6 that verifies the person's location and shall only be given credit for the
7 time served within the boundaries of the person's residence.

8 (2) (A) The court may order that the term of imprisonment imposed
9 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
10 the custody of the secretary of corrections in a facility designated by the
11 secretary for the provision of substance abuse treatment pursuant to the
12 provisions of K.S.A. 21-6804, and amendments thereto. The secretary of
13 corrections may refuse to admit the person to the designated facility and
14 place the person in a different state facility, or admit the person and
15 subsequently transfer the person to a different state facility, if the secretary
16 determines: ~~(A)~~(i) That substance abuse treatment resources or the
17 capacity of the facility designated by the secretary for the incarceration
18 and treatment of the person is not available; ~~(B)~~(ii) the person has failed to
19 meaningfully participate in the treatment program of the designated
20 facility; ~~(C)~~(iii) the person is disruptive to the security or operation of the
21 designated facility; or ~~(D)~~(iv) the medical or mental health condition of the
22 person renders the person unsuitable for confinement at the designated
23 facility. The determination by the secretary that the person either is not to
24 be admitted into the designated facility or is to be transferred from the
25 designated facility is not subject to review.

26 (B) *In addition to the provisions of subsection (b)(1), for any*
27 *conviction pursuant to subsection (b)(1)(D) or (b)(1)(E), if the person is*
28 *granted probation, the court shall determine whether the person shall be*
29 *supervised by community correctional services or court services based on*
30 *the risk and needs of the person. The risk and needs of the person shall be*
31 *determined by use of a risk assessment tool specified by the Kansas*
32 *sentencing commission. During the probation supervision, the person*
33 *shall be required to participate in a multidisciplinary model of services for*
34 *substance use disorders facilitated by a Kansas department for aging and*
35 *disability services designated care coordination agency to include*
36 *assessment and, if appropriate, referral to a community based substance*
37 *use disorder treatment including recovery management and mental health*
38 *counseling as needed. The multidisciplinary team shall include the*
39 *designated care coordination agency, the supervision officer, the Kansas*
40 *department for aging and disability services designated treatment provider*
41 *and the person.*

42 (3) *In addition to the provisions of subsection (b)(1), for any*
43 *conviction pursuant to subsection (b)(1)(C), at the time of the filing of the*

1 judgment form or journal entry as required by K.S.A. 21-6711 or 22-3426
2 ~~or K.S.A. 21-6711~~, and amendments thereto, the court shall cause a
3 certified copy to be sent to the officer having the ~~offender person~~ in
4 charge. The court shall determine whether the ~~offender person~~, upon
5 release from imprisonment, shall be supervised by community correctional
6 services or court services based upon the risk and needs of the ~~offender~~
7 ~~person~~. The risk and needs of the ~~offender person~~ shall be determined by
8 use of a risk assessment tool specified by the Kansas sentencing
9 commission. The law enforcement agency maintaining custody and control
10 of a ~~defendant person~~ for imprisonment shall cause a certified copy of the
11 judgment form or journal entry to be sent to the supervision office
12 designated by the court and upon expiration of the term of imprisonment
13 shall deliver the ~~defendant person~~ to a location designated by the
14 supervision office designated by the court. After the term of imprisonment
15 imposed by the court, the person shall be placed on supervision to
16 community correctional services or court services, as determined by the
17 court, for a mandatory one-year period of supervision, which such period
18 of supervision shall not be reduced. During such supervision, the person
19 shall be required to participate in a multidisciplinary model of services for
20 substance use disorders facilitated by a Kansas department for aging and
21 disability services designated care coordination agency to include
22 assessment and, if appropriate, referral to a community based substance
23 use disorder treatment including recovery management and mental health
24 counseling as needed. The multidisciplinary team shall include the
25 designated care coordination agency, the supervision officer, the Kansas
26 department for aging and disability services designated treatment provider
27 and the ~~offender person~~. ~~An offender~~ A person for whom a warrant has
28 been issued by the court alleging a violation of this supervision shall be
29 considered a fugitive from justice if it is found that the warrant cannot be
30 served. If it is found ~~the offender~~ that the person has violated the
31 provisions of this supervision, the court shall determine whether the time
32 from the issuing of the warrant to the date of the court's determination of
33 an alleged violation, or any part of it, shall be counted as time served on
34 supervision. Any violation of the conditions of such supervision may
35 subject such person to revocation of supervision and imprisonment in jail
36 for the remainder of the period of imprisonment, the remainder of the
37 supervision period, or any combination or portion thereof. The term of
38 supervision may be extended at the court's discretion beyond one year, and
39 any violation of the conditions of such extended term of supervision may
40 subject such person to the revocation of supervision and imprisonment in
41 jail of up to the remainder of the original sentence, not the term of the
42 extended supervision.

43 (4) In addition to the provisions of subsection (b)(1), prior to

1 sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)
2 (B), the court shall order the person to participate in an alcohol and drug
3 evaluation conducted by a provider in accordance with K.S.A. 8-1008, and
4 amendments thereto. The person shall be required to follow any
5 recommendation made by the provider after such evaluation, unless
6 otherwise ordered by the court.

7 (c) Any person 18 years of age or older convicted of violating this
8 section or an ordinance which prohibits the acts that this section prohibits
9 who had one or more children under the age of 18 years in the vehicle at
10 the time of the offense shall have such person's punishment enhanced by
11 one month of imprisonment. This imprisonment must be served
12 consecutively to any other minimum mandatory penalty imposed for a
13 violation of this section or an ordinance which prohibits the acts that this
14 section prohibits. Any enhanced penalty imposed shall not exceed the
15 maximum sentence allowable by law. During the service of the enhanced
16 penalty, the judge may order the person on house arrest, work release or
17 other conditional release.

18 (d) If a person is charged with a violation of subsection (a)(4) or (a)
19 (5), the fact that the person is or has been entitled to use the drug under the
20 laws of this state shall not constitute a defense against the charge.

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

26 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
27 the court may order that the person perform community service specified
28 by the court. The person shall receive a credit on the fine imposed in an
29 amount equal to \$5 for each full hour spent by the person in the specified
30 community service. The community service ordered by the court shall be
31 required to be performed not later than one year after the fine is imposed
32 or by an earlier date specified by the court. If by the required date the
33 person performs an insufficient amount of community service to reduce to
34 zero the portion of the fine required to be paid by the person, the
35 remaining balance of the fine shall become due on that date.

36 (2) The court may, in its discretion, waive any portion of a fine
37 imposed pursuant to this section, except the \$250 required to be remitted
38 to the state treasurer pursuant to subsection (q)(2), upon a showing that the
39 person successfully completed court-ordered education or treatment.

40 (g) Prior to filing a complaint alleging a violation of this section, a
41 prosecutor shall request and shall receive from the:

42 (1) Division a record of all prior convictions obtained against such
43 person for any violations of any of the motor vehicle laws of this state; and

1 (2) Kansas bureau of investigation central repository all criminal
 2 history record information concerning such person.

3 (h) The court shall electronically report every conviction of a
 4 violation of this section and every diversion agreement entered into in lieu
 5 of further criminal proceedings on a complaint alleging a violation of this
 6 section to the division including any finding regarding the alcohol
 7 concentration in the ~~offender's~~ *person's* blood or breath. Prior to
 8 sentencing under the provisions of this section, the court shall request and
 9 shall receive from the division a record of all prior convictions obtained
 10 against such person for any violations of any of the motor vehicle laws of
 11 this state.

12 (i) For the purpose of determining whether a conviction is a first,
 13 second, third, fourth or subsequent conviction in sentencing under this
 14 section:

15 (1) Convictions for a violation of this section, or a violation of an
 16 ordinance of any city or resolution of any county that prohibits the acts
 17 that this section prohibits, or entering into a diversion agreement in lieu of
 18 further criminal proceedings on a complaint alleging any such violations,
 19 shall be taken into account, but only convictions or diversions occurring
 20 on or after July 1, 2001. Nothing in this provision shall be construed as
 21 preventing any court from considering any convictions or diversions
 22 occurring during the person's lifetime in determining the sentence to be
 23 imposed within the limits provided for a first, second, third, fourth or
 24 subsequent offense;

25 (2) any convictions for a violation of the following sections occurring
 26 during a person's lifetime shall be taken into account:

27 (A) Driving a commercial motor vehicle under the influence, K.S.A.
 28 8-2,144, and amendments thereto;

29 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
 30 32-1131, and amendments thereto;

31 (C) involuntary manslaughter while driving under the influence of
 32 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)
 33 (3) or (a)(5), and amendments thereto;

34 (D) aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)
 35 (4), and amendments thereto; and

36 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
 37 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
 38 crime was committed while committing a violation of K.S.A. 8-1567, and
 39 amendments thereto;

40 (3) "conviction" includes:

41 (A) Entering into a diversion agreement in lieu of further criminal
 42 proceedings on a complaint alleging an offense described in subsection (i)
 43 (2); and

1 (B) conviction of a violation of an ordinance of a city in this state, a
2 resolution of a county in this state or any law of another jurisdiction that
3 would constitute an offense that is comparable to the offense described in
4 subsection (i)(1) or (i)(2);

5 (4) multiple convictions of any crime described in subsection (i)(1) or
6 (i)(2) arising from the same arrest shall only be counted as one conviction;

7 (5) it is irrelevant whether an offense occurred before or after
8 conviction for a previous offense; and

9 (6) a person may enter into a diversion agreement in lieu of further
10 criminal proceedings for a violation of this section, and amendments
11 thereto, or an ordinance which prohibits the acts of this section, and
12 amendments thereto, only once during the person's lifetime.

13 (j) For the purposes of determining whether an offense is comparable,
14 the following shall be considered:

15 (1) The name of the out-of-jurisdiction offense;

16 (2) the elements of the out-of-jurisdiction offense; and

17 (3) whether the out-of-jurisdiction offense prohibits similar conduct
18 to the conduct prohibited by the closest approximate Kansas offense.

19 (k) Upon conviction of a person of a violation of this section or a
20 violation of a city ordinance or county resolution prohibiting the acts
21 prohibited by this section, the division, upon receiving a report of
22 conviction, shall suspend, restrict or suspend and restrict the person's
23 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

24 (l) (1) Nothing contained in this section shall be construed as
25 preventing any city from enacting ordinances, or any county from adopting
26 resolutions, declaring acts prohibited or made unlawful by this act as
27 unlawful or prohibited in such city or county and prescribing penalties for
28 violation thereof.

29 (2) The minimum penalty prescribed by any such ordinance or
30 resolution shall not be less than the minimum penalty prescribed by this
31 section for the same violation, and the maximum penalty in any such
32 ordinance or resolution shall not exceed the maximum penalty prescribed
33 for the same violation.

34 (3) On and after July 1, 2007, and retroactive for ordinance violations
35 committed on or after July 1, 2006, an ordinance may grant to a municipal
36 court jurisdiction over a violation of such ordinance which is concurrent
37 with the jurisdiction of the district court over a violation of this section,
38 notwithstanding that the elements of such ordinance violation are the same
39 as the elements of a violation of this section that would constitute, and be
40 punished as, a felony.

41 (4) Any such ordinance or resolution shall authorize the court to order
42 that the convicted person pay restitution to any victim who suffered loss
43 due to the violation for which the person was convicted.

1 (m) (1) Upon the filing of a complaint, citation or notice to appear
2 alleging a person has violated a city ordinance prohibiting the acts
3 prohibited by this section, and prior to conviction thereof, a city attorney
4 shall request and shall receive from the:

5 (A) Division a record of all prior convictions obtained against such
6 person for any violations of any of the motor vehicle laws of this state; and

7 (B) Kansas bureau of investigation central repository all criminal
8 history record information concerning such person.

9 (2) If the elements of such ordinance violation are the same as the
10 elements of a violation of this section that would constitute, and be
11 punished as, a felony, the city attorney shall refer the violation to the
12 appropriate county or district attorney for prosecution.

13 (n) No plea bargaining agreement shall be entered into nor shall any
14 judge approve a plea bargaining agreement entered into for the purpose of
15 permitting a person charged with a violation of this section, or a violation
16 of any ordinance of a city or resolution of any county in this state which
17 prohibits the acts prohibited by this section, to avoid the mandatory
18 penalties established by this section or by the ordinance. For the purpose
19 of this subsection, entering into a diversion agreement pursuant to K.S.A.
20 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
21 constitute plea bargaining. This subsection shall not be construed to
22 prohibit an amendment or dismissal of any charge where the admissible
23 evidence is not sufficient to support a conviction beyond a reasonable
24 doubt on such charge.

25 (o) The alternatives set out in subsection (a) may be pleaded in the
26 alternative, and the state, city or county may, but shall not be required to,
27 elect one or more of such alternatives prior to submission of the case to the
28 fact finder.

29 (p) As used in this section:

30 (1) "Alcohol concentration" means the number of grams of alcohol
31 per 100 milliliters of blood or per 210 liters of breath;

32 (2) "imprisonment" includes any restrained environment in which the
33 court and law enforcement agency intend to retain custody and control of a
34 ~~defendant~~ *person* and such environment has been approved by the board of
35 county commissioners or the governing body of a city; and

36 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
37 5712, and amendments thereto.

38 (q) (1) The amount of the increase in fines as specified in this section
39 shall be remitted by the clerk of the district court to the state treasurer in
40 accordance with the provisions of K.S.A. 75-4215, and amendments
41 thereto. Upon receipt of remittance of the increase provided in this act, the
42 state treasurer shall deposit the entire amount in the state treasury and the
43 state treasurer shall credit 50% to the community alcoholism and

1 intoxication programs fund and 50% to the department of corrections
2 alcohol and drug abuse treatment fund, which is hereby created in the state
3 treasury.

4 (2) On and after July 1, 2011, the amount of \$250 from each fine
5 imposed pursuant to this section shall be remitted by the clerk of the
6 district court to the state treasurer in accordance with the provisions of
7 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
8 remittance, the state treasurer shall credit the entire amount to the
9 community corrections supervision fund established by K.S.A. 75-52,113,
10 and amendments thereto.

11 Sec. 2. K.S.A. 8-1567 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its
13 publication in the statute book.