

HOUSE BILL No. 2221

By Committee on Corrections and Juvenile Justice

Requested by Jennifer King on behalf of the Department of Corrections

2-3

1 AN ACT concerning state funds; relating to the alcohol and drug abuse
2 treatment fund; creating the Kansas department for aging and disability
3 services alcohol and drug abuse treatment fund; transferring moneys
4 and liabilities of the department of corrections alcohol and drug abuse
5 treatment fund to the Kansas department for aging and disability
6 services alcohol and drug abuse treatment fund; abolishing the
7 department of correction alcohol and drug abuse treatment fund;
8 amending K.S.A. 74-7336 and K.S.A. 2024 Supp. 8-1567 and repealing
9 the existing sections.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 2024 Supp. 8-1567 is hereby amended to read as
13 follows: 8-1567. (a) Driving under the influence is operating or attempting
14 to operate any vehicle within this state while:

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

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

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

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

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

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

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

33 (B) on a second conviction, a class A, nonperson misdemeanor. The
34 person convicted shall be sentenced to not less than 90 days nor more than
35 one year's imprisonment and fined not less than \$1,250 nor more than

1 \$1,750. The following conditions shall apply to such sentence:

2 (i) As a condition of any probation granted under this subsection, the
3 person shall serve at least 120 hours of confinement. The hours of
4 confinement shall include at least 48 hours of imprisonment and otherwise
5 may be served by a combination of: Imprisonment; a work release
6 program, if such work release program requires such person to return to
7 the confinement at the end of each day in the work release program; or a
8 house arrest program pursuant to K.S.A. 21-6609, and amendments
9 thereto;

10 (ii) (a) if the person is placed into a work release program or placed
11 under a house arrest program for any portion of the minimum of 120 hours
12 of confinement mandated by this subsection, the person shall receive hour-
13 for-hour credit for time served in such program until the minimum
14 sentence is met. If the person is placed into a work release program or
15 placed under a house arrest program for more than the minimum of 120
16 hours of confinement mandated by this subsection, the person shall receive
17 hour-for-hour credit for time served in such program until the minimum of
18 120 hours of confinement is completed, and thereafter, the person shall
19 receive day-for-day credit for time served in such program unless
20 otherwise ordered by the court; and

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

27 (C) on a third conviction, a class A, nonperson misdemeanor, except
28 as provided in subsection (b)(1)(D). The person convicted shall be
29 sentenced to not less than 90 days nor more than one year's imprisonment
30 and fined not less than \$1,750 nor more than \$2,500. The following
31 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 30 days of confinement. After at least 48
34 consecutive hours of imprisonment, the remainder of the period of
35 confinement may be served by a combination of: Imprisonment; a work
36 release program, if such work release program requires such person to
37 return to the confinement at the end of each day in the work release
38 program; or a house arrest program pursuant to K.S.A. 21-6609, and
39 amendments thereto; and

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

1 confinement, and thereafter, the person shall receive day-for-day credit for
2 time served in such program unless otherwise ordered by the court; and

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

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

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

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

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

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

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

43 (ii) (a) if the person is placed into a work release program or placed

1 under a house arrest program for any portion of the minimum of 30 days
2 of confinement mandated by this subsection, the person shall receive hour-
3 for-hour credit for time served in such program for the first 240 hours of
4 confinement, and thereafter, the person shall receive day-for-day credit for
5 time served in such program unless otherwise ordered by the court; and

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

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

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

1 department for aging and disability services designated treatment provider
2 and the person.

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

1 extended supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (A) Driving a commercial motor vehicle under the influence, K.S.A.
29 8-2,144, and amendments thereto;

30 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
31 32-1131, and amendments thereto;

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

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

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

41 (3) "conviction" includes:

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

1 (2); and

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

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

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

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

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

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

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

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

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

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

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

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

42 (4) Any such ordinance or resolution shall authorize the court to order
43 that the convicted person pay restitution to any victim who suffered loss

1 due to the violation for which the person was convicted.

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

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

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

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

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

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

30 (p) As used in this section:

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

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

37 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
38 5712, and amendments thereto.

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

1 state treasurer shall credit 50% to the community alcoholism and
2 intoxication programs fund and 50% to the ~~department of corrections~~
3 *Kansas department for aging and disability services* alcohol and drug
4 abuse treatment fund, which is hereby created in the state treasury.

5 (2) *On July 1, 2025, the director of accounts and reports shall*
6 *transfer all moneys in the department of corrections alcohol and drug*
7 *abuse treatment fund to the Kansas department for aging and disability*
8 *services alcohol and drug abuse treatment fund. On July 1, 2025, all*
9 *liabilities of the department of corrections alcohol and drug abuse*
10 *treatment fund are hereby transferred and imposed on the Kansas*
11 *department for aging and disability services alcohol and drug abuse*
12 *treatment fund, and the department of corrections alcohol and drug abuse*
13 *treatment fund is hereby abolished.*

14 ~~(2)~~(3) On and after July 1, 2011, the amount of \$250 from each fine
15 imposed pursuant to this section shall be remitted by the clerk of the
16 district court to the state treasurer in accordance with the provisions of
17 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
18 remittance, the state treasurer shall credit the entire amount to the
19 community corrections supervision fund established by K.S.A. 75-52,113,
20 and amendments thereto.

21 Sec. 2. K.S.A. 74-7336 is hereby amended to read as follows: 74-
22 7336. (a) Of the remittances of fines, penalties and forfeitures received
23 from clerks of the district court, at least monthly, the state treasurer shall
24 credit:

- 25 (1) 10.7% to the crime victims compensation fund;
- 26 (2) 2.19% to the crime victims assistance fund;
- 27 (3) 2.69% to the community alcoholism and intoxication programs
28 fund;
- 29 (4) 7.48% to the ~~department of corrections~~ *Kansas department for*
30 *aging and disability services* alcohol and drug abuse treatment fund;
- 31 (5) 0.16% to the boating fee fund;
- 32 (6) 0.11% to the children's advocacy center fund;
- 33 (7) 2.23% to the EMS revolving fund;
- 34 (8) 2.23% to the trauma fund;
- 35 (9) 2.23% to the traffic records enhancement fund;
- 36 (10) 4.31% to the criminal justice information system line fund;
- 37 (11) 2.2% to the seat belt safety fund; and
- 38 (12) the remainder of the remittances to the state general fund.

39 (b) The county treasurer shall deposit grant moneys as provided in
40 subsection (a), from the crime victims assistance fund, to the credit of a
41 special fund created for use by the county or district attorney in
42 establishing and maintaining programs to aid witnesses and victims of
43 crime.

1 Sec. 3. K.S.A. 74-7336 and K.S.A. 2024 Supp. 8-1567 are hereby
2 repealed.

3 Sec. 4. This act shall take effect and be in force from and after its
4 publication in the statute book.