

HOUSE BILL No. 2498

By Committee on Judiciary

Requested by Representative Osman on behalf of Representative McDonald

1-21

AN ACT concerning crimes, punishment and criminal procedure; relating to driving under the influence; classifying crimes related to driving under the influence and driving a commercial vehicle under the influence as person crimes; amending K.S.A. 8-2,144 and K.S.A. 2025 Supp. 8-1567 and repealing the existing sections.

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

Section 1. K.S.A. 8-2,144 is hereby amended to read as follows: 8-2,144. (a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this state while:

(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, as defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is 0.04 or more; or

(3) committing a violation of K.S.A. 8-1567(a), and amendments thereto, or the ordinance of a city or resolution of a county ~~which~~ that prohibits any of the acts prohibited thereunder or is otherwise comparable.

(b) (1) Driving a commercial motor vehicle under the influence is:

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

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

(i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of 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; and

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; and

23 (C) on a third or subsequent conviction, a severity level 6, ~~nonperson~~
24 *person* felony. The following conditions shall apply to such sentence:

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

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

39 (b) when in a work release program, the person shall only be given
40 credit for the time served in confinement at the end of and continuing to
41 the beginning of the person's work day. When under a house arrest
42 program, the person shall be monitored by an electronic monitoring device
43 that verifies the person's location and shall only be given credit for the

1 time served within the boundaries of the person's residence.

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

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

20 (d) If a person is charged with a violation of K.S.A. 8-1567(a)(4) or
21 (a)(5), and amendments thereto, as incorporated in this section, the fact
22 that the person is or has been entitled to use the drug under the laws of this
23 state shall not constitute a defense against the charge.

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

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

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

43 (g) Prior to filing a complaint alleging a violation of this section, a

1 prosecutor shall request and shall receive from the:

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

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

6 (h) The court shall electronically report every conviction of a
7 violation of this section to the division. Prior to sentencing under the
8 provisions of this section, the court shall request and shall receive from
9 the:

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

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

14 (i) Upon conviction of a person of a violation of this section or a
15 violation of a city ordinance or county resolution prohibiting the acts
16 prohibited by this section, the division, upon receiving a report of
17 conviction, shall:

18 (1) Disqualify the person from driving a commercial motor vehicle
19 under K.S.A. 8-2,142, and amendments thereto; and

20 (2) suspend, restrict or suspend and restrict the person's driving
21 privileges as provided by K.S.A. 8-1014, and amendments thereto.

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

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

32 (3) Any such ordinance or resolution shall authorize the court to order
33 that the convicted person pay restitution to any victim who suffered loss
34 due to the violation for which the person was convicted.

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

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

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

1 (2) If the elements of such ordinance violation are the same as the
2 elements of a violation of this section that would constitute, and be
3 punished as, a felony, the city attorney shall refer the violation to the
4 appropriate county or district attorney for prosecution. The county or
5 district attorney shall accept such referral and pursue a disposition of such
6 violation, and shall not refer any such violation back to the city attorney.

7 (l) No plea bargaining agreement shall be entered into nor shall any
8 judge approve a plea bargaining agreement entered into for the purpose of
9 permitting a person charged with a violation of this section, or a violation
10 of any ordinance of a city or resolution of any county in this state ~~which~~
11 *that* prohibits the acts prohibited by this section, to avoid the mandatory
12 penalties established by this section or by the ordinance or resolution. This
13 subsection shall not be construed to prohibit an amendment or dismissal of
14 any charge where the admissible evidence is not sufficient to support a
15 conviction beyond a reasonable doubt on such charge.

16 (m) The alternatives set out in subsection (a) may be pleaded in the
17 alternative, and the state, city or county may, but shall not be required to,
18 elect one or more of such alternatives prior to submission of the case to the
19 fact finder.

20 (n) For the purpose of determining whether a conviction is a first,
21 second, third or subsequent conviction in sentencing under this section:

22 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
23 thereto, or a violation of an ordinance of any city or resolution of any
24 county that prohibits the acts that such section prohibits, or entering into a
25 diversion agreement in lieu of further criminal proceedings on a complaint
26 alleging any such violations, shall be taken into account, but only
27 convictions or diversions occurring on or after July 1, 2001. Nothing in
28 this provision shall be construed as preventing any court from considering
29 any convictions or diversions occurring during the person's lifetime in
30 determining the sentence to be imposed within the limits provided for a
31 first, second, third, fourth or subsequent offense;

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

34 (A) This section;

35 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
36 32-1131, and amendments thereto;

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

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

42 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
43 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the

1 crime was committed while committing a violation of K.S.A. 8-1567, and
2 amendments thereto;

3 (3) "conviction" includes:

4 (A) Entering into a diversion agreement in lieu of further criminal
5 proceedings on a complaint alleging a violation of a crime described in
6 subsection (n)(2); and

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

11 (4) it is irrelevant whether an offense occurred before or after
12 conviction for a previous offense; and

13 (5) multiple convictions of any crime described in subsection (n)(1)
14 or (n)(2) arising from the same arrest shall only be counted as one
15 conviction.

16 (o) For the purposes of determining whether an offense is
17 comparable, the following shall be considered:

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

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

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

22 (p) For the purpose of this section:

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

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

29 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
30 5712, and amendments thereto.

31 (q) On and after July 1, 2011, the amount of \$250 from each fine
32 imposed pursuant to this section shall be remitted by the clerk of the
33 district court to the state treasurer in accordance with the provisions of
34 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
35 remittance, the state treasurer shall credit the entire amount to the
36 community corrections supervision fund established by K.S.A. 75-52,113,
37 and amendments thereto.

38 Sec. 2. K.S.A. 2025 Supp. 8-1567 is hereby amended to read as
39 follows: 8-1567. (a) Driving under the influence is operating or attempting
40 to operate any vehicle within this state while:

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

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

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

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

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

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

12 (A) On a first conviction, a class B, ~~nonperson~~ *person* misdemeanor.
13 The person convicted shall be sentenced to not less than 48 consecutive
14 hours nor more than six months' imprisonment, or in the court's discretion
15 100 hours of public service, and fined not less than \$750 nor more than
16 \$1,000;

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

22 (i) As a condition of any probation granted under this subsection, the
23 person shall serve at least 120 hours of confinement. The hours of
24 confinement shall include at least 48 hours of imprisonment and otherwise
25 may be served by a combination of: Imprisonment; a work release
26 program, if such work release program requires such person to return to
27 the confinement at the end of each day in the work release program; or a
28 house arrest program pursuant to K.S.A. 21-6609, and amendments
29 thereto;

30 (ii) (a) if the person is placed into a work release program or placed
31 under a house arrest program for any portion of the minimum of 120 hours
32 of confinement mandated by this subsection, the person shall receive hour-
33 for-hour credit for time served in such program until the minimum
34 sentence is met. If the person is placed into a work release program or
35 placed under a house arrest program for more than the minimum of 120
36 hours of confinement mandated by this subsection, the person shall receive
37 hour-for-hour credit for time served in such program until the minimum of
38 120 hours of confinement is completed, and thereafter, the person shall
39 receive day-for-day credit for time served in such program unless
40 otherwise ordered by the court; and

41 (b) when in a work release program, the person shall only be given
42 credit for the time served in confinement at the end of and continuing to
43 the beginning of the person's work day. When under a house arrest

1 program, the person shall be monitored by an electronic monitoring device
2 that verifies the person's location and shall only be given credit for the
3 time served within the boundaries of the person's residence;

4 (C) on a third conviction, a class A, ~~nonperson~~ *person* misdemeanor,
5 except as provided in subsection (b)(1)(D). The person convicted shall be
6 sentenced to not less than 90 days nor more than one year's imprisonment
7 and fined not less than \$1,750 nor more than \$2,500. The following
8 conditions 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;

29 (D) on a third conviction, a severity level 6, ~~nonperson~~ *person* felony
30 if the person has a prior conviction—~~which~~ *that* occurred within the
31 preceding 10 years, not including any period of incarceration. The
32 following conditions shall apply to such sentence:

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

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

1 for-hour credit for time served in such program for the first 240 hours of
2 confinement, and thereafter, the person shall receive day-for-day credit for
3 time served in such program unless otherwise ordered by the court; and

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

10 (E) on a fourth or subsequent conviction, a severity level 6,
11 ~~nonperson~~ *person* felony. The following conditions shall apply to such
12 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.

33 (2) (A) The court may order that the term of imprisonment imposed
34 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
35 the custody of the secretary of corrections in a facility designated by the
36 secretary for the provision of substance abuse treatment pursuant to the
37 provisions of K.S.A. 21-6804, and amendments thereto. The secretary of
38 corrections may refuse to admit the person to the designated facility and
39 place the person in a different state facility, or admit the person and
40 subsequently transfer the person to a different state facility, if the secretary
41 determines: (i) That substance abuse treatment resources or the capacity of
42 the facility designated by the secretary for the incarceration and treatment
43 of the person is not available; (ii) the person has failed to meaningfully

1 participate in the treatment program of the designated facility; (iii) the
2 person is disruptive to the security or operation of the designated facility;
3 or (iv) the medical or mental health condition of the person renders the
4 person unsuitable for confinement at the designated facility. The
5 determination by the secretary that the person either is not to be admitted
6 into the designated facility or is to be transferred from the designated
7 facility is not subject to review.

8 (B) In addition to the provisions of subsection (b)(1), for any
9 conviction pursuant to subsection (b)(1)(D) or (b)(1)(E), if the person is
10 granted probation, the court shall determine whether the person shall be
11 supervised by community correctional services or court services based on
12 the risk and needs of the person. The risk and needs of the person shall be
13 determined by use of a risk assessment tool specified by the Kansas
14 sentencing commission. During the probation supervision, the person shall
15 be required to participate in a multidisciplinary model of services for
16 substance use disorders facilitated by a Kansas department for aging and
17 disability services designated care coordination agency to include
18 assessment and, if appropriate, referral to a community based substance
19 use disorder treatment including recovery management and mental health
20 counseling as needed. The multidisciplinary team shall include the
21 designated care coordination agency, the supervision officer, the Kansas
22 department for aging and disability services designated treatment provider
23 and the person.

24 (3) In addition to the provisions of subsection (b)(1), for any
25 conviction pursuant to subsection (b)(1)(C), at the time of the filing of the
26 judgment form or journal entry as required by K.S.A. 21-6711 or 22-3426,
27 and amendments thereto, the court shall cause a certified copy to be sent to
28 the officer having the person in charge. The court shall determine whether
29 the person, upon release from imprisonment, shall be supervised by
30 community correctional services or court services based upon the risk and
31 needs of the person. The risk and needs of the person shall be determined
32 by use of a risk assessment tool specified by the Kansas sentencing
33 commission. The law enforcement agency maintaining custody and control
34 of a person for imprisonment shall cause a certified copy of the judgment
35 form or journal entry to be sent to the supervision office designated by the
36 court and upon expiration of the term of imprisonment shall deliver the
37 person to a location designated by the supervision office designated by the
38 court. After the term of imprisonment imposed by the court, the person
39 shall be placed on supervision to community correctional services or court
40 services, as determined by the court, for a mandatory one-year period of
41 supervision, which such period of supervision shall not be reduced. During
42 such supervision, the person shall be required to participate in a
43 multidisciplinary model of services for substance use disorders facilitated

1 by a Kansas department for aging and disability services designated care
2 coordination agency to include assessment and, if appropriate, referral to a
3 community based substance use disorder treatment including recovery
4 management and mental health counseling as needed. The
5 multidisciplinary team shall include the designated care coordination
6 agency, the supervision officer, the Kansas department for aging and
7 disability services designated treatment provider and the person. A person
8 for whom a warrant has been issued by the court alleging a violation of
9 this supervision shall be considered a fugitive from justice if it is found
10 that the warrant cannot be served. If it is found that the person has violated
11 the provisions of this supervision, the court shall determine whether the
12 time from the issuing of the warrant to the date of the court's determination
13 of an alleged violation, or any part of it, shall be counted as time served on
14 supervision. Any violation of the conditions of such supervision may
15 subject such person to revocation of supervision and imprisonment in jail
16 for the remainder of the period of imprisonment, the remainder of the
17 supervision period, or any combination or portion thereof. The term of
18 supervision may be extended at the court's discretion beyond one year, and
19 any violation of the conditions of such extended term of supervision may
20 subject such person to the revocation of supervision and imprisonment in
21 jail of up to the remainder of the original sentence, not the term of the
22 extended supervision.

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

30 (c) Any person 18 years of age or older convicted of violating this
31 section or an ordinance~~which~~ that prohibits the acts that this section
32 prohibits who had one or more children under the age of 18 years in the
33 vehicle at the time of the offense shall have such person's punishment
34 enhanced by one month of imprisonment. This imprisonment must be
35 served consecutively to any other minimum mandatory penalty imposed
36 for a violation of this section or an ordinance~~which~~ that prohibits the acts
37 that this section prohibits. Any enhanced penalty imposed shall not exceed
38 the maximum sentence allowable by law. During the service of the
39 enhanced penalty, the judge may order the person on house arrest, work
40 release or other conditional release.

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

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

6 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
7 the court may order that the person perform community service specified
8 by the court. The person shall receive a credit on the fine imposed in an
9 amount equal to \$5 for each full hour spent by the person in the specified
10 community service. The community service ordered by the court shall be
11 required to be performed not later than one year after the fine is imposed
12 or by an earlier date specified by the court. If by the required date the
13 person performs an insufficient amount of community service to reduce to
14 zero the portion of the fine required to be paid by the person, the
15 remaining balance of the fine shall become due on that date.

16 (2) The court may, in its discretion, waive any portion of a fine
17 imposed pursuant to this section, except the \$250 required to be remitted
18 to the state treasurer pursuant to subsection (q)(3), upon a showing that the
19 person successfully completed court-ordered education or treatment.

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

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

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

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

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

37 (1) Convictions for a violation of this section, or a violation of an
38 ordinance of any city or resolution of any county that prohibits the acts
39 that this section prohibits, or entering into a diversion agreement in lieu of
40 further criminal proceedings on a complaint alleging any such violations,
41 shall be taken into account, but only convictions or diversions occurring
42 on or after July 1, 2001. Nothing in this provision shall be construed as
43 preventing any court from considering any convictions or diversions

1 occurring during the person's lifetime in determining the sentence to be
2 imposed within the limits provided for a first, second, third, fourth or
3 subsequent offense;

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

6 (A) Driving a commercial motor vehicle under the influence, K.S.A.
7 8-2,144, and amendments thereto;

8 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
9 32-1131, and amendments thereto;

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

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

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

19 (3) "conviction" includes:

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

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

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

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

31 (6) 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~~ that prohibits the acts of this section, and
34 amendments thereto, only once during the person's lifetime.

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

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

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

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

41 (k) Upon conviction of a person of a violation of this section or a
42 violation of a city ordinance or county resolution prohibiting the acts
43 prohibited by this section, the division, upon receiving a report of

1 conviction, shall suspend, restrict or suspend and restrict the person's
2 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

3 (l) (1) Nothing contained in this section shall be construed as
4 preventing any city from enacting ordinances, or any county from adopting
5 resolutions, declaring acts prohibited or made unlawful by this act as
6 unlawful or prohibited in such city or county and prescribing penalties for
7 violation thereof.

8 (2) The minimum penalty prescribed by any such ordinance or
9 resolution shall not be less than the minimum penalty prescribed by this
10 section for the same violation, and the maximum penalty in any such
11 ordinance or resolution shall not exceed the maximum penalty prescribed
12 for the same violation.

13 (3) On and after July 1, 2007, and retroactive for ordinance violations
14 committed on or after July 1, 2006, an ordinance may grant to a municipal
15 court jurisdiction over a violation of such ordinance—~~which~~ *that* is
16 concurrent with the jurisdiction of the district court over a violation of this
17 section, notwithstanding that the elements of such ordinance violation are
18 the same as the elements of a violation of this section that would
19 constitute, and be punished as, a felony.

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

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

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

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

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

35 (n) No plea bargaining agreement shall be entered into nor shall any
36 judge approve a plea bargaining agreement entered into for the purpose of
37 permitting a person charged with a violation of this section, or a violation
38 of any ordinance of a city or resolution of any county in this state—~~which~~
39 *that* 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. This subsection shall not be construed to

1 prohibit an amendment or dismissal of any charge where the admissible
2 evidence is not sufficient to support a conviction beyond a reasonable
3 doubt on such charge.

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

8 (p) As used in this section:

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

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

15 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
16 5712, and amendments thereto.

17 (q) (1) The amount of the increase in fines as specified in this section
18 shall be remitted by the clerk of the district court to the state treasurer in
19 accordance with the provisions of K.S.A. 75-4215, and amendments
20 thereto. Upon receipt of remittance of the increase provided in this act, the
21 state treasurer shall deposit the entire amount in the state treasury and the
22 state treasurer shall credit 50% to the community alcoholism and
23 intoxication programs fund and 50% to the Kansas department for aging
24 and disability services alcohol and drug abuse treatment fund, which is
25 hereby created in the state treasury.

26 (2) On July 1, 2025, the director of accounts and reports shall transfer
27 all moneys in the department of corrections alcohol and drug abuse
28 treatment fund to the Kansas department for aging and disability services
29 alcohol and drug abuse treatment fund. On July 1, 2025, all liabilities of
30 the department of corrections alcohol and drug abuse treatment fund are
31 hereby transferred and imposed on the Kansas department for aging and
32 disability services alcohol and drug abuse treatment fund, and the
33 department of corrections alcohol and drug abuse treatment fund is hereby
34 abolished.

35 (3) On and after July 1, 2011, the amount of \$250 from each fine
36 imposed pursuant to this section shall be remitted by the clerk of the
37 district court to the state treasurer in accordance with the provisions of
38 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
39 remittance, the state treasurer shall credit the entire amount to the
40 community corrections supervision fund established by K.S.A. 75-52,113,
41 and amendments thereto.

42 Sec. 3. K.S.A. 8-2,144 and K.S.A. 2025 Supp. 8-1567 are hereby
43 repealed.

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