

MEMORANDUM

To: Chair Colloton and Members of the House Corrections Committee
From: Jason Thompson, Senior Assistant Revisor
Date: March 13, 2012
Subject: SB 453, Driving under the influence

Senate Bill 453 contains several technical and substantive updates to laws related to driving under the influence. Nearly all of these statutes were amended in 2011 Senate Bill 6. Below is a summary of each section of the current bill.

Sec. 1. K.S.A. 8-241; Examinations and reinstatement fees (p. 1-2)

Subsection (b): Cleanup of reinstatement fees for 4th and subsequent offenses; strikes reinstatement prohibition on 5th offense because revocation was eliminated in SB 6.

Sec. 2. K.S.A. 8-2,144; Driving a commercial vehicle under the influence (p. 2-7)

Subsection (b)(1)(A)-(C): Removes the \$250 fine increase imposed by SB 6. Related amendment strikes community corrections supervision fund provision in subsection (p).

Subsection (b)(1)(C): Changes 240 hours (10 days) to 2,160 hours (90 days).

[See note below under K.S.A. 8-1567 on the number of hours of confinement]

Sec. 3. K.S.A. 8-1008; Alcohol and drug evaluations (p. 7-8)

Subsections (d) and (e): Creates indigent exception for payment of provider fee, requires court to pay the fee for them. Fee charged shall be not less than \$150.

Sec. 4. K.S.A. 8-1014; Administrative driving penalties (p. 8-12)

Subsection (a): Adds 1 additional year of interlock for test refusals.

Subsection (d): Technical amendments to reference the provider system in 8-1008 adopted in SB 6, strike the old ADSAP references.

Subsections (g) and (h): Technical correction in (g); new provision for crediting time served on old suspension/restriction/revocation for the new suspension/restriction period, if the person shows they obeyed by the old requirements.

Sec. 5. K.S.A. 8-1015; Details on administrative driving penalties (p. 12-15)

Subsection (a):

(1) says for refusals you can apply for restricted interlock license after 90 days.

(2) says for 1st time refusal, you can do the same, and you are allowed to drive more places, like you were under the law before SB 6 (because the federal limitations are only for repeat offenders). [Note: See the end of this memo for the text of K.S.A. 8-292]

(3) keeps current law for conviction/test failure (8-1014(b)) and under 21 conviction/test failure (8-1014(c)) – apply for restricted interlock after 45 days.

(4) says for 1st time high-BAC conviction/failure (8-1014(b)(2)(A)) and 1st time under 21 conviction/failure, you can do the same, and you are allowed to drive more places.

[Note: See the end of this memo for the text of K.S.A. 8-292]

Remember that 1st time .08-.15 conviction/failure is only a 30 day suspension, so it is not covered by any of this restricted interlock license language.

New (5): \$100 fee for all restricted interlock licenses, directed to the community corrections supervision fund in subsection (h).

Subsection (g): Technical corrections.

Subsection (h): Money from subsections (a) and (g); \$100,000 goes to division of vehicles each fiscal year, all after that each year to the community corrections supervision fund.

Sec. 6. K.S.A. 8-1020, Administrative hearings (p. 15-20)

Subsections (a)-(d): Technical changes concerning the hearing fee adopted in SB 6.

Sec. 7. K.S.A. 8-1567, Driving under the influence (p. 20-29)

Subsection (a)(6): Strikes “habitual user” provision.

Subsection (b): Removes the \$250 fine increase imposed by SB 6. Related amendment strikes community corrections supervision fund provision in subsection (r)(2).

Subsection (b)(1)(C)-(E): Changes 240 hours (10 days) to 2,160 hours (90 days).

Federal requirement for 2nd offenses is not less than 5 days imprisonment and, if served on house arrest or work release, 120 hours of actual confinement. The 5 days and 120 hours numbers in this section are compliant. Federal requirement for 3rd and subsequent offenses is not less than 10 days imprisonment and, if served on house arrest or work release, 240 hours of actual confinement. The current 240 hours provision is compliant, but it is inconsistent with the subsection's mandated 90 days imprisonment language; 90 days = 2,160 hours. The numbers are updated here to reflect the 90 days requirement. I note that the amount of mandatory imprisonment served is counted toward the 120 or 2,160 for work release, but it is not counted on house arrest - you have to serve the full number of hours confined in your residence. My recollection is that this was a conscious decision to make a person serve more "imprisonment" time if they are given the privilege of house arrest, but it is noteworthy.

Subsection (g): Strikes impoundment provision.

Subsection (k)(5): Striken due to removing impoundment provision.

Subsection (p): Strikes revocation of license plate/registration provision.

Text of K.S.A. 8-292:

"(a) Except as otherwise provided by law, whenever a statute authorizes the court to place restrictions on a person's driving privileges or whenever a municipal ordinance which prohibits the acts prohibited by such a statute so provides, a district or municipal court may enter an order restricting the person's driving privileges to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008, and amendments thereto; (5) at such times of the day as may be specified by the order; and (6) to such places as may be specified by the order."