

CORRECTED
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**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 6**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 6 would amend various administrative and criminal statutes related to driving under the influence (DUI).

Administrative Penalties

The bill would amend the administrative penalties for test refusal as follows:

- For a second test refusal, driving privileges would be suspended for one year, followed by a two-year ignition interlock restriction. The current penalty is a two-year suspension.
- For a third test refusal, driving privileges would be suspended for one year, followed by a three-year ignition interlock restriction. The current penalty is a three-year suspension.
- For a fourth test refusal, driving privileges would be suspended for one year, followed by a four-year ignition interlock restriction. The current penalty is a ten-year suspension.
- For a fifth test refusal, driving privileges would be suspended for one year, followed by a permanent

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

ignition interlock restriction. The current penalty is permanent revocation.

The administrative penalties for a test failure or an alcohol or drug-related conviction in Kansas would be amended as follows (there would be no change made to the penalty for a second occurrence):

- For a first occurrence, driving privileges would be suspended for 30 days, followed by an additional 330-day ignition interlock restriction. The current penalty is a 30-day suspension and a 330-day restriction to driving to or from school or work, in the course of employment, in a medical emergency, to probation or parole meetings, or for drug or alcohol counseling or treatment. There is currently an ignition interlock option available in lieu of these restrictions at the request of the offender.
- For a third occurrence, driving privileges would be suspended for one year, followed by a two-year ignition interlock restriction. The current penalty is a one-year suspension and one-year ignition interlock restriction.
- For a fourth occurrence, driving privileges would be suspended for one year, followed by a three-year ignition interlock restriction. The current penalty is a one-year suspension and one-year ignition interlock restriction.
- For a fifth occurrence, driving privileges would be suspended for one year, followed by a permanent ignition interlock restriction. The current penalty is permanent revocation.

The administrative penalties for test failure with a blood or breath alcohol concentration of .15 or greater would be amended so that for a fifth occurrence, driving privileges would be suspended for one year, followed by a permanent ignition interlock restriction. The current penalty is permanent revocation.

A person subject to administrative penalties under the current version of this section would be allowed to apply to have the new penalties applied retroactively. There would be a \$59 fee for such application.

A person whose driving privileges have been suspended for one year would be allowed, after 45 days of such suspension, to apply to the Division of Vehicles for an ignition interlock restriction for the remainder of the suspension period for the purposes of getting to and from work, school, an alcohol treatment program, and the ignition interlock provider for maintenance purposes. A violation of the restrictions would add an additional year's suspension.

The bill would maintain a provision allowing a person under an ignition interlock restriction to operate an employer's vehicle without an ignition interlock device during normal business activities, as long as the person does not own or control the vehicle or business. The bill would clarify that this provision would not apply to an interlock ignition restriction granted for the remainder of a one-year suspension period.

Supervision and Treatment for Repeat Offenders

The bill would amend the DUI statute, KSA 2010 Supp. 8-1567, by providing that upon expiration of a term of imprisonment for a third, fourth or subsequent DUI conviction, the offender would be placed in the custody of the community correctional services program for a mandatory one-year period of supervision. During this time the offender would be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a Department of Social and Rehabilitation Services-designated care coordination agency, to include assessment and, if appropriate, treatment. The bill would accordingly amend the Community Corrections Act to clarify that DUI offenders may be supervised by community correctional services programs.

House Arrest

The bill would amend the sentencing provisions in KSA 2020 Supp. 8-1567 for first and fourth or subsequent convictions for DUI by allowing the court to place the offender under house arrest to serve the remainder of the minimum sentence after 48 (for first conviction) or 72 (for fourth or subsequent conviction) hours imprisonment.

KBI Central Repository

The bill would require the KBI director to adopt rules and regulations on or before July 1, 2012, requiring district courts to report to the central repository the filing of all cases alleging a DUI or commercial DUI. The director would be required to adopt rules and regulations on or before July 1, 2013, requiring such reporting to be electronic.

The bill would make the filing of a charge a reportable event for purposes of the central repository.

The bill would require municipal court judges to ensure that the municipal court reports the filing and disposition of any DUI case to the KBI central repository. After July 1, 2013, such reporting would be required to be made electronically.

Background

As introduced, SB 6 would have amended current law regarding the search incident to arrest exception to the warrant requirement. The Senate Committee on Judiciary amended SB 6 and the Senate passed SB 6 as amended.

The House Committee on Corrections and Juvenile Justice included a provision regarding search incident to arrest in a substitute bill for SB 63. The House Committee then modified and incorporated language from HB 2277 into a

substitute bill for SB 6.

As introduced, HB 2277 would have allowed for supervision of a third-time DUI offender by community correctional services or court services. It would have allowed for the same supervision for fourth or subsequent offenders and would have required participation in an inpatient or outpatient program for alcohol and drug abuse.

In the House Committee hearing on HB 2277, a representative of the Kansas Department of Corrections testified in support of the bill. Mothers Against Drunk Driving and the Kansas Ignition Interlock Association provided written testimony supporting the bill. A representative of the Kansas Community Corrections Association testified in opposition to the bill.

The House Committee adopted language from a proposed substitute for HB 2277 and recommended a substitute bill for SB 6 incorporating this language. The adopted language differed from HB 2277, as introduced, by reworking the community corrections supervision and treatment requirements, eliminating the court services supervision option, and adding the provisions regarding administrative penalties and the KBI central repository.

The House Committee of the Whole amended House Sub. for SB 6 by adding house arrest provisions to certain DUI offenses and adding a requirement for an ignition interlock restriction for a first test refusal or alcohol or drug-related conviction.

The fiscal note on SB 6, as introduced, stated the League of Kansas Municipalities indicated SB 6 would have no effect on cities. There would be no fiscal effect to the state budget.

There is no fiscal note on the substitute bill. The fiscal note on HB 2277, as introduced, stated that the Office of Judicial Administration indicated the bill would increase

caseloads for court service officers (CSO's). Using FY 2010 data, the increases would equal approximately 300 low-risk offenders and 482 medium-risk offenders. Assuming CSO's would supervise all low-risk offenders, an additional four CSO's would be needed, requiring \$201,016 from the State General Fund. Assuming CSO's would supervise both low-risk and medium-risk offenders, an additional 12 CSO's would be needed, costing \$603,049.

The Kansas Association of Counties indicated that counties would incur additional costs from revoked offenders who are returned to jail for longer stays. The precise amount of additional jail costs is difficult to determine because it is not known how many offenders would have their supervision rescinded. The Department of Corrections did not respond to a request for information by the time the fiscal note was prepared. Any fiscal effect associated with HB 2277 is not reflected in *The FY 2012 Governor's Budget Report*.