

As Amended by House Committee

Session of 2021

**HOUSE BILL No. 2387**

By Committee on Judiciary

2-12

1 AN ACT concerning aircraft; relating to operating an aircraft under the  
2 influence; prescribing criminal and administrative penalties; providing  
3 for testing of blood, breath, urine or other bodily substances and  
4 preliminary screening tests of breath or oral fluid; **amending K.S.A.**  
5 **65-1,107 and 75-712h and K.S.A. 2020 Supp. 22-3437 and 60-427**  
6 **and repealing the existing sections; also repealing K.S.A. 3-1001, 3-**  
7 **1002, 3-1003, 3-1004 and 3-1005.**

8  
9 *Be it enacted by the Legislature of the State of Kansas:*

10 **New Section 1.** (a) Operating an aircraft under the influence is  
11 operating or attempting to operate any aircraft within this state while:

12 (1) The alcohol concentration in the person's blood or breath as  
13 shown by any competent evidence, including other competent evidence, is  
14 0.04 or more;

15 (2) the alcohol concentration in the person's blood or breath, as  
16 measured within four hours of the time of operating or attempting to  
17 operate an aircraft, is 0.04 or more;

18 (3) under the influence of alcohol to a degree that renders the person  
19 incapable of safely operating an aircraft;

20 (4) under the influence of any drug or combination of drugs to a  
21 degree that renders the person incapable of safely operating an aircraft; or

22 (5) under the influence of a combination of alcohol and any drug or  
23 drugs to a degree that renders the person incapable of safely operating an  
24 aircraft.

25 (b) (1) Operating an aircraft under the influence is a class A  
26 nonperson misdemeanor, except as provided in subsection (b)(2).

27 (A) On a first conviction, the person convicted shall be sentenced to  
28 not less than 48 consecutive hours nor more than six months'  
29 imprisonment, or in the court's discretion 100 hours of public service, and  
30 fined not less than \$750.

31 (B) On second or subsequent conviction, the person convicted shall  
32 be sentenced to not less than 90 days nor more than one year's  
33 imprisonment and fined not less than \$1,250. The following conditions  
34 shall apply to such sentence:

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

1 confinement shall include at least 48 hours imprisonment and otherwise  
2 may be served by a combination of: Imprisonment; a work release  
3 program, provided such work release program requires such person to  
4 return to the confinement at the end of each day in the work release  
5 program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-  
6 6609, and amendments thereto; and

7 (ii) (a) if the person is placed into a work release program or placed  
8 under a house arrest program for the minimum 120 hours confinement  
9 mandated by this subsection, the person shall receive hour-for-hour credit  
10 for time served in such program until the minimum sentence is met. If the  
11 person is placed into a work release program or placed under a house  
12 arrest program for more than the minimum 120 hours confinement  
13 mandated by this subsection, the person shall receive hour-for-hour credit  
14 for time served in such program and thereafter the person shall receive  
15 day-for-day credit for time served in such program unless otherwise  
16 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 (2) ~~Operating an aircraft under the influence is a severity level 6,~~  
24 ~~nonperson felony if the offense occurred while the person convicted did~~  
25 ~~not hold a valid pilot license issued by the federal aviation administration.~~  
26 **is prohibited from operating an aircraft:**

27 ~~(A) The person convicted shall be sentenced to not less than 90 days~~  
28 ~~nor more than one year's imprisonment and fined \$2,500. The person~~  
29 ~~convicted shall not be eligible for release on probation, suspension or~~  
30 ~~reduction of sentence or parole until the person has served at least 90 days'~~  
31 ~~imprisonment. **By a court order pursuant to this section; or**~~

32 ~~(B) The 90 days' imprisonment mandated by this subsection may be~~  
33 ~~served in a work release program only after such person has served 72~~  
34 ~~consecutive hours' imprisonment, provided such work release program~~  
35 ~~requires such person to return to confinement at the end of each day in the~~  
36 ~~work release program. The person convicted, if placed into a work release~~  
37 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~  
38 ~~2,160 hours of confinement shall be a period of at least 72 consecutive~~  
39 ~~hours of imprisonment followed by confinement hours at the end of and~~  
40 ~~continuing to the beginning of the offender's work day because such~~  
41 ~~person's pilot license is revoked or suspended by an order of the~~  
42 ~~federal aviation administration for a prior alcohol or drug-related~~  
43 ~~conviction.~~

(A)

(i)

(ii)

(B) 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 30 days of confinement. After at least 48 consecutive hours of imprisonment, the remainder of the period of confinement may be served by a combination of: Imprisonment; a work release program, provided such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2021 Supp. 21-6609, and amendments thereto; and  
(ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum 30 days of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program for the first 240 hours of confinement, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and  
(b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.

1 ~~(C) The court may place the person convicted under a house arrest~~  
2 ~~program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,~~  
3 ~~to serve the 90 days' imprisonment mandated by this subsection only after~~  
4 ~~such person has served 72 consecutive hours' imprisonment. The person~~  
5 ~~convicted, if placed under house arrest, shall be monitored by an electronic~~  
6 ~~monitoring device that verifies the offender's location. The offender shall~~  
7 ~~serve a minimum of 2,160 hours of confinement within the boundaries of~~  
8 ~~the offender's residence. Any exceptions to remaining within the~~  
9 ~~boundaries of the offender's residence provided for in the house arrest~~  
10 ~~agreement shall not be counted as part of the 2,160 hours.~~

11 (3) As part of the judgment of conviction, the court shall order the  
12 person convicted not to operate an aircraft for any purpose for a period of  
13 six months from the date of final discharge from the county jail, or the date  
14 of payment or satisfaction of such fine, whichever is later or one year from  
15 such date on a second conviction. If the court suspends the sentence and  
16 places the person on probation as provided by law, the court shall order as  
17 one of the conditions of probation that such person not operate an aircraft  
18 for any purpose for a period of 30 days from the date of the order on a first  
19 conviction or 60 days from the date of the order on a second conviction.

20 (4) For the purpose of determining whether an occurrence is a first,  
21 second or subsequent occurrence:

22 (A) "Conviction" includes entering into a diversion agreement in lieu  
23 of further criminal proceedings on a complaint alleging commission of a  
24 crime described in subsection (a); and

25 (B) it is irrelevant whether an offense occurred before or after  
26 conviction or diversion for a previous offense.

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

30 **New Sec. 2.** (a) Any person who operates or attempts to operate an  
31 aircraft within this state may be requested, subject to the provisions of  
32 sections 1 through 4, and amendments thereto, to submit to one or more  
33 tests of the person's blood, breath, urine or other bodily substance to  
34 determine the presence of alcohol or drugs. The testing shall include all  
35 quantitative and qualitative tests for alcohol and drugs. The test shall be  
36 administered at the direction of a law enforcement officer, and the law  
37 enforcement officer shall determine which type of test is to be conducted  
38 or requested.

39 (b) (1) One or more tests may be required of a person when, at the  
40 time of the request, a law enforcement officer has probable cause to  
41 believe the person has committed a violation of section (1)(a), and  
42 amendments thereto, while having alcohol or drugs in such person's  
43 system, and one of the following conditions exists: