

2023 Kansas Statutes

3-1006. Operating an aircraft under the influence; criminal penalties. (a) Operating an aircraft under the influence is operating or attempting to operate any aircraft 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, is 0.04 or more;
- (2) the alcohol concentration in the person's blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
- (3) under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
- (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
- (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.

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

(A) On a first conviction, 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.

(B) On second or subsequent conviction, 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. 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 may be served by a combination of: Imprisonment; a work release program, if 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. 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 of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, 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.

(2) (A) Operating an aircraft under the influence is a severity level 6, nonperson felony if the offense occurred while the person convicted is prohibited from operating an aircraft:

- (i) By a court order pursuant to this section; or
- (ii) because such person's pilot license is revoked or suspended by an order of the federal aviation administration for a prior alcohol or drug-related conviction.

(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, if 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. 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 of 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.

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

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

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

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

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

History: L. 2022, ch. 80, § 1; July 1.