

SENATE BILL No. 582

By Committee on Ways and Means

2-7

9 AN ACT relating to driving under the influence of alcohol or drugs; con-
10 cerning certain penalties; amending K.S.A. 2007 Supp. 8-1567 and
11 repealing the existing section; also repealing K.S.A. 2007 Supp. 8-
12 1567b.

13

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

15 Section 1. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as
16 follows: 8-1567. (a) No person shall operate or attempt to operate any
17 vehicle within this state while:

18 (1) The alcohol concentration in the person's blood or breath as
19 shown by any competent evidence, including other competent evidence,
20 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
21 ments thereto, is .08 or more;

22 (2) the alcohol concentration in the person's blood or breath, as meas-
23 ured within two hours of the time of operating or attempting to operate
24 a vehicle, is .08 or more;

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

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

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

32 (b) No person shall operate or attempt to operate any vehicle within
33 this state if the person is a habitual user of any narcotic, hypnotic, som-
34 nifacient or stimulating drug.

35 (c) If a person is charged with a violation of this section involving
36 drugs, the fact that the person is or has been entitled to use the drug
37 under the laws of this state shall not constitute a defense against the
38 charge.

39 (d) Upon a first conviction of a violation of this section, a person shall
40 be guilty of a class B, nonperson misdemeanor and sentenced to not less
41 than 48 consecutive hours nor more than six months' imprisonment, or
42 in the court's discretion 100 hours of public service, and fined not less
43 than \$500 nor more than \$1,000. The person convicted must serve at

1 least 48 consecutive hours' imprisonment or 100 hours of public service
2 either before or as a condition of any grant of probation or suspension,
3 reduction of sentence or parole.

4 In addition, the court shall enter an order which requires that the
5 person enroll in and successfully complete an alcohol and drug safety
6 action education program or treatment program as provided in K.S.A. 8-
7 1008, and amendments thereto, or both the education and treatment
8 programs.

9 (e) On a second conviction of a violation of this section, a person shall
10 be guilty of a class A, nonperson misdemeanor and sentenced to not less
11 than 90 days nor more than one year's imprisonment and fined not less
12 than \$1,000 nor more than \$1,500. The person convicted must serve at
13 least five consecutive days' imprisonment before the person is granted
14 probation, suspension or reduction of sentence or parole or is otherwise
15 released. The five days' imprisonment mandated by this subsection may
16 be served in a work release program only after such person has served
17 48 consecutive hours' imprisonment, provided such work release program
18 requires such person to return to confinement at the end of each day in
19 the work release program. The court may place the person convicted
20 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
21 ments thereto, to serve the remainder of the minimum sentence only
22 after such person has served 48 consecutive hours' imprisonment.

23 As a condition of any grant of probation, suspension of sentence or
24 parole or of any other release, the person shall be required to enter into
25 and complete a treatment program for alcohol and drug abuse as provided
26 in K.S.A. 8-1008, and amendments thereto.

27 (f) (1) On the third conviction of a violation of this section, a person
28 shall be guilty of a nonperson felony and sentenced to not less than 90
29 days nor more than one year's imprisonment and fined not less than
30 \$1,500 nor more than \$2,500. The person convicted shall not be eligible
31 for release on probation, suspension or reduction of sentence or parole
32 until the person has served at least 90 days' imprisonment. The 90 days'
33 imprisonment mandated by this paragraph may be served in a work re-
34 lease program only after such person has served 48 consecutive hours'
35 imprisonment, provided such work release program requires such person
36 to return to confinement at the end of each day in the work release
37 program. The court may place the person convicted under a house arrest
38 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
39 the remainder of the minimum sentence only after such person has served
40 48 consecutive hours' imprisonment.

41 (2) The court may order that the term of imprisonment imposed pur-
42 suant to paragraph (1) be served in a state facility in the custody of the
43 secretary of corrections in a facility designated by the secretary for the

1 provision of substance abuse treatment pursuant to the provisions of
2 K.S.A. 21-4704, and amendments thereto. The person shall remain im-
3 prisoned at the state facility only while participating in the substance
4 abuse treatment program designated by the secretary and shall be re-
5 turned to the custody of the sheriff for execution of the balance of the
6 term of imprisonment upon completion of or the person's discharge from
7 the substance abuse treatment program. Custody of the person shall be
8 returned to the sheriff for execution of the sentence imposed in the event
9 the secretary of corrections determines: (A) That substance abuse treat-
10 ment resources or the capacity of the facility designated by the secretary
11 for the incarceration and treatment of the person is not available; (B) the
12 person fails to meaningfully participate in the treatment program of the
13 designated facility; (C) the person is disruptive to the security or operation
14 of the designated facility; or (D) the medical or mental health condition
15 of the person renders the person unsuitable for confinement at the des-
16 ignated facility. The determination by the secretary that the person either
17 is not to be admitted into the designated facility or is to be transferred
18 from the designated facility is not subject to review. The sheriff shall be
19 responsible for all transportation expenses to and from the state correc-
20 tional facility.

21 The court shall also require as a condition of parole that such person
22 enter into and complete a treatment program for alcohol and drug abuse
23 as provided by K.S.A. 8-1008, and amendments thereto.

24 (g) (1) On the fourth or subsequent conviction of a violation of this
25 section, a person shall be guilty of a nonperson felony and sentenced to
26 not less than 90 days nor more than one year's imprisonment and fined
27 \$2,500. The person convicted shall not be eligible for release on proba-
28 tion, suspension or reduction of sentence or parole until the person has
29 served at least 90 days' imprisonment. The 90 days' imprisonment man-
30 dated by this paragraph may be served in a work release program only
31 after such person has served 72 consecutive hours' imprisonment, pro-
32 vided such work release program requires such person to return to con-
33 finement at the end of each day in the work release program.

34 (2) The court may order that the term of imprisonment imposed pur-
35 suant to paragraph (1) be served in a state facility in the custody of the
36 secretary of corrections in a facility designated by the secretary for the
37 provision of substance abuse treatment pursuant to the provisions of
38 K.S.A. 21-4704, and amendments thereto. The person shall remain im-
39 prisoned at the state facility only while participating in the substance
40 abuse treatment program designated by the secretary and shall be re-
41 turned to the custody of the sheriff for execution of the balance of the
42 term of imprisonment upon completion of or the person's discharge from
43 the substance abuse treatment program. Custody of the person shall be

1 returned to the sheriff for execution of the sentence imposed in the event
2 the secretary of corrections determines: (A) That substance abuse treat-
3 ment resources or the capacity of the facility designated by the secretary
4 for the incarceration and treatment of the person is not available; (B) the
5 person fails to meaningfully participate in the treatment program of the
6 designated facility; (C) the person is disruptive to the security or operation
7 of the designated facility; or (D) the medical or mental health condition
8 of the person renders the person unsuitable for confinement at the des-
9 ignated facility. The determination by the secretary that the person either
10 is not to be admitted into the designated facility or is to be transferred
11 from the designated facility is not subject to review. The sheriff shall be
12 responsible for all transportation expenses to and from the state correc-
13 tional facility.

14 At the time of the filing of the judgment form or journal entry as
15 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the
16 court shall cause a certified copy to be sent to the officer having the
17 offender in charge. The law enforcement agency maintaining custody and
18 control of a defendant for imprisonment shall cause a certified copy of
19 the judgment form or journal entry to be sent to the secretary of correc-
20 tions within three business days of receipt of the judgment form or journal
21 entry from the court and notify the secretary of corrections when the
22 term of imprisonment expires and upon expiration of the term of impris-
23 onment shall deliver the defendant to a location designated by the sec-
24 retary. After the term of imprisonment imposed by the court, the person
25 shall be placed in the custody of the secretary of corrections for a man-
26 datory one-year period of postrelease supervision, which such period of
27 postrelease supervision shall not be reduced. During such postrelease
28 supervision, the person shall be required to participate in an inpatient or
29 outpatient program for alcohol and drug abuse, including, but not limited
30 to, an approved aftercare plan or mental health counseling, as determined
31 by the secretary and satisfy conditions imposed by the Kansas parole
32 board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-
33 olation of the conditions of such postrelease supervision may subject such
34 person to revocation of postrelease supervision pursuant to K.S.A. 75-
35 5217 et seq., and amendments thereto and as otherwise provided by law.

36 (h) Any person convicted of violating this section or an ordinance
37 which prohibits the acts that this section prohibits who had one or more
38 children under the age of 14 years in the vehicle at the time of the offense
39 shall have such person's punishment enhanced by one month of impris-
40 onment. This imprisonment must be served consecutively to any other
41 minimum mandatory penalty imposed for a violation of this section or an
42 ordinance which prohibits the acts that this section prohibits. Any en-
43 hanced penalty imposed shall not exceed the maximum sentence allow-

1 able by law. During the service of the enhanced penalty, the judge may
2 order the person on house arrest, work release or other conditional
3 release.

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

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

19 (k) (1) Except as provided in paragraph (5), in addition to any other
20 penalty which may be imposed upon a first conviction of a violation of
21 this section, the court may order that the convicted person's motor vehicle
22 or vehicles be impounded or immobilized for a period not to exceed one
23 year and that the convicted person pay all towing, impoundment and
24 storage fees or other immobilization costs.

25 (2) The court shall not order the impoundment or immobilization of
26 a motor vehicle driven by a person convicted of a violation of this section
27 if the motor vehicle had been stolen or converted at the time it was driven
28 in violation of this section.

29 (3) Prior to ordering the impoundment or immobilization of a motor
30 vehicle or vehicles owned by a person convicted of a violation of this
31 section, the court shall consider, but not be limited to, the following:

32 (A) Whether the impoundment or immobilization of the motor ve-
33 hicle would result in the loss of employment by the convicted person or
34 a member of such person's family; and

35 (B) whether the ability of the convicted person or a member of such
36 person's family to attend school or obtain medical care would be impaired.

37 (4) Any personal property in a vehicle impounded or immobilized
38 pursuant to this subsection may be retrieved prior to or during the period
39 of such impoundment or immobilization.

40 (5) As used in this subsection, the convicted person's motor vehicle
41 or vehicles shall include any vehicle leased by such person. If the lease
42 on the convicted person's motor vehicle subject to impoundment or im-
43 mobilization expires in less than one year from the date of the impound-

1 ment or immobilization, the time of impoundment or immobilization of
2 such vehicle shall be the amount of time remaining on the lease.

3 (l) (1) Except as provided in paragraph (3), in addition to any other
4 penalty which may be imposed upon a second or subsequent conviction
5 of a violation of this section, the court shall order that each motor vehicle
6 owned or leased by the convicted person *and which is required to be*
7 *registered under article 1 of chapter 8 of the Kansas Statutes Annotated,*
8 *and amendments thereto,* shall either be equipped with an ignition inter-
9 lock device or be impounded or immobilized for a period of two years.
10 The convicted person shall pay all costs associated with the installation,
11 maintenance and removal of the ignition interlock device and all towing,
12 impoundment and storage fees or other immobilization costs.

13 (2) Any personal property in a vehicle impounded or immobilized
14 pursuant to this subsection may be retrieved prior to or during the period
15 of such impoundment or immobilization.

16 (3) As used in this subsection, the convicted person's motor vehicle
17 or vehicles shall include any vehicle leased by such person. If the lease
18 on the convicted person's motor vehicle subject to impoundment or im-
19 mobilization expires in less than two years from the date of the impound-
20 ment or immobilization, the time of impoundment or immobilization of
21 such vehicle shall be the amount of time remaining on the lease.

22 (m) The court shall report every conviction of a violation of this sec-
23 tion and every diversion agreement entered into in lieu of further criminal
24 proceedings or a complaint alleging a violation of this section to the di-
25 vision. Prior to sentencing under the provisions of this section, the court
26 shall request and shall receive from the division a record of all prior
27 convictions obtained against such person for any violations of any of the
28 motor vehicle laws of this state.

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

32 (1) "Conviction" includes being convicted of a violation of this section
33 or entering into a diversion agreement in lieu of further criminal pro-
34 ceedings on a complaint alleging a violation of this section;

35 (2) "conviction" includes being convicted of a violation of a law of
36 another state or an ordinance of any city, or resolution of any county,
37 which prohibits the acts that this section prohibits or entering into a di-
38 version agreement in lieu of further criminal proceedings in a case alleg-
39 ing a violation of such law, ordinance or resolution;

40 (3) any convictions occurring during a person's lifetime shall be taken
41 into account when determining the sentence to be imposed for a first,
42 second, third, fourth or subsequent offender;

43 (4) it is irrelevant whether an offense occurred before or after con-

1 viction for a previous offense; and

2 (5) a person may enter into a diversion agreement in lieu of further
3 criminal proceedings for a violation of this section, and amendments
4 thereto, or an ordinance which prohibits the acts of this section, and
5 amendments thereto, only once during the person's lifetime.

6 (o) Upon conviction of a person of a violation of this section or a
7 violation of a city ordinance or county resolution prohibiting the acts
8 prohibited by this section, the division, upon receiving a report of con-
9 viction, shall suspend, restrict or suspend and restrict the person's driving
10 privileges as provided by K.S.A. 8-1014, and amendments thereto.

11 (p) (1) Nothing contained in this section shall be construed as pre-
12 venting any city from enacting ordinances, or any county from adopting
13 resolutions, declaring acts prohibited or made unlawful by this act as
14 unlawful or prohibited in such city or county and prescribing penalties
15 for violation thereof. Except as specifically provided by this subsection,
16 the minimum penalty prescribed by any such ordinance or resolution shall
17 not be less than the minimum penalty prescribed by this act for the same
18 violation, and the maximum penalty in any such ordinance or resolution
19 shall not exceed the maximum penalty prescribed for the same violation.
20 *On and after the effective date of this act and retroactive for ordinance*
21 *violations committed on or after July 1, 2006, an ordinance may grant to*
22 *a municipal court jurisdiction over a violation of such ordinance which*
23 *is concurrent with the jurisdiction of the district court over a violation of*
24 *this section, notwithstanding that the elements of such ordinance violation*
25 *are the same as the elements of a violation of this section that would*
26 *constitute, and be punished as, a felony.*

27 (2) Any such ordinance or resolution shall authorize the court to or-
28 der that the convicted person pay restitution to any victim who suffered
29 loss due to the violation for which the person was convicted. ~~Except as~~
30 ~~provided in paragraph (5), any such ordinance or resolution may require~~
31 ~~or authorize the court to order that the convicted person's motor vehicle~~
32 ~~or vehicles be impounded or immobilized for a period not to exceed one~~
33 ~~year and that the convicted person pay all towing, impoundment and~~
34 ~~storage fees or other immobilization costs.~~

35 ~~—(2)—The court shall not order the impoundment or immobilization of~~
36 ~~a motor vehicle driven by a person convicted of a violation of this section~~
37 ~~if the motor vehicle had been stolen or converted at the time it was driven~~
38 ~~in violation of this section.~~

39 ~~—(3)—Prior to ordering the impoundment or immobilization of a motor~~
40 ~~vehicle or vehicles owned by a person convicted of a violation of this~~
41 ~~section, the court shall consider, but not be limited to, the following:~~

42 ~~—(A)—Whether the impoundment or immobilization of the motor ve-~~
43 ~~hicle would result in the loss of employment by the convicted person or~~

1 ~~a member of such person's family; and~~
2 ~~—(B) whether the ability of the convicted person or a member of such~~
3 ~~person's family to attend school or obtain medical care would be impaired.~~
4 ~~—(4) Any personal property in a vehicle impounded or immobilized~~
5 ~~pursuant to this subsection may be retrieved prior to or during the period~~
6 ~~of such impoundment or immobilization.~~
7 ~~—(5) As used in this subsection, the convicted person's motor vehicle~~
8 ~~or vehicles shall include any vehicle leased by such person. If the lease~~
9 ~~on the convicted person's motor vehicle subject to impoundment or im-~~
10 ~~mobilization expires in less than one year from the date of the impound-~~
11 ~~ment or immobilization, the time of impoundment or immobilization of~~
12 ~~such vehicle shall be the amount of time remaining on the lease.~~
13 (q) No plea bargaining agreement shall be entered into nor shall any
14 judge approve a plea bargaining agreement entered into for the purpose
15 of permitting a person charged with a violation of this section, or a vio-
16 lation of any ordinance of a city or resolution of any county in this state
17 which prohibits the acts prohibited by this section, to avoid the mandatory
18 penalties established by this section or by the ordinance. For the purpose
19 of this subsection, entering into a diversion agreement pursuant to K.S.A.
20 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
21 constitute plea bargaining.
22 (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
23 be pleaded in the alternative, and the state, city or county, but shall not
24 be required to, may elect one or two of the three prior to submission of
25 the case to the fact finder.
26 (s) Upon a fourth or subsequent conviction, the judge of any court in
27 which any person is convicted of violating this section, may revoke the
28 person's license plate or temporary registration certificate of the motor
29 vehicle driven during the violation of this section for a period of one year.
30 Upon revoking any license plate or temporary registration certificate pur-
31 suant to this subsection, the court shall require that such license plate or
32 temporary registration certificate be surrendered to the court.
33 (t) For the purpose of this section: (1) "Alcohol concentration" means
34 the number of grams of alcohol per 100 milliliters of blood or per 210
35 liters of breath.
36 (2) "Imprisonment" shall include any restrained environment in
37 which the court and law enforcement agency intend to retain custody and
38 control of a defendant and such environment has been approved by the
39 board of county commissioners or the governing body of a city.
40 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-
41 4165, and amendments thereto.
42 (u) The amount of the increase in fines as specified in this section
43 shall be remitted by the clerk of the district court to the state treasurer

1 in accordance with the provisions of K.S.A. 75-4215, and amendments
2 thereto. Upon receipt of remittance of the increase provided in this act,
3 the state treasurer shall deposit the entire amount in the state treasury
4 and the state treasurer shall credit 50% to the community alcoholism and
5 intoxication programs fund and 50% to the department of corrections
6 alcohol and drug abuse treatment fund, which is hereby created in the
7 state treasury.

8 (v) Upon every conviction of a violation of this section, the court shall
9 order such person to submit to a pre-sentence alcohol and drug abuse
10 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-
11 sentence evaluation shall be made available, and shall be considered by
12 the sentencing court.

13 Sec. 2. K.S.A. 2007 Supp. 8-1567 and 8-1567b are hereby repealed.

14 Sec. 3. This act shall take effect and be in force from and after its
15 publication in the statute book.