

HOUSE BILL No. 2771

By Committee on Federal and State Affairs

3-5

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to appeals; trials; violations of the uniform act regulating traffic on
3 highways; amending K.S.A. 12-4601 and K.S.A. 2011 Supp. 22-3424,
4 22-3436, 22-3609 and 74-7301 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 12-4601 is hereby amended to read as follows: 12-
8 4601. An appeal may be taken to the district court in the county in which
9 said municipal court is located:

10 (a) By the accused person in all cases; and

11 (b) By the city upon questions of law.

12 The appeal shall stay all further proceedings upon the judgment
13 appealed from. *No appeal shall be filed until after the sentence has been*
14 *imposed.*

15 New Sec. 2. (a) Prior to the sentencing of a person convicted of a
16 violation of the uniform act regulating traffic on highways which resulted
17 in serious bodily injury to a person or the death of a person, the court shall
18 cause reasonable attempts to be made to notify the victim or the victim's
19 family, who shall be given an opportunity to make a victim impact
20 statement as to the impact of the offense on the victim's life or the lives of
21 the victim's family members.

22 (b) Any court sentencing a person convicted of a violation of the
23 uniform act regulating traffic on highways which resulted in personal
24 injury to a person, the death of a person or injury to a person's property
25 may require, in addition to any other penalty provided by law, that the
26 convicted person pay restitution as a condition of probation or parole.

27 (c) This section shall not apply to an alcohol or drug-related offense,
28 as defined by K.S.A. 8-1019, and amendments thereto, which resulted in
29 serious bodily injury to a person or the death of a person.

30 (d) This section shall be part of and supplemental to the uniform act
31 regulating traffic on highways.

32 New Sec. 3. (a) Any person who is convicted of violating K.S.A. 8-
33 1526, 8-1527, 8-1528, 8-1529 or 8-1531, and amendments thereto, and as
34 a result of such violation, was involved in a vehicle accident or collision
35 resulting in serious bodily injury to any person, upon conviction, shall be
36 guilty of an unclassified misdemeanor punishable:

1 (1) Upon a first conviction:

2 (A) By a fine of not less than \$250 and no more than \$1,000; and

3 (B) such person's driving privileges may be suspended for a period
4 not to exceed 90 days; and

5 (2) upon a second or subsequent conviction:

6 (A) By a fine of not less than \$500 and no more than \$2,000;

7 (B) a sentence of not less than 90 days imprisonment; and

8 (C) such person's driving privileges may be suspended for a period
9 not to exceed one year.

10 (b) Any person who is convicted of violating K.S.A. 8-1526, 8-1527,
11 8-1528, 8-1529 or 8-1531, and amendments thereto, and as a result of such
12 violation, was involved in a vehicle accident or collision resulting in the
13 death of any person, upon conviction, shall be guilty of an unclassified
14 misdemeanor punishable:

15 (1) Upon a first conviction:

16 (A) By a fine of not less than \$500 and no more than \$2,000 or, in
17 lieu of a fine, such person may be required to complete 1,000 hours of
18 community service;

19 (B) such person may be sentenced to not less than six months
20 imprisonment; and

21 (C) such person's driving privileges may be suspended for a period
22 not to exceed three years; and

23 (2) upon a second or subsequent conviction:

24 (A) By a fine of not less than \$5,000;

25 (B) a sentence of not less than one year imprisonment; and

26 (C) a suspension of such person's driving privileges for a period not
27 to exceed three years.

28 (c) For the purpose of this section, "conviction" means a final
29 conviction without regard to whether sentence was suspended or probation
30 granted after such conviction. Forfeiture of bail, bond or collateral
31 deposited to secure a defendant's appearance in court, which forfeiture has
32 not been vacated, shall be equivalent to a conviction.

33 (d) This section shall be part of and supplemental to the uniform act
34 regulating traffic on highways.

35 Sec. 4. K.S.A. 2011 Supp. 22-3424 is hereby amended to read as
36 follows: 22-3424. (a) The judgment shall be rendered and sentence
37 imposed in open court.

38 (b) If the verdict or finding is not guilty, judgment shall be rendered
39 immediately and the defendant shall be discharged from custody and the
40 obligation of the defendant's appearance bond.

41 (c) If the verdict or finding is guilty, judgment shall be rendered and
42 sentence pronounced without unreasonable delay, allowing adequate time
43 for the filing and disposition of post-trial motions and for completion of

1 such presentence investigation as the court may require.

2 (d) If the verdict or finding is guilty, upon request of the victim or the
3 victim's family and before imposing sentence, the court shall hold a
4 hearing to establish restitution. The defendant may waive the right to the
5 hearing and accept the amount of restitution as established by the court. If
6 the court orders restitution to be paid to the victim or the victim's family,
7 the order shall be enforced as a judgment of restitution pursuant to K.S.A.
8 60-4301 through 60-4304, *and amendments thereto*.

9 (e) Before imposing sentence the court shall: (1) Allow the
10 prosecuting attorney to address the court, if the prosecuting attorney so
11 requests; (2) afford counsel an opportunity to speak on behalf of the
12 defendant; (3) allow the victim or such members of the victim's family as
13 the court deems appropriate to address the court, if the victim or the
14 victim's family so requests; and (4) address the defendant personally and
15 ask the defendant if the defendant wishes to make a statement on the
16 defendant's own behalf and to present any evidence in mitigation of
17 punishment.

18 (f) After imposing sentence in a case which has gone to trial on a plea
19 of not guilty, the court shall advise the defendant of the defendant's right to
20 appeal and of the right of a person who is unable to pay the costs of an
21 appeal to appeal *in forma pauperis*.

22 (g) *For the purposes of subsection (d) and (e), "victim" includes a*
23 *person who suffers serious bodily injury or death as a result of a violation*
24 *of the uniform act regulating traffic on highways.*

25 Sec. 5. K.S.A. 2011 Supp. 22-3436 is hereby amended to read as
26 follows: 22-3436. If a defendant is charged with a crime pursuant to
27 articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
28 K.S.A. 2011 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-
29 6421, and amendments thereto; *or charged with a violation of the uniform*
30 *act regulating traffic on highways which resulted in serious bodily injury*
31 *or death:*

32 (a) The prosecuting attorney, as defined in K.S.A. 22-2202, and
33 amendments thereto, shall: (1) inform the victim or the victim's family
34 before any dismissal or declining of prosecuting charges; (2) inform the
35 victim or the victim's family of the nature of any proposed plea agreement;
36 and (3) inform and give notice to the victim or the victim's family of the
37 rights established in subsection (b); *and*

38 (b) The victim of a crime or the victim's family have the right to be
39 present at any hearing where a plea agreement is reviewed or accepted and
40 the parties may submit written arguments to the court prior to the date of
41 the hearing.

42 Sec. 6. K.S.A. 2011 Supp. 22-3609 is hereby amended to read as
43 follows: 22-3609. (1) The defendant shall have the right to appeal to the

1 district court of the county from any judgment of a municipal court which
2 adjudges the defendant guilty of a violation of the ordinances of any
3 municipality of Kansas or any findings of contempt. The appeal shall be
4 assigned by the chief judge to a district judge. The appeal shall stay all
5 further proceedings upon the judgment appealed from.

6 (2) An appeal to the district court shall be taken by filing, in the
7 district court of the county in which the municipal court is located, a notice
8 of appeal and any appearance bond required by the municipal court.
9 Municipal court clerks are hereby authorized to accept notices of appeal
10 and appearance bonds under this subsection and shall forward such notices
11 and bonds to the district court. *No appeal shall be filed until after the*
12 *sentence has been imposed.* No appeal shall be taken more than 14 days
13 after the date of the judgment appealed from *the sentence is imposed.*

14 (3) The notice of appeal shall designate the judgment or part of the
15 judgment appealed from. The defendant shall cause notice of the appeal to
16 be served upon the city attorney prosecuting the case. The judge whose
17 judgment is appealed from or the clerk of the court, if there is one, shall
18 certify the complaint and warrant to the district court of the county, but
19 failure to do so shall not affect the validity of the appeal.

20 (4) Except as provided herein, the trial of municipal appeal cases
21 shall be to the court unless a jury trial is requested in writing by the
22 defendant not later than seven days after first notice of trial assignment is
23 given to the defendant or such defendant's counsel. The time requirement
24 provided in this subsection regarding when a jury trial shall be requested
25 may be waived in the discretion of the court upon a finding that imposing
26 such time requirement would cause undue hardship or prejudice to the
27 defendant. A jury in a municipal appeal case shall consist of six members.
28 All appeals taken by a defendant from a municipal judge in contempt
29 findings, cigarette or tobacco infraction or traffic infraction cases shall be
30 tried by the court.

31 (5) Notwithstanding the other provisions of this section, appeal from
32 a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416, and
33 amendments thereto, shall be conducted only on the record of the
34 stipulation of facts relating to the complaint.

35 Sec. 7. K.S.A. 2011 Supp. 74-7301 is hereby amended to read as
36 follows: 74-7301. As used in this act:

37 (a) "Allowance expense" means reasonable charges incurred for
38 reasonably needed products, services and accommodations, including
39 those for medical care, rehabilitation, rehabilitative occupational training
40 and other remedial treatment and care and for the replacement of items of
41 clothing or bedding which were seized for evidence. Such term includes a
42 total charge not in excess of \$5,000 for expenses in any way related to
43 funeral, cremation or burial; but such term shall not include that portion of

1 a charge for a room in a hospital, clinic, convalescent or nursing home or
2 any other institution engaged in providing nursing care and related
3 services, in excess of a reasonable and customary charge for semi-private
4 accommodations, unless other accommodations are medically required.
5 Such term includes a total charge not in excess of \$1,000 for expenses in
6 any way related to crime scene cleanup.

7 (b) "Board" means the crime victims compensation board established
8 under K.S.A. 74-7303, and amendments thereto.

9 (c) "Claimant" means any of the following persons claiming
10 compensation under this act: A victim; a dependent of a deceased victim; a
11 third person other than a collateral source; or an authorized person acting
12 on behalf of any of them.

13 (d) "Collateral source" means a source of benefits or advantages for
14 economic loss otherwise reparable under this act which the victim or
15 claimant has received, or which is readily available to the victim or
16 claimant, from:

17 (1) The offender;

18 (2) the government of the United States or any agency thereof, a state
19 or any of its political subdivisions or an instrumentality or two or more
20 states, unless the law providing for the benefits or advantages makes them
21 excess or secondary to benefits under this act;

22 (3) social security, medicare and medicaid;

23 (4) state-required temporary nonoccupational disability insurance;

24 (5) workers' compensation;

25 (6) wage continuation programs of any employer;

26 (7) proceeds of a contract of insurance payable to the victim for loss
27 which the victim sustained because of the criminally injurious conduct; or

28 (8) a contract providing prepaid hospital and other health care
29 services or benefits for disability.

30 (e) "Criminally injurious conduct" means conduct that: (1) (A)
31 Occurs or is attempted in this state or occurs to a person whose domicile is
32 in Kansas who is the victim of a violent crime which occurs in another
33 state, possession, or territory of the United States of America may make an
34 application for compensation if:

35 (i) The crimes would be compensable had it occurred in the state of
36 Kansas; and

37 (ii) the places the crimes occurred are states, possessions or territories
38 of the United States of America not having eligible crime victim
39 compensation programs;

40 (B) poses a substantial threat or personal injury or death; and

41 (C) either is punishable by fine, imprisonment or death or would be
42 so punishable but for the fact that the person engaging in the conduct
43 lacked capacity to commit the crime under the laws of this state; or

1 (2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent
2 crime that posed a substantial threat or caused personal injury or death,
3 committed outside of the United States against a person whose domicile is
4 in Kansas, except that criminally injurious conduct does not include any
5 conduct resulting in injury or death sustained as a member of the United
6 States armed forces while serving on active duty.

7 Such term shall not include conduct arising out of the ownership,
8 maintenance or use of a motor vehicle, except for violations of K.S.A. 8-
9 2,144 or 8-1567, and amendments thereto, or violations of municipal
10 ordinances or county resolutions prohibiting the acts prohibited by those
11 statutes, or violations of K.S.A. 8-1602, and amendments thereto, K.S.A.
12 21-3404, 21-3405 and 21-3414, prior to their repeal, or K.S.A. 2011 Supp.
13 21-5405, 21-5406 and subsection (b) of K.S.A. 2011 Supp. 21-5413, and
14 amendments thereto, or when such conduct was intended to cause personal
15 injury or death, *or when such conduct constitutes a violation of the*
16 *uniform act regulating traffic on highways which resulted in serious bodily*
17 *injury or death.*

18 (f) "Dependent" means a natural person wholly or partially dependent
19 upon the victim for care or support, and includes a child of the victim born
20 after the victim's death.

21 (g) "Dependent's economic loss" means loss after decedent's death of
22 contributions of things of economic value to the decedent's dependents, not
23 including services they would have received from the decedent if the
24 decedent had not suffered the fatal injury, less expenses of the dependents
25 avoided by reason of decedent's death.

26 (h) "Dependent's replacement services loss" means loss reasonably
27 incurred by dependents after decedent's death in obtaining ordinary and
28 necessary services in lieu of those the decedent would have performed for
29 their benefit if the decedent had not suffered the fatal injury, less expenses
30 of the dependents avoided by reason of decedent's death and not subtracted
31 in calculating dependent's economic loss.

32 (i) "Economic loss" means economic detriment consisting only of
33 allowable expense, work loss, replacement services loss and, if injury
34 causes death, dependent's economic loss and dependent's replacement
35 service loss. Noneconomic detriment is not loss, but economic detriment is
36 loss although caused by pain and suffering or physical impairment.

37 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
38 physical impairment and nonpecuniary damage.

39 (k) "Replacement services loss" means expenses reasonably incurred
40 in obtaining ordinary and necessary services in lieu of those the injured
41 person would have performed, not for income, but for the benefit of self or
42 family, if such person had not been injured.

43 (l) "Work loss" means loss of income from work the injured person

1 would have performed if such person had not been injured, and expenses
2 reasonably incurred by such person in obtaining services in lieu of those
3 the person would have performed for income, reduced by any income from
4 substitute work actually performed by such person or by income such
5 person would have earned in available appropriate substitute work that the
6 person was capable of performing but unreasonably failed to undertake.

7 (m) "Victim" means a person who suffers personal injury or death as
8 a result of: (1) Criminally injurious conduct; (2) the good faith effort of
9 any person to prevent criminally injurious conduct; or (3) the good faith
10 effort of any person to apprehend a person suspected of engaging in
11 criminally injurious conduct.

12 (n) "Crime scene cleanup" means removal of blood, stains, odors or
13 other debris caused by the crime or the processing of the crime scene.

14 Sec. 8. K.S.A. 12-4601 and K.S.A. 2011 Supp. 22-3424, 22-3436, 22-
15 3609 and 74-7301 are hereby repealed.

16 Sec. 9. This act shall take effect and be in force from and after its
17 publication in the statute book.
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