

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 60**

As Agreed to May 3, 2012

**Brief\***

House Sub. for SB 60 would amend various administrative and criminal statutes related to driving under the influence (DUI) and allow the issuance of class C licenses for the operation of a motorized bicycle to certain persons with suspended or revoked drivers' licenses. The bill serves as a follow-up to 2011 House Sub. for SB 6 (SB 6), which made extensive revisions to Kansas DUI law.

First, the bill would clarify that \$250 from each fine imposed by a municipal court for a violation of a DUI or commercial DUI ordinance shall be directed to the Community Corrections Supervision Fund.

Next, the bill would create the crime of refusing to submit to a test to determine the presence of alcohol or drugs. Under this section, it would be a crime to refuse to submit to or complete such a test if a person has a prior test refusal or a prior conviction for DUI or commercial DUI, any of which occurred (1) on or after July 1, 2001, and (2) when such person was at least 18 years of age. Thus, a first-time test refusal would not constitute criminal conduct unless a person has a previous DUI or commercial DUI conviction as specified in the section. The penalties for a first conviction of test refusal would be the same as the penalties for a second DUI, the penalties for a second test refusal conviction would be the same as the penalties for a third DUI, and the

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penalties for a third or subsequent test refusal conviction would be the same as the penalties for a fourth or subsequent DUI conviction. The evaluation and procedural requirements for this crime would be the same as those for DUI, as amended by this bill. The implied consent statute would be amended to include information regarding the test refusal crime in the oral and written notice given to persons subject to testing.

In determining whether a test refusal conviction is a first, second, third, or subsequent conviction for sentencing under the new section, the following would count as a conviction, in addition to any convictions under the new section itself: convictions for DUI on or after July 1, 2001, and any lifetime convictions of commercial DUI, boating DUI, involuntary manslaughter while DUI, aggravated vehicular homicide, or vehicular battery while DUI. "Convictions" would include conviction of violation of a city ordinance, county resolution, or law of another state; a diversion agreement; or punishment under the Uniform Code of Military Justice or Kansas Code of Military Justice. Convictions before the offender reached the age of 18 would not be included in this calculation. The bill would clarify that a previous DUI or commercial DUI conviction used to trigger the test refusal criminal provision shall not also be used for sentencing purposes.

The bill would amend the DUI and commercial DUI statutes to incorporate comparable provisions requiring the consideration of convictions of related crimes, including the new crime of test refusal, in determining the number of the current conviction. However, the provisions in the DUI and commercial DUI statutes would not exclude convictions before the age of 18.

The bill would allow a person to obtain a class C license for the operation of a motorized bicycle if such person's driving privileges have been suspended for a first time DUI conviction. Further, a person whose license has been revoked for being a habitual violator could obtain a class C license, so long as in the last five years the person has not

had a test refusal; test failure; "alcohol or drug related conviction," as defined in Kansas law; or conviction for fleeing or eluding a police officer.

KSA 8-241, regarding drivers' license examination in certain circumstances, would be amended to clarify imposition of reinstatement fees upon the fourth or subsequent DUI offense and to remove a reinstatement provision that is obsolete due to the changes enacted by SB 6.

KSA 8-1008, regarding alcohol and drug evaluations, would be amended to establish a minimum fee of \$150 for the required alcohol and drug evaluation. Evaluation providers would be required to agree to evaluate indigent defendants at no up-front cost and have the evaluation fee be assessed to the defendant as part of the judgment. The implementation of a provision requiring the use of a standardized substance use evaluation approved by the Secretary of Social and Rehabilitation Services would be delayed until July 1, 2013. A grandfather clause would be added to allow persons who, on or before July 1, 2012, were taking action to become a provider in accordance with the requirements of this section to continue to perform services described in the section until July 1, 2014. This section, as well as the test refusal, DUI, and commercial DUI sections, would be amended so that evaluations pursuant to this section would not be required for third and subsequent refusal or commercial DUI convictions or for third or fourth and subsequent DUI convictions.

KSA 8-1014, governing the administrative penalties for test refusal or failure or an alcohol or drug-related conviction, would be amended to add an additional year of interlock restriction for a test refusal. The administrative penalty for the first test failure or DUI-related conviction by a person less than 21 years of age would be made the same as for any other offender. Language referencing alcohol and drug safety actions programs would be updated to reflect the provider system established by SB 6. A new provision would require the Division of Vehicles to credit any suspension or

revocation time greater than a year, which was served prior to the retroactive application of the changes in SB 6, to be credited toward the ignition interlock restriction period imposed under the provisions of SB 6, so long as the person did not drive during the applicable period and completes a form indicating this.

KSA 8-1015, regarding authorized restrictions of driving privileges for DUI-related reasons, would be amended to allow a person whose driving privileges have been suspended for first-time test refusal to apply for a restricted interlock license after 90 days, for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (a) (4). For subsequent test refusal suspensions, a person would be permitted to apply for a restricted interlock license after 90 days for the purposes of getting to and from work, school, or an alcohol treatment program, and the ignition interlock provider for maintenance and data download.

Persons subject to first-time suspensions for high blood alcohol content conviction or test failure would be permitted to apply for a restricted interlock license after 45 days for the purposes of driving in those circumstances specified in KSA 8-292(a)(1) through (4).

A \$100 application fee for restricted ignition interlock licenses would be created, and the first \$100,000 generated from this fee each fiscal year would be directed to the Division of Vehicles, with the remainder directed to the Community Corrections Supervision Fund.

Persons subject to first-time suspensions for test refusal, high blood alcohol content conviction, or test failure would be permitted to operate an employer's vehicle without an ignition interlock device installed during normal business activities.

The DUI criminal statute, KSA 2011 Supp. 8-1567, would be amended to strike provisions regarding habitual users, impoundment, and revocation of license plates or temporary certifications. House arrest and work release

provisions for third or subsequent convictions would be amended to increase the required minimum hours of confinement from 240 hours to 2,160 hours (90 days) to be consistent with the 90 days' imprisonment required elsewhere in this subsection.

The commercial DUI criminal statute, KSA 2011 Supp. 8-2,144, also would be amended to include the same confinement hours increase for house arrest and work release for third or subsequent convictions. Additionally, this statute would be amended to include supervision, risk assessment, and multidisciplinary services requirements for third and subsequent commercial DUI convictions that would be identified to the requirements for third and subsequent DUI or test refusal convictions.

The bill would clarify that the Kansas Bureau of Investigation is authorized, rather than required, to adopt rules and regulations related to the approval of saliva testing devices.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of SB 453, representing the Senate position on DUI changes, with the following modifications adopted from House Sub. for SB 104, representing the House position on DUI changes: adding the provision for motorized bicycle licenses, requiring providers to agree to evaluate indigents and accept payment as part of the judgment, modifying KBI saliva test regulation authority from "required" to "authorized," and making administrative penalties for a first-time test failure or conviction the same regardless of age. The Conference Committee then added the provider grandfather clause; a provision allowing some persons subject to interlock to drive an employer vehicle; language specifying that evaluations pursuant to KSA 8-1008 are not required for third and subsequent convictions of test refusal, commercial DUI, or DUI; and supervision, risk assessment, and multidisciplinary

services requirements for third and subsequent commercial DUI convictions.

The Committee placed its agreed-upon language into House Sub. for SB 60.

## **Background**

As it entered conference, House Sub. for SB 60 would have amended statutes regarding the convening of a grand jury, certain direct appeals to the Kansas Supreme Court, community corrections, house arrest, and arrest expungement fees. All these sections were passed as part of SB 55 during the 2011 Session.

### ***Background of SB 453***

2011 House Sub. for SB 6 made extensive revisions to Kansas DUI law, implementing many of the recommendations of the Kansas DUI Commission. SB 453 was introduced by the Senate Committee on Federal and State Affairs as a follow-up bill to make policy adjustments and technical amendments related to the changes made in SB 6.

In the Senate Committee on Judiciary, Johnson County District Attorney Steve Howe and a representative of the Sunflower Alcohol Safety Action Project, Inc., testified in support of the bill. The Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association submitted written testimony supporting the bill. A representative of the Kansas Community Corrections Association testified in opposition to the bill. A representative of the Office of Judicial Administration testified as a neutral party and submitted a proposed amendment. The City of Lenexa submitted a proposed amendment.

Subsequent to the hearing, the Kansas Association of Counties submitted written testimony supporting the amendment proposed by the Office of Judicial Administration.

The Kansas Bureau of Investigation and Kansas Sheriffs' Association also submitted written testimony.

The Senate Committee amended the bill to: remove a provision requiring courts to pay the alcohol and drug evaluation fee for indigent defendants at the time of service; remove provisions reversing the \$250 fine increases for DUI and commercial DUI established by SB 6; remove a provision striking language directing the funds generated by these fee increases be directed to the Community Corrections Supervision Fund; clarify that municipal courts are to remit funds generated by the fee increases to the Community Corrections Supervision Fund; and add the section criminalizing test refusal. The Committee recommended the bill be passed as amended.

The Kansas Sentencing Commission submitted an assessment of the test refusal criminalization provision. There would be no impact on prison admissions or prison bed needs. The Commission estimated there would be an additional 2,519 convictions, requiring 7,744 mandatory minimum jail days at an estimated cost of \$805,376 (\$104 per day).

The fiscal note on the bill, as introduced, indicates the Office of Judicial Administration estimates costs of \$267,750 if the courts were required to pay the alcohol and drug assessment cost for indigent defendants. This provision was removed by the Senate Committee.

The Department of Revenue estimates \$13,106 for FY 2012 would be required for database programming, to be paid from the Vehicle Operating Fund and the Department of Motor Vehicles Modernization Fund.

The Kansas Association of Counties and the Department of Corrections had not provided responses at the time the fiscal note was prepared. The fiscal note stated the Department of Corrections would presumably receive less revenue under the provision in the bill eliminating the

direction of a portion of DUI fine proceeds into the Community Corrections Supervision Fund. This provision was removed by the Senate Committee.

There is no fiscal note available for the bill as amended.

### ***Background of House Sub. for SB 104***

SB 104 was introduced in 2011 as a bill updating references in the Kansas Tort Claims Act to certain Kansas Dental Board regulations. The 2011 Senate Judiciary Committee made no changes to the bill and recommended it be passed.

The 2012 House Committee on Corrections and Juvenile Justice recommended a substitute bill be passed replacing the text of SB 104 with the text of SB 453, with certain modifications.

The House Committee heard testimony from the following conferees regarding DUI-related issues: representatives of the Attorney General's Office, the Kansas County and District Attorney's Association, the Kansas Community Corrections Association, and the Sunflower Alcohol Safety Actions Project, Inc. The Kansas Bureau of Investigation, Division of Vehicles of the Kansas Department of Revenue, Kansas Sheriffs' Association, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Association of Counties submitted written testimony.

The House Committee modified the text of SB 453 before inserting it into House Sub. for SB 104 by: removing provisions that would have reversed fine increases established in SB 6 for DUI and commercial DUI; retaining a provision directing the proceeds from these fine increases into the Community Corrections Supervision Fund; requiring assessment providers to agree to evaluate indigent defendants at no up-front cost; adding motorized bicycle

licensing provisions from HB 2506; adding a section criminalizing test refusal; equalizing the administrative penalties for first-time offenders, regardless of age; requiring \$250 from each municipal court fine be directed to the Community Corrections Supervision Fund; and adding a provision modifying saliva test device approval.

The Kansas Sentencing Commission submitted an assessment of the test refusal criminalization provision. There would be no impact on prison admissions or prison bed needs. The Commission estimated there would be an additional 2,519 convictions, requiring 7,744 mandatory minimum jail days at an estimated cost of \$805,376 (\$104/day).

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The Kansas Association of Counties and the Department of Corrections had not provided responses at the time the fiscal note was prepared. The fiscal note stated the Department of Corrections would presumably receive less revenue under the provision in the bill eliminating the direction of a portion of DUI fine proceeds into the Community Corrections Supervision Fund. This provision was removed by the House Committee.

There is no fiscal note available for the substitute bill.

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Driving under the influence (DUI); commercial DUI; DUI test refusal; community corrections; alcohol and drug evaluation and treatment; Kansas Department of Revenue; motorized bicycles; restricted licenses; administrative hearings and penalties; Kansas Bureau of Investigation (KBI); ignition interlock.