

Driving Under the Influence

House Sub. for SB 6 amends various administrative and criminal statutes related to driving under the influence (DUI). The bill addresses professional licensing consequences for DUI, permits saliva testing, creates a Community Corrections Supervision Fund and related funding provisions, amends the commercial DUI statute to make it more consistent with the DUI statute, adjusts the implied consent provision as to urine samples, restructures alcohol and drug evaluations and treatment, adjusts administrative penalties for DUI, creates a DUI administrative hearing fee, increases fines for DUI and commercial DUI, amends postrelease provisions for DUI, adds a DUI lookback date for previous convictions, increases the blood or breath testing window for DUI and commercial DUI, overhauls the reporting of DUI and commercial DUI to the KBI central repository, allows expungement of a DUI after 10 years, and makes technical changes related to DUI and commercial DUI.

Professional Licensing

The bill creates a statutory provision prohibiting a professional licensing body from suspending, denying, terminating, or failing to renew a professional license solely because the licensee was convicted of, pled guilty or *nolo contendere* to, or entered into a diversion regarding a first time DUI. The provision clarifies that the licensing body, after proper notice and hearing, may take alternative corrective measures regarding such violation, and the provision does not limit the authority of the Division of Vehicles of the Department of Revenue to restrict, revoke, suspend or deny a driver's license or commercial driver's license.

Saliva Testing

The bill creates a statutory provision requiring the Kansas Bureau of Investigation (KBI) to adopt rules and regulations allowing saliva testing for law enforcement purposes and listing approved saliva testing devices. The implied consent statute is amended to add saliva testing.

Community Corrections Supervision Fund

The bill creates the Community Corrections Supervision Fund to be used to provide grants for community correctional services under KSA 75-52,111 to implement the supervision provisions contained in the bill.

Commercial DUI

The commercial DUI statute, KSA 2010 Supp. 8-2,144, is amended to ensure consistency with DUI under KSA 2010 Supp. 8-1567, as follows:

- The blood or breath testing window is increased from 2 hours to 3 hours.
- Second-time offenders on house arrest are required to serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest are required to serve 240 hours of confinement within the residence. Such offenders on house arrest are required to be electronically monitored.
- Second-time offenders placed in work release are required to serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release are required to serve 240 hours of confinement, including the same initial minimum imprisonment.
- The minimum and maximum fines for a second offense are increased by \$250. The minimum fine for first or third offenses are increased by \$250. An amount of \$250 from each fine will be directed into the Community Corrections Supervision Fund created by the bill.
- All offenders are required to complete an alcohol and drug evaluation pursuant to the amended provisions of KSA 8-1008 and to follow any recommendation as ordered by the court.
- The sentence for any conviction for commercial DUI when one or more children under 14 years of age are in the vehicle at the time of the offense will be enhanced by one month, which the judge may order to be served on house arrest, work release, or other conditional release.
- Legal use of drugs is not a defense to commercial DUI of drugs.
- In lieu of payment of a fine under this section, the court may order the defendant to perform community service. The defendant will receive credit on the fine of \$5 per hour of community service, and the community service must be performed within one year after imposition of the fine or earlier if so ordered.

- Before filing a complaint alleging commercial DUI, a prosecutor must obtain motor vehicle violations records from the Division of Vehicles and criminal history from the KBI.
- The court is required to electronically report every conviction or diversion agreement for commercial DUI and obtain criminal history information from the KBI before sentencing.
- Upon a conviction, the Division of Vehicles is required to suspend, restrict, or suspend and restrict the offender's driving privileges under KSA 8-1014.
- Cities or counties are allowed to prohibit commercial DUI as long as the minimum penalty is no lower than the statutory minimum, the maximum penalty is no higher than the statutory maximum, and restitution is authorized.
- Any municipal offense that would constitute a felony must be referred to the county or district attorney for prosecution.
- No plea bargaining which permits a person charged with commercial DUI to avoid the mandatory penalties established by the section is allowed.

References to the commercial DUI statute are added to a variety of other statutory provisions to ensure consistency with references to DUI under KSA 2010 Supp. 8-1567.

Urine Samples

The bill amends the implied consent provision for collection of a urine sample to require supervision by a person licensed to practice medicine and surgery, licensed as a physician's assistant, or acting under the direction of such licensed person; a registered nurse or licensed practical nurse; or a law enforcement officer of the same sex as the person being tested.

Restructuring of Alcohol and Drug Evaluations and Treatment

The bill removes many of the provisions in KSA 8-1008 regarding evaluation and supervision of DUI offenders under the alcohol and drug safety action program (ADSAP). To replace ADSAP, the bill requires the Department of Social and Rehabilitation Services (SRS) to develop a standardized substance abuse evaluation. Evaluation and treatment will be provided by a "provider" who is licensed by the Behavioral Sciences Regulatory Board and is compliant with SRS requirements.

Administrative Penalties

The bill amends the administrative penalties for test refusal as follows:

- For a second test refusal, driving privileges will be suspended for one year, followed by a two-year ignition interlock restriction.
- For a third test refusal, driving privileges will be suspended for one year, followed by a three-year ignition interlock restriction.
- For a fourth test refusal, driving privileges will be suspended for one year, followed by a four-year ignition interlock restriction.
- For a fifth test refusal, driving privileges will be suspended for one year, followed by a ten-year ignition interlock restriction.

The administrative penalties for a test failure or an alcohol or drug-related conviction in Kansas are amended as follows (there is no change to the penalty for a second occurrence):

- Between July 1, 2011, and June 30, 2015, for a first occurrence, driving privileges will be suspended for 30 days for all offenders, followed by a 180-day ignition interlock restriction, or a one-year ignition interlock restriction for offenders with certain previous violations on their record. On and after July 1, 2015, the penalty for a first occurrence will return to the former provision, which was a 30-day suspension and a 330-day restriction to driving for certain purposes, with an ignition interlock option.
- For a third occurrence, driving privileges will be suspended for one year, followed by a two-year ignition interlock restriction.
- For a fourth occurrence, driving privileges will be suspended for one year, followed by a three-year ignition interlock restriction.
- For a fifth occurrence, driving privileges will be suspended for one year, followed by a 10-year ignition interlock restriction.

For a first time test failure or alcohol or drug-related conviction, the prior violations that will trigger the one-year ignition interlock restriction include open container, minor in possession, those violations listed in the habitual violator statute, three or more moving violations in a single year, or any other suspension or revocation of driving privileges.

The administrative penalties for test failure with a blood or breath alcohol concentration of .15 or greater are amended so that for a fifth occurrence, driving privileges will be suspended for one year, followed by a ten-year ignition interlock restriction.

A person subject to a ten-year ignition interlock restriction will be permitted to petition the district court for relief from this restriction after five years of the restriction have been served. The court must consider whether the person's driving privileges have been limited by another action of the Division of Vehicles or a court and whether the person has proven installation, maintenance, and use of the interlock device throughout the five-year period.

A person subject to administrative penalties under the previous version of this section will be allowed to apply to have the new penalties applied retroactively. There is a \$100 fee for such application. The first \$100,000 generated by this fee will be credited to the Division of Vehicles Operating Fund, with the remainder credited to the Community Corrections Supervision Fund.

A person whose driving privileges have been suspended for one year will be allowed, after 45 days of such suspension, to apply to the Division of Vehicles for an ignition interlock restriction for the remainder of the suspension period for the purposes of getting to and from work, school, an alcohol treatment program, and the ignition interlock provider for maintenance purposes. A violation of the restrictions will add an additional year's suspension.

The bill maintains a provision allowing a person under an ignition interlock restriction to operate an employer's vehicle without an ignition interlock device during normal business activities, as long as the person does not own or control the vehicle or business. The bill clarifies that this provision does not apply to an interlock ignition restriction granted for the remainder of a one-year suspension period.

Administrative penalties for tampering with or requesting another to blow into an ignition interlock device are amended from the previous penalty of a two-year suspension to the following:

- On a first conviction, the ignition interlock restriction will be extended 90 days; and
- On a second or subsequent conviction, the original interlock restriction period will be restarted.

The administrative penalty for operating a vehicle not equipped with an ignition interlock device is changed from a two-year suspension to a restart of the original interlock restriction period.

Administrative Hearing Fee

The bill amends the DUI administrative hearing statute to add a \$50 hearing fee to cover administrative costs of the hearing. The fee is required regardless of whether the hearing was in person or by telephone.

DUI

The bill amends the DUI statute, KSA 2010 Supp. 8-1567, as follows:

- The minimum and maximum fines for second offenses are increased by \$250. The minimum fine for first or third offenses are increased by \$250. An amount of \$250 from each fine will be directed into the Community Corrections Supervision Fund created by the bill.
- The classification of a third conviction is changed from a nonperson felony to a class A, nonperson misdemeanor, unless the offender has a prior conviction which occurred within the preceding ten years, not including any period of incarceration.
- All offenders are required to complete an alcohol and drug evaluation pursuant to the amended provisions of KSA 8-1008 and to follow any recommendation as ordered by the court.
- Upon expiration of a term of imprisonment for a third, fourth or subsequent DUI conviction, the offender will be placed in the custody of the community correctional services program for a mandatory one-year period of supervision. The court will determine whether the offender should be assigned to community corrections or court services based upon a risk assessment tool. During supervision, the offender will be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a Department of Social and Rehabilitation Services-designated care coordination agency, to include assessment and, if appropriate, treatment. The bill accordingly amends the Community Corrections Act to clarify that DUI offenders may be supervised by community correctional services programs.
- For first and fourth or subsequent convictions for DUI, the court may place the offender under house arrest to serve the remainder of the minimum sentence after 48 (for first conviction) or 72 (for fourth or subsequent conviction) hours imprisonment.

- Second-time offenders on house arrest must serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest must serve 240 hours of confinement within the residence. Such offenders on house arrest must be electronically monitored.
- Second-time offenders placed in work release must serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release must serve 240 hours of confinement, including the same initial minimum imprisonment.
- Only DUI convictions occurring on or after July 1, 2001, will be counted in determining the current conviction classification.
- Legal use of drugs is not a defense to DUI of drugs.
- The blood or breath testing window for DUI is increased from two hours to three hours.
- Existing criminal interlock, impound, and immobilization provisions for second or subsequent convictions are removed in light of the revised administrative penalties.

KBI Central Repository

The bill requires the KBI Director to adopt rules and regulations on or before July 1, 2012, requiring district courts to report to the central repository the filing of all cases alleging a DUI or commercial DUI. The Director must adopt rules and regulations on or before July 1, 2013, requiring such reporting to be electronic.

The bill makes the filing of a charge a reportable event for purposes of the central repository.

The bill requires municipal court judges to ensure that the municipal court reports the filing and disposition of any DUI case to the KBI central repository. After July 1, 2013, such reporting must be made electronically.

Expungement

The bill allows a petition for expungement of a DUI (under KSA 8-1567 or municipal equivalent) after 10 years.

Technical Changes

Throughout the bill, various references and other language are revised to ensure statutory consistency and reflect current law.