

## HOUSE Substitute for SENATE BILL No. 214

By Select Committee on Corrections Reform and Oversight

3-26

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9 AN ACT concerning driving under the influence; amending K.S.A. 2007  
10 Supp. 8-1567 and repealing the existing section; also repealing K.S.A.  
11 2007 Supp. 8-1567b.

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

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

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

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

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

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

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

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

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

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

1 either before or as a condition of any grant of probation or suspension,  
2 reduction of sentence or parole.

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

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

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

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

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

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

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

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

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

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

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

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

1 order the person on house arrest, work release or other conditional  
2 release.

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

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

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

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

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

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

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

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

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

1 such vehicle shall be the amount of time remaining on the lease.

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

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

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

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

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

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

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

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

40 (4) it is irrelevant whether an offense occurred before or after con-  
41 viction for a previous offense; and

42 (5) a person may enter into a diversion agreement in lieu of further  
43 criminal proceedings for a violation of this section, and amendments

1 thereto, or an ordinance which prohibits the acts of this section, and  
2 amendments thereto, only once during the person's lifetime.

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

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

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

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

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

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

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

- 1 (4) Any personal property in a vehicle impounded or immobilized  
2 pursuant to this subsection may be retrieved prior to or during the period  
3 of such impoundment or immobilization.
- 4 (5) As used in this subsection, the convicted person's motor vehicle  
5 or vehicles shall include any vehicle leased by such person. If the lease  
6 on the convicted person's motor vehicle subject to impoundment or im-  
7 mobilization expires in less than one year from the date of the impound-  
8 ment or immobilization, the time of impoundment or immobilization of  
9 such vehicle shall be the amount of time remaining on the lease.
- 10 (q) No plea bargaining agreement shall be entered into nor shall any  
11 judge approve a plea bargaining agreement entered into for the purpose  
12 of permitting a person charged with a violation of this section, or a vio-  
13 lation of any ordinance of a city or resolution of any county in this state  
14 which prohibits the acts prohibited by this section, to avoid the mandatory  
15 penalties established by this section or by the ordinance. For the purpose  
16 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
17 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
18 constitute plea bargaining.
- 19 (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may  
20 be pleaded in the alternative, and the state, city or county, but shall not  
21 be required to, may elect one or two of the three prior to submission of  
22 the case to the fact finder.
- 23 (s) Upon a fourth or subsequent conviction, the judge of any court in  
24 which any person is convicted of violating this section, may revoke the  
25 person's license plate or temporary registration certificate of the motor  
26 vehicle driven during the violation of this section for a period of one year.  
27 Upon revoking any license plate or temporary registration certificate pur-  
28 suant to this subsection, the court shall require that such license plate or  
29 temporary registration certificate be surrendered to the court.
- 30 (t) For the purpose of this section: (1) "Alcohol concentration" means  
31 the number of grams of alcohol per 100 milliliters of blood or per 210  
32 liters of breath.
- 33 (2) "Imprisonment" shall include any restrained environment in  
34 which the court and law enforcement agency intend to retain custody and  
35 control of a defendant and such environment has been approved by the  
36 board of county commissioners or the governing body of a city.
- 37 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
38 4165, and amendments thereto.
- 39 (u) The amount of the increase in fines as specified in this section  
40 shall be remitted by the clerk of the district court to the state treasurer  
41 in accordance with the provisions of K.S.A. 75-4215, and amendments  
42 thereto. Upon receipt of remittance of the increase provided in this act,  
43 the state treasurer shall deposit the entire amount in the state treasury



1 and the state treasurer shall credit 50% to the community alcoholism and  
2 intoxication programs fund and 50% to the department of corrections  
3 alcohol and drug abuse treatment fund, which is hereby created in the  
4 state treasury.

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

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

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