

MEMORANDUM

To: Leyton Gunn, Division of the Budget
From: Scott M. Schultz, Executive Director
Date: February 16, 2021
Re: Prison Bed Impact Assessment, **HB 2377 – Revising the laws concerning driving under the influence, including authorizing reinstatement of a driver's license for certain persons with an ignition interlock device restriction, requiring persons with an ignition interlock device restriction to complete the ignition interlock device program before driving privileges are fully reinstated, providing for reduced ignition interlock device program costs for certain persons and modifying the criminal penalties for driving a commercial motor vehicle under the influence and driving under the influence**

IMPACT ASSESSMENT

- **Prison Admissions:** This bill will **increase** prison admissions by **193** in FY 2022 and **211** in FY 2031.
- **Prison Bed Space:** This bill will **increase** prison beds by **193** in FY 2022 and **345** in FY 2031.
- **KSSC Workload:** This bill will have **no impact** on the workload of the Commission.

SUMMARY OF THE BILL

New Section 1. Any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed and who meets the requirements may request reinstatement of such person's driver's license.

The division shall approve the request if the person's ignition interlock device restriction period has been extended at least five years due to the person's failure to provide the division with proof of completion of the ignition interlock device and: the person has not had an alcohol or drug-related conviction or occurrence; and has no convictions for K.S.A. 8-1599, K.S.A. 41-727, 8-285(a), or conviction of two or more moving traffic violations committed on separate occasions.

Section 2. K.S.A. 8-235 is amended to remove language that a driver must complete mandatory suspension time and made application in order to have a valid driver's license. Language about motorized bicycles is removed.

Section 3. K.S.A. 8-2,142 is amended to allow commercial vehicle drivers disqualified for life to have driving privileges restored if the driver meets the following: has been disqualified for at least 10 years; the person has had no occurrence of any offense, test refusal or test failure during the 10-year period preceding the application; the person has had no alcohol or drug related convictions as during the 10-year period preceding the

application; the person has no pending alcohol or drug related criminal; the person has successfully completed an alcohol or drug treatment program, or a comparable program; and the person is no longer a threat to the public safety of this state.

Language is added that a person may be disqualified for life who uses a commercial motor vehicle in the commission of a felony involving sex trafficking.

Section 5. K.S.A. 8-1015 is amended to include language that a person may only complete the ignition interlock device program if the person has not more than three standard violations and no serious violation in the 90 consecutive days prior to application for reinstatement and the application occurs upon or after expiration of the applicable ignition interlock period required by law.

Section 6. K.S.A. 8-1016 is amended to allow restricted costs for ignition interlock.

Section 7. K.S.A. 8-1567 is amended to allow at least 120 hours of confinement which include at least 48 hours imprisonment and otherwise may be served by a combination of: imprisonment; a work release program; or a house arrest program.

Language is added that for a 3rd time misdemeanor DUI as a condition of any probation granted, the person shall serve at least 30 days of confinement. After at least 48 consecutive hours imprisonment the remainder of the period of confinement may be served by a combination of: imprisonment or a house arrest program. The penalty for a 3rd time felony conviction (prior within ten years) or a 4th time conviction is a **severity level 6, nonperson felony which was changed from a nongrid felony.**

Language is added to allow an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.

Section 9. K.S.A. 12-4415 is amended to read that a city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint or traffic citation alleging a violation of an ordinance of any city or resolution of any county that prohibits the acts prohibited under chapter 8 of the Kansas Statutes Annotated, if the defendant was a commercial driver's license holder at the time the violation was committed or at any subsequent time prior to being considered for diversion.

ASSUMPTIONS

- The target inmates as defined in this proposed bill include offenders who are convicted of DUI-third and DUI-fourth as defined in K.S.A. 8-1567
- Projected admission to prison for the target offenders is assumed to increase by an annual average of 1%, which is the same percentage used in relation to the baseline prison population forecast produced in September 2020 by the Kansas Sentencing Commission.
- It is assumed that the new policy effective date starts on July 1, 2021.
- The average sentence length for **severity level 6** is assumed to be 23 months, which is the observed length of sentence in FY 2019. Those receiving a prison sentence were 37.9%.

FINDINGS

- In FY 2019, there were **503** convictions for felony DUI under K.S.A. 8-1567
 - 319 were for DUI-third
 - 18 sentenced to county jail
 - 2 sentenced to probation
 - 299 sentenced to DUI-PIS
 - 184 were for DUI-fourth

- 25 sentenced to county jail
 - 1 sentenced to probation
 - 158 sentenced to DUI-PIS
- In FY 2019, there were **0** convictions for commercial DUI.
 - Under this bill, it is assumed that all 503 convictions from FY 2019 would result in a severity level 6 felony.
 - The following chart is a breakdown of increased prison admissions and prison beds created by this bill.

Fiscal Year	Increased Admission	Increased Prison Beds
2022	193	193
2023	195	318
2024	197	318
2025	199	330
2026	201	326
2027	203	332
2028	205	332
2029	207	335
2030	209	340
2031	211	345

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